

Daley Epstein, Chris Knight, Wes Dutton, Alicia Pitts in The Appellate Advocate: 'Texas Supreme Court Update'

April 14, 2021 Chris Knight

PRACTICES Litigation, Appellate

In re. Republican Party of Tex., No. 20-0525, 63 Tex. Sup. Ct. J. 1591, 605 S.W.3d 47 (July 13, 2020) (per curiam)

Citing the COVID-19 pandemic, the Houston First Corporation terminated its agreement to license the George R. Brown Convention Center—which it operates for the City of Houston—to the Republican Party of Texas for its 2020 State Convention. With the convention only days away, the Party sued for a declaration that Houston First had breached the license agreement, an injunction prohibiting termination, and specific performance. After a brief hearing, the trial court denied the Party’s request for a temporary restraining order and the Party filed a petition for writ of mandamus in the Supreme Court.

The Party’s writ asked the Court to direct the City and Houston First “to perform their obligations in connection with the Convention, including performance of their contractual obligations, and performance of all legal obligations to ensure the free exercise of association and assembly.” In support of its writ, the Party cited section 273.061 of the Election Code, which in relevant part gives the Court jurisdiction to “issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election.” The State argued section 273.061 does not apply because any duty to perform was imposed by contract, not by law. The Party argued it had a constitutional right to hold a convention to engage in electoral activities.

The Court dismissed the petition for want of jurisdiction, holding that section 273.061 did not apply because the Party did not argue that Houston First owed it any duty imposed by law. Though the Party had a constitutional right to hold a convention and engage in electoral activities, that right did not entitle it to commandeer use of the Convention Center; the only duty Houston First had to allow use of the Center arose under contract, not law.

Justice Devine dissented. In his view, section 273.061 established jurisdiction over the petition because a contractual duty is “a duty imposed by law.” He would have granted the Party’s mandamus petition because Houston First did not show appropriate reliance on the contract’s force-majeure clause in terminating the agreement due to COVID-19 and specific performance was the appropriate remedy.

Excerpted from *The Appellate Advocate*. To read the full article, click [here](#).