No. 23-0656

In the Supreme Court of Texas

THE STATE OF TEXAS; OFFICE OF THE ATTORNEY GENERAL OF TEXAS; KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF TEXAS; OFFICE OF THE TEXAS SECRETARY OF STATE; AND JANE NELSON, IN HER OFFICIAL CAPACITY AS TEXAS SECRETARY OF STATE,

Appellants,

v.

HARRIS COUNTY, TEXAS; AND CLIFFORD TATUM,

Appellees.

On Direct Appeal from the
345th Judicial District Court, Travis County

BRIEF FOR APPELLANTS

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Statement of the Case

Nature of the Case: Following several well-publicized problems with the administration of elections in Texas's largest county, the Legislature passed Senate Bill 1750, which prohibited large counties from managing elections using an Elections Administrator. Act of May 23, 2023, 88th Leg., R.S., ch. 952 (2023) (codified as an amendment to Tex. Elec. Code ch. 31) ("S.B. 1750" or "the Act"). Harris County sued the State of Texas, the Attorney General, and Secretary of State Jane Nelson, seeking to enjoin the enforcement of S.B. 1750. CR.5. Harris County alleged that the Act violates the prohibition against "local or special" laws found in article III, section 56(a) of the Texas Constitution. CR.405-07. Harris County later amended its pleadings to add the Office of the Attorney General and the Office of the Secretary of State as defendants. CR.405.

Trial Court: 345th Judicial District Court, Travis County
The Honorable Karin Crump

Course of Proceedings: Harris County sought a temporary injunction prohibiting the State, the Secretary of State, and the Attorney General from enforcing S.B. 1750. CR.5. The State, the Secretary, and the Attorney General filed a plea to the jurisdiction. CR.129. In response, Harris County amended its petition to include the Office of the Attorney General and the Office of the Secretary of State as defendants, CR.405, and Harris County Elections Administrator Clifford Tatum intervened as a cross-plaintiff, seeking to enjoin Harris County from implementing S.B. 1750. CR.736, 759-60. The State of Texas and the Attorney General intervened as defendants in that cross-complaint to defend S.B. 1750 against that collusive request for injunctive relief. CR.770-76. On August 8, the trial court held a combined hearing regarding both the plea and the temporary-injunction motions. CR.860, 862, 876. After that hearing, the Harris County Republican Party intervened as a cross-plaintiff against Harris County. CR.884.

Disposition in the Trial Court:

The trial court granted the State's plea to the jurisdiction but denied the plea of the Secretary and the Attorney General. CR.860-61. The trial court granted both Harris County's and Tatum's motions for temporary injunctions against the Secretary, the Attorney General, and Harris County. CR.873, 879-80. That order did not specifically enjoin the Office of the Secretary of State or the Office of the Attorney General, which were added as defendants after Harris County's initial application for a temporary injunction was filed. *See* CR.5, 875-76, 879-80.

Statement of Jurisdiction

This Court has noted probable jurisdiction over this direct appeal. An appeal may be taken directly to this Court "from an order of a trial court granting or denying an interlocutory or permanent injunction on the ground of the constitutionality of a statute of this state." Tex. Gov't Code § 22.001(c). Harris County does not dispute that this appeal as it relates to the temporary injunctions falls within that statutory grant of jurisdiction. Harris County's Emergency Motion for Temporary Relief at 3 ("County Motion"). Although that concession did not extend to the plea to the jurisdiction, the Court may consider the issues raised in that plea for the reasons explained in Appellants' Statement of Jurisdiction.

Issues Presented

The issues presented are:

1. Whether plaintiffs were entitled to a temporary injunction permitting Harris County to continue to manage its elections using an Elections Administrator on the ground that S.B. 1750 is facially unconstitutional under the prohibition on local or special laws found in Texas Constitution article III, section 56(a).
2. Whether plaintiffs established the trial court's jurisdiction.

To the Honorable Supreme Court of Texas:

No one disputes that S.B. 1750 abolished the position of Harris County Elections Administrator or that, under current conditions, it applies only in Harris County. That does not make S.B. 1750 unconstitutional. Texas is a famously large and highly diverse State. Its Legislature is permitted to enact laws that apply differently in different locations so long as it has a reasonable basis to do so. And there are many reasonable bases to believe that, in large counties, elections should be managed by individuals accountable to the people rather than appointed bureaucrats removable only for cause. As a result, Harris County and Tatum (collectively, "plaintiffs") have no facially valid claim—let alone a probable right to relief. Plaintiffs' appeals to equity also ring hollow in the light of the numerous problems reported in Harris County during the brief tenures of its two Elections Administrators—not to mention their own delays in implementing the Legislature's policy decision.

Far from establishing a probable right to relief, plaintiffs failed to establish that the trial court had jurisdiction to entertain their request to facially invalidate an act of the Legislature. Because plaintiffs can point to no statutory waiver, their facially invalid claim runs afoul of sovereign immunity. Moreover, Harris County also lacked standing to sue the Attorney General and the Secretary of State because it failed to allege (let alone show) that either of those officials will enforce the Act against it. And its agent, Clifford Tatum, could not manufacture a justiciable controversy by suing his employer to enjoin an act that Harris County itself wants to enjoin. Such a claim itself is non-justiciable because those two parties are in no way adverse. If there

were any doubt about the collusive nature of Tatum's cross-claim, it was dispelled when the County called Tatum as its own star witness to help prove its case.

Statement of Facts

I. Harris County and Its Elections-Administration Problems

Harris County is the third largest county in the country—bigger than many States or even foreign countries. Its population of 4,780,913 represented about 16% of the total population of Texas as of July 2022. U.S. Census Bureau, *Quick Facts,* https://tinyurl.com/37rkhv5r. By contrast, Dallas County accounts for 9% of the population, Tarrant County accounts for 7%, Bexar County accounts for 7%, and Collin County accounts for 4%. *Id.*

As a result of its sheer size, Harris County has an outsized impact on statewide—and even national—elections. According to the Secretary of State's records, it has 2,568,463 registered voters. Harris County Voter Registration Figures, Tex. Secretary of State, https://www.sos.state.tx.us/elections/historical/harris.shtml.[1] That figure entitles it to nine seats in the U.S. House of Representatives, eight seats in the Texas Senate, and twenty-four seats in the Texas House of Representatives. Harris County, Texas Delegation, Capitol Impact, http://ciclt.net/sn/clt/capitolimpact/gw_countydel.aspx?ClientCode=capitolimpact&State=tx&StName=Texas&StFIPS=48&FIPS=48201. By way of comparison, that gives Harris County a congressional delegation equal in size to the Commonwealth of Massachusetts's and

[1] All websites were last visited on September 20, 2023.

larger than the State of Colorado's. 118th Congress, Ballotpedia, https://ballotpedia.org/United_States_House_of_Representatives.

Until 2020, these elections were managed by the county clerk and county tax assessor-collector's offices. *See* 2.RR.122-23. As with all county clerks in Texas, that individual must stand for election by—and is thus accountable to—the people of the county every four years. Tex. Const. art. V, § 20. Harris County decided to change course following the 2020 elections, 2.RR.80-81, and created the position of Elections Administrator pursuant to the authority of the county commissioners' court. *See* Tex. Elec. Code §§ 31.031-.049; *infra* p. 5.

Harris County has had trouble managing its elections ever since. 2.RR.122. Isabel Longoria, the County's first Elections Administrator, resigned following the 2022 primary election, 2.RR.117-18, after publicly admitting that she "didn't meet [her] own standards," *Harris County Official to Resign After Problems with Primary*, https://www.nbcdfw.com/news/local/texas-news/harris-county-official-to-resign-after-problems-with-primary/2909960/. She did not meet anyone else's standards either. For example, the Secretary of State's office had to "work with the party chairs, both Republican and Democratic," to address concerns about whether their election workers were being properly utilized and "to make sure the county was compliant in that area." 2.RR.183; *see also* CR.890. Even more concerning, after the election, Harris County initially could not account for approximately 10,000 votes. 2.RR.181-82. There were also reports that the ballot paper at some voting locations was the wrong size such that it cut off votes near the bottom of the page. CR.893; *see* Michael Hardy, *Why Can't the Biggest County in Texas Run an Election*, Tex. Monthly

(Mar. 10, 2022), https://www.texasmonthly.com/news-politics/harris-county-elections-2022/. The County also delayed reporting its election results because Longoria's team "needed more time to count" and the County determined that it was "not going to be able to complete [its] returns by the statutory timeframe." 2.RR.182; *see also* CR.892.

Although there is far from universal agreement about the cause of Harris County's election mismanagement, legislators would have been aware of wide public reporting about these problems. Indeed, one periodical called the 2022 primary election over which Longoria presided "one of the worst-run elections in recent memory." Hardy, *supra*; *see also* 2.RR.120.

The problems did not stop after Longoria resigned and was replaced by Clifford Tatum, as Tatum himself testified. 2.RR.117-19. During the November 2022 general election, which occurred months after Tatum was appointed Elections Administrator, there were shortages of ballot paper at multiple polling locations, including some reports of polling locations running completely out of ballot paper for periods of time. 2.RR.118-19. Faced with various problems, some election workers called for help but could not reach the relevant individuals. 2.RR.120-21.

Christina Adkins, Director of Elections in the Elections Division of the Texas Secretary of State's office, also testified as to these problems. She explained that "there have been very public accounts of some issues" that occurred in Harris County during the 2022 primary and general elections. 2.RR.181. During the general election, she explained, Harris County experienced problems in scanning ballots properly, and there were "allegations of ballot paper shortages in some locations that

may have impacted the ability for th[o]se locations to accept and process voters." 2.RR.182. Whether any of those errors might have changed the outcome of an election is unclear, given that some races were decided by a fraction of a percentage point. *See, e.g.*, Ryan Chandler, *Trial ends in Harris County election challenge*, KXAN (Aug. 15, 2023), https://www.kxan.com/news/texas-politics/trial-ends-in-harris-county-election-challenge/ (discussing the challenge of Erin Lunceford, who "lost a race for district judge to incumbent Democrat Tamika Craft by 2,743 votes—a margin of 0.26%").

As with the primary election, legislators would have been aware of the County's election-administration problems, given that they were reported by several newspapers, *see* 2.RR.120-21, and fourteen candidates filed election contests to challenge the results, 2.RR.120, some of which are still pending, *e.g.*, *Mealer v. Hidalgo*, Cause No. 2023-00964 (Harris County 133rd Judicial Dist.).

II. The Texas Election Code and S.B. 1750

The default rule in Texas is that counties run elections through their elected county clerks and tax assessor-collectors, Tex. Elec. Code §§ 12.001, 43.002, 67.007, 83.002, as Harris County did until 2020, *see supra* p. 3. Before S.B. 1750 became law, counties had the option of creating the position of an appointed county elections administrator. *See* 3.RR.43 (showing changes made to the Election Code by S.B. 1750). Such an individual is appointed by the county election commission. Tex. Elec. Code § 31.032(a). Unlike a county clerk, who must answer to the voters for poor performance, Tex. Const. art. V, § 20,—or the Secretary of State, who is appointed by the Governor (who must answer to the voters for his choice), Tex. Const.

art. IV, § 21—an Elections Administrator has no such democratic check. *Cf. Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 483-84 (2010) (discussing the role of presidential appointment and termination power to promote accountability).

Once put into power, an Elections Administrator can be removed in only two ways. *First*, she can be removed "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." Tex. Elec. Code § 31.037(a) (emphasis added). *Second*, she can be removed by the Secretary of State, but only upon a finding of a "recurring pattern of problems with election administration or voter registration" that has "not [been] rectified or continues to impede the free exercise of a citizen's voting rights"—and even then only at "the conclusion of administrative oversight of the county elections administrator's office." *Id.* § 31.037(b).

After Harris County's experience demonstrated the perils of ceding control over elections in large counties to such an unaccountable bureaucrat, the 88th Legislature passed S.B. 1750 in May of this year. The Act contains two provisions relevant here. *First*, it provides that "[t]he commissioners court *of a county with a population of 3.5 million or less*, by written order may create the position of a county elections administrator for the county." Act of May 23, 2023, 88th Leg., R.S., ch. 952, 2023 Tex. Sess. Law Serv. (S.B. 1750) § 2(a) (emphasis added to reflect the amendment) (now codified at Tex. Elec. Code § 31.031(a)). *Second*, it provides that "[o]n September 1, 2023, all powers and duties of the county elections administrator of a county with a population of more than 3.5 million under this subchapter are transferred to the

county tax assessor-collector and county clerk." *Id.* § 3 (now codified at Tex. Elec. Code § 31.050). The Governor signed the bill in mid-June. Actions: S.B. 1750, Texas Legislature Online, https://capitol.texas.gov/billlookup/Actions.aspx?LegSess=88R&Bill=SB%201750.

As with most significant bills passed during the 88th Legislature, the Act took effect on September 1, 2023. S.B. 1750 § 5. The parties agree that only Harris County had a population of 3.5 million or more on September 1, 2023. *See* CR.130; CR.407.

III. Procedural History

Before the Act took effect, Harris County sued the Attorney General, Secretary Nelson (with the Attorney General, the "State Officials"), the Office of the Attorney General of Texas, the Office of the Secretary of State, and the State, seeking to enjoin the enforcement of the Act. CR.405. Harris County alleged that the statute violates the prohibition against "local or special" laws found in article III, section 56(a) of the Texas Constitution. CR.422. Harris County sought a temporary injunction prohibiting defendants from enforcing the Act. CR.427.

The State, the Attorney General, and the Secretary filed a plea to the jurisdiction. CR.129. In that plea, the State and State Officials argued that they were not proper defendants for sovereign-immunity purposes because this Court has concluded that the Uniform Declaratory Judgments Act impliedly waives sovereign immunity "in a suit against a governmental *entity* that challenges the constitutionality of a statute"—not a government official, *Patel v. Tex. Dep't of Licensing & Regulation*, 469 S.W.3d 69, 76 (Tex. 2015) (emphasis added), or the State, *Abbott v. Mexican Am. Legislative Caucus, Tex. House of Representatives*, 647 S.W.3d 681, 697 (Tex. 2022)

(*MALC*). CR.141-42. The State Officials also challenged the County's standing because (among other reasons) the County had not alleged that either of them was likely to enforce the statute. CR.143-48.

In an attempt to solve Harris County's standing problem, Tatum intervened as a cross-plaintiff and sought a temporary injunction prohibiting Harris County from implementing the Act that it was itself attempting to avoid enforcing. CR.736, 759-60. Because Harris County demonstrably had no intention to defend against such an injunction, the State and the Attorney General intervened as defendants in Tatum's cross-claim to defend S.B. 1750 against Tatum's collusive request for an injunction against Harris County. CR.770-76. To establish a route around sovereign immunity, Harris County later amended its petition to add the Office of the Attorney General and the Office of the Secretary State as additional defendants. CR.405.

The trial court denied the plea to the jurisdiction except as to the State of Texas. CR.860-61. It also granted Harris County's and Tatum's requests for temporary injunctions. CR.862-81. The defendants filed a notice of direct appeal to this Court, which superseded the injunctions. CR.856-57; Docket, No. 23-0656 (Tex. Aug. 17, 2023); *see* Tex. Civ. Prac. & Rem. Code § 6.001(b); Tex. Gov't Code § 22.001(c); Tex. R. App. P. 29.1(b); *In re Abbott*, 645 S.W.3d 276, 282 (Tex. 2022). Harris County and Tatum each sought temporary emergency relief under Texas Rule of Appellate Procedure 29.3, which this Court denied. The Court noted probable jurisdiction over the direct appeal and set the case for oral argument on November 28, 2023.

Summary of the Argument

I. To establish their right to a temporary injunction, plaintiffs had to prove three specific elements: "(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." *State v. Hollins*, 620 S.W.3d 400, 405 (Tex. 2020) (per curiam). Assuming plaintiffs have a cause of action, they fail to meet either of the other required elements.

A. Plaintiffs lack a facially viable claim, let alone a probable right to relief, on the theory that S.B. 1750 is a special or local law in violation of article III, section 56(a) of the Texas Constitution. To start, plaintiffs' claim depends on this Court accepting the premise that S.B. 1750 can only ever apply to Harris County—that is, that the Legislature created a "closed bracket" of counties with a population of 3.5 million on September 1, 2023. CR.412. That argument, however, reads S.B. 1750's reference to that date out of context in order to put forth a statutory reading that is *at best* ambiguous. Because this Court has recognized that its duty to avoid a conflict between an act of the Legislature and the Constitution is "not optional," *Phillips v. McNeill*, 635 S.W.3d 620, 630 (Tex. 2021), it should reject plaintiffs' proposed reading. But even accepting plaintiffs' view would not result in facial invalidation of S.B. 1750. It would support only severance of the limitation that causes the constitutional issue.

In any event, "[t]he primary and ultimate test" this Court has established for "whether a law is general or special" is "whether there is a reasonable basis for the classification made by the law, and whether the law operates equally on all within the

class." *Maple Run at Austin Mun. Util. Dist. v. Monaghan*, 931 S.W.2d 941, 945 (Tex. 1996). Here, the Legislature's classification was reasonable. Harris County's sheer size and impact on statewide elections, its history of mismanaging elections, and public perception that its elections have been mismanaged were each constitutionally sufficient bases for the Legislature to act.

B. An injunction was also improper because neither Harris County nor Tatum has shown irreparable harm. As defendants explained in their response to plaintiffs' request for emergency relief, Harris County's asserted harms—primarily that the November 2023 elections would be disrupted—were largely self-inflicted because the County failed to make contingency plans to implement the Act in the event it did not prevail in this case. Tatum did not show irreparable harm before September 1 because he made no effort to demonstrate that he could not be reinstated at the end of this suit and had made no effort to show that he would be unable to find a position that would make him monetarily whole. Now that the Act has taken effect, materials subject to judicial notice as well as the County's public statements demonstrate that its alleged harm was overstated and that Tatum has, in fact, been able to find alternative employment. With a presidential primary scheduled for March, the current status quo, balance of equities, and public interest disfavor the County's effort to switch back to an Elections Administrator that the Legislature has deemed to be inappropriate for a county this size.

II. The trial court also erred in entering an injunction because, for three reasons, it never had jurisdiction to entertain either Harris County's claim or Tatum's cross-claim. *First*, plaintiffs' claims against the State Officials do not fit within a

waiver of sovereign immunity, and the County's belated suit against those officials' respective agencies does not cure the problem. *Second*, Harris County lacks standing to sue the Attorney General and the Secretary of State because it has not shown that either official possesses a demonstrated willingness to enforce S.B. 1750 against it. *Third*, there is no justiciable controversy between Tatum and Harris County because the two are effectively co-plaintiffs rather than adverse parties.

Standard of Review

This Court reviews a trial court's temporary injunction for abuse of discretion. *E.g.*, *Henry v. Cox*, 520 S.W.3d 28, 33 (Tex. 2017). "A trial court has no discretion to misapply the law, however, and thus [the Court] review[s] its legal determinations de novo, based on current law." *Tex. Educ. Agency v. Hous. ISD.*, 660 S.W.3d 108, 116 (Tex. 2023) (citing *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding)); *see also Walker*, 827 S.W.2d at 840 (noting that a "clear failure by the trial court to analyze or apply the law correctly will constitute an abuse of discretion"). The Court reviews "orders on pleas to the jurisdiction *de novo*." *Matzen v. McLane*, 659 S.W.3d 381, 388 (Tex. 2021). Even if this Court were to decide that it lacked appellate jurisdiction over the order denying the State Officials' plea to the jurisdiction, it would still have to examine whether the trial court had jurisdiction *de novo*. *See, e.g.*, *Abbott v. Harris County*, 672 S.W.3d 1, 8 (Tex. 2023).

ARGUMENT

I. The Trial Court's Preliminary Injunction Was Improper.

To start, the trial court's injunction was improper both because plaintiffs lack a probable right to relief on the merits and because they failed to establish that equity favors their request. Defendants recognize that this Court "would normally resolve jurisdictional questions" such as those addressed in Part II of this brief "first." *In re Abbott*, 628 S.W.3d 288, 294 n.8 (Tex. 2021) (citing *Ross v. St. Luke's Episcopal Hosp.*, 462 S.W.3d 496, 499 (Tex. 2015)). However, it need not do so because "the failure of either showing—either jurisdiction or the merits—means a probable right to relief is lacking" and an injunction must be vacated. *Id.* (quoting *Abbott v. Anti-Defamation League Austin, Sw., & Texoma Regions*, 610 S.W.3d 911, 917 (Tex. 2020) (per curiam)) (cleaned up). The Court can do so here because plaintiffs' constitutional claim is facially invalid under current precedent, which is both a merits and a jurisdictional inquiry in this posture. *MALC*, 647 S.W.3d at 699. And it may wish to do so because a ruling that does not address the Act's constitutionality may create uncertainty for the parties and the voters in future elections, including the upcoming March 5, 2024 presidential primary. *See* Texas Secretary of State, *Running for President in Texas (in 2024)* https://www.sos.state.tx.us/elections/candidates/guide/2024/president.shtml.

A. Plaintiffs lack a facially valid claim, let alone a probable right to relief.

Plaintiffs would have this Court engage in "[o]ne of the most delicate duties to be performed by the judicial branch of the government": to "declar[e] an act of the

legislative department to be unconstitutional and invalid" on its face. *Lombardo v. City of Dallas*, 73 S.W.2d 475, 486 (Tex. 1934). This Court has recently reaffirmed that it is "not optional" for courts to construe statutes to avoid such an outcome. *Phillips*, 635 S.W.3d at 630. Where that is not possible, courts are to sever problematic provisions where doing so would "leav[e] a valid law." *Rose v. Drs. Hosp.*, 801 S.W.2d 841, 845 (Tex. 1990).

Plaintiffs would turn these principles on their head. They have suggested that an "open" bracket that "happens to capture only Harris County" would be consistent with the Constitution even if the law currently applies only to Harris County. CR.424. They nonetheless ask the Court to interpret S.B. 1750 to create a "closed" population bracket—even though an "open" bracket would be consistent with the text of the statute or, at minimum, achievable through severing four words that in context appear to refer to the effective date of the statute. Plaintiffs' interpretation should not be accepted or allowed to distract from the reasonableness of the distinction the Legislature drew. And that reasonableness satisfies the Court's "primary and ultimate test" of whether a law is general or special. *Maple Run*, 931 S.W.2d at 945.

1. The Court should construe S.B. 1750 to adopt an "open bracket," which plaintiffs do not dispute would be constitutional.

The Texas Constitution prohibits the Legislature from passing a "local or special law." Tex. Const. art. III, § 56. A "local law is one limited to a specific geographic region of the State, while a special law is limited to a particular class of persons distinguished by some characteristic other than geography." *Maple Run*, 931

S.W.2d at 945. However, "[a] law is not a prohibited local law merely because it applies only in a limited geographical area." *Id.* "[W]here a law is limited to a particular class or affects only the inhabitants of a particular locality, the classification must be broad enough to include a substantial class and must be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to be accomplished by the proposed legislation." *Id.*

No one disputes that, at present, S.B. 1750 applies only to Harris County. On its face, it divides the State into two brackets: counties with fewer than 3.5 million people, which may create Elections Administrators, S.B. 1750 §§ 2-3, and counties with more than 3.5 million people, which may not, *id.* At present, only Harris County has more than 3.5 million people. But as Harris County suggests, that is permissible so long as the second bracket is not "closed." County Motion at 9; CR.424.

a. Applying ordinary rules of statutory construction, the Act does *not* create a "closed" bracket just because it says that the initial transfer of powers of the Election Administrator will occur "[o]n September 1, 2023." S.B. 1750 § 3. This Court has repeatedly stated that words are to be read in their linguistic and historic context. *In re Office of the Att'y Gen. of Tex.*, 456 S.W.3d 153, 155 (Tex. 2015) (per curiam). Moreover, the Legislature is presumed to understand the ordinary rules of English grammar. Tex. Gov't Code § 311.011; *see also* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 140 (2012) (describing the presumption as "unshakeable").

Here, taken together, those rules suggest that the phrase "on September 1, 2023" should not be read to mean that September 1, 2023, is the one and only day

on which powers can be transferred. Instead, it is best understood as a reference to the effective date of the statute, given the constitutionally prescribed grace period that attaches to most new laws. *See Fire Prot. Serv., Inc. v. Survitec Survival Prod.s., Inc.*, 649 S.W.3d 197, 202 (Tex. 2022).

Put another way, the phrase "on September 1, 2023" is a phrase describing *when* something will happen. In English, words and phrases that answer questions like "when?" are adverbs, which typically modify verbs. *See Adverb*, Webster's Third New International Dictionary Unabridged 31 (1961). Because the verb in S.B. 1750 is "transfer," the modifier "on September 1, 2023" specifies when that transfer is to occur; it does not limit the transfer solely to Harris County even if other counties reach the same size threshold. By contrast, if the Legislature wanted to limit the application of the Act to Harris County, the more natural way to do it would have been to write that the Act applied to "a county with a population of more than 3.5 million *as of* September 1, 2023." But the Legislature did not do so.

Plaintiffs' contrary argument—that Section 3 should be read as operative on one day only—is a textbook example of faux textualism. "Ordinary meaning and literal meaning are two different things. And judges interpreting statutes should follow ordinary meaning, not literal meaning." *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1491 (2021) (Kavanaugh, J., dissenting) (citing Antonin Scalia, A Matter of Interpretation 24 (1997) (A "good textualist is not a literalist.")). "As Justice Scalia, textualism's staunchest and most prominent proponent, puts it[:] 'In textual interpretation, context is everything.'" *Ojo v. Farmers Group, Inc.*, 356 S.W.3d 421, 451 (Tex. 2011) (Willett, J., concurring) (quoting Antonin Scalia, *Common-Law Courts in a Civil Law*

System: The Role of United States Federal Courts in Interpreting the Constitution and Laws, in A Matter of Interpretation, 3, 37 (Amy Gutmann ed., 1997)). That is because "[t]he meaning of words read in isolation is frequently contrary to the meaning of words read contextually in light of what surrounds them." *Office of the Att'y Gen.*, 456 S.W.3d at 155 (cautioning that "courts should resist rulings anchored in hyper-technical readings of isolated words or phrases").

Nor is it a response to invoke the canon against surplusage. *Contra* Harris County Motion Reply 1. That is so for two reasons.

First, the language is not surplusage because Section 2(a) speaks in terms of when a county of fewer than 3.5 million people can "create" the position of Elections Administrator. 3.RR.43. To "create" means "to bring into existence." *Create*, Webster's Third New International Dictionary Unabridged 532 (1961). As a result, neither Section 2(a) nor a provision specifying when that section will become effective says anything about what to do with a county that is *already* above 3.5 million people and *already* has an Elections Administrator. Section 3 closes that gap and brings Harris County within the class of counties with 3.5 million residents that are not permitted to have an Elections Administrator.

Second, even if this language might otherwise be surplusage, that would not change the outcome. As this Court has recently reiterated, "[l]ike all canons of construction, the surplusage canon 'must be applied with judgment and discretion, and with careful regard to context.'" *Whole Woman's Health v. Jackson*, 642 S.W.3d 569, 582 (Tex. 2022) (quoting Scalia & Garner, *supra*, at 176-77). In particular, the Court has "repeatedly recognized, when faced with legal language that appears repetitive

or otherwise unnecessary, that drafters often include redundant language to illustrate or emphasize their intent." *Id.* (collecting cases). Here, to the extent there is duplication, it is best understood to be a "belt-and-suspenders approach," *Ex parte K.T.*, 645 S.W.3d 198, 205 (Tex. 2022), which ensures that Harris County cannot argue that it is exempt from S.B. 1750.

b. This conclusion is buttressed by two additional canons of construction—one contextual and one substantive.

First, courts "interpret statutes to avoid an absurd result." *Jose Carreras, M.D., P.A. v. Marroquin*, 339 S.W.3d 68, 73 (Tex. 2011). If the Act applied on one day only, September 1, 2023, then it would lead to absurd results. S.B. 1750 is not a statute that can be turned on and off on a particular day. It requires significant planning to implement. *See Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring) (discussing the logistical complications of managing an election). It would be absurd to think that the Legislature expected Harris County's transition to happen in a single day or expected it to stop if not accomplished on that day. Indeed, if Harris County were correct that Section 3 applies only on September 1, 2023, the County's refusal to comply with the statute on that date would seem to allow it to ignore S.B. 1750 in perpetuity. That makes no sense. To the contrary, the Constitution mandates, with limited exceptions, that "statutes not take effect until ninety days after the legislative session adjourns." *Fire Protection,* 649 S.W.3d at 202. The Constitution contains that requirement so that entities like Harris County, or people like Tatum, will have notice of a new statute's passage "to enable them to adjust their affairs to the change made." *Id.*

Second, "[s]tatutes are given a construction consistent with constitutional requirements, when possible, because the legislature is presumed to have intended compliance with state and federal constitutions." *Brady v. Fourteenth Court of Appeals*, 795 S.W.2d 712, 715 (Tex. 1990) (citing *Greyhound Lines, Inc. v. Bd. of Equalization*, 419 S.W.2d 345, 348-49 (Tex. 1967); Tex. Gov't Code § 311.021(1)); *see Paxton v. Longoria*, 646 S.W.3d 532, 539 (Tex. 2022) (explaining that courts should "interpret a statute in a manner that avoids constitutional infirmity.").

Reading Section 3 of the Act in its linguistic context and in the light of these canons confirms that the Legislature did not pass a provision that applies on one day only. Rather, the Act imposes a continuing duty on any county with more than 3.5 million people to manage its elections using its county tax assessor-collector and county clerk rather than an Elections Administrator. As applied to Harris County, Section 3 creates an obligation that begins on September 1, 2023. And under Section 2, that obligation continues so long as Harris County's population remains above 3.5. million.

2. The only relief that would remedy plaintiffs' putative harm is unavailable under even their theory.

Even if Section 3's reference to September 1 created a closed bracket, it would not entitle plaintiffs to the relief they sought and that the trial court ordered. It would instead result in an order severing "on September 1, 2023" from S.B. 1750. Absent a further change to the law, that would mean Dallas County would lose its ability to have an Elections Administrator when its population reached 3.5 million, *supra* p. 2

(discussing the State's current demographics), but it would not allow Tatum to continue to serve as an Elections Administrator in Harris County.

A claim under article III, section 56 sounds in unequal treatment: the provision "prevent[s] the granting of special privileges and . . . secure[s] uniformity of law throughout the State as far as possible." *Miller v. El Paso County*, 150 S.W.2d 1000, 1001 (Tex. 1941); *see also Maple Run*, 931 S.W.2d at 945 (citing *Miller*). When "the constitutional violation is unequal treatment, . . . a court theoretically can cure that unequal treatment either by extending the benefits or burdens to the exempted class, or by nullifying the benefits or burdens for all," so long as the restriction is severable. *Barr v. Am. Ass'n of Political Consultants, Inc.*, 140 S. Ct. 2335, 2354 (2020) (citing *Heckler v. Mathews*, 465 U.S. 728, 740 (1984)); *see also, e.g.*, *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1699 (2017). Here, that means the Court could resolve the inequality *either* by (as plaintiffs ask) "nullifying" S.B. 1750 as applied to Harris County *or* (as plaintiffs suggest would be constitutional, CR.424) extending S.B. 1750's bar to any county that in the future reaches 3.5 million.

Although defendants are unaware of this Court having ever addressed the question, other courts have expressed the "preference for extension rather than nullification." *Barr*, 140 S. Ct. at 2354 (collecting cases). Such a rule is consistent with the default rule under Texas law that "if any provision of the statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute that can be given effect without the invalid provision or application, and to this end the provisions of the statute are severable." Tex. Gov't Code § 311.032(c). This general presumption applies "unless all the

provisions are connected in subject-matter, dependent on each other, operating together for the same purpose, or otherwise so connected in meaning that it cannot be presumed the legislature would have passed the one without the other." *Builder Recovery Servs., LLC v. Town of Westlake*, 650 S.W.3d 499, 507 (Tex. 2022) (quoting *Rose*, 801 S.W.2d at 844).

Under this general rule, if the phrase "on September 1, 2023" in Section 3 makes the Act unconstitutional, then it should be severed, such that the statute would state that "all powers and duties of the county elections administrator of a county with a population of more than 3.5 million . . . are transferred to the county tax assessor-collector and county clerk." S.B. 1750 § 3. The Act would then contain an open population bracket, defeating any argument that the Act will only ever apply to Harris County.

And far from being "dependent on each other," eliminating the phrase "on September 1, 2023" would seem to have no appreciable impact on the rest of Section 3. *Builder Recovery Servs.*, 650 S.W.3d at 507. As Harris County acknowledges in making its surplusage argument, September 1, 2023, was the presumptive effective date of the statute. Harris County Motion Reply 1. Including that date just eliminated any potential ambiguity regarding its application. *Supra* pp. 16-17. And according to information subject to judicial notice, removing that language would not expand the statute's scope either now or in the near future. The State's next largest county—Dallas County—will not reach that population threshold for years, or perhaps even decades. *See, e.g.*, Texas Demographic Center, Demographic Trends in Texas and the DFW Area (July 28, 2022), https://demographics.texas.gov/Resources/

Presentations/OSD/2022/2022_07_28_NorthTexasCommission.pdf (reflecting a 1% annual growth rate for the last decade). If anything, the fact that these four words can be so easily severed without causing any damage to the legislative design just emphasizes the fallacy of Harris County's interpretation.

3. S.B. 1750 meets this Court's ultimate test because the Legislature's classification was reasonable.

In all events, the Act is constitutional because the Legislature's classification was reasonable. "The primary and ultimate test of whether a law is general or special is whether there is a reasonable basis for the classification made by the law, and whether the law operates equally on all within the class." *Maple Run*, 931 S.W.2d at 945. "The Legislature may restrict the application of law to particular counties by the use of classifications, providing the classifications are not arbitrary." *Smith v. Davis*, 426 S.W.2d 827, 830 (Tex. 1968). "It is to be presumed that the Legislature has not acted unreasonably or arbitrarily; and a mere difference of opinion, where reasonable minds could differ, is not a sufficient basis for striking down legislation as arbitrary or unreasonable." *Id.* at 831. "The wisdom or expediency of the law is the Legislature's" prerogative, not the Court's. *Id.*

That is a low bar. The Court has equated the reasonable-basis test for the purposes of article III, section 56 with rational-basis review under the federal Equal Protection Clause and its Texas counterpart. *Owens Corning v. Carter*, 997 S.W.2d 560, 580-83 (Tex. 1999); *Tex. Boll Weevil Eradication Found., Inc. v. Lewellen*, 952 S.W.2d 454, 464-65 (Tex. 1997). Under that level of scrutiny, the Court "must uphold the law if [it] can conceive of any rational basis for the Legislature's action." *Owens*, 997

S.W.2d at 581. "It does not matter whether the justifications courts may hypothesize as a rational basis in fact underlay the legislative decision." *Id.* Rational-basis determinations are "'not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.'" *Klumb v. Hous. Mun. Emps. Pension Sys.*, 458 S.W.3d 1, 13 (Tex. 2015) (quoting *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993)). Those "attacking the rationality of the legislative classification have the burden to negative every conceivable basis which might support it." *Beach Commc'ns,* 508 U.S. at 315. Further, "it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." *Id.*

Texas courts have understood this to be the appropriate level of scrutiny under Article III, Section 56. "If there could exist a state of facts justifying the classification or restriction complained of, [the Court] will assume that it existed." *Scurlock Permian Corp. v. Brazos County*, 869 S.W.2d 478, 485 (Tex. App.—Houston [1st Dist.] 1993, writ denied); *Inman v. R.R. Comm'n*, 478 S.W.2d 124, 127 (Tex. App.—Austin 1972, writ ref'd n.r.e.) (same).

The Act has at least three reasonable bases. *First*, Harris County's sheer size creates a statewide interest in the proper administration of its elections, which is unlikely to dissipate even if, due to statewide population growth, other large counties eventually reach populations of over 3.5 million. *Second*, legislators may have concluded that the protections from accountability normally afforded to Elections Administrators were no longer tenable in the light of reported mismanagement in Harris County's 2022 elections. *Third*, regardless of the veracity of those reports,

legislators may have been concerned that widespread reporting about poorly managed elections in Harris County caused voters to lose confidence in the integrity of those elections.

a. Harris County's sheer size creates a statewide impact on elections.

Although the ultimate test is reasonableness, "[w]here the operation or enforcement of a statute is confined to a restricted area, the question of whether it deals with a matter of general rather than purely local interest is an important consideration in determining its constitutionality." *Maple Run*, 931 S.W.2d at 947 (quoting *County of Cameron v. Wilson*, 326 S.W.2d 162, 165 (Tex. 1959) (orig. proceeding)). "Because of the breadth and territorial extent of the State, its varied climatic and economic interests, and the attendant problems of transportation, regulation[,] and general needs incident to a growing and active population," the State "ha[s] been and will again be faced with the need and demand for legislation which affects all the people of the State generally, yet which, in its direct operation will apply to one locality or to a comparatively small number of counties." *County of Cameron*, 326 S.W.2d at 167. "Such legislation is not only common, but is generally for the public good, or at least has been so declared by the legislative branch of government." *Id.* And the Court has long held that "[t]he scope of such legislation should not be restricted by expanding the nullifying effect of Article 3, s[ection] 56 of the Constitution." *Id.*

For example, this Court has cited with favor a case involving a statute that "applied only to airports operated jointly by two cities with [a] population exceeding 400,000." *Maple Run*, 931 S.W.2d at 948 (discussing *City of Irving v. Dallas/Fort*

Worth Int'l Airport Bd., 894 S.W.2d 456, 467 (Tex. App.—Fort Worth 1995, writ denied)). Even though that statute could apply only to the Dallas/Fort Worth Airport, the statute was upheld as reasonable due to "the tremendous statewide importance of the facility and the special zoning conflicts that can arise for a jointly operated airport." *Id.*

Similar reasoning applies here. Harris County's size makes it different from all other counties. As discussed above, it is far larger than any other county in Texas, making the proper management of its elections an issue of enormous statewide importance. *See supra* p. 2. Because elections in Harris County have a statewide impact, particularly when statewide officials and measures are on the ballot, the Act is not local within the meaning of the Constitution.

Harris County has asserted that if the Act were concerned with population size, it would apply prospectively to all counties that reach 3.5 million voters in the future. County Motion at 12. But that argument assumes that "on September 1, 2023" is a limiting phrase and not a descriptive one, which is not correct. *See supra* pp. 14-15. It also ignores Harris County's unique size and that it is unlikely to remain static in population while other large counties grow and reach populations of 3.5 million. According to the state demographer, Harris County is projected to reach a population of between 5.7 and 6.3 million by the year 2060, depending upon migration rates, whereas Bexar, Dallas, Collin, Tarrant, and Travis Counties are not expected to even cross the 3.5 million threshold within that time. *See* Texas State Demographer, Texas Demographic Center, *Texas Population Projections Program*, County Projection 2020-2060 1.0 Migration Scenario and 0.5 Migration Scenario,

https://demographics.texas.gov/Projections/2022/. Harris County will likely continue to grow and continue to have a much larger impact on statewide elections than any other county, even as other counties grow and (eventually) reach the 3.5 million bracket created by the Act.

b. Harris County has poorly managed its elections since it created an Elections Administrator.

Beyond size, it was reasonable for legislators to have believed reports that Harris County's Elections Administrators mismanaged the County's recent elections and to have concluded that such mismanagement required increased accountability. Plaintiffs have largely ignored this reality, even though the Court "must uphold the law if [it] can conceive of any rational basis for the Legislature's action." *Owens*, 997 S.W.2d at 581.

That Harris County experienced problems in managing its elections in 2022 is not in serious dispute. Tatum admitted as much at the temporary-injunction hearing. 2.RR.117-119. As detailed above, the problems included shortages of critical supplies, 2.RR.118-19, and assistance, 2.RR.120-21. During the general election, Harris County experienced problems in scanning ballots properly, and there were "allegations of ballot paper shortages in some locations that may have impacted the ability for th[o]se locations to accept and process voters." 2.RR.182; *see also* CR.892 (Harris County Republican Party alleging that "Longoria failed to procure, distribute, and provide necessary election supplies and voting equipment" during the primary).

Because of all these election-day administration problems, fourteen candidates filed election contests to challenge the election results. 2.RR.120. One such contest

was in trial as of August 2023, nearly a year after the election. *See*, *e.g.*, Ryan Chandler, *Trial ends in Harris County election challenge*, KXAN (Aug. 15, 2023), https://www.kxan.com/news/texas-politics/trial-ends-in-harris-county-election-challenge/ (discussing the challenge of Erin Lunceford, who "lost a race for district judge to incumbent Democrat Tamika Craft by 2,743 votes—a margin of 0.26%").

Given these difficulties, it was rational for legislators to conclude that the individual responsible for elections needed to be accountable to voters. After all, under existing law, the Elections Administrator can be removed "for good and sufficient cause," but such cause must be agreed upon by "four-fifths vote of the county election commission" *and* "a majority vote of the commissioners court." Tex. Elec. Code § 31.037(a) (emphasis added). In a large county, termination under that provision could be practically impossible. And in a county the size of Harris County, waiting for a "recurring pattern of problems with election administration or voter registration" that has "not [been] rectified or continues to impede the free exercise of a citizen's voting rights" despite "the conclusion of administrative oversight of the county elections administrator's office," *id.* § 31.037(b), can have profound statewide—or even nationwide—consequences. *Cf. Bush v. Gore*, 531 U.S. 98, 101 (2000) (per curiam) (adjudicating an election dispute in which a presidential election turned on a small number of votes).

Indeed, based on Harris County's own experience, legislators had more than a reasonable basis to believe that the elected officials of county tax assessor-collector and county clerk were better choices to run the County's elections than an unelected Elections Administrator. After all, those elected officials had run the County's

elections only a few years ago, and so legislators may have believed that it would be best—and not disruptive—to return those duties to those officials, given all the problems that occurred during the 2022 election cycle. Plaintiffs disagree with that policy choice, but such disagreement does not render the Legislature's choice unreasonable.

c. The public perception that Harris County's elections were mismanaged was reason enough for the Legislature to act.

Even if reports of election mismanagement in Harris County were untrue (or at least unproven), legislators may have reasonably believed that action was required so that voters would not lose confidence in the integrity of the County's elections. Courts recognize that "public confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process." *Crawford v. Marion Cnty. Elec. Bd.*, 553 U.S. 181, 197 (2008); *see also Veasey v. Abbott*, 830 F.3d 216, 274 (5th Cir. 2016) (Higginson, J., concurring) (discussing *Crawford* in the context of Texas's Voter ID law); *accord In re Khanoyan*, 637 S.W.3d 762, 765 (Tex. 2022) (orig. proceeding) (emphasizing the importance of not allowing the courts "themselves [to] contribute to electoral confusion").

Not even Tatum disputes that there was widespread reporting of the problems that Harris County experienced in 2022—the only major election cycle run by an Elections Administrator. 2.RR.120. Given the outsized impact that Harris County has on statewide elections, legislators may have been reasonably concerned about media reporting regarding Harris County's elections and acted to prevent voters from questioning the integrity of the County's elections.

Plaintiffs try to spin this history, quoting statements by individual legislators to paint the Act as having improper purposes. CR.415-16 (Harris County's live petition). But that is irrelevant under the rational-basis test. Indeed, even in rare instances in which claims turn on legislative mal-intent, such statements are of minimal value because they do not speak to the intent of the Legislature. *See Brnovich v. Democratic Nat'l Committee*, 141 S. Ct. 2321, 2350 (2021) (holding that the "'cat's paw' theory has no application to legislative bodies"). Here, where the subjective motivation of legislators is *not* an element of the plaintiffs' claims, and only the reasonableness of the Legislature's classification matters, *see Maple Run*, 931 S.W.2d at 945, legislative history plays no role in the analysis. Instead, "the truest manifestation of what lawmakers intended is what they enacted," as the Legislature "expresses its intent by the words it enacts and declares to be the law." *BankDirect Capital Fin., LLC v. Plasma Fab, LLC*, 519 S.W.3d 76, 80 (Tex. 2017). The law was rational for all of the reasons just noted. As a result, plaintiffs have not shown a facially valid constitutional claim, let alone a probability that S.B. 1750 will be held invalid on its face.

B. Neither Harris County nor Tatum has shown irreparable harm.

Plaintiffs also failed to show a "probable, imminent, and irreparable injury." *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). That is an independent ground to reverse the temporary injunctions. *Id.*

1. Harris County's possible harm was self-inflicted and appears to have been factually unsupported.

Before September 1, Harris County argued that if the Act took effect and shifted Tatum's duties to the tax assessor-collector and county clerk, many problems would

arise because "neither of these officials ha[s] had any involvement in the ongoing election preparations, and neither currently has the staff or resources necessary to carry out the registration or administration functions." County Motion at 16-17. The County contended that the county clerk and tax assessor-collector were not prepared to assume these functions and that reallocating Tatum's duties to them would cause disruption and confusion and "imperil the orderly conduct of the election." County Motion at 18. Even if that were true (and subsequent experience has suggested that it is not), such an alleged harm was insufficient because it was self-inflicted and it has now proven to be overblown.

a. Injunctions are, at bottom, equitable in nature and thus controlled by the "principles, practice and procedure governing courts of equity." *State v. Tex. Pet Foods, Inc.*, 591 S.W.2d 800, 803 (Tex. 1979). Equity disfavors those with unclean hands, *Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644, 656 n.8 (Tex. 2006), and it should not save a party from the consequences of its own actions.

When this Court evaluates the constitutionality of a statute, it begins with a presumption of "compl[iance] with both the United States and Texas Constitutions." *EBS Solutions, Inc. v. Hegar*, 601 S.W.3d 744, 754 (Tex. 2020). "The party asserting that the statute is unconstitutional bears a high burden to show unconstitutionality." *Id.* Further, and as already noted, there is a reason the Act takes effect September 1. "[S]tatutory grace periods are required by our Constitution, which mandates that (with limited exceptions) statutes not take effect until ninety days after the legislative session adjourns." *Fire Protection,* 649 S.W.3d at 202. "Not long after our Constitution's adoption," this Court "explained that the object of that [requirement] was to

give notice to the people of its passage, that they might obey it when it should become effective, and also to enable them to adjust their affairs to the change made, if any." *Id.* Thus, "[i]n determining whether a law disrupts or impairs settled expectations," the Court considers "whether the law gives parties a 'grace period' to adapt before the law takes effect." *Id.* at 201-02.

Plaintiffs presumptively knew these background principles of state law. And they should have taken them into account as Tatum and his office tracked S.B. 1750 during the legislative process. 2.RR.87. The Governor signed the bill on June 18, 2023. S.B. 1750 History, https://capitol.texas.gov/BillLookup/History.aspx?LegSess=88R&Bill=SB1750. That occurred months before September 1, so if Harris County was unprepared to comply with the Act, it had only itself to blame. It had a grace period since June to prepare to implement the Act.

Harris County may have the right to challenge the Act as unconstitutional, but because the statute involves elections, it must do so with maximum dispatch. *In re Khanoyan*, 637 S.W.3d at 765. It may not ignore a new statute, fail to prepare to implement it, and seek a temporary injunction on the ground that irreparable harm exists because it has not made any contingency plans in the event it loses. Accordingly, even when the trial court entered the injunction, Harris County's alleged irreparable harm was self-inflicted.

b. Although the Court need not consider them, events during the pendency of this appeal reflect that any claims of irreparable harm were overblown. Ordinarily, facts that occur subsequent to an appealable order are irrelevant, but it is a centuries-old equitable principle that "[a] continuing decree of injunction directed to events

to come is subject always to adaptation as events may shape the need." *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932); *accord City of San Antonio v. Singleton*, 858 S.W.2d 411, 412 (Tex. 1993) (per curiam) (citing *Swift* with favor).

Pennsylvania v. Wheeling & Belmont Bridge Co. was one early recognition of this principle. 59 U.S. (18 How.) 421 (1855) ("*Wheeling Bridge*"). There, the U.S. Supreme Court ordered removal of a bridge because it illegally obstructed navigation. *Id.* at 430. Congress then enacted a law authorizing the bridge. *Id.* Once the new law was passed, the Court denied the movant's subsequent request for an order to remove the bridge because "[t]here [wa]s no longer any interference with the enjoyment of the public right inconsistent with law." *Id.* at 427, 432. Thus, *Wheeling Bridge* recognized that because an injunction "is executory, a continuing decree," changed circumstances can affect its enforceability over time. *Id.* at 431. For example, if "th[e] right" that formed the basis for the injunction "has been modified by the competent authority," since the injunction was issued, "the decree of the court cannot be enforced" even if it was properly issued in the first instance. *Id.* at 431-32; *see also, e.g.*, *ePlus, Inc. v. Lawson Software, Inc.*, 789 F.3d 1349, 1355 (Fed. Cir. 2015) ("Because the [Wheeling] [B]ridge was no longer unlawful, the Court had to set aside the previous order rather than enforce it.") (citing *Wheeling Bridge*, 59 U.S. (18 How.) at 431-32).

September 1 has now passed, and S.B. 1750 has taken effect. On September 1, the county clerk released a statement saying that she had "deputized election clerks this morning as one of her first calls of action as the County's Chief Election Official to ensure a smooth transition and avoid any disruptions or delays in the ongoing work

related to the conduct of the November 7, 2023 election." Teneshia Hudspeth, County Clerk, Harris County Clerk Aiming for a Smooth Transition as Election Administrative Duties Return to Her Office (Sept. 1, 2023), https://tinyurl.com/ak293wyh. The statement acknowledges that S.B. 1750 took effect on September 1 and mentions that the Harris County Clerk's Office once again has an Elections Department. *Id.* at 1. Although the transition does not moot this dispute because Harris County remains under an ongoing obligation not to reconstitute the office of the Elections Administrator, *supra* p. 18, this statement suggests that the County's alleged difficulties in transitioning were overstated and did not justify the entry of the injunction in the first instance (or its enforcement now).

2. Tatum has also failed to demonstrate irreparable harm.

Tatum's request for a temporary injunction suffers from similar flaws. To the extent he has relied on an argument that the Elections Administrator's office would be disbanded, or that it would be difficult for the County to administer an election, Appellee Clifford Tatum's Opposed Emergency Motion for Rule 29.3 Order at 14, 17, that is the County's harm and will not support a temporary injunction for the reasons just discussed.

Tatum's only potential *personal* harm was losing his job. Although that was an injury, he has not shown that it is irreparable. As for the employment itself, "reinstatement is an equitable remedy," that likely would be available to Tatum. *City of Fort Worth v. Jacobs*, 382 S.W.3d 597, 599 (Tex. App.—Fort Worth 2012, pet dism'd); *see City of Seagoville v. Lytle*, 227 S.W.3d 401, 411 (Tex. App.—Dallas 2007, no pet.); *Watson v. Houston ISD*, No. 14-03-01202-CV, 2005 WL 1869064, at *6

(Tex. App.—Houston [14th Dist.] 2005, no pet.). After all, the history of this collusive litigation demonstrates that Harris County likely would not resist the request. *See infra* p. 43. To the extent that Tatum alleged economic loss, "[a]n 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*, 84 S.W.3d at 204. Tatum never attempted to show that he would be unable to find a new job or that a new job would not be similarly remunerative. To the contrary, Tatum acknowledged the possibility that the County could hire him in either the county clerk's or tax assessor-collector's offices. 2.RR.123. That absence of evidence is fatal because it was Tatum's burden to demonstrate irreparable harm. *Anti-Defamation League*, 610 S.W.3d at 916.[2]

3. The balance of equities, public interest, and interest in preserving the status quo disfavor Harris County.

Finally, the trial court erred in issuing a temporary injunction because the equities disfavor Harris County. The purpose of a temporary injunction is to preserve the status quo. *Butnaru*, 84 S.W.3d at 204. Additionally, "[a] request for injunctive relief invokes a court's equity jurisdiction," and "when exercising such jurisdiction, a court must, among other things, balance competing equities." *In re Gamble*, 71

[2] According to his LinkedIn profile, Tatum appears to have started a new job in September at a private consulting company. https://www.linkedin.com/in/clifford-tatum-6ab05a24; https://www.eclsconsulting.com/about.html. Defendants do not know whether this position is more remunerative than his prior employment or whether Tatum wishes to return to public service. It may thus be necessary for Tatum to demonstrate that his claim—as opposed to the County's claim—is not moot. *See Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90-91 (2013).

S.W.3d 313, 317 (Tex. 2002). Further, "[b]ecause the State is the appealing party, its interest and harm merge with that of the public." *Veasey v. Abbott*, 870 F.3d 387, 391 (5th Cir. 2017). As discussed in defendants' Rule 29.3 response (at 32), the status quo is the presumption of constitutionality and that parties will use the constitutionally prescribed grace period to implement new legislation—not ignore the statute for weeks before rushing to court and seeking relief on the ground that the law is new. That status quo has now been confirmed because S.B. 1750 has, in fact, been implemented consistent with the presumption of constitutionality.

The only effect that interim, as opposed to final, relief would have now would be to allow Harris County to switch back to an Elections Administrator very quickly, in time for the March 5, 2024 presidential primary—only to then re-institute S.B. 1750, should Harris County ultimately lose. *See* Texas Secretary of State, *Running for President in Texas (in 2024)*, https://www.sos.state.tx.us/elections/candidates/guide/2024/president.shtml. Such relief would not be an appropriate exercise of this Court's equitable jurisdiction because if Harris County truly experienced severe difficulties in transitioning from Tatum to the county clerk, as it initially claimed, then this type of flip-flopping would only exacerbate the administrative problems.

II. Plaintiffs Failed to Establish Jurisdiction to Enter the Injunction.

Finally, the temporary injunction cannot be sustained because the trial court lacked jurisdiction over the only defendants it enjoined for two independent reasons: sovereign immunity and the lack of a justiciable controversy.

A. Sovereign immunity bars plaintiffs' claims.

The Court lacks jurisdiction as an initial matter because plaintiffs' claims against the defendants named in the injunction are barred by sovereign immunity. "Generally, sovereign immunity deprives a trial court of jurisdiction over a lawsuit in which a party has sued the State or a state agency unless the Legislature has consented to suit." *Tex. Parks & Wildlife Dep't v. Sawyer Tr.*, 354 S.W.3d 384, 388 (Tex. 2011). Plaintiffs have invoked the UDJA's sovereign-immunity waiver. Tex. Civ. Prac. & Rem. Code § 37.004(a); CR.422. But under this Court's precedent, such a claim will not lie against the Attorney General or Secretary of State because they are not governmental entities. *Patel*, 469 S.W.3d at 76-77. Harris County attempted to fix that problem by amending its complaint to name the Office of the Attorney General and the Office of the Secretary of State. CR.405. That amendment did not help plaintiffs, however, because sovereign immunity is analyzed on a defendant-by-defendant basis. *E.g.*, *MALC*, 647 S.W.3d at 697-98. Neither the Office of the Attorney General nor the Office of the Secretary of State is among the parties enjoined, CR.873, 875, 879-80, so even if their immunity had been overcome, their status as parties could not support the trial court's injunction against their co-defendants.

Even if the Court were willing to overlook this mismatch, plaintiffs' claims would still be barred by immunity. "While it is true that sovereign immunity does not bar a suit to vindicate constitutional rights, . . . immunity from suit is not waived if the constitutional claims are facially invalid." *Klumb*, 458 S.W.3d at 13 (citing *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009); *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 11 (Tex. 2011)); *see also, e.g.*, *MALC*, 647 S.W.3d at 698. For the

reasons already discussed, plaintiffs have not established a facially valid claim. *See supra* Part. I.A.

B. Neither plaintiff has established a justiciable controversy.

Each plaintiff has also failed to establish a justiciable controversy: Harris County because it lacks standing to sue the defendants it named, and Tatum because he is not adverse to the defendant he named.

1. Harris County lacks standing to sue the Attorney General and the Secretary of State.

Harris County cannot sue a statute. *Okpalobi v. Foster*, 244 F.3d 405, 426 (5th Cir. 2001) (en banc) (chiding the panel for "confus[ing] the *statute's* immediate coercive effect on the plaintiffs with any coercive effect that might be applied by the *defendants*"); *see Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993) (stating that "[b]ecause standing is a constitutional prerequisite to maintaining a suit under both federal and Texas law, [the Court] look[s] to the more extensive jurisprudential experience of the federal courts on this subject for any guidance it may yield"). To establish standing, Harris County must instead show a cognizable injury that is fairly traceable to each *defendant*'s conduct and likely to be redressed by the requested relief against that *defendant*. *Heckman v. Williamson County*, 369 S.W.3d 137, 154 (Tex. 2012). The injury must be "actual or imminent," not "hypothetical." *Id.* And it must be fairly traceable to *each defendant's* conduct. *Id.* at 154; *see also In re Gee*, 941 F.3d 153, 161-62 (5th Cir. 2019). Here, Harris County cannot show an injury fairly traceable to or redressable by either the Attorney General or the

Secretary of State—the only two defendants who were named in the injunction in its favor. CR.875, 879-80.

a. Harris County has not established traceability as to the Attorney General.

To start, Harris County has argued, *see* County Motion at 21, that it has been injured because the Attorney General might enforce the Act against it, citing three reasons to support that theory. But an examination of each demonstrates that any such threat is speculative.

First, Harris County has contended, *see id.*, that this case is analogous to *Abbott v. Harris County*, 672 S.W.3d 1, 8 (Tex. 2023), which involved whether the Attorney General would enforce the Governor's executive order that prevented localities such as Harris County from imposing mask mandates. True, this Court has tied traceability to the notion of enforcement. *See, e.g.*, *MALC*, 647 S.W.3d at 697. But this case is meaningfully different from *Harris County* when it comes to that inquiry: in *Harris County*, "[t]he Attorney General sent a letter" to the County and others threatening legal action "in response to their violations of the Governor's prohibition on mask requirements." 672 S.W.3d at 9. On those facts, the Court held that Harris County had standing to sue the Attorney General because of a "credible threat of prosecution." *Id.* at 8; *see also, e.g.*, *NiGen Biotech, L.L.C. v. Paxton*, 804 F.3d 389, 392-93, 397 (5th Cir. 2015). But here, the Attorney General has not threatened to take legal action against Harris County for violations of *this Act.* Under these circumstances, there is no harm traceable to the Attorney General. *See Tex. Democratic Party v.*

Abbott, 978 F.3d 168, 181 (5th Cir. 2020) (distinguishing "threatening letters" from mere restatements of the law).

Second, Harris County has argued that because the Attorney General has enforced other provisions of the Election Code in the past against Harris County, he will also enforce a new, recently enacted provision of the Election Code against Harris County. 2.RR.95, 175-76. In particular, the County has relied upon a letter that the Attorney General sent to the Harris County Attorney in 2020 regarding the creation of the county's Elections Administrator position and appointment of Isabel Longoria, 3.RR.7, as well as a lawsuit the State filed during the 2020 election cycle, 2.RR.95, 175-76; *see also State v. Hollins*, 620 S.W.3d 400 (Tex. 2020).

The Fifth Circuit has considered precisely this argument and rejected it as insufficient to demonstrate an enforcement connection between the Attorney General and a challenged statutory provision. *City of Austin v. Paxton*, 943 F.3d 993, 1002 (5th Cir. 2019). As the Court explained, where enforcement is discretionary, that an official with general enforcement powers "has chosen to intervene to defend *different* statutes under *different* circumstances does not show that he is likely to do the same here." *Id.* at 1002. Without that proof, "the mere fact that the Attorney General *has* the authority to enforce" a given provision does not constitute "enforcement" because it "cannot be said to 'constrain'" the County from doing anything. *Id.* at 1001. Although this language appeared in the court's discussion of sovereign immunity from suit in federal court, the court made clear that it also applied to standing. *Id.* at 1002-03.

Stated differently, the "mere fact that the Attorney General *has* the authority to enforce" any particular state law "cannot be said to 'constrain' the [County] from enforcing" its laws—or compel it to do anything else. *Id.* at 1001. Without some coercive action in violation of the Constitution, there is nothing for this Court to enjoin the Attorney General from doing. *Id.* at 1002. For that reason, courts have routinely held that "the official must have the requisite connection to the enforcement of the particular statutory provision that is the subject of the litigation." *Tex. Democratic Party*, 978 F.3d at 179; *see also, e.g.*, *Lewis v. Scott*, 28 F.4th 659, 664 (5th Cir. 2022). When an official's connection to enforcement is *not* established, "the plaintiff [has] failed to allege sufficient facts to satisfy the traceability element of standing." *MALC*, 647 S.W.3d at 697. Because Harris County has not pointed to any coercive action—actual or threatened—by the Attorney General with respect to *this* Act, it has no standing to sue him.

Third, Harris County has pointed to the then-Provisional Attorney General's stipulation that she could not commit that OAG would never file a lawsuit against Harris County regarding the Act. CR.433 (joint stipulation). But this gets the analysis backwards: it is Harris County that "has the burden to affirmatively demonstrate the court's jurisdiction." *Gulf Coast Ctr. v. Curry*, 658 S.W.3d 281, 286 (Tex. 2022). At most, the stipulation means that the Attorney General has not said, one way or the other, whether the Office of the Attorney General intends to sue Harris County over the Act. Because such a determination requires balancing competing enforcement priorities, any enforcement action would depend on a "chain of contingencies" that is a far cry from the type of "*certainly* impending" enforcement that creates a

justiciable controversy. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409-10 (2013). For example, had Harris County attempted to comply with S.B. 1750 in good faith and been unable to do so for logistical reasons, the Attorney General might have concluded that enforcement was not appropriate. Or he might have decided that other concerns in the State were more pressing. Because Harris County's putative evidence of standing "amounts to mere speculation" about what the Attorney General will do regarding a newly enacted law, it has failed to establish standing. *Id.* at 410.

b. Harris County has not established traceability as to the Secretary of State.

Similar problems plague Harris County's efforts to establish standing as to the Secretary of State. Harris County has argued, County Motion at 23-25, that the Secretary allegedly *could* do a variety of things to enforce the Act. According to the County, she *could* refuse to treat Tatum as a valid election officer, *id.* at 23, or work with Tatum to perform duties under the Election Code, *id.* at 24, or refuse to pay Harris County for voters it registers, *id.*, or assist Tatum in training election workers, *id.* at 25. She allegedly *could* even take enforcement actions, *id.*, or seek removal of county elections officials, *id.*

But absent proof that the Secretary *will* do any of those things, any injury possibly traceable to the Secretary is "conjectural or hypothetical," not "actual or imminent." *Heckman*, 369 S.W.3d at 154. And such proof is notably absent—despite the presence of a representative of the Secretary, Ms. Adkins, at the temporary-injunction hearing. Indeed, before the hearing, one of Harris County's primary theories of harm was that if the Elections Administrator continued to run the upcoming

November election, the Secretary might refuse to accept the results of that election. CR.421. But Adkins repeatedly testified that the Secretary would accept "whatever [election] returns were provided to [her] office by the county, regardless of who's providing those returns." 2.RR.148-49. She explained that election returns and other information have to be submitted through the Secretary's electronic system, but that as long as Harris County does not notify the Secretary that anyone's access to that system has been revoked, "then they will continue to have access." 2.RR.149-50. She explained: "I think as long as we're not getting competing data from two different offices purporting to fulfill the same role, we're going to take the data that the county provides." 2.RR.155. When asked if she would accept election results from Tatum, she said: "Absolutely. I'm not going to be in a position where we're disenfranchising up to 2.5 million registered voters." 2.RR.185. Indeed, Adkins made it abundantly clear that she would not take actions to disenfranchise the voters of Harris County: "I'm not going to jeopardize a statewide election. I'm not going to jeopardize a mayoral race in Houston. I'm not going to put those elections in jeopardy because [of] an administrative issue like this." 2.RR.185.

Adkins also denied that the Secretary would engage in many of the other forms of enforcement that plaintiffs insist are threatened. For example, as to paying the county for registering voters, Adkins testified that as long as there are no competing claims between two entities in Harris County for those payments, "[w]e're not going to stop providing funds or stop -- we're not going to prevent people from completing their statutory duties because of a transition that's happening locally." 2.RR.152; *see* 2.RR.150. She later reiterated: "I have no plans on cutting access to the county on

September 1 because there's a dispute as to who is holding that authority under the law, with respect to a tax assessor-collector or an elections administrator." 2.RR.154. "[A]s long as I don't have two different offices competing for the same funds, then I think we would make a distribution as we normally would." 2.RR.154.

The County has also argued, County Motion at 25, that the Secretary previously asserted that the Elections Administrator position was not legally created. That is irrelevant. Whatever the Secretary's views might have been as to a *different* law, "[m]ore is needed—namely, a showing of the Secretary's connection to the enforcement of the particular statutory provision that is the subject of the litigation." *Lewis*, 28 F.4th at 664.

Finally, the Secretary's representative testified that she could not commit to take *no* action if Tatum continues to run elections in Harris County. Specifically, Adkins stated: "I cannot commit to that because I don't know what might happen in the next few months that might warrant or necessitate some clarification." 2.RR. 185-86. But again, that statement does not establish traceability. It is Harris County that "has the burden to affirmatively demonstrate the court's jurisdiction." *Gulf Coast*, 658 S.W.3d at 286.

Accordingly, even if the Secretary has the authority to take certain actions against Harris County, the County has not shown "a demonstrated willingness" by the Secretary to *use* that authority to "enforce the [challenged] statute" in a way that harms a cognizable interest of the County any more than the Attorney General. *Tex. All. for Retired Ams. v. Scott*, 28 F.4th 669, 672 (5th Cir. 2022). In short, without a

"significant possibility that" a named defendant "will act to harm a plaintiff," there is no justiciable controversy. *City of Austin*, 943 F.3d at 1002.

2. Tatum's intervention did not cure the jurisdictional defects in the County's complaint.

a. Tatum's intervention as a plaintiff does not cure the lack of a justiciable controversy between Harris County and the defendants. Tatum's intervention is "collusive because it is not in any real sense adversary." *United States v. Johnson*, 319 U.S. 302, 305 (1943). When parties are not adverse, there is no "justiciable controversy." *Block Distrib. Co. v. Rutledge*, 488 S.W.2d 479, 481 (Tex. Civ. App.—San Antonio 1972, no writ); *see also Tex. Ass'n of Bus.*, 852 S.W.2d at 445 (explaining that, if standing were not jurisdictional and reviewable for the first time on appeal, then appellate courts "could not arrest collusive suits"); *cf.* Hart & Wechsler's The Federal Courts and the Federal System 81 (7th ed. 2015) (discussing collusive suits in the context of the federal Constitution's case-or-controversy requirement).

Here, there was never a justiciable controversy between Tatum and Harris County because Tatum and Harris County were not adverse. Both believe that the Act is unconstitutional. CR.405-06; CR.741. And although Tatum sought and received an injunction against Harris County, CR.862-63, the County has never argued that an injunction against it would be improper. To the contrary, Harris County called Tatum as *its own witness* to help make the County's case as to why it should be freed from the obligation of obeying the Act. 2.RR.69. When counsel for the State pointed out the lack of adversity between the County and Tatum, Tatum's only

response was to note the State's defense of the statute. 2.RR.201-02. That proved the State's point.

b. Tatum cannot avoid this problem by claiming that neither the State nor the Attorney General has standing to appeal an injunction that runs against Harris County. *See* Appellee Clifford Tatum's Opposed Emergency Motion for Rule 29.3 Order at 3. A single party with standing is sufficient to invoke this Court's jurisdiction. *Andrade*, 345 S.W.3d at 6 & n.9. Regardless of the status of any other parties, the State and the Attorney General intervened precisely so that they could defend the constitutionality of state law in the face of a collusive cross-claim. CR.770-76.

"This Court has consistently recognized the *State's* right to defend Texas law from constitutional challenge" so long as it "timely intervene[s]." *State v. Naylor*, 466 S.W.3d 783, 788 (Tex. 2015). Here, as soon as the State and the Attorney General realized that Tatum intended to seek an injunction against Harris County that the County would not defend, they intervened to oppose Tatum's request for that collusive injunction. Tex. Gov't Code § 402.010(d); Tex. Civ. Prac. & Rem. Code § 37.006(b). At the moment they intervened, they became parties to Tatum's suit against Harris County. *Kenneth D. Eichner, P.C. v. Dominguez*, 623 S.W.3d 358, 362 (Tex. 2021) (per curiam) (explaining that "a person who intervenes *before* the trial court signs a final judgment becomes a party to that judgment"). Because the State and the Attorney General were parties to the suit against Harris County, they had the right to appeal any appealable order entered in that suit that harmed their interest. *Id.*

The injunction against Harris County injured the State, giving it appellate standing. This Court has held that the State has a "justiciable interest in its sovereign capacity" in the maintenance and operation of localities in accordance with law. *Hollins*, 620 S.W.3d at 410. Because the injunction prevented a locality, Harris County, from following a state law, the State was injured by that order. *Id.* As a party that was injured by the injunction against Harris County, the State had standing to appeal that order. *West Virginia v. EPA*, 142 S. Ct. 2587, 2606 (2022) ("In considering a litigant's standing to appeal, the question is whether it has experienced an injury 'fairly traceable to the *judgment below*.'") (quoting *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2362 (2019)).

For these reasons, the State and the Attorney General properly appealed Tatum's temporary injunction, but there was never a justiciable controversy between Tatum and Harris County.

Prayer

The Court should reverse the trial court's orders, dissolve the temporary injunctions, dismiss the case for lack of jurisdiction, and provide defendants any additional relief to which they may be entitled.

Respectfully submitted.

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Certificate of Service

On September 21, 2023, this document was served on Wallace B. Jefferson, lead counsel for Harris County, via wjefferson@adjtlaw.com, and Gerald Birnberg, lead counsel for Clifford Tatum, via birnberg@wba-law.com.

/s/ Lanora C. Pettit
Lanora C. Pettit

Certificate of Compliance

Microsoft Word reports that this document contains 12,332 words, excluding exempted text.

/s/ Lanora C. Pettit
Lanora C. Pettit

No. 23-0656

In the Supreme Court of Texas

THE STATE OF TEXAS; OFFICE OF THE ATTORNEY GENERAL OF TEXAS; KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF TEXAS; OFFICE OF THE TEXAS SECRETARY OF STATE; AND JANE NELSON, IN HER OFFICIAL CAPACITY AS TEXAS SECRETARY OF STATE,

Appellants,

v.

HARRIS COUNTY, TEXAS; AND CLIFFORD TATUM,

Appellees.

On Direct Appeal from the
345th Judicial District Court, Travis County

APPENDIX

TAB A:
ORDER ON DEFENDANTS' PLEA TO THE JURISDICTION

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

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

ORDER ON DEFENDANTS' PLEA TO THE JURISDICTION

On August 8, 2023, this Court heard Defendants' the State of Texas, Angela Colmenero in her Official Capacity as Provisional Attorney General, and Jane Nelson in her Official Capacity as Texas Secretary of State Plea to the Jurisdiction (the "Plea"). After considering the Plea, the responses filed thereto, and the argument of counsel, the Court has determined that the Plea should be, and is, **GRANTED** as to the State of Texas and **DENIED** as to Angela Colmenero in her Official Capacity as Provisional Attorney General and Jane Nelson in her Official Capacity as Texas Secretary of State Plea to the Jurisdiction.

EXHIBIT
1

The Court **FINDS** that it does not have jurisdiction over Plaintiff's claims against the State of Texas. It is **THEREFORE ORDERED** that Plaintiff's claims against the State of Texas are dismissed for lack of jurisdiction.

The Court **FURTHER FINDS** that it has jurisdiction over Plaintiff's claims against Angela Colmenero in her Official Capacity as Provisional Attorney General and Jane Nelson in her Official Capacity as Texas Secretary of State Plea to the Jurisdiction. It is **THEREFORE ORDERED** that Plaintiff's claims against Angela Colmenero in her Official Capacity as Provisional Attorney General and Jane Nelson in her Official Capacity as Texas Secretary of State Plea to the Jurisdiction remain pending before the Court.

SIGNED this 14th day of August, 2023.

JUDGE PRESIDING
KARIN CRUMP
250TH DISTRICT COURT

DISTRICT COURT OF TRAVIS COUNTY TEXAS

TAB B:
ORDER ON INTERVENOR/CROSS-CLAIMANT CLIFFORD TATUM'S APPLICATION FOR TEMPORARY INJUNCTION AGAINST HARRIS COUNTY

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

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

EXHIBIT 2

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.

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[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

DISTRICT COURT OF TRAVIS COUNTY TEXAS

TAB C:
ORDER GRANTING PLAINTIFF'S APPLICATION FOR TEMPORARY INJUNCTION

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

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

ORDER GRANTING PLAINTIFF'S APPLICATION FOR TEMPORARY INJUNCTION

On this day, the Court considered the application by Plaintiff Harris County, Texas ("Plaintiff" or "Harris County") for a Temporary Injunction (the "Application"), as found in Plaintiff's Verified Second Amended Petition and Application for Temporary Injunction and Permanent Injunction (the "Petition") filed against Defendants the State of Texas, Angela Colmenero, in her official capacity as Interim Attorney General of Texas, and Jane Nelson, in her official capacity as Texas Secretary of State (collectively, "Defendants"). Having granted the State of Texas's Plea to the Jurisdiction, the remaining Defendants are Angela Colmenero, in her official capacity as Interim Attorney General of Texas, and Jane

EXHIBIT 3

Nelson, in her official capacity as Texas Secretary of State (collectively, the "State Officer Defendants").

Based on the facts set forth in Plaintiff's Application, the stipulation among the parties filed on August 7, 2023, the testimony, the evidence, the argument of counsel presented in Plaintiff's Amended Brief in Support of Temporary Injunctive Relief filed on August 7, 2023 (the "Brief in Support"), as well as during the August 8, 2023 hearing on Plaintiff's Application, and being otherwise fully informed in the premises, this Court finds sufficient cause to enter a Temporary Injunction against the State Officer Defendants. The Court therefore GRANTS Plaintiff's request for temporary injunction and does hereby FIND the following:

1. The Temporary Injunction is hereby GRANTED.
2. Plaintiff has demonstrated a valid cause of action, a probable right to relief, and imminent and irreparable injury.
3. Plaintiff states a valid cause of action against each State Officer Defendant and has a probable right to the declaratory and permanent injunctive relief it seeks. For the reasons detailed in Plaintiff's Application, Brief in Support, and accompanying evidence, there is a substantial likelihood that Plaintiff will prevail after a trial on the merits because Senate Bill 1750 ("SB 1750"), passed during the Texas Legislature's 88th Regular Session, is an unconstitutional local law under Article III, section 56 of the Texas

Constitution. As a result, any actions taken by the State Officer Defendants premised on the operation of SB 1750 would be void.

4. It clearly appears to the Court that unless the State Officer Defendants are immediately enjoined from taking any actions premised on the operation of SB 1750, Plaintiff will suffer imminent and irreparable injury. First, Harris County suffers injury because it will be forced to implement an unconstitutional statute. Moreover, on September 1, 2023, just weeks before voting begins for the November 7, 2023 election (the "November Election") that is run by Harris County, Harris County will be required to effect massive transfers of employees and resources from the Harris County Elections Administrator's Office (the "Harris County EA") to the Harris County Clerk and the Harris County Tax Assessor-Collector. Not only will this transfer lead to inefficiencies, disorganization, confusion, office instability, and increased costs to Harris County, but it will also disrupt an election that the Harris County EA has been planning for months. The Harris County Clerk and the Harris County Tax Assessor-Collector have had no role in preparing for the November Election. Transferring responsibility for that election just weeks before voting starts will disrupt existing processes and risk the efficient administration of the election. Over the next few months, the Harris County elections department will have to undertake a multitude of crucial tasks to effectively administer the November Election; as a result of SB 1750,

Harris County will be forced to hire additional permanent and temporary workers, as well as consultants, at a great cost, to ensure it can meet its many obligations and to navigate the management structure to be used, the personnel to be retained, and the numerous decisions that need to be made in hopes of orderly administering Harris County, as well as this November's election. Absent intervention by this Court, Harris County would face the full weight of the Election Code, as well as the Secretary of State's mandatory rules on issues relating to voter registration and elections administration. Harris County running elections through a legally defunct office could jeopardize the results of the November Election and also risk the validity of voter lists, polling locations, thousands of financial transactions, and contracts with other entities. Without this order, the State Officer Defendants will likely disrupt the upcoming election and cause havoc (e.g., with respect to voter outreach, voter registration, election administration, and vote tallying), and Harris County's entire election apparatus would be thrown into disarray, as well as the unnecessary expense associated with such disruption. The harm to Harris County, its residents, and the public outweighs any potential harm caused to the State Office Defendants by entering this injunctive relief. State Officer Defendants' wrongful actions cannot be remedied by any award of damages or other adequate remedy at law.

5. The Temporary Injunction being entered by the Court today maintains the status quo prior to September 1, 2023, and should remain in effect while this Court, and potentially the Court of Appeals, and the Supreme Court of Texas, examine the parties' merits and jurisdictional arguments.
6. This injunctive relief is appropriate under traditional equitable standards and principles.

IT IS THEREFORE ORDERED that, until all issues in this lawsuit are finally and fully determined, the State Officer Defendants, and their employees, agents, and representatives, are immediately enjoined and restrained from taking actions premised on the operation of SB 1750. This Temporary Injunction restrains the following actions by the State Officer Defendants:

1. Taking any actions to enforce SB 1750;
2. The Secretary of State is enjoined from:
    a. refusing to recognize the Harris County Elections Administrator's Office as a lawful elections office;
    b. refusing to accept from the Harris County Elections Administrator results of any Harris County election;
    c. refusing to coordinate with, and approve election action taken by, Harris County's Elections Administrator;
    d. refusing to provide official election reporting forms and voting by mail forms;

e. refusing to provide funds to which Harris County is entitled under Texas Election Code Section 19.002;

f. taking any actions on the sole basis that the Harris County Elections Administrator position is abolished; and

g. refusing to cooperate with the Harris County Elections Administrator to perform election-related responsibilities.

3. The Attorney General is enjoined from:

a. Refusing to recognize the Harris County Elections Administrator's Office as a lawful elections office after SB 1750's effective date, including by enforcing SB 1750 by seeking civil penalties against Harris County or its elections officials.

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.

No bond is required as Plaintiff Harris County is exempt from the bond requirements under Tex. Civ. Prac. & Rem. Code § 6.001.

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

DISTRICT COURT OF TRAVIS COUNTY TEXAS

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

SIGNED this 14th day of August, 2023, at 4:00 p.m. in Travis County, Texas.

JUDGE PRESIDING
KARIN CRUMP
250TH DISTRICT COURT

DISTRICT COURT OF TRAVIS COUNTY TEXAS

TAB D:
TEX. CONST. ART. III § 56

Vernon's Ann.Texas Const. Art. 3, § 56

§ 56. Prohibited local and special laws

Effective: November 26, 2001

Currentness

(a) The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing:

(1) the creation, extension or impairing of liens;

(2) regulating the affairs of counties, cities, towns, wards or school districts;

(3) changing the names of persons or places;

(4) changing the venue in civil or criminal cases;

(5) authorizing the laying out, opening, altering or maintaining of roads, highways, streets or alleys;

(6) relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State;

(7) vacating roads, town plats, streets or alleys;

(8) relating to cemeteries, grave-yards or public grounds not of the State;

(9) authorizing the adoption or legitimation of children;

(10) locating or changing county seats;

(11) incorporating cities, towns or villages, or changing their charters;

(12) for the opening and conducting of elections, or fixing or changing the places of voting;

(13) granting divorces;

(14) creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts;

(15) changing the law of descent or succession;

(16) regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, justices of the peace, sheriffs, commissioners, arbitrators or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate;

(17) regulating the fees, or extending the powers and duties of aldermen, justices of the peace, magistrates or constables;

(18) regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes;

(19) fixing the rate of interest;

(20) affecting the estates of minors, or persons under disability;

(21) remitting fines, penalties and forfeitures, and refunding moneys legally paid into the treasury;

(22) exempting property from taxation;

(23) regulating labor, trade, mining and manufacturing;

(24) declaring any named person of age;

(25) extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of his official duties, or his securities from liability;

(26) giving effect to informal or invalid wills or deeds;

(27) summoning or empanelling grand or petit juries;

(28) for limitation of civil or criminal actions;

(29) for incorporating railroads or other works of internal improvements; or

(30) relieving or discharging any person or set of persons from the performance of any public duty or service imposed by general law.

(b) In addition to those laws described by Subsection (a) of this section in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided, that nothing herein contained shall be construed to prohibit the Legislature from passing:

(1) special laws for the preservation of the game and fish of this State in certain localities; and

(2) fence laws applicable to any subdivision of this State or counties as may be needed to meet the wants of the people.

Credits

Adopted Feb. 15, 1876. Amended Nov. 6, 2001, eff. Nov. 26, 2001.

Vernon's Ann. Texas Const. Art. 3, § 56, TX CONST Art. 3, § 56
Current through legislation effective July 1, 2023, of the 2023 Regular Session of the 88th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

End of Document

TAB E:
SENATE BILL 1750

EXHIBIT 16

S.B. No. 1750

AN ACT

relating to abolishing the county elections administrator position in certain counties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Subchapter B, Chapter 31, Election Code, is amended to read as follows:

SUBCHAPTER B. COUNTY ELECTIONS ADMINISTRATOR IN CERTAIN COUNTIES

SECTION 2. Section 31.031(a), Election Code, is amended to read as follows:

(a) The commissioners court of a county with a population of 3.5 million or less by written order may create the position of county elections administrator for the county.

SECTION 3. Subchapter B, Chapter 31, Election Code, is amended by adding Section 31.050 to read as follows:

Sec. 31.050. ABOLISHMENT OF POSITION AND TRANSFER OF DUTIES IN CERTAIN COUNTIES. On September 1, 2023, all powers and duties of the county elections administrator of a county with a population of more than 3.5 million under this subchapter are transferred to the county tax assessor-collector and county clerk. The county tax assessor-collector shall serve as the voter registrar, and the duties and functions of the county clerk that were performed by the administrator revert to the county clerk, unless a transfer of duties and functions occurs under Section 12.031 or 31.071.

SECTION 4. On the effective date of this Act, a county that

has a county elections administrator and a population of more than 3.5 million shall transfer employees, property, and records as necessary to accomplish the abolishment of the position of county elections administrator under this Act.

SECTION 5. This Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1750 passed the Senate on April 18, 2023, by the following vote: Yeas 20, Nays 11.

Secretary of the Senate

I hereby certify that S.B. No. 1750 passed the House on May 23, 2023, by the following vote: Yeas 81, Nays 62, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

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