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Supreme Court of Texas.
In re the Honorable Robert Francis, Relator.
In re the Honorable Charles Holcomb, Relator.
Nos. 06-0040, 06-0042.

January 24, 2006.

Appearances:

Deborah G. Hankinson, Law Offices of Deborah Hankinson PC, Dallas, for relator.

C. Robert Heath, Bickerstaff Heath Smiley Pollan Kever & McDaniel, L.L.P., Austin, TX, for relator.

Patrick O. Keel, York Keller & Field, L.L.P., Edward M. Shack, Austin, TX, for real party.

Before:

Scott A. Brister, Phil Johnson, Dale Wainwright, Nathan L. Hecht, Paul W. Green, David M. Medina, Harriet O'Neill, Don R. Willett, Wallace B. Jefferson, Supreme Court Justices.

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JUSTICE: The Court is now ready to hear argument in 06-0040, In re Robert Francis consolidated for argument was 06-0042, In re the Honorable Charles Holcomb.

COURT MARSHALL: May it please the Court. Mr. Robert Heath will present argument for Relator, Honorable Charles Holcomb. In his rebuttal was reserved five minutes for rebuttal. Ms. Deborah Hankinson represent argument for Relator Robert Francis. Relator, Francis have reserved the three minutes for rebuttal.

ORAL ARGUMENT OF C. ROBERT HEATH ON BEHALF OF THE RESPONDENT

MR. HEATH: May it please the Court. Judge Holcomb has raised constitution unlike be of specific petition signature require on section represented 2041(d), require with compliance state line judges. 18 people but not belong judicial statements. That there is a long one of U.S Supreme Court cases that deal ballot access issues but this Court in Greny versus 144 Filsrock demonstruct 15 years ago, discuss those cases brought on together summarize them and set out the constitutional test becomes cases to provide.

JUSTICE: Mr. Heath, what was the purpose of the statute that applies only to the major parties and didn't correct Republican parties and not the so called: "Minor Parties" which, which states if this

command.

MR. HEATH: Well, we don't think describe cancel there's to prevent. We think that is something that's very irrational protects exactly, what the state does in enhancement here by the way, a compelling study the interest to justify this statute 'cause we're hoping about fundamental rise and that's the test. And they apply just to people through a writing on the temporarily to republican tickets. The following to run if you look at the competing candidate. For justice of the Supreme Court or Judge in a court of appeals. I don't have to hang up this single signature in order to dealing about. Now, the reason is they now lay back for the instances but not a primary assistant but if it's to show that you have some state lines supportive [inaudible] that's what the test is. It's certainly, it's not Marilyn Taylor to apply to democrats in the Republicans not Totalitarian.

JUSTICE: Seems they-- the State against Togerous, we said that, the any of the series not a fundamental right.

MR. HEATH: Well, but a-- that, that maybe the case but in Bullet versus Carter. And I think again, in a summarizing in the bribery is it was summarizing those-- it obtains when your looking a ballot access requirements. That a rights of the candidate and the rights of the voter or inextricably combine and you have to look them together. And that there are fundamental interest that are issue under the first commandment and those are expressive rights and associational rights. And so it's the combination of the two that requires a compelling signatures in federal courts act that it could been a very strong of that. The one of that things, is of course that, this is something that applies to Republicans and Democrats not to look a carriers. Also, that applies to judges but not to the gabler, the lieutenant gabler of members on the redrow commission. And there's a case that, that was decided in Pennsylvania federal case, it's federal district court. He was to found summarily by Fourth Circuit, called "Patrick Party" of Pennsylvania and that case, you have petition requirement for judges and you also have petition requirement for other options such as, President and Governor in the like statute work. In, in there are now requirements, a lot more signatures to get on the ballot is a judge that if for precedent or gather. And the Court said: "There is absolutely know by this for making that position." You know, there-- there is no compelling signatures knowing there obtaintly and it makes no sense from upon petition to stand the Court to required bribery standard of support for judges then for other offices which the state of Pennsylvania, it's saying, to have a like those on our hierarchy.

JUSTICE: Other than Pennsylvania I mean, the other 49 states include us ever suggested statute like this is unconstitutional.

MR. HEATH: I'm not sure that the another state has I don't know what another state has such a statute ...

JUSTICE: I, I can, I can now represent and your appearance would be the ...

MR. HEATH: What? I, I can represent that there's a reason ...

JUSTICE: Did it very close. It's not that, not that fudge of requirement if, if the signature ...

MR. HEATH: That, that, that's correct. And one thing I've said, in, in cited on the brief than we have of that come before your saying ...

JUSTICE: In the fact that, the libertarian get advice not usually that they get threat to remedy Republican or Democratic candidate is right?

MR. HEATH: Well, but I don't think that's from constitutional

standard.

JUSTICE: What would that matter, what would that matter than a man of parties not a threat to a major part.

MR. HEATH: I, I think it wouldn't matter. I think that the fact that you treat the minor parties differently and give them essentially a free pass does not matter in the sense of a holding statute-- I think that did it matters and then to shows that standard does it make any sense with the statute doesn't make any sense but it's not Marilyn Taylor to promote the compelling interest. What this stands adverse to you? One possibility is that, is it to show some lot of support. Another is that the-- he was suggested that during some questioning in the district court, the making us to show the people have some qualification or to penetrate the qualification frist, on the letter there's nothing again, on signatures that deals with qualifications. According your ju-- qualify judge or not is not going to determine by how many signatures you get? So it gets down to a question on support and certainly-- you know, I think that a libertarian or some other-- I think parties that qualifies to be on the ballot. Does not have that support if your going to that supporting to show until need to show it-- you know, formally across the board or required in the formally across the board. The ...

JUSTICE: On the second point, if in the statute to presume statutes constitutional while did you give on the ballot with 45 signatures.

MR. HEATH: The-- if the statute is constitutional, obviously were find signatures showing. In the Gamble case, this Court like on us that the calls of prevision of the appellat. Let say as that you can get equitable relief that there is the option for obtain separately buy to open enough and giving the people the change to correct. Now the whole statute is design that to what-- is design to have the party officials review matters as quickly as practicable. To let you know in fact, that's what happen here. Judge Holcomb file on the 28, on the 29 the party had reviewed his petitions and it said: "He qualify." Essentially at that point the game is over for him. He knews it he qualify and he didn't have to worry about it anymore. As it turn about, after the following period have closed five, six, seven days later, they call him and say, "By the way, you don't qualify." Now if ...

JUSTICE: So-- seem with me a candidate made up 15 names just [inaudible] made up 15 names give it to the party, very enough. The party approves it, same result as what your argue in Court, party approve it. The party didn't say anything I could have got 50 more signatures.

MR. HEATH: I, I think before it might be a difference situation if you can show for all but there's certainly has no fault here. They now-- that anyone has suggest on that and that is not the case. But the statute is design to give you the chance to fix the problems. And the problem here, is none and I have not argue that, 700 signatures or 50 signatures on a particular law pal is strickly owners requirement, what's owner's about it he has that obstacle course. We wanted to say, let show support by showing how many signatures you can give or that you have to give a ballots on 2000 or some number signatures, that's one thing. But to say, I have to come 50 from here, 50 from here, 50 from here, 50 from here and when you do that all like crazy quilt system which I think the judicial districts ...

JUSTICE: Well, this part of your argument if regarding move down from constitutional to the minimum level signatures taken that this part of your argument is a legislate of argument is about wanted to

make some legislature in determining, how you require the signatures to be taken across the state. To the appellant you, your making appellant the argument. This facts were-- will doesn't makes safe but isn't that an argument that you make to elected representative to our drafting the statute instead of the Court.

MR. HEATH: Your Honor, is a-- have what also as to the constitutional-- constitution reality if it doesn't makes sense of it's not Marilyn Taylor, you can't frustrate a fundamental and like by putting this something in-- that it's not Marilyn Taylor could raise that like in this Court of appeal.

JUSTICE: Are you contending that, this is a facial defect because in gamble, we did been a lot of responsibility on the candidate in sells to check this petitions. And only in the event of a facial sort of defects. It easily tangible because the equity case statement.

MR. HEATH: Ms. Wilson, eventually that nobody can go behind the signatures to find.

JUSTICE: So your argument process or falls upon are calling this to be in facial defects.

MR. HEATH: Well, on the ...

JUSTICE: None constitutional ...

MR. HEATH: Of the none constitutionable.

JUSTICE: Any further questions?

COURTH MARSHALL: Thank you, counsel. The Court is ready to hear argument from the relator of the Court, Robert Francis.

ORAL ARGUMENT OF DEBORAH G. HANKINSON ON BEHALF OF THE PETITIONER

MS. HANKINSON: May it please the Court. Apellant on this Court analysis in In re Bell. The admission of "Place 8" from 11 pages of Judge Francis, 225 page petition. Does not underline the election codes, the place number requirement because there is no evidence of election fraud or better confusion or the invalidation of any better signature they on his or her signing more than one candidates petition. That's invalidating the challenge signatures is not adjust and reasonable result in the light of this statutory purposes. Alternatively, if they signatures are invalid then balancing the containing equities under In re Gamble, should result in Judge Francis receiving equitable relate from the statutory deadline.

JUSTICE: What-- what's significance of any of this gamble have on this Court, in light of fact that was a 441 decision.

MS. HANKINSON: I don't believe it was parity decision except this to one paragraph. Judge Phillips did not participate the paragraph 2(b). Otherwise, it was on majority opinion. So I believe there is a majority with respect to the board recognizing with the legislature had given it equitable powers over decisions under the election code and in connection with, under certain circumstances were the competing other events who in competing equities justifies relate to a candidate from the statutory deadlines. That is, that is the one this Court has start us.

JUSTICE: To bring really want to call petition signers and start questing even Court. I mean in Bell for example, it was independently bare a file for the, the signors address, she did not to go the signer like make raise there hand and this is a good predicate then is there calling in petition signers to see what your intent was all about.

MS. HANKINSON: I, I don't think that you have to hold on in-- under this circumstances. Your Honor, I think that the Courts question in, In re Bell whether in validating the signatures is adjust on reason of the result and why the object result to be obtain by the statute applies in this particular case. And I believe that on this record, without having called, any voter in. And looking at the entirety of the petition which this Court recognize to was the appropriate way to do it. We can answer thing from the face of the petition-- that there was no election fraud, there was no voter confusion and that the provisions of the election code which would have been validated the signature of a better who signed for more than one candidate running for the same office and the same election did not happen.

JUSTICE: But how can we tell whether someone didn't say, "Sign this for Judge Francis, he's running for this price" and then later, change that and would say, "He's running for presiding judge -

MS. HANKINSON: In this ...

JUSTICE: - an then it doesn't say on there and then when they get petition back, they change it to "Place 6."

MS. HANKINSON: Well, because there was no change here, we have the omission and we know there was not and next to talk was the election code, your Honor that I believe if there was evidence in the record then if you apply the In re Bell test. You might reach a different result.

JUSTICE: If-- but then coming the Judge O'Neill's question, how can we tell without call only people-- I don't say what were talking ...

MS. HANKINSON: Because you can look at the step and you can see that out of 225 pages. There are 11, that do not say, "Place 8" on. And if you read the record from the hearing in this case, you note there was no voter confusion and no election fraud.

JUSTICE: How do we know that from the record. I just-- I thought that here you say that, you can look at the other candidates signatures on the file and if there are no overlapping signatures, you don't have to hold up the signers in.

MS. HANKINSON: Well, the reason why I say that, your Honor is that with respect to place number on the petitions. The legislature has address the circumstances under which I signature is invalidated. And it's invalidated if you sign more than one petition, the later signature is invalid. So I would suggest to the Court that under the contestant In re Bell. If our record reflected that in facts someone had sign representative Keel's petition after Judge Francis and he lost signatures and then otherwise, qualified him for the ballot. Then under your In re Bell test, we would have, we would have a different result or similarly. It in fact, in, in Judge Francis cause that circumstance with his petition. That's what I think on the face of the petitions. And on this particular record, you can see that the object of the statute which was what this Court focus on in In re Bell is accomplish by recognizing that this petitions in the context of the totality of the petition. If there is no evidence on the face of about the fraud nor better confusion ...

JUSTICE: Is it impossible, how much 11 pages that the persons signing those petition and his or her mind was taken out sign this petition for Francis as long as his not running against Keel.

MS. HANKINSON: Well, ...

JUSTICE: For as long any exhibit it, it was important to the voter. What the place under was. And, and -

MS. HANKINSON: But ...

JUSTICE: - and-- you know, that the person gather in the signatures made up misrepresentation that this not clear to us from the record-- you know, what was taken.

MS. HANKINSON: Well, first of all the election code require the person getting signatures to tell the person what they resign. We have nothing in the record indicate that, that was not follow in this particular instance ...

JUSTICE: Well, on it's that sort of that is a question because it tells on what there's go to sign because also about to say, that at the top ...

MS. HANKINSON: I, I understand, your Honor in, in there not ...

JUSTICE: What you represent?

MS. HANKINSON: Were not here but we also require to-- there's also require to be an evidence jury record and advice the guest ...

JUSTICE: And the evidence on this case is not that I read it to them.

MS. HANKINSON: I agree, I agree the person did not mean to say that, I'm just talking about -

JUSTICE: Who's expected ...

MS. HANKINSON: - who's expected looking at totality of the statutory is came.

JUSTICE: Whose got the burden of presenting evidence, challenger?

MS. HANKINSON: I think the challenger would given the fact that under this circumstances the party had made the decision. And had given notice to you Judge Francis that he was going on the ballot. In fact representative Keel when in the Court to change the state is[inaudible]. In order to do that, I believe that he had the burden to show that the signatures were invalid.

JUSTICE: So it assume he comes on the Court with one person who says, at did know was to "Place 8." I would not to sign if I known that was for "Place 8" then we would have a fact question, Judge Dietz could to say, whether the issue been injunction or not whether there was voter fraud ...

MS. HANKINSON: Well, I, I think that perhaps under-- if you change the facts so that Justice Brister, then you makes the law for under the gamble situation. I think that what the Court has done in the two decisions, In re Bell and In re Gamble is we are dealing with the legal questions under the election code, statutory interpretation under the constructed In re Bell. Then the Court set up a construct for equitable considerations, if in fact it was going to exercise he's equitable power. So I think that what would have is very much a case by case analysis with appropriate parameters set it by the Court under either construct.

JUSTICE: Well, but in Bell did you can tell, if you with the interpretation and with look to that to tell were everybody live. At least, what the record show. And in Gamble, nobody was confuse about the party. There was no possibility proper confusion. This is the first case that we've have boarders of possibility proper confusion.

MS. HANKINSON: Well, that we have evidence in this record that the reason of proper confusion because we in fact have the woman who have those petitions signed in the trial court of appeals jurisdiction that she submitted within two enough hours, she went back to most for the same voters. They've resign the petition to with "Place 8" owner. And that is in the record in this case but the true this that we do have evidence in this case that there was no voter confusion.

JUSTICE:[inaudible] There seems to be an argument that the statute provide this safe in that for those candidate should foul the similar

second as suppose to January 2. They really matter if they foul the December 2 or the very last date. If you foul December 2, and the party doesn't catch the mistake.

MS. HANKINSON: NO, it, it not matter. There under, under In re Gamble, the Court recognize two statutory did. The first for that, the party is a timely didn't review. And secondable, to immediately notify in running the candidate of any deficiency. The party in this instance believe this petition were okay. If they will run, they committed a mistake of law. If the Court disagrees with our first argument and in fact that fail to make there second statutory didn't refuse immediately know of in that document deficiency. This record reflects, that had Judge Brik-- Judge Francis being told. Either the petition were in ballot or that there was question rights that when-- within two and half hours, he could have corrected the issue. He felt poor guys before the end of the deadline. So if we built and I think that, that the impasses that representative Keel replaces on the five repetition on December 2, under In re Gamble is over gone. In here, if you balance the equities and to all of the things that In re Gamble talks about the competing equities. Come down absolutely on the side of Judge Francis being allowed to be on the ballot.

JUSTICE: We account this morning some above the reason for the signature requirement of, of the what were our-- what other legislate of goals thought to be achieved by this ...

MS. HANKINSON: The, the legislative go as reflected by the, the case legislative history that we have was to show state line of support for the candidate. That was not mean, I'm going to vote for the candidate but did in fact, the candidate has enough credibility recognition of there qualifications state line characterized it whatever you would to justify putting them on the ballot. And not voters in Texas want this person on the ballot.

JUSTICE: He's also a statute that precludes the same signer from signing for more than one candidate -

MS. HANKINSON: Correct.

JUSTICE: - for the same office. For that has to be another purpose of the 50-signature requirement. To allow the voter to decide which candidate here she wants to support by helping to get on the ballot ...

MS. HANKINSON: That's exact-- I think that's exactly is correct, you Honor. In this particular instance, Judge Francis had 1710 signatures but he only needed 700. He had a 122 in Taylor before in the trial court appeal jurisdiction before they were struck. He start getting signatures in September, he thought four early regularly communicate with the party to make surely that they do anything else. He was able to get substitute petitions in two and half hour which could have been putting on have even time they told or could have supplemented if you need. There was question ...

JUSTICE: I, I think it's fair to say, in reading gamble that the parameters of this sort of equity requirement are not very well establish. I would said, there's parity on that. This is majority that, that equity can be considered but to for judge parity said, very strict, that's very aware. So I think were again testing the parameters of this equity remedy.

MS. HANKINSON: Well, I've been through the business so far and I think in other factor and it has to be the fact that representative Keel, I'm not attributing to him, any kind of Helen have but I'm try [00:23:22.568] he recognize according to record that there was called: "A serious problem." Well, after his lawyer and I think the question is, either In re Gamble, is this Court trying to send the message to

candidates. They it did okay, that it is okay, to write about 30 minutes before the file on deadline when it's clear legislated in two ...

JUSTICE: Well, that it seems to correct.

JUSTICE: We going to have a clear statute. This is here's what the candidate has to did. And-- you know, we tried of put some fault on there are claim on the party to try a force that on from other candidates he were testing this petitions. It's rise needed that, if you can determine objectively without falling in signers. Then, maybe that would be a strict to parameter for equity. And of that's the case, how would you insure that there's no-- the interest not to be protected. Is that the voter knows what's about the running force so they want sign another petition. How can you objectively establish on objective test. You have to make sure that don't have.

MS. HANKINSON: I think the objective test is the fact that about didn't sign another petition. I mean, I mean that's to me is a cretical fact in this particular case whether you looking at the statutory construct under In re Bell or whether you looking it In re Gamble. It have-- excuse me ...

JUSTICE: Well, that-- that's fact can be very probative note. That's I can be here probative note, counsel there's twelve million voters in Texas. You have to get 50 signatures in 1814 districts. Presided those 50 signers didn't sign another petition is evidence that they were interested in signing that petition, didn't tell us the whole lot. This very-- this a very small chance if you to sign 50 when you got 12 million possible voters up there.

MS. HANKINSON: Well, but I think that answers the question that someone was not interested in signing in other persons petition and in fact that were showing support I think it bottom when you look at the equity test and you line them all up under In re Gamble. This is a case, that certainly justifies the equities, there are the equities that catch the other way given the legislatures intent on wanting this, this collections to be made and I think you have to follow up and remember that what is ...

JUSTICE: Let me, let me just on here again, what another question, should the Court be very cautious in implying equitable exceptions to mandatory statutes. Should will be very cautious in there ...

MS. HANKINSON: I think that's what the Court said, In re Gamble that the Court was going to be careful and I bring you justice in here ...

JUSTICE: Pacifically as to extending the deadline that I'm speaking generally.

MS. HANKINSON: And I, and I agree Justice O'Neill that what the Court did was agree that it have the equitable power to do it. It did not have the record in that case to be able to make the decision whether to allowed in that case or not. There was one paragraph in which there was some detail or indication of what the Court might do with Chief Justice Phillips did not joining into but the power is there and balancing competing equities in this case, what Judge Francis his position way up here with nothing contribute any and you have to put in hamper. On the balancing test, the rights and interest of the voters in electing candidates of there choice. In this long has traditionally elivated the rights of voters. And in this case, the rights of voters with objective us to Judge Francis is now ...

JUSTICE: Thank you, counsel. There any further questions.

JUSTICE: To victim what am I-- I don't think this is on you brief and ignore I think it's your argument. That I like to know with your

faults are in constitutionality of the statute.

MS. HANKINSON: Candidate I guess were they-- are apologize for not being prepare on behalf but I would have not evaluating Justice Holcomb. At Judge Holcomb's position on that entity incomptable offer him payment.

JUSTICE: In my question is, not got-- I got to ask you -

MS. HANKINSON: Okay.

JUSTICE: - you, you argue that the In re Bell governs this case not In re Bell your client wins. With your judicial had on you the senate In re Bell. Can you explain that force on making involve about it ...

MS. HANKINSON: But and I'm lost, and I'm lost, and I'm lost In re Gamble to by about stand to decision to Justice Beyker and our take-- I can take Gamble's sponsor but in, In re Bell was a 17th position and I join Justice Beyker understand because I was-- you know, I felt like that I did differently of statute however, the case I lost In re Bell is now dividing prejudice to this form I think this Court prior with alleges to start the process. My job here is an applicant and it would be if I'm still a judge for being appear to In re Bell.

JUSTICE: Thank you, counsel.

COURT ATTENDANT: The Court is ready to hear argument from the real party and interest. May it please the Court. Ms. Donjie Davies will represent argument for real parties with interest. The Republican Party of Texas and [inaudible] been has a chairman woman of the Republican Party of Texas. Mr. Patrick Keel represent argument for real parties and interest [inaudible].

MS. DAVIES: May it please the Court. The Republican Party of Texas needs to responsible Holcomb and Francis situation. They were determine differently because they were different situations. One was a case of a deficiency in signatures or which there was case law that been indicate that you could get should not be counted to arbitrary require. Athon Going versus Rains. However, in the Francis case, In re Bell arguably would apply because petition were involve not just the application. We did not-- Yes.

JUSTICE: Counsel, did the party certify Judge Robert Francis? The transcript of the hearing suggest that, one point that it did another point perhaps it if didn't-- a statute seems to contemplate the difference between certifying a candidate by the Republican Party of Texas or the other major party, the democratic party versus signing the certified list to the county chairs. Does the party see that way in, in if somewhere if not when was Robert Francis certify about the party?

MS. DAVIES: And that's an excellent question.

JUSTICE: Thank you.

MS. DAVIES: Well, the following reasons, I will give you a time line and you can see were the confusion were like. On January 6, the determination was made to certify Judge Francis. When the decision was made in turn.

JUSTICE: But the termination was made.

MS. DAVIES: Yes.

JUSTICE: He was certified?

MS. DAVIES: But nothing had been relate to the secretary states office. That is a secret staff.

JUSTICE: Was he certified January 6?

MS. DAVIES: No, the certification was did not go out until January 9.

JUSTICE: Drown a distinction between when you send the list versus when you certified. If that's state-- if that's the way you do

business. So when did can certified HIM.

MS. DAVIES: We stated that, we have certified him and the letter to him on January 6.

JUSTICE: The letter was send out on January 6.

MS. DAVIES: Yes, Sir. I believe so.

JUSTICE: Right. You rejected Mr. Keel's challenge.

MS. DAVIES: In response to Mr. Keel's test ...

JUSTICE: You did-- so you reject-- you rejected one of Mr. Keel's challenges, you accepted the evidence.

MS. DAVIES: That is correct.

JUSTICE: How was that distinguish the cases-- is there any distinction between those cases at this Court now that the party sustain one challenge and overall together. What difference should not make it legal analysis.

MS. DAVIES: Well, legal analysis, we believe that this certification in lighted In re Bell would considerably been correct because it was a petition issue and it was on that base of the ballot were other determination could be made ...

JUSTICE: I'm not arguing about whether your right or wrong. Thank you.

MS. DAVIES: I understood.

JUSTICE: Well, eventually decided.

MS. DAVIES: Yes, sir.

JUSTICE: Should to be a difference between a case. I'm wondering whether the burden of proof hope to be on one party to prove that the parties is wrong, whether it certifies or done certify. Should the party-- should to be some effect to the parties decision? Or at your position that, it's just did matter what the party does.

MS. DAVIES: It does matter what the party does and the party try to make the best decision about my understanding that equities subject to challenge you've elect. If we have chosen not to certify then the challenge were probably come from Judge Francis to get on the ballot. If we chose to certify which we did then we knew that Keel would then opposed that as well. The difficulty was in trying to interpret whether is going to be a strict construction standard or In re Bell type of standard-- substantial complaint standard. Not knowing were the lines will be drawn.

JUSTICE: Mr. Keel-- if Mr. Keel had stock have to receiving your decision. Then the fact the matter is at Judge Dietz have never been involved. Judge Francis would be on the ballot and Judge Holcomb would not, correct?

MS. DAVIES: Yes.

JUSTICE: So when Judge Dietz said: "Nether once on the ballot. He change the status quo entity."

MS. DAVIES: Because of our decision to certified that would be correct made on January 6. However, in our representation to Judge Dietz because it certified the list had not gone up. We determine that it could conditionally and we represented that we could conditionally certify Judge Francis because ballot would not have been would not have been printed yet. Ballot placement would not have been drawn for and the practical effect would be that if he conditionally certify. However, we discover later, with the electronic system. We were not able to conditionally certifies. So we either had to certify or not and keep better when applies that effect that it was subject to change.

JUSTICE: Before you sit down, I want to be on this election contest timeless of the offence and there are competing ideas about what is the last day that this Court has to add delivered. He was

certainly they attempt to act this provisions. When will the ballot be [inaudible]. When, when will the ballot be prologative. When, when this early voting start. What is the crises point?

MS. DAVIES: It is my understanding at this point that the secretary state has send to had a member to Republican County Chairs as of yesterday or day before. I do not have a copy edit but I've, I've been inform to this has advice people not different ballot. Request for ballot can be made at anytime. At this point, early voting start on February 21st. Therefore, if everything is decided in a timely passion. Before February 28th, there is still time legally speaking, to handle it. Practically speaking, it would be difficult because there are still counties that have paper ballot, electronically for those counties that a larger. That probably as a possibility and consultation of the secretary statement I ask and February 28th was the Court deadline, practically speaking it has to be sometime probably the week before. To give enough time for the actual ballot to be planted interstate.

JUSTICE: The times submit speaking legally not practically, what is the last dated a challenge could have been made to either Judge Holcomb or Judge Francis by election.

MS. DAVIES: Actually, I believe that is all an open legal question that have been challenges that have taken place after-- well, in a primary situation I am not sure. I do not have an answer to that, I made it in general action for having case that have been decided quite late but there is also deadline there's of August 25th with this year, if somebody were bring a challenge to the general election nominate. But I'm not sure for that would be in the primary.

JUSTICE: It's a past yet as of, as of time consider of dice past time for a challenge ...

MS. DAVIES: No. Actually again, I don't think there easy an actual timeline. Again, in consultation effect there state trying to determine if there was line in order to be prepare for that question. We were told that technically we could still reject applications now but again, practically speaking that would make to much that.

JUSTICE: Well, at your practically speaking sometimes it's going to type of facts she legally speaking. Now I guess if found is made after you say, be practical we can't with the ballots so there's a little problem through this Court would still or any Court would still had to deal with the challenge even though the ballot had been printed.

MS. DAVIES: Yes and then if would been need either to order that about namely stricken or I believe even stickers that he stickers not been used to add name to ballot. Previously, if the ballots are argue then [inaudible].

JUSTICE: So if in, if in fact the challenge could be made up until the time of early voting started for example. Then if were talking about what the Court can do, any challenger would-- so in order to avoid at hearing of things, wait until the very last day, it maybe.

MS. DAVIES: That discuss with an ...

JUSTICE: Before you start extending deadline of been that was in-- then was going to happen party at the same like is going to happen the last day your going to give a right the challenges throughout the stay or you not?

MS. DAVIES: The, the last thing that we would wanted is that to happen. That your challenges for better, it is very difficult to modify 1400 county party chairs at changes-- we have to do so it, it is a lot more simple a process even though it's an Honors to ask in time consuming, we can deal it early on in process because that replacement toward the meetings have not-- yes, necessarily can help to that point

or even if I have there still a change to just offer that place. And again, my understanding is that letter when have either there about.

JUSTICE: When a party of reviews the application to supporting with, with substantial complaints of the statute, there's still complaints to the letter of the law ...

MS. DAVIES: Generally, strictly claim.

JUSTICE: What happens when the party accepts an application and the signature without contain a voter registration number.

MS. DAVIES: At, at one point in time, in 2002 the Republican Party of Texas was challenge by Michel Fedmon and at-- that was one of the question involve in the voter registration number was being to be unconstitutional by Judge Sparks but that happen something that have been required and Mr. Fedmon happen kick of the ballot for that reason. Was not elect be on about for that reason. In re Bell kingdom defend time is that foot case. So those signatures that don't have city or state for -

JUSTICE: Zip code.

MS. DAVIES: - zip code.

JUSTICE: Right.

MS. DAVIES: Also, then were after that argument down to be valid so that post on ...

JUSTICE: What is the party make the requirement on this petition gathering process.

MS. DAVIES: The secretary state guidelines, show that the voter registration member should be included in a course if under In re Bell, all you have is a voter registration member and name then you can determine potentially for that person list by going optical to the petition.

JUSTICE: A ticket of the parties job is at least to impart, to assist the candidates in meeting all this technical requirements.

MS. DAVIES: Yes, your Honor.

JUSTICE: Ms., Ms. Porki is that her name just ...

MS. DAVIES: Ms. Florki.

JUSTICE: And then she correct that in fact everybody submits three or four times statutory member signatures because everybody makes mistakes on this.

MS. DAVIES: I, I don't recall that in our testimony that, yes. Generally speaking in order to avoid this problems, you try to in your ...

JUSTICE: Your always problems on different application that have transcript saying, when you collect judicial petition signatures, you collect so many over the requirement then a case there's one that I found that not able account signatures you used to have enough. The fact to the matter is -

MS. DAVIES: Yes.

JUSTICE: - the legislatures said: "50 signatures."

MS. DAVIES: Yes.

JUSTICE: And everybody is collected 100 of signatures because of technical errors.

MS. DAVIES: Yes.

JUSTICE: What purpose is that fulfill.

MS. DAVIES: I think by been gathering an over beyond-- above on beyond the members signatures require. That no matter how many are validated, it ...

JUSTICE: So the allege, the purpose, the statute was to get candidates only to work good copy editors. So that did make no technical mistakes. That's what the legislature intended.

MS. DAVIES: Now, the legislature intended for our support and I think ...

JUSTICE: Is that what-- but, but is he-- everybody is getting far more because everybody makes mistakes.

MS. DAVIES: Even Judge Holcomb in my conversation about in know that the duplicate signatures had said, and represented to me that he had more petitions, he could had provided.

JUSTICE: And in fact in this case, if you had the-- if the party had let the ca-- you look candidate know, will the party did look the candidate now before the deadline. Party would had no objection to them submitting additional occurring letter.

MS. DAVIES: That would be in a problem they would actually have to received the petitions and then add to it and then resubmit all of that again. That would not have been a problem. If the candidates reviewed the file names as closely as here opposition candidates would be reviewing them. As the party personal responsibility, we would probably see far of your challenges.

JUSTICE: Did, did you just suggest that supplementation of petition signatures is not allowed -

MS. DAVIES: No [inaudible].

JUSTICE: - except upon withdraw then there's a provision on statute through supplementation ...

MS. DAVIES: That to lay back is correct.

JUSTICE: So otherwise you can't supplement the petition you need to refile the interpretation.

MS. DAVIES: Correct and ...

JUSTICE: And that is assumes that the-- your opposite excepts copies. Did you get the refile interpretation. You can't refile the original twice the reason had been filed already ...

MS. DAVIES: Actually, it will probably be practically speaking find if somebody cannot to there [inaudible] and, and she had rejected it and say, let me come up. I will take it from you. She could deliver act to them with there check. They could been put in the new petitions and fill up any application In re Bell considerably within minutes - if they regarded the signatures.

JUSTICE: Okay. So -

MS. DAVIES: - if they regarded are regarded the signatures.

JUSTICE: - so your understanding is supplementation of petitions is not allowed.

MS. DAVIES: Correct.

JUSTICE: And the original has to be found.

MS. DAVIES: Yes, sir. I believe so.

JUSTICE: Judge, how come in Judge Francis each had explanations for how this happen. Did you learn those explanations before you act with all the applications.

MS. DAVIES: No. We had not been able to contact either Judge Francis or Judge Holcomb prior to making on determinations to certify once we are contacted at Judge Francis and actually, we reserve an affidavit in my office later, indicating that one of the circulators did indicate that "Place 8" had been mention that they had mention that the opponent for that place is Mr. Keel and it was not offer in the evidence.

JUSTICE: Could that make any difference to side to side.

MS. DAVIES: It help does understand, how In re Bell could potentially be the standard as support of that position however, against reconstruction is, is not something that were reverse to you.

JUSTICE: Thank you, counsel.

MS. DAVIES: Thank you.

COURT ATTENDANT: The Court is ready to hear argument from the real parties interest [inaudible].

MR. KEEL: May it please the Court. I'd like to begin by speaking up with the gamble. To the extent gamble applies at all in this case. I think the critical fact here's the evidence that even before the district court on whether or not the party carry out it's duty under the statute. The party has a duty, incumbent on the reviewing person at the party. To review those applications and petitions carefully. What do we know about what happen here. Ziera Floriki and the other people in there office that assist her in none reading her testimony, do the best job they can and examine those applications of those petitions in making sure that are correct. They make sure, they comply with the letter of the law was her testimony. They do us, good a job is they can because there very account the interest about those legal requirements. And a wrong personal go is to get not in the same day but because judicial act occasions include the petitions some concious not able to make that go. Now what is that matter? Here's why to be extent gamble is the law I respectfully suggest to the Court. There is absolutely no opportunity to apply gamble here because there's no demonstration, no evidence that the party failed to discharge it's duty under the election code. And unless the Court is going to construe gamble and the election code for me, that the party is a guarantor of the accuracy of the application in the petition. There is no way that you can even get to a gamble analysis in this case I respectfully ...

JUSTICE: What your response to there very one clean hands that on the plan in your situation.

MR. KEEL: That, that our-- my answer to that argument, at Justice Madelina is the testimony of Ed Shock. The election may your expert who was to carry to his advisor on this, this contact matters. He's testimony was, he work this past as he could represented the Keel delivered, copy of Francis and Holcomb's application and petitions to him, late in the afternoon on Friday 30th. The next day day was New Year's Eve and Mr. Shock had family now and it was a holiday, he got through on Sunday however, he wrote up this leaves and he review the petitions, he review the case law. To satisfy himself that there was a problem. He was also this ...

JUSTICE: Remaining twelve thirty minutes before the deadline was over. The fact to the matter is, if somebody had said: "By the way, it 'Place 8' is missing which is not only reason Mr. Keel copy this on this record, undisputably did could have been occur before the deadline."

MR. KEEL: Well, I know is this, Justice Brister. Mr. Shock said: "I was operating under the Rule that I know because I live in brief this election code, the time was on the essence and that's exactly ...

JUSTICE: Employers are always busy. The fact to the matter is, the only reason, Mr. Keel make copies of the petitions was because he saw "Place 8" was missing on a few.

MR. KEEL: There not.

JUSTICE: Could if said that, at the moment? If you had said that, at the 28, we would be here because Judge Francis would have to fix it, right?

MR. KEEL: Justice Brister, I think that just of the testimony before the district judge was represented Keel, goes and looks if those and says, all my goodness he didn't ...

JUSTICE: I need an answer to my question.

MR. KEEL: I'm sorry, I'm sorry.

JUSTICE: If he had said, when it took the copies, the reason I'm making a copies is 'cause "Place 8" is missing. The party had the duty to immediately know that, file Judge Francis in disputably on this record Judge Francis would affix it. And Judge Francis would be a candidate, correct?

MR. KEEL: Correct. If the party have actual knowledge of the mistake and shows to ignore it.

JUSTICE: So shouldn't-- shouldn't we construe the law in a way that puts people on the ballot rather than kicks people of the ballot.

MR. KEEL: I don't think there is a problem with construing the law, to put people on the ballot ...

JUSTICE: It shouldn't be construe the law in a way that gives technical errors corrected before the deadline rather than two days after the deadline.

MR. KEEL: No, sir. I think if you construe the law to the just and say something other than what the black letter of the election code says, absent a, a the arrangement of duty by a party official. If you do that Justice Brister, you invite may him.

JUSTICE: So, so fort if all 50 people from all 14 districts, coming to Judge Dietz to support and say, "Of course, we intended to sign for Judge Francis to be on 'Place 8'." Is it your position behind that we should-- because of this feelings clear, clear or whatever. We should ignore the facts and post candidate above the ballot.

MR. KEEL: Your not ignoring the facts because the fact is that have to happen before 6 o'clock on January 2nd. And if that happen before 6 o'clock on January 2nd, we would not be include.

JUSTICE: Mr. Keel when we follow it. One of the days they concerns me here of that again, is the plan were she apply to this equitable analysis. What sort of standard of review is there on what the trial court does. For example, I'm stand your sponsor just to first question, is draw forth her to unclean his argument and rejected it. The waiver here that de novo, what assume of difference to we give trial court if in fact this equity standard laws.

MR. KEEL: I believe that's an abuse of discretion standard Justice O'Neill because ...

JUSTICE: Which place maintain?

MR. KEEL: Yes, ma'am.

JUSTICE: Then it sort of-- to arose this cases into whatever judge you happen to drawn.

MR. KEEL: Well, you say that is though-- that is in indictment of the system that's been said up by the legislature but respectfully, the election code plaintiff's says, that a person who was agree or even threatened by a possible violation of the election code is entitle to see conjunctive ...

JUSTICE: I, I they can happen here.

MR. KEEL: Can all be fired.

JUSTICE: I think one of the problems with this equity argument is, is just subject this-- is someone interpretational.

MR. KEEL: I see what your saying.

JUSTICE: If you can get different results according to wherever you go and not guess this person on the individual trial for judge but-- then I have different this appeals strickly the courage of event.

MR. KEEL: I, I apologize, I see, I see your point and I guess I was am, am-- I'm here to defend the exercise of discretion by Judge Dietz, specifically and obviously in this case but I think your exactly right because I think the last thing this Court or the trial court of the state want to be dealing is rest that with this election code

cases. Every time we have an election and that's what's so happen.

JUSTICE: Okay. So let me file a rub now. If, if what we want is some sort of objective test. While we don't have to hope voters in and determine credibility of what different candidates did win and none claim answer things like that. What can we have attest but do have ample. She said, but it doesn't to be taken into account to raise should there and just resultant, we cross a bit of a threshold there about making that statement or at least file judges on the Court did. What would be wrong with attest that says, if you can objectively look and determine that no voter was mislead because the object to this is not the mislead signers of petitions. If you can look at of objectively and determine that no one was mislead but that thinking any evidence at all. The one should that we put Judge Francis on the ballot.

MR. KEEL: Because in this case, you can't objectively make that determination.

JUSTICE: I'll want to-- because if we look at the other ones.

MR. KEEL: Right.

JUSTICE: In the double signature.

MR. KEEL: Right.

JUSTICE: If the code itself, has a provision that says, person is the good one. What can we objectively determine.

MR. KEEL: Because if that is the law, if that, that catch all at the end of the, the second sign when makes the first one invalid. If that's the rule then you must follow every requirement of what has to be on the petition. What the signers has to provide by, by that [inaudible]. I was trying to think of the analogy incorporation for exactly that argument in our-- I think that argument if you carry to responsible conclusion is a little bit by saying, don't worry about violating the law or committing the crime because the executive can always part of the-- would clearly that doesn't makes sense. The reason for you ...

JUSTICE: I still don't-- I'm not sure I understand why-- I mean the statute itself just to say person prevails so that, same to contemplate someone signing more than one that enough put on the ...

MR. KEEL: But it's your promise if you do that and there is, there is in fact on the form because it's required by the code to be there ain't morning to the voters that says, you cannot sign more than one petition were ...

JUSTICE: No, I didn't say that on the morning. It says that, in statute. The warning since you can put the signing can't to this state on the allege coming up a party. So there' nothing impossible as to be read that since you guess under petition.

MR. KEEL: Respectfully is that an, an indeed statute says, it must be aware don't, don't you look correct, there's also a warning about not participating on another parties that primary but it also there that says, this going has to be on the Court ...

JUSTICE: So what ...

MR. KEEL: And the form has it.

JUSTICE: What if the petition says, "CCA Place 8."

MR. KEEL: That's okay. In facts someone will say that.

JUSTICE: Why it could says, CCA Place 8 on because doesn't actually say the office result.

MR. KEEL: Because I think CCA is a conventional abbreviation that most reasonable people would be able to look at and understand.

JUSTICE: So we have in fact it matters whether the voters, Know what there were doing on.

MR. KEEL: Precisely, in that's why this is ...

JUSTICE: So if it says, supposedly evidence in front of Judge Dietz says, court of criminal appeals no place but every voter comes in and says, they had this big number 8, right behind the person signing the petition like said, it for "Place 8." Oh boy, that's the place we want for Judge Francis in "Place 8." No quest the voters indisputable facts, may have to that quote. The voters all know what there were doing but your position is, we tossed them all because we can't to elect from look at the feet.

MR. KEEL: Your hypothetical makes it hard for me to argue, that would be a judge [inaudible] the party has just result. And I must concede that our record like that. It would be hard for me to be here. I would, I would submit this as well Justice Brister, if this were the kind of-- I don't think this ever can happen that really case have one candidate on for, for criminal case on the ballot but if this works an office with place number didn't make a difference for this year, there want three candidates running for the Court criminal appeals. We only have one place represented Keel would not be here. Represented of Keel would not have make the challenge because I think that would get you mean to a Bell analysis were it would be perfectly legitimate for the Court or any Court for the-- for that to say, we look, that, that make a difference. It is, it is not a distinction as your because there's only one spada or if that, if you say my point, so we wouldn't be here those with the facts. And if the facts as you post your hypothetical were the facts I, I agree. You know, I think the state, the law. I think this Court jurisprudence and, and the election code over the last decade or so can be summarize this way. Yeah, it's still strict constructions but were, were, were cannot avoid if you can by equity. An, an just or even an observe this act. And I hope ...

JUSTICE: Well, there's a little obtention, was there any before the years we said, strict construction.

MR. KEEL: Yes, sir.

JUSTICE: Right been the law and you have said that, 15 years. And then, for that four years ago, we started saying, construe against in eligible and we even say, none law of this. Did you think one has eclipse the other ...

MR. KEEL: [inaudible]. Respectfully, I think Gamble is problematic. I, I don't ask precedent, my question is, precedential value because, because there were going only the parality on the key section of Justice Phillips have been. I think Justice Beyker's decent in gamble which right on a man. I think your decent justice had in the fifth case. Judge versus 14 court of appeals which arose out of just-- judge-- Justice O'Neill's then Judge O'Neill's situation in here's county. I'm impure exactly right. The law's below and any reasonable lawyer or person ...

JUSTICE: But if the record-- in the record here's establish is that everybody makes this. Here by does three times what they need because they know were everybody makes this and yet every elections cycle lately three or four, five people for struck of the ballot for technical errors. Isn't that a rather whimsical form of democracy, were every election we take a hundred candidates, we throw the dices and five of you are random or off and the rest can run.

MR. KEEL: I, I would agree with you if the requirements for owners but here the requirements on ...

JUSTICE: No compared.

MR. KEEL: We have a green party, your Honors. Compared deliver pterion party, your Honors. Well, exact on the context ...

JUSTICE: But someone ask you about the constitution issue ...

MR. KEEL: Okay. And I think on, if you want you address then I will.

JUSTICE: I think you better jurisdiction ...

MR. KEEL: I'm sorry did I'm not ...

JUSTICE: No I'm just if the requirements, if it's all easy then it makes no sense that everybody is getting 120 signatures. Everybody is getting 120 signatures, when they need 50 because they know it is notice.

MR. KEEL: But Justice Brister, I think citing the fact that people get more than they need. That's, that's somehow that's become the state purpose. I don't think that's correct because your just signing the fact that people being proved. And I think any good candidate is going to do is get-- for example, lawyers when they have a deadline-- you know, I don't want to file my motion for the trial which is we all knows that critical deadline that effects whether you can even have an appeal. A good lawyer probably didn't late until the deadline, the day that's due to do it. You try to do in advance. Well, just that mean the deadlines really not 30 days, is 25 will know ...

JUSTICE: So but your making the argument that prove on people never make mistakes. If prove people never make mistakes, we would need enough of pro-talk orders in courts because even courts make a mistakes and after-- and there's nothing stronger in courts about when the plenary jurisdiction is over. It's over and yet for a hundred years with that no pro talks that can be done after you've lost jurisdiction because courts makes mistakes.

MR. KEEL: Here's were your equity analysis, I think is [inaudible]. If the candidate despite his or her best efforts to comply. For sure and the party is somehow complicit in failing to bring it to his attention because the party didn't do an eligent job reviewing the application in petition. There's rule there for equities ...

JUSTICE: But in this case, after you brought on to there attention, they still certified Judge Francis.

MR. KEEL: They made an initial determination that they would do so.

JUSTICE: They, they made one determination that certified in this but look at this particular pages.

MR. KEEL: Well, ...

JUSTICE: The party look at those pages again and they said, certify the case.

MR. KEEL: What your record in the brief from the party demonstrate to you is, the party frankly can understand what the letter of the law required and would not have certified Francis about for it's concerns about Bell and Gamble which it open the candle with box.

JUSTICE: I do have somone has keep upon the language in the petition. It's, it's not important enough as supposed for them to require it be read but it is at very top.

MR. KEEL: Yes, ma'am.

JUSTICE: The signing of the petition of more than one candidate for the same office and the same election is prohibited. Presuming everyone is sign this written and they know, I can't sign for another office, for another person at the same office. And they did, he look at the other at other petitions. They didn't do that-- you know, why could regret an objective test.

MR. KEEL: Because you can't do that on the place that you have to go back to do and after the fact, after the fact in which in ...

JUSTICE: You don't have to gather anything else. You just look at

the petitions of, of Holcomb and you look at the petition of Keel.

MR. KEEL: Well, I guess my response to that would be, we have the requirement at all. I mean, it's got to mean something, doesn't it that the law ...

JUSTICE: The presented we, we means it something when we said, there's someone of equity and if we can tell objectively because what I, I promise with this holding petitions I present.

MR. KEEL: Yes, yes.

JUSTICE: Seem-- could we tell from the face of what's on file on public record. It really know one was mislead here. Instead the object saw to be attain-- obtain has been served.

MR. KEEL: But I don't think you can do that because you can't, you can't answer the question were they mislead unless you know the "Place 8," that takes the question if you can see what I mean.

JUSTICE: Counsel, it sounds like you do not disputed Robert Francis was certified. Did Robert Francis was certified by the party. Initially?

MR. KEEL: He, he-- they make a determination by-- as I understood it as the lawyer who was waiting for there decision and told them I'm waiting for your decision because if you determine, your goin to go ahead that certify again, I'm going to seek temporary restraining order keep you from doing that. And candidly our communications were, we were talking each other. On my understanding and the understanding Judge Dietz had when that there are application is presented to him on Saturday was that the status form was, he wasn't yet certify that they were begun certify. And in fact Judge Dietz decided on the record. What he's understanding invensible. It was only because Judge Dietz wanted to get Judge Francis an opportunity to be heard from that, that nothing was going to ...

JUSTICE: I understand the, the transcript reading at it going to goes back and fort you were there at were ...

MR. KEEL: Yes, sir.

JUSTICE: You can tell the whole lot to form a trial judge you will not go to know that but being there-- but the record says, Francis mistakes (h)4849 of the initial hearing, we would been send out notice is call become at you. Letting do know in according to what your opinion if you they certify him which presume he was-- to this certify I mean, to have to this certify wants. Statement in just notice that the party certified him on January 6. Are you telling us you take issue with here statement?

MR. KEEL: I, I believe she been suppose because if you read further ...

JUSTICE: I, I don't think she mis spoke. The question was put to a several of time. She was clear in what she intended. Are you taking issue on what she said?

MR. KEEL: I'm in because I don't it's accurate judge when write in brief further and Judge Dietz were summarize how we got to were wore that mandate. It's clear that what was represented to him and the only reason he didn't sign at the-- one of the reason he didn't sign at T.L.R on Saturday was, we can, we can wait until 3:30 on Monday when he schedule the hearing in this in the-- we would be in the same situation because the party agree to stand out.

JUSTICE: We do a briefly address upon Justice Medina, the Court you unconstitutional certify.

MR. KEEL: I think for you to engage in, in that merits of the constitutional argument with Judge Holcomb was brought. You would had, had a different party because Judge Holcomb's own testimony indicated

that respectfully he himself may absolutely know ever comply the statutory requirements and for him the argument that there on do with arguments on. His, his totaly a consistent with this in conduct that we will see that in his testimony. On the merits of the argument, the Pennsylvania case. I think that can be distinguish so easily it is almost laughable because in that case, state line candidates in Pennsylvania wee require to gather 56,000 signatures and were talking about in this what the Pennsylvania purpose offended by. Was not that they restraining judicial candidates differently from none judicial candidates that, the Pennsylvania law, which three minor parties have more partially been restraining Republican Democratic Party and making it's more difficult for the Patrick party which is, that what you came across for both party in Pennsylvania. It made it harder for them to get more signatures than, than the so called: "ministered parties." And they could district judge. There was correct to say that, offensive under the constitution for that's plainly not the case.

JUSTICE: Were not the same situation Texas has your amendment indepent that ones ...

MR. KEEL: Well, it indeed it's, it's easier I guess I understand it for an independent to get on, to get on the general election ballot through a convention system rather and have to gather signatures that was sort of been burns.

JUSTICE: Further questions. Thank you.

MR. HEATH: If I might begin by knowing something about the date for action. The question came up to the party represented it has to when report needed act and I think the legal deadline was beginning with our regarding which is apply the 21st February. As an practical matter early building man male balance with typically go out the 28th of January.

JUSTICE: Is there a deadline if you request the ballot for sending mail.

MR. HEATH: They are suppose to go out load later have been the 38th day before the elections. It's a, it's a section 86.004 and I hesitate to go over 'cause it less two or three days you have to add and subtract days and so fort. That it says, the 38 today before the election. And as I computed that is 28th of January. He's when they are supposed to go out. Now in sectors state is hoping don't quite the balance of-- they may allow in layer from that as a pratical matter but that's sort of the time for a-- that working on our Court appeal order. The-- I think issue talking about Pennsylvania case on constitutional issue as what Pennsylvania case meet. With, with Mr. Keel, I do not believe the Court was offended by training the major party candidates more generously to the matter of 40 candidates required to have those more signatures the minor party had this eligent party. And in fact Courts typically have not to have a problem there. Is either the case that very, very, very carefully. They were offended by the fact that, for the precedential in governor, governor party under candidates had impact at least many signatures as a judicial candidates. This is for my report. With the major parties, you don't have this despair actually, there wasn't despair 'cause there is small and the governor and the precedential candidate has-- are requirement that is mention that, in passing there was on the sign. It wasn'tly the fundamental issue of the case in which was saying, they tend to look at the precedent and the governorship as typically something that would require more and here with the judicial candidates reflect that all it's have. So it wasn'tly difference from major manner, there relate with pacifically at requirements, more for the matter-- a more for the

judicial candidates then for the executive offices and that was the problem that do they have. As was mention during the questioning-- you know, perhaps the statute is giving us a principle and not pursue. You have the fact here that's certinly it is operating to keep people of the ballot. Were make a very problematic here on the ballot. In this particular raise of three candidates who had file for that office who go out have attended to get the signatures and by the way at also reject here position and Judge Holcomb did nothing to get the signatures of fact require with the statute. Let's not to lay every testimony at all. Obviously, he could about more signatures or whatever I think enhance I did it this could have been that but he made a very diligent effort to go out to each of the Court being Court of Appeals, after to got those signatures.

JUSTICE: Mr. Heath.

MR. : Yes.

JUSTICE: The question is, come up about whether if we continue damage were if this Court has going to be setting an hearing this kinds of cases every two years. And argue before this with compliance with the, with the statute that more objective, prospective. And here were talking about applicant's to judicial balance.

MR. HEATH: Right.

JUSTICE: This be able here asking that the voters of the state minimal Court to do it interpret.

MR. HEATH: Right.

JUSTICE: Strictly interpret the laws which is were about all the time. Are you reconcile that?

MR. HEATH: Well, I reconcile it by the fact that the, it's often if all this design to do here and part the law that you have to have the compelling interest. And you have to have-- in Marilyn Taylor approach to meeting that compelling interest in there his log here. That there is 11 in this law that is consistent with the whatever goal is attempted to be achieve and because of that statutes on constitutional it says, that you did before to determine that is on constitutional. And that's what the judges are-- you know, that, that would be the about to the judicial.

JUSTICE: There any further questions. [inaudible].

JUSTICE: Counsel, is Judge Francis certify by the party and it's on what date?

MS. HANKINSON: I'm dream the parties rep-- representation of that, okay. He was on that certified in which Justice Brister said that, stand is full change by Judge Dietz order on that ...

JUSTICE: Is the January 6, letter on the record.

MS. HANKINSON: I don't recall that, yes your Honor but would have to double check.

JUSTICE: Since what there prostitute make, if for long to have an hearing on February 3rd end of our tuning our we-- don't we have a hear schedule for the forum ...

MS. HANKINSON: There is a per-- permanent injunction here. The first of all because the temporary injunction isn't abuse discretion because it change the state was.

JUSTICE: Okay.

MS. HANKINSON: And then in the mean time, it is Judge Francis of the ballot. So laying for permanent injunction here is not acceptable on this circumstances.

JUSTICE: We have been issue that within the time limit for a challenge.

MS. HANKINSON: Well, that here's the fact inject-- whatever I like

to point can may answer this response this several in mention earlier as well. I think there are two things as Court can did, to build on it existing jurisprudence and take care your concern of Justice Jefferson about-- you know, what's going to happen until to the last minute and causing at even election process in Justice Green, your concern on that is the Court want to did this for every two years. The first thing is Justice-- I agree with Justice O'Neill that an objective standard which has consider in Bell. And I think can imply the Gamble context. Is what the Court needs to look out. And this is the case whether is no about our mislead revealing the facial defect. We have a record that statutory purpose is reveal. It's an objective standard but the second aspect rather which raise into the gambling anlysis in balancing the equities. Is-- as we know, this challenges are for account from, from merely from at an comment and the rights. And yes, the statute allows a challenge to be brought of until the jury in of the elections on. I think with this Court should do, it save to the candidates in this step that if you expect to be able to prevail on this challenges and not have the equities lay back. They made this incumbent upon you to at the earliest possible opportunity, review your appellant's petition and apply to the party immediately of any concern that you have and that what fulfill a legislatures purpose. In making sure that the voters have candidates on the ballot. I don't think there's any question at this Court jurisprudence ...

JUSTICE: Let me add there's, there's no requirement on the statute for opponent or some others going to be potentially harmed to take any action at any quick your time. There is a statutory requirement that party did. So what the-- your, your long to ask that's to impose a new burden in order from the collectable relief.

MS. HNKINSON: No, I'm going to ask-- I'm looking-- I'm going to ask you in the context that balancing competing equity. I do not believe that would acceptable for a candidate to engage in mandamus state. In order to have the win fall ...

JUSTICE: What is, what is of the statute allowing the challenge of after the day before any voting begins in.

MS. HANKINSON: Well, because, because of the fact that we want qualify candidates on the ballot. If there's a problem then in fact it can be that work of until the time the people vote. On the other hand, if what we are dealing with, our facial technical defects which a legislature clearly said, at the state intending our be safe to that for candidates. Intending for there to be the operately the opportunity to correct. In this Court, in connection with this In re Gamble decisions sustain the message. That it is inconbent upon you, if you expect to be able to rely on that kind of thing. That you must comfort with the legislatures intent. Otherwise, the equities are going to work against you ...

JUSTICE: Well, the kind of question on equities-- you know, were talking about an objective test and perhaps not an objective test. What will be the standard of review on either of those. If, if we were to determine that you can tell at on the face of the petition that no one was mislead. Then to you-- do we review that de novo was there anything for the trial court to determine if it's were the balancing of the equities. How much difference do we have to give ...

MS. HANKINSON: I think that the legislature case, this Court and Court of appeals by giving it the power to issue mandamus to the party official with respect to, to the equities because you have a mandmus power, your are in the position to apply the mandamus standard.

JUSTICE: Clear of use of discretion.

MS. HANKINSON: Yes.

JUSTICE: So if we apply a none objectives sort of equitable balancing test. We would have to give a great deal of difference to Judge Dietz determine.

MS. HANKINSON: I don't, I don't think that's the case here. In the face of the standards that you have said, out in, In re Bell with respect to have the statute is to be interpreted and have the election code to be apply. And I think, that if you did decide Judge Francis is cause under In re Bell. There was a clear reviews of discretion and the only action were talking about here with Judge Dietz right now, is the fact that he improperly granted in injunction. And our relief as to, to mandamus him to set aside his injunction but we invoke the election code with respect to getting Judge Francis back on the ballot, which creates a different construct that were asking that, the party represented be in mandamus to put in back on the ballot. So what revealing with truck now with the injunction. The only action Judge Dietz [inaudible] the injunction decide party. You need undo everything that you done which is the change of status file. So I think to that issues not clear. I think that the gamble and In re Bell issues are in connection with our request for mandamus on the election code of this Court, mandamus the party to put them on the ballot.

JUSTICE: Regarding Judge Dietz his order to give-- in do regard [inaudible]. It perhaps does show that it was perhaps unclear based on the party representations whether Judge Francis have concern about or not. What there does three things that says, don't certify if you haven't, if you have this certify and not with sending all that, don't print the ballots. So the county said that, several layers there it. Perhaps so that he was on ...

MS. HANKINSON: Forever there's no question that when representative Keel worst down Judge Dietz upon on Saturday afternoon what happening those to Judge Francis. That things started happening that change the status file because at that point on time, the record reflects, the party was prepare to certify representative Keel and they've read-- well, it won't take that action until Monday. I can brief that mean to clarrify Judge Francis. We have not been notify to that point on time. So I brief if you did this say, a state of affairs that is a little but it was a very, very unusual act that prevents to have proceeded but the bottom line is, about for what Judge Dietz did. Judge Francis will be on the ballot. And I think that's the bottom, the bottom question ...

JUSTICE: That can in proper do about it, Judge been ask for an expert a T.R.O.

MS. HANKINSON: Excuse me.

JUSTICE: Is that's for-- there's nothing improper that the judge being ask for next party T.R.O. That's provided for an Rules. Some counties have lawful, lawful rules and say, you can't give an expertise to our -

MS. HANKINSON: But particularly ...

JUSTICE: - less someone is die. But for the judge to be approach-- someone saying, I still, I don't know the truck needs something heard quickly and then say, well, if judge with everybody it said, Monday not to improper about that.

MS. HANKINSON: Well, but I would suggest that-- you know, that when letter went to the party in January 2nd, and there are four days with the Court has to was open. And then, we end up with the challenge on Saturday afterton. Ultimately I agree at all came out of the law because the hearing was held on Monday with Judge Francis and he was

able to have a work on Monday morning to be there at 3:30 Monday, afternoon. I have plan in talking about there was that, I did take with that sequence of events reflects a change with status, status project in ...

JUSTICE: As, as large just today that, that is Mr. Keel's proogative. And he did the fact-- that's Mr. Keel's proogative to file his, his complaint at anytime he desires or any, anyone desires a challenge -

MS. HANKINSON: I think that ...

JUSTICE: - petition. The almost is not on the challenge, the almost is on the county to make sure that they comply with the statute ...

MS. HANKINSON: I agree, that is Justice Brister said, I wish I could said, never made a mistake and certainly not in terms of dealing with Judge Francis reviewed those petitions and he missed-- I mean, and he is not for saying that the Court that he didn't makes that. There's no question and there's no question that, that if, if represented Keel on the challenge is could ...

JUSTICE: I think those are two different issues.

MS. HANKINSON: I was talking about in the context, your Honor of the fact that was indeed in the context. And it seems to me that given the legislature intent behind election code which is to give candidates every opportunity to take care of technical problems with there petitions that given there. That if the Court fails the rolling In re Gamble in balance his competing equities. The Court should send a message that it is in conduct upon a candidate to revi-- review early and immediately notify fell the legislated intent of allow correct to ballots. Wherever been trying to get the win fall of un-contest election. And the public policy of this state is, is exactly the contrary and all of the voters have a right to have choices when they go because the ballots in election.

JUSTICE: Thank you, counsel. This proceedings have been submitted and the Court will now take the recess.

2006 WL 6005730 (Tex.)