# Supreme Court of Texas

No. 23-0111

In re Maria Teresa Ramirez Morris, and
Texas Alliance for Life, Inc.,

*Relators*

On Petition for Writ of Mandamus

JUSTICE BLAND delivered the opinion of the Court, in which Chief Justice Hecht, Justice Lehrmann, Justice Boyd, Justice Busby, and Justice Huddle joined.

JUSTICE YOUNG filed a dissenting opinion, in which Justice Devine and Justice Blacklock joined.

Advocacy organizations in San Antonio collected sufficient signatures to place a proposed charter amendment before the voters on the City's May 2023 election ballot. A prospective voter challenges the amendment, arguing that it violates a state law requiring that citizen-initiated charter amendments be confined to a single subject. The voter seeks pre-election relief directly from this Court to (1) move the vote on the proposition from the May to the November election; (2) compel the San Antonio City Clerk and Council to separate the proposed amendment into single-subject parts; and (3) order alterations to the ballot language.

Voters injured by an election irregularity have remedies to address their injury after the election. This voter, however, asks that the Court exercise its authority to interfere with an election before it is held, disrupting the settled expectations of the people of San Antonio. There is no corresponding redress from pre-election judicial meddling that prevents voters from voting in the first instance.

Adhering to our longstanding commitment to avoid undue interference with elections, we deny relief. Sufficient post-election remedies exist that permit the voter to challenge any infirmity in the proposed amendment and its placement on the ballot—after the voters have had their say.

**I**

In January 2023, the San Antonio City Clerk received a petition to place a measure on the May 6 ballot. If adopted, the proposed "Justice Policy" would amend the City Charter, purportedly to prohibit local enforcement of certain state laws related to marijuana possession, theft offenses, and abortion. It also purports to ban no-knock warrants and chokeholds, and it replaces warrants for certain nonviolent offenses with citations. Finally, it proposes to create the position of a "Justice Director" to implement and enforce its prohibitions.

Relators Maria Teresa Ramirez Morris and the Texas Alliance for Life oppose the Justice Policy amendment. Relators demanded that the City Clerk reject the proposition on the basis that it violates Texas Local Government Code section 9.004(d) and (e). Subsection (d) requires a proposed charter amendment to contain a single subject, and subsection (e) requires the ballot to allow a voter to approve or

disapprove any one charter amendment without having to approve or disapprove all the amendments.[1] The City Clerk determined that the petition complies with the requirements to place it on the ballot, and the City Council set the proposition for discussion at its regular meeting on February 16.

Before the meeting, Relators sought relief in this Court to compel either the City Clerk or the Council to divide the elements of the Justice Policy into "single subjects" and to present them separately to the voters "so that a voter may approve or disapprove any one or more amendments without having to approve or disapprove all of the amendments." The City responded that such relief was premature. It added that the City Charter grants the Clerk and Council no authority to exercise editorial control over citizen-initiated ballot amendments.

The City Council met on February 16. It ordered the Justice Policy amendment to be placed on the ballot as part of the May general election. The Council left the text of the proposition undisturbed. Seven council members approved an ordinance placing the proposition on the ballot; three members were marked absent. Had the ordinance received eight votes, it could take immediate effect under the City Charter.[2] Because the ordinance received fewer than eight votes, however, the

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[1] Tex. Loc. Gov't Code § 9.004(d), (e).

[2] *See* Charter of the City of San Antonio, Tex. art. II, § 15 (2021) ("Except as otherwise provided . . . all ordinances and resolutions passed by the council shall take effect at the time indicated therein, but not less than ten (10) days from the date of their final passage. The affirmative vote of at least eight (8) members of the council shall be required to pass any ordinance or resolution as an emergency measure. An emergency measure . . . may be made effective immediately upon enactment.").

order placing the proposition on the May ballot became effective ten days after its passage, on February 26.[3]

After the council meeting, the parties supplemented their briefs in this Court. Relators added two new claims. First, they request that we compel the City Council to move consideration of the Justice Policy amendment to the November election. Relators argue that the Council did not timely order the special election more than seventy-eight days ahead of the uniform election date, as Election Code section 3.005(c) requires, because the ordinance became effective on February 26 rather than immediately upon its passage.[4]

Second, Relators request that the Court amend the ballot language that describes the proposed Justice Policy amendment. Relators argue that the ballot language "omit[s] a key feature of the law—the enlistment of the entirety of city government in thwarting the state's efforts to administer its laws relating to abortion." Relators seek to replace the existing ballot language stating that "police officers shall not investigate, make arrests, or otherwise enforce any alleged criminal abortion, except in limited circumstances," with language stating that "no city staff, city funds, or city resources may be used to gather or provide information to any other governmental body or agency regarding abortion, miscarriage or reproductive act unless in defense of a healthcare provider or patient."

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[3] *Id.*

[4] "For an election to be held on a uniform election date, the election shall be ordered not later than the 78th day before election day." Tex. Elec. Code § 3.005(c).

## II

Mandamus relief exists to correct a clear abuse of discretion when no adequate appellate remedy exists.[5] The Election Code expressly grants our Court the authority to "compel the performance of any duty imposed by law in connection with the holding of an election."[6] We may also issue "appropriate injunctive relief" to prevent harm caused by a violation of the Election Code.[7]

When asked to employ this authority before an election is held, we must first evaluate whether the exercise of judicial power that interferes in the political process is appropriate. "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."[8] We have acted in advance of an election to facilitate *placing* issues and candidates before the voters but have not done so to deprive voters of their choice.[9] We also have acted to correct misleading ballot language—if the correction can be made without disturbing the election from going forward.[10]

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[5] *In re Petricek*, 629 S.W.3d 913, 917 (Tex. 2021).

[6] Tex. Elec. Code § 273.061(a).

[7] *Id.* § 273.081.

[8] *Blum v. Lanier*, 997 S.W.2d 259, 263 (Tex. 1999).

[9] *E.g.*, *In re Francis*, 186 S.W.3d 534, 543 (Tex. 2006) (ordering candidate returned to ballot despite uncured but curable invalid signatures); *Coalson v. City Council of Victoria*, 610 S.W.2d 744, 747 (Tex. 1980) (ordering city council to place citizen-initiated charter amendment on the ballot).

[10] *Petricek*, 629 S.W.3d at 917.

Historically, however, the Court has not enjoined elections altogether, even elections "called without authority and therefore absolutely void."[11] Though we are not insensitive to the costs associated with a void election, "[i]t is of vastly greater importance that the courts refrain from interfering with the exercise of political functions."[12] In the seventy years since the Legislature endowed the Court with statutory power to address violations of the Election Code, we have not once used it to altogether deprive the voters of an election.

After an election is held, the courts have a far more robust role to play in evaluating the results and the process by which those results were obtained. The Election Code provides remedies for "elections tainted by fraud, illegality or other irregularity."[13] A party may not file such a suit, however, until after the election is held.[14] Reviewing claims after an election permits the parties to fully present them to the trial court, which we review in the ordinary course. "[A]s a prudential matter, the law is typically better served when the lower courts review a legal issue before this Court does."[15] It also minimizes the threat of judicial

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[11] *City of Austin v. Thompson*, 219 S.W.2d 57, 59 (Tex. 1949).

[12] *Id.* at 61.

[13] *Blum*, 997 S.W.2d at 262.

[14] *Id.* (citing Tex. Elec. Code § 233.006(a)).

[15] *Rattray v. City of Brownsville*, ___ S.W.3d ___, 2023 WL 2438952, at *6 (Tex. Mar. 10, 2023).

interference where our jurisdiction to correct the political process is lacking.[16]

None of the relief requested in this pre-election challenge warrants a departure from these principles.

**A**

Relators first request that the Court enjoin the City from holding the special election in May. "An injunction that delays the election would be improper, but an injunction that facilitates the elective process may be appropriate."[17] While we have granted mandamus relief to compel city officials to *place* citizen-initiated propositions on the ballot,[18] Relators point to no case in which we have *withdrawn* a proposition from the ballot for any reason, let alone for a claimed procedural defect.

In requesting relief, Relators invoke Local Government Code section 9.004(b). That section requires a city council to order an election within "sufficient time to comply with other requirements of law."[19] One of those requirements is that a council order a special election at least seventy-eight days in advance of a coinciding general election.[20] Relators argue that the Council did not do so because its order to place the proposition on the ballot did not become effective until February 26,

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[16] *See Coalson*, 610 S.W.2d at 747 (observing that suit challenging the constitutionality of a citizen-initiated proposition seeks an advisory opinion because the voters may disapprove of the proposition).

[17] *Blum*, 997 S.W.2d at 263.

[18] *Coalson*, 610 S.W.2d at 747.

[19] Tex. Loc. Gov't Code § 9.004(b).

[20] Tex. Elec. Code § 3.005(c).

leaving fewer than seventy-eight days between the effective date and the May election. Thus, Relators argue, the November election is the first proper date on which such an election may be held.

This same law that commands a city council to "allow sufficient time," however, further commands that the council must order an election like this one "on the *first* authorized uniform election date prescribed by the Election Code or on the *earlier* of the date of the next municipal general election or presidential general election."[21] There are compelling reasons to give weight to the statute's further requirement that the City hold the special election at the earliest lawful opportunity. "Election results are often influenced by unique and complex factors existing at a particular point in time, and those who petition for an election may have strong reasons for desiring a particular election date."[22] Giving effect to section 9.004(b) in its entirety, it arguably imposes a ministerial duty upon the Council to timely order the election.[23] The Council could have met this duty by meeting at least eighty-eight days in advance of the election. But by the date of its regular meeting in February, it could only do so by acting with at least eight votes. In the face of the City Council's dual statutory duties—to order the special election at least seventy-eight days in advance and to set the election for the earliest lawful date upon proper presentment—

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[21] Tex. Loc. Gov't Code § 9.004(b) (emphases added).

[22] *Blum*, 997 S.W.2d at 264.

[23] *See Coalson*, 610 S.W.2d at 747 ("The City Council's duty [to order an election on a citizen-initiated amendment] is clear, and its compliance with the law is ministerial in nature.").

we should refrain from issuing a pre-election opinion that withdraws consideration of the proposition from the voters at the May election, in derogation of one of the Council's statutory duties.

The power of initiative "is the exercise by the people of a power reserved to them, and not the exercise of a right granted."[24] This right of citizens to propose charter amendments allows the people to directly assume legislative power and sidestep unresponsive governmental bodies.[25] Permitting that same body to arrogate the timing of the special election through inaction exacerbates the very problem the initiative process is meant to overcome. As the Court recognized more than a half-century ago, petition signers, "being otherwise entitled to have the initiative election called and held, cannot be defeated in that right by the refusal of [the city council] to perform purely ministerial duties on the ground that in their opinion the ordinance would be invalid if adopted."[26]

We reaffirmed that principle thirty years later in *Coalson v. City Council of Victoria*.[27] In that case, the City of Victoria refused to place a citizen-initiated proposed charter amendment on the ballot pending the outcome of its suit to declare the amendment unconstitutional.[28] In granting relief to place the proposition on the ballot a mere thirty-one

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[24] *Id.* (quoting *Taxpayers' Ass'n of Harris Cnty. v. City of Houston*, 105 S.W.2d 655, 657 (Tex. 1937)).

[25] *Id.*

[26] *Glass v. Smith*, 244 S.W.2d 645, 648 (Tex. 1951).

[27] 610 S.W.2d at 747.

[28] *Id.* at 746.

days before the election, our Court held that any opinion on the constitutionality of the amendment before the election was held would be purely advisory because voters may disapprove the amendment.[29]

Even should Relators prevail over the City's arguments that appropriate procedures were followed, it is not clear that judicial removal of the proposition from the ballot to extend consideration of it to the next scheduled election is the appropriate remedy.[30] Rather, it is the post-election enforcement of the proposition that remains in question. "The right to call and hold a void election is a political right that the courts have no jurisdiction to interfere with, but the right to enforce a void election in such a way as to violate the laws of this state

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[29] *Id.* at 747.

[30] We agree with Relators that the general election is in no danger of being declared void; section 3.007 of the Election Code provides that the "[f]ailure to order a general election does not affect the validity of the election." Tex. Elec. Code § 3.007. We may presume that a late-ordered general election is similarly saved. We disagree, however, that the existence of the savings clause for the general election necessarily commands the opposite result for late-ordered special elections, as the savings clause predates statutory deadlines for special elections. *See* Act of May 13, 1985, 69th Leg., R.S., ch. 211, § 1, sec. 3.005–.007, 1985 Tex. Gen. Laws 802, 809 (incorporating the savings clause from article 4.04 of the prior Election Code and adding a new provision requiring political subdivisions to order elections not later than the 45th day before election day). We also observe that the Election Code does not prescribe a consequence or remedy for an election that is untimely ordered and that "an 'express statutory deadline' . . . does not necessarily mean that the legislature 'intended for *courts* to enforce the deadline.'" *In re Stetson Renewables Holdings, LLC*, 658 S.W.3d 292, 296 (Tex. 2022) (quoting *Nielsen v. Preap*, 139 S. Ct. 954, 969 n.6 (2019)). The City makes other arguments to support its position that the special election is appropriately timed, which neither we nor the dissent reach. We do not foreclose a review of the timing of this special election in an election contest; we merely observe that the matter is not "as basic and clear-cut as the calendar." *Post* at 6 (Young, J., dissenting).

would present a matter that the judicial power of the government would have the right to give relief from."[31]

Relators seek the Court's direct interference with this "political right."[32] They would have us enjoin the special election, supersede the decision of the City Council, and deprive the Justice Policy signatories of their choice of election based on a claimed procedural violation. Relators ascribe no particularized injury to themselves, but rather point to the inability of San Antonians to amend their charter for another two years.[33] The Election Code anticipates and alleviates the sting of such a harm, however, by holding that any restriction on the "time interval between elections" is calculated "as if the election had not been held" when a court determines that an election is void.[34] Relators' claimed injury is not a reason to remove the proposition from the ballot.

To the extent that the purpose of the seventy-eight-day period is to give the electorate sufficient notice of a special election, we observe that Relators and the public were on notice of this special election well before the City Council voted to order it. Relators sought relief in this Court before the Council's vote. A late-ordered election resulting from

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[31] *City of Austin*, 219 S.W.2d at 60 (quoting *Winder v. King*, 1 S.W.2d 587, 589 (Tex. Comm'n App. 1928, holding approved)).

[32] *Id.*

[33] *See* Tex. Const. art. XI, § 5(a) ("[N]o city charter shall be altered, amended or repealed oftener than every two years.").

[34] Tex. Elec. Code § 233.012(a). Additionally, the Election Code expedites certain election contest procedures. *See id.* § 233.007 (setting the time to answer an election contest); *id.* § 231.009 (granting an election contest precedence on appeal).

the Council's failure to comply with its duties is not a failure of the citizen petitioners, like the failure to obtain the requisite signatures or an attempt to alter the charter by initiative too soon after the last alteration.[35] The Council's failure to timely order the election is the result of the inaction of three councilmembers, the very body deliberately sidestepped by the initiative process, and not a failure by the amendment's proponents. We have recognized that "the failure to publish notices and send copies thereof to the voters prior to the election . . . constitute mere irregularities" that courts should address in an election contest after the election is held.[36]

We do not conclude or even assume that the election in this case is lawfully ordered. We recognize, however, that the political branch has put the political process in motion and placed this initiative on the ballot. Given the Council's statutory duty to place the proposition on the ballot at the earliest available election, and the availability of post-election relief, we hold that the Relators have failed to show they are entitled to judicial removal of the proposition from the ballot. Adopting a different approach encourages judicial mischief—to ignore the remedies that the Election Code grants to voters after the election in

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[35] *See State v. City Comm'n of San Angelo*, 101 S.W.2d 360, 361 (Tex. App.—Austin 1937, writ ref'd). *San Angelo* is an example of typical judicial restraint: the trial court refused to order city officials to hold a special election on a charter amendment sooner than the two-year constitutional waiting period. In *San Angelo* the courts refrained from acting because the arguments for judicial intervention lacked merit. Declining to grant relief in that case does not compel the inverse in this one—to exercise judicial interference rather than judicial restraint.

[36] *Id.* at 362.

favor of removing ballot measures before the election, based on any irregularity that the Court might divine important enough to stop voters from voting. Because such an approach inappropriately interferes with the political process, our precedent has squarely rejected it, even in the face of colorable arguments that the proposition under consideration was constitutionally infirm.[37]

**B**

Whether or not the election goes forward in May, Relators seek to order the City Clerk or Council to separate the Justice Policy into "single-issue" amendments. Assuming that the Justice Policy violates the single-issue rule, Relators do not point to the source of a ministerial duty on the part of the City Clerk or Council to revise a proposed ordinance that has gathered the requisite number of signatures and qualifies for placement on the ballot. Under the San Antonio City Charter, the City Council has no discretion to modify the language of the proposed ordinance.[38]

The State, as amicus, suggests that the City Council may divide the Justice Policy into single subjects via its authority to "prescribe the wording of a proposition that is to appear on the ballot."[39] Control over the words appearing on the ballot, however, is not control authorizing

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[37] *Coalson*, 610 S.W.2d at 747.

[38] Charter of the City of San Antonio, Tex. art. IV, § 41 (2021) ("If the council fails to pass an ordinance proposed by initiative petition, or passes it in a form different from that set forth in the petition . . . the proposed or referred ordinance shall be submitted to the electors . . . .").

[39] Tex. Elec. Code § 52.072(a).

local officials to rewrite the amendment itself.[40] It is unclear whether the City Council has the authority to rephrase the proposition to ensure that the *amendment* adheres to the single-subject rule or any other state law. Nor is it clear whether to do so would be a ministerial task—that is, a task in which it has no discretion.[41] Determining which aspects of the Justice Policy constitute a single subject necessarily requires consideration and judgment.

We also cannot discount the possibility that some petition signatories acceded to some aspects of the Justice Policy only because they were yoked together with others. To dismantle the Justice Policy into pieces in advance of the election deprives those signatories of their right to have their amendment considered by the voters as it was proposed. "The initiative process . . . affords direct popular participation in lawmaking. The system has its historical roots in the people's dissatisfaction with officialdom's refusal to enact laws."[42] The City Council's duty is to place the proposed amendment before the voters.[43]

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[40] *See Blum*, 997 S.W.2d at 262 ("Although the petitioners draft the charter amendment, the municipal authority generally retains discretion to select the form of the ballot proposition that describes the proposed amendment." (footnote omitted)).

[41] "An act is ministerial when the law clearly spells out the duty to be performed by the official with sufficient certainty that nothing is left to the exercise of discretion." *Anderson v. City of Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991).

[42] *Coalson*, 610 S.W.2d at 747.

[43] Tex. Loc. Gov't Code § 9.004(a).

We have held that even concerns about the constitutionality of an amendment are no justification for it to refuse to do otherwise.[44]

In denying relief, we decide neither the validity of the Justice Policy nor the legal merit of Relators' specific objections to it. Whether the Justice Policy violates the Local Government Code or other state law, and the remedy for such violations, are questions that the courts may resolve in an election contest or other post-election proceeding if the proposition passes.

**C**

Finally, Relators have not shown themselves entitled to relief in the form of amending the proposition's ballot language. While we have recognized that citizens who sign initiative petitions have standing to correct misleading ballot propositions, we have expressed skepticism that a member of the public equally can do so in a pre-election suit.[45] Such a challenge is available post-election.[46]

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[44] *Coalson*, 610 S.W.2d at 747 ("The City Council's duty is clear, and its compliance with the law is ministerial in nature. The City Council's refusal to submit the proposed amendments to the vote of the people thwarts not only the legislature's mandate but the will of the public.").

[45] *Blum*, 997 S.W.2d at 262 (concluding that petition signatory had standing distinct from the general public because "signers, as sponsors of the initiative, have a justiciable interest in seeing that their legislation is submitted to the people for a vote"); *see also Petricek*, 629 S.W.3d at 921 (granting mandamus relief to signers of proposition seeking correction of misleading ballot language); *In re Durnin*, 619 S.W.3d 250, 251 (Tex. 2021) (same); *In re Williams*, 470 S.W.3d 819, 821 (Tex. 2015) (same).

[46] *See Dacus v. Parker*, 466 S.W.3d 820, 828 (Tex. 2015) (holding proposition language misleading in post-election challenge).

We do not foreclose the possibility that a member of the public might assert a pre-election injury distinct from the general public.[47] Relators' alleged injury from the Justice Policy, however, does not materialize unless and until the proposition passes, at which point it is a subject for an election challenge brought by any "qualified voter[] of the territory covered by an election."[48] Accordingly, Relators have not demonstrated that they are entitled to pre-election relief to modify the ballot language.

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The power of initiative is reserved to the people, not granted to them.[49] Courts must not lightly usurp that power. Our role is to facilitate elections, not to stymie them, and to review the consequences of those elections as the Legislature prescribes. We can readily do so in this instance through a post-election challenge. Accordingly, without hearing oral argument, we deny Relators' petition for writ of mandamus.

Jane N. Bland
Justice

**OPINION DELIVERED:** March 17, 2023

[47] The Election Code authorizes injunctive relief, *see* Tex. Elec. Code § 273.081, but we have held that provision itself does not create standing. *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 17 (Tex. 2011). A plaintiff must show injury or damage "other than as a member of the general public." *Id.*

[48] Tex. Elec. Code § 233.002; *see Dacus*, 466 S.W.3d at 828 (holding proposition language misleading in post-election challenge).

[49] *Coalson*, 610 S.W.2d at 747.