

A graphic featuring a wooden gavel resting on a wooden surface, with a blurred Texas state flag in the background. The text is overlaid on the image.

Texas Supreme Court Update

Opinions Issued July 13 and September 18, 2020

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Mandamus Relief: *The right to relief is not conclusively established unless when the evidence does not foreclose the possibility that such relief was not required by law.*

Mootness: *When relief remains possible, mere difficulty of implementing the requested relief does not render the case moot.*

[*In re Party of Texas*](#) was an original proceeding in which Democratic candidates sought to remove Green Party candidates from the ballot for failing to pay a required filing fee. Under Election Code § 145.003(f)(2), the appropriate authority – in this case, the Green Party’s leadership – must declare a candidate ineligible if “facts indicating ... ineligib[ility] are conclusively established by another public record.” Although the Election Code required “conclusive” proof, even without a statutory mandate general mandamus principles would have required such proof to establish a ministerial duty sufficient to warrant relief.

The Green Party candidates were nominated by convention which meant that they had to either pay a fee or submit a petition to be entitled to appear on the ballot. When the fee option is invoked, it is not necessary the fee be paid at the time the application for ballot inclusion is filed with the Secretary of State. The record presented to the Green Party leadership showed that the filing fee had not been paid as of four days before the deadline for removing candidates from the ballot. The Election Code does not, however, include a deadline for the payment of the fee itself.

In a *per curiam* opinion, the Supreme Court of Texas ruled that proof of non-payment on a given date did not *conclusively* show that the Green Party candidates were ineligible. In so ruling, the court invoked a presumption against removing a candidate from the ballot unless removal is expressly required by the Election Code. Applying this presumption, the court “disagree[d with the court of appeals] that the public document demonstrating that the Green Party candidates had not paid the filing fee as of August 17 conclusively established that they were ineligible.”

The case came to the court, however, *after* the last date the statute allowed for removing candidates from the ballot. Nonetheless, the case was not moot because “the Secretary of State has indicated that changes to the ballot are not precluded by statute and relief is still possible.” Curiously, the opinion accepted without examination the Secretary’s “indication” and refused to declare that the case had become moot. The increased costs in removing a candidate from the ballot after the statutory last date for changing the ballot were not sufficient to make the case moot, especially in light of the importance of a candidate’s access to the ballot in a democracy.

The mootness holding can be helpful to practitioners as indicating that a case should not be declared moot merely because the relief might be difficult, so long as the relief is still possible.

Freedom of Assembly and Association: *The right to conduct a political convention does not impose a right paramount to that of the property owner to enforce an agreement.*

Force Majeur: *The opinion implies that COVID-19 constitutes force majeure allowing the termination of a licensing agreement.*

[In re Republican Party of Texas](#) arose out of the operator's termination of an agreement to license a City of Houston convention center to the Republican Party of Texas for its state convention. The operator invoked the agreement's *force majeure* clause, citing "the unprecedented scope and severity of the COVID-19 epidemic in Houston." The Party claimed the cancellation authorized relief under Election Code § 273.061 which permitted the issuance of 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." The Election Code defined "law" to include only "a constitution, statute, city charter, or city ordinance," and did not include common law contract.

The Party attempted to identify a constitutional duty by urging that it had a constitutional right "hold a convention and engage in electoral activities." The court did not question this right, but declared "those rights do not allow [the Party] to simply commandeer use of the [convention center]. It ruled, therefore, that the operator's only duty to allow use of the center is under the terms of the parties' Agreement, not a constitution. As a result, the court dismissed the Party's mandamus petition because it did not meet the criteria of the statute on which it was based.