

Cause No. C-1121-20-I

JOSE “JOE” FLORES, Contestant	§	IN THE DISTRICT COURT
	§	
VS.	§	_____ JUDICIAL DISTRICT
	§	
EVERARDO “EVER” VILLARREAL Contestee	§	HIDALGO COUNTY, TEXAS
	§	

**CONTESTANT’S ORIGINAL PETITION FOR ELECTION CONTEST**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, JOSE “JOE” FLORES, Contestant in the above styled and numbered cause, and through his attorney of record files this his Original Petition for Election Contest seeking to challenge the result of the Hidalgo County Precinct 3 County Commissioner, Democratic Primary Election held on March 3, 2020 (hereinafter the “Election”), and canvassed on March 12, 2020. Contestant would respectfully show the Court as follows:

**I. DISCOVERY CONTROL PLAN**

1. Contestant pleads that discovery should be conducted pursuant to a Level 3 discovery control plan. Tex. R. Civ. 190.4.

**II. SUMMARY**

2. The cornerstone of democracies is a fair and transparent election. Everardo “Ever” Villarreal (hereinafter “Villarreal” or “Contestee”) built his political campaign around a promise of honesty and transparency. The discouraging reality, however, is that Villarreal’s campaign demonstrated the extreme opposite by, *inter alia*, the following actions:

His campaign **PAID** many voters to vote for him;

**THOUSANDS OF VOTERS WHO WERE NOT DISABLED WERE ASSISTED**

**ILLEGALLY** by Villarreal’s supporters to influence their vote for him; and

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Members of the ballot board were on Villarreal's campaign payroll during the Election.

Villarreal's campaign altogether consciously ignored the law in order to obtain more votes. Victory at the expense of the true will of the voters is not a victory at all but rather a slap in the face to our democracy and the citizens of Hidalgo County Precinct 3.

A new election must be ordered to restore trust to the citizens of Hidalgo County Precinct 3.

**III. PARTIES AND SERVICE**

3. Contestant, Jose "Joe" Flores, (hereinafter "Flores" or "Contestant") was the incumbent candidate in the Election. Flores is a resident of Hidalgo County, Texas.

4. Contestee, Everardo "Ever" Villarreal, is the other candidate in the Election and was declared the alleged winner of the Election. Villarreal is likewise a resident of Hidalgo County, Texas, and can be served via private process server at 2407 N. Shary Rd., Suite A, Mission, Texas 78574, or wherever he may be found.

5. Pursuant to Texas Election Code § 232.009(a)(1), Contestant specifically requests that the head Canvassing Authority, Norma Ramirez, Chair, Hidalgo County Democratic Party (Canvassing Official, Democratic Party) be noticed of the filing of this Contest. Such notice should be sent to her at her office located at the Hidalgo County Democratic Party, Norma Ramirez, Chair, 1111 West Nolana, McAllen, Texas 78504, or wherever she may be found.

6. Pursuant to Texas Election Code § 232.008(d), a copy of the present lawsuit must be delivered to the Texas Secretary of State. The lawsuit may be delivered to the Elections Division, Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060.

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**IV. JURISDICTION AND VENUE**

7. The District Court of Hidalgo County, Texas has exclusive jurisdiction and venue of this cause of action pursuant to Texas Election Code sections 221.002(a) and 232.006(c).

8. Pursuant to Texas Election Code section 231.004, notice is hereby given that this matter involves territory covered by the District Court of Hidalgo County. Therefore, the regularly and duly elected judge of this Court is statutorily disqualified. The District Clerk shall promptly notify the judge of this filing so that a special judge may be assigned to hear this matter pursuant to Texas Election Code section 231.004(b).

9. This election contest is timely filed pursuant to Texas Election Code section 232.008(c), because it was filed not later than the 10th day after the official result was determined— i.e., the election canvassing that occurred on March 12, 2020.

**V. STATEMENT OF FACTS**

10. The official results of the Election were determined to be as follows:

<b><u>Candidate</u></b>	<b><u>Votes Received</u></b>	<b><u>Percentage</u></b>
Joe Flores	9,945	49.77%
Ever Villarreal	10,037	50.23%

11. Villarreal was declared the winner, because he received 92 more votes than Flores, and because Villarreal obtained over 50% of the votes.

12. As a result of Villarreal's actions, individually and/or by and through his campaign, illegal votes were counted in the Election. The number of illegal votes counted in the Election greatly exceed 93 votes and the amount that would change the outcome of the Election.

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**VI. APPLICABLE LAW**

13. The focus of a trial court's inquiry in an election contest is set out in Texas Election Code section 221.003(a). Section 221.003(a) requires:

(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 true 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.

Tex. Elec. Code § 221.003(a).

14. “To set aside the outcome of an election, the contestant must prove by clear and convincing evidence that a violation of the election code occurred and such violation materially affected the outcome of the election.” *Duncan–Hubert v. Mitchell*, 310 S.W.3d 92, 97–98 (Tex. App.—Dallas 2010, pet. denied); *see Gonzalez v. Villarreal*, 251 S.W.3d 763, 773, 777–78 (Tex. App.—Corpus Christi 2008, pet. dismiss'd w.o.j.); *see also Regalado v. Munoz*, No. 13–14–00274–CV, 2014 WL 3542056, at \*2 (Tex. App.—Corpus Christi July 17, 2014, no pet.) (mem.op.); *Vazaldua v. Muñoz* No. 13–14–00275–CV, 2014 WL 2937014, at \*6 (Tex. App.—Corpus Christi June 20, 2014, no pet.) (mem.op.).

15. An election's outcome may be materially affected when a different and correct result would have been reached in the absence of irregularities, or if irregularities in the conduct of the election render it impossible to determine the majority of the voters' true will. *See*

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*Duncan–Hubert*, 310 S.W.2d at 98; *see Gonzalez*, 251 S.W.3d at 778; *see also Vazaldua*, 2014 WL 2937014, at \*6.

16. It is an undeniable feature of our political system and tradition that an “individual's right to vote . . . is protected as a fundamental right.” *Veasey v. Perry*, No. 13–CV–00193, 2014 WL 5090258, at \*41 (S.D.Tex. Oct. 9, 2014), *stayed by* 769 F.3d 890 (5th Cir.(Tex.) Oct. 14, 2014) (citing *Burdick v. Takushi*, 504 U.S. 428, 433–34 (1992); *Kusper v. Pontikes*, 414 U.S. 51, 55 (1973)).

**VII. SUMMARY OF ILLEGAL VOTES**

*VII.A Payments in Exchange for Votes for Villarreal*

17. Several individuals were given cash payments in exchange for their votes for Villarreal.

18. These individuals will testify regarding how they were paid, how they were driven to the voting sites, and how operators of Villarreal’s campaign "assisted them" and voted on their behalf for Villarreal.

19. These paid votes for Villarreal are “illegal votes” as contemplated by Texas Election Code section 221.003(a)(1). As such, pursuant to section 221.011, these illegal votes must be subtracted from Villarreal’s official total votes.

20. These illegal votes, together with the other illegal votes described in this lawsuit, exceed 93 votes. This means the outcome of the contested election, as shown by the final canvass, is not true, and these votes materially affected the outcome of the Election. *See* Tex. Elec. Code § 221.003(a).

*VII.B Systemic Illegal Voter Assistance*

21. Chapter 64 of the Texas Election Code is extremely clear about who is eligible to receive assistance to vote. A voter may be assisted "if the voter cannot prepare the ballot because of:

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(1) a physical disability that renders the voter unable to write or see; or (2) an inability to read the language in which the ballot is written.” Tex. Elec. Code § 64.031, ELIGIBILITY FOR ASSISTANCE.

22. Chapter 64 of the Texas Election Code is also extremely clear that unauthorized assistance voids ballots. Texas Election Code section 64.037 states, UNAUTHORIZED ASSISTANCE **VOIDS** BALLOT, “If assistance is provided to a voter who is not eligible for assistance, the voter's ballot may not be counted.” Tex. Elec. Code § 64.037 (emphasis added). Thus, any instance of assistance to an individual voter who does not meet the criteria defined under Texas Election Code section 64.031 constitutes an illegal vote that cannot be counted.

23. It strains the imagination why more than **2000** voters were “assisted” in the Election. Several hundreds of these voters were ineligible for such assistance but received “assistance” from the Villarreal campaign in violation of the law. These votes are illegal under Texas Election Code section 221.003(a)(1) and are voided and expressly not to be counted pursuant to section 64.037.

24. Because these are “illegal votes” as contemplated by Texas Election Code section 221.003(a)(1), then Texas Election Code section 221.011 requires that they be considered in determining whether the election should be voided. Because the number of these illegal votes **ALONE** clearly exceeds 93, a new election should be held. *See* Tex. Elec. Code Ann. § 221.009(b).

25. Furthermore, members of the Villarreal campaign further violated Texas Election Laws by having employers of individual voters assist these individual voters in violation of Texas Election Code section 64.032(c). These votes are also “illegal votes” pursuant to Texas Election Code § 221.003(a)(1).

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26. Additionally, non-U.S. citizens and individuals who are not registered to vote were assisting individual voters by providing interpreter services in violation of Texas law. *See* Tex. Elec. Code § 61.033.

*VII.C Members of Ballot Board Were on Villarreal's Payroll During the Election*

27. Subchapter A of Chapter 87 of the Texas Election Code regulates Early Voting Ballot Boards. Texas Election Code section 87.003., ELIGIBILITY FOR BOARD MEMBERSHIP, states “To be eligible for appointment to the early voting ballot board, a person must meet the requirements for eligibility for service as a presiding election judge, except that the appointee must be a qualified voter of the territory served by the early voting clerk and is not required to be a qualified voter of any other particular territory.” Tex. Elec. Code § 87.003.

28. Chapter 32 of the Texas Election Code regulates Election Judges and Ballot Board Members. Section 32.054(a) of the Texas Election Code states that “[a] person is ineligible to serve as an election judge or clerk in an election if the person is employed by” a candidate. Tex. Elec. Code § 32.054(a).

29. One member of the Ballot Board for the Election was employed by the Villarreal campaign, which is demonstrated by a January 2020 Campaign Expenditure Report. The Villarreal Campaign Expenditure Report shows payments to this Ballot Board member on February 11, 2020 for \$1,500.00, on February 19, 2020 for \$316, and on February 27, 2020 (during early voting) for \$1,000.00.

30. Based on information and belief, another member of the Ballot Board also was employed, directly or indirectly, by Villarreal and/or his campaign.

31. The Ballot Board made decisions that eliminated legal votes for Flores and counted illegal votes in favor of Villarreal, thus affecting the outcome of the Election.

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32. These votes, together with the other illegal votes described in this lawsuit, are illegal votes that should not be counted.

VII.D Non Precinct-3 Residents Unlawfully Voted In Election

33. Based on information and belief, individuals who are not residents of Precinct 3 voted in the Election in violation of Texas law. *See* Tex. Elec. Code § 11.001(a)(2).

VII.E Non-U.S. Citizens Voted in the Election

34. Based on information and belief, non-U.S. citizens voted in the Election. *See* Tex. Elec. Code § 11.002(a)(2).

VII.F Felons on Probation and/or Parole Voted in the Election

35. Based on information and belief, felons who are ineligible to vote voted in the Election. *See* Tex. Elec. Code 11.002(a)(4)(A).

VII.G Total Illegal Votes Exceeds 93.

36. After considering the total number of illegal votes counted for Villarreal, which equal to or exceed 93, the Court should declare Flores the true winner of the Election. *See* Tex. Elec. Code § 221.011(a).

37. Alternately, the total number of illegal votes that were counted in the Election equals to or exceeds 93, and Contestant will prove that the number is actually much higher. Therefore, the Court should declare the Election void and order that the appropriate authority conduct a new election. *See* Tex. Elec. Code § 221.009(b).

**VIII. REQUEST FOR RELIEF AND ATTORNEY'S FEES**

38. As a result of the irregularities herein alleged, the canvass does not reflect the true result of the Election. Upon trial of this contest, Contestant will show the true winner of the Election to be Jose “Joe” Flores. Alternatively, because the true outcome of the Election cannot be



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determined, Contestant requests that the Election be declared void, and that a new election be held. Should a new election be ordered by this Court, Contestant requests that this Court maintain supervisory jurisdiction over the election, and issue sufficient orders to prevent a recurrence of the irregularities which impugned the Election.

39. Contestant is entitled to necessary cost and attorneys' fees from Contestee.

**IX. PRAYER**

40. WHEREFORE, PREMISES CONSIDERED, Contestant prays that after trial on the merits on his cause of action, that the results of the Election and canvass be re-tallied, such that Contestant be declared the true winner of the Election, or alternatively, that the Election be declared void because the result cannot be determined and a new election be ordered to be held, that costs and attorneys' fees be assessed against Contestee, and for all other and further relief, either in law or in equity, to which Contestant may show himself justly entitled.

Respectfully submitted,

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