

No. _____

In the Texas Supreme Court

IN RE TEXAS NATIONALIST MOVEMENT,
Relator

EMERGENCY PETITON FOR WRIT OF MANDAMUS

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EMERGENCY RELIEF REQUESTED

Identity of Parties and Counsel

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STATEMENT OF THE CASE

This is an original *mandamus* proceeding brought to compel Respondent, Matt Rinaldi, to perform his duty imposed by law to accept the Real Party in Interest, Texas Nationalist Movement's voter petition for referendum (herein, pursuant to Tex. Elec. Code § 172.088, and place the referendum referenced in the petition on the Republican Party of Texas's March 2024 primary ballot as required by Tex. Elec. Code § 172.088(a). Texas Nationalist Movement's petition for referendum satisfied the requirements of § 172.088 because it contained over 139,000 bona fide signatures from voters whereas § 172.088(e) requires "five percent of the total vote received by all candidates for governor in the party's most recent gubernatorial general primary election," which was 97,709. Relator's petition was submitted in a timely fashion, "before the date of the regular filing deadline for candidates' applications for a place on the primary ballot." Tex. Elec. Code § 172.088(d). Because § 172.088 states "Voters by petition may *require* that a proposal to include a demand for specific legislation or any other matter in a political party's platform or resolutions be submitted to a vote in the party's general primary election by placement on the general primary election ballot," Respondent was required to accept Relator's petition and place the referendum on the ballot and had no discretion to reject the petition.

REQUEST FOR EMERGENCY CONSIDERATION

Relator requests emergency consideration of its mandamus petition due to the short deadlines for having Relator's referendum placed on the ballot. Pursuant to Texas Election Code § 86.004(b), mail ballots will start being sent to voters requesting them 45 days before the election, which is January 20, 2024. Tex. Elec. Code § 86.004(b); Sec. of State, Elec. Adv. No. 2023-21: March 5, 2024 Primary Election Law Calendar and May 28, 2024 Primary Runoff Election Law Calendar, *available at* <https://www.sos.state.tx.us/elections/laws/advisory2023-21-march-5-2024-primary-calendar-2.shtml> (list of all required and suggested deadlines in the election, last access January 9, 2024). The election authorities in each county will need some lead time before this date to print the ballots, which would typically be ten days, or approximately January 10, 2024. Accordingly, Relator requests emergency consideration of its mandamus petition so that there is time to ensure its referendum is placed on the ballot in the event it prevails in this proceeding. Without such emergency consideration this proceeding will become moot and this Court will lose its jurisdiction without an opportunity for Relator to obtain a ruling on the merits.

STATEMENT OF JURISDICTION

This Court has jurisdiction of this case pursuant to Texas Election Code § 273.061, which permits the Texas Supreme Court to issue writs of mandamus in

order to ensure compliance with the state’s election laws. Tex. Elec. Code § 273.061. The Court also has jurisdiction under its general powers to issue writs and other orders as granted by Article V of the Texas Constitution and Texas Government Code § 22.221. There are no issues of contested fact material to the issues raised in this case. Relator has also placed a demand for performance, and as of the date of this filing, Respondent has refused to perform his duty, thus fulfilling the necessary prerequisites for entitlement to mandamus relief. *In re Cullar*, 320 S.W.3d 560, 566–67 (Tex. App.—Dallas 2010, no pet.).

STATEMENT PURSUANT TO TEX. R. APP. P. 52.3(e)

Relator filed this petition directly with the Texas Supreme Court because time is of the essence. *Sears v. Bayoud*, 786 S.W.2d 248, 249 (Tex. 1990, orig. proceeding). Due to the short schedule for obtaining relief as a result of ballot deadlines, and the inability to preserve the Supreme Court’s appellate review jurisdiction in the event this case would be first filed at the Court of Appeals, this proceeding is properly first filed in this Court. *Id.*, *Fitch v. Fourteenth Court of Appeals*, 834 S.W.2d 335, 336 (Tex. 1992) (enjoining effect of the court of appeals’ order removing candidate from the primary ballot in order to protect supreme court’s jurisdiction to review appellate court’s mandamus order); *In re Angelini*, 186 S.W.3d 558, 561 (Tex. 2006); *The Republican Party of Texas v. Dietz*, 940 S.W.2d 86, 93–94 (Tex. 1997). Given that the issue presented is of “statewide importance” and “the

urgency of the time constraints” requires immediate intervention, this proceeding is properly first filed in this Court. *Sears*, 786 S.W.2d at 249–50.

ISSUE PRESENTED

Should this Court issue a Writ of Mandamus compelling Respondent to accept the voter petition for referendum submitted by Texas Nationalist Movement and place the referendum on the 2024 Republican General Primary Ballot?

STATEMENT OF FACTS

In June 2023, Texas Nationalist Movement (hereinafter, “TNM”) launched a campaign to obtain signatures for a voter petition for referendum, pursuant to Texas Election Code § 172.088, to place the following question on the 2024 Republican General Primary Ballot: “The State of Texas should reassert its status as an independent nation. FOR OR AGAINST.” Exhibit A, Voter Petition for Referendum.

By the end of the 180-day campaign, TNM collected a total of 170,097 signatures by electronic signature. Of those, TNM rejected 30,426 as technically defective and processed 215 requests for the removal of signatures. This left a total of 139,456 signatures that were hand-delivered to the state chair of the Republican Party of Texas at its headquarters on December 11, 2023 at approximately 12:05 p.m, which was the deadline for candidates applications for a place on the primary ballot pursuant to Texas Election Code § 172.088(d). *See* Exhibit A; Exhibit B,

Rinaldi Letter Rejecting Petition. The number of signatures submitted was 33,619 signatures above the statutory minimum required in Texas Election Code § 172.088(e). *See* Exhibit A.

On December 27, 2023, Respondent, Matt Rinaldi, Chairman of the Republican Party of Texas, issued an open letter to TNM, officially rejecting the proposition on two grounds. Exhibit B. First, Respondent claimed that the petition was not timely filed by interpreting § 172.088(d) to require filing by the day before the regular filing deadline for candidates' applications for a place on the primary ballot, which would be December 10, 2023, not December 11. *Id.* Second, Respondent claimed that the signatures were invalid primarily because electronic signatures do not suffice for the requirements of § 172.088(e) by citing Texas Election Code § 141.063(a). *Id.* However, the Texas Uniform Electronic Transactions Act (hereinafter "UETA"), which, as set forth below, applies to the Texas Election Code and provides, "A record or signature may not be denied legal effect or enforceability solely because it is in electronic form." Tex. Bus. & Com. Code 322.007.

Additionally, Respondent asserted, in complete contradiction of the bona fide signatures submitted with the Petition, "The vast majority of petition signatures were invalid" by claiming, "A number of the signatures omitted one or all of the residence address, county of registration, and date of birth/voter registration number" and

“Many contained invalid voter names.”

Relator submitted a letter to Rinaldi demanding that he reconsider his unlawful rejection of the Petition. Exhibit C, TNM Demand Letter to Rinaldi. As of this date, Respondent has not fulfilled his duty to accept TNM’s petition and place the referendum contained in the petition on the 2024 Republican General Primary Ballot.

ARGUMENT

I. RESPONDENT HAS A DUTY TO ACCEPT THE PETITION AND PLACE THE REFERENDUM ON THE BALLOT FOR THE 2024 REPUBLICAN PRIMARY.

Texas Election Code § 172.088(a) states, “Voters by petition may require that a proposal to include a demand for specific legislation or any other matter in a political party's platform or resolutions be submitted to a vote in the party's general primary election by placement on the general primary election ballot.” TNM’s Petition satisfied all of the requirements of Section 172.088.

Respondent’s rejection of TNM’s voter petition for referendum (hereinafter, (the “Petition”) primarily stems from an alleged lapse in timeliness and secondarily from alleged defects in the signatures. As to timeliness, the relevant provision of the Election Code states, “The petition must be filed with the state chair of the political party holding the primary to which the petition applies before the date of the regular filing deadline for candidates' applications for a place on the primary ballot.” Tex.

Elec. Code § 172.088(d). Candidate applications “must be filed not later than 6 p.m. on the second Monday in December of an odd-numbered year.” Tex. Elec. Code § 172.023.

Rinaldi’s assertion that TNM failed to timely submit the Petition lacks legal foundation. The crux of this issue is interpretation of the phrase “before the date of the regular filing deadline.” § 172.088(d). When used to denote a deadline on a specific date, use of the word “before” generally encompasses the entire day up to its conclusion. *See* Blacks Law Dictionary, *Ward v. Walters*, 63 Wis. 44, 22 N.W. 844 (1885), days or weeks must intervene before the day fixed. There is a notable absence of any Texas authority interpreting “before” to mean the day before the date specified.

Rinaldi asserts that the applicable deadline was December 10, 2023, which is a Sunday. Exhibit B. In this context, it is highly dubious the Texas Legislature intended a statutory deadline to fall on a Sunday, whereas the deadline specified in the statute is always a Monday. Moreover, the Republican Party of Texas headquarters was not open on Sunday, December 10, 2023. Indeed, whereas the Legislature specified the exact time and date for applications for candidates to be “filed not later than 6 p.m. on the second Monday in December,” it would be strange for the Legislature to specify a different deadline for voter petitions for referendums as there would be no ostensible purpose for a separate deadline. More likely, the

Legislature intended for both candidate applications and voter petitions to have the same deadline, which is why it referenced the candidate application deadline in the provision applicable to the voter petition deadline.

As to Rinaldi's secondary reason for rejecting the Petition due to the signatures being electronic, this also lacks legal foundation. The UETA explicitly acknowledges the legal effect of electronic signatures in the State of Texas: "A record or signature may not be denied legal effect or enforceability solely because it is in electronic form." Tex. Bus. & Comm. Code § 322.007. Yet, that is exactly what Rinaldi did in rejecting the Petition. Section 322.007(d) states, "If a law requires a signature, an electronic signature satisfies the law." § 322.007(d).

Any argument by Respondent that the UETA does not apply to the Texas Election Code is unfounded. The only exclusions for applicability provided by the UETA are as to "a law governing the creation and execution of wills, codicils, or testamentary trusts," a transaction governed by the Uniform Commercial Code (other than certain enumerated sections), documents produced by a court reporter "for use in the state or federal judicial system," and transactions "governed by rules adopted by the supreme court." § 322.003. If the Legislature meant to exclude any provision of the Texas Election Code from the UETA, it would have included any such exclusion under the scope of the statute identified in § 322.003. Thus, Rinaldi's assertion that electronic signatures do not satisfy the requirements for a voter's

petition for referendum pursuant to Texas Election Code § 172.088 has no validity.

Regarding Rinaldi's remaining assertions in his letter that the "vast majority of petition signatures were invalid" due to omission of one or "one or all of the residence address, county of registration, and date of birth/voter registration number" and/or signatures not being in the petitioner's own handwriting, the signatures attached to the Petition conclusively refute Rinaldi's unsupported assertion. Exhibit A. Thus, Rinaldi had no discretion to reject the Petition.

II. RELATOR IS ENTITLED TO MANDAMUS RELIEF

The Courts of Appeal and the Supreme Court have jurisdiction to "compel the performance of any duty imposed by law in connection with the holding of an election." *Cullar*, 320 S.W.3d at 563–64 (citing Tex. Elec. Code § 273.061; *see also* Tex. Const. Art. V (addressing judicial power of Texas courts and providing Supreme Court shall have jurisdiction, original, and appellate, as prescribed by law). To be entitled to mandamus relief, a relator must (1) establish that the respondent has a legal duty to perform a non-discretionary act, (2) demand performance from a respondent, and (3) respondent has to refuse to act. *Cullar*, 320 S.W.3d at 564 (citing *O'Connor v. Fifth Court of Appeals*, 837 S.W.2d 94, 97 (Tex. 1992) (citing *Doctors Hosp. Facilities v. Fifth Court of Appeals*, 750 S.W.2d 177, 178 (Tex. 1988)); *see also Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 556 (Tex. 1990) (in order for mandamus to lie, respondent must have refused to act); cf. *In re Link*, 45 S.W.3d

149, 151–52 (Tex. App.—Tyler 2000, orig. proceeding) (in proceeding pursuant to § 273.061, relators must establish clear legal right to action they seek to compel, and duty of person sought to be compelled must be clearly fixed and required by law).

As established above, Respondent had a legal duty to accept TNM’s Petition and place the referendum contained therein on the ballot for the 2024 primary election.

III. NO ISSUES OF CONTESTED FACT EXIST TO PRECLUDE MANDAMUS RELIEF.

An appellate court may not deal with disputed areas of fact in an original mandamus proceeding. *Brady v. Fourteenth Court of Appeals*, 795 S.W.2d 712, 714 (Tex. 1990) (citing *West v. Solito*, 563 S.W.2d 240, 245 (Tex. 1978); *Dinkeman v. Snell*, 490 S.W.2d 183, 186–87 (Tex. 1973)). Here, the factual record is clear. Notwithstanding Rinaldi’s unsupportable assertions in his letter, TNM’s Petition contains well over the minimum number of 97,709 signatures required pursuant to Texas Election Code § 172.088(e). Exhibit A. Because there are no material issues of disputed fact, mandamus relief is appropriate. *See LaRouche v. Hannah*, 822 S.W.2d 632, 634 (Tex. 1992).

PRAYER

WHEREFORE, PREMISES CONSIDERED, Relator, Texas Nationalist Movement, prays that the Court grant its Emergency Petition for Writ of Mandamus

and issue a writ of mandamus compelling Respondent, Hon. Matt Rinaldi, to accept its voter petition for referendum and further to include the following proposition question on the ballot for the 2024 Republican General Primary: “The State of Texas should reassert its status as an independent nation. FOR OR AGAINST” and to notify the Secretary of State that the proposition shall be included on the ballot. Finally, Relator prays for all other relief, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

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By: _____
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52.3(J) AND 52.3(K) CERTIFICATION

I hereby certify that I have reviewed the above Petition for Writ of Mandamus and have concluded that every factual statement in the said petition is supported by competent evidence included in the appendix or record. I further certify that the documents contained in the appendix are true and correct copies of those documents in the possession of Relator.

Paul M. Davis

CERTIFICATION OF WORD COUNTY COMPLIANCE

I certify that this document complies with Rule of Appellate Procedure 9.4. Excluding the portions listed in Rule 9.4(i)(1), and according to the word count of the computer program used, this document contains [] words.

Paul M. Davis

CERTIFICATE OF SERVICE

By my signature above, I hereby certify that a true and correct copy of this document was served as required by Texas Rule of Appellate Procedure 9.5 to the parties to the proceeding, via-e-filing on this 9th day of January, 2024.

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APPENDIX

- Exhibit A. Voter Petition for Referendum (to be filed under seal and separately due e-file size limitations)
- Exhibit B. Rinaldi Letter Rejecting Petition
- Exhibit C. TNM Demand Letter to Rinaldi

Automated Certificate of eService

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Associated Case Party: MatthewRinaldi

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