

Texas Panel Asks If Late Votes Should Decide Judge's Election

By Spencer Brewer

Law360 (January 30, 2025, 10:23 PM EST) -- A Texas appellate panel asked what it was supposed to do with voters who wrote that they lived outside the county in deciding the last remaining challenge to the county's 2022 election results, saying during oral arguments Thursday that voters' own assertions seemed convincing.

Harris County Judge DaSean A. Jones, a Democrat, appealed after a state district judge tossed his election victory in May last year and ordered a new election to take place in May this year. During oral arguments, which lasted over an hour and a half, the panel questioned why it should count votes for people who had written in their ballots that they lived outside Harris County, when the law seemingly indicates those votes shouldn't get tallied.

"If the voters are hand writing that they lived in Rockdale or Georgetown, you don't think a judge could believe that was an accurate statement of their real belief?" Justice Clint Morgan asked.

Joaquin Gonzalez of Marziani Stevens & Gonzalez PLLC, told the panel there's "conflicting evidence" regarding those ballots. For example, one young voter may have had two addresses listed, one in Harris County and one in Travis County.

"You could not have a firm conviction that this is not a college student," Gonzalez said.

Tami C. Pierce's lawsuit to toss the election represents the last of 21 lawsuits filed by Republican candidates **challenging the 2022 election results** in Harris County. In that election, **Judge Jones defeated Pierce** by 50.02% to 49.98% — by a margin of 449 votes — according to election data.

But Harris County District Judge David Peoples found that about 1,000 votes shouldn't have been counted, and since that exceeded Judge Jones' election victory margin, he declared the election void. That order would void over 1 million votes, Gonzalez said, and represents the largest election a Texas court has ever set aside.

"This is perhaps the most flawed and least substantial record to ever support a successful contest," Gonzalez said. Pierce fell well short of the mark when trying to prove that the election result was indeed impossible to prove and the lower court misused the terms "illegal vote" and "mistake," an error that by itself requires reversal, he added.

Justice Veronica Rivas-Molloy asked if, in the event the panel did find irregularities in the votes, whether the Texas Election Code would still hold that those votes shouldn't be voided because the election code doesn't expressly allow for them to be voided. Gonzalez said a "mountain of precedent" supports that conclusion.

Of the votes the lower court flagged as suspicious, the vast majority are **simply missing information**, he said.

But Paul Simpson of McGinnis Lochridge LLP told the panel that the lower court was correct to find that the number of votes that weren't countable was enough to cast doubt on the election.

Justice Morgan asked Simpson to discuss the late votes. In response to a series of challenges that plagued the election, Harris County District Judge Donna Roth allowed the sites to stay open an extra hour, but the Texas Supreme Court later stayed that order, requiring all votes cast after 7 p.m. to be segregated.

Justice Morgan said he understood the late voting was a bad idea, but deciding all the late votes can't be counted seemed like "something of a jump for him." The trial court found that election officials made a "mistake" when they kept the polls open for longer, a factor that helped determine the final judgment, according to Pierce's brief.

The whole idea and execution of keeping the polling locations open longer was done in a slipshod manner, Simpson said. Election officials absolutely made a mistake by keeping the polls open, and Judge Peebles was right to use that to weigh his decision, he said.

Justices Veronica Rivas-Molloy, Amparo Monique Guerra and Clint Morgan sat on the panel for the First Court of Appeals.

Judge Jones is represented by Joaquin Gonzalez and Mimi Marziani of Marziani Stevens & Gonzalez PLLC.

Pierce is represented by Paul F. Simpson of McGinnis Lochridge LLP.

The case is DaSean A. Jones v. Tami C. Pierce, case number 01-24-00377-CV, in the Texas Court of Appeals for the First District.

--Additional reporting by Catherine Marfin. Editing by Rich Mills.