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November 9, 2023

VIA ECF

Lyle W. Cayce
Clerk of Court
United States Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130

Re: Case No. 23-40582, Petteway v. Galveston County

Dear Mr. Cayce:

The NAACP/LULAC Plaintiffs submit this response to Appellants' 28(j) letter to provide clarifying citations, and to caution that Appellants at times cite to their own Proposed Findings (ROA.15444-670) rather than to the district court's findings of fact, which are subject to review only for clear error.

- “No Black or Latino Republican has ever won a primary election to be the Republican Party’s nominee for county judge or a county commissioner.” **ROA.15936.**
- There was no opportunity for other candidates to run against Dr. Armstrong in the general election because Commissioner Clark, who was uncontested in the general election, passed away after winning the primary. **ROA.19491, 19504-05 (Armstrong Trial Testimony); Tex. Elec. Code 145.035-36 (providing process for a party to fill a post-primary vacancy due to death, but no process for *other* parties to retroactively nominate candidates).**
- Under then-applicable law, Dr. Armstrong was “declared elected” and did not receive *any* votes in the general election. **Exhibit A (Tex. Elec. Code 2.056 (now repealed)).**

- In the 2022 Republican primary for State Senate—Dr. Armstrong’s only other contested election—he lost to an Anglo candidate by a 48.8% margin. **ROA.19489 (Armstrong Trial Testimony); ROA.21185 (DX-159).**
- The two officials identified as successful Latino Republicans, **Appellants’ Br. 52-53**, have Anglo first and last names. Their Republican colleagues in county government could not identify them as being minority candidates. **ROA.15989.**
- “All experts agreed that general elections are more probative than primary elections in this case; this includes determining inter-group cohesion” **ROA.15928.**
- Dr. Alford included multi-candidate primary contests, and the Court found “[b]etween Drs. Oskooii and Alford, the analyzed results show that Blacks and Latinos usually support the same top-choice candidate in primary contests.” **ROA.15929.**
- In 93% of racially contested elections, Latino and Black voters were cohesive behind the minority candidate, while Anglo voters were cohesive behind the Anglo candidate. **ROA.15936.** By contrast, Dr. Alford “based his conclusions regarding the role of partisanship versus race primarily on one election.” **ROA.15935-36.**
- “[A] partisan explanation for voting patterns in Galveston County does not overcome the weighty evidence of racially polarized voting on account of race.” **ROA.15938.**

Respectfully submitted,

s/ Richard Mancino

Richard Mancino

CERTIFICATE OF SERVICE

I certify that on November 9, 2023, this letter was served on counsel for all parties via the ECF system. I further certify that all parties required to be served have been served.

s/ Richard Mancino

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify that this letter contains 350 words, as determined by the word-count function of Microsoft Word 2016, and was prepared in a proportionally spaced 14-point Times New Roman font.

s/ Richard Mancino

Exhibit A

Vernon's Texas Statutes and Codes Annotated
Election Code ([Refs & Annos](#))
Title 1. Introductory Provisions
Chapter 2. Vote Required for Election to Office
Subchapter C. Election of Unopposed Candidate

This section has been updated. Click [here](#) for the updated version.

V.T.C.A., Election Code § 2.056

§ 2.056. Unopposed Candidate for Office of State or County Government

Effective: December 2, 2021 to August 31, 2023

(a) In this section:

(1) "Certifying authority" means:

(A) the secretary of state, for a statewide or district office; or

(B) the county clerk, for a county or precinct office.

(2) "Office of the state or county government" means an office described by [Section 52.092\(a\)\(2\) or \(3\)](#).

(b) This section applies only to the general election for state and county officers.

(c) A certifying authority shall declare a candidate elected to an office of the state or county government if, were the election held, only the votes cast for that candidate in the election for that office may be counted.

(d) If a declaration is made under Subsection (c):

(1) the election for that office is not held; and

(2) the name of the candidate is listed on the ballot as elected to the office as provided by this section.

(e) The offices and names of any candidates declared elected under this section shall be listed separately after the contested races in the election under the heading "Unopposed Candidates Declared Elected." The candidates shall be grouped according to their respective political party affiliations or status as independents in the same relative order prescribed for the ballot generally. No votes are cast in connection with the candidates.

(f) The secretary of state by rule may prescribe any additional procedures as necessary to accommodate a particular voting system or ballot style and to facilitate the efficient and cost-effective implementation of this section.

(g) The certifying authority shall issue a certificate of election to a candidate declared elected under this section in the same manner as provided for a candidate elected at the election.

Credits

Added by Acts 2003, 78th Leg., ch. 1061, § 2, eff. Sept. 13, 2003. Amended by Acts 2005, 79th Leg., ch. 1107, § 1.04, eff. Sept. 1, 2005; Acts 2021, 87th Leg., 2nd C.S., ch. 1 (S.B. 1), § 3.02, eff. Dec. 2, 2021.

V. T. C. A., Election Code § 2.056, TX ELECTION § 2.056

Current through the end of the 2023 Regular and Second Called Sessions of the 88th Legislature.

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