COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

THE EL PASO REPUBLICAN PARTY OF EL PASO COUNTY, INC. f/k/a THE EL PASO REPUBLICAN PARTY and RICK SEEBERGER, in his capacity as President and Chairman of THE EL PASO REPUBLICAN PARTY OF EL PASO COUNTY, INC., Appellants,	§ § § § §	No. 08-21-00093-CV Appeal from the County Court of Law Number Three of El Paso County, Texas (TC# 2021-DCV-0666)
v.	§	
RAYMUNDO BACA, Appellee.	§ §	

CONCURRING AND DISSENTING OPINION

At its core, this case involves a disagreement about whether a duly elected county chair of a county executive committee was entitled by law to complete his two-year term. One side says a resignation sent by email took effect when sent to party members while the other side says it was quickly withdrawn and ineffective. Either way, both sides agree the political party at issue nominates candidates for office by primary election. As a result, I would conclude that Title 10 of the Election Code is implicated, conferring subject matter jurisdiction on the trial court. TEX. ELEC. CODE ANN. §§ 161.001-174.097. As was long ago established by the Supreme Court

of Texas, "when regulated by law," actions of a political party may be reviewed by courts "as [this is] the only means of giving effect to the sovereign law of the State." *Gilmore v. Waples*, 188 S.W. 1037, 1040 (Tex. 1916).

I agree in part and disagree in part with the Court's analysis and conclusions. I write separately to offer my view of the two issues presented for review by Seeberger, treating subsidiary questions as covered that are fairly included by the issues. *See* TEX. R. APP. P. 38.1 (f).

I.

Issue One

Are Texas courts absolutely barred from exercising jurisdiction over disputes involving the internal affairs of political parties?

In his first issue, Seeberger argues the trial court erred by dismissing the case on the basis that Texas courts are absolutely barred from exercising jurisdiction in cases involving the internal affairs of a political party. Baca had successfully argued as such when urging his jurisdictional plea in the district court. Relying on a statutory basis implicating an exception to the jurisdictional bar, Seeberger contends the dispute at issue is regulated by Texas law. Said differently, he contends there is no absolute bar prohibiting the trial court from exercising jurisdiction over the case. As a starting point of the jurisdictional inquiry, I agree that no absolute bar prohibits courts from exercising jurisdiction in cases involving the affairs of a political party. Well over a century of Texas law has reiterated that principle on more than one occasion. The reasoning for that principle is based on the dual role served by political parties.

Political Parties in Texas

"A Texas political party is a free and voluntary association of citizens of the state." *Holland v. Taylor*, 270 S.W.2d 219, 221 (Tex. 1954). These associations are readily recognized as being instituted for political purposes. *Seay v. Latham*, 182 S.W.2d 251, 253 (Tex. 1944). That is, a

political party "is organized for the purpose of effectuating the will of those who constitute its members, and it has the inherent power of determining its own policies." *Id.* (citing *Bell v. Hill*, 74 S.W.2d 113, 120 (Tex. 1934)); *see also Holland*, 270 S.W.2d at 221 ("Such parties cannot operate if the courts entertain the suit of every member who concludes that he is in disagreement with its decisions."). Yet, despite these qualities, more than a hundred years ago the Supreme Court of Texas described that "political parties are not beyond the control of the law." *See Gilmore*, 188 S.W. at 1040. "When regulated by law, their action to the extent that it is so governed may be reviewed by the courts as the only means of giving effect to the sovereign law of the State." *Id.* "In such case[,] the inquiry is judicial," which is a function of the courts. *Id.*

Moreover, it is well recognized that political parties serve an important role within our political system while otherwise remaining private in other areas. *Republican Party of Texas v. Dietz*, 940 S.W.2d 86, 92 (Tex. 1997) ("[a] political party is a state actor in some instances, such as when it is conducting elections, but a private organization in other instances, such as when it is conducting certain of its internal affairs"); *see also Dick v. Kazen*, 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."). Because of this duality, there are corresponding limits to involvement in party affairs by the courts. As *Gilmore* explained long ago, "[i]f there is no provision of law interdicting the proposed action of the committee, no legal right of the plaintiff can be said to be threatened with impairment, and the case presents merely a party dispute which the courts will remit to the party forum." *Gilmore*, 188 S.W. at 1038. As a function of its policymaking role, the legislature determines where the line is drawn. *Bell*, 74 S.W.2d at 115 ("To what extent the rights of organized political parties should be

regulated by law is a matter of public policy to be determined by the legislative department-a matter which does not concern the courts.”).

In *Wall v. Currie*, the Supreme Court restated the long-established principle that subject-matter jurisdiction over the affairs of a political party is conferred by statute alone. 213 S.W.2d 816, 817 (1948). This principle is often expressed in the form of an exception to a general rule stated as follows:

> **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.

Id. (emphasis added). Two years following *Wall*, the Supreme Court further explained the reasoning for the limitation. *Carter v. Tomlinson*, 227 S.W.2d 795, 799 (Tex. 1950). The Court described, “[i]n this State political parties have not by law been created either State or governmental agencies, and in the absence of a statute covering the matter, committees of any political party in acting for the party's interests are not acting as officers of the State.” *Id*. (concluding, based on statutory construction of a then existing provision, that jurisdiction is limited to resolving disputes over “a place on party tickets for public elective offices”).

Rather than establishing an absolute bar to a court exercising subject-matter jurisdiction over a dispute involving a political party, Texas law plainly recognizes the legislature sets the jurisdictional boundaries of the courts. *See Wall*, 213 S.W.2d at 817; *Carter*, 227 S.W.2d at 799; *Gilmore*, 188 S.W. at 1040; *see also Runyon v. Kent*, 239 S.W.2d 909, 910 (Tex. App.—San Antonio 1951, writ ref’d). On a case-by-case basis, courts must consider whether the dispute at hand is covered by a statutory provision; or, whether it is one that merely involves an inner party

controversy involving party officials or members. *See Carter*, 227 S.W.2d at 797 ("At the very outset we must decide if this cause presents a justiciable matter for the courts, or if the Legislature has taken such jurisdiction away from the courts and lodged the jurisdiction over contests of this character solely within the party convention and other party machinery.").

Having concluded that no absolute bar exists, I disagree with the majority's overruling of Seeberger's first issue. That conclusion, however, would not end the necessary inquiry. It would still need to be determined whether Seeberger's pleading affirmatively demonstrated that it set forth a justiciable controversy regulated by statute, not an inner-party dispute. Seeberger more particularly addressed that question by his second issue. Because the Court concludes that Seeberger "failed to rebut the presumption against jurisdiction over internal political party leadership disputes, [and thus] the trial court correctly granted Baca's plea to the jurisdiction," I disagree with that portion of the decision.

II.

Issue Two

Does the Texas Election Code regulate this dispute contesting whether a vacancy arose in the office of county chair during Seeberger's two-year term of office?

By his second issue, Seeberger argues the trial court erred in dismissing the case for lack of jurisdiction on the basis that no statute regulated this dispute. Relying on the exception to the general rule limiting the jurisdiction of courts over matters involving party government and discipline, Seeberger argues the dispute here is covered by a resignation provision enacted by the Election Code. To that extent, he argues his resignation was not effective. Countering, Baca argues that *Wall*, *Carter*, and *Runyon*, establish that Texas courts have no jurisdiction over matters of party governance. I address Baca's argument first.

A. Do *Wall*, *Carter*, and *Runyon* control the outcome here?

Decided in 1948, *Wall* involved a dispute over the elected position of Chairman of the Dallas County Executive Committee of the Republican Party. *Wall*, 213 S.W.2d at 816. Applying the jurisdictional limitation to statutes then enacted, the Supreme Court of Texas concluded that, "[t]he office of chairman of a Republican county executive committee is not regulated by statute, nor is jurisdiction over such office otherwise conferred by statute." *Id.* at 818. Reviewing statutory provisions in effect at the time, the Court distinguished between parties holding primary elections and those not yet large enough to do so. *Id*. at 818-19 ("[t]he only Texas statute providing for county executive committees of political parties is one under the terms of which the party is required by that law to hold primary elections for the nomination of its candidates."). The Court noted the provision was then predicated on a party's voting strength. *Id*. Only those political parties casting 200,000 votes or more, as measured from the preceding general election, were required to nominate their candidates by primary election. *Id*. As part of the evidence of the case, *Wall* noted the parties had stipulated that the Republican candidate for Governor of the State had received more than 10,000 votes but less than 200,000 votes in the preceding general election. *Id*. at 817. Based on that stipulation, *Wall* then concluded, "the Republican party in Texas [was] in the group *not* required to hold primary elections and for which no county executive committee is provided by law." *Id*. at 819 (emphasis added).

Contrasted to *Wall*, the Democratic Party at issue in *Carter* met the 200,000-vote threshold to be covered by statute. *Carter*, 227 S.W.2d at 803. Yet, the case itself involved a different aspect of party operations. *Id*. at 796. Factually, the dispute involved proceedings at the State Democratic Convention held in Fort Worth in September 1948. *Id*. Among claims, the suit included allegations that "the State Convention seated a delegation favorable to petitioners over one favorable to

respondents." *Id*. In applying the jurisdictional rule, the Supreme Court found the subject of the dispute was *not* regulated by statute. *Id*. at 807 The Court noted, "[i]n 1941 the Legislature materially amended certain articles of the Statutes, and repealed others, relating to contested elections." *Id*. at 798. And the prevailing statute then in effect provided that "[e]xcept for a place on party tickets for public elective office, all contests within a political party shall be decided by the State, District, or County Executive Committee, as the nature of the office may require, each such Committee to retain all such powers and authority now conferred by law." *Id*. Applying the statute to the subject of the dispute, *Carter* pointed out that respondents were not seeking places on the party ticket for public elective offices. *Id*. at 799. As a result, the provision at issue did not apply to the subject of the dispute. *Id*. And the action taken at the party's convention was not subject to judicial review. *Id*.

Like *Carter*, the dispute in *Runyon* also involved the Democratic Party. *Runyon*, 239 S.W.2d at 910. In that case, A.M. Kent filed suit seeking a judgment declaring his status as the party's duly constituted County Chairman for Cameron County. *Id*. As a result of receiving a majority of the votes cast at the Democratic Primary Election, Kent asserted he had been elected on July 22, 1950. *Id*. His suit contended the committee of the party met a week later, without a quorum present, removed him illegally as County Chairman, and named Robert Runyon in his place. *Id*. *Runyon* acknowledged the rule pronounced in *Wall* that limited a court's jurisdiction over matters involving political parties, "except to the extent that such jurisdiction is conferred or [the] subject [is] regulated by statute." *Id*. (citing *Wall*, 213 S.W.2d 816). Examining the relevant statute, *Runyon* found that Article 3146, Vernon's Ann. Civ. Stats., as amended in 1941, took away from the courts all jurisdiction to decide contests over the office of Democratic County Chairman of the county executive committee. *Id.* at 911. Tracking the statutory language, *Runyon* concluded

that "[t]he office of Democratic County Chairman is a political office and not a 'public elective office,' and the contest here presented is not one over which the courts have jurisdiction, but one which 'shall be decided by the * * * County Executive Committee.'" *Id*.

Wall, *Carter*, and *Runyon* each found that jurisdiction would not lie over the subject of the dispute. But each relied on statutory provisions that were then prevailing. And these cases were decided during the years between 1948 and 1951. The Election Code, however, was recodified in 1951, and again in 1985. *See In re Baker*, 404 S.W.3d 575, 581 (Tex. App.—Houston [1st Dist.] 2010, no pet.); *Carubbi v. Craig*, 405 S.W.2d 610, 612 (Tex. App.—Amarillo 1966, no writ). As a result, *Wall*, *Carter*, and *Runyon*, are only dispositive if the statutes so construed remained unchanged in the interim. Because the majority decision applies *Wall* as though no changes have been enacted, I disagree with this part of its analysis. Clearly, that is not the case. To determine whether a jurisdictional bar applies, however, more is necessary to make that determination. Currently adopted statutes must be considered. Based on these considerations, I also disagree with Baca's argument.

B. Do currently enacted provisions of the Election Code regulate this dispute?

Seeking relief based on his status as the elected party official, Seeberger's UDJA claim questions whether his resignation took effect before withdrawn such that Baca was properly appointed by the County Executive Committee to fill the resulting vacancy in office. Relying on provisions of the Election Code, he contends, first, that § 201.023 regulates resignations of all officers, without limitation, including those of a political party; and second, he further contends that other provisions of the Election Code address the filling of a vacancy in the office of county chair. *See* TEX. ELEC. CODE ANN. §§ 171.023, 171.024, and 171.025. Countering, Baca argues that Seeberger's argument fails for two reasons: (1) that section 201.023 applies only to public officers,

and the office of county chair is not a public office; and (2) the statute applies only for the purpose of determining whether an election is necessary to fill a vacant office, and, based on sections 171.024 and 171.025 of the Election Code, no election is ever necessary to fill a vacancy in the office of county chair.

Although I agree with the Court that section 201.023 does not apply to the office of county chair; nonetheless, unlike the majority, I would conclude Title 10 of the Election Code confers jurisdiction over the subject matter of the dispute.

C. Analysis

1. Overview of Title 10 of the Election Code

Enacted in 1985, Title 10 of the Election Code is titled "Political Parties."[1] The title is divided into three subtitles with Subtitle A covering general provisions, Subtitle B covering parties that nominate by primary election, and Subtitle C covering parties that nominate by convention. *See id*. §§ 161.001-163.007 (Subtitle A); 171.001-174.097 (Subtitle B); 181.001-182.007 (Subtitle C). Setting an outer boundary, § 161.001 declares that "[a] political party retains all of its inherent powers *except as limited by this code*." *Id*. § 161.001. (emphasis added).

Among provisions of the title, Chapter 162 prescribes requirements for participation in party affairs; and Chapter 163 adopts rules imposed on political parties with a state executive committee. *See id*. §§ 162.001-163.006. These provisions cover topics including restrictions on a party's name, eligibility for party membership, requirements for nominating candidates for election, and, to a limited extent, the eligibility requirements for certain party offices. *See, e.g.*, *id*. §§ 161.002 (party name), .003 (method of making nominations for political office), .004 (party documents as public information), .005 (eligibility for party offices), .009 (subjecting party

[1] *See* Act of May 24, 1985, 69th Leg., R.S., ch. 211, § 1, 1985 Tex. Gen. Laws 802 (codified at TEX. ELEC. CODE ANN. §§ 161.001 - 182.007).

officers to mandamus relief). When applicable, the Code further provides that political parties must make rules prescribing procedures governing the conduct of party meetings and its conventions from the precinct level to the state level. *Id*. § 163.002. And rules adopted by such parties must be consistent with state law. *Id*. § 163.003.

Relevant to the subject of this dispute, Chapter 171 of the title sets forth an organizational structure imposed on parties who nominate candidates by primary election. To that end, covered parties are required to form a State Executive Committee (SEC), a County Executive Committee (CEC), and other committees, if applicable. *Id*. §§ 171.001-171.073. Among those provisions, section 171.022 regulates the composition of a party's CEC and, more specifically, includes the office of county chair. *Id*. § 171.022.

Relevant here, section 171.022 states as follows:

> (a) A county executive committee consists of:
>
> (1) **a county chair**, who is the presiding officer, elected at the general primary election by majority vote of the qualified voters of the county who vote in the primary on that office or appointed by the county executive committee as provided by this subchapter; and
>
> (2) **a precinct chair** from each county election precinct, elected at the general primary by majority vote of the qualified voters of the precinct who vote in the primary on that office, subject to Section 171.0221, or appointed by the county executive committee as provided by this subchapter.
>
> . . .
>
> (c) Each committee member serves for a term of two years beginning the 20th day after runoff primary election day.

Id. § 171.022(a) and (c) (emphasis added).

Relevant to the office of county chair, two methods are provided for a member to attain the position: (1) being elected at the general primary election by majority vote of the qualified voters of the county who vote in the primary on that office; or (2) being appointed by the county executive

committee as provided by the subchapter. *Id*. By separate provision, a third method is available, but it applies when only one candidate's name is to be placed on the ballot for that office. *Id*. § 171.0221.

In general, section 171.024 addresses the topic of filling any vacancy on the CEC, and section 171.025 sets forth requirements for filling a vacancy in the office of county chair. *Id*. §§ 171.024 and 171.025. Regarding party participation, section 171.026 declares that persons may not participate in a CEC meeting as a proxy. *Id*. § 171.026. Finally, section 171.029 establishes procedures for the removal of either a county chair or a precinct chair for such member's failure to perform duties provided by the Election Code, or to attend four or more consecutive meetings of the CEC. *Id*. § 171.029. When given proper notice of removal, said officers must respond, on or before the seventh day after the receipt of notice, and affirmatively state the officer wishes to remain in office. *Id*. § 171.029(d). An officer's failure to so respond results in a vacancy in the office of precinct chair or county chair, respectively, as applicable to the circumstance. *Id*.

In sum, provisions regulating the office of county chair, as well as procedures for filling vacancies in that political party office, are included in Chapter 171 of the title. *See* TEX. ELEC. CODE ANN. §§ 171.022, 171.024, and 171.025. And because the El Paso County Republican Party nominates by primary election, and it has an established CEC, I conclude the office of county chair of said party is governed by provisions of the Election Code. *See* §§ 161.001-163.006, 171.001-174.097.

2. *Hardberger's* statutory interpretation of the term "vacancy"

Baca relied on *State ex rel. Angelini v. Hardberger*, 932 S.W.2d 489, 492-495 (Tex. 1996), to argue that section 201.023 was limited in purpose to Title 12 of the Election Code. Because I view *Hardberger*'s interpretation of section 201.023 as controlling, I agree with Baca and the majority's decision on this point. Yet, unlike the majority, I see no reason not to follow

Hardberger's statutory interpretation of the term "vacancy." In that sense, I would treat that statutory interpretation of "vacancy" as controlling.

In *Hardberger*, the Supreme Court held that Justice Hardberger was entitled to serve his full term in office—based on him having been elected by a majority of the qualified voters. *Id.* at 492. Unless he died while in office, was constitutionally removed from office, or left of his own accord, that term of office controlled. *Id*. That determination flowed from two provisions of the Texas Constitution including: (1) that the constitutional term of an appellate justice is six years, *see* TEX. CONST. art. V, § 6(b); and (2) that removal from office is based on prescribed grounds, which were not at issue in the case, *id*. arts. V, § 1-a(6), XVI, § 40. *See Hardberger*, 932 S.W.2d at 492.

Most relevant to this case, however, *Hardberger* necessarily construed the meaning of the term "vacancy" to reach its decision. As addressed in *Hardberger*, Article V, Section 28 of the Texas Constitution mandates that "[v]acancies . . . shall be filled by the Governor until the next succeeding General Election." *Id*. (citing TEX. CONST. art. V, § 28). In construing the meaning of "vacancies," as was enacted, the Supreme Court rejected the view that a vacancy in office may be created before the officer actually leaves office. *Id*. at 493. Instead, the Court described, "[w]hen Justice Hardberger actually leaves office, he will vacate his office in the constitutional sense." *Id*. (citing *Leander Indep. Sch. Dist. v. Cedar Park Water Supply Corp.*, 479 S.W.2d 908, 912 (Tex. 1972) (words used in constitution are to be interpreted as the people generally understood them); *Youngblood v. Marr*, 253 Ind. 412, 254 N.E.2d 868, 871-72 (1970) (legislature cannot declare a vacancy under the constitution when in fact no vacancy exists); *State ex rel. Foughty v. Friederich*, 108 N.W.2d 681, 690-91 (N.D.1961) (legislature may not create a vacancy in the constitutional sense when one does not naturally exist); *Friedman v. Lewis*, 598 A.2d 1361, 1363

(Pa. Cmwlth. Ct. 1991) (words in constitution must be given their common or popular meaning, and the plain meaning of "vacancy" is "[a] place or position which is empty, unfilled, or unoccupied"); *State ex rel. Witcher v. Bilbrey,* 878 S.W.2d 567, 573-74 (Tenn. Ct. App.1994) ("[T]he Constitution of Tennessee uses the term 'vacancy' in its ordinary sense . . . . Thus, a vacant office is one that is unoccupied or without an incumbent.")).

Although the office of county chair certainly differs from a constitutional office, nonetheless, I am guided by *Hardberger*'s analytical framework. A plain reading of § 171.022 of the Election Code establishes that a county chair of a covered political party serves a term of two years. TEX. ELEC. CODE ANN. § 171.022 (a), (c). Once elected or appointed, only § 171.029 establishes the grounds for removal from office. *Id*. § 171.029. Removal grounds include the county chair's failure to perform prescribed duties or to attend four or more consecutive meetings of the CEC. *Id*. When given proper notice of intent to remove, a chair must respond, on or before the seventh day after receipt of notice, and affirmatively state such officer wishes to remain in office. *Id*. § 171.029(d). An officer's failure to so respond results in a vacancy in office. *Id*. Sections 171.024 and 174.025 thereafter set forth procedures for filling a vacancy in the office of county chair. *Id.* §§ 171.024(a)-(b) and 174.025. Construing such provisions, I would conclude the legislature fixed the method of attaining the office of county chair, set the term in office as two years, prescribed grounds for removal, and included procedures for filling a vacancy in office. *Id*. §§ 171.022 (c), 171.024(a)-(b), 174.025, and 174.029.

I would conclude that Seeberger's petition affirmatively demonstrates the subject of the dispute is governed by each of these provisions of the Election Code. The petition asserts he won the primary election for the office of county chair of the El Paso County Republican Party in March 2020. Here, there is no dispute that § 171.022 provides for a two-year term in office. *See*

TEX. ELEC. CODE ANN. § 171.022(c). Before his election in March 2022, Baca also asserted entitlement to the office by relying on §§ 171.024 and 171.025. Thus, I would hold that Title 10 of the Election Code explicitly regulates the term of office of a county chair of a CEC, to include whether grounds for removal apply, whether removal procedures were followed, and whether the office became vacant as of a particular date. To that extent, I would conclude that §§ 161.001, 171.022, 171.024, 171.025, 171.029, and other related provisions of that title, govern the subject of this dispute. *See* TEX. ELEC. CODE ANN. §§ 161.001, 171.022, 171.024, 171.025, and 171.029. Based on these provisions, then, I would conclude that subject-matter jurisdiction is conferred on the trial court to give full force and effect to the law. *See Gilmore*, 188 S.W. at 1038; *Wall*, 213 S.W.2d at 817. Because the Court ultimately concludes otherwise, I respectfully dissent from that portion of the majority's opinion and judgment.

GINA M. PALAFOX, Justice

October 31, 2022

Before Rodriguez, C.J., Palafox, J., and Ferguson, Judge.
Ferguson, Judge, (Sitting by Assignment)