



NUMBER 13-08-00330-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE VANESSA CAHILL

On Petition for Writ of Mandamus

OPINION

Before Chief Justice Valdez and Justices Rodriguez and Benavides
Opinion by Chief Justice Valdez

Relator, Vanessa Cahill, filed a petition for writ of mandamus in the above cause on May 23, 2008, asking this Court to compel Michael A. Bertuzzi, the Nueces County Republican Chairman ("County Chair"), to grant relator access to copies of precinct convention minutes. After duly considering the petition and the County Chair's response thereto, the Court conditionally GRANTS the petition for writ of mandamus as stated herein.¹

¹ In her petition for writ of mandamus, relator identified the Republican Party of Texas as the real party in interest and Michael A. Bertuzzi as the respondent. See TEX. R. APP. P. 52.2. Relator has subsequently identified Michael A. Bertuzzi as the real party in interest and has notified this Court that the Republican Party of Texas should have "no further involvement in this matter." The Court DENIES the "Motion to Extend Time to File Response to Writ of Mandamus, Motion to Dismiss and Motion for Damages for Frivolous Pleadings" filed by the Republican Party of Texas.

I. BACKGROUND

In March 2008, Cahill, who was elected as a delegate to the Republican County Convention for Nueces County, requested that the County Chair produce copies of the precinct minutes/records from the precinct meetings for every precinct in Nueces County. The County Chair refused to produce these records, and this original proceeding ensued. Cahill argues that the Texas Election Code imposes on the County Chair the duty to maintain, as public information, copies of all Nueces County precinct minutes for the remainder of that election year. In response, the County Chair contends that (1) this Court lacks jurisdiction over the petition, (2) the petition for writ of mandamus is deficient, (3) the records are not public information, (4) the County Chair has no duty to provide access to these documents, and (5) Cahill has an adequate remedy through the procedures and processes within the Republican Party itself.

II. JURISDICTION

Our jurisdiction over this original proceeding is delineated by section 273.061 of the Texas Election Code:

The supreme court or a court of appeals may issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election or a political party convention, regardless of whether the person responsible for performing the duty is a public officer.

TEX. ELEC. CODE ANN. § 273.061 (Vernon 2003); *see, e.g., In re Torry*, 244 S.W.3d 849, 851 (Tex. 2008) (orig. proceeding) (per curiam). The election code further provides that “[t]he performance of a duty placed by this code on an officer of a political party is enforceable by writ of mandamus in the same manner as if the party officer were a public officer.” TEX. ELEC. CODE ANN. § 161.009 (Vernon 2003); *In re Dupont*, 142 S.W.3d 528, 531 (Tex. App.—Fort Worth 2004, orig. proceeding). Accordingly, this Court has jurisdiction to consider relator's petition for writ of mandamus and to compel the performance of any

duty imposed by law in connection with the holding of an election or political party convention. See TEX. ELEC. CODE ANN. §§ 273.061; *In re Jackson*, 14 S.W.3d 843, 846 (Tex. App.—Waco 2000, orig. proceeding).

Our mandamus jurisdiction, and thus, the scope of our review, is confined to that issue which is clearly regulated by statute, that is, access to the precinct minutes. Otherwise, as long recognized by the Texas Supreme Court, the judiciary has no power to control the electoral process or matters referable to the internal issues of political parties:

Except to the extent that jurisdiction is conferred by statute or that the subject has been regulated by statute, the courts have no power to interfere with the judgments of the constituted authorities of established political parties in matters involving party government and discipline, to determine disputes within a political party as to the regularity of the election of its executive officers, or their removal, or to determine contests for the position of party committeemen or convention delegates.

Wall v. Currie, 147 Texas 127, 129, 213 S.W.2d 816, 817 (1948) (quoting with approval 29 C.J.S. Elections § 88); see *Dick v. Kazen*, 156 Tex. 122, 126, 292 S.W.2d 913, 916 (Tex. 1956) (“The holding of elections and the election procedure is a part of the political power of the State, and except as provided by statute, the judiciary has no control over them.”); *Runyon v. Kent*, 239 S.W.2d 909, 910 (Tex. Civ. App.—San Antonio 1951, writ re’fd). Accordingly, we reach no other issue herein.

III. THE PETITION FOR WRIT OF MANDAMUS

The County Chair contends that Cahill’s petition for writ of mandamus is defective because her verification is deficient. Rule 52.3 of the Texas Rules of Appellate Procedure provides for the form and content of a petition in an original proceeding. TEX. R. APP. P. 52.3. Specifically, rule 52.3 provides that “[a]ll factual statements in the petition must be verified by affidavit made on personal knowledge by an affiant competent to testify to the

