

NO: CV01149

ROYCE ABBOTT,  
Contestant

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IN THE 102ND DISTRICT COURT

vs.

OF

TERRY REED,  
Contestee

RED RIVER COUNTY, TEXAS

FILED  
05-11-17 PM 2:00  
CLERK OF DISTRICT COURT  
RED RIVER COUNTY TEXAS

**CONTESTANT'S FIRST AMENDED ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Contestant, **ROYCE ABBOTT**, complains of Contestee, **TERRY REED**, as follows:

I.

Contestant is an individual residing in Bagwell, Red River County, Texas.

Contestee is the duly appointed Sheriff of Red River County, Texas and has appeared and answered herein.

II.

The purpose of this action is to contest, under the provisions of Texas Election Code § 221.001, et seq, § 231.001, et seq, and § 232.001, et seq, the results of the primary election of the Democratic Party held on March 7, 2006, to determine nominees of that party for candidates for offices in the general election to be held in November 2006, the particular office involved in this contest being that of Sheriff for Red River County, Texas, for which Contestant and Contestee were the party's only candidates for nomination in the primary run-off election held on April 11, 2006.

Under Texas Election Code § 221.002, this Court has original and exclusive jurisdiction of this contest. Venue is proper in Red River County, Texas in accord with Texas Election Code § 232.006.

III.

Contestant would show that the Judges in the 6th Judicial District Court and the 102nd Judicial District Court (the only district courts serving Red River County) are disqualified to preside in this contest. Therefore, the District Clerk shall promptly call the filing of this petition to the attention of either of the District Judges and that judge shall promptly request the presiding judge of the Administrative Judicial Region to assign a special judge to preside in the contest in accord with Texas Election Code § 231.004.

IV.

On May 1, 2006, the County Democratic Chair of Red River County, Texas (Patty Barton) met with the County Executive Committee sitting as the canvassing board for the primary run-off election held on April 11, 2006 and conducted the canvass of the Democratic Primary Run-off After Recount. Attached as **EXHIBIT A** and incorporated herein for all purposes is a true and correct copy of the Canvass of Democratic Primary Run-off After Recount together with the recount votes recorded for Terry Reed and Royce Abbott. Therefore, this Contestant's Original Petition is being timely filed in accordance with Texas Election Code § 232.008.

V.

The results of such Canvass of the Democratic Primary Run-off After Recount reflect that Contestant received 1,161 votes and that Contestee received 1,192 votes, or 31 votes more than Contestant, and the results were then recorded by the County Clerk in the book kept for that purpose.

## VI.

For reasons subsequently stated, the outcome of the contested election, as shown by the final canvass is not the true outcome and the election should be declared void because:

- “(1) Illegal votes were counted; or
  - (2) An election officer or other person officially involved in 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.”
- (Texas Election Code § 221.003)

## VII.

Your Contestant would show that, in accordance with Texas Election Code § 65.013, each presiding judge in each voting precinct shall prepare a statutorily mandated ballot register. That form as prescribed by the Secretary of State of the State of Texas, in accord with Texas Election Code § 65.013, is called “Register of Official Ballots”. The statutorily mandated Register of Official Ballots must state those items as set forth in Texas Election Code § 65.013(b), and the statutorily mandated Register of Official Ballots shall be prepared as an original and one (1) copy as set forth in Texas Election Code § 65.013(c), and, on completing the register, the presiding judge shall sign each one to certify its accuracy. The Texas Election Code thereafter specifically states that, under Texas Election Code § 65.014(d), a presiding judge of a precinct commits an offense if the judge knowingly fails “to include in the precinct returns the applicable information required by this code”. The Texas Election Code § 65.014(e) then states that an offense under sub-section (d) as above set forth is a Class B Misdemeanor under the Texas Penal Code which your Contestant urges constitutes fraud, illegal conduct, or, at the very least, a mistake.

## VIII.

A. On April 25, 2006, Lorie Moose, County Clerk, Red River County, Texas, responded to an open records request as propounded by Ernest Henslee of Avery, Texas for information pertaining to election information for the April 11, 2006 Democratic Primary Run-Off by giving to Mr. Henslee a copy of the Register of Official Ballots for Precincts 4, 7, 9, 10, 11, 14, 17, 19, 24, 27, 28, 29, 30, 31 and 32 (a copy of said letter from Lorie Moose being attached hereto as **EXHIBIT B**, and the copies of the Register of Official Ballots as provided by her, consisting of 15 pages, being attached hereto collectively as **EXHIBIT C**, and both exhibits are incorporated herein for all purposes). Those Register of Official Ballots constituted the ballot register for fifteen (15) voting precincts in Red River County, Texas.

B. At the time of the primary and the run-off as conducted on April 11, 2006, there were twenty-three (23) voting precincts in Red River County, Texas. Therefore, eight (8) of the twenty-three (23) precincts involved in the voting on April 11, 2006 failed to prepare the statutorily mandated ballot register as set forth in Texas Election Code § 65.013, as evidenced by Exhibit B attached hereto.

C. Further, upon examination of the fifteen (15) Register of Official Ballots, specifically the ones for Precinct 19 and Precinct 30, there is absolutely nothing filled out, thus constituting two (2) additional precincts that failed to prepare the statutorily mandated ballot register (see Exhibit C, pages 8 and 13). Additionally, upon further examination of the Register of Official Ballots for Precinct 14, there is only the notation of the number of ballots received, but the number of unused ballots, the number of ballots voted, and the total number of ballots

accounted for are blank. Therefore, your Contestant would urge that the statutorily mandated Register of Official Ballots for Precinct 14 is also nonexistent (see Exhibit C, page 6).

D. Subsequent to the filing of the Original Petition in this cause, Contestant has been provided additional purported Register of Official Ballots for other precincts. Pink copies (not the original and the copy to be placed in envelope no. 3) have been provided for Precincts 1, 3, 5, 18 and 20. And, purported original copies of the Register of Official Ballots were found for Precincts 13 and 19. But, even after this production, Contestant would show that completed original Register of Official Ballots (that should have been placed inside of Ballot Box No. 4 with the unused ballots) were only produced for Precincts 4, 7, 9, 10, 11, 13, 17, 24, 27, 28, 29, 31 and 32 (however, for this precinct, a different form was used with no beginning and ending serial number blanks for ballots sent to this early vote box). Thus, only 13 of the 23 voting precincts have completed original Register of Official Ballots as mandated by Texas Election Code § 65.013.

E. It is the position of the Contestant that ten (10) of the twenty-three (23) voting precincts had no statutorily mandated Register of Official Ballots prepared and that, therefore, it is impossible to ascertain in those ten (10) voting precincts the total number of ballots received for conducting voting at the polling place (showing the beginning and ending serial numbers of the ballots presented to each polling place or precinct), the number of defectively printed ballots received, the number of ballots provided to voters as indicated by the number of voters on the poll list, the number of spoiled ballots returned by voters, and the number of unused ballots that are not accounted for as defectively printed ballots. Thus, the failure by the election officer or other person officially involved in the administration in the ten (10) precincts to prepare and

verify the information mandated by Texas Election Code § 65.013(a)(b)(c) constitutes a statutory violation that is illegal conduct or fraud or a mistake.

F. Further, the failure to prepare this statutorily mandated Register of Official Ballots for these ten (10) precincts is a criminal Class B Misdemeanor offense for failing to include in the precinct returns the applicable information as required by the Texas Election Code and therefore constitutes illegal conduct or fraud, or, at the very least, a fatal mistake.

#### IX.

Alternatively, Contestant will show that there were many illegal votes counted for the Contestee or legal votes that failed to be counted or eligible voters that were prevented from voting, in violation of Chapter 63 of the Texas Election Code and that such illegal votes should not be counted in accordance with Texas Election Code § 221.003.

#### X.

Further, Contestant would show that additional illegal conduct has been committed by an election officer or other person officially involved in the administration of the April 11, 2006 run-off election either before or after the election. (A) Specifically, the early voting box (Precinct 32) was only secured with a padlock on the deposit slot at the end of each voting day with no seal being placed on the deposit slot. Then, at the end of each voting day, the early voting box (Precinct 32) was left in an unsecured location overnight during the entire early voting period, and the key to the padlock on the deposit slot was left in a desk drawer in the same location as the ballot box, the location of said key being known by many individuals. This conduct violates Texas Election Code § 127.063, § 127.064, § 127.066 and § 127.068.

(B) Further, there has been illegal conduct committed by persons involved in the administration

of the April 11, 2006 run-off election and the preservation of documents from said election. After the filing of the lawsuit, the ballot box containing the voted ballots has been opened numerous times during this preservation period, all without authorized entry, in violation of Texas Election Code § 66.058. This unauthorized entry is a Class A misdemeanor offense as per the Texas Penal Code and constitutes fraud or illegal conduct or mistakes. Further, the key to the ballot box that was delivered to the County Auditor as its custodian, in accord with § 66.060(a)(1) of the Texas Election Code, was allowed to be given to the Red River County Clerk's office on numerous occasions, the relinquishment of the custody of that key being not permitted by law and being in violation of § 66.060(c) and (d) of the Texas Election Code and constituting a Class B misdemeanor offense as per the Texas Penal Code. This conduct also constitutes fraud or illegal conduct or mistakes.

## XI.

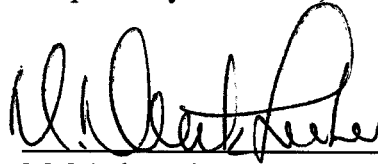
### CLAIM FOR RELIEF

WHEREFORE, your Contestant prays:

1. That the Clerk give notice of the filing of this contest to Patty Barton, the presiding officer of the final canvassing authority, as required by Texas Election Code § 232.009(a);
2. That Contestee be cited to appear and answer within ten (10) days after the service of process, as required by Texas Election Code § 232.010;
3. That some of the votes cast for Contestee be declared illegal and/or that the Court find that some legal votes failed to be counted and/or that eligible voters were prevented from voting under Texas Election Code § 221.003;

4. That the outcome of the contested election be declared to be NOT the true outcome because an election officer or other person officially involved in administration of the election engaged in "other fraud" or "illegal conduct" or made a fatal mistake in violation of Texas Election Code § 221.003;
5. That the contested election be declared void because the Court cannot ascertain the true outcome of the election in accord with Texas Election Code § 221.012;
6. That the contested election be declared void and that the Court shall include in its judgment an order directing the appropriate authority to order a new election in accordance with Texas Election Code § 232.041;
7. For costs of this action; and
8. For any further relief at law or in equity to which he may be entitled.

Respectfully submitted,



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M. Mark Lesher  
Texas Bar Card No: 12225500

**LESHER & ASSOCIATES**  
524 Spruce Street  
P.O. Box 2033  
Texarkana, TX 75504-2033  
Telephone: (903) 794-3309  
Fax: (903) 792-7085

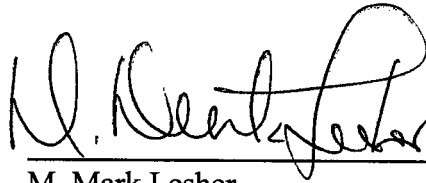
ATTORNEY FOR CONTESTANT

CERTIFICATE OF SERVICE

I, M. Mark Leshner, do hereby certify that, in accordance with the Texas Rules of Civil Procedure, a true and correct copy of the above and foregoing document has been transmitted to the following counsel of record on this the 7<sup>th</sup> day of June, 2006:

**Via Confirmed Fax Transmission to: (903) 785-0312:**

Ms. Judy Hodgkiss  
THE MOORE LAW FIRM  
100 North Main Street  
Paris, TX 75460



A handwritten signature in black ink, appearing to read "M. Mark Leshner", is written over a horizontal line.

M. Mark Leshner