

DISMISSING THE ELECTION CONTEST RELATING TO THE OFFICE OF REPRESENTATIVE FROM THE NINTH CONGRESSIONAL DISTRICT OF TENNESSEE

JUNE 26, 2013.—Referred to the House Calendar and ordered to be printed

Mrs. MILLER of Michigan, from the Committee on House Administration, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H. Res. 277]

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

DISMISSING THE ELECTION CONTEST IN THE NINTH CONGRESSIONAL DISTRICT OF TENNESSEE

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

COMMITTEE ACTION

On June 4, 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. 277, 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 March 27, 2013, Project Hurt (“Contestant”) filed a Notice of Contest with the Clerk of the House of Representatives for the Ninth Congressional District. Project Hurt did not run for office as part of the November 6, 2012 election. The candidate who won the election for the Ninth Congressional District of Tennessee was incumbent Democrat Steve Cohen (“Contestee”).

BASIS OF CONTEST

In the Notice of Contest, Project Hurt gives no basis to contest the outcome of the election. The organization does not allege any irregularity in the voting process. No claims have been made of fraud or illegality in the voter registration, vote casting, vote counting, or vote reporting. Nowhere in the filing does the organization claim the results of the election were inaccurate.

The crux of Project Hurt’s accusations against Congressman Cohen is that he failed to respond to Project Hurt’s grievances sent to the Congressman about allegedly impeachable offenses by President Obama. Project Hurt now asserts that, in doing so, Congressman Cohen is complicit in those “massive criminal activities.” Project Hurt asserts that those criminal activities prevented the organization from recruiting candidates to run for office.

STANDING

Under the requirements of the FCEA, to be a valid Contestant the contesting party must be an individual.¹ The notice of contest in this case was filed by Project Hurt, an organization claiming to be a registered 501(c)(3) not for profit organization. Accordingly, Project Hurt does not meet the definition of Contestant under the FCEA and is not authorized to file a contest.²

However, even if Project Hurt fit the definition of Contestant under the act, 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.³ Project Hurt was not a candidate in the Ninth Congressional

¹2 U.S.C. §381(3).

²Even if this contest were filed by Project Hurt founder Dwayne Anderson in his individual capacity, because of the other defects of the filing detailed in this report the Committee still would not have entertained it.

³2 U.S.C. §382(a).

District of Tennessee for the November 6, 2012, election, and Project Hurt does not claim a right to the office.

Project Hurt is not a valid Contestant under the statute, was not a candidate in the last preceding election, and does not claim a right to office. Therefore, Project Hurt does not have standing to pursue a contest.

TIMING/NOTICE

The FCEA requires that any person seeking to contest the election of a Member of the House of Representatives file notice of his or her intent to contest the election within thirty days after the result has been certified.⁴ The Secretary of State from the State of Tennessee certified the election on December 5, 2012. Project Hurt filed the Notice of Contest with the Clerk of the House of Representatives on March 27, 2013, 112 days past the certification date.

The Notice of Contest was not timely and therefore should not be considered.

STANDARD FOR GRANTING MOTION TO DISMISS

The House of Representatives has the constitutionally vested power to judge its own elections.⁵

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.⁶ 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.⁷ Unless a contestant credibly claims in his Notice of Contest a right to the office, the House of Representatives will dismiss the Contest.⁸

ANALYSIS

Project Hurt is not a valid Contestant under the statute. Additionally, Project Hurt was not a candidate for office in the preceding election, and did not claim a right to office. Project Hurt did not timely file the contest or make any claim of irregularity or fraud in the election of the Congressman from the Ninth Congressional District of Tennessee. Project Hurt's claims against Congressman Cohen do not in any way speak to whether or not he was validly elected. They are outside the scope of the FCEA, and outside the Committee on House Administration's jurisdiction. All of these statements would be equally true had Dwayne Anderson filed the contest in his individual capacity.

CONCLUSION

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

⁴ 2 U.S.C. § 382(a).

⁵ U.S. Const. art. I, § 5.

⁶ 2 U.S.C. § 382.

⁷ See, e.g., *Pierce v. Pursell*, H. Rep. 95-245 (1977).

⁸ *Anderson v. Rose*, H. Rep. 104-852 (1996).

ADDITIONAL VIEWS OF RANKING MEMBER ROBERT A. BRADY, REP. ZOE LOFGREN AND REP. JUAN VARGAS

We reluctantly acquiesced in the majority's desire to originate privileged resolutions to dismiss this "election contest" against Rep. Steve Cohen, as well as the identical one against Rep. Maxine Waters. These Members appear to have been chosen essentially at random by the "contestant." (*Cover letter by the Clerk of the House and "Notice of Contested Election" appear in the Appendix following these views*)

There is nothing in the House rules which requires the Committee, or the House, to address a matter which is not a proper election contest. Sections 5.1 (p. 348), 6.6 (p. 355), 19.6 (p. 389) and 53.2 (pages 539–542) of volume 2 of *Deschler's Precedents of the U.S. House of Representatives* discuss *In re Plunkett*, a 1945 contest initiated by a non-candidate purporting to challenge the elections of 79 Members. According to these citations, "the committee took no action on the matter, it appearing that the contestant, not being a candidate in the disputed election, was not qualified to initiate the proceedings".

There is no record the committee submitted a report in this case or that the House acted in any way upon the contest.

In the 1941 contest, *Miller v. Kirwan*, *Deschlers* sec. 51.1, p. 525, the Majority Leader brought a resolution to the floor summarily dismissing the case without committee action, on the grounds that Miller had not been a general election candidate and was not competent to bring a contest for the seat.

The Committee on House Administration, its predecessor panels and the House have acted in the past to dismiss meritless and frivolous contests, but these new cases should prod the Committee to adopt clearer standards before wasting either our own time or that of the House. The report outlines the reasons why this is not a proper election contest, yet instead of drawing the conclusion that it did not merit a response, the majority presses ahead anyway to present a resolution to the House.

The majority would contend that the Committee must act on everything presented to it in the guise of an election contest, in order to ensure that no legitimate future challenge is unfairly buried by a partisan majority. However, our role as elected Members of the House is to make choices, to review issues on behalf of the House, and to make recommendations, or take action, or not, as appropriate. Even if the Committee were to make an egregious error in failing to consider a particular contest, the matter could still be raised independently on the Floor by any Member as a question of the privileges of the House pursuant to Rule IX.

In the instant case, the "contestant" did not run against the incumbent Member and is not even a person, being described as "Project Hurt", a name of a purported organization linked to a convicted felon, Dwayne Anderson, incarcerated at Hardeman County Correctional Facility in Whiteville, Tennessee. *No allegations were made disputing the validity of Rep. Cohen's election.* As stated in the draft report presented at the House Administration Committee markup of June 4, 2013, this matter gives no basis to contest the outcome of his election, does not meet the definition of contestant under the FCEA, and was filed too late. Notably, the report states,

relating to the allegations: "They are outside the scope of the FCEA and outside the Committee on House Administration's jurisdiction."

The report appears to raise doubts that there was anything before the Members which could be acted upon in the form of a report or resolution, which the Committee claims to be privileged under Rule X, clause 1(k)(12) and clause 5(a)(3) of Rule XIII, relating to the Committee's authority to file privileged reports at any time on contested elections.

The fact that a person, or entity, does not like a particular Member or Members of the House should not qualify as an election contest. In the Committee's logic, an otherwise blank sheet of paper stating, as this one does, that Member X is "hereby contested" could set in motion an inexorable chain of events requiring a vote by and consuming the time of the House. This should not be the case.

We are ready to work with the majority to develop standards to facilitate consideration of proper election contests. Perhaps those which are blatantly frivolous could be disposed of through adoption of internal committee resolutions describing, for the historical record, the reasons for such action. These would not require any action by the House.

APPENDIX

KAREN L. HAAS
CLERK

ROBERT F. REEVES
DEPUTY CLERK

H-154 THE CAPITOL

Office of the Clerk
U.S. House of Representatives
Washington, DC 20515-6601

April 5, 2013

The Honorable Candice S. Miller
The Honorable Robert A. Brady
Committee on House Administration
1309 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Miller and Ranking Member Brady:

I transmit herewith correspondence captioned "Notice of Contested Election" received from Project Hurt, by and through its founder and representative, Dwayne Anderson. The enclosed correspondence was received in the Office of the Clerk by certified mail on April 1, 2013.

With best wishes, I am

Sincerely,



Karen L. Haas
Clerk of the House

cc: Mr. Peter Shalestock, Deputy General Counsel
Mr. Thomas Hicks, Senior Counsel

KLH/kb

UNITED STATES HOUSE OF REPRESENTATIVES

OFFICE OF THE CLERK
WASHINGTON, D.C. 20515

IN RE: PROJECT HURT, CONTESTANT.

NOTICE OF CONTESTED ELECTION

The contestant, Project Hurt, by and through its founder and representative, Dwayne Anderson, hereby files with the Clerk's office of the United States House of Representatives, pursuant to 2 U.S.C. 381, the instant "Notice of Contested Elections" as described herein.

Important to note: The representative of Project Hurt has, as of March 8, 2013, learned, through a fellow inmate at his current place of confinement, Hardeman County Correctional Facility (HCCF), in Whiteville, TN., of Project Hurt's right to contest the elections described herein within thirty (30) days after the result of such elections. Therefore, Project Hurt could not have timely file the instant Notice of Contested Election due the its named representative being hindered from obtaining such vital information by employees of the Shelby County Jail in Memphis, TN., employees at his said current place of confinement, and the Federal Election Commission (FEC).

Therefore, a hearing, if necessary, is requested to present evidence with regard to the representative being willfully hindered in this matter to obtain information to contest elections.

GROUNDS FOR CONTESTED ELECTION

On July 3, 2012, Project Hurt filed with the Federal Election Commission a "Request for an Advisory Opinion," (AO Request), pursuant to 2 U.S.C.A. 437f (a)(1), within which sought to secure Ballot Access for itself for Federal Office in order to field a slate of federal candidates and to convince the individuals to run for federal office, that being the 2012 Presidential Election as an Independent. The AO request demonstrated that Project Hurt is "Political Organization" whose aim is at investigating and exposing corruption, fraud, misconduct, among other unethical and criminal activities in both private and public institutions, and also pointed out that in, February, 2011, representative Anderson founded Project Hurt for the aforesaid reasons and wrote to the clerk's office of the United States House of Representatives requesting all pertinent documents for properly establishing Project Hurt as a registered 501(c)(3) not-for-profit organization, or for the clerk to properly convey the said request to the appropriate federal agency to provide representative Anderson with the 501(c)(3) documents. However, representative Anderson received no response from the clerk of the House of Representatives. The AO request

asked the FEC whether Project Hurt would be considered a “political committee” before the conclusion of its online convention to convince individuals to run in the 2012 presidential election.

By letter dated August 31, 2012, the Acting Associate General Counsel (GC) of the FEC, Kevin Deely, purported that the AO request was responded to on July 20, 2012, but, however, the letter of response was “returned to them as undeliverable,” but produced no evidence to substantiate such. The purported letter in response states, in pertinent part:

“Dear Mr. Anderson:

This responds to your letter received on July 11, 2012, which requests an advisory opinion on behalf of Project Hurt, concerning application of the Federal Election Campaign Act of 1971, as amended (the “ACT”), and Commission regulations to Project Hurt’s status as a political committee.

The requirements for political committee status are spelled out in the Act and Commission regulations. (citing 2 U.S.C. 431(4); 11 C.F.R. 100.5). Your letter does not provide any information by which the Commission could determine whether Project Hurt has fulfilled the requirements for political committee status. Accordingly, this office has determined that your request does not qualify as a complete advisory opinion request. (citing 11 C.F.R. 112.1(c).”

On September 11, 2012, representative Anderson filed with the FEC an “Administrative Appeal,” believing such proceeding to be proper due to the FEC failure to provide representative Anderson with the Rules promulgated by the FEC upon his requests for such, within which pointed out that GC Deely has misconstrued Project Hurt’s AO request by finding that Project Hurt is a political committee, because Project Hurt had not officially chose candidates to run in the 2012 presidential election, but was fielding a slate to convince individuals to run for the said federal office. The FEC failed to respond to the administrative appeal’s contents or whether the administrative appeal was proper.

On September 20, 2012, representative Anderson filed with the FEC a “Complaint of Criminal Conduct” against the attorney the FEC, Ruth Heilizer, for concealing a “Complaint for Violation of the Federal Election Campaign Act of 1971” filed by representative Anderson against the Senior Official of the United States Department of Justice for covering up representative Anderson’s “Request for a Criminal Investigation,” pursuant to 28 U.S.C. 591(e), into the following:

(1) The cover up of representative Anderson’s “Petition for Impeachment” by the president of the United States, Barack Obama, against a host of criminal acts committed by a host of federal district court and court of appeals judges, and federal elected and appointed officials in connection with Anderson’s civil matters, including a district court judge nominated by president Obama, Bernice B. Donald, to fill a vacant seat on the United States Court of Appeals for the Sixth Circuit;

(2) The cover up of representative Anderson’s “Request for a Criminal Investigation” by United States Attorney General, Eric Holder, into the cover up of

Anderson's "Request for a Criminal Investigation" by the Memphis United States District Attorney General, Edward L. Stanton, III, into the criminal acts committed, under federal law, by Memphis Police Officers, and Tennessee Court Officers in connection with Anderson's arrest on fabricated criminal offenses, and prosecution of such, for filing civil lawsuits against the City of Memphis and Shelby County officers, which such request for a criminal investigation included the Shelby County Criminal Court Judge who was presiding over the Anderson's aforesaid fabricated criminal offenses, John T. Fowlkes, Jr., and the same judge that president Obama has nominated to fill the vacant seat on the Memphis Federal Court previously held by the aforesaid nominee of president Obama, judge Donald, and after president Obama had received from Anderson a "Request for a Criminal Investigation" into judge Fowlkes' federal crimes committed in connection with Anderson's aforesaid fabricated criminal matter, while acting in concert with the Shelby County District Attorney General, Amy P. Weirich, such as, refusing to rule on Anderson's unopposed "Motion to Dismiss Indictments," denying other unopposed motions, and unlawfully intercepting, ruling on, and denying Anderson's "Motion to Convene a Special Grand Jury," to prevent the Shelby County Grand Jury from properly inquiring into their criminal acts and returning "Presentments" criminally charging them; and

(3) The cover up of Anderson's "Request for a Criminal investigation" filed, respectively, with United States House of Representatives, Maxine Waters, and Steve Cohen, both requests expounding the above described acts of president Obama's cover up of impeachable offenses and federal crimes of extreme public importance.

Important to note: On April 4, 2012, representative Anderson filed with the Chairperson of the Judiciary Committee of the United States House of Senate, and U.S. Senators Lamar Alexander and Bob Corker, a "Request to Attend Confirmation Hearing of Judge John T. Fowlkes, Jr.," to present crucial evidence in opposition to ther extremely corrupt and unfit judge Fowlkes. The request was wilfully concealed by the Chairperson of the Judiciary Committee and senators Alexander and Corker to criminally allow judge Fowlkes to be confirmed.

The Complaint for Violation of the Federal Election Campaign Act also demonstrated that the aforesaid criminal investigation request to the Department of Justice senior official demonstrated how he or she must conduct a preliminary investigation into such massive criminal activities involving cover up of federal crimes committed by president Obama, and representatives Waters and Cohen, clearly for the purpose of allowing the complained of to remain as judicial and executive officers, federal and state, to support their campaign for re-election, and other political agendas.

The complaint pointed out to the FEC that 2 U.S.C. 438a, , in pertinent part, reads:

"Any Federal Executive Agency receiving election-related information which that agency is required by law to publicly disclose shall cooperate and coordinate with the Federal Election Commission to make such report available through, or for the posting on, the web-site of the Federal Election Commission," and

that the Department of Justice senior official was presented with sufficient documentary evidence of actual quid pro quo corruption of those named in the criminal investigation request, and that that official's cover up of such further prevented the exposure of, by outrightly refusing to investigate, an actual quid pro quo corruption "inherent in" contributions made directly to, contributions made at the express behest of, and expenditures made in coordination with, president Obama, and representatives Waters and Cohen, in connection with this matter, to prevent exposure of such massive corruption during their campaign for re-election, while simultaneously deceiving the public of such vital and entitled information, and permitting Anderson to be torture, receive inhumane treatment and false imprisonment and wrongly convicted, which such treatment and criminal acts were committed by judge Fowlkes, while acting in concert with Shelby County District Attorney Weirich, and prosecutors of her office, also while acting in concert with president Obama, representatives Waters and Cohen, U.S. Attorney General Holder, and U.S. District Attorney General Stanton of Memphis. The aforesaid criminal complaint against attorney Heilizer was concealed.

Further, on August 24, 2012, representative Anderson filed with the FEC a "Complaint for Violation of the Federal Election Campaign Act of 1971" within which demonstrated that, "on August 10, 2012, a Memphis attorney, Steffen G. Schreiner, was allowed access to Anderson by judge Fowlkes in an unlawful manner in order to offer Anderson one thousand dollars (\$1,000), from representative Cohen, for Anderson to relinquish his then herein mentioned AO Request, and other things filed against representatives Cohen and Waters, president Obama, and District Attorney Weirich, and that Anderson will received four (4) more thousand dollars (\$4,000) once he relinquished such, and attorney Schreiner concluded with a threat of bodily harm to Anderson if he (Anderson) continued with such. Basically a death threat. Judge Fowlkes relentless violations of Anderson constitutional rights persist whereby that judge was well aware that Anderson had long-rejected attorney Schreiner and fully exercised his rights to represent himself in his criminal proceeding, but disregarded such to unlawfully allow attorney Schreiner's access to Anderson to offer the said bribe. Such conduct of judge Fowlkes was vigorously argued to the Tennessee Supreme Court and Tennessee Court of Criminal Appeals (Western Division), prior to and after the bribe and death threats, but was to no avail. Nevertheless, attorney Heilizer willfully concealed the complaint to criminally aid in the re-election of those herein named. Representative Anderson is currently attempting to be rightfully heard in the United States District Court for the District of Columbia on his "Petition for Review," pursuant to 2 U.S.C. 437(g)(8)(A), of his AO Request and Complaints for Violation of the Federal Election Campaign Act, which such was criminally obstructed by the Clerk of that court resulting in the filing of "Complaint of Judicial Misconduct," by Anderson, against the Chief Judge of that Court for allowing the Clerk to prevent such from being filed during the aforesaid election.

Due to GC Deely and attorney Heilizer's insidious and criminal activities as described herein, such unfairly deprived Project Hurt from rightfully securing Ballot Access to field a slate of candidates to convince the individuals to run in the 2012 Presidential Election as an Independent, deprived such individuals of voters and possibly election to the office of the United States President, and willfully and criminally prevented the exposure of an actual quid pro quo corruption involving those herein named during their campaign for re-election.

Based upon the foregoing, president Obama, and representatives Waters and Cohen elections are hereby contested, and that pursuant to 2 U.S.C. 382(b), an answer hereto must be served upon the contestant Project Hurt, to representative Anderson, under section 383 of this titled within thirty (30) days after such notice.

Respectfully submitted,

Dwayne Anderson
DWAYNE ANDERSON#124529
HCCF
P.O. BOX 549
WHITEVILLE, TN. 38075

I, Dwayne Anderson, the representative and founder of Project Hurt, hereby affirm that the true and exact copies of the foregoing has been sent on this 19th day of MARCH, 2013, VIA U.S. Mail to;

UNITED STATES HOUSE OF REPRESENTATIVES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20515

STEVE COHEN
U.S. REPRESENTATIVE
WASHINGTON, D.C. 20515
U.S. HOUSE OF REPRESENTATIVES

MAXINE WATERS
U.S. REPRESENTATIVE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

BARACK OBAMA
UNITED STATES PRESIDENT
1600 PENNSYLVANIA AVENUE, NW
1st FLOOR WEST WING
WASHINGTON, D.C. 20500

Dwayne Anderson
DWAYNE ANDERSON #124529

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ROBERT A. BRADY.
ZOE LOFGREN.
JUAN VARGAS.

