IN THE 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. 3:08-CV-02117-P
DALLAS COUNTY, TEXAS; BRUCE SHERBET, in his capacity as Election Administrator for Dallas County, Texas,	§	
Defendants.	§	

DEFENDANTS' ANSWER TO PLAINTIFFS'
FIRST AMENDED ORIGINAL COMPLAINT

Defendants Dallas County, Texas ("Dallas County") and Bruce Sherbet ("Sherbet"), in his capacity as Election Administrator for Dallas County, Texas (collectively "Defendants") file their Original Answer to Plaintiffs' First Amended Original Complaint ("Complaint"), as follows:

I.
ADMISSIONS AND DENIALS

1. Defendants admit that certain polling stations in Dallas County, Texas utilize optically scanned ballots, which scan paper ballots. Defendants deny the remaining allegations in paragraph 1 of Plaintiffs' Complaint.

2. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 2 and, therefore, deny the allegations in paragraph 2 of Plaintiffs' Complaint.

3. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 3 and, therefore, deny the allegations in paragraph 3 of Plaintiffs' Complaint.

4. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 4 and, therefore, deny the allegations in paragraph 4 of Plaintiffs' Complaint.

5. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 5 and, therefore, deny the allegations in paragraph 5 of Plaintiffs' Complaint.

6. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 6 and, therefore, deny the allegations in paragraph 6 of Plaintiffs' Complaint.

7. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 7 and, therefore, deny the allegations in paragraph 7 of Plaintiffs' Complaint.

8. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 8 and, therefore, deny the allegations in paragraph 8 of Plaintiffs' Complaint.

9. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 9 and, therefore, deny the allegations in paragraph 9 of Plaintiffs' Complaint.

10. Defendants deny the allegations in paragraph 10 of Plaintiffs' Complaint.

11. Defendants admit that Section 65.007 of the Texas Election Code states:

> (a) In an election in which a single square is provided on the ballot for casting a straight-party vote, the tally lists shall contain spaces for tallying those votes.
>
> (b) Except as provided by Subsection (c) or (d), each straight-party vote shall be tallied for the party receiving the vote instead of being tallied for the individual candidates of the party. The total number of straight-party votes tallied for each party shall be added to the total votes received for each of the party nominees individually.
>
> (c) If a ballot indicates a straight-party vote and a vote for an opponent of one or more of that party's nominees, a vote shall be counted for the opponent and for each of the party's other nominees whether or not any of those nominees have received individual votes.
>
> (d) If a ballot indicates straight-party votes for more than one party, those votes may not be tallied and a vote shall be counted for each candidate receiving an individual vote if no other individual votes are received in that race. If no candidate receives an individual vote, the portion of the ballot for offices may not be counted.

Defendants deny the remaining allegations in paragraph 11 of Plaintiffs' Complaint.

12. Defendants admit that Section 65.007 of the Texas Election Code was enacted in 1985, and made effective January 1, 1986. Defendants admit that section 65.007 was amended in 1993, effective September 1, 1993. Defendants admit that the Voting Rights Act, 42 U.S.C. § 1973c was enacted in 1965, and amended in 1970, 1975, and 2006. Defendants deny the remaining allegations in paragraph 12 of Plaintiffs' Complaint.

13. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 13 and, therefore, deny the allegations in paragraph 13 of Plaintiffs' Complaint.

14. Defendants deny the allegations in paragraph 14 of Plaintiffs' Complaint.

15. Defendants admit that this web address links to the Texas Secretary of State website and displays an October 31, 2008 memorandum from Ann McGeehan, Director of Elections to County Clerks and Election administrators, which contains the text quoted in paragraph 15. Defendants deny the remaining allegations in paragraph 15 of Plaintiffs' Complaint.

16. Defendants admit that Dallas County, Texas began using ES&S iVotronic direct record electronic voting machines in 1998. Defendants deny the remaining allegations in paragraph 16 of Plaintiffs' Complaint.

17. Defendants deny the allegations in paragraph 17 of Plaintiffs' Complaint.

18. Defendants deny the allegations in paragraph 18 of Plaintiffs' Complaint.

19. Defendants admit that the iVotronic generates a review screen. Defendants deny the remaining allegations in paragraph 19 of Plaintiffs' Complaint.

20. Defendants deny the allegations in paragraph 20 of Plaintiffs' Complaint.

21. Defendants admit that the iVotronic generates a review screen. Defendants deny the remaining allegations in paragraph 21 of Plaintiffs' Complaint.

22. Defendants deny the allegations in paragraph 22 of Plaintiffs' Complaint.

23. Defendants admit that a General Election was held on November 4, 2008.

24. Defendants admit that Dallas County, Texas permitted early voting in the November 4, 2008 General Election by personal appearance on the iVotronic. Defendants deny the remaining allegations in paragraph 24 of Plaintiffs' Complaint.

25. Defendants admit that following the November 4, 2008 General Election, candidate Bob Romano requested a recount of ballots cast in the race for Texas House District 105. Defendants deny the remaining allegations in paragraph 25 of Plaintiffs' Complaint.

26. Defendants deny the allegations in paragraph 26 of Plaintiffs' Complaint.

27. Defendants deny the allegations in paragraph 27 of Plaintiffs' Complaint.

28. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 28 and, therefore, deny the allegations in paragraph 28 of the Plaintiffs' Complaint.

29. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 29 and, therefore, deny the allegations in paragraph 29 of the Plaintiffs' Complaint.

30. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30 and, therefore, deny the allegations in paragraph 30 of the Plaintiffs' Complaint.

31. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31 and, therefore, deny the allegations in paragraph 31 of the Plaintiffs' Complaint.

32. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 32 and, therefore, deny the allegations in paragraph 32 of the Plaintiffs' Complaint.

33. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 33 and, therefore, deny the allegations in paragraph 33 of the Plaintiffs' Complaint.

34. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 34 and, therefore, deny the allegations in paragraph 34 of the Plaintiffs' Complaint.

35. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 35 and, therefore, deny the allegations in paragraph 35 of the Plaintiffs' Complaint.

36. Defendants admit that Dallas County, Texas is a political subdivision of the State of Texas. Defendants further admit that Dallas County, Texas was served with this lawsuit. Defendants deny the remaining allegations in paragraph 36 of the Plaintiffs' Complaint.

37. Plaintiffs' Complaint does not contain paragraph 37. Therefore, there is nothing to deny or admit.

38. Defendants admit that Bruce Sherbet is the Election Administrator for Dallas County, Texas. Defendants admit that Bruce Sherbet was served with this lawsuit. Defendants deny the remaining allegations in paragraph 38 of the Plaintiffs' Complaint.

39. Defendants admit that the Court has jurisdiction over this matter under 28 U.S.C. § 1331. Defendants deny the remaining allegations in paragraph 39 of the Plaintiffs' Complaint.

40. Defendants admit that venue is proper in this district. Defendants deny the remaining allegations in paragraph 40 of the Plaintiffs' Complaint.

41. Defendants admit that 42 U.S.C. § 1973c states that "[a]ny action under this section shall be heard and determined by a court of three judges in accordance with the

provisions of section 2284 of Title 28." Defendants deny the remaining allegations in paragraph 41 of the Plaintiffs' Complaint.

42. Defendants incorporate paragraphs 1-41 by reference.

43. Defendants admit that Plaintiffs purport to sue Defendants pursuant to 42 U.S.C. § 1973c. Defendants deny the remaining allegations in paragraph 43 of the Plaintiffs' Complaint.

44. Defendants admit that Plaintiffs purport to sue Defendants pursuant to 42 U.S.C. § 1973c. Defendants deny the remaining allegations in paragraph 44 of the Plaintiffs' Complaint.

45. Defendants admit that political subdivisions subject to 42 U.S.C. § 1973c may, pursuant to 42 U.S.C. § 1973c, "institute an action in the United States District Court for the District of Columbia for a declaratory judgment" that "a qualification, prerequisite, standard, practice, or procedure" encompassed by 42 U.S.C. § 1973c "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after

such submission, the Attorney General has affirmatively indicated that such objection will not be made." Defendants deny the remaining allegations in paragraph 45 of the Plaintiffs' Complaint.

46. Defendants admit that Dallas County, Texas is a political subdivision subject to Section 5 of the Voting Rights Act. Defendants deny the remaining allegations in paragraph 46 of the Plaintiffs' Complaint.

47. Defendants deny the allegations in paragraph 47 of the Plaintiffs' Complaint.

48. Defendants deny the allegations in paragraph 48 of the Plaintiffs' Complaint.

49. Defendants deny the allegations in paragraph 49 of the Plaintiffs' Complaint.

50. Defendants deny the allegations in paragraph 50 of the Plaintiffs' Complaint.

51. Defendants deny the allegations in paragraph 51 of the Plaintiffs' Complaint.

52. Defendants deny the allegations in paragraph 52 of the Plaintiffs' Complaint.

53. Defendants incorporate paragraphs 1-52 by reference.

54. Defendants deny the allegations in paragraph 54 of the Plaintiffs' Complaint. *See* April 17, 2009 Court's Order.

55. Defendants deny the allegations in paragraph 55 of the Plaintiffs' Complaint. *See* April 17, 2009 Court's Order.

56. Defendants incorporate paragraphs 1-55 by reference.

57. Defendants deny that the Plaintiffs are entitled to either a preliminary or permanent injunction. Defendants deny the allegations in paragraph 57 of the Plaintiffs' Complaint.

58. Defendants deny that the Plaintiffs are entitled to either a preliminary or permanent injunction. Defendants deny the remaining allegations in paragraph 58 of the Plaintiffs' Complaint.

59. Defendants deny that the Plaintiffs are entitled to attorneys' fees.

60. Defendants deny the allegations in paragraph 60 of the Plaintiffs' Complaint.

61. Defendants deny that the Plaintiffs are entitled to the judgment they seek.

II.
AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE (LACHES)

Plaintiffs' claims are barred in whole or in part by laches.

SECOND AFFIRMATIVE DEFENSE (UNCONSTUTIONALITY)

Section 5 of the Voting Rights Act is unconstitutional.

III.
REQUEST FOR RELIEF

Defendants Dallas County, Texas and Bruce Sherbet, in his capacity as Election Administrator for Dallas County, Texas, pray for judgment as follows:

a. A judgment in favor of Defendants Dallas County, Texas and Bruce Sherbet, in his capacity as Election Administrator for Dallas County, Texas, as to each and every allegation and cause of action asserted against them in Plaintiff's Complaint;

b. That Defendants Dallas County, Texas and Bruce Sherbet, in his capacity as Election Administrator for Dallas County, Texas, be awarded their costs in this Action;

c. A judgment that Defendants Dallas County, Texas and Bruce Sherbet, in his capacity as Election Administrator for Dallas County, Texas, be awarded such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Jamil N. Alibhai
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COUNSEL FOR DEFENDANTS DALLAS COUNTY, TEXAS AND BRUCE SHERBET, IN HIS CAPACITY AS ELECTION ADMINISTRATOR FOR DALLAS COUNTY, TEXAS

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon on counsel of record via the Court's ECF Noticing System on this 1st day of May, 2009.

/s/ Jamil N. Alibhai
Jamil N. Alibhai