

November 15, 2007

The Honorable Tim Curry
Tarrant County District Attorney
401 West Belknap Street
Fort Worth, Texas 76196

Dear Mr. Curry:

Collectively, we are writing as concerned citizens and voters of Tarrant County to respectfully ask your office to conduct a criminal investigation concerning the anonymous political campaign tactics in the most recent special election of November 6, 2007 for State Representative District 97.

In the very early morning hours (7 a.m. – 9 a.m.) of election day, November 6, 2007, a caller-id blocked and anonymous automatically dialed phone call with a pre-recorded broadcast political ad was made to voters of Tarrant County who reside within State House District 97. In a deliberate attempt to deceive voters, this anonymous call did not identify the source and/or identity of the caller or any other identifying information as required by law. This anonymous call was certainly conducted with the intent to mislead voters by deceptively attacking one candidate with purposefully deceptive and misrepresentative references that the information of the call was originating from another candidate.¹

Similar complaints, seeking similar investigations within their respective jurisdictions, have been filed with the Texas Public Utilities Commission and the Texas Ethics Commission.

Section 26.125(b)(3) of the Texas Public Utilities Commission Regulations requires that an automatic dial announcing device ("ADAD") "within the first 30 seconds of the call, the ADAD message must clearly state the nature of the call, the identity of the business, individual, or other entity initiating the call, and the telephone number (other than that of the ADAD which placed the call) or address of the business, individual, or entity." At no point, during the anonymous call of November 6, 2007, were any of these requirements disclosed to the recipient.

¹ A true and correct copy of the actual phone call as received by Tarrant County voters who reside in State Representative District 97 has been captured electronically and can be provided to the Tarrant County District Attorney's Office upon request and/or retrieved from the internet websites of the *Fort Worth Star-Telegram* (http://www.star-telegram.com/metro_news/story/298687.html) and *The Quorum Report* (<http://www.quorumreport.com>--click on Daily Buzz).

Additionally, Section 26.125(b)(8) of the Texas Public Utilities Commission Regulations provides that no call utilizing an ADAD may be conducted before 9 a.m. on a weekday. As shown in the actual recording of the anonymous call and Attachments A-C to this letter, the anonymous phone call occurred between the hours of 7 a.m. and 9 a.m. on Tuesday, November 6, 2007.

Furthermore, the anonymous November 6, 2007 phone call is in violation of Sec. 255.004 and 255.005 of the Texas Election Code. Section 255.004(b) of the Texas Election Code states that "a person commits an offense if, with intent to injure a candidate or influence the result of an election, the person knowingly represents in a campaign communication that the communication **emanates from a source other than its true source.**" Similarly, Section 255.005 of the Texas Election Code provides that "a person commits an offense if, with intent to injure a candidate or influence the result of an election, the person **misrepresents the person's identity** or, if acting or purporting to act as an agent, misrepresents the identity of the agent's principal, in political advertising or a campaign contribution." Any offense under either of these statutes is a Class A misdemeanor.

Pursuant to the requirements of Section 255.005, the anonymous call misrepresented the identity of the caller by (a) not actually identifying the actual caller and/or (2) insinuating that the identity of the caller was someone other than the actual caller. A campaign automated phone call certainly falls within the statutory definition of a campaign communication. Finally, as evidenced by the attachments to this letter and the actual recording of the anonymous phone call from the voicemail of a victimized Tarrant County voter, this call occurred in the early morning hours of November 6, 2007. The timing of the anonymous phone call blatantly reveals the true intent of the misrepresentation: to injure a candidate and/or influence the result of an election. Therefore, the phone call violates Section 255.005 of the Texas Election Code.

Likewise, Section 255.004 of the Texas Election Code provides that a campaign communication **may not knowingly represent that a source of a communication is other than its true source.** This statute casts a broader net for any possible investigation of the communication. While Section 255.005 seeks to prevent campaign communications from misrepresenting the identity of the actual caller (in this case the agent of a candidate), Section 255.004 focuses on the source of that communication (a campaign or any independent third-party expenditure).

Indeed, as seen in Attachment D to this letter, the effect of the call between early voting and election date results is tangible and potentially altered the outcome of the election.

To aid in the initial process of evaluation, we have included several relevant attachments to this letter. Attachment A is a true and correct copy of an article published in the November 10, 2007 edition of the *Fort Worth Star-Telegram* detailing the early

reports of the campaign communication. Attachments B and C are separate articles published on the politically-focused website, *The Quorum Report*, which address the campaign communication. Attachment D is a true and correct copy of the election results from the Tarrant County Elections website which details the potential effects of the anonymous communication on the election date results as compared with the early voting results. Clearly, the intent of the true source of the anonymous call was to "injure a candidate and/or influence the result of the election"; whether or not this intent was actually realized is not relevant to the requested investigation.

As concerned voters and citizens of Tarrant County, we see the damage that illegal activities can do to the political process. Your investigative capabilities and your ability to prosecute these criminal violations can ensure that the voters of Tarrant County are no longer deceived by misrepresentations and illegal campaign tactics in future elections.

Respectfully,

Anna Moraw

Bob Head

Steve Hollern
(STEPHEN M. HOLLERN, JR.)

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Warren C. Russell

Jim Lusk