

**IN THE HOUSE OF REPRESENTATIVES
FOR THE STATE OF TEXAS**

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**IN THE MATTER OF THE GENERAL ELECTION
OF NOVEMBER 4, 2008
FOR STATE REPRESENTATIVE FROM DISTRICT 11
REPRESENTING CHEROKEE, HOUSTON, PANOLA, AND RUSK COUNTIES
IN TEXAS**

BRIAN WALKER, CONTESTANT

VS.

CHUCK HOPSON, CONTESTEE

ORIGINAL PETITION IN AN ELECTION CONTEST

TO THE HONORABLE SPEAKER OF THE HOUSE OF REPRESENTATIVES FOR
THE STATE OF TEXAS:

COMES NOW, BRIAN WALKER, Contestant in the above-styled cause of
action, against CHUCK HOPSON, Contestee, and makes and files this, his Original
Petition in an Election Contest in the House of Representatives for the State of Texas.
In support of such election contest, Mr. Walker would respectfully show as
follows:

I.

This Election Contest is brought in accordance with the provisions of § 241.003, Texas Election Code, which requires the Original Petition to be filed with the Secretary of State not later than the seventh day after the date the official result of the contested election is determined. The official canvass and certification was conducted by the Governor on December 8, 2008. Therefore, this petition is timely filed.

II.

Contestant, BRIAN WALKER, is a resident of District 11, Panola County, Texas. He is the Republican nominee for the position of State Representative from District 11.

Contestee, CHUCK HOPSON, is a resident of District 11, Cherokee County, Texas. He is the Democratic nominee for the position of State Representative from District 11. He has been notified of the filing of this action in accordance with § 241.003 (b), Texas Election Code.

III.

Contestant will show that when the votes for the District 11 race for State Representative were recounted by the officials from each of Cherokee, Houston, Panola, and Rusk counties and subsequently canvassed by the Office of the Secretary of State and the Governor of Texas on or about December 8, 2008, the official tally indicated that Contestee had prevailed in the election by only 121 votes. Rejected absentee and provisional ballots for Houston, Rusk, and Panola Counties total more than the 121-vote margin of victory. Rejected ballots from Cherokee County have still not been provided

to Petitioner. Additionally, more than 150 voters district-wide appear to reside outside the county in which they voted.

IV.

District 11 is comprised of more than 97 voting precincts which include the aforementioned counties. However, the issues and questions raised in Chuck Hopson's home county, Cherokee County which is comprised of 31 voting precincts, challenge the credibility and the validity of the conduct of the election for any office, let alone the office of state representative which directly impacts the laws of this State which provide for election conduct. In fact, the irregularities surrounding the box containing the votes cast in Precinct 36 (Box 36), Chuck Hopson's home precinct, affect a sufficient number of votes to call the election outcome into question. On the information and belief of Contestant, Contestant will show this tribunal that:

- A) More than 900 electronic ballots cast in Cherokee County were not properly sealed nor kept in a locked box until December 2, 2008, almost a full month after the election, in violation of TEX. ELEC. CODE § 66.058 and as explained in Election Advisory Opinion 2008-19 issued pursuant to TEX. ELEC. CODE § 122.001, which could have resulted in illegal votes being counted;

- B) Box 36 was the only precinct in Cherokee County that relied solely on paper ballots as opposed to voting machines due to an alleged malfunction of the voting machine;
- C) The Election Judge for Box 36 was not appointed in accordance with TEX. ELEC. CODE § 32.007 which provides for emergency appointments and did not meet the eligibility requirements as provided in TEX. ELEC. CODE § 32.002.
- D) The Election Judge for Box 36 claimed a voting machine malfunction but did not report same as required by TEX. ELEC. CODE § 125.006.
- E) On Election Day, the Election Judge for Precinct 36 did not exclude bystanders in accordance with TEX. ELEC. CODE § 61.001.
- F) Box 36, Chuck Hopson's home precinct, was the last box to come in district-wide on election night arriving at the courthouse almost three hours after the polls closed although the Precinct is within 20 minutes drive time of the Courthouse.
- G) The Election Judge did not arrive at the Courthouse until 9:45 p.m., leaving a significant period of time unaccounted for although the law prescribes that the delivery of election records be delivered "immediately

after the precinct returns are completed” pursuant to TEX. ELEC. CODE § 66.053.

- H) The Election Judge allegedly attempted to explain the lapse of time but provided two differing accounts of the evening’s events that precluded her arrival at the Courthouse in a timely fashion, and admittedly made stops between the voting location and the Cherokee County Courthouse.
- I) The vote count available before 9:45 p.m. on election night showed that Walker was leading in the number of votes cast with the other boxes all accounted for except Box 36 which arrived at approximately 9:45 p.m.
- J) When Box 36 arrived at the Courthouse at 9:45 p.m., witnesses allege that the box had no padlock to secure the ballots contained therein. Furthermore, there were several other boxes not padlocked in Cherokee County as is required.
- K) The seals on Box 36 were broken after Election Day, as were others, allegedly to remove provisional ballots;
- L) A logic and accuracy test of the program and equipment was not conducted prior to the recounting of electronic ballots in Cherokee County in violation of TEX. ELEC. CODE § 214.046;

- M) During the recount conducted in Cherokee County, the totals provided to the witnesses of the recount at the close of same on Tuesday, December 2, 2008 were Walker 6883, Hopson 8963, and Paul Bryan 262; however, on the official canvass signed by the Governor, the totals were Walker 7012, Hopson 9008, and Bryan 256 which calls into question more than enough votes to affect the outcome of the election.
- N) The explanation provided by the County election officials was inconsistent in that one recount table allegedly added in the number of electronic votes cast on Election Day rather than the early voting period because of confusion over which line total to use from a computer-generated report; however, there was no complete reconciliation of the ballots conducted to determine whether the number of votes matched the number of votes cast;
- O) The ballot registers showing the number of ballots received in each voting precinct as required by TEX. ELEC. CODE § 65.013 were not available in Cherokee County for all of the boxes and were still not available as of December 12, 2008;
- P) On the ballot registers provided by Cherokee County:
- (i) Precinct 11 states that they received 365 ballots, while ballot serial numbers show that only 364 ballots were delivered.
 - (ii) Precinct 15 accounts for 1,001 ballots while ballot serial numbers indicate that only 1,000 ballots were delivered.
 - (iii) Precinct 25 accounts for only 153 ballots, yet states 430 ballots were delivered.

- (iv) Precinct 26 accounts for only 499 ballots, yet 500 ballots were delivered.
- (v) Precinct 29 accounts for 189 ballots, while the ballot register states that only 188 were received while ballot serial numbers show 190 ballots were delivered.
- (vi) Precinct 32 accounts for only 258 ballots, yet states that a total of 333 were received, in addition to handwritten notes indicating their confusion in accounting for all of the ballots.
- (vii) Precinct 34 accounts for only 420 ballots while the ballot serial numbers show that 550 ballots were delivered.
- (viii) Precinct 35 accounts for 418 ballots, yet states that only 390 ballots were received although ballot serial numbers indicate that 400 ballots were delivered.
- (ix) Precinct 36 accounts for 799 ballots, yet states that 800 ballots were received.
- (x) Precinct 38 accounts for only 200 ballots, yet states 700 ballots were received.
- (xi) Precinct 46 accounts for 297 ballots, yet states that 300 ballots were received.
- (xii) Precinct 47 accounts for only 282 ballots, while the ballot serial numbers indicate that 375 ballots were delivered.
- (xiii) Ten precincts (13, 16, 24, 25, 33, 36, 38, 43, 45, and 46) did not record the beginning or ending serial numbers of the ballots received in Cherokee County for those precincts.

These allegations of irregularities, unlawful or otherwise, cumulatively and materially affect the outcome of this race and demand to be addressed in this, the only available recourse for the Contestant.

V.

Accordingly, Contestant seeks the following relief:

(A) That Contestee be declared ineligible to be seated as member of the House of Representatives for the State of Texas, District 11 and a special election be called to fill the vacancy; or


(B) If the true outcome of the election cannot be determined, that a new election be ordered; or

(C) In light of the irregularities found in Cherokee County and in order to preserve the integrity of the process, that a new election be ordered solely in Cherokee County to ascertain the true will of the voters as constituents of House of Representatives District 11.

WHEREFORE, ALL PREMISES AND THINGS CONSIDERED, Contestant prays that, after appointment of a master for purpose of conducting discovery, the Speaker refer this contest to a special committee. Upon such hearing, Contestant prays that the committee issue its report of its findings of fact and conclusions of law to the entire House of Representatives and that the House of Representatives be permitted to consider the report and take action upon this contest as prescribed by § 221.012 of the Texas Election Code, and further relief to which Contestant is entitled.

Respectfully submitted,

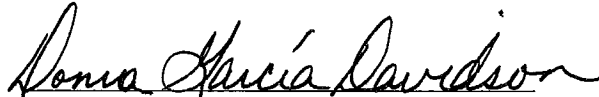
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By: 
Donna García Davidson

ATTORNEYS FOR BRIAN WALKER

CERTIFICATE OF SERVICE

I certify that on the 15th day of December, 2008, a true and correct copy of the foregoing document has been sent via certified United States Mail, return receipt requested and restricted delivery to Chuck Hopson, 605 East Rusk, Jacksonville, Texas, 75766.


Donna García Davidson

Brian K. Walker

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