

STATEMENT OF FACTS BACKGROUND

The major national parties held their nominating conventions from August 25-28, 2008 for the Democratic Party and from September 2-5, 2008 for the Republican party.

As is the custom of each of these parties, the selection of the vice-presidential candidates by the presumptive nominee were delayed until shortly before each convention. The presumptive Democratic Nominee, Senator Barack Obama, named his vice-presidential selection, Senator Joseph Biden, on August 23, 2008. The presumptive Republican nominee, Senator John McCain named his selection, Governor Sarah Palin, on August 29, 2008.

As was expected, the presumptive nominees and their selected vice presidential choices were nominated by their conventions, by votes taken on August 27th and September 3rd respectively.

THE REQUIREMENTS OF TEXAS LAW

§192.031[2] of the Texas Election Code requires:

(2) before 5 p.m. of the 70th day before presidential election day, the party's state chair signs and delivers to the secretary of state a written certification of:

(A) the names of the party's nominees for president and vice-president; and....

After a party's chairman files a timely certification of the party's nomination, the Secretary of State must certify the names of the candidates to the counties "not later than the 62nd day before presidential election day." See

§192.033[b] of the Texas Election Code.

THERE ARE NO FACTUAL DISPUTES IN THIS CASE

There are no disputed facts in this case. Every assertion herein is based upon documents received by or sent to or from the Secretary of State of Texas and representatives of the major political parties: the Democrats and the Republicans.

WHAT HAS ACTUALLY OCCURRED IN 2008?

The 70th day before the election was August 26, 2008. This was the deadline acknowledged by the Secretary of State's office for certification of party nominees by their party chairperson. [See Exhibit 11, a June 24th e-mail from the State Elections Division confirming the filing deadline.] On August 26th, the major party nominees were merely "presumptive." What steps did the major parties take to comply with the mandate of §192.031?

THE DEMOCRATIC PARTY "FILINGS"

First Democratic Document According to the documents provided by the office of the Secretary of State,¹ three pages were faxed at 11:58 AM on August 27, 2008² to the Secretary of State by a Washington, D.C. law firm from a

¹ Exhibit 1, the affidavit of Russell Verney authenticates the exhibits in the record, except for Exhibit 10, the Secretary of State's certification for the November 2008 ballot, Exhibit 13, Relator's Request for Judicial Notice and Exhibit 14, a report of primary election results from the Texas Secretary of State,

² Virtually all state and federal offices that receive time sensitive documents have a system, usually a meter, to record date and time of receipt. Yet, not a *single* one of the major party documents produced by the Secretary of State bears any stamp showing time and date of receipt.

fax machine with a Denver [303] area code. [Exhibit 3, p. 1.] The subject was listed as “Certification of Nomination.” The facsimile included an affidavit from Boyd Ritchie, Chairman of the Texas Democratic Party, stating:

I, Boyd Ritchie, Chairman of the Texas Democratic Party, hereby certify that Barack Obama has been nominated for President of the United States and Joseph Biden has been nominated for Vice President of the United States at the Democratic National Convention held in Denver, Colorado on August 27, 2008.

See Exhibit 3, p. 2.

In this remarkable document, Mr. Ritchie claims the gift of prescience when he avers, in the *past tense*, to events that did not occur until the evening of August 27th. The nominations of Joseph Biden and Barack Obama by vote of the Democratic convention delegates occurred during the evening of August 27th. [Exhibit 13, No. 4.] In the second, equally remarkable document [Exhibit 3, p. 3], simultaneously transmitted at 11:58 AM on August 27, 2008, Mr. Ritchie again verified the occurrence of *future events* under oath:

OFFICIAL CERTIFICATION OF NOMINATION

THIS IS TO CERTIFY that at the following National Convention of the Democratic Party of the United States of America held at Denver, Colorado on August 25 *through August 28, 2008*, the following are the nominees of the Texas Democratic Party and were duly nominated as candidates for President and Vice President of the United States respectively:....

[Emphasis added.]

[See Exhibit 3, p. 3.]

In June 2008, the Secretary of State’s Office has used a official time and date stamp on the Libertarian Party candidate certification. [See Exhibit 8].

Second Democratic Document. In a separate document e-mailed to the Secretary of State at 4:40 P.M. on August 26th, [Exhibit 2], the Democratic Party filed its list of electors.³

THE REPUBLICAN PARTY “FILINGS”

First Republican Document. Chronologically, the first document provided by the Texas Republican Party to the Office of the Secretary of State is a letter from Tina Benkiser, Chairman of the Texas Republican Party, dated August 26, 2008, [Exhibit 4] which certifies its electors and then states:

...Also, in accordance with Section 192.031, I inform you that the Republican National Convention *is scheduled* to nominate Senator John McCain and his running mate for President and Vice-President on the 2008 General Ballot.

[Emphasis added.]

[Exhibit 4, p.1]

This letter, dated August 26th, bears the handwritten notation: “Old/ Melinda/ 8/25/08/ replaced/ today.” [See Exhibit 4] The handwritten notation is without attribution and the date appears to have been corrected.

Second Republican Document. The second document provided by the Office of the Secretary of State is a letter from Tina Benkiser, Chairman of the Texas Republican Party, also dated August 26, 2008, which certifies its electors and states:

... Also in accordance with Section 192.031, I inform you that the

³ The Democrats nominated the correct number of electors [34] but in their list the electors are numbered 1-31 with three numbers repeated. See Exhibit 2, pp. 2-3.

Republican National Convention *is scheduled to nominate* Senator John McCain and his running mate for President and Vice-President on the 2008 General Ballot. I certify these nominees possess the qualifications for those offices as prescribed by federal law and that the Republican Party of Texas is authorized by Subchapter A of Chapter 172 to make its nominations by primary election.⁴

[Emphasis added.]

[Exhibit 5.]

Curiously, this letter, dated August 26th, bears the following handwritten notation: “Received /8/25/08/ Replacement/ from original/ filed.”

[Exhibit 5.] Again, the handwritten notation is without attribution.

Third Republican Document. The third Republican document provided by the Office of the Secretary of State is a letter from Tina Benkiser, Chairman of the Texas Republican Party, dated August 29, 2008. The letter [Exhibit 6] again certifies its electors and states:

Also in accordance with Section 192.031, I inform you that the Republican National Convention *is scheduled to nominate* Senator John McCain and Governor Sarah Palin for President and Vice-President, respectively, on the 2008 General Ballot. I certify these nominees possess the qualifications for those offices as prescribed by federal law and that the Republican Party of Texas is authorized by Subchapter A of Chapter 172 to make its nominations by primary election.

This filing is meant to amend our previous filing under this section which was timely filed on August 25, 2008. In the event you or a court of competent jurisdiction find this amendment to be untimely, I intend the previous filing to be effective.

[Emphasis added.]

⁴ The reference to “Subchapter A of Chapter 172” is attempting to demonstrate compliance with the provisions of §192.031[3][A]. More precisely, party nominations for president are governed by Chapter 191 and are made at the quadrennial party conventions.

This letter bears the handwritten notation: “Received ~~from~~by/ Melinda Nickless/ Secretary of State’s Office/ 8/29/08.” [Cross-out appears on original. See Exhibit 6.]

Fourth Republican Document. The fourth submission from the Republican National Committee and the Texas Republican Party to the Office of the Secretary of State consists of a facsimile transmission sheet, a memorandum re: certification and a formal certification form [see Exhibit 7, pp. 1-3], dated September 4, 2008. The transmission certifies that Senator McCain and Governor Palin were nominated on September 4, 2008.⁵ [Exhibit 7.]

ARGUMENT

What steps did the major parties take to comply with the mandate of §192.031? None. Their filings were all late and/or inadequate. This problem did not come on suddenly. §192.031 has been unchanged since 2005. The dates of the major party conventions have been known for years. The major parties have taken no steps to modify, comply with or meet the requirements of the law.

1. The Democratic Party’s Certification Is Untimely & Invalid On Its Face.

§192.031 requires that the “written certification” of the “party’s state chair” be delivered “before 5 p.m. of the 70th day before election day.” Plainly, the

⁵ Though dated September 4, 2008, this document bears a fax transmission stamp of 7:43 AM on September 5, 2008.

Democratic Party failed to meet this requirement. Their false⁶ certifications were not transmitted until August 27th, the 69th day before the election.

Nor can the Democratic Party take refuge in the Texas primary as the “selection process” because neither Barack Obama nor Joseph Biden were selected by party voters in the primary: Senator Hilary Clinton won the Texas Democratic Primary. [See Exhibit 13, No. 2 & Exhibit 14.]

2. The Republican Party’s Certifications Are Invalid On Their Face.

According to the documents supplied by the Secretary of State, the Republican Party transmitted its two letters either on August 25th or August 26th. However, these letters fail to meet the requirements of §192.031 because they purport to “certify” a future event. They also fail to certify the *name* of the vice presidential nominee. At best, the letters are a *prediction* that John S. McCain and an *unnamed* person *will be* nominated eight days hence. [Exhibits 4 and 5.]

3. The Republican Party’s Certifications Are Insufficient to Permit the Inclusion of Governor Sarah Palin on the Ballot.

Nowhere in the records produced by the Secretary of State is there a timely designation of Gov. Sarah Palin as the Republican candidate for Vice President. The only references to Governor Palin are in the untimely submissions dated August 29th and September 4th. [Exhibits 6 & 7.]

4. Regulation of Presidential Ballot Access Is Constitutionally Committed to

⁶ The party chair avers in the first that the nominees “were nominated” eight hours *before* they were nominated and in the second does the same.

the Texas Legislature.

Selection of the President and Vice President is an important, quadrennial political exercise for the citizens of the United States. Recognition of its importance mandates scrupulous adherence to the rules applicable to the conduct of the process. Perhaps in Nonomura,⁷ election officials may certify a “nominee to be named later” or swap candidates on and off the ballot. This Court should affirm that such “third-world” practices are not permitted in Texas.

Article 2, §1 of the United States Constitution commits the process of selecting Presidential electors to the state legislatures. The Texas Legislature has developed specific rules for handling the presidential and vice presidential elections, different from rules for other elected officials. These procedural requirements established by the Legislatures are paramount:

...in a Presidential election *the clearly expressed intent of the legislature must prevail. . . .*

...For the court to step away from this established practice, prescribed by the Secretary, the state official charged by the legislature with “responsibility to . . . [o]btain and maintain uniformity in the application, operation, and interpretation of the election laws,” § 97.012(1), was to depart from the legislative scheme.

[Emphasis added.]

Bush v. Gore [2000] 561

U.S. 98, 120 [concurring
opinion of Rehnquist, C.J.]

The candidates and their electors are created through the nominating

⁷ Nonomura is a mythical “third world” country in the 1970 Broadway satire, *Sheep on the Runway*, written by Pulitzer Prize winning humorist Art Buchwald.

process mandated by the Legislature. Presidential candidates for the major parties run in primaries but they are only nominated at the party's presidential nominating convention based on their party rules and §191.007 of the Texas Election Code.

§ 192.031 *requires* the party to timely certify the “names of the party's nominees for president and vice-president.” Can candidates be certified before nomination? No. The deadline for the certification of candidates for the ballot is “before 5 p.m. on the 70th day before the election....” *Id.*

5. This Court Should Strictly Enforce the Requirements of §192.031 Where the Failure to Comply Is Not the Responsibility of Any State Official

The courts of this state have strictly enforced mandatory statutory requirements for political candidacy. In *Burroughs v. Lyles*, 142 Tex. 704, 181 S.W.2d 570 (1944), the Texas Supreme Court held that candidates could not be placed on the ballot when their applications were not received by the specified filing deadline. See, e.g., *Wallace v. Howell*, 707 S.W.2d 876, 877 (Tex.1986) (disqualifying candidate who filed application for two judicial positions and conditioned withdrawal from one on qualification for the other); *Brown v. Walker*, 377 S.W.2d 630, 632 (Tex.1964) (disqualifying candidate who mailed application by regular mail because applications sent before, but received after, the deadline must be sent via certified or registered mail); *Canady v. Democratic Executive Comm. of Travis County*, 381 S.W.2d 321, 324 (Tex.1964) (disqualifying candidate who listed his legal address as one outside the relevant precinct).

In recent years, the Supreme Court has allowed limited exceptions on filing deadline issues. However, in each of these cases a state official failed to carry out his duty to the candidate. For example, in *Painter v. Shaner*, 667 S.W.2d 123 (Tex.1984), a county party official absented himself from his office prior to the expiration of the filing deadline so the candidate had to drive 170 miles to file his application. *Id.*, at 125. Recently, in *In Re Francis*, 186 S.W.3d 534 (2006), the Supreme Court underscored this distinction:

Finally, we 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. ... *Third, it does not allow political parties or candidates to ignore statutory deadlines;....*

[Emphasis Added.]
Id., at 543.

The Secretary of State has no explanation for her acceptance of certifications outside of the time set by §192.031. Russell Verney, the campaign manager of the Relators Barr and Root's political campaign, wrote to the Secretary of State on September 4, 2008 requesting the removal of the Democratic and Republican candidates for president and vice president from the ballot. [See Exhibit 9.] The response came on September 10, 2008 [Exhibit 12] but it offers no insight into the Secretary of State's rationale.⁸

⁸ The laconic response was, "The agency does not agree with your legal interpretation." See Exhibit 12.

Is this because there is no rationale? The Texas courts have repeatedly affirmed that election officials have no authority to extend deadlines or accept late filings. See, for example, *Bird v. Rothstein*, 930 S.W.2d 586, 589 (Tex. 1992) in which the Court said that “(t)he Secretary had *no authority* to accept a late filing until the deadline had been extended by a court of law.” [Emphasis added.]

After 5:00 PM on the 70th day before the election, the Secretary of State has no authority to accept “amendments” or “late filings” absent a grant of authority to do so from a court of law.

6. This Court Should Direct The Secretary of State to Withdraw Her Certifications of the Democratic and Republican Candidates from the General Election Ballot.

The record produced by the Secretary of State shows that the Democratic Party utterly failed to meet the deadline for submitting its certification. *Nothing* was submitted to certify the candidates until after the deadline had passed. The documents submitted late intentionally misstated the state of the nominating process by representing, under oath, that Senators Obama and Biden had already been nominated, an event that had not yet occurred. [Exhibit 13, No. 3.]

The record produced by the Secretary of State shows that, while the Republican Party submitted a letter on August 25th or 26th, prior to the deadline, it was not a certification, as required by §192.031. Logically, it could not have been a certification of a nominee because there were no nominees, as the letter admits. The vice-presidential nominee was not even named because she was unknown.

Senator John McCain and Governor Palin were not nominated until September 3, 2008. [Exhibit 13, No. 4.]

Apparently, the Secretary of State believes that a major party can treat this like a baseball trade with a “vice-president to be named later.” Not so.

7. This Court Should Direct The Secretary of State to Withdraw Her Certification of Governor Sarah Palin from the General Election Ballot.

The record produced by the Secretary of State shows that, when the Republican Party submitted a letter on August 25th or 26th prior to the deadline, there was no certification whatsoever of Governor Palin until August 29, 2008. [Exhibits 4, 5 & 6.]

§192.031 requires that a certification contain “the names” of the presidential nominee and the vice presidential nominee. The documents submitted on August 25th or August 26th by the Republican Party failed to meet this basic criteria because they *could not know* who the vice presidential nominee would be. When the third letter was written on August 29th, the party knew her name but had not yet nominated Governor Palin.

Based upon the unequivocal command of the Texas Legislature in §192.031, this Court has no alternative but to direct the Secretary of State to withdraw her certification of Senators Obama and Biden, and of Senator McCain and Governor Sarah Palin as a candidate from the 2008 General Election ballot.

**CONCLUSION:
IS THERE A GREATER QUESTION HERE?**

The seriousness of this issue is self-evident: The hubris of the major parties has risen to such a level that they feel that the election laws of the State of Texas do not apply to them.

Yet, any problem this portends is relieved by the brilliance of our founders and our system. The Constitution allows for a situation where no candidate gets a majority of the votes in the Electoral College. Section 1 of Article II and the Twelfth Amendment of the United States Constitution provide a successful mechanism for addressing the lack of a majority in the Electoral College.

Then, the question before this Court is not any Cassandra prediction that may come from the Respondents or the Real Parties In Interest. We are not a lawless third world country like Nonomura. Selection of the President will proceed in an orderly fashion in accordance with our Constitution. The more important question is whether Texas a state of laws or a state of convenient exceptions?

Relators commend this Court to the words of Justice Burger:

Our individual appraisal of the wisdom or unwisdom of a particular course consciously selected by the Congress is to be put aside in the process of interpreting a statute. Once the meaning of an enactment is discerned and its constitutionality determined, the judicial process comes to an end. We do not sit as a committee of review, nor are we vested with the power of veto. The lines ascribed to Sir Thomas More by Robert Bolt are not without relevance here:

'The law, Roper, the law. I know what's legal, not what's right. And I'll stick to what's legal.... I'm not God. The currents and eddies of right and wrong, which you find such plain-sailing, I can't navigate, I'm no voyager. But in the thickets of the law, oh there I'm a forester.... What would you do? Cut a great road through the law to get after the Devil? ... And when the last law was down, and the Devil turned round on you where would you hide, Roper, the laws all being flat? ... This country's planted thick with laws from coast to coast--Man's laws, not God's--and if you cut them down ... d'you really think you could stand upright in the winds that would blow then? ... Yes, I'd give the Devil benefit of law, for my own safety's sake.' R. Bolt, *A Man for All Seasons*, Act I, p. 147 (Three Plays, Heinemann ed. 1967).

We agree with the Court of Appeals that in our constitutional system the commitment to the separation of powers is too fundamental for us to pre-empt congressional action by judicially decreeing what accords with 'common sense and the public weal.' Our Constitution vests such responsibilities in the political branches.

Tennessee Valley Authority v. Hill, 437
U.S. 153, 194-195, 98 S.Ct. 2279, 2301-
2302, 57 L.Ed.2d 117 (1978)

Every election cycle, minor party candidates parties are held to ever higher standards to achieve ballot access. Ralph Nader, who garnered nearly 3 million votes in the 2000 presidential election, is required to continuously fight for ballot access. Failure to enforce state election laws with the same vigor against the “major” parties would expose an intolerable hypocrisy in our system.

The spirits of Jefferson, Franklin and Adams gaze over our shoulders to see if the law of Texas or the dictum that the “ends justify the means” prevails.

RELIEF REQUESTED

The Relators request that this Court grant the following relief:

1. Direct the Secretary of State to withdraw certification of Senators Barack Obama and Joseph Biden as Democratic candidates for President and Vice President of the United States and withdraw the certification of Senator John McCain and Governor Sarah Palin as Republican candidates for President and Vice President of the United States on the 2008 November General Election ballot; and
2. Direct the Secretary of State to withdraw certification of Governor Sarah Palin as candidate for Vice President of the United States on the 2008 General Election ballot; and
3. Direct the Secretary of State to direct the county clerks of the State of Texas to print or reprint the ballots for the 2008 General Election in accordance with the orders of this Court.

PRAYER

Relators respectfully request that the Court grant their petition for mandamus and order the relief requested. The Relators also request any further relief to which they may be entitled.

Respectfully submitted,
DREW SHIRLEY, P.C.

By _____
DREW SHIRLEY
ATTORNEYS FOR RELATOR

CERTIFICATION

I hereby certify that I have reviewed the petition and concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.

Respectfully submitted,
DREW SHIRLEY,P.C.

By _____
DREW SHIRLEY
ATTORNEYS FOR RELATOR

APPENDIX

UNITED STATES CONSTITUTION

ARTICLE II, SECTION 1

Section 1 - The President

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice-President chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

(The Electors shall meet in their respective States, and vote by Ballot for two persons, of whom one at least shall not lie an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; a quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.) (This clause in parentheses was superseded by

the 12th Amendment.)

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

(In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.) (This clause in parentheses has been modified by the 20th and 25th Amendments.)

TWELFTH AMENDMENT

Amendment 12 - Choosing the President, Vice-President.

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;

The person having the greatest Number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest

numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

TEXAS GOVERNMENT CODE

§ 22.002. WRIT POWER. (a) The supreme court or a justice of the supreme court may issue writs of procedendo and certiorari and all writs of quo warranto and mandamus agreeable to the principles of law regulating those writs, against a statutory county court judge, a statutory probate court judge, a district judge, a court of appeals or a justice of a court of appeals, or any officer of state government except the governor, the court of criminal appeals, or a judge of the court of criminal appeals.

(b) The supreme court or, in vacation, a justice of the supreme court may issue a writ of mandamus to compel a statutory county court judge, a statutory probate court judge, or a district judge to proceed to trial and judgment in a case agreeable to the principles and usages of law, returnable to the supreme court on or before the first day of the term, or during the session of the term, or before any justice of the supreme court as the nature of the case requires.

(c) Only the supreme court has the authority to issue a writ of mandamus or injunction, or any other mandatory or compulsory writ or process, against any of the officers of the executive departments of the government of this state to order or compel the

performance of a judicial, ministerial, or discretionary act or duty that, by state law, the officer or officers are authorized to perform.

(d) Repealed by Acts 1987, 70th Leg., ch. 148, § 2.03, eff. Sept. 1, 1987.

(e) The supreme court or a justice of the supreme court, either in termtime or vacation, may issue a writ of habeas corpus when a person is restrained in his liberty by virtue of an order, process, or commitment issued by a court or judge on account of the violation of an order, judgment, or decree previously made, rendered, or entered by the court or judge in a civil case. Pending the hearing of an application for a writ of habeas corpus, the supreme court or a justice of the supreme court may admit to bail a person to whom the writ of habeas corpus may be so granted.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 148, § 2.03, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 355, § 1, eff. Sept. 1, 1995.

TEXAS ELECTION CODE

§ 192.031. PARTY CANDIDATE'S ENTITLEMENT TO PLACE ON BALLOT.

A political party is entitled to have the names of its nominees for president and vice-president of the United States placed on the ballot in a presidential general election if:

(1) the nominees possess the qualifications for those offices prescribed by federal law;

(2) before 5 p.m. of the 70th day before presidential election day, the party's state chair signs and delivers to the secretary of state a written certification of:

(A) the names of the party's nominees for president and vice-president; and

(B) the names and residence addresses of presidential elector candidates nominated by the party, in a number equal to the number of presidential electors that federal law allocates to this state; and

(3) the party is:

(A) required or authorized by Subchapter A of Chapter 172 to make its nominations by primary election; or

(B) entitled to have the names of its nominees placed on the general election ballot under Chapter 181.

Acts 1985, 69th Leg., ch. 211, § 1, eff. Jan. 1, 1986. Amended by Acts 1997, 75th Leg., ch. 864, § 203, eff. Sept. 1, 1997.

Amended by: Acts 2005, 79th Leg., Ch. 1109, § 21, eff. September 1, 2005.

§ 192.033. CERTIFICATION OF CANDIDATES FOR PLACEMENT ON BALLOT.

(a) Except as provided by Subsection (c), the secretary of state shall certify in writing for placement on the general election ballot the names of the candidates for president and vice-president who are entitled to have their names placed on the ballot.

(b) Not later than the 62nd day before presidential election day, the secretary of state shall deliver the certification to the authority responsible for having the official ballot prepared in each county.

A candidate's name may not be certified if, before delivering the certification, the secretary of state learns that the name is to be omitted from the ballot under Subchapter C.

§ 273.063. VENUE IN COURT OF APPEALS. (a) A petition to a court of appeals for a writ of mandamus under this subchapter must be filed with the court specified by this section.

(b) A petition pertaining to an election must be filed with the court of the court of appeals district in which:

(1) the respondent resides, or in which one of them resides if there is more than one respondent, if the election is statewide; or

(2) the territory covered by the election is wholly or partly situated, if the election is not statewide.

(c) A petition pertaining to a political party convention must be filed with the court of the court of appeals district in which:

(1) the respondent resides, or in which one of them resides if there is more than one respondent, for a state convention;

(2) the territory represented by the convention delegates is wholly or partly situated, for a district convention; or

(3) the precinct or county is situated, for a precinct or county convention.

Acts 1985, 69th Leg., ch. 211, § 1, eff. Jan. 1, 1986. Amended by
Acts 1987, 70th Leg., ch. 54, § 15(c), eff. Sept. 1, 1987.