



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

THE EL PASO REPUBLICAN PARTY OF	§	
EL PASO COUNTY, INC. f/k/a THE EL		
PASO REPUBLICAN PARTY and RICK	§	No. 08-21-00093-CV
SEEBERGER, In His Capacity as President		
and Chairman of THE EL PASO	§	Appeal from the
REPUBLICAN PARTY OF EL PASO		
COUNTY, INC.	§	County Court at Law #3
		of El Paso County, Texas
Appellants,	§	(TC# 2021DCV0666)
v.	§	
RAYMOND BACA,	§	
Appellee.	§	

OPINION

This is an accelerated appeal from the trial court's order granting a plea to the jurisdiction in this dispute over the chairmanship of a local political party.¹

Rick Seeberger—who submitted a letter of resignation as the El Paso Republican Party (the County Party) chair on January 21, 2021—brought a declaratory judgment seeking to confirm his continued chairmanship of the County Party. Seeberger asserts that although he did submit a letter of resignation to the County Party, he should remain chair of the County Party through his full

¹ This appeal is the companion case of case number 08-21-00102-CV, a mandamus action that shares the same relevant factual and procedural history as this case.

elected term because he retracted his resignation prior to the letter's effective date, thereby making the County Party's election replacing him with Raymundo Baca ineffective.

Because we conclude Seeberger's pleadings failed to rebut the presumption against jurisdiction over internal political party leadership disputes, we affirm the trial court's order granting Baca's plea to the jurisdiction.

I. BACKGROUND

A. Factual History

The facts underlying this appeal are undisputed. On January 20, 2021, Respondent Rick Seeberger, the duly elected chairman of the County Party, submitted an email to the County Party in which he "tendered [his] resignation as Chair of the El Paso Republican Party at 4:05 p.m. today" and which would "be effective January 28, 2021[.]"

When local level vacancies occur in a political party that nominates candidates by primary ballot, the county executive committee (CEC) of that local political party is charged with filling those vacancies by appointment. *See generally* TEX.ELEC.CODE ANN. §§ 171.024(a), 171.025. The members of the county executive committee consist of the county chair and the precinct chairs from each county election precinct. *Id.* §§ 171.022(a)(1)–(2).

Section 171.025 of the Texas Election Code outlines the procedure for filling a vacancy in the office of the county chair. "If a vacancy occurs in the office of county chair, the secretary of the county executive committee shall call a meeting for the purpose of filling the vacancy." *Id.* § 171.025(a). "If a committee member files with the secretary a written request for a meeting to fill a vacancy, the secretary shall call the meeting to convene not later than the 20th day after the date the secretary receives the request." *Id.* "If the committee does not have a secretary or if . . . the secretary fails to call the meeting, the state chair, on written request of a member of the county

executive committee filed with the state chair, shall call the meeting to convene not later than the 20th day after the date the chair receives the request.” *Id.* § 171.025(b). “A majority of the committee’s membership must participate in filling a vacancy in the office of county chair. To be elected, a person must receive a favorable vote of a majority of the members voting.” *Id.* § 171.024(b).

At the time Seeberger submitted his letter of resignation, the County Party lacked a board secretary. In line with the procedures for filling a chairmanship vacancy set out at Texas Election Code Section 171.025(b), on January 21, 2021, four precinct chairs—Michael Aboud (Precinct #64), Marsha Rivas (Precinct #74), David Thackston (Precinct #55), and James Peinado (Precinct #176)—sent an email to State Republican Party Chairman Allen West requesting he set a special meeting to select Seeberger’s replacement. As precinct chairs, Aboud, Rivas, Thackston, and Peinado were all members of the CEC, *see id.* § 171.022(a)(2), and all had the individual right to request that State Chairman West call a meeting to replace Seeberger under the circumstances, *see id.* § 171.025(b). On January 22, 2021, another precinct chair, Robyn Cooper, sent an email to the State Republican Party requesting that State Chairman West call a replacement election. Cooper was also a member of the CEC by virtue of being a precinct chair.

On January 25, 2010, State Chairman West, in accordance with Section 171.025(b) of the Election Code, sent a letter calling a meeting of the County Party’s CEC “to fill the vacancy in the office of County Chair.” The meeting was set for February 1, 2021, at 6:30 p.m. In his letter, West stated the request for an election had come not just from Aboud, Rivas, Thackston, Peinado, and Cooper, but also from precinct chairs Mark Dunham and Bobby Pena, meaning that seven precinct chairs in total had requested a replacement election. On January 27, 2021, at 3:10 p.m., Seeberger

sent a mass email to the County Party membership with the subject line “Rescission of Resignation.” The email stated:

Dear CEC Members,

After much feedback from Precinct Chairs and Republican Voters who I believe have the best interests of the El Paso Republican Party at heart, I have reconsidered my resignation and am hereby rescinding my resignation effective immediately.

Respectfully,
Rick Seeberger
Chairman
The El Paso Republican Party

On January 30, 2021, State Chairman West issued a letter addressed to the County Party precinct chairs. In the letter, State Chairman West stated in part:

Earlier this week you received an email from Republican Party of Texas (RPT) Organization Director [sic] with an attached letter from me calling a meeting to fill the Vacancy in the Office of County Chair in the El Paso County Republican Party. Since that time, County Chairman Rick Seeberger sent an email stating that he was rescinding his resignation.

I know many of you have questions about where that leaves you, and I appreciate your patience as I consulted with staff, SREC members, RPT attorneys, and the RPT parliamentarian to ensure all movement forward is done according to applicable state laws and party rules.

In short, Chairman Seeberger’s resignation can not [sic] be rescinded. The meeting I called for February 1, 2021 at 6:30 p.m. (Mountain), pursuant to my duties as outlined in Texas Election Code Section 171.025(b), was properly called and will proceed.

Attached to State Chairman West’s letter was a legal memorandum citing caselaw surrounding the common law of public officer resignations as well as provisions of the Texas Election Code and Robert’s Rules of Order. Based on his reading of these materials in consultation with State Party staff, attorneys, and the parliamentarian, State Chairman West concluded in part:

Chairman Seeberger’s resignation can not [sic] be rescinded. Chairman Seeberger tendered his resignation and that resignation was accepted and acted upon in two steps, first by multiple El Paso County Republican Party Precinct

Chairs requesting me, as State Chairman, to call a meeting to fill the vacancy, and second by my setting a meeting date, designating David Powell as the Temporary Meeting Chair as directed by 171.025(d), and sending notice of the meeting date and designation of temporary chair to all precinct chairs.

The decision that Chairman Seeberger is not able to rescind his resignation is based solely upon laws, case law, and parliamentary procedure.

County Party minutes show in accordance with State Chairman West's call, an emergency meeting to elect a county chair was called to order at 6:30 p.m. on February 1, 2021. The minutes indicate "Former Chairman Rick Seeberger asked to address the floor" and the temporary meeting chair "reminded Seeberger that he, Seeberger, was a guest in attendance" before asking if there was a motion to allow Seeberger five minutes to speak. The motion was made and seconded before proceeding to a CEC vote. The motion to allow Seeberger to speak failed with nine in favor and thirty-nine opposed.

The temporary meeting chair then appointed a temporary parliamentarian, sergeants at arms, a timekeeper, and a temporary secretary without objection and presided over the adoption of election meeting rules, with "[n]o discussion" noted. The temporary meeting chair opened up nominations to the floor, and three people were nominated to be chair, including Baca. Baca ultimately won the CEC vote by receiving 27 out of 52 votes cast,² and the meeting minutes indicate that the election meeting was adjourned "[w]ithout objection" at 7:44 p.m.

² "A majority of the committee's membership must participate in filling a vacancy in the office of county chair. To be elected, a person must receive a favorable vote of a majority of the members voting." TEX.ELEC.CODE ANN. §171.024(b).

The minutes indicate that out of 73 precinct chairs total, 54 were present at the election meeting, meaning that quorum was met. Of the 54 precinct chairs who returned ballots, two ballots were abstentions. Of the 52 remaining precinct chairs who did not abstain:

- Two ballots were votes for Greg Baine;
- 23 ballots were votes for Bethany Hatch;
- 27 ballots were votes for Ray Baca.

Because Baca received a favorable vote from the majority (27) of the 52 precinct chairs that participated in the election, Baca was named chair.

On February 3, 2021, Baca sent Seeberger an email formally requesting that Seeberger “promptly relinquish any and all property, records, and associated items that belonged to the El Paso GOP at the time of your resignation and return them to us. I would like to have the records and bank info picked up right away and disclosure of where the office items are stored so that we can arrange for their pick up as well.”

On March 1, 2022—during the pendency of this Appeal—Baca ran unopposed for the Party chairmanship. He was elected on March 1, 2022. Under the Election Code, Baca became the undisputed chairman of the Party on June 13, 2022, twenty days after the May 24, 2022, primary runoff date. *Id.* § 171.022(c).

B. Procedural History

1. Seeberger’s Declaratory Judgment Action Against Baca

On February 25, 2021, Seeberger and a corporation named the El Paso County Republican Party of El Paso County, Inc. (the Corporation)³ filed an original petition for declaratory judgment against Baca in El Paso County Court at Law No. 3, contending Seeberger’s resignation never became effective, no vacancy ever occurred in the office of chairman of the County Party, and that Seeberger remained chairman of the County Party.

On March 4, 2021, Baca sent a follow-up email to Seeberger, stating at a meeting the previous Monday, the CEC had authorized Baca to hire an attorney to recover the County Party assets from Seeberger. In this email, Baca once again requested Seeberger turn over control of the County Party bank account and property to Seeberger.

³ In his response to the mandamus petition, Seeberger asserted that the County Party, which operated as an unincorporated entity, had voted to authorize the creation of a corporation to use to conduct party business. Seeberger has allegedly transferred control of certain party assets into the Corporation.

On March 18, 2021, Baca filed a plea to the jurisdiction, contending the trial court lacked subject-matter jurisdiction because the dispute over Seeberger’s resignation and Baca’s election involved internal party affairs into which the county court could not intrude. *See Wall v. Currie*, 213 S.W.2d 816, 817 (Tex. 1948)(“[T]he courts have no power to interfere with the judgments of the constituted authorities of established political parties in matters involving party government[.]”). On April 19, 2021, the trial court granted Baca’s plea to the jurisdiction. Seeberger and the Corporation appealed to this Court. We docketed the appeal as *The El Paso Republican Party of El Paso County, Inc. f/n/a The El Paso Republican Party and Rick Seeberger, In His Capacity as President and Chairman of The El Paso Republican Party of El Paso County, Inc. v. Baca*, No. 08-21-00093-CV (the Appeal).

Following the intervening election, Baca filed a motion to dismiss the appeal as moot.

2. Baca’s Mandamus Action Against Seeberger

On June 8, 2021, while the Appeal remained pending, the County Party and Baca filed a companion mandamus petition seeking return of County Party property from Seeberger under Texas Election Code section 171.028(a). We docketed the mandamus action as *In re El Paso Republican Party and Raymundo Baca, Relators*, No. 08-21-00102-CV, and called for a response from Seeberger.

II. DISCUSSION

1. Issues

Seeberger brings two issues on appeal. First, he asserts the trial court erred in dismissing the underlying case on the basis that courts are absolutely barred from exercising jurisdiction

where the dispute involves internal affairs of a political party.⁴ Second, he complains the trial court erred in dismissing the cases in concluding that no applicable statute regulates the subject matter of the dispute. Seeberger points to TEX.ELEC.CODE ANN. sec. 201.023 as his basis for asking us to reverse the trial court's order denying Baca's plea to the jurisdiction.

2. Standard of Review

A plea to the jurisdiction is a dilatory plea used to defeat a cause of action without regard to whether the asserted claims have merit. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). The plea challenges the trial court's subject-matter jurisdiction. *Id.* Whether a trial court has subject-matter jurisdiction is a question of law that we review de novo. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). A district court generally does not have jurisdiction to enter a declaratory judgment or injunction related to regularity of a political parties' internal elections absent statutory authorization. *See Cahill v. Bertuzzi*, No. 13-09-00183-CV, 2010 WL 2163136, at *6 (Tex.App.—Corpus Christi May 27, 2010, pet. denied)(mem. op.)(affirming plea to the jurisdiction in district court declaratory action/injunction case because request for district court injunction to remedy Election Code violation must (1) be timely to correct the alleged violations, (2) not seek to delay or cancel an election, (3) not interfere with the elective process, and (4) not inquire into or declare the validity of the election, and plaintiffs' bare request for an injunction placing them into certain Republican Party offices violated that jurisdictional standard). Apart from matters committed to our statutory review, "the judiciary has no power to control the electoral process or matters referable to the internal issues of political parties." *In re*

⁴ To clarify, we understand and address Seeberger's Issue One as contending the trial court erred in granting the plea to the jurisdiction in *this* case. The question of whether the courts are absolutely barred from exercising jurisdiction where the dispute involves internal affairs of a political party is beyond the scope of our review.

Cahill, 267 S.W.3d 104, 106 (Tex.App.—Corpus Christi 2008, orig. proceeding). As our sister court has held:

Except to the extent that jurisdiction is conferred by statute or that the subject has been regulated by statute, the courts have no power to interfere with the judgments of the constituted authorities of established political parties in matters involving party government and discipline, to determine disputes within a political party as to the regularity of the election of its executive officers, or their removal, or to determine contests for the position of party committeemen or convention delegates.

Id. (citing *Wall*, 213 S.W.2d at 817).

3. Mootness

As an initial matter, Baca has filed a motion to dismiss this appeal, contending that the intervening election has mooted the controversy between him and Seeberger. Baca is correct that in some instances, intervening elections can moot appeals by extinguishing the controversy between the parties. *See Kolsti v. Guest*, 576 S.W.2d 892, 893–84 (Tex.App.—Tyler 1979, no writ). However, Seeberger alleges that the existence of a dispute over attorney’s fees is sufficient to perpetuate jurisdiction over this otherwise moot controversy.

“An appellate court is prohibited from deciding a moot controversy.” *Taylor v. Margo*, 508 S.W.3d 12, 22 (Tex.App.—El Paso 2015, pet. denied). “An issue becomes moot when (1) it appears that one seeks to obtain a judgment on some controversy, which in reality does not exist or (2) when one seeks a judgment on some matter which, when rendered for any reason, cannot have any practical legal effect on a then-existing controversy.” *Id.* at 23. “Thus, an issue may be moot if it becomes impossible for the court to grant effectual relief for any reason.” *Id.*

However, in some cases, a claim for attorney’s fees “breathes life” into an otherwise moot case. *See Allstate Ins. Co. v. Hallman*, 159 S.W.3d 640, 643 (Tex. 2005)(holding fees dispute overcame mootness in insurance dispute); *Camarena v. Tex. Emp’t Comm’n*, 754 S.W.2d 149, 151 (Tex. 1988)(holding claim for fees under the Texas Unemployment Compensation Act “breathes

life into the appeal”). Whether an attorney’s fees claim “breathes life” into an otherwise moot appeal depends first on whether the party seeking fees does so under a statute that authorizes fees for a prevailing party or one that permits fees based on equitable principles, no matter who prevails. *State ex rel. Best v. Harper*, 562 S.W.3d 1, 7 (Tex. 2018). If the party seeks fees under a statute permitting a non-prevailing party to recover fees under equitable principles, “the claim for fees always breathes life into a case that has otherwise become moot, because the trial court must always consider the relative merits of the parties’ positions (among other factors) when exercising its discretion to award fees to either party.” *Id.* (citing *Allstate*, 159 S.W.3d at 643).

In his live petition, Seeberger cites the Uniform Declaratory Judgments Act (UDJA) as a basis for his requested award of attorney’s fees. UDJA allows a trial court to “award costs and reasonable and necessary attorney’s fees as are equitable and just.” TEX.CIV.PRAC.&REM.CODE ANN. § 37.009. Notably, as this Court has previously recognized, attorney’s fee awards under UDJA are not contingent on a finding that the party “substantially prevailed” in litigation. *See Sierra Crest Homeowners Ass’n, Inc. v. Villalobos*, 527 S.W.3d 235, 249 (Tex.App.—El Paso 2016, no pet.). Indeed, while it “is appropriate to award attorney’s fees to the prevailing party in a declaratory judgment action” if the trial court believes the fees are reasonable and necessary and awarding fees would be equitable and just, “the trial court is not required to do so,” and the trial court may even “award attorney’s fees to the non-prevailing party.” *Id.* In other words, Seeberger’s claim for attorney’s fees “breathes life” back into the otherwise moot case. We therefore deny Baca’s motion to dismiss because the appeal is not moot.

Here, accordingly, we consider the relative merits of the parties’ positions as to Seeberger’s declaratory judgment action. Because we conclude Seeberger’s pleadings failed to rebut the presumption against jurisdiction over internal political party leadership disputes, the trial court

correctly granted Baca’s plea to the jurisdiction. Without an independent basis for jurisdiction, Seeberger’s claim for attorney’s fees under UDJA must fail.

4. Analysis

Though Seeberger cites UDJA as a basis for district court jurisdiction, UDJA does not provide an independent basis for jurisdiction, nor does it create jurisdiction where none exists; instead, UDJA “is ‘merely a procedural device for deciding cases already within a court’s jurisdiction.’” *City of El Paso v. Tom Brown Ministries*, 505 S.W.3d 124, 148-49 (Tex.App.—El Paso 2016, no pet.)(quoting *Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993)); *see also Tabrizi v. City of Austin*, 551 S.W.3d 290, 297 (Tex.App.—El Paso 2018, no pet.)(UDJA standing alone does not create jurisdiction to determine the effect of a party’s actions under statute where governmental immunity exists). Seeberger can use UDJA to obtain relief assuming he can point to a separate jurisdictional basis for the trial court to exercise jurisdiction.

Because the Election Code provision Seeberger relies upon in his petition is inapposite and does not confer an independent basis for jurisdiction, he cannot do so here. Issue One is overruled.

a. Title 12 does not apply to this dispute.

Seeberger argues the trial court did have statutory jurisdiction despite the general presumption against intrusion into internal party affairs because Texas Election Code section 201.023 governs the resignation standard for public “officers,” which he contends includes County Party chair because the County Party chairmanship is an elected office. Specifically, Section 201.023 states: “If an officer submits a resignation, whether to be effective immediately or at a future date, a vacancy occurs on the date the resignation is accepted by the appropriate authority or on the eighth day after the date of its receipt by the authority, whichever is earlier.” TEX.ELEC.CODE ANN. § 201.023.

But Section 201.023—which applies to a “public officer” who resigns his post, *see id.* § 201.001—appears in Subchapter A of Title 12 of the Election Code. Title 12 sets out detailed procedures used to fill public officer vacancies in three enumerated categories of public offices: (1) vacancies in an office of state or county government, *see id.* §§ 202.001–.007 (Chapter 202); (2) vacancies in the Legislature, *see id.* §§ 203.001–.014 (Chapter 203); and (3) vacancies in Congress, *see id.* §§ 204.001–.021 (Chapter 204). However, the statutes applicable to political parties appear at Title 10 in the Election Code, which governs the structure and conduct of political parties in Texas. *See generally* §§ 161.001 et seq. Title 10 also contains detailed procedures for how political parties must make nominations, handle resignations, and fill vacancies. For instance, Title 10 requires all political parties with a state executive committee to adopt rules of “parliamentary procedure governing the conduct of party meetings and conventions from the precinct level to the state level”—rules which are enforceable through writs of mandamus. *See id.* §§ 163.001, .002(1), .007. Title 10 also proscribes how parties that make their nominations through primary elections must conduct their affairs at the county level, *id.* §§ 171.021–.029, including the procedure used to fill a vacancy in the county chair position, *id.* § 171.025.

The Legislature’s careful separation of procedures specific to political parties at Title 10 and procedures specific to public offices at Title 12 strongly suggests that it is not proper to cross-reference and apply procedures in Title 12 in determining whether a political party has acted in a procedurally proper manner.

Further, we can tell that a “public officer” as identified in the resignation provision at Section 201.023 in Title 12 cannot be a political party officer identified in Title 10 once we read the text of the Election Code as a whole, since the provision of Title 10 which grants courts mandamus jurisdiction to force a political party officer to comply with his ministerial duties under

the Election Code draws a conceptual distinction between a “public officer” and a political party officer. Specifically, Texas Election Code Section 161.009 subjects “an officer of a political party” to mandamus “in the same manner *as if the party officer were a public officer.*” [Emphasis added]. If a political party officer was subsumed within the definition of “public officer,” this provision of the Election Code would draw a superfluous distinction without a difference. But we are to presume that the Legislature has chosen its words carefully and not intended to be redundant, so a political party officer and a public officer cannot be one and the same.

By drawing a distinction between “an officer of a political party” and “a public officer” in Title 10, and by putting the resignation procedure for “public officers” in Title 12—the Election Code title which enumerates resignation and replacement procedures for specific categories of public office—the Legislature has indicated that the resignation procedure contained at Section 201.023 does not apply to an officer of a political party but only to Title 12 vacancies in an office of state or county government, the Legislature, or Congress.

Thus, even if Section 201.023 could be construed as somehow creating district court jurisdiction when viewed through the prism of UDJA, Section 201.023 does not apply to this situation, since it only applies to vacancies in Title 12 public offices, not Title 10 political party offices. Seeberger asserts an irregularity in the resignation and replacement procedures of a Title 10 political party office. That kind of dispute has been beyond civil court review absent legislative authorization for decades. *See Wall*, 213 S.W.2d at 817 (announcing jurisdictional ban on internal party leadership disputes in 1948); *see also Runyon v. Kent*, 239 S.W.2d 909, 910–11 (Tex.Civ.App.—San Antonio 1951, writ ref’d)(concluding courts lack jurisdiction to hear election contests absent legislative authorization providing otherwise); *Carter v. Tomlinson*, 227 S.W.2d 795, 799 (Tex. 1950)(same). And since Seeberger failed to provide any other basis for the trial

court to assert jurisdiction, the presumption against jurisdiction controls, and the trial court was correct to grant the plea to the jurisdiction.⁵

Furthermore, Seeberger is not entitled to remand for the opportunity to replead his claim. We may afford a plaintiff the opportunity to amend their pleadings on remand if “the pleading do not contain sufficient facts to affirmatively demonstrate the trial court[’]s jurisdiction” so long as the pleadings do not otherwise demonstrate incurable defects in jurisdiction. *Miranda*, 133 S.W.3d at 226. However, “[i]f the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiffs an opportunity to amend.” *Id.* at 227.

Here, Seeberger’s legal claim is for a declaration that he served as the Party chair for the 2020–22 term. He has pleaded a claim over which jurisdiction is incurably barred by the internal political party disputes doctrine under *Wall*. *See Wall*, 213 S.W.2d at 817. Because his legal claim is fundamentally defective, there is no basis to remand for repleading.

Issue Two is overruled. Accordingly, we affirm the trial court’s order.

b. Response to the dissent

i. Title 10 does not address whether a vacancy exists here, leaving the decision one of internal party politics.

The dissent contends provisions of Title 10 of the Election Code govern whether a vacancy exists in this case. We disagree.

⁵ The dissent suggests we overrule Seeberger’s first issue because we conclude an “absolute bar” precludes jurisdiction. Not so. We agree subject-matter jurisdiction exists in cases involving political party disputes if the legislature has provided statutory authorization to overcome the internal political party disputes doctrine. *See Cahill*, 267 S.W.3d at 106 (Excepted to the extent jurisdiction is conferred or regulated by statute, “the judiciary has no power to control the electoral process or matters referable to the internal issues of political parties[.]”). However, because there is a presumption against jurisdiction in cases involving internal party leadership disputes, courts lack jurisdiction unless the plaintiff affirmatively demonstrates otherwise. *See id.* Because Seeberger has not—and indeed cannot—overcome the presumption against jurisdiction in this case, the trial court properly granted Baca’s plea to the jurisdiction.

Indeed, Title 10 contains detailed instructions on how to call an election meeting to replace a county chairman in the event of a vacancy, as well as what constitutes a quorum necessary to appointing a successor to fill a vacancy. *See generally* TEX.ELEC.CODE ANN. § 171.024. However, no provision of Title 10 establishes at which point a vacancy occurs in the county chairmanship in this situation—*i.e.*, when a county chair resigns, then revokes his resignation—or otherwise sets standards for when a county chair’s resignation becomes effective. *Cf. id.* § 201.023 (establishing a vacancy occurs automatically eight days after a state or county official, state legislator, or member of U.S. Congress announces their resignation if the accepting authority has not yet accepted the resignation). Likewise, Article V, Section 6 of the Bylaws of the El Paso County Republican Party define the quorum standard needed to hold a vote to fill an existing vacancy (25 percent of CEC members), but like Title 10 of the Election Code, the Bylaws do not define under what conditions a county chairmanship vacancy occurs, nor do the bylaws define what the CEC must do to accept a resignation. In other words, Title 10 neither addresses nor controls the determination of whether a vacancy exists in this dispute.

The dissent complains we err in applying *Wall* and its progeny because the Election Code has been twice recodified since *Wall*. Certainly if the changes to the Election Code included a provision establishing at which point a vacancy occurs under this case’s circumstances, we would agree. But the dissent does not identify any current provision of the Election Code addressing whether a vacancy exists in this dispute.⁶ Simply because the Election Code has been modified since *Wall* does not mean it ceases to be good law. Because Title 10, including its post-*Wall*

⁶ For example, the dissent points to current provisions of the Election Code which address filling any vacancy on the CEC, *see* TEX.ELEC.CODE ANN. § 171.024, filling a vacancy in the office of county chair, *see id.* § 171.025, whether a person may participate in a CEC meeting as a proxy, *see id.* § 171.026, and establishing procedures for the removal of a county or precinct chair, *see id.* § 171.029. However, none of these provisions address what is at issue here: when or whether a vacancy occurs in a county chairmanship following a resignation.

modifications—which are substantively inapplicable here—does not provide statutory authorization to overcome the internal political party disputes doctrine, the trial court lacked jurisdiction to enter declaratory judgment in this case and therefore properly granted Baca’s plea to the jurisdiction.

ii. *Hardberger* is inapplicable.

We also disagree with the dissent’s assertion that *State ex rel Angelini v. Hardberger*, 932 S.W.2d 489 (Tex. 1996) guides the court’s decision in this case. In *Hardberger*, the Texas Supreme Court found the Governor could not oust a sitting court of appeals justice from office and appoint a successor justice prior to the effective date of the sitting justice’s resignation because if the justice’s “service is ended by voluntary resignation, he controls the right to decide when he leaves.” 932 S.W.2d at 492.

But *Hardberger* did not establish a general rule applicable to all officeholders. Instead, *Hardberger* addressed the specific office of justice of the court of appeals, the term of which is defined and protected by the Texas Constitution and cannot be interfered with by the Legislature or the Governor absent just cause. *Id.* In *Hardberger*, Associate Justice Phil Hardberger of the Fourth Court of Appeals in San Antonio was running unopposed for that court’s chief justiceship. *Id.* at 490. On June 20, 1996, he advised the Governor by letter he intended to resign his office midterm on January 1, 1997, which was the date he would assume the chief justiceship. *Id.* The Governor, believing the general state officer resignation statute at Texas Election Code Section 201.023 created an automatic vacancy that divested Justice Hardberger of his office as associate justice eight days after the letter was received, attempted to appoint Karen Angelini to fill Justice Hardberger’s unexpired term, and the Governor brought quo warranto proceedings against Hardberger, seeking Hardberger’s immediate ouster from office. *Id.*

In the Texas Supreme Court, the Governor argued “whatever his expressed intent,” Hardberger could not “deliver his letter of resignation in June . . . to be effective January 1 . . . because the Texas Election Code creates a vacancy in his office no later than eight days after his letter of resignation is received by the Governor.” *Id.* at 491. The Court held Section 201.023 could not be constitutionally applied to a court of appeals justice because the Texas Constitution establishes an appellate justice “is entitled to serve for six years unless he dies, is constitutionally removed from office, or leaves of his own accord,” and while a justice could be constitutionally removed from office involuntarily under certain circumstances, “submitting a future resignation” was not a ground for removal under the Texas Constitution. *Id.* at 492 (holding that “[w]hen the Constitution fixes the tenure of a civil office, it is beyond the power of the Legislature to affect the tenure”)(quoting *Opinion of the Justices of the Supreme Judicial Court*, 343 A.2d 196, 203 (Me. 1975). Absent just cause for removal, under the Texas Constitution, it is the individual justice who “controls the right to decide when he leaves.” *Id.*

Hardberger establishes that an appellate justice who is not subject to removal for just cause cannot be forced out of office before he or she is ready to leave because the Texas Constitution protects that justice’s tenure. By contrast, the office of El Paso County Republican Party chairman does not possess any similar constitutional tenure protections as an appellate court justice; the office of county chair is wholly a creation of statute. *See* TEX.ELEC.CODE ANN. § 171.021 (establishing a county executive committee for each county in which a political party is holding a primary); *id.* § 171.022(a)(1)(establishing the elective office of county chair). Though the dissent is “guided by” *Hardberger*’s analytical framework in interpreting the term “vacancy,” *Hardberger* construes “vacancy” strictly within the context of a constitutional provision. Indeed, so do all the cases cited in *Hardberger* that the dissent highlights as supporting its position. Accordingly,

Hardberger does not apply to the facts of this case, and its framework is inapplicable to our analysis.

CONCLUSION

For the foregoing reasons, we deny Baca's motion to dismiss and affirm the trial court's order granting the plea to the jurisdiction.

October 31, 2022

YVONNE T. RODRIGUEZ, Chief Justice

Before Rodriguez, C.J., Palafox, J., and Ferguson, Judge
Ferguson, Judge (Sitting by Assignment)