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HOUSTON, WE'VE HAD A PROBLEM

A Three Percent Solution for Minority Voters

—Houston, Texas

“**T**his is Ground Zero of the conservative movement,” Garnet Coleman said. “I tell my friends around the country that they can nip it in the bud if they come down here and help us defeat some of these people. The Taxpayer Bill of Rights, voter ID, whatever it is. When the hard right rolls out its misinformation, it starts here.”

Coleman is an African-American Democrat who has represented one of the city’s historically black districts in the state House since 1991. He described the last session of the Legislature, which ended with a two-day special session after legislators failed to fund several state agencies, as a frustrated Republican attempt to find a solution to a problem that doesn’t exist: voter fraud.

The 140-day regular session had been consumed by a fight over a voter ID bill filed by a Republican senator with close ties to Rick Perry—a Republican governor best known outside the state for threats to secede from the union.

House Democrats killed the bill—along with scores of others—using a devious procedural filibuster in a body in which filibuster isn’t permitted. Coleman sees voter ID as part of a broader attempt by Texas Republicans to discourage voter turnout in a state in which demographics are working against them. “It’s what Republicans do across the country,” Coleman said. “If they keep voter turnout low, they win. There are more than enough Democrats to win elections, if we can get them registered.”

In Texas the year 2006 was a bellwether. Democrats won every contested seat in Dallas County, long considered a Southern citadel of conservatism, where county-wide races were beyond the reach of Democratic candidates.

Republicans in Houston knew they were next. Coleman, and attorneys representing the state Democratic Party in federal court, allege that Republicans used one county office to suppress the vote in Harris County, which includes Houston—the nation’s fourth-largest city, in which Hispanics, African Americans and Asians make up 64 percent of the population.

What should have been a sweep of county-wide races

for Democrats in 2008 was impeded by the Harris County tax assessor-collector shaving “1, 2, maybe 3 percent off of voter turnout,” Coleman said, thus allowing the Republicans to cling to power.

Democratic Party plaintiffs in a federal lawsuit filed against the tax assessor-collector claim that the county tax office violated voters’ constitutional rights by using an “overly technical review” of applications to disqualify voters and then failing to properly process 7,000 provisional ballots.

If the hijacking of a handful of judicial and other county races wasn’t national news, it got big play at home. Mark Greenblatt at the local CBS television affiliate broke the story, in a series that brought into sharp focus the peculiar process

by which the Republican tax assessor-collector vetted voters as they registered. Or tried to register.

A lot has happened since Greenblatt’s reports, and the story is bigger than Houston.

The last time Republicans

gained any ground in the U.S. House was in the 2004 election, after then-Majority Leader Tom DeLay compelled the Texas Legislature in 2003 to undertake an unprecedented second redistricting session that resulted in five new Republican House districts.

After the 2010 census, the Texas Legislature will again redraw the political map of the state. Unless the Democratic Party picks up two seats in a state House that Republicans now control by a 75-74 margin, Republicans will dominate the redistricting process as they did in 2003. And the three or four new U.S. House districts that Texas will gain after the census—at the expense of Democratic “rust belt” states where population has declined relative to the population in Texas—will be safely Republican.

THE TAX MAN COMETH—In Texas, the county tax assessor-collector assesses and collects taxes. The office also vets and verifies voter registration applicants and maintains registration rolls for elections. The odd combination of functions can be traced back to the post-Reconstruction era, when Southern states began to use the poll tax to keep newly enfranchised blacks from voting.

Gaming the Vote

“In the 2002 election, the CDS software gave us the advantage we needed to overcome and defeat the massive Democrat turnout in Harris County.”

— Republican testimonial deleted from Campaign Data Systems’ Web site (*see page 2*)

The Harris County tax assessor-collector who died in office in 1998 was elected the year LBJ won his first Senate race. His replacement that same year by the vice chair of the county Republican Party defined the end of an era. On the day Paul Bettencourt was elected tax assessor-collector, the Republicans swept not only Harris County, but took the last statewide office (there are twenty-two) and reelected George W. Bush to a second term as governor. It was the culmination of a project begun in Houston, when the senior George Bush brought Karl Rove to Texas in 1977 and introduced him to Republican Money determined to remake the state.

Unlike the superannuated civil servant he replaced, Bettencourt was ruthlessly partisan. He frequently appeared on local right-wing talk radio to argue that Houstonians were overtaxed (a peculiar position for the tax assessor-collector). Bettencourt was also a zealous promoter of voter identification legislation, viewed by Democrats as a mechanism to suppress voter turnout. He appeared before a Congressional committee in 2006 to make the case for Republican Congressman Henry Hyde's federal voter ID bill, promoted as protection against undocumented aliens' assault on the polls. On radio appearances he promoted the Texas voter ID legislation and warned of voter fraud.

In its endorsement of his Democratic opponent in the 2008 election, the editorial board of the *Houston Chronicle* objected to Bettencourt's relentless partisanship. Bettencourt won with 51.50 percent of the vote. He then resigned before being sworn in, which some of his critics see an admission of culpability and others describe as crass dishonesty and opportunism. "Who resigns from office just weeks after they're elected?" Coleman asked.

The former tax assessor now runs Bettencourt Tax Advisors, a private business that helps "residential and commercial property taxpayers reduce their tax liabilities."

RACE DEMOGRAPHICS—Nile Copeland is a Houston lawyer who represented a Democratic judge who lost by 230 votes (out of 1,098,496 cast) in the 2008 election. Copeland told me that he began to question the voter registration process in early 2008, when he joined a friend for lunch at the Downtown Houston Pachyderm Club. Copeland's ears pricked up when the luncheon speaker described the racial makeup of voters registered in the county in 2008—information that couldn't be gleaned from voter registration records. The speaker was Associate Voter Registrar Ed Johnson.

Copeland discovered that Johnson has a private business—"like a data mining company." He assumed that the county official was taking driver's license information and voter information and merging data fields to provide demographic information for Republican groups.

The lawsuit Copeland filed on behalf of the judicial candidate was dismissed by a state district judge, but Copeland passed the information regarding Johnson on to attorneys who filed a much broader lawsuit in federal court.

Copeland also described a comment Ed Johnson made about storm victims from Louisiana, who had relocated to Houston after Hurricane Katrina destroyed New Orleans in 2005. According to Copeland, Johnson discussed denial rates of African-American voter applicants and referred to "storm refugees." Someone in the audience asked Johnson if he

expected more refugees to register in Texas.

"And Ed said, 'no, they want to get back to Louisiana because they want to collect their free money.'

"I was like, wow, this is a county official making a racial slur," Copeland observed.

Johnson's comments about "free money" and African-American storm refugees might be subject to interpretation. His job as a political consultant isn't.

In corporate filings in the offices of the Texas secretary of state's office, Johnson is listed as both a "director" and "member" of Campaign Data Systems (CDS), a software and data company that serves a long list of Republican candidates in Texas.

Johnson's business partner is Dwayne Bohac, a third-term Republican state representative who was also on the 2008 ballot in Harris County. During the 2009 Texas legislative session, as the deputy voter registrar from Harris County, Johnson testified on behalf of the failed voter ID bill before a committee co-chaired by his business partner, Bohac—without disclosing their business relationship.

It's hardly surprising that Johnson said nothing about his second job. A CDS Web site testimonial from a Republican election operative reads: "In the 2002 election, the CDS software gave us the advantage we needed to overcome and defeat the massive Democrat turnout in Harris County." (The CDS page has been pulled down, but a copy of it was included in the federal lawsuit filed by the Texas Democratic Party.)

While working for CDS, Ed Johnson was also the county official who oversaw the review of voter registration applications, according to affidavits in the federal lawsuit. Democratic plaintiffs claim that in the 2008 election cycle, the Harris County tax assessor-collector rejected 70,000 voter registration applications. (The spokesperson for the Harris County tax assessor's office says the figure was far lower, 3,518, and that the 70,000-figure includes letters sent to applicants to request additional information.) In the same time period, Dallas County rejected 1,183—a disparity that can't be explained away by population: Harris County, 4 million and Dallas County, 2.5 million. Johnson was also

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responsible for processing 6,090 provisional ballots.

Democrats looking at the high registration denial rate and several photo-finish elections want to know if Johnson had his thumb on the scales.

The county judge (the county's chief administrator) was reelected with 53.15 percent of the vote—the largest percentage won by any Harris County Republican in 2008. The few Republicans elected held on by razor-thin margins, including four judicial races won with 50.01 percent, 50.11 percent, 50.57 percent, and 51.42 percent of the vote. Twelve candidates on the Harris County ballot in 2008 were CDS clients, including the district attorney, who won with 50.15 percent, and a state rep who defeated his Democratic challenger by 590 votes.

"This is one of the biggest cities in the country and these guys run it like it was Mayberry," said a lawyer who pointed me in the direction of the story.

"If you were in any other place," Garnet Coleman said, "or if this were Enron, you would be talking about a criminal enterprise."

TEXAS HOLD'EM—Fred Lewis directs voter registration campaigns for the non-profit and non-partisan Texans Together Education Fund. "Harris County is the largest county in the state," Lewis said. "It also has the largest voter registration problem."

Lewis estimates that 550,000 eligible voters in Harris County remained unregistered in 2008. In 2010, if current trends continue, that number will exceed 600,000.

"The vast majority of that 550,000 are modest-income and low-income historical minorities," Lewis said. "I believe Harris County has a large registration problem for two reasons. One is because it has a large, young, mobile and multi-cultural population. The other is because of the practices of the tax assessor-collector."

Texans Together field workers maintain a paper trail of every voter they register, retaining a carbon copy of each registration form after mailing one to the county. Because of the technical errors they saw in 2006, they carefully tracked voters they registered in 2008.

An unusually high number of applicants never made it to the rolls. "Applicants were being rejected for hyper-technical reasons," said Texans Together's field director in Houston, Maureen Haver.

Applicants were rejected for a variety of simple, correctable errors, such as failing to check the box indicating they would be 18 years old on election day, although their date of birth on the subsequent line indicated they would be of age to vote. One confusing section on the registration form required applicants to check a box indicating they had no Texas driver's license before they entered their Social Security number; a missing check mark resulted in a disqualified ballot. Applications were tossed if zip codes were missing, although clerical workers in other counties routinely look up and enter postal codes. In some instances, applicants were rejected if their hyphenated surnames were not hyphenated in a state database. In one sample of 4,000 applicants, 30 percent of the individuals registered by Texans Together didn't make it onto the rolls.

Houston State Representative Garnet Coleman com-

plained about Harris County's use of an outdated and confusing voter application form, after the secretary of state had distributed a newer, simpler form.

Haver and Coleman aren't the only critics. Jim Harding is a Republican who has worked five consecutive elections as a Harris County election judge. He told me that he never saw applications and provisional ballots treated as badly as they were in the 2008 election. Harding said that when he started to see white out and strike-overs on provisional ballots, he "got pretty nervous."

He said he directs his staff of thirty to thoroughly parse all the information on a slightly flawed application, to determine whether a voter is qualified to vote despite a minor error. The tax assessor, Harding said, erred on the side of exclusion.

"When it comes to a citizen's franchise, I'm an includer," Harding said. "The people in that office were excluders." Harding also questioned Ed Johnson's outside work for a private company that deals with voting data, a question attorneys in the federal lawsuit are also pursuing.

Ed Johnson has been reassigned, according to the public information department at the tax assessor's office, to "a position which focuses on technology integration throughout the entire office of the Tax Collector-Assessor and Voter Registrar." Johnson's business partner at CDS, Republican State Representative Dwayne Bohac, has not returned calls.

The lawsuit the Democratic Party filed is slowly moving through federal court in Houston. Information about the case is posted on the Web site of the Lone Star Project, an independent party-building organization that has promoted the Harris County investigation of Paul Bettencourt.

The backstory involves a harsh reality confronting national Republicans. The numbers don't work for them anymore.

Fred Lewis says that in ten years Texas will look very much like Harris County, with its 64-65 percent minority population. "Texas is about twenty years ahead of the rest of the country. In twenty years, the country is going to look a lot like Harris County." —L.D.

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Cracking Acorn—When Congress voted in mid-September to curtail all federal funding to Acorn, two people with costumes and a video camera achieved what the Bush Justice Department failed do in eight years.

The community organizing group has been on the Republican Party’s hit list since George W. Bush’s 366-vote victory in 2000 in Florida energized Democratic activists to register and turn out voters. Since then, the Association of Community Organizations for Reform Now, or Acorn—a 40-year-old nationwide non-profit group that has 400,000 members and focuses on low- and moderate-income economic issues and voter registration—has registered approximately 2 million voters.

The two Acorn employees filmed by a right-wing video team in Baltimore are pathetic and painful to watch, as they give tax and housing advice to a couple posing as a prostitute and a pimp. The hidden camera brought into focus real problems of an advocacy group that pays its organizers too little and fails to provide adequate supervision.

The result was a trifecta for the Republican Party. Acorn workers will not be subcontracted to work on the census, Congress has voted to cut off all its federal funding (much of which goes toward housing issues), and Acorn’s leadership is considering shutting down its voter registration program.

Banana Republican Alert—Bush White House Advisor Karl Rove warned the Republican National Lawyers Association in April 2006 of “an enormous and growing problem with elections today”—where in some “hot spots,” American elections looked like elections in countries run by “colonels in mirrored sunglasses.” Rove warned that our democracy was at risk because of failed ballot security.

The truth was more complex, if sometimes hidden. Six months later, the federal agency studying voter fraud concluded that it was not a problem. Revealing the truth required leaking the original 2006 Election Assistance Commission Report—after a version revised and edited by political operatives was first published as the commission’s official findings. The uncensored report concluded that “there is widespread but not unanimous agreement that there is little polling place fraud.”

That conclusion was confirmed by an April 2007 *New*

York Times report on the Bush Administration’s crackdown on voter fraud that found that in seven years 120 people had been charged and 86 convicted—in the entire United States.

Gonzo Justice—It might have been Rove’s obsession with voter fraud that ended the career of Bush Attorney General Alberto Gonzales (now a visiting professor at Texas Tech University, after no law firm would come near him). At least two of the nine U.S. attorneys fired in the scandal that forced Gonzales to resign lost their jobs because they failed to deliver Acorn prosecutions demanded by political hacks at the White House and Justice Department.

U.S. Attorney David Iglesias (a Republican appointee) in New Mexico looked at 100 voting fraud complaints, according to the *Times*. He could only find one “real shot” at prosecution. After the FBI interviewed his best prospect, Iglesias concluded there was no criminal intent. The state Republican Party chair and Republican Senator Pete Domenici complained to the Bush Administration and Iglesias was fired. The woman Iglesias elected not to prosecute was an Acorn employee who falsified applications to bump up her quota for a job that paid less than \$10 an hour.

David Graves, the (Republican) U.S. Attorney in Kansas City, Missouri, was also asked to resign after he failed to file criminal charges against four Acorn employees, against whom he could find no justification to prosecute. Graves was replaced by Brad Schlozman, who simultaneously served as the interim U.S. attorney in Kansas City and a deputy attorney general at the Civil Rights and Voting Rights Division of the Justice Department.

Less than a week before the November 2006 election, Schlozman indicted the four Acorn workers, despite DOJ guidelines that strongly discourage indictments on the eve of an election. (Acorn had notified Graves that the four workers had engaged in questionable practices.) The charges were dismissed. So was Schlozman, who resigned after a meltdown before the Senate Judiciary Committee.

A DOJ inspector general’s report in July 2008 concluded that Schlozman had politicized the office, violated hiring policies, and lied to Congress. The report was turned over to the criminal division of the Justice Department. In a letter to Congress last month, Attorney General Eric Holder announced that Schlozman would not be prosecuted.—*L.D.*

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