

NO. _____

In the Supreme Court of Texas

IN RE STEVEN HOTZE, M.D., HARRIS COUNTY REPUBLICAN PARTY, AND
SHARON HEMPHILL,
Relators,

On Petition for Writ of Mandamus to the Harris County Clerk

ORIGINAL PETITION FOR WRIT OF MANDAMUS

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Counsel for Relators

Identity of Parties and Counsel

1. Relators

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Dr. Hotze is a registered voter in Harris County and will be voting in the general election.

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The Harris County Republican Party is a political party established under the Texas Election Code.

Sharon Hemphill
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Spring, Texas 77379

Sharon Hemphill is a registered voter in Harris County. Sharon Hemphill is the Republican nominee for judge of the 80th Judicial District Court, Harris County, Texas. She is on the ballot in the general election on November 3, 2020. She advanced from the Republican primary on March 3, 2020.

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2. Respondent

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Record References

“App.” refers to the appendix to this petition.

Statement of the Case

Nature of the underlying proceeding: Pursuant to section 273.061 of the Texas Election Code [App. A], this is a petition for a writ of mandamus compelling the Harris County Clerk, Chris Hollins to perform his statutory duties to only send early applications to vote by mail to individuals who request them in accordance with the Texas Election Code. *See* Tex. Elec. Code § 86.001. [App. B].

Respondent: Harris County Clerk Christopher Hollins

Respondent's challenged actions: Under Texas law, voting by mail is lawful only under limited circumstances. *See id.* §§ 82.001-.004. One of those circumstances is disability, meaning “a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood . . . of injuring the voter’s health.” *Id.* § 82.002(a). [App. C]. On Tuesday, August 25, 2020, Respondent announced that his office is sending applications to vote by mail to all registered voters in Harris County regardless of whether the application was requested or the voter has a disability. [App. D]. Respondents actions are contrary to the law. Because statewide voting is fast approaching, and applications are being sent to voters who have not requested them or may not be disabled, mandamus relief is necessary.

Statement of Jurisdiction

Texas Election Code §273.061 gives the Court original jurisdiction to issue a writ of mandamus “to compel the performance of any duty imposed by law in connection with the holding of an election.” The Relators have a compelling reason to request mandamus from this Court in the first instance. *See* Tex. R. App. P. 52.3. Preparations for the upcoming elections have already begun, and Respondent has or will soon begin sending applications to vote by mail to all registered voters in Harris County regardless of whether the voter requested the application or meets the Legislature’s test for eligibility to do so. [App. D]. Each day Respondent is allowed to engage in this unlawful conduct, more applications are submitted, and it becomes more difficult to properly identify voters who meet the statutory definition of “disabled” from those who do not. The damage to election integrity increases with every day that Respondent fails to follow Texas law.

Relators ask the Court to use the power granted by the Election Code “to compel the performance of any duty imposed by law in connection with the holding of an election.” Tex. Elec. Code § 273.061. Respondent is or will be accepting invalid applications to the extent they were not requested by the voter.

When time is of the essence, this Court has not hesitated to exercise its mandamus authority. *See, e.g., In re Woodfill*, 470 S.W.3d 473, 481 (Tex. 2015) (per curiam); *In re Carlisle*, 209 S.W.3d 93, 95-96 (Tex. 2006) (per curiam); *In re Tex.*

Senate, 36 S.W.3d 119, 121 (Tex. 2000); *Sears v. Bayoud*, 786 S.W.2d 248, 250 & n.1 (Tex. 1990). The Court should exercise its original mandamus authority again.

Issue Presented

Whether Respondent is violating the Texas Election Code § 84.012 by sending applications for mail-in ballots to over 2.37 million registered voters in Harris County regardless of whether the individual has requested the application or has a “disability” under Texas Election Code § 82.002(a).

Statement of Facts

Harris County has a rogue clerk who is abusing the application to vote by mail process and compromising the integrity of elections in Harris County. On August 25, 2020, Respondent Hollins tweeted, “Update: our office will be mailing every registered voter an application to vote by mail. To learn more about voting by mail in Harris County, Please visit [HarrisVotes.com/vote by mail](https://www.harrisvotes.com/vote-by-mail).” [App. E]. Respondent Hollins is now sending applications to vote by mail to all 2.47 million registered voters in Harris County, regardless whether the voter requested the application or has a qualifying disability. [Apps. E and F].

To protect the integrity of elections, the Texas Legislature requires almost every voter to vote by personal appearance at a designated polling place, where trained poll workers confirm the voter’s identity before issuing a ballot. In-person voting is the best way to prevent voter fraud and guarantee that every voter is who they claim to be. The Legislature has recognized that a voter may suffer from a “disability”—that is, a “sickness or physical condition”—that “prevents” the voter “from appearing at the polling place on election day.” Tex. Elec. Code § 82.002(a). The Legislature has determined that the disabled voter, is “eligible for early voting by mail.” *Id.* Voters may also be eligible for early voting by mail if they are over 65 years old, *id.* § 82.003, or incarcerated, *id.* § 82.004, or absent from their county, *id.* § 82.001. Mail-in ballots are unavailable to voters outside these limited groups.

This Court recently decided whether a voter's lack of immunity from COVID-19 and concern about contracting it at a polling place is a "disability" under the Texas Election Code. *In re State*, 602 S.W.3d 549 (Tex. 2020). This Court answered no. *Id.*

The Legislature has tasked local election officials like Respondent with enforcing these provisions. Section 86.001 of the Texas Election Code requires county officials to "review each application for a ballot to be voted by mail" and determine whether the applicant "is entitled to vote an early voting ballot by mail." *Id.* § 86.001(a)-(b). If the applicant is not entitled to vote by mail, the county official must reject the application. *Id.* § 86.001(c).

Respondent has decided that the coronavirus pandemic allows him to unilaterally expand the Legislature's determination of how one receives an application to vote by mail and who is potentially eligible to vote by mail. Respondent is using taxpayer dollars to provide applications to vote by mail to all registered voters in Harris County, regardless of whether the application was requested, or the voter has a disability.

The Texas Secretary of State recently addressed the issue in a letter to Respondent Hollins, stating, "At a minimum, sending an application to every registered voter will confuse voters about their ability to vote by mail. Earlier this year and continuing, there have been a number of lawsuits challenging the fact that

Texas law requires a reason to vote by mail. Thus far the challenged law remains the same in spite of these lawsuits. An official application from your office will lead many voters to believe they are allowed to vote by mail, when they do not qualify." [App. G].

Respondent has previously proclaimed that his definition of "disability" trumps the Legislature's, and he has encouraged voters to apply to vote by mail regardless of whether they have any "disability," as the Legislature defined that term. This Court recently rejected this position. *See In re State*, 602 S.W.3d 549 (Tex. 2020) (holding that "[t]he decision to apply to vote by mail based on a disability is the voter's...."). However, despite this Court's ruling in *In re State*, Respondent has chosen to violate the Election Code and send out applications to vote by mail to all registered voters in Harris County regardless of whether the voter requested the application or has a disability. Clearly, this is an attempt by Respondent to circumvent the Court's previous ruling and encourage voters to identify a COVID-19 disability regardless of whether the voter qualifies.

I. History of Voting by Mail

"The history of absentee voting legislation in Texas shows that the Legislature has been both engaged and cautious in allowing voting by mail." *In re State*, 602 S.W.3d 549, 558 (Tex. 2020). Voting before election day was first permitted by statute in Texas in 1917. *See id.* (discussing the history of Texas legislation involving

early voting). A voter who expected to be absent from his county of residence on election day, an “absentee”, could appear beforehand in person before the county clerk and mark his ballot, which the clerk retained to be counted with all the votes cast. Act of May 26, 1917, 35th Leg., 1st C.S., Ch. 40, § 1, 1917 Tex. Gen. Laws 62, 63–64.

II. Texas Law Requires In-Person Voting With Limited Exceptions

Texas law requires most voters to cast their ballots in person, either on Election Day, Tex. Elec. Code Ch. 64, or during an early voting period prescribed by the Legislature, *Id.* § 82.005. The in-person voting requirement represents a deliberate policy chosen by the Legislature to curb fraud and abuse. *See McGee v. Grissom*, 360 S.W.2d 893, 894 (Tex. App.—Fort Worth 1962, no writ) (per curiam).

The potential for fraud and abuse with respect to mail-in ballots persists. In 2005, the Commission on Federal Election Reform found that “[a]bsentee ballots remain the largest source of potential election fraud.” “Blank ballots. . . might get intercepted,” “[c]itizens who vote at home, at nursing homes, at the workplace, or in church are more susceptible to pressure . . . or to intimidation,” and “[v]ote buying schemes are far more difficult to detect when citizens vote by mail.” Building Confidence in U.S. Elections, Report of the Commission on Federal Election Reform, September 2005, p. 46.

In 2018, the Austin American-Statesman reported: “Of the 91 Texas election fraud cases prosecuted from state investigations in the last decade, . . . [o]nly 4 of the 91 involved in-person voter impersonation. Most cases involve abuse of mail-in ballots and of campaigns acting as voter assistants to help people mark their ballots.” Elizabeth Findell, In election season in the Rio Grande Valley, watchful eyes at the polls (Austin American-Statesman June 11, 2018), <https://www.statesman.com/news/20180611/in-election-season-in-rio-grande-valley-watchful-eyes-at-polls>.

The Texas Legislature has long balanced the risk of fraud against the unique hardships faced by certain voters who suffer from physical disabilities. Today, Texas law allows voters to vote by mail under four limited circumstances. Tex. Elec. Code §§ 82.001-.004.

To obtain a mail-in ballot, an eligible voter applies to his home county’s early voting clerk. *Id.* § 86.001. Respondent is the early voting clerk for Harris County. *See id.* §§ 31.043(2), 83.002. The Election Code sets out the early voting clerk’s duties: He must “review each application for a ballot to be voted by mail” and determine whether the applicant “is entitled to vote an early voting ballot by mail.” *Id.* § 86.001(a)-(c). That review leads to one of two outcomes: “If the applicant is entitled to vote an early voting ballot by mail, the clerk shall provide an official ballot to the applicant.” *Id.* § 86.001(b). But “if the applicant is not entitled to vote by mail, the clerk shall reject the application, enter on the application ‘rejected’ and

the reason for and date of rejection, and deliver written notice of the reason for the rejection to the applicant.” *Id.* § 86.001(c) (emphasis added). If the defect is technical (e.g., failure to provide necessary information), the applicant is given an opportunity to cure it. If the voter is not eligible, this notice informs the voter that he may vote only by personal appearance.

III. State Law Requires Voters to Request an Application to Vote by Mail

The Texas Election Code § 84.012 states:

CLERK TO MAIL APPLICATION FORM ON REQUEST. The early voting clerk shall mail without charge an appropriate official application form for an early voting ballot to each applicant requesting the clerk to send the applicant an application form.

Limitations on voting by mail and fraud related to the voting by mail process has been the subject of “intense political debate, in this State and throughout the country.” *In re State*, 602 S.W.3d 549, 550 (Tex. 2020). This Court has not taken “a side in that debate,” and has left the decisions regarding voting by mail “to legislators and others.” *Id.*

The issue before this Court is not whether the application process for voting by mail is a better policy or worse, but what the Legislature has enacted. It is purely a question of law. This Court’s “authority and responsibility are to interpret the statutory text and give effect to the Legislature’s intent.” *Id.*

Argument and Authorities

I. Respondent Refuses to Perform his Ministerial Duties in Compliance with Texas Law

Voting by mail is a privilege granted by the Legislature in rare and narrow circumstances. *McDonald v. Bd. of Election Comm'rs of Chi.*, 394 U.S. 802, 807 (1969). The bare possibility of exposure to a virus is not a “sickness or physical condition.” This Court previously rejected Respondent’s position that fear of exposure to the novel coronavirus—even where the voter is healthy—makes a voter eligible to vote by mail. *In re State*, 602 S.W.3d 549 (Tex. 2020). This Court’s intervention is needed to correct this ongoing misapplication of Texas law.

A. The plain language of Texas Election Code § 84.012 prohibits Respondent from sending applications to all registered voters.

Texas statutes are to be interpreted based on their plain language. *See Leland v. Brandal*, 257 S.W.3d 204, 206 (Tex. 2008). The Court presumes the Legislature included each word for a purpose and that words not included were purposefully omitted. *In re M.N.*, 262 S.W.3d 799, 802 (Tex. 2008). It also presumes the Legislature understood and followed the rules of English grammar. Tex. Gov’t Code § 311.011; *See also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 140 (2012) (describing the presumption as “unshakeable”).

The Texas Election Code § 84.012 states:

CLERK TO MAIL APPLICATION FORM ON REQUEST. The early voting clerk shall mail without charge an appropriate official

application form for an early voting ballot to each applicant requesting the clerk to send the applicant an application form.

The plain language of the statute makes it clear that the clerk shall mail the appropriate official application form for early voting only to “applicant[s] requesting the clerk to send the application form.” *Id.* The Texas Election Code § 84.012 does not allow for the clerk to send applications to all registered voters.

The Legislature’s refusal to add such language is consistent with the Legislature’s desire to curtail fraud associated with voting by mail. If the Legislature had wanted to require the clerk to send the application to vote early to all registered voters, they could have done so. Additionally, if they wanted the clerk to have this option, they could have provided it in the language of the statute. Instead, the Legislature limited the mandate to provide the application only to those who request it.

B. This Court recently prohibited Respondent’s conduct.

This Court recently held in *In re State* that “[t]he decision to apply to vote by mail based on a disability is the voter’s....” *In re State*, 602 S.W.3d 549, 550 (Tex. 2020). Here, Respondent has ignored this Court’s holding in *In re State* and violated Texas Election Code § 84.012 by making the decision to apply to vote by mail for all registered voters in Harris County, regardless of whether the voter requested the application or has a “disability.”

On June 19, 2020, almost a month after this Court issued its opinion in *In re State*, Respondent attempted to further confuse voters regarding COVID-19 as a qualifying disability or “physical condition” making the voter eligible for early voting by mail under the Texas Election Code. Specifically, Respondent issued a press release stating: “The Texas Supreme Court ruled that a lack of immunity to COVID may be considered as a factor in determining whether in-person voting creates a ‘likelihood of injury’ to the voter’s health, but it cannot be the sole factor.” [App. F] In *In re State* this Court made it clear that a lack of immunity to COVID-19 is not a disability-sickness or "physical condition" for being eligible to vote by mail within the meaning of Tex. Elec. Code Ann. § 82.002(a). 602 S.W. 549, 559-60.

In *In re State*, this Court mistakenly believed that mandamus relief was not necessary because it was “confident that the Clerks and all election officials will comply with the law in good faith....” *Id.* at 549. It appears this confidence was misplaced and, therefore, mandamus relief is necessary.

II. Respondent’s unlawful actions are creating widespread confusion and opportunities for voter fraud.

Respondent’s public interpretation of the Election Code has contributed to confusion and disarray amongst Harris County voters. Respondent has issued numerous press releases regarding his interpretation of Texas Election Code § 84.012. Respondent Hollins has politicized the issue and willfully ignores a long

history of voter fraud associated with the ballot by mail process. In a recent television interview Hollins stated, “There are states on both sides of the aisle, red states and blue states, that complete their elections 100 percent by mail, and they haven’t had any allegations of this sort of fraud so this is not something we should be worried about.” KHOU-11, August 14, 2020; <https://www.khou.com/article/news/politics/elections/harris-county-mail-in-ballot-application-houston-texas/285-d844bb57-f804-4291-a5c5-8b039612c4d4>. Hollins then goes on to politicize the process, stating he is concerned about what’s happening with the postal service and calls the possibility of defunding it a shame. *Id.* He goes on to state, “That’s totally unacceptable. And we shouldn’t be disenfranchising the people of Texas, the people of Harris County for the purpose of guaranteeing wins or losses in particular races.” *Id.* In the same interview Hollins ignores this Court’s ruling in *In re State* and tells the public “disability” can also mean being at risk for COVID-19. *Id.* Hollins lets the public know he will not be checking the veracity of the claimed disability, stating, “You are the sole determinant of your health status. You make that judgment, and my office is not qualified and does not have the ability or the will to question your judgment.” *Id.*

In an amicus brief in a recent Travis County lawsuit involving allowing voting by mail for all voters due to the COVID-19 pandemic, Harris County’s former early voting clerk Diane Trautman (along with other Harris County officials) advocated

treating “a healthy person who fears infection if he or she were to appear in person to vote” as disabled under section 82.002(a), and argued that “all voters should be free to vote by mail in the July 14 run-off and the November election.” Like Hollins, Trautman is reported to have declared that “her office would not challenge any voter’s request for a mail ballot”— “effectively opening the [disability] accommodation to anyone.” *See* Zach Despart, Harris County OKs up to \$12M for mail ballots amid coronavirus concerns (Houston Chron. April 28, 2020, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Harris-CountyOKs-up-to-12M-for-mail-ballots-15232775.php>). On April 28, 2020, Trautman asked the Harris County Commissioner’s Court for \$12 million in funding to expand Harris County’s vote-by-mail program—a budget big enough to provide an absentee ballot to every voter in Harris County. A recording of the April 28, 2020, Harris County Commissioner’s Court hearing is available at <https://harriscountytexas.newswagit.com/videos/56616>. Trautman’s budget request is discussed at 3:53:33-5:50-17. Trautman promised to conduct a widespread voter information campaign, or in this case voter misinformation campaign, promoting voting by mail. *See id.* 5:29:45-5:30:55. The Commissioner’s Court granted her request along party lines, i.e., three Democrats including the county judge voted for it while the two Republicans opposed it. *Id.* 5:50:10-17.

It is clear from the statutes and discussion, that the Texas Legislature has designated the mail ballot process to be for a select group and for a select time. As noted by the bill analysis for House Bill 1483 of the 75th legislative session,

“[v]oting by mail has been available to elderly and disabled voters in Texas for decades. It is also available for voters that are out of the country on election day or in jail. There are concerns that voting by mail may lead to certain illegal activities because people can gain access to mail-in ballots.”

The Legislature intended to limit the mail-in ballot process to a specific group of registered voters. Sending out mail ballot applications to all registered voters is likely to cause confusion and certainly prompt non-eligible registered voters to vote by mail.

In 2017, the State Legislature increased the penalties and violations of election laws. As noted in the bill analysis, House Research Organization for Senate Bill 5 for the 85th XX, p 5 -6, “Vote fraud by mail is a problem in Texas, with reports of voters receiving mail ballots they did not request, SB 5 forgeries on mail ballot applications, and ballot harvesting in which someone fraudulently collects and casts others' ballots. Many of these issues have been raised in the recent allegations of irregularities and election fraud in Dallas and Tarrant counties.”

Because most Harris County voters have never requested or received applications to vote by mail, and since the Harris County Clerk has publicly

promoted a vote by mail program for all voters due to the COVID-19 pandemic, the likelihood of voter confusion increases exponentially if all registered voters receive an application to vote by mail.

III. The Relators Have No Other Adequate Remedy, and Time Is of the Essence

The Relators seek a writ of mandamus because they have no other means of ensuring that Respondent complies with Texas law in the fast-approaching elections. Despite previous guidance from this Court, Respondent has persisted in his mistaken application of the Election Code. As described above, Respondent's mistake of law is particularly harmful because it misleads voters who are not eligible to vote by mail into believing they qualify. By providing applications to vote by mail to those who have not requested the application, and to those who do not qualify, Respondent creates confusion amongst voters who may send in the application believing they qualify to vote by mail. Additionally, Respondent undermines election integrity by creating an atmosphere that is ripe for voter fraud.

In previous litigation involving COVID-19 and voting by mail, clerks have recognized that they do not investigate the applicants' veracity, however, that is no justification for willful blindness. If the Respondent knows the applicant is ineligible to vote by mail, his duty is to reject the application. Tex. Elec. Code § 86.001(c); *see id.* § 86.008(a). However, in this instance the Respondent, who does not check the veracity of the applicant, is intentionally sending an application to individuals he

knows do not qualify for the application. If Respondent is allowed to persist in issuing mail-in ballots to ineligible voters, then there will be no practical way to restore the integrity of the upcoming elections.

Prayer

For the reasons detailed above, Relators Steven F. Hotze, M.D. and Sharon Hemphill, respectfully request this Court issue a writ of mandamus compelling Respondent to perform his duties as the early voting clerk in Harris County in accordance with law. Relators respectfully request the mandamus relief which include the following:

1. Respondent immediately cease sending applications to vote by mail to any registered voter who has not sent in the initial request for an application to vote by mail.
2. Respondent refrain from processing any application to vote by mail received as a result of Respondent mailing an application not initially requested by the voter.
3. Respondent refrain from counting ballots received as a result of Respondent unlawfully sending an application to vote by mail that was not initially requested by the voter.

Respectfully submitted,

/s/ Jared R. Woodfill

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CERTIFICATE OF SERVICE

By affixing my signature above, I , Jared Woodfill, hereby certify that a true and correct copy of the above Original Petition for Writ of Mandamus has been delivered via electronic mail to the parties below on the 30th day of August, 2020.

/s/Jared Woodfill

Jared Woodfill

TRAP 52.3(J) CERTIFICATION

Pursuant to TRAP 52.3(j), the undersigned certifies that he has reviewed the above Petition for Writ of Mandamus and concluded that every factual statement in the petition is supported by competent evidence included in the appendix and or the record.

/s/ Jared Woodfill

Jared Woodfill

CERTIFICATE OF COMPLIANCE

I, Jared Woodfill, Counsel for Relators certify that this document was generated by a computer using Microsoft Word which indicates that the word count of this document is 3,298. The typeset is Times New Roman 14 pt. for text.

/s/ Jared Woodfill

Jared Woodfill

APPENDIX

APP. A



User Name: Jared Woodfill

Date and Time: Saturday, August 29, 2020 10:02:00 PM CDT

Job Number: 124308582

Document (1)

1. [Tex. Elec. Code § 273.061](#)

Client/Matter: -None-

Search Terms: Texas Election Code 273.061

Search Type: Natural Language

Tex. Elec. Code § 273.061

This document is current through the 2019 Regular Session, 86th Legislature, and 2019 election results.

Texas Statutes & Codes Annotated by LexisNexis® > Election Code > Title 16 Miscellaneous Provisions (Chs. 271 — 279) > Chapter 273 Criminal Investigation and Other Enforcement Proceedings (Subchs. A — E) > Subchapter D Mandamus By Appellate Court (§§ 273.061 — 273.080)

Sec. 273.061. Jurisdiction.

The supreme court or a court of appeals may issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election or a political party convention, regardless of whether the person responsible for performing the duty is a public officer.

History

Enacted by Acts 1985, 69th Leg., ch. 211 (S.B. 616), § 1, effective January 1, 1986.

Annotations

LexisNexis® Notes

Notes

STATUTORY NOTES

Revisor's Notes.

The revised law clarifies the persons against whom a writ of mandamus may be issued by the appellate courts to compel performance of a duty regarding the holding of elections or party conventions.

Case Notes

Administrative Law: Judicial Review: Remedies: Mandamus

Civil Procedure: Justiciability: Mootness

Civil Procedure: Justiciability: Standing: General Overview

Civil Procedure: Jurisdiction: Subject Matter Jurisdiction: Jurisdiction Over Actions

Civil Procedure: Remedies: Writs: General Overview

Civil Procedure: Remedies: Writs: Common Law Writs: Mandamus

Civil Procedure: Remedies: Writs: Common Law Writs: Quo Warranto

Civil Procedure: Appeals: Appellate Jurisdiction: General Overview

Education Law: Administration & Operation: Boards of Elementary & Secondary Schools: General Overview

Governments: Courts: Authority to Adjudicate

Governments: Courts: Judges

Governments: Legislation: Initiative & Referendum

Governments: Local Governments: Boundaries

Governments: Local Governments: Elections

Governments: Local Governments: Employees & Officials

Governments: Local Governments: Ordinances & Regulations

Governments: State & Territorial Governments: Elections

Governments: State & Territorial Governments: Employees & Officials

Real Property Law: Zoning & Land Use: Initiative & Referendum

Administrative Law: Judicial Review: Remedies: Mandamus

Record did not show that relator demanded that the city clerk declare real party in interest ineligible for a city council position and that the city clerk refused to comply. Based on the record before it, the appellate court could not conclude that relator was entitled to mandamus relief. [*In re Osborn, No. 03-13-00272-CV, 2013 Tex. App. LEXIS 5370 \(Tex. App. Austin Apr. 30, 2013\).*](#)

Civil Procedure: Justiciability: Mootness

District court judge election contest was moot, and an appellate court thus lacked subject-matter jurisdiction to grant the relief sought, where appellants intentionally delayed filing their appeal and failed to request expedited relief, and a ruling on the merits of the appeal would interfere with the orderly process of the election despite the appellate court's effort to expedite its decision by ordering an expedited

briefing schedule; the printing of the ballots for the general election had begun and the mailing of ballots to overseas and military absentee voters was imminent. [*Lee v. Dallas Cty. Democratic Party*, No. 05-18-00715-CV, 2018 Tex. App. LEXIS 7736 \(Tex. App. Dallas Sept. 20, 2018\)](#).

Civil Procedure: Justiciability: Standing: General Overview

Although relator asked the appellate court to compel the city clerk to declare relator's opponent ineligible to serve on the city council due to the opponent's residency ineligibility, any standing relator had to challenge the candidacy of his opponent ceased to exist once the opponent could no longer be removed from the ballot. At that point, relator's interest in having the opponent declared ineligible was simply the same as that shared by the general public. [*In re Osborn*, No. 03-13-00314-CV, 2013 Tex. App. LEXIS 5916 \(Tex. App. Austin May 15, 2013\)](#).

Political activist lacked standing to seek to compel a political party county chair under Tex. Elec. Code Ann. §§ [161.009](#), [273.061](#) to remove a candidate from the ballot because no direct injury was shown by his statement under *Tex. R. App. P. 52.3(e)* that he was involved in party activities and financially supported another candidate; Tex. Elec. Code Ann. § [273.081](#) did not confer standing on the basis of being a voter, and the candidate he supported was of a different political party. [*In re Baker*, 404 S.W.3d 575, 2010 Tex. App. LEXIS 1426 \(Tex. App. Houston 1st Dist. Feb. 25, 2010, no pet.\)](#).

Supporters of an amendment to a city charter had standing to seek mandamus relief to compel the mayor to certify the amendment to the Texas Secretary of State and to compel the city council to enter an order in the city's records declaring that the amendment had been adopted; the supporters had a particular interest in seeking to have a proposition that they sponsored enacted as law once it was adopted by the citizens of the city in a referendum election. [*In re Robinson*, 175 S.W.3d 824, 2005 Tex. App. LEXIS 2900 \(Tex. App. Houston 1st Dist. Apr. 14, 2005, no pet.\)](#).

Civil Procedure: Jurisdiction: Subject Matter Jurisdiction: Jurisdiction Over Actions

Trial court did not have subject matter jurisdiction over appellant's mandamus claim because the Legislature conferred subject matter jurisdiction to the state supreme court and courts of appeals. [*Nelson v. Head*, No. 13-18-00484-CV, 2019 Tex. App. LEXIS 10197 \(Tex. App. Corpus Christi Nov. 26, 2019\)](#).

Civil Procedure: Remedies: Writs: General Overview

Mandamus relief was appropriate to compel a mayor to certify to the Texas Secretary of State three amendments approved by the voters of the municipality and to compel the city council to enter an order in the city's records declaring that the amendments had been adopted; the duty to certify and make effective laws that have been validly adopted by the voters is a necessary component of the election process. [*In re Robinson*, 175 S.W.3d 824, 2005 Tex. App. LEXIS 2900 \(Tex. App. Houston 1st Dist. Apr. 14, 2005, no pet.\)](#).

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interest in seeking to have a proposition that they sponsored enacted as law once it was adopted by the citizens of the city in a referendum election. [*In re Robinson*, 175 S.W.3d 824, 2005 Tex. App. LEXIS 2900 \(Tex. App. Houston 1st Dist. Apr. 14, 2005, no pet.\)](#).

When a petition for a proposed charter amendment was presented, the city secretary, based on the plain language of Tex. Loc. Gov't Code Ann. § [9.004](#), had a ministerial duty to verify that a sufficient number of qualified voters signed the petition; § 9.004 does not give her the discretion of determining whether the petition violates a city charter, the laws of Texas, or the Texas Constitution. Thus, the citizens were entitled to mandamus relief compelling the city secretary to certify the petition to the governing body of the city upon such verification. [*In re Roof*, 130 S.W.3d 414, 2004 Tex. App. LEXIS 2179 \(Tex. App. Houston 14th Dist. Mar. 5, 2004, no pet.\)](#).

Balch Springs, Tex., City Charter art. VI, 6.06 clearly did not allow the city council to reconsider recall petitions that were declared sufficient by the city secretary; therefore, the council violated a ministerial duty under the city charter to call a recall election as to four of its members, and relators, who were residents and registered voters of Balch Springs, were entitled to a writ of mandamus directing the council members to carry out their duties. [*In re Porter*, 126 S.W.3d 708, 2004 Tex. App. LEXIS 1189 \(Tex. App. Dallas Feb. 9, 2004, no pet.\)](#).

District court had no authority to appoint a visiting judge to conduct a hearing on the validity of an election contestant's application for a place on the ballot; thus, the appellate court refused the contestant's writ petition and refused to issue a mandamus to compel the judge to conduct an expedited hearing because the appellate court could only compel performance of a duty imposed by law. [*Bejarano v. Moody*, 901 S.W.2d 570, 1995 Tex. App. LEXIS 810 \(Tex. App. El Paso Apr. 13, 1995, no writ\)](#).

Supreme court may issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election regardless of whether the person responsible for performing the duty is a public officer pursuant to Tex. Elec. Code Ann. § [273.061](#). [*Walles v. McDonald*, 889 S.W.2d 236, 1994 Tex. LEXIS 35 \(Tex. 1994\)](#).

In a case where relator party precinct chairman asked leave under Tex. R. Civ. P. 383 to file a writ of mandamus pursuant to former Tex. Rev. Civ. Stat. Ann. art. 1735a to compel respondent county party chairman to call a meeting of the county party executive committee to obtain approval of the committee for monies spent from the primary fund and other funds, the court denied leave to file because it lacked jurisdiction under former art. 1735a; the payment and the amount of expenditures necessary for holding a primary election were within the authority of the secretary of state, thus, the county party chairman had no duty to obtain a vote of 51 percent of the executive committee to approve the expenditures. [*Slagle v. Kessler*, 566 S.W.2d 330, 1978 Tex. App. LEXIS 3204 \(Tex. Civ. App. Dallas Apr. 25, 1978, no writ\)](#).

Clear language of former Tex. Rev. Civ. Stat. Ann. art. 1735a (now Tex. Elec. Code Ann. §§ [273.061](#)) and [273.062](#) and Tex. Gov't Code Ann. § [22.221](#)) dictates a writ of mandamus will issue only upon a showing that an election officer has failed to discharge a duty imposed by statute. [*Nelson v. Welch*, 499 S.W.2d 927, 1973 Tex. App. LEXIS 2616 \(Tex. Civ. App. Houston 14th Dist. Sept. 19, 1973, no writ\)](#).

The appellate court did not have authority under former Tex. Rev. Civ. Stat. Ann. art. 1735a (now Tex. Elec. Code Ann. §§ [273.061](#) and [273.062](#), and Tex. Gov't Code Ann. § [22.221](#)) to grant a writ of mandamus to compel election officials to perform a duty not in accordance with the laws of the state;

respondents did perform their duties in accordance with former Tex. Elect. Code art. 13.09(b), despite relators' claim that certain portions of the statute violated their constitutional rights and should have been held unconstitutional and void. [*Lydick v. Chairman of Dallas County Republican Executive Committee*, 456 S.W.2d 740, 1970 Tex. App. LEXIS 2036 \(Tex. Civ. App. Dallas June 5, 1970, no writ\).](#)

The appellate court did not have authority under former Tex. Rev. Civ. Stat. Ann. art. 1735a (recodified in part at Tex. Educ. Code Ann. § 273.061) to grant a writ of mandamus to compel election officials to perform a duty not in accordance with the laws of the state since respondents did perform their duties in accordance with former Tex. Elect. Code § 13.09(b) (now recodified in part at Tex. Elect. Code Ann. § [52.068](#)), despite relators' claim that certain portions of the statute violated their constitutional rights and should have been held unconstitutional and void. [*Lydick v. Chairman of Dallas County Republican Executive Committee*, 456 S.W.2d 740, 1970 Tex. App. LEXIS 2036 \(Tex. Civ. App. Dallas June 5, 1970, no writ\).](#)

Civil Procedure: Remedies: Writs: Common Law Writs: Mandamus

Requirements for the Office of President did not exclude felons, but felony convictions were a relevant qualification for Texas state elective offices; consequently, there was no justiciable controversy between the Secretary of State and the candidate with regard to the proper form whose promulgation the candidate sought through mandamus. [*In re Judd*, No. 03-15-00595-CV, 2015 Tex. App. LEXIS 10808 \(Tex. App. Austin Oct. 21, 2015\).](#)

Mandamus relief was not granted in a case where a prospective candidate sought certification as a write-in candidate in a general election after a judge denied such due to residency issues because the mandamus petition ignored important aspects of the statutorily-prescribed election schedule; by waiting until September 22 to seek relief, the candidate allowed a number of election deadlines to pass. Moreover, the petition required the appellate court to engage in improper fact-finding. [*In re Garza*, No. 07-14-00347-CV, 2014 Tex. App. LEXIS 11370 \(Tex. App. Amarillo Oct. 14, 2014\).](#)

Mandamus relief was warranted in an election dispute because the Hearne, Tex., Home Rule Charter permitted a city council only to order and hold a recall election on November 4, 2014; the election should not have been further delayed by holding it in May 2015. The pendency of a declaratory-judgment counterclaim had no bearing on the city council's ministerial duty under the city charter to order the recall election and to fix a date for holding it. [*In re Johnson*, No. 10-14-00341-CV, 2015 Tex. App. LEXIS 944 \(Tex. App. Waco Feb. 2, 2015\).](#)

City Secretary did not have discretion under a city charter to refuse to certify a petition for a recall election based on insufficiency of the grounds for recall alleged in the petition; because the number of signatures on the recall petition was sufficient, mandamus was appropriate to compel the City Secretary to certify the petition. [*In re Lee*, 412 S.W.3d 23, 2013 Tex. App. LEXIS 2044 \(Tex. App. Austin Feb. 28, 2013, no pet.\).](#)

If the public record established that an applicant was ineligible for office for purposes of Tex. Elec. Code Ann. § [145.003\(f\)](#) and Tex. Const. art. V, § [7](#), the chairman had a duty to declare such ineligibility, and mandamus relief was proper under Tex. Elec. Code Ann. § [273.061](#). [*In re Sanchez*, 366 S.W.3d 255, 2012 Tex. App. LEXIS 1940 \(Tex. App. San Antonio Mar. 9, 2012, no pet.\).](#)

Certified and sworn letter from the Texas Supreme Court clerk stated that the applicant was ineligible to practice law from November 21, 2008 until November 5, 2009 when she lifted the non-practicing attorney exemption from mandatory continuing legal education requirements, and it was not disputed that the exemption was not lifted until at least November 3, 2009, such that her ineligibility was established conclusively, for purposes of Tex. Elec. Code Ann. § [145.003\(f\)](#) and Tex. Const. art. V, § [7](#); the documents she provided from the State Bar did not rebut the Supreme Court public record, and thus the court granted conditional mandamus relief under Tex. Elec. Code Ann. § [273.061](#). *In re Sanchez*, [366 S.W.3d 255](#), [2012 Tex. App. LEXIS 1940](#) (Tex. App. San Antonio Mar. 9, 2012, no pet.).

Because a change from at-large districts to single-member districts did not affect a city's recall procedures, the mayor and council members had a ministerial duty under the charter, enforceable by mandamus, to call and hold recall elections for three council members after valid petitions were presented. *In re Stewart*, No. 09-11-00467-CV, [2011 Tex. App. LEXIS 7060](#) (Tex. App. Beaumont Aug. 29, 2011).

Mandamus relief was unavailable under Tex. Elec. Code Ann. § [273.061](#), Tex. Const. art. V, and Tex. Gov't Code Ann. § [22.221](#) to remove a Texas Senate candidate from the ballot because there was no evidence that documents purporting to show his nonresident status under Tex. Const. art. III, § [6](#) and Tex. Elec. Code Ann. § [1.015\(a\)](#) had been presented under Tex. Elec. Code Ann. § [145.003\(g\)](#) to the appropriate authority. *In re Cullar*, [320 S.W.3d 560](#), [2010 Tex. App. LEXIS 6725](#) (Tex. App. Dallas Aug. 19, 2010, no pet.).

Proponents of a local initiative measure who sought to incorporate an area within the city's extraterritorial jurisdiction were not entitled to mandamus relief under Tex. Elec. Code Ann. § [273.061](#) when the city refused to certify their petition because Tex. Loc. Gov't Code Ann. § [42.041](#) has withdrawn incorporation from the field in which the initiatory process is operative. *In re Bouse*, [324 S.W.3d 240](#), [2010 Tex. App. LEXIS 6775](#) (Tex. App. Waco Aug. 17, 2010, no pet.).

Because a city had no right under Tex. Loc. Gov't Code Ann. § [212.003\(a\)\(1\)](#) to legislate land use in its extraterritorial jurisdiction, an agreement pursuant to Tex. Loc. Gov't Code Ann. § [212.172\(b\)\(8\)](#) as to the use of land in the city's extraterritorial jurisdiction was not legislative and was not subject to the referendum process; thus, mandamus relief was not available under Tex. Elec. Code Ann. § [273.061](#) to compel the city council to submit the matter to the voters. *In re Hollis*, No. 03-09-00589-CV, [2009 Tex. App. LEXIS 9888](#) (Tex. App. Austin Nov. 19, 2009).

Claimant was not entitled to mandamus relief, because the claimant did not have standing under Tex. Elec. Code Ann. § [273.061](#) necessary to maintain the instant original proceeding, when the relief the claimant sought, the implementation and enforcement of proposition 2, went beyond the election process, as the claimant sought to compel respondents to perform duties that were not in connection with the holding of an election. *In re Hotze*, No. 14-08-00421-CV, [2008 Tex. App. LEXIS 9897](#) (Tex. App. Houston 14th Dist. July 10, 2008).

Appellate court had jurisdiction to hear a mandamus proceeding relating to a delegate's request to compel a county chair to produce copies of precinct minutes under Tex. Elec. Code Ann. § [273.061](#), Tex. Elec. Code Ann. § [161.009](#); however, the scope of the appellate court's jurisdiction was limited because the judiciary had no power to control the electoral process or matters referable to the internal issues of political parties. *In re Cahill*, [267 S.W.3d 104](#), [2008 Tex. App. LEXIS 4097](#) (Tex. App. Corpus Christi June 3, 2008, no pet.).

Petition for a writ of mandamus was denied because an objector had no standing to bring a challenge to a city council's annexation in a quo warranto proceeding under Tex. Civ. Prac. & Rem. Code Ann. § [66.002\(c\)](#); further, a city council did not fail in any duties since annexation ordinances were not subject to the referendum process in El Campo, Tex., City Charter § 7.03. *In re Ryan, No. 13-08-00179-CV, 2008 Tex. App. LEXIS 2956 (Tex. App. Corpus Christi Apr. 18, 2008).*

Writ of mandamus was conditionally granted, under Tex. Elec. Code Ann. § [161.009](#) and Tex. Elec. Code Ann. § [273.061](#), and a county party chair was directed to certify an applicant as a candidate for state representative, and take all necessary steps to include her name on the Democratic Party primary ballot, because the court could not locate, and the chair did not identify, any Texas Election Code provision that authorized a party chair to refuse to certify a candidate's name for placement on the ballot on the basis of the candidate's failure to designate a campaign treasurer with the Texas Ethics Commission, and the Election Code did not authorize a party chair to insert additional certification requirements beyond those prescribed in the Election Code. *In re Torrey, 244 S.W.3d 849, 2008 Tex. LEXIS 67 (Tex. 2008).*

Applicant was not entitled to mandamus relief under Tex. Elec. Code Ann. § [273.061](#) from a party chairperson's rejection of his application and petition for a place on a county's general primary election ballot because no ministerial duty was violated; the application did not comply with Tex. Elec. Code Ann. § [141.031](#) because it misidentified the precinct, its rejection was mandatory under Tex. Elec. Code Ann. § [141.032\(e\)](#), and the timeliness of its review was a fact issue that could not be adjudicated in a mandamus proceeding. *In re Armendariz, 245 S.W.3d 92, 2008 Tex. App. LEXIS 526 (Tex. App. El Paso Jan. 24, 2008, no pet.).*

Candidate for the office of El Paso County Commissioner is required to both reside within and be a registered voter in the corresponding precinct in order to satisfy the statutory eligibility requirements; the phrase "in the territory from which the office is elected" necessarily refers to Precinct 3, rather than all of El Paso County, in the context of a county commissioner from Precinct 3. Therefore, mandamus relief was conditionally granted because a second candidate for the office of county commissioner was not eligible; he was not a registered voter in the precinct at issue on the filing date since his registration was not effective until the 30th day after he submitted his address change. *In re Perez, 508 S.W.3d 500, 2016 Tex. App. LEXIS 208 (Tex. App. El Paso Jan. 11, 2016, no pet.).*

In an election dispute by opposing political parties with respect to a particular candidate's applications for a place on both parties' primary ballots, relief other than mandamus that was requested by the parties lacked merit because the prevention of a future action related to candidacy was not within the court's mandamus jurisdiction. *In re Meyer, No. 05-16-00063-CV, 2016 Tex. App. LEXIS 1008 (Tex. App. Dallas Feb. 1, 2016).*

Opposing political parties were not entitled to writs of mandamus under Tex. [Elec. Code Ann. § 273.061](#) (2010), wherein each sought to preclude a particular candidate's applications for a place on the other party's primary ballots, as the requests were moot because the balloting materials for voting by mail were already printed and mailed. *In re Meyer, No. 05-16-00063-CV, 2016 Tex. App. LEXIS 1008 (Tex. App. Dallas Feb. 1, 2016).*

Political party's petition for writ of mandamus directing the trial court to vacate a temporary injunction was granted as a final decision could not be reviewed by an appellate court in advance of statutory

election deadlines signaling the start of the election process. [*In re Dallas Cty. Republican Party, No. 05-18-00979-CV, 2018 Tex. App. LEXIS 6986 \(Tex. App. Dallas Aug. 29, 2018\).*](#)

Mandamus relief was appropriate, because the party co-chairs had a statutory duty to declare the real parties in interest ineligible, the party co-chairs refused to perform their statutory duty, and realtors lacked an adequate remedy at law due to the deadline for removing ineligible candidates from the November 2020 ballot. [*In re Davis, No. 03-20-00414-CV, 2020 Tex. App. LEXIS 6663 \(Tex. App. Austin Aug. 19, 2020\).*](#)

Civil Procedure: Remedies: Writs: Common Law Writs: Quo Warranto

Petition for a writ of mandamus was denied because an objector had no standing to bring a challenge to a city council's annexation in a quo warranto proceeding under Tex. Civ. Prac. & Rem. Code Ann. § [66.002\(c\)](#); further, a city council did not fail in any duties since annexation ordinances were not subject to the referendum process in El Campo, Tex., City Charter § 7.03. [*In re Ryan, No. 13-08-00179-CV, 2008 Tex. App. LEXIS 2956 \(Tex. App. Corpus Christi Apr. 18, 2008\).*](#)

Civil Procedure: Appeals: Appellate Jurisdiction: General Overview

Appellate court had jurisdiction to hear a mandamus proceeding relating to a delegate's request to compel a county chair to produce copies of precinct minutes under Tex. Elec. Code Ann. § [273.061](#), Tex. Elec. Code Ann. § [161.009](#); however, the scope of the appellate court's jurisdiction was limited because the judiciary had no power to control the electoral process or matters referable to the internal issues of political parties. [*In re Cahill, 267 S.W.3d 104, 2008 Tex. App. LEXIS 4097 \(Tex. App. Corpus Christi June 3, 2008, no pet.\).*](#)

Education Law: Administration & Operation: Boards of Elementary & Secondary Schools: General Overview

Where a member of a school board did not receive compensation for her services in accordance with Tex. Educ. Code Ann. § [11.061\(d\)](#) and did not hold a lucrative office within the meaning of Tex. Const. art. III, § [19](#), she was entitled to a writ of mandamus pursuant to Tex. Elec. Code Ann. § [273.061](#) to require party officials to certify her as a state legislative candidate in a primary election. [*In re Carlisle, 209 S.W.3d 93, 2006 Tex. LEXIS 94 \(Tex. 2006\).*](#)

Governments: Courts: Authority to Adjudicate

The trial court exceeded its statutory subject-matter jurisdiction by granting non-injunctive relief in favor of the Democratic party candidate that required a particular Republican party candidate to be certified as ineligible for the county judge election, because pursuant to Tex. Elec. Code Ann. § [273.061](#), exclusive jurisdiction was vested in the courts of appeals and the supreme court. [*Pollard v. Mosier, No. 01-98-00173-CV, 1998 Tex. App. LEXIS 1162 \(Tex. App. Houston 1st Dist. Feb. 18, 1998\).*](#)

Governments: Courts: Judges

Candidate's petition supporting her application to be on the ballot for a justice of the peace election primary, although initially accepted pursuant to Tex. Elec. Code Ann. § [141.032\(a\)](#), was properly rejected after further review under Tex. Elec. Code Ann. §§ [141.032\(d\)](#), [141.065\(b\)](#), because the candidate failed to provide at least 250 signatures of registered voters within her precinct as required by Tex. Elec. Code Ann. § [172.021\(e\)](#). *In re Wilson*, 421 S.W.3d 686, 2014 Tex. App. LEXIS 441 (Tex. App. Fort Worth Jan. 15, 2014, no pet.).

Supreme court may issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election regardless of whether the person responsible for performing the duty is a public officer pursuant to Tex. Elec. Code Ann. § [273.061](#). [Walles v. McDonald](#), 889 S.W.2d 236, 1994 Tex. LEXIS 35 (Tex. 1994).

Judicial candidate was not entitled to a writ of mandamus challenging the placement of his opponent on the ballot pursuant to a petition under Tex. [Elec. Code Ann. §§ 141.062, 172.021\(e\)](#), because the petition's circulator verified the signatories' registration status, and the party director was entitled to treat the signatures as valid. [In re Piki](#), No. 06-18-00003-CV, 2018 Tex. App. LEXIS 392 (Tex. App. Texarkana Jan. 12, 2018).

Governments: Legislation: Initiative & Referendum

Although a referendum vote can be held on a municipality's initial adoption of zoning regulations, voters cannot repeal individual zoning ordinances; the general definition of zoning regulations as including amendments does not apply in this context. Thus, mandamus relief was not available to compel the application of a city charter's referendum provisions to a proposed repeal of zoning amendments passed by the city council. [In re Arnold](#), 2014 Tex. App. LEXIS 8172 (July 29, 2014).

Proponents of a local initiative measure who sought to incorporate an area within the city's extraterritorial jurisdiction were not entitled to mandamus relief under Tex. Elec. Code Ann. § [273.061](#) when the city refused to certify their petition because Tex. Loc. Gov't Code Ann. § [42.041](#) has withdrawn incorporation from the field in which the initiatory process is operative. [In re Bouse](#), 324 S.W.3d 240, 2010 Tex. App. LEXIS 6775 (Tex. App. Waco Aug. 17, 2010, no pet.).

When a petition for a proposed charter amendment was presented, the city secretary, based on the plain language of Tex. Loc. Gov't Code Ann. § [9.004](#), had a ministerial duty to verify that a sufficient number of qualified voters signed the petition; § 9.004 does not give her the discretion of determining whether the petition violates a city charter, the laws of Texas, or the Texas Constitution. Thus, the citizens were entitled to mandamus relief compelling the city secretary to certify the petition to the governing body of the city upon such verification. [In re Roof](#), 130 S.W.3d 414, 2004 Tex. App. LEXIS 2179 (Tex. App. Houston 14th Dist. Mar. 5, 2004, no pet.).

City's ballot language for a proposition to adopt a citizen-initiated ordinance was misleading because it suggested that the ordinance necessitated additional election costs, which it did not, and because it omitted the ordinance's emphasis on prioritization of hotel tax revenue funds towards cultural arts, historic preservation, and tourism. [*In re Linder, No. 03-19-00553-CV, 2019 Tex. App. LEXIS 7584 \(Tex. App. Austin Aug. 22, 2019\).*](#)

Governments: Local Governments: Boundaries

County judge had to order an incorporation election where there was proof that the area contained between 201 and 4,999 inhabitants, and as long as the area was not part of another city or town, boundary questions were not for the county judge. The court granted a writ of mandamus and ordered the county judge to call the incorporation election. [*In re Fitzgerald, 140 S.W.3d 380, 2004 Tex. LEXIS 698 \(Tex. 2004\).*](#)

Governments: Local Governments: Elections

District court judge election contest was moot, and an appellate court thus lacked subject-matter jurisdiction to grant the relief sought, where appellants intentionally delayed filing their appeal and failed to request expedited relief, and a ruling on the merits of the appeal would interfere with the orderly process of the election despite the appellate court's effort to expedite its decision by ordering an expedited briefing schedule; the printing of the ballots for the general election had begun and the mailing of ballots to overseas and military absentee voters was imminent. [*Lee v. Dallas Cty. Democratic Party, No. 05-18-00715-CV, 2018 Tex. App. LEXIS 7736 \(Tex. App. Dallas Sept. 20, 2018\).*](#)

Trial court did not have subject matter jurisdiction over appellant's mandamus claim because the Legislature conferred subject matter jurisdiction to the state supreme court and courts of appeals. [*Nelson v. Head, No. 13-18-00484-CV, 2019 Tex. App. LEXIS 10197 \(Tex. App. Corpus Christi Nov. 26, 2019\).*](#)

Mandamus relief was not granted in a case where a prospective candidate sought certification as a write-in candidate in a general election after a judge denied such due to residency issues because the mandamus petition ignored important aspects of the statutorily-prescribed election schedule; by waiting until September 22 to seek relief, the candidate allowed a number of election deadlines to pass. Moreover, the petition required the appellate court to engage in improper fact-finding. [*In re Garza, No. 07-14-00347-CV, 2014 Tex. App. LEXIS 11370 \(Tex. App. Amarillo Oct. 14, 2014\).*](#)

Mandamus relief was warranted in an election dispute because the Hearne, Tex., Home Rule Charter permitted a city council only to order and hold a recall election on November 4, 2014; the election should not have been further delayed by holding it in May 2015. The pendency of a declaratory-judgment counterclaim had no bearing on the city council's ministerial duty under the city charter to order the recall election and to fix a date for holding it. [*In re Johnson, No. 10-14-00341-CV, 2015 Tex. App. LEXIS 944 \(Tex. App. Waco Feb. 2, 2015\).*](#)

Candidate for the office of El Paso County Commissioner is required to both reside within and be a registered voter in the corresponding precinct in order to satisfy the statutory eligibility requirements; the phrase "in the territory from which the office is elected" necessarily refers to Precinct 3, rather than all of

El Paso County, in the context of a county commissioner from Precinct 3. Therefore, mandamus relief was conditionally granted because a second candidate for the office of county commissioner was not eligible; he was not a registered voter in the precinct at issue on the filing date since his registration was not effective until the 30th day after he submitted his address change. [*In re Perez*, 508 S.W.3d 500, 2016 Tex. App. LEXIS 208 \(Tex. App. El Paso Jan. 11, 2016, no pet.\)](#).

In an election dispute by opposing political parties with respect to a particular candidate's applications for a place on both parties' primary ballots, relief other than mandamus that was requested by the parties lacked merit because the prevention of a future action related to candidacy was not within the court's mandamus jurisdiction. [*In re Meyer*, No. 05-16-00063-CV, 2016 Tex. App. LEXIS 1008 \(Tex. App. Dallas Feb. 1, 2016\)](#).

Opposing political parties were not entitled to writs of mandamus under Tex. [*Elec. Code Ann. § 273.061*](#) (2010), wherein each sought to preclude a particular candidate's applications for a place on the other party's primary ballots, as the requests were moot because the balloting materials for voting by mail were already printed and mailed. [*In re Meyer*, No. 05-16-00063-CV, 2016 Tex. App. LEXIS 1008 \(Tex. App. Dallas Feb. 1, 2016\)](#).

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Although a referendum vote can be held on a municipality's initial adoption of zoning regulations, voters cannot repeal individual zoning ordinances; the general definition of zoning regulations as including amendments does not apply in this context. Thus, mandamus relief was not available to compel the application of a city charter's referendum provisions to a proposed repeal of zoning amendments passed by the city council. [*In re Arnold*, 2014 Tex. App. LEXIS 8172 \(July 29, 2014\)](#).

Candidate's petition supporting her application to be on the ballot for a justice of the peace election primary, although initially accepted pursuant to Tex. Elec. Code Ann. § [*141.032\(a\)*](#), was properly rejected after further review under Tex. Elec. Code Ann. §§ [*141.032\(d\)*](#), [*141.065\(b\)*](#), because the candidate failed to provide at least 250 signatures of registered voters within her precinct as required by Tex. Elec. Code Ann. § [*172.021\(e\)*](#). [*In re Wilson*, 421 S.W.3d 686, 2014 Tex. App. LEXIS 441 \(Tex. App. Fort Worth Jan. 15, 2014, no pet.\)](#).

City Secretary did not have discretion under a city charter to refuse to certify a petition for a recall election based on insufficiency of the grounds for recall alleged in the petition; because the number of signatures on the recall petition was sufficient, mandamus was appropriate to compel the City Secretary to certify the petition. [*In re Lee*, 412 S.W.3d 23, 2013 Tex. App. LEXIS 2044 \(Tex. App. Austin Feb. 28, 2013, no pet.\)](#).

Because a change from at-large districts to single-member districts did not affect a city's recall procedures, the mayor and council members had a ministerial duty under the charter, enforceable by mandamus, to call and hold recall elections for three council members after valid petitions were presented. [*In re Stewart*, No. 09-11-00467-CV, 2011 Tex. App. LEXIS 7060 \(Tex. App. Beaumont Aug. 29, 2011\)](#).

Political activist lacked standing to seek to compel a political party county chair under Tex. Elec. Code Ann. §§ [161.009](#), [273.061](#) to remove a candidate from the ballot because no direct injury was shown by his statement under *Tex. R. App. P. 52.3(e)* that he was involved in party activities and financially supported another candidate; Tex. Elec. Code Ann. § [273.081](#) did not confer standing on the basis of being a voter, and the candidate he supported was of a different political party. *In re Baker*, [404 S.W.3d 575](#), [2010 Tex. App. LEXIS 1426](#) (Tex. App. Houston 1st Dist. Feb. 25, 2010, no pet.).

Claimant was not entitled to mandamus relief, because the claimant did not have standing under Tex. Elec. Code Ann. § [273.061](#) necessary to maintain the instant original proceeding, when the relief the claimant sought, the implementation and enforcement of proposition 2, went beyond the election process, as the claimant sought to compel respondents to perform duties that were not in connection with the holding of an election. *In re Hotze*, No. 14-08-00421-CV, [2008 Tex. App. LEXIS 9897](#) (Tex. App. Houston 14th Dist. July 10, 2008).

Applicant was not entitled to mandamus relief under Tex. Elec. Code Ann. § [273.061](#) from a party chairperson's rejection of his application and petition for a place on a county's general primary election ballot because no ministerial duty was violated; the application did not comply with Tex. Elec. Code Ann. § [141.031](#) because it misidentified the precinct, its rejection was mandatory under Tex. Elec. Code Ann. § [141.032\(e\)](#), and the timeliness of its review was a fact issue that could not be adjudicated in a mandamus proceeding. *In re Armendariz*, [245 S.W.3d 92](#), [2008 Tex. App. LEXIS 526](#) (Tex. App. El Paso Jan. 24, 2008, no pet.).

Court conditionally granted a writ ordering a mayor and city council members to call a general municipal election for certain city council seats where the voters had amended the city charter to provide for two-year terms and the council seats at issue had been filled after the amendment and were thus no longer three-year terms. *In re Quintanilla*, No. 05-06-00297-CV, [2006 Tex. App. LEXIS 2281](#) (Tex. App. Dallas Mar. 24, 2006).

Mandamus relief was appropriate to compel a mayor to certify to the Texas Secretary of State three amendments approved by the voters of the municipality and to compel the city council to enter an order in the city's records declaring that the amendments had been adopted; the duty to certify and make effective laws that have been validly adopted by the voters is a necessary component of the election process. *In re Robinson*, [175 S.W.3d 824](#), [2005 Tex. App. LEXIS 2900](#) (Tex. App. Houston 1st Dist. Apr. 14, 2005, no pet.).

Supporters of an amendment to a city charter had standing to seek mandamus relief to compel the mayor to certify the amendment to the Texas Secretary of State and to compel the city council to enter an order in the city's records declaring that the amendment had been adopted; the supporters had a particular interest in seeking to have a proposition that they sponsored enacted as law once it was adopted by the citizens of the city in a referendum election. *In re Robinson*, [175 S.W.3d 824](#), [2005 Tex. App. LEXIS 2900](#) (Tex. App. Houston 1st Dist. Apr. 14, 2005, no pet.).

Chairperson of a county's Republican Party had a mandatory duty to certify a judicial candidacy in accordance with the will of the majority of precinct chairs who were present at a meeting; therefore, the court conditionally granted a petition for writ of mandamus to require the chairperson to certify the candidate's name for placement on the general election ballot. *In re Dupont*, [142 S.W.3d 528](#), [2004 Tex. App. LEXIS 6947](#) (Tex. App. Fort Worth July 26, 2004, no pet.).

Balch Springs, Tex., City Charter art. VI, 6.06 clearly did not allow the city council to reconsider recall petitions that were declared sufficient by the city secretary; therefore, the council violated a ministerial duty under the city charter to call a recall election as to four of its members, and relators, who were residents and registered voters of Balch Springs, were entitled to a writ of mandamus directing the council members to carry out their duties. [*In re Porter*, 126 S.W.3d 708, 2004 Tex. App. LEXIS 1189 \(Tex. App. Dallas Feb. 9, 2004, no pet.\)](#).

City charter did not assign anyone the responsibility for verifying signatures on a recall petition; therefore, a city secretary who had disqualified signatures was directed to submit all petitions requesting a recall election, with all signatures, to the city commission, and the court directed that if the secretary did not comply promptly, a writ of mandate would issue. [*In re Suson*, 120 S.W.3d 477, 2003 Tex. App. LEXIS 9120 \(Tex. App. Corpus Christi Oct. 28, 2003, no pet.\)](#).

Where candidate for office sought a writ of mandamus to submit her name as a duly certified candidate, the writ was granted; the fact that the candidate cast a ballot in another city did not conclusively establish that she was ineligible for office. [*In re Jackson*, 14 S.W.3d 843, 2000 Tex. App. LEXIS 2297 \(Tex. App. Waco Apr. 4, 2000, no pet.\)](#).

Where candidate's petition in lieu of filing fee was insufficient as a matter of law, the city clerk was required to reject it; failure to perform her duty subjected the clerk to mandamus, pursuant to Tex. Elec. Code Ann. § 273.061. [*Bejarano v. Hunter*, 899 S.W.2d 346, 1995 Tex. App. LEXIS 897 \(Tex. App. El Paso Apr. 27, 1995, no writ\)](#).

Conditional writ of mandamus was issued where officials in a Texas town refused to hold a recall election though a recall petition and other local procedures required for a recall vote as to council members had been met. [*Duffy v. Branch*, 828 S.W.2d 211, 1992 Tex. App. LEXIS 1177 \(Tex. App. Dallas Mar. 20, 1992, no writ\)](#).

Governments: Local Governments: Employees & Officials

Conditional writ of mandamus was issued where officials in a Texas town refused to hold a recall election though a recall petition and other local procedures required for a recall vote as to council members had been met. [*Duffy v. Branch*, 828 S.W.2d 211, 1992 Tex. App. LEXIS 1177 \(Tex. App. Dallas Mar. 20, 1992, no writ\)](#).

Governments: Local Governments: Ordinances & Regulations

Conditional writ of mandamus was issued where officials in a Texas town refused to hold a recall election though a recall petition and other local procedures required for a recall vote as to council members had been met. [*Duffy v. Branch*, 828 S.W.2d 211, 1992 Tex. App. LEXIS 1177 \(Tex. App. Dallas Mar. 20, 1992, no writ\)](#).

Governments: State & Territorial Governments: Elections

Requirements for the Office of President did not exclude felons, but felony convictions were a relevant qualification for Texas state elective offices; consequently, there was no justiciable controversy between the Secretary of State and the candidate with regard to the proper form whose promulgation the candidate sought through mandamus. [*In re Judd, No. 03-15-00595-CV, 2015 Tex. App. LEXIS 10808 \(Tex. App. Austin Oct. 21, 2015\).*](#)

Political party's petition for writ of mandamus directing the trial court to vacate a temporary injunction was granted as a final decision could not be reviewed by an appellate court in advance of statutory election deadlines signaling the start of the election process. [*In re Dallas Cty. Republican Party, No. 05-18-00979-CV, 2018 Tex. App. LEXIS 6986 \(Tex. App. Dallas Aug. 29, 2018\).*](#)

Judicial candidate was not entitled to a writ of mandamus challenging the placement of his opponent on the ballot pursuant to a petition under Tex. [*Elec. Code Ann. §§ 141.062, 172.021\(e\)*](#), because the petition's circulator verified the signatories' registration status, and the party director was entitled to treat the signatures as valid. [*In re Pikl, No. 06-18-00003-CV, 2018 Tex. App. LEXIS 392 \(Tex. App. Texarkana Jan. 12, 2018\).*](#)

If the public record established that an applicant was ineligible for office for purposes of Tex. Elec. Code Ann. § [*145.003\(f\)*](#) and Tex. Const. art. V, § [*7*](#), the chairman had a duty to declare such ineligibility, and mandamus relief was proper under Tex. Elec. Code Ann. § [*273.061*](#). [*In re Sanchez, 366 S.W.3d 255, 2012 Tex. App. LEXIS 1940 \(Tex. App. San Antonio Mar. 9, 2012, no pet.\).*](#)

Certified and sworn letter from the Texas Supreme Court clerk stated that the applicant was ineligible to practice law from November 21, 2008 until November 5, 2009 when she lifted the non-practicing attorney exemption from mandatory continuing legal education requirements, and it was not disputed that the exemption was not lifted until at least November 3, 2009, such that her ineligibility was established conclusively, for purposes of Tex. Elec. Code Ann. § [*145.003\(f\)*](#) and Tex. Const. art. V, § [*7*](#); the documents she provided from the State Bar did not rebut the Supreme Court public record, and thus the court granted conditional mandamus relief under Tex. Elec. Code Ann. § [*273.061*](#). [*In re Sanchez, 366 S.W.3d 255, 2012 Tex. App. LEXIS 1940 \(Tex. App. San Antonio Mar. 9, 2012, no pet.\).*](#)

Mandamus relief was unavailable under Tex. Elec. Code Ann. § [*273.061*](#), Tex. Const. art. V, and Tex. Gov't Code Ann. § [*22.221*](#) to remove a Texas Senate candidate from the ballot because there was no evidence that documents purporting to show his nonresident status under Tex. Const. art. III, § [*6*](#) and Tex. Elec. Code Ann. § [*1.015\(a\)*](#) had been presented under Tex. Elec. Code Ann. § [*145.003\(g\)*](#) to the appropriate authority. [*In re Cullar, 320 S.W.3d 560, 2010 Tex. App. LEXIS 6725 \(Tex. App. Dallas Aug. 19, 2010, no pet.\).*](#)

Writ of mandamus was conditionally granted, under Tex. Elec. Code Ann. § [*161.009*](#) and Tex. Elec. Code Ann. § [*273.061*](#), and a county party chair was directed to certify an applicant as a candidate for state representative, and take all necessary steps to include her name on the Democratic Party primary ballot, because the court could not locate, and the chair did not identify, any Texas Election Code provision that authorized a party chair to refuse to certify a candidate's name for placement on the ballot on the basis of the candidate's failure to designate a campaign treasurer with the Texas Ethics Commission, and the

Election Code did not authorize a party chair to insert additional certification requirements beyond those prescribed in the Election Code. [*In re Torry*, 244 S.W.3d 849, 2008 Tex. LEXIS 67 \(Tex. 2008\)](#).

Where a member of a school board did not receive compensation for her services in accordance with Tex. Educ. Code Ann. § [11.061\(d\)](#) and did not hold a lucrative office within the meaning of Tex. Const. art. III, § [19](#), she was entitled to a writ of mandamus pursuant to Tex. Elec. Code Ann. § [273.061](#) to require party officials to certify her as a state legislative candidate in a primary election. [*In re Carlisle*, 209 S.W.3d 93, 2006 Tex. LEXIS 94 \(Tex. 2006\)](#).

The trial court exceeded its statutory subject-matter jurisdiction by granting non-injunctive relief in favor of the Democratic party candidate that required a particular Republican party candidate to be certified as ineligible for the county judge election, because pursuant to Tex. Elec. Code Ann. § [273.061](#), exclusive jurisdiction was vested in the courts of appeals and the supreme court. [*Pollard v. Mosier*, No. 01-98-00173-CV, 1998 Tex. App. LEXIS 1162 \(Tex. App. Houston 1st Dist. Feb. 18, 1998\)](#).

District court had no authority to appoint a visiting judge to conduct a hearing on the validity of an election contestant's application for a place on the ballot; thus, the appellate court refused the contestant's writ petition and refused to issue a mandamus to compel the judge to conduct an expedited hearing because the appellate court could only compel performance of a duty imposed by law. [*Bejarano v. Moody*, 901 S.W.2d 570, 1995 Tex. App. LEXIS 810 \(Tex. App. El Paso Apr. 13, 1995, no writ\)](#).

Supreme court may issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election regardless of whether the person responsible for performing the duty is a public officer pursuant to Tex. Elec. Code Ann. § [273.061](#). [*Walles v. McDonald*, 889 S.W.2d 236, 1994 Tex. LEXIS 35 \(Tex. 1994\)](#).

Mandamus will lie to compel the party chairman and executive committee to place relator's name on the ballot in a primary election if relator is entitled to be placed on the ballot, under former Tex. Rev. Civ. Stat. Ann. art. 1735a. [*Painter v. Shaner*, 667 S.W.2d 123, 1984 Tex. LEXIS 332 \(Tex. 1984\)](#).

Clear language of former Tex. Rev. Civ. Stat. Ann. art. 1735a (now Tex. Elec. Code Ann. §§ [273.061](#)) and [273.062](#) and Tex. Gov't Code Ann. § [22.221](#)) dictates a writ of mandamus will issue only upon a showing that an election officer has failed to discharge a duty imposed by statute. [*Nelson v. Welch*, 499 S.W.2d 927, 1973 Tex. App. LEXIS 2616 \(Tex. Civ. App. Houston 14th Dist. Sept. 19, 1973, no writ\)](#).

The appellate court did not have authority under former Tex. Rev. Civ. Stat. Ann. art. 1735a (now Tex. Elec. Code Ann. §§ [273.061](#) and [273.062](#), and Tex. Gov't Code Ann. § [22.221](#)) to grant a writ of mandamus to compel election officials to perform a duty not in accordance with the laws of the state; respondents did perform their duties in accordance with former Tex. Elect. Code art. 13.09(b), despite relators' claim that certain portions of the statute violated their constitutional rights and should have been held unconstitutional and void. [*Lydick v. Chairman of Dallas County Republican Executive Committee*, 456 S.W.2d 740, 1970 Tex. App. LEXIS 2036 \(Tex. Civ. App. Dallas June 5, 1970, no writ\)](#).

Challenger did not show that the registration records were conclusive or even reliable to the point that would compel a removal of the candidate from the ballot; none of the records submitted by the challenger established that the candidate was not registered to vote in Van Zandt County prior to the November 29,

2017 transfer, and the challenger did not conclusively establish the candidate's ineligibility. [*In re Martin, No. 05-18-00542-CV, 2018 Tex. App. LEXIS 3345 \(Tex. App. Dallas May 10, 2018\).*](#)

Governments: State & Territorial Governments: Employees & Officials

Clear language of former Tex. Rev. Civ. Stat. Ann. art. 1735a (now Tex. Elec. Code Ann. §§ [273.061](#)) and 273.062 and Tex. Gov't Code Ann. § [22.221](#)) dictates a writ of mandamus will issue only upon a showing that an election officer has failed to discharge a duty imposed by statute. [*Nelson v. Welch, 499 S.W.2d 927, 1973 Tex. App. LEXIS 2616 \(Tex. Civ. App. Houston 14th Dist. Sept. 19, 1973, no writ\).*](#)

Real Property Law: Zoning & Land Use: Initiative & Referendum

Because a city had no right under Tex. Loc. Gov't Code Ann. § [212.003\(a\)\(1\)](#) to legislate land use in its extraterritorial jurisdiction, an agreement pursuant to Tex. Loc. Gov't Code Ann. § [212.172\(b\)\(8\)](#) as to the use of land in the city's extraterritorial jurisdiction was not legislative and was not subject to the referendum process; thus, mandamus relief was not available under Tex. Elec. Code Ann. § [273.061](#) to compel the city council to submit the matter to the voters. [*In re Hollis, No. 03-09-00589-CV, 2009 Tex. App. LEXIS 9888 \(Tex. App. Austin Nov. 19, 2009\).*](#)

Research References & Practice Aids

LAW REVIEWS

[49 Baylor L. Rev. 867.](#)

TREATISES & ANALYTICAL MATERIALS

1-2 Dorsaneo, Texas Litigation Guide § [2.01](#), Pretrial Practice (Chs. 1-114), Prelitigation Planning (Chs. 1-4), Civil Courts, Dorsaneo, Texas Litigation Guide.

10-152 Dorsaneo, Texas Litigation Guide § [152.02](#), Appellate Practice (Chs. 140-154), Appellate Procedure (Chs. 145-154), Jurisdiction Over Original Proceedings, Dorsaneo, Texas Litigation Guide.

10-152 Dorsaneo, Texas Litigation Guide § [152.03](#), Appellate Practice (Chs. 140-154), Appellate Procedure (Chs. 145-154), Types of Original Proceedings, Dorsaneo, Texas Litigation Guide.

10-152 Dorsaneo, Texas Litigation Guide § [152.50](#), Appellate Practice (Chs. 140-154), Appellate Procedure (Chs. 145-154), Preliminary Determinations, Dorsaneo, Texas Litigation Guide.

10-152 Dorsaneo, Texas Litigation Guide § [152.100](#), Appellate Practice (Chs. 140-154), Appellate Procedure (Chs. 145-154), Petition in Original Proceeding, Dorsaneo, Texas Litigation Guide.

10-152 Dorsaneo, Texas Litigation Guide § [152.201](#), Appellate Practice (Chs. 140-154), Appellate Procedure (Chs. 145-154), Statutes and Rules, Dorsaneo, Texas Litigation Guide.

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APP. B



User Name: Jared Woodfill

Date and Time: Saturday, August 29, 2020 10:04:00 PM CDT

Job Number: 124308598

Document (1)

1. [Tex. Elec. Code § 86.001](#)

Client/Matter: -None-

Search Terms: Texas Election Code 86.001

Search Type: Natural Language

Tex. Elec. Code § 86.001

This document is current through the 2019 Regular Session, 86th Legislature, and 2019 election results.

Texas Statutes & Codes Annotated by LexisNexis® > Election Code > Title 7 Early Voting (Subts. A — C) > Subtitle A Early Voting (Chs. 81 — 88) > Chapter 86 Conduct of Voting By Mail (§§ 86.001 — 86.014)

Sec. 86.001. Reviewing Application and Providing Ballot.

- (a) The early voting clerk shall review each application for a ballot to be voted by mail.
- (b) If the applicant is entitled to vote an early voting ballot by mail, the clerk shall provide an official ballot to the applicant as provided by this chapter.
- (c) Except as provided by Section 86.008, if the applicant is not entitled to vote by mail, the clerk shall reject the application, enter on the application “rejected” and the reason for and date of rejection, and deliver written notice of the reason for the rejection to the applicant at both the residence address and mailing address on the application. A ballot may not be provided to an applicant whose application is rejected.
- (d) If the application does not include the applicant’s correct voter registration number or county election precinct of residence, the clerk shall enter the appropriate information on the application before providing a ballot to the applicant.
- (e) If the applicant does not have an effective voter registration for the election, the clerk shall reject the application unless the clerk can determine from the voter registrar that the applicant has submitted a voter registration application and the registration will be effective on election day.
- (f) [Repealed by Acts 2013, 83rd Leg., ch. 1178 (S.B. 910), § 23, effective September 1, 2013.]
- (g) If a ballot is provided to the applicant, the clerk shall indicate beside the applicant’s name on the list of registered voters that a ballot to be voted by mail was provided to the applicant and the date of providing the ballot unless the form of the list makes it impracticable to do so.

History

Enacted by Acts 1985, 69th Leg., ch. 211 (S.B. 616), § 1, effective January 1, 1986; am. Acts 1987, 70th Leg., ch. 472 (H.B. 612), § 26, effective September 1, 1987; am. Acts 1991, 72nd Leg., ch. 203 (S.B. 1234), § 2.12, effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 554 (S.B. 1186), § 1, effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 1381 (H.B. 1483), § 13, effective September 1, 1997; am. Acts 2013, 83rd Leg., ch. 1178 (S.B. 910), § 23, effective September 1, 2013.

Annotations

Notes

STATUTORY NOTES

Revisor's Notes.

The revised law clarifies the procedure to be followed by an absentee voting clerk in accepting and rejecting applications to vote absentee by mail. The section eliminates the requirement pertaining to certain voters voting on the ground of absence from the county that an application must be postmarked outside the county in order for the absentee clerk to send the voter a ballot.

Amendment Notes

repealed (f), which read: "If the clerk receives an application for an election for which the clerk is not serving as early voting clerk, the clerk shall reject the application for that election and notify the applicant of the rejection in accordance with Section 86.008."

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APP. C



User Name: Jared Woodfill

Date and Time: Saturday, August 29, 2020 10:05:00 PM CDT

Job Number: 124308609

Document (1)

1. [Tex. Elec. Code § 82.002](#)

Client/Matter: -None-

Search Terms: Texas Election Code 82.002

Search Type: Natural Language

Tex. Elec. Code § 82.002

This document is current through the 2019 Regular Session, 86th Legislature, and 2019 election results.

Texas Statutes & Codes Annotated by LexisNexis® > Election Code > Title 7 Early Voting (Subts. A — C) > Subtitle A Early Voting (Chs. 81 — 88) > Chapter 82 Eligibility for Early Voting (§§ 82.001 — 82.007)

Sec. 82.002. Disability.

(a) A qualified voter is eligible for early voting by mail if the voter has a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter's health.

(b) Expected or likely confinement for childbirth on election day is sufficient cause to entitle a voter to vote under Subsection (a).

History

Enacted by Acts 1985, 69th Leg., ch. 211 (S.B. 616), § 1, effective January 1, 1986; am. Acts 1987, 70th Leg., ch. 472 (H.B. 612), § [19](#), effective September 1, 1987; am. Acts 1991, 72nd Leg., ch. 203 (S.B. 1234), § [2.05](#), effective September 1, 1991; am. Acts 1991, 72nd Leg., ch. 554 (S.B. 1186), § [1](#), effective September 1, 1991; am. Acts 1997, 75th Leg., ch. 864 (H.B. 1603), § [69](#), effective September 1, 1997.

Annotations

LexisNexis® Notes

Notes

STATUTORY NOTES

Revisor's Notes.

The revised law clarifies the degree of sickness or physical disability necessary to vote absentee on those grounds.

Case Notes

Civil Rights Law: Voting Rights: Absentee Ballots

Governments: Legislation: Interpretation

Governments: Legislation: Vagueness

Civil Rights Law: Voting Rights: Absentee Ballots

Texas state officials challenging the district court's preliminary injunction requiring distribution of mail-in ballots to any eligible voter who wanted one due to the pandemic were likely to show that a void-for-vagueness claim was unlikely to succeed because Texas law provided an adequate definition of "disability." [*Tex. Democratic Party v. Abbott*, 2020 U.S. App. LEXIS 17564 \(June 4, 2020\)](#).

Governments: Legislation: Interpretation

Voter's lack of immunity to COVID-19, without more, is not a "disability" as defined by the Election Code, but election officials have no responsibility to question or investigate a ballot application that is valid on its face. The decision to apply to vote by mail based on a disability is the voter's, subject to a correct understanding of the statutory definition of "disability." [*In re State*, 2020 Tex. LEXIS 452 \(May 27, 2020\)](#).

Lack of immunity to COVID-19 is not itself a "physical condition" for being eligible to vote by mail within the meaning of Tex. [*Elec. Code Ann. § 82.002\(a\)*](#). [*In re State*, No. 20-0394, 2020 Tex. LEXIS 452 \(Tex. May 27, 2020\)](#).

Phrase "physical condition" as used in Tex. [*Elec. Code Ann. § 82.002\(a\)*](#) cannot be interpreted so broadly consistent with the legislature's historical and textual intent to limit mail-in voting. [*In re State*, No. 20-0394, 2020 Tex. LEXIS 452 \(Tex. May 27, 2020\)](#).

Governments: Legislation: Vagueness

Texas state officials challenging the district court's preliminary injunction requiring distribution of mail-in ballots to any eligible voter who wanted one due to the pandemic were likely to show that a void-for-vagueness claim was unlikely to succeed because Texas law provided an adequate definition of "disability." [*Tex. Democratic Party v. Abbott*, 2020 U.S. App. LEXIS 17564 \(June 4, 2020\)](#).

Opinion Notes

Attorney General Opinions

Voter eligibility.

A court would likely conclude that a qualified voter civilly committed pursuant to Tex. Health & Safety Code Ann. ch. 841 and residing at the Texas Civil Commitment Center is eligible to vote by mail under Tex. [Elec. Code Ann. § 82.002\(a\)](#). 2017 Tex. Op. Att'y Gen. KP-0149.

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APP. D



Check your mail!

**Every Harris County
registered voter
will be sent an application to
vote by mail next month.**



**For more information, visit
[HarrisVotes.com](https://www.harrisvotes.com)**

APP. E



Harris County Clerk
@HarrisVotes

Update: our office will be mailing every registered voter an application to vote by mail. To learn more about voting by mail in Harris County, Please visit [HarrisVotes.com/votebymail](https://www.harrisvotes.com/votebymail).

APP. F



Chris Hollins · Harris County Clerk

FOR IMMEDIATE RELEASE

June 19, 2020

CONTACT: Communications & Voter Outreach

County.Clerk@cco.hctx.net

(713) 274-9550

Harris County Clerk Launches New Public Service Announcement ***"Vote Early and Stay Safe"***

(Houston, Texas) - Today, Harris County Clerk Chris Hollins launched a Public Service Announcement (PSA) to remind voters about available options to *Vote Early and Stay Safe*. The PSA lists the four requirements needed to vote by mail. Apart from being registered to vote, a person must be either:

- 65 years of age or older on Election Day;
- Out of the County during the Early Voting period and on Election Day;
- Confined in jail, but otherwise eligible to vote, or
- Disabled.

A voter qualifies as disabled if they believe that their physical condition is such that in-person voting will cause a likelihood of injury to their health. Pregnant women are automatically covered in the disability category.

The Texas Supreme Court ruled that a lack of immunity to COVID may be considered as a factor in determining whether in-person voting creates a "likelihood of injury" to the voter's health, but it cannot be the sole factor. It is the responsibility of voters to make their own health determinations, and the County Clerk's Office does not have the authority or ability to question the voter's judgment. If a voter applies for a mail ballot and checks one of the four categories of eligibility, the County Clerk's Office will send you a ballot.

"Our goal is to promote and maximize voting by mail within the bounds of the law and ensure that voters can cast their ballots as easily and safely as possible," **said Harris County Clerk Chris Hollins**. "Voting by mail is the safest way to cast your vote, and we encourage all eligible Harris County voters to make their own health assessments to determine if they qualify ahead of the July 2nd deadline to receive applications."

The PSA is available in English, Spanish, Chinese, and Vietnamese. It is part of the Vote Your Way Campaign, which focuses on letting voters know that they have a choice when it comes to when and how to cast a ballot. The PSA was produced by Black Sheep Agency and generously funded by the Houston Endowment. The 15-second spots will run on local radio and TV stations for the next two weeks in advance of the start of the early voting period for the July 14 Primary Runoff Elections.

"For those who want to vote in person, we hope that they take advantage of the ten days of early voting that will be available," added Hollins. "We will have additional polling locations and extended hours, and we will be taking the necessary precautions to keep voters and election workers safe."

Here are some dates to remember:

- **Monday, June 29** First day of in-person Early Voting
- **Thursday, July 2** Last day to apply for a mail ballot for the 2020 Primary Runoff
(County Clerk's Office must receive the application by this date, regardless of the postmark date)
- **Friday, July 10** Last day of in-person Early Voting
- **Tuesday, July 14** 2020 Primary Runoff Election Day, and last day by which a mail ballot must be postmarked (County Clerk's Office must receive the mail ballot by July 15)

For more election information go to [HarrisVotes.com](https://harrisvotes.com) and follow @HarrisVotes on Facebook, Twitter and Instagram.

###

[Clerk Chris Hollins PSA Intro](#)

[English PSA](#)

[Spanish PSA](#)

[Vietnamese PSA](#)

[Chinese PSA](#)

APP. G

The State of Texas



Elections Division
P.O. Box 12060
Austin, Texas 78711-2060
www.sos.state.tx.us

Phone: 512-463-5650
Fax: 512-475-2811
For Relay Services
(800) 252-VOTE (8683)

Ruth R. Hughs
Secretary of State

August 27, 2020

Chris Hollins
Harris County Clerk
201 Caroline St., 3rd Floor
Houston, Texas 77002

Dear Mr. Hollins:

It has come to our office's attention that Harris County intends to send an application to vote by mail to every registered voter in the county. Such action would be contrary to our office's guidance on this issue and an abuse of voters' rights under Texas Election Code Section 31.005.

As you know, the Texas Election Code requires that voters have a qualifying reason to vote by mail. They must be 65 years or older, disabled, out of the county while voting is occurring, or confined in jail but otherwise eligible to vote. It is not possible that every voter in Harris County will satisfy one or more of these requirements.

By sending applications to all voters, including many who do not qualify for voting by mail, your office may cause voters to provide false information on the form. Your action thus raises serious concerns under Texas Election Code Section 84.0041(a)(1), (2).

At a minimum, sending an application to every registered voter will confuse voters about their ability to vote by mail. Earlier this year and continuing, there have been a number of lawsuits challenging the fact that Texas law requires a reason to vote by mail. Thus far the challenged law remains the same in spite of these lawsuits. An official application from your office will lead many voters to believe they are allowed to vote by mail, when they do not qualify.

Finally, by sending an application to every registered voter, you could impede the ability of persons who need to vote by mail to do so. Clogging up the vote by mail infrastructure with potentially millions of applications from persons who do not qualify to vote by mail will make it more difficult for eligible mail voters to receive their balloting materials in a timely manner and will hamper efforts to qualify and count these ballots when received by your office.

For all of these reasons, you must immediately halt any plan to send an application for ballot by mail to all registered voters and announce its retraction. If you have not done so by noon on Monday, August 31, 2020, I will request that the Texas Attorney General take appropriate steps under Texas Election Code 31.005.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Keith Ingram', with a stylized flourish extending from the end.

Keith Ingram
Director of Elections