

IN THE SUPREME COURT OF TEXAS

=====
No. 06-0088
=====

IN RE THE HONORABLE KAREN ANGELINI

=====
ON PETITION FOR WRIT OF MANDAMUS
=====

JUSTICE BRISTER delivered the opinion of the Court, in which CHIEF JUSTICE JEFFERSON, JUSTICE HECHT, JUSTICE MEDINA and JUSTICE GREEN joined.

JUSTICE JOHNSON filed a concurring opinion, in which JUSTICE O'NEILL joined.

JUSTICE WAINWRIGHT filed a dissenting opinion.

JUSTICE WILLETT did not participate in the decision.

In this original proceeding, the Honorable Karen Angelini, currently Justice of the Fourth Court of Appeals, Place Five, seeks mandamus relief against Charles E. Soechting, State Chair of the Texas Democratic Party. The latter initially listed Lauro A. Bustamante as a candidate for Place Seven on the Fourth Court of Appeals, then at the filing deadline as a candidate for Place Five, then after the deadline as disqualified, and finally as a candidate for Place Five again after this Court issued three opinions on January 27, 2006.¹ Because we find fact issues that must be determined after a hearing on the merits, we deny the petition for writ of mandamus.

¹ See *In re Francis*, ___S.W.3d___ (Tex. 2006); *In re Holcomb*, ___S.W.3d___ (Tex. 2006); *In re Sharp*, ___S.W.3d___ (Tex. 2006).

Angelini alleges “multiple defects” in Bustamante’s filings that could not be cured by the filing deadline. The facsimile date and time stamps on the filings indicate that they were transmitted to the Party between 6:04 and 6:40 p.m. on January 2, 2006 — after the 6:00 p.m. filing deadline.² Angelini reports that a Democratic Party representative told her Bustamante’s papers were actually received before the deadline, but that the Party’s facsimile clock had not been reset from Daylight Savings Time. In any case, Angelini argues that our decision in *Francis* did not authorize relief for a late-filer like Bustamante, citing the following:

[W]e emphasize several limitations on today’s holding. First, it concerns only facial defects that are apparent from the four corners of a candidate’s filings; it does not reach forgery, fraud, or other non-accidental defects discoverable only by independent investigation. Second, it concerns only early filings that allow time for corrections after the state chair’s review: no additional time will be available for candidates who file at the last minute so that review cannot be completed before the filing deadline. Third, it does not allow political parties or candidates to ignore statutory deadlines; it allows candidates only the time that the Election Code was designed to give them. Fourth, it concerns only defective filings that have erroneously been approved; it does not change what the Election Code says party chairs should and must reject.³

As Bustamante did not file until at or after the deadline, she argues that the State Chair did not review it until after the deadline, did not erroneously approve it, and did not deny Bustamante the opportunity to cure that the Election Code provides to early filers.

In response, Bustamante has filed an affidavit in which he states that the Democratic Party reviewed his filings as each page arrived and approved them. Further, he challenges the authenticity and veracity of all Angelini’s evidence about his filings. Finally, he avers that he had time to correct

² See TEX. ELEC. CODE § 172.023(a).

³ *Francis*, ___ S.W.3d at ___.

any mistakes before the filing deadline because he had staff, computers, facsimile machines, and a notary available.

“It is well established Texas law that an appellate court may not deal with disputed areas of fact in an original mandamus proceeding.”⁴ There are several such factual disputes here, including (1) whether Bustamante filed his documents before the deadline, (2) whether he complied with all statutory requirements except for facial defects that are apparent within their four corners, (3) whether the Party had sufficient time to complete its statutory review of his filings before the deadline,⁵ (4) whether after that review but before the deadline the Party erroneously notified Bustamante that his filings complied with statutory requirements,⁶ and (5) whether Bustamante could have cured any facial errors before the deadline had the State Chair properly notified him of those defects. If the trial court answers any of these questions “No,” then we agree Angelini would be entitled to mandamus relief.⁷ The parties may of course raise legal and factual issues other than these.

We decline the dissent’s invitation to disqualify Bustamante without giving him a hearing. First, he does not admit that his filings were defective; that is instead our colleague’s conclusion. While he avers that he had “time for corrections,” he never concedes that his filings needed any. More important, he challenges the authenticity and veracity of the copies of his filings submitted by

⁴ *Brady v. Fourteenth Court of Appeals*, 795 S.W.2d 712, 714 (Tex. 1990).

⁵ *See* TEX. ELEC. CODE § 141.032(c).

⁶ *See id.* § 141.032(a).

⁷ *See Francis*, ___ S.W.3d at ___.

Angelini, the only basis upon which we could make any decision.

Second, in concluding that Bustamante filed only 20 signatures that complied with the Election Code, the dissent decides several factual and legal issues without a hearing and barely any mention. Bustamante’s petition contains almost 400 signatures, but the dissent disqualifies all but 20 because only two petition pages were signed by a circulator. Voters’ signatures are valid under the Election Code if they appear in the same “part” of the petition as the circulator’s affidavit, and the same “page” of the petition as other items like the place number discussed in *Francis*.⁸ We need not decide today whether “part” and “page” are the same because, depending on what facts the trial court finds, it may be irrelevant in this case.

The dissent’s approach to defects in a candidate’s filings has not been the law for several years. A majority (not a plurality) of this Court held in *Gamble* that defective filings could be remedied after the filing deadline to correct a party official’s violation of a statutory duty.⁹ *Gamble* concerned an application for office rather than a petition, but the Election Code treats the two as one document,¹⁰ so we cannot treat them differently.

Any “mystery” about the duty of state party chairs can be cleared up by reading the statute, which does *not* require them to do the work for any candidate, but *does* require them to review

⁸ See TEX. ELEC. CODE § 141.063(a)(3)-(4).

⁹ *In re Gamble*, 71 S.W.3d 313, 318 (Tex. 2002).

¹⁰ TEX. ELEC. CODE § 141.032(c) (“If an application is accompanied by a petition, the petition is considered part of the application”).

filings “as soon as practicable” after receipt and “immediately deliver” written notice of defects.¹¹ If the Legislature intended for less-than-perfect candidates to get what the dissent thinks they deserve, there would be no reason for state chairs to review anything before the deadline, and certainly no reason to move quickly.

As both Angelini and Bustamante are unopposed in their respective primaries, there should be ample time before the general election in November for a trial court to make its findings, and for any appellate review to be conducted first in the court of appeals rather than this Court. Generally, such proceedings “must be presented first to the court of appeals unless there is a compelling reason not to do so.”¹²

For the foregoing reasons, we deny the petition for writ of mandamus.

Scott Brister
Justice

OPINION DELIVERED: February 24, 2006

¹¹ *Id.* § 141.032(c), (e).

¹² *See* TEX. R. APP. P. 52.3(e); *The Republican Party of Texas v. Dietz*, 940 S.W.2d 86, 93-94 (Tex. 1997).