

December 19, 2017

Mr. Tim O'Hare
Chairman
Tarrant County Republican Party
7524 Mosier View Court
Fort Worth, TX 76118

***Re: Challenges by Hon. Russell Casey,
Incumbent Justice of the Peace, Pct. 3***

Chairman O'Hare,

Thank you for your inquiry regarding the request of Russell Casey, incumbent Justice of the Peace, Pct. 3, to remove his challengers from the Republican Party general primary ballot.

As you know, I have been a licensed attorney in the state of Texas for more than 22 years. I served as Chairman of the Dallas County Republican Party from 2011 to 2016. During my tenure, I dealt with election law issues like the issues presented here. I have also represented candidates and parties in state and municipal election law matters over the past decade. I currently serve as General Counsel for the Texas Republican County Chairmen's Association and Assistant General Counsel for the Republican Party of Texas. I issue this opinion as an election law attorney in private practice and not in my capacity as Counsel to any political party or organization.

I've reviewed the written challenge, the relevant statutes and case law, and it is my opinion that the incumbent's challenges should be denied.

SUMMARY OF THE ISSUE

Russell Casey is the incumbent Tarrant County Justice of the Peace, Pct. 3. He, along with two challengers, filed applications and petitions for judicial office to be placed on the Republican Party ballot in the upcoming general primary election.

After the filing deadline, Casey presented the Tarrant County Republican Party with a written request that both challengers be removed from the general primary ballot. Casey asserts that defects in the affidavits of circulators in the challengers' petitions render some of the signatures of registered voters invalid, and therefore, his challengers do not have the number of signatures necessary to place them on the general primary ballot.

As more fully explained below, the challenged affidavits meet the requirements of Texas law. Each affidavit is signed by the circulator and a notary public. The affidavits contain the statements required by the Texas Election Code. While the form offered by the Secretary of State includes blanks that the circulator can fill in, these blanks do not call for information specifically required by the Election Code. Therefore, omission of such information does not render the affidavits defective.

Because the affidavits are sufficient under the Election Code, the petitions of the challengers contain a sufficient number of signatures. Accordingly, the challengers are entitled to be placed on the Republican Party ballot in the upcoming general primary election.

REQUIREMENTS FOR AFFIDAVIT OF CIRCULATOR

To run for the office of Justice of the Peace, a candidate must file an Application for a Place on the Republican Party General Primary Ballot, along with a Petition for Judicial Office. The petition must contain the requisite number of valid signatures. *See* TEX. ELEC. CODE §§ 141.031, 141.062, 141.063(a)(1), 172.021(a) & (e). Each “part” of the petition must contain the affidavit of the petition circulator as required by § 141.065.

An affidavit can take many forms. It is simply a "statement in writing of a fact or facts signed by the party making it, sworn to before an officer authorized to administer oaths, and officially certified to by the officer under his seal of office." TEX. GOV. CODE §312.011(1). The jurat of an affidavit is a "certificate by a competent officer that the writing was sworn to by the person who signed it." *Huckin v. Connor*, 928 S.W.2d 180, 183 (Tex. App.—Houston [14th Dist.] 1996, *writ denied*).

In terms of substance of the circulator's affidavit, the Texas Election Code does not specify the exact wording, nor does it require the wording on the form promulgated by the Secretary of State. Instead, the statute sets out four general statements which must be in the affidavit:

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.

TEX. ELEC. CODE § 141.065(a). If the circulator makes these statements under oath before the proper authority, the county party may treat as valid each signature to which the affidavit applies, without further verification, unless proven otherwise. *See* TEX. ELEC. CODE § 141.065(b). The circulator need not sign every petition page. A single notarized affidavit is valid for all signatures gathered by the circulator if the date of notarization is on or after the date of the last signature obtained by the circulator. *See* TEX. ELEC. CODE § 141.065(c).

APPLICATION OF LAW TO FACTS

In the present matter, the petitions attached to Casey’s written challenges comply with Texas law. Each affidavit is signed by the circulator and a notary public with the necessary seal. In terms of substance, each affidavit contains the statements required by the Election Code.

Casey raises two primary issues. First, he states that the circulators failed to fill in certain blanks on the affidavit form printed on the petitions. The blanks to which he is referring relate principally to the name of the circulator and the date of the sworn statement was made. Certainly, the name of the affiant is necessary for a valid affidavit; however, each signed affidavit does, in fact, contain the name of the circulator in the form of a signature. The Election Code contains no requirement beyond that. While the form offered by the Secretary of State includes blanks that the circulator can fill in, these blanks do not call for information specifically required by the Election Code. Therefore, omission of such information does not render the affidavits defective.

Second, and related to the first issue, Casey correctly points out that many of the affidavits do not contain the date the affidavits were notarized. Casey also correctly points out that § 141.065(c) allows the filing authority to rely on the notarization date when reviewing signatures. Despite this rule of accommodation, a notarization date is not one of the four statements required by the statute for a valid affidavit. Further, affidavits are not generally considered invalid if the notarization date is omitted. *Cooper v. Scott Irrigation Constr.*, 838 S.W.2d 743, 754 (Tex. App.— El Paso 1992, *no writ*) (“The lack of a specific date in the jurat of an affidavit does not render the affidavit invalid.”); See also *Order of Aztecs v. Noble*, 174 S.W. 623, 624 (Tex.Civ.App.—Austin 1915, *no writ*); 2 Tex.Jur.3d, Affidavits, § 19 (1979). Therefore, omission of the date cannot be fatal.

Finally, it should be noted that even if the challengers had omitted information that was technically required, courts will generally construe the statute to avoid declaring a candidate ineligible, especially if the signatures of registered voters are otherwise valid.

In *In re Bell*, 91 S.W.3d 784 (Tex. 2002), the petition signers failed to include their city and zip code as part of their residential address required by § 141.063(a)(2). The Texas Supreme Court held that the omitted information does not invalidate the signatures. They noted that the Texas Election Code was amended in 1985 to incorporate the Code Construction Act. TEX. ELEC. CODE § 1.003(a); *In re Bell*, 91 S.W.3d 785. The Code Construction Act states that the Legislature is presumed to have intended a “just and reasonable result” in enacting statutes. TEX. GOV. CODE § 311.021(3).

Similarly, the Texas Supreme Court has noted many times that “provisions that restrict the right to hold office must be strictly construed against ineligibility.” *In re Francis*, 186 S.W.2d 534, 542 (Tex. 2006).

Candidates have a duty to file applications for office that comply with the Texas Election Code. But the ballot is not restricted to those who never make a mistake. To the contrary, the Election Code anticipates that candidates will occasionally err and specifically requires party officials to assist them so that no candidate is excluded from the ballot unnecessarily. When a defect could have easily been cured had party officials properly performed their statutory role, nothing in the Code requires exclusion as a mandatory remedy.

In re Francis, 186 S.W.2d at 536.

CONCLUSION

Considering the issues raised in Casey’s challenges, the relevant statutes, and case law, and I am of the opinion that the incumbent’s challenge should be denied, and I am confident that courts following recent Supreme Court authority would agree. The challenged affidavits meet the specific requirements set forth in the Texas Election Code. While the form offered by the Secretary of State includes blanks that the circulator can fill in, these blanks do not call for information specifically required by the Election Code. Similarly, the dates the affidavits were notarized is referred to in § 141.065(c), but not required by statute. Omission of such dates does not generally invalidate an affidavit. Therefore, the omission of such information does not render the affidavits defective.

Because the affidavits are sufficient under the Election Code, the petitions of the challengers contain a sufficient number of signatures. Accordingly, the challengers are entitled to be placed on the Republican Party ballot in the upcoming general primary election.

Sincerely,

A handwritten signature in blue ink, appearing to read "Wade Emmert", written in a cursive style.

Wade Emmert