

No. 22-0142
IN THE SUPREME COURT OF TEXAS

IN RE JOHN PEREZ

ORIGINAL EMERGENCY PETITION FOR WRIT OF MANDAMUS

**RESPONSE BY REAL PARTY IN INTEREST VIRGINIA ELIZONDO IN
OPPOSITION TO RELATOR'S EMERGENCY MOTION FOR
EXPEDITED RELIEF**

Barry Abrams
State Bar No. 00822700
SD Tex. Bar No. 2138
BLANK ROME LLP
717 Texas Avenue, Suite 1400
Houston, Texas 77002
(713) 228-6601
(713) 228-6605 (fax)
babrams@blankrome.com

Martin Golando
THE LAW OFFICE OF
MARTIN GOLANDO, PLLC
Texas Bar No. 24059153
2326 West Magnolia
San Antonio, Texas 78201
Telephone: (210) 471-1185
Martin.Golando@gmail.com

ARGUMENT

Real Party in Interest Virginia Elizondo opposes Relator's Emergency Motion for Expedited Relief for the reasons outlined in her response to the writ of mandamus. The Real Party of Interest writes separately, here, to highlight the specific problem of "emergency relief" in this case.

This Court's Members have indicated that temporary stays may be appropriate to allow the Court a "meaningful opportunity to consider" relevant issues "upon less hurried deliberation." *Del Valle ISD v. Dibrell*, 830 S.W.2d 87, 87-88 (Tex. 1992) (Cornyn, J., joined by Hecht, J., dissenting); *cf. June Medical Servs., L.L.C. v. Russo*, 139 S. Ct. 661 (2019) (ordering a temporary stay because "the Justices need[ed] time to review the[stay-related] filings"). However, a temporary stay is only warranted when the Court reaches "the tentative opinion that relator is entitled to the relief sought" and "the facts show that relator will be prejudiced in the absence of such relief." *Republican Party of Tex. v. Dietz*, 924 S.W.2d 932, 932-33 (Tex. 1996) (per curiam) (citing former TEX. R. APP. P. 121).

Here, the Relator fail both tests. First, the Relator has not shown any right to the relief sought. To begin with, Relator seeks expansive non-ministerial relief:

"Issue an immediate stay to prevent [SBISD] from abdicating its ministerial duty to administer and complete the May 7, 2022 election, coupled with a directive that it may not permissibly fail to object to a potential cancellation and postponement of the election, so that Relator and the other eight candidates may continue to campaign, and so that any postponement of the May 7, 2022 election by the federal court will

be limited to a situation where the court finds a violation or a potential violation of Section 2 of the Voting Rights Act and/or U.S. Constitution, rather than simply cancelling an election by virtue of the parties' agreement without regard to whether such a drastic and intrusive remedy is required by the Voting Rights Act.”

Relator's Emergency Motion for Expedited Relief at p. 8-9. SBISD has not abdicated any statutorily-prescribed duty concerning the May 7, 2022 school board election. Then, Relator seeks a “directive” from this Court that SBISD “may not permissibly fail to object to potential cancellation and postponement of the election.” Again, no statutory duty exists that requires a governmental entity to stake out a particular position in election-related litigation. This Court has no authority to direct litigants to oppose or agree to any particular motion or position in a matter pending in federal court. The May SBISD election is continuing. There simply is no duty subject to mandamus that requires SBISD to defend itself in federal litigation in whatever way the non-party Relator prefers. The Relator is not entitled to relief that no litigant could or should ever be awarded.

Second, the Relator has not shown how he would be prejudiced absent emergency relief. The Relator posits that “[his] candidacy will be irreparably harmed, and, even more fundamentally, over 180,000 residents living within Spring Branch ISD political and geographic boundaries will lose their right to vote in the May election.” The Relator has to campaign for election at some

point. However, the Relator offers no facts demonstrating why a May election (as opposed to a November election) is critical to his candidacy. More to the point, the Relator is not immediately harmed by the actions of SBISD. The May 2022 election will continue unless and until enjoined by the federal court. Put more simply, there is no action that “could be stayed”, because SBISD *already* is complying with its election duties.

The Relator hyperbolically claims that “over 180,000 residents... will lose their right to vote in the May election.” However, this is not the first time SBISD has postponed its elections, as detailed in Real Party in Interest’s Response to Relators Petition for Writ of Mandamus. If a right to vote “in a May election” was not violated in 2020 when SBISD postponed its trustee election until November, it is not at risk now. Relator suggests that “[taking a position in a federal lawsuit that the Relator does not agree with] is susceptible to abuse” because “the government entity’s incumbent officeholders will maintain their elected positions, unchallenged, for no less than six months beyond the terms for which they were elected.” However, this is a situation that is contemplated, generally, by statute. Texas law has expressly authorized “political subdivisions... that [held] its general election for officers on a date other than the November uniform election date may, not later than December 31, 2016, change the date on which it holds its general

election for officers to the November uniform election date.” TEX. ELEC. CODE §41.052 (a). For jurisdictions that moved their election date, the continuation of the terms of their elected officials was permitted. The point here is that if permissively moving an election under Section 41.052 did not give rise to an injury to voters such that they could seek relief to remove holdover officers, then permissively “not opposing” an election move based upon a federal court order cannot conceivably give rise to a cognizable claim.

Conclusion

The Real Party in Interest respectfully requests that this Court deny the Relator’s Emergency Motion for Expedited Relief.

Respectfully Submitted,

/s/ Barry Abrams

Barry Abrams
State Bar No. 00822700
SD Tex. Bar No. 2138
BLANK ROME LLP
717 Texas Avenue, Suite 1400
Houston, Texas 77002
(713) 228-6601
(713) 228-6605 (fax)
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San Antonio, Texas 78201
Telephone: (210) 471-1185
Martin.Golando@gmail.com

CERTIFICATE OF SERVICE

A copy of the foregoing petition for writ of mandamus has been sent by electronic mail to Relators, on February 28, 2022.

/s/ Barry Abrams

Barry Abrams,
Attorney for Real Party in Interest