

## Validity of Ballot Application Signatures

*Stockman v. Williams*

*(Lee Yeakel and Sam Sparks, W.D. Tex. 1:06-cv-742)*

On September 19, 2006, an independent candidate for Congress filed a federal action to get his name on the ballot. The assigned judge was away that week, so another judge presided over a temporary restraining order hearing. Because absentee ballots would be issued in a few days' time, and because the plaintiff did not name all necessary defendants, immediate relief was denied. The originally assigned judge determined the following week that the case was filed too late to obtain relief.

*Subject:* Getting on the ballot. *Topics:* Getting on the ballot; laches; case assignment.

On Tuesday, September 19, 2006, Steve Stockman filed a federal action in Austin against Texas's secretary of state, seeking an order to place Stockman's name on the ballot as an independent candidate for Texas District 22's member of Congress.<sup>1</sup> The complaint challenged disqualifications of his ballot petition signatures.<sup>2</sup>

The election for this office drew attention because incumbent Tom DeLay resigned from Congress after he won the Republican Party primary election, and the Republican Party could not legally name a replacement for him on the general election ballot.<sup>3</sup>

The Western District of Texas assigned Stockman's case to Judge Sam Sparks, but Judge Sparks was away that week.<sup>4</sup> Judge Lee Yeakel was the other active district judge in Austin; Judges Sparks and Yeakel coordinated their travel schedules to avoid occasions when they were both out of town at the same time.<sup>5</sup> Judge Yeakel offered to either preside over initial proceedings or take assignment of the case.<sup>6</sup> Judge Sparks chose to retain the case, over

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1. Complaint, *Stockman v. Williams*, No. 1:06-cv-742 (W.D. Tex. Sept. 19, 2006), D.E. 1; *see* Amended Complaint, *id.* (Sept. 19, 2006), D.E. 13.

2. Complaint, *supra* note 1.

3. *Texas Democratic Party v. Benkiser*, 459 F.3d 582 (5th Cir. 2006) (holding that the U.S. Constitution permits a residency requirement only on the day of election and Texas law does not permit a party's replacing a nominee who merely withdraws from the race), *aff'g* Opinion, No. 1:06-cv-459 (July 6, 2006), D.E. 40 (Judge Sam Sparks), 2006 WL 1851295, *and stay denied*, Docket Sheet, No. 06A139 (U.S. Aug. 7, 2006) (Justice Scalia); *see* Complaint, *supra* note 1, at 1.

4. Transcript, *Stockman*, No. 1:06-cv-742 (W.D. Tex. Sept. 20, 2006, filed Sept. 27, 2006), D.E. 17 [hereinafter Sept. 20, 2006, Transcript].

Tim Reagan interviewed Judge Sparks for this report by telephone on Sept. 19, 2012.

5. Interview with Hon. Sam Sparks, Sept. 19, 2012.

Tim Reagan interviewed Judge Yeakel for this report by telephone on Sept. 12, 2012.

6. Interview with Hon. Lee Yeakel, Sept. 12, 2012.

which he would preside when he returned.<sup>7</sup> Judge Yeakel relied on Judge Sparks' law clerks for preliminary matters.<sup>8</sup>

Judge Yeakel held a hearing on Stockman's motion for a temporary restraining order on the case's second day.<sup>9</sup>

... I have checked with Judge Sparks' calendar and Judge Sparks could entertain a hearing on a temporary injunction on September the 28th in the afternoon, which is not exactly a long way away. My experience in private practice, and it hasn't changed much since I have been on this Court, is that it is often better to get the lawyers together and encourage them to get everything put together before a temporary injunction hearing, because then both sides have a better opportunity to present all of their exhibits and you have a better record and you've got a record that one side or the other can appeal from, and it's a pretty expeditious way to do it that way.<sup>10</sup>

After the hearing, the secretary moved to dismiss the action.<sup>11</sup> On the third day, Judge Yeakel denied the temporary restraining order because Stockman had not included all necessary parties as defendants and because the issuing of absentee ballots was only days away.<sup>12</sup>

I am concerned that the election directors and the clerks are not parties to this action because I have a real question, regardless of whether they from time to time take advice from the Secretary of State as to whether the granting of injunctive relief as prayed for against the Secretary of State in any way affects the actions of the election directors and the county clerks in the four counties in which they are relocated. I concede that it is easier if you only have one party, but these are the persons who actually are in charge of mailing out the ballots and taking care of the administrative acts of obtaining the ballots and sending them out.

I have concern about what we have referred to as the laches argument. I am bothered by the fact that we are here at a time when I am told that the clerks and elections directors must take action by Saturday to send the mail-out ballots to servicemen, when in fact the disagreement between Mr. Stockman and the Secretary of State was apparently known as early as June the 22nd.<sup>13</sup>

Judge Sparks held another hearing one week later.<sup>14</sup> Judge Sparks determined that the case was filed too late to obtain the desired relief.<sup>15</sup>

It's too late for any injunction from this judge. That doesn't mean that I'm satisfied with what I'm doing. I don't think I'm ever satisfied in elec-

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7. *Id.*

8. *Id.*

9. Docket Sheet, *Stockman*, No. 1:06-cv-742 (W.D. Tex. Sept. 19, 2006).

10. Sept. 20, 2006, Transcript, *supra* note 4, at 2–3.

11. Motion to Dismiss, *Stockman*, No. 1:06-cv-742 (W.D. Tex. Sept. 20, 2006), D.E. 9.

12. Order, *id.* (Sept. 21, 2006), D.E. 12.

13. Sept. 20, 2006, Transcript, *supra* note 4, at 39–40.

14. Transcript, *Stockman*, No. 1:06-cv-742 (W.D. Tex. Sept. 28, 2006, filed Oct. 11, 2006), D.E. 34 [hereinafter Sept. 28, 2006, Transcript]; Docket Sheet, *supra* note 9.

15. Sept. 28, 2006, Transcript, *supra* note 14, at 74 (“what I can find very clearly is that this lawsuit should have been filed in June”).

tions squabbles because I think, you know, the Secretary of State is to serve the people, and whether that occurred in this case or not, I don't know. I wouldn't mind having a week to find out. But I'm not going to set aside the election and—not set aside the election but set aside the election process under these circumstances. The harm it would cause is far more than the benefit in the event I had an evidentiary hearing and determined that you were correct.<sup>16</sup>

Judge Sparks issued an order on October 2 stating that injunctive relief could seriously disrupt the coming election and the ballot application signature requirements imposed by Texas were not unreasonable.<sup>17</sup> On October 26, the court of appeals summarily affirmed.<sup>18</sup>

On January 19, 2007, Judge Sparks dismissed the action.<sup>19</sup>

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16. *Id.* at 75.

17. Order, *Stockman*, No. 1:06-cv-742 (W.D. Tex. Sept. 19, 2006), D.E. 31.

18. Opinion, *Stockman v. Williams*, No. 06-51346 (5th Cir. Oct. 26, 2006).

19. Judgment, *Stockman*, No. 1:06-cv-742 (W.D. Tex. Jan. 19, 2007), D.E. 59.