

DC-21-06544

CAUSE NO. 53711691

DONALD PARISH, CANDIDATE	§	IN THE DISTRICT COURT
FOR DALLAS CITY COUNCIL, PLACE 7	§	
CONTESTANT,	§	
	§	
v.	§	<u>162nd</u> JUDICIAL DISTRICT
	§	
	§	
HON. ADAM BAZALDUA, CANDIDATE	§	
FOR DALLAS CITY COUNCIL, PLACE 7, &	§	
KEVIN FELDER, CANDIDATE	§	
FOR DALLAS CITY COUNCIL, PLACE 7	§	
CONTESTEE.	§	DALLAS COUNTY, TEXAS

CONTESTANT’S ORIGINAL PETITION FOR AN ELECTION CONTEST UNDER TITLE 14,
TEXAS ELECTION CODE & MOTION TO PRODUCE RECORDS

COMES NOW, Donald Parish(“Parish” or the “Contestant”), candidate for City of Dallas (the “City Council”), Place 7, and files this Election Contest complaining against the Hon. Adam Bazaldua (“Bazaldua”) the incumbent City Councilman for Place and Kevin Felder (“Felder”) (or together the “Contestees”), who hold *prima facie* title to a spot in the runoff for the

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City Council Place 7 seat because they had the most votes at the close of the Canvas but neither had 50%+1. Therefore they were declared the winners to move on to the runoff and canvassed as such in the race for Dallas City Council Place 7 (the “Contested Race”). In support of this contest, the Contestant shows the Court the following:

I. INTRODUCTION

1. The Contested Race produced extremely tight results.
2. It also saw serious irregularities, which make it impossible to put any faith in the integrity of those results. These facts, explained in detail below, require a judicial remedy and a new election.

II. CLAIMS FOR RELIEF

4. Contestant brings this lawsuit under Chapter 14 of the Texas Election Code.
5. This lawsuit arises out of provable, unlawful, and irregular violations of the Texas Election Code which clouded the true will of the electorate, preventing it from being discernible who prevailed in the Contested Race.
6. Contestant asks this Court to declare that because those officially involved in the administration of the Contested Race failed to count legal votes,¹ counted additional illegal

¹ Tex. Elec. Code §221.003(a)(1) ((a) The tribunal hearing an election contest shall attempt to ascertain whether the outcome of the contested election, as shown by the final canvass, is not the true outcome because: ... (2) an election officer or other person officially involved in the administration of the election: ... (B) failed to count legal votes).

ballots,² and prevented voters legally entitled to vote from voting and/or having their ballot counted, the outcome of the election cannot now be determined and may be divergent from the will of the electorate.

7. Contestant asks the Court to declare that an election officer or officers personally involved in the election administration prevented eligible voters from voting, failed to count legal votes, counted illegal votes, and/or engaged in fraud and other illegal conduct.³
8. Contestant also seeks for this Court to declare that an election officer or officers personally involved in the election administration made a mistake substantial enough to affect the outcome of the election.
9. If the outcome has been rendered uncertain by fraud, unlawful activity, and/or other irregularities, then the Contestant requests this Court order a new election.⁴

III. DISCOVERY CONTROL PLAN

12. This matter is subject to Discovery Level 2 in accordance with the Texas Rule of Civil Procedure 190.3 in all instances NOT otherwise explicitly covered by the Texas Election Code.⁵

² Tex. Elec. Code §221.003(a)(1) ((a) The tribunal hearing an election contest shall attempt to ascertain whether the outcome of the contested election, as shown by the final canvass, is not the true outcome because: (1) illegal votes were counted;...).

³ Tex. Elec. Code §221.003(a)(2)(2) an election officer or other person officially involved in the 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.

⁴ *Id.* §221.003; §221.012

⁵ Tex. Elec. Code § 231.002.

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13. There is however no formal discovery period, and this suit is an expedited matter under the Texas Election Code and Texas Rules of Civil Procedure, as well as by order of the SCOTX.

14. In lieu of Discovery, Contestant also brings a Sections 231.006 & 221.008, Election Code Motion to Compel Production of Records.

IV. PARTIES

14. Contestant Parish is a resident of Dallas County, who was a Candidate in the Contested Race, which went to a run-off. He may be served with process by and through his attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D'Arc, Forney, Tx, 75126.

15. Contestee Hon. Adam Bazaldua, is a resident of Dallas County, lists his address as P.O. Box 571634, Dallas, Tx, 75357 as his campaign address. He was a Candidate in the Contested Race, which went to a run-off. His office is at Dallas City Hall, 1500 Marilla St., Room 5FN, Dallas, Texas 75201.

16. Contestee Kevin Felder, is a resident of Dallas County, and lists his address 8404 Capriola Lane, Dallas, TX 75288 as his campaign address. who was a Candidate in the Contested Race, which went to a run-off.

V. JURISDICTION & VENUE

16. Contestant brings this action pursuant to Title 14, Chapter 232 of the Texas Election Code, to contest the results of the Contested Race held on May 1, 2021 to select Dallas City Council Member for Place 7, for which Contestant and Contestee were the only candidates.

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Therefore, Dallas County is the proper venue for this matter pursuant to Section 232.006(c) of the Texas Election Code.⁶

17. This Election Contest was timely filed because the Contestant filed his initial petition not later than the 10th day after the date of the official result the contested election was determined,⁷ rolled forward to the next business day.⁸

18. This District Court has original and exclusive jurisdiction over this matter pursuant to Section 221.02 of the Texas Election Code.⁹

19. However, pursuant to Section 231.004 of the Election Code, the judges of Dallas County's district courts are disqualified to preside over this contest. Therefore, the presiding judge of the administrative judicial region must assign a special judge to preside in the contest.

VI. NOTICE TO THE SECRETARY OF STATE

21. A copy of this petition was delivered to the Texas Secretary of State as required by the Texas Election Code.¹⁰

⁶ Tex. Elec. Code § 232.006(c).

⁷ *Id.* § 232.008(c).

⁸ *Id.* § 1.006.

⁹ Tex. Elec. Code § 221.002(a) (“Except as otherwise provided by this section, the district court has exclusive original jurisdiction of an election contest.”)

¹⁰ Tex. Elec. Code § 232.008(d).

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VII.

NOTICE TO THE CANVASSING AUTHORITY

22. Pursuant to Section 232.009(a) and (d) the Contestant hereby notices the District Clerk that a copy of this petition must be delivered to the canvassing authority and a notice including the names and addresses of these individuals is attached to this Petition.¹¹

VIII.

FACTS

A. THE PRIMARY AND ITS RESULTS

23. On May 1, 2021 (“Election Day”), the City of Dallas by and through the Dallas County Elections Administrator (the “Administrator”) conducted the Contested Race in Dallas County, Texas. Contestant Parish and Contestees Bazaldua and Felder were the three of 8 candidates in the Contested Race.

24. The Contested Race, like all Texas elections, saw voters cast their ballots in one (1) of three (3) ways; each participating voter cast a ballot through: (a) in-person early voting; (b) mail-in balloting; or (c) in-person election day voting on Election Day. On Election Day, voters cast their ballots at various pre-established voting locations across the Precinct (each a “Voting Location”).

25. The Administrator tabulated each kind of balloting separately. The returns, published on the County Elections website,¹² which one can only presume are those results which were sent

¹¹ Tex. Elec. Code § 232.009(a)(d).

¹² <https://assets01.aws.connect.clarityelections.com/Assets/Connect/RootPublish/dallas-tx.connect.clarityelections.com/ElectionDocuments/2021/2021%20Joint/2021%20Joint%20Election%20Final%20Canvass%20Reports%20Final%20Cum%20Totals%20WOverUnder.pdf>

and certified to the Texas Secretary of State¹³ - show that a total of 3,752 ballots were cast in this election (including the provisional ballots eventually qualified and included in vote totals). Documents produced by the election department reflect how many ballots were cast in the Contested Race: (i) throughout early voting, across the Precinct; (ii) through mail-in balloting, across the Precinct; and (iii) at each Voting Location on election day.

26. The results, attached to this Petition as Exhibit A, show that the Contestant missed making the run-off by 28 votes.

27. Further, there is evidence that voting machines were turned off at the Precinct. An estimate about the number of votes will be provided soon

28. The Canvas reached that conclusion based on a ballot set infected by the inclusion of illegal ballots and the exclusion of legal ones to a greater degree than the Contestant's margin of victory.

29. If this Court agrees, it cannot allow the Contested Race's result to stand.

30. The Court should hold that minus those ballots which should not have been counted that Contestant would have secured a place in the run-off and order it.

31. Or, in the alternative, that were irregularities of a sufficient nature to prevent the will of the electorate from being discernible from the Contested Race, find that it is necessary to declare the Contested Race void, and order the City of Dallas to hold a new election for City Council Place 7.

B. IN THE CONTESTED ELECTION, THE AUTHORITY COUNTED NUMEROUS UNLAWFUL

¹³ Contestant will verify this by making a motion under Tex. Elec. Code § 221.008 for those records to be produced before the Court.

BALLOTS

31. The scope of inquiry for this Court in an election contest

“to ascertain whether the outcome of the contested election, as shown by the final canvass, is not the true outcome because:

- (1) illegal votes were counted; or
- (2) an election officer or other person officially involved in the 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.

32. Contestant will show that Dallas County illegally failed to count legal votes.

33. Contestant will show that Dallas County counted, for whom no associated, qualified voter's existence can be confirmed or otherwise that the the votes were not cast by the voter

34. In the Contested Race there was a voted differential of only 28 votes

35. Contestant will prove that more than 28 votes are clearly in dispute, putting the result of the Contested Race in serious question.

VIII. MOTION TO COMPEL RECORDS

36. Under Sections 221.008 and 231.006 of the Election Code, the Contestant hereby Moves to Compel the custodian of records to produce the following records for inspection in front of the presiding judge at the earliest possible date before the Contestees' responses are due:

- a. All precinct returns for this race;

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- b. All carrier envelopes for ballots by mail returned for this race;
- c. All applications and available signatures for all returned ballots by mail for this race;
- d. Records and official reports listing the number of ballots by mail requested, sent, and returned in this race;
- e. VMAX or other reports listing each ballot by mail requested and sent in this race;
- f. All accepted ballots by mail in this race;
- g. All rejected ballots by mail in this race;
- h. All tally sheets for late arriving ballots by mail in this race;
- i. All provisional ballots and ballot envelopes cast in this race;
- j. All ballot and seal certificates for the precincts within the territory covered by this race for Early Voting in Person and Election Day in Person;
- k. All transfer forms from Central Count to the Early Voting Ballot Board for ballots in this race;
- l. All transfer forms for ballots in this race from the Signature Verification Committee to the Central Count;
- m. All transfer forms for ballots in this race from the Signature Verification Committee to the Early Voting Ballot Board;
- n. All transfer forms for ballots in this race from the Early Voting Ballot Board to the Central Count;
- o. Any notices of rejected ballots sent to a voter who resides in the territory covered by this race pursuant to Section 87.0431;

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- p. an official copy of the canvassed results by precinct;
- q. an official copy of the canvassed results for early voting ballot by mail;
- r. any carrier envelopes or applications for early voting ballots by mail with the contestees listed as assistants or witnesses.

37. If separating the requested ballots by mail from all other ballots by mail would require the Department of Elections of the Canvassing Authority to take more than 2 days to produce, the Contestant would request this Court Compel production of all ballots by mail and pursuant to the Code the Contestant will search through the records for the ballots he requires to continue litigation and then the Court may impound those to its custody and return the rest to the custodian of record.

IX.

PRAYER & RELIEF

WHEREFORE, PREMISES CONSIDERED, Contestant respectfully requests:

1. That this cause be set for trial and given precedence over all other causes as provided by law;
2. That notice of the filing of the petition and of the hearing date be given to all parties;
3. That the Court immediately grant the Motion to Compel Production and Inspection of Records in its presence pursuant to Sections 231.006 & 221.008, Election Code;
4. That if, after hearing the evidence, the true outcome of the election can be determined to show that Contestant is the lawful winner, that Contestant be declared the winner of the Contested Race or entitled to a place in the run-off;

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5. In the alternative, that the election be declared void as it is impossible to ascertain the true results, and an order issue for a new election for the contested office pursuant to section 232.041, Texas Election Code; and
6. That Contestant be awarded costs of this action and any other relief to which contestant may be entitled.

RESPECTFULLY SUBMITTED, May 21, 2021

/s/ElizabethAlvarez
Elizabeth D. Alvarez
Texas Bar No. 24071942

/s/Scott Gray
Scott Gray
Texas Bar No. 24043701
Scott@guestandgray.com

/s/Shivani Patel
Shivani Patel
Texas Bar No. 24121047
patel@guestandgray.com

Guest and Gray Law Firm
315 S Bois D'arc St
Forney, Tx 75126
Telephone: (972) 564-4644
Facsimile: (866) 209-9785

COUNSEL FOR CONTESTANT
Donald Parish

CAUSE NO. 53711691

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CERTIFICATE OF SERVICE

I certify that on Friday, May 21, 2021, I served a copy of this Petition on all Contestees, and their counsel of record if known, in accordance with the Texas Rules of Civil Procedure and the Texas Election Code via email, and through service of process.

/s/Elizabeth D. Alvarez

Elizabeth D. Alvarez

Contestee Hon. Adam Bazaldua

Dallas City Hall, 1500 Marilla St., Room 5FN,

Dallas, Texas 75201

Contestee Kevin Felder

8404 Capriola Lane, Dallas, TX 75288

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KEVIN FELDER, CANDIDATE	§	
FOR DALLAS CITY COUNCIL, PLACE 7	§	
CONTESTEE.	§	DALLAS COUNTY, TEXAS

MOTION FOR EMERGENCY APPOINTMENT OF VISITING JUDGE

COMES NOW, Donald Parish (“Parish” or the “Contestant”), candidate for City of Dallas (the “City Council”), Place 7, and files this Emergency Appointment of Visiting Judge and would humbly show this court as follows :

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1. According to the SCOTX set of emergency orders, all non-emergency civil matters may be delayed to observe the safety and well being of litigants. As we have all been experiencing delays and sufferings from the recent pandemic that is happening, we feel it is more important than ever to observe these rules.
2. According to the Texas Election Code, an Election Contest is an expedited matter, and that the Contestant must answer not later than 10 a.m. of the 10th day after the date of service of citation and then trial must take place in 10 days. ¹
3. We understand that the Court can extend that deadline at this time, BUT that while the Code requires us to file in Dallas County,² it also requires that a visiting judge be appointed.³

¹ Sec. 232.012. ACCELERATED PROCEDURES FOR TRIAL OF CERTAIN CONTESTS. (a) This section applies only to the contest of an election described by Section 232.008(c).
(b) When the contestant's petition is filed, the district clerk shall immediately notify the district judge of the filing.
(c) A contestee must file an answer to the contestant's petition not later than 10 a.m. of the fifth day after the date of service of citation on the contestee. The citation issued for the contestee must command the contestee to answer by the specified deadline and must direct the officer receiving the citation to return it unserved if it is not served within 10 days after the date of issuance.
(d) After the clerk receives the officer's return showing service of citation, the clerk shall promptly notify the district judge of that fact. The judge shall set the contest for trial for a date not later than the fifth day after the date by which the contestee must answer.
(e) The district judge may not grant a continuance in the trial except:
(1) one time for a period not exceeding 10 days for good cause supported by the affidavit of a party; or
(2) with the consent of the parties.
(f) The district judge may limit amendments to the pleadings of a party after the party announces ready for trial.
(g) Subsections (e) and (f) do not apply to continuances or amendments to pleadings for the purpose of bringing in a substitute contestee following the death of a contestee.
(h) This section supersedes other provisions of this subchapter to the extent of any conflict.

² This District Court has original and exclusive jurisdiction over this matter pursuant to Section 221.02 of the Texas Election Code.

³ Pursuant to Section 231.004 of the Election Code, the judge of this district court is disqualified to preside over this contest. Therefore, the presiding judge of the administrative judicial region must assign a special judge to preside in the contest.

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4. Therefore, in order to facilitate that extension, we file this emergency motion requesting a recusal and appointment take place immediately, so that the assigned judge can extend those statutory deadlines if necessary.
5. It is our hope that this motion will ensure that a visiting judge is still appointed as soon as is practicably possible.
6. We pray this brings this to the Court's direct attention.

RESPECTFULLY SUBMITTED, May 21, 2021

/s/Elizabeth Alvarez
Elizabeth D. Alvarez
Texas Bar No. 24071942

/s/Scott Gray
Scott Gray
Texas Bar No. 24043701
Scott@guestandgray.com

/s/Shivani Patel
Shivani Patel
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/s/Elizabeth D. Alvarez

Elizabeth D. Alvarez

Contestee Hon. Adam Bazaldua

Dallas City Hall, 1500 Marilla St., Room 5FN,

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FOR DALLAS CITY COUNCIL, PLACE 7, &	§	
KEVIN FELDER, CANDIDATE	§	
FOR DALLAS CITY COUNCIL, PLACE 7	§	
CONTESTEE.	§	DALLAS COUNTY, TEXAS

NOTICE TO THE DISTRICT CLERK TO PROVIDE NOTICE TO THE CANVASSING AUTHORITY
UNDER SECTION 232 OF THE TEXAS ELECTION CODE

1. Pursuant to Section 232.009(a) and (d) the Contestant hereby notices the District Clerk that a copy of the petition filed by the Contestant in this matter must be delivered to the canvassing authority of the May 2021 Dallas City Council Race for Place 7.

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NOTICE TO THE DISTRICT CLERK TO PROVIDE
NOTICE TO THE CANVASSING AUTHORITY UNDER
SECTION 232 OF THE TEXAS ELECTION CODE

2. In compliance with this section Contestant hereby supplies the name and addresses of all the individuals to whom a copy of the petition must be delivered.¹

Canvassing Authority

City of Dallas

Biliera Johnson

City Secretary

1500 Marilla St.

Room 5 D South

Dallas, Texas 75201

Phone: (214)-670-3738

Fax: (214)-670-5029

Canvassing Authority

City of Dallas

Hon. Eric Johnson

Office of the Mayor

1500 Marilla St.

Suite 5EN

Dallas, Texas 75201

Phone: 214.670.3301

Fax: 214.670.0646

¹ Tex. Elec. Code § 232.009(a)(d).

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NOTICE TO THE DISTRICT CLERK TO PROVIDE
NOTICE TO THE CANVASSING AUTHORITY UNDER
SECTION 232 OF THE TEXAS ELECTION CODE

RESPECTFULLY SUBMITTED, May 21, 2021

/s/Elizabeth Alvarez
Elizabeth D. Alvarez
Texas Bar No. 24071942

/s/Scott Gray
Scott Gray
Texas Bar No. 24043701
Scott@guestandgray.com

/s/Shivani Patel
Shivani Patel
Texas Bar No. 24121047
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COUNSEL FOR CONTESTANT
Donald Parish

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SECTION 232 OF THE TEXAS ELECTION CODE

CERTIFICATE OF SERVICE

I certify that on Friday, May 21, 2021, I served a copy of this Petition on all Contestees, and their counsel of record if known, in accordance with the Texas Rules of Civil Procedure and the Texas Election Code via email, and through service of process.

/s/Elizabeth D. Alvarez

Elizabeth D. Alvarez

Contestee Hon. Adam Bazaldua
Dallas City Hall, 1500 Marilla St., Room 5FN,
Dallas, Texas 75201

Contestee Kevin Felder
8404 Capriola Lane, Dallas, TX 75288

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Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Marie Decator on behalf of Elizabeth Alvarez
Bar No. 24071942
marie@guestandgray.com
Envelope ID: 53764302
Status as of 5/25/2021 9:23 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Elizabeth Alvarez		alvarez@guestandgray.com	5/25/2021 12:32:42 AM	SENT
Jessica Burr		jessica@guestandgray.com	5/25/2021 12:32:42 AM	SENT
Shivani Patel		patel@guestandgray.com	5/25/2021 12:32:42 AM	SENT
Scott Gray		scott@guestandgray.com	5/25/2021 12:32:42 AM	SENT