No. 23-0656

In the Supreme Court of Texas

THE STATE OF TEXAS; OFFICE OF THE ATTORNEY GENERAL OF TEXAS; ANGELA COLMENERO, IN HER OFFICIAL CAPACITY AS PROVISIONAL 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

STATEMENT OF JURISDICTION

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Angela Colmenero (both a defendant and an intervenor–defendant below)
Office of the Texas Secretary of State
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Statement of the Case

Nature of the Case: Harris County sued the State of Texas, Provisional Attorney General Angela Colmenero, the Office of the Attorney General of Texas, Texas Secretary of State Jane Nelson, and the Office of the Texas Secretary of State (the "State Defendants"), seeking to enjoin the enforcement of Senate Bill 1750 ("the Act" or "S.B. 1750"), passed during the most recent regular legislative session. Act of May 23, 2023, 88th Leg., R.S., ch. 952 (2023) (to be codified as an amendment to Tex. Elec. Code ch. 31). Among other things, the Act requires Harris County to transfer the duties currently fulfilled by its Elections Administrator to the County Clerk and County Tax Assessor–Collector. *Id.* 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.

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

Course of Proceedings: Harris County initially sought a temporary injunction prohibiting the State, the Secretary of State, and the Provisional Attorney General from enforcing the Act. CR.5. Harris County Elections Administrator Clifford Tatum intervened as a cross-plaintiff, seeking a temporary injunction prohibiting Harris County from implementing the Act. CR.736, 759-60. The State of Texas and the Attorney General intervened as Defendants to defend the Act with respect to Tatum's request for an injunction against Harris County. CR.770-76. The State, the Secretary, and the Attorney General filed a plea to the jurisdiction. CR.129. 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. On August 8, the trial court conducted 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 plea to the jurisdiction as to the State but denied it as to 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. The trial court did not enjoin the Office of the Secretary of State or the Office of the Attorney General, which Harris County had later added as Defendants. *See* CR.875-76, 879-80.

To the Honorable Supreme Court of Texas:

The State Defendants have filed a direct appeal to this Court from the trial court's orders granting two temporary injunctions and denying a plea to the jurisdiction in part. Before they were superseded by the State Defendants' notice of appeal, the temporary injunctions collectively enjoined the Secretary of State, Provisional Attorney General, and Harris County from enforcing the Act on the ground that it is an unconstitutional local law. CR.867-68, 873, 876-77, 879-80. The State Defendants file this statement of jurisdiction under Texas Rule of Appellate Procedure 57.3. This Court has already denied Appellees' motions for emergency relief under Texas Rule of Appellate Procedure 29.3, noted probable jurisdiction, ordered the parties to file briefs, and set the case for oral argument on November 28, 2023.

Statement of Jurisdiction

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). As Harris County acknowledged in its motion for emergency relief, *see* App'x Tab E at 3, this appeal as it relates to the temporary injunctions falls within that statutory grant of jurisdiction. The appeal as to the plea to the jurisdiction also falls within this Court's extended jurisdiction.

A. In July 2023, Harris County sued the State Defendants to prevent the enforcement of the Act, which prevents any county of a certain size from administering an election using an Elections Administrator (as opposed to a county clerk and county tax assessor–collector). On August 14, 2023, the trial court granted a plea to

the jurisdiction as to the State but denied it as to the Secretary and Provisional Attorney General. CR.860-61. Immediately upon receipt of that order—and before any further orders were entered on the docket or served on the parties—the Secretary and the Provisional Attorney General filed a notice of appeal to the Third Court of Appeals, invoking the automatic stay under Texas Civil Practice and Remedies Code section 51.014(b). CR.839-40.

B. After the notice of appeal had been filed and served on the parties and the trial court via email, the trial court informed the parties that the previous day it had signed and filed, but neither docketed nor served notice of, two temporary—that is, interlocutory—injunctions against the Secretary, Provisional Attorney General, and Harris County on the ground of the Act's constitutionality.* *See* CR.857 n.1. In the State Defendants' view, an injunctive order that has neither been docketed nor served has not been issued and could not be issued after their notice of appeal under Civil Practice and Remedies Code section 51.014(b). However, cognizant of their duty as government lawyers to serve justice rather than seek victory at all costs, *cf. Hillman v. Nueces County*, 579 S.W.3d 354, 365 (Tex. 2019) (Guzman, J., concurring), counsel for the State Defendants agreed not to raise the stay as an objection to properly issuing the already-signed, already-filed temporary injunctions. CR.857 n.1.

* Notwithstanding the addition of additional State Defendants to Harris County's original claims and the intervention of the State and Provisional Attorney General in Tatum's cross-claims, the temporary injunction issued in Harris County's favor runs only against the Provisional Attorney General and the Secretary, CR.879-80, and the injunction issued in Tatum's favor runs only against Harris County, CR.873.

To avoid further confusion, all State Defendants are listed as Appellants on each order appealed. CR.856-57. Even if they do not all have appellate standing as to each order, at least one State Defendant has such standing. That is all that is needed to invoke the Court's jurisdiction. *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 6 & n.9 (Tex. 2011).

The trial court's orders enjoined the Secretary and the Provisional Attorney General, stating that Harris County was likely to succeed on the merits because the Act "is an unconstitutional local law under Article III, section 56 of the Texas Constitution." CR.876-77. Similarly, in its order granting Tatum's request for a temporary injunction against Harris County, the trial court found it "likely Mr. Tatum will prevail on his claim that SB 1750" is "unconstitutional" and violates Article III, section 56. CR.868. For that reason, section 22.001(c) authorizes a direct appeal of the temporary-injunction orders, as Harris County has acknowledged. *See* App'x Tab E at 3.

C. Section 22.001(c) does not mention orders on pleas to the jurisdiction, such as the one that the trial court signed here. CR.860-61. But this appeal encompasses review of that order, too, for three independent reasons.

First, when the Court "has appellate jurisdiction over any issue, it acquires 'extended jurisdiction' over all other questions of law properly preserved and presented." *Perry v. Del Rio*, 67 S.W.3d 85, 89 (Tex. 2001); *accord Edgewood Indp. Sch. Dist. v. Meno*, 917 S.W.2d 717, 749 n.39 (Tex. 1995). The "well-established" doctrine of extended jurisdiction allows the Court to consider issues over which it would otherwise lack jurisdiction as long they are raised alongside an issue over which the

Court has jurisdiction. *Brown v. Todd*, 53 S.W.3d 297, 301 (Tex. 2001). So, although the Court would have lacked jurisdiction had the trial court issued—as the State Defendants originally believed—only a ruling on the plea to the jurisdiction, it has extended jurisdiction over the plea order based on its jurisdiction under section 22.001(c) over the temporary-injunction orders.

Second, the Court "always has jurisdiction to determine its own, and the lower courts', jurisdiction." *Abbott v. MALC*, 647 S.W.3d 681, 699 (Tex. 2022).

And *third*, the Court has twice indicated that a separate interlocutory order "may be attacked in the appeal from [a] temporary injunction" so long as "the questions raised affect the validity of the injunction order." *State v. Cook United, Inc.*, 464 S.W.2d 105, 106 (Tex. 1971) (citing *Tex. State Bd. of Exam'rs in Optometry v. Carp*, 343 S.W.2d 242, 243 (Tex. 1961)).

All three jurisdictional bases are implicated here. Whether the trial court had subject-matter jurisdiction was the subject of the plea and will be part of what the Court may properly consider when assessing the State Defendants' challenge to the temporary-injunction orders. *See In re Abbott*, 628 S.W.3d 288, 294 n.8 (Tex. 2021); *Abbott v. Anti-Defamation League Austin, Sw., & Texoma Regions*, 610 S.W.3d 911, 917 (Tex. 2020) (per curiam).

And the general rule that "if [this Court's] jurisdiction is properly invoked on one issue, [the Court] acquire[s] jurisdiction of the entire case," *Brown*, 53 S.W.3d at 301, applies with particular force in this context. When "a direct appeal to [this] Court is filed, the parties to the appeal must not, while that appeal is pending, pursue an appeal to the court of appeals." Tex. R. App. P. 57.5. As a result, when the State

Defendants appealed to this Court, they could no longer "follow up or proceed with" the appeal they initially noticed to the Third Court. *Pursue*, Webster's Third New International Dictionary 1848 (2002 ed.); *see* App'x Tab F (unopposed motion to abate the Third Court appeal). Even if they could, doing so would raise the possibility of two courts considering the same jurisdictional questions in the same case at the same time. Judicial economy counsels against that approach.

Prayer

The Court should proceed with adjudication of this direct appeal consistent with its August 22, 2023 notation of probable jurisdiction, briefing schedule, and oral-argument setting.

Respectfully submitted.

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Certificate of Service

On August 24, 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 1,238 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; ANGELA COLMENERO, IN HER OFFICIAL CAPACITY AS PROVISIONAL 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

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.

[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:
HARRIS COUNTY'S EMERGENCY MOTION FOR TEMPORARY RELIEF

No. _____

IN THE SUPREME COURT OF TEXAS

OFFICE OF THE ATTORNEY GENERAL OF TEXAS, ET AL.,
Appellants,

v.

HARRIS COUNTY, TEXAS,
Appellee.

On Direct Appeal from the
345th Judicial District Court, Travis County, Texas
No. D-1-GN-23-003523

HARRIS COUNTY'S EMERGENCY MOTION FOR TEMPORARY RELIEF

On November 7, 2023, Harris County must administer an election. Preparations have been underway for months, led by Harris County's Elections Administrator. The trial court enjoined an unconstitutional law that would abolish the Administrator's position on the eve of the election. The State filed this direct appeal. Now, Harris County requests emergency relief to preserve the status quo and this Court's jurisdiction, and to prevent the election's severe, last-minute disruption. **Harris**

County requests a ruling on its motion no later than Friday, August 18, 2023.

INTRODUCTION

For more than eight months, Harris County's Elections Administrator has been preparing for the fast-approaching November 7, 2023, elections. But on September 1, 2023—just weeks before ballots must be finalized, and not even two months before voting begins—Senate Bill 1750 purports to shift the elections administrator's duties to two other county officials who have had no role in these preparations and currently lack the staff and resources necessary to administer the election.

To preserve the status quo, and because this enormous, last-minute change to election procedures is likely to harm Harris County's administration of the November 2023 election, and thus the People's right to vote, the trial court temporarily enjoined the Attorney General and Secretary of State (collectively, "the State") from enforcing SB1750—a patently unconstitutional local law that will abolish Harris County's elections administrator—but no other county's, now or in the future. *See* Tex. Const. art. III, § 56(a) (prohibiting the Legislature from enacting a

local law "regulating the affairs of counties," regarding the "conducting of elections," or "prescribing the powers and duties of [county] officers").

The State appealed directly to this Court, and it asserts that the appeal automatically supersedes the trial court's injunction. Harris County therefore seeks temporary relief barring the State from enforcing SB1750 with respect to the November 2023 election. By preventing last-minute changes to election procedures, temporary relief would ensure the integrity of the election. The State will, conversely, suffer no harm from the order. If the State prevails in this appeal—in which Harris County will not contest jurisdiction over the injunction orders and which it readily agrees to expedite—SB1750 will be able to take effect in an orderly fashion

BACKGROUND

Elections for public office across Texas are run by counties. For nearly half a century, Texas has given *every* county the power to create an elections administrator position to manage voter registration and elections. Tex. Elec. Code § 31.031.[1] Because this position adds

[1] *See* Act of May 28, 1977, 65th R.S., ch. 609, § 3, sec. 56a, 1977 Tex. Gen. Laws 1497, 1499.

professionalism and removes partisanship from the management of elections, more than half of Texas's 254 counties—including nine of its ten largest—have opted to use elections administrators. App. B at 125. In 2020, Harris County followed suit. Its current Elections Administrator is Cliff Tatum, an experienced professional recruited from out of state to run an office of more than 170 employees with a budget of more than $30 million. *Id.* at 70-73.

Immediately upon the position's creation in Harris County, state officials began working to abolish it. In November 2020, the Secretary of State asserted that Harris County had violated the Elections Code by creating the position and appointing someone to fill it. App. B at 95–96. The Attorney General joined in, asserting that the position was "null and void" and did "not exist," threatening legal action if the position continued to operate. App. C, Ex. 1. And Senator Bettencourt, who would later write the law at issue here, publicly called on the County to abolish the office and fire the Administrator. *Id.*, Ex. 2.

During the 2023 legislative session, Senator Bettencourt filed—and the Legislature passed—SB1750 to accomplish the same purpose. The law has two provisions:

- First, SB1750 prohibits a county with a population of more than 3.5 million people—a category that includes Harris County alone—from creating an elections administrator position. Tex. Elec. Code § 31.031(a). Every other county may still do so.
- Second, SB1750 abolishes the election administrator position in a county that has more than 3.5 million people *on September 1, 2023*. Tex. Elec. Code § 31.050. This provision will thus apply to Harris County—and then never again.

This singling out of Harris County was intentional. Senator Bettencourt repeatedly named Harris County as SB1750's intended target, on one occasion stating plainly that the bill "will eliminate the Harris County Elections Administrator." App. C, Ex.7; *accord id.*, Exs. 3, 4, 6, 8, 10–14. SB1750's House sponsor, Rep. Briscoe Cain, was even more blunt: "my bill was filed only for Harris County." *Id.*, Ex. 9 at 5.[2]

On August 8, 2023,[3] the trial court held an evidentiary hearing on Harris County's application for a temporary injunction and the State's plea to the jurisdiction. On August 14, 2023, the court denied the State's jurisdictional plea issued a detailed order temporarily enjoining the Secretary of State and Attorney General from enforcing SB1750 against

[2] Rep. Cain explicitly stated that the House had changed an earlier, lower population bracket in order to *exclude* other large counties. App. C, Ex. 9 at 5.

[3] The cover of the hearing transcript states that the hearing occurred on *July* 8, and on the first page of the transcription the record says it occurred on August *9*. Both of these statements are incorrect.

Harris County. Apps. A1, A3. Further, in response to a request from Tatum, who intervened and filed claims against Harris County to prevent his own termination, the court enjoined Harris County from enforcing SB1750 against Tatum. App. A4.

On August 15, the State immediately appealed the temporary-injunction orders directly to this Court, prompting Harris County to file this motion.

ANALYSIS

The trial court's injunction preserved the status quo—the Elections Administrator's ongoing administration of the November 2023 election. Therefore, the State's purported "suspension of the temporary injunction would, in this case, have the contradictory effect of permitting the status quo to be altered, because if compliance with the injunction were not required, [Harris County's] manner of govern[ing]" its internal affairs and administering the upcoming election "could be changed from the last actual, peaceable non-contested status that preceded the pending controversy." *In re Tex. Educ. Agency*, 619 S.W.3d 679, 683-84 (Tex. 2021) (internal quotation marks and brackets omitted; emphasis added). Worse, refusal to grant temporary relief will subject Harris County to

irreparable injuries, and it may interfere with Harris County's ability to seek judicial relief at all. *See id.* at 686 (discussing the goals of Rule 29.3).

Because SB1750 is unconstitutional, and because letting it take effect will disrupt Harris County's administration of the upcoming election, this Court should grant temporary relief mirroring the trial court's injunction prohibiting SB1750's enforcement.

I. SB1750 is an unconstitutional local law.

A. A law that can only ever affect one county's internal governance or election administration is unconstitutional.

To "prevent the granting of special privileges and to secure uniformity of law throughout the State," *Miller v. El Paso County*, 150 S.W.2d 1000, 1001 (Tex. 1941), Article III, Section 56(a) flatly prohibits the Legislature from "pass[ing] *any* local or special law" on a variety of enumerated subjects, Tex. Const. art. III, § 56(a) (emphasis added). As this Court explained in its most recent opinion on Section 56(a), a "local law is one limited to a specific geographical 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 at Austin Mun. Util. Dist. v. Monaghan*, 931 S.W.2d 941, 945 (Tex. 1996).

SB1750 is an unconstitutional local law. Relevant here, the subjects on which the Legislature is prohibited from passing local laws include:

- "regulating the affairs of counties"
- regulating the "conducting of elections";
- "creating offices, or prescribing the powers and duties of officers, in counties"

Tex. Const. art. III, §§ 56(a)(2), (12), (14). Section 56(a) thus prevents the Legislature from "meddling in local affairs—or, conversely, . . . prevent[s] a group from dashing to the Capitol to get something their local government would not give them." *Kelly v. State*, 724 S.W.2d 42, 47 (Tex. Crim. App. 1987) (quoting George D. Braden, The Constitution of the State of Texas: An Annotated and Comparative Analysis 273 (1977)).

The Legislature may, of course, enact laws that apply to less than the entire State. But it must do so using a classification "broad enough to include a substantial class," and the classification "must be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to be accomplished." *Maple Run*, 931 S.W.2d at 945 (quoting *Miller*, 150 S.W. at 1001–02). This Court's "primary and ultimate test" has therefore long been "whether there is a reasonable basis for the classification made by law, and whether the law

operates equally on all within the class." *Id.* (quoting *Rodriguez v. Gonzales*, 227 S.W.2d 791, 793 (Tex. 1950)).

SB1750 purports to be a law of general application, rather than a local law, by using a population classification or "bracket." In applying the reasonable-basis test, courts have distinguished between brackets that are "open" and "closed." Open brackets are those that will apply to any locality that subsequently comes within the statute's classification. Closed brackets, by contrast, are brackets that apply to one or more localities at the time they take effect, but are drafted so as to *exclude* localities that later meet the classification criteria.

Texas Courts have consistently invalidated laws that use closed population brackets. *See, e.g.*, *City of Forth Worth v. Bobbitt*, 36 S.W.2d 470, 473 (Tex. Comm'n App. 1931, op. adopted) (calling statute "repugnant to the constitution[]" where it "appl[ied] to one city only in the state, and can never in any contingency apply to any other city"); *Suburban Util. Corp. v. State*, 553 S.W.2d 396, 399 (Tex. App.—Houston [1st Dist.] 1977, writ ref'd n.r.e.) ("The statute is unconstitutional . . . if at the time of its enactment, the classification by population is based entirely upon existing circumstances and the application of the statute is

'closed' to other local units in the future."); *see also* App. E at 20–21, 25–26 & n.24 (citing additional cases).

Indeed, Harris County has not found—and the State has not cited—*any* case upholding a closed population bracket, let alone a closed population bracket affecting a single locality.[4]

B. Section 3 of SB1750 is a closed population bracket that unconstitutionally targets Harris County without any reasonable basis.

Section 3 of SB1750 uses a closed bracket to target Harris County by making the provision apply only to a county meeting the population bracket on a single date. Pointedly, the State did not dispute this in the trial court.

Section 3 provides in relevant part:

> On September 1, 2023, all powers and duties of the county elections administrator of a county with a population of more

[4] The State pointed to *Board of Managers of Harris County Hospital District v. Pension Board of the Pension System for the City of Houston*, 449 S.W.2d 33 (Tex. 1969), as a counter example. But, as this Court noted, the law at issue in *Board of Managers* was "applicable to any city having 900,000 or more inhabitants." *Id.* at 38. And while the law's provision permitting governmental subdivisions to request pension contribution transfers within 90 days of enactment could only affect Houston, the same transfer provision could also be invoked by later-created subdivisions within 90 days of creation—and thus could affect other cities later reaching the population threshold. *See id.* at 35, 38–39. Thus, the law at issue in *Board Managers* was an open bracket.

> than 3.5 million under this subchapter are transferred to the county tax assessor-collector and county clerk.

Tex. Elec. Code § 31.050. The sentence's introductory prepositional phrase ("On September 1, 2023") modifies the sentence's verb phrase ("are transferred"), providing for a date-specific, one-time transfer of duties in a county within the bill's population bracket.[5] Again, the State does not advance any alternative reading.

On September 1, 2023, Harris County will be the only county in Texas meeting the population criteria. And, because the provision would not apply to a county later reaching the population threshold, the bracket is *closed*. There will never be another county that, *on September 1, 2023*, will have a population exceeding 3.5 million.

SB1750's closed bracket violates both prongs of *Maple Run*. A closed bracket necessarily does not "operate[] equally on all within the class" because it omits from its operation localities coming within the classification after the law's effective date. *Maple Run*, 931 S.W.2d at 945.

[5] The prepositional phrase's only other possible referent is the noun phrase "county with a population of more than 3.5 million." This would have the same result, as it would likewise limit application of the bill's transfer provision to counties meeting the population threshold on September 1, 2023.

SB1750's closed bracket also lacks a reasonable basis because it is not "based on characteristics legitimately distinguishing [it] from others with respect to the public purpose sought to be accomplished." *Id.* at 945. The State offers two justifications for SB1750: (1) Harris County's "sheer size," and its attendant "outsized impact on statewide elections"; and (2) alleged purely "local problem[s]" with Harris County's running of elections in 2022. App. F at 21, 29.

Both justifications conflict with SB1750's text.[6] Plainly, SB1750 is unconcerned with a county's "sheer size," or that size's impact on statewide elections. Were that the true concern, then Section 3 would apply prospectively to all counties that reach the population threshold, instead of targeting the single county at that threshold on September 1, 2023. There can be no legitimate reason for targeting Harris County for

[6] Below, the State took the position that *Maple Run*'s "reasonable basis" test is essentially equivalent to a rational-basis standard. But the State's test is inconsistent with the clarity of the Constitution's prohibition, which require more exacting scrutiny. *See United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938) (noting that there "may be a narrower scope for the operation of constitutionality [than rational-basis review] when legislation appears on its face to be within a specific prohibition of the Constitution"); *accord District of Columbia v. Heller*, 554 U.S. 570, 629 n.27 (2008) (quoting *Carolene Products* and making the same point).

its size but excluding any other county that might one day reach the same population threshold.

The State's other justification is similarly infirm. SB1750's stated classification is not "Harris County" or "counties with problems administering their elections"—it is "count[ies] with a population of 3.5 million or more." *That* is the classification that the State must—but does not—defend. *See Maple Run*, 931 S.W.2d at 946 (striking down local law where "the brackets selected by the Legislature have [no]thing to do with the purpose of the statute"). The State asserts that a local law, even a closed-bracket targeting a single county, is constitutional if it "furthers a larger statewide interest," citing Harris County's impact on statewide elections. App. E at 27. But *Maple Run* refused to immunize from Section 56(a)'s scope local laws with "statewide interest," reiterating instead that its two-prong test applies in all cases and that a "statewide interest" is merely a factor courts can take into account. 931 S.W.2d at 945. And, in any event, this statewide interest is not the bill's motivation given its exclusion of other counties that equal or exceed Harris County's sizxe in the future.

Maple Run thus reflects the Constitution's language. Large counties will necessarily have an outsized effect on the State, including on its elections. Yet the Constitution's drafters—surely aware of that reality—nevertheless prohibited local laws "prescribing the powers and duties of [county] officers" or regarding the "conducting of elections." The drafters thus balanced the reality of statewide impact and the importance of local control by insisting that—on these issues—the Legislature address such problems using legislation of general, not local, impact. The State's justifications are impossible to square with the constitutional prohibition: neither a county's size nor "local problems" justify the Legislature's surgical intervention into a single county's local affairs, altering its officers' duties and its conduct of elections.

SB1750's stated classification is population, but it treats equally populated counties differently for no legitimate reason. It is therefore unconstitutional.

II. Without temporary relief, Harris County will suffer irreparable injury and may lose its appellate rights.

In the first place, temporary relief may be necessary to preserve this Court's jurisdiction over the State's appeal. Because Harris County currently has an elections administrator, its suit has focused on Section

3 of SB1750—the closed bracket eliminating that position in Harris County and nowhere else.[7] However, if SB1750 takes effect without emergency relief, and Harris County were forced to abolish its elections administrator position, then the State would likely argue that Harris County's challenge to Section 3 is moot. Standing alone, the need to protect this Court's jurisdiction over the State's appeal counsel's strongly in favor of temporary relief. Tex. Gov't Code § 21.001(a) (providing that a court has "authority to issue the writs and orders necessary or proper in aid of its jurisdiction"); *Texas Educ. Agency*, 619 S.W.3d at 685–86. Otherwise, the State's supersedeas may become a means of defeating a substantial constitutional claim by frustrating its review.[8]

Temporary relief is equally warranted by the need to protect Harris County—and its voters—from irreparable harm. *See* App. A3 at 3–4 (finding that Harris County will suffer irreparable harm absent an

[7] Section 2, which prohibits counties larger than 3.5 million from creating the position of elections administrator, uses an open, rather than closed, bracket, a fact that alters the constitutional analysis. While Harris County also challenged the validity of Section 2, that section has not been the focus of this suit because Harris County currently has an elections administrator.

[8] On August 15, 2023, the Harris County Republican Party also attempted to intervene in this matter, seeking declaratory relief against Harris County that is SB1750 is constitutional—confirming the broad interest in this case and the need for this Court to reach the merits.

injunction); *see also In re Geomet Recycling, LLC*, 578 S.W.3d 82, 89 (Tex. 2019) (holding that Rule 29.3 grants "great flexibility in preserving the status quo" and permits a court to "protect [a litigant] from irreparable harm"). The Elections Administrator and his large staff began preparing for the November 2023 election in January—almost eight months ago. App. B at 106. This election will include votes on constitutional amendments, a countywide bond issuance, and for a variety of officers for the City of Houston and *fifty* other political subdivisions. *Id.* at 104. Harris County will operate more than 700 polling sites and more than sixty voting centers for more than 2.5 million voters, staffed by 5000 election workers. *Id.* at 105, 107. Already, the Administrator's office is designing the ballot, ensuring the validity of the voting machines, determining the number of voting sites needed and election judges to be hired, choosing rally sites, and determining a training schedule for the thousands of expected election workers. *Id.* at 103, 107.

Without intervention by this Court, SB1750 will take effect on September 1, 2023, and shift the Administrator's voter-registration duties to the tax assessor-collector and his administration duties to the county clerk. But neither of these officials have 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. *Id.* at 107–08. Yet, within weeks, vital deadlines will pass: on September 23, just twenty-two days after the law takes effect, Harris County must finalize in person and absentee ballots and mail military and overseas ballots. *Id.* at 103. Voter registration is already underway and ends on October 10. And on October 23, not even two months after SB1750 would take effect, voting begins. App. B at 103.

Shifting these critical functions to unprepared officials at this juncture will severely disrupt election preparations.[9] Voter registration is illustrative: on September 1, the tax assessor-collector becomes responsible for voter registration, but she has had no staff, no money, and no preparation with which to *immediately* take on that function during the final push of registration for the upcoming election.

The same is true for administration functions. Between now and election day, Harris County must inventory election supplies, learn and

[9] Harris County created the election administrator position in July 2020 but waited until after the November 2020 elections for it to begin operations precisely to avoid "some sort of transition of one office to another in the middle of an election cycle." App. B at 81.

implement new election laws, train election workers, test voter equipment, design and proof ballots, mail ballots overseas, prepare a mass mail-out of voter registration cards, make emergency appointments of presiding and alternative judges, serve as early voting clerk, and choose and allocate supplies among polling locations, among other functions. *See, e.g.*, App. B at 103. The county clerk is not prepared to assume these functions on the eve of a major election. And in addition to taking on these new duties, the county clerk as well as the tax-assessor collector will have to continue to manage their non-election-related duties. *Id.* at 78.

While Harris County would attempt to reallocate the Administrator's employees and resources between the clerk and tax-assessor, the inevitable disruption and confusion would imperil the orderly conduct of the election. This is not simply a matter of transferring functions and employees—it would be akin to trying to build a plane while flying it. Harris County will have to "unwind[]" voting systems that have been "developed over the course of the last three years" in order to "send back certain portions of those systems to the tax assessor and to the clerk." *Id.* at 108. In the process, Harris County will necessarily lose

efficiencies and synchronizations that has been developed. *Id.* Moreover, employees have resigned from the administrator's office because of its impending abolishment, and more are reasonably likely to follow. App. B at 107. The newly empowered officials will be forced to scramble to hire new personnel and will likely have to settle for less-qualified staff at greater cost and less efficiency. *Id.* at 108–09.

In sum, without emergency relief, SB1750 will cause severe disruption, inefficiency, disorganization, confusion, and instability—jeopardizing voter lists, polling locations, and thousands of financial transactions related to the election's administration, as well as and contracts that the Elections Administrator has entered into to run other political subdivisions' elections. *See* App. B at 104–05. Harris County will also suffer irremediable financial injury because it will be forced to hire additional permanent and temporary workers, in addition to consultants to advise it how to dismantle and then reconstruct an election-administration apparatus *during the election*. *Id.* at 108–09.

The equities weigh heavily in favor of protecting the status quo, and against a last-minute disruption to an election.

III. Harris County has standing.

A. SB1750 and its enforcement by the State will injure Harris County.

Harris County must have an injury that is "both concrete and particularized and actual or imminent, not conjectural or hypothetical." *Data Foundry, Inc. v. City of Austin*, 620 S.W.3d 692, 700 (Tex. 2021) (citing *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 154–55 (Tex. 2012)). "An injury is 'particularized' for standing purposes if it 'affects the plaintiff in a personal and individual way.'" *Id.* (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016)) (internal brackets omitted). An injury is "concrete" if it "actually exist[s]"—that is, if it is "'real,' and not 'abstract.'" *Spokeo*, 578 U.S. at 340. Harris County's injuries easily meet this standard.

First, as the State admits, Harris County alleged (and, as noted above, proved at the injunction hearing) a pecuniary harm from SB1750. App. A3 at 3–4; App. B at 92–93, 108–10, App. D ¶¶ 40–42. This alone suffices. *Data Foundry*, 620 S.W.3d at 696. Second, SB1750 strips Harris County (and no other county) of statutory authority it currently possesses—an injury that is both concrete and particularized. Third, Harris County must implement SB1750—it must effectuate the transfer

of the election administrator's duties to other county officials, and it must use those latter officials to administer its elections. A political subdivision has a cognizable injury when it "is charged with implementing a statute it believes violates the Texas Constitution." *Neeley v. West Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 772 (Tex. 2005) (quoting *Nootsie, Ltd. v. Williamson Cnty. Appraisal Dist.*, 925 S.W.2d 659, 662 (Tex. 1996)).[10] Harris County will be harmed for all the other reasons laid out in § II above.

Harris County will also be injured by the Attorney General's and Secretary of State's enforcement of SB1750. This Court recently held that that a "credible threat" that the Attorney General would "bring enforcement actions against the County" gave Harris County "standing to pursue its claims against the Attorney General." *Abbott v. Harris County*, No. 22-0124, 2023 WL 4278763, at *6 (Tex. Jun. 30, 2023). Here,

[10] *Nootsie* and *Neeley* forcefully reject the State's argument below that a political subdivision never has standing to sue the State for altering the legal context in which the political subdivision operates. *See Neeley v. West Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 772 (Tex. 2005) (observing that this Court has never "establish[ed] a broad rule that a governmental entity cannot sue to declare a statute unconstitutional"); *Nootsie, Ltd. v. Williamson Cnty. Appraisal Dist.*, 925 S.W.2d 659, 662 (Tex. 1996) (rejecting argument that a political subdivision's standing depends on the challenged law "violat[ing] constitutional rights belonging to the [subdivision]").

a similarly credible threat exists. The Attorney General has routinely sued Harris County for perceived violations of the Elections Code. App. B at 175–76. And the Attorney General previously threatened legal action aimed at abolishing Harris County's election administrator position over claims its creation violated the Election Code. App. C, Ex. 1; App. B at 95–96.

Notably, the Election Code authorizes the Attorney General to seek penalties against the County and its officials and employees for certain Election Code violations—which the elections administrator and others would commit if he continued acting after SB1750 takes effect. *E.g.*, *id.* §§ 18.065(a), 31.129. SB1750 only makes it more likely the Attorney General will pursue similar action in the future. Indeed, the State stipulated below that it could not rule out that it would sue or assess penalties against Harris County if it continues to use its election administrator position after SB1750 takes effect. App. B at 30–31; *see 303 Creative LLC v. Elenis*, 143 S.Ct. 2298, 2310 (2023) (finding a credible threat, for standing purposes, where the state had pursued similar enforcement actions and had "declined to disavow future

enforcement proceedings against" the plaintiff (internal quotation marks and brackets omitted)).

The Secretary of State must also enforce SB1750 in a variety of ways that will harm Harris County absent emergency relief. The Election Code and the Administrative Code are filled with requirements authorizing or requiring the Secretary of State to work with counties' registrars and clerks.[11] Currently, however, the Elections Administrator performs these officers' roles, Tex. Elec. Code § 31.043, so the Secretary of State must work with him instead.

However, after SB1750 takes effect, the statutory scheme will require the Secretary of State to interact with the clerk and tax assessor-collector; the Secretary of State will lack authority to treat the Election Administrator as a valid election officer. *See* App. B at 184–85 (testimony from the Secretary of State's elections director agreeing with this construction of the post-SB1750 statutory scheme). Most fundamentally, these Election Code provisions include all of the statutes relating to the actual tabulation of votes. Absent emergency relief, the Election Code

[11] *See, e.g.*, Tex. Elec. Code §§ 15.083, 18.043, 20.065(c), 112.011(c),141.068.

would not permit the Secretary of State to work with the Election Administrator on these crucial issues. *See* Tex. Elec. Code §§ 67.007, 68.034.[12]

The enforcement harms hardly stop there. Harris County is today entitled to payments from the Secretary of State for voters registered by the Elections Administrator. Tex. Elec. Code § 19.002. But after SB1750, the Administrator will no longer qualify as a "registrar" and the Secretary of State could not—absent emergency relief—pay Harris County for voters he registers, resulting in a pecuniary loss to the County.[13] Similarly, the Secretary of State would be statutorily required

[12] During the hearing, the Secretary of State's elections director acknowledged that, after SB1750 takes effect, she would lack legal authority to accept election returns from the Elections Administrator. App. B at 148–49, 184–88. Nevertheless, she suggested that the Secretary of State would—or at least might—accept Harris County's returns in violation of the Elections Code. *Id.* at 188 ("Possibly, yes."). Whatever the truth of the director's response, the State cannot avoid Harris County's claims that SB1750 is unconstitutional by speculating that its officers might ignore their ministerial duties to enforce it—especially when the State will not actually commit to not enforcing the Statute. *See* App. B at 30–31, 185.

[13] The elections director agreed with this straightforward statutory analysis. App. B at 150. Yet, when asked whether the Secretary of State would pay Harris County for registrations by the Elections Administrator after SB1750 takes effect, she gave a series of wishy-washy and nonresponsive answers that seemed to presume that Harris County would be transferring the registration duties to the tax assessor-collector. *Id.* at 150–51. And ultimately, the director confirmed she "can't commit" to the Secretary of State "tak[ing] no action if Mr. Tatum continues to run the election despite being a legally defunct office." *Id.* at 185.

to refuse to assist the Election Administrator in the training of election judges and clerks, Tex. Elec. Code § 31.115, and she could be *required* to take enforcement actions against the county clerk if the Elections Administrator continue to perform registration functions, *id.* § 18.065(b). In this manner, the Secretary of State will enforce SB1750 against Harris County in a host of negative ways involving the registration of voters and the conduct of future elections.

Finally, as with the Attorney General, there is a credible threat the Secretary of State will pursue other enforcement actions against Harris County and its officers. The Secretary of State has previously asserted that the Harris County election administrator position was not legally created, referring the matter to the Attorney General. And the Secretary of State was recently empowered to investigate and seek removal of county election officials. Tex. Elec. Code §§ 31.017(b), 31.019–.021.

B. Harris County's injuries are traceable to the Attorney General and Secretary of State.

This Court recently held that Harris County had standing to sue the Attorney General regarding the Governor's executive order forbidding local governments from enacting mask mandates because of the Attorney General's "credible threat" of an "enforcement action[]

against the City." *Abbott v. Harris County*, No. 22-0124, 2023 WL 4278763, at *5 (Tex. June 30, 2023). Importantly in that case, neither the relevant statute nor the executive order gave the Attorney General explicit authority to enforce the executive order against the County. Instead, traceability was based on the Attorney General's broader statutory enforcement powers.

This same reasoning applies here. The Secretary of State's prior assertion that the election administrator's appointment violated the Election Code, the Secretary's referral of the matter to the Attorney General for enforcement, the Attorney General's routine filing of election-related suits against Harris County, and the Attorney General's explicit threats of enforcement aimed at abolishing Harris County's Elections Administrator establish the same credible threat of enforcement as existed in *Abbott v. Harris County*. *See 303 Creative*, 143 S.Ct. at 2310.

Traceability as to the Secretary of State is also established by the numerous statutes mentioned above requiring the Secretary to enforce SB1750 by refusing to recognize the Elections Administrator as a legitimate election official, as these injuries—including pecuniary injuries—will be the direct result of the Secretary of State's actions.

Harris County's injuries are therefore traceable to the Attorney General and Secretary of State.[14]

CONCLUSION

Harris County prays that this Court grant its motion and, during the pendency of this case, enter an order providing for the same injunctive relief the trial court ordered. Harris County further prays that this Court accept jurisdiction over the appeal of the injunction orders and set an expedited schedule for briefing and argument.

[14] Below, the State argued that Harris County should have sued "the Office of the Secretary of State" and "the Office of the Attorney General," rather than the officeholders in their official capacities. App. F a 14, 35–36. As Harris County explained, the State's argument is meritless. App. G at 6–7. In any event, Harris County also sued the Offices, App. D ¶¶3, 5, and this Court can therefore grant relief against whichever entities it believes is appropriate.

Respectfully submitted,

/s/ *Wallace B. Jefferson*

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CERTIFICATE OF CONFERENCE

I certify that on August 15, 2023, I twice called Susanna Dokupil, counsel for Appellants, to ask whether her clients are opposed to the relief sought in this motion. I left a voicemail with Ms. Dokupil, but as of the time this motion was filed I had not received a response.

/s/ *Jonathan Fombonne*
Jonathan Fombonne

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2023, a true and correct copy of this motion was served via electronic service through eFile.TXCourts.gov on parties through counsel of record, listed below:

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/s/ *Wallace B. Jefferson*
Wallace B. Jefferson

TAB F:
UNOPPOSED MOTION TO ABATE THIRD COURT APPEAL

No. 03-23-00490-CV

In the Court of Appeals for the Third Judicial District Austin, Texas

ANGELA COLMENERO, IN HER OFFICIAL CAPACITY AS PROVISIONAL ATTORNEY GENERAL OF TEXAS; JANE NELSON, IN HER OFFICIAL CAPACITY AS TEXAS SECRETARY OF STATE; AND THE ATTORNEY GENERAL OF TEXAS,

Appellants,

v.

HARRIS COUNTY, TEXAS; AND CLIFFORD TATUM

Appellees.

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

UNOPPOSED MOTION TO ABATE

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Counsel for Appellants

To the Honorable Third Court of Appeals:

Appellants move the Court to abate this interlocutory appeal pending resolution of a direct appeal to the Texas Supreme Court arising from the trial-court order at issue here and two others. Appellees have indicated that they are unopposed.

In July 2023, Harris County sued the Texas Secretary of State and the Provisional Attorney General of Texas (collectively, the "State Officials") and their offices, as well as the State to prevent enforcement of S.B. 1750 from the 88th Legislature's regular session, a bill addressing the administration of elections. On August 14, 2023, the trial court granted a plea to the jurisdiction as to the State but denied it as to the State Officials. The Texas Supreme Court has instructed that in cases like this one, "[a]ll parties must move with maximum expedition so that the courts . . . do not contribute to electoral confusion." *In re Khanoyan*, 637 S.W.3d 762, 765 (Tex. 2022). Consistent with that instruction, immediately upon receipt of the trial court's order on their plea, the State Officials filed a notice of appeal to this Court and invoked the automatic stay pursuant to Texas Civil Practice and Remedies Code section 51.014(b). At that time, no other trial-court order had been entered on the docket or served on the parties.

But after the notice of appeal had been filed, the trial court informed the parties that the previous day it had signed and filed—but neither docketed nor served notice of—two temporary injunctions issued on the ground of S.B. 1750's constitutionality. In the State Officials' view, an injunction that has neither been docketed nor served has not been issued, and it could not be issued after the State Officials' notice of appeal effected the automatic stay pursuant to Civil Practice and Remedies Code

section 51.014(b). However, rather than prolong this litigation and exacerbate the risk of confusion that it causes, the State Officials agreed not to raise the stay as an objection to issuance of the already-signed, already-filed temporary injunctions. The State Officials subsequently perfected a direct appeal to the Texas Supreme Court of both the temporary injunctions (pursuant to Texas Government Code section 22.001(c)) and the plea order at issue in this appeal (pursuant to the Texas Supreme Court's extended jurisdiction). The direct appeal has been docketed under Texas Supreme Court No. 23-0656.

This highly unusual set of circumstance has led to two parallel appeals raising a common issue: whether the trial court had jurisdiction to enjoin the State Officials from enforcing S.B. 1750. By rule, the State Officials may not "pursue" both appeals at the same time. Tex. R. App. P. 57.5. Given the impact that the outcome of this case will have on administration of the forthcoming election in the State's largest county, the State Officials respectfully request that this Court abate this appeal pending the Texas Supreme Court's resolution of No. 23-0656. Plaintiff Harris County and Intervenor-Plaintiff Clifford Tatum have each indicated that they are unopposed to this request.

Prayer

The Court should abate this appeal pending the Texas Supreme Court's resolution of *State of Texas v. Harris County*, No. 23-0656.

Respectfully submitted.

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Provisional Attorney General

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Certificate of Service

On August 17, 2023, this document was served on Christian Menefee, Wallace B. Jefferson, and Nicholas Bacarisse, counsel for Harris County, via Christian.Menefee@harriscountytx.gov, wjefferson@adjtlaw.com, and nbacarisse@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 motion contains 518 words, excluding exempted text.

/s/ Lanora C. Pettit
Lanora C. Pettit

Certificate of Conference

I certify that on August 16, 2023, I received emails from Richard Schechter, counsel for Clifford Tatum, and Jonathan Fombonne, counsel for Harris County, both stating that they were unopposed to this motion.

/s/ Lanora C. Pettit
Lanora C. Pettit

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Filing Description: 20230817_1750 3COA Motion to Abate_Final
Status as of 8/18/2023 8:28 AM CST

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Envelope ID: 78900422
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Status as of 8/25/2023 7:46 AM CST

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