

Haigler and the Harris County Republican Party Chair² to place Bell on the ballot. On January 14, Bell filed his petition for writ of mandamus with this Court. *See* TEX. ELEC. CODE § 272.061. Two days later, this Court granted Bell’s motion for temporary relief and ordered Haigler to allow Bell to participate in the drawing for a ballot position pending the Court determining the merits of Bell’s mandamus petition.

II. THE ISSUE AND THE PARTIES’ ARGUMENTS

The only issue to decide today is whether the information on a candidate’s petition must identify the city in which the registered voter resides. Bell contends that the signer’s city is wholly irrelevant to determine if that person resides within Harris County Precinct Four and that the only purpose in requiring the signer’s address and voter registration number is “to allow verification, if desired.” *See Cohen v. Strake*, 743 S.W.2d 366, 368 (Tex. App.—Houston [14th Dist.] 1988, orig. proceeding). Additionally, Bell argues that the Court must consider the entire petition to determine if it contains the requisite information. *See Fitch v. Fourteenth Court of Appeals*, 834 S.W.2d 335, 337-38 (Tex. 1992) (orig. proceeding). He urges that, if we do so here, it is clear the office he seeks lies within Harris County Precinct Four, and this is the only pertinent information for this election. Therefore, according to Bell, this Court should hold the signatures not including the signer’s city valid as a matter of law.

In response, Haigler does not dispute Bell’s argument that the only signatures on the petition she believes are defective are those without a city. Instead, Haigler simply contends that she rejected Bell’s ballot for “insufficient signature requirements.”

III. APPLICABLE LAW

A. ELECTION CODE

This Court has repeatedly recognized that “statutory requirements concerning candidacy for

² Neither Bell nor Haigler tell us the Chair’s name. Accordingly, I collectively refer to the Chair and the Primary Director as Haigler.

political office are mandatory and are to be strictly enforced.” *Wallace v. Howell*, 707 S.W.2d 876, 877 (Tex. 1986); *Painter v. Shaner*, 667 S.W.2d 123, 125 (Tex. 1984); *Brown v. Walker*, 377 S.W.2d 630, 632 (Tex. 1964); *Burroughs v. Lyles*, 181 S.W.2d 570, 573 (Tex. 1944). Indeed, the Code uses mandatory language when describing the information that must appear in a candidate’s petition. Specifically, the Code provides that, to be valid, a candidate’s petition “*must* (1) be timely filed with the appropriate authority; (2) contain valid signatures in the number required by this code; and (3) comply with any other applicable requirements for validity prescribed by [the Election Code].” TEX. ELEC. CODE § 141.062(a)(emphasis added). And, if a candidate for justice of the peace in a county with a population of more than 850,000 pays the filing fee, the accompanying petition must have 250 signatures. TEX. ELEC. CODE § 172.021(b), (e).

Section 141.063, entitled “Validity of Signature,” details the information that must be included with each signature on a petition: (1) the signer’s residence address; (2) the signer’s date of birth, voter registration number, and county registration number if the election involves more than one county; (3) the signing date; and (4) the signer’s printed name. TEX. ELEC. CODE § 141.063(a)(2). The Code defines the signer’s “residence address” as “the street address and any apartment number, or the address at which mail is received if the residence has no address, and the city, state, and zip code that correspond to a person’s residence.” TEX. ELEC. CODE § 1.005(17). Before the 1997 amendments, section 141.063 did not expressly validate signatures if they omitted information that section requires. However, in 1997 the Legislature amended this section to explicitly provide that “[t]he omission of the state from the signer’s residence address does not invalidate a signature unless the political subdivision from which the signature is obtained is situated in more than one state.” TEX. ELEC. CODE § 141.063(d). The amendment also states that “[t]he omission of the zip code from the address does not invalidate a signature.” TEX. ELEC. CODE § 141.063(d). Moreover, the Legislature amended section 141.063 to provide that the signature is the only information required to appear on the petition in the signer’s own handwriting. TEX. ELEC. CODE

§ 141.063(b). In passing the amendments, the Legislature observed that the amendments' purposes are "to provide for more efficient operation of elections" and to handle problems such as "voter fraud." *See* SENATE COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. H.B. 331, 75th Leg., R.S. (1997); HOUSE COMM. ON ELECTIONS, BILL ANALYSIS, Tex. H.B. 331, 75th Leg., R.S. (1997).

B. STATUTORY CONSTRUCTION

This Court has held:

It is a rule of statutory construction that every word of a statute must be presumed to have been used for a purpose. Likewise, we believe every word excluded from a statute must also be presumed to have been excluded for a purpose.

Cameron v. Terrell & Garrett, Inc., 618 S.W.2d 535, 540 (Tex. 1981) (citations omitted). We have upheld this rule on numerous occasions. *See, e.g., Quick v. Austin*, 7 S.W.3d 109, 123 (Tex 1998); *Laidlaw Waste Sys., Inc. v. City of Wilmer*, 904 S.W.2d 656, 659 (Tex. 1995). This rule complements another general statutory construction principle that courts should not insert words in a statute except to give effect to clear legislative intent. *Laidlaw*, 904 S.W.2d at 659 (citing *Hunter v. Fort Worth Capital Corp.*, 620 S.W.2d 547, 552 (Tex. 1981)).

IV. ANALYSIS

We need only look to the plain language of the pertinent Code provisions to resolve the issue here. Section 141.063 requires that a petition include the signer's "residence address." TEX. ELEC. CODE § 141.063(a)(2)(A). By definition, this includes the signer's street address, city, state, and zip code. TEX. ELEC. CODE § 1.005(17). However, section 141.063(d) validates a signature even if it omits the state, in certain circumstances, or the zip code. TEX. ELEC. CODE § 141.063(d). Applying our long-recognized statutory construction rule, we presume that the Legislature included the signer's state and zip code in this subsection for a purpose — that is, to validate a signature even if the petition does not include this

information. Likewise, we presume that the Legislature did not include the signer's city in this subdivision for a purpose — that is, to invalidate a signature if the petition does not include this information. *See Cameron*, 618 S.W.2d at 540; *Quick*, 7 S.W.3d at 123; *Laidlaw*, 904 S.W.2d at 659.

Bell and the Court cite cases holding that, although the petitions at issue omitted certain information, this did not render the signature invalid. *Reese v. Commissioners' Court of Cherokee County*, 861 S.W.2d 281 (Tex. App.—Tyler 1993, orig. proceeding) (signatures omitting zip code); *Strachan v. Lanier*, 867 S.W.2d 52 (Tex. App.—Houston [1st Dist.] 1993, orig. proceeding) (signatures omitting city or zip code); *Bacon v. Harris County Republican Executive Comm.* 743 S.W.2d 369, 371 (Tex. App.—Houston [14th Dist.] 1988, orig. proceeding) (signatures omitting state); *Love v. Veselka*, 764 S.W.2d 564 (Tex. App.—Houston [1st Dist.], 1988, orig. proceeding) (signatures omitting state). The courts' rationale in these cases for validating the signatures without all the information generally turns on the ability to verify the signer's eligibility without the missing information. *See, e.g., Reese*, 861 S.W.2d at 284. Following the reasoning in these cases, the Court and Bell conclude that the signers' city here is immaterial because the information provided is enough to determine the signer's eligibility to vote in this county election.

But the cases Bell and the Court rely upon cite no authority — other than each other — to support the conclusion that the residence address's sole purpose is to verify the voter's eligibility. And these cases do not hold that, as the Court's leap in logic suggests, the sole purpose in verifying a voter's eligibility is to preclude election fraud. Moreover, these cases issued before the Legislature's 1997 Code amendments. And one amendment states that a petition's signature is valid even if it omits the signer's *state* and *zip code*. *See* TEX. ELEC. CODE § 141.063(d). The Legislature's intent in amending the Code is clear. The Legislature recognized the problems arising from courts inconsistently applying the Code as it existed. Thus, it proposed the amendments to, among other things, ensure “less chances for election fraud” and “provide for more efficient operations of elections.” *See* SENATE COMM. ON STATE AFFAIRS, BILL

ANALYSIS, Tex. H.B. 331, 75th Leg., R.S. (1997); HOUSE COMM. ON ELECTIONS, BILL ANALYSIS, Tex. H.B. 331, 75th Leg., R.S. (1997). The Legislature’s expressly validating signatures without the state and zip code — and continuing to require a city for signature validation — demonstrates its policy decision to accept only those pre-1997 cases upholding petitions omitting the signer’s state and zip code, not those omitting the city.

The Court argues that section 141.063’s language defining when a petition signature is valid is not mandatory. ___ S.W.3d at ___. However, section 141.062, which governs a petition’s validity, does contain mandatory language. It explicitly states that “[t]o be valid, a petition *must* . . . contain valid signatures in the number required by this code; and . . . comply with any other applicable requirements for validity prescribed by this code.” TEX. ELEC. CODE § 141.062 (a)(2), (3) (emphasis added). That is, the petition must contain the information section 141.063 requires, which without a doubt does include specifying the city. *See* TEX. ELEC. CODE § 141.062(a)(2)(A); TEX. GOV’T CODE § 311.016 (Code Construction Act provision stating that a statute’s using the term “must” creates or recognizes a condition precedent).

Additionally, the Court suggests that, in amending section 141.063 to validate signatures without a state or zip code, the Legislature merely codified some of the earlier case law. Consequently, the Court concludes, it can rely upon the reasoning in those cases to validate petition signatures without a city. However, this view wholly ignores that, although one case before the 1997 amendment held that omitting the signer’s city is permissible, *Strachan*, 867 S.W.2d at 53, several others concluded that omitting the signer’s city is a fatal defect. *Gray v. Vance*, 567 S.W.2d 16, 17 (Tex. Civ. App.—Fort Worth 1978, orig. proceeding); *Pierce v. Peters*, 599 S.W.2d 849, 851 (Tex. Civ. App.—San Antonio 1980, orig. proceeding); *Shields v. Upham*, 597 S.W.2d 502, 503 (Tex. Civ. App.—El Paso 1980, orig. proceeding).

The Court cursorily concludes these cases are immaterial because they relied upon a prior version

of the Election Code that did not expressly state that the Code Construction Act applies. However, this rationale entirely ignores that Article 10 of the revised civil statutes, now at Chapter 312 of the Government Code, governed how to construe that previous version of the Election Code. Notably, Article 10 provided that “[i]n all [statutory] interpretations, the court shall look diligently for the intention of the Legislature, keeping in view at all times the old law, the evil and the remedy.” TEX. REV. CIV. STAT. art. 10, § 6 (current version at TEX. GOV’T CODE § 312.005). Thus, the Election Code’s purpose — or, in the Code Construction Act’s words, the object the Legislature sought to attain — was pertinent to the courts’ holdings in *Gray*, *Pierce*, and *Shields*, just as it was in *Strachan*, *Reese*, *Love*, and *Bacon*.

Furthermore, the Court’s illogical conclusion that a petition’s signatures are valid even if they omit the signer’s city flies in the face of the rule that we must not insert words in a statute unless it is to give effect to the Legislature’s clear intent. See *Laidlaw*, 904 S.W.2d at 659; *Cameron*, 618 S.W.2d at 540; *Hunter*, 620 S.W.2d at 552. Here, we know that the Legislature amended the Code to correct inconsistencies in applying the Code, to provide for more efficient operations of elections, and to preclude voter fraud. See HOUSE COMM. ON ELECTIONS, BILL ANALYSIS, Tex. H.B. 331, 75th Leg., R.S. (1997). Clearly, the Legislature intended that the 1997 amendments define the specific requirements candidates must follow to obtain valid signatures and to identify which information may be omitted without invalidating a signature. Because of this intent, the Court cannot — as it does here — read “city” out of the subsection that requires this information and then read “city” into the subsection that does not mention this information. TEX. ELEC. CODE §§ 141.063(a)(2)(A), 141.063(d). In doing so, the Court defeats the Legislature’s intent.

Additionally, Bell misplaces his reliance on *Fitch*, 834 S.W.2d at 337, to conclude that Haigler can consider the entire petition to determine whether a signer’s residence address information is enough. In *Fitch*, this Court determined whether we should remove a candidate’s name from the general primary election ballot because her petition stated only that she was running for the March 1992 primary and did

not identify the *Democratic* primary. *Fitch*, 834 S.W.2d at 336. Relying on a Code provision stating that the candidate's petition is part of his or her application, we concluded that *Fitch*'s petition was adequate because her application stated she was applying for the Democratic primary election. *Fitch*, 834 S.W.2d at 337.

This case differs significantly from *Fitch*. First, the information on the candidate's petition in *Fitch* was not pertinent to the voters' eligibility. Rather, the information's purpose was to advise the voter about the candidate. Second, and more importantly, in 1997, the Legislature amended the Code provision the *Fitch* Court relied upon to expressly state that "the petition is *not* part of the application for purposes of determining compliance with the requirements applicable to each document, and a deficiency in the requirements for one document may *not* be remedied by the contents of the other document." TEX. ELEC. CODE § 141.032(c) (emphasis added); see *Fitch*, 834 S.W.2d at 338 (Hecht, J., dissenting). This demonstrates that the 1997 Code amendments evidence the Legislature's approval or disapproval of prior case law. Thus, the amendment to section 141.032(c) disavows *Fitch*, while the amendment adding section 141.063(d) approves only those cases allowing a petition to omit the state or zip code.

Finally, the Court contends that the purpose of the residence address, or the "object sought to be attained," is solely to ensure there is enough information to verify the signer's eligibility to vote. Based on this, the Court argues that the signer's city of residence does not demonstrate the signer's eligibility to vote in this election, because Precinct Four comprises more than one city. But this ignores the converse. If the signer's city of residence is not within Precinct Four, then that information would conclusively demonstrate the voter's ineligibility to vote in this election.

Moreover, the Code, both before and after the 1997 amendments, requires more information than the minimal amount necessary to verify the signer's eligibility. If the Code's "residence address" purpose is only to provide voter-eligibility verification, then arguably no information except the voter's name and voter-registration number would be necessary. But "[t]he Election Code does not require just a petition

which may be verified. It requires specified information which this petition admittedly did not contain.” *Shields*, 597 S.W.2d at 504. Furthermore, even if the residence address’s sole purpose is to verify a voter’s eligibility, the Legislature’s 1997 Code amendments either validated or invalidated those prior cases that determined the necessary information for voter eligibility. The Legislature’s choice to continue to require information such as the signer’s city — even when such information may seem unnecessary to determine a voter’s eligibility for a particular election — is a policy decision to which we should defer. Because the Court refuses to do so today, candidates and those charged with determining eligibility for a place on the ballot have no guidance in future elections for determining what information is mandatory to validate petitions. If the Court truly desires to uphold the Legislature’s intent to preclude election fraud, then it would require that signatures on petitions adhere to the Code’s minimum, clear, and express mandates.

V. CONCLUSION

The Code establishes specific requirements a candidate’s petition must meet so he or she is entitled to a place on the ballot. Although courts, in the past, have held that substantial compliance will suffice, the Legislature has expressly determined what information is mandatory. The Code’s mandates are not onerous, unfair, or unduly restrictive. Indeed, Bell concedes that all the residence address information can be obtained through the Harris County Tax Office. Moreover, the Code allows persons other than the signer to fill in such information. *See* TEX. ELEC. CODE § 141.063(b).

In sum, the Code expressly requires that the petition include the signer’s city as part of the signer’s residence address and expressly allows a petition to omit only the signer’s state or zip code. Today, the Court performs an amazing feat of legal legerdemain in statutory construction by removing the word “city” from one section of the Code and inserting it into another. The Court disregards clear, statutory mandates to circumvent the Code and fix what it perceives to be an inconsequential technicality. Because of the

Court's decision, the Legislature's amendments specifically defining what information is and is not necessary are eviscerated. Accordingly, I dissent.

James A. Baker, Justice

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