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| CHRIS RECTOR | § | IN THE DISTRICT COURT OF |
| | § | |
| <i>Contestant,</i> | § | |
| | § | |
| v. | § | |
| | § | |
| RICHARD WEST “BO” FRENCH AND | § | TARRANT COUNTY, TEXAS |
| THE TARRANT COUNTY | § | |
| REPUBLICAN PARTY, | § | |
| | § | |
| <i>Contestees.</i> | § | |
| | § | 141st JUDICIAL DISTRICT |

**CONTESTEE BO FRENCH’S ORIGINAL ANSWER
AND PLEAS TO THE JURISDICTION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Richard West “Bo” French, Contestee in the above-entitled and numbered case, and files this Original Answer replying to Contestant’s Election Contest and Request for Injunctive Relief and would respectfully show:

Introduction

This Election Contest *would* present unprecedented questions of the highest importance to the Tarrant County Republican Party’s freedom of association and this Court’s authority to entertain election contests generally.

For example: Is the Party required to seat as a member of its governing executive committee a member of the Democratic Party, who ran for Congress as a Democrat during the 2024 election cycle, who ran for the state legislature as a Democrat during the 2022 election cycle, who has confessed to doing the “pretend to be a Republican thing,” has stated a desire to “bring the [Tarrant County Republican Party] into the fold with [the Tarrant County Democratic Party], and

even desires to “outlaw” Republican groups in Tarrant County and prohibit the Republican Party from donating to Tarrant County Republican candidates? May such a person employ the power of the Texas Judiciary to compel him to be seated as a member of the very private organization he seeks to destroy?

Moreover, what role do Texas Courts have to play in determining the results of elections for a party office, such as precinct chair? From a search of legal research databases, it appears this is the very first election contest ever brought into the State of Texas over the position of a political party’s precinct chair. Regardless, Supreme Court precedent casts doubt on this Court’s authority to interfere with the Tarrant County Republican Party’s management of its own elections for internal party offices. *See, e.g., Cousins v. Wigoda*, 419 U.S. 477, 483, (1975) (Supreme Court overruling an injunction issued by the state courts of Illinois which sought to control the credentialing and seating of Illinois delegates to the 1972 Democratic Party’s convention on grounds that Illinois’ interference with the party’s credentialing process imposed a severe burden on its right to choose with whom it would associate). Moreover, a 1985 constitutional amendment appears to have stripped district courts of authority to hear *any* election contest.

Alas, these questions may not be reached by this Court because this Contest is untimely. For this simple reason, this Court should dismiss this Election Contest with prejudice. In the alternative, if this Court finds the Contest to be timely, then this Court lacks jurisdiction over this Contest because all district courts were stripped of such authority in 1985.

General Denial

Pursuant to TEX. R. CIV. P. 92, Contestee Richard West “Bo” French generally denies each and every allegation set forth in Contestant Chris Rector’s Election Contest and demands strict proof thereof.

Plea to the Jurisdiction—Untimely Filing

Rector’s Election Contest is untimely and accordingly this Court lacks subject matter jurisdiction over the Contest.¹

In accordance with TEX. ELEC. CODE § 172.116(b), French’s designee conducted the local canvass for the Tarrant County Republican Party primary election on March 14, 2024. For purposes of the race for Tarrant County Republican Party Precinct Chair for precinct 4230, TEX. ELEC. CODE § 221.005 defines the local canvass as the date of determination of the official result of the election. Accordingly, pursuant to TEX. ELEC. CODE § 232.008(c), because this is a Contest of a party primary election, this Contest was required to be filed by the 15th day after the official result of the election was determined.

In other words, **this Contest was required to be filed on March 29th, 2024**. It is undisputed that **it was actually filed on April 10th, 2024**—12 days too late.

The deadline for filing an election contest is jurisdictional and non-waivable. *See Nichols v. Seei*, 97 S.W.3d 882, 883 (Tex. App.—Dallas 2003, no pet.); *City of Hous. v. Bryant*, 516 S.W.3d

¹ Additionally, Rector consistently claims his suit is based on Chapter 233 of the Election Code, which authorizes a suit on a measure. This appears to be a simple typo, and likely is a reference to Chapter 232. Nonetheless, to the extent Rector relies on Chapter 233, a contest for precinct chair is not an election on a measure.

47, 51-52 (Tex. App.—Houston [1st Dist.] 2017, pet. denied); *Leonard v. Burge*, 74 S.W.3d 135, 137 (Tex. App.—Beaumont 2002, pet. denied).

Accordingly, this Court lacks subject matter jurisdiction and is required to dismiss Rector’s Election Contest as untimely filed.

Plea to the Jurisdiction—Election Contests Have Been Unconstitutional Since 1985

In the alternative, this Court lacks subject matter jurisdiction because all Texas district courts have lacked constitutional authority to entertain election contests since the Texas Constitution was amended in 1985.

Texas Courts were granted statutory authority to hear election contests during the 19th century, but this authority was rejected by the courts as unconstitutional until the adoption of an 1891 constitutional amendment. As the Texas Supreme Court explained in 1938:

“An examination of the decisions of this Court will disclose that, though the statutes above quoted were first enacted long prior to the adoption of the 1891 constitutional amendment just mentioned, it was uniformly held by this Court prior to such adoption that the district court was without jurisdiction, generally speaking, to try contested election cases.”

De Shazo v. Webb, 113 S.W.2d 519, 521 (1938).

This history was echoed again by the Texas Supreme Court in 1956:

It has been stated that an election contest is a political and not a judicial question and that the courts have no jurisdiction in such proceedings save as given by statute. Prior to the constitutional amendment of 1891 (Art. 5, Sec. 8) it had been held that courts had no jurisdiction to try an election contest and that the Legislature was not authorized to confer such jurisdiction.

Dick v. Kazen, 292 S.W.2d 913, 916 (1956).

Senate Joint Resolution 16, passed by the 22nd Texas Legislature, R.S. (available at https://lrl.texas.gov/scanned/sessionLaws/22-0/SJR_16.pdf) added jurisdiction to the District

Courts to hear “contested elections” amongst the laundry list of jurisdictional items granted in TEX. CONST. Art. V, Sec. 8. Under that authority, the Dallas Court of Appeals reflected on the nature of election contests as something altogether foreign to the judiciary’s regular cases at law or equity:

[W]e deem it desirable and appropriate to direct attention to and discuss the character of the proceedings before us. **An election contest does not partake of the usual characteristics of the ordinary case in law or in equity.** While the Constitution and laws of the state specifically confer jurisdiction of election contests on district courts, and specifically provide for appeals in such cases to the Court of Civil Appeals, **such contests involve political questions, rather than judicial questions, and therefore lack the elements of a civil suit.** Our courts have repeatedly said that **an election contest is not a civil suit in the true sense of the term.** It is said that election contests are political proceedings, legislative proceedings, quasi-judicial proceedings, and other such designations.

Wooley v. Sterrett, 387 S.W.2d 734, 737 (Tex. Civ. App.—Dallas 1965, no writ) (internal citations omitted) (emphasis added).

In 1910, the Texas Supreme Court recognized jurisdiction under the then-existing constitutional provisions and statutes to hear election contests over primary elections “where they are given the characteristics of legal elections and contests of them are provided for by the Legislature.” *Hammond v. Ashe*, 131 S.W. 539 (1910). Yet the Court recognized that this did not make them “causes” under the Constitution, and accordingly rejected the right to a jury trial in such actions. *Id.*

More recently, election contests have been described not as a judicial proceeding, but a “legislative proceeding.” *Mendez v. City of Amarillo*, No. 07-07-0207-CV, 2008 Tex. App. LEXIS 4868, at *3 (Tex. App.—Amarillo June 30, 2008, no pet.); *see also Cohen v. Clear Lake City Water Auth.*, 687 S.W.2d 406, 407 (Tex. App.—Houston [14th Dist.] 1985, no writ) (“It is well settled in Texas that an election contest is a legislative proceeding and not an ordinary civil

suit. . . . Therefore, a court's jurisdiction in an election contest is limited to such subjects or grounds of contest as are expressly or impliedly authorized by the Election Code.”).

In 1985, Texas voters approved the constitutional amendment proposed by the 69th Texas Legislature, R.S., in Senate Joint Resolution 14 (available at: <https://lrl.texas.gov/legis/billsearch/amendmentdetails.cfm?legSession=69-0&billtypeDetail=SJR&billNumberDetail=14&billSuffixDetail=&amendmentID=427>). The amendment simplified the language of Article V, Sec. 8 of the Texas Constitution to state, in relevant part: “District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies. . . .”

Under Article II of the Texas Constitution, the separation of powers is guaranteed “except in the instances herein **expressly** permitted.” (emphasis added). Given that election contests have been consistently recognized as “political” or “legislative” proceedings, to not be “causes” under the ordinary use of the term in the Constitution, and to not be of a judicial character, it appears the 1985 revision to Art. V, Sec. 8, struck the “express permission” granted to district courts to hear election contests and reverted Texas constitutional law to its pre-1891 status on this question. This issue appears not to have been raised in response to any election contest since 1985 and, if reached, is a matter of first impression for this Court.

Common law would suggest that the Republican Party of Tarrant County, not this Court, is the body possessing the authority to entertain an election contest for precinct chair for Tarrant County Precinct 4230. As the Corpus Christi Court of Appeals recognized in 2010, it lacked statutory authority to hear an election contest for positions of party committeeman and convention delegates:

[T]he crux of appellants' complaints pertain to an election contest for the positions of party committeemen and convention delegates, which the supreme court has

held is not within the jurisdiction of the trial court but, rather, within the sphere of authority of the political party—the Republican Party here. In fact, it is well settled that separation of powers and the judiciary's deference to the legislative branch require that judicial power ought not to interfere with the elective process, and the supreme court has held that except to the extent that jurisdiction is conferred by statute or that the subject has been regulated by statute, the courts have no power to interfere with the judgments of the constituted authorities of established political parties in matters involving party government and discipline, to determine disputes within a political party as to the regularity of the election of its executive officers, or their removal, or to determine contests for the position of party committeemen or convention delegates. Moreover, the supreme court has recognized that a Texas political party is a free and voluntary association of citizens of the state. Such parties cannot operate if the courts entertain the suit of every member who concludes that he is in disagreement with its decisions.

Cahill v. Bertuzzi, No. 13-09-00183-CV, 2010 Tex. App. LEXIS 3951, at *20-22 (Tex. App.—Corpus Christi May 27, 2010, pet. denied) (cleaned up).

Accordingly, in the alternative to French's plea on the untimeliness of this Election Contest, he asks this Court to recognize that it lacks jurisdiction over *any* election contest, including this one, and dismiss this Contest with prejudice.

Prayer for Relief

Contestee Richard West “Bo” French asks this Court to render judgement that Plaintiff recover nothing from by way of this suit, that he recover his costs of court, and for all other relief to which he may show himself justly entitled.

Respectfully Submitted,

/s/ Tony K. McDonald

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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2024, a true and correct copy of the above and foregoing has been e-filed and e-served via Texas e-File to all counsel of record for those parties that have appeared in this action in accordance with the Texas Rules of Civil Procedure.

/s/ Tony K. McDonald