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

TEXAS DEMOCRATIC PARTY, et al.	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	Cause No. 08-CV-02117-P
	§	
DALLAS COUNTY, TEXAS, et al.,	§	
	§	
Defendants.	§	

PLAINTIFFS' REPLY TO DEFENDANTS' RESPONSE OPPOSING PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS AND BRIEF IN SUPPORT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiffs, TEXAS DEMOCRATIC PARTY and BOYD L. RICHIE, in his Capacity as Chairman of the Texas Democratic Party (hereinafter referred to as "Plaintiffs"), who make and file this, their Reply to Defendants' Response Opposing Plaintiffs' Motion for Attorneys' Fees and Costs and Brief in Support filed by DALLAS COUNTY, TEXAS and BRUCE SHERBERT, in his Capacity as Election Administrator for Dallas County, Texas (hereinafter referred to as "Defendants"), Defendants herein, and in support thereof would respectfully show unto the Honorable Court as follows:

I.
BACKGROUND

On December 30, 2009, Plaintiffs filed a Motion for Attorneys' Fees and Costs and Supporting Memorandum of Law. This request for a fee award was based on 42

U.S.C. § 1973*l*(e), which allows the award of the Plaintiffs reasonable attorneys' fees and costs as the prevailing party in an action under the Voting Rights Act. The Plaintiffs' Motion was supported by attached attorneys' fees affidavits and supporting time record documentation. Motion, Exhibits 1-2.

Defendants filed a Response in Opposition to Plaintiffs' Motion, asking the Court to deny or reduce the amount of fees requested because Plaintiffs allegedly failed to meet their burden in demonstrating their request was reasonable. However, as will be shown below, the Defendants' argument is disingenuous given the amount of fees Defendants' counsel has charged. Defendants have failed to raise the issue because they produced no conflicting affidavit, and as a matter of law, the Plaintiffs have met their burden by producing sufficient evidence to support the requested award. The Defendants have failed to rebut the presumption. As a result, the Motion should be granted for the full amount of fees requested plus the additional amounts incurred since the Motion was filed as detailed in the attached Exhibits.

II.
ARGUMENTS AND AUTHORITIES

A. The Court's Calculation of the Amount of Reasonable Attorneys' Fees.

1. The Purpose Behind Statutes Allowing for the Recovery of Attorneys' Fees and Costs.

Under 42 U.S.C. 1973*l*(e), the Court may allow the prevailing party a reasonable attorneys' fee and costs in an action to enforce constitutional voting guarantees.[1] The primary purpose of attorneys' fee statutes is to encourage private enforcement of civil rights. *Vaughner v. Pulito*, 804 F.2d 873, 878 (5th Cir. 1986). The road to the resolution of a civil rights case is generally long and hard, and giving litigants the opportunity to recover fees encourages plaintiffs to take on lengthy and expensive litigation. Attorneys' fees statutes are tools serving the purpose of vindicating important rights by making attorneys' fees available under a private attorney general theory. *Farrar v. Hobby*, 506 U.S. 103, 122, 113 S.Ct. 566 (1992). Thus, the prevailing plaintiff in a civil rights action should recover attorneys' fees unless special circumstances would render such award unjust. *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S.Ct. 1933 (1984); *Nash v. Chandler*, 848 F.2d 567, 572 (5th Cir. 1988).[2]

2. The Factors the Court Should Consider in Determining a Reasonable Attorneys' Fee Award.

In *Hensley v. Eckerhart*, the Supreme Court adopted the twelve *Johnson* factors for determining reasonable attorneys' fees in civil rights cases. *Hensley*, 461 U.S. at 430. The twelve factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the

[1] Defendants concede Plaintiffs are prevailing parties as they do not contest that issue in their Response.

[2] Although several cases cited address the attorneys' fees provision in the Civil Rights Attorneys' Fee Award Act, 42 U.S.C. § 1988, the same language is used in the attorneys' fees provision of the Voting Rights Act, 42 U.S.C. § 1973*l*(e) and courts apply the same analysis to both statues. *League of United Latin Am. Citizens No. 4552 v. Roscoe Indep. Sch. Dist*., 119 F.3d 1228, 1232 (5th Cir. 1997); *Watkins v. Fordice*, 7 F.3d 453, 457 (5th Cir. 1993).

preclusion of employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations, imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Id*. at 430 n. 3. With the application of these twelve factors, district courts make a determination as to a reasonable fee award based on the specific facts of each case. *Id*. at 429 ("the amount of the fee, of course, must be determined on the facts of each case").[3]

Specifically, the application begins with the calculation of the lodestar, i.e. the number of hours reasonably expended on the litigation multiplied by a reasonable hourly billing rate. *Hensley*, 461 U.S. at 434; *Roscoe Indep. Sch. Dist*., 119 F.3d at 1232. These two numbers are determined with the *Johnson* factors in mind. *Roscoe Indep. Sch. Dist*., 119 F.3d at 1232. The party applying for a fee award should submit evidence supporting its calculation of the hours worked and the rate charged. *Hensley*, 461 U.S. at 433. If it does this, the lodestar amount is presumed to be a reasonable fee award, but it may be adjusted upward or downward in exceptional circumstances. *Roscoe Indep. Sch. Dist*., 119 F.3d at 1232. Because Defendants have offered no conflicting evidence, they have not rebutted the legal presumption that the fees submitted are reasonable and necessary.

[3] Thus, the Defendants citations to other cases for support of a reduction of fees sought is of little value, as each case must stand on its particular facts.

B. Plaintiffs' Request Reflects a Reasonable Fee Award in this Case.

1. Defendants' Unclean Hands in Bringing their Challenge.

Generally and broadly, Defendants' Response argues that the Plaintiffs' request for attorneys' fees in the amount of $86,400.00 is unreasonable. (The fees requested are now $109,350 because Plaintiffs' counsel has been required to file substantial briefing since the original fee request was made.) *See* Exhibits "1" and "2." The force of this argument is significantly undermined, however, by knowledge that the Defendants' counsel charged in excess of $140,000.00 in fees to defend this same case.[4] Although the Plaintiffs had the burden of proof and, as outlined in the Response, were forced to maneuver through numerous obstacles to prevail, the Plaintiffs' fees amount is substantially less than what the Defendants' attorneys charged during the same period. Any argument by the Defendants that the Plaintiffs' fee request is unreasonable is disingenuous (at best) and should be viewed in light of the amount of fees the Defendants' counsel themselves charged, which is indicative of the customary fee charged for such work.

2. Plaintiffs' Evidence to Support Number of Hours Reasonably Expended and their Reasonable Hourly Billing Rate

[4] Due to the time restraints in filing a reply, the undersigned was unable to obtain documentary evidence of the amount of the Defendants' fees, but intend to supplement this Reply with the evidence as soon as possible. Plaintiffs requested this information from defense counsel by letter in Exhibit 3. Defense Counsel demurred in response, Exhibit 4. Nevertheless, Defense Counsel does not deny the alleged amount of Defendants' fees. *See id*.

Additionally, the Plaintiffs' request for attorneys' fees should be granted because the evidence produced in support of the award is sufficient and uncontested. Defendants have failed to provide a contrary affidavit, thus, Plaintiffs' affidavits are the only evidence in the record.[5] As the Defendants note, the applicant must show entitlement to an award and to provide sufficient documentation to support their request, and the Plaintiffs have done so in this case. Plaintiffs' counsel submitted evidence of their background and experience, how they calculated their fees in this case according to the *Johnson* factors, and their detailed time records outlining how their time was spent over the two years of litigation in this case. Motion, Exhibits 1-2.

In their Response, the Defendants only challenge the number of hours reasonably expended by claiming: (1) fees incurred in state court litigation should be excluded; (2) fees for a particular document should not have been charged; (3) fees for a particular issue should be excluded; (4) fees for issues involving a party no longer in the litigation should be excluded; (5) the Plaintiffs' fees should be reduced because they only prevailed on one claim; and (6) the Plaintiffs' fees should be reduced for failure to submit sufficient and accurate records.[6]

3. Defendants Attempt to Divide Up Plaintiffs' Case into Sub-Issues to Reduce Plaintiffs' Fees Should be Dismissed

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[5] Defendants are not likely to produce a counter affidavit since their own lawyers charged considerably more than Plaintiffs' request.

[6] The Defendants do not dispute Plaintiffs are the prevailing party, the billing rate charged by Plaintiffs' counsel, or Plaintiffs request for $856.76 in costs associated with this case.

In order to determine the number of hours reasonably spent, the court must determine whether the total number of hours claimed is reasonable and whether specific hours claimed were reasonably expended. *Alberti v. Klevenhagen*, 896 F.2d 927, 933-34 (5th Cir.), *vacated in part on other grounds*, 903 F.2d 352 (5th Cir. 1990). Since Defendants have produced no evidence, Plaintiffs have met their burden.

This case involves a common core of facts that support several related legal theories. Plaintiffs' counsel in this case devoted their time to the development of this case as a whole, and it cannot be divided up into subsets of issues as the Defendants allege. The focus in determining whether the number of hours claimed is reasonable should be on the significance of the overall relief obtained by the plaintiff in relation to the hours expended on the litigation. *Hensley*, 461 U.S. at 435. Here, the Plaintiffs prevailed on their claims for multiple violations of Section 5 of the Voting Rights Act, and received an injunction to prevent the Defendants from employing their changed voting practices until such time as they obtain the required pre-clearance.[7] Although the Plaintiffs did not prevail on their other claims, the Supreme Court has made clear that a fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. *Id.* Litigants may raise alternate legal grounds for a desired outcome, and the court's rejection of some of these grounds is not a sufficient reason for reducing a fee award. *Id.* Plaintiffs obtained all the relief they sought.

[7] Defendants argue they prevailed on most issues which is strongly denied. Plaintiffs sought to enjoin changed election practices and sought to do so by any arguable claims. Plaintiffs completely succeeded by obtaining all the relief requested.

Furthermore, the Defendants claim the Plaintiffs failed to keep sufficient and accurate records is incorrect. In support of their fee request the Plaintiffs submitted fourteen pages of time records setting out the date, an explanation of the time spent, the hourly rate, the exact time spent and the amount.[8] Motion, Exhibits 1-2. Plaintiffs' counsel are not required to record in great detail how each minute of their time was expended. *Id.* at 437 n.12. Rather, they are only charged with identifying the general subject matter of each time expenditures. *Id.* The Plaintiffs have done this.

As to the remaining issues raised by the Defendants (D & E have already been addressed), brief responses are made below using the same section letters as Defendants' Response:

A. Plaintiffs do not seek recovery for the state court proceeding. Hundreds more hours were spent on the state court suit not claimed here. The reason Plaintiffs have claimed any of this time is because some portions of the state proceeding served as the discovery period for this case. It was in the state court proceeding where Plaintiffs examined Defendant Sherbet and he admitted the elements of a Section 5 violation. It was also during the state court proceeding and recount where Plaintiffs obtained the evidence of the potential for discrimination. Had the state court proceeding not occurred, Plaintiffs' counsel would have pursued discovery in this case that would

[8] In Defendants' sifting of the time records, several transcription errors are discovered. For example, Alice's pleadings refer to Dallas' pleadings — a simple error made when dictation is reduced to the written word. Nevertheless, these transcription errors do not reveal the time is unreasonable.

have cost a great deal more than is requested for the state court work that provided Plaintiffs the same evidence and information. Not awarding fees for this work merely encourages future litigants to submit discovery for evidence they obtained prior to suit.

B. Plaintiffs were forced to request a TRO when suit was filed because the recount was underway and Defendants were employing a new recount procedure in violation of Section 5. As it turns out, the number of votes affected was not sufficient to change the outcome of the race. However, Plaintiffs had to prepare the application because there would not have been time to do so when the manual recount was completed in order to stop the wrongful certification of a winner had the number of votes affected been significant.

C. Linda Harper-Brown filed pleadings in this case that Plaintiffs were required to review and then respond. Had Dallas not continued to employ non-precleared election practices, Harper-Brown's pleadings would not have required attention. At all material times, Defendants had the opportunity to avoid further litigation but they chose to continue enforcing changed election practices. But for Defendants' changed election practices, no litigation between Harper-Brown and Plaintiffs would have been necessary.

Finally, the Plaintiffs note that the number of hours spent on this case has only increased since they filed their Motion. Since that time, the Defendants have filed requests with the Court that it reconsider its prior rulings, they have opposed Plaintiffs' requests for costs and they have challenged the Plaintiffs' attorneys' fee request. Because of this, the Plaintiffs have been forced to incur an additional $22,950 in reasonable and necessary attorney's fees, as set out in the Supplemental Affidavits attached hereto as Exhibits "1" and "2." The Plaintiffs argue that, pursuant to 42 U.S.C. 1973*l*(e), they should be permitted to recover these fees, also. Therefore, the total amount of fees for Brazil & Dunn now equals $89,580 and $19,770 for Clay Jenkins. The total amount of attorneys' fees requested is $109,350.

III.
CONCLUSION AND PRAYER

In summary, Defendants claim the Plaintiffs are not entitled to recover their fees because the request is not reasonable and because the number of hours billed on the core issues in the case is less than the hours for which compensation is sought. Yet, Defendants' counsel have billed Dallas County significantly more than the amount the Plaintiffs seek, charges the Plaintiffs can only assume the Defendants deemed reasonable and necessary. Further, the Plaintiffs have submitted sufficient billing records to support the reasonableness of the number of hours billed and the hourly rate charged, and the *Johnson* factors all weigh in favor of a full award of the amount requested. Finally, the Defendants' arguments that this case should be divided up in order to reduce the

Plaintiffs' attorneys' fees is without merit, and would undermine the very purpose of permitting such awards in the first place. Plaintiffs are not required to engage in endless and expensive satellite litigation after prevailing in order to prove every meeting, phone call and letter was absolutely necessary. Accordingly, the Plaintiffs' request for attorneys' fees in the amount of $109,350 and costs in the amount of $856.76 should be granted.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Court grant their Motion and award Plaintiffs the full amount of the attorneys' fees and costs requested.

Plaintiffs pray for such other and further relief, general or special, in law or in equity to which they may prove themselves to be justly entitled.

Dated this 3rd day of February, 2010.

Respectfully submitted,

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
State Bar No. 24036507
General Counsel
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BRAZIL & DUNN
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Facsimile: (972) 938-7676

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2010, I electronically filed the foregoing document with the Clerk of the United States District Court, Northern District of Texas, Dallas 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:

E. Leon Carter
Jamil N. Alibhai
Munck Carter PC
600 Banner Place
12770 Coit Rd.
Dallas, TX 75251
(Attorneys for Defendant Dallas County and Bruce Sherbet)

/s/ Chad W. Dunn
Chad W. Dunn

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.	§	Cause No. 08-CV-02117-P
DALLAS COUNTY, TEXAS; and BRUCE SHERBET, in his capacity as Election Administrator for Dallas County, Texas,	§	
Defendants.	§	

SUPPLEMENTAL AFFIDAVIT OF CHAD W. DUNN

STATE OF TEXAS §
§
COUNTY OF HARRIS §

On this day, Chad W. Dunn appeared before me, the undersigned notary republic. After I administered an oath to him, upon his oath he said:

1. My name is Chad W. Dunn. I am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. This affidavit is in supplement to my earlier affidavit which is incorporated herein for all purposes.

3. Since filing Plaintiffs' Motion for Attorneys' Fees and Costs, I have been required to spend additional time on this case. The amount of fees for this time is $20,130. This amount was calculated by multiplying the total number of hours worked (67.1) by the hourly rate of $300 per hour.

4. Attached hereto and incorporated herein as exhibit "A" to this affidavit is a detailed time record outlining the usage of this time.

EXHIBIT "1"

5. The fees Scott Brazil and I charge are those customarily charged in this area for the same or similar services by an attorney with my experience, reputation and ability, considering the nature of the controversy, the time limitations imposed, the results obtained compared with results in similar cases and the nature and length of my relationship with Plaintiffs.

6. These additional fees are reasonable and necessary for the nature of the case, complexity of issues, time and labor required, other employment lost, responsibility assumed and the benefits derived by Plaintiffs.

Further, Affiant sayeth not."

Signed this 3rd day of February, 2010.

CHAD W. DUNN, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME on this the 3rd day of February, 2010, to certify which witness my hand and seal of office.

Notary Public in and for the State of Texas

BRAZIL & DUNN
Attorneys at Law
4201 FM 1960 West, Suite 530
Houston, Texas 77068
(281) 580-6310

Boyd Richie
Texas Democratic Party
505 W. 12th St.
Suite 200
Austin, TX 78701

TDP/Dallas County

Statement Date: 02/03/2010
Statement No. 1961
Account No. TDP.19

FOR LEGAL SERVICES RENDERED:

Attorneys' Fees

			Rate	Hours	
01/11/2010					
	CWD	Receipt and review of Dallas' Objection to Motion for Costs. Research and review authorities cited therein.	300.00	3.20	960.00
	CWD	Research Response to Objection to Bill of Costs.	300.00	1.80	540.00
	KSB	Receipt and review of Dallas' Objection to Motion for Costs. Review authorities cited therein.	300.00	0.40	120.00
01/13/2010					
	CWD	Receipt and review of Dallas' Motion to Reconsider.	300.00	3.50	1,050.00
	KSB	Receipt and review of Dallas' Motion to Reconsider.	300.00	1.10	330.00
	CWD	Telephone conference with Clay Jenkins regarding Dallas' Motion to Reconsider.	300.00	0.20	60.00
01/14/2010					
	CWD	Continue research and drafting of Response to Motion to Reconsider.	300.00	4.80	1,440.00
	CWD	Review summary judgment evidence including ballot images. Prepare summary under Federal Rule of Evidence 1006 of summary judgment evidence			

EXHIBIT "A"

Boyd Richie

Statement Date: 02/03/2010
Statement No. 1961
Account No. TDP.19

			Rate	Hours	
		showing effect on minority voters.	300.00	4.50	1,350.00
01/15/2010					
	CWD	Begin draft of Response to Objection to Bill of Costs.	300.00	4.10	1,230.00
	KSB	Research Motion to Reconsider. Edit working draft of Response.	300.00	5.50	1,650.00
	KSB	Review and edit FRE 1006 summary concerning evidence of minority discrimination.	300.00	1.20	360.00
01/16/2010					
	CWD	Review and edit Response on Objection to Bill of Costs.	300.00	2.10	630.00
	KSB	Edit Cost Response.	300.00	0.30	90.00
01/17/2010					
	CWD	Continue edit and drafting Response to Motion to Reconsider.	300.00	3.30	990.00
01/18/2010					
	CWD	Edit and file Response on Objection to Costs.	300.00	1.40	420.00
	KSB	Edit Cost Response.	300.00	0.40	120.00
01/20/2010					
	CWD	Receipt and review of Dallas' Response to Motion for Attorneys Fees.	300.00	2.50	750.00
	KSB	Receipt and review of Dallas' Response to Motion for Attorneys' Fees.	300.00	0.50	150.00
	CWD	Telephone conference with Clay Jenkins regarding attorneys' fees.	300.00	0.20	60.00
01/27/2010					
	CWD	Begin research on reply to objection to attorneys fees.	300.00	6.50	1,950.00

Boyd Richie

Statement Date: 02/03/2010
Statement No. 1961
Account No. TDP.19

			Rate	Hours	
01/28/2010					
	CWD	Continue drafting and researching reply on attorneys fees.	300.00	3.80	1,140.00
	CWD	Prepare and send Rule 11 letter for failure to disclose fee billing to Dallas County in excess of those fees requested by Plaintiffs.	300.00	0.30	90.00
	CWD	Telephone conference with Clay Jenkins regarding Dallas County's attorneys' fees charges from Munck Carter.	300.00	0.50	150.00
02/01/2010					
	CWD	Continue draft and research of reply to attorneys fees.	300.00	3.50	1,050.00
	CWD	Draft and edit additional attorneys fees affidavit.	300.00	0.50	150.00
	CWD	Receipt and review of Carter's letter concerning failure to disclose higher Dallas County attorneys fees.	300.00	0.20	60.00
02/02/2010					
	CWD	Receipt and review of Dallas' reply to Motion to Reconsider and Motion for Costs.	300.00	3.20	960.00
	KSB	Receipt and review of Dallas' reply to Motion to Reconsider and Motion for Costs.	300.00	0.30	90.00
02/03/2010					
	CWD	Draft, edit and finalize Motion for Attorneys Fees Reply.	300.00	5.50	1,650.00
	KSB	Edit Attorneys' Fees Reply.	300.00	1.80	540.00
		For Current Services Rendered		67.10	20,130.00

Boyd Richie

Statement Date: 02/03/2010
Statement No. 1961
Account No. TDP.19

Recapitulation

Timekeeper	Hours	Rate	Total
Scott Brazil	11.50	$300.00	$3,450.00
Chad Dunn	55.60	300.00	16,680.00

Total Expenses, Attorney's Fees and/or Client Disbursements	20,130.00
Previous Balance	$69,450.00
Balance Due	$89,580.00

Aged Due Amounts

0-30	31-60	61-90	91-120	121-180	181+
20,130.00	69,450.00	0.00	0.00	0.00	0.00

Please Remit $89,580.00

PLEASE MAKE CHECK PAYABLE TO:
K. SCOTT BRAZIL
THANK YOU.

IF THIS STATEMENT OR A PORTION THEREOF CONTAINS AN ERROR(S), PLEASE CONTACT OUR OFFICE SO CORRECTIONS AND/OR CLARIFICATIONS CAN BE MADE.

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.	§	Cause No. 08-CV-02117-P
DALLAS COUNTY, TEXAS; and BRUCE SHERBET, in his capacity as Election Administrator for Dallas County, Texas,	§	
Defendants.	§	

SUPPLEMENTAL AFFIDAVIT OF CLAY JENKINS

STATE OF TEXAS §
§
COUNTY OF DALLAS §

On this day, Clay Jenkins appeared before me, the undersigned notary republic. After I administered an oath to him, upon his oath he said:

1. My name is Clay Jenkins. I am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. This affidavit is in supplement to my earlier affidavit which is incorporated herein for all purposes.

3. Since filing Plaintiffs' Motion for Attorneys' Fees and Costs, I have been required to spend additional time on this case. The amount of fees for this time is $2,820.00. This amount was calculated by multiplying the total number of hours worked (9.4) by the hourly rate of $300 per hour.

4. Attached hereto and incorporated herein as exhibit "A" to this affidavit is a detailed time record outlining the usage of this time.

EXHIBIT "2"

5. The fees I charge are those customarily charged in this area for the same or similar services by an attorney with my experience, reputation and ability, considering the nature of the controversy, the time limitations imposed, the results obtained compared with results in similar cases and the nature and length of my relationship with Plaintiffs.

6. These additional fees are reasonable and necessary for the nature of the case, complexity of issues, time and labor required, other employment lost, responsibility assumed and the benefits derived by Plaintiffs.

Further, Affiant sayeth not."

Signed this ~~3rd~~ 2nd day of February, 2010.

CLAY JENKINS, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME on this the 2nd day of February, 2010, to certify which witness my hand and seal of office.

DEEANN ELLIS
Notary Public, State of Texas
My Commission Expires
October 19, 2013

Notary Public in and for the State of Texas
My Commission Expires: 10/19/13

JENKINS & JENKINS
516 West Main Street
Waxahachie, TX 75165
Phone: (972) 938-2529
Fax: (972) 938-7676

Boyd Richie
Texas Democratic Party
505 West 12th Street, Suite 200
Austin, TX 78701

Re: TDP/Dallas County

FOR LEGAL SERVICES RENDERED:

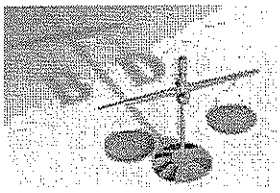
Date		Rate	Hours	
1/11/2010	Receipt and review of Objection to Costs. Research same.	$300.00	0.8	$240.00
1/13/2010	Receipt and review of Motion to Reconsider. Conference with co-counsel.	$300.00	2.5	$750.00
1/14/2010	Review summary judgment evidence of ballot images to assist attorney Dunn in preparing a summary of same.	$300.00	1.2	$360.00
1/16/2010	Review and edit draft response to costs.	$300.00	0.5	$150.00
1/17/2010	Edit draft Response to Objection to Costs.	$300.00	0.3	$90.00
1/20/2010	Review Dallas' Response to Motion for Attorneys' Fees.	$300.00	1.2	$360.00
1/20/2010	Telephone conference with attorney Dunn concerning attorneys' fees.	$300.00	0.2	$60.00
1/28/2010	Telephone conference with attorney Dunn concerning Dallas County's attorneys' fees from Munck Carter.	$300.00	0.5	$150.00
2/1/2010	Draft and edit supplemental attorneys' fees affidavit.	$300.00	0.5	$150.00

EXHIBIT "A"

2/1/2010	Receipt and review of attorney Carter's letter regarding attorneys' fees.	$300.00	0.2	$60.00
2/2/2010	Receipt and review of Dallas' Reply on Costs.	$300.00	0.2	$60.00
2/2/2010	Receipt and review of Dallas' Reply to Motion to Reconsider.	$300.00	0.2	$60.00
2/3/2010	Edit Motion for Attorneys' Fees Reply	$300.00	1.1	$330.00
	Total for Current Services Rendered		**9.4**	**$2,820.00**

CASE EXPENSES:

Total Case Expenses		**$0.00**
TOTAL EXPENSES AND ATTORNEY'S FEES		**$2,820.00**



Brazil & Dunn

Attorneys at Law

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Scott Brazil
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Board Certified Personal Injury Trial Law
Texas Board of Legal Specialization

Chad W. Dunn
Board Certified Personal Injury Trial Law
Texas Board of Legal Specialization

January 25, 2010

E. Leon Carter
Munck Carter PC
600 Banner Place
12770 Coit Rd.
Dallas, TX 75251
(Attorneys for Defendants)

By Fax Only: 972-628-3616

Re: Cause No. 3:08-02117, *Texas Democratic Party, Boyd L. Richie, et al. vs. Dallas County, Texas, et al.*; In the United States District Court for the Northern District of Texas, Dallas Division.

Dear Mr. Carter:

As you know, your firm recently filed, on behalf of Dallas County, a motion objecting to the amount of attorneys' fees Plaintiffs' counsel claims in this case. It has come to my attention that your firm has billed Dallas County in excess of the amounts claimed by the Plaintiffs. Your firm's billings greatly exceed those billed by Plaintiffs despite the fact Plaintiffs carried the burden of proof.

Under Federal Rules of Civil Procedure 11, your firm had a duty to inform the Court (1) that the attorneys' fees incurred by Dallas County were in excess of those claimed by Plaintiffs' counsel, and (2) why the discrepancy in billing amounts does not negate the argument and authorities presented in Dallas County's objection to Plaintiffs' Motion for Attorneys' Fees and Costs. Your pleading's failure to provide information on your firm's greater attorneys' fees billing is a failure to disclose material facts.

Please let me know immediately if you intend to amend your filings with the Court to include this additional information or withdraw your objection.

Very truly yours,

Chad W. Dunn
General Counsel
Texas Democratic Party

CWD:crw

EXHIBIT "3"

cc: Clay L. Jenkions
Jenkins & Jenkins, P.C.
516 West Main Street
Waxahachie, Texas 75165

By Fax Only: 972-938-7676

MUNCK CARTER
Trials. Transactions. Technology.

February 1, 2010

VIA FACSIMILE
Chad W. Dunn
Brazil & Dunn
4201 FM 1960W
Suite 530
Houston, TX 77068

Re: *Texas Democratic Party v. Dallas County;* Civil Action No. 3:08-cv-02117-P, Northern District of Texas-Dallas Division, Dallas County, Texas

Dear Mr. Dunn:

We are in receipt of your letter dated January 25, 2010. In the above-captioned action, the Texas Democratic Party ("the TDP") contends that it is entitled to attorneys' fees. Thus, the TDP has the burden to show that its requested fees are reasonable. Defendants have objected to the fees sought by the TDP on various grounds, but primarily because the requested fees are not reasonable. The fees are not unreasonable merely because of the amount requested; rather, they are unreasonable because—as set forth in Defendants' response to the motion for attorneys' fees— the request seeks (1) fees incurred in state court litigation of the House District 105 recount; (2) fees incurred drafting a never-filed TRO application related to the recount; (3) fees incurred for issues involving Linda Harper-Brown; and (4) fees incurred prosecuting claims on behalf of multiple plaintiffs, when plaintiffs prevailed on only one claim Furthermore, the records submitted are insufficiently specific, faulty, and fail to demonstrate any exercise of billing judgment.

With respect to the fees billed by my firm, the defendants prevailed on the majority of issues presented—unlike plaintiffs. Additionally, we are not aware of authority that states that the reasonableness of TDP's fees should be determined based on attorneys' fees billed to defendants. Please provide us with citations to U.S. Supreme Court or Fifth Circuit authority holding (i) that our firm had a duty to inform the court of the amount of attorneys' fees incurred by Dallas County and (ii) that the attorneys' fees incurred by Dallas County negate the arguments and authorities presented in Dallas County's objection to plaintiffs' motion for attorneys fees and costs.

We look forward to your prompt response.

Very truly yours,

E. Leon Carter

ELC/kn
cc: Clay L. Jenkins (via facsimile)

EXHIBIT "4"