



January 8, 2010

Mr. David Buren Wilson  
1512 W. 34th Street  
Houston, TX 77018

Dear Mr. Wilson:

I appreciate the opportunity to have met with you yesterday.

Unfortunately, because your Application for a Place on the Democratic Party General Primary Ballot was not filed until, virtually, the very last minute on the very last day (approximately 5:45 p.m. on January 4, 2010), I did not have an opportunity until yesterday to complete a review of it to determine whether it complies with the statutory requirements as to form, content, and procedure, as I am required to do by virtue of TEX.ELEC.CODE § 141.032.

TEX.ELEC.CODE § 141.031(a)(4)(I) provides that “a candidate’s application for a place on the ballot that is required by this code **must**:

- (4) include:
  - (I) the candidate’s residence address.<sup>1</sup>

Your Application lists “1512 W. 34th St., Houston, Texas, 77018,” as your “Permanent Residence Address.” However, during our conversation you indicated that this is actually your

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<sup>1</sup> TEX.ELEC.CODE § 141.031(a)(4)(I) does provide that “the address at which the candidate receives mail and a concise description of the location of the candidate’s residence” can be provided in lieu of a “residence” address if, but only if, “the residence has no address.” But this provision is inapplicable because the place at which you reside, 7307 Lake Lane, Houston, Texas 77040, does have an address, and your Application has not provided “a concise description” of 7307 Lake Lane, at all events.

business address.<sup>2</sup> Since you referred to this location in our conversation as the situs of your *business*, and never suggested that you actually live there, and I have a mandatory statutory duty to review your Application to determine whether it complies with the requirements of the Code as to form, content and procedure, I had to determine whether your application actually includes your “residence address,” as required by the statute, or contained only your *business* address.

Long-established Texas law holds that the test of the residence of a married man is that his residence is where his wife resides. If one of them owns an home to which, for example, the constitutional homestead exemption applies, it is the family domicile and permanent place of residence for the *husband* and the wife.

Public records indicate that your wife, Connie J. Wilson, is the record title owner of a residence located at 7307 Lake Lane, Houston, Texas 77040-3423, upon which a residential homestead exemption has been claimed. The Harris County Appraisal District records describe this property as “residential single family.” By virtue of Texas law, it appears to me that this public record establishes 7307 Lake Lane, Houston, Texas – not 1512 W. 34th Street – as your actual “residence address.”

Other information confirms this conclusion. The HCAD records indicate that 1512 W. 34th Street is, indeed, commercial property – not residential property. Owned by D.S.W. Equipment, Inc., the property is described as “Industrial Warehouse-Metallic” “Retail Store” on HCAD records. There is no City of Houston Certificate of Occupancy authorizing its use for residential purposes. I also have reason to believe that the place where you sleep nightly and keep personal belongings such as clothes is 7307 Lake Lane, not 1512 W. 34th Street. Where a person sleeps and keeps personal belongings such as clothes and furniture further determines where he or she is a resident, under established Texas law.

From all of the foregoing I conclude that:

a) As established by public records, 7307 Lake Lane, Houston, Texas 77040-3423, is your “residence address”;

b) Your Application for a Place on the Democratic Party General Primary Ballot does not include “7307 Lake Lane, Houston, Texas 77040-3423” as your “residence address” and therefore does not “include your residence address,” as required by TEX.ELEC.CODE § 141.031(a)(4)(I); and

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<sup>2</sup> During our meeting you gave me a business card listing the West 34th Street address as your business address and told me that you often did work at a nearby school because it is close to your business, located on West 34th Street (not because it was near your home).

c) Your Application, therefore, does not comply with the applicable requirements of Section 141.031 of the Texas Election Code.

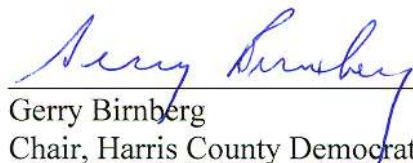
TEX.ELEC.CODE § 141.032(e) provides, “[i]f an application does not comply with the applicable requirements, the authority [in this case, the chair of the Harris County Democratic Party] **shall** reject the application and immediately deliver to the candidate written notice of the reason for the rejection.” Accordingly, by this letter I am formally informing you that, for the reasons set forth above, I have rejected your Application for a Place on the March 2, 2010 Harris County Democratic Party General Election Ballot and will not be certifying your name for inclusion on the ballot of the March 2, 2010, Harris County Democratic Party General Primary Election.

I want to stress that my withholding of certification of your name for placement on the ballot is not because I have concluded you do not live within precinct four. It is solely because I have concluded that your Application fails to include your residence address, as required by mandatory provisions of the statute.

I hasten to add that if the Application had been filed earlier than the very last hour of the very last day, I am confident I would have discovered this defect in time to notify you and afford you an opportunity to correct it before the filing deadline. Unfortunately, the fact that the Application was not submitted until less than fifteen minutes before the filing deadline precluded such a review (and notification to you of the defect) before the deadline.

As a result of this action and pursuant to TEX.ELEC.CODE §141.038(a)(3), you are entitled to a refund of the \$1,250 filing fee tendered with your Application. To receive that refund, you must present to me a claim for a refund. For your convenience, I have included a form you can use for that purpose. Immediately upon your submission of that claim for refund, we will prepare a check and mail it to you or have it available for pickup at the offices of the Harris County Democratic Party, at your preference.

Very truly yours,

  
Gerry Birnberg  
Chair, Harris County Democratic Party