

**CAUSE NO. 20C0554-202**

<b>KYLE BARRETT, CANDIDATE</b>	0	<b>IN THE COURT</b>
<b>FOR BOWIE COUNTY COMMISSIONERS'</b>	0	
<b>COURT, PRECINCT 3,</b>	0	
<b>CONTESTANT</b>	0	
<b>V.</b>	0	
	0	<b>202<sup>ND</sup> DISTRICT</b>
<b>HON. JAMES BOYD STRAIN, CANDIDATE</b>	0	
<b>FOR BOWIE COUNTY COMMISSIONERS'</b>	0	
<b>COURT, PLACE 3,</b>	0	
<b>CONTESTEE</b>	0	<b>BOWIE COUNTY, TEXAS</b>

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**FINDINGS OF FACT**

1. The Bowie County Republican Primary Election was held in Bowie County, Texas on March 3, 2020.
2. In the Republican Primary there was a contested race for County Commissioner for Precinct 3 between the incumbent, James Strain and the challenger, Kyle Barrett.
3. On the night of the election it was reported by the Elections Administrator's Office the results of the election were 1630 votes for Mr. Strain and 1602 votes for Mr. Barrett.
4. Mr. Barrett timely requested a recount. A Recount Committee was formed and executed the recount. The official canvass results from the recount reflected 1631 votes for Mr. Strain and 1604 votes for Mr. Barrett.
5. Mr. Barrett brings this Election Contest case pursuant to Chapter 232 of the Texas Election Code.
6. The Court finds it has jurisdiction over this case.

7. The Court finds the March 3, 2020 Republican Primary was fraught with errors, mistakes and failures to follow procedures set forth by the Texas Election Code. The findings of fact this Court issues below only partially demonstrate these oversights

### **EARLY VOTING FINDINGS**

8. There were two early voting locations for the Republican Primary in Bowie County. One location was in New Boston and the other was in Texarkana. Ms. S. Whittle was an election judge at the New Boston location. On February 28, 2000 her voting machine jammed and would no longer transfer ballots to the ballot box. At the instruction of the Election Administrator, she cut the seal on the ballot box, repaired the jam. According to her records she re-sealed the machine with Seal #: 0361823. Later that day the machine jammed again. She repeated the same procedure as before. This required her to cut Seal # 0361823 and replace it with a new seal. On that same day, the Election Judge at the Texarkana early voting location certified that the final seal on his voting machine ballot box at the end of early voting was Seal # 0361823. No plausible explanation was provided the Court as to how the same seal could be in two locations at the same time.

### **MAIL-IN-BALLOT FINDINGS**

1. The "Detail Summary" report reflects there were 1048 total Mail-In-Ballots received (both Democrat and Republican primaries combined) by the Election Administrator's Office. (000030). However the Early Voting Ballot Board reported that it received 1050 Mail-In-Ballots and rejected 6 of those, leaving 1044 total Mail-In-Ballots in the Democratic and Republican primaries. (000028).
2. There are two documents (FPCA/ ABBM Reports) provided by the Elections Administrator's Office reflecting that 572 Mail-In-Ballots were returned and received by the Election Administrator's Office in the Republican Primary. (001322; 000156). However, the "Detail Summary" reflects there were only 560 Mail-In Ballots cast in the Republican Primary. (000030). The FPCA/ABBM reports may or may not reflect mail-in ballots that were received on March 4, 2020 that are properly counted in the election. There were 16 mail-in ballots received by the Election Administrator's Office on March 4, 2020. If these 16 are added to the 560 reported in the "Detail Summary", there should have been 576 Mail-In-Ballots, not 572 as reported. No plausible explanation was provided the Court for these discrepancies.
3. The FPCA/ABBM report reflect there were 138 Mail-In-Ballots received by the Elections Administrator in Commissioner Precinct 3. (001322-33). However, the "Detail

Summary” of Mail-In-Ballots received by Election Administrator’s Office for Commissioner’s Precinct 3 voters reflect 140 Mail-In-Ballots were received. (000033). There were 138 Mail-In-Ballots counted in the Commissioner Precinct 3 race. (Ex. 65; and 001335-36). There are potentially 2 votes in controversy with Mail-In-Ballots.

4. It is admitted that a properly registered voter was required to vote a provisional ballot. The Early Voting Ballot Board erroneously rejected this ballot. This is 1 vote that is in controversy.

#### **PRECINCT 13/30 FINDINGS (HOOKS HIGH SCHOOL)**

5. The Republican Primary polling place for Precincts 13/30 was Hooks High School. The Election Judge at that location reported 286 voters voted at that location on Election Day as shown on the “poll list” (000402). Records from the Election Administrators Office reflect 278 voters voted in this precinct on Election Day. (000287-289). The poll book for this location reflects 283 individuals signed in to vote on Election Day. The Court finds the numbers reported by the Election Judge at this location are erroneous.
6. At the inspection of this ballot box by counsel prior to trial, there were 279 ballots in this box with 11 undervotes, leaving 268 votes cast in this race. Further, the Election Night Canvass reflects 266 votes cast on Election Day in this race. The recount numbers reflect 268 votes. (001335-1337).
7. Four Republican primary ballots were located in the Democratic primary box at this location from Election Day voting. As such the poll book number of 283 voters who voted at this location on Election Day matches the total ballots: 279 in the Republican box and 4 Republican ballots in the Democrat box. ( $279+4 = 283$ ).
8. As indicated above if there are 279 ballots with 11 undervotes you have 268 votes. However if you have 283 votes with 11 undervotes there should have been 272 votes cast in this race. The Court cannot make this determination as the Court is unaware if any of the 4 ballots located in the Democratic box are undervotes.
9. The Election Night Canvass reflects 266 votes cast on Election Day in this race. The recount numbers reflect 268 (001335-1337). There could have potentially been 272 votes that should be in this race. There are 2 to 6 votes in controversy from this box.

**PRECINCTS 10R/24/25 FINDINGS (DEKALB HIGH SCHOOL)**

10. The Republican Primary polling place for Precincts 20R/24/25 was held at DeKalb High School. The Election Judge made a number of errors in her reporting documents. She reported 555 voters voted in these boxes on Election Day as shown on the "polling list". (000501) Records from the Election Administrator's Office reflect 520 voters voted at that location on Election Day. (000287). Other records from the Election Administrator's Office reflect 530 voters voted at this precinct on Election Day. (000288-289). The Poll Book reflects 521 voters signed in to the Poll Book on Election Day. (Ex. 60).
11. The Election Judge at this location reported the following numbers on her official election documents: 105 total votes cast in box 20R, with one of those being a provisional ballot. (0005000); in box 24, 137 ballots cast, with two of those being provisional ballots (000502); in box 25, 291 ballots cast, with no provisional votes. If you include provisional ballots reported, these numbers total 533 total votes cast. If you do not count the reported provisional ballots the numbers total 530 total votes cast at this polling place on Election Day.
12. The Elections Administrators records reflect the following ballots cast in the boxes: 113 in Box 20R; 135 in Box 24 and 282 in Box 25. This totals 530 ballots, but the numbers for each box is not as reported by the Election Judge. No reasonable explanation was provided the Court for these discrepancies. At the inspection of the ballot boxes by counsel prior to trial there were 524 ballots in this ballot box. The Court finds there were 521 voters signed in to vote at this polling location, but there are 524 ballots. It is extremely disturbing for this Court to find there are 3 more ballots in this box than the Court finds voters who voted at this polling place. The Court finds there are 3 ballots in controversy at this location.
13. The Election Judge at this location also signed the Democratic Election Judge's official documentation. (000538).
14. There were 5 Republican ballots in the Democratic ballot box at this location.

**PRECINCTS 4A/4C/2D/5B FINDINGS (TEXARKANA COLLEGE)**

15. The Republican Primary polling place for Precincts 4A/4C/2D/5B was located at Texarkana College. The Election Judge at this location reported 95 voters voted at this polling place on Election Day as shown on the "polling list". (000362). Records from the Election Administrators Office reflect 96 voters voted at this location on Election Day, (000287-289). There is potentially 1 vote in controversy at this polling location.

16. The Republican Judge for this location admits she completed her official paperwork for Box 4C. (000362-363). However, she testified she was not provided official records for completion for Boxes 4A, 2D and 5B and has no explanation as to who completed those or her signature appearing on the documents. (000364-366).
17. The Republican Election Judge at this location signed the 'Ballot and Seal Certificate' for the Democratic Box at this location . (000382)

#### **PRECINCT 14 FINDINGS (BOWIE COUNTY COURTHOUSE)**

18. The Republican Primary polling place for Precinct 14 was a Bowie County Courthouse. The Election Judge reported 321 voters voted at this polling place on Election Day as shown on the "polling list" with one provisional ballot cast. (000426). Records from the Election Administrator's Office reflect 320 votes were cast at this location on Election Day. (000287-288). The poll book reflects 321 voters signed in to vote on Election Day. There is potentially 1 vote in controversy from this box.
19. There were two Republican primary ballots contained in the Democratic Primary Box 14/15.

#### **FINDINGS FOR PRECINCT 15 (MALTA SCHOOL)**

20. The Republican Primary polling place for Precinct 15 was at Malta School. All records reflect 110 voters voted at this polling place on Election Day. (000287-288; 430). However, the canvass from election night voting results reflect 115 votes from this voting box in this contested race. (001335). Records from the recount reflect 115 votes from this box in this race. (001337). Finally, at the time of the records inspection by counsel there were 115 ballots in this box. Again, the Court finds it incredibly disturbing that there are more ballots in this box than the number of voters who are recorded as voting on Election Day. There are certainly 5 votes in controversy from this box.

#### **FINDINGS FOR PRECINCTS 21/22 (OAK GROVE LIGHTHOUSE CHURCH)**

21. The Republican Primary polling place for Precinct 21/22 was Oak Grove Lighthouse Church. Records from the Election Administrator's Office reflect 175 voters voted at this location on Election Day. (000287). However, other documents from the Elections Administrator's Office reflects 166 voters voted at this location on Election Day. (000289). The poll book for this location reflects 175 voters signed in to vote at this location. The Election Judge at this polling place did not properly complete his "Ballot

and Seal Certificate”, as he did not report the total number of voters who signed into the poll book as shown on the “polling list”.

22. The Election Night canvass reflects 175 votes were cast from this location on Election Day. (001335). However, the recount canvass reflects 176 votes cast from this polling location. Six of those 176 votes were Republican ballots located in the Democratic Box for this location. Again, the Court finds it very disturbing that it appears this box contains one more vote than voters that signed in to vote at this location. There is 1 vote in controversy from this polling place.
23. The Court finds an Election Clerk for the Republican Judge at this location made a highly inappropriate statement as to why she would not vote for Kyle Barrett that was heard by two voters in the polling place, who had indicated their intention to vote for Mr. Barrett. The voters voted for Mr. Barrett in spite of the Clerk’s unprofessional behavior.
24. It is noteworthy that the Election Judge for this polling place testified adamantly that he properly completed all his official paperwork at the polling place before turning it in to the Election Administrator’s Office. He had no explanation when shown a copy of his paperwork not properly completed.

#### **FINDINGS REGARDING ELECTION PROCEDURES**

25. On Election night, the following procedure was utilized by the Bowie County Election Administrator’s Office for the return and receipt of Precinct Ballot Boxes. When the polling place closed the Election Judge is responsible for completing all paperwork and ensuring the voting flap on the voting box is closed and sealed with a numbered seal. The Judge then returns the box to the Bowie County Courthouse.
26. There were two employees from the Election’s Administrator’s Office located in the lobby of the Bowie County Courthouse to “check in” the ballot boxes. These employees check the Seals to determine if they are sealed, sealed properly or broken. The voting boxes are then stacked behind the employees while additional boxes arrive. Workers will come and retrieve the boxes from where they are stacked and load them onto a cart and walk them down the hall of the Courthouse to the Central Counting Station where they are delivered to Central Counting Station.
27. The two employees checking in the boxes have the Election Judge sign the “Receipt of Transfer Case”. (example: 000299).
28. The Ballot Boxes should be Sealed by the Election Judge of the Precinct, and the Election Judge should directly deliver the Box to the Presiding Judge of the Central Counting

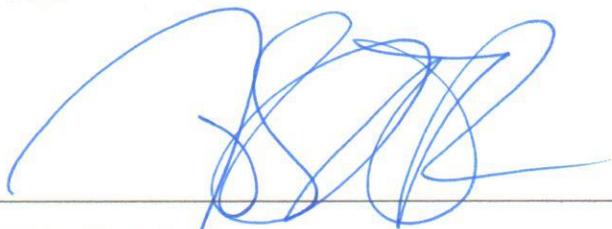
Station. When delivered the Presiding Judge of the Central Counting Station should sign the "Receipt of Transfer Case" acknowledging the Election Judge has delivered the Ballot Box.

29. There was no transfer documentation signed by anyone tracking the transfer of the ballot boxes from the two employees "checking in" the Ballot Boxes to the Central Counting Station.
30. The purpose of ensuring the Ballot Boxes are Sealed and they are delivered directly to the Central Counting Station by the Election Judge is to minimize any opportunity for outside tampering with the Boxes, to eliminate them from changing hands on multiple occasions, to eliminate any fraudulent activity, and to insure the integrity of the election.
31. There were a number of Ballot Boxes returned on election night noted to have "broken" seals. The Seal placed by the Election Judge at DeKalb High School in the Republican Primary failed to Seal her Ballot Box properly.
32. The employees who were checking in the Ballot Boxes as they arrived at the Courthouse were provided no instructions or procedure on what to do in the event a Ballot Box was returned with a broken Seal.
33. Provisional Ballots were placed in specially marked envelopes for provisional ballots at the polling place and then placed in the ballot boxes when the polls closed. These boxes were delivered as set forth above: from the Election Judge, to the two employees checking in the boxes, and subsequently by other workers to the Central Counting Station.
34. After the provisional ballots were received by the Central Counting Station, they are removed from the Ballot Boxes as they are opened and provided to the Custodian of Election Records (The Elections Administrator). They are then stored in a secure room overnight.
35. At the Recount the Recount Committee did not tally or count the number of ballots in a Ballot Box. They did not tally or count the number of undervotes. They simply counted and tallied the votes voted in Precinct 3 County Commissioner's race.
36. The Recount Canvass of Votes from the Recount Committee reflects 5 Democratic Primary Boxes that held Republican Primary Ballots. (001337).
37. The Court finds the maximum number of votes in controversy in this case is 20 votes.

## CONCLUSIONS OF LAW

38. A tribunal dealing with an election contest must try to ascertain whether the election's outcome is not the true outcome because illegal votes were counted; an election officer or other person officially involved in the administration of the election; prevented eligible voters from voting, failed to count legal votes, or engaged in other fraud or illegal conduct or made a mistake. TEX.ELEC.CODE, Sec. 221.003.
39. In order to overturn an election, the Contestant must prove by clear and convincing evidence that any voting irregularities "materially affected" the election results. *Denny v. Doss*, 2020 WL 2071949 (Tex.App.-Fort Worth 2020).
40. If the tribunal finds that illegal votes were cast but cannot ascertain how the voters voted, the tribunal shall consider those votes in making its judgment. TEX.ELEC.CODE, Sec. 221.011
41. The provisions of Texas Election Code, Section 65.053 were not complied with in the March 3, 2020 Primary Election.
42. In some instances, the provisions of Texas Election Code, Section 127.066 were not complied with in the March 3, 2020 Primary Election.
43. The provisions of Texas Election Code, Section 127.068 were not complied with in the March 3, 2020 Primary Election.
44. The Contestant has shown by clear and convincing evidence extensive mistakes made by Election Officials in the March 3, 2020 Bowie County Republican Primary Election. These mistakes have revealed a maximum of 20 votes in controversy. The Court is unaware for whom any of these controversial votes were cast.
45. Because Mr. Strain won the election by either 27 or 28 votes, this Court concludes these mistakes have not been shown to have "materially affected" the outcome of the race by clear and convincing evidence.
46. In accordance with Section 221.012 of the Texas Election Code, the Court declares James Strain the winner of the March 3, 2020 Bowie County Republican Primary for Bowie County Commissioner, Precinct 3.

SIGNED THIS 13<sup>TH</sup> DAY OF JULY, 2020

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right. The signature is positioned above a horizontal line.

---

**HON. TIM WOMACK  
ASSIGNED DISTRICT JUDGE  
202<sup>ND</sup> DISTRICT COURT  
BOWIE COUNTY, TEXAS**