

CAUSE NO. 2022-79328

ERIN ELIZABETH LUNCEFORD,	§	IN THE DISTRICT COURT
	§	
Contestant,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
TAMIKA “TAMI” CRAFT,	§	
	§	
Contestee.	§	164TH JUDICIAL DISTRICT

CONTESTEE TAMIKA CRAFT’S FIRST AMENDED ANSWER AND SPECIAL EXCEPTIONS TO CONTESTANT ERIN ELIZABETH LUNCEFORD’S FIRST AMENDED ORIGINAL PETITION ASSERTING ELECTION CONTEST

Contestee, Tamika Craft, files her First Amended Answer and Special Exceptions to Contestant Erin Elizabeth Lunceford’s First Amended Original Petition Asserting Election Contest (“First Amended Original Petition”), and states as follows:

GENERAL DENIAL

Contestee generally denies the allegations contained in the First Amended Original Petition.

DISCOVERY CONTROL PLAN

Contestee requests that this case be governed by Level 3 Discovery Control Plan and hereby moves this Court to issue a discovery control plan tailored to the specific needs of this case as promptly as reasonably possible. *See* Tex. R. Civ. P. 190.4.

ELECTION CONTEST BACKGROUND

This lawsuit is not about an election. This lawsuit is not even about Contestant or Contestee. Instead, this lawsuit is about Contestant’s counsel’s, who is also the lawyer for the Harris County Republican Party, incessant need to challenge our democracy. And this election

audit—because we should call it what it is—is just another stunt to make headlines after an election was lost. More stunts will follow.

For context, the General Election was held in Harris County, Texas on November 8, 2022. Contestee won her election against Contestant by 2,743 votes. On November 9, 2022, as evidenced by the social media post below, Contestant conceded defeat, admitted she came up short, and congratulated all the winners. Gracious and professional.



Erin Lunceford



47m · 

Well folks, it was a close one, but I came up short by 1025 votes, out of just over a million votes. Thank you to all my loyal supporters and friends and congrats to all the winners. Luckily I have a great job where I get to help folks resolve cases and now I don't have to worry about rescheduling all those 2023 arbitrations. I still have some December mediation dates available!!

And the inquiry in a democratic election where voters have spoken—whether a Democrat, Republican, or Independent candidate has won the election—should have ended the moment the votes were counted and Contestee was declared the winner.

But that was never going to be the case here because the writing was on the wall long before November 8, 2022. For months prior to the election, Contestant's counsel—who self-describes himself as the “top election lawyer both in Texas and America”—was emailing Harris County employees about the upcoming election's procedures and processes. Consequently, he

knew the exact procedures that would be used in the election long before the election was held. Yet, no lawsuit was filed prior to the election. No public cries of wrongdoing were lodged. No days of reckoning were threatened. The saber-rattling was non-existent.

After November 8, 2022, Contestant's counsel seized on the opportunity to earn money at the expense of Harris County taxpayers. Tellingly, he has the following quote posted on his website:

"He's the troubleshooting lawyer for Republicans whose political problems become legal problems," Texas Monthly wrote of Mr. Taylor.

Coincidentally, here, Contestant is a Republican lawyer who lost a political election. And now, Contestant's lawyer has seized on the opportunity to file this frivolous election contest that is not about Contestee or who won the election. Instead, Contestant's counsel blatantly told the media exactly what the lawsuit is about during a Harris County GOP news conference. During that conference to announce this election contest, Contestant's Counsel stated that, **"he wanted to use the lawsuit to send a message to Harris County elections administrator Clifford Tatum."**¹ And when the election was filed, Contestant's counsel was quoted saying, "Mr. Tatum, your day of reckoning has just started and it started with the lawsuit that we just filed."² But no one has to take Contestee's word for it because the entire news conference remains posted on the Harris County GOP website (a photo of the news conference posted below).³

Notably, no evidence was attached to Contestant's First Amended Original Petition. No mention was made of 2,734 fraudulent votes. No mention was made of wrongdoing by Contestee.

¹ <https://www.texastribune.org/2022/12/09/harris-county-election-lawsuits/> (emphasis added). *See also* <https://www.harriscountygop.com/video-republican-judicial-candidate-erin-lunceford-holds-press-conference-on-election-contest-in-the-189th-judicial-district-court-of-harris-county/>

² *Id.*

³ <https://www.harriscountygop.com/video-republican-judicial-candidate-erin-lunceford-holds-press-conference-on-election-contest-in-the-189th-judicial-district-court-of-harris-county/>

Instead, Contestant’s First Amended Original Petition is a politically fueled lawsuit riddled with unsupported allegations. There is literally not a shred of proof that a single one of the allegations, or even all of the allegations coupled together, would have changed the outcome. It’s a where there is smoke, there is fire approach. But we remain with bated breath to see the fire and the reckoning.



Now, Contestee will be sworn in as the Judge of the 189th District Court. But in doing so, she will be clouded by a political party’s need to “send a message.” That aside, Contestee will serve this county and Texas along with the other impeccable elected judges of Harris County as she will be sworn to do, regardless of threats of a reckoning.

So, this is not about an election. This is not about how to analyze an election to make improvements. This is not about figuring out how to improve the procedures and processes used in an election—errors and mistakes are admittedly made in every election without materially impacting the outcome. And this election contest is also not about confirming who won the

election according to Harris County voters. Instead, like similar election contests seen throughout the country, this is the latest political stunt by a paid lawyer who will earn his paycheck whether or not there is a “reckoning.”

Lawsuits should be about seeking the truth and justice. This election contest, unfortunately for more than a million voters (taxpayers) and our democratic system, is a charade to audit an election and “send a message.” Truth and justice be damned.

SPECIAL EXCEPTIONS

Pleadings must be stated in plain and concise language and must be sufficient to give “fair notice” of a claim. *See* TEX. R. CIV. P. 45(b), 47(a). Special exceptions force clarification of and specification in pleadings that are vague, indefinite, or uncertain. *See Cronen v. Pierce*, No. 01-90-00123-CV, 1991 WL 35054, at *4 (Tex. App.—Houston [1st Dist.] Mar. 14, 1991, writ denied); *Subia v. Texas Dept. of Human Servs.* 750 S.W.2d 827, 829 (Tex. App.—El Paso 1988, no writ). Because Contestant’s pleadings fail to comply with Rule 47’s standards and interpretive case law, Contestee asserts the following special exceptions:

a. Examples 1 & 2

Contestee specially excepts to Example 1 of the First Amended Original Petition (paragraphs 12-21) relating to allegations of an unknown number of unspecified voters receiving second ballots after experiencing problems scanning page two of their ballots, and Example 2 (paragraph 22) relating to the issuance of second ballots to voters who experienced difficulties with scanning their ballots. The allegations in these examples are vague, fail to give fair notice of a claim, and are legally insufficient. Moreover, even if the allegations were true, they are legally insufficient as a basis for an election contest.

To put this in context given that this is an election contest, the very first two allegations—described as examples by Contestant (paragraphs 12-22 of the First Amended Original Petition)—do not mention a single section of the Texas Election Code. So, we have a candidate who conceded the election on November 9, 2022, but now we have a lawyer stating in public that there will be a “day of reckoning” and attempting to cast doubt on the sanctity of elections in general. But it’s questionable how there will be a “day of reckoning” when the first two allegations in the First Amended Original Petition do not mention a single section of the Texas Election Code that was violated. This is telling.

The allegations in Examples 1 and 2 fail to provide the necessary notice of Contestant’s legal theory as required under Rule 47. Specifically, though Contestant exhausts the better part of six pages alleging that there was a deviation from the proper election procedures for scanning ballots, Contestant wholly fails to identify a single section of the Texas Election Code that was allegedly violated. Additionally, even assuming *arguendo* that the proper election procedures were not followed as Contestant alleges, Contestant provides zero support for how any such deviations impacted the election’s true outcome.

No allegations in Examples 1 or 2 are supported by evidence; instead, Examples 1 and 2 are a glaring example of speculation, conjecture, and lawyer storytelling. And noticeably absent from the examples is any language asserting that the allegations are based upon information and belief. There is simply no factual support that there was a significant number of “double voting” or “double counting,” and importantly, there is no allegation that there was any meaningful impact on the election based on the alleged means of voting and/or counting.

Given the current defective pleading language contained in Examples 1 and 2 (paragraphs 12-22), the Court should order Contestant to do the following: (1) state the specific sections of the

Texas Election Code that Contestant believes were violated to give notice to Contestee of a legal theory as required by Rule 47; (2) articulate the specific supporting facts for each alleged violation; (3) specifically identify how any of the alleged violations expressed in Examples 1 and 2 would have materially impacted the election such that Contestee would not have been declared the winner; (4) identify the “innocent voters” referenced in paragraph 16 of Election 1 to avoid the vague and ambiguous language; and (5) identify the “certain voters” that had their votes recorded twice as referenced in paragraph 19 of Example 1 to avoid the vague and ambiguous language.

b. Example 3

Contestee specially excepts to paragraphs 23-29 of Example 3 of the First Amended Original Petition relating to allegations of a shortage of ballot paper. The allegations in this example are vague, fail to give fair notice of a claim, and are legally insufficient. Moreover, even if the allegations were true, they are legally insufficient as a basis for an election contest.

In Example 3, Contestant complains that there was a lack of ballot paper. Section 51 of the Texas Election Code requires the procuring and distributing of “supplies for the election.” But there is no section of the Texas Election Code that specifically details the quantity of required ballot paper. Instead of focusing on the actual requirements of Section 51, Contestant, without citing to any actual evidence, states that “at least 3,135 voters were turned away from 26 specific polling locations on Election Day.” *See* Example 3, ¶ 23.

3,135 voters is a very specific number, but Contestant fails to provide the identify of a single one of those alleged voters. 26 polling locations is another very specific number, but again, Contestant fails to identify the name of a single polling location. There is also no statement of whether any of those 3,135 voters were planning to vote for Contestant or Contestee or whether any of those unnamed and undisclosed voters went to another polling location to cast their vote in

the countywide election. Lastly, there is no mention of what specific obligations the Texas Election Code places on the specific quantity of ballot paper that must be maintained at each polling location. Without this important information, Contestee simply has no notice of an actual election contest claim.

Given the current defective pleading language contained in Example 3, the Court should order Contestant to do the following: (1) state the specific sections of the Texas Election Code she believes were allegedly violated by a perceived lack of ballot paper; (2) articulate the specific supporting facts for each alleged violation for paragraph 23 of Example 3; (3) specifically identify how any of the alleged violations expressed in Example 3 would have materially impacted the election such that Contestee would not have been declared the winner; (4) identify the “at least 3,135 voters [who] were turned away from 26 polling locations on Election Day as referenced in paragraph 23 of Example 3 to avoid the vague and ambiguous language; and (5) state whether any person was actually unable to vote in the General Election due to an alleged shortage of ballot paper.

c. Example 4

Contestee specially excepts to Example 4 of the First Amended Original Petition (paragraphs 24-29) relating to allegations of a Court Order that conditionally permitted voting for an extra hour on election day. The allegations in this example are vague, fail to give fair notice of a claim, and are legally insufficient. Moreover, even if the allegations were true, they are legally insufficient as a basis for an election contest.

Example 4 butchers what truly occurred on election day from a procedural perspective. Importantly, Example 4 fails to account for the fact that it was a Harris County District Judge that extended voting for one hour. Example 4 also fails to account for the fact that it was the Texas

Supreme Court that ordered, two weeks after the election, the votes cast after 7 pm be included in the certified election results. Section 221.003 of the Texas Election Code is very clear that the scope of inquiry for an election contest is whether:

- (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.

TEX. ELEC. CODE § 221.003(a).

The Harris County District Judge who issued the initial TRO extending the voting period by one hour is certainly not an election officer. The Texas Supreme Court, who ordered that the votes cast after 7 pm be included in the certified election results is also certainly not an election officer. And of course, the votes cast after 7 pm were not illegally counted because the Texas Supreme Court ordered on November 22, 2022, that they be included.

All that aside, paragraph 29 of the First Amended Original Petition concedes that, even if everything that Contestant pled was true—and it is not—Contestant “picks up an additional 325 votes in her favor.” Even assuming that is true, Contestant still lost the election.

Given that it was a district court judge (not an election officer) who issued the TRO, that it was the Texas Supreme Court (not an election officer) who ordered that the votes cast after 7 pm be included in the certified election results, and that the votes cast after 7 pm were done so legally and counted legally, the Court should order Contestant to do the following: (1) state the specific sections of the Texas Election Code she believes were violated by the Texas Supreme Court ordering that the votes cast after 7 pm should be counted; (2) articulate the specific supporting facts for each alleged violation that Contestant alleges in paragraph 28 of Example 4; and (3)

specifically identify how any of the alleged violations expressed in Example 4 would have materially impacted the election such that Contestee would not have been declared the winner.

d. Example 5

Contestee specially excepts to Example 5 of the First Amended Original Petition (paragraphs 30-33) relating to allegations that the election results were not properly collected. The allegations in this example are vague, fail to give fair notice of a claim, and are legally insufficient. Moreover, even if the allegations were true, they are legally insufficient as a basis for an election contest.

As an initial matter, Contestant's argument is nonsensical. No evidence is presented to even hint that the ballot collection process—a ministerial issue—affected the vote count. Upon information and belief, Contestant's counsel, Andy Taylor, knew about this process well in advance of the 2022 general election but waited until this lawsuit to raise the “allegation” in Example 5. Without a specific allegation of how the ballot collection process actually impacted the vote count, Contestant fails to give Contestee fair notice of a claim.

Given the current defective pleading language contained in Example 5, the Court should order Contestant to do the following: (1) articulate the specific supporting facts for each alleged violation described in paragraph 31 of Example 5; and (3) specifically identify how any of the alleged violations expressed in Example 5 would have materially impacted the election such that Contestee would not have been declared the winner.

e. Examples 6 & 7

Contestee specially excepts to Example 6 of the First Amended Original Petition (paragraphs 34-35) relating to allegations that EA Tatum (who Contestant's counsel has repeatedly told the media has a “day of reckoning” coming) violated a duty to select, place, and allocate

alternate presiding judges and/or other election officials to serve at each early voting polling location from the list supplied by the HRCP. Additionally, in a similar argument, Contestee specially excepts to Example 7 of the First Amended Original Petition (paragraphs 36-37) contending that EA Tatum failed to adhere to a ministerial duty to reject persons who did not meet all applicable eligibility requirements and were not listed on the HRCP's list.

The allegations in these examples are vague, fail to give fair notice of a claim, and are legally insufficient. Moreover, even if the allegations were true, they are legally insufficient as a basis for an election contest.

Here, Contestant's argument lacks any factual basis—it simply is false. But again, even assuming the argument has merit, which it does not, Contestant pleads no facts that an underrepresentation of registered Republican voters serving at early voting polling locations affected the election outcome in any manner. Similarly, Contestant pleads no facts—literally not a single fact—to support the baseless contention that “Tatum allowed persons not appearing on HRCP's list to serve as alternate judges and election clerks wrongfully and illegally.” *See* Example 7, ¶ 37.

Given the current defective pleading language contained in Examples 6 and 7, the Court should order Contestant to do the following: (1) state the specific sections of the Texas Election Code she believes were violated; (2) articulate the specific supporting facts for each alleged violation; (3) specifically identify the “several polls [that] were severely out of balance in favor of the Democratic Party” as alleged in paragraph 35 by stating the location of each violative poll and how there was a misrepresentation; (4) identify which persons were allowed to serve as alternate judges and election clerks wrongfully and illegally as alleged in paragraph 37; and (5) specifically

identify how any of the alleged violations expressed in Examples 6 and 7 would have materially impacted the election such that Contestee would not have been declared the winner.

f. Example 8

Contestee specially excepts to Example 8 of the First Amended Original Petition (paragraphs 38-39) alleging that mail-in ballots were handled improperly. Specifically, Contestant states that she will “show that approximately 700 mail-in ballots were counted that should not have been counted” due to several violations of the requirements of the election code. The allegations in this example are vague, fail to give fair notice of a claim, and are legally insufficient. Moreover, even if the allegations were true, they are legally insufficient as a basis for an election contest because Contestant has made no allegations that the Signature Verification Committee or Early Voting Ballot Board were unable to perform their duties. Further, the evidence will show that Contestant’s allegation that “EA Tatum was not allowing the SVC to have access to the voter’s registration records” is simply not true. As to the allegation in paragraph 39 that “the Harris County records indicate that there were more mail ballots counted than were sent and received,” the Harris County records that Contestant is referring to are the initial reconciliation forms that were due at 7 pm on Election Day. The final reconciliation report has not even been released yet.

Additionally, the bald statement begs several questions. Which ballots should not have been counted? Why should the ballots not have been counted? How did the counting of the mail-in ballots violate the Texas Election Code? Why did the Texas Secretary of State bless and approve the procedural process used to handle and count mail-in ballots?

Given the current defective pleading language contained in Example 8, the Court should order Contestant to do the following: (1) state the specific sections of the Texas Election Code she believes were violated; (2) articulate the specific supporting facts for each alleged violation; (3)

specifically identify the “approximately 700 mail-in ballots” complained of as stated in paragraph 38 of Example 8; and (4) specifically identify how any of the alleged violations expressed in Example 8 regarding “approximately 700 mail-in ballots” would have materially impacted the election such that Contestee would not have been declared the winner despite receiving 2,743 more votes than Contestant.

g. Example 9

Contestee specially excepts to Example 9 of the First Amended Original Petition (paragraph 40) alleging that double voting occurred. Specifically, Contestant states that she will “show that at least sixteen specific voters voted more than once in the November 8, 2022 General Election.” Like many other “Examples,” this contention is vague, ambiguous, and fails to give fair notice of a claim. It also lacks any factual support because, like the “records” referenced in Example 8, these are only the initial reconciliation reports. The final reconciliation report has yet to be released. And even if the allegations are taken as true, there is simply no evidence that they affected the election results.

Here, Contestant fails to: (1) give Contestee notice of the identity of the “at least sixteen specific voters” who voted more than once; (2) fails to give notice of which reconciliation report(s) Contestant relies on instead of relying upon the final reconciliation report; and, again, (3) fails to identify how this would have had any impact on the election’s outcome.

Given the current defective pleading language contained in Example 9, the Court should order Contestant to do the following: (1) specifically identify the at least sixteen specific voters complained of in paragraph 40 of Example 9; and (2) specifically identify how the counting of at least sixteen voters who allegedly voted twice, would have materially impacted the election such

that Contestee would not have been declared the winner despite receiving 2,743 more votes than Contestant.

h. Examples 10 – 16 (paragraphs 41-49)

In a glaring example of throwing the kitchen sink, Contestant asserts 7 additional “examples” that provide zero notice of what Contestant’s specific claims are or whether any of the claims violate and sections of the Texas Election Code. The 7 examples are vague, ambiguous, indefinite, restatements of prior deficient “Examples,” and provide zero notice to Contestee of the specific claims being asserted. Moreover, even if the allegations were true—whatever those allegations are—they are legally insufficient as a basis for an election contest. As one court has stated:

The general rule is that the performance of duties placed upon the election officials are directory, unless made mandatory by statute, while those placed upon the voters are mandatory. It has been said many times by our courts that the object of every popular election is to ascertain the will of the qualified electors in the area to be affected thereby upon the issue or issues submitted to them. Our courts have also said that statutory enactments concerning elections must be strictly enforced to prevent fraud but liberally construed in order to ascertain and effectuate the will of the voters. The rule is that statutes regulating the manner of holding an election are merely directory and a departure from their provisions will not ordinarily invalidate an election, unless such departure or such irregularities have affected or changed the results of the election. *Prado v. Johnson*, 625 S.W.2d 368, 369 (Tex. Civ. App.—San Antonio 1981, writ dismissed w.o.j.).

Given the current defective pleading language contained in Examples 10-16, the Court should order Contestant to do the following: (1) specifically state which sections of the Texas Election Code were allegedly violated; (2) articulate specific facts supporting each example/claim; and (3) specifically identify how any of the alleged violations expressed in Examples 10 through 16 would have materially impacted the election such that Contestee would not have been declared the winner.

i. Example 17

Contestee specially excepts to Example 17 of the First Amended Original Petition (paragraph 50) relating to allegations of a failure to prepare required election returns at polling locations. The allegations in this example are vague, fail to give fair notice of a claim, and are legally insufficient. Moreover, even if the allegations were true, they are legally insufficient as a basis for an election contest.

Example 17 is a glaring example of why this is a frivolous election contest designed to push a political party's agenda, rather than focusing on the actual election. To put this "example" in perspective, Contestant's counsel, Andy Taylor, knows full well that section 65.014 only applies to counties that do not use electronic voting systems with a central counting station, i.e., counties very unlike Harris County. In counties like Harris County where electronic voting systems with a central counting station are used, section 127.131 applies. Presumably, Contestant's counsel also knows that section 127.131 *does not* require that election returns be completed by the presiding judge at each polling location. Section 127.131(a) only requires that the *presiding judge of the central counting station* prepare the election returns.

Given the current defective pleading language contained in Example 17, the Court should order Contestant to do the following: (1) state the actual specific sections of the Texas Election Code that she believes were violated; (2) articulate the specific supporting facts for each alleged violation; (3) specifically explain how the Harris County Election Administrator's Office failed to adequately instruct presiding judges how to prepare returns of the election for the polling locations as alleged in paragraph 50 of the First Amended Original Petition; (4) identify those polling judges who were allegedly inadequately instructed as alleged in paragraph 50 of the First Amended Original Petition; and (5) specifically identify how any of the alleged violations expressed in

Example 17 would have materially impacted the election such that Contestee would not have been declared the winner.

j. Example 18

Contestee specially excepts to Example 18 of the First Amended Original Petition (the 2nd paragraph 50) relating to the allegation that EA Tatum's failure to follow election code requirements for delivery of election results to central count. The allegations in this example are vague, fail to give fair notice of a claim, and are legally insufficient. Moreover, even if the allegations were true, they are legally insufficient as a basis for an election contest.

In paragraph 50 of Example 18 (not paragraph 50 of Example 17), Contestant refers to "inserting non-polling location workers into the role of Presiding Judge." But similar to other examples, these "workers" are not disclosed. Additionally, without citing to any factual support, Contestant states in the same paragraph that, "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." For clarification, the "election results" Contestant refers to are actually the ballot boxes, as "election results" are not even known until the ballot boxes are delivered to the central counting station. Upon information and belief, these so-called "non-polling location workers" who delivered the ballot boxes were actually sworn in as election officers by the presiding judges for the polling locations pursuant to section 127.066(c).

But again, even assuming these allegations are true—and there is no factual support to assume that they are—there is no notice of an actual claim provided in the single paragraph. There is no contention that the alleged violations as stated in paragraph 50 of Example 18 materially impacted the election such that Contestee would not have been declared the winner. So even if we

accept whatever Contestant attempted to plea in paragraph 50 of Example 18, there is nothing here other than a statement by a lawyer without any factual support.

Given the current defective pleading language contained in Example 18, the Court should order Contestant to do the following: (1) state the actual specific sections of the Texas Election Code that she believes were violated; (2) articulate the specific supporting facts for each alleged violation;(3) specifically explain which non-polling location workers served the role of Presiding Judge as alleged in paragraph 50 of Example 18, because if that happened as pled, Contestant should have that information readily available; and (5) specifically identify how any of the alleged violations expressed in Example 18 would have materially impacted the election such that Contestee would not have been declared the winner.

k. Example 19

Contestee specially excepts to Example 19 of the First Amended Original Petition (paragraph 51) relating to the allegation that EA Tatum's alleged failure to provide chain of custody for the election results delivered to Central Count. The allegations in this example are vague, fail to give fair notice of a claim, and are legally insufficient. Moreover, even if the allegations were true, they are legally insufficient as a basis for an election contest.

In paragraph 51 of Example 19, Contestant states that, "EA Tatum rarely provided chain of custody documentation that indicated the materials that were delivered (sic), the time of deliver or the person receiving documentation." But yet again, Contestant and Contestant's counsel knows that election results are not "delivered" to Central Count. Instead, ballots are delivered to Central Count. And the ballots are then tabulated/counted by Central Count. This is not a surprise nor is it violative of the Election Code in any manner—a fact supported by Contestant's failure to cite to the Texas Election Code in Example 19.

Moreover, even assuming these allegations are true—and there is no factual support to assume that they are—there is no notice of an actual claim provided in the single paragraph. There is no contention that the alleged violations, whatever they may be given the vague and ambiguously pleading, as stated in paragraph 51 of Example 19, materially impacted the election such that Contestee would not have been declared the winner.

Given the current defective pleading language contained in Example 19, the Court should order Contestant to do the following: (1) state the actual specific sections of the Texas Election Code that she believes were violated; (2) articulate the specific supporting facts for each alleged violation; (3) specifically explain what “results” were allegedly supposed to be delivered to Central Count as stated in paragraph 51 of the First Amended Original Petition; and (4) specifically identify how any of the alleged violations expressed in Example 19 would have materially impacted the election such that Contestee would not have been declared the winner.

I. Cause of Action

To put this election contest in perspective, the general election occurred on November 8, 2022. Contestant posted the following post on her social media the following day:



Erin Lunceford

47m ·



Well folks, it was a close one, but I came up short by 1025 votes, out of just over a million votes. Thank you to all my loyal supporters and friends and congrats to all the winners. Luckily I have a great job where I get to help folks resolve cases and now I don't have to worry about rescheduling all those 2023 arbitrations. I still have some December mediation dates available!!

And it was a close, hard-fought election. But that said, Contestant admitted defeat and gave “congrats to all the winners.” Apparently, that tune dramatically changed, even after it was determined that Contestant lost by 2,743 votes rather than 1,025 votes.

So here, after exhausting many pages with unsupported complaints and criticisms, Contestant finally gets to a “Cause of Action.” But Contestant does not actually provide the Court with a cause of action; instead, there are endless unsupported “examples” that in no way purport to materially impact the election’s outcome. Contestant advises that section 221 of the Texas Election Code sets forth the general parameters of an election contest. Contestee agrees.

So, what is the basis for Contestant’s cause of action? What specific section of the Texas Election Code was violated? How was each section violated? What allegedly illegal votes were counted? How were eligible voters prevented from voting? How did anyone fail to count legal votes? What fraud, illegal conduct, or mistakes are being alleged? And importantly, how was the outcome of the contested election, as shown by the final canvass, not the true outcome?

None of these questions are answered. And no allegations are supported by facts so as to give Contestee fair notice of Contestant's claims.

CONCLUSION

For these reasons, the Court should grant these special exceptions and order Contestant to replead within 10 days of the Court's Order. Should Contestant fail to do so, the Court should strike the pleadings and dismiss the allegations with prejudice. Contestee further asks for all other relief to which she may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Texas Rule of Civil Procedure 21a, a true and correct copy of the foregoing instrument was forwarded to all counsel of record and/or parties on April 21, 2023.

/s/ Nicholas L. Ware

Nicholas L. Ware

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