



Kherkher Garcia LLP

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Marilyn Burgess - District Clerk Harris County
Envelope No. 72418655
By: Quandella Andrews
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January 25, 2023

Via E-Mail

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RE: Cause No. 2022-79328; *Erin Elizabeth Lunceford v. Tamika "Tami" Craft.*; In the 164th District Court of Harris County, Texas.

Dear Counsel:

I am writing to request that you supplement and cure your client, Former Judge Erin Lunceford's, deficient discovery responses to Judge Tami Craft's First Set of Discovery Requests. As always, we hope to work these issues out amicably without the need for Court intervention at Friday's scheduled hearing.

General and Global Objections to Request for Production

At the outset of Contestant's responses to Contestee's First Set of Discovery Requests, Contestant lodges the following improper "general" and "global" objections:

4. To the extent any Request seeks "all" documents, Contestee objects to it as overly broad and unduly burdensome. It is impossible to represent, even after diligent search and consideration, that "all" documents or piece of information falling within the description can be or has been located. Therefore, Contestant cannot warrant or represent that she has produced or identified "all" documents, things, or pieces of information requested, but only that she has produced or identified that which she could locate or determine after a reasonably diligent search and consideration.

5. Contestant also objects to each Request to the extent that they are unduly vague, overly broad, oppressive, harassing, confusing, irrelevant, they seek information or documents not relevant to the claims or defenses of any party, they are not reasonably calculated to lead to the discovery of admissible evidence, and they are not otherwise within the scope of relevant discovery.

6. Contestant objects to each Request to the extent that they seek documents and/or information unavailable to Contestant or not within Contestant's possession, custody, or control.

7. Contestant objects to each Request to the extent that they request information that is a matter of public record, that is equally available to Contestee and/or equally obtainable from more convenient sources, or that purport to impose upon Contestant a burden or obligation beyond the duties imposed by the Texas Rules of Civil Procedure or other applicable rules or law governing this action.

8. By responding to any of the Requests or providing any information herewith, Contestant does not waive and expressly preserves the objections set forth herein and does not concede relevancy or admissibility.

9. These responses are made without prejudice to, or waiver of, the right of Contestant to supplement the responses with facts, objections and documents omitted from these responses due to oversight, inadvertence or good faith error or mistake, or with any facts and documents identified through discovery from third parties or otherwise. Contestant reserves the right to withdraw, revise, supplement, explain, correct, or clarify any of the responses, including objections.

10. Contestant objects to producing electronically stored information. Contestant cannot, through reasonable efforts, retrieve the data or information requested or produce it in the form requested, as the requested information is not reasonably available to Plaintiffs in the ordinary course of business. Because the burdens of

producing the electronic information are outweighed by the burdens of production, Contestant accordingly objects to every request for electronically stored information.

11. Finally, Contestant objects to each Request to the extent that it calls for documents protected by the attorney client, attorney joint client, attorney work product, party communication, joint defense, allied litigant, and purely consulting expert witness privileges.

12. Finally, the actual documents produced by the Contestant herself are limited to those documents marked as Erin Lunceford 000283 to 000374. However, because there are other non-privileged documents which Contestant intends to use in her case-in-chief, and because Judge Peebles has encouraged the parties to cooperate and expedite discovery matters, certain additional documents are included in Contestant's document production. These documents constitute the remainder of the production. By producing these documents, Contestant is not waiving her rights or any rights which may belong to any non-party, to object or seek to protect the disclosure of any other documents which may exist but which have not been produced by the Contestant herein.

Accordingly, without waiving any of the foregoing objections, Contestant submits the following responses to the Contestee's discovery requests:

Texas law is very clear that these types of boilerplate objections are improper for several reasons. First, these objections violate Texas Rule of Civil Procedure 193.2(c) for two reasons: (1) the objections are hypothetical because they are lodged only "to the extent" that a request suffers from some deficiency; and (2) Rule 193.2(c) limits a party's objections to those for which a "good faith factual and legal basis...exists at the time the objection is made." TEX. R. CIV. P. 193.2(c); accord *In re Park Cities Bank*, 409 S.W.3d 859, 877 (Tex. App.—Tyler 2013, orig. proceeding).

These boilerplate objections also violate Rule 193.2(a) which requires a responding party to "state...the extent to which the party is refusing to comply with the request." TEX. R. CIV. P. 193.2(a). These objections are so nonspecific that there is no possible way for my client to know

what information is actually being provided and what information is being withheld (and the reason it is being withheld). Texas courts have routinely held these objections to be improper and grounds for waiver. In *De Anda v. Jason C. Webster, P.C.*, the 14th District Court of Appeals recently held that a plaintiff waived her objections to written discovery when she repeatedly lodged “the same global, prophylactic string of objections” to each discovery request. *De Anda*, No.14-17-00020-CV, 2018 WL 3580579, at *7 (Tex. App.—Houston [14th Dist.] July 26, 2018, pet. denied) (mem. op.); see also *In re Park Cities Bank* 409 S.W.3d at 878 (explaining that “prophylactic objections are now prohibited by the rules of procedure”).

A review of your client’s responses to Contestee’s Request for Production reveals that you lodged the same prophylactic, generic, and nonspecific objection to **every single one of the 29 Requests for Production**, an example of which I have included below:

1. All documents, communications, materials, statements, and ESI evidencing the “established procedure” for scanning election ballots. See Contestant’s Original Petition at ¶¶ 12 – 14.

Response: Subject to all of the foregoing objections, which are incorporated herein by this reference to this specific Request, Contestant will produce all responsive documents to counsel for the Contestee via Drop Box.

The addition of the language “which are incorporated herein by this reference to this specific Request” fails to specifically identify which objections your client lodges against each request. At the end of the day, Contestee has no idea what the good faith factual and legal basis for the objection(s) is, what about the request is objectionable, and what information is being provided and/or withheld subject to the objection. To use your client’s own words, “[t]actics like this are what give lawyers a bad name, and create needless public disdain for our profession.” Practice what you preach.

That brings us to the next glaring problem. Throughout your client’s responses to Contestee’s First Request for Production, Contestant responded, “Contestant will produce all responsive documents to counsel for the Contestee via Drop Box.” Such a vague response is directly at odds with Texas Rule of Civil Procedure 196.2(b)(2) which requires a responding party to state that “the requested items are being served on the requesting party with the response.” With that vague and ambiguous response, Contestee has no way to know which documents your client believes are responsive to each request. For example, the email below was produced via Drop Box, which shows Harris County Republican Party Chair Cindy Siegel lamenting about not being able to find a candidate to file an election contest until December:

From: Vanessa Ingrassia vanessa.ingrassia@harriscountygop.com
Subject: Message from Chair Cindy Siegel: Candidate Legal Update
Date: Jan 3, 2023 at 2:43:19 PM
To: Vanessa Ingrassia vanessa.ingrassia@harriscountygop.com
Cc: Cindy Siegel chair@harriscountygop.com
Bcc: erinlunceford@gmail.com

Dear Candidate,

We had hoped to have more information to share with you by today so that you (and any legal counsel that you might have) could make an informed decision on whether or not you want to file an election challenge by January 6th.

However, as of the date of this email, Harris County has yet to produce a single document in Erin Lunceford's election contest. Our lawyers have been pressing for documents for several weeks. However, because we did not have a candidate willing to file a contest until December, and because the holidays have given Harris County a plausible excuse for not being able to work for the last week or more, we have not yet been able to receive any documents. An additional excuse given by Harris County is that the election records contain information which is confidential, such as SSN or TDL information. Our lawyers have offered to redact this information if Harris County will promptly produce the records in their native format, but Harris County has refused. To the contrary, Harris County insists on doing the redactions themselves, which, as you might imagine, is time consuming. In addition, Harris County asked the Court to enter a confidentiality order, which has further complicated our ability to access and analyze the data once it is produced. A hearing has been set by the Court to discuss these issues on January 5th, but the bottom line is that we will not be able to share any document with you prior to the deadline for you to file your election contest. A copy of the Confidential Order is attached.

Erin Lunceford 000345

That said - I am attaching (again) the petition that Erin filed for her election challenge for your information. Additionally please note that subsequent to the filing, the estimated number of voters has been revised once we were able to speak personally with the election judges. Based upon information to date we believe there were approximately 2600 or more estimated voters turned away due to running out of ballot paper or machines not working for a period of time.

As we have more information that we are allowed to share - we will do that as expeditiously as possible. In the meantime, if you have any questions - please contact Vanessa or myself.

Best regards,

Cindy Siegel
Chairman
Harris County Republican Party



Erin Lunceford 000346

(See Bates Nos. Erin Lunceford 000345-000346)

For documents like these emails, Contestee has no way of knowing whether this email is supposed to be responsive to all RFPs, some of them, or only one of them. That creates a real problem, because in drafting the requests, we were very deliberate and specific in tying the requests to the so-called “examples” in your client’s Original Petition. This was done for two reasons: (1) the phrase “upon information and belief” was never once used in Contestant’s Original Petition; and (2) my client shared the same worry that the individual in the email below shared:

On Nov 17, 2022, at 4:00 PM, Sartaj Bal <ssb4judge@gmail.com> wrote:

This may sound a little pessimistic, but here goes my two cents:

It's game over unless and until we have admissible evidence in our possession - going to need more than affidavits for proving up a case at trial. As of right now we have mere allegations and a lawsuit which may be dismissed - immunity issues. Not sure if there is an agreement of consent, but as of this time today, I still don't see that a citation has been issued or requested for the defendants. That in addition to the new disclosure rules and other filings that the defendants will most likely file after being served - if ever served, I would not bank on the defendants receiving or responding to discovery prior to our deadline to file a challenge - or ever. Not sure what other potential sources of evidence we have.

I am not an election or class action law expert but my thoughts regarding a class action - no way we will be able to certify a class as candidates to an election challenge. Maybe for a different case but I highly doubt for an election challenge. The code is pretty clear in that each of us have to sue our opponent. Also, we, not have a collective defendant and having all the parties (Ps & Ds) in one case could get messy.

That being said, a class action that may be interesting to see is one brought by the disenfranchised voters more of less with the following two causes of action - injunction on certification of the HC election results and declaratory judgment with the declaration carefully worded in a manner which may give the appropriate authorities something to work with. The disenfranchised voters have been irreparably harmed and there is not an adequate remedy at law. Perfect plaintiffs. Them getting to vote now cannot be a remedy.

Again, we have zero admissible evidence in our possession at this time and in my opinion it's game over until we do - if we ever do.

I am hoping for the same thing that each of you are and would love it if we get a hold of the admissible evidence that we need for a successful election challenge.

Sartaj

See Bates Nos. Erin Lunceford 000350.

As officers of the Court, you and your client know that Texas Rule of Civil Procedure 13 requires that the information contained within the pleading “is not groundless and brought in bad faith or groundless and brought for the purpose of harassment.” Assuming that the information contained within Contestant’s Original Petition is not groundless and brought in bad faith—and that evidence was somehow discovered in the period between November 17, 2022 and the date of Contestant’s Original Petition—Contestant should be able to specifically identify which of the produced documents are responsive to each of the “examples.”

For every response where that language or other similar language is used, which I will represent to you is every response except RFP 29, please do the following: (1) confirm the requested documents have been produced and identify by Bates number(s); or (2) confirm that your intent is to supplement those responses.

Request for Admissions

Rather than going through each objection and/or response that Contestee contends is improper or deficient in this letter, we believe it would be more appropriate and efficient to take up those issues with Judge Peebles in the Friday morning hearing and through the upcoming deposition of Contestant.

I am happy to discuss any and all of the issues and deficiencies raised in this letter prior to Friday morning's hearing. Please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "R S MacLeod", written in a cursive style.

Ryan S. MacLeod

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Status as of 2/3/2023 1:49 PM CST

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