



**Esperanza "Hope" Andrade**

SECRETARY OF STATE

State of Texas

December 21, 2010

DATE 12.22.10 (AM) 10:30 PM  
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ROUTED TO DD FILE \_\_\_\_\_  
CC: \_\_\_\_\_

The Honorable Joe Straus, III  
Speaker of the House of Representatives  
1100 N. Congress Capitol Bldg.  
Austin, TX 78701

Dear Speaker Straus,

Enclosed are special exceptions filed by Representative Donna Howard, contestee, for State Representative District 48. The filing was received in my office December 21 by personal delivery that afternoon.

If my office can be of any assistance in this matter, please feel free to contact Ann McGeehan, Director of the Elections Division at: 463-9871.

Yours truly,

A handwritten signature in black ink, appearing to read "Esperanza Andrade", written in a cursive style.

Hope Andrade

HA:lg

Enclosure

**IN THE MATTER OF THE GENERAL ELECTION OF NOVEMBER 2, 2010**

<b>DAN NEIL</b>	§	<b>HOUSE OF REPRESENTATIVES</b>
<b>CONTESTANT</b>	§	
<b>v.</b>	§	<b>OF THE</b>
	§	
<b>DONNA HOWARD</b>	§	
<b>CONTESTEE</b>	§	<b>STATE OF TEXAS</b>

**CONTESTEE'S SPECIAL EXCEPTIONS**

**To the Honorable Speaker of the House of Representatives for the State of Texas:**

Contestee, Donna Howard, hereby files her special exceptions to Contestant's Original Petition and would show the House of Representatives as follows:

**I.**

1. Contestee is required to answer Contestant's Original Petition by December 27, 2010. Contestant's pleadings are defective under Texas law and these pleading defects prevent Contestee from preparing an adequate answer to Contestant's Petition.

**II.**

**SPECIAL EXCEPTIONS**

2. Contestee special excepts to Count 3.B. of Contestant's Petition in that he fails to plead the identity of any voter who used names of deceased voters, or persons who were ineligible to vote because of disqualifications to vote in the election in question and does not specify the basis for such a disqualification of the voter. This contest must be heard immediately so that the duly elected member of the House of

Representatives may be seated or in the event of a finding that the outcome cannot be ascertained, a new election can be held. In an election contest, the names, addresses and precincts and the grounds for disqualification for each voter challenged must be pleaded. Without the required pleading of the identifying information of the voters being challenged, Contestee cannot defend the case. *See Ware v. Crystal City I.S.D.*, 289 S.W.2d 190 (Tex.Civ.App.-San Antonio, writ dismissed); *Roberts v. Hall*, 167 S.W.2d 621 (Tex.Civ.App.- Amarillo 1942, no writ).

3. Contestee specially excepts to Contestant's pleadings in that Contestant does not plead that any of the alleged illegal voters voted in the election in question.

4. Contestee specially excepts to Contestant's pleading in Count 3.B. of his Petition in that it fails to plead the identities of some 1,900 illegal voters alleged in paragraph 46 of Count 3.B. Contestant admits that he has identified the 1,900 illegal voters and now must plead those identities and the specific reasons he claims that their votes were illegal.

5. Contestee specially excepts to Count 1.B. of his Petition in that it alleges that ballots have been lost and the count is wrong. Contestant has failed to specify how these allegations would have affected the outcome of the election and how the allegation causes a different election result.

6. Contestee is puzzled by Contestant's Petition, Count 1.A. and specially excepts to the allegation that certain overseas voter's votes that voted a straight party ticket should have been counted. Contestant's pleadings do not allege that if such votes

were counted that it would affect the outcome of the election. On the contrary, Contestant knows that if such straight party votes were counted, Contestee Donna Howard's margin of victory would be increased by at least eight votes.

**PRAYER**

Contestee Howard requests the Secretary of State to immediately deliver these Special Exceptions to the Speaker of the House of Representatives and that the Master in Discovery order Contestant Neil to replead in the manner sought by Contestee so that Contestee may file an adequate Answer to Contestant's Petition.

Respectfully submitted,

**RAY, WOOD & BONILLA**

By: 

Randall B. Wood  
State Bar No. 21905000  
Ray Bonilla  
State Bar No. 02600985  
Doug W. Ray  
State Bar No. 16599200

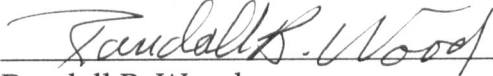
2700 Bee Caves Road #200  
Austin, Texas 78746  
(512) 328-8877 (Telephone)  
(512) 328-1156 (Telecopier)  
**ATTORNEYS FOR CONTESTEE  
DONNA HOWARD**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Contestee's Special Exceptions has been hand delivered to the following:

Mr. Joseph M. Nixon  
BEIRNE, MAYNARD & PARSONS, L.L.P.  
401 West 15<sup>th</sup> Street, Suite 845  
Austin, Texas 78701  
**ATTORNEYS FOR CONTESTANT DAN NEIL**

on this the 21<sup>st</sup> day of December, 2010.

  
\_\_\_\_\_  
Randall B. Wood

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