

CAUSE NO. 2012-48965

LLOYD WAYNE OLIVER
Plaintiff

v.

LANE LEWIS, Chair of Harris County
Democratic Party, STAN STANART,
Harris County Clerk, GILBERTO
HINOJOSA, State Chairman of the Texas
Democratic Party, EDWARD EMMET,
Harris County Judge, and HOPE
ANDRADE, Texas Secretary of State

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IN THE DISTRICT COURT

189th JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

TEMPORARY INJUNCTION

On September 5, 2012, appeared Lloyd Wayne Oliver with counsel and requested that this Court enter a temporary injunction ordering Lane Lewis, Chair of the Harris County Democratic Party, Stan Stanart, Harris County Clerk and Hope Andrade, the Texas Secretary of State to take all necessary actions to see that his name appears on the general election ballot as the Democratic Nominee for the position for the Harris County District Attorney. Lane Lewis, Chair of the Harris County Democratic Party did not appear, but was represented by counsel. Gilberto Hinojosa, State Chairman of the Texas Democratic Party did not appear, but was represented by counsel. Edward Emmet, Harris County Judge did not appear, but was represented by counsel. Hope Andrade, Texas Secretary of State did not appear, but was represented by counsel. Stan Stanart, Harris County Clerk did appear in person and with counsel.

The Court has examined the pleadings of the respective parties. The court finds that each party has either filed an answer or made a general appearance either in person, or by and through their respective counsel. Accordingly, the Court finds that it has both

personal jurisdiction and subject matter jurisdiction over the parties and claims asserted herein.

A hearing was conducted on the record and duly recorded by the court reporter. All parties were present for the hearing and had an opportunity to present evidence and oral argument.

Findings of Fact

The only witness who testified was Plaintiff, Lloyd Wayne Oliver. The court makes the following findings of fact and conclusions of law:

a. Lloyd Wayne Oliver filed his application to run in the Democratic Primary Election for the position of Harris County District Attorney and paid the requisite filing fee;

b. The office of the Harris County District Attorney is a district office within the meaning of the Texas Election Code;

c. Lloyd Wayne Oliver is a licensed attorney in the State of Texas and is eligible, under the Texas Election Code to serve as the Harris County District Attorney;

~~d. Defendants presented no credible evidence that Lloyd Wayne Oliver is not eligible to serve the office sought;~~ [no finding d]

e. Lloyd Wayne Oliver was a candidate in the Democratic Primary Election for the position of the Harris County District Attorney and subsequently won the primary election;

f. Lane Lewis of the Harris County Democratic Party and Gilberto Hinojosa, State Chair for the Democratic Party refused to certify Lloyd Oliver's name for a place on the general election ballot and announced that the Democratic Party would not run a

candidate in the general election for the District Attorney, contending Oliver's actions violated Democratic Party Rules;

g. Hope Andrade, Chief Election Officer was unable to certify Oliver's name and deliver the certification to Stan Stanart, the Harris County Clerk who is the authority in charge of the preparation of the election ballot;

i. Stan Stanart, Harris County Clerk was unable to place Oliver's name on the election ballot without the proper certification or court order.

j. Oliver has demanded that the above authorities place his name on the general election ballot as the Democratic Nominee for the office of the Harris County District Attorney;

k. The Democratic Party Rules, submitted into evidence, are internal party rules which may not form the basis to determine the eligibility of Lloyd Oliver, as the term "eligibility" is defined in the Texas Election Code;

l. In the event the "party" rules are relevant, Lloyd Oliver's post election statements regarding Pat Lykos were insufficient to amount to a violation of the Democratic Parties Rule and Defendants failed to present credible evidence of a violation of those rules;

m. On September 6, 2012 at 5:00 the "wheels" are scheduled to be put in motion to prepare the election process;

n. Lloyd Oliver will be irreparably harmed if this Court does not enter a temporary injunction on or before September 6, 2012 by 5:00 p.m. mandating that his name appears on the general election ballot. The harm arises from well settled law that election contests become "moot" after the election has begun. Therefore, if Lloyd Oliver

is to have a remedy, an appropriate order should be rendered before the preparation and certification of the ballots has begun. The Court takes notice that its ~~order was orally~~ *findings were recited* ~~rendered~~ in open court on the record in the presence of all parties;

o. Lloyd Oliver has demonstrated probability of prevailing at a final hearing sufficient to grant this temporary injunction; and

p. Defendants presented no evidence of harm in the event it is later determined the court's order is erroneous.

Conclusions of Law

A person who is being harmed or is in danger of being harmed by a violation or threaten violation of this code is entitled to appropriate injunctive relief to prevent the violation from continuing or occurring. *TEX. ELEC.CODE § 273.081*. In Texas a political party's powers are expressly limited by the Texas Election Code. *TEX. ELEC.CODE § 161.001*. A political party may make nominations for public office only by the methods provided by the election code. *TEX. ELEC.CODE § 161.003*. In Texas the process to choose the Democratic Nominee of public office is accomplished through a primary election. *TEX. ELEC.CODE § 172.002(b)*. Lloyd Oliver prevailed in the primary election. The Secretary of State shall certify in writing for placement on the general election ballot the name of each candidate nominated at a primary election. . . of a political party for a statewide or district office. *TEX. ELEC.CODE § 161.008*. The only statutory basis for the denial of certification arises under *TEX. ELEC.CODE § 145.003* and ~~Defendants did not meet their burden of proof.~~ *the evidence did not support a denial of certification under these provisions.*

**Insert (A)*

Insert A

The Court has considered Defendant's argument that to compel that Plaintiff Oliver be placed on the ballot as the Democratic Party's Candidate for District Attorney violates the political party's First Amendment Right of Association. The Court concludes that whatever the political party's rights may be in a pre-primary situation (where a person is seeking to be placed on a party's primary ballot) such associational rights are not absolute after a primary election and a candidate receives a majority of the votes. The right of association must be balanced against not only the rights of the successful candidate but also the rights of the voters who elected him^{is} as the party's nominee in the primary process. In this circumstance, the political party so called Right of Association must yield to other rights which vested as a result of the party's primary process. The State of Texas, too, has a compelling interest in a free and fair elections^{and} promoting democratic decision making. That is what The Court is attempting to do in this order and I do not believe this decision impermissibly burdens the associational rights of the Democratic Party.

The act of certifying the prevailing party in a primary election for a place on the general election ballot is a ministerial act. The court finds that ^{the temporary injunction} that bond shall be set in the amount of \$100.00 (one hundred dollars).

It is further ORDERED, ADJUDGED and DECREED that Hope Andrade, Texas Secretary of State and the State's chief election office shall prepare and deliver all necessary certifications for Lloyd Wayne Oliver's name to appear on the general election as the Democratic Party Nominee for the position of Harris County District Attorney.

It is ORDERED, ADJUDGED, and DECREED that Harris County Clerk, Stan Stanart, shall include the name "Lloyd Wayne Oliver" on the November 6, 2012 General and Special Elections Ballot as the Democratic Party Nominee for the office of Harris County District Attorney. Oliver's name shall be included on the election ballot in the same manner as if the County Clerk had received the proper certifications in the ordinary course of business.

It is further ORDERED, ADJUDGED and DECREED that Gilbert Hinojosa, ^{and Lane Lewis, Harris County Democratic} State Chair of the Democratic Party, ^{Chairman,} shall prepare and deliver all necessary certifications for Lloyd Wayne Oliver's name to appear on the general election as the Democratic Party Nominee for the position of Harris County District Attorney.

It is ORDERED, ADJUDGED, and DECREED that in the event that this order is overturned before November 6, 2012, Election Day, the County Clerk will not be

^{Lloyd is}
required to remove Oliver ~~Lloyd~~'s name from the November 6, 2012 General and Special
Elections ballot and Oliver Lloyd's opponent will be declared the winner regardless of
~~vote tabulation~~ ^{unless ordered to do so by a court with}
~~the record until further court orders.~~ ^{jurisdiction.}

It is further ORDERD, ADJUDGED and DECREED that the failure of one party
to comply with this ORDER shall not excuse any other party from complying with this
ORDER.

It is further ORDERED, ADJUDGED and DECREED that due to time constraints
that service of this ORDER may be accomplished by fax on the attorney for the
respective parties.

It is further ORDERD, ADJUDGED and DECREED that the above styled and
numbered case be set for trial on the merits on December 3, 2012.

It is further ORDER^ED, ADJUDGED and DECREED that this order is effective
immediately. The Court will not stay this order pending appeal, if any, ^{or after appellate}
^{review or}
^{mandamus.}

Signed on September 5, 2012

William R. Burhe
PRESIDING JUDGE

Approved and Entry Requested By:

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Approved as to Form Only By:
