



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-21-00147-CV

**IN RE** Denise **GUTIERREZ-HOMER**, Patrick Von Dohlen, Andrew Fernandez Vicencio,  
Irina Rudolph, and Raymond Zavala, Relators

Original Proceeding<sup>1</sup>

PER CURIAM

Sitting: Patricia O. Alvarez, Justice  
Irene Rios, Justice  
Lori I. Valenzuela, Justice

Delivered and Filed: April 20, 2021

DISMISSED FOR LACK OF JURISDICTION

Relators are candidates in various municipal elections in Bexar County. Relators ask us to issue writs of mandamus to several Bexar County election officials, directing them to generally comply with various Texas Election Code provisions during the 2021 municipal elections. In support of their petition, relators allege respondents violated several Election Code provisions during the 2020 elections. Relators also allege we have jurisdiction under section 273.061 of the Texas Election Code. *See* TEX. ELEC. CODE § 273.061.

Our statutory jurisdiction to issue writs of mandamus to “compel the performance of any duty imposed by law in connection with the holding of an election,” *id.*, is constrained by the constitutional prohibition against us issuing advisory opinions in controversies that are not

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<sup>1</sup>This proceeding arises under section 273.061 of the Texas Election Code.

justiciable because we lack subject matter jurisdiction over such proceedings. *See In re Lopez*, 593 S.W.3d 353, 356 (Tex. App.—Tyler 2018, orig. proceeding). “This prohibition is rooted in the separation of powers doctrine in the Texas and United States Constitutions.” *Id.* (quotation marks omitted). “The distinctive feature of an advisory opinion is that it decides an abstract question of law without binding the parties.” *Id.* A controversy is not justiciable if the proceeding is moot or not ripe. *See Sw. Elec. Power Co. v. Lynch*, 595 S.W.3d 678, 683 (Tex. 2020). A proceeding “is moot when a court’s action on the merits cannot affect the parties’ rights.” *See Lopez*, 593 S.W.3d at 356. A proceeding is not ripe when the alleged injury “is based on hypothetical facts, or upon events that have not yet come to pass.” *Lynch*, 595 S.W.3d at 683 (quotation marks omitted).

Relators complain about respondents’ alleged violations of the Election Code during the 2020 elections, and generally request that writs of mandamus be issued to respondents to compel them to comply with the cited Election Code provisions. To the extent relators seek to remedy alleged illegalities during the 2020 elections, this proceeding is moot because our action on the merits will not affect relators’ rights regarding the 2020 elections. *See Lopez*, 593 S.W.3d at 356. To the extent relators seek to remedy hypothetical future violations that might occur during the 2021 municipal elections, this proceeding is not ripe because it is based on hypothetical facts, and upon events that have not yet come to pass. *See Lynch*, 595 S.W.3d at 683.

We hold that the controversy before this court is not justiciable because this proceeding is moot and not ripe. We therefore lack subject matter jurisdiction to address the merits because doing so would require us to render an advisory opinion, which this court lacks the constitutional authority to issue. Because we lack jurisdiction over this proceeding, we dismiss relators’ petition for writ of mandamus.

PER CURIAM