

NO. C-6914-13-G

LETICIA LOPEZ, Contestant, § **IN THE 370TH DISTRICT COURT**
 §
v. § **OF**
 §
LUPE RIVERA, Contestee § **HIDALGO COUNTY, TEXAS**

CONTESTANT’S FIRST AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Contestant, LETICIA “LETTY” LOPEZ, files this first amended original petition, complaining of contestee LUPE RIVERA, and for cause of action respectfully shows:

Discovery Control Plan

1. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, plaintiff intends to conduct discovery in this case under Level 3.

Parties

2. At all times mentioned in this petition, contestant was an individual residing at 1315 Clifton Street, Weslaco, Hidalgo County, Texas 78596.

3. Contestee is an individual residing at 716 N. Padre, Weslaco, Hidalgo County, Texas 78596. Contestee must be commanded to answer this petition by 10:00 a.m. on the 10th day after service of the citation. Tex. Elec. Code § 232.010. A citation issued in an election contest must direct the officer receiving the citation to return it unserved if it is not served within 20 days after the date of issuance. *Id.* § 232.011.

4. Contestee has answered and appeared in court represented by counsel.

Jurisdiction and Venue

5. Contestant brings this action pursuant to title 14, chapter 232, Texas Election Code, to contest the results of the Weslaco municipal General Election held on November 5, 2013, to

select the City Commission District 5 representative of Weslaco, Texas, for which contestant and contestee were the only candidates. This election contest is timely filed because it is filed not later than the 30th day after the date the official result of the contested election was determined. Tex. Elec. Code § 232.008.

6. This court has original and exclusive jurisdiction of this contest pursuant to Texas Election Code § 221.002. Hidalgo County is the proper venue for this election contest. Tex. Elec. Code § 232.006(c).

Notice to Secretary of State

7. A copy of this petition was delivered to the Texas Secretary of State as required by Texas Election Code § 232.008(d).

Election Contest

8. On November 18, 2013, a final and official canvass and certification of the general election results for City Commission District 5 was completed by the Weslaco City Commission. The certified vote allocation shows 487 votes for Lupe Rivera, and 471 votes for contestant Letty Lopez. Contestee was declared the winner because he received 16 more votes than contestant.

9. Contestant will show on the trial of this cause that this was not the true outcome of the election for the following reasons.

10. Contestant will show that at least 24 votes were illegally cast by individuals who were not eligible to vote in District 5 because they were not residents of District 5. A review of official records reveals the following:

- a. Shortly before Election Day, 23 individuals were suddenly registered as voters residing at **1518 E 6th Street, Weslaco, TX 78596**, a single-family residence within District 5. The following seven (7) individuals do not actually reside at this address

or otherwise in District 5 but registered with this address and actually voted illegally in the November 5, 2013 election:

- i. Delma Cadena
 - ii. Osmel Cadena
 - iii. Alexia Chavez (daughter of Delma Cadena)
 - iv. Alyssa Chavez (daughter of Delma Cadena)
 - v. Delma Chavez (daughter of Delma Cadena)
 - vi. Diana Pena (sister of Delma Cadena)
 - vii. Valerie Pena (daughter of Diana Pena and niece of Delma Cadena)
- b. Delma Cadena is an employee of Hidalgo County Precinct One Commissioner A.C. Cuellar. Commissioner Cuellar supported contestee Lupe Rivera's campaign.
- c. Shortly before Election Day, at least 10 individuals were suddenly registered as voters residing at **316 West Los Torritos St, Weslaco, TX 78596**, a single-family residence within District 5. The following eight (8) individuals do not actually reside at this address or otherwise in District 5 but registered with this address and actually voted illegally in the November 5, 2013 election:
- i. Cassandra Renea Alaniz
 - ii. Felipa Cuellar
 - iii. Illiana Annette Guerrero (girlfriend of contestee's son, Lupe Rivera, Jr.)
 - iv. Illiana Yvonne Rivera
 - v. Irma Rivera
 - vi. Raul Rivera
 - vii. Jacqueline Garcia
 - viii. Ricardo Garcia
- d. The following three (3) individuals registered to vote at contestee Lupe Rivera's own home, **716 N. Padre, Weslaco, TX 78596**, who do not actually reside at that address or otherwise in District 5, and actually voted illegally in the November 5, 2013 election:
- i. Jose Heriberto Sandoval (friend of Lupe Rivera, Jr.; actually resides in Dallas)
 - ii. Guadalupe "Lupe" Rivera, Jr. (contestee's son)
 - iii. Laura Rivera

e. The following two (2) individuals registered to vote at **717 N. Padre, Weslaco, TX 78596**, who do not actually reside at that address or otherwise in District 5, and actually voted illegally in the November 5, 2013 election:

- i. Noe Arnaldo Cavazos
- ii. Tomasa Martinez Cavazos

f. The following four (4) individuals registered to vote **608 N. Tio St., Weslaco, TX 78596**, who do not actually reside at that address or otherwise in District 5, and actually voted illegally in the November 5, 2013 election:

- i. Jose Luis Martinez
- ii. Jose Luis Martinez
- iii. Eva Cinco
- iv. Maria Pedraza

11. Contestant will show that at least 16 mail-in ballots, those ballots of the voters listed below, were improperly rejected on the claimed basis of a discrepancy between the voters' signature on the carrier envelope and the signature on the ballot application. These ballots were not counted, although there is no discrepancy in the signatures:

- a. Porfirio Gonzalez, 1510 E. 2nd, Weslaco, TX 78596 (all voters below reside in Weslaco, TX 78596)
- b. Pablo Jaramillo, Jr., 314 N. Iowa
- c. Overlin Alaniz, 711 N. Nevada St
- d. Soledad F. Avila, 1211 E. First St
- e. Daniel Cavazos, 801 N. Republic
- f. Bentura Arriaga, 404 N. Missouri
- g. Ramilo Roman, 1505 E First St
- h. Reymondo Lozano, 717 N. Cedro
- i. Antonia Lozano, 717 N. Cedro
- j. Irene Rodriguez, 1522 East 7th St.
- k. Maria Concepcion Ramirez, 103 N. Pat Cannon St.
- l. Patricio Ramirez, 103 N. Pat Cannon St.
- m. Norma Linda Gutierrez, 1800 N. Texas Blvd. # 188
- n. Francisca Macias, 203 Ballard St.
- o. Esperanza Martinez, 609 E. Sugarcane
- p. Ruben Montano, Jr., 514 W. Torritos

12. Contestant will show that at least one (1) mail-in ballot, the ballot of the voter listed below, was improperly rejected for a reason that is not currently apparent:

a. Adolfo Acevedo, 620 N. Padre, Weslaco, TX 78596

13. Notably, of the 55 mail-in ballots rejected for all of Hidalgo County, 53 of these rejected ballots were from Weslaco. This improbable number, combined with the obvious illegal registration and voting by non-residents of the district, raise the specter of outright election fraud in this contest.

14. Contestant will show that numerous mail-in ballots that were counted should not have been counted due to pervasive violations of various requirements in the Election Code. Such violations include the following: (1) the voter is not eligible to vote by mail; (2) the voter was assisted in completing or signing the early voting ballot application by a person other than the early voting clerk or a deputy but the witness failed to provide the information required by Tex. Elec. Code § 84.003(a) or (b);¹ (3) the voter is not eligible for assistance reading or completing the ballot but was assisted in doing so, *see* Tex. Elec. Code §§ 64.031, 64.0321, 86.010(a); (4) the voter was assisted by a person not eligible to assist; (5) the assistant fails to sign the oath prescribed by Tex. Elec. Code § 64.034, *see* Tex. Elec. Code § 86.010(c); (6) the assistant fails to enter his or her “signature, printed name, and residence address on the official carrier envelope of the voter,” Tex. Elec. Code § 86.010(e); (7) the voter permits another person to take possession of the voter’s ballot and carrier envelope to deposit same in the mail or with a common or contract carrier for delivery to the elections office but such person fails to “provide the person’s signature, printed name, and residence address on the reverse side of the envelope,” Tex. Elec. Code § 86.0051(b); (8) the voter did not seal the carrier envelope containing his or her

¹ *See* Tex. Elec. Code § 1.011(d).

ballot before the ballot and envelope leaves the voter's hand; (9) the voter received assistance that was not limited to that authorized by the election code at a polling place, *see id.* § 86.010(b), including encouraging the voter how to vote or even pressuring or coercing votes; (10) the person providing assistance prepared the voter's ballot "without direction from the voter." *See id.* § 64.036(a)(2). The ballots of numerous voters who voted by mail, including but not necessarily limited to those voters listed below, should not have been counted due to one or more of the reasons indicated above (and for such additional reasons as may present themselves in discovery or at trial):

- a. Margarita Perez, 103 S Bridge St
- b. Ramiro Perez, 103 S Bridge St
- c. Noe Saldana, 304 N Liberty
- d. Oralia Saldana, 304 N Liberty
- e. Ruth Saldana, 304 N Liberty
- f. Sulema Saldana, 304 N Liberty
- g. Arnulfo Gonzalez, 414 N Liberty
- h. Maria Gomez, 411 W Los Torritos
- i. Dolores G Vargas, 100 E Martha
- j. Jesus Vargas, 100 E Martha
- k. Dominga Hernandez, 613 N Nevada
- l. Sebera Gavia, 708 N Nevada
- m. Elma Alaniz, 606 N Padre Ave
- n. Jamey Alaniz, 606 N Padre Ave
- o. Julian Cantu III, 618 N Padre Ave
- p. Antonio C Cavazos, 712 N Padre Ave
- q. Miguel A Morin, 713 N Padre
- r. Oliva E Morin, 713 N Padre
- s. Ramon Villezcas, 715 N Padre
- t. Margarito Martinez, 717 N Padre
- u. Sulema Martinez, 717 N Padre
- v. Carmen Cantu, 618 N Padre
- w. Gloria H Perez, 209 N Pat Cannon
- x. Guadalupe G Garcia, 221 Pat Cannon
- y. Maria Alvarado, 237 S Pat Cannon
- z. Santos Alvarado, 237 S Pat Cannon
- aa. Juana R. Trevino, 500 N Pino St.
- bb. Irene Marquez, 718 N Pino St
- cc. Leon Marquez, 718 N Pino St
- dd. Luisa M Trevino, 719 N Pino

- ee. Abel Bernal, 800 E Rebecca St
- ff. Julian Rivera, 609 N Republic St
- gg. Antonia De la Cruz, 1800 N Texas Apt 59
- hh. Rolando Garza, 1800 N Texas Apt 20
- ii. Rosalinda Gutierrez, 1800 N Texas Apt 188
- jj. Eulalio D Ibanez, 1800 N Texas Apt 31
- kk. Leocadia Ledesma, 1800 N Texas Apt 186
- ll. Andres Martinez, 1800 N Texas Apt 23
- mm. Marlen Martinez, 1800 N Texas Apt 23
- nn. Virginia M Martinez, 1800 N Texas Apt 165
- oo. Emma A Oviedo, 1800 N Texas Apt 163
- pp. Jesus Trevino, 1800 N Texas Apt 159
- qq. Maria Berrones, Pat Cannon

15. These pervasive illegalities in ballots voted by mail are the result of a concerted effort by Contestee Rivera's campaign to encourage voters to seek ballot by mail applications, some of which were fraudulently submitted on behalf of voters not eligible to vote by mail, and thereby to gain opportunities for the Rivera campaign to improperly secure votes by visiting the voters' homes when the ballots are voted and either persuading the voter to vote for Rivera or even completing ballots without direction from the voters. This ballot by mail scheme allowed the Rivera campaign to exercise undue influence on such voters in a manner that would not be possible, or at least would be harder to achieve, if the voter were to vote in person. While a great number of voters who voted by mail received assistance at each step of the process by the Rivera campaign (submitting the application, completing their ballot, and transporting the ballot and carrier envelope to the voting clerk), for the vast majority of these ballots the person providing such assistance or who took possession of the ballot and carrier envelope for transportation to the mail or common or contract carrier did not complete the required information on the carrier envelope in violation of the Election Code.

16. Contestant will show that numerous votes were obtained and/or influenced by City of Weslaco and Hidalgo County officers and/or employees or by use of City of Weslaco or Hidalgo

County property or resources, in violation of state and federal law. Examples of such improper influences include, but are not necessarily limited to, the following:

- a. Hidalgo County Precinct One encouraged or permitted the use of its official resources for purposes of furthering the campaign of Contestee Lupe Rivera and other candidates on the preferred slate of Precinct One leadership. Such use of official Precinct One property and/or resources includes, but is not necessarily limited to, the following: placement of a sign indicating a slate of candidates for whom county employees should vote, which included Lupe Rivera, on top of the time clock in plain view of county employees.
- b. A police officer employed by the Weslaco Police Department, while in uniform and using his official cruiser, escorted voters to the polls. On information and belief, this officer was promised a promotion to Corporal by A.C. Cuellar in return for escorting voters to the polls to vote for A.C. Cuellar's preferred slate, which includes Contestee Lupe Rivera.
- c. Weslaco city manager Leonardo Olivares directed or approved the use of city resources and staff to prepare an anonymous multi-page full color mailpiece sent to city voters that promoted the campaign of Contestee Lupe Rivera and other incumbents running in the election, which reached voters in the last days before Election Day.

17. Contestant will show that Contestee Lupe Rivera's campaign offered to pay and/or did in fact pay voters to vote for Rivera.

18. Contestant will show that a number of voters presented to vote in person but an election officer or other person officially involved in the administration of the election either improperly

rejected the voter or failed to properly record required information, or failed to count valid votes.

These voters include, but are not necessarily limited to, the following:

- a. Roxanne Calderon, who desired to vote for Contestant Lopez but was not permitted to vote by Ludivina Ruiz, who was working at the poll where Calderon presented to vote;
- b. Tami Diaz, who desired to vote for Contestant Lopez and who did vote at the “Precinct One mobile unit” but whose name is not reflected on the combination form;

19. As a result of the above, illegal votes were counted, and legal votes that should have been counted were improperly rejected, in the election for the office of Commissioner for District 5, City of Weslaco. Had these illegal votes not been counted, and had the legal votes that were improperly rejected been counted, a different and correct result would be obtained in the election.

Notice of Disqualification

20. Pursuant to Texas Election Code § 231.004, notice is hereby given that this matter involves territory covered by the Hidalgo County District Court. As such, the district judge of this court is statutorily disqualified. Contestant requests that the District Clerk promptly notify the judge of this filing so that a special judge may be assigned to hear this matter. Tex. Elec. Code § 231.004(b).

Prayer

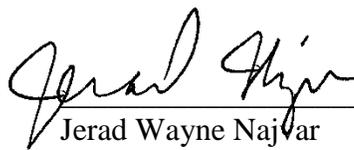
WHEREFORE, PREMISES CONSIDERED, contestant respectfully requests:

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 if, after hearing the evidence, the true outcome of the election can be determined to show that contestant is the winner, that contestant be declared the winner and District 5 Commissioner, City of Weslaco;
4. 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
5. That contestant be awarded costs of this action and any other relief to which contestant may be entitled.

Dated: December 18, 2013

Respectfully submitted,



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Certificate of Service

I hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record and unrepresented parties in this cause by facsimile and/or electronically through the court's e-filing system, on December 18, 2013, as follows:

Gilberto Hinojosa
622 E. St. Charles St.
Brownsville, TX 78520
Fax: 956-544-1335
Attorney for Contestee

A handwritten signature in black ink, appearing to read "Gilberto Hinojosa", is written over a horizontal line.