

22DC-CV-00397

CRAIG MCNAIR,
Contestant,

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IN THE DISTRICT COURT

253rd JUDICIAL DISTRICT

v.

LEON WILSON,
Contestee.

LIBERTY COUNTY, TEXAS

CONTESTEE’S MOTION TO STRIKE FIRST AMENDED PETITION

Contestee Leon Wilson’s plea to the jurisdiction is pending. As presented in that filing, the court lacks jurisdiction and should dismiss this contest because it was not timely filed. In the alternative, Wilson requests that the court strike McNair’s First Amended Original Petition, filed late Friday afternoon. The First Amended Petition is really an entirely different lawsuit, seeking radically different relief. McNair now asks the court to install him as the Commissioner for Precinct 4, on the basis of his eleventh-hour amended petition, filed late Friday afternoon before a Monday trial setting.

I. The amendment is prejudicial to Contestee

The amended petition still does not identify a single individual who purportedly voted illegally, nor does it identify any particular voters who McNair plans to present coupled with testimony as to how those voters purportedly voted (for McNair or for Wilson)—although the premise of the amended petition demands that he present exactly that type of evidence. McNair cannot be allowed to manipulate the accelerated procedures in a primary contest by requesting that he be installed in office by judicial fiat, while simultaneously refusing to divulge the factual bases of his new claims so that Wilson can prepare his defense. The petition in an election contest must give fair and adequate notice of the facts upon which it is based, so as to give the contestee the

opportunity to prepare a defense. *Rodriguez v. Cuellar*, 143 S.W.3d 251, 258-59 (Tex. App.—San Antonio 2004, pet. dismissed) (affirming the striking of contestant’s amended petition because it raised new bases for contest; namely, alleging illegal votes were cast, whereas original petition only alleged irregularities in counting).

II. Contestant has approached witnesses through false pretenses

Perhaps more concerning than even the last-minute switcheroo is the emerging evidence that McNair has gathered information from voters through false pretenses. It appears, from the testimony of at least two voters, that when McNair visited voters to ask about the claimed redistricting problems and identify witnesses to use in his petition, he falsely presented himself as law enforcement or another county employee. Liberty County voter Jay Matlock will testify that McNair pulled up to his property in a black Tahoe “with a light bar in the front windshield like a cop.” McNair spoke with Mr. Matlock’s mother (another voter who will also testify) first, and falsely told her that he had spoken with Jay Matlock earlier that day and that Mr. Matlock was expecting him. This was false; Matlock did not speak with McNair and did not even know who he was until he was later identified after leaving the residence. McNair also claimed that he was “hired by the County.” Specifically, McNair claimed, he was representing “Liberty County Zoning and Redistricting.” No such body or position exists. Mr. Matlock will testify that McNair had a list of voters with him, and he apparently planned to visit numerous voters from there to Cleveland. McNair asked Matlock to sign something on the papers. Matlock did not think much of it, partly because of the official-looking vehicle. Matlock’s mother also reports seeing what resembled a police radio.

McNair’s false statements calculated to gain the confidence and cooperation of Liberty County voters appears to have been a third-degree felony, impersonation of a

public servant. Tex. Pen. Code § 37.11 (“A person commits an offense if the person ... (1) impersonates a public servant with intent to induce another to submit to the person’s pretended official authority or to rely on the person’s pretended official acts; or (2) knowingly purports to exercise, without legal authority, any function of a public servant or of a public office, including that of a judge and court.”).

McNair’s last-minute attempt to amend his lawsuit to ask that he be installed as Precinct 4 Commissioner cannot be indulged. It is improper and should be struck because it works prejudice against Wilson, who has been denied the opportunity to defend himself in this matter. Not only was the amended petition submitted at the last hour, McNair still does not identify for Wilson—either in the petition or privately—the list of voters he has spoken with, or what their purported testimony may be. McNair’s petition should be struck in its entirety, and he should be denied the opportunity to seek a court declaration that he actually won the election. If McNair were interested in rectifying claimed problems with redistricting lines, then he should have been proactive in disclosing to Contestee the list of voters he claims to believe voted improperly, so that a proper investigation could have been done with the already truncated time allowed in the contest of a primary election. He cannot be allowed to ambush contestee and the court with a selective list of preferred witnesses. His conduct of this contest thus far seems more designed to manipulate the judicial process to install himself as Commissioner rather than rectify errors in administration of the election.

Conclusion

For the foregoing reasons, the Contestee respectfully requests that the court strike McNair’s First Amended Original Petition.

Respectfully submitted,

/s/ Jerad Najvar

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document, and any accompanying exhibits and proposed order, were served via electronic filing service, on April 10, 2022, as follows:

Andy Taylor
ANDY TAYLOR & ASSOCIATES, P.C.
2628 Highway 36S, #288
Brenham, TX 77833
Via email

/s/ Jerad Najvar

Jerad Najvar

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