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June 7, 2021

Christopher J. Caso
City Attorney
Dallas City Attorney's Office
1500 Marilla Street, 7 DN
Dallas, Tx 75201
Via Electronic Delivery

RE: Dallas City Council, Place 7
Parrish Election Contest

Dear Mr. Caso:

My name is Elizabeth Alvarez and I am an attorney with Guest & Gray, and the head of its election litigation section. We represent Mr. Parrish, a candidate for Dallas City Council Place 7 in the May Election. That contest means that under the Election Code, the City may not hold the run-off for Place 7, but it appears to have done so anyway. I am writing this to make a demand that you not certify the election results for Place 7 for the City Council's race, pursuant to the Texas Election Code Title 14. I do not wish to seem impatient, but given the constraints of the Election Code, if we do not hear back from you by 12:00 P.M., tomorrow June 8, 2021, we will be filing a Writ of Mandamus with the Texas Supreme Court to ask them to compel you to comply with the Texas Election Code.

The Texas Election Code makes it clear a candidate has a right to file an election contest under Title 14 of the Election Code, and that such a contest will be heard if it is timely filed. In an accelerated contest, the Contestant must include a notice to the district clerk that they are to forward the petition to the canvassing authority,¹ and subsequently *"the district clerk shall promptly deliver written notice of the filing to the presiding officer of the final canvassing authority for the contested election."*² Following this, the code provides that "The officer receiving notice under Subsection (a) shall deliver written notice to each authority

¹ Tex. Elec. Code § 232.009(d).

² Tex. Elec. Code § 232.009(a)(2).

to whom the names of the candidates in the succeeding election are certified for placement on the ballot that the contest has been filed and that the certification is subject to the outcome of the contest. The officer shall deliver the notice at the same time as the certification or, if the certification is delivered before receipt of notice under Subsection (a), as soon as practicable after certification.”³

The use of “shall” makes the provisions of the election code mandatory and not directory.⁴ The Courts must strictly enforce the sections of the code that exist to prevent fraud and cannot construe the words “shall” in the Election Code related to its prevention as merely directory. This also mirrors other procedures in the Election Code which are directory and non-optional, such as those for the review and acceptance of applications for placement on the ballot,⁵ or the acceptance of a poll watcher for service,⁶ and suggests the duty to accept or reject the watcher is ministerial, and non-optional.^{7,8} The canvassing authority, then is on notice that the election results are contested, and the Tex.

³ Tex. Elec. Code § 232.009(b)).

⁴ *Fuentes v. Howard*, 423 S.W.2d 420, 423 (Tex. Ct. App. - El Paso [8th Dist.] 1967) “[T]he function of the courts is to interpret and apply the law as written by the legislature, and this provision of the law leaves no room for interpretation. We are unable to construe words such as 'shall not' be counted, and 'shall be void' as directory.” See also *Hogdes v. Thompson*, 932 S.W.2d 717 (Tex. App. - Ft. Worth [2nd Dist.] 1996); *Gonzalez v. Villarreal*, 251 S.W.3d 763 (Tex. App. - Corpus Christi - Edinburg [13th Dist.] 2008); *Hoot v. Brewer*, 640 S.W.2d 758 (Tex. App. - Houston [1st Dist.] 1982).

⁵ Tex. Elec. Code § 141.032

⁶ Tex. Elec. Code § 33.051.

⁷ See e.g. *Farrell v. Jordan*, 338 S.W.2d 269 (Tex. Civ.App., Houston 1960; wr. disp.); *Brandon v. Quisenberry*, 361 S.W.2d 616 (Tex. Civ.App., Amarillo [7th Dist.] 1962; n.w.h.); *McGee v. Grissom*, 360 S.W.2d 893 (Tex. Civ.App., Ft. Worth [2nd Dist.] 1962; n.w.h.); *Guerra v. Ramirez*, 351 S.W.2d 272 (Tex. Civ.App., San Antonio [4th Dist.] 1961; wr. disp.); *Atkinson v. Thomas*, 407 S.W.2d 243 (Tex. Civ.App., Austin [3rd] 1966; n.w.h.); *Fuentes*, 423 S.W.2d 420 (Tex. Ct. App. - El Paso [8th Dist.] 1967)

⁸ Contrast with the enforcement of those provisions which are merely directory “The purpose of the [Election] Code is to prohibit error, fraud, mistake, and corruption, and yet it may not be used as an instrument of disfranchisement for irregularities of procedure. Since the will of the legal voters as expressed at the polls is the matter of paramount concern, and, in the absence of any showing of fraud, or reasonable indication that such will has not been fairly expressed and the evidence thereof properly preserved, the courts have been liberal in construing and enforcing as directory only the provisions of the election laws which are not upon their face clearly mandatory.” *Honts v. Shaw*, 975 S.W.2d 816 (Tex. App. 1998) (citing *Prado v. Johnson*, 625 S.W.2d 368, 369-70 (Tex. Civ.App.--San Antonio [4th Dist.] 1981, writ disp'd w.o.j.)).

Elec. Code further provides that *“A runoff election for a contested office may not be held until the judgment in the contest becomes final.”*⁹

Whether or not you contend the district court clerk failed to notify you immediately, you were at a minimum on notice on Friday before the Election, and on Friday and today the process servers were given the run-around by the city office staff while they attempted to serve Councilman Bazaldua, which is required by the Code. Furthermore, our client was called to comment on his lawsuit the week it was filed, and the reporters also contacted City Hall and the two individuals involved. There can be no question the City know the election is impacted by the filing of the contest, and by declaring the winner Saturday night, **the City willfully ignored the law**, and attempted to violate the Separation of Powers Doctrine by imposing the will of the Executive over the will of the Legislature who makes the laws concerning the administration of elections, and has assigned the judiciary to be the ultimate arbiter in this matters once a timely contest has been filed, until a final judgement has been entered. “There can be no valid election without some lawful authority behind it. The right to hold an election cannot exist or be lawfully exercised without express grant of power by the Constitution or Legislature.”¹⁰ § 67.002 of the Code does not permit the canvassing of the precinct results to occur if the procedures are otherwise provided by this Code. **Therefore, if the City continues to insist it can certify the results of an invalid election, it will be willfully refusing to comply with the Election Code.** The City may not canvas these results.

We hereby make a demand that you agree on behalf of the City of Dallas not to certify the results, and allow the duly filed contest filed under Chapter 232 of the Code to take place. If you do not respond, or do not agree by 12:00 P.M., tomorrow, June 8, 2021, we will immediately seek enforcement by filing a Section § 273.061 Writ of Mandamus under the Texas Election Code, as well as take any other action that is available to my client.

Sincerely,

/s/ Elizabeth Alvarez
alvarez@guestandgray.com
Cell: 956-929-5790

Paralegal: Jessica Burr, jessica@guestandgray.com

EA/SP/SG/jb

⁹ Tex. Elec. Code § 232.007(a) (emphasis added).

¹⁰ *Countz v. Mitchell*, 38 S.W.2d 770, 774 (Tex. Comm'n App. 1931).