

In the Supreme Court of Texas

In re HARRIS COUNTY REPUBLICAN PARTY AND
CINDY SIEGEL AS CHAIR OF HARRIS COUNTY REPUBLICAN PARTY,
Relators.

On Petition for Writ of Mandamus
to Isabel Longoria, Harris County Election Administrator

**REAL PARTY IN INTEREST'S RESPONSE IN SUPPORT OF
RELATOR'S PETITION FOR WRIT OF MANDAMUS**

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“Appx.” refers to the appendix to Relator’s petition.

STATEMENT OF THE CASE

Respondent: Isabel Longoria, Harris County Elections Administrator.

Respondent’s challenged actions: Harris County’s Elections Administrator, Isabel Longoria plans to appoint her own deputies to deliver sealed ballot boxes from voting precincts to the central counting station, Appx.0040, despite the fact that the Texas Election Code assigns this function to the presiding judge of the voting precincts.

STATEMENT OF JURISDICTION

Jurisdiction is proper under Texas Election Code § 273.061(a), which authorizes this Court to “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.”

ISSUE PRESENTED

Whether Respondent, the Harris County Elections Administrator, may appoint her own deputies to deliver sealed ballot boxes from voting precincts to the central counting station notwithstanding the Texas Election Code’s assignment of that duty to the “presiding judge” of the voting precinct. Tex. Elec. Code §§ 66.051, 127.066.

TO THE HONORABLE SUPREME COURT OF TEXAS:

The State agrees with Relator that this Court’s intervention is urgently needed to prevent Respondent, the Harris County Elections Administrator, from frustrating the procedures prescribed by the Legislature for the conduct of the already-under-way primary elections. The Election Code expressly requires the “presiding judge” of voting precincts to deliver sealed ballot boxes to the central counting station after the completion of voting. Tex. Elec. Code §§ 66.051, 127.066. But Respondent intends to appoint her own deputies to carry out this statutory duty notwithstanding these statutory provisions. Appx.0040. Because Respondent lacks any authority remotely conferring authority upon her to override the Legislature’s choices, she has abused her discretion and mandamus relief is necessary to compel her to follow the law.

Time is also of the essence. The polls close in less than two hours and without relief from this Court, Respondent will be permitted to violate the Election Code with impunity.

STATEMENT

A. Statutory Background

The Texas Election Code generally provides for the disposition of records and supplies after an election. *See* Tex. Elec. Code §66.001, *et seq.* Precinct election records include “the precinct election returns, voted ballots, and other records of an election.” *Id.* § 66.002. “On completing the election returns for the precinct, the presiding judge shall assemble the precinct election records and place them in the

appropriate envelopes and ballot boxes.” *Id.* § 66.021; *see also id.* § 66.003 (providing how the envelopes should be addressed), *id.* §§ 66.022–66.026 (providing the contents of each envelope and ballot box.). The presiding judge of the precinct is then required to deliver the election records “in person” to the presiding officer of the local canvassing authority, the general custodian of election records, of the voter registrar. *Id.* § 66.051. If the presiding judge so designates, the delivery of election records or supplies may be performed by an election clerk. *Id.* § 66.052.

The Texas Elections Code also specifically addresses how electronic voting system results are to be processed during an election. *See id.* § 127.001, *et seq.* Electronic voting system ballots are required to be delivered “from the polling place to the central counting station in accordance with [Subchapter C, Chapter 127, Texas Election Code].” *Id.* § 127.061. Subchapter C requires ballot boxes to be sealed and delivered to the polling places. *Id.* §§127.064–127.065. Immediately after completion of voting at a polling place, an election officer seals the deposit slot on each ballot box and that seal is signed. *Id.* § 127.066(a), (b). Finally, “[a]fter the box is sealed, it shall be delivered to the central counting station by two election officers” who shall “deliver the box to the presiding judge of the central counting station or to the judge’s designee.” *Id.* §127.066(c).

B. Factual Background.

Respondent “created a program to have Law Enforcement and Election Staff to pick up and securely deliver [] election night equipment to the Central Counting station.” Appx0046. Respondent utilized this program “on May 7th and plan to do it again on May 24th as well.” *Id.* In the May 7, 2022 election, “deputized county

deputy constables and election workers returned the ballots and election materials directly to the Central Counting Station.” Appx.0040. “Every single one of those folks is then deputized as an officer of the elections office so that those election records can be turned over to [the election office] by definition and extension through them.” Respondent has expressly stated that “[t]he process for the May 24 primary will be the same as the process for May 7 election.” Appx.0040.

ARGUMENT

Mandamus relief is available when necessary to “correct a clear abuse of discretion or the violation of a duty imposed by law when there is no other adequate remedy by law.” *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992). Both elements are easily met here.

I. Respondent Has Abused Her Authority.

At the “completion of voting” at a polling place, Texas law tasks “election officers” with delivering “sealed ballot boxes” “to the presiding judge of the central counting station or to the judge’s designee.” Tex. Elec. Code § 127.066 (a), (c). Upon receipt, the presiding judge is to supply the election officers who delivered those sealed ballot boxes with a “signed receipt for the box.” *Id.* § 127.068 (a).

Section 66.051 of the Election Code, in turn, defines which “election official” is charged with transporting those sealed ballot boxes to central counting station: “the presiding judge” of the precinct. Specifically, “the presiding judge shall deliver” the precinct election records to “the presiding officer of the local canvassing authority.”

Id. § 66.051(a); *see also id.* § 66.002 (defining precinct election records). In this case, the local canvassing authority is the central counting station. *Id.* §§67.007, 127.001.

Respondent, however, has confirmed that she will flout these established standards. Instead of allowing the presiding judge of the precincts to deliver the ballot boxes to the central counting station, she intends to obstruct the presiding judge’s fulfillment of that statutory duty and task county officials that she has deputized to carry out that duty. Appx.0040. But Respondent’s handpicked couriers are in no sense the “presiding judge” of the precinct that is tasked by the Election Code to deliver the sealed ballots to the central counting authority. Tex. Elec. Code § 66.051(a). Nor does Respondent, as a county election officer, have any authority to appoint the presiding judge of the precinct. Instead, the Election Code only authorizes Respondent to appoint “deputies and other persons” in a number set by the Commissioner’s Court. *Id.* § 31.039. No authority indicates that such “deputies and other persons” can serve as presiding judges. And the Election Code in fact identifies only one instance in which a new presiding judge may be appointed—an emergency appointment where not the presiding judge or the alternate presiding judge are unable to serve—that is not applicable here. *Id.* § 32.007(a).

Respondent’s conduct runs directly counter to what the Legislature has provided for under the Election Code. It therefore constitutes a clear abuse of authority of her authority under Texas law. After all, because Respondent “acts on behalf of Harris County, [s]he possesses only those powers ‘granted in express words’ or ‘necessarily or fairly implied in’ an express agreement.” *State v. Hollins*, 620 S.W.3d 400, 406 (Tex. 2020). Because no authority, express or implied, authorizes

Respondent to rewrite the Election Code while an election is ongoing, mandamus is necessary to compel her to comply with the law.

II. Relator Has No Other Adequate Remedy, and Time Is of the Essence.

Relator has no other adequate remedy than a writ of mandamus to secure Respondent's compliance with Texas law with respect to the already-underway elections. The polls close in less than two hours, and without this Court's correction Respondent will be permitted to violate Texas law. This violation of law is itself an irreparable injury to the State, *Hollins*, 620 S.W.3d at 409-10, and the State has designated Relator's chair as the election official responsible for running tonight's primary election in Harris County. *See* Tex. Elec. Code § 1.005(4-A)(V).

PRAYER

The Court should grant the mandamus petition.

Respectfully submitted.

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CERTIFICATE OF SERVICE

On May 24, 2021, this document was served electronically on all counsel of record.

/s/ William F. Cole
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CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this document contains 1,189 words, excluding the portions of the document exempted by Rule 9.4(i)(1).

/s/ William F. Cole
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