

CAUSE NO. _____

LON BURNAM
Contestant

V.

RAMON ROMERO Jr.,
Contestee

§
§
§
§
§
§
§

IN THE DISTRICT COURT OF
TARRANT COUNTY, TEXAS
____ JUDICIAL DISTRICT

**CONTESTANT'S ORIGINAL PETITION
AND REQUEST FOR DISCLOSURE TO CONTESTEE**

COMES NOW, Lon Burnam, Contestant, and files his election contest and would show the Court as follows:

DISCOVERY LEVEL

1. Discovery is intended to be conducted under Level 2 of TEX. R. CIV. P. 190.

PARTIES

2. Contestant Lon Burnam was a candidate for Texas State House of Representative District 90 in the Democratic Party held on March 4, 2014 in Tarrant County, Texas.

3. Contestee Ramon Romero Jr. opposed Contestant in the race referred above. Contestee can be served with process at 421 Conner Ave, Fort Worth Texas, 76105-1114.

JURISDICTION AND VENUE

4. Contestant brings this contest pursuant to Chapters 221, 231 and 232 of the TEXAS ELECTION CODE. This Court has jurisdiction over this cause pursuant section 221.002 of the code. Venue is set in Tarrant County.

FACTUAL BASIS

5. The Democratic Primary was held on March 4, 2013. On March 13, 2014, the Tarrant County Democratic Party Executive Committee canvassed the primary election results in Texas House of Representatives District 90. Contestee was declared the winner by 111 votes. Contestee received 430 ballots by mail. A sufficient number of the ballots by mail for Contestee were obtained illegally to effect the outcome.

6. The Contestee canvassed neighborhoods seeking persons to apply to vote by mail. His representatives used an iPad with an application on it that that was an application for a ballot by mail. The canvassers would simply ask the voter to sign the iPad. These signatures would be downloaded as a printed application and sent to the election officials so that a ballot could be mailed to the voter. Such assistance provided to a voter requires the signature of the assistant on the application for ballot by mail. Texas Election Code, § 84.003.

7. On information and belief there are in excess of 180 such applications obtained in this manner. This exceeds the margin of votes between Contestant and Contestee.

CAUSE OF ACTION

8. Obtaining ballots by using this device invalidates the votes. The only time that the code allows electronic signatures is at the polling place. *See* Section 63.002. Electronic devices used in the voting process must be approved by the Secretary of State, which in this case, has not been done. The Secretary of State says that the only authority for using electronic signatures is code Section 63.002 which limits such

signatures to use at the polling place. There is no other authority for using electronic signatures in an uncontrolled environment as was done here. See the attached communication from the Secretary of State on this issue which is attached hereto as Exhibit "A" and incorporated by reference herein in this petition.

9. Contestant further says, upon information and belief that these illegal procedures were such that:

(a) Persons who were not eligible to vote in the election at issue were allowed to cast ballots which were counted in this election;

(b) Persons who were eligible to vote in this election were denied the right to vote and/or their vote was diluted by ineligible votes in the election at issue;

(c) The errors that caused persons who were eligible to vote to be denied the right to vote and that allowed persons to vote that were ineligible to vote to have ballots counted in this election were caused by the persons charged with registering and assisting voters;

(d) If the votes in this election are correctly tallied, Contestant is the winner of this election.

10. Pursuant to Section 221.008, of the Texas Election Code, Contestant seeks to have the Court cause to have ballots and applications for ballots by mail to be unsecured to determine the election contest.

11. Pursuant to Section 232.009, of the Texas Election Code, the district clerk shall promptly deliver notice of the filing of this election contest to the presiding officer of the final canvassing authority of the contested 2014 Democratic Primary election, the

Honorable Deborah Peoples, Tarrant County Democratic Headquarters, 2806 Race Street, Fort Worth, Texas 76111.

REQUEST FOR DISCLOSURE

12. Under the authority of Texas Rules of Civil Procedure 194, Contestant requests that Contestee disclose within fifty (50) days of service of this request, the information or material described in Rules 194.2 and 194.3 and 194.5.

NOTICE OF INTENT TO USE DOCUMENTS

13. Pursuant to Tex. R. Civ. P. 193.7, Contestant, by and through the undersigned attorney, notifies Contestee of Contestant's intention to use, at any pretrial proceeding or at trial, any documents produced by Contestee in response to Contestant's written discovery.

CIVIL PRACTICES AND REMEDIES CODE § 30.014

14. Pursuant to the Civil Practices and Remedies Code § 30.014, the last three digits of Contestant Burnam's Driver's License number are #242.


PRAYER

WHEREFORE, Contestant respectfully requests that this petition be duly served on Contestee with notice to the Chairwoman of the Tarrant County Democratic Party; that this Court to declare Contestant the winner of the election at issue; if the Court cannot determine the true winner of the election, Contestant respectfully requests this

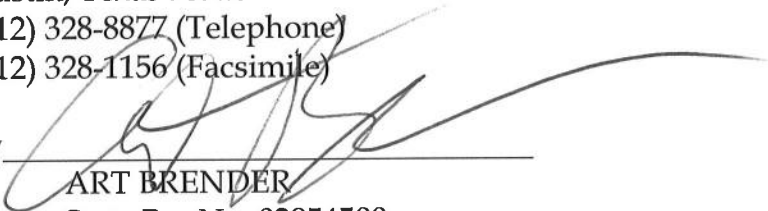
Court void the results of the election and order a new election in accordance with the Texas Election Code; and for such other relief as Contestant may be properly awarded.

Respectfully submitted,

RAY & WOOD

By 
Randall Buck Wood
State Bar No. 21905000

2700 Bee Caves Road, Suite 200
Austin, Texas 78716
(512) 328-8877 (Telephone)
(512) 328-1156 (Facsimile)

By 
ART BENDER
State Bar No. 02954500

THE BENDER LAW FIRM
600 Eighth Avenue
Fort Worth, Texas 76104
(817) 334-0171 telephone
(817) 334-0274 telecopier
e-mail: mainoffice@brenderlawfirm.com
Eserve e-mail address: eserve@brenderlawfirm.com

To: Keith Ingram
Subject: Q - Electronic submission of VBM app

Keith,

My question is, does Section 84.007 of the Election Code ONLY allow vote by mail applications to be submitted by 1) mail, 2) common or contract carrier; or 3) telephonic facsimile machine, if a machine is available in the clerk's office.

Specifically, is it lawful to interpret "telephonic facsimile machine" to include some other form of electronic submission, such as a scanned and emailed regular paper vote by mail application?

For example, if someone was approached by a canvasser at their door and filled out a VBM application on an iPad or similar tablet device, and then signed it electronically on that tablet, could that application then be transmitted to the clerk's office directly? Or would it be permissible for another private individual to print out the application with the electronic signature and then submit that by mail to the clerk?

Thank you,
Conor

Conor Kenny
Chief of Staff
State Representative Lon Burnam
[\(512\) 463-0740](tel:5124630740)
conor.kenny@house.state.tx.us



Conor Kenny

From: Keith Ingram <KIngram@sos.texas.gov>
Sent: Thursday, March 20, 2014 2:25 PM
To: Conor Kenny
Subject: RE: Q - Electronic submission of VBM app

We have issued a rule on electronic signature capture devices at the polling place under 63.002 and we have issued lots of advisories and emails and seminar materials about applications for ballots by mail, their methods of delivery and assistance of a voter.

Obviously, there are many great advancements in the world of technology that could assist with election procedures, such as a voter completing an ABBM with an electronic signature. However, these technologies must be proven to work within the legal procedures set forth in the Election Code, and approved by the Legislature. We believe that had the Legislature desired for electronic signature capture to be used in other areas of elections procedures, they would have expanded this capability to more than the signature roster. Therefore, while we have issued advisories and rules on these topics generally, we have not had the need issue any specific legal opinions or seek an opinion from the Attorney General. I am not aware of OAG writing any opinions on this matter.

Keith

From: Conor Kenny [mailto:Conor.Kenny@house.state.tx.us]
Sent: Thursday, March 20, 2014 1:42 PM
To: Keith Ingram
Subject: RE: Q - Electronic submission of VBM app

Has your office or the AG published any opinions or guidance on these two potential problems?

Conor

From: Keith Ingram [mailto:KIngram@sos.texas.gov]
Sent: Wednesday, March 19, 2014 4:21 PM
To: Conor Kenny
Subject: RE: Q - Electronic submission of VBM app

No. There would be one potential problem and one concrete problem with such a procedure. The potential problem is that having a voter sign a form on an electronic device and then taking that elsewhere to print and mail in for the vote would constitute assistance under 84.003. If the person doing this did not sign the application as an assistant, then they would be committing a crime.

Assuming that A did sign the application as an assistant, then this still would not be permissible. The only time the Election Code allows electronically captured signatures is in 63.002 when a voter checks in to vote. The devices used in that process have to be approved by our office. Let me know if you need anything else.

Keith

From: Conor Kenny [mailto:Conor.Kenny@house.state.tx.us]
Sent: Wednesday, March 19, 2014 4:03 PM
To: Keith Ingram