

SUPREME COURT OF TEXAS

In re Steven Hotze, M.D., Hon. Allen West, Republican Party of Texas, Hon. Sid Miller, Hon. Mark Henry, Hon. Charles Perry, Hon. Pat Fallon, Hon. Bill Zedler, Hon. Cecil Bell, Jr., Hon. Steve Toth, Hon. Dan Flynn, Hon. Matt Rinaldi, Hon. Rick Green, Hon. Molly White, Harris County Republican Party/Hon. Keith Nielsen, Hon. Bryan Slaton, Hon. Robin Armstrong, M.D., Jim Graham, Hon. Cathie Adams, Hon. Joann Fleming, Julie McCarty, Sharon Hemphill, and Al Hartman

No. 20-0739 · No. No. 20-0739 · Decided October 7, 2020

SUMMARY

Justice Devine dissented from the Texas Supreme Court's order denying a petition for writ of mandamus and motion for stay concerning the Governor's proclamation suspending certain Election Code provisions. The dissent argues that the mandamus petition was timely and that the Secretary of State had statutory duties subject to mandamus review, including duties implicated by the allegedly unconstitutional proclamation.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	John P. Devine
JURISDICTION	Texas
DECIDED	October 7, 2020
DOCKET	No. 20-0739
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Relators petitioned the Supreme Court of Texas for a writ of mandamus and moved for a stay, seeking to compel the Secretary of State to comply with specified Texas Election Code provisions and to challenge the Governor's proclamation suspending statutory early-voting requirements. The court denied the petition and motion for stay, treating the mandamus proceeding as untimely; Justice Devine dissented.

PRECEDENTIAL VALUE	dissenting opinion; no independent majority precedential value
PARTIES	Steven Hotze, M.D., Hon. Allen West, Republican Party of Texas, Hon. Sid Miller, Hon. Mark Henry, Hon. Charles Perry, Hon. Pat Fallon, Hon. Bill Zedler, Hon. Cecil Bell, Jr., Hon. Steve Toth, Hon. Dan Flynn, Hon. Matt Rinaldi, Hon. Rick Green, Hon. Molly White, Harris County Republican Party, Hon. Keith Nielsen, Hon. Bryan Slaton, Hon. Robin Armstrong, M.D., Jim Graham, Hon. Cathie Adams, Hon. Joann Fleming, Julie McCarty, Sharon Hemphill, Al Hartman v. Secretary of State of Texas

TOPICS

election law

election administration

appellate procedure

remedies

constitutional law

PRACTICE AREAS

election law

constitutional law

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remedies

QUESTIONS PRESENTED

1. Whether the Supreme Court of Texas should exercise mandamus authority to compel the Secretary of State to perform statutory duties under the Election Code.
2. Whether the Secretary of State's implementation of the Governor's proclamation constituted an abuse of discretion or otherwise implicated a ministerial duty subject to mandamus.
3. Whether the mandamus petition was untimely in light of the importance of the electoral interests at stake.
4. Whether relators, including ballot candidates and a county judge subject to the proclamation, had standing to seek mandamus relief.

KEY QUOTATIONS

“In such a situation, as here, where our state, local, and national elections are at issue and the Court is ‘properly called on,’ the Court should exercise its mandamus authority over officials empowered to carry out our election laws.”

“mandamus may issue to compel public officials to perform ministerial acts, as well as ‘to correct a clear abuse of discretion of a public official.’”

“The Proclamation was a mandate to those in his chain of command—including the Secretary—to carry out its directives.”

FACTUAL BACKGROUND

On July 27, 2020, the Governor issued a proclamation purporting to suspend Texas Election Code sections 85.001(a) and 86.006(a-1) under the Disaster Relief Act. The proclamation directed the Secretary of State to take

notice of the changes, and the Secretary subsequently provided additional guidance to local election officials. Relators contended that the proclamation and the Secretary's actions violated statutory requirements governing the timing and manner of early voting and were potentially unconstitutional.

PROCEDURAL HISTORY

Relators sought mandamus relief directly in the Supreme Court of Texas against the Secretary of State. The majority denied the petition and motion for stay on timeliness grounds without reaching standing or the merits. Justice Devine would have considered the petition and granted relief.

DISPOSITION

writ_denied

CASES CITED

- In re Salon a La Mode, No. 20-0340, 2020 WL 2125844 (Tex. May 5, 2020)
- In re Palomo, 366 S.W.3d 193, 194 n.7 (Tex. 2012) (per curiam)
- Bird v. Rothstein, 930 S.W.2d 586, 587–588 (Tex. 1996)
- Davis v. Taylor, 930 S.W.2d 581, 584 (Tex. 1996)
- LaRouche v. Hannah, 822 S.W.2d 632, 634 (Tex. 1992)
- Painter v. Shaner, 667 S.W.2d 123, 124 (Tex. 1984)
- In re Williams, 470 S.W.3d 819, 821 (Tex. 2015)
- Anderson v. City of Seven Points, 806 S.W.2d 791, 793 (Tex. 1991)
- In re Hotze, No. 20-0430, 2020 WL 4046034, at *1–2 (Tex. July 17, 2020) (Devine, J., concurring)
- In re Republican Party of Texas, 605 S.W.3d 47, 51 n.7 (Tex. 2020) (Devine, J., dissenting)