

**Statement of Nancy M. Archer
Liberty County Democratic County Chair**

The questions regarding qualifications and eligibility of Democratic County Judge nominee, Kenneth Morrison have been raised since he first filed for office. The following is a summary of the events which has led to this statement, the legal issues involved, and today, the final resolution of these questions.

BACKGROUND:

The Democratic Party of Texas was created by the Texas Legislature as an official State entity. The County Democratic Parties were also created and are State entities as well. An official of the Liberty County Democratic Party is an elected official of the State of Texas and is governed by State law, primarily through the Election Code. Over the years the original legislation has been amended many times and is a part of the Statutes of the State of Texas. The latest version of the Election Code can be found in the Texas Legislature website. It specifies term of office, requirements and eligibility for persons seeking the political offices covered. An official application form is provided by the Texas Secretary of State providing candidates specific places to enter the required information. The form is not considered complete until the candidate certifies, under oath, that "I further swear that the foregoing statements included in this application are in all things true and accurate." (A copy of the official application of Mr. Kenneth Morrison is attached; Attachment: A)

Precedence has established a general presumption that an application, submitted and sworn to by a candidate is correct. There is no obligation upon the County party to inquire further. When I first met with Mr. Morrison he presented to me documents supporting his residency in Liberty County including the information that he had purchased property in Liberty County three years before, that he was personally building his home, and was living on that property. He volunteered to me at that time that he had been a resident of Harris County, and owned a house there which he placed on the market two years before, and that he was not then a registered voter of Liberty County. That raised questions in my mind as to his residency qualifications. The facts stated above were presented to the State Democratic Party of Texas. I was informed by Party officials that Texas law concerning residency had been previously determined by the Texas Supreme Court, While numerous Supreme Court cases have asked for clarification of residency and for more specificity, the Court has resisted, ruling that each situation determines its own solution. This general rule has been described variously as a question of 'state of the mind' or 'where the head is rested at night'. When the State Party delivered its opinion, but before placing Mr. Morrison's name on the Primary Ballot, County

Judge Phil Fitzgerald was contacted. It was my belief that he should have the opportunity to challenge my decision. He declined to do so.

PRIMARY CERTIFICATION AND PRESENT

On March 2, 2010, the Democratic Primary voters chose Mr. Morrison to be the party's candidate for County Judge, and on March 18, 2010 the Democratic Executive Committee met and officially certified the ballots.. (See Attachment B Official Precinct Canvas. The official canvas was transmitted to State Democratic Party Headquarters where it was officially accepted.

In mid June, 2010, Judge Fitzgerald brought a set of documents to me asking that I exercise the provision of Section 145.003(b) of the Election Code, ADMINISTRATIVE DECLARATION OF INELIGIBILITY, (See Attachment C) and declare Mr. Morrison to be ineligible to be the Democratic Candidate for County Judge in the November General Election. He additionally asked that I appoint a replacement candidate to fill the vacant position. Without saying so, it was clear that he wished to be the replacement candidate.

In late June 2010, Judge Fitzgerald submitted additional documents which he asserted as justification for the declaration of ineligibility of Mr. Morrison. (See Attachment D) The documents were copied from the Harris County Central Appraisal District website, and included real property appraisal and specifications. Specifically, the property description stated that as of January 1, 2010, the property had been declared a residential homestead of Mr. Morrison. The information was not unknown to me, having been disclosed by Mr. Morrison previously, when he explained his difficulty in selling his Harris County home. That sale was in fact consummated thirteen days later. (See Attachment E, copied from the Harris County Central Appraisal District website.)

In mid July 2010 Judge Fitzgerald presented a document to me entitled "Formal Request for Administrative Declaration of Ineligibility 'Election Code 145.003'. (See Attachment F). It was a demand letter to me, citing what he described as mandatory provisions of the Election Code which required me to remove Mr. Morrison from the ballot.. I reiterated to Judge Fitzgerald what I had said to him at each previous meeting, that a challenge to a candidate's residency following an election and his subsequent official certification was a subject which properly belonged in a judicial forum and that his allegations would be best served through his filing a lawsuit to resolve the charges. I have studied the Election Code and experienced election attorneys have explained the complexity and contradictions of our residency laws. The Election Code does give to the party official certifying a candidate to be placed on the General Election Ballot .the ability to Administratively declare the ineligibility of a candidate "if (1) the information on the candidate's application ...indicates that the candidate is ineligible for the office, or

facts indicating that the candidate is ineligible are *conclusively* (emphasis added) established by another public record.

Judge Fitzgerald's reference to a mandatory obligation to remove Mr. Morrison is a simple misunderstanding of law. The Code section which he quotes is only a restatement of the section quoted above with the exception that it restricts the officer's action to "A candidate may be declared ineligible *ONLY* (emphasis added) if"

While this has been an issue which has been viewed as local to Liberty County, in fact another case has attracted state-wide attention. It is a virtual duplicate of the Morrison debate. Appealed to the Fifth District Court of Appeals in Dallas, IN RE R. JOHN CUELLAR AND THE TEXAS DEMOCRATIC PARTY centers upon the election of Texas State Senator Brian Birdwell SD-22. Texas law provides that a State Senator must have been a continuous resident of Texas for five years immediately preceding his election. Petitioners provided information to the Court that Birdwell had actually been a resident of Virginia, and they provided the Court with information that he had voted in the 2006 Virginia Election.

With this case pending in a Court of Appeals and with its potential to affect any decision which might be made in Liberty County I wondered whether any decision would stand. However, on Friday August 20, 2010, the Court announced its decision and dismissed the suit. It held that "it is a rule that election officials, charged with the duty of certifying names to properly appear on the ballot have no authority to inquire into facts beyond the immediate record" It then held ;that "Unless the facts relied upon for disqualification are conclusively proved by another public record, the election official is without authority to rely upon them." Further the Court stated that photocopies, or other such representations of an actual record do not meet the requirement of the statute to provide such conclusive proof.

With this decision now established, as well as my deep belief that the voter's decision must always be respected. I am again pleased and proud to reconfirm that Mr. Kenneth Morrison is the Democratic Party's candidate for Liberty County Judge. He will make us all proud.!