

IN THE HOUSE OF REPRESENTATIVES

IN THE MATTER OF ELECTION CONTEST, DISTRICT 149

Talmadge Heflin, Contestant

v.

Hubert Vo, Contestee

Report and Findings of Master of Discovery to Select Committee on Election Contests

Rep. Will Hartnett

February 7, 2005

REPORT AND FINDINGS OF THE MASTER

SUMMARY

1. Contestant Heflin has failed to establish by clear and convincing evidence that the outcome of the contested election, as shown by the final canvass indicating Contestee Vo as the winner, was not the true outcome of the election. Accordingly, Contestant Heflin's contest should be dismissed.

2. It is the master's finding that Contestee Vo's vote margin was reduced from 33 votes to 16 votes. There remain 4 votes that may be retrieved and opened and 1 voter who may be compelled to testify.¹ However, even if all of those votes were in favor of the Contestant, Contestee Vo would still have a margin of victory of not less than 10 votes.

3. Contestant has produced no evidence of any intentional voter fraud which affected the final vote tally to his detriment. Contestant's challenge to the vast bulk of the votes in question is based on technical, and apparently unintentional, violations of election law.²

4. There is evidence that several voters in District 149 were fraudulently transferred into District 137 in late 2003 or early 2004. The voters, primarily Nigerian Americans, all had their voter registrations transferred in a similar manner, likely by the same person. This matter is under investigation by the Harris County Voter Registrar and the Harris County District Attorney.

A. PROCEDURAL HISTORY OF HEFLIN v. VO ELECTION CONTEST

In the November 2004 general election, Talmadge Heflin and Hubert Vo were the only two candidates on the ballot for State Representative, House District 149. On election night, Vo

won by a 32 vote margin. During a subsequent recount, Vo's margin increased by 1 to 33. The final canvass³ showed:

State Representative District 149				
	Talmadge Heflin(I)	REP	20,662	49.96%
	Hubert Vo	DEM	20,695	50.03%

		Race Total	41,357	

The Harris County Clerk's office provided the following information:⁴

State Representative District 149		
	Talmadge Heflin(I)	20,662
	Hubert Vo	20,695

Under Votes	2,142
Over Votes	0
Total	43,499

On November 24, 2004, Heflin filed his original petition seeking an election contest. Vo's answer was filed on December 1, 2004, and Heflin perfected his contest by timely filing a cost bond on December 3, 2004.⁵

Pursuant to an order dated December 6, 2004, the Speaker of the House appointed the Select Committee on Election Contests and appointed Representative Will Hartnett as the master of discovery.⁶ The duties of the master and the committee are outlined in the order. The order was subsequently extended at the start of the 79th Legislature. Among the duties of the master

³ <http://elections.sos.state.tx.us/elchist.exe>, then select 2004 General Elections and scroll to State Representative, District 149

⁴ http://www.harrisvotes.org/HISTORY/120104/SRD149_Recount.pdf

⁵ The pleadings in this case, as well as the video of any public hearings, can be found at: http://www.tlc.state.tx.us/legal/elec_contests.html

⁶ http://www.tlc.state.tx.us/legal/contest_pdf/SpeakerOrder_AppointingMaster.pdf

are the duties to assist the House in the resolution of the election contest, to "supervise discovery," and "to receive and report evidence."

Shortly after the appointment of the master, counsel for Heflin and Vo and the master began a series of weekly conference calls in which the parties presented their views regarding the case to the master, discussed the matters related to the conduct of the election contest, planned discovery procedures, and exchanged information. In addition, the master, at each meeting, requested the parties to provide updates on items learned in discovery, and asked the parties to arrange groups of alleged illegal voters allowed to vote or legal voters whose votes were not counted into narrow, well-defined categories. Additionally, the parties exchanged and the master received Excel spreadsheets showing preliminary categories and names of voters within the categories. The final Excel spreadsheet list of voters by category that displays the findings of the master (attached as Appendix 1) is based on the list of voters and the broad categories of claims developed from the eight weekly conference calls with the parties.

The master also used these conference calls to set deadlines in the conduct of the election contest. Deadlines of importance included pleading and discovery deadlines. Discovery in this matter was to be completed on January 15, 2005.⁷ The master, after consultation with the parties, also scheduled a January 28, 2005, hearing date for this matter.

Counsel for the parties conducted extensive discovery in this case. Prior to the filing of the election contest, Heflin made open records requests of Harris County voting officials. During discovery, both Vo and Heflin availed themselves of additional open records requests. The parties met and conferred regarding documents received from public sources. Early in the case, the parties met and jointly reviewed information regarding individual voters of interest. The

⁷ Several expert depositions were admitted by the master as evidence although they occurred after the general discovery deadline. Vo has raised an issue relating to 22 depositions of voters taken by Heflin more than a week (January 22-26) after the discovery cutoff and, in several cases, filed only the day before the master's hearing. Heflin alleges the taking of the depositions was done in a manner to not inconvenience the deponents and caused no prejudice to Vo. Because the admission of these depositions does not impact the outcome of the master's findings, the master makes no finding as to whether prejudice occurred. If, however, the committee determines that the outcome of this contest is different from the recommendations of the master, the committee may wish to allow counsel to reopen this issue.

parties agreed, with the master's approval, to a method of summoning witnesses, mostly persons alleged to have voted illegally. The parties took additional oral depositions and depositions of experts. The parties exchanged interrogatories and disclosures. The parties also exchanged informal discovery by e-mail. The parties entered into a number of stipulations regarding voters.⁸

On January 28, 2005, the master conducted a hearing. Counsel for Vo and Heflin presented evidence to the master. The testimony of David Beirne, Harris County Clerk's office, and the expert testimony of Mr. Michael Baselice, Dr. Ray Perryman, and Dr. Richard Murray was also heard. The master began the hearing by reaffirming a series of guidelines that the master intended to follow regarding standards of proof in this case. Later in the hearing, the master also informed the parties of his discussions with the Select Committee chair and vice chair regarding the applicable standards of proof. On January 29, the hearing reconvened and the master continued to receive evidence and argument of the parties.⁹ At the hearing, both parties tendered and the master received evidence in the contest.¹⁰ Following the hearing, the parties submitted post-hearing briefs to clarify evidence or expand on arguments of counsel.¹¹ By the close of the evidence, the legality or illegality of 259 votes had been challenged by the parties, of which 161 were disputed.

This matter was posted for hearing by the Select Committee on Election Contests on Tuesday, February 8, 2005. A copy of this report is being tendered to the parties, the members of the committee, and all of the members of the House.

B. SUMMARY OF PARTIES' ARGUMENTS

1. HEFLIN

⁸ A brief word regarding exemplary conduct of counsel is in order. Both counsel for Heflin and counsel for Vo cooperated with the master to bring about the timely conclusion of this case. Their ability to reach agreement and, where agreement was not possible, to narrow the issues, greatly assisted the master in the handling of this case.

⁹ The video of the hearing may be viewed at http://www.tlc.state.tx.us/legal/elec_contests.html

¹⁰ Exhibits tendered by the parties are Master's exhibit 1

¹¹ Copies of all filings, including the post-trial briefs, are submitted as Master's exhibit 2

Contestant Heflin argues that the 33-vote Vo victory in the District 149 race was not the true outcome of the purported election because illegal votes were counted and legal votes were discarded.¹² Specifically, Heflin argued that 259 voters,¹³ spanning 12 categories of election error, either cast illegal votes or had their legal votes discarded.¹⁴ Adjusting for those votes would make Heflin the winner of the race. Further, if the results of the information Heflin has obtained are extrapolated over the group of illegal voters in District 149 who have not been deposed, Heflin would win by an even greater margin.¹⁵

Heflin argues that Vo's winning margin is the result of counting illegal votes and of not counting legal votes, and that he is the true winner. Alternatively, Heflin argues that the true outcome cannot be determined and that a special election should be ordered¹⁶.

2. VO

Contestee Vo alleges that the evidence shows that Heflin's challenges of voters actually represent only claims of "technical violations of certain provisions of the Texas Election Code and that even if these violations occurred, they did not change the legal outcome of the election."¹⁷ Vo contends that a fairer view of the evidence actually increases Vo's margin of victory to 36.

Further, Vo criticizes Heflin's extrapolation theory as "junk science." Rather than "meeting his burden to actually prove specific illegal votes for Vo to change the outcome, [Heflin] comes up with a way to merely estimate illegal Vo votes that he asks be deducted."¹⁸

¹² Heflin's brief on the merits, page 2

¹³ At the close of evidence, taking into account voters agreed upon by the parties or voters who were no longer challenged, 161 votes remained in dispute.

¹⁴ Heflin's exhibit 287 .

¹⁵ Heflin's brief on the merits, page 6

¹⁶ Heflin's brief on the merits, pages 5-6

¹⁷ Vo pre-trial brief, page 3

¹⁸ Vo pre-trial brief, pages 4-5

C. STANDARDS OF REVIEW

1. GUIDELINES USED BY THE MASTER

At the start of the telephone conferences with counsel for the parties, and at various times during the course of the conduct of the election contest, the master laid out principles or guidelines that the master would use in guiding discovery in this case. The guidelines are statements that the master believes are correct application of current Texas case law. Those guidelines are:

a. Construction of Election Laws

Guideline 1. In interpreting statutes, courts should not attribute to the Legislature an intention to work an injustice.¹⁹

Guideline 2. "The right to free exercise of intelligent choice by a citizen at the polls is surely one of the most treasured of all American heritages guaranteed by the Constitution and Bill of Rights. We do not believe it can be said that the free exercise of this right is to be unreasonably curtailed or restricted by judicial decree which places a narrow or strict construction on legislative rules."²⁰

Guideline 3. Election laws shall be "liberally construed to effectuate the will of the voters at the election being contested."²¹ Statutes regulating the right to vote "should be given a liberal interpretation in favor of that right."²²

¹⁹ Seawall East Townhomes Ass'n, Inc. v. City of Galveston, 879 S.W.2d 363, 365 (Tex. App.-Houston [14th Dist.] 1994, no writ); Grizzaffi v. Lee, 517 S.W.2d 885, 890 (Tex. Civ. App.-Fort Worth 1974, writ dismissed); General Motors Corporation v. Hebert, 501 S.W.2d 950, 959 (Tex. Civ. App.-Houston [1st Dist.] 1973, writ refused n.r.e.).

²⁰ Wooley v. Sterrett, 387 S.W.2d 734, 738 (Tex. Civ. App.-Dallas 1965, no writ), quoted with approval in Mahaffey v. Gill, 459 S.W.2d 919, 922 (Tex. Civ. App.-Texarkana 1970, no writ).

²¹ Deffebach v. Chapel Hill I.S.D., 650 S.W.2d 510, 512 (Tex. App. – Tyler 1983, no writ); Prado v. Johnson, 625 S.W.2d 368, 369 (Tex. App. – San Antonio 1981, writ dismissed).

²² Thomas v. Groebl, 212 S.W.2d 625, 629 (Tex. 1948); Serna v. Enriquez, 545 S.W.2d 281, 283 (Tex. Civ. App.-Corpus Christi 1976, no writ).

Guideline 4. In construing election statutes, "a qualified citizen shall not be denied the exercise of his suffrage except in those cases where the legislature has acted within constitutional authority and has expressly or by clear implication indicated an intention that a ballot of a qualified voter shall be void if certain prohibited conditions are shown to exist."²³

Guideline 5. "The general rule of interpretation is that the election laws are to be construed as directory in the absence of fraud or a mandatory provision which requires the voiding of a ballot for failure to comply with its provisions."²⁴

b. General Guidelines for the Conduct of Election Contests

Guideline 6. Time is of the essence in an election contest.²⁵

Guideline 7. Votes are presumed to be legal.²⁶ Allowance or rejection of votes by election officials is presumed to be correct.²⁷

Guideline 8. "The contestant's burden is a heavy one and the declared results of an election will be upheld in all cases except where there is clear and convincing evidence of an erroneous result."²⁸

²³ Mitchell v. Jones, 361 S.W.2d 224, 228 (Tex. Civ. App.-Texarkana 1962, no writ).

²⁴ Reese v. Duncan, 80 S.W.3d 650, 658 (Tex. App.-Dallas 2002, pet. denied); Kelley v. Scott, 733 S.W.2d 312, 313-4 (Tex. App.-El Paso 1987, writ dismissed).

²⁵ Duncan v. Willis, 302 S.W. 2d 627, 630 (Tex.1957).

²⁶ Simmons v. Jones, 838 S.W.2d 298, 301 (Tex. App.-El Paso 1992, no writ).

²⁷ Reese v. Duncan, 80 S.W.3d 650, 661 (Tex. App.-Dallas 2002, pet. denied); Chumney v. Craig, 805 S.W.2d 864, 865 (Tex. App.-Waco 1991, writ denied); Reyes v. City of Laredo, 794 S.W.2d 846, 848 (Tex. App.-San Antonio 1990, no writ).

²⁸ Price v. Lewis, 45 S.W.3d 215, 218 (Tex. App.-Houston [1st Dist.] 2001, no pet.). Also see Speights v. Willis, 88 S.W.3d 817, 821 (Tex. App.-Beaumont 2002, no pet.); Tiller v. Martinez, 974 S.W.2d 769, 772 (Tex. App.-San Antonio 1998, pet. dismissed w.o.j.).

Guideline 9. The requirement of "clear and convincing evidence" in an election contest has been well-established in Texas jurisprudence since at least 1924.²⁹

Guideline 10. "Clear and convincing" is "the degree of proof that will produce in the mind of the trier of fact a 'firm belief or conviction' as to the truth of the allegations sought to be proved."³⁰

Additional Comments Regarding Guidelines 8-10: Clear and Convincing Evidence

Both legislative and judicial precedents indicate that, to overturn an election, the Contestant has the heavy burden of proving by clear and convincing evidence that voting irregularities materially affected the election results. Since 1993, Texas courts of appeals have repeatedly approved this statement.³¹ Legislative precedent also indicates that this is the appropriate standard. In the two most recent House election contests, the committees investigating the election contests adopted the clear and convincing evidence burden of proof. In *Fogo v. Talton*, the chair stated that "the burden of proof was to make the showing required by Section 221.003 was by clear and convincing evidence." Likewise, in *Erickson v. Wohlgemuth*, the committee also adopted the burden of proof to make the showing required by Section 221.003 in the contested election by clear and convincing evidence.³²

²⁹ See *Reese v. Duncan*, 80 S.W.3d 650, 655 (Tex. App.-Dallas 2002, pet. denied); *Jordan v. Westbrook*, 443 S.W.2d 616, 618 (Tex. Civ. App. 1969, no writ); *Johnston v. Peters*, 260 S.W. 911, 916 (Tex. Civ. App. 1924, writ dismissed).

³⁰ *Price v. Lewis*, 45 S.W.3d 215, 218 (Tex. App.-Houston [1st Dist.] 2001, no pet). In re K.C.M., 4 S.W.3d 392, 395 (Tex. App.-Houston [1st Dist.] 1999, pet. denied).

³¹ See *Speights v. Willis*, 88 S.W.3d 817 (Tex. App.-Beaumont 2002); *Price v. Lewis*, 45 S.W.3d 215 (Tex. App.-Houston [1st Dist.] 2001); *Olsen v. Cooper*, 24 S.W.3d 608 (Tex. App.-Houston [1st Dist.] 2000, no pet.); *Tiller v. Martinez*, 974 S.W.2d 769 (Tex. App.-San Antonio 1998); *Alvarez v. Espinoza*, 844 S.W.2d 238, 242 (Tex. App.-San Antonio 1992, writ dismissed w.o.j.); *Guerra v. Garza*, 865 S.W.2d 573 (Tex. App.-Corpus Christi 1993, writ dismissed w.o.j)

³² Junell, Seidlits, and Shuffler, *Consideration of Illegal Votes in Legislative Election Contests*, 28 Tex. Tech L.Rev. 1095, 1144 and 1152 (1997) (citing the comments of the committee chair recorded in the *Fogo* and *Erickson* hearings). ("Election Contest Law Review")

"Clear and convincing evidence is defined as that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established."³³ This intermediate standard "falls between preponderance of the evidence of ordinary civil proceedings and the reasonable doubt standard utilized in criminal proceedings."³⁴

This standard is well understood in Texas and has been applied in a wide variety of cases, including termination of parental rights³⁵ and the award of exemplary damages.³⁶ While the proof must weigh heavier than merely the greater weight of the credible evidence, there is no requirement that the evidence be unequivocal or undisputed.³⁷ Last month, the Texas Supreme Court commented on clear and convincing evidence:

"But when proof of an allegation must be clear and convincing, even evidence that does more than raise surmise and suspicion will not suffice unless it is capable of producing a firm belief or conviction that the allegation is true. Evidence of lesser quality is, in legal effect, no evidence..."³⁸

The Texas Supreme Court, in In re G.M., citing a U.S. Supreme Court case applying the standard to Texas family proceedings, explained the reason for the high standard:

The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, "is to instruct the fact finder concerning the degree of confidence our society thinks [the fact finder] should have in the correctness of factual conclusions for a particular type of adjudication"...The standard

³³ State v. Addington, 588 S.W.2d 569 (Tex. 1979); Gore v. Scotland Golf, 136 S.W.3d 26, 33 (Tex. App.-San Antonio)

³⁴ See State v. Addington, 588 S.W.2d 569, 570 (Tex.1979).

³⁵ Tex. Family Code Sec.161.001

³⁶ Tex. Civ Prac & Rem. Code 41.003(a)

³⁷ See Citizen Nat'l Bank v. Allen Rae Inv., Inc, 2004 WL 1595732 (Tex. App.-Fort Worth 2004).

³⁸ Southwestern Bell v. Garza, Cause no. 01-1142Tex. Sup. Ct., issued December 31,2004 (emphasis added). The opinion may be found at <http://www.supreme.courts.state.tx.us/historical/2004/dec/011142.htm>

serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision."

The intermediate standard..."is no stranger to the civil law."... One typical use of the standard is in civil cases involving allegations of fraud...The interests at stake in those cases are deemed to be more substantial than mere loss of money and some jurisdictions accordingly reduce the risk to the defendant of having his reputation tarnished erroneously by increasing the plaintiff's burden of proof.³⁹

Both the legislature and the Texas judiciary in applying this standard were correct to set the clear and convincing standard as a higher bar. The right to vote is no less important than any other right to liberty which requires at least a clear and convincing standard to inhibit such liberty through disenfranchisement. Overturning the results of an election is a drastic remedy, and due process requires this House to receive substantial proof and impose a standard more substantial than a preponderance of the evidence.

c. Specific Guidelines for Resolution of Votes in This Contest

Guideline 11. The Contestant must show that an illegal vote was cast in the race in question.⁴⁰

Guideline 12. In the current election contest, the Contestant has the burden of proving, by clear and convincing evidence, that the margin of victory is completely offset by some combination of illegal votes cast, or excluded legal votes.⁴¹

Guideline 13. As a general rule, the Contestant must tie each illegal vote to a particular candidate by direct or circumstantial evidence.⁴²

³⁹ In re G.M., 596 S.W.2d 846, 847 (Tex. 1980)

⁴⁰ Reese v. Duncan, 80 S.W.3d 650, 656 (Tex.App.-Dallas 2002, pet. denied); Simmons v. Jones, 838, S.W.2d 298, 300 (Tex.App.-El Paso 1992, no writ); Medrano v. Geinser, 769 S.W.2d 687, 688 (Tex.App.-Corpus Christi 1989, no writ); Miller v. Hill, 698 S.W.2d 372, 375 (Tex.App.-Houston [14th Dist.] 1985, writ dismissed w.o.j.).

⁴¹ See footnote 31 and the discussion on Comments regarding Guidelines 11-13 and arguments for a lower standard of proof

⁴² Miller v. Hill, 698 S.W.2d 372, 375 (Tex.App.-Houston [14th Dist.] 1985, writ dismissed w.o.j.).

Comments regarding Guidelines 11-13 and arguments for a lower standard of proof

In order to prevail in this contest, the Contestant must show that the margin of victory in this race was offset by clear and convincing evidence of excluded legal votes or illegal votes cast in the race that are tied to a particular candidate.

Guideline 11 states that the Contestant must show that an illegal vote was cast in the race in question. Guideline 12 states "In the current election contest, the Contestant has the burden of proving, by clear and convincing evidence, that the margin of victory is completely offset by some combination of illegal votes cast; or excluded legal votes." Guideline 13 states "As a general rule, the Contestant must tie each illegal vote to a particular candidate by direct or circumstantial evidence." Taken together, these three principles place a high standard on the Contestant in an election contest case. This is exactly the standard placed on the Contestant in the last two election contests before the House.

Heflin's counsel has argued that a lesser standard of proof may be used. In Heflin's post-submission brief, Heflin argues that "Alternatively, it is possible that the master will find that the number of illegal votes is greater than the number of votes necessary to change the outcome of the election, irrespective of which candidate has the higher number of legal votes." Heflin's counsel contends that the Select Committee must take those votes into account in making its judgment under Section 221.011, Election Code,⁴³ and "in the event the Committee finds that the true outcome of the contest cannot be determined, then Contestant Heflin requests that a special election be ordered immediately."⁴⁴ The Heflin prayer tracks the language found in Section 221.009(b), Election Code.⁴⁵

⁴³ Heflin Post-Submission Brief at 4. Section 221.011(b) of the Election Code states "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."

⁴⁴ Id. at 13

⁴⁵ Section 221.009(b), Election Code, states "[I]f the number of illegal votes is equal to or greater than the number of votes necessary to change the outcome of an election, the tribunal may declare the election void without attempting to determine how individual voters voted."

In past election contests, contestants have urged the Select Committee to adopt a broad reading of Section 221.009(b), Election Code, such that, if the number of unaccounted for or unassigned illegal votes exceeds the margin of victory, the election should be voided. In *Erickson v. Wohlgemuth*, the contestant argued that a pool of 55 or 72 unascertained "prima facie" illegal voters would allow an election to be declared void because that number exceeded the winning margin of 22 votes.⁴⁶ In *Fogo v. Talton*, the contestant argued that Section 221.009(b) did not require testimony from each illegal voter or proof that such testimony would be physically impossible, and that, because the number of illegal voters exceeded the winning margin, the tribunal must declare the election void.⁴⁷ The master of discovery and the election contest chairman of these two cases, in discussing this proposition in a law review article later, stated "The contestant's arguments reflected the very broadest interpretation of section 221.009(b), urging in effect that the election be declared void because of the number of unascertained alleged illegal votes, but without presenting any specific evidence tying those votes to the contested race."⁴⁸

In both *Fogo* and *Erickson*, the Select Committee rejected the attempts to apply a lower standard. Observers of the committee decisions noted that "[i]t is a reasonable interpretation of the statutes and existing precedent that, in a contest based on the counting of illegal votes, this burden requires the evidence presented to sufficiently tie the illegal votes to the contested race."⁴⁹

The lower standard has also been rejected by Texas appellate courts. In *Slusher v. Streater*, the 1st Court of Appeals, citing opinions from the Corpus Christi and 14th Court of

⁴⁶ Election Contest Law Review Article at 1154 (citing *Erickson* Hearing on the Merits at 278-81)

⁴⁷ *Id.* at 1145.

⁴⁸ *Id.*

⁴⁹ *Id.* at 1159.

Appeals, held that "the contestant must prove that illegal votes were cast in the election being contested and that a different and correct result would be reached by not counting the illegal votes." ⁵⁰

The Dallas Court of Appeals also adopted this standard in *Reese v. Duncan*.⁵¹ The *Reese* court said "In a multi-race election the contestant must first show that (1) illegal votes were counted or (2) an election official prevented eligible voters from voting, failed to count legal votes, or engaged in other fraud, illegal conduct or mistake. The contestant must next show the illegal votes were cast in the race being contested. Finally, the contestant must show either a 'different result would have been reached by counting or not counting certain specified votes or irregularities were such as to render it impossible to determine the will of the majority of the voters participating.'" ⁵² In *Reese*, there was an implied finding by the trial court that the persons who were alleged to have voted illegally participated in the contested race.⁵³ Only by following the three-step process outlined in *Reese*--determining an illegal vote, tying it to the race, and showing its impact on the race--may a tribunal allow an illegal vote to affect the outcome of an election.

In this case, Heflin argues that there are more illegal votes than the margin of victory by Vo. The master has examined every vote raised by the parties and made a determination of whether they were an illegal vote, and finds Heflin's contention is correct. However, there was no competent evidence that any of these voters actually voted in the District 149 race.⁵⁴

⁵⁰ 896 S.W.2 239, 241 (Tex. App.-Houston [1st Dist.] 1995, no writ).

⁵¹ 80 S.W.3d 650, 665 (Tex. App.-Dallas 2002, pet. denied)

⁵² *Id.* at 656

⁵³ 80 S.W.3d at 664

⁵⁴ There is evidence of over 2,000 undervotes (voters who did not participate in the District 149 election) . The Contestant's expert testimony in this case did not take into consideration undervotes or attempt to establish the likelihood that a nondeposed illegal voter actually participated in the District 149 election. This is a failure of proof by the Contestant.

Accordingly, Heflin has not satisfied the clear higher standard of proof enunciated in the legislative contests and the case law.

It is also important to note Heflin's counsel's allegation that to ignore illegal votes is "akin to sweeping this entire matter under the carpet and hoping no one notices."⁵⁵ The master has examined each vote in this case. He has made a diligent effort on the basis of evidence before him to make a determination of whether a legal or an illegal vote was cast. A list of the determinations by the master of all illegal votes is presented to the committee. Names are named. There is no doubt that in this election, as in most, illegal votes were cast. In one case, it was because the election official gave a voter card to a non-citizen.⁵⁶ In other cases, an election judge improperly punched in a four-digit code, rather than a nine-digit code, and made a potentially illegal vote irretrievable.⁵⁷ Some voters misunderstood where they were supposed to vote, or voted in the wrong place out of confusion or in obedience to an election judge's order.

It is also clear that mistakes were made. The Voter Registrar of Harris County acknowledges giving a card to a voter who should not have had one, and the Harris County Clerk's office admits to errors by several of the 65 precinct workers at multiple sites on election day. A substantial number of properly registered voters in this contest were initially rejected in exercising their right to vote at the polls, because their voter registration had been altered by an outsider, and, despite being aware of some alterations, the voter registrar had been unable to locate all of the alterations.⁵⁸

⁵⁵ Heflin Post-Trial Brief at 13

⁵⁶ See Voter Subpoenaed in Vo-Heflin Flap, Houston Chronicle (Jan. 11, 2005). A Norwegian citizen was given a voter card despite correctly disclosing that he was not a U.S. citizen. The voter voted in the District 149 election. The Harris County voter registrar has acknowledged that his office erred in processing the application.

⁵⁷ Heflin Exhibit 259 (Beirne retrieval code letter) and Vo Exhibit 3 (Deposition of Mr. David Beirne) confirming that election judges made mistakes in the operation of the voting machines which caused voters to be shown as having voted in the wrong precinct and several provisional ballots being made irretrievable.

⁵⁸ See the discussion regarding Category 1.0 voter Ejjiofor in Section D1.

The two months of discovery in this case show that very little about the November 2004 election in District 149 has not been examined. If anything, this contest has pulled back the carpet and allowed the master, the parties, and the Select Committee to sweep away the dust to allow an in-depth examination of the problems of conducting a modern election in a mobile urban society, while guaranteeing access to the ballot box for all and ensuring the integrity of the elections.⁵⁹

d. Additional Guidelines

Guideline 14. A registered voter in the district who voted in the wrong precinct in the district is not an illegal voter for purposes of an election contest before the House.

Guideline 15. In the circumstances presented in this case and in other minor instances, ballots are valid even though not signed by the election judge.⁶⁰

Guideline 16. In the circumstances presented in this case and in other minor instances, ballots are valid even though the voter did not sign the combination list.⁶¹

Guideline 17. Voters who have moved out of the district but stayed within the county are legal voters.⁶²

Guideline 18. Voting by a person domiciled outside the county of the district is illegal, even if the person formerly was domiciled in the district.⁶³ Intention to return to the district does not

⁵⁹ During the final conference call, all the parties and the master indicated a willingness, after the resolution of this case, to sit down and discuss their experiences and jointly discuss possible changes in election law raised by this case.

⁶⁰ *Simmons v. Jones*, 838 S.W.2d 298, 301 (Tex. App.-El Paso 1992, no writ). In *Simmons*, two persons selected and voted ballots that did not have the election judge's signature on the back. Nevertheless, it is certainly the better practice to have the back of the ballots signed. Also see *Davis v. Walcott*, 96 S.W.2d 819 (Tex. Civ. App.-San Antonio 1936, writ dismissed).

⁶¹ *Gottlieb v. Hofheinz*, 523 S.W.2d 7, 10 (Tex. Civ. App.-Houston [1st Dist.] 1975, writ dismissed w.o.j.). In *Gottlieb*, 14,984 persons failed to sign the signature roster in 24 separate precincts in a municipal election. Again, it is certainly the better practice to have the signature roster signed.

⁶² Election Code §11.004.

⁶³ Election Code §11.003; *Harrison v. Jay*, 271 S.W.2d 388, 389 (Tex. 1954).

alter the illegality of the vote.⁶⁴ Section 11.005, Election Code, does allow the vote to count in races common to both the correct and incorrect districts.

e. Additional Evidentiary Issues

The issue of admissibility of tape recorded statements and the use of extrapolation evidence merits additional discussion:

i. Use of Telephone Survey

Heflin's counsel hired a firm to conduct a phone survey. The firm, according to Heflin's counsel, independently determined to tape the telephone calls.⁶⁵ The firm placed phone calls to voters identified as voting in the contested race. The master played Exhibit 284--two recorded phone calls alleged to be with Patrick Okoro and Pamela Plumber-- who are alleged to be illegal voters and who were not deposed.

From statements by Heflin's counsel and the transcripts of the two tapes played, several observations can be made. First, identification of the person on the other end of the line was not always clear. Often the identification of the person is based on the operator's identification of the phone number called and the request to speak to the individual. In the two phone calls played for the master, there was no reliable indicia that the person requested to be spoken to was in fact the person alleged to be the illegal voter. Additionally, Heflin's counsel admits that, in at least one case, the phone operator misidentified the person being called, confusing him with another person with the same name.

⁶⁴ Slusher v. Streater, 896 S.W. 2d 239, 246 (Tex.App.-Houston [1st Dist.] 1995, no writ).

⁶⁵ There is no doubt that the Penal Code allows tape recordings of individuals without their consent. Vo raised an issue that the taping of conversations without notice violated the Texas Disciplinary Rules of Professional Conduct. Under those rules, attorneys may not secretly tape record a phone call or circumvent their ethical obligations by requesting that clients secretly record conversations to which the attorney is a party. Ethics Opinion 514 (Feb 1996) .

Heflin's counsel stressed that the firm he hired independently made the decision to tape the conversation without informing the person. Under Rule 5.03(a), Rules of Professional Conduct, with respect to a nonlawyer employed or retained by or associated with a lawyer, a lawyer having direct supervisory authority over a nonlawyer assistant "shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer". Because the tapes were not admitted for other reasons, it is unnecessary to address the issue raised by Vo.

Heflin tendered recordings of these two phone calls as Exhibit 284, and tendered all the taped phone conversations as Exhibit 285. Vo objected, arguing that the documents were hearsay, that he had no opportunity to cross-examine these persons, and that there was no attempt to identify these persons. Heflin responded that the tapes should be admissible as a hearsay exception, at least under Texas Rule of Evidence 803(24) (admission against party interest). Also, Heflin suggested that the restrictions of the hearsay rules may not apply in cases involving broader policy issues, such as finding the true outcome of this election. The master ruled the tapes inadmissible based on hearsay, lack of authentication, and the fact that statements about whom a person voted for are not statements against pecuniary interest or bases for liability; but presents the recordings to the committee to make its own determination. In Heflin's post-submission brief, Heflin argues that testimony on the tapes should be admissible because the tapes are "both reliable and trustworthy."⁶⁶

The master follows the Texas Rules of Evidence in making this determination. In the proclamation appointing the master and the select committee, the Select Committee is instructed to "use the...Texas Rules of Evidence as guidelines in its proceedings, subject to changes in those rules or limitations imposed by the committee."

A hearsay statement is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. As a general rule, hearsay statements are inadmissible. However, Rule 803(24) of the Texas Rules of Evidence sets out a limited exception to the hearsay rule. The exception states:

(24) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, or to make the declarant an object of hatred, ridicule, or disgrace, that a reasonable person in declarant's position would not have made the statement unless believing it to be true. In criminal cases, a statement tending to expose

⁶⁶ Heflin Post-Submission Brief at 7.

the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

The tapes fail under these criteria. First, the tapes were not authenticated as required by Texas Rule of Evidence Rule 901.⁶⁷ Authentication is usually a condition precedent to admission of evidence. Second, Heflin bore the burden, as the party seeking to admit the tapes, to establish who the declarant on the tapes was. As shown by the admitted misidentification of the voter by Heflin, there was no unique identifying information elicited from the persons being recorded. In the phone call to Patrick Okoro, the person was never asked to identify himself by first name. Accordingly, the tapes were held inadmissible and were not considered.⁶⁸ If the tapes were admitted, it would allow unsworn statements made by unknown people that are based wholly on hearsay and that have not been tested by cross-examination. At least one Texas court faced with the same standard of proof excluded similar evidence because of the fundamental problem that the witness is in effect giving unsworn testimony untested by cross-examination.⁶⁹

⁶⁷ Heflin's counsel indicated that he could get someone to authenticate the tape either by phone or by affidavit. However, no proffer or affidavit was submitted .

⁶⁸ An example of why hearsay information contained within an admissible document is in fact inadmissible is found in footnote 2 in *Garcia v. State*, 126 S.W.3d 921 (Tex. Crim. App. 2004):

For example, a delusional person might call Crimestoppers to report that George Washington was cutting down a cherry tree on the Capitol grounds. Although Crimestoppers has a business duty to accurately record all incoming calls and to keep the records as part of its business records, the caller had no business duty to report accurately. His statements may be contained within a business record, but they are not admissible to establish the fact that George Washington was, in fact, cutting down a cherry tree, although they would be admissible to establish that the person did call and make a report of some type on a given day.

In this case it is clear that the tape sought to be introduced showed that the phone surveyor made a recording and talked to a person at a set time, but it is not admissible to show that the person who answered was the person who was being called or the alleged illegal voter. Additionally, the caller who answered the phone, as in *Garcia*, had no duty to answer accurately. Absent other indicia of corroborating circumstances clearly indicating trustworthiness of each person called, the statements are not an exception to the hearsay rule and are not admissible to prove how that unknown person "voted."

⁶⁹ In re T.L.H., 630 S.W.2d 441,447-448 (Tex. App.-Corpus Christi 1982, no writ)

ii. Extrapolation Data

Heflin offered the expert testimony of Mr. Michael Baselice regarding a theory for the extrapolation of votes. Mr. Baselice opined that, if the same percentage of illegal voters who had not been deposed acted in the same manner as the pool of illegal voters who had been deposed and whose votes had been obtained, then simple sixth grade math could project how those voters would vote. Mr. Baselice's opinion was countered by both Dr. Perryman and Dr. Murray. Because of the admission by Mr. Baselice that performing his extrapolation is nothing more than sixth grade math, the master does not feel that expert testimony is material regarding this issue. Accordingly, the master places no weight on the opinions of the three experts.

This leaves the issue of whether extrapolation evidence is useful at all. First, the approach suggested by Heflin failed to take into account that several voters, among the known responses persons, did not vote for either Vo or Heflin. A significant number of known deposition responses, about 15% (21/135) were unclear or did not recall who they voted for. Mr. Heflin's calculation does not take this into consideration.

A second limitation is the sample pool. There is no evidence that any unresolved illegal voters will act any more or any less like the group of known voters (or for that matter, any more or any less like the voters in the general election). Vo's attorneys have suggested that they would act more like the large general election population. Heflin's attorneys have suggested that they would act more like the small pool of other illegal voters. Mr. Baselice admitted that he knew nothing of the pool composition; he was merely applying a mathematical formula to a number given to him by Heflin. So, like sixth grade math, Heflin's approach leaves the master multiplying two numbers and getting a sum. While the master is certain of the computational ability of the experts, the master is uncertain what that sum means, whether the right number has been multiplied (the general election number or the "other unknown voter" number), and whether any sum generated from such an unreliable formula is clear and convincing evidence of anything. Texas Rules of Evidence Rules 702 and 703 require that opinions be based on sound underlying data and are not admissible if the data is not sound. The method suggested by Heflin

is not sound. The deposition of expert Murray makes it clear that major flaws exist in attempting to perform such a calculation. The testimony of expert Baselice makes it clear that he did not have an understanding of the pool of voters he was calculating. He was simply performing multiplication. This does not meet the requirements of Rule 702 or 703.

Previous masters and select committee chairs accurately predicted that:

"a future committee may well be confronted with the question of the appropriateness of accepting or speculating on the application of statistical analysis or mathematical projections to one or both of the two probable remaining pools of unascertained voter, those tied to the race by voter testimony and those not so tied, in an attempt to attribute those votes to particular candidates...The ultimate acceptance or rejection of such analysis or projections will depend on the character and scope of the alleged illegal voting, the range of the numbers in question, the credibility and persuasiveness of the expert witnesses, the quality and persuasiveness of the parties' arguments...and the various other factors inherent in determining such complex matters, including whether the ultimate use of the analysis or projections is to be able to declare a winner or to declare an election void.⁷⁰

In this case, the master finds no clear and convincing evidence that either set of calculations is meaningful or valid. The character and scope of alleged illegal voting varies widely, and there is a wide variation in the numbers of illegal voters by category. The master did not consider this testimony in making his findings.

D. DISPOSITION OF ALLEGED ILLEGAL VOTES COUNTED AND ALLEGED VALID VOTES NOT COUNTED.

Attached to this report as Appendix 1 are the master's conclusions regarding each alleged illegal vote and each alleged excluded legal vote. At the behest of the master during several conference calls in the weeks prior to the hearing, the parties classified and refined alleged illegal votes that were counted and alleged valid votes that were not counted into 13 different categories. Category 8 was used to designate voters who, according to Contestant, had voted but were not listed on a voter history file provided to Contestant by the Harris County Clerk's

⁷⁰ Election Contest Law Review Article at 1160.

office. Those discrepancies were resolved, and that category was dropped. Within some of the categories are subcategories that group voters based on similar fact situations. For the sake of continuity, each person has been assigned an identification number based on the person's number on Contestant's spreadsheet filed with the master on January 22, 2005. If the person was dropped from the contest after that date, the person's number was not reassigned to another person, and this has created gaps in the numbering sequence on the final disposition chart. The voter's identification number on this table also matches the voter's identification number discussed during the master's two-day hearing. If a person was added to the contest, or a previous challenge to the person was revived, the person was placed in an existing category and assigned a number followed by an "A."

SUMMARY

At the start of the proceeding, Mr. Vo had a 33-vote lead. The following chart shows the additions or deduction to that lead for each category:

**HOUSE DISTRICT 149 ELECTION CONTEST VOTE ADJUSTMENTS
BY MASTER OF DISCOVERY**

Category	Explanation	Adjustment		Voter Number=Vote (H Heflin V Vo)
		Heflin	Vo	
1.0	voted in HD149 but registered in and Harris County resident of another HD	-1	-2	6=H, 11=V, 14=V
2.0	voted and registered in HD149, but voted in wrong precinct	-0	-0	none
3.0	voted in and resident of HD149, but registered in another Harris County HD	-0	-2	20=V, 25=V
4.0	voted in HD149, but resident of a county other than Harris County	-40	-51	27=V, 28=V, 31=V, 32=H, 34=H, 36=H, 37=H, 38=V, 39A=H, 40=V, 41=H, 42=V, 47=V, 48=V, 51=V, 54=H, 55=V, 56=V, 57=H, 59=H, 61=V, 62=V, 63=V, 65=V, 66=V, 67=H, 70=V, 71=V, 72=H, 73=H, 75=V, 76=V, 77=H, 81=V, 82=V, 84=H, 86=H, 94=H, 95=V, 96=H, 100=H, 102=H, 108=H, 109=V, 112=H, 114=V, 115=V, 120=H, 122=H, 123=H, 124=V, 125=V, 127=V, 128= V, 129=V, 130=V, 131=V, 132=V, 136=H, 137=H, 139=H, 142=V, 143=V, 144=V, 145=H, 146=V, 147=H, 148=H, 150=H, 151=H, 152=V, 153=V, 154=H, 154A=H, 156=V, 157=H, 158=H, 159=H, 163=V, 164=H, 169=H, 170=V, 171=V, 172=V, 173=V, 174=H, 175=V, 176=V, 177=V, 179=V, 180
5.0	unregistered voter on election day	-0	-3	184=V, 190=V, 197=V
6.1-6.4	double vote	-1	-0	199=H
7.1-7.3	various signature problems	-0	-0	none
9.1-9.3	provisional ballot, no retrieval code	-1	-3	237=V, 238=V, 242=H, 243=V
10.1	accepted by the early voting ballot board but should have been rejected	-0	-0	none
10.2	rejected by the early voting ballot board but should have been accepted	+0	+0	none
11.0	non-citizen	-1	-0	259=H
12.0	no statement of residency (SOR)	-0	-0	none
13.0	mail ballot Election Code violations	-0	-0	none
Total		-44	-61	

The final conclusion is that Mr. Vo won the race by 16 votes. This margin of victory could increase or decrease by the four ballots remaining to be opened and one person who could be compelled to testify. Because the five votes that could be counted or removed do not make a difference in the final analysis, it is for the committee to determine whether the ballots should be opened or the voter compelled.

In addition, there were 57 illegal votes cast for which the master has no competent evidence whether the voter participated in the District 149 election and for whom the person voted.

1. Category 1.0. (Illegal Votes to be deducted: Vo 2, Heflin 1)

The 15 persons listed in Category 1.0 were registered to vote in precincts located outside District 149 (generally within Harris County) but were allowed to vote in precincts within District 149. As a part of the voter registration process, an applicant is required to give the applicant's residence address.⁷¹ Under Section 11.001(2), Election Code, persons who reside outside a district are normally not eligible to vote in an election within that district. An exception to this rule exists that allows a former resident of a precinct to vote a full ballot in that precinct if the person has moved elsewhere in the same county and the person's new voter registration has not become effective.⁷² Evidence presented to the master indicates that most persons in this category do not reside in the district, do not fall into the exception provided by Section 11.004, and thus are illegal voters.

a. Persons deposited. Five persons in Category 1.0 were deposited. Of these, the parties agreed that one was an illegal vote cast for Contestee Vo. The master was able to determine that two more illegal votes were cast, and the parties agreed that of these one vote was cast for Contestee Vo and one for Contestant Heflin. The master determined that the remaining two votes were legal.

Contestant disputes the master's determination that Ms. Franca Ejiofor was a legal voter in District 149. In her deposition, Ms. Ejiofor stated that she resided at the same address for the last six years and that she went to vote on election day at her current precinct at an elementary school. The list of registered voters at the precinct in which she voted did not include her name, but election officials wrote her name on the signature roster, and she signed her name next to the

⁷¹ Sec. 13.002(c)(7), Election Code.

⁷² Sec. 11.004, Election Code.

new entry. Records obtained from the Harris County voter registrar indicate that Ms. Ejiofor was registered at the address she stated was her residence in her deposition. But on January 20, 2004, a change to her registration was logged on the Harris County records. The registration application corresponding to this change stated a new residence address in District 137, but listed the previous registration address as her mailing address. In her deposition, Ms. Ejiofor said that she did not sign this new registration application and did not authorize anyone else to sign on her behalf. The signature on the application does not match the signature of Ms. Ejiofor on the poll list or on the deposition she signed in January 2005.

It appears that Ms. Ejiofor's voter registration was moved without her knowledge to another district in which she did not reside. She is likely a victim of a broad scheme conducted in Harris County in late 2003 and early 2004 to involuntarily re-register persons with African or Nigerian surnames into District 137. In the March 2004 Democratic Primary, the incumbent from District 137, Scott Hochberg, faced a challenge from Bernardo Amadi, a Nigerian immigrant. In the election, Representative Hochberg won 72% of the vote, and subsequently, the Harris County voter registrar conducted an investigation in which he found that over 100 people primarily with African or Nigerian surnames had their registrations involuntarily transferred in time to be effective to vote in the Democratic primary in March 2004. Results of the investigation were forwarded to the Harris County District Attorney.⁷³

⁷³ For a brief discussion of the ongoing investigation, see "Voter fraud suspected in House District 137," Houston Chronicle, Feb. 5, 2005 . <http://www.chron.com/cs/CDA/ssistory.mpl/metropolitan/3025211> .

It is unclear whether knowledge of these acts was widespread and what impact the acts had on illegal voting in District 149. On election day, at least one election judge noted on the provisional ballot application for both Helen and Ignatius Okeze that the Okezes had been given a fraudulent address by a Nigerian candidate running for state representative in the 2004 elections. Counsel for both parties agree that they had not been informed about any fraudulent transfer scheme. In fact, none of the public records information provided, including the voting cards of various Nigerian Americans, bore any indication that there were any issues relating to the authenticity of the cards or the eligibility of the voters.

On Friday, February 3, 2005, in response to a request from the master, the Harris County voter registrar sent the original voter registration card of Helen Okeze to the master. That voter card indicates that her voter registration was recently fraudulently transferred. It appears from the Harris County Voter Registration page, that the Voter registrar is attempting to undo the fraudulent transfers. As of Saturday, February 4, the Okezes are shown as properly registered in District 149. Ms. Ejiofor is still shown as a District 137 voter.

Given this set of circumstances, Ms. Ejiofor should not lose her right to vote in District 149 when she was previously registered in the district, has lived in the same house for six years, and did not authorize a change in voter registration. Accordingly, the master finds that Ms. Ejiofor's vote in the precinct of her residence was legal.

The remaining person whom the master determined was a legal voter is Mr. Michael Flowers. According to Mr. Flowers' deposition, he had resided at the same address within District 149 for some 23 years. In November of 2002 he moved to a new address outside District 149, but within Harris County. He stated that he had filled out a registration application for the new address, but when he showed up at the new precinct, he was not on the list of registered voters. The election officials there told him to return to his former precinct, where his name was on the list of registered voters. At the old precinct, he signed the voter roster next to his name, filled out a statement of residence indicating his new address, and was allowed to vote. This vote is legal because of the application of Section 11.004, Election Code, which allows voters to return to their former precinct of residence and vote a full ballot when they moved within the county and their new registration is not effective.

b. Persons not deposed. Of the 10 persons who were not deposed, the master was able to determine that seven cast illegal votes. Three persons had their registrations fraudulently transferred in the scheme discussed above and thus cast legal votes. Although a telephone survey purports to reveal the vote of one of these illegal voters, the master finds that there is no admissible evidence that ties any of these illegal voters to the District 149 race.

2. Category 2.0. (No illegal votes to be deducted)

The two persons in this category were registered to vote at a precinct within District 149, but voted at a different precinct within District 149. There is insufficient evidence to determine how either voter in this category voted, and thus, under the legal standards discussed in Guidelines 11-14 above, neither person will have an impact on this contest. Contestant believes that these votes are illegal because, under Section 11.003, Election Code, a voter must vote in the

election precinct in which the person resides. In *Harrison v. Jay*,⁷⁴ the Texas Supreme Court held that, under the predecessor statute to Section 11.003, in an election held countywide on the question of whether to move a county seat, votes cast in a precinct other than the precinct in which the voter resided were properly excluded.

Although precedents of the Texas Supreme Court should give the committee and the house significant guidance in interpreting election law, nevertheless under the separation of powers doctrine contained in Section 1, Article II, Texas Constitution, and the provision in Section 8, Article III, making each house the judge of the qualifications of its own members, decisions of the supreme court are not binding on the legislature in determining an election contest. Legislative policy has evolved since 1954 to recognize the increasing mobility of voters and allow formerly ineligible votes to now be counted in situations in which a voter casts a ballot at a precinct that is not the voter's precinct of residence, but only to the extent that races are common to both the precinct of residence and the precinct in which the vote is cast. In the case of these two votes, no harm is done to the democratic process by allowing these votes to stand. The master believes that for purposes of an election contest, in a situation such as this where a person is properly registered in the district and is allowed to vote by election officials in another precinct in that district, the vote should be counted.

a.. Persons deposited. Only one person in Category 2.0 was deposited. In her deposition on written questions, Ms. Roxana Salazar appears to give inconsistent answers as to who she voted for in the District 149 race. She stated that she voted straight ticket Democrat, that she voted for Mr. Vo, and that she did not vote a straight Republican ticket. She also said that she could possibly have voted for Mr. Heflin, that she did vote for Mr. Heflin, and that she could have voted straight ticket Republican. Based on these responses, the master finds that it is unclear as to how Ms. Salazar voted in the District 149 race.

b. Persons not deposited. The remaining person in Category 2.0 was not deposited.

⁷⁴ 271 S.W.2d 388, 389 (Tex. 1954)

3. Category 3.0. (Illegal votes to be deducted: Vo 2, Heflin 0)

The 10 persons listed in this category were registered in a precinct outside District 149 in Harris County, but, according to Contestant, moved into District 149 and voted before their registrations became effective in the new precinct. This category is very similar to Category 1.0, and the same law discussed in that category applies to persons in this category.

a.. Persons deposed. Five persons in Category 3.0 were deposed. The master has determined that two of these persons cast illegal votes because the registration in the person's new precinct of residence did not take effect until after the November 2, 2004 general election. The parties agreed that both of these persons cast votes for Contestee Vo.

Contestant disputes the master's determination that the votes cast by Helen Okeze, Ignatius Okeze, and Emmanuel Oriahi were legal, for the same reasons he objected to the determination made for Ms. Ejiofor in Category 1.0. The master finds that each of these persons was registered to vote at an address located within District 149 before January 1, 2004. By early 2004 however, a new application was completed for each person transferring their registration to an address located in District 137. The signatures on these transfer applications do not match the signatures on documents that these persons signed for the November 2004 election or the depositions taken in this contest. Both Okezes voted in the period for early voting by personal appearance and were required to vote a provisional ballot because they were no longer on the list of registered voters in their home precinct. The election judge noted on both of the provisional ballot affidavits that the Okezes had been given a fraudulent address by a Nigerian candidate running for state representative in 2004 elections. On its face, this is a cryptic comment, but when placed in the context of the registration scheme discussed in Category 1.0, it is apparent that the Okezes also had their registrations changed involuntarily to District 137.⁷⁵ Mr. Oriahi voted on election day and was also required to vote a provisional ballot. On his affidavit, the

⁷⁵ At the request of Contestant's counsel, the master called Mr. Okeze to discuss the registration issue. Mr. Okeze confirmed to the master that his registration transfer was fraudulent.

election judge noted that the voter stated that he had never lived at the address listed on his registration certificate. It is likely that Mr. Oriahi also fell victim to the same transfer scheme.

As with Ms. Ejiofor, the master finds that the votes cast by Helen and Ignatius Okeze and Emmanuel Oriahi were legal and properly cast in the precinct of their residence. To find otherwise would disenfranchise these voters based on the fraudulent transfer of voter registrations by a third party.

b. Persons not deposited. The remaining five persons in Category 3.0 were not deposited. The master was able to determine that three of these persons were illegal voters, one was a legal voter, and one is unknown.

4. Category 4.0. (Illegal votes to be deducted: Vo 51, Heflin 40)

The 158 persons in this category voted in a precinct within District 149, but filled out a statement of residence that indicated they now resided outside Harris County. Since District 149 is wholly contained within Harris County, a person who resides outside Harris County cannot be a legal voter in an election for state representative in District 149. Under the Election Code, when a person arrives to vote, an election officer shall ask the person if the person's address on the precinct list of registered voters is current and whether the voter has changed residence within the county.⁷⁶ If the person indicates that a change of address has occurred within the county, the person is accepted for voting but must fill out a statement of residence indicating the person's new address within the county.⁷⁷ Also, persons who are noted on a precinct's list of registered voters as being on the suspense list of registered voters must follow the same procedure to be accepted for voting.⁷⁸ Most people who appear on the suspense list are placed there after the return of an undelivered renewal certificate of registration because the voter has moved. Certificates are not allowed to be forwarded to the voter's new address.⁷⁹

⁷⁶ Sec. 63.0011(a), Election Code.

⁷⁷ Secs 63.0011(b), (c), Election Code.

⁷⁸ Sec. 15.112, Election Code.

⁷⁹ See Secs. 14.002, 14.021, Election Code.

Through some confusion, the election officials allowed the people in Category 4.0 to vote in the election even though they provided an address on the statement of residence that was located outside of the county.⁸⁰ This was error because Section 63.0011, Election Code, allows for voting only if the person has changed address within the county. The vast majority of persons listed in this category are illegal voters. A few are legal because the person indicated an address outside of the state or the country that indicates a temporary absence from District 149 because the person was in the military, at school in another state, or worked temporarily outside the country.

a. Persons deposed. One hundred thirteen people in Category 4.0 were deposed. Of those, the parties agreed that 97 were illegal votes. The parties agree that of the 97, 44 illegal votes were cast for Contestee Vo, 36 illegal votes were cast for Contestant Heflin, five people could not remember how they voted, two people were unclear in their depositions, one person did not vote in the District 149 race, and one person refused to answer. Of the eight remaining votes that the parties agreed were illegal, the master was able to determine that two illegal votes were cast for Heflin and one person did not know how they voted. The remaining five depositions were unclear as to how the person voted.

Regarding votes that the parties disputed as legal or illegal, the master determined that 11 were illegal votes. Of this number, the parties agreed that three votes were cast for Contestee Vo and two votes were cast for Contestant Heflin. The master determined that four of the remaining votes were cast for Contestee Vo and that two depositions are unclear.

The master determined that the five remaining persons who were deposed, but for whom the parties could not agree on legality, were legal voters. The reasons for these determinations were that two persons were temporarily residing for work purposes in Calgary, Alberta, one person was in the military and temporarily residing in Copperas Cove, Texas, one person was temporarily residing in Fort Bend County, and one person moved within Harris County.

⁸⁰ Many of these persons had moved from a Houston address in Harris County to a Houston address in Fort Bend County.

b. Persons not deposed. Forty-four persons in Category 4.0 were not deposed. The master adopted a standard of proof to determine whether these votes were illegal. Each person in this category filled out a statement of residence indicating an address outside Harris County. If the person was also on the suspense list of registered voters, meaning that the person's renewal registration certificate was returned because the person had moved, the strong presumption was that the person no longer resided in Harris County. However, if the person listed an address that was out of country, or indicated that the person was serving in the military, the presumption was rebutted because citizens living abroad are still entitled to vote. Most of the persons in the latter situations voted by mail, and the fact that they applied for and received a mail ballot in Harris County indicates that the persons considered Harris County their permanent address but were temporarily out of the county serving in the military or working overseas.

If the person was not on the suspense list of registered voters, the out-of-county statement of residence provides some evidence that the person has moved, but not enough to meet the clear and convincing standard used in this contest.

After applying the standard to the undeposed voters in Category 4.0, 26 persons were determined to have cast illegal votes. Eighteen persons cast legal votes. Of these, two persons were serving on Navy ships, one was at the Naval Academy in Annapolis, one was serving at an Army base in Georgia, 11 were overseas, and three were not on the suspense list.

5. Category 5.0 (Illegal votes to be deducted: Vo 3, Heflin 0)

Eleven persons in this category are persons whom the Contestant argues are not registered to vote or whose registrations took effect after November 2, 2004, but were allowed to vote. One person's provisional ballot was rejected because that person's registration was previously canceled, but Contestant argues that the cancellation was improper.

a. Persons deposed. Five persons in this category were deposed. Ms. Destiny (Calvert) Byas filed an application for registration on October 3, 2004, which would have allowed her to have an effective registration on November 2, 2004. However, she failed to indicate whether she was a citizen. In a letter dated October 12, the Harris County voter registrar informed her by

letter that her application was incomplete because she did not indicate whether she was a citizen. The letter stated that if she provided the required information within 10 days, her effective registration date would relate back to the date of her original application. If she provided the information after the 10-day period however, her registration would be effective 30 days after the postmark on the form on which she provided the missing information, in accordance with Section 13.073(c), Election Code. She filled out another application dated October 17 which appears to be postmarked October 25. Unfortunately, she still did not fill out the citizenship box. In a letter dated November 2, 2004, the voter registrar informed her again that her application was incomplete. On November 2, 2004, Ms. Byas went to vote in the precinct in which she resided. Her name was not on the list of registered voters, so it was written in on the signature roster and she signed her name and was allowed to vote a regular ballot. Ms. Byas filled out a third registration on election day, this time checking off that she was a citizen. According to evidence provided by Contestant, the website for the Harris County voter registrar now lists Ms. Byas as having an effective registration date of November 24, 2004, meaning that the information provided on the third application related back to the date of the second incomplete application. However, evidence provided by Contestee shows that on January 9, 2005, the website indicated that Ms. Byas' registration was effective from October 31, 2004. Contestee argues that this proves that Ms. Byas was a legal voter on election day.

Two pieces of evidence indicate that Ms. Byas' registration was not effective on November 2, 2004. Her name was not on the list of registered voters in her precinct, and the voter registrar sent her a letter on that day indicating her application was not complete. Also, none of her applications would support a date of October 31, 2004, as an effective date for her registration. The master finds that the January 9, 2005, web posting indicating that Ms. Byas had an effective registration on October 31 was an error and does not validate an otherwise ineffective registration. Accordingly, Ms. Byas did not cast a legal vote on November 2. Her deposition indicates that her vote was cast for Contestee Vo, and that vote should be subtracted from his total.

Another person in this category had a similar situation. Ms. Fatimah Siddiqi first submitted a registration application in September 2003, but failed to indicate whether she was a citizen. She again submitted an application on August 2, 2004, but failed to indicate whether she was a citizen. On August 19, 2004, the Harris County voter registrar sent her a letter indicating that her registration was incomplete because she failed to indicate whether she was a citizen. On October 12, 2004, she filed another application, this time indicating she was a citizen. The Harris County voter registrar's website currently lists an effective date of November 12, 2004, for Ms. Siddiqi's registration--a date 30 days after her final application. On November 2, Ms. Siddiqi voted in her precinct of residence but signed in on an omissions list, indicating that she was not on the list of registered voters. Contestee provided a printout from the Harris County voter registrar's website on December 7, 2004, indicating that Ms. Siddiqi's registration was effective from January 1, 2004.

As with Ms. Byas, the information from the website indicating an effective registration on November 2 does not comport with the situation at her precinct on election day or the August 19 letter indicating an incomplete registration. As such, the master finds it to be an error and that Ms. Siddiqi was not a legal voter on November 2. In her deposition, Ms. Siddiqi indicates that her vote was cast for Contestee Vo, and one vote should be subtracted from his total to reflect her vote.

One person was allowed to vote on election day without any evidence that she was registered to vote. This fact is noted on the omissions list that she signed before she voted. Neither party has provided any documentation that she was a registered voter in District 149 on November 2, 2004, and the Harris County voter registrar's website provides no registration record for her. Accordingly this is an illegal vote. After reviewing her deposition, the master finds that one vote should be deducted from Contestee Vo's total to account for her vote.

The remaining two deposed voters in this category cast provisional ballots that were accepted by the early voting ballot board. For the first, the provisional ballot affidavit indicates that there was a voter registration application on file, but that it had not been received in the

voter registrar's office. Written next to this was the letter "Y." According to David Beirne of the Harris County Clerk's office, this is the code used to indicate that the person was accepted because the person had timely submitted a registration application to the Department of Public Safety, but that the department failed to send the computer tape containing these records to the voter registrar in time for the November 2, 2004, general election. The policy of the early voting ballot board was to accept provisional ballots for these persons. The master finds that this policy is appropriate, and thus this person's vote was legal.

The other deposed voter apparently had his provisional ballot accepted but was later flagged by the voter registrar as not being a registered voter on election day. The record does not contain a copy of this person's provisional ballot affidavit which would indicate whether the ballot was accepted and the reason for acceptance. One document in the record indicates that the person was purged from the list of registered voters on November 30, 2002--indicating that the person was likely on the suspense list and had not voted for two election cycles.⁸¹ However, this is insufficient evidence to overturn the decision of the ballot board accepting this person's vote, if that was what happened. In the hearing, the master invited the Contestee to present further evidence to illuminate the situation on this voter. The master can find no further documentary evidence presented by either party, and thus whatever decision the early voting ballot board made on this ballot stands.

b. Persons not deposed. Seven persons in this category were not deposed. One had her provisional ballot rejected by the early voting ballot board because her registration had been canceled. Contestant argues that this was improper and asks that the ballot be accepted and added to the counted ballots in the race. On the provisional ballot affidavit, the voter registrar indicated that this person's registration was canceled on May 14, 2002, with the added notation "out of county." The person filled out a voter registration address confirmation on May 14, 2002, providing an address inside Harris County. At the hearing, the master agreed that

⁸¹ See Sec. 16.032, Election Code.

Contestant could provide further evidence relating to why the early voting ballot board was incorrect in rejecting this ballot. No additional evidence has been submitted and therefore the master finds that there is insufficient evidence to overturn the decision of the ballot board rejecting this provisional ballot.

Two other persons in this category were accepted for voting on election day, but a subsequent audit by the Harris County registrar determined that they were not registered in the precinct in which they voted. One was registered in a precinct outside District 149 and the other had his registration canceled on November 30, 2002. The master finds that both of these persons were not properly registered and thus cast illegal votes.

A person who voted a regular ballot on election day was subsequently flagged by the Harris County registrar because her date of birth on the statement of residence did not match the date of birth of the registered voter with the same name and address. While it is possible that there are two separate persons with the same name, perhaps mother and daughter, it is also possible that the registration records contain an error for the person's date of birth. The registered voter's original application card was not provided to the master. There is insufficient evidence for the master to determine whether there is actually a second person with the same name and address but a different date of birth, and thus the decision to accept this person for voting at her precinct cannot be overturned.

The remaining three persons in this category all cast provisional ballots. The early voting ballot board accepted all three, and each had noted on their provisional ballot affidavit that there was a voter registration application on file, but that it had not been received in the voter registrar's office. Adjacent to this box was written "Y" or "Yes." As discussed above, this is the notation used to indicate that the person had registered timely with the Department of Public Safety, but that the information had not been transferred to the voter registrar. In each instance, the information derived from the Department of Public Safety computer tape indicates that the person had registered does not indicate on what date the person registered. Because the early

voting ballot board accepted all three, and no evidence has been provided indicating that these persons were not timely registered, the master must conclude that all three were legal voters.

6. Categories 6.1, 6.2, 6.3, and 6.4 (Illegal votes to be deducted: Vo 0, Heflin 1, 1 ballot may be retrieved)

The eight people listed in these categories have been challenged by the Contestant as having voted twice in the election. Knowingly voting more than once is illegal and punishable as a third degree felony.⁸² No evidence was presented as to any voter's intent in voting more than once, and this report makes no conclusions as to whether any person knowingly voted more than once.

The different categories represent the different situations by which a person might vote more than once through early voting by mail, early voting by personal appearance, and election day voting. Since there are so few in each category, these persons will be collectively treated in one category.

a. Persons deposited. Three persons were deposited in these categories. One of these was a person who was registered twice at the same address, with the same first and last name (but a different middle name) and date of birth. In her deposition she stated that she was both persons and that she signed both registration applications and sent in two ballots to be voted by mail because she had been sent two ballots. She stated that she did not vote a straight Democratic ticket but "voted for Republic," meaning the Republican party. She also said that she voted for Contestant Heflin and did not vote for Contestee Vo. The master finds that this person cast one illegal vote that should be deducted from Contestant Heflin.

The master finds that the remaining two deposited voters were both legal, and that no double voting by these persons occurred. One situation involved two registered voters, one of whom voted by mail (this person was not deposited). When the deposited person attempted to sign the roster, the name for the voter who had registered by mail was written on her line, that she

⁸² Sec. 64.012(a)(2), Election Code.

signed on the line above hers which might give the appearance that she had voted by mail and in person. Election officials made a notation that the signatures had been switched. In her deposition, she stated that she had voted only once on election day and explained how the signatures became switched. Although no deposition was taken of the other person, the signature for her name on the polling list did not match the signature on her registration application--to the point that her first name was spelled differently. Although it is a mystery as to who signed this name on the roster, there is insufficient proof to conclude that anyone cast more than one vote in this situation. Contestant offered no evidence of any discrepancy between the total number of votes recorded on the precinct computer and the total number of signatures on the poll list.

The last deposed person in this category voted early in person. This was noted on the poll list used on election day, but something also was scribbled in the space next to her name. She stated in her deposition that this was not her signature, that she had voted only once, and that she had voted in the early voting period. Other examples of her signature clearly demonstrate that this scribble is not her signature. Again, there is insufficient proof to show that anyone cast more than one vote in this case.

b. Persons not deposed. Of the five persons who were not deposed, the master finds that two persons did not vote twice. Sufficient evidence exists to show that two other persons did vote twice, but there is no evidence to show that they voted for a candidate in the District 149 race.

The remaining person, Zona McDade, who is over age 85, applied to vote a ballot by mail. The ballot was sent to her, and the ballot by mail acceptance list compiled by the Harris County Clerk's office indicates that a carrier envelope was returned. No evidence was presented at the hearing to indicate that Ms. McDade canceled her application to vote by mail as required by Subchapter B, Chapter 84, Election Code. On election day, Ms. McDade showed up at her polling place and was required to vote a provisional ballot because the signature roster indicated that she had voted by mail. On the affidavit for provisional ballot, the election official indicated

that Ms. McDade stated that she threw away her ballot to be voted by mail. The early voting ballot board accepted Ms. McDade's provisional ballot.

Testimony at the hearing by David Beirne indicated that carrier envelopes are occasionally returned that do not contain a ballot to be voted by mail, but no notation is made of that fact by the early voting ballot board. The master finds that the facts in this situation are insufficient to overturn the determination by the Harris County's Clerk's office that Ms. McDade had voted an early ballot by mail. Therefore, the provisional ballot should not have been accepted. The master recommends that, if it is possible, and the committee determines it necessary, the committee, using the retrieval code listed on the provisional ballot affidavit, retrieve Ms. McDade's provisional ballot to determine whether she voted in the District 149 race and, if so, subtract one vote from the appropriate candidate.

7. Category 7.1 (No illegal votes to be deducted)

In this category are nine persons whom Contestant argues are illegal voters due to their failure to sign the signature roster as required by Section 63.002, Election Code. Subsection (b) of that section provides, "[a] voter who is accepted for voting must sign the roster before the voter is permitted to vote." Under Section 32.071, Election Code, the presiding judge of each precinct is "in charge of and responsible for the management and conduct of the election at the polling place of the election precinct." Election officers at the precinct are charged with determining whether to accept a person for voting. Sec. 63.001, Election Code. Thus, election officers have the ability to prevent someone from voting who does not follow the proper procedures for voting. Accordingly, if a person votes on election day and does not sign the signature roster, it is only because an election officer allowed the person to vote without signing. Such error by election officers has been held not to invalidate the vote of a person who did not sign the signature roster.⁸³ The reasoning in this case is persuasive, and thus the master finds that all persons in this category are legal voters.

8. Category 7.2. (No illegal votes to be deducted)

The sole person in this category is challenged by Contestant because the person did not sign the person's application to vote a ballot by mail. The person applied to vote a ballot by mail through a federal postcard application that was received by the Harris County Clerk's office on May 10, 2004. While the box for the applicant's signature is blank, the box below to indicate "Witness/ Notary Address and Signature" does appear to have some markings in it that may be initials. The Harris County Clerk's office accepted the application and mailed a ballot to the address the person provided in Paris, France. The person returned a voted ballot by mail in a properly signed carrier envelope. There is no evidence that this person would otherwise not be entitled to vote a ballot by mail.

⁸³ Gottlieb v. Hofheinz, 523 S.W.2d 7, 10 (Tex. Civ. App.--Houston [1st Dist.] 1975, no writ).

The person in this category is quite similar to the persons discussed in Category 7.1 above. The Harris County Clerk's office is responsible for processing the application to vote a ballot by mail and had plenty of time in this case to inform the person that his application was defective, so that the person could send a corrected application timely. No such notice was provided, and instead a ballot was sent to the person. If an error was made, it was on the part of the election officials in the clerk's office. Mistakes of election officials should not operate to disenfranchise a voter in a situation like this where the voter has no knowledge that he may not have supplied all the information required for an application to vote a ballot by mail. The voter should not be disenfranchised by an alleged error of the county clerk. The master finds that this person cast a legal vote.

9. Category 7.3. (No illegal votes to be deducted)

For the six persons in this category, Contestant complains that the signatures contained on the applications for a ballot to be voted by mail do not match those of the corresponding carrier envelope certificate. Under Section 87.041(b)(2), Election Code, the early voting ballot board may accept a ballot to be voted by mail only if "neither the voter's signature on the ballot application nor the signature on the carrier envelope certificate is determined to have been executed by a person other than the voter, unless signed by a witness." After reviewing the signatures contained on the appropriate ballot applications, carrier signature envelopes, and voter registration applications, the master finds that, for three of these persons, the signatures on the carrier envelope and the application clearly are not those of the same person. No evidence has been provided that a witness was used, so these people cast illegal votes. For the remaining three persons, although there is some uncertainty about the handwriting, that uncertainty does not rise to the level of clear and convincing evidence, and accordingly the master upholds the decision of the early voting ballot board to accept these ballots as legal.

10. Categories 9.1, 9.2, and 9.3 (Illegal votes to be deducted: Vo 3, Heflin 1)

The 14 voters in these categories cast a provisional ballot that was rejected by the early voting ballot board. Unfortunately, the new procedures in place to separate provisional ballots

from normal ballots in the electronic voting system used by Harris County were not properly followed, and several of the rejected provisional votes were mistakenly counted. According to evidence and testimony provided by Mr. David Beirne of the Harris County Clerk's office, 12 of the 14 persons in these categories were mistakenly processed as normal votes. There is no way to retrieve these votes from the tally of valid ballots counted, and the only way to determine how these people voted is through personal testimony of those voters. Two of the voters in this category were not placed in the mix of counted valid ballots, and their rejected provisional ballots remain isolated. Because neither party presented evidence that these two ballots should have been counted, they are of no further relevance in determining the outcome of the contest.

a. Persons deposited. Five of the persons whose rejected provisional ballots were mistakenly counted were deposited. All are illegal votes and were properly rejected by the early voting ballot board. Of these the master finds that three votes were cast for Contestee Vo, one vote was cast for Contestant Heflin, and how the remaining vote was cast is unclear.

b. Persons not deposited. Of the remaining seven persons, the master finds that six were illegal votes properly rejected by the early voting ballot. The remaining person, Ms. Nonyem Okongwu, had her registration fraudulently transferred to District 137 in the scheme that affected the other voters with Nigerian or African surnames. Ms. Okongwu was a legal voter and her provisional ballot should have been counted.

11. Category 10.1 (No illegal votes to be deducted)

The sole person in this category was allowed only to vote a provisional ballot on election day because he did not present either his voter certificate or physical identification to the election officials at his precinct. On the provisional ballot affidavit, the election official stated that the person's identity, based on the person's driver's license and social security numbers, was confirmed over the phone. The signature on the provisional ballot matches the person's signature on his registration application and his deposition on written questions in this contest. The early voting ballot board accepted the person's provisional ballot. Contestant disputes this acceptance,

alleging that the person did not provide a physical form of identification listed in Section 63.0101, Election Code, and that the vote is not legal and should not have been accepted.

Section 63.011, Election Code, which allows a person to cast a provisional ballot, is not exclusive as to the form of identification required for a person voting a provisional ballot. Somewhat expansive rules have been adopted by the secretary of state. See 1 T.A.C. 81.172-81.174. Each rule covers a different voting system, but they are identical as to how a person must provide identification. Section 81.172(c)(2), Title 1, Texas Administrative Code, provides:

(2) The Election Judge must request the Voter to present a valid form of identification to vote a provisional ballot. If the Voter has no identification, he may still be permitted to vote a provisional ballot, but his ballot will not be approved for counting and the Election Judge must notify the Voter of that fact. Acceptable forms of identification include:

(A) a driver's license or personal identification card issued to the person by the Department of Public Safety or a similar document issued to the person by an agency of another state, regardless of whether the license or card has expired;

(B) a form of identification containing the person's photograph that establishes the person's identity;

(C) a birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity;

(D) United States citizenship papers issued to the person;

(E) a United States passport issued to the person;

(F) official mail addressed to the person by name from a governmental entity;

(G) a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the Voter;
or

(H) any other form of identification prescribed by the secretary of state.

The section provides that acceptable forms of identification "include" both photographic and non-photographic forms of identification. The list is identical to the one laid out in Section 63.0101, Election Code. Since the listing of forms of identification is not clearly and specifically exclusive, and driver's license and social security numbers are commonly used in commercial transactions to confirm a person's identity, the master finds that the voter was properly identified and that he cast a legal ballot. The rule does not clearly prohibit this kind of identification, and the master believes that no material harm is done to the democratic process by allowing the

ballot board decision and the vote to stand. Furthermore, Contestant presented no evidence excluding the possibility that other identification may have been supplied.

12. Category 10.2 (No illegal votes to be deducted; 3 ballots may be retrieved)

This category involves a challenge by Contestant to the rejection of the 13 ballots by the early voting ballot board. Thus, votes in this category were not counted in the race, but, according to Contestant, were legal and should now be counted. Because all of these ballots were either voted by mail or provisionally, it is possible to retrieve these ballots and add the votes to the tally in the District 149 race.

Five ballots by mail that were rejected all involved the same basic fact situation. When the persons filled out the ballot to be voted by mail, they indicated that they were over 65 and did not check a special category used to allow the ballot to be sent to an address other than their permanent residence address. Each application was preprinted and contained the person's residence address at which the person was registered to vote. Each person then indicated a mailing address that was different from the preprinted address at which the person was registered to vote. Some also marked up the preprinted address to reflect a new address. The applications were processed by the Harris County Clerk's office and, as required by Section 86.002(a), Election Code, the persons were sent a ballot and a statement of residence because they had provided a change of address. After voting, the persons mailed back the ballot, but failed to include the required statement of residence. The early voting ballot board rejected these ballots for failure to include the statement of residence required by Section 87.041(b)(6), Election Code. The master finds that for four of these ballots, the rejection was proper as required by law. The sole exception is Ms. Emily Sheard. On her ballot application, she merely indicated that she had changed apartments within the same apartment complex from # 605 to # 728. All other components of her address remained the same. The strict application of the law in this situation produces a harsh result, which far outweighs the public policy for requiring a statement of residence, and the master therefore finds that Ms. Sheard's ballot should have been accepted.

Accordingly, if necessary, the committee may obtain Ms. Sheard's ballot by mail and add her vote to the appropriate candidate in the District 149 race.

Seven other persons in this category cast provisional ballots that were rejected by the early voting ballot board for various reasons. For five of these persons, the master agrees with the decision of the board and thus would not count these ballots in the District 149 race. The reasons for rejection of these ballots include a person's failure to complete the registration application timely, that a person had previously voted a ballot by mail ballot, and that a person was not registered in the precinct because he had submitted two voter registration applications containing different addresses, and the registrar gave effect to the application with the other address. One person was rejected because the person failed to properly sign the carrier envelope on a ballot to be voted by mail. There is insufficient evidence in the record for the master to overturn the decision of the board rejecting this ballot.

Two persons voted a provisional ballot that should have been accepted. Mr. Andrew Prokop was registered to vote in Precinct 462 on election day. When he showed up to vote in Precinct 462, he indicated that he had changed addresses to another location in Harris County. He was permitted to vote a provisional ballot and the board rejected that ballot. This was improper, because under Section 11.004, Election Code, a person can vote a full ballot in his precinct of previous residence if he has moved within the county and his registration at the new address is not effective. The other person, Howard Smith, was rejected because the voter registrar determined that he had completed a registration application, which had not been received in the voter registrar's office. Evidence presented at the hearing showed that Mr. Smith registered with the Department of Public Safety on August 24, 2004. Other than the failure of the voter registrar to receive the application from the Department of Public Safety, there is no other evidence to suggest Mr. Smith is not an eligible voter. The master finds that, but for the failure of the department and the voter registrar to timely process Mr. Smith's registration application properly, Mr. Smith would have been properly registered on election day, and his provisional ballot should have been accepted. Therefore, if necessary, the committee may

retrieve the provisional ballots of Andrew Prokop and Howard Smith and add their votes to the appropriate candidates in the District 149 race.

13. Category 11.0. (Illegal votes to be deducted: Vo 0, Heflin 1)

The two persons in this category are challenged as non-citizens who are ineligible to vote. One person voted by a provisional ballot which the early ballot voting board rejected, because her registration had been canceled in 1997 due to her lack of citizenship. It is unclear whether there is basis to challenge this person because her vote was apparently not counted. The other person indicated on his registration application that he was not a citizen, but for some reason was registered to vote anyway. The person stated in his deposition on written questions that he was not a citizen and that he voted a straight Republican party ticket on election day. The master finds that this vote is illegal and that one vote should be subtracted from Contestant Heflin.

14. Category 12.0 (No illegal votes to be deducted)

The seven persons in this category have ostensibly been challenged by Contestant because of their failure to complete statements of residence despite being on the suspense list in their precinct. Although no statements of residence have been discovered for the persons in this category, the true challenge appears to be that these person all moved out of Harris County into Fort Bend County. None of the persons in this category have been deposed.

The fact that all persons in this category were on the suspense list in the precinct in which they were registered in Harris County, is some evidence that these persons no longer reside at their registered address in Harris County, because the primary reason for being placed on the suspense list is having a renewal certificate returned as undeliverable by the postal service. Additional evidence also ties these persons to residence outside Harris County, such as residential property owned in Fort Bend County or voter registration in Fort Bend County. In the absence of depositions, only voter registration in Fort Bend County that was effective for the November 2004 general election provides clear and convincing evidence that a person resided outside Harris County on the date of the election. Accordingly, the master finds that there are

four illegal votes and three legal votes in this category. There is no evidence indicating whether or how the illegal votes in this category affected the District 149 race.

15. Category 13.0 (No illegal votes to be deducted)

The final category of challenged votes in this contest involves two persons who faxed an application to vote a ballot by mail based on their expectation that they would be absent from the county on election day and during the early voting period. The Harris County Clerk's office accepted both applications, and mailed ballots to the persons at addresses outside Harris County as indicated on the applications. Both persons voted and returned ballots to the clerk. The ballots were accepted by the early voting ballot board and counted in the November 2004 general election.

Contestant argues that both votes were illegal because the ballot applications appeared to be faxed from inside Harris County, in contravention of Section 84.007(b), Election Code. That section provides:

- (b) An application must be submitted to the early voting clerk by:
 - (1) mail;
 - (2) common or contract carrier; or
 - (3) telephonic facsimile machine, if the applicant is absent from the county and if a machine is available in the clerk's office.

The headers on each of the faxed applications provided a phone number and a name of a business located inside Harris County, according to evidence provided by Contestant. However, although fax headers are some evidence, they are merely information typed on a document by a machine. In a matter of seconds, a person can program a fax machine to print any desired time, date, or place in a fax header. Faxes can be sent, for example, from a personal computer at a person's vacation home yet appear, from the fax header, to have originated from that person's business. No evidence was presented regarding exactly what information the election official, who is presumed to act correctly, had or did not have regarding the location of the fax machines.

Thus it cannot be stated that by clear and convincing evidence that a header on the fax establishes conclusively that the fax originated within Harris County.

Even if the faxes could be shown to have originated in Harris County, it does not mean that the votes would be illegal. Section 84.001(f), Election Code, provides that "[a] person who has not made an application as provided by this title is not **entitled to** receive an early voting ballot to be voted by mail." (emphasis added) Even though the persons in this category may not have been **entitled to** receive a ballot, they were sent one. Once the ballots arrived, these persons had no way of knowing that their ballot application was in any way defective. If the Harris County Clerk's office had timely informed these persons that the office found the applications violated Section 84.007(b), Election Code, the persons could have resubmitted the application from outside Harris County in time for the November election. To raise this issue after the election operates to disenfranchise these voters based on alleged mistakes by the Harris County Clerk's office in accepting the application. The master finds that both persons in this category cast legal votes.

Other Recommendations

a. Floor Procedure. Based on the conduct of other election contests in the House, the master makes the following recommendation to the committee. Historically, consideration of a report of the outcome of an election contest has been handled in the same manner as any other legislation. On very rare occasions, specifically when there was a minority report generated in the committee, or there was substantial disagreement about the recommendation of the committee, the House allowed argument of counsel on the floor for a brief time.

The master's recommendation, therefore, is that, in keeping with the history and dignity of the House, in the absence of either a minority report or substantial disagreement regarding the recommendation of the committee, the House take up the report in the ordinary course of business, and that no additional changes to House procedure or rules be adopted.

b. Costs. The master makes no recommendation regarding costs. In determining whether to award costs, the select committee may wish to consider the costs to the House of conducting

the proceeding, the costs incurred by the parties in recording and transcribing the two-day hearing, and Contestant's and Contestee's discovery of numerous illegal votes in an extremely close election.

CONCLUSION

This was a very close election decided by only a handful of votes out of more than 41,357 cast. After months of discovery, the detailed review of the voter files of 259 persons, and hours of examination and analysis of voter files by the parties and the master, it is the opinion of the master that Contestant has failed to meet his burden of proof. The master concludes that Representative Vo retains his seat by not less than 10 votes and not more than 20 votes, depending on the impact of the five votes that may still be counted.

Although there was no evidence of voter fraud generated by or for any candidate in this race, serious questions remain regarding the fraudulent "deportation" of a significant number of Nigerian American voter registrations from District 149 and several other districts into District 137.

Representative Heflin, a 22-year veteran of the Texas House, and Representative Vo, a freshman member, have conducted themselves during this contest in compliance with the highest standards of this House. The master applauds both of them and their counsel for their cooperation and diligence during the difficult course of this contest.

**APPENDIX 1
MASTER'S DISPOSITION OF VOTERS, HEFLIN V. VO
FEBRUARY 7, 2005**

CAT #	CERT #	LAST NAME	FIRST NAME	LEGALITY		DEPO	VOTES							
				LEGAL	ILLEGAL		VO	HEFLIN	DON'T KNOW	[A]GREED [M]ASTER				
										NO VOTE	UNCLEAR	REFUSE	RETRIEVE BALLOT	
1	1.0	AHMAD	KHOLOUD		M	N								
2	1.0	BASKHARONE	RICHARD		M	N								
3	1.0	BAUMAN	NICOLE		M	N								
4	1.0	BIGGERSTAFF	FRANCES		M	N								
5	1.0	EJIOFOR	FRANCA	M		Y	M							
5A	1.0	FLOWERS	MICHAEL	M		Y		M						
6	1.0	GRAY	ROBERT		M	Y		A						
7	1.0	IHEKWEAZU	IKENNA	M		N								
8	1.0	MEDINA	ARTURO		M	N								
9	1.0	NWANKWO	CHRISTIANA	M		N								
10	1.0	OKORO	PATRICK	M		N								
11	1.0	OUTLAW	L.C.		A	Y	A							
12	1.0	PARFFREY	BRYON		M	N								
13	1.0	RUFAI-SHANKS	SHERIFAT		M	N								
14	1.0	TREFFALLS	JOHN		M	Y	A							
15	2.0	HOLDER	TEDIA	M		N								
16	2.0	SALAZAR	ROXANA	M		Y					M			
17	3.0	FISHER	CHARLES		M	N								
18	3.0	HINTOLAY	AHMED	M		N								
19	3.0	HUNTER	NATISHA		M	N								
20	3.0	JENKINS	DAVID		M	Y	A							
21	3.0	OKEZE	HELEN	M		Y	A							
22	3.0	OKEZE	IGNATIUS	M		Y						A		
23	3.0	ORIAHI	EMMANUEL	M		Y	A							
24	3.0	RACHAL	KAREN	M		N								
25	3.0	SWAYZER	SHARONE		M	Y*	A							
26	3.0	ZAHEER	ISRA		M	N								
27	4.0	AKUCHIE	HENRY		A	Y	A							
28	4.0	ALDACO	CONSUELO		A	Y	A							
29	4.0	ALI	AKBAR		A	Y					M			
30	4.0	AMOKOMOWO	MOJISOLA	M		N								
31	4.0	ANDERSON	CLAUDINA		A	Y	A							
32	4.0	ANDERSON	SCOTT		A	Y		A						
33	4.0	ANDERSON	MELISSA	M		N								
34	4.0	ARGUETA	RAUL		A	Y		M						
35	4.0	ATCHISON	MICHAEL		M	N								
36	4.0	AUSTIN	ANNIETESS		A	Y		A						
37	4.0	AUSTIN	NEIL		A	Y		A						
38	4.0	BAILEY	ALPHEUS		A	Y	A							
39	4.0	BALBA	BERT		A	Y					M			
39A	4.0	BALBALOZA	MARLA		M	Y		A						
40	4.0	BARRON	ADA		A	Y	A							
41	4.0	BENOIT	DAVID		A	Y		A						
42	4.0	BROWN	DARCEY		A	Y	A							
43	4.0	BURCH	RALPH	M		N								
44	4.0	BUTT	KEVIN	M		Y					A			
45	4.0	BUTT	JASMINE	M		Y		A						
46	4.0	CARVAJAL	NUBIA		M	Y*					M			

**APPENDIX 1
 MASTER'S DISPOSITION OF VOTERS, HEFLIN V. VO
 FEBRUARY 7, 2005**

CAT #	CERT #	LAST NAME	FIRST NAME	LEGALITY		DEPO	VOTES							
				[A]GREED [M]ASTER			[A]GREED [M]ASTER							
				LEGAL	ILLEGAL		VO	HEFLIN	DON'T KNOW	NO VOTE	UNCLEAR	REFUSE	RETRIEVE BALLOT	
47	4.0	CHANEY	THERESA		A	Y	A							
48	4.0	CHANEY	DEMETRIUS		A	Y	A							
49	4.0	CHOU	DORIS	M		N								
50	4.0	CHRISTMAN	KYLE	M		N								
51	4.0	CLARK	TIFFANY		A	Y	A							
52	4.0	CONNOR	JAMES		A	Y					A			
53	4.0	CORTS	FRANK	M		N								
54	4.0	CUBILLAS	PACIENTE		A	Y		A						
55	4.0	DANG	KEVIN		A	Y	A							
56	4.0	DAVIS	DEONA		A	Y	A							
57	4.0	DAY	COLLIN		A	Y		A						
58	4.0	DENNIS	TIFFANY		M	N								
59	4.0	DUNN	THOMAS		A	Y		A						
60	4.0	EAGLETON	MYIA		M	N								
61	4.0	ELDER	CHARITA		M	Y*	M							
62	4.0	ESPREE	CHRISTINA		A	Y	A							
63	4.0	FARIAS	STACY		A	Y	A							
64	4.0	FAROOQ	ANEELA		A	Y			A					
65	4.0	FERGUSON	ALTON		M	Y*	M							
66	4.0	FERGUSON	SHENICE		A	Y	A							
67	4.0	FERNANDEZ	ALAIN		A	Y		A						
68	4.0	FISHER	PATRICIA		A	Y			M					
69	4.0	FISHER	JACKSON		M	N								
70	4.0	FONTENOT	ROCHQUEL		M	Y*	M							
71	4.0	FONTENOT	GREGORY		A	Y	A							
72	4.0	GALINDO	MARTHA		A	Y*		A						
73	4.0	GALVEZ	RONALD		A	Y		A						
74	4.0	GARCIA	RUBIDIA		A	Y			A					
75	4.0	GASPER-BOWLES	LESHEQUA		A	Y	A							
76	4.0	GOMEZ	JAVIER		A	Y	A							
77	4.0	GONZALES	NATHAN		A	Y		A						
78	4.0	GONZALEZ	PATRICK		M	N								
79	4.0	HAITH, JR	KEITH	M		N								
80	4.0	HANDY	JAMES		M	N								
81	4.0	HARRISON	SHANNON		A	Y	A							
82	4.0	HENRY	TRACI		A	Y	A							
83	4.0	HERMAN	AUDRA		A	Y			A					
84	4.0	HERRERA	HAROLD		A	Y*		M						
85	4.0	HILL	JENNIFER	M		N								
86	4.0	HOANG	QUYNH		A	Y		A						
87	4.0	(WOODS) HUBBARD	PAULA		A	Y			A					
88	4.0	HUSER	SHEA	M		N								
89	4.0	JACKSON	ROBERT		A	Y					A			
90	4.0	JOHNSON	BRIAN		M	Y*					M			
91	4.0	JONES	RHIANNON		M	N								
92	4.0	JORDAN	YOLANDA	M		N								
93	4.0	KAMPF	MATTHEW	M		Y	M							
94	4.0	KASSA	GENNET		A	Y		A						
95	4.0	KELLEY	RAY		A	Y	A							
96	4.0	KIRSHY	JOHN		A	Y		A						
97	4.0	KNOX	JEFFREY		M	N								

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FEBRUARY 7, 2005**

CAT #	CERT #	LAST NAME	FIRST NAME	LEGALITY		DEPO	VOTES							
				[A]GREED [M]ASTER			[A]GREED [M]ASTER							
				LEGAL	ILLEGAL		VO	HEFLIN	DON'T KNOW	NO VOTE	UNCLEAR	REFUSE	RETRIEVE BALLOT	
98	4.0	KNOX	PATTI		M	N								
100	4.0	LEAL	ANGEL		A	Y		A						
101	4.0	LEASSEAR	DEBRA		M	N								
102	4.0	LOBRE	WENDY		A	Y		A						
103	4.0	LONG	MICHAEL		A	Y			M					
104	4.0	LOVINGS	LAKEISHA		M	N								
105	4.0	LUCILLE	FREDDIE		M	N								
106	4.0	MAHAFFIE	SUSAN	M		N								
107	4.0	MAHAFFIE	MICHAEL	M		N								
108	4.0	MARQUEZ	CANDICE		A	Y		A						
109	4.0	MAURICE	CEDRIC		A	Y	A							
110	4.0	MCADORY	LEE		M	N								
111	4.0	MCADORY	SHARON		M	N								
112	4.0	MCGARVEY	JOHN		A	Y		A						
113	4.0	MCKENZIE	CRAIG		A	Y							A	
114	4.0	MCLEAN	JENNY		A	Y	A							
115	4.0	MCLEMORE	LADON		A	Y	A							
116	4.0	MITCHELL	VANESSA	M		N								
117	4.0	MUETHING	CYNTHIA	M		N								
118	4.0	MUETHING	LARISSA	M		N								
119	4.0	MURPHY	NICTIA		M	N								
120	4.0	NGUYEN	KIMLAN		A	Y		A						
121	4.0	ORANGE-LUCILLE	ROSALYN		A	Y			A					
122	4.0	ORCUTT	BRANDAN		A	Y		A						
123	4.0	ORCUTT (Olsovsky)	LARISSA		A	Y		A						
124	4.0	ORTIZ	JESUS		A	Y	A							
125	4.0	OUTLAND	RICHARD		A	Y	A							
126	4.0	PABIJAN	DAVID		M	N								
127	4.0	PARVEEN	ARSHAD		A	Y	A							
128	4.0	PATILLO	WILLIAM		A	Y	A							
129	4.0	PATRICK-ALLISON	DWANA		A	Y	A							
130	4.0	PAYNE	LAMONT		M	Y*	A							
131	4.0	PEARSE	CLARA		A	Y	A							
132	4.0	PHAN	DENISE		A	Y	A							
133	4.0	PHILLIPS	REUBEN	M		N								
134	4.0	PIERRE	ALICIA	M		N								
135	4.0	PLUMBER	PAMELA		M	N								
135A	4.0	POST	DANIEL	M		Y	M							
136	4.0	PRIOR	MELISSA		A	Y		A						
137	4.0	PUCIO	ROBERT		A	Y		A						
138	4.0	PUGH	ALLEGRA		M	N								
139	4.0	PUIG	ALICE		A	Y		A						
140	4.0	RAJABALI	KARELIA		M	N								
141	4.0	RAMIREZ	JOHNNY		M	N								
142	4.0	RAMIREZ	FRANGELICA		A	Y	A							
143	4.0	REID	ELETHISA		A	Y	A							
144	4.0	ROBINSON	CHARNETT		A	Y	A							
145	4.0	ROBINSON	KENNETH		A	Y		A						
146	4.0	RUEDA-SANCHEZ	SANDRA		A	Y	A							
147	4.0	RUSSELL	WENDY		A	Y		A						
148	4.0	SAMUELS	NIKKI		A	Y		A						

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 FEBRUARY 7, 2005**

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				[A]GREED [M]ASTER			[A]GREED [M]ASTER						
				LEGAL	ILLEGAL		VO	HEFLIN	DON'T KNOW	NO VOTE	UNCLEAR	REFUSE	RETRIEVE BALLOT
149	4.0	SCHOFFNER	BRITTANY	M		N							
150	4.0	SCHROEDER	BARBARA		A	Y		A					
151	4.0	SCOTT	BRIAN		A	Y		A					
152	4.0	SEALES-HAWTHORNE	VANESSA		A	Y	A						
153	4.0	SEPULBEDA (GOMEZ)	ELIANA		A	Y	A						
154	4.0	SHARP	CYNTHIA		A	Y		A					
154A	4.0	SHARP	SHAWN		M	Y		A					
155	4.0	SOKOYA	BABATUNDE		A	Y				A			
156	4.0	SOOMRO	HUSSAIN		A	Y	A						
157	4.0	STAATS	ALEDIGNA		A	Y		A					
158	4.0	STAATS	MICHAEL		A	Y		A					
159	4.0	STEWART	JENNIFER		A	Y		A					
160	4.0	TAYLOR-BOOKER	CAROLYN		M	N							
160A	4.0	TERRY	SHERRY	M		Y		A					
161	4.0	THOMAS	KENNETH		M	N							
162	4.0	THOMPSON	KENNETH		M	N							
163	4.0	TU	JENNIE		M	Y*	A						
164	4.0	URELL	JACQUELINE		A	Y		A					
165	4.0	URZUA	NANCY		M	N							
166	4.0	VIGELIS	PHAIK		A	Y					M		
167	4.0	VORRICE	BRIDGET		A	Y					M		
168	4.0	WALLACE	KRISTIN		M	N							
169	4.0	WAPPLER	BEVERLY		A	Y		A					
170	4.0	WARNER	NITOSHA		A	Y	A						
171	4.0	WILLIAMS, JR.	LACY		A	Y	A						
172	4.0	WILLIS	JOSEPH		A	Y	A						
173	4.0	WOKA	EMEKA		A	Y	A						
174	4.0	WOLF	DIGNA		A	Y		A					
175	4.0	WYATT	KAPREA		M	Y*	M						
176	4.0	YANCY	MYRTLE		A	Y	A						
177	4.0	YASSINE	ALI		A	Y	A						
178	4.0	YATES	JIMMIE		M	N							
179	4.0	YUSUFF	FOLASHADE		M	Y*	A						
180	4.0	ZULUAGA	ALBA		A	Y	A						
184	5.0	BYAS-CALVERT	DESTINY		M	Y	M						
185	5.0	GAMEZ	MICHELLE		M	N							
187	5.0	HAGAN	SHIRLEY	M		N							
188	5.0	HARRIS	LASHANDA		M	N							
189	5.0	JENKINS	WYNEVESTER	M		Y	M						
190	5.0	KAITHAMATTATHIL	SUMITHA		M	Y	M						
191	5.0	LIPSEY	RICKY	M		N							
194	5.0	PUGH	MICHAEL	M		Y		M					
195	5.0	SANCHEZ	AMANDA	M		N							
196	5.0	SHAFIK	EZZET		M	N							
197	5.0	SIDDIQI	FATIMAH		M	Y*	M						
198	5.0	WILLIAMS, III	DAVE	M		N							
199	6.1	3 4/U	LOAN		M	Y*		M					
200	6.2	5 0	HAVERKAMP		M	N							

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				[A]GREED [M]ASTER			[A]GREED [M]ASTER							
				LEGAL	ILLEGAL		VO	HEFLIN	DON'T KNOW	NO VOTE	UNCLEAR	REFUSE	RETRIEVE BALLOT	
201	6.2	LOOK	KARLA	M		N								
202	6.2	MEDINA/MEDRANO	BETTY/KAREN	M		Y	M							
204	6.3	GUIDO	WILLIAM		M	N								
205	6.3	MCDADE	ZONA		M	N								X
206	6.4	CHUNG	CHEN-HUA	M		Y	M							
208	6.4	RUNNELS	HAROLD	M		N								
209	7.1	ALVAREZ	JOSE	M		N								
210	7.1	AUGUSTINE	ELLEN	M		N								
211	7.1	GUILLORY	MONICA	M		N								
212	7.1	IBE	LETICIA	M		N								
213	7.1	IVANHOE	SAGASTUME	M		N								
214	7.1	MALANI	PANKAJ	M		N								
215	7.1	NICHOLS	SUSAN	M		N								
216	7.1	OHA, JR.	ANTHONY	M		N								
217	7.1	PIERCE	RAMONA	M		N								
218	7.2	ELHOLM	ERLING	M		N								
220	7.3	FERRELL	ROBERT		M	N								
221	7.3	KELMINSON	MARGARET		M	N								
222	7.3	LEWIS	EVE	M		N								
223	7.3	ROCA	ALBERTO	M		N								
224	7.3	TOVIAS	DOMINIC	M		N								
225	7.3	ZEIDAN	TOUFIC		M	N								
232	9.1	HERNANDEZ	HILDA		M	N								
233	9.1	HINOJOSA	ROELL		M	Y					M			
234	9.1	OKONGWU	NONYEM	M		N								
235	9.1	SMITH	ROBIN		M	N								
236	9.1	TAHARAH	TARIQ		M	N								
237	9.1	TAHARAH	BERTHILDE		M	Y	M							
238	9.1	TARAFDER	DEBJANI		M	Y	M							
239	9.1	THOMPSON	KURSTON		M	N								
240	9.1	WALWYN	EULONE		M	N								
241	9.1	WILLIAMS	RONNETTE		M	N								
241A	9.2	ARNOLD	CANDYCE		M	Y*	A*							
242	9.3	KEY	IRIS		M	Y*		M						
243	9.3	LUNSFORD	ANN		M	Y	M							
243A	9.3	RICKS	TERRENCE		M	Y*						M*		
244	10.1	COOPER	JAMES	M		Y						M		
245	10.2	ESCHER	AGNES		M	N								
246	10.2	MELoy	MARVIN		M	N								
247	10.2	PODLEWSKI	SHIRLEY		M	N								
248	10.2	SHEARD	EMILY	M		N								X
249	10.2	WOOD-NEWTON	PATRICIA		M	N								
250	10.2	JOHNSON	MONIQUE		M	N								
251	10.2	MINDER	PAUL		M	N								
252	10.2	PROKOP	ANDREW	M		N								X
253	10.2	ROBERTSON	STEVEN		M	N								
254	10.2	SMITH	HOWARD	M		N								X
255	10.2	STEHR	PATRICIA		M	N								

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					[A]GREED [M]ASTER			[A]GREED [M]ASTER							
					LEGAL	ILLEGAL		VO	HEFLIN	DON'T KNOW	NO VOTE	UNCLEAR	REFUSE	RETRIEVE BALLOT	
256	10.2		STEWART	NAOMI		M	N								
257	10.2		WARREN	KENNETH		M	N								
258	11.0		DIAZ	MARIA											
259	11.0		EILERT-OLSEN	HENNING		M	Y		M						
260	12.0		BLOTNICK	DEBORAH	M		N								
261	12.0		GOSSETT	KEITH		M	N								
262	12.0		ILANGA	RICARDO	M		N								
263	12.0		MOSLEY	GEORGE		M	N								
264	12.0		PATEL	KETKI	M		N								
265	12.0		SMITH	RONALD		M	N								
266	12.0		SMITH	SHAWN		M	N								
267	13.0		KENYEN	VAS	M		Y	A							
268	13.0		OLALEYE	ABIMBOLA	M		Y	A							

NOTE 1. IN THE DEPO COLUMN, AN ENTRY WITH AN ASTERISK MEANS A POST-DEADLINE DEPOSITION ACORDING TO THE LIST SUBMITTED BY VO'S COUNSEL.

NOTE 2: IN THE VOTES COLUMN, AN ENTRY WITH AN ASTERISK MEANS A VOTE WHICH, BASED ON THE PARTIES' AGREEMENT OR THE MASTER'S STIPULATION, REQUIRES NO SUBTRACTION FROM NOR ADDITION TO THE COUNT OF EITHER VO OR HEFLIN.