

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TEXAS DEMOCRATIC PARTY; §
BOYD L. RICHIE, in his capacity as §
Chairman of the Texas Democratic Party; §
HARRIS COUNTY DEMOCRATIC §
PARTY; GERALD BIRNBERG, in his §
capacity as Chairman of the Harris §
County Democratic Party; J. §
GOODWILLE PIERRE; ALEXANDRA §
GIBBS; JEFFREY T. §
VANSCHOONHOVEN; BONI SUE §
LESZCZUK; and ERIC J. GALLOWAY §

Plaintiffs,

vs.

LEO VASQUEZ, in his capacity as §
Harris County Tax Assessor Collector §
and Harris County Voter Registrar §

Defendant.

Cause No. 4:08-CV-03332

PLAINTIFFS' MOTION TO COMPEL
TESTIMONY OF ED JOHNSON

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiffs, TEXAS DEMOCRATIC PARTY, BOYD L. RICHIE, in his capacity as Chairman of the Texas Democratic Party, HARRIS COUNTY DEMOCRATIC PARTY, GERALD BIRNBERG, in his capacity as Chairman of the Harris County Democratic Party, J. GOODWILLE PIERRE, ALEXANDRA GIBBS, JEFFREY T. VANSCHOONHOVEN, BONI SUE LESZCZUK, and ERIC J.

GALLOWAY (hereinafter collectively referred to as “Plaintiffs”), and files this their Motion to Compel Testimony of Ed Johnson and in support of thereof would show the following:

I.

BACKGROUND

Plaintiffs allege tens of thousands of voter registration applications were wrongfully denied or rejected in the months leading up to the last general election. Since this lawsuit was filed, Plaintiffs have learned that the individual responsible for supervising the Voter Registration Department of Harris County is Ed Johnson. Ed Johnson also has a business relationship with State Representative Dwayne Bohac under the name of Campaign Data Systems LLC. See Exhibit “A.” Campaign Data Systems Inc. principal business is to consult Republican Candidates in Harris County and provide them data and voter lists. Campaign Data Systems website advertised to “would-be” Republican clients that the products CDS delivers contains information that is not available elsewhere. See attached Exhibit “B.”

When the relationship between Ed Johnson, Representative Bohac and CDS was publicly reported, the website was removed.

Filings with the Texas Ethics Commission revealed that CDS received a six figure income from Republican candidates in Harris County. See attached Exhibit “B”. These reports indicate Ed Johnson was overseeing voter registration and the processing of provisional ballots affidavits while at the same time Ed Johnson’s company, CDS, was

performing services for a fee for numerous Republican candidates that appeared on the ballot in that same election.

Oral Deposition of Michelle Dixon – March 11, 2009 (pg 37 and 97)

Q. And when the – when the affidavits are brought in, are they brought in in an – individually in an envelope? Or how are they brought in?

A. That's when the provisional – now, the provisional ballots themselves, I'm not sure because that's taken to the county clerk. But the affidavits – the affidavits are in a sealed --- they have to be in a sealed envelope.

...

Q. And do you know who was in charge of purging voters from the system?

A. It would – I know Ed Johnson but – probably Ed Johnson and Mr. Hammerlein. But I can't tell you which one would actually go in and – and go ahead and do it. I'm not sure.

Q. Okay. But Ed Johnson, as far as you know, is in charge of those systems?

A. Yes.

Oral Deposition of Elizabeth Hernandez – March 10, 2009 (pg 21)

Q. Is it fair to say that Mr. Johnson is actively involved in managing your department?

A. Yes.

Q. Other than Mr. Johnson and Frances, who were the other fairly active managers of the department?

A. Mr. Johnson's pretty much the one that does everything. Hamerlein doesn't really do too much. Chris German's kind of active in doing things, as well.

Oral Deposition of Kimberly Shoemaker – March 10, 2009 (pg 30)

Q. Okay. Is there anybody standing around watching you guys to see what you're doing with the provisional ballots, or is it pretty much just a free for all?

A. Sometimes our manager will stand over us.

Q. Okay.

A. Ed Johnson will stand over us.

See Exhibit "D."

As a result of the foregoing, Plaintiffs have requested the deposition of Ed Johnson. It is the understanding of the undersigned counsel that the Defendant does not oppose producing Ed Johnson for a deposition. The undersigned counsel also conferred with Ed Johnson's private attorney, Richard Haynes, who is also unopposed to producing Ed Johnson for a deposition.

However, the undersigned has the good faith belief that Johnson will be instructed not to testify about certain issues by one or both of his attorneys during the deposition. In order to avoid an enormous waste of time and expense, Plaintiffs asked the court to rule on the scope of the deposition in advance.

II.

AREAS OF INQUIRY

Plaintiffs intend to question Ed Johnson concerning all of his activities with regard to the following subjects:

1. Processing of provisional ballot affidavits.

2. Receipt of provisional ballot affidavits from the County Clerk's office.
3. Delivery of provisional ballot affidavits to the Ballot Board.
4. Interaction and discussions with the Ballot Board or any of its members during the General Election period.
5. Interaction or discussion with anyone, including Republican candidates and elected officials, concerning the processing of provisional ballot affidavits and/or the activities of the Harris County Tax Assessors' Office as they relate to voting issues, or the Harris County Ballot Board.
6. Staffing levels of voter registration employees.
7. Office policies and procedures concerning the processing of voter registration applications.
8. Structure and training of the voter registration staff.
9. Direction provided to Ed Johnson by his superiors as it relates to voter issues.
10. Computer and other technology available to the tax office for voter registration.
11. Pre-clearance of election changes alleged in plaintiff's latest complaint and also those additional election changes mentioned in the depositions taken to date.
12. The structure, ownership, and inception of Campaign Data Systems, LLC.

13. The business relationship between Ed Johnson and State Representative Dwayne Bohac.
14. The clients and income of Campaign Data Systems, LLC.
15. Ed Johnson's activities, responsibilities, and official capacity for Campaign Data Systems, LLC.
16. Data sources for Campaign Data Systems, LLC activities, including whether Harris County voter registration database was accessed to support Campaign Data Systems, LLC activities.
17. The application made by Ed Johnson, in his capacity as a county employee, to the Texas Department of Public Safety requesting the release of the state drivers license data base for Harris County and whether or not such data base was released to Campaign Data Systems, Inc. for its activities. See Exhibit "E."
18. Ed Johnson's testimony before the Texas House and/or Texas Senate concerning bills sponsored by Representative Dwayne Bohac.
19. Activities of Ed Johnson as it relates to two bills passed in the legislature by Representative Dwayne Bohac that specifically relate to the activities of the voter registrar and also impacted clients of Campaign Data Systems, LLC.
20. The process of and responsibility for purging voters from voting rolls.

The foregoing information is relevant to the claims made in this case. They concern an issue of vital public importance and also inform how it is the Harris County

Voter Registrar rejected, or sent notices of incompletes in response, approximately 65,000 more voter registration applications than the next largest county in the state. The testimony also informs the motive of the tax office.

These motivations inform whether and why the tax office failed to comply with State and Federal Law regarding registration of voters during the last election period. These matters also inform the already obtained deposition testimony that provisional ballot affidavits were altered by the tax office, were not processed timely, and otherwise were not processed in accordance with the Law.

III.

RELEASE REQUESTED

Plaintiffs request the Court order (1) the Defendant to produce Ed Johnson for a deposition at a mutually agreeable time, and (2) direct Mr. Johnson to answer questions related to the above referenced subjects.

Alternatively, in the event the Court disagrees that some of the subjects above are not likely to lead to the discovery of admissible evidence, Plaintiffs request the Court schedule a conference call and direct the parties as to which subjects may be explored during the deposition.

IV.

REQUEST FOR EXPEDITED REVIEW

The Plaintiffs respectfully request an expedited review of this Motion. Currently, the deposition of Ed Johnson is tentatively set for September 18 or September 21, 2009.

It would be in the interest of all parties to receive a ruling from the Court before the 18th of September.

V.

CERTIFICATE OF CONFERENCE

On September 8, 2009, the undersigned conferred with John Odam, counsel for Defendant. During the call, counsel was informed by Mr. Odam that the County Attorney did not object to producing Ed Johnson. Mr. Odam indicated there would be some subjects that Mr. Johnson would be instructed not to answer. Mr. Odam advised the Defendant had not yet finalized their decision as to which subjects Mr. Johnson would be allowed to respond to at deposition. Later this week Mr. Odam and the undersigned tentatively agreed to a deposition date of September 18 or 21, 2009.

WHEREFORE, PREMISE, CONSIDER, Plaintiffs TEXAS DEMOCRATIC PARTY, BOYD L. RICHIE, in his capacity as Chairman of the Texas Democratic Party, HARRIS COUNTY DEMOCRATIC PARTY, GERALD BIRNBERG, in his capacity as Chairman of the Harris County Democratic Party, J. GOODWILLE PIERRE, ALEXANDRA GIBBS, JEFFREY T. VANSCHOONHOVEN, BONI SUE LESZCZUK, and ERIC J. GALLOWAY (hereinafter collectively referred to as "Plaintiffs"), pray the court grant their motion to Compel the Deposition Testimony of Ed Johnson and grant them other and further relief to which they may show themselves justly entitled.

Dated this 11th day of September 2009.

Respectfully submitted,

TEXAS DEMOCRATIC PARTY and
BOYD L. RICHIE, in his capacity as
Chairman of the Texas Democratic Party

By: /s/ Chad W. Dunn
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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2009, I electronically filed the foregoing document with the Clerk of the United States District Court, Southern District of Texas, Houston Division, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

F. Clinton Gambill, II
Senior Assistant City Attorney
1019 Congress, 15th Floor
Houston, TX 77002
(Attorneys for Defendant)

/s/ Chad W. Dunn
Chad W. Dunn

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing instrument has been directed to all interested parties, as listed below, by facsimile transmission, by certified mail, return receipt requested, and/or by regular U.S. first class mail on this the 11th day of September, 2009.

Richard Haynes
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/s/ Chad W. Dunn
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