IN THE SUPREME COURT OF TEXAS

NO. 15-0632

IN RE SHANNON DORN ET AL., RELATORS

ON PETITION FOR WRIT OF MANDAMUS

JUSTICE DEVINE, joined by JUSTICE LEHRMANN, dissenting from the denial of the petition for writ of mandamus.

I would have granted the writ of mandamus. The City of San Marcos disregarded its own laws regarding charter amendments, ignoring the legislative prerogative of the people through citizen-initiated petitions. This is a power protected by our laws,[1] our precedent,[2] and the City's own Charter.[3] Here, the City Clerk of San Marcos refused to review the signatures on a petition calling for a charter amendment. The Clerk reasoned that the petition was invalid because the signatures were not accompanied by any oath or affirmation confirming their authenticity. Because neither the City Charter nor Texas law imposes this requirement, I believe the City Clerk should have been directed to review the signatures on the petition.

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[1] *See* TEX. ELEC. CODE § 277.001–.004.

[2] *See, e.g.*, *In re Woodfill*, __ S.W.3d __, __, 2015 WL 4498229, at *1 (Tex. 2015) (per curiam).

[3] *See* San Marcos, Charter, art. XII, § 11 ("Amendments to this Charter may be framed and submitted to the voters of the city in the manner provided by state law.").

The City claims the petition does not satisfy section 6.03 of the City's Charter. This section, however, pertains exclusively to petitions regarding *ordinances*:

> Initiative petition papers shall contain the full text of the proposed legislation in the form of an *ordinance*, including a descriptive caption. Referendum petition papers shall contain a sufficient description of the *ordinance* sought to be referred to identify it, or if the *ordinance* has been passed by the council, the full text of the *ordinance* sought to be referred shall be included in such papers. Before signatures on any petition paper may be counted, one of the signers of such petition paper, a qualified voter, shall make oath or affirmation before the city clerk or any other officer competent to administer oaths or affirmations, that the statements made therein are true, that each signature to the paper appended is the genuine signature of the person whose name purports to be signed thereto, and that such signatures were placed thereon in that person's presence.

San Marcos, Charter, art. VI, § 3 (emphasis added). Any requirement that signatures on petitions be verified applies only to citizen-initiated legislation on ordinances. Indeed, the Charter does not contemplate these provisions applying to anything else. Just one example: under the Charter, if an initiative petition calls for the adoption of the ordinance, the City may choose between passing the ordinance itself or submitting it to a vote. *Id.* art. VI, § 4(a). If a referendum petition calls for the repeal of an ordinance, the City may either repeal the ordinance itself, or call an election. *Id.* art. VI, § 4(b). But because charter amendments *always* require an election—the City cannot amend the charter on its own—this section obviously does not apply to charter amendments. TEX. ELEC. CODE § 9.004; San Marcos, Charter, art. XII, § 11.

When it comes to Charter amendments, the Charter relies solely on state law to define the proper procedure: "Amendments to this Charter may be framed and submitted to the voters of the city in the manner provided by state law." San Marcos, Charter, art. XII, § 11. State law, however, does not require the verification the City Clerk demands. "The governing body shall submit a

proposed charter amendment to the voters for their approval at an election if the submission is supported by a petition signed by a number of qualified voters of the municipality equal to at least five percent of the number of qualified voters of the municipality . . . ." TEX. LOC. GOV'T CODE § 9.004(a). The Election Code, in turn, specifies the requirements "[f]or a petition signature to be valid." TEX. ELEC. CODE § 277.002. The verification requirement the City argues for is not one of the statutorily-imposed requirements.

In other words, state law does not impose these verification requirements, and the City Charter relies solely on state law for the charter-amendment process. No literal reading of the Charter allows the criteria of section 6.03 to be applied to charter amendments. Indeed, mere months ago, the Court recognized a distinction exists between city charter requirements for citizen-initiated charter amendments as opposed to ordinances. *See Dacus v. Parker*, __ S.W.3d __, __, 2015 WL 3653295, at *6 (Tex. 2015) ("[A]lthough the Houston charter provides no means for amending the charter, the Texas Local Government Code does.").

The Court has long held that laws regarding citizen-initiated legislation "should be liberally construed in favor of the power reserved" to the people. *In re Woodfill*, __ S.W.3d at __, 2015 WL 4498229, at *6 (quoting *Taxpayers' Ass'n of Harris Cnty. v. City of Houston*, 105 S.W.2d 655, 657 (Tex. 1937)). This case is no different. Moreover, the Election Code disfavors local technicalities that hamper the people's right to amend their charter: "Any requirements for the validity or verification of petition signatures in addition to those prescribed by this chapter that are prescribed by a home-rule city charter provision or a city ordinance are effective only if the charter provision or ordinance was in effect September 1, 1985." TEX. ELEC. CODE § 277.004. Simply put, the City

cannot amend its charter to impose the requirements the City Clerk demands, let alone impose them here.

Though the deadline for ordering elections passed, *see* TEX. ELEC. CODE § 3.005(c); *In re Woodfill*, __ S.W.3d at __ n.11, 2015 WL 4498229, at *5 n.11, the people of San Marcos were not without a remedy. The City should not be able to avoid its duty under the Charter—indeed, under Texas law—merely because it failed to timely order the election. If, as the Election Code states, "[f]ailure to order a general election does not affect the validity of the election," TEX. ELEC. CODE § 3.007, then neither should a late order in this case.

Here, a district court determined the City Clerk must review the petition signatures and perform her ministerial duty. Rather than comply, the City initiated an interlocutory appeal, assuring that the deadline would pass before relief could be obtained. I would not permit a city to use a directory deadline in the Election Code in this manner to either avoid a ministerial duty or thwart the will of the people. When the Texas Election Code and Local Government Code, as well as the City's own Charter, require the City to act, the City may not hide behind the statutory deadline. Indeed, "[t]he right to vote is so fundamental in our form of government that it should be as zealously safeguarded as are our natural rights," and election statutes must be interpreted "in favor of that right." *Thomas v. Groebl*, 212 S.W.2d 625, 630 (Tex. 1948). In *Woodfill*, we required a city to comply with its duties before the deadline, *see In re Woodfill*, __ S.W.3d at __ , 2015 WL 4498229, at *1, and I would have required compliance here as well.

Though the deadline does not remove a remedy, it does foreclose any adequate remedy by appeal. *See In re Williams*, __ S.W.3d __, at __, 2015 WL 4931372, at *3 (Tex. 2015) (per curiam);

In re Woodfill, __ S.W.3d at __ , 2015 WL 4498229, at *6. Because we did not act, the voters were denied any timely relief.

As we have held before, a City's "refusal to submit the proposed amendment[] to the vote of the people thwarts not only the legislative mandate" of the Local Government Code, but also "the will of the public." *Coalson v. City Council of Victoria*, 610 S.W.2d 744, 747 (Tex. 1980). This case is no different. I would have granted the petition for mandamus relief and directed the City Clerk to count the signatures. Accordingly, I respectfully dissent from the denial of the petition for writ of mandamus.

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John P. Devine
Justice

Opinion Delivered: September 4, 2015