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CAUSE NO. _____

RUSSELL CASEY,
PETITIONER,
VS.
TIM O'HARE,
RESPONDENT.

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IN THE DISTRICT COURT
____ JUDICIAL DISTRICT

TARRANT COUNTY, TEXAS

THOMAS A. WILDEBE
DISTRICT CLERK

2018 JAN - 2 PM 1:34

FILED
TARRANT COUNTY

ORIGINAL PETITION FOR MANDAMUS RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Petitioner Russell Casey, a candidate in the 2018 Republican primary election for Justice of the Peace, Pct. 3 against Tim O'Hare in his official capacity as Chairman of the Tarrant County Republican Party and would show this Honorable Court:

DISCOVERY

This case should proceed under a Level One Discovery Plan, pursuant to TEX. R. CIV. P. 190.2.

NATURE OF THIS SUIT

This suit arises out of a failure of respondent to fulfill his duties in his official capacity as the filing authority for the 2018 Tarrant County Republican primary and request that the court issue a writ of mandamus compelling respondent Tim O'Hare to declare candidates for Justice of the Peace, Pct. 3 William "Bill" Brandt and Leonard "Lenny" Lopez ineligible in the 2018 Republican primary due to an inadequate number of valid signatures on their petitions that accompanied their application on the ballot.

SERVICE

Petitioner may be contacted at his home address of 8312 Thorncrest Ct. North Richland Hills, TX 76182. Pursuant to Tex. Civ. Prac. & Rem. Code § 30.014 Petitioner hereby discloses that:

- (a) the last three numbers of his driver's license number are: 323;
- (b) the last three numbers of his social security number are: 434.

Petitioner is not aware of the driver's license number or social security number of Respondent. Service on Respondent may be effected by service at the following address: Tim O'Hare who may be found his usual place of business 7524 Mosier View Court Suite 230, Fort Worth, Texas 76118

VENUE AND JURISDICTION

Venue in this case would be proper in Tarrant County, Texas pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 15.002, as the acts forming the basis of Petitioner's complaint occurred in Tarrant County. District courts have original jurisdiction over mandamus proceedings except when the Constitution or a statute confers original jurisdiction on another tribunal. Tex. Const. Art. V, § 8; Tex. Gov't Code § 24.007; *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668-671-672 (Tex. 1995). An original proceeding for writ of mandamus is subject to the rules of procedure governing any other civil lawsuit, including trial. *Anderson v. City of Seven Points*, 806 S.W.2d 791, 792 n.1 (Tex. 1991). When initiated in a trial court, a mandamus proceeding is a civil action subject to trial and appeal on substantive law issues and rules of procedure as any other civil action. *Id.*

FACTS

Tex. Elec. Code 171.21(e) requires certain candidates to accompany their application for a place on the ballot with petitions.

(e) A candidate for an office specified by Section 172.024(a)(8), (10), or (12), or for justice of the peace in a county with a population of more than 1.5 million, who chooses to pay the filing fee must also accompany the application with a petition for a place on the primary ballot as a candidate for judicial office that complies with the requirements prescribed for the petition authorized by Subsection (b), except that the minimum number of signatures that must appear on the petition required by this subsection is 250. If the candidate chooses to file the petition authorized by Subsection (b) in lieu of the filing fee, the minimum number of signatures required for that petition is increased by 250. Signatures on a petition filed under this subsection or Subsection (b) by a candidate covered by this subsection may not be obtained on the grounds of a county courthouse or courthouse annex.

Texas Elec. Code 141.032 requires the authority with whom the application is filed to review to examine the application and petitions for facial errors.

Sec. 141.032 REVIEW OF APPLICATION; NOTICE TO CANDIDATE. (a) On the filing of an application for a place on the ballot, the authority with whom the application is filed shall review the application to determine whether it complies with the requirements as to form, content, and procedure that it must satisfy for the candidate's name to be placed on the ballot.

(b) Except as provided by Subsection (c), the review shall be completed not later than the fifth day after the date the application is received by the authority.

(c) If an application is accompanied by a petition, the petition is considered part of the application, and the review shall be completed as soon as practicable after the date the application is received by the authority. However, the petition is not considered part of the application for purposes of determining compliance with the requirements applicable to each document, and a deficiency in the requirements for one document may not be remedied by the contents of the other document. Unless the petition is challenged, the authority is only required to review the petition for facial compliance with the applicable requirements as to form, content, and procedure.

(d) A determination under this section that an application complies with the applicable requirements does not preclude a subsequent determination that the application does not comply, subject to Section 141.034.

(e) If an application does not comply with the applicable requirements, the authority shall reject the application and immediately deliver to the candidate written notice of the reason for the rejection.

(f) This section does not apply to a determination of a candidate's eligibility.

(g) After the filing deadline:

(1) a candidate may not amend an application filed under Section 141.031; and

(2) the authority with whom the application is filed may not accept an amendment to an application filed under Section 141.031.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1993, 73rd Leg., ch. 728, Sec. 54, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1349, Sec. 51, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 254 (H.B. 1135), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 95 (S.B. 44), Sec. 1, eff. May 23, 2017.

Both candidates Brandt and Lopez's petitions were invalid on their face due to an insufficient number of valid signatures. In spite of this Tim O'Hare in his capacity as chairman of the Tarrant County Republican Party accepted the applications for a place on the ballot when he was required by law to declare them ineligible.

Texas Election Code Sec.145.003. ADMINISTRATIVE DECLARATION OF INELIGIBILITY.

(f) A candidate may be declared ineligible only if:

(1) the information on the candidate's application for a place on the ballot indicates that the candidate is ineligible for the office; or

(2) facts indicating that the candidate is ineligible are conclusively established by another public record.

(g) When presented with an application for a place on the ballot or another public record containing information pertinent to a candidate's eligibility, the appropriate authority shall promptly review the record. If the authority determines that the record establishes ineligibility as provided by Subsection (f), the authority shall declare the candidate ineligible.

(h) If a candidate is declared ineligible after the deadline for omitting an ineligible candidate's name from the ballot, the authority making the declaration shall promptly certify in writing the declaration of ineligibility to the canvassing authority for the election.

On December 18, 2017 Petitioner, candidate Russell Casey, filed challenges to both candidates Brandt and Lopez's eligibility as allowed as per Tex. Elec. Code. 141.034

Texas Election Code Sec. 141.034. LIMITATION ON CHALLENGE OF APPLICATION. (a) An application for a place on the ballot may not be challenged for compliance with the applicable requirements as to form, content, and procedure after the day before any ballot to be voted early by mail is mailed to an address in the authority's jurisdiction for the election for which the application is made.

(b) This section does not apply to a determination of a candidate's eligibility.

(c) A challenge must state with specificity how the application does not comply with the applicable requirements as to form, content, and procedure. The authority's review of the challenge is limited to the specific items challenged and any response filed with the authority by the challenged candidate.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1989, 71st Leg., ch. 2, Sec. 7.07, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 203, Sec. 2.57; Acts 1991, 72nd Leg., ch. 554, Sec. 28, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 728, Sec. 55, eff. Sept. 1, 1993.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 95 (S.B. 44), Sec. 2, eff. May 23, 2017.

Why the signatures are invalid

In Texas, only the Judicial branch of elected officials requires petitions for place on the ballot. And for the office of Justice of the Peace, only those counties that have more than 1,500,000 are required to have petitions. It is reasonable to assume that if you aspire to be a judge, then you should be able to understand and obey the law and understand and complete legal documents such as affidavits. It appears that the purpose of the petition requirement is to limit candidates. It seems that the statutory requirements for Justice of the Peace only include the counties with the highest populations, is because in those counties Justices of the Peace preside over thousands of cases every year that are solely dependent upon legal documents and affidavits.

There are several laws that very specifically spell out the legal requirements for these petitions.

Tex. Elec. Code 141.062 describes what makes a petition valid:

Sec. 141.062. VALIDITY OF PETITION. (a) To be valid, a petition must:

- (1) be timely filed with the appropriate authority;
- (2) contain valid signatures in the number required by this code; and

- (3) comply with any other applicable requirements for validity prescribed by this code.
- (b) A petition may consist of multiple parts.
- (c) After the filing deadline:
 - (1) a candidate may not amend a petition in lieu of a filing fee submitted with the candidate's application; and
 - (2) the authority with whom the application is filed may not accept an amendment to a petition in lieu of a filing fee submitted with the candidate's application.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 254 (H.B. 1135), Sec. 2, eff. September 1, 2011.

You will notice that Sec. 141.062 (2) requires the signatures to be valid. Sec. 141.063 describes what makes a signature valid.

Sec. 141.063. VALIDITY OF SIGNATURE. (a) A signature on a petition is valid if:

- (1) except as otherwise provided by this code, the signer, at the time of signing, is a registered voter of the territory from which the office sought is elected or has been issued a registration certificate for a registration that will become effective in that territory on or before the date of the applicable election;
 - (2) the petition includes the following information with respect to each signer:
 - (A) the signer's residence address;
 - (B) the signer's date of birth or the signer's voter registration number and, if the territory from which signatures must be obtained is situated in more than one county, the county of registration;
 - (C) the date of signing; and
 - (D) the signer's printed name;
 - (3) the part of the petition in which the signature appears contains the affidavit required by Section 141.065;
 - (4) each statement that is required by this code to appear on each page of the petition appears, at the time of signing, on the page on which the signature is entered; and
 - (5) any other applicable requirements prescribed by this code for a signature's validity are complied with.
- (b) The signature is the only information that is required to appear on the petition in the signer's own handwriting.

(c) The use of ditto marks or abbreviations does not invalidate a signature if the required information is reasonably ascertainable.

(d) The omission of the state from the signer's residence address does not invalidate a signature unless the political subdivision from which the signature is obtained is situated in more than one state. The omission of the zip code from the address does not invalidate a signature.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1997, 75th Leg., ch. 1349, Sec. 52, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 726 (H.B. 1509), Sec. 1, eff. September 1, 2005.

Note that Sec. 141.063 (3) requires that the affidavit meet the criteria of Sec. 141.065. Looking at Sec. 141.065 we see the requirements of the affidavit of the circulator.

Sec. 141.065. AFFIDAVIT OF CIRCULATOR. (a) Each part of a petition must include an affidavit of the person who circulated it, executed before a person authorized to administer oaths in this state, stating that the person:

(1) pointed out and read to each signer, before the petition was signed, each statement pertaining to the signer that appears on the petition;

(2) witnessed each signature;

(3) verified each signer's registration status; and

(4) believes each signature to be genuine and the corresponding information to be correct.

(b) If a petition contains an affidavit that complies with Subsection (a), for the purpose of determining whether the petition contains a sufficient number of valid signatures, the authority with whom the candidate's application is filed may treat as valid each signature to which the affidavit applies, without further verification, unless proven otherwise.

(c) A single notarized affidavit by any person who obtained signatures is valid for all signatures gathered by the person if the date of notarization is on or after the date of the last signature obtained by the person.

It is Sec. 141.065(c) that is the point of challenge to both candidates Brandt and Lopez's petitions.

Mr. Brandt presented his petitions in the form of multiple parts, most of these parts consisting of multiple pages. Of those parts that consisted of more than one page, only one of the pages was signed by the circulator and notarized. Mr. Lopez presented his petitions in the form of one part consisting of thirty five pages. In Mr. Lopez's petition only one of the pages was signed by the circulator and notarized. Texas Election Code Sec. 141.065(c) allows for this by stating:

(c) A single notarized affidavit by any person who obtained signatures is valid for all signatures gathered by the person if the date of notarization is on or after the date of the last signature obtained by the person.

However in thirteen of the parts of Mr. Brandt's petitions the affidavit does not satisfy the requirements of the code and the one part of Mr. Lopez's petitions failed to meet the requirements as well. Although the Texas Secretary of State provided an easy to use, fill in the blank form, in thirteen of the parts of Mr. Brandt's petitions, and in the one part of Mr. Lopez's circulators did not fill in the blanks. The information to be filled in on the affidavit form is not frivolous. **The date of notarization is required in order to validate the signature.** The code is worded in such a way so that when you have multiple pages notarized by one, then the signatures are considered invalid with a simple mechanism to make them valid. They are validated by a comparison of when the signature was obtained as compared to when the pages were notarized.

Computer programmers call this type of thing an If/Then statement. IF (this) THEN (do this). It follows logic. A light switch works the same way. If the switch is up the light is on, if it is down the light is off.

According to Texas Election Code, IF the date the signature is obtained is on or before the date of notarization, THEN it is valid. (the switch is on). However, since there is not a date of notarization there is no switch. It's like if you were patting your hand all around on the wall in the dark, but there is not a light switch there. The absence of the switch would make it impossible for you to turn the light on. Without a date of notarization (the switch) there is not a mechanism to make the signatures valid. It really is important. The effect of not having a date of notarization, and thus being unable to validate the signatures, is the same as if there were no notarization there at all. This means that neither candidate Brandt nor Lopez turned in the required amount of valid signatures in order to be eligible for a place on the ballot.

Tex. Elec. Code § 141.065(a) was amended effective September 1, 2017, to add a requirement that the affidavit be executed before a person authorized to administer oaths in the state. The same act added Subsection (c), which provides: A single notarized affidavit by any person who obtained signatures is valid for all signatures gathered by the person if the date of notarization is on or after the date of the last signature obtained by the person.

Cases:

County party chair had ministerial duty to reject previously accepted petition for placement on primary ballot, upon obtaining conclusive, public-record evidence of invalidity of sufficient number of signatures thereon to take number below threshold required for placement on ballot. Texas Elec. Code § 141.065(b). In re Wilson, 421 S.W.3d 686, 689 (Tex. App. - Fort Worth 2014, orig. proceeding)

This is apparent on the face of the documents and as such Mr. O'Hare had a duty under Texas law to determine the signatures invalid and he failed to do so. *Provisions of V.A.T.S. Election Code, art. 13.08 (repealed; see, now, this section and §§ 141.070, 172.025 et seq.) requiring an affidavit to be attached to nominating petition in lieu of a filing fee were mandatory rather than directory. Geiger v. DeBusk, 534 S.W.2d 437, 438-9 (Tex. Civ. App. - Dallas 1976) (orig. proceeding)*

The petitions filed with the Tarrant County Republican Party of both candidates Brandt and Lopez do not comply with Texas Election Code Sec. 141.065. Since they fail to comply with Sec. 141.065 they fail to comply with Sec 141.063. Since they do not comply with Sec 141.063 then they do not comply with section 141.062 and therefore candidates Brandt and Lopez should be declared ineligible for having an

insufficient number of valid signatures. *Candidates must bear ultimate responsibility for filing a proper application and petition to be placed on ballot. Risner v. Harris County Republican Party, 444 S.W.3d 327, 344-5 (Tex. App. - Houston [1st Dist.] 2014, no pet.)*

Texas Law does not allow for petitions to be amended once filed, so the error is fatal.

Sec. 141.032 (g) After the filing deadline:

- (1) a candidate may not amend an application filed under Section 141.031; and
- (2) the authority with whom the application is filed may not accept an amendment to an application filed under Section 141.031.

When Petitioner filed challenges to the petitions of candidates Brandt and Lopez under Sec. 141.034 Mr. O'Hare continued to refuse to comply with law. *County party chair was statutorily authorized to undertake further review of accepted petition for placement on primary ballot, following incumbent's challenge to validity of signatures. In re Wilson, 421 S.W.3d at 689.* Texas Election Code 141.034 is incorporated in this above but I want to emphasize Sec. 141.034c

- (c) A challenge must state with specificity how the application does not comply with the applicable requirements as to form, content, and procedure. The authority's review of the challenge is limited to the specific items challenged and any response filed with the authority by the challenged candidate.

In Mr. O'Hare's December 27, 2017 email response to petitioner Casey he stated that he was denying the challenge and he lists several different sources that he used to make his determination. He also attached to the email a legal opinion from the Emmert Law firm, which it appears Mr. O'Hare obtained the services of on his own accord. Absent from his list of sources, is any review of responses from the challenged candidates.

Judge Casey:

After receiving the opinion from Republican Party of Texas Assistant General Counsel Wade Emmert, consultation with the Secretary of State's Office, and consultation with multiple past Tarrant County GOP Chairs, your request to have Bill Brandt and Lenny Lopez removed from the ballot is denied.

Tim O'Hare
Chairman, Tarrant County Republican Party

It was improper for Mr. O'Hare to base his review of the challenges on the opinion of Mr. Emmert. It is also insufficient as the opinion did not address the validity of the signatures based upon the absence of the date of notarization. The absence of responses from the challenged candidates should have left Mr. O'Hare's review of the challenges solely upon the specific items challenged. Since the petitions are public documents and they are on their face insufficient, Mr. O'Hare should have declared both candidates ineligible as per Texas Law.

By hiring the Emmert Law Firm to respond to the challenge Mr. O'Hare further demonstrated his unwillingness to obey Texas Law. When petitioner responded to Mr. O'Hare requesting to see the challenged candidates responses and pointed out to respondent that Mr. Emmert's opinion did not address the issue of signature validity, Mr. O'Hare replied that he was out of town and would not be able to respond until January 3, 2018 further demonstrating Mr. O'Hare's willingness to comply with the law.

STANDARDS FOR ISSUANCE OF WRITS OF MANDAMUS

Mandamus relief is proper where 1) an elected official clearly abused its discretion and, 2) the aggrieved party has no other adequate remedy. An elected official abuses its discretion if it fails to analyze the law correctly or misapplies the law to established facts. In a mandamus proceeding, an elected official's legal determinations are reviewed de novo by the reviewing court.

PRAYER

Based upon the actions of Mr. O'Hare in his official capacity as chairman of the Tarrant County Republican Party, petitioner is left with no choice other than to seek relief of the court to declare both candidates Brandt and Lopez as ineligible as per Texas law, and for the court to compel Mr. O'Hare to notify the final canvassing authority of candidates Brandt and Lopez's ineligibility as per Texas Election Code Sec. 145.003.

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that Respondent be cited to appear and answer, and that upon final hearing hereof, he be granted judgment for all relief described above, together with all such other and further relief, at law or in equity, as to which he may be justly entitled.

Respectfully submitted,

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