

Cause No. DC-18-00821

The Dallas County Republican Party,	§	IN THE DISTRICT COURT
Missy Shorey as Dallas County	§	
Republican Chair,	§	
	§	
Plaintiff,	§	
	§	
v.	§	14TH JUDICIAL DISTRICT
	§	
The Dallas County Democratic Party,	§	
Carol Donovan as the Dallas County	§	
Democratic Chair,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS

Defendant's Rule 91a Motion to Dismiss

Introduction

The Dallas County Republican Party (GOP) has sued the Dallas County Democratic Partu (DCDP) for declaratory and injunctive relief alleging the ineligibility of 128 Democratic candidates for elective office in Dallas County. But even if everything the GOP says is true (which it most certainly is not) the lawsuit must be dismissed under Rule 91a of the Texas Rules of Civil Procedure.

First, this Court lacks subject-matter-jurisdiction over the GOP's claims because they are moot. As the Dallas Court of Appeals held in an opinion issued today, this contest became moot when absentee balloting began on January 20, 2018. Because the GOP did not file its contest in enough time to obtain a final judgment and allow for exhaustion of appellate rights before voting began, it is moot and must be dismissed. Second, the GOP lacks standing to challenge eligibility of any Democratic candidates; only the opposing candidates would have standing under the Election Code. Finally, the GOP's entire theory is flawed—the Election Code does not impose

the signature requirement cited by the GOP as the basis for relief. Because the GOP's claims lack any basis in law, dismissal under Rule 91a is appropriate.

Relief Sought

DCDP seeks dismissal of all claims asserted against it by the GOP. Those claims lack legal merit for the reasons explained in this motion. Additionally, DCDP seeks to recover its reasonable and necessary attorney's fees and costs.

Basis for Relief

Rule 91a authorizes dismissal of any cause of action lacking a basis in law. Under the rule, "[a] cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them do not entitle the claimant to the relief sought." Tex. R. Civ. P. 91a.1. The prevailing party on a Rule 91a motion is entitled to recover reasonable and necessary attorney's fees and costs. *Id.* 91a.7. Taking the GOP's factual allegations as true (which they are not), this Court lacks subject-matter-jurisdiction over the claims.

1. The claims are moot.

As the GOP alleges in its petition, early voting ballots were mailed on January 20, 2018. In an opinion issued earlier today, the Dallas Court of Appeals held that similar election challenges—all of them filed before this one—were moot because they “left no time for a final decision before the mailing of the ballots.” *In re Jones, et al.*, No. 05-18-00065-CV, No. 05-18-00067-CV, No. 05-18-00068-CV, slip op. at 4. (Tex. App.—Dallas Jan. 24, 2018, orig. proceeding) (per curiam) (copy attached as Exhibit A). Based on this holding, the court of appeals vacated all trial court orders granting temporary injunctive relief because the challenges were moot. *Id.* at 10.

This ruling is consistent with entrenched Texas case law that a challenge filed on the eve of absentee voting is moot. “The established rule is that where a contest between candidates for nomination in a party primary election cannot be tried and a final decree entered in time for substantial compliance with pre-election statutes by officials charged with the duty of preparing for the holding of the election, the courts must dismiss the contest as being moot.” *Nichols v. Swindle*, 833 S.W.2d 641, 642 (Tex. App.—Eastland 1992, no pet.) (citations omitted). “This is true, even though the contestant may have good cause or grounds for the contest.” *Id.* (citation omitted). As the Dallas Court of Appeals noted today, this has been the law “since Miriam ‘Ma’ Ferguson’s second election as governor” *In re Jones*, slip op. at 7 (citation omitted).

Just like the challenge in *Williams*, the GOP’s lawsuit is moot because it does not afford time for a resolution before commencement of absentee voting. As a result, it must be dismissed. *See Price v. Dawson*, 608 S.W.2d 339, 340 (Tex. Civ. App.—Dallas 1980, no writ); *Law v. Johnson*, 826 S.W.2d 794, 797 (Tex. App.—Houston [1st Dist.] 1992, no pet.) (citation and internal citation omitted); *Smith v. Crawford*, 747 S.W.2d 938, 940 (Tex. App.—Dallas 1988, orig. proceeding); *Brimer v. Maxwell*, 265 S.W.3d 926, 928 (Tex. App.—Dallas 2008, no pet.).

2. The GOP lacks standing.

If a party lacks standing to bring an action, the trial court lacks subject-matter-jurisdiction to hear the case. *Town of Fairview v. Lawler*, 252 S.W.3d 853, 855 (Tex. App.—Dallas 2008, no pet.). As the Supreme Court has noted, the Election Code provisions conferring standing for election contests still require a showing of personal injury to support entitlement to declaratory or injunctive relief. *Andrade v. NAACP of Austin*, 345 S.W.3d 1 (Tex. 2011).

Under these established principles, the Election Code provisions permitting injunctive relief and damages afford standing only to the individual candidates opposing the purportedly ineligible candidates. *See Brimer*, 265 S.W.3d at 929. Only these “individual office holders or candidates” have standing. *See City of El Paso v. Tom Brown Ministries*, 505 S.W.3d 124, 139 (Tex. App.—El Paso 2016, no pet.). The GOP is not one of these “individual office holders or candidates” who would have standing. As a result, the case must be dismissed.

3. No statute requires signature by the Chair.

Not one of the statutes cited by the GOP in its petition requires any signature by a county chair to certify candidates for the primary ballot. And not one of those statutes prohibits a county chair from delegating any responsibility for a signature even if one existed.

The GOP relies principally on section 172.029 of the Election Code in contending that only the county chair can sign the form listing the party’s primary candidates. But section 172.209 contains no signature requirement for the county chair. It simply requires that “each county chair shall electronically submit” specified candidate information. There is no reference to a signature by *anyone*. Tex. Elec. Code Ann. § 172.029(a) (West 2010 & Supp. 2017). Similarly, section 141.031, setting forth the requirements for a candidate’s application form, says nothing about any signature by the county chair. Tex. Elec. Code Ann. § 141.031 (West 2010).

The GOP also contends that the county chair has a “certification” requirement for the primary. But the only such requirement is a certification of the form of each candidate’s name—not their eligibility. Tex. Elec. Code. Ann. § 141.037 (West 2010). The only certification requirement for a county chair in regards to eligibility is contained in section 172.117(a) of the Code. But that concerns certification for the general election, after the primary election is

completed. Tex. Elec. Code Ann. § 172.117 (West 2010). When it comes to the primary, the state chair is the person responsible to “certify to the secretary of state for placement on the general primary election ballot” the name of each candidate. Tex. Elec. Code Ann. § 172.028(a) (West 2010).

Even if the Election Code did impose a signature requirement, nothing in the Code purports to limit the chair’s ability to delegate that requirement. The GOP cites section 172.130 as containing this prohibition. But that section just specifies when the state chair is authorized to perform acts for a county chair. It says nothing even remotely suggesting that the county chair cannot delegate requirements to other employees.

In any event, there is no requirement for signature; the sole requirement is that the chair “submit” the mandatory information. She did so. Simply put, the GOP rests its entire argument on the chair’s failure to perform a “requirement” that does not exist under the Election Code.

4. DCDP is entitled to recover its attorney’s fees.

If this Court grants DCDP’s motion, an award of reasonable and necessary attorney’s fees is mandatory. Upon the setting of a hearing on this motion, DCDP will submit testimony concerning the amount of those reasonable and necessary fees (which are, at present unknown).

Conclusion

Based on the foregoing, DCDP requests that the claims against it be dismissed and that it be awarded its reasonable and necessary attorney’s fees.

Respectfully submitted,

/s/ Coyt Randal Johnston

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Certificate of Service

A copy of the foregoing documents has been forwarded to all counsel of record by efileing on January 24, 2018.

/s/Coyt Randal Johnston

Coyt Randal Johnston