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No. 2010-01196

<b>CHRIS DANIEL,</b>	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff</b>	§	<b>164<sup>TH</sup> JUDICIAL DISTRICT</b>
<b>V.</b>	§	
<b>JARED WOODFILL, IN HIS CAPACITY</b>	§	
<b>OF THE HARRIS COUNTY</b>	§	
<b>REPUBLICAN PARTY,</b>	§	<b>OF HARRIS COUNTY, TEXAS</b>
<b>Defendant</b>	§	

**FILED**  
 Loren Jackson  
 District Clerk  
 JAN 08 2010  
 Harris County, Texas  
 Deputy  
 Time: \_\_\_\_\_  
 By: \_\_\_\_\_

**THIRD PARTY DEFENDANT'S RESPONSE TO ORIGINAL APPLICATION AND AFFIDAVIT FOR TEMPORARY RESTRAINING ORDER AND PERMANENT INJUNCTION**

1. *Introduction*

a. Third Party Defendant, Steve Dorman, stipulates that all facts stated in Part 1 of Plaintiff's original application are true and correct. However, the withdrawal deadline in §172.052 does not apply to party precinct chairs because they are elected at the conclusion of the primary, not nominated.

2. *Grounds*

a. Texas Election Code §172.052 does not state that December 30, 2009 was the final day for a candidate to withdraw from the March 2, 2010 Primary Election. Rather, it states that "A candidate for **nomination** may not withdraw from the general primary election after the 62nd day before general primary election day."

- b.* While “nomination” is not defined directly in Texas Election Code, it’s meaning can be derived from §172.061, relating to “Party Offices”, which states “(a) Except for Sections 172.058(b), 172.059(c), and 172.060(b), this subchapter applies to a candidate for county chair or precinct chair. (b) If a runoff candidate for county chair or **precinct chair** withdraws, the remaining candidate is considered to be **elected** and the runoff election for that office is not held.” Because county and precinct chairs do not run in the general election, they are elected rather than nominated. Note the exclusionary language in 172.061, which refers to 172.059(c) not applying to county and precinct chair candidates. 172.059c states, “If a runoff candidate withdraws, the remaining candidate is the **nominee** and the runoff election for that office is not held.” The two subsections are exactly the same except §172.061 distinguishes what a candidate is trying to accomplish, election, for candidates of party offices, or nomination, for candidates of public offices.
- c.* Since §172.052 only limits the ability of candidates for nomination to withdraw to at least 62 days before the primary election, and Mr. Dorman as a candidate for precinct chair was not a candidate for nomination, rather a candidate for election, he was allowed to withdraw and subsequently file for a public office and become a candidate for nomination. Therefore, Mr. Dorman was never on two different places on the ballot and did not violate §141.033.
- d.* Other sections of Texas Election Code also distinguish between candidates for public office and party offices. §172.023b states, “(b) An application, other than an application for the office of precinct chair, may not be filed earlier

than the 30th day before the date of the regular filing deadline. An application for the office of precinct chair may not be filed earlier than the 90th day before the date of the regular filing deadline.” Precinct chairs can file up 60 days prior to all other candidates.


- e. The distinguishing language in Texas Election Code regarding party offices reflects the legislature’s intent to allow precinct chairs, because of the sheer volume of filings, to be able to freely enter and exit races without restriction. Precinct chairs are not compensated, and their main purpose is to rally like minded voters in their voting precinct and to promote candidates belonging to the same political party. Public officeholders, on the other hand, are compensated and make decisions that affect the public.

*3. Prayer*

Third Party Defendant prays that-

- a. Mr. Dorman be allowed to remain on the ballot.
- b. Plaintiff’s application for temporary restraining order and permanent injunction be denied.
- c. Defendant be granted all further relief to which Defendant may be entitled.

Respectfully submitted,

By:  \_\_\_\_\_

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