

# Supreme Court of Texas

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No. 22-0658

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In re Keith Self, et al.,

*Relators*

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On Petition for Writ of Mandamus

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## PER CURIAM

In this emergency mandamus action, Republican Party candidates in the November 2022 general election seek to remove their Libertarian Party opponents from the ballot because of the Libertarians' failure to pay a statutory filing fee. The Republicans contend that the Texas Election Code requires exclusion of the Libertarian candidates from the ballot. The Libertarians respond with a plausible, competing understanding of the Election Code under which, even if the fee has not been paid, removing these candidates from the ballot is not the appropriate remedy at this stage of the election process. Without resolving the merits of the parties' dispute, we deny the Republicans' petition because it does not comport with our recent instruction that "invoking judicial authority in the election context requires unusual dispatch." *In re Khanoyan*, 637 S.W.3d 762, 764 (Tex. 2022).

Relators filed this mandamus petition on August 8, 2022. The petition seeks relief within eighteen days, by August 26, which relators contend is the deadline established by the Election Code for the relief they seek. The Libertarian Party nominated the disputed candidates, who had not paid the filing fee, in April 2022. Under relators' view of the law, those candidates' ineligibility attached in April 2022, when they were nominated despite not paying the fee. Nearly four months passed between the facts giving rise to the relators' claims and the filing of this mandamus action. Relators do not provide any explanation for why these claims could not have been investigated and brought to the courts with the "unusual dispatch" our precedent requires of those who seek to use the court system to alter the conduct of elections.<sup>1</sup>

Mandamus generally "aids the diligent and not those who slumber on their rights." *Rivercenter Assocs. v. Rivera*, 858 S.W.2d 366, 367 (Tex. 1993) (quoting *Callahan v. Giles*, 155 S.W.2d 793, 795 (Tex. 1941)). Never is adherence to that general rule more important than when candidates seek, at a late hour, to constrain the choices available to voters in an election. "[A]ccess to the ballot lies at the very heart of a constitutional republic." *In re Green Party of Tex.*, 630 S.W.3d 36, 37 (Tex. 2020) (quoting *In re Francis*, 186 S.W.3d 534, 542 (Tex. 2006)). For

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<sup>1</sup> Relators do note that the Libertarians filed suit in federal court challenging the filing-fee requirement, that the federal court denied the Libertarians' motion for a preliminary injunction in March 2022, and that the federal suit remains pending in that court. See *Bilyeu v. Scott*, No. 1:21-CV-1089-RP, 2022 WL 607889, at \*1 (W.D. Tex. Mar. 1, 2022). While we might speculate that relators believed the pendency of that suit required or justified their delay in seeking relief from this Court, relators make no assertions or arguments to that effect.

that reason, we strictly construe statutory provisions against a finding of a candidate's ineligibility. *Id.* And for the same reason, when asked to remove candidates from the ballot, courts should strictly adhere to the timeliness requirements discussed in *Khanoyan*. 637 S.W.3d at 764.

In this case, relators have not contended that the emergency timeline for this Court's consideration of the parties' arguments results from emergency circumstances beyond the relators' control. In other cases, when circumstances beyond a petitioner's control create time-sensitive controversies requiring speedy judicial resolution, this Court has demonstrated its own willingness and ability to act with the same "unusual dispatch" we ask of parties and counsel in such matters. *See, e.g., In re Anthony*, 642 S.W.3d 588 (Tex. 2022); *In re Abbott*, 628 S.W.3d 288 (Tex. 2021); *In re Williams*, 470 S.W.3d 819 (Tex. 2015). But when the emergency timeframe is entirely the product of avoidable delay in bringing the matter to the courts, our precedent is clear that judicial relief altering the conduct of an election is disfavored. *Khanoyan*, 637 S.W.3d at 764-67.

By denying the petition as untimely, we do not suggest that the relief the relators seek would or would not have been appropriate had the petition been filed more speedily. We do not address the merits of the parties' dispute about the Election Code's requirements.

The petition for writ of mandamus is denied.

**OPINION DELIVERED:** August 26, 2022