

DISMISSING THE ELECTION CONTEST RELATING TO THE
OFFICE OF REPRESENTATIVE FROM THE TWENTY-
EIGHTH CONGRESSIONAL DISTRICT OF TEXAS

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MARCH 19, 2013.—Referred to the House Calendar and ordered to be printed
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Mrs. CANDICE MILLER of Michigan, from the Committee on House
Administration, submitted the following

R E P O R T

[To accompany H. Res. 127]

The Committee on House Administration, having had under consideration an original resolution dismissing the election contest relating to the office of Representative from the Twenty-Eighth Congressional District of Texas, report the same to the House with the recommendation that the resolution be agreed to.

DISMISSING THE ELECTION CONTEST IN THE TWENTY-EIGHTH
CONGRESSIONAL DISTRICT OF TEXAS

The Committee on House Administration, having had under consideration an original resolution dismissing the election contest against Henry Cuellar, report the same to the House with the recommendation that the resolution be agreed to.

COMMITTEE ACTION

On March 14, 2013, by a voice vote, a quorum being present, the Committee agreed to a motion to report the resolution favorably to the House.

COMMITTEE OVERSIGHT FINDINGS

In compliance with House Rule XIII, clause 3(c)(1), the Committee states that the findings and recommendations of the Committee, based on oversight activities under House Rule X, clause 2(b)(1), are incorporated into the general discussion section of this report.

STATEMENT OF BUDGET AUTHORITY AND RELATED ITEMS

The resolution does not provide new budget authority, new spending authority, new credit authority, or an increase or decrease in revenues or tax expenditures and a statement under House Rule XIII, clause 3(c)(2), and section 308(a)(1) of the Congressional Budget Act of 1974 is not required.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with House Rule XIII, clause 3(c)(3), the Committee states, with respect to H. Res. 127, that the Director of the Congressional Budget Office did not submit a cost estimate and comparison under section 402 of the Congressional Budget Act of 1974.

STATEMENT OF FACTS

On December 11, 2012, William R. Hayward (“Contestant”) filed a Notice of Contest with the Clerk of the House of Representatives pursuant to the Federal Contested Elections Act (FCEA).¹ Contestant ran as the nominee of the Republican Party for the office of Representative to the United States Congress representing the Twenty-Eighth Congressional District of the State of Texas in the November 6, 2012, general election. The other principal candidate for the Twenty-Eighth Congressional District was incumbent Democrat Henry Cuellar (“Contestee”). On December 6, 2012, the Texas Secretary of State’s office certified the results as follows: Contestee received 112,456 votes and Contestant received 49,309 votes. The Texas Secretary of State, John Steen, issued the Certificate of Election certifying Contestee as the winner of the Twenty-Eighth Congressional District on December 7, 2012.

BASIS OF CONTEST

In his Notice of Contest, Contestant alleges that the official election results for the Twenty-Eighth Congressional District were tainted by fraud and vote tampering and that, absent such fraud and tampering, the election would have been in favor of Contestant. In addition, Contestant claims that if a new election were ordered Contestant could win because registered voters who were intimidated from not voting would come out to the polls. Contestant is asking that the House order an inspection of the ballots, a review to determine whether election law violations occurred, and a new election pursuant to the authority in Article I Sec. 5 of the United States Constitution.

STANDING

To have standing under the FCEA, a contestant must have been a candidate for election to the House of Representatives in the last preceding election and claim a right to the Contestee’s seat.² Contestant was the Republican nominee and his name appeared as a candidate for the Twenty-Eighth Congressional District on the official ballot for the November 6, 2012 election. Contestant’s claim of a right to the office in the Notice of Contest is ambiguous.

¹ 2 U.S.C. Sec. 381–96.

² 2 U.S.C. Sec. 382(a).

Contestant claims that “had the ballots not been tampered with, that their votes cast would count, and the voters were given a fair choice on who to vote for without fear of reprisals from the Contestees” then the election would have been in favor of Contestant. Elsewhere, Contestant asks specifically for a new election rather than to be declared the winner of the election held on November 6, 2012, and suggests that additional voters would need to come to the polls in order for him to win.

Contestee did not challenge Contestant’s standing in the Motion to Dismiss. The Committee assumes, without deciding, that Contestant has standing to pursue this contest. Because of the Committee’s conclusion on the merits of the contest, this assumption does not prejudice Contestee.

TIMING/NOTICE

The Notice of Contest has been served upon Contestee and was filed with the Clerk of the House of Representatives on December 11, 2012, within the prescribed time periods of the FCEA.

RESPONSE BY CONTESTEE

On January 15, 2013, Contestee filed a Motion to Dismiss Contest of Election in response to Contestant’s Notice of Contest challenging the results of the 2012 General Election for the Twenty-Eighth Congressional District of the State of Texas. Contestee maintains that the contest against him should be dismissed because Contestant failed to set forth with particularity, as required by 2 U.S.C. 382(b), grounds sufficient to change the result of the election.

STANDARD FOR GRANTING MOTION TO DISMISS

The House of Representatives has the constitutionally vested power to judge its own elections.³

The FCEA sets forth procedures under which a contestant may bring a contest to the House of Representatives. Under the FCEA, it is not sufficient for a contestant merely to allege irregularities or fraud in an election. The contestant must claim a right to the office.⁴ The contestant must support this claim with specific credible allegations of irregularity or fraud that if proven true, would entitle the contestant to the office.⁵ Unless a contestant credibly claims in his Notice of Contest a right to the office, the House of Representatives will dismiss the Contest.⁶

ANALYSIS

Contestant claims Contestee and Contestee’s representatives committed a number of violations of both United States and Texas law including: unlawfully influencing voters, illegal voting by non-citizens, tampering with Direct Recording Electronic voting machines, and unlawful electioneering.

Contestant expressed “shock” when the vote totals were released and he found himself behind in the count because he had “put a

³ U.S. Constitution Article I, Section V.

⁴ 2 U.S.C. Sec. 382.

⁵ See, e.g. *Pierce v. Pursell*, H. Rep. 95–245 (1977).

⁶ *Anderson v. Rose*, H. Rep. 104–852 (1996).

campaign business size card on every car in Laredo”, there were many early voters and Republicans tend to vote early, and many Democratic voters had informed the Contestant that they were voting for him. Contestant also states that a number of the counties in question have a long history of vote tampering, but provides no evidence of that long history. In addition, Contestant claims that Democratic voters were bused to the polls, had utilities bills paid, were given free tacos, and were provided money in return for their vote. Contestant questions the security of ballots from early voting and says that they were not kept in secure conditions when not in use. Finally, Contestant claims that the voting machines were tampered with so that those who voted for the Contestant had their votes changed to Contestee. In support of his allegations, Contestant has offered the hearsay of unnamed sources and his own testimony. He does not provide any evidence to support his claims other than his own words. Contestant has offered information such as early vote totals and final vote totals that seem to prove Contestee garnered a majority of the votes in the November 6, 2012 election.

The Contestant must support his claims with specific credible allegations of irregularity or fraud that, if proven true, would entitle the Contestant to the office. Contestant has offered no support for his claims.

The Committee finds that Contestant has failed to make a credible and specific claim that he is entitled to the office.

CONCLUSION

For the reasons discussed above, the Committee therefore concludes that this contest should be dismissed.

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