# Supreme Court of Texas

No. 21-1111

In re Ranya Khanoyan, Alan Vera, David Lugo,
Tom S. Ramsey and R. Jack Cagle,

*Relators*

On Petition for Writ of Mandamus

JUSTICE BLACKLOCK and JUSTICE YOUNG delivered the opinion of the Court.

"[P]erhaps the most fundamental individual liberty of our people," Justice Black famously wrote, is "the right of each man to participate in the self-government of his society." *In re Winship*, 397 U.S. 358, 385 (1970) (Black, J., dissenting). The right to vote makes self-government possible and undergirds the premise that the government has the consent of the governed. This petition for writ of mandamus contends that the Harris County Commissioners Court has stripped more than a million Texans of their right to vote for a commissioner in the 2022 election. According to Relators, the majority of the commissioners court—when redrawing their own precincts—did this to increase the chances that one party will retain control of the court for the next decade. Respondents, by contrast, contend that redistricting combined with staggered elections makes it inevitable that some voters

who would have voted in 2022 under an old map will end up voting in 2024 under a new map. They claim that the commissioners court has substantial discretion in drawing the precinct lines, that the reasons for drawing the lines as they did reflect rational considerations (like unifying rather than dividing "communities of interest" within common precincts), and that, in any event, this Court lacks jurisdiction because no Relator has standing and because of other obstacles peculiar to the posture of this litigation.

We deny the petition for writ of mandamus, but we do not do so lightly or summarily. Our decision implies no endorsement, affirmation, or other view of the redrawn map of precincts challenged here. Nor do we suggest that mandamus would never be an appropriate vehicle to resolve this question or ones like it. Our narrow holding is that this mandamus petition, under the circumstances we describe below, cannot go forward under settled precedents that sharply limit judicial authority to intervene in ongoing elections.

To begin, the executive and legislative branches of government are the primary managers of our state's elections. They, no less than the courts, are sworn to uphold the Constitution and the laws. Texas courts do not sit as general overseers of election processes; they sit only to resolve any concrete and justiciable disputes that may arise. A party with such a dispute certainly has access to judicial resolution. But for a court to resolve an election dispute, the court must receive the case early enough to order relief that would not disrupt the larger election.

This Court, like the U.S. Supreme Court, therefore has repeatedly explained that invoking judicial authority in the election context

requires unusual dispatch—the sort of speed not reasonably demanded of parties and lawyers when interests less compelling than our society's need for smooth and uninterrupted elections are at stake.[1] Time is particularly of the essence if a lawsuit seeks judicial action that may prevent the election from happening on time. Like the courts themselves, all parties must minimize delays in this context. Avoidable delays, in particular, may be fatal to the courts' ability to proceed at all.[2]

Another corollary is likewise true: as the risk of judicial interference with an election rises, so does the duty of the party invoking judicial power to explain with precision how any relief will affect that election and the larger structure of our state's election machinery. At a bare minimum, a party who asks a court to take action that could disrupt the election calendar after the election process has begun has the duty to explain the practical consequences of the requested judicial action. That explanation must contain sufficient detail to allow the

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[1] *See, e.g.*, *Purcell v. Gonzalez*, 549 U.S. 1, 4–6 (2006) (per curiam) (refusing to allow judicial interference in electoral rules in light of an imminent election); *In re Hotze*, 627 S.W.3d 642, 645–46 (Tex. 2020) (orig. proceeding) (citing *Purcell* and other cases to explain refusal to interfere in an imminent election through mandamus); *In re Francis*, 186 S.W.3d 534, 541 n.32 (Tex. 2006) (orig. proceeding) ("[C]ourts generally should not delay an election."); *In re Gamble*, 71 S.W.3d 313, 318 (Tex. 2002) (orig. proceeding) ("Generally, courts will not exercise equitable powers when their exercise may delay the election."); *Blum v. Lanier*, 997 S.W.2d 259, 263 (Tex. 1999) ("It is well settled that separation of powers and the judiciary's deference to the legislative branch require that judicial power not be invoked to interfere with the elective process.").

[2] Similarly, a party that thinks that an opponent is engendering delay to make a case impossible for the courts to resolve may need to seek anticipatory relief, or at least make a clear record of doing everything practicable to not contribute to the delay.

Court to weigh the need for the requested relief against the burdens the relief would impose on the election process and on the rights of other Texans.

These principles are not novel. Courts at every level, including the U.S. Supreme Court and this Court, have declined to implement even "seemingly innocuous" alterations to election laws on the eve of an election, let alone after one has begun. *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring); *see In re Hotze*, 627 S.W.3d 642, 646 (2020) ("[C]ourt changes of election laws close in time to the election are strongly disfavored.") (quoting *Tex. All. for Retired Ams. v. Hughs*, 976 F.3d 564, 567 (5th Cir. 2020)); *see also Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) (per curiam) (holding that a lower court errs when it changes election laws on the eve of the election without sufficient showing of constitutional burdens). All parties must move with maximum expedition so that the courts—which also must act quickly when properly called upon—do not themselves contribute to electoral confusion.

Expedition and precision in requesting relief help ensure that courts can never be converted, willingly or otherwise, into a partisan tool for one side or the other. Those requirements reduce the incentives for partisan adversaries to lie in wait with lawsuits that create chaos. To be clear, we do not charge Relators here with any such intention. We simply note that the rules are demanding because such conduct would otherwise go undeterred. Courts must follow the same, exacting standards in all cases.

These principles leave us no option but to deny the petition. The Harris County Commissioners Court held a series of hearings leading up to the passage of the map at issue. That court passed the map on October 28, 2021.[3] Relators sued three weeks later, on November 16. The district court held a hearing on November 29 to consider Relators' request for a temporary restraining order, which the court denied during the hearing. On December 22, at a hearing to consider Relators' application for a temporary injunction and Respondents' plea to the jurisdiction, Relators rightly asked the district judge to proceed quickly so that they could appeal. The judge obliged by signing an order granting Respondents' plea to the jurisdiction at the end of the hearing. Relators then recognized that an interlocutory appeal would leave insufficient time for the courts to resolve the merits and grant them any relief, and so on December 23, they instead filed an original petition for writ of mandamus in this Court.

The time frame is a particularly acute concern. When an election's imminence will likely implicate the judicial limitations on granting relief described above, litigants often have some options to accelerate the process. For example, litigants who choose to proceed in the district court, and file promptly in that court, may respectfully alert that court that, due to the emergency nature of the litigation, they will feel constrained to file a mandamus petition to prevent the loss of their

[3] By contrast, the Texas Legislature redistricted federal congressional seats, both houses of the legislature itself, and other districts by October 19. The record and briefing before us do not appear to explain why Harris County, with only four precincts, did not finish its work much sooner than the legislature did instead of nine days afterwards.

claimed rights if they have not received a ruling by a specified date. If such a filing becomes necessary, the case can come to the appellate courts' attention sooner. Or if the urgency makes proceeding in a district court impracticable, a litigant with statutory authority to do so may file an original mandamus petition in an appellate court, accompanied by a factual record that establishes the nature of the violation and justifies the requested relief. Such mechanisms may enable courts to address claims without interfering with an impending or ongoing election.

But no amount of expedited briefing or judicial expediency at this point can change the fact that the primary election for 2022 is already in its early stages. It began on November 13 with the opening of the filing period for candidates based on the now-challenged map. That filing period ended on December 13. The period for ballot access has closed. Ballots must be finalized very soon to comply with deadlines for mailing ballots to military and overseas voters. This Court and other Texas courts are duty-bound to respond quickly to urgent cases that warrant expedited proceedings, but even with utmost judicial speed, any relief that we theoretically could provide here would necessarily disrupt the ongoing election process.

Relators do not suggest any relief that could avoid these practical consequences. As far as we can see, they have asked us only to enjoin the use of the map enacted by the commissioners court. But wiping away that map would only leave the preexisting map—one that Relators agree violates *federal* law because of the disparity in size among the precincts based on a decade of uneven population growth throughout Harris County. Enjoining the current map, the County assures us,

would bring dire consequences. The affidavits attached to Respondents' brief—including affidavits from the Texas Secretary of State's office drawn from contemporaneous litigation—all state that disruptions to the election at this point would be "catastrophic."[4] Should Relators be successful here, the requested relief could prevent the election from going forward on time and, at the very least, insert a great deal of confusion into this election cycle. Relators do not argue to the contrary.[5] This is an original mandamus proceeding brought in this Court with a bare record that contains only allegations—some of which are not disputed, but many of which are. Ordering the requested relief on the paltry record before this Court would be an irresponsible shot in the dark.

Relators claim to be in possession of an alternative map that lawfully redraws precincts without excluding any voter from consecutive county-commissioner elections. This map was not presented to the commissioners court, the district court, the Respondents, or this Court, and it is unclear how this map could become law.

Would this Court order its production and then its use? Some other court? Would the commissioners court have to meet to enact a new map? Would the commissioners court be obligated to adopt it, or would that court have the traditional discretion to consider other factors in

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[4] Resp. Br. App'x 6 (Decl. of Brian Keith Ingram), ¶¶6–12; *see also* Resp. Br. App'x 7 (Decl. of Bruce Sherbet), ¶¶14–16 (describing the scope of the disruption should a court grant relief); App'x 8 (Decl. of David Blackburn), ¶¶9–10 (same); App'x 9 (Decl. of Staci Decker), ¶¶11–12 (same).

[5] Respondents filed their brief and supporting affidavits on December 30, 2021. Relators did not file anything in reply.

determining the boundaries between precincts? Would a new candidate filing period be required? Would the commissioners' primary elections be delayed and conducted separately from other primaries? Would, as Respondents contend, relief here also throw the elections in many other Texas counties into disarray?[6] We lack answers to these questions.[7] Nor do the parties' filings provide any guidance on whether and how elections for the commissioners court could lawfully be held on schedule if the existing lines are judicially invalidated at this late date.

Both because of where we are in the electoral calendar and because of the likelihood of substantial harm that would flow from any judicial action, the relief that Relators seek transgresses this Court's settled limits on judicial interference with elections. Other potential but unsought relief *might* have mitigated such concerns. For example, an order requiring *all* precincts to stand for election in 2022 would eliminate any concerns about disenfranchisement—but would not address the perceived political gerrymandering that Relators claim

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[6] No county believed itself to be subject to the rule that Relators propose here when drawing precinct lines. Granting relief in this case, therefore, would at least *threaten* to upend elections in many other counties. We do not know how many other counties drew maps that moved more than the minimum number of people from precincts scheduled to vote in 2022. We would be hard-pressed to impose a new map on Harris County on the ground that the map its commissioners enacted was unconstitutional yet insist that other counties continue to use maps that were equally unconstitutional, given that the disruption there would be no more than in Harris County.

[7] In fairness, Relators do not ask us to impose their map—they instead state that the map that they have simply shows that they "stand ready to assist with the passage of a plan that is valid in all respects." That offer, however, only opens the door to more questions of timing, logistics, and substantive requirements for generating and implementing "a plan that is valid in all respects."

motivated the new map. Opening ballot access at this late date for the two precincts that did not believe an election would be held until 2024 might have its own challenges—and Relators, in any event, did not request that relief, even in the alternative. *See Republican Nat'l Comm.*, 140 S. Ct. at 1207.[8]

In some circumstances, litigants could present the courts with a clear violation of ministerial duties imposed by law, which—especially if brought early enough to avoid harm to the larger election—could lead to prompt judicial correction. But the petition here presents the opposite scenario—a highly uncertain issue of Texas constitutional law never before addressed by the courts of our state. Relators appear to argue that the Texas Constitution imposes an absolute duty, in the context of staggered elections, to eliminate or minimize the extent to which any voter must wait two years before again voting for a county commissioner. They acknowledge that it is sometimes inevitable that some voters will be unable to vote because of the combination of census-based redistricting and staggered elections; those voters are "temporarily disenfranchised" in a sense. Many courts in the past have confronted similar objections to the redrawing of district lines in staggered-term systems. While we express no view on the matter, these other courts have rejected the claim that the temporary deferral of a

[8] We do not suggest that such an order is necessarily ever within the judicial authority, much less suggest that it would have been available if requested here. We simply note that it was not among the relief requested.

voter's ability to vote due to the redistricting of a staggered-term legislative body violates the voter's constitutional rights.[9]

We note, moreover, that the Texas Constitution has not been blind to the consequences of combining staggered elections with reapportionment every decade following the census. We stagger elections for our senate—but following redistricting, *every* senate district is up for election. Then, as our Constitution requires, the senators draw lots to determine which of them will have a truncated two-year term rather than a full four-year term. Tex. Const. art. III, § 3. The People amended our Constitution in 1954 to extend county commissioners' terms to four years, Tex. Const. art. XVI, § 64, leading to staggered terms thereafter. But the Constitution does not expressly

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[9] *Pate v. El Paso County*, 337 F. Supp. 95, 98 (W.D. Tex. 1970), *aff'd mem.* 400 U.S. 806 (1970); *Kahn v. Griffin*, 701 N.W.2d 815, 833–34 (Minn. 2005); *Griswold v. County of San Diego*, 32 Cal. App. 3d 56, 62 (Cal. Ct. App. 1973) (citing *Legislature v. Reincke*, 516 P.2d 6, 12 (Cal. 1973)); *see also Mader v. Crowell*, 498 F. Supp. 226, 230–31 (M.D. Tenn. 1980), *vacated on other grounds*, 444 U.S. 505 (1980); *Ferrell v. Oklahoma ex rel. Hall*, 339 F. Supp. 73, 82 (W.D. Okla. 1972), *aff'd mem.*, 406 U.S. 939 (1972); *Stout v. Bottorff*, 249 F. Supp. 488, 495 n.12 (S.D. Ind. 1965); *Barnett v. Boyle*, 250 N.W.2d 635, 638 (Neb. 1977); *People v. Lavelle*, 307 N.E.2d 115, 118 (Ill. 1974); *Marston v. Kline*, 301 A.2d 393, 398–99 (Penn. 1973); *Twilley v. Stabler*, 290 A.2d 636, 638 (Del. 1972); *Selzer v. Synhorst*, 113 N.W.2d 724, 732 (Iowa 1962); *Visnich v. Sacramento Cnty. Bd. of Educ.*, 37 Cal. App. 3d 684, 688 (Cal. Ct. App. 1974); *New Democratic Coal. v. Austin*, 200 N.W.2d 749, 753–55 (Mich. Ct. App. 1972); *Yates v. Kelly*, 274 A.2d 589, 591–93 (N.J. Super. Ct. 1971); *Anggelis v. Land*, 371 S.W.2d 857, 859 (Ky. Ct. App. 1963). One case does recognize a constitutional violation in similar circumstances, *Mayor & Council of Tuscon v. Royal*, 510 P.2d 394, 400 (Ariz. Ct. App. 1973), but that court ordered immediate elections in all seats; it did not enjoin the legislatively adopted map, as Relators request.

include the same requirement that all commissioners stand for election simultaneously following a reapportionment.

In any event, the very fact that Relators propose a rule that never before has been part of Texas constitutional law[10] makes it especially challenging to grant relief in the context of a mandamus petition that arises under the circumstances here. To be abundantly clear, by denying the petition today, we do not dispute that the constitutional issue Relators raise is a serious question that warrants this Court's full consideration when properly presented. We do not prejudge the outcome. *See, e.g.*, *Purcell v. Gonzalez*, 549 U.S. 1, 5–6 (2006) (per

[10] Multiple other considerations have been or could be used. Counties could also conclude, for example, that it would be better to get closer to actual numerical equality, and not embrace a 10% population disparity among precincts just because the law seems to allow that much. Likewise, unlike legislative districts, the precincts of Texas counties are unified by specific services, like maintenance of bridges and roads within the precinct. Perhaps counties try to draw lines so that each precinct can be efficient and effective. Counties may value keeping certain communities linked rather than divided. They may consider geographic features, including how highways or rivers divide the county. They surely bear in mind all federal standards, not just the numerical minimum standards, but also those based on demographics. And, from time immemorial, redistricting has included partisan considerations. *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2497, 2500 (2019) (noting that political bodies have long looked to "partisan interests" alongside "traditional redistricting criteria" including "maintaining political subdivisions, keeping communities of interest together, and protecting incumbents"); *see also Reynolds v. Sims*, 377 U.S. 533, 580 (1964) (approving consideration of political subdivisions in reapportionment); *Griswold*, 32 Cal. App. 3d at 62 (considering "topography, geography, cohesiveness, contiguity, integrity, compactness of territory, and community of interest"). If this case boils down to whether Harris County went too far in using partisan considerations, we could also be forced to confront whether claims of political gerrymandering are even within Texas courts' subject-matter jurisdiction. *Cf. Rucho*, 139 S. Ct. at 2484 (holding that such claims are political questions over which federal courts lack jurisdiction).

curiam) (expressing no opinion on the ultimate disposition and precluding judicial intervention only in light of "the imminence of the election and the inadequate time to resolve the factual disputes").

Instead, we follow our settled precedents that, by rejecting election-law litigation under unjustifiable duress, ensure that when we must eventually address such a significant and fraught question, we will do it with full deliberation and with full consideration of the larger history of our Constitution. The lack of a record and the lack of precision about the requested relief make it impossible for us to proceed that way here, particularly when all involved understand that any relief this Court could grant is already likely to disrupt elections in Harris County, and with every passing day the likely severity of that disruption grows.

We conclude, therefore, that we have no other option than to deny the petition. Even temporarily staying implementation of the already partially implemented precinct lines, as Relators request, would itself disrupt the election just as surely as immediately granting the petition would do so. A stay would prohibit Harris County from proceeding under the new precinct map at a time when the county *must* proceed under one map or another. Though technically temporary, such a stay order at this juncture would have permanent effects. It would require either immediate adoption of new maps (without any guidance from this Court on how to draw a legal map) or delaying the election of commissioners (an extremely disruptive and fraught judicial imposition). The resulting disruption, delay, and confusion—the extent of which we can only imagine—would all be for nothing if the Court ultimately decided that relief is unwarranted. The timing and other

circumstances of this mandamus petition give the Court two choices—deny it immediately or grant it immediately.

We emphasize that our inability to address the merits of *this* petition on the eve of the election—because of the timing and nature-of-relief problems discussed above[11]—does not by any means establish that there is never any judicial relief that could be given. To assess the Texas Constitution's commands (which may include a command *to the courts* to not interfere, whether in whole or in part), however, we must await a case—whether by appeal or mandamus—that does not require us to contravene the limits on our own authority to intervene in elections.

It remains possible, in fact, that *this case* may yet provide such a vehicle for judicial consideration of the questions presented here. No party disputes that an interlocutory appeal is permissible. Such an appeal could not change the 2022 primary, which has already begun. But the new map, if it stands, will govern Harris County elections for the rest of the decade. If the courts conclude that the map is in fact unconstitutional, the remedial options could, at least in theory, include an election for all four precincts in 2024—or even, again at least in

[11] Respondents likewise raise other problems that the Court would have to address, and which would delay resolution of the case, were the Court to proceed—matters like Relators' standing and the availability of our mandamus jurisdiction for technical reasons. For example, given that Relators chose to litigate the case in district court, is an original mandamus petition filed directly in this Court—essentially as if the district court, who has not been made a party to the mandamus proceeding, had never ruled—a procedurally valid mechanism to pursue relief? And if an original mandamus petition is appropriate, should it not have been filed immediately after the maps were enacted, rather than two months later? We express no view of those or other preliminary issues.

theory, for a special election for the two precincts up in 2022. *Cf., e.g.*, *Dollinger v. Jefferson Cnty. Comm'rs Ct.*, 335 F. Supp. 340 (E.D. Tex. 1971). We do not opine as to whether Relators would have any successful claim, whether (if they did) any of these options would be available or appropriate, or even whether the appeal would survive a mootness challenge.

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Judicial relief is all too often thought of as the only relief to be had. That perception is unfortunate. Justice Black's depiction of participation in self-government as each citizen's most precious liberty reminds us that every Texan has a stake in what the rules for elections are. We each vote for a county commissioner, and we all are subject to either temporary disenfranchisement following a redistricting, or vote dilution if precincts are not allocated reasonably closely to population. If this is a problem, Texans do not need our courts to fix it. Just as the legislature proposed a constitutional amendment that allowed the People to amend our Constitution to create staggered terms for county commissioners, and just as the legislature proposed a constitutional amendment that allowed the People to amend our Constitution to ensure that every senatorial district would be subject to election after a redistricting, the legislature and the People could do so here. They could even reassign redistricting authority from commissioners courts or determine that staggered terms for commissioners are no longer desirable. There is no shortage of possible solutions.

Or, of course, the People remain perfectly free to leave things just as they are. In that event, when a proper case comes, this Court will

have to clarify what the Constitution requires. And if the Court does so and the People dislike the result, they can repudiate our work. But the People need not *await* our work. The Constitution is *theirs*, not *ours*, and the People may freely adjust its contours whenever they wish, after assessing what system of elections best suits the needs of Texas.

The petition for writ of mandamus is denied.

James D. Blacklock
Justice

Evan A. Young
Justice

**OPINION DELIVERED:** January 6, 2022