

# IN THE SUPREME COURT OF TEXAS

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No. 06-0061  
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IN RE JIM SHARP, RELATOR

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ON PETITION FOR WRIT OF MANDAMUS  
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JUSTICE BRISTER delivered the opinion of the Court, in which CHIEF JUSTICE JEFFERSON, JUSTICE HECHT, JUSTICE MEDINA and JUSTICE GREEN joined.

JUSTICE O'NEILL concurred in the decision.

JUSTICE JOHNSON filed a dissenting opinion, in which JUSTICE WAINWRIGHT joined.

JUSTICE WILLETT did not participate in the decision.

In this companion case to *In re Francis*,<sup>1</sup> Jim Sharp, a candidate for the First Court of Appeals, Place 9, filed his application, petition, and filing fee with the Texas Democratic Party. Although a Party official reviewed Sharp's filing and assured him that everything was in order, he was later notified that he would not be certified as a candidate because his application had not been notarized. Because Sharp could have remedied this defect had the Party pointed it out rather than overlooked it, we hold that he is entitled to an opportunity to cure and, if he does, a place on the primary ballot.

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<sup>1</sup> \_\_\_ S.W.3d \_\_\_ (Tex. 2006).

On January 2, 2006, Sharp filed his application to become a candidate for Justice of the First Court of Appeals, Place 9, in the Democratic Party primary. He delivered the application in person to the Texas Democratic Party headquarters in Austin; there he signed it after filling in all the blanks, including those in the required statement “I, \_\_\_\_\_, of \_\_\_\_\_ County, Texas, being a candidate for the office of \_\_\_\_\_, swear that I will support and defend the constitution and laws of the United States and of the State of Texas.”<sup>2</sup> But Sharp’s signature was not notarized. On January 10, 2006, the State Chair of the Texas Democratic Party, Charles E. Soechting, notified Sharp that he would not be certified as a candidate because his application “was not properly acknowledged.”

We need not decide whether Sharp’s application was “signed and sworn to” (as required by the Election Code<sup>3</sup>) when his signed statement to that effect was not notarized. Assuming without deciding that the application was defective, we hold as we did in *Francis* that the Election Code does not mandate that this defect be punished by exclusion from the ballot.

Sharp alleges that the facial defect on his application could have been immediately cured if he had been notified of the defect, and we can see no reasonable basis for disputing that assertion. Moreover, even a cursory review of Sharp’s application should have discovered the alleged defect. Once the Party told Sharp his application was in order, it could not change that decision without giving him the same opportunity to cure as he would have had before the deadline passed.<sup>4</sup>

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<sup>2</sup> See TEX. ELEC. CODE § 141.031(4)(K).

<sup>3</sup> *Id.* § 141.031(2).

<sup>4</sup> \_\_\_ S.W.3d at \_\_\_.

Accordingly, we conditionally grant the writ of mandamus and direct Soechting to allow Sharp the opportunity to cure the facial defect in his application. If Sharp does cure the facial defect, we further direct Soechting to certify him as a candidate for Justice of the First Court of Appeals, Place 9. We are confident Soechting will promptly comply, and our writ will issue only if he does not.

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Scott Brister  
Justice

OPINION DELIVERED: January 27, 2006