

Court of Harris County, Texas, as reported in the final canvass, shows Contestant with 530,967 votes (49.87%) and Contestee with 533,710 votes (50.13%). Thus, the margin of purported defeat is a mere 0.26 of one percent. This purported 2,743 vote margin, as reported by the final canvass, is not the true outcome. Indeed, as the evidence will demonstrate, this Court will ultimately be unable to declare the true winner, as it is not possible to ascertain the true outcome of this contested race, due to how poorly the election was conducted, coupled with the fact that illegal votes were accepted, while legal votes were rejected. Unless and until this Honorable Court reviews all of the evidence and determines that the true outcome cannot be determined, both the candidates and the public will be in limbo. It is therefore crucial to determine the merits of this Contest as soon as possible.

II.
THE PARTIES, JURISDICTION AND VENUE

2. Contestant Lunceford is a resident and registered voter in Harris County. Contestant Lunceford was (and still is) the Republican nominee and candidate for the 189th Judicial District Court of Harris County.

3. Contestee Craft also is a resident and registered voter in Harris County. Contestee Craft was (and still is) the Democratic nominee and candidate for the 189th Judicial District Court of Harris County. Contestee has filed an appearance in this matter and is represented by counsel. Further service will be effectuated in this case by serving Contestee's counsel via email.

4. Contestant does not accuse Contestee of any wrongdoing, but is required under the Texas Election Code to name Contestee as the defendant in an election contest.

5. Jurisdiction over this Election Contest is vested in a District Court pursuant to Section 231.001 of the Texas Election Code.

6. Venue of this Election Contest is proper in Harris County pursuant to Section 233.005 of the Texas Election Code. However, pursuant to Section 231.004 of the Texas Election Code, all Harris County Judges are disqualified from presiding over this Election Contest. Accordingly, this Election Contest was transferred to the Presiding Judge of this Administrative Judicial Region, the Honorable Susan Brown, who in turn assigned the Honorable David Peeples as a Special Judge to preside in this matter.

III.
EXPEDITED DISCOVERY PLAN

7. Contestant intends to conduct discovery as permitted under the Texas Election Code and as permitted by the Texas Rules of Civil Procedure and asks that the Court enter an order setting forth a suitable discovery control plan.

8. Pursuant to Texas Rule of Civil Procedure 47(c)(2), Contestant seeks a new election. No monetary damages are sought.

9. Section 231.002 of the Texas Election Code provides that the Texas Rules of Civil Procedure apply to this Election Contest. The common law also

dictates that time is of the essence in an election contest, and [t]here are compelling state interests to promptly resolve the disputed issues in order to put into office the duly elected candidate.” *Goodman v. Wise*, 620 S.W.2d 857, 860 (Tex. Civ. App. — Corpus Christi 1981, writ ref’d n.r.e.); *see also Wendover v. Tobin*, 261 S.W. 434, 438 (Tex. Civ. App. — San Antonio 1924) (“public welfare . . . demand[s] a swift and expeditious disposal” of election contests). The need for swift and expeditious disposal of this contest is paramount. The reason for this need for speed is simple: the candidates and the public need to know whether a new election should be ordered for the 189th Judicial District of Harris County. When this Honorable Court sustains this Election Contest, then a new election will be conducted to determine the winner of this contested election. Accordingly, it is absolutely critical that this issue be resolved as expeditiously as possible.

10. Additional support for expedited treatment can be found in statutory law. More specifically, the Texas Legislature has determined in Section 231.009 of the Texas Election Code that an election contest has precedence in the appellate courts and shall be disposed of as expeditiously as practicable. Clearly, as stated above in the rules, common law, and statutory law, the public policy of this State is to resolve this Election Contest as rapidly as possible. Contestant Lunceford and her undersigned counsel stand ready to assist the Court and the Contestee to move as expeditiously as possible.

IV.
BACKGROUND FACTS

11. Harris County early in-person voting began on Monday, October 24, 2022 and ended on November 4, 2022. Election Day voting took place on Tuesday, November 8, 2022. As the Elections Administrator (“EA”) for Harris County, Clifford Tatum had the responsibility of enforcing the election laws to ensure a fair and honest election in Harris County. Instead of complying with this mandate, Tatum allowed the election to be run in such a manner that it illegally disenfranchised countless registered voters from casting their votes for the candidates of their choice.

Example One:

A. Issuing Second Ballots To Voters Who Experienced Problems With Scanning Page Two (2) Of Their Ballots.

12. One example of how EA Tatum deviated from the proper election procedures has to deal with scanning the ballot. The ballot for the November 8, 2022 General Election was two pages in length, both of which are 8.5 by 14 inches in width and length. Once the voter is finished voting, that voter’s ballot must be scanned into a scanner. Once scanned, that ballot is electronically recorded on a special flash drive (“V-drive”) and on a hard drive of the scanner and is officially included in the total hard count for the election.

13. The problem that occurred throughout Harris County at a significant number of the ninety-nine (99) early voting polling locations--as well as the seven

hundred eighty-two election day polling locations (782)--is that the scanners were not properly scanning both pages of a voter's ballot. When this occurred, the page that was scanned successfully is recorded electronically onto a V-drive and entered into the total hard count for the election. But the page that is not scanned is not recorded electronically on the V-drive and is not part of the total hard count for the election.

14. Problems like this are not particularly uncommon for Harris County, and there is an established procedure on how to deal with this situation. The remedy for problem ballots involves utilization of what is known as the Emergency Chute, which is a receptacle for placing problem ballots that were not counted (e.g., not recorded on the V-drive), but should be counted. Members of the Central Count team would collaborate with teams to ensure that the unscanned page of the voter's ballot in the Emergency Chute was accurately scanned and added to the hard count.

15. EA Tatum altered the election procedure for handling unscannable ballot pages, and issued instructions to poll workers to issue a second ballot when problems like this occurred. The second ballot will have a separate and distinct serial number from all other ballots generated at the polling location. The voter was supposed to scan in the ballot page from the second ballot that did not scan from the first ballot. The judges were required to spoil the unscannable page of the first ballot and the duplicate page of the second ballot. This process of creating a new ballot

was normally managed by the Central Count team which had numerous checks and balances to ensure that the correct ballot page was placed in the ballot box. The result of this ill-advised instruction to poll workers resulted in voters accidentally scanning both pages of the second ballot and/or poll workers placing ballots that should be spoiled in the Emergency Chute, which was later counted by Central Count. These mistakes resulted in double votes by those innocent voters, in direct violation of the Texas Election Code. This ill-advised process also would allow an unscrupulous election worker to view the voter's actual votes on their secret ballot before determining whether to place one or more pages in the spoiled ballot envelope or the Emergency Chute.

16. EA Tatum knew better than to do this. In the past May election, the Election Administrator's procedure was to simply place the ballot page that was not scanned properly into the Emergency Chute, which is the collection box for those ballots that were cast and should be counted, but, for whatever reason (e.g., the scanner would not accept the ballot, for example), was not able to be scanned and therefore is not included in the total hard count. Eventually, all of the ballots placed in the Emergency Chute are triaged by Central Count, where they have the technological capability to match the serial number of the ballot in the Emergency Chute with the serial number in the total hard count, making it feasible to then match the two ballot pages through an audit process and connect those two pages to a

specific voter who voted, but could not get one of the two pages of their ballot to properly scan.

17. This new procedure caused a huge problem of a colossal magnitude. This deviation from the Harris County procedures instructed polling officials to spoil the second page of the first ballot that was not able to be scanned, and then scan the second page of the second ballot. Assuming poll workers did this correctly, then the total hard count on the V-drive will have a ballot for one of the two pages with one serial number, while the hard count will also have a ballot for the other page of the two pages with a different serial number. This procedure makes it impossible for Central Count to connect either page of the second ballot with either page of the first ballot, as both ballots have a unique serial number. Thus, once voting was concluded, no one at Central Count is able to audit the results because there is no way to tie these two separate ballots pages together. This also makes it impossible for the Texas Secretary of State's office to conduct a post-election audit, which is has already announced it intends to do.

18. Moreover, because of EA Tatum's instructions, Contestant is now unable to demonstrate if a legal vote was wrongfully discarded and/or an illegal vote was wrongfully included, much less tie those two ballot pages together to create one ballot.

19. Even worse, by providing the voter with a second ballot, there are countless instances where either the voter or the poll workers failed to follow EA Tatum's new procedure. Indeed, many voters simply scanned in both pages of their new ballots, which means that this specific voter violated the law by voting twice for the candidates on the page that was successfully scanned on the first voting effort when that same page was successfully scanned again on the second ballot. Moreover, poll workers were placing the spoiled ballot in the Emergency Chute, rather than placing them in a segregated envelope solely devoted to holding spoiled ballots. This has caused countless ballots to be counted at Central Count that were not supposed to have been counted, meaning certain voters have had their votes recorded not just once, but twice.

20. As has already been explained, the proper method for managing a partially scanned ballot situation is to place the unscanned ballot in the Emergency Chute and let Central Count audit the ballots to match the unscanned ballot with the matching page of the scanned ballot.

21. But that was not the procedure which EA Tatum instructed in writing. HCRP tried very hard to avoid litigation and to amicably resolve this issue, and even took the time and effort to rewrite the EA's ill-advised and illegal instructions, along with a request that the revised instruction be immediately disseminated to all early voting poll workers. Unfortunately, however, EA Tatum refused to do so, which lead

to a significant number of double voting or double counting that will not be explainable through normal auditing procedures, and which also caused illegal double counts in flagrant violation of the Texas Election Code.

Example Two:

B. Issuing Second Ballots To Voters Who Experienced Smudges Or Other Legibility Problems With Scanning Their Ballots.

22. Just as what described above with scanning problems, the exact same procedure was supposed to have been used for ballots which had legibility problems, such as smudges. But EA Tatum instead insisted that a new ballot be issued. What was supposed to occur was to simply place that problem ballot in the Emergency Chute, and Central Count could then recreate that ballot in the presence of multiple observers. Once duplicated, the ballot would then be scanned in and recorded on V-drive. But by issuing a new ballot, all of the same problems as were described above occurred in violation of the law.

Example Three:

C. Not Supplying Paper To Polling Places.

23. In an inexplicable failure of epic proportions, EA Tatum failed to supply certain polling locations with a sufficient amount of ballot paper in violation of the Texas Election Code Sections 51.004, 51.010 and 51.011, even after numerous calls were placed to the Harris County Election Administrator's Office. As a result, numerous polls ran out of ballot paper. This deficit caused thousands of voters to be

turned away from the polls. There was no excuse for this to occur, as the software system on the EA's iPad gave a real-time account of how many voters had arrived at a particular polling location. That iPad system also tied into the EA's inventory management system, so that they would know if they were running out of paper at a particular polling location. Based upon an investigation thus far, Contestant asserts that at least 2,600 voters were turned away from 29 specific polling locations on Election Day, 3 of which were caused by equipment failures and 26 of which were caused by a lack of ballot paper. As can be seen below, the overwhelming majority of the paperless polling locations were located in neighborhoods that are traditionally Republican strongholds, while a scant few are located in neighborhoods that are traditionally Democratic strongholds. If the mismanagement of ballot paper were truly random, it is troubling that the trend so far demonstrates a significantly disproportionate impact on polling locations that are located in traditionally strong turnout neighborhoods for Republican voters and candidates. Indeed, thus far the investigation demonstrates that roughly 73% of the polling locations without paper fall in Republican stronghold precincts. Contestant will leave no stone unturned to determine whether this trend continues upon the completion of this investigation. The map below provides a visual demonstration of what seems to have occurred.

25. Contestant will show that, because the Harris County Election Administrator's Office did not adequately supply certain Election Day polling locations, there was no factual or legal justification for keeping any of the polling locations open for an additional hour of voting. By EA Tatum agreeing with certain plaintiffs in an emergency court hearing to extend voting for an additional hour, the problems associated with certain polling locations were exacerbated.

26. Although the local HCRP had a vested interest in an emergency request for extra time to vote, neither the plaintiffs nor EA Tatum, who was a named defendant in the emergency lawsuit, notified HCRP that a lawsuit had been filed, or that an emergency hearing was set to occur. Despite the fact that HCRP discovered that a hearing was going to occur, and despite to making an appearance, asking to intervene, being permitted to intervene, and objecting to the request for an extra hour of voting, both the plaintiffs and the defendant EA Tatum nevertheless agreed with each other and asked the Ancillary Judge to enter such an order. That order was not properly granted for a number of reasons, not the least of which was the fact that the court found the written declarations in support of the application for emergency temporary restraining order relief to be invalid. Although live testimony is not permitted under the rules governing temporary restraining orders, the Court permitted such testimony and granted relief.

27. The Texas Election Code is clear that it is impermissible to leave open a few polling locations open. To the contrary, if a court order permits extra time to vote, then that court order must require every single polling location countywide to remain open. Because certain polling sites ran out of paper, ordering those specific sites to remain open for an additional hour was an exercise in futility, which ultimately suppressed the vote in locations without paper, while permitting additional voting in locations with paper. Given the factual and legal basis to permit an extra hour of voting was lacking, the end result was that numerous polls were not able to be open for the extended hour as required under the Texas Election Code 43.007(p). Consequently, no polls should have been permitted to remain open after 7:00 pm to receive voters arriving after 7:00 pm and the votes collected during that time should not be counted.

28. As predicted, this order permitted more problems to occur. For example, not all polls stayed open for an additional hour, even though state law requires all polling locations, not just some polling locations, to stay open when a court order permits additional time to vote. Moreover, a significant number of polling locations did not have any paper, such that no voters could vote during the extended period. In addition, some polling locations did not require voting to be provisional, and simply allowed these votes to be cast regularly counted and entered onto the V-drive for election day totals. Finally, not all locations segregated those

provisional ballots that were cast during the extra hour, and simply allowed those voters to vote provisionally without regard to the time of their vote.

29. Even though EA Tatum agreed to keep the polls open for an additional hour, he posted the early voting results online at approximately 7:30 pm, thirty (30) minutes prior to the time that he expected the polls to close in violation of Section 61.007 of the Texas Election Code. Out of all of the provisional ballots that were cast during the extra hour of voting, 2,073 were counted. None of those ballots were eligible to be counted, and all of them should be subtracted from the final count. Inasmuch as 822 of these ballots were cast and counted for Contestant, while 1147 of these ballots were cast and counted for Contestee, after subtracting all of these illegal ballots, Contestant picks up an additional 325 votes in her favor.

Example Five:

E. Picking Up Election Results From The Polls Rather Than Requiring Judges To Fulfill Requirements Under Law.

30. EA Tatum pressured Election Judges to allow for Harris County personnel to pick up the election results from the polling locations on Election Day in direct contravention to the Texas Election Code.

31. On November 3, 2022, the Harris County Election Administrator's Office directed each Early Voting Judge to **not secure** voting systems at their polling places on the close of early voting, November 4, 2022. The specific instructions from the EA are as follows:

“(1) Judges, for the last day of Early Voting, your specific Vote Center is being asked to leave all lines setup with all Controllers and Duos left on.

Harris County EA Technicians will check Paper Path Guides and reset the time on the equipment. After which, technicians will turn them off.

(2) When preparing items for Return the last day of Early Voting, any Emergency Slot Envelopes that will not fit in the Scan should be placed in the Judge's Supply Box.”

32. This direction directly contradicts the mandatory, non-discretionary, ministerial requirements of Section 125.063, Election Code. That statute requires the following:

"On the close of voting at each polling place at which electronic voting system equipment is used, an election officer shall secure or inactivate the equipment as prescribed by the secretary of state so that its unauthorized operation is prevented.”

33. But that is not the procedure which has been instructed in writing, as demonstrated in paragraph 31 above.

Example Six:

F. EA Tatum Violated His Duty to Select, Place And Allocate Alternate Presiding Judges and/or Other Election Officials (e.g., Clerks) To Serve At Each Early Voting Polling Location from the List Supplied by HCRP.

34. Pursuant to Section 85.009 of the Texas Election Code, EA Tatum was required to comply with the following statutory and ministerial duties:

Sec. 85.009. ELECTION OFFICERS FOR GENERAL ELECTION FOR STATE AND COUNTY OFFICERS.

(a) The county clerk shall select election officers for the main early voting polling place and any branch polling place from a list provided under Subsection (b), in a manner that provides equal representation to the extent possible for each political party holding a primary election in the county.

(b) Before July of each year, the county chair of each political party holding a primary election in the county shall submit in writing to the county clerk a list of names of persons in order of preference for each early voting polling place who are eligible for selection as an election officer. The county chair may supplement the list of names of persons until the 30th day before early voting begins in case an appointed election officer becomes unable to serve. The county clerk shall appoint the first person meeting the applicable eligibility requirements from the list submitted in compliance with this subsection by the party with the highest number of votes in the county as the presiding judge of that polling place and the first person meeting the applicable eligibility requirements from the list submitted in compliance with this subsection by the party with the second highest number of votes in the county as the alternate presiding judge of that polling place. The county clerk shall appoint additional election officers for each polling place in the manner described by Subsection (a). The county clerk may reject the list if the persons whose names are submitted on the list are determined not to meet the applicable eligibility requirements.

(c) The county clerk, after making a reasonable effort to consult with the party chair of the appropriate political party or parties, may select election officers for each early voting polling place in which a list is not submitted in a manner that attempts to ensure equal representation to the extent possible for the parties holding a primary election in the county.

See Section 85.009 of the Texas Election Code.

35. The duty to review HCRP's list of Republican volunteers and to select, place, and allocate those names—in the order listed—of those persons satisfying all applicable eligibility requirements for service as either alternate presiding judges

and/or other election officials (e.g., clerks) was not discretionary; it was mandatory. *In re Robinson*, 175 S.W.3d 824, 830 (Tex. App. 2005) (“The use of the word *shall* in a statute is generally construed as creating a nondiscretionary duty.”). This duty includes the specific obligation to ensure that each person selected off HCRP’s list satisfies the criteria set forth in the Texas Election Code to permit that specific registered voter to serve at an early voting polling location. Numerous early voting polls were not provided with equal representation even though the Harris County Republican Party provided more than a sufficient number of names to work the early voting polling locations. In fact several polls were severely out of balance in favor of the Democratic Party.

Example Seven:

G. EA Tatum Has A Ministerial Duty To Reject The Selection, Placement, And Allocation Of Any Person Not Appearing On HCRP’s List Unless And Until It Has First Been Determined That None Of The Remaining Names On The List Are Persons Meet All Applicable Eligibility Requirements.

36. Under Section 85.009 (b) of the Texas Election Code, EA Tatum does not have the discretion to select, place, and allocate names of any persons that do not appear on the list of Republican volunteers submitted by HCRP. To the contrary, he was required to first exhaust all of the names on the list before choosing persons not listed.

37. Despite HCRP's demand that he do so, EA Tatum refused to comply with his ministerial duties set forth in Section 85.009 of the Texas Election Code. Simply put, EA Tatum failed to contact each and every person on HCRP's list of Republican volunteers. Accordingly, in violation of the Texas Election Code, Tatum allowed persons not appearing on HCRP's list to serve as alternate judges and election clerks wrongfully and illegally.

Example Eight:

H. Mail-in Ballots Were Not Handled Properly.

38. Contestant will show that approximately 700 mail-in ballots were counted that should not have been counted due to the several violations of the requirements of the Texas Election Code. First, the Signature Verification Committee ("SVC") began its process of reviewing mail-in ballots without the tools required by law. Under Texas Election Code Section 87.126 (a-1), election records should include both sides of an envelope. Initially, the SVC did not have access to both sides of the mail-in ballot envelope. Indeed, EA Tatum was not scanning both sides of the carrier envelope as required by law so that the SVC could see both sides. Approximately 700 mail-in ballots were processed in this illegal manner. Second, the SVC did not have access to the voter registration information which is required for identification purposes pursuant to Texas Election Code Section 87.041. The Election Administrator is required to provide access to information necessary for

fulfilling the functions of the committee according to Texas Election Code Section 87.028. EA Tatum was not allowing the SVC to have access to the voter's registration records and instructed them to only compare the ID number on the carrier envelope of the mail-in ballot envelope to the ID number on the application for a mail-in ballot rather than to the voter's registration information.

39. The Harris County records indicate that there were more mail ballots counted than were sent and received by Harris County.

Example Nine:

I. Double Voting Occurred.

40. Contestant will show that at least sixteen (16) specific voters voted more than once in the November 8, 2022 General Election in violation of Texas Election Code Section 64.012, according to the Harris County Election Administrator Records. In addition, Contestant will show that certain Harris County reconciliation reports demonstrate that more ballots were cast in this election than were voters. There are several reconciliation reports, with the disparity between ballots and voters ranging from a high of negative 7,291 to a low of positive 1,190. For those reports showing a negative number, those disparities represent double votes by innocent Harris County registered voters which have been cast and counted but should not have been counted or potentially from persons acting nefariously in the election process. Because these double votes cannot be tied to a specific voter or

to a specific candidate, it is not possible to know who these voters are and for whom they voted.

Example Ten:

J. Mail-In Ballots.

41. Contestant will show that certain mail-in ballots that were cast and counted should not have been counted.

42. Contestant will also show that certain mail-in ballots were cast but not counted that should have been counted.

Example Eleven:

K. Provisional Ballots During Early Voting and Election Day During non-Extended Hours.

43. Contestant will show that certain provisional ballots that were cast and counted should not have been counted.

44. Contestant will also show that certain provisional ballots were cast but not counted that should have been counted.

Example Twelve:

L. Illegal Votes Were Cast And Counted Without An SOR.

45. Contestant will show that voters who were required to fill out a Statement of Residence (“SOR”) prior to be accepted for voting voted illegally by not filling out the required document in violation of the Texas Election Code Section 64.0011. Voters whose address has come into question through a variety of

processes, may be placed on a suspense list. Voters whose names are on the suspense list are required to fill out an SOR in order to be able to vote in the election.

Example Thirteen:

M. Illegal Votes Were Cast And Counted Without An Appropriate Registration Address.

46. Contestant will show that illegally registered voters voted in violation of Texas Election Code Sections 1.015, 13.001 and 13.002.

Example Fourteen:

N. Discrepancies in the Cast Vote Records.

47. Contestant will show that according to the Harris County Election Administrator's official canvass, the cast votes record for all county-wide races is not consistent amongst the various contests. If all of the ballots were counted correctly for all of the races, the cast votes record would be the same for every county-wide contest.

Example Fifteen:

O. Failure To Supply Adequate Supply Election Equipment.

48. Contestant will show that Harris County Election Administrator's Office failed to adequately supply election equipment for polling locations on Election Day in violation of the Texas Election Code as identified in Sections 51.004, 51.010 and 51.011.

Example Sixteen:

P. Inadequate Staffing At Polling Locations.

49. Contestant will show that the Harris County Elections Administrator's Office operated polling locations in violation of the Texas Election Code Sections, 32.002 and 85.009, by failing to provide the required staffing for the polling locations, thereby placing the November 8, 2022 General Election in jeopardy.

Example Seventeen:

Q. Failure To Prepare Required Election Returns At Polling Locations.

50. Contestant will show that the Harris County Election Administrator's Office failed to adequately instruct presiding judges how to prepare returns of the election for the polling location by providing the total number of votes counted for each candidate and for and against each measure in violation of Texas Election Code Section 65.014. As a consequence, there was a failure to prepare required returns at certain polling locations.

Example Eighteen:

R. EA Tatum's Failure to Follow Election Code Requirements for Delivery of Election Results to Central Count.

50. Contestant will show that EA Tatum created chaos and confusion by inserting non-polling location workers into the role of Presiding Judge. Pursuant to Texas Election Code Section 66.051, the Election Day Presiding Judge is required

to deliver the polling place election results and associated documentation to Central Count. EA Tatum sent non-polling location workers to pick up the election results and deliver the equipment and documents to Central Count in violation of the Texas Election Code.

Example Nineteen:

S. EA Tatum’s Failure to Provide Chain of Custody for Election Results Delivered to Central Count.

51. As the Presiding Judges delivered the election results to Central Count on Election Night, EA Tatum rarely provided chain of custody documentation that indicated the materials that were delivered, the time of delivery or the person receiving the documentation.

Example Twenty:

T. EA Tatum’s Failure to Properly Reconcile Mail-in Ballots.

52. The Harris County EA’s official reconciliation report has reported 9,307 more mail-in ballots were counted that were actually turned in by Harris County voters.

V.

CAUSE OF ACTION

53. Section 221 of the Texas Election Code sets forth the general parameters of an election contest:

Sec. 221.003. SCOPE OF INQUIRY. (a) The tribunal hearing an election contest shall attempt to ascertain whether the outcome of the

contested election, as shown by the final canvass, is not the true outcome because:

- (1) illegal votes were counted; or
- (2) an election officer or other person officially involved in the administration of the election:
 - (A) prevented eligible voters from voting;
 - (B) failed to count legal votes; or
 - (C) engaged in other fraud or illegal conduct or made a mistake.
- (b) In this title, "illegal vote" means a vote that is not legally countable.
- (c) This section does not limit a provision of this code or another statute expanding the scope of inquiry in an election contest.

54. Many courts interpret an election contest to mean any type of suit in which the validity of an election or any part of the elective process is made the subject matter of the litigation. *Roberts v. Brownsboro Indep. School Dist.*, 575 S.W.2d 371, 374 (Tex. Civ. App. - Tyler 1978, writ dismiss'd) (challenging an order calling a school bond election); *Kennedy v. Burnet Indep. School Dist.*, 474 S.W.2d 742, 746 (Tex. Civ. App. - Austin 1971, no writ) (contesting authority of county judge to call election involving consolidation of school districts); *Weinberg v. Molder*, 312 S.W.2d 393, 396 (Tex. Civ. App. - Waco 1958, writ refused n.r.e.) (challenging school bond election on grounds of misrepresentations by school district officials); *Turner v. Lewie*, 201 S.W.2d 86, 88 (Tex. Civ. App. - Fort Worth 1947, writ dismiss'd) (contesting notice of election to amend city charter).

55. These cases rely on language in *Dickson v. Strickland*, a 1924 Texas Supreme Court case in which it was contended that although the Constitution vested in the legislature exclusive authority to determine contested elections for governor, that authority did not come into being until after the election. *114 Tex. 176, 265 S.W. 1012 (1924)*. In determining that the legislature's authority covered every part of the process of electing a governor, the court stated:

An election contest necessarily involves questions of both fact and law. It may be predicated upon a status or upon facts which existed before an election, upon what took place at the election, and perhaps in some instances upon a status or what took place after an election. The ineligibility of a candidate before an election, whether arising from lack of age, or from personal misconduct, or other infirmities, the manner of giving notice of the election, appointing election officers, their qualification, the creation of election districts, the preparation of the polls or polling places, the manner in which the ballots may have been prepared, and various other things which of necessity precede an election, are all well-known subjects of election contests. A failure to observe any one or more of the many articles of title 49, Revised Statutes, applicable to general elections, may become the subject-matter of an election contest, and many of these provisions concern matters which must occur before the time of actual voting. In determining what a "contested election" is, we must bear in mind that an election in this state is not a single event, but a process, and that the entire process is subject to contest.

265 S.W. at 1018.

56. In *Cohen v. Clear Lake City Water Auth.*, the Houston Court of Appeals held that an election contest is meant to include any type of suit in which the validity of an election or any part of the elective process is made the subject matter of the litigation. *687 S.W.2d 406, 408 (Tex. App. -- Houston [14th Dist.] 1985, no writ)*.

The court then determined that it had jurisdiction over matters occurring prior to election day, which may have affected the election. *Id.* Notwithstanding the fact that the provision in the Election Code which sets out the scope of inquiry in an election contest has been revised since *Cohen, TEX. ELEC. CODE ANN. § 221.003* (Vernon 1986), it would be error to read the new provision as restricting a court's inquiry to matters occurring only on election day.

57. Accordingly, Contestant asserts that this Court has subject matter jurisdiction over this Election Contest and over all aspects plead above in the Statement of Facts.

VI. **CONCLUSION**

58. For all of the foregoing reasons, Contestant asks the Court to:

- (i) after a trial on the merits, sustain this Election Contest;
- (ii) after subtracting all illegal votes that were cast and counted, and after adding all legal votes that were cast but not counted, and after consideration of all of the actions of EA Tatum and all other election officials which occurred before, during, and after the General Election, declare that the true outcome of the election cannot be ascertained;
- (iii) void the November 8, 2022 General Election conducted in Harris County, Texas, for the 189th Judicial District Court; and
- (iv) award such other and further relief to which Contestant may show herself to be justly entitled.

Respectfully Submitted,

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