

Suits Over Removing Withdrawn Candidate from a Primary Election Ballot

Republican Party of Texas v. Pablos
(*Andrew Austin and Sam Sparks, 1:17-cv-1167*)
and *Texas Democratic Party v. Republican Party of Texas*
(*Lee Yeakel, 1:17-cv-1186*) (W.D. Tex.)

A member of Congress withdrew from reelection consideration after the statutory deadline for removal from the primary election ballot. His party filed a federal action to keep him off the ballot, but the state's secretary of state said that he would not interfere with the removal. The opposing party filed a federal case to keep the incumbent on the ballot, but the judge declined to order immediate relief. Both actions were withdrawn voluntarily.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; primary election; party procedures; case assignment; enjoining elections.

On Thursday, December 14, 2017, two days after the state's deadline for withdrawing from the primary election, a member of Congress decided not to run for reelection.¹ Late on the next day, the Republican Party of Texas, its state chair, and a voter filed a federal complaint in the Western District of Texas seeking relief from state election laws that would prevent the party from removing the retiring member of Congress from the 2018 primary election ballot.² The complaint alleged that although the deadline for withdrawal was December 12, because the deadline for the party chair to submit candidates' names to Texas's secretary of state was not until December 19, the plaintiffs were entitled to equitable relief.³ With their complaint, the plaintiffs filed a motion for preliminary and permanent injunctions and a temporary restraining order.⁴

The member of Congress decided not to run following an \$84,000 sexual harassment settlement.⁵ He resigned from Congress on April 6, 2018.⁶

1. See John C. Moritz, *Farenthold Out*, Corpus Christi Caller-Times, Dec. 15, 2017, at A7; Sheryl Gay Stolberg, *Texas Republican, Under Ethics Investigation, Says He Won't Run Again*, N.Y. Times, Dec. 15, 2017, at A21; Elise Viebeck & Mike DeBonis, *Facing Allegations of Harassment, Rep. Farenthold Won't Seek Reelection*, Wash. Post, Dec. 15, 2017, at A4.

2. Complaint, *Republican Party of Tex. v. Pablos*, No. 1:17-cv-1167 (W.D. Tex. Dec. 15, 2017), D.E. 1 [hereinafter *Republican Party of Tex. Complaint*]; see Rebecca Elliott, *GOP Sues to Remove Farenthold from Ballot*, Hous. Chron., Dec. 17, 2017, at A3; John C. Moritz, *GOP Sues to Remove Farenthold on Ballot*, Corpus Christi Caller-Times, Dec. 17, 2017, at A5.

3. *Republican Party of Tex. Complaint*, *supra* note 2, at 5–6.

4. Motion, *id.* (Dec. 15, 2017), D.E. 3.

5. See Moritz, *supra* note 1; Stolberg, *supra* note 1; Viebeck & DeBonis, *supra* note 1.

6. See Emily Cochrane, *Texas Lawmaker in Sex Settlement Resigns*, N.Y. Times, Apr. 7, 2018, at A15; Mike DeBonis, *Rep. Farenthold Abruptly Resigns from Congress*, Wash. Post, Apr. 7, 2018, at A16.

On the day that the complaint was filed, Judge Sam Sparks referred the motion to Magistrate Judge Andrew Austin,⁷ who set the case for hearing on Tuesday, December 19.⁸ At the hearing, the lawyer for Texas’s secretary of state said that the secretary would not interfere with the party’s omitting the incumbent’s name from the primary election ballot.⁹ The plaintiffs orally moved for dismissal of their case, and Judge Sparks granted the dismissal that day.¹⁰

On the next day, the Texas Democratic Party and its chair filed a federal action in the Western District seeking to keep the incumbent’s name on the primary election ballot.¹¹ With their complaint, the plaintiffs filed an application for a temporary restraining order, a preliminary injunction, and a permanent injunction.¹² The second case was assigned to Judge Sparks,¹³ but because of his unavailability he transferred it to Judge Lee Yeakel.¹⁴

Judge Yeakel held a telephonic conference on the day that the complaint was filed.¹⁵

I could go ahead and rule on the temporary restraining order just on the pleadings in front of me because I don’t have any time to set you for an immediate hearing on the temporary restraining order because I have sentencing all day tomorrow. . . . My suggestion is that we go directly to a preliminary injunction hearing and that we do it next week.¹⁶

At the end of the hearing, Judge Yeakel denied immediate relief and set the case for hearing on December 26.¹⁷ He was unwilling to issue an immediate injunction on so thin a record.¹⁸ The plaintiffs dismissed the action on the day that they filed it.¹⁹

7. Referral Order, *Republican Party of Tex.*, No. 1:17-cv-1167 (W.D. Tex. Dec. 15, 2017), D.E. 5.

8. Order, *id.* (Dec. 18, 2017), D.E. 8.

9. See John C. Moritz, *Farenthold Taken Off Ballot by Republicans*, Corpus Christi Caller-Times, Dec. 21, 2017, at A5.

“Republicans pulled U.S. Rep. Blake Farenthold’s name off the ballot late Tuesday after their lawyer was told in court that the secretary of state’s office would not mount a legal challenge to leave the four-term incumbent as an option for March 6 GOP primary voters.” *Id.*

10. Order, *Republican Party of Tex.*, No. 1:17-cv-1167 (W.D. Tex. Dec. 19, 2017), D.E. 13.

11. Complaint, *Tex. Democratic Party v. Republican Party of Tex.*, No. 1:17-cv-1186 (W.D. Tex. Dec. 20, 2017), D.E. 1; see Alejandra Matos, *Farenthold’s Exit from Race Sparks Criticism from Dems*, Hous. Chron., Dec. 21, 2017, at A6; Moritz, *supra* note 9.

12. Motion, *Tex. Democratic Party*, No. 1:17-cv-1186 (W.D. Tex. Dec. 20, 2017), D.E. 3.

13. Docket Sheet, *id.* (Dec. 20, 2017).

14. Order, *id.* (Dec. 20, 2017), D.E. 2; Transcript at 3, *id.* (Dec. 20, 2017, filed Jan. 31, 2018), D.E. 8 [hereinafter *Tex. Democratic Party Transcript*].

15. *Tex. Democratic Party Transcript*, *supra* note 14.

16. *Id.* at 2–3.

17. *Id.* at 8; see Matos, *supra* note 11.

18. *Tex. Democratic Party Transcript*, *supra* note 14, at 4–5.

19. Final Judgment, *Tex. Democratic Party*, No. 1:17-cv-1186 (W.D. Tex. Dec. 20, 2017), D.E. 7; Stipulation, *id.* (Dec. 20, 2017), D.E. 5; see Matos, *supra* note 11.