

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

**TARRANT COUNTY REPUBLICAN PARTY’S ORIGINAL ANSWER AND TCPA MOTION TO DISMISS**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the Tarrant County Republican Party (“TCGOP” or the “Party”), mislabeled as “Contestee” in the above-entitled and numbered case but better described as a Third-Party Defendant, and files this Original Answer and TCPA Motion to Dismiss replying to Contestant’s Election Contest and Request for Injunctive Relief and would respectfully show as follows:

**Introduction**

Plaintiff Chris Rector has an agenda to destroy the Tarrant County Republican Party. He is a member of the Democratic Party, ran for Congress as a Democrat during the 2024 election cycle and ran for the state legislature as a Democrat during the 2022 election cycle. He has confessed to doing the “pretend to be a Republican thing” and has stated a desire to “bring the [Tarrant County Republican Party] into the fold with [the Tarrant County Democratic Party].”

Rector even has desires to “outlaw” Republican groups in Tarrant County and prohibit the Republican Party from donating to Tarrant County Republican candidates.

Despite no statutory authority to name the Tarrant County Republican Party as a “Contestee” in an election contest, Rector seeks to use this Election Contest to invade the Tarrant County Republican Party’s freedom of association, so that he can work to destroy the party from the inside. Texas law does not recognize political parties as proper “contestees” in election contests. Accordingly, inclusion of TCGOP in this suit is an error and this Court is required to dismiss this action against the Party.

Moreover, the U.S. Supreme Court has recognized that state district courts are limited in their power to impose membership requirements on private political parties. *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). Likewise, a 1985 constitutional amendment appears to have stripped district courts of jurisdiction to hear *any* election contest.

Accordingly, the Republican Party of Tarrant County answers this Election Contest by bringing a motion to dismiss under the Texas Citizens Participation Act and demands dismissal with prejudice and an award of its attorney’s fees and sanctions against Rector.

## **General Denial**

Pursuant to TEX. R. CIV. P. 92, the Tarrant County Republican Party generally denies each and every allegation set forth in Contestant Chris Rector's Election Contest and demands strict proof thereof.

## **TCPA Motion to Dismiss**

The Party brings a motion to dismiss this legal action against it under the Texas Citizens Participation Act.

Chapter 27 of the Civil Practice & Remedies Code, more commonly known as the Texas Citizens Participation Act or TCPA, provides for expedited dismissal of a legal action that falls within its scope. And that scope is quite broad. The act applies to "a legal action [that] is based on or is in response to a party's exercise of the right of free speech, right to petition, or right of association or arises from any act of that party in furtherance of the party's communication or conduct described by Section 27.010(b)." TEX. CIV. PRAC. & REM. CODE § 27.003(a)

In other words, if the legal action is based on or in response to the exercise of *any* of the above three rights, *or* arises from an act in furtherance of the party's communication or conduct described in Section 27.010(b), then "that party may file a motion to dismiss the legal action." *Id.* When a TCPA motion is filed, it automatically stays all discovery in the legal action until the court rules on the motion. TEX. CIV. PRAC. & REM. CODE § 27.003(c).

In ruling on a motion to dismiss under the TCPA, the TCPA requires the trial court to engage in a three-step process:

The first step is to determine whether or not the TCPA applies to the legal action at issue. TEX. CIV. PRAC. & REM. CODE § 27.005(b). If the moving party demonstrates that the legal action

is *based on or in response to* a party's exercise of the right of free speech or the act of a party described by Section 27.010(b), then the court *must* dismiss the legal action unless the party bringing the legal action satisfies step two of the analysis. *Id.*

In the second step, the court examines whether the party bringing the legal action has established by *clear and specific evidence* a prima facie case for *each essential element of its claims*. TEX. CIV. PRAC. & REM. CODE § 27.005(c) (emphasis added). If the party has done so, then the Court may not dismiss the legal action unless the moving party satisfies step three of the analysis. *Id.*

In the third step, even if the non-moving party has established a prima facie case for each essential element of its claims, the court must still “dismiss a legal action against the moving party if the moving party establishes an affirmative defense or other grounds on which the moving party is entitled to judgement as a matter of law.” TEX. CIV. PRAC. & REM. CODE § 27.005(d).

#### **TCPA Step One: The Act Applies to this Legal Action**

The TCPA defines “legal action” broadly to mean a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim **or any other judicial pleading or filing that requests legal, declaratory, or equitable relief**. TEX. CIV. PRAC. & REM. CODE § 27.001(6). Rector's election contest at ¶18 specifically seeks declaratory and injunctive (equitable) relief against rhw TCGOP to declare Rector the winner of the race for precinct chair for Tarrant County precinct 4230, to require TCGOP to seat Rector as the precinct chair for precinct 4230 on the TCGOP executive committee, and prohibiting TCGOP from appointing any other person to fill the vacant precinct chair position. Accordingly, Rector's Contest is a legal action under Section 27.001.

TEX. CIV. PRAC. & REM. CODE § 27.006 tells trial courts what they should consider when determining whether a legal action is based on or in response to a legally protected right that falls

within the scope of the statute. It states that “[i]n determining whether a legal action is subject to or should be dismissed under this chapter, the court shall consider the pleadings, evidence a court could consider under Rule 166a, Texas Rules of Civil Procedure, and supporting and opposing affidavits stating the facts on which the liability or defense is based.” TEX. CIV. PRAC. & REM. CODE § 27.006.

The Texas Supreme Court has offered further guidance. For example, although a trial court is not constrained by the manner in which the action was pleaded, “[w]hen it is clear from the plaintiff’s pleadings that the action is covered by the Act, the defendant need show no more.” *Hersh v. Tatum*, 526 S.W.3d 462, 467 (Tex. 2017). Indeed, the Court in *Hersh* held that the basis of a legal action is not determined by the defendant’s admissions or denials, but by the plaintiff’s allegations. *Id.*

Here it cannot reasonably be disputed that Rector’s Election Contest is based on TCGOP’s exercise of the right of association. The TCPA defines “Exercise of the right of association” as “to join together to collectively express, promote, pursue, or defend common interests relating to a governmental proceeding or a matter of public concern.” TEX. CIV. PRAC. & REM. CODE § 27.001(2). “Matter of public concern” is broadly defined to include any “statement or activity regarding . . . a matter of **political**, social, or other interest to the community” or regarding “a subject of concern to the public.” TEX. CIV. PRAC. & REM. CODE § 27.001(7) (emphasis added).

Rector’s Contest is based on his alleged right to control who the Tarrant County Republican Party associates with by asking to Court to force the Party to seat him as a member of its executive committee, and no other person. In *Cousins v. Wigoda*, 419 U.S.

477, 483, (1975), the U.S. Supreme Court recognized that judicial interference with the seating of delegates at a party's convention implicated the right of the Party to freedom of association, and was therefore unconstitutional. Likewise, in *Cahill v. Bertuzzi* the Corpus Christi Court of Appeals recognized that a political party's freedom of association barred judicial intervention in its elections for party committeeman and convention delegates. No. 13-09-00183-CV, 2010 WL 2163136, at \*20-22 (Tex. App.—Corpus Christi May 27, 2010, pet. denied).

Additionally, the TCPA can apply through its catch-all provision, which holds that if a party's conduct is described by Section 27.010(b), and a legal action “arises from [acts] of that party in furtherance of the party's . . . conduct described” by that section, then the legal action is subject to the Act. Conduct described by Section 27.010(b) includes:

[A]ny act of [a] person, whether public or private, **related to the gathering, receiving, posting, or processing of information for communication to the public**, whether or not the information is actually communicated to the public, **for the creation, dissemination, exhibition, or advertisement or other similar promotion of a dramatic, literary, musical, political, journalistic, or otherwise artistic work**, including audio-visual work regardless of the means of distribution, a motion picture, a television or radio program, or an article published in a newspaper, website, magazine, or other platform, no matter the method or extent of distribution.

TEX. CIV. PRAC. & REM. CODE § 27.010(b) (emphasis added).

Rector's legal action against TCGOP, “arises from [acts] of that party in furtherance of the party's communication or conduct described by Section 27.010(b).” A political party is organized for the purpose of communicating political works to the public. Indeed, that is the entire point of the Republican Party of Tarrant County—to persuade the public to support Republican candidates and the Republican platform. The recruitment and seating of precinct chairs on TCGOP's executive committee is an act related to the gathering, receiving, posting, or processing of

information for communication to the public of political works. Rector's Election Contest, in which he seeks to control TCGOP in this regard, arises from these acts related to such protected communications.

Accordingly, the Texas Citizens Participation Act applies to Rector's claims against TCGOP and Rector must show evidence of a prima facie case in order to avoid dismissal.

**TCPA Step Two: Rector Can't Demonstrate a Prima Facie Case Because TCGOP is Not a Statutorily Authorized Contestee and His Contest is Untimely**

Although the burden now shifts to Rector to show a prima facie case, he cannot do so because his Election Contest lacks certain essential elements.

First, categorically, TCGOP is not a proper contestee. Under TEX. ELEC. CODE § 232.003, the general rule is that a contestee in an election is the opposing candidate. But § 232.004 allows the presiding officer of the final canvassing authority to be named as a substitute contestee if "a deceased or ineligible candidate receives a sufficient number of votes for nomination or election according to the official result of the contested election." This is the case here, where Rector received a majority of the votes but was administratively declared ineligible. Accordingly, there was statutory authority to name Bo French as a substitute contestee in his official capacity. However, under TEX. ELEC. CODE § 232.004 there is no authority to name the Tarrant County Republican Party as a contestee.

Second, Rector's Election Contest is untimely and accordingly this Court lacks subject matter jurisdiction over the Contest.

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 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).

Subject matter jurisdiction is “an equally fundamental component of a prima facie case.” *De La Torre v. De La Torre*, 613 S.W.3d 307, 314 (Tex. App.—Austin 2020, no pet.). Accordingly, the lack of subject matter jurisdiction here because Rector’s contest is untimely is fatal to his ability to present a prima facie case.

### **TCPA Step Three: The Party Can Establish Grounds Which Entitle It to Judgement As a Matter of Law**

Under TCPA Step Three, even if the non-moving party has established a prima facie case for each essential element of its claims, the court must still “dismiss a legal action against the moving party if the moving party establishes an affirmative defense or other grounds on which the moving party is entitled to judgement as a matter of law.” TEX. CIV. PRAC. & REM. CODE § 27.005(d).

This is the case here because 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](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.

The common law would suggest that TCGOP, 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, because TCGOP can establish grounds on which it is entitled to judgement as a matter of law—the lack of constitutional authority for district courts to hear election contests—TCGOP is entitled to dismissal of Rector’s contest against it.

### **TCGOP Is Entitled to its Attorneys’ Fees and Costs**

When a legal action is dismissed under the TCPA, the defendant is entitled to court costs, attorney fees, and other expenses incurred in defending against the action as justice and equity may require. TEX. CIV. PRAC. & REM. § 27.009(a)(1) (“if the court orders dismissal of a legal action under this chapter, the court *shall award* to the moving party . . . court costs, reasonable attorney’s fees, and other expenses incurred in defending against the legal action as justice and equity may require”) (emphasis added); *See also Sullivan v. Abraham*, 488 S.W.3d 294, 299 (Tex. 2016) (court forced to award reasonable attorneys’ fees for an action dismissed under the TCPA).

When seeking fees, the applicant must provide evidence thereof to the court, including the services performed, who performed them at what hourly rate, when they were performed, and how much time the services required. *Sullivan*, 488 S.W.3d at 299 (citing *El Apple I, Ltd. v. Olivas*, 370 S.W.3d 757, 760–65 (Tex. 2012)).

Texas courts have adopted the lodestar method as an acceptable way to calculate attorneys’ fees. *El Apple I, Ltd.*, 370 S.W.3d at 760. Under the lodestar method, calculating reasonable attorneys’ fees involves two steps: (1) determining the hours spent by counsel and a reasonable hourly rate for the attorneys involved, and (2) multiplying the number of hours spent by the applicable rate. *Id.* An affidavit providing evidence of these factors is sufficient, and billing records or other documentation is not required. *See Texas Commerce Bank, Nat. Ass’n v. New*, 3 S.W.3d 515, 517–18 (Tex. 1999); *In re A.B.P.*, 291 S.W.3d 91, 99 (Tex. App.—Dallas 2009, no pet.).

Services provided and a reasonable rate for such services will be discussed extensively in a declaration to be filed with the Court following a ruling on this Motion. The declaration will identify the attorneys who performed work on this matter, the hourly rate charged by the attorneys, and the work the attorneys performed. The time keeping entries provided as exhibits to the declaration will delineate the date of, and amount of, and time expended by each attorney for the services provided.

Accordingly, this Court should award TCGOP its reasonable attorneys' fees in defending against this action and should request evidence and briefing from the litigants on the amount of such fees.

#### **This Court Should Award Sanctions Against Rector**

This Court should also award sanctions against Rector under TEX. CIV. PRAC. & REM. CODE § 27.009(a)(2). A court may impose sanctions sufficient to deter a plaintiff from bringing similar actions in the future, and TCGOP requests this Court do so in order to deter Rector from filing similar lawsuits in the future against other challengers and political opponents. TEX. CIV. PRAC. & REM. CODE § 27.009(a)(2). TCGOP suggests double the amount of its reasonable attorneys' fees in this action as a reasonable sanction amount, though the amount of a sanction, if any, is fully in the discretion of this Court.

This Contest was untimely and improperly brought against the Tarrant County Republican Party, in an effort to violate its right to freedom of association, despite a clear lack of statutory authority to name the Party as a contestee in this suit. TCGOP should not have ever had to deal with this suit and a simple reading of Chapter 232 should have made that clear.

Accordingly, this Court should award an amount of sanctions it deems sufficient to deter Rector from bringing similar actions in the future.

**Prayer for Relief**

For these reasons the Tarrant County Republican Party moves that the Court dismiss Rector's legal action against it, issue a final judgment that he take nothing against the Party by his claims, award TCGOP its reasonable attorneys' fees and costs incurred in defending against the legal action, order the parties to provide additional briefing on the proper amount of such fees, and award an amount of sanctions the Court deems sufficient to deter Rector from bringing similar actions in the future. TCGOP additionally prays for all other and further relief to which it may show itself justly entitled.

Respectfully Submitted,

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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