

CAUSE NO. 401-02334-2018

<b>DIANE PIWKO</b>	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>NO. _____</b>
	§	
<b>JACK RANDALL "RANDY"</b>	§	
<b>RICE, Contestee,</b>	§	
<b>BRUCE SHERBET,</b>	§	
<b>Collin County Elections Official,</b>	§	
<b>Defendant(s).</b>	§	<b>COLLIN COUNTY, TEXAS</b>

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**CONTESTANT'S VERIFIED ORIGINAL PETITION AND  
APPLICATION FOR TEMPORARY RESTRAINING ORDER**

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COMES NOW Contestant, DIANE PIWKO, files this petition complaining of JACK RANDALL "RANDY" RICE, Contestee, and BRUCE SHERBET, Collin County Elections Official, and for cause of action respectfully shows:

1. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Plaintiff intends to conduct discovery in this case under Level 2.
2. At all times mentioned in this petition, contestant, Diane Piwko, was an individual residing in Collin County, whose mailing address is 200 McKinney Street, Farmersville, Texas, 75442.
3. Contestee, Randy Rice, is a resident of Collin County with a mailing address of 419 Haughton St., Farmersville, Texas, 75442.

4. Defendant, Bruce Sherbet, is an appointed election official for the Collin County Elections Department with an address of 2010 Redbud Blvd., Suite 102, McKinney, Texas, 75069.
5. Contestant requests leave of court to amend the Petition for Election Contest to add necessary additional parties prior to the date of trial.
6. Contestant brings this action pursuant to § 221.003(a)(1) and 221.003(a)(2)(C) of the Texas Election Code to contest the results of the Farmersville Mayoral Election held on May 5, 2018, for which Contestant and Randy Rice were the only candidates.
7. This court has original and exclusive jurisdiction of this contest pursuant to the Texas Election Code § 221.002(a).
8. A copy of this petition was delivered to the Secretary of State in accordance with Texas Election Code § 232.008.
9. Contestant alleges that ineligible, illegal, or fraudulent ballots were included in the vote total.
10. Contestant alleges that the results of the election for Mayor of Farmersville are not accurate due to the mistake of Mr. Sherbet in accepting and counting the fraudulent votes.

11. Contestant alleges that the number of ineligible, illegal, or fraudulent votes is equal to or greater than the number of votes necessary to change the outcome of the election.

As a result of the matters set forth above, contestant challenges the validity of the May 5, 2018 election results and alleges that the outcome of the election was affected by the fraud, illegal conduct, or mistake of the election officer in the administration of the election, in accordance with § 221.003(a)(2)(C). Accordingly, the election results did not express the will of the electorate and the true outcome of the election cannot be ascertained and should be declared void under § 221.012(b) and/or § 221.009(b).

### **APPLICATION FOR TEMPORARY RESTRAINING ORDER**

1. Plaintiff incorporates by reference all allegations in all paragraphs of the Verified Petition as though fully set forth in this Application.
2. Plaintiff has alleged claims against Defendants whereby immediate and irreparable injury, loss, or damage will result to Plaintiff before notice can be served on Defendants and before a hearing can be held on Plaintiff's application for a temporary restraining order because, unless certification of the election is immediately restrained, Contestee will be certified as Mayor of Farmersville on or about May 15, 2018;

3. Plaintiff and the voting public will suffer irreparable injury unless this restraint is immediately ordered, without notice to Defendants, because any other remedy at law would be unavailable or inadequate;
4. In the public interest, the status quo of Diane Piwko serving as Mayor should be preserved, by temporarily restraining and enjoining the certification process of Randy Rice by the Election Office and the Council until the important legal issues and claims raised in this Verified Petition and Application are resolved;
5. Plaintiff's injury will outweigh any injury to Defendants that may occur on issuance of this restraining order;
6. Plaintiff shall / shall not be required to post a bond in the amount of \$ \_\_\_\_\_ until a hearing can be held on Plaintiff's application for a temporary restraining order.

### **PRAYER FOR RELIEF**

Therefore, 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, the hearing date, and citation be given by the Collin County Clerk's Office to all parties and the final canvassing authority;

3. That the court order the ballot boxes and voting materials now in the custody of the Collin County Elections Office be made available for review, inspection, and copying by Contestant on a date set by this court prior to trial, together with a copy of the election returns, mail in ballots, mail in ballot applications, lists of voters, and poll lists of the aforementioned election;
4. That the court issue an immediate restraining order against the Collin County Elections Department certifying the results of this mayoral election;
5. In the alternative, that the election be declared void as it is impossible to ascertain the true results and that an order issue for a new election for the contested office of Farmersville Mayor, pursuant to § 232.041; and
6. For all costs related to this account and for all general and equitable relief to which contestant may be entitled.

Respectfully submitted this 14<sup>th</sup> day of May, 2018,

DIANE PIWKO

BY:



NICHOLE M. MANNING

State Bar No. 24094042

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*Attorney for Plaintiff*

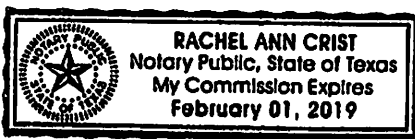
**VERIFICATION**

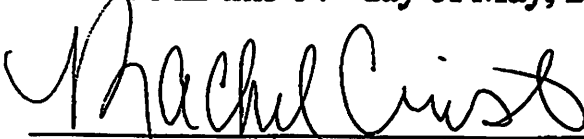
**State of Texas**            §  
**County of Collin**       §

Before me personally appeared Diane Piwko, Contestant, and certifies that she has read Plaintiff's Original Verified Petition and Application for Temporary Injunction and states that the facts contained therein are within her personal knowledge and that they are true and correct.

  
\_\_\_\_\_  
Diane Piwko, Declarant

SWORN TO AND SUBSCRIBED BEFORE ME this 14<sup>th</sup> day of May, 2018.



  
\_\_\_\_\_  
Notary Public, State of Texas  
Rachel Crist  
\_\_\_\_\_  
Printed Name  
February 1, 2019  
\_\_\_\_\_  
Commission Expiration

**NOTICE TO THE COLLIN COUNTY DISTRICT CLERK'S OFFICE**

Under Texas Election Code, Section 232.009(d), notice of the petition for election contest is required to be given to the final canvassing authority for the election, Collin County Elections Department with an address of 2010 Redbud Blvd., Suite 102, McKinney, Texas, 75069. I hereby request that citation issue including a statement directing the officer receiving the citation to return it unserved if it is not served within 20 days after the date of issuance.

Randy Rice  
419 Haughton St.  
Farmersville, Texas, 75442

Bruce Sherbet  
2010 Redbud Blvd., Suite 102  
McKinney, Texas, 75069