

Cause No. D-1-GN-23-003523

HARRIS COUNTY, TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff/Cross-Defendant,	§	
	§	
v.	§	
	§	
THE STATE OF TEXAS; ANGELA	§	
COLMENERO, IN HER OFFICIAL CAPACITY AS	§	
PROVISIONAL ATTORNEY GENERAL; AND JANE	§	TRAVIS COUNTY, TEXAS
NELSON, IN HER OFFICIAL CAPACITY AS TEXAS	§	
SECRETARY OF STATE,	§	
Defendants.	§	
	§	
AND	§	
	§	
CLIFFORD TATUM,	§	
Intervenor/Cross-Claimant.	§	
	§	
AND	§	
	§	
THE ATTORNEY GENERAL OF TEXAS,	§	
Intervenor.	§	345th JUDICIAL DISTRICT

**ORDER ON INTERVENOR/CROSS-CLAIMANT
CLIFFORD TATUM’S APPLICATION FOR TEMPORARY INJUNCTION
AGAINST HARRIS COUNTY**

On August 8, 2023, this Court heard Clifford Tatum’s Application for a Temporary Injunction against Harris County, Texas. Mr. Tatum seeks to enjoin the County from taking any action against Mr. Tatum or his office, the Harris County Elections Administrator’s Office (the “Harris County EA”), due to the passage of Texas Senate Bill 1750 (“SB 1750”), arguing SB 1750, and the proposed new Texas Election Code Section 31.050 contained within SB 1750, are unconstitutional because they violate Article III, section 56 of the Texas Constitution. Due notice was given of the hearing, including notice to the

Attorney General that Mr. Tatum is challenging the constitutionality of a state statute. At the hearing, Mr. Tatum appeared personally and through his counsel. Plaintiff/Cross-defendant Harris County and Defendants the State of Texas, The Honorable Jane Nelson, in her official capacity as Secretary of State of the State of Texas and The Honorable Angela Colmenero, in her official capacity as Interim Attorney General of the State of Texas, all appeared through their respective counsel. The Court has jurisdiction over Mr. Tatum's Application, and personal jurisdiction and venue are uncontested. After considering Mr. Tatum's Application, the pleadings, exhibits, testimony, and evidence admitted at the Hearing, and the argument of counsel, the Court grants the injunctive relief sought by Mr. Tatum for the reasons that follow.

FINDINGS

Counties in Texas are responsible for voter registration and the administration of elections. Every county has a choice about who will be in charge of handling these matters: either (1) partisan, elected county tax assessor-collectors and county clerks may manage voter registration and election administration, along with their many other statutory duties; or (2) a county may opt to establish the office of county elections administrator and hire a trained, professional, non-partisan administrator to manage voter registration and the administration of elections. TEX. ELEC. CODE § 31.031. Pursuant to state law, Harris County has opted to hire a county elections administrator and transfer the duties of voter registration and election administration to that office, as it is statutorily entitled to do.

Texas Senate Bill 1750, enacted during the Texas Legislature's 88th Regular Session, amends the Texas Election Code in two critical ways relevant to this case. The first is the addition of new Section 31.050, scheduled to take effect on September 1, 2023. New Section 31.050 abolishes the office of county elections administrator only in Texas counties with a population of 3.5 million on September 1, 2023, and in those counties transfers responsibilities for voter registration and election administration back to the county tax assessor-collector and county clerk. The second change made by SB 1750 is to amend Section 31.031(a), and effectively prohibit any county with a population of over 3.5 million that does not have a county elections administrator from ever establishing the office of county elections administrator.

Only one county in Texas has a population that on September 1, 2023, will exceed 3.5 million: Harris County.¹ The effect of the plain language of SB 1750, new Texas Election Code Section 31.050, and newly amended Texas Election Code Section 31.031(a) is to eliminate the office of county elections administrator in Harris County and prevent Harris County from ever establishing such an office again. No other county in Texas is so affected by SB 1750 and new Section 31.050. The Court finds SB 1750, new Section 31.050, and amended Section 31.031(a) were targeted to regulate the affairs and administration of voter registration and elections in only one county in Texas: Harris County.

¹ Harris County's current population is approximately 4.9 million, making it the third largest county in the country. <https://worldpopulationreview.com/us-counties/tx/harris-county-population>. Dallas County is the next most populous county in Texas, with approximately 2.6 million residents. <https://worldpopulationreview.com/us-counties/tx/dallas-county-population>.

The Court also finds SB 1750 and the new statutory provisions were intentionally designed to affect only one county in Texas – Harris County – in perpetuity and to deprive Harris County of a statutory right available to every other county in Texas.

Should SB 1750 go into effect on September 1, 2023, Harris County will be statutorily obligated to comply with its provisions. This is even though Texas Election Code Section 31.037 provides that a county elections administrator’s employment can be terminated only “for good and sufficient cause on the four-fifths vote of the county election commission and approval of that action by a majority vote of the commissioners court.”

Intervenor Clifford Tatum is the current duly appointed, qualified, and serving Elections Administrator of Harris County, having been appointed to that position on August 16, 2022, by the Harris County election commission, pursuant to and in accordance with Texas Election Code Section 31.032. Mr. Tatum is a non-partisan professional trained in managing all aspects of the elections process with over twenty years of experience at both state and county levels. The Court, having heard the testimony of Mr. Tatum, finds that he was a credible witness and is well-qualified to do his job.

If the Harris County EA is abolished, Mr. Tatum will lose his job and be deprived of both the tangible economic benefits of the Harris County EA (such as salary, health insurance, retirement benefits, and automobile expense allowance) and the significant non-economic benefits of that position, including: (1) the stature and status of holding the position as elections administrator of the third most populous county in the country, a position which, if SB 1750 goes into effect, he will never again be able to obtain; (2) the

reputation as one of the leading election administrators in the country; and (3) the fulfillment of important (to Mr. Tatum) public service objectives of meaningfully ensuring the sanctity of the electoral process by spearheading both voter registration efforts and election administration functions in ways which Mr. Tatum believes will help safeguard and facilitate participatory democracy. Mr. Tatum has chosen a career in government service because of the importance of the role he can play. He has nearly reached the pinnacle in his chosen field – heading both voter registration and elections administration activities of the third largest county in the nation. The Court finds that the abolition of this office will irreparably affect Mr. Tatum’s ability to continue in the unique role he has achieved, to the irreplaceable detriment of his life ambition, his reputation, his stature, and the potential of future employment in a comparable role.

The Court finds that there is currently no “good and sufficient cause” to terminate Mr. Tatum as Harris County’s Elections Administrator and that the only conceivable “good and sufficient cause” would be if SB 1750 is found to be constitutional, eliminating his position as a matter of law.

Nevertheless, if not restrained, Harris County will follow the law and abolish the Harris County EA because it would be mandated to do so by SB 1750, *if* that enactment is constitutional, which the Court concludes, as explained below, it likely is not.

Further, if SB 1750 goes into effect on September 1, 2023, the whole Harris County EA will be closed, its duties transferred to the Harris County Tax Assessor-Collector’s and the Harris County Clerk’s offices, and Mr. Tatum will never again be able to head the

county elections office of the third largest county in the country. The Court finds that the harm Mr. Tatum faces is real, imminent, and irreparable. *Krier v. Navarro*, 952 S.W.2d 25, 28 (Tex. App.—San Antonio 1997, pet. denied) (holding threatened removal of Bexar County’s elections administrator sufficient imminent harm to justify injunctive relief).

Article III, section 56(a) of the Texas Constitution bars the legislature from passing “any local or special law” (1) “regulating the affairs of counties;” (2) authorizing the “conducting of elections;” (3) “prescribing the powers and duties of officers” in counties; and (4) “relieving or discharging any person” from the “performance of any public duty or service imposed by general law.” TEX. CONST. art. III, § 56(a)(2), (12), (14) and (30). Article III, section 56(b) prohibits enactment of any local or special laws “where a general law can be made applicable.” TEX. CONST. art. III, § 56(b). The purpose of section 56 is twofold. The first is to “prevent the granting of special privileges and to secure uniformity of law throughout the State as far as possible.” *Miller v. El Paso County*, 150 S.W.2d 1000, 1001 (Tex. 1941). The second is to prevent “lawmakers from engaging in the ‘reprehensible’ practice of trading votes for the advancement of personal rather than public interests.” *Maple Run at Austin Municipal Utility District v. The City of Austin*, 931 S.W.2d 941, 945 (Tex. 1996) (citing *Miller*, 150 S.W.2d at 1001).

When interpreting the Texas Constitution, a court must rely heavily on the literal text of the Constitution and give effect to its plain language. *Bosque Disposal Systems, LLC v. Parker County Appraisal District*, 555 S.W.3d 92, 94 (Tex. 2018). The Court finds it is likely Mr. Tatum will prevail on his claim that SB 1750 and proposed Texas Election

Code Section 31.050 are unconstitutional because they violate the plain language of the text of the Constitution.

The Court finds SB 1750 and new Texas Election Code Section 31.050 violate both purposes underlying Article III, section 56. The Court finds it is likely Mr. Tatum will prevail on his claim that SB 1750 and proposed Texas Election Code Section 31.050 are unconstitutional because they violate the purposes underlying Article III, section 56.

Admittedly, the Supreme Court of Texas has recognized that the Legislature has “a rather broad power to make classifications for legislative purposes and to enact laws for the regulation thereof, even though such legislation may be applicable only to a particular class or, in fact, affect only the inhabitants of a particular locality.” *Miller*, 150 S.W.2d at 1001. For such a law to be constitutional, however, “there must be a substantial reason for the classification. It must not be a mere arbitrary device resorted to for the purpose of giving what is, in fact, a local law the appearance of a general law.” *Id.* at 1002. “The primary and ultimate test [of whether a law is general or special] is whether there is a reasonable basis for the classification and whether the law operates equally on all within the class.” *Maple Run*, 931 S.W.2d at 947 (citing *County of Cameron v. Wilson*, 326 S.W.2d 162, 165 (Tex. 1959)).

The Court, having heard all the testimony and weighed the credibility of the witnesses presented, reviewed all the documentary evidence, read all the pleadings and briefing, and carefully listened to all the arguments of counsel, finds it is likely that Mr. Tatum will prevail on his claim that there is no reasonable basis or substantial reason for

the classification established by the Legislature in SB 1750, new Election Code Section 31.050 and amended Election Code Section 31.031(a). The Court reaches this conclusion for several reasons, including, but not limited to, the ones set out below.

First, the Court finds there is no reasonable basis or substantial reason for the classification that counties with a population of 3.5 million persons or more *on September 1, 2023*, must abolish the office of county elections administrator, but that a county whose population grows to surpass 3.5 million persons *after September 1, 2023* may keep the office of county elections administrator. The Court further finds this classification to be unreasonable, arbitrary, and simply a means of singling out one county for special treatment and attempting to regulate how Harris County, to the exclusion of all other counties in the state, manages voter registration and elections.

Second, the Court finds there is simply no rational basis for a conclusion, crucial to the constitutionality of SB 1750 and new Texas Election Code Section 31.050, that if a county's population exceeds 3.5 million *on September 1, 2023*, its voter registration functions need to be performed by its tax assessor collector, rather than discharged by an appointed county elections administrator, but that when it does not attain that population until after that date, no such transfer of duties is required to protect the public interest. Further, there is simply no rational basis for a conclusion, crucial to the constitutionality of SB 1750, that if a county's population exceeds 3.5 million *on September 1, 2023*, its elections need to be managed by its county clerk, rather than by an appointed elections administrator, but that when it does not reach that population mark until after that date, no

such transfer of responsibility is necessary to secure the state's interest in achieving accountability and transparency to the voting public. The Court finds this classification to be unreasonable, arbitrary, and simply a means of singling out one county for special treatment and attempting to regulate Harris County differently than any other county in the State.

Third, the Court finds that the number 3.5 million bears no rational relationship to the stated objectives of the statute – transparency, placing election related activities in the hands of elected officials who will be more accessible, and therefore more responsive, to the voting public, and minimizing concentration of authority in a single individual. Assuming those objectives are within the Legislature's prerogatives, the Court finds there is no rational reason why these objectives are more important in Harris County than in Dallas, Tarrant, or Bexar Counties, counties with a population that exceeds 2 million persons. Indeed, if county elections administrators pose such a pernicious threat, the Court finds there is no rational basis for allowing any county in Texas to have one.

Fourth, the Court finds there is no rational nexus between the objectives of the statute and a population of 3.5 million (or more), and the irrationality is exacerbated by the fact that if populations of Dallas, Tarrant, or Bexar Counties grow to 3.5 million, they may keep their elections administrators, but Harris County must eliminate its elections administrator position, solely because its population got there (3.5 million) sooner than did that of Dallas, Tarrant, or Bexar counties.

The Court also finds that the equities and hardships favor granting a temporary injunction. The Court finds that Clifford Tatum will be grievously and irreparably injured if his position is abolished, and the Harris County EA eliminated. The Court finds that the hardships Harris County will suffer are minimal, at most. Indeed, the County seeks its own temporary injunction to restrain the State of Texas from enforcing SB 1750 because of the significant harm the County will suffer if the law goes into effect on September 1, 2023. Further weighing in favor of the injunction is the fact that if the County abolishes the office of county elections administrator and distributes the employees and functions between the Harris County Tax Assessor-Collector and the Harris County Clerk, if Mr. Tatum prevails, as is likely, that administrative alteration will have to be unwound. *Houston Elec. Co. v. Glen Park Co.*, 155 S.W. 965, 971 (Tex. Civ. App—Galveston 1913, writ ref'd). As between the parties, the Court finds the equities and hardships favor granting a temporary injunction.

Adding consideration of the public interest tilts the balance overwhelmingly in favor of granting a temporary injunction. *Storey v. Central Hide & Rendering Co.*, 226 S.W.2d 615, 618–19 (Tex. 1950) (in balancing the equities a court may consider the effect of a temporary injunction on the public). The public interest will be seriously disserved if responsibility for voter registration activities are transferred to the tax assessor-collector barely a month before the registration deadline for the November 7, 2023, the City of Houston election and responsibility for administration of the election itself must be transferred from the election administrator's office to the county clerk less than eight weeks

before the start of early voting. Those actions would likely result in incalculable disruption to and chaos in the November election. *See* TEX. ELEC. CODE § 31.031(c) (allowing counties to hire a county elections administrator-designate 90 days before the creation of the position of county elections administrator to “facilitate the orderly transfer of duties”). In these circumstances the public interest weighs heavily in favor of a temporary injunction pending trial on the merits. *Cf. Purcell v. Gonzalez*, 549 U.S. 1 (2006) (*per curiam*).

CONCLUSIONS OF LAW

The purpose of a temporary injunction is to preserve the status quo pending a trial on the merits. To obtain a temporary injunction, an applicant must plead and prove: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

The Court concludes Clifford Tatum has met the standard required for the issuance of a temporary injunction: he has stated a cause of action against Harris County, has shown a substantial likelihood he will prevail on the merits, and has established that if the Court does not issue a temporary injunction, he will suffer imminent, irreparable harm. Further, the equities and hardships favor the granting of the injunction that Mr. Tatum seeks.

The issuance of the temporary injunction described below will maintain the status quo between the parties during the pendency of this order.

The Court assesses bond at \$1,000.00 and allows Intervenor Clifford Tatum to place a cash deposit of that amount into the registry of the Court, to be accepted by the Travis County District Clerk, in lieu of bond, for the temporary injunction issued below.

IT IS THEREFORE ORDERED that the Clerk of this Court issue a Temporary Injunction, operative until final judgment, restraining Harris County and each of its instrumentalities, commissions, elected officials, agents, servants, employees, attorneys, representatives or any person or persons in active concert or participation with the County who receives actual notice of this Temporary Injunction from enforcing any provision of Texas Senate Bill 1750, including new Texas Election Code Section 31.050, to the extent that statute abolishes the position of county elections administrator in Harris County and/or requires transferring the duties and responsibilities of the Harris County EA from that office to the offices of the Harris County Tax Assessor-Collector and/or the Harris County Clerk. Harris County and each of its instrumentalities, commissions, elected officials, agents, servants, employees, attorneys, representatives or any person or persons in active concert or participation with the County who receives actual notice of this Temporary Injunction are further enjoined from terminating Clifford Tatum's employment as county elections administrator or discontinuing or reducing the compensation, employee benefits, or other emoluments of the office of county elections administrator he was receiving, or entitled to receive, from Harris County on August 31, 2023, on account of or in reliance upon SB 1750 or new Texas Election Code Section 31.050, set to go into effect on September 1, 2023.


IT IS FURTHER ORDERED that Clifford Tatum shall post a bond in the amount of \$1,000.00. In lieu of the bond, Clifford Tatum may make a cash deposit of the same amount into the registry of the court, to be accepted by the Travis County District Clerk. This cash deposit shall be deemed in conformity with the law for the period during which this Temporary Injunction is in effect.

IT IS FURTHER ORDERED that a trial on the merits of this case is preferentially set before Judge Karin Crump of the 250th Judicial District Court of Travis County, Texas on January 29, 2024 at 9:00 AM in the 250th Judicial District, located at 1700 Guadalupe Street, Austin, TX 78701, Courtroom 9B.

The Clerk of the Court shall forthwith issue a temporary injunction in conformity with the laws and terms of this Order.

It is further ORDERED that this Order shall expire at 11:59 p.m. on January 29, 2024, or upon further of the Court.

SIGNED this 14th day of August, 2023, at 4:04 p.m. in Travis County, Texas.



**JUDGE PRESIDING
KARIN CRUMP
250TH DISTRICT COURT**