

Cause No. DC-18-00821

The Dallas County Republican Party, Missy Shorey as Dallas County Republican Party Chair	§ § § §	IN THE DISTRICT COURT
Plaintiffs,	§	
v.	§	14 th JUDICIAL DISTRICT
	§	
The Dallas County Democratic Party, Carol Donovan, as the Dallas County Democratic Chair	§ § § §	
Defendants.	§	DALLAS COUNTY, TEXAS

**Answer of Dallas County Democratic Party and Carol Donovan in her
Representative Capacity as Chair of the Dallas County Democratic Party
and
Motion to Abate**

The Dallas County Democratic Party and its Chair Carol Donovan (DCDP),
respond as follows to the claims and allegations of Plaintiff:

Introduction

This lawsuit constitutes a cynical attempt by the Dallas County Republican Party to: (a) use publicity concerning this frivolous lawsuit to confuse voters in the hope of disenfranchising minority voters; and (b) deny Dallas County citizens the right to vote for the candidates of their choice.

Plaintiffs surely must know that, with ballot distribution already underway, the Republican Party and its Chair Missy Schorey are not even proper parties to this

lawsuit. Nor is the DCDP a proper party-Defendant. As a result, there is no justiciable controversy between the parties that would permit the issuance of the declaratory relief or the injunctive relief requested in the lawsuit. Moreover, the Republican Party's claims are moot under entrenched Texas law. The entire lawsuit is frivolous for multiple reasons.

General Denial

DCDP denies generally all Plaintiffs' allegations and demands strict proof thereof in accordance with Texas law.

Specific Denials

1. DCDP specifically denies that the documents at issue in this case contain any forgeries or unauthorized signatures. All the signatures at issue are genuine, authorized, and legally valid for their intended purpose.

2. DCDP specifically denies that anyone forged the signature of Carol Donovan. Any signature purporting to be the signature of Carol Donovan is in-fact the signature of Carol Donovan.

3. DCDP specifically denies that there is a justiciable controversy within the meaning of the Texas Uniform Declaratory Judgment act.

4. DCDP specifically denies it is liable to Plaintiffs in the capacity in which it has been sued.

5. DCDP specifically denies that Plaintiffs are the real parties in interest or have the legal capacity to sue for the relief herein requested.

6. DCDP denies that the proper parties are before this court. There is a defect of parties-Plaintiff and a defect of parties-Defendant.

7. DCDP denies that the Republican Party has clean hands sufficient to request or receive any equitable relief from this court

Affirmative Defenses

8. Plaintiff's claims are barred by the Texas Constitution. Plaintiff seeks by this lawsuit to disenfranchise minority voters by denying them the opportunity to vote for candidates of their choice and by denying minority candidates the opportunity to receive votes and be elected.

9. Plaintiffs' claims are barred by the plain and unambiguous terms of the Texas Elections Code, which permits the delegation of the ministerial tasks at issue in this case.

10. This Court lacks subject-matter-jurisdiction over Plaintiffs' claims because those claims are moot. Plaintiffs delayed the filing of these claims until after absentee balloting had begun to create confusion and generate adverse publicity. Plaintiffs could have filed these claims at any time and allowed the parties-and this Court-ample time for an orderly presentation of and ruling on the issues presented – a ruling that would have resulted in the dismissal of the claims.

Instead, Plaintiffs purposefully delayed filing the claims in the hope of avoiding an orderly presentation of the issues to the Court and thereby generating adverse publicity, confusion and chaos concerning the status of highly qualified Democratic Party candidates for public office.

11. This Court lacks subject-matter-jurisdiction over Plaintiffs' claim for declaratory judgment because no justiciable controversy exists between Plaintiffs and DCDP. Because the distribution of ballots has begun, the only party against whom a declaration would have any legal effect would be the Texas Secretary of State or the Dallas County Elections Administrator. DCDP lacks any power over the ballots, and the requested declaration against DCDP would have no legal effect.

12. This Court lacks subject-matter-jurisdiction over Plaintiffs' claims for injunctive relief due to the lack of jurisdiction over the only substantive underlying claim (Request for declaratory relief) supporting the request for injunctive relief.

13. Plaintiffs' claims are barred by their failure to sue indispensable parties, necessary to the relief Plaintiffs have requested.

14. Plaintiffs' claim for declaratory judgment is barred by failure to join all persons who have or claim any interest that would be affected by the declaration, as required by section 37.006 of the Texas Civil Practice and

Remedies Code. This would include all the implicated candidates and the Texas Secretary of State or the Dallas County Elections Administrator.

15. There is a defect in parties because DCDP does not have power or authority to remove qualified candidates from the ballot. That authority rests with the Texas Secretary of State, an agency of the Government of the State of Texas or the Dallas County Elections Administrator, an agency of the Government of the County of Dallas. This plea is verified as required by Rule 93 of the Texas Rules of Civil Procedure.

Motion to Abate

16. Plaintiff's sole claim is for declaratory judgment. As a result, section 37.006 of the Texas Civil Practice and Remedies Code requires joinder of all persons who have or claim any interest that would be affected by the declaration. This would include all the implicated candidates, and the Texas Secretary of State or the Dallas County Elections Administrator. This case should be abated until a proper party Plaintiff has joined and properly served every one of those affected parties.

Conclusion

17. It has become necessary for DCDP retained the undersigned counsel to protect its interests in connection with the claims asserted herein and VCP is entitled to inherent fees for recovery of its reasonable attorneys' fees.

18. This litigation is baseless and frivolous and was filed solely for the purpose of harassment and other ulterior purposes. DCDP is entitled to and herein sues for an appropriate award of sanctions pursuant to the Texas Rules of Civil Procedure, to be determined by this court.

Respectfully submitted,

Johnston Tobey Baruch, P.C.

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Certificate of Service

On this 24th day of January 2018, a copy of the foregoing was served on counsel of record through the e-filing system.

/s/ Randy Johnston
Randy Johnston