

No Relief from Election Officials’ Not Striking a Candidate from the Ballot at a Voter’s Request

Davis v. Wayne County Election Commission
(Sean F. Cox, E.D. Mich. 2:20-cv-11819)

About four weeks before a primary election, a federal complaint alleged that election officials improperly declined to strike a congressional candidate from the ballot. Five months later, the court dismissed the action because the plaintiff had not shown a violation of federal law.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; matters for state courts; primary election.

A frequent litigator and another voter filed a federal complaint in the Eastern District of Michigan on Monday, July 6, 2020, seeking to remove from the August 4 primary-election ballot a candidate for Congress.¹ Defendants included the candidate and election officials for Detroit and Wayne County.² The complaint stated that the frequent litigator might elect to proceed pro se.³ On the following day, the plaintiffs filed an emergency motion for summary judgment,⁴ an amended summary-judgment motion,⁵ and a motion to expedite a decision.⁶

On Wednesday, Judge Sean F. Cox declined supplemental jurisdiction over state-law claims:

The Court concludes that Plaintiffs’ state-law claims would substantially expand the scope of this case beyond that necessary and relevant to the federal claims. Thus, the state-law claims would substantially predominate over the federal claims. The state-law claims also raise novel and complex issues of state law.⁷

Judge Cox therefore trimmed the complaint to include only three of the original seven claims, only the frequent litigator as a plaintiff, and only some city and county election officials as defendants.⁸ This eliminated from the case the claims on which the plaintiffs sought summary judgment.⁹

On August 13, the remaining plaintiff sought expedited consideration of his motion to file an amended complaint in advance of the August 17 due date

1. Complaint, *Davis v. Jordan*, No. 2:20-cv-11819 (E.D. Mich. July 6, 2020), D.E. 1; see Christine MacDonald, *Activist Tries to Kill Jones’ Challenge of Tlaib*, Detroit News, July 7, 2020, at A5.

2. Complaint, *supra* note 1.

3. *Id.* at 2 n.1.

4. Summary-Judgment Motion, *Davis*, No. 2:20-cv-11819 (E.D. Mich. July 7, 2020), D.E. 5.

5. Amended Summary-Judgment Motion, *id.* (July 7, 2020), D.E. 7.

6. Motion, *id.* (July 7, 2020), D.E. 4.

7. Opinion at 4–5, *id.* (July 8, 2020), D.E. 18, 2020 WL 3833041.

8. *Id.* at 2–5.

9. *Id.* at 5–6; Order, *id.* (July 8, 2020), D.E. 19.

for a response to a pending motion to dismiss the action.¹⁰ Wayne County election officials responded on the following day that the plaintiff's time pressure resulted from his own delay: "the August Primary Election occurred on August 4, 2020. . . . Yet [the plaintiff] waited until August 13, 2020—9 days later—to seek the Court's permission to file an amended complaint and to receive an expedited briefing schedule."¹¹

With no ruling on the plaintiff's motion to file an amended complaint, the plaintiff filed—one day after his response was due—a motion for a two-day extension of his deadline to respond to the dismissal motion.¹² On the day of the proposed revised deadline, a defendant argued that the plaintiff had not shown excusable neglect.¹³ Still represented by counsel, the plaintiff responded to the dismissal motion at approximately 1:25 a.m. on the following day—three days after the original deadline—and filed an amended motion to adjust the deadline.¹⁴ Judge Cox granted the deadline motion and set the case for hearing by video conference on December 10.¹⁵

Judge Cox agreed to dismiss the action on December 15; the plaintiff had not shown that the defendants' not removing a candidate from the ballot at the plaintiff's request violated federal law.¹⁶

10. Motion, *id.* (Aug. 18, 2020), D.E. 24.

11. Motion Response at 3, *id.* (Aug. 14, 2020), D.E. 25.

12. Motion, *id.* (Aug. 18, 2020), D.E. 26.

13. Motion Response at 1, *id.* (Aug. 19, 2020), D.E. 27.

14. Amended Motion, *id.* (Aug. 20, 2020), D.E. 29; Motion Response, *id.* (Aug. 20, 2020), D.E. 28.

15. Notice, *id.* (Oct. 8, 2020), D.E. 34; Docket Sheet, *id.* (July 6, 2020) (order, Aug. 20, 2020).

16. Opinion, *id.* (Dec. 15, 2020), D.E. 35, 2020 WL 7353475.