IN THE SUPREME COURT OF TEXAS

NO. 16-0260

AC INTERESTS, L.P., FORMERLY AMERICAN COATINGS, L.P., PETITIONER,

v.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

Argued October 11, 2017

JUSTICE DEVINE delivered the opinion of the Court, in which CHIEF JUSTICE HECHT, JUSTICE GREEN, JUSTICE GUZMAN, JUSTICE LEHRMANN, and JUSTICE BROWN joined.

JUSTICE BOYD filed a dissenting opinion, in which JUSTICE JOHNSON joined.

JUSTICE BLACKLOCK did not participate in the decision.

The Texas Clean Air Act provides that a person adversely affected by a Texas Commission on Environmental Quality (TCEQ) ruling may appeal by filing a petition in a Travis County District Court within 30 days of the ruling. TEX. HEALTH & SAFETY CODE § 382.032(a), (b). The Act further requires serving citation on the TCEQ within 30 days of filing the petition. *Id.* § 382.032(c). The petitioner here failed to meet this latter requirement, and the district court dismissed the appeal

on the TCEQ's motion. The court of appeals affirmed, concluding that the service deadline was mandatory and required dismissing the appeal. 521 S.W.3d 58, 62-63 (Tex. App.—Houston [1st Dist.] 2016) (mem. op.). We do not understand the Act to require dismissal under the circumstances here. Accordingly, we reverse and remand.

I. Background

The TCEQ is charged with administering the Texas Clean Air Act, which establishes a regulatory scheme to "safeguard the state's air resources from pollution." TEX. HEALTH & SAFETY CODE §§ 382.002(a), .011(a)(1). As part of the Act's implementation, the TCEQ has adopted rules to regulate and control air pollution and contaminants. *See* 30 TEX. ADMIN. CODE §§ 101.300-.304 (Tex. Comm'n on Envtl. Quality, Emission Credit Program) (2018). These rules authorize the TCEQ to grant Emission Reduction Credits (ERCs) when certain authorized emissions are reduced or eliminated under an emissions banking and trading program. *See id.* § 101.301. A company may generate ERCs, for example, by permanently shutting down a facility that lawfully emits volatile organic compounds or nitrogen oxides. *Id.* §§ 101.302(a)(1), .303(a)(1)(A).

An ERC created under the TCEQ's rules is a limited authorization to emit pollutants. *Id.* § 101.302(k). The emission reduction, however, must be certified, which means that the reduction must be "enforceable, permanent, quantifiable, real and surplus," among other things. *Id.* § 101.302(d)(1)(A). If the TCEQ certifies the reduction, the company may trade or use its ERCs within a designated area, for example, to offset emissions from a new source. *Id.* § 101.306(a)(1).

In 2013, AC Interests asked the TCEQ to certify ERCs. The TCEQ reviewed and denied the application. This prompted AC Interests to seek judicial review. AC Interests filed its petition in

Travis County District Court on December 10, 2014, and hand delivered a copy to the TCEQ a couple of days later. But AC Interests did not formally serve the TCEQ until 58 days after filing the petition. In the interim, the TCEQ moved to dismiss because it had not been served within 30 days of the petition's filing, per § 382.032(c). The district court granted the motion and dismissed the petition. AC Interests appealed, and this Court transferred the appeal from the Third Court of Appeals in Austin to the First Court in Houston, as a routine docket-equalization matter. *See* TEX. GOV'T CODE § 73.001 (granting the Supreme Court authority to transfer appellate cases); *see also Miles v. Ford Motor Co.*, 914 S.W.2d 135, 137 (Tex. 1995) (noting authority typically exercised to equalize dockets). The First Court, applying the Third Court's precedent, affirmed the dismissal. 521 S.W.3d at 63 & n.3 (citing TEX. R. APP. P. 41.3).

II. The Standard of Review

The TCEQ asserted Rule 91a as the basis for its dismissal motion. *See* TEX. R. CIV. P. 91a. Rule 91a permits a party to "move to dismiss a cause of action on the grounds that it has no basis in law or fact." *Id*. 91a.1. "A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought." *Id.* "A cause of action has no basis in fact if no reasonable person could believe the facts pleaded." *Id.* The motion must (1) state that it is made pursuant to Rule 91a, (2) "identify each cause of action to which it is addressed," and (3) "state specifically the reasons the cause of action has no basis in law, no basis in fact, or both." *Id.* 91a.2. The court is not to consider evidence but "must decide the motion based solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule 59." *Id*. 91a.6.

The TCEQ's motion does not address the pleadings or the deficiency of any cause of action. It instead asks the court to dismiss the appeal because AC Interests failed to comply with a statutory requirement—the timely service of citation. We review Rule 91a motions *de novo*, but as the court of appeals correctly points out, that was not the proper motion to file. *See* 521 S.W.3d at 60 (stating the matter is not one "that can be resolved by looking only at the allegations in the pleadings"). Even so, the court concluded that the TCEQ's motion was in substance a general motion to dismiss that the court could review. *Id*. Further, because the motion concerned a legal question requiring statutory construction—the consequences for AC Interests's failure to comply with the Clean Air Act's 30-day service deadline—the court declared that the standard of review was *de novo*. *Id*. at 61 (quoting *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625 (Tex. 2008) ("Statutory construction is a legal question we review *de novo*.").

We agree that the TCEQ's dismissal motion is premised on matters of statutory construction rather than on any matter subject to Rule 91a and, therefore, treat it as a general motion to dismiss or dilatory plea premised on the TCEQ's interpretation of the statute. *Cf. Bland Indep. Sch. Dist. v. Blue,* 34 S.W.3d 547, 554 (Tex. 2000) ("The purpose of a dilatory plea is not to force the plaintiffs to preview their case on the merits but to establish a reason why the merits of the plaintiff's claim should never be reached."); *Kelley v. Bluff Creek Oil Co.*, 309 S.W.2d 208, 214 (Tex. 1958) (noting "a speedy and final judgment may be obtained on the basis of matters in bar and without the formality of a trial on the merits, if the parties so agree"). AC Interests complains here that its district court appeal should not have been dismissed because either (1) the Clean Air Act's 30-day service deadline does not apply to AC Interests, or (2) if it does, the requirement is neither mandatory nor a legitimate basis for dismissal. We consider these issues in turn.

III. Analysis

A. Does the Clean Air Act's 30-day service requirement in TEX. HEALTH & SAFETY CODE § 382.032(c) apply to AC Interests's appeal?

In the court of appeals, AC Interests argued that the 30-day-service requirement did not apply because its TCEQ appeal was premised on the Water Code, not the Clean Air Act. Like the Clean Air Act, the Water Code requires that an appeal must be filed within 30 days of the TCEQ's ruling. TEX. WATER CODE § 5.351(b). Unlike the Clean Air Act, the Water Code does not provide for the service of citation within 30 days of the petition's filing. *Compare* TEX. WATER CODE § 5.351, *with* TEX. HEALTH & SAFETY CODE § 382.032(c). Instead, the Water Code provides for dismissal one year after the petition's filing if the plaintiff has not secured proper service or prosecuted the suit within that time, unless good cause exists for the delay. TEX. WATER CODE § 5.353. AC Interests therefore concludes that its service on the TCEQ a mere 58 days after the filing of its petition was timely.

The court of appeals recognized that the Water Code provides general authority for judicial review of TCEQ rulings. *See* 521 S.W.3d at 62 (citing TEX. WATER CODE § 5.351). The court also acknowledged that AC Interests's petition in the district court cites both the Water Code and the Clean Air Act, but necessarily relies on the Clean Air Act as "the authority for the TCEQ to regulate air emissions." *Id*. at 63. And because the Clean Air Act not only authorizes the particular TCEQ decision but also specifically provides for its judicial review, the court concluded that the Clean Air Act controls over the more general Water Code provision. *See id*. (quoting "the traditional statutory construction principle that the more specific statute controls over the more general" from *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000)).

We agree that the Clean Air Act controls AC Interests's request for judicial review in the district court and that the 30-day service requirement was therefore applicable. *See* TEX. HEALTH & SAFETY CODE § 382.032(c).

B. Is the Clean Air Act's 30-day service requirement in TEX. HEALTH & SAFETY CODE § 382.032(c) mandatory or directory?

The Clean Air Act provides successive 30-day deadlines in connection with the appeal of a TCEQ ruling. The first deadline is to file the petition that initiates the appeal. TEX. HEALTH & SAFETY CODE § 382.032(a)-(b). The second is to serve citation on the TCEQ. *Id.* § 382.032(c). The parties agree that the filing deadline is a mandatory, jurisdictional requirement and that the service deadline is not jurisdictional. The parties disagree about whether the service deadline is mandatory and about what consequence follows failing to meet this service deadline.

AC Interests argues that the service deadline is directory and that, because AC Interests complied with the statute's essential purpose by hand-delivering the petition to the TCEQ two days after filing, dismissal is not required. It submits that statutory provisions that "are included for the purpose of promoting the proper, orderly and prompt conduct of business" are not generally construed as mandatory, particularly when the failure to comply will not prejudice the rights of the interested parties. *Chisholm v. Bewley Mills*, 287 S.W.2d 943, 945 (Tex. 1956). Moreover, a timing provision that requires performing an act within a certain time but does not specify the consequences for noncompliance is, generally, construed as directory. *Helena Chem. Co. v. Wilkins,* 47 S.W.3d 486, 495 (Tex. 2001). But, AC Interests concedes, this is not always the case; the lack of a stated consequence cannot be interpreted to defeat the statute's essential purpose. *See Edwards Aquifer Auth. v. Chem. Lime, Ltd.*, 291 S.W.3d 392, 403 (Tex. 2009). AC Interests submits that § 382.032's essential purpose is to provide a process for appealing the TCEQ's ruling and that the two deadlines

exist to expedite that process. It contends that it substantially complied with that process by timely filing its petition and providing actual notice of the filing to the TCEQ two days later. *See id*. (noting that the issue is not substantial compliance with the filing deadline but rather substantial compliance with the statute's "application process, one requirement of which was the filing deadline").

The TCEQ responds that the language and purpose of the statute demonstrate that the service requirement is mandatory. The statute states that "service of citation *must* be accomplished within 30 days." TEX. HEALTH & SAFETY CODE § 382.032(c). (emphasis added). The word "must" indicates a condition precedent "unless the context in which the word or phrase appears necessarily requires a different construction," according to the Code Construction Act. TEX. GOV'T CODE § 311.016. The TCEQ therefore concludes that AC Interests had to serve process within 30 days to accrue its right to judicial review. But the TCEQ also concedes that serving citation, unlike filing the petition, is not jurisdictional. Nevertheless, it contends that the Legislature intended the same mandatory effect because it used the same mandatory term—"must"—and a similar timing provision. Thus, even though timely service is not a jurisdictional prerequisite, a failure to meet the deadline should, according to the TCEQ, yield the same consequence: dismissal. Finally, the TCEQ submits that the service deadline is not onerous because any party appealing a TCEQ ruling knows where to serve the TCEQ, having already appeared before the agency. The TCEQ submits that "[i]n this respect, serving citation is more like filing a notice of appeal than serving citation for a common-law lawsuit." But the TCEQ also submits that the service deadline does not merely provide prompt notice of the appeal but also eliminates any due-diligence argument that might otherwise excuse late service.

The "fundamental rule" for determining whether a statutory provision is mandatory or directory "is to ascertain and give effect to the legislative intent." *Chisholm*, 287 S.W.2d at 945. But the legislative intent is often unclear when the Legislature creates a deadline but expresses no penalty or consequence for failing to meet it. In situations like that, we have acknowledged that no "absolute test" exists for distinguishing the mandatory from the directory. *Id*. And to punctuate the point, we offered these additional observations sixty years ago:

> Although the word "shall" is generally construed to be mandatory, it may be and frequently is held to be merely directory. In determining whether the Legislature intended the particular provision to be mandatory or merely directory, consideration should be given to the entire act, its nature and object, and the consequences that would follow from each construction. Provisions which are not of the essence of the thing to be done, but which are included for the purpose of promoting the proper, orderly and prompt conduct of business, are not generally regarded as mandatory. If the statute directs, authorizes or commands an act to be done within a certain time, the absence of words restraining the doing thereof afterwards or stating the consequences of failure to act within the time specified, may be considered as a circumstance tending to support a directory construction.

Id.

The words "shall" and "must" in a statute are generally understood as mandatory terms that create a duty or condition. *Wilkins*, 47 S.W.3d at 493 (citing TEX. GOV'T CODE § 311.016(2), (3)). But we have cautioned that such labels can be misleading absent context. *See State v. $435,000*, 842 S.W.2d 642, 644 (Tex. 1992) (per curiam). "More precisely the issue is not whether 'shall' [or 'must'] is mandatory, but what consequences follow a failure to comply." *Id*. Thus, "[t]o determine whether a timing provision is mandatory, we first look to whether the statute contains a noncompliance penalty. If a provision requires that an act be performed within a certain time without any words restraining the act's performance after that time, the timing provision is usually directory." *Wilkins*, 47 S.W.3d at 495. But, of course, we will not interpret silence regarding the

consequences for noncompliance to undermine the statute's purpose. *See Hines v. Hash*, 843 S.W.2d 464, 468 (Tex. 1992) (stating that when the statute is silent, we may look to its purpose for guidance). And again "[t]he fundamental rule is to ascertain and give effect to the legislative intent," *Chisholm*, 287 S.W.2d at 945, which "is best revealed" by the language enacted. *In re Office of Attorney Gen.*, 422 S.W.3d 623, 629 (Tex. 2013). We must, therefore, look at the Clean Air Act's text for clues of the intended consequence for late service.

The Act states that a person affected by a TCEQ ruling "may appeal the action *by filing a petition*." TEX. HEALTH & SAFETY CODE § 382.032(a) (emphasis added). "The petition must be filed within 30 days after . . . the effective date of [the TCEQ's] ruling." *Id.* § 382.032(b). This means that a person may appeal only if the petition complies with the 30-day filing requirement—*i.e.*, a person who fails to comply may *not* appeal; hence, any attempt to appeal should be dismissed. Filing a timely petition under the statute is a jurisdictional requirement. *See* TEX. GOV'T CODE § 311.034. When a party's failure to comply results in a court lacking jurisdiction, the necessary consequence for that failure is dismissal. Similarly, when the deadline relates to the very act necessary to establish a claim, right, or benefit under the statute, the deadline is usually considered mandatory and its neglect fatal. *See, e.g., Chem. Lime, Ltd.*, 291 S.W.3d at 404-05 (holding that applicant was not entitled to a ground water permit because it failed to submit proof of its historical water usage by deadline). But no such consequence for failing to comply with the 30-day *service* deadline is stated or necessary here. The Act states that "[s]ervice of citation on the commission must be accomplished within 30 days after the date on which the petition is filed." *Id.* § 382.032(c). It states only a requirement, not a consequence; you "may appeal . . . by filing a

petition," not by serving citation. Both the service and petition deadlines "must" be met, but only the petition deadline has a clear consequence for noncompliance—you may *not* appeal.

The court of appeals dealt with this dilemma by concluding that the service deadline was mandatory, rather than directory, and required dismissal, relying on precedent from the Austin Court of Appeals. 521 S.W.3d at 61-62 (following *TJFA, L.P. v. Tex. Comm'n on Envtl. Quality*, 368 S.W.3d 727 (Tex. App.—Austin 2012, pet. denied)); *see also* TEX. R. APP. P. 41.3 (requiring that the transferee court apply the transferor court's precedent in cases transferred by the Supreme Court). *TJFA* dealt with a Solid Waste Act provision that provided a similar 30-day deadline to serve the TCEQ. *TJFA*, 368 S.W.3d at 729; *see* TEX. HEALTH & SAFETY CODE § 361.321(c). The Austin Court held that the 30-day service deadline was mandatory because the statute did not expressly provide for any exceptions and was written with mandatory language, which had to be afforded some significance. *TJFA,* 368 S.W.3d at 735. Like the statute here, the Solid Waste Act does not specify the consequence for noncompliance with the service deadline. The Austin Court, however, determined that the consequence for noncompliance was dismissal because the Legislature placed the service and filing deadlines in the same subsection. This, the court reasoned, indicated that the service deadline should be treated like the filing one. *Id.* at 735-36.

We are not convinced that this placement indicates anything significant. But even if it does, the service and filing deadlines here are in different subsections. *See* TEX. HEALTH & SAFETY CODE § 382.032(b), (c). Thus, what the court found significant in *TJFA* does little to help resolve this case.

The TCEQ nevertheless argues that we must afford some significance to the statute's use of the word "must," which, under the Code Construction Act, indicates a condition precedent "unless the context . . . necessarily requires a different construction." TEX. GOV'T CODE § 311.016. As a

condition precedent, the TCEQ claims, the statutory provision is mandatory, which means that AC Interests's suit should be dismissed. But that argument misses the point. Even if the service requirement is a condition precedent and, hence, mandatory, that does not resolve what the consequence is for *late* service. It is too quick to say that "must" is mandatory language, therefore failure to comply results in dismissal. *See $435,000*, 842 S.W.2d at 644 (noting that the issue is not the use of mandatory language "but what consequences follow a failure to comply"). That goes too far as a statutory-construction approach because it assumes, without more, that *any* noncompliance with a condition precedent results in dismissal. But other possible consequences exist. *See, e.g., Albertson's, Inc. v. Sinclair*, 984 S.W.2d 958, 961 (Tex. 1999) (per curiam) (noting that failure to comply with mandatory notice provision under worker's compensation law did not require dismissal of action for judicial review); *Hines v. Hash,* 843 S.W.2d 464, 467-69 (Tex. 1992) (determining abatement to be the consequence for failure to give required statutory notice); *$435,000*, 842 S.W.2d at 644 (concluding that failure to hold forfeiture case hearing within statutorily required 30-day period did not require dismissal); *Tex. Dep't of Pub. Safety v. Gratzer*, 982 S.W.2d 88, 90-91 (Tex. App.—Houston [1st Dist.] 1998, no pet.) (holding that officer's failure to comply with statutory deadline regarding notice of license suspension did not render DWI-warning form inadmissible because statute did not provide a consequence and driver did not assert any prejudice).

We recently held in *BankDirect Capital Finance, LLC v. Plasma Fab, LLC* that the failure to meet a statutory timelimit could not be excused, but that situation is distinguishable from the present one. 519 S.W.3d 76, 78 (Tex. 2017). There, the issue was whether the Insurance Code permitted BankDirect, a premium finance company, to cancel an insured's policy even though BankDirect did not comply with a statutory timelimit for doing so. *Id.* at 79. The statute required

BankDirect to mail an intent-to-cancel notice to the insured stating a deadline of not less than ten days to cure the insured's default. *Id*. at 80. BankDirect's notice did not provide this minimum deadline to cure. *Id*. at 79. The statute in *BankDirect*, however, unlike the statute here, states a consequence for such noncompliance: a finance company "may not cancel" an insured's policy unless the statutory notice is given. TEX. INS. CODE § 651.161(a)-(b). Because BankDirect did not comply with the statute, it was not allowed to cancel the policy. *See BankDirect*, 519 S.W.3d at 86 (noting the statute's "austere consequence for noncompliance: BankDirect 'may not cancel' the policy"). Thus, *BankDirect* does not control this case.

The statutory provision at issue here does not state a consequence and, importantly, no consequence is logically necessary. *See* TEX. HEALTH & SAFETY CODE § 382.032(c). Contrast this with a jurisdictional requirement, where failure to comply results in dismissal because the failure means that jurisdiction never obtains. *See*, *e.g., id.* § 382.032(a). In that situation, dismissal is logically necessary though not explicitly stated. But the service requirement here is not jurisdictional. *See Roccaforte v. Jefferson Cty.*, 341 S.W.3d 919, 925 (Tex. 2011) (holding that failure to give statutorily required post-suit notice is not jurisdictional). That is, even if it is a condition precedent to *something*, it is not a condition precedent to suit, and no other particular consequence for noncompliance is logically necessary. Hence, deeming the service requirement a "condition precedent" does not resolve the issue of what a court is to do here.

The dissent, however, argues that subsections (a), (b), and (c) are *all* conditions precedent to appeal. *Post* at ___ (Boyd, J., dissenting). That is, the dissent thinks that you "may appeal" only by (1) filing a petition, (2) doing so within 30 days, and (3) serving citation within 30 days. But that is not how the statute is written. Nowhere does the statute state that a party "may appeal" by filing

a petition *and* serving citation. It states, in subsection (a) only, how a party "may appeal": "by filing a petition." *Compare* TEX. HEALTH & SAFETY CODE § 382.032(a), *with id.* § 382.032(b), (c). There is no conjunction linking subsections (a) and (c), or (a) and any other subsection. *See id.* § 382.032. Without a conjunction, there is no plain-language argument that subsection (c) refers back to subsection (a)'s "may appeal" language and, hence, is a condition precedent to appeal. Subsection (c) states, in its entirety: "Service of citation on the [TCEQ] must be accomplished within 30 days after the date on which the petition is filed. Citation may be served on the executive director or any [TCEQ] member." *Id.* § 382.03(c). We cannot conclude from this that the service deadline, like the petition-filing requirement, is a condition precedent to appeal.

The dissent further argues that there is no principled reason to construe the petition deadline as a condition precedent to appeal but not to do so for the service deadline. *Post* at ___. Respectfully, we disagree. Subsections (a) and (b) are linked because subsection (b) lists the requirements for filing the petition identified in subsection (a)—these requirements are simply what subsection (a) means by "filing a petition." If you do not meet these requirements, you have not filed a petition and, therefore, may not appeal. We think that conclusion is logically necessary given that you must file a petition in order to appeal. But subsection (c) is not defining a term in subsection (a), and again, does not in any way refer back to subsection (a)'s "may appeal." Thus, we cannot similarly conclude that failing to meet the service deadline means that you may not appeal.

The dissent's argument that subsection (c) is just as much a condition precedent to appeal as subsection (b) is a perfectly reasonable one, but it is based on an inferential leap that is not needed when making the same conclusion about subsection (b). That inference is that the Legislature intended for subsection (a)'s "may appeal" language to apply to subsection (c), too. Such an

inference is reasonable, and reasonable minds will disagree about whether subsection (c) was meant as a condition precedent to appeal. But that is exactly the point: the dissent's reading is reasonable and logical, but it is not logically *necessary*. Also reasonable is concluding that serving citation is a *post*-suit requirement or that its purposes was merely to provide notice. All of these conclusions are reasonable, but they all require us to make inferences beyond what the text provides. None are logically necessary. Thus, the dissent's subsection (c) conclusion, though reasonable, is principally distinct from our subsection (b) conclusion, which is logically necessary.

Of course, had AC Interests *never* served citation, this failure to ever perform the condition precedent—accomplishing service—means that AC Interests would be prohibited from *continuing* to appeal. But that, by itself, still does not mean that failing to serve within 30 days requires dismissal. Dismissal might occur eventually, as the Act's one-year presumption-of-abandonment provision suggests: "If the plaintiff does not prosecute the action within one year after the date on which the action is filed, the court shall presume that the action has been abandoned." TEX. HEALTH & SAFETY CODE § 382.032(d). Indeed, in that situation, a court is required to "dismiss the suit on a motion for dismissal . . . unless the plaintiff . . . can show good and sufficient cause for the delay." *Id.* But before one year has elapsed, the only logically necessary consequence for failing to serve the citation is that, until it *is* served, AC Interests cannot pursue a remedy under the Act. After a year, this failure might result in dismissal. *See id.* In that sense, serving citation is mandatory—it must be done at some point. But AC Interests *did* serve citation; it simply did so more than 30 days after filing the petition. Thus, even if the service deadline is mandatory and, hence, failing to ever accomplish service—a condition precedent—could eventually result in dismissal, that consequence

is not logically necessary when service is merely beyond 30 days. So we are back to the initial question: what is the consequence for noncompliance with the service-of-citation deadline?

But the dissent protests that serving citation is a constitutionally required step that is "inherent in the act of filing a petition" and is jurisdictional. *Post* at ___. Even if serving citation is jurisdictional, *contra Roccaforte*, 341 S.W.3d at 925, or constitutionally required, doing so within 30 days is not. The 30-day deadline is a creature of the statute, not the constitution or our jurisdiction jurisprudence. And AC Interests did serve citation on the TCEQ. What AC Interests did not do was serve citation within the *statute's* 30-day deadline. AC Interests did not fail to meet a constitutional or jurisdictional requirement; it failed to meet a statutory one. Thus, we cannot conclude that failing to meet this statutory requirement implicates due-process concerns or deprives a court of subject-matter jurisdiction.

As the above discussion demonstrates, that "must" creates a condition precedent under the Code Construction Act does not determine the consequence for noncompliance here. Even if the provision is mandatory in the sense that failure to *ever* effect service cannot be excused, the statute does not give any guidance for determining the consequence for *late* service. This leaves us with essentially the same question as before—is the 30-day aspect of the service requirement mandatory or directory?—with no statutory guidance to answer it. But ironically, this lack of guidance is what guides us. Our acknowledgment of this uninformed choice between mandatory and directory is what informs our analysis, because presuming that the provision here is mandatory requires us to create a statutory consequence for noncompliance, which is the Legislature's job, not ours. Interpreting such a provision as directory avoids this problem.

Presuming that the 30-day requirement is mandatory entails judicial guesswork to resolve the case. Indeed, such a presumption requires choosing legal consequences without any direction from the text. When no stated or logically necessary consequence for noncompliance can be tethered to the text, choosing between dismissal, abatement, or some other consequence presents an intractable problem. Hence the presumption that a timing provision that fails to state the consequences for noncompliance should be considered directory rather than mandatory. *Wilkins*, 47 S.W.3d at 495; *Chisholm*, 287 S.W.2d at 945. But this presumption cannot be used to undermine the statute's purpose. Thus, when the statute is otherwise silent on the subject, we look to its purpose for guidance in divining the consequence for noncompliance. *See Chem. Lime*, 291 S.W.3d at 404. In other words, if a particular consequence is logically necessary to accomplish the statute's purpose, the courts will apply that consequence.

The statute's purpose here is to provide a process for the judicial review of TCEQ decisions. *See* TEX. HEALTH & SAFETY CODE § 382.032 ("Appeal of Commission Action"). The successive 30-day deadlines indicate a further purpose to expedite filing and notice and presumably the appeal itself. *Id*. § 382.032(b)-(c). The TCEQ emphasizes that the service requirement is not merely a notice requirement but also a service-of-process requirement, implying strict compliance. We, however, see no textual basis to conclude that serving citation within 30 days of filing the petition is so essential to the statute's purpose that the Legislature intended anything less than strict compliance to require dismissal. *Cf. Roccaforte,* 341 S.W.3d at 926 (concluding under another statute requiring expedited notice that the failure to strictly comply with the manner of notice was not fatal because the statute's purpose was not "to create a procedural trap allowing a county to obtain dismissal even though the appropriate officials have notice of the suit").

The dissent agrees with our identified purpose—providing a process for judicial review and expediting appeals—but claims that "construing the service-of-citation requirement as a condition precedent to judicial review best promotes that purpose." *Post* at ___. Maybe so, but that the dissent's construction promotes the purpose does not mean that the construction is required to satisfy that purpose. Appeals under this statute are more expedient when the 30-day deadline is met, but missing that deadline does not make the appeal so prolonged that it is delayed to the point of failing this "expedience" purpose. That is, this particular deadline, even if it helps to make appeals more expedient, is not so essential to "expediency" that failure to meet the deadline necessarily entails dismissal. We should be careful not to confuse incrementally promoting a purpose with being fundamentally required by it—*i.e.*, just because "expediency" is a purpose does not mean that being less-expedient requires dismissal.

Moreover, that dismissal under subsection (d) can occur only after failing to "prosecute the action within one year," TEX. HEALTH & SAFETY CODE § 382.032(d), shows that dismissal for missing this 30-day deadline is not essential to the purpose. Because AC Interests could sit on its hands for almost an entire year after filing its petition and serving citation before the statute allows for dismissal based on this lack of expediency, delays short of that one-year mark cannot be so contrary to "expediency" that they *require* dismissal. Indeed, even at the one-year mark, the statute allows for AC Interests to avoid dismissal by showing "good and sufficient cause for the delay." *Id.* Whatever consequence the Legislature might have had in mind when writing subsection (c), we cannot conclude that it was dismissal when subsection (d) allows for such a significant delay, and then an opportunity to provide an excuse, before dismissing.

The dissent also claims that the statute's purpose is to detail when the Legislature waives the TCEQ's sovereign immunity. *Post* at ___. Even if we agreed with this alleged purpose, there is no ambiguity regarding what the Legislature has waived sovereign immunity for: appealing "a ruling, order, decision, or other act" of the TCEQ or executive director. *Id.* § 382.032(a). There is nothing regarding the breadth of sovereign immunity to broadly or narrowly construe here. The TCEQ's waiver of immunity is equally limited under both our analysis and the dissent's. We disagree whether the service deadline is a condition precedent to bringing an appeal, but that does not affect how limited the waiver is. Regardless, immunity was waived when AC Interests properly filed its petition. The dissent's argument that serving citation is also required to waive immunity rests on its premise that the service deadline is jurisdictional and constitutionally required. But we have already discussed why we disagree with that argument. Thus, missing the 30-day deadline cannot be so essential to the statute's purpose that dismissal is logically necessary.

Whatever gap a court must bridge between a statute's language and its intended result, it is a wider gap if the statute's language is presumed to be mandatory rather than directory. Thus, when a statutory provision has mandatory language, but is not jurisdictional, and does not have an explicit or logically necessary consequence, we presume the provision was intended as a direction rather than a mandate. Doing so ends the judicial inquiry, or at least the difficult part of it. Because such a provision is directory, courts are not forced to blindly search for or invent a particular consequence that the Legislature failed to provide. But just because a provision such as this is directory does not make it a mere suggestion that can be disregarded at will. If a party does not comply with such a provision, an opposing party can, upon a showing of prejudice, have that prejudice remedied as the court determines that justice requires. This might mean, for example, abatement, attorney's fees, or

expediting subsequent proceedings as appropriate. In extreme situations where the noncompliance prevents the opposing party from adequately presenting its case, it might mean dismissal. Failure to comply with a directory provision has consequences, but they are not always fatal.

* * * * *

Here, AC Interests served citation on the TCEQ after the 30-day statutory deadline. Because the Legislature expressed no particular consequence for failing to meet that deadline and none is logically necessary, we presume that the Legislature intended the requirement to be directory rather than mandatory and that the Legislature did not intend for late service to result in the automatic dismissal of AC Interests's appeal. Because the court of appeals erred in upholding the dismissal, we reverse its judgment and remand the cause to the district court for further proceedings consistent with this opinion.

_____

John P. Devine
Justice

Opinion Delivered: March 23, 2018