

No. _____

**In the Court of Appeals
for the Fifteenth Judicial District
Austin, Texas**

FILED IN
15th COURT OF APPEALS
AUSTIN, TEXAS
9/16/2024 5:57:36 PM
CHRISTOPHER A. PRINE
Clerk

THE STATE OF TEXAS,

Appellant,

v.

JACQUELYN CALLANEN IN HER OFFICIAL CAPACITY AS BEXAR COUNTY
ELECTION ADMINISTRATOR; PETER SAKAI, IN HIS OFFICIAL
CAPACITY AS BEXAR COUNTY JUDGE; REBECA CLAY-FLORES, IN HER
OFFICIAL CAPACITY AS BEXAR COUNTY COMMISSIONER; JUSTIN
RODRIGUEZ, IN HIS OFFICIAL CAPACITY AS BEXAR COUNTY
COMMISSIONER; GRANT MOODY, IN HIS OFFICIAL CAPACITY AS
BEXAR COUNTY COMMISSIONER; TOMMY CALVERT, IN HIS OFFICIAL
CAPACITY AS BEXAR COUNTY COMMISSIONER,

Appellees.

On Appeal from the
57th Civil District Court, Bexar County

**APPELLANT'S EMERGENCY MOTION
FOR TEMPORARY ORDER**

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TO THE HONORABLE FIFTEENTH COURT OF APPEALS:

It has been the law of this State for a century that county officials lack the power to take any official act unless that power is specifically granted. *E.g.*, *Town of Lakewood Vill. v. Bizios*, 493 S.W.3d 527, 536 (Tex. 2016); *Foster v. City of Waco*, 255 S.W. 1104, 1106 (Tex. 1923). And because counties derive both their existence and authority from the State, any “doubt concerning the existence of power” is resolved against the county. *Foster*, 255 S.W. at 1106. After all, a county is the State’s agent, *see Yett v. Cook*, 281 S.W. 837, 843 (Tex. 1926), and an agent may not act without the authorization of its principal.

In 2020, the Texas Supreme Court unanimously applied these principles to hold that counties may not mass mail election forms unless specifically authorized by the Legislature. *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020). True, *Hollins* involved the mass-mailing of applications to vote by mail, but the principle for which it stands is far broader: that because counties “represent no sovereignty distinct from the state,” their authority “is limited” and they “possess only such powers and privileges as have been expressly or impliedly conferred upon them.” *Id.* at 406 (quoting *Wasson Ints. Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 429-30 (Tex. 2016)). Because no provision of the Election Code clearly authorized or “necessarily implied” the power to distribute unsolicited applications to vote by mail, the Supreme Court held, any such mailing is ultra vires. *Id.* at 409.

Now, just one presidential election cycle later, Bexar County election officials have decided to ignore *Hollins*, hiring a private contractor to mass mail thousands of unsolicited but partially completed voter-registration applications. But they can no

more point to a statute authorizing such a mailing than could their colleagues in *Hollins*. To the contrary, multiple provisions of the Election Code affirmatively *prohibit* Bexar County from using taxpayer money to fund a partisan organization to mass mail voter-registration forms.

Perhaps recognizing that its actions are flatly foreclosed by *Hollins*, Bexar County has done everything it can to avoid defending its actions in court. After making a show of attending a hearing that was never scheduled,¹ it ignored communications by the State that tried to negotiate an orderly litigation process.² On Monday, September 9, the County complained that it lacked sufficient notice to proceed with the State's request for a TRO hearing. Then, the morning of the scheduled TRO hearing on September 10, the County and the State stipulated to a combined TRO and temporary injunction hearing on September 16. App.39-40, 54-57. Consistent with their obligations as officers of the Court and members of the bar to allow an opposing party to respond, counsel for the State agreed to this arrangement—only to later discover that, on the same day the County stipulated to a combined hearing, it accelerated a planned mail out so that its unlawful act would putatively be complete *before* the hearing to which its counsel had agreed.

The State immediately filed an emergency request for a TRO seeking to prohibit the County from taking any further action under its *ultra vires* contract, including

¹ Compare App.49 (scheduling a hearing on September 10), *with* App.37 (complaining that Attorney General Paxton did not attend a non-existent hearing on September 6).

² App.39-47 (seeking to confer on a schedule to respond).

making any payments under it because the State could no longer trust the County to act in good faith. App.82-102.

At a hearing on September 16, the trial court heard only the State's original request for a TRO and temporary injunction, but it did not hear the County's plea to the jurisdiction or the State's second request for a TRO and a temporary injunction. The trial court orally denied the original request for a TRO and a temporary injunction.³

The State immediately appealed the denial of the temporary injunction, App.155-56, and now seeks an emergency temporary order under Texas Rule of Appellate Procedure 29.3 to prevent any further performance of the contract at issue pending appeal.

Because the County could make payments under the unlawful contract at *any time*, and because any such ultra vires conduct harms the State as a matter of law, **the Attorney General requests a ruling as soon as possible. The Attorney General also requests an administrative stay while the Court considers this motion.** *See, e.g.,* Order at 1, *In re the State of Texas*, No. 20-0715 (Tex. Sept. 15, 2020).

³ The trial court orally denied the original request for a temporary injunction, and the State is working to obtain a written order which it will file with this Court as soon as it has been received. For the reasons explained in this motion, the State could not wait for a written order before filing a notice of appeal and this motion. *See* Tex. R. App. P. 27.1(a).

BACKGROUND

I. Factual Background

Over the Labor Day weekend, Attorney General Ken Paxton learned that a number of counties, including Bexar County, intended to mass mail voter registration applications in apparent violation of the Supreme Court's decision in *Hollins*. On September 2, 2024, Attorney General Paxton sent a letter to the Bexar County Commissioners Court to express his concerns about a proposal on which the Commissioners Court intended to vote at its meeting the next day to contract with a private company called Civic Government Solutions (CGS) to mail thousands of unsolicited voter registration applications to unregistered voters. App.3-4. The Attorney General explained that a county had no authority to mail unsolicited voter registration forms. App.4. He also noted that Bexar County lacked the authority to “grant a discretionary exemption to the competitive bidding requirements set forth in the Texas County Purchasing Act” under the circumstances here. App.3-4.

Notwithstanding the Attorney General's concerns—echoed by numerous public commenters—a narrow majority of the Commissioners Court approved a contract to pay CGS \$392,700 to mail thousands of unsolicited voter registration applications. App.21-22. The County's decision was quite controversial in part because CGS's Chief Executive Officer appeared partisan and favored “progressive candidates.” App.22. One member of the Commissioners Court expressed concern over the County's decision to dispense with the competitive bidding process in the County Purchasing Act in hiring CGS. App.23. The County's Elections

Administrator also opposed the contract. App.23. The County was, however, undeterred. App.23.

II. Procedural Background

That same day, the State brought an ultra vires action in Bexar County District Court against the Bexar County Elections Administrator, County Judge, and members of the Commissioners Court, in their official capacities, to prevent them from executing the CGS contract and mass mailing unsolicited voter registration applications. App.17-18. The State contended that the Election Code does not empower the County to engage in such a mailing—let alone to pay a private contractor to do so. App.25. It also alleged that the County Purchasing Act required the County to follow a competitive-bidding procedure before executing the contract with CGS, which it did not do. App.27. The State sought a temporary restraining order, temporary injunction, and permanent injunction to prevent the County from engaging in these ultra vires acts. App.32.

After unsuccessful efforts to reach out to the County to negotiate an orderly litigation process, the State set a hearing on its request for a TRO on September 10. App.49-50. But the County complained on September 9 that it lacked sufficient notice. App.44-45. So, the State and the County stipulated to hold a combined TRO and temporary injunction hearing on September 16. App.39-40, 54-57. Cognizant of the obligations on all Texas lawyers to allow their opponent the opportunity to respond, the State agreed to this.⁴ But the County used that time to allow its

⁴ See *The Texas Lawyer's Creed—A Mandate for Professionalism*, <https://www.txcourts.gov/media/276685/texaslawyerscreed.pdf> (“I will not serve

contractor to mail *all* of the voter registration applications, and the contractor purportedly completed the job by the evening of September 10. *See* App.39. Disregarding their own obligations of “courtesy, candor, cooperation and scrupulous observance of all agreements and mutual understandings, *The Texas Lawyer’s Creed, supra*, the County’s counsel first informed the State of its action in its plea to the jurisdiction filed on the evening of Friday, September 13, App.65, 77, which alleged, among other things, that the case was now moot.

The State immediately filed an emergency request for a TRO seeking to prohibit the County from taking any further action under its ultra vires contract, including making any payments under it. App.87-91, 100. The State did so immediately and over the weekend because it could no longer trust the County to act in good faith.

The State also amended its petition seeking a temporary injunction to prevent the County from further performing the contract. App.120, 124.

At a hearing on September 16, the trial court heard only the State’s original request for a TRO and temporary injunction, but it did not hear the County’s plea to the jurisdiction or the State’s second request for a TRO and a temporary injunction. The trial court orally denied the original request for a TRO and a temporary injunction.

The State immediately appealed the denial of the temporary injunction, App.155-56, and now seeks an emergency temporary order under Texas Rule of

motions or pleadings in any manner that unfairly limits another party’s opportunity to respond.”).

Appellate Procedure 29.3 to prevent any further performance of the CGS contract pending appeal.

STANDARD OF REVIEW

Rule 29.3 authorizes a court of appeals to “preserve the parties’ rights until disposition of the appeal.” Tex. R. App. P. 29.3. The Texas Supreme Court recently clarified the standard of review governing motions under Rule 29.3. A court should consider “the likely merits of the parties’ respective legal positions,” and “the injury that will befall either party depending on the court’s decision.” *In re State*, No. 24-0325, 2024 WL 2983176, at *2-3 (Tex. June 14, 2024). The movant must show that it “will suffer irreparable harm if relief is not granted,” and the court must consider any harm “that other parties or the public will suffer if relief is granted—as well as any potential injury to non-parties caused by granting or denying relief. The equitable balancing of these harms is a required aspect of a court’s effort to preserve the parties’ rights pending appeal.” *Id.* at *3.

ARGUMENT

I. The State is Likely to Succeed on The Merits of Its Appeal.

A. The Court has jurisdiction.

To start, the County was wrong to suggest that the trial court allegedly lacked jurisdiction either at the time that the original petition was filed or at the time of the September 16 hearing.

1. The State has sued the proper parties, seeking appropriate relief.

This case is effectively *Hollins* 2.0: As a subdivision of the State of Texas, Bexar County has no sovereign power of its own. *See Hollins*, 620 S.W.3d at 403-04. It “is a subordinate and derivative branch of state government.” *Avery v. Midland County*, 406 S.W.2d 422, 426 (Tex. 1966), *vacated on other grounds*, 390 U.S. 474 (1968); *see* Tex. Const. art. IX, § 1; *id.* art. XI, § 1. As a political subdivision, the County “possess[es] only such powers and privileges” as the State confers upon it. *Wasson Ints.*, 489 S.W.3d at 430; *e.g.*, *Quincy Lee Co. v. Lodal & Bain Eng’rs, Inc.*, 602 S.W.2d 262, 264 (Tex. 1980). And the State has standing to enforce the limit of those powers against the County and its agents, who cannot take any action in their official capacities that exceeds the scope of the County’s powers. *Cf. Abbott v. Harris County*, 672 S.W.3d 1, 9-12 (Tex. 2023).

Nonetheless, the County has argued that the State should have sued Bexar County itself and CGS, as opposed to the members of the Commissioners Court and the Elections Administrator. App.74-75. The County contends that the County itself and CGS are indispensable parties. App.74-75. The County is wrong. *Hollins* was a suit not against Harris County but against Chris Hollins, who was then the Harris County Clerk, in his official capacity. 620 S.W.3d at 404. “Because Hollins act[ed] on behalf of Harris County, he possess[ed] only those powers ‘granted in express words’” to the County or “‘necessarily or fairly implied in’ an express grant.” *Id.* at 406. But at all times, the Supreme Court’s analysis was phrased in terms of the claims against *Hollins*, not the county.

Far from a necessary party, the County could not have been properly named under the Supreme Court's existing jurisprudence on governmental immunity. Specifically, it is blackletter law that "governmental entities themselves [are] not proper parties to an ultra vires suit. Instead, a plaintiff must sue the relevant officers in their official capacities." *Hall v. McRaven*, 508 S.W.3d 232, 239 (Tex. 2017). Because "the rule that ultra vires suits are not suits against the State within the rule of immunity of the State from suit derives from the premise that the acts of officials which are not lawfully authorized are not acts of the State, it follows that these suits cannot be brought against the State, which retains immunity, but must be brought against the state actors in their official capacity. This is true even though the suit is, for all practical purposes, against the state." *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 (Tex. 2009) (cleaned up); *see also, e.g., Patel v. TDLR*, 469 S.W.3d 69, 76 (2015) (discussing, inter alia, *Tex. Dep't Ins. v. Reconveyance Servs., Inc.*, 306 S.W.3d 256, 258-59 (Tex. 2010)).

Nor is CGS an indispensable party. As an initial matter, a private party cannot be a party to an ultra vires suit because such suits are, at bottom, an effort to "reassert[] the control of the state," and "enforce existing state policy" against a governmental official who has departed from the will of the Legislature. *Heinrich*, 284 S.W.3d at 372; *see also, e.g., Hall*, 508 S.W.3d at 238. As the Texas Supreme Court has repeatedly recognized, the State has the "intrinsic right to enact, interpret, and enforce its own laws," *State v. Naylor*, 466 S.W.3d 783, 790 (Tex. 2015) (citing *Printz v. United States*, 521 U.S. 898, 912 n.5 (1997)), particularly against government officials who transgress their statutory bounds, *Hollins*, 620

S.W.3d at 410 (“The sovereign would be impotent to ‘enforce its own laws’ if it could not temporarily enjoin those breaking them pending trial.”).

In any event, an injunction against the Commissioners will also run against CGS. That is because every injunction and every restraining order is binding upon “the parties to the action;” their “agents, servants;” and “those persons in active concert or participation with them who receive actual notice of the order.” Tex. R. Civ. P. 683. CGS is an agent or an entity acting in concert with the Commissioners because the County purported to give it the authority to send out registration applications on the County’s behalf. Because CGS is simply acting on behalf of the County, any injunction will bind it too.

The State has also properly sought prospective relief for acts that have not yet occurred. *Contra* App.71. The State alleged that the County’s “vote to contract with CGS is therefore ultra vires, and the Court should enjoin any further action by Defendants to complete the procurement process.” App.118. That includes any further performance of the contract, such as the County making payments under it. App.124.

2. This case is not moot.

The County has argued that this case nonetheless is moot because its contractor has already mailed out the voter registration applications. App.65-67. But “[a] case becomes moot if,” and only if, “since the time of filing, there has ceased to exist a justiciable controversy between the parties—that is, if the issues presented are no longer ‘live’ or if the parties lack a legally cognizable interest in the outcome.” *Heckman v. Williamson County*, 369 S.W.3d 137, 162 (Tex. 2012). “Put simply, a case

is moot when the court's action on the merits cannot affect the parties' rights or interests." *Id.* Importantly, the party asserting mootness, "must prove that intervening events make it *impossible* for a court to grant *any* effectual relief whatever to the prevailing party"—not merely that such relief is unlikely, *Abbott v. Mexican Am. Legis. Caucus*, 647 S.W.3d 681, 689 (Tex. 2022), or wouldn't take the form originally sought by the State, *cf. In re Allcat Claims Serv., LP*, 356 S.W.3d 455, 462-63 (Tex. 2011) (orig. proceeding) (concluding that the Court will "simply exercise as much jurisdiction over the case as the Constitution allows"); *In re Dallas County*, 2024 WL 3908122, at *3-4 (Tex. Aug. 23, 2024) (finding a justiciable controversy for a more limited form of relief than originally pleaded).

The County has not met that burden. Even though their contractors assert "all voter registration forms are now in the mail," App.80, it does not follow that the contract has been fully performed. Namely, the County has not stated whether it has paid CGS its intended amount of \$392,700. *See* App.21-22. "As a rule, parties have the right to contract as they see fit *as long as their agreement does not violate the law or public policy.*" *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 129 & n. 11 (Tex.2004) (emphasis added); *see also, e.g., Fairfield Ins. Co. v. Stephens Martin Paving, LP*, 246 S.W.3d 653, 664 (Tex. 2008). A contract that does violate public policy is, however, void and unenforceable. *See id.* As will be discussed below, this is such a contract. Because entry into such a contract was ultra vires, and "ultra vires conduct automatically results in harm to the sovereign as a matter of law," *Hollins*, 620 S.W.3d at 410, at least part of the State's injuries may be still be redressed by a court via an order preventing the County from engaging in any further performance of the

contract, including making payments under it. *See* App.124; *see* *Larson v. Valente*, 456 U.S. 228 (1982) (finding partial redressability sufficient to create a justiciable controversy).

Additionally, the County approved a contract for up to 210,000 initial mailings, App.109, 133, but its vendor notes that it has sent less than 140,000, App.80. So even though the County asserts that the mass mailing is complete, the facts suggest that it could send out another mailing.

Further, even if this dispute were moot, the issue of Bexar County's mass mailing is "capable of repetition yet evading review." *Texas A&M Univ.-Kingsville v. Yarbrough*, 347 S.W.3d 289, 290 (Tex. 2011). That exception to the mootness doctrine applies when "the challenged act is of such short duration that the appellant cannot obtain review before the issue becomes moot," and there "must also be a reasonable expectation that the same action will occur again if the issue is not considered." *Id.* Bexar County does not dispute the first element. App.66-67. Indeed, it cannot, after acting in bad faith by secretly mailing out its registration applications on the same day that it stipulated to a TRO and temporary injunction hearing to be held a week later. App.80; App.54. And the very email to which the County points to establish mootness establishes the second element. Specifically, in informing the County that its unlawful mailing had been completed, CGS explained that it did not include "spring college student rosters" in its mailing because "it's post semester," but stated that CGS "would *suggest including the fall college students in a November mailing.*" App.80 (emphasis added). In other words, CGS and Bexar County are already contemplating a repetition of this unlawful mass mailing. App.86.

B. The County's contract is ultra vires.

The County's contract was unlawful for two independent reasons. *First*, the Election Code prohibits the County from (or, at minimum doesn't authorize) mass mailing unsolicited voter registration forms. *Second*, the County improperly circumvented the competitive-bidding procedures required under the County Purchasing Act.

1. The Election Code prohibits the County from mass mailing unsolicited voter registration forms.

a. As *Hollins* reaffirmed in no uncertain terms, “legal subdivisions of the State,” which are “subordinate and derivative branches of state government,” “represent no sovereignty distinct from the state and possess only such powers and privileges as have been expressly or impliedly conferred upon them.” *Hollins*, 620 S.W.3d at 403-04. Where a county claims a power that has not been “granted in express words,” that power must be “necessarily or fairly implied in or incident to the powers expressly granted.” *Id.* at 404. To be “necessarily or fairly implied,” however, a claimed power “must . . . be indispensable”—that is, the power must be “essential to the accomplishment of the declared objects and purposes of the corporation” and “not simply convenient.” *Id.* at 406. Either way, any action that a county takes “must be grounded ultimately in the constitution or statutes,” *id.* at 404, and “[a]ny reasonable doubt must be resolved against an implied grant of authority,” *id.* at 406.⁵

⁵ See also, e.g., *Wasson*, 489 S.W.3d at 430; *Guynes v. Galveston County*, 861 S.W.2d 861, 863 (Tex. 1993); *Quincy*, 602 S.W.2d at 264.

Texas Courts “presume[] the Legislature is aware of relevant case law when it enacts or modifies statutes.” *Phillips v. Bramlett*, 407 S.W.3d 229, 241 (Tex. 2013) (quoting *In re Allen*, 366 S.W.3d 696, 706 (Tex. 2012)); see also, e.g., *In re Pirelli Tire, L.L.C.*, 247 S.W.3d 670, 677 (Tex. 2007) (*Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios*, 46 S.W.3d 873, 878 (Tex. 2001)). In a decision that was widely reported both locally and nationally, the Texas Supreme Court unanimously and unequivocally held that although the Election Code “does not prohibit mass mailings, it expressly contemplates that ballot applications are to be requested by voters.” *Hollins*, 620 S.W.3d at 408.⁶ Following that decision, the Legislature amended the Election Code to make clear that the *Hollins* principle applies broadly: “[A] public official or election official *may not* create, alter, modify, waive, or suspend any election standard, practice, or procedure mandated by law or rule in a manner not expressly authorized by this code.” Tex. Elec. Code § 276.019; see also Act of Sept. 1, 2021, 87th Leg., 2d C.S., ch. 1 (S.B. 1), § 7.04, eff. Dec. 2, 2021.

The Election Code nowhere “expressly authorize[s]” the County to hire a third-party contractor to mass mail unsolicited voter registration forms. To the contrary, it specifically provides that election authorities “shall furnish forms in a reasonable quantity *to a person requesting them* for the purpose of submitting or filing the document or paper.” Tex. Elec. Code § 1.010(b) (emphasis added). Although the

⁶ See, e.g., Emma Platoff, *Harris County Can’t Send Mail-In Ballot Applications to All Registered Voters, Texas Supreme Court Rules*, Tex. Tribune (Oct. 7, 2020), <https://perma.cc/VN8H-8X7P>; Ashley Killough & Veronica Stracquarlursi, *Texas Supreme Court Rules Harris County Cannot Mail Out Ballot Applications to All Registered Voters*, CNN (Oct. 7, 2020), <https://perma.cc/6PSK-C786>.

County Commissioners Court may vote to compensate volunteer registrars for their incidental expenses, *id.* § 13.037, only individuals who are themselves eligible to vote may serve in such a capacity, *id.* § 13.031(d)(3). Entities such as CGS are not eligible to vote in Texas. *Id.* § 13.008. And it is a crime to pay CGS performance-based compensation for registering voters. *Id.* § 13.008; *accord id.* § 13.031 (allowing the appointment of “volunteer deputy registrar[]” in order “[t]o encourage voter registration”). Taken together, counties may furnish voter registration forms to those who “request” them—and may even conduct volunteer voter-registration drives—but they may not “alter” or “modify” that “practice or procedure” by hiring a private contractor to mass mail *unrequested* forms because such a “practice” is not “expressly authorized by” the Election Code. *See id.* § 276.019.

b. The County makes four efforts to justify its actions, none of which has merit. *First*, the County has primarily pointed to an administrative rule that long predates both *Hollins* and Section 276.019. Specifically, in an administrative rule promulgated in 1995 and amended in 2010, the Secretary of State stated that “efforts to increase the number of registered voters in the county are payable with Chapter 19 funds,” and that “voter registration drive efforts include but are not limited to mailouts of applications of households, insertion of applications into newspapers, distributing applications at public locations, and other forms of advertising.” 1 Tex. Admin. Code § 81.25(a)-(b). But that provision does not and cannot authorize the County to take actions not otherwise authorized in the Election Code.

By its terms, Section 82.25 *does not* authorize any unsolicited voter-registration efforts. To the contrary, it provides that voter-registration authorized by

“Applicable Sections of the Texas Election Code” are “payable” with certain funds. *Id.* § 81.25(a). True, it refers to “mailouts of applications to households,” *id.* § 81.25(b), but it does not specify whether such mailouts must be solicited or unsolicited, *see id.* And tellingly, it specifically provides that “Chapter 19 funded registration drives must not promote a particular party.” *Id.* § 81.25(d).

More fundamentally, an administrative rule *cannot* give the County the power to mass mail unsolicited voter applications. As the Supreme Court explained, “[b]efore a county official can take any action, that action’s legal basis must be grounded ultimately in the constitution or statutes.” *Hollins*, 620 S.W.3d at 404. It is a bedrock principle of administrative law that “an agency’s rules must be consistent with the laws of this state.” *Dallas Cnty. Bail Bond Bd. v. Stein*, 771 S.W.2d 577, 580 (Tex. App.—Dallas, writ denied) (citing *Gerst v. Oak Cliff Sav. & Loan Ass’n*, 432 S.W.2d 702, 706 (Tex. 1968)); *see also R.R. Comm’n of Tex. v. Lone Star Gas Co., a Div. of Enserch Corp.*, 844 S.W.2d 679, 685 (Tex. 1992). And regardless of what the laws of the State permitted when the Secretary promulgated Section 81.25 in 1995, 20 Tex. Reg. 5841—or amended it in 2010 for that matter, 35 Tex. Reg 11569—in 2021, the Legislature forbade any “public official or election official” from “creat[ing], alter[ing], modify[ing], waiv[ing], or suspend[ing] any election standard, practice, or procedure mandated by law or rule in a manner not expressly authorized by *this code*.” Tex. Elec. Code § 276.019 (effective Dec. 2, 2021) (emphasis added). “This code”—meaning the Election Code—does not authorize mass mailing of election forms but instead authorizes election officials to “furnish forms in a reasonable

quantity to a person requesting them for the purpose of submitting or filing the document or paper.” *Id.* § 1.010(b) (emphasis added).

Second, the County has tried to fill that gap by pointing to a constitutional provision stating that a county commissioners court “shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed.” Tex. Const. art V, § 18(b) (emphasis added); App.69. But a legal instrument empowering—or forbidding—a particular entity to perform such a function is an “empty vessel” where that function was never authorized in the first instance. *State v. Zurawski*, 690 S.W.3d 644, 659 (Tex. 2024); accord *In re City of Georgetown*, 53 S.W.3d 328, 332 (Tex. 2001) (explaining that such an “other law” provision takes its content from external sources of authority). Here, the Legislature has *not* conferred the power to conduct a mass mailing of unsolicited voter registration applications in the Election Code, and it has expressly forbidden a county from creating or modifying any election practice not in the Election Code.

Third, the County has suggested that it has the implied authority to conduct a mass mailing because it has “broad discretion to accomplish the purposes intended.” App.69-70. *Hollins* said the opposite—applying a century of precedent, it unequivocally stated that a county has only the powers granted to it in “express words,” powers “necessarily or fairly implied in or incident to those powers expressly granted,” or powers “essential to the accomplishment of the [Legislature’s] declared objects and purposes”—“not simply convenient, but indispensable.” *Hollins*, 620 S.W.3d at 406. And it reiterated that “[a]ny fair, reasonable, substantial doubt concerning the existence of power is resolved by the

courts against the [county] and the power is denied.” *Id.* Far from abrogating that conclusion, the Legislature confirmed it in 2021. *See* Tex. Elec. Code § 276.019. Although the Texas Legislature has encouraged (and continues to encourage) eligible citizens to register to vote, the County can point to no statute to which mass mailing of unsolicited voter registration applications to residents regardless of their eligibility is “indispensable.” *Id.*

Fourth, the County has tried to excuse its disregard of both the Election Code and *Hollins* based on a mistake or misinterpretation of the law. That is wrong. *See* App.67-68, 70. “[A] public officer generally lacks discretion or authority to misinterpret the law,” and it is ultra vires for a state official “allegedly exceeding his granted authority to interpret and apply a law.” *Hall*, 508 S.W.3d at 241. True, “[w]hen the ultimate and unrestrained objective of an official’s duty is to interpret collateral law, a misinterpretation is not overstepping such authority; it is a compliant action even if ultimately erroneous.” *Id.* at 242. But here, the County has been given no authority to interpret election law. That duty falls to the Attorney General, Tex. Const. art. IV, § 22 (empowering the Attorney General to issue advisory opinions); the Secretary of State, Tex. Elec. Code § 31.003 (empowering the Secretary of State to issue “detailed and comprehensive” advisories “based on this code and the election laws outside this code”); and ultimately the Courts, *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) (“It is emphatically the province and duty of the judicial department to say what the law is.”); *see Hollins*, 620 S.W.3d at 403. In disregarding the instructions of at least two of those authorities in favor of its own preferred policy, the County has taken actions that were

“unauthorized”; its officials “shed the cloak of the sovereign and act[ed] ultra vires.” *Hall*, 508 S.W.3d at 243.

Fifth, most recently, the County has asserted that because a federal law, the National Voter Registration Act (NVRA), requires that the Chief Election Officer of Texas make available voter registration forms, they have the ability to send out a mass mailing of those forms. App.141. But the provision of the NVRA to which the County points merely states that “the chief State election official of a State shall make [voter registration forms] available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.” 52 U.S.C. § 20505(b); App.141. In Texas, the chief State election official is the Secretary of State. But that provision nowhere requires Secretary to empower a specific local government entity such as a county to send out unsolicited voter registration forms. Indeed, it is far from clear how the County thinks the federal government has the authority to change the division of power between the State and its counties, which are after all, “subordinate and derivative branch[es] of state government.” *Avery*, 406 S.W.2d at 426; *see* Tex. Const. art. IX, § 1; *id.* art. XI, § 1. To the contrary, it is the State’s sovereign prerogative to organize its government as it chooses. And Texas has chosen that as a political subdivision, the County “possess[es] only such powers and privileges” as the State confers upon it. *Wasson Ints.*, 489 S.W.3d at 430; *e.g.*, *Quincy Lee Co.*, 602 S.W.2d at 264

For the reasons explained above, neither the Legislature nor the Secretary has conferred the power to engage in such a mass mailing, and the County’s suggestion that 1 Tex. Admin Code § 81.25 delegates that authority does not alter that

conclusion because that provision is no longer good law as applied to the facts of this case (if it ever meant what the County asserts).

2. The County violated the County Purchasing Act.

The County compounded this error by violating the County Purchasing Act in executing the CGS contract without following the Act's required competitive-bidding procedures. The County cannot evade that conclusion by asserting (incorrectly) that the State lacks standing to enforce its own statute.

a. The County violated the County Purchasing Act.

Under the County Purchasing Act, before a county may purchase “items” under a contract that will require spending \$50,000 or more, the commissioners court must comply with competitive bidding or other statutorily-proscribed procedures, Tex. Loc. Gov't Code § 262.023(a)(1), absent an applicable exception, *see id.* § 262.024. Here, the County does not claim that it complied with those procedures. Instead, it entered a notice in its Commissioners Court minutes asserting that it was excused from those requirements under the statutory exception for “an item that can be obtained from only one source,” including “items for which competition is precluded because of the existence of . . . secret processes.” *Id.* § 262.024(a)(7)(A); App.11. But the process of voter-registration is heavily regulated in Texas to ensure multiple sources of voter registration. *Supra* p.14-15. And if CGS is indeed using some other, secret process, it is illegal. *See, e.g.,* Tex. Elec. Code § 13.005 (making it a class-B misdemeanor to “act as an agent for an applicant” in circumstances not authorized by the Election Code); *id.* § 13.006 (making it a third-

degree felony if that agent completes or signs the application without authorization); *id.* § 13.044 (making it a class-C misdemeanor to purport to perform the duties of a deputy voter registrar without proper appointment).

Nevertheless, in a memo submitted to the County to obtain the contract, CGS stated that it employs a “proprietary database and proprietary methodologies” to identify unregistered voters. App.11. But even a cursory review of the “unique sources” CGS identifies to compile that putatively “proprietary” database shows they are all public—namely, “colleges and universities, professional license holders, public employees,” and “open records requests.” App.11. Respectfully, obtaining publicly available information by using methods such as public information requests is, by definition, not a “secret” process. *E.g.*, *Secret*, Websters Third International Dictionary 2052 (2002 ed.) (defining secret as “kept from knowledge or view,” or an “unexplained or inscrutable process or fact”).

The County has contended that “CGS represented” to its purchasing agent that the company “had developed its own proprietary database and proprietary methodologies to identify eligible voters in Bexar County who are unregistered” and that the purchasing agent determined that CGS met the sole-source exception. App.73. It then contends that a trial court may only review the County’s decision to use that exception for an abuse of discretion. App.73-74. But a trial court “abuses its discretion when it misinterprets or misapplies the law.” *In re Millwork*, 631 S.W.3d 706, 711 (Tex. 2021). And the *point* of the County Purchasing Act is to test whether a contractor’s assertion that it “offers a service not offered by any other entity,” App.11, is truth or puffery.

As one court explained, interpreting an exception to the competitive bidding requirement for health and safety, to “simply accept the city’s ipse dixit that its . . . policy is necessary for the health and safety of [its] residents would . . . eviscerate Texas’s requirement that City expenditures . . . be competitively bid.” *Davray, Inc. v. City of Midlothian*, No. Civ. A. 3:04-CV-0539-B, 2005 WL 1586574, at *11 (N.D. Tex. July 6, 2005). “In such a case nothing could stop a municipality from simply declaring all of its expenditures as ‘necessary’ for the public health and safety.” *Id.* Rather, when a political subdivision wishes to “escape the competitive bidding scheme,” it “must produce some evidentiary basis for its actions.” *Id.* CGS has not provided such evidence.

b. The State has standing to sue under the County Purchasing Act.

The County cannot avoid the conclusion that its actions were unlawful by arguing that the State lacks standing to enforce the County Purchasing Act, which states that “any property tax paying citizen of the county may enjoin performance under a contract made by a county in violation of this subchapter.” Tex. Loc. Gov’t Code § 262.033. *Contra* App.72. To the extent Section 262.033 has anything to do with standing (which is questionable), it is *statutory* standing—a “label [that] can be ‘misleading’” because it addresses “considerations that do not implicate subject-matter jurisdiction.” *Pike v. Tex. EMC Mgmt., LLC*, 610 S.W.3d 763, 773-74 (Tex. 2020) (quoting *Lexmark Int’l Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 & n.4 (2014)). That is, Texas law does not casually assume that a private individual can sue to enforce a statutory mandate. *See Tex. Med. Res., LLP v. Molina Healthcare*

of *Tex., Inc.*, 659 S.W.3d 424, 431 (Tex. 2023) (citing *Brown v. De La Cruz*, 156 S.W.3d 560, 563 (Tex. 2004)). Section 262.033 fills that gap by allowing taxpayers to sue, but it does not otherwise displace the well-established principles that allow this lawsuit.

Most fundamentally, the State does not need a legislatively-created right of action. As the Supreme Court reiterated in *Hollins*, “[a]s a sovereign entity, the State has an intrinsic right to . . . enforce its own laws.” 620 S.W.3d at 410 (quoting *Naylor*, 466 S.W.3d at 790). Absent a contrary legislative rule, one method by which it may do so is to bring an ultra vires action, *id.*, a cause of action created by the common law which “requires a plaintiff to allege, and ultimately prove, that the officer acted without authority,” *Hall*, 508 S.W.3d at 238.

In arguing to the contrary, the County incorrectly conflates the existence of such a cause of action with standing, which it insists is “conferred by statute.” *Contra* App.72. But “[s]tanding is a constitutional perquisite to suit.” *Heckman*, 369 S.W.3d at 150. “The requirement in this State that a plaintiff have standing to assert a claim derives from the Texas Constitution’s separation of powers among the departments of government, which denies the judiciary authority to decide issues in the abstract, and from the Open Courts provision, which provides court access only to a ‘person for an injury done to him.’” *Sw. Bell Tel. Co. v. Mktg. on Hold Inc.*, 308 S.W.3d 909, 915 (Tex. 2010).

Here, the State has an injury sufficient to establish standing to bring its County Purchasing Act claim because “ultra vires conduct automatically results in harm to the sovereign as a matter of law.” *Hollins*, 620 S.W.3d at 410. That is because the

ultra vires “tool would be useless . . . if the State were required to demonstrate additional, particularized harm arising from a local official’s specific unauthorized actions.” *Id.* The lower court cases upon which the County relies, *see* App.72-73, all predate *Hollins*. Thus, they were decided without the benefit of the Supreme Court’s unequivocal, unanimous holding that the State has not just a cause of action but a “justiciable interest in its sovereign capacity in the maintenance and operation of its municipal corporations in accordance with law.” *Hollins*, 620 S.W.3d at 410. Where “those laws are being defied or misapplied by a local official, an ultra vires suit is a tool to reassert the control of the state.” *Id.* Here, the State has properly invoked that power to police both the limits on the County’s authority under the Election Code and its affirmative obligations to comply with the County Purchasing Act. To the extent the trial court held otherwise, that was a clear abuse of discretion.

II. Temporary Relief Is Necessary to Prevent Multiple Irreparable Harms.

Temporary relief against the County’s unlawful actions is necessary to prevent at least three irreparable harms: harm to the State’s sovereign interest in the enforcement of its laws, harm to the status quo, and harm to this Court’s and the Texas Supreme Court’s jurisdiction to assess the legality of the CGS contract.

A. Absent temporary relief, Texas will suffer a sovereign injury that outweighs any injury to the County.

To start, the State is entitled to a temporary order to prevent violations of the Election Code and County Purchasing Act. “As a sovereign entity, the State has an intrinsic right to enact, interpret, and enforce its own laws.” *Naylor*, 466 S.W.3d at

790. “The ‘inability [of a State] to enforce its duly enacted [laws] clearly inflicts irreparable harm on the State.’” *Tex. Ass’n of Bus. v. City of Austin*, 565 S.W.3d 425, 441 (Tex. App.—Austin 2018, pet. denied) (quoting *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018)). As the Supreme Court explained in *Hollins*, because a sovereign injury by a party with governmental immunity “cannot be adequately compensated,” the only available remedies “are injunctive and declaratory relief.” 620 S.W.3d at 410 (quoting *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 2004 (Tex. 2002)). “The sovereign would be impotent to ‘enforce its own laws’ if it could not temporarily enjoin those breaking them pending trial”—particularly in an election context where bells cannot be unrung. *Id.* For the reasons explained above, the County has violated, and will continue to violate, the Election Code and County Purchasing Act absent a temporary order and thereby continue to inflict irreparable harm upon the State.

That principle applies even if the only remedy that is left to the State is to enjoin payment on this unlawful contract. As the Texas Supreme Court recently held in a case involving another county attempting to give money away to certain residents, “[o]nce the funds are distributed to individuals,” they often “cannot feasibly be recouped if it is later determined they were paid in violation of the Texas Constitution.” *In re State*, 2024 WL 2983176, at *5. The same is true here. Once the County pays CGS, those funds cannot be recouped in an ultra vires action even if it is later determined that such payments violated Texas law. Moreover, other counties that are contemplating similar contracts with other entities—if not CGS itself—will be emboldened to flout the Texas Supreme Court, the Legislature, and their own

obligations to carry out their statutory duties in good faith. *Cf. In re Stetson Holdings, Inc.*, 658 S.W.3d 292, 297 (Tex. 2022) (“Like all citizens, government officials should follow the law *because it is the law* . . .”).

By contrast, the County will suffer no harm by being prevented from making payments or otherwise continuing to perform the contract. The “county is not harmed by being required to follow” the law. *In re State*, 2024 WL 2983176, at *5. “Requiring the government to follow the law benefits everyone.” *Id.* Nor is any harm to CGS, a private company, relevant because it entered into and voluntarily performed a contract knowing that the contract was likely illegal. App.3-4. And it has been the law for over a century, based on a “great number of cases,” that “where a transaction is had with knowledge, purpose, and effect to aid another in the commission of an unlawful act, a consideration founded upon such transaction cannot be enforced.” *Hayes v. G.A. Stowers Furniture Co.*, 180 S.W. 149, 152 (Tex. App.—El Paso 1915, no writ); *see also, e.g., Anheuser-Busch Brewing Ass’n v. Houck*, 30 S.W. 869, 870 (1895); John W. Wade, *Benefits Obtained Under Illegal Transactions-Reasons for and Against Allowing Restitution*, 25 Tex. L. Rev. 31, 32 (1946) (explaining that courts frequently do not allow restitution even following partial performance of an illegal contract).

B. Temporary relief will maintain the status quo.

The status quo is defined as “the last, actual, peaceable non-contested status which preceded the pending controversy.” *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004). Here, that means that the contract remains at least partially unperformed. If the County were allowed to make payments or otherwise continue to perform the

contract, then prospective relief in an ultra vires suit could not undo those acts. Under such circumstances, the Supreme Court has stated that the status quo “should remain in place while the court of appeals, and potentially this Court, examine the parties’ merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought.” Order at 1, *In re Abbott*, No. 21-0720 (Tex. Aug. 26, 2021).

C. Temporary relief will protect the Court’s jurisdiction.

Finally, temporary relief is warranted to protect the Court’s jurisdiction in any future temporary injunction appeal in this case. *See Geomet*, 578 S.W.3d at 90. Once again *Hollins* is instructive. There, the Texas Supreme Court forbade Harris County from mass-distributing unsolicited mail-in ballot applications to preserve its jurisdiction to resolve the State’s claim that such distribution was unlawful. Order, *In re State of Texas*, No. 20-0715 (Tex. Sept. 15, 2020). Similarly, in *In re TEA*, 619 S.W.3d 679 (Tex. 2021) (orig. proceeding), the Texas Supreme Court held that it was appropriate to issue temporary orders to prevent the installation of a board of managers in the Houston Independent School District, *id.* at 681-82. Doing otherwise would have risked mooted the underlying dispute because the Court could never have reached the legal merits. *Id.* at 688-89, 692.

Similar relief is appropriate here. “[T]he only remedies available in an *ultra vires* action are injunctive and declaratory relief.” *Hollins*, 620 S.W.3d at 410. Due to the County’s bad-faith litigation conduct, *supra* p.5-6, the Court’s ability to afford relief is already limited because the Court cannot un-mail thousands of pieces of correspondence. Unless the Court issues a temporary order, the Court will be

entirely precluded from issuing adequate prospective injunctive relief in the future — thereby implicitly blessing the County’s ultra vires conduct in this suit.

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PRAYER

The Court should grant emergency temporary relief prohibiting the Defendants and their agents from further performing any aspect of the CGS contract, including making payments under it, during the pendency of this appeal. Because the County could make payments under the unlawful contract at *any time*, **the State requests a ruling as soon as possible. The State also requests an administrative stay while the Court considers this motion.**

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
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/s/ Lanora C. Pettit
LANORA C. PETTIT
Principal Deputy Solicitor General
State Bar No. 24115221
Lanora.Pettit@oag.texas.gov

BENJAMIN WALLACE MENDELSON
Assistant Solicitor General

Counsel for Appellant

CERTIFICATE OF CONFERENCE

I certify that on September 16, 2024, Appellant's counsel contacted Larry Roberson, counsel for Appellees, and notified them that this emergency motion for a temporary order would be filed. Appellees are presumed opposed.

/s/ Lanora C. Pettit

LANORA C. PETTIT

CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this document contains 7,591 words, excluding exempted text.

/s/ Lanora C. Pettit

LANORA C. PETTIT

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APP. 1: ATTORNEY GENERAL LETTER TO BEXAR COUNTY

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KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 2, 2024

Peter Sakai
Bexar County Judge
CountyJudge@bexar.org

Rebeca Clay-Flores
Precinct 1 Commissioner
CommissionerPct1@bexar.org

Justin Rodriguez
Precinct 2 Commissioner
precinct2commissioner@bexar.org

Grant Moody
Precinct 3 Commissioner
CommissionerPct3@bexar.org

Tommy Calvert
Precinct 4 Commissioner
tc@bexar.org

Judge Sakai and Bexar County Commissioners:

I write today concerning the proposal slated for consideration at your commissioners court meeting this Tuesday to spend hundreds of thousands of taxpayer dollars to mail unsolicited voter registration applications to an untold number of Bexar County residents regardless of whether those residents have requested such an application or are even eligible to vote. At best, this proposal is ill-advised because it potentially confuses residents of Bexar County about whether they are eligible to vote. At worst, it may induce the commission of a crime by encouraging individuals who are ineligible to vote to provide false information on the form. Either way, it is illegal, and if you move forward with this proposal, I will use all available legal means to stop you.

According to the September 3, 2024, agenda for the Bexar County Commissioners Court, the Court is considering hiring a company to perform services for the County that the County is unauthorized to perform. Item 66 on the agenda reads:

66. Discussion and appropriate action regarding granting a discretionary exemption to the competitive bidding requirements set forth in the Texas County Purchasing Act for the

purpose of awarding a purchase order to Civic Government Solutions, LLC to print and mail State Voter Registration Forms, with postage paid return envelopes, to unregistered voters in location(s) based on targeting agreed to by the County, to include data and reporting in the amount of \$392,700, on a discretionary exemption basis, in accordance with Texas Local Government Code § 262.024(7)(a), as requested by Commissioners Court; and authorizing the Purchasing Agent to execute contract and file the appropriate award documents for record.

Because Bexar County has no authority to “print and mail State Voter Registration Forms, with postage paid return envelopes, to unregistered voters in location(s),” such a proposal is *ultra vires*.

Bexar County only has authority granted to it by law and can take no action without a grant of legal authority. Nothing in Texas law gives counties the power to “print and mail State Voter Registration Forms, with postage paid return envelopes, to unregistered voters” who have not requested such forms. Nor does Texas law authorize Bexar County to grant a discretionary exemption to the competitive bidding requirements set forth in the Texas County Purchasing Act section 262.024(7). That section only applies to an “item that can be obtained from only one source.” But registering voters is a service, not an “item” —a service which is provided by numerous entities and people from the Secretary of State to volunteer deputy registrars.¹

When Harris County similarly attempted in 2020 to send applications to vote by mail to every registered voter in the county—whether they asked for an application or not, and whether they were eligible to vote by mail or not—I sued Harris County and won. *State v. Hollins*, 620 S.W.3d 400 (Tex. 2020). Citing a century of precedent, the Court held that “[w]hile the [Election Code] does not prohibit mass mailings,” Harris County’s actions were nonetheless unlawful because “it expressly contemplates that ballot applications are requested by voters.” *Id.* at 408. And it emphasized that “[a]ny reasonable doubt must be resolved against an implied grant of authority” to the County. *Id.* at 409. Because the same can be said for mass mailings of voter registration applications, I am confident the courts will agree with me that your proposal exceeds your authority.

Your proposal is particularly troubling this election cycle. In any year, there are numerous individuals within Texas who are not eligible to register to vote—for example, because they have been finally convicted of a felony. This year that concern is magnified because as you are aware, the Biden-Harris administration’s open border policies have saddled Texas—and the entire country—with a wave of illegal immigration that has resulted in ballooning noncitizen populations across our State. It is more important than ever that we maintain the integrity of our voter rolls and ensure only eligible voters decide our elections. Your proposal does the opposite by indiscriminately inviting county residents to register to vote regardless of their eligibility. I urge you to abandon this proposal. If you do not, I will see you in court.

¹ To the extent Civic Government Solutions, LLC has promised a certain level of results in return for \$392,700 of Bexar County taxpayers’ money, the proposed illegal purchase order may also violate section 13.008 of the Election Code, which makes it a class A misdemeanor to pay for and accept compensation for voter registrations.

For Texas,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON
Attorney General

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**APP. 2: CGS MEMORANDUM PRESENTED TO BEXAR
COUNTY**

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Item Number: _____
(for Comm Ct use only)

AGENDA COORDINATION FORM

Bexar County Commissioners Court

Type of Agenda Item (Choose one): Ceremonial <input type="checkbox"/> Special Presentation <input type="checkbox"/> Time Certain <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Individual <input type="checkbox"/>			
Sponsoring Office/Department: <u>Purchasing Department</u>		Recipient Agency / Individual Name: <u>Commissioners Court</u>	
Contact Person: <u>Thomas Guevara</u>	Phone Number: <u>210-335-0180</u>	Court Date Requested: <u>August 20, 2024</u>	
Presenter: <u>Patricia Torres, Purchasing Agent</u>	Phone Number: <u>210-335-2291</u>	Deadline for Action: <u>August 20, 2024</u>	
Audio / Visual Presentation: Y <input type="checkbox"/> N <input checked="" type="checkbox"/> PowerPoint? Y <input type="checkbox"/> N <input checked="" type="checkbox"/>		ADA Assistance Required (type): <u>N/A</u>	
Official/Department Head Signature: <u>Patricia Torres</u>		Small, Minority, Women-owned Business Enterprise (SMWBE): Impact: Y <input type="checkbox"/> N <input checked="" type="checkbox"/>	

CAPTION:

Granting a discretionary exemption to the competitive bidding requirements set forth in the Texas County Purchasing Act for the purpose of awarding a purchase order to Civic Government Solutions, LLC to print and mail State Voter Registration Forms, with postage paid return envelopes, to unregistered voters in location(s) based on targeting agreed to by the County, to include data and reporting in the amount of \$392,700.00, on a discretionary exemption basis, in accordance with Texas Local Government Code §262.024, as requested by Commissioners Court; and authorizing the Purchasing Agent to execute contract and file the appropriate award documents for record.

ESTIMATED PRESENTATION TIME: None

BACKGROUND:

This action includes (i) granting an exception to the Texas County Purchasing Act under Discretionary Exemptions for the purpose of awarding a purchase order on a sole source basis for the purchase of an item that can be obtained from only one source, and (ii) to print and mail State Voter Registration Forms, with postage paid return envelopes, to unregistered voters in location(s) based on targeting agreed to by the County. Provide the County with a non-transferable, non-sublicensable license to use Contractor Data and Third-Party Data used to identify the targets necessary to perform the Services. To include providing the County access to a dashboard containing ongoing mail tracking and conversion analytics for VR applications mailed to prospective voters, updated once per business day, including individual barcode tracking data and updates on successful registration, where available.

This action is recommended in accordance with Local Government Code Chapter 262, Subchapter C, §262.024, (a)(7)(a) providing for discretionary exemptions where an item can be obtained from only one source, therefore exempt from competitive bidding.

RECOMMENDED MOTION:

Granting a discretionary exemption to the competitive bidding requirements set forth in the Texas County Purchasing Act for the purpose of awarding a purchase order to Civic Government Solutions, LLC to print and mail State Voter Registration Forms, with postage paid return envelopes, to unregistered voters in location(s) based on targeting agreed to by the County, to include data and reporting in the amount of \$392,700.00, on a discretionary exemption basis, in accordance with Texas Local Government Code §262.024, as requested by Commissioners Court; and authorizing the Purchasing Agent to execute contract and file the appropriate award documents for record.

Local Government Code §262.024, as requested by Commissioners Court; and authorizing the Purchasing Agent to execute contract and file the appropriate award documents for record.

FISCAL ASSESSMENT: APPLICABLE

Yes ☒

No ☐

Fiscal Note ☐

1	Is this a revenue or expense?	Revenue <input type="checkbox"/>	Expense <input checked="" type="checkbox"/>
2	Dollar amount of revenue or expense associated with item?	\$392,700	
3	Is this a budgeted revenue or expense?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
4	Does this item require additional staff?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
5	Will this increase your current budget?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
6	Impact on future Budget? If Yes, Explain in Comments.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
7	Current End-of-Year Expenditure Estimate-for impacted Object	\$1,551,829	
8	If an expense, what is the current Object Code budget amount?	\$1,378,000	
9	If an expense, are sufficient funds currently budgeted in the Object Code?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
10	If an expense, are sufficient funds currently budgeted in the Appropriation Unit?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
11	List impacted offices or departments or note if countywide:	Non-Departmental	
12	Fund number:	100: General Fund	
13	Org number:	9999: Non-Departmental	
14	Object Code number:	52485: Special Services	
15	If this is a grant, what is the estimated amount of program income?		
16	If this is a grant, what is the amount of Grantor funding?		
17	If this is a grant, what is the required County cash match?		
18	If this is a grant, what is the required County in-kind/allocation		
19	If this is a grant, was item approved by the Grant Review	Yes <input type="checkbox"/>	No <input type="checkbox"/>
20	Comment: This item is unbudgeted. However, sufficient savings exist in the General Government Operational Expenses appropriation budget to offset this cost.		
21	Coordinated by: <u>Thomas Guevara</u> Verified By: <u>Christina Mendoza (8/27/2024)</u>		



**BEXAR COUNTY
PURCHASING DEPARTMENT**

1103 S. Frio Street, Purchasing Suite * San Antonio, Texas * 78207
Patricia Torres, CTCD, CTCM
County Purchasing Agent

Date: August 20, 2024

To: Bexar County Commissioner Court
Bexar County Texas

Subject: Sole Source Purchase Notification – Civic Government Solutions, LLC

This notice is to inform you that the sole source purchase of printing and mailing State Voter Registration Forms, with postage paid return envelopes, to unregistered voters in location(s) based on targeting agreed to by the County, to include data and reporting is made in accordance with Local Government Code 262.024 (a)(7)(a) providing for discretionary exemptions where an item can be obtained from only one source, therefore exempt from competitive bidding. This purchase is made at the request of the Bexar County Commissioners Court.

This notice is submitted pursuant to the Local Government Code Subchapter C, §262.024, (a)(7)(a) and is to be entered in Commissioners Court minutes providing for the purchase of printing and mailing State Voter Registration Forms, with postage paid return envelopes, to unregistered voters in location(s) based on targeting agreed to by the County, to include data and reporting from Civic Government Solutions, LLC pursuant thereto.

Patricia Torres

Patricia Torres
County Purchasing Agent



To: Patricia Torres, Bexar County Purchasing Agent
From: Civic Government Solutions
Date: August 1, 2024
Re: Bexar County Voter Registration Activities

As requested by your July 31, 2024 email, this memorandum explains why Civic Government Solutions meets the criteria for a "sole source" exemption under Texas Local Government Code Section 262.024(a)(7). If you have questions or desire additional information, please contact our team at the email address or phone number provided below.

Civic Government Solutions Overview

Civic Government Solutions (CGS) is a specialized company that assists local governments in engaging citizens through voter registration and civic participation. CGS has a well-established reputation for developing and implementing tools and techniques that help local, state, and federal agencies enhance the effectiveness of voter outreach and registration efforts, while saving public time and money. CGS's services are uniquely tailored to meet the strategic goals of governmental entities seeking to boost participation in a cost-effective manner, including by leveraging proprietary data, specialized expertise, and advanced technology that make it the only source for the provision of its particular services. Learn more at civicsgs.com.

Legal Background

Under Texas Local Government Code Section 262.024, counties are permitted to exempt certain contracts from the typical competitive bidding process if the commissioners court determines that an item or service "can be obtained from only one source." The Texas Supreme Court has long affirmed the importance of this type of exception. As the Court has explained, counties must be able to procure the "skill, experience, [and/or] technical knowledge" necessary for important public projects where "technical skill and experience of a high degree" are critical for the competent, trustworthy execution of that project. *Stephens County v. J.N. McCammon, Inc.*, 122 Tex. 148, 155 (1932). Accordingly, identifying sole source



providers is “peculiarly a matter for the sound discretion of the County Commissioners.” *Hayden v. Dallas County*, 143 S.W.2d 990, 994 (Tex. Civ. App. 1940).

CGS Meets the Criteria for a Sole Source Exemption

Section 262.024(a)(7) identifies several non-exclusive examples of criteria under which a county may deem an item or service eligible for a “sole source” exception, including “(A) items for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies.” CGS meets the criteria for a sole source exemption for multiple reasons.

1. Proprietary Data and Unique Service Offerings

CGS employs a proprietary database and proprietary methodologies to identify unregistered but eligible voters. Every month, CGS identifies and adds potential voter information to its database to maintain the most comprehensive unregistered voter database available. CGS's proprietary data set identifies millions of potential voters from unique sources like colleges and universities, professional license holders, public employees like teachers, and countless other sources that provide a robust picture of movement across the country. CGS has a dedicated team that does tens of thousands of open records requests across the country to amass a proprietary combination of data sources that is specifically designed to identify unregistered but eligible voters.

CGS's ability to access and integrate these diverse data sources, combined with its proprietary methodologies, including market research and voter registration best practices, allows it to provide a holistic picture of the unregistered voter population, including individuals that do not appear in the typical government data sources, and effectively reach that population in a way that integrates seamlessly with local government operations. This is a service that is not offered by any other entity and which no other entity is positioned to offer in the near future.

The proprietary methodologies and unique data sources align with the exemptions provided under Sec. 262.024(a)(7)(A), where competition is precluded by the existence of secret processes.



2. Lack of Market Availability or Comparable Competitors

CGS is the sole provider offering this specific voter registration service tailored to the needs of local governments. The team at CGS includes professionals with specialized knowledge in data science, voter registration, voting and public information law, public outreach, and mailing logistics. This expertise allows CGS to tailor its services to the specific needs of a local government entity, ensuring that the voter registration efforts are not only compliant with legal standards but also strategically designed to maximize voter participation. No other potential contractor has been identified that provides a similar service with the same level of specialization or a comparable proprietary data set.

This unique combination, along with the proprietary data sources and matching processes, positions CGS as the only company capable of delivering this specific service. "To hold that contracts for this kind of work must be let to the lowest bidder would inevitably result in the county being placed in a position which would require it to accept the services of incompetent persons," a result that the legislature "never intended." *Stephens County*, 122 Tex. at 155.

Conclusion

Based on the proprietary nature of CGS's data and services, the lack of comparable competitors, and the specialized expertise they offer, Civic Government Solutions clearly meets the criteria for a sole source exemption under Texas Local Government Code Section 262.024(a)(7).

Thank you so much for inviting CGS to provide this information. If you have questions or desire additional information, please do not hesitate to contact our team.

Civic Government Solutions
5473 Blair Road
Suite 100, PMB 39556
Dallas, TX 75231
512-688-6417 // operations@civicgs.com

SCOPE OF SERVICES

Contractor will provide the County the Services as described below.

1.0 Services Provided:

- Contractor will print and mail State Voter Registration Forms, with postage paid return envelopes, to unregistered voters in location(s) listed below, based on targeting agreed to by the County. The first effort will involve:
 - Number of Forms: Approximately 210,000 forms and component envelopes to newly identified residents
 - The number of targets provided in this Order Form is an estimate only. The final number of mailers sent may vary based on a number of factors during program execution, such as postal delivery errors. Any difference between the number quoted here and the total number of targets mailed will not be refunded from the cost of the project unless it is greater than 5% of the original estimate.
 - Location(s): Across Bexar County, TX
- Subsequent efforts will occur approximately quarterly, with the approval of the County on specific dates to adapt to relevant election timetables. These quarterly mailings will involve:
 - Number of Forms: Future efforts are estimated to involve ~15,000 - 20,000 forms and component envelopes to newly identified residents
 - This number is subject to change based on what actually occurs with residents arriving to the county or aging into the electorate each future quarter. For anything greater than 20,000 forms, Contractor will seek County approval.
 - Location(s): Across Bexar County, TX
- Contractor will include a 2-sided color letter from the County with language and materials provided by the County.
 - Upon finalization of format and/ or content, Contractor will provide County with a final sampler (State Voter Registration Form, letter, container envelope, and any other enclosed documents) that a targeted, unregistered resident will receive.
 - County is responsible for providing content approval within 10 days following execution of this agreement to ensure timely delivery. Timelines can be adjusted per County needs.
 - County is responsible for providing logo files for printing before production runs can begin.
 - Upon mailing of forms and component envelopes to newly identified residents, Contractor will provide the County with a list of all newly identified residents set to receive these documents. Format of the list must be in either Comma Separated Value (CSV) or Microsoft Excel spreadsheet format.

- County office Logos can be applied to envelopes at the discretion of the County.
- USPS IV-MTR Tracking enabled for precise measurement and accountability (see reporting section below).
- Data is provided from a pool of known, unregistered residents identified across public records as having recently moved to the county. Data will be randomized by Contractor to allow scientific measurement of the program's effectiveness and avoid any biases in the selection of who receives the communications.
- Services will be provided in the following three terms:
 - The Initial Onboarding Term will consist of the above steps of data acquisition, licensing, analysis, and selection; design with the County's approval; and content approval by the County of all language communicating to County residents.
 - The Printing and Mailing Term will consist of the steps of paper acquisition, shipping, printing, Quality Assurance, and mailing by the US Postal Service.
 - The Reporting Term will consist of provisioning a data-based dashboard (see Reporting section 3.0 below) to provide ongoing mail tracking, success analytics, and a final comprehensive analysis of the program's impacts made available in the months after mail has been sent once Texas voter-level election results are released, acquired by Contractor, and analyzed by Contractor.
- Contractor will execute a full production and delivery timeline within 3 weeks of County's payment of the Initial Term invoice and content approval. In the event of delays outside of Contractor control, County will be notified and kept up to date on new timetables.

2.0 Data: Contractor will provide the County with a non-transferable, non-sublicensable license to use Contractor Data and Third-Party Data used to identify the targets necessary to perform the Services.

3.0 Reporting: Contractor will provide County access to a dashboard containing ongoing mail tracking and conversion analytics for VR applications mailed to prospective voters, updated once per business day, including individual barcode tracking data and updates on successful registration, where available.

FEE SCHEDULE

The total fee for the first mailing effort of the Services provided under this Agreement is - a fixed fee of \$392,700.00, payable to Civic Government Solutions LLC in accordance with the terms specified herein. This is comprised of:

- \$251,328 for the Initial Onboarding Term comprised of data licensing, design, and content approval by the County
- \$141,372 for the Printing and Mailing Term
- \$0 for the Reporting Term

The Fees for subsequent efforts of the Services provided under this Agreement is a variable fee of \$2.10 per form sent, payable to Civic Government Solutions LLC in accordance with the terms specified herein. If any of the Contractor's 3rd party providers supporting the Services increase the rates charged to the Contractor during the Service Term (a "Rate Change"), Contractor will have the right to, upon prompt written notice to County of such a Rate Change, increase the Service Fees charged to County to account for the increased charges (a "Fee Increase"). For a Fee Increase of greater than 10%, the Contractor must confirm the Rate Change with the County. Conditions: Payment is contingent upon the County's approval of the invoices submitted by the Contractor. The invoices must align with the specifications outlined in the Scope of Services.

Payment Terms Method: Payments will be made via electronic funds transfer.

Late Payments: Interest on late payments, if any, will be calculated at a rate of 1.5% per month on any outstanding balance.

Modifications to Payment Schedule

Any modifications to this Fee Payment Schedule must be documented in writing and signed by authorized representatives of both the Contractor and the County. Such amendments are to be integrated into this contract and are considered binding only upon agreement by both parties.

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APP. 3: STATE'S ORIGINAL PETITION

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Rebeca Clay-Flores, Justin Rodriguez, Grant Moody, and Tommy Calvert, in their official capacity as Bexar County Commissioners.

2. The State seeks emergency injunctive relief against the named defendants to prevent them from giving a partisan organization, in violation of state and local procurement procedures, hundreds of thousands of taxpayer dollars to mail unsolicited voter registration applications to an untold number of Bexar County residents, regardless of whether those residents have requested such an application or are even eligible to vote. Defendants' actions will create confusion, facilitate fraud, undermine confidence in elections, and are illegal *ultra vires* acts because they exceed statutory authority.

Discovery Control Plan

3. Discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.3.

Claims for Relief

4. Plaintiff seeks injunctive relief. Therefore, this suit is not governed by the expedited actions process in Tex. R. Civ. P. 169.

Venue

5. Venue is proper in Bexar County under section 15.002(a)(1), (a)(2), and (a)(3) of the Texas Civil Practices and Remedies Code.

Waiver of Sovereign Immunity

6. Neither sovereign immunity nor governmental immunity applies to the State of Texas's *ultra vires* claim. "The basic justification for th[e] *ultra vires* exception to sovereign immunity is that *ultra vires* acts—or those acts without authority—should not be considered acts of the state at all." *Hall v. McRaven*, 508 SW.3d 232, 238 (Tex. 2017) (internal quotation marks and citations omitted). As a

result, “*ultra vires* suits do not attempt to exert control over the state—they attempt to reassert the control of the state over one of its agents.” *Id.*

Parties

7. The plaintiff is the State of Texas, by and through its Attorney General, Ken Paxton. *Yett v. Cook*, 115 Tex. 205, 221, 281 S.W. 837, 842 (1926) (“That the state has a justiciable ‘interest’ in its sovereign capacity in the maintenance and operation of its municipal corporations in accordance with law does not admit of serious doubt.”); *see also State v. Naylor*, 466 S.W.3d 783, 790 (Tex. 2015) (“As a sovereign entity, the State has an intrinsic right to enact, interpret, and enforce its own laws.”).

8. The defendants include Jacquelyn Callanen, in her official capacity as the Bexar County Election Administrator. *See Hall*, 508 S.W. at 240 (stating that “an *ultra vires* suit must lie against the allegedly responsible government actor in his official capacity”) (internal quotation marks omitted). She may be served with process at 1103 S. Frio, Suite 100, San Antonio, TX 78207.

9. The defendants include Peter Sakai, in his official capacity as the Bexar County Judge. *Id.* He may be served with process at 101 W. Nueva, 10th Floor, San Antonio, TX 78205.

10. The defendants include Rebeca Clay-Flores, in her official capacity as Bexar County Commissioner. *Id.* She may be served with process at 101 W. Nueva, Suite 1009, San Antonio, TX 78205.

11. The defendants include Justin Rodriguez, in his official capacity as Bexar County Commissioner. *Id.* He may be served with process at 101 W. Nueva, 10th Floor, San Antonio, TX 78205.

12. The defendants include Grant Moody, in his official capacity as Bexar County Commissioner. *Id.* He may be served with process at 101 W. Nueva, Suite 1007, San Antonio, TX 78205.

13. The defendants include Tommy Calvert, in his official capacity as Bexar County Commissioner. *Id.* He may be served with process at 101 W. Nueva, Suite 1029, San Antonio, TX 78205.

Factual Background

14. On September 2, 2024, Attorney General Ken Paxton sent a letter to the Bexar County Commissioners Court expressing concerns over a proposal involving mass mailing of voter registration applications. Letter from Texas Attorney General Ken Paxton, *Bexar County Voter Registration*, (Sep. 2, 2024), <https://tinyurl.com/mudk3f83>.

15. In the letter, the Attorney General warned the Bexar County Commissioners Court that such a proposal is *ultra vires* since Bexar County has no authority granted to it by law to print and mail unsolicited voter registration forms. *Id.*

16. The letter pointed out that, in addition to being *ultra vires*, the agenda item makes elections in Texas less secure by indiscriminately inviting county residents to vote regardless of legal status. *Id.*

17. Over 6,500 non-citizens have been removed from Texas voter rolls since 2021. Press Release, Office of the Texas Governor, *Governor Abbott Announces Over 1 Million Ineligible Voters Removed from Voter Rolls* (Aug. 26, 2024), <https://gov.texas.gov/news/post/governor-abbott-announces-over-1-million-ineligible-voters-removed-from-voter-rolls>. Of those non-citizens, nearly 2,000 have voted. *Id.*

18. On September 3, 2024, the Bexar County Commissioners Court held a public meeting. *See generally* Bexar County Commissioners Court, Agenda for Sept. 3, 2024, Bexar County, <https://www.bexar.org/AgendaCenter/ViewFile/Agenda/09032024-1621> (last visited Sept. 3, 2024) (Recording to be available at <https://bexarcountytx.new.swagit.com/videos/313881>)

19. At this meeting, the Commissioners Court approved an agenda item hiring the company Civic Government Solutions (CGS) to conduct services for the County that the County is unauthorized to perform.

20. CGS claims to have the “most comprehensive database of unregistered voters.” Home, Civic Government Solutions (last visited Sept. 3, 2024), <https://civicgs.com/>. It states it has “broad range of expertise, including data scientists, voting law experts, and mail logistics experience” that enables it to “deliver the market’s most reliable and effective voter registration solutions.” *Id.*

21. It has sent more than 10 million mailers since 2018 and has registered approximately 2 million people since 2018. *Id.*

22. Agenda item 66 called for approving a purchase order paying CGS hundreds of thousands of dollars to print and mass mail voter registration applications.

23. Agenda item 66 read:

Discussion and appropriate action regarding granting a discretionary exemption to the competitive bidding requirements set forth in the Texas County Purchasing Act for the purpose of awarding a purchase order to Civic Government Solutions, LLC to print and mail State Voter Registration Forms, with postage paid return envelopes, to unregistered voters in location(s) based on targeting agreed to by the County, to include data and reporting in the amount of \$392,700, on a discretionary exemption basis, in accordance with Texas Local Government Code § 262.024(7)(a), as requested by Commissioners Court; and authorizing

the Purchasing Agent to execute contract and file the appropriate award documents for record.

24. According to the County, CGS will mail out 210,000 applications in hopes of getting 75,000 new registrants, resulting in a 3-4% upswing in votes cast in the county.

25. The CEO of CGS, Jeremy Smith, (Smith) told the Bexar County Commissioners Court that CGS would register these voters at an estimated cost of about \$7 per voter.

26. During the meeting, several members of the public voiced concerns over how the agenda item could negatively affect the integrity of elections in Texas.

27. Several citizens expressed concerns over Smith's prior public comments made on a podcast about his interest in getting people to vote for progressive candidates. *See Jeremy Smith of Civitech Discusses Data and Tools for Progressive Politics*, THE GREAT BATTLEFIELD (Sep. 2, 2022), <https://greatbattlefield.com/episode/data-and-tools-for-progressive-politics-with-jeremy-smith-of-civitech/>.

28. Smith is also listed as CEO of the company Civitech. *See Texas Comptroller of Public Accounts, Taxable Entity Search Results*, "Civitech, INC." <https://mycpa.cpa.state.tx.us/coa/coaSearchBtn>. (last visited Sep. 3, 2024).

29. Civitech is listed as the registrant contact of the CGS internet domain. *See WHOIS.com*, <https://www.whois.com/whois/civicgs.com>. (last visited Sept. 3, 2024),

30. Civitech has been described as a "Progressive data startup." Sara Fischer, *Progressive data startup Civitech raises \$10M*, Axios, <https://www.axios.com/2022/01/12/dem-startup-civitech-raises-10-million-midterm> (last visited Sep. 3, 2024).

31. Its website claims that the company’s goal is to “drive support for progressive causes and candidates” and that “[r]egistering the unregistered likely Democratic voters across the nation could be the key to securing Democratic victory in 2024.” *Closing the Voter Registration Gap*, Civitech, <https://civitech.io/post/closing-the-voter-registration-gap/> (last visited Sep. 4, 2024).

32. During the meeting, Smith maintained that the efforts of CGS to mail voter registrations would remain nonpartisan.

33. But given the appearance of partisanship, at least one member of the Commissioners Court expressed concern over the County dispensing with the competitive bidding process in retaining CGS. *See* Texas County Purchasing Act § 262.024(7)(a).

34. Elections Administrator Jacquelyn Callanen objected to the measure. Her concerns included the potential for the mass mailing of voter registration applications to worsen the backlog that already exists in the Bexar County Elections Department.

35. After extensive public comment and significant pushback, the agenda item passed 3-1 in approving the purchase order with one member of the Commissioners Court abstaining.

Legal Background

36. It is well-established that “[t]he authority vested in Texas counties—and county officials—is limited.” *State v. Hollins*, 620 S.W.3d 400, 406 (Tex. 2020). This is because political subdivisions of the state—such as counties, municipalities, and school districts—“represent no sovereignty distinct from the state and possess only such powers and privileges as have been expressly or impliedly conferred upon

them.” *Id.* They are “a subordinate and derivative branch of state government.” *Avery v. Midland Cty.*, 406 S.W.2D 422, 426 (Tex. 1966).

37. Bexar County is a political subdivision of the State of Texas; it therefore possesses only those powers granted to it by the Texas Constitution or the Texas Legislature. *E.g.*, *Town of Lakewood v. Bizios*, 493 S.W.3d 527, 536 (Tex. 2016). More precisely, it:

possesses and can exercise the following powers, and no others: First, those *granted in express words*; second, those *necessarily or fairly implied* in or incident[] to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but *indispensable*. “Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, *and the power is denied*.”

Foster v. City of Waco, 113 Tex. 352, 355 (Tex. 1923).

38. In the case of the Election Code, the Legislature further cabined the power of political subdivisions, instructing that “[a] public official or election official may not create, alter, modify, waive, or suspend any election standard, practice, or procedure mandated by law or rule in a manner not *expressly* authorized by this [election] code.” *Id.* § 276.019 (emphasis added).

39. Defendant Jacquelyn Callanen is an agent of Bexar County; she cannot take any action in her official capacity that exceeds the scope of the County’s powers. She “possesses only those powers ‘granted in express words’ or ‘necessarily or fairly implied in’ an express grant—powers ‘not simply convenient’ but ‘indispensable.’” *Hollins*, 620 S.W.3d at 406.

40. Defendants Peter Sakai, Rebeca Clay-Flores, Justin Rodriguez, Grant Moody, and Tommy Calvert make up the Bexar County Commissioners Court. They too “possess[] only those powers ‘granted in express words’ or ‘necessarily or fairly

implied in' an express grant—powers 'not simply convenient' but 'indispensable.'" *Id.*; see also *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003) (noting the limited nature of commissioner courts' powers).

41. "Any reasonable doubt must be resolved against an implied grant of authority." *Hollins*, 620 S.W.3d at 406.

A. Voter Registration

42. According to the Election Code, "[a] person desiring to register to vote" in Texas "must submit an application to the registrar of the county in which the person resides." § 13.002(a).

43. Not everyone is qualified to register to vote, however. A person is eligible for registration, only if he or she is (1) "18 years of age or older;" (2) "a United States citizen;" (3) has not "been determined by a final judgment of a court exercising probate jurisdiction to be: (A) totally mentally incapacitated; or (B) partially mentally incapacitated without the right to vote;" (4) has not "been finally convicted of a felony;" and (5) is "a resident of the county in which application for registration is made." § 13.001.

44. Traditionally, "[t]he county tax assessor-collector was the voter registrar for the county," but the Election Code also allows certain counties to appoint an election administrator to "perform[] the duties and functions of the voter registrar." §§ 31.043; 12.001. Defendant Callanen, as the election administrator, is the voter registrar for Bexar County.

45. The Election Code does not empower the voter registrar or any other county official to arrange for the mass mailing of voter registration forms unsolicited. To the contrary, the Election Code provides, officials "shall furnish forms in a

reasonable quantity *to a person requesting them* for the purpose of submitting or filing the document or paper.” § 1.010(b) (emphasis added).

46. The county registrar, as an election official to whom a document is required to be submitted, “shall make printed forms for that purpose, as officially prescribed, readily and timely available.” § 1.10(a). The Texas Supreme Court explained in *Hollins* that this provision, when read in context, simply means that the relevant officials must have the forms on hand to distribute to voters on request. 620 S.W.3d at 407.

47. The voter registrar has the authority to appoint persons who volunteer to serve as deputy registrars. Tex. Elec. § 13.031. Although a deputy registrar may distribute voter registration application forms, *id.* at § 13.038, “a person may not receive compensation from the county for service as a volunteer deputy registrar unless compensation is authorized by the commissioners court.” *Id.* at § 13.037.

48. For a commissioners court to authorize said compensation, it must follow proper procurement procedures. *See infra*. The Bexar County Commissioners Court failed to do so here.

49. In addition, even if compensation is properly authorized by the Commissioners Court, the Election Code prohibits performance-based compensation for registering voters. §§ 13.008(a)(1-4). Compensation may not be “based on the number of voter registrations . . . successfully facilitate[d]” or conditioned on a “quota of voter registrations to facilitate.” *Id.* § 13.008(a)(1-2). Violations of this section constitute a Class A misdemeanor.

50. From all available evidence, it appears that the Bexar County Commissioners Court has premised the contract price on the number of voters contacted and/or registered. This arrangement violates the statute.

B. Improper Procurement

51. The Texas Local Government Code provides statutorily-mandated procurement procedures for counties contracting with vendors for more than \$50,000.00. Tex. Loc. Govt. Code § 262.023. These procedures require competitive bidding, a reverse auction, or compliance with Texas Government Code Section 2269. *Id.* On information and belief, Defendants complied with none of these procedures.

52. Instead, according to the Commissioners Court agenda, Defendants claim their proposed contract with CGS is exempt from the requirements of Section 262.023 under Section 262.024(7)(a). *See* Agenda Item 66, reproduced *supra*. But the exceptions of Section 262.024(7)(a) are inapplicable. Those exceptions occur only where there is no competition for the contracted services due to “patents, copyrights, secret processes, or monopolies.” Tex. Loc. Govt. Code § 262.024(7)(a).

53. Defendants make no mention of what patent, copyright, secret process, or monopoly prevents them from undergoing the transparent bidding process mandated by Texas procurement laws governing counties. The reason is simple: there is no such basis to forego statutorily-mandated procurement procedures. This is particularly true where Defendants are entrusting a partisan vendor with responsibilities in Texas elections.

54. By skipping mandatory procurement procedures in selecting a partisan vendor to send voter registration applications to recipients who may or may not be eligible to vote, Defendants exceed their authority, and any implied authority necessary to carry out their duties. Defendants’ vote to contract with CGS is there for *ultra vires*, and the Court should enjoin any further action by Defendants to complete the procurement process.

The State of Texas requests an injunction against Defendants’ *ultra vires* acts

55. The Court should issue such an injunction because Defendants lack the authority to contract with a vendor outside the statutory procurement process, and similarly lack authority to send unsolicited voter registration applications to recipients who may or may not be eligible to vote. Defendants' acts are therefore *ultra vires*.

56. In an *ultra vires* case, a plaintiff must allege, and ultimately prove, that an officer acted without legal authority or failed to perform a purely ministerial act. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

57. Counties in Texas are limited to exercising those powers that are specifically conferred on them by statute or the constitution. *Guynes v. Galveston Cty.*, 861 S.W.2d 861, 863 (Tex. 1993). The County has no sovereign power of its own: It "is a subordinate and derivative branch of state government." *Avery v. Midland Cty.*, 406 S.W.2d 422, 426 (Tex. 1966), *rev'd on other grounds*, 390 U.S. 474 (1968); see TEX. CONST. art. IX, § 1 ("The Legislature shall have power to create counties for the convenience of the people"); *id.* art. XI, § 1 ("The several counties of this State are hereby recognized as legal subdivisions of the State."). As a political subdivision, the County "represent[s] no sovereignty distinct from the state and possess[es] only such powers and privileges" as the State confers upon it. *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 430 (Tex. 2016) (quotation omitted); accord *Quincy Lee Co. v. Lodal & Bain Engineers, Inc.*, 602 S.W.2d 262, 264 (Tex. 1980).

58. A commissioners court also has power "necessarily implied to perform its duties." *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 29 (Tex. 2003). Such powers must, however, be "indispensable" to perform such an express grant of authority, *Foster v. City of Waco*, 255 S.W. 1104, 1105–06 (Tex. 1923). "Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied." *Id.*

59. There is no statute empowering Defendants to circumvent statutory procurement procedures or to send voter registration applications to recipients who may or may not be registered to vote. Nor do those acts constitute exercises of power necessarily implied to perform Defendants' duties.

60. In fact, Defendants' actions undermine Texas law. A governmental entity sending voter registration applications may cause recipients who are ineligible to vote to believe they may register. At best, applications sent to these individuals will simply go unused. More likely, these excess applications will become ripe material for voter fraud.

61. Sending voter registration applications to every voter, without any attempt at all to tailor such a mass-mailing to persons who definitively are eligible to vote, is certain to result in large numbers of applications from voters who are ineligible to vote. Regardless of whether Defendants includes literature in their mailing attempting to explain voter eligibility criteria, it is inevitable that recipients of applications from a public official with the imprimatur of state authority will wrongly assume they are eligible to vote.

62. Similarly, circumventing statutorily-mandated procurement processes in order to award a no-bid contract to a partisan vendor exceeds Defendants' authority and undermines the integrity of Texas's electoral process and Texans' faith in that integrity. The court must thus infer that some of those ineligible voters will submit the applications and be incorrectly approved to vote.

63. Defendants' plan to send voter registration applications *en masse* to recipients who may or may not be eligible to vote is *ultra vires*. Likewise, Defendants' plan to contract with a partisan vendor outside the statutory procurement process is *ultra vires*. Defendants should be enjoined.

Application for a Temporary Restraining Order

64. “The purpose of a TRO is to preserve the status quo, which we have defined as the last, actual, peaceable, non-contested status which preceded the pending controversy.” *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (footnote and internal quotation marks omitted).

65. If the Court does not issue the requested temporary restraining order, the status quo will be irrevocably broken. The proximity of the upcoming election demonstrates Defendants’ intent to carry out their plans imminently. Once that happens, there will be no way to recall more than 200,000 pieces of mail.

66. The State will suffer irreparable injury in that event. As a sovereign entity, Texas has an inherent right to enforce its own law. *Naylor*, 466 S.W.3d at 790. And the State “indisputably has a compelling interest in preserving the integrity of its election process.” *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). That right will be fundamentally undermined the moment that mail goes out. And no other way exists to make Plaintiff whole. The State’s sovereign interest cannot be remedied with monetary damages. *See Hollins*, 620 S.W.3d at 410. State officers will be required to combat the confusion that will inevitably result from Defendants’ actions. Even if state officers were able to divert their full attention to that task, it likely will not repair the resulting damage. Moreover, time they spend on this issue will distract them from their other critical duties just weeks before an election.

67. Therefore, the State is entitled to a temporary restraining order preserving the status quo by enjoining Defendants from sending unsolicited voter registration applications until the temporary injunction hearing.

Application for a Temporary Injunction

68. For similar reasons, the State is entitled to a temporary injunction. A temporary injunction's purpose is to preserve the status quo of the litigation's subject matter pending a trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

69. Plaintiff must prove three elements to obtain a temporary injunction: (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. *Id.*

70. Plaintiff describes its probable right to recovery above. Plaintiff is not required to establish that it will prevail at trial to obtain a temporary injunction. *Butnaru* at 211.

71. 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* at 204. If Defendants are not enjoined and send the applications, damages are not available as a remedy and would not compensate Plaintiff in any event for the reasons discussed above. *See Hollins*, 620 S.W.3d at 410.

72. Therefore, Plaintiff is entitled to a temporary injunction enjoining Defendants from committing the *ultra vires* act of sending unsolicited voter registration applications to recipients who may or may not be eligible to vote.

Application for a Permanent Injunction

73. Plaintiff requests trial on the merits, where it will seek a permanent injunction enjoining Defendants from committing the *ultra vires* acts of sending unsolicited voter registration applications and contracting with a partisan vendor in violation of statutory procurement procedures.

Prayer

74. Therefore, Plaintiff seeks a temporary restraining order, temporary injunction, and permanent injunction enjoining Defendants from sending unsolicited voter registration applications to the residents of Bexar County.

Request for Disclosure

75. Plaintiff requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Texas Rules of Civil Procedure 194.2.

Dated: September 3, 2024.

Respectfully submitted,

KEN PAXTON
Attorney General

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

AUSTIN KINGHORN
Deputy Attorney General for Legal Strategy

RYAN D. WALTERS
Chief, Special Litigation Division

/s/Kathleen T. Hunker
KATHLEEN T. HUNKER
Special Counsel
State Bar No. 24118415

GARRETT GREENE
Special Counsel
State Bar No.24096217

RYAN KERCHER
Deputy Chief, Special Litigation Division
State Bar No. 24060998

Special Litigation Division
OFFICE OF THE ATTORNEY GENERAL OF TEXAS
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 936-1706 • fax (512) 320-0167
Kathleen.Hunker@oag.texas.gov
Garrett.Greene@oag.texas.gov
Ryan.Kercher@oag.texas.gov

ATTORNEYS FOR PLAINTIFF

APP. 34

Restraining Order, Temporary Injunction, and Permanent Injunction. I verify under penalty of perjury that the facts stated therein are within my personal knowledge and are true and correct.



Austin Kinghorn

Sworn and subscribed before me on _____, 2024.

Notary Public, State of Texas

APP. 4: TWEET REGARDING NON-EXISTENT HEARING

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Post

Robert Price
@RobertPriceTV



WATCH: Political prank or a genuine case of miscommunication? DA Joe Gonzales spent several hours waiting for Ken Paxton to show up at the Bexar County Courthouse Friday, but the AG was a no-show, prompting questions of whether Paxton was ever actually coming in the first place.



0:05 / 1:43

9:26 PM · Sep 6, 2024 · 1,330 Views

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APP. 37

**APP. 5: CORRESPONDENCE REGARDING SCHEDULING A
TRO HEARING WITH BEXAR COUNTY**

RETRIEVEDFROMDEMOCRACYDOCKET.COM

From: [Kathleen Hunker](#)
To: [Cubriel, Lisa](#); [Ryan Kercher](#); [Roberson, Larry L.](#)
Cc: [Garrett Greene](#); [Amaireny Rodriguez](#)
Subject: RE: OAG v. Bexar County Lawsuit
Date: Tuesday, September 10, 2024 7:52:25 AM

Lisa,

Thanks for your email.

The process server should be effectuating service this morning. In regard to the hearing, my office will contact the court and inform them of the change. I look forward to seeing you on Monday.

Kathleen Hunker

Special Litigation Unit
Office of the Attorney General of Texas
209 W. 14th Street
Austin, TX 78711
512-936-2275
Kathleen.Hunker@oag.texas.gov

From: Cubriel, Lisa <Lisa.Cubriel@bexar.org>
Sent: Tuesday, September 10, 2024 7:34 AM
To: Kathleen Hunker <Kathleen.Hunker@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Roberson, Larry L. <lroberson@bexar.org>
Cc: Garrett Greene <Garrett.Greene@oag.texas.gov>; Amaireny Rodriguez <Amaireny.Rodriguez@oag.texas.gov>
Subject: RE: OAG v. Bexar County Lawsuit

Kathleen,

I only have authority to agree to a combined TRO and TI hearing for Monday, September 16, 2024. Are you going to serve the County officials?

Sincerely,

Lisa V. Cubriel
Assistant District Attorney – Civil Section
Bexar County District Attorney's Office
7th Floor Paul Elizondo Tower
101 W. Nueva
San Antonio, Texas 78205
(210) 335-2142 – Direct

(210) 335-2773 - Fax

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From: Kathleen Hunker <Kathleen.Hunker@oag.texas.gov>

Sent: Tuesday, September 10, 2024 6:34 AM

To: Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Cubriel, Lisa <Lisa.Cubriel@bexar.org>; Roberson, Larry L. <lroberson@bexar.org>

Cc: Garrett Greene <Garrett.Greene@oag.texas.gov>; Amaireny Rodriguez <Amaireny.Rodriguez@oag.texas.gov>

Subject: RE: OAG v. Bexar County Lawsuit

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Good morning, Lisa.

In my email yesterday, I had raised two proposals. Rereading your response, I don't think you answered whether Bexar County would be interested in holding a combined TRO/ TI hearing either this Friday or Monday in lieu of today's TRO.

That offer is still on the table. We are willing to push back today's hearing to either date, regardless of a Rule 11 agreement, so long as we have assurance that it will be a combined hearing.

Please let me know if your office agrees. If so, I will notify the court of the change. Thank you.

Kathleen Hunker

Special Litigation Unit
Office of the Attorney General of Texas
209 W. 14th Street
Austin, TX 78711
512-936-2275
Kathleen.Hunker@oag.texas.gov

From: Ryan Kercher <Ryan.Kercher@oag.texas.gov>

Sent: Monday, September 9, 2024 5:24 PM

To: Cubriel, Lisa <Lisa.Cubriel@bexar.org>; Kathleen Hunker <Kathleen.Hunker@oag.texas.gov>; Roberson, Larry L. <lroberson@bexar.org>

Cc: Garrett Greene <Garrett.Greene@oag.texas.gov>; Amaireny Rodriguez <Amaireny.Rodriguez@oag.texas.gov>

Subject: Re: OAG v. Bexar County Lawsuit

Lisa -

With all due respect, we reached out to your office about this last week, and it's not our fault it went to Larry's junk folder (but not yours somehow).

Your office clearly knew about the lawsuit on Friday when it staged a press conference without the courtesy of conferring with any of the attorneys listed on the pleadings. And now that you are aware of the hearing and have time to email about it, you don't have time to jump on the phone.

There is no reason to litigate this way, despite the important disagreement at issue. Perhaps you can obtain requisite authority before tomorrow's hearing.

Regards,

RGK

Ryan G. Kercher
Deputy Chief, Special Litigation
Office of the Attorney General of Texas
Ryan.Kercher@oag.texas.gov
512.788.3771

From: Cubriel, Lisa <Lisa.Cubriel@bexar.org>
Sent: Monday, September 9, 2024 5:11:13 PM
To: Kathleen Hunker <Kathleen.Hunker@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Roberson, Larry L. <lroberson@bexar.org>
Cc: Garrett Greene <Garrett.Greene@oag.texas.gov>; Amaireny Rodriguez <Amaireny.Rodriguez@oag.texas.gov>
Subject: RE: OAG v. Bexar County Lawsuit

Kathleen,

With all due respect, it is after 5 p.m. on the day before the proposed hearing and we cannot obtain the authority to enter into such a Rule 11 agreement. Most of Bexar County has either left for the day or is otherwise tied up with the County budget related matters, which as I previously mentioned the final budget hearing is set for 9:00 a.m. tomorrow morning in Commissioners Court.

At this point, the only thing that we can agree to is to reset the TRO hearing until Friday, September 13, or Monday, September 16. If you are in agreement, please let me know. Otherwise, we will assert our

objections as I previously indicated.

Sincerely,

Lisa V. Cubriel
Assistant District Attorney – Civil Section
Bexar County District Attorney's Office
7th Floor Paul Elizondo Tower
101 W. Nueva
San Antonio, Texas 78205
(210) 335-2142 – Direct
(210) 335-2773 - Fax

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From: Kathleen Hunker <Kathleen.Hunker@oag.texas.gov>

Sent: Monday, September 9, 2024 4:47 PM

To: Cubriel, Lisa <Lisa.Cubriel@bexar.org>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Roberson, Larry L. <lroberson@bexar.org>

Cc: Garrett Greene <Garrett.Greene@oag.texas.gov>; Amaireny Rodriguez <Amaireny.Rodriguez@oag.texas.gov>

Subject: Re: OAG v. Bexar County Lawsuit

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Lisa,

If we push the date back, we think it makes sense to schedule it as a combined TRO/ TI hearing. This way we avoid the need for multiple hearings and get better clarity from the court. Assuming you agree with this plan, we propose calendaring the hearing for either Friday, September 13 or Monday, September 16.

My office is concerned about the registration applications being sent before we get a ruling by the court. I don't think I can get my office to agree to push the hearing date back unless it was with the assurance of a combined TRO/ TI hearing or a Rule 11 agreement, confirming that the contract wouldn't be executed until the legal issues were resolved. My office entered a similar agreement with Harris County in 2020

when it contemplated distributing unsolicited ABBMs.

I should be available by phone and email throughout the day if you wish to confer further.

Kathleen Hunker

Special Litigation Unit
Office of the Attorney General of Texas
209 W. 14th Street
Austin, TX 78711
512-936-2275
Kathleen.Hunker@oag.texas.gov

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From: Cubriel, Lisa <Lisa.Cubriel@bexar.org>
Sent: Monday, September 9, 2024 3:59:56 PM
To: Kathleen Hunker <Kathleen.Hunker@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Roberson, Larry L. <lroberson@bexar.org>
Cc: Garrett Greene <Garrett.Greene@oag.texas.gov>; Amaireny Rodriguez <Amaireny.Rodriguez@oag.texas.gov>
Subject: RE: OAG v. Bexar County Lawsuit

I am not available for a phone call right now. Do you have any dates in mind to re-set?

Lisa

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From: Kathleen Hunker <Kathleen.Hunker@oag.texas.gov>
Sent: Monday, September 9, 2024 3:45 PM
To: Cubriel, Lisa <Lisa.Cubriel@bexar.org>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Roberson, Larry L. <lroberson@bexar.org>
Cc: Garrett Greene <Garrett.Greene@oag.texas.gov>; Amaireny Rodriguez <Amaireny.Rodriguez@oag.texas.gov>
Subject: RE: OAG v. Bexar County Lawsuit

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Lisa,

Are you available to jump on the phone for a short chat?

Kathleen Hunker

Special Litigation Unit
Office of the Attorney General of Texas
209 W. 14th Street
Austin, TX 78711
512-936-2275
Kathleen.Hunker@oag.texas.gov

From: Cubriel, Lisa <Lisa.Cubriel@bexar.org>

Sent: Monday, September 9, 2024 3:29 PM

To: Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Roberson, Larry L. <lroberson@bexar.org>

Cc: Garrett Greene <Garrett.Greene@oag.texas.gov>; Kathleen Hunker <Kathleen.Hunker@oag.texas.gov>; Amaireny Rodriguez <Amaireny.Rodriguez@oag.texas.gov>

Subject: RE: OAG v. Bexar County Lawsuit

Importance: High

Ryan –

Larry Roberson has been in Commissioners Court today, so I have just now conferred with him. Mr. Roberson was not aware of your emails. After Commissioner's Court, I conferred with him and he located your emails in his spam folder.

I was out of the country last week and did not have access to my emails until today, as indicated in my out-of-office replies.

As to your first question directed toward my section – we are not authorized to accept service on behalf of Bexar County officials. Our County Judge has made it clear to our section in the past that we do not have the authority to do so.

I also note that you have set a hearing for tomorrow at 9:00 a.m. on a Motion for TRO, Temporary Injunction, and Permanent Injunction and listed Larry Roberson as the counsel for Defendants. First, I must inform you that Larry is unavailable tomorrow at that time. He will be in the Bexar County Commissioners Court meeting, which begins tomorrow at 9:00 a.m. This meeting was set in stone at the beginning of the current fiscal year, back in October 2023. Tomorrow's Commissioners Court meeting will include a hearing on the 2025

County Budget, and I anticipate this meeting will last all day.

I must also inform you that your notice of in-person hearing does not comply with TRCP 21 and the Bexar County local rules, which requires parties to provide the other side at least 3 days' notice of the hearing, not including weekends.

I respectfully request that you serve all parties, and send an amended notice of hearing that complies with TRCP 21 and Bexar County's local rules. If you do not do so, my office will raise objections as to lack of proper service, notice and failure to comply with TRCP 21 and Bexar County local rules.

Lisa V. Cubriel
Assistant District Attorney – Civil Section
Bexar County District Attorney's Office
7th Floor Paul Elizondo Tower
101 W. Nueva
San Antonio, Texas 78205
(210) 335-2142 – Direct
(210) 335-2773 - Fax

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From: Ryan Kercher <Ryan.Kercher@oag.texas.gov>
Sent: Monday, September 9, 2024 11:47 AM
To: Cubriel, Lisa <Lisa.Cubriel@bexar.org>; Roberson, Larry L. <lroberson@bexar.org>
Cc: Garrett Greene <Garrett.Greene@oag.texas.gov>; Kathleen Hunker <Kathleen.Hunker@oag.texas.gov>; Amaireny Rodriguez <Amaireny.Rodriguez@oag.texas.gov>
Subject: RE: OAG v. Bexar County Lawsuit

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Larry –

I am following up with you on the e-mail below to which I've received no response. I understand from Lisa's out-of-office e-mail that she is back in the office today. Please find attached our notice of hearing on our TRO for tomorrow morning at 9 am. I trust Lisa will forward to the appropriate party. Lisa, if I've mistyped Larry's e-mail, please let me know.

Separately, I saw a news story this morning where the Bexar County DA allegedly showed up for a hearing on Friday that we did not set. Our e-mail addresses and phone numbers are on our pleading. If anyone expected us to show for an alleged hearing, they could have called us to work out any misunderstanding. It appears someone thought calling the press would be more useful.

Regards,

RGK

From: Ryan Kercher

Sent: Wednesday, September 4, 2024 10:39 AM

To: Cubriel, Lisa <lisa.cubriel@bexar.org>; lroberson@bexar.org

Cc: Garrett Greene <Garrett.Greene@oag.texas.gov>; Kathleen Hunker <Kathleen.Hunker@oag.texas.gov>; Amaireny Rodriguez <Amaireny.Rodriguez@oag.texas.gov>

Subject: OAG v. Bexar County Lawsuit

Dear Mr. Roberson –

I write to confer regarding the lawsuit my office filed yesterday evening against Bexar County officials in their official capacity. I've copied Lisa Cubriel, whom we know from the SB 1 litigation.

The first matter for conference is service: please let me know whether you will accept on behalf of the county officials.

The second matter is scheduling the TRO hearing. We intend to move forward as soon as possible and wanted to get the availability of counsel in your office.

As a professional matter, I dislike short turnarounds; however, given the urgency of the matter (to both our offices, I believe), I must respectfully request a response by COB today.

Thanks in advance—I am, as always, happy to jump on a call to discuss further.

Regards,

RGK

Ryan G. Kercher

Deputy Chief
Special Litigation
Office of the Attorney General for the State of Texas
Ryan.Kercher@oag.texas.gov
Direct: 512.788.3771

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APP. 6: ORIGINAL NOTICE OF IN-PERSON HEARING

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Cause No. 2024CI19710

THE STATE OF TEXAS,
Plaintiff,

v.

JACQUELYN CALLANEN in her
official capacity as Bexar County
Election Administrator; PETER
SAKAI, in his official capacity as
Bexar County Judge; REBECA
CLAY-FLORES, in her official
capacity as Bexar County
Commissioner; JUSTIN
RODRIGUEZ, in his official capacity
as Bexar County Commissioner;
GRANT MOODY, in his official
capacity as Bexar County
Commissioner; TOMMY CALVERT,
in his official capacity as Bexar
County Commissioner.

Defendants.

In the District Court of

Bexar County, Texas

73RD Judicial District

NOTICE OF IN-PERSON HEARING

Plaintiff State of Texas's Motion for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction, is set for hearing on **Tuesday, September 10, 2024 at 9:00 a.m.**, in the Presiding Civil District Courtroom (Room 1.09) located at the Bexar County Courthouse, 100 Dolorosa , San Antonio, TX 78205.

At the designated time above, report in-person to the Presiding Civil District Courtroom (Room 1.09) located at the Bexar County Courthouse, 100 Dolorosa, San

Antonio, Texas, 78205. If you plan to introduce documents and evidence during your hearing, you must be prepared to share them on Zoom using a personal computer or smart device equipped with wireless modem or air card and Zoom app installed.

The time announcement will be approximately 2 hours.

Kathleen T. Hunker
Special Counsel, Special Litigation Division
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548
Kathleen.Hunker@oag.texas.gov

Ryan Kercher
Deputy Chief, Special Litigation Division
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548
Ryan.Kercher@oag.texas.gov

Counsel for Plaintiffs

Larry Roberson
Bexar County District Attorney's Office
101 W. Nueva
7th Floor
San Antonio, TX 78205-3030
(210) 335-2141
lroberson@bexar.org

Counsel for Defendants

A language interpreter is not required.

Dated: September 6, 2024.

CHRISTINE HORTICK
PRESIDING JUDGE
225TH DISTRICT COURT
BEXAR COUNTY, TEXAS

Respectfully submitted,

KEN PAXTON
Attorney General

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

AUSTIN KINGHORN
Deputy Attorney General for Legal Strategy

RYAN D. WALTERS
Chief, Special Litigation Division

/s/Kathleen T. Hunker
KATHLEEN T. HUNKER
Special Counsel
State Bar No. 24118415

GARRETT GREENE
Special Counsel
State Bar No. 24096217

RYAN KERCHER
Deputy Chief, Special Litigation Division
State Bar No. 24060998

Special Litigation Division
OFFICE OF THE ATTORNEY GENERAL OF TEXAS
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 936-1706 • fax (512) 320-0167
Kathleen.Hunker@oag.texas.gov
Garrett.Greene@oag.texas.gov

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on the 6th day of September 2024, the Plaintiffs Notice of Hearing was served through the e-mail system on Defendant through their attorneys of record in accordance with the applicable Texas Rules of Civil Procedure.

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**APP. 7: PLAINTIFF'S FIRST AMENDED NOTICE OF
IN-PERSON HEARING**

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CAUSE NO. 2024CI19710

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	BEXAR COUNTY, TEXAS
	§	
JACQUELYN CALLANEN in her official	§	
capacity as Bexar County Election Administrator;	§	
PETER SAKAI, in his official capacity as Bexar	§	
County Judge; REBECA CLAY-FLORES, in her	§	
official capacity as Bexar County Commissioner;	§	
JUSTIN RODRIGUEZ, in his official capacity as	§	
Bexar County Commissioner; GRANT MOODY,	§	
in his official capacity as Bexar County	§	
Commissioner; TOMMY CALVERT, in his	§	
official capacity as Bexar County Commissioner,	§	
<i>Defendants.</i>	§	73RD JUDICIAL DISTRICT

PLAINTIFF'S FIRST AMENDED NOTICE OF IN-PERSON HEARING

Please take notice that Plaintiff State of Texas's Motion for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction, is reset, by agreement of the parties, for hearing on **Monday, September 16, 2024 at 9:00 a.m.**, in the Presiding Civil District Courtroom (Room 1.09) located at the Bexar County Courthouse, 100 Dolorosa , San Antonio, TX 78205.

At the designated time above, report in-person to the Presiding Civil District Courtroom (Room 1.09) located at the Bexar County Courthouse, 100 Dolorosa, San Antonio, Texas, 78205. If you plan to introduce documents and evidence during your hearing, you must be prepared to share them on Zoom using a personal computer or smart device equipped with wireless modem or air card and Zoom app installed.

The time announcement will be approximately 2 hours.

Contact information for all known attorneys is as follows:

COUNSEL FOR PLAINTIFFS

Kathleen T. Hunker
Special Counsel, Special Litigation Division
Kathleen.Hunker@oag.texas.gov

Ryan Kercher
Deputy Chief, Special Litigation Division
Ryan.Kercher@oag.texas.gov

Telephone (512) 463-2100

COUNSEL FOR DEFENDANTS

LARRY ROBERSON
Telephone (210) 335-2141
lroberson@bexar.org

LISA V. CUBRIEL
Assistant District Attorney – Civil Section
Telephone: (210) 335-2142
Lisa.Cubriel@bexar.org

A language interpreter is not required.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

AUSTIN KINGHORN
Deputy Attorney General for Legal Strategy

RYAN D WALTERS
Chief, Special Litigation Division

/s/Kathleen T. Hunker
KATHLEEN T. HUNKER
Special Counsel
Texas State Bar No. 24118415

GARRETT GREENE
Special Counsel
Texas State Bar No. 24096217

RYAN KERCHER
Deputy Chief, Special Litigation Division
Texas State Bar No. 24060998

OFFICE OF THE ATTORNEY GENERAL
Special Litigation Division (MC-009)
P.O. Box 12548, Capitol Station

Austin, Texas 78711-2548
Telephone: (512) 463-2100
kathleen.hunker@oag.texas.gov
garrett.greene@oag.texas.gov
ryan.kercher@oag.texas.gov

COUNSEL FOR PLAINTIFF,
THE STATE OF TEXAS

CERTIFICATE OF CONFERENCE

I hereby certify that on Monday, September 9, 2024, the undersigned attorney conferred via electronic mail with Lisa Cubriel, counsel for Bexar County, who indicated she is unavailable for the hearing noticed for Tuesday, September 10, 2024. The parties thereafter agreed to reset the hearing as a combined the TRO/ TI hearing on September 16, 2024; this notice is filed in accordance with that agreement.

/s/Kathleen T. Hunker
KATHLEEN T. HUNKER
Special Counsel

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2024, a true and correct copy of the above and forgoing document has been served via electronic service and/or email to the following:

LARRY ROBERSON
Telephone (210) 335-2141
lroberson@bexar.org

LISA V. CUBRIEL
Assistant District Attorney – Civil Section
Telephone: (210) 335-2142
Lisa.Cubriel@bexar.org

BEXAR COUNTY DISTRICT ATTORNEY'S
OFFICE
7th Floor Paul Elizondo Tower
101 W. Nueva
San Antonio, Texas 78205
Facsimile: (210) 335-2773
COUNSEL FOR DEFENDANT(S)

/s/Kathleen T. Hunker
KATHLEEN T. HUNKER
Special Counsel

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Bonnie Freymuth on behalf of Kathleen Hunker
Bar No. 24118415
bonnie.freymuth@oag.texas.gov
Envelope ID: 91830928
Filing Code Description: FIRST AMENDED
Filing Description: NOTICE OF HEARING
Status as of 9/11/2024 8:23 AM CST

Associated Case Party: STATE OF TEXAS

Name	BarNumber	Email	TimestampSubmitted	Status
Ryan Kercher		ryan.kercher@oag.texas.gov	9/10/2024 9:51:31 AM	SENT
Garrett Greene		Garrett.Greene@oag.texas.gov	9/10/2024 9:51:31 AM	SENT
Amaireny Rodriguez		amaireny.rodriguez@oag.texas.gov	9/10/2024 9:51:31 AM	SENT
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Associated Case Party: Jacquelyn Callanen

Name	BarNumber	Email	TimestampSubmitted	Status
Larry Roberson	24046728	lroberson@bexar.org	9/10/2024 9:51:31 AM	SENT
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**APP. 8: BEXAR COUNTY'S ORIGINAL PLEA TO THE
JURISDICTION**

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THE STATE OF TEXAS

Plaintiff,

vs.

JACQUELYN CALLANEN, in her official capacity as Bexar County Election Administrator; PETER SAKAI, in his official capacity as Bexar County Judge; REBECA CLAY-FLORES, in her official capacity as Bexar County Commissioner; JUSTIN RODRIGUEZ, in his official capacity as Bexar County Commissioner; GRANT MOODY, in his official capacity as Bexar County Commissioner; TOMMY CALVERT, in his official capacity as Bexar County Commissioner.

Defendants.

IN THE DISTRICT COURT OF

BEXAR COUNTY, TEXAS

73RD JUDICIAL DISTRICT

DEFENDANTS' ANSWER AND PLEA TO THE JURISDICTION TO PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

TO THE HONORABLE JUDGE OF THE DISTRICT COURT:

NOW COMES Defendants, JACQUELYN CALLANEN, in her official capacity as Bexar County Elections Administrator (hereinafter, "Defendant Callanen"); PETER SAKAI, in his official capacity as Bexar County Judge; REBECA CLAY-FLORES, in her official capacity as Bexar County Commissioner; JUSTIN RODRIGUEZ, in his official capacity as Bexar County Commissioner; GRANT MOODY, in his official capacity as Bexar County Commissioner; and TOMMY CALVERT, in his official capacity as Bexar County Commissioner (hereinafter collectively, "Bexar County Commissioner

Defendants”) in the above-styled and numbered cause, represented by and through the undersigned Assistant District Attorneys, and files this, their Original Answer and Plea to the Jurisdiction, and in support thereof would respectfully show the following:

I. Background

The Bexar County Commissioners Court is composed of the county judge and the county commissioners. Tex. Const. art. V, § 18(b); Tex. Local Gov’t Code Ann. § 81.001 et seq. Although it is called a “court,” it serves as the county’s principal governing body, and its primary function is the administration of the county’s business. Tex. Const. art. V, § 18(b); *Commissioners Court of Titus County v. Agan*, 940 S.W.2d 77, 79 (Tex. 1997). In the exercise of its powers and jurisdiction over county business, a commissioners court has implied authority to exercise broad discretion to accomplish the purposes intended. *Canales v. Laughlin*, 214 S.W.2d 451, 453 (Tex. 1948).

This case arises from a contract procurement between Bexar County and Civic Government Solutions (“CGS”), a third-party vendor. Texas Administrative Code Rule 81.25(a)-(b), as promulgated by the Texas Secretary of State, encourages counties to engage in voter registration drives and voter registration efforts, which may include, “but are not limited to mailouts of applications to households, insertion of applications into newspapers, distributing applications at public locations, and other forms of advertising.” 1 T.A.C. § 81.25(a)-(b). In keeping with that provision of the Texas Administrative Code, the Bexar County Commissioners Court approved an agenda item at a public Commissioners Court meeting held on September 3, 2024. Approval of this agenda item resulted in the hiring of third-party vendor CGS to print and mail out voter registration applications to a targeted population of unregistered Bexar County residents in a limited

voter outreach effort designed to expand and encourage participation in the democratic process in Bexar County.

Plaintiff improperly characterizes the nature of the work performed by CGS as “sending voter registration applications to every voter, without any attempt at all to tailor such a mass-mailing to persons who definitively are eligible to vote...” Pl.’s Orig. Pet., § 61. The Texas Attorney General disapproves of the selection of CGS because he fears it will target voter registration applications to Democratic voters. *Id.*, §§ 28-31. In an effort to sow distrust and undermine the public’s confidence in elections, Plaintiff accuses Defendants of “facilitat[ing] fraud” by “indiscriminately inviting county residents to vote regardless of legal status.” Pl.’s Orig. Pet., ¶¶ 2, 15. Plaintiff conveniently ignores all of the safeguards put into place by the Texas Legislature through the Texas Election Code to ensure that only eligible Texas citizens are actually successfully registered to vote. *See* Tex. Elec. Code Chapters 13, 18 (setting out eligibility requirements; the process for registering to vote including the mandatory confidential, sensitive personal information required to be on the application to register to vote; and procedures for identifying registered voters). Plaintiff overlooks the fact that every single voter registration application received by the Voter Registrar goes through a mandatory verification process with the Texas Secretary of State’s Office to determine whether the applicant meets the criteria necessary to be eligible to vote. *See* Texas Election Code, Chapter 13, Subchapter C. An applicant can only be registered to vote after completion of the statutory verification process. *Id.*

It is axiomatic that the right to vote is a core principle embedded in the foundations of the American democratic process. *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 12 (Tex.

2011) (“The right to vote is fundamental, as it preserves all other rights.”). However, without full and free participation in the democratic process by registered voters, that core principle rings hollow. Full participation for those who are legally entitled to participate in our democratic process must be protected and defended and this includes the action that is at issue in this proceeding.

Plaintiff’s claims for relief fail because this Court does not have jurisdiction over this cause of action: Plaintiff’s claim for a temporary restraining order and injunctive relief is moot, and Defendants retain governmental immunity for their actions, which are authorized by law. Moreover, the Bexar County Commissioner Defendants did not violate the County Purchasing Act in voting to award the contract to CGS because it did not abuse its discretion in determining the sole source exception to the County Purchasing Act applied in this instance. Finally, this Court does not have the authority to issue injunctive relief because Plaintiff failed to name and serve the indispensable parties to this cause of action: Bexar County and CGS, the parties to the contract.

II. General Denial

Defendants assert a general denial as authorized by the Texas Rules of Civil Procedure to the allegations of material fact contained in Plaintiff’s Original Petition and request that Plaintiff be required to prove such allegations by a preponderance of the credible evidence as required by law. Defendants also deny each and every, all and singular, the allegations contained in Plaintiff’s Original Petition, and demand strict proof thereof.

III. Plea to the Jurisdiction

The State of Texas, by and through Ken Paxton, the Attorney General of Texas, filed an Original Verified Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction against Defendants Jacquelyn Callanen, in her official capacity as Bexar County Election Administrator¹; Peter Sakai, in his official capacity as Bexar County Judge; and Bexar County Commissioners Rebeca Clay-Flores, Justin Rodriguez, Grant Moody, and Tommy Calvert, in their official capacity, seeking emergency and other forms of injunctive relief. Plaintiff alleges that the Bexar County Commissioners Court – Defendants Sakai, Clay-Flores, Rodriguez, Moody, and Calvert – did not have legal authority to vote on an agenda item hiring a third-party vendor, CCGS, to mail out applications to register to vote to unregistered residents of Bexar County.

Plaintiff's legal arguments have no merit, and Defendants retain their governmental immunity from this cause of action.

A. Standard of Review

It is a fundamental rule of Texas jurisprudence that the State of Texas, its agencies, and its officers may not be sued without the consent of the Texas Legislature. *Hosner v. DeYoung*, 1 Tex. 764 (1847); *Griffin v. Hawn*, 341 S.W.2d 151 (Tex. 1960). The State of Texas is immune from suit unless it gives its consent to be sued. *Missouri Pac. R.R. Co.*

¹ The Elections Administrator is not an elected public official, but an employee of Bexar County. *Krier v. Navarro*, 952 S.W.2d 25, 26 (Tex. App – San Antonio 1997, writ denied). The Texas Election Code permits the commissioners court of a county with a population of 3.5 million or less to create the position of county elections administrator Tex. Elec. Code §§ 31.031-32. Bexar County has certain duties related to elections and voter registration and the Elections Administrator is appointed in order to carry out those duties on its behalf. See Tex. Elec. Code § 12.001, 31.043-45 (duties of elections administrator); 1 T.A.C. § 81.9 (duties of election administrator).

v. Brownsville Navigation Dist., 453 S.W.2d 812, 813 (Tex. 1970). While immunity from liability protects governmental units from judgments, immunity from suit completely bars lawsuits against them absent the express consent of the Texas Legislature. *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999). As a result, governmental immunity deprives trial courts from subject matter jurisdiction unless the governmental unit consents to the lawsuit. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 225-26 (Tex. 2004).

As with the State of Texas, political subdivisions of the State, such as Bexar County and its employees, enjoy the protection afforded by this governmental immunity, except in instances where immunity has been expressly waived by statute. Tex. Civ. Prac. & Rem. Code §§ 101.001(3); 101.021-.022; *Harris County v. Annab*, 547 S.W.3d 609, 613 (Tex. 2018). When a governmental unit and its employees are immune from suit under the doctrine of governmental immunity, courts lack subject-matter jurisdiction over the claims. *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 95 (Tex. 2012); *Jones*, 8 S.W.3d at 638. Generally, for there to be a waiver of immunity from suit, the Texas Legislature must have waived immunity from suit as to the claim in question by clear and unambiguous language. See Tex. Gov't Code Ann. § 311.034; *Tooke v. City of Mexia*, 197 S.W.3d 325, 332-33 (Tex. 2006).

A party suing a governmental unit and its employees protected by governmental immunity must allege consent to suit by statute or express legislative permission. *Federal Sign v. Tex. Southern Univ.*, 951 S.W.2d 401 (Tex. 1997); *Missouri Pac.*, 453 S.W.2d at 814. It is the opposing party's "burden to plead and prove that governmental immunity from suit has been waived." *Liberty Mutual v. Sharp*, 874 S.W.2d 736, 739 (Tex. App. – Austin 1994, writ denied). Without an express waiver of governmental immunity, the trial

court has no jurisdiction to hear the case. It is a well-established principle of law that a court without jurisdiction cannot render a valid judgment. *Id.* Accordingly, if at any time during the trial court's proceedings it becomes apparent that the court has no lawful authority to adjudicate the issues presented, the court must dismiss the case. *City of Beaumont v. West*, 484 S.W.2d 789, 791 (Tex. App. – Beaumont 1972, writ ref'd n.r.e.) Moreover, it is unnecessary to allow the plaintiff an opportunity to amend the pleadings before the case is dismissed when it is impossible for the facts alleged in the plaintiff's pleadings to confer jurisdiction on the trial court. *City of Austin v. L.S. Ranch, Ltd.*, 970 S.W.2d 750, 753 (Tex. App.—Austin 1998, no pet.).

B. This Court lacks jurisdiction to decide a moot controversy.

Plaintiff's claim for a temporary restraining order, temporary injunction and permanent injunction has become moot because the registration applications at issue have already been mailed. A case is moot when a justiciable controversy does not exist between the parties or when the parties do not have a legally cognizable interest in the outcome. *Abbott v. Mex. Amer. Leg. Caucus, Tex. House of Representatives*, 647 S.W.3d 681, 689 (Tex. 2002); *Heckman v. Williamson County*, 369 S.W.3d 137, 162 (Tex. 2012). Courts lack subject-matter jurisdiction to decide a moot controversy. *Tex. Dep't of Fam. & Protective Servs. v. N.J.*, 644 S.W.3d 189, 192 (Tex. 2022). If the act sought to be enjoined has been completed prior to the granting of a temporary injunction, and is not likely to recur, the issue has become moot and the temporary injunction should be denied. *Cameron v. Saathoff*, 162 Tex. 124, 345 S.W.2d 281 (1961); *Krenak v. South Texas Electric Cooperative Inc.*, 502 S.W.2d 605 (Tex. Civ. App.—Corpus Christi 1975, no writ); *Southwestern Bell Telephone Co. v. Communications Workers of America, AFL-CIO*, 454 F.2d 1333 (5th Cir. 1971).

CGS has recognized expertise in performing the work for which they were hired by the Bexar County Commissioners Court. CGS diligently performed their services and have flawlessly executed the performance of identifying potentially eligible Bexar County residents in a targeted voter registration drive and have fully completed the mailout of all voter registration applications under the contract. See Exhibit A, correspondence from CGS confirming completion of mailing. Plaintiff is therefore requesting the Court to prohibit actions that have already been completely performed, and such a request cannot be maintained by the Court. No effect can be given to an order enjoining the doing of that which has already been done. Plaintiff's petition and all claims for requested relief should be dismissed in their entirety by this Court for want of jurisdiction. *Heckman*, 369 S.W.3d at 161.

Defendants would note that there is an exception to the mootness doctrine "capable of repetition, yet evading review" under Texas law². However, this exception applies only in "rare" circumstances not applicable here. *Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001). For it to apply, two elements must be satisfied: (1) the challenged conduct must be of such short duration that it cannot be reviewed before the issue becomes moot and (2) there must be a reasonable expectation that the challenged conduct will occur again. *Id.* Neither element is satisfied here.

For the Court to entertain this exception to the mootness doctrine, the Court would have to engage in a long train of supposition and guesswork, a proposition that is inappropriate for the application of this exception. For instance, the Court would have to

² Another exception exists for "inherently transitory" claims, but the exception is only available where a population as a whole retains a live claim against a defendant, but the individual membership of that population is always changing due to the short-lived nature of the claim. See *Heckman v. Williamson County*, 369 S.W.3d 137, 164 (Tex. 2012). A circumstance clearly not presented in this case.

presume that the narrow 3-1-1 vote which led to the approval of the contract would repeat itself and another contract could be approved. In addition, the Court would have to disregard that the voter registration deadline for the November general election is October 7, 2024, and the next meeting of the Bexar County Commissioners Court does not occur until the next following day on October 8, 2024. Finally, and most importantly, the Court would have to ignore that Plaintiffs would have 72 hours' prior notice of any attempt by the Bexar County Commissioners Court to approve another contract to perform similar services as a result of the requirement that all items to be considered by commissioners court be posted with 72 hours advance public notice. *See* Tex. Gov't Code 551.041 ("A governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body."); *see also*, Tex. Gov't Code 551.043 ("The notice of a meeting...must be posted...for at least 72 hours' before the scheduled time of the meeting."). In short, Plaintiff would have more than sufficient time to obtain any appropriate relief thus vitiating this exception to mootness.

C. Defendants retain their governmental immunity because they acted pursuant to lawful authority in voting to approve the contract at issue.

The Plaintiff attempts to defeat Defendants' governmental immunity by bringing forth an *ultra vires* claim. He contends that Defendants "have no authority granted to [them] by law to print and mail unsolicited voter registration forms." Pl.'s Orig. Pet., ¶ 15.

A suit against a state official in his or her official capacity can proceed in the absence of a waiver of immunity if the official's actions are *ultra vires*. *Hall v. McRaven*, 508 S.W.3d 232, 238 (Tex. 2017). An *ultra vires* action requires a plaintiff to "allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act." *Id.* However, not every mistake or misinterpretation of the law amounts

to an *ultra vires* act. *Id.* at 241. To be cognizable, an *ultra vires* claim must challenge the government official's authority, not whether the government official made an incorrect decision. See *Creedmoor-Maha Water Supply Corp. v. Tex. Comm'n on Env'tl. Quality*, 307 S.W.3d 505, 517-18 (Tex. App.—Austin 2010, no pet.). An official's erroneous decision, made within the bounds of his authority, does not give rise to an *ultra vires* claim. *Id.* at 241; see also *N. Alamo Water Supply Corp. v. Texas Dep't of Health*, 839 S.W.2d 455, 459 (Tex. App.—Austin 1992, writ denied) (The fact that the agency might decide 'wrongly' in the eyes of an opposing party does not vitiate the agency's jurisdiction to make decision.).

Merely asserting legal conclusions and labeling actions of a governmental actor as *ultra vires* acts is insufficient to properly plead an *ultra vires* claim. *Edinburg Consol. Indep. Sch. Dist. v. Smith*, Nos. 13-16-00253-CV, 13-16-00254-CV, 2016 WL 3068119 at *13 (Tex. App.—Corpus Christi May 26, 2016, no pet.) (mem. op.) (“[M]erely asserting legal conclusions or labeling a defendant's actions as *ultra vires*, illegal, or unconstitutional is insufficient to plead an *ultra vires* claim—what matters is whether the facts alleged constitute actions beyond the governmental actor's statutory authority, properly construed.”). The sole question before this court to determine if immunity bars Plaintiff's requested relief and one that the Plaintiff must properly demonstrate is whether there is a complete absence of authority for the acts of the Bexar County Commissioners Court, not whether the Bexar County Commissioners made an incorrect or improvident decision.

Plaintiff cannot carry its *ultra vires* burden and Defendants' plea to the jurisdiction should be granted. While accusing Defendants of acting without any legal

authority in approving the hiring of CGS, Plaintiff entirely disregards section 81.25 of the Texas Administrative Code³ in which the Secretary of State – the State’s highest elections officer⁴ – “[e]ncourages” counties to engage in Voter Registration Drives:

Voter Registration drive efforts include but are not limited to *mailouts of applications to households*,” insertion of applications into newspapers, distributing applications at public locations, and other forms of advertising.

¹ T.A.C. § 81.25 (emphasis added). This is the very same activity the Plaintiff now complains of, which is clearly authorized under Texas law.

Additionally, the Texas Constitution provides that the commissioners court “shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed.” Tex. Const. art. V, § 18. Thus, the Texas Constitution establishes the Commissioners Court as the county’s principal governing body. *Comm’s Court of Titus County v. Agan*, 940 S.W.2d 77, 79 (Tex. 1997). In the exercise of its powers and jurisdiction over county business, the commissioners court has implied authority to exercise broad discretion to accomplish the purposes intended. *Canales v. Laughlin*, 147 Tex. 169, 214 S.W.2d 451, 453 (1948); *Cosby v. County Commissioners of Randall County*, 712 S.W.2d 246, 248 (Tex. App. – Amarillo 1986, writ ref’d n.r.e.). A commissioners court’s power is limited to that which is expressly delegated to it by the Texas Constitution or Legislature, *or necessarily implied to perform*

³ With the passage of the Administrative Code Act, the Texas Legislature intended for the Secretary of State to contract with public entities to publish the Texas Administrative Code. See <https://www.sos.state.tx.us/tac/index.shtml> (last visited September 11, 2024).

⁴ Section 31.001 of the Texas Election Code provides that the Texas Secretary of State is the “chief election officer of the state.” Tex. Elec. Code § 31.001.

its duties. City of San Antonio v. City of Boerne, 111 S.W.3d 22, 29 (Tex. 2003) (emphasis added).

The Bexar County Commissioners Court remains responsible for voter registration in Bexar County as well as conducting federal, state, and local elections within its jurisdiction. *Krier v. Navarro*, 952 S.W.2d 25, 28-29 (Tex. App. – San Antonio 1997, writ denied). Bexar County has created the position of elections administrator, who is an “agent or employee of the county, retained to discharge the administrative duties necessary to carry out the State and county’s responsibilities regarding elections and voter registration.” *Id.* at 29 (emphasis added). Although the Bexar County Elections Administrator is a named Defendant in this suit, she is not a party to the contract at issue, and she has not been tasked with providing voter registration forms. Rather, CGS has been retained to independently print and mail out voter registration forms. *See* Pl.’s Orig. Pet. At 5, paragraph’s, 22, 24.

The Bexar County Commissioners Court had legal authority on which to make a discretionary decision to engage in a limited voter outreach drive in an effort to target a limited population of unregistered or new Bexar County residents to engage them in the democratic process in Bexar County. 1 T.A.C. § 81.25. The Texas Attorney General may disagree with that decision or believe it was made in error. However, even if made in error, such a basis does not serve as a sufficient predicate for an *ultra vires* exception to governmental immunity. Accordingly, Defendants’ Plea to the Jurisdiction should be in all things granted and all relief requested by Plaintiff should be denied.

D. Plaintiff states no viable *ultra vires* claim for relief against any Defendant.

Plaintiff does not meet its burden to show that this Court has subject matter jurisdiction because its claims focus exclusively on a past alleged instance of *ultra vires* conduct—specifically, the Commissioners Court’s “plan” to mail registration applications, as reflected in the Commissioner’s Court’s approval of an agenda item to contract with CGS to conduct the mailing. *See* Pl’s Orig. Pet. at 13. But Plaintiff does not, and cannot, allege that any of the named Defendants have any ongoing responsibilities with regard to the mailing of registration applications. In fact, the petition makes clear that only CGS, which is not a party to this lawsuit, is responsible for printing and mailing the applications. *See id.* at 5, ¶¶ 22, 24. “The *ultra vires* exception to sovereign immunity permits only prospective declaratory or injunctive relief restraining *ultra vires* conduct, as opposed to retroactive relief.” *Combs v. Texas Civil Rights Project*, 410 S.W.3d 529, 537 (Tex. App.—Austin 2013, pet. denied) (citing *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009)) (holding that plaintiffs “failed to sufficiently allege facts demonstrating that any relief sought would not be barred by sovereign immunity” where *ultra vires* claim was based on past conduct, and concluding trial court would not have jurisdiction; “[a]ny declaration as to whether [the government official’s] past conduct exceeded her authority is purely retrospective in nature and therefore could not constitute valid *ultra vires* relief”). *See also Hailey v. Glaser*, No. 06-12-00065-CV, 2012 WL 5872869, at *11 (Tex. App. — Texarkana Nov. 21, 2012, no pet.) (holding allegations regarding past acts were not claims for prospective declaratory relief). There are no alleged future actions of any named Defendant to which Plaintiff might be entitled to injunctive relief under the doctrine of *ultra vires*. Accordingly, the *ultra vires* exception to immunity does not apply, and Plaintiff’s claims for injunctive relief must fail.

IV. Defendants did not violate the County Purchasing Act.

Plaintiff contends that the Bexar County Commissioner Defendants failed to abide by the requirements of the County Purchasing Act. The County Purchasing Act is located in Chapter 262 of the Texas Local Government Code, and generally sets forth the competitive bidding procedures that counties must follow.

Plaintiff lacks standing to challenge a contract allegedly made in violation of the Act. Section 262.033 of the County Purchasing Act provides that a “property-tax paying citizen of the County” may seek to enjoin performance of a contract made in violation of the County Purchasing Act.” *See* Tex. Local Gov’t Code § 262.033. First, Plaintiff lacks standing to seek injunctive relief under the County Purchasing Act. This lawsuit has not been brought by a property-tax paying citizen of Bexar County.

When standing is conferred by statute, a court must analyze the statute itself to determine whether the Legislature intended to confer standing on a particular party. *See Labrado v. County of El Paso*, 132 S.W.3d 581, 594 (Tex. App. – El Paso 2004, no pet.). Another court reached a similar conclusion when interpreting an analogous statute waiving a city’s immunity for violating the bid requirements of Chapter 252 of the Local Government Code. *See City of El Paso v. Waterblasting Techs., Inc.*, 491 S.W.3d 890, 900-01 (Tex. App – El Paso 2016, no pet.) (interpreting an analogous statute waiving a city’s immunity for violating the bid requirements of Chapter 252 of the Local Government Code.); *see also* Tex. Loc. Gov’t Code Ann. § 252.061 (which allows a property tax paying citizen of the municipality to enjoin performance of a contract in violation of the requirements of Chapter 252 by any “property tax paying resident of the municipality.”). Other courts considering Section 252.061 have reached a similar conclusion. *See e.g., City of Austin v. Util. Assocs., Inc.*, 517 S.W.3d 300, 310 (Tex. App.

– Austin 2017, pet. denied) (“only resident municipal taxpayers are authorized to seek the injunctive relief authorized by the statute.”).

To the extent that Plaintiff is challenging the award of the contract under Chapter 262, that portion of the lawsuit has not been brought by a property-tax paying citizen of Bexar County and may not be maintained by Plaintiff.

Second, even if this Court were to find that Plaintiff had standing to challenge the decision of Defendants to award the contract to CGS, Plaintiff is simply incorrect in its assertion the Defendants violated the County Purchasing Act. Plaintiff asserts that Defendants failed to comply with the requirements of section 262.023, which allegedly required competitive bidding for the contract. This is incorrect. The sole source exception under section 262.024(a)(7)(A) permits counties to exempt certain contracts from the typical competitive bidding process if the Commissioners Court determines that an item or service “can be obtained through only one source” including items for which competition is precluded because of the existence of, among others, “secret processes”. Tex. Loc. Gov’t Code § 262.024(a)(7)(A). CGS represented to the Bexar County Purchasing Agent that it had developed its own proprietary database and proprietary methodologies to identify eligible voters in Bexar County who are unregistered. The Purchasing Agent for Bexar County determined that this procurement met the exemption outlined in section 262.024(a)(7)(A) of the County Purchasing Act and advised the Commissioners Court as such. The Bexar County Commissioners Court exercised its discretion in granting this exemption to procurement. Tex. Loc. Gov’t Code § 262.024(a)(7)(A).

As a general rule, a district court’s supervisory control over a commissioners court is limited to determining whether the commissioners court has abused its discretion or

acted illegally or arbitrarily. *Commissioners Court of Titus County v. Agan*, 940 S.W.2d 77, 80 (Tex. 1997). However, in reviewing a commissioners court judgment for abuse of discretion, a reviewing court has no right to substitute its judgment and discretion for that of the Commissioners Court. *Id.* It is quite clear the Attorney General disagrees with the Commissioners Court's decision to award a contract to CGS because the Attorney General believes that CGS will target eligible voters to register to vote in Bexar County who will end up voting for Democratic candidates. But mere disagreement with Commissioners Court's decision does not amount to an abuse of discretion.

Further, nor is the agenda item violative of the prohibition on "performance-based compensation for registering voters." Pl. Orig. Pet. at 10. As Plaintiff alleges, the program entails mailing applications "with the hopes of" a certain return. Pl. Orig. Pet. at 6. The compensation to CGS thus is not performance-based.

V. No Temporary Injunction Can Issue Without Bexar County and CGS, Which Are Indispensable Parties.

Plaintiff's request for injunctive relief is also defective for failure to join necessary parties. Plaintiff's petition acknowledges that the substance of Plaintiff's grievance is "an agenda item hiring the company Civic Government Solutions (CGS) to conduct services *for the County* that the County is unauthorized to perform." Original petition at 5, ¶ 2. Bexar County and CGS are necessary parties to this suit because they are parties to the contract that Plaintiff seeks to enjoin. *See* Tex. R. Civ. P. 39; *McCharen v. Bailey*, 87 S.W.2d 284, 285 (Tex. App.—Eastland, 1935, no writ) ("Where the injunction in effect sets aside a contract all parties to the contract are necessary parties"); *Davis v. Wildenthal*, 241 S.W.2d 620, 622 (Tex. App. – El Paso 1951, writ ref's n.r.e.) (overruled in part on other grounds by *Scott v. Graham*, 156 Tex. 97, 292 S.W.2d 324 (1956)); *see also*

Henry v. Cox, 520 S.W.3d 28, 34 (Tex. 2017) (failure to name indispensable party “deprived the trial court the authority to bind them”). Bexar County’s status as a necessary and indispensable party is especially evident in light of the fact that, as discussed above, the contract already has been executed and CGS already has performed the printing and mailing of registration applications. But Plaintiff names as defendants only the members of the Bexar County Commissioners Court and Elections Administrator Jacque Callanen. This is insufficient to bring Bexar County into the lawsuit. *Scott v. Graham*, 156 Tex. 97, 101 (1956) (“A county is not made a party to a suit by joining the commissioners and other officials of the county as parties. Petitioner having failed to make the county a party, his suit is subject to dismissal at any time.”). Plaintiff’s failure to join Bexar County, a necessary and indispensable party, is in itself fatal to its claims for relief.

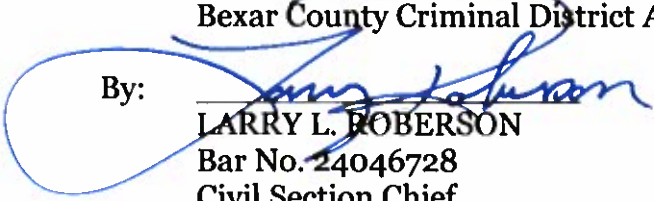
Prayer

Defendants request that the Court dismiss Plaintiff’s lawsuit, that all costs be assessed against Plaintiff, and for any other relief to which Defendants may be justly entitled.

Respectfully Submitted,

JOE D. GONZALES
Bexar County Criminal District Attorney

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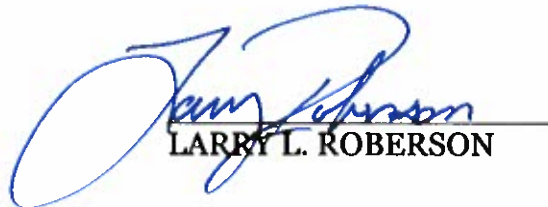
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CERTIFICATE OF SERVICE

I do hereby certify compliance with TEX. R. CIV. P. 21a. A true and correct copy of the foregoing instrument has been served on all counsel, by electronic transmission to the electronic mail address on file with the electronic filing manager Rule 21a.(1). If a party has not designated an electronic mail address with the electronic filing manager, the party was served a true and correct copy of the foregoing instrument in person, by certified/regular mail, by commercial delivery service, by fax or by email, or by such other manner as the Court in its discretion may direct. Rule 21a.(2). Service was made on all parties as provided on September 13, 2024.

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Case No. 2024-CI-19710

EXHIBIT A

E-Mail Correspondence From CGS

RETRIEVEDFROMDEMOCRACYDOCKET.COM

THE STATE OF TEXAS,
Plaintiff,

vs.

JACQUELYN CALLANEN, et al.
Defendants.

§ IN THE DISTRICT COURT
§
§
§ 73rd JUDICIAL DISTRICT
§
§
§ BEXAR COUNTY, TEXAS

BUSINESS RECORDS AFFIDAVIT

STATE OF TEXAS §
BEXAR COUNTY §

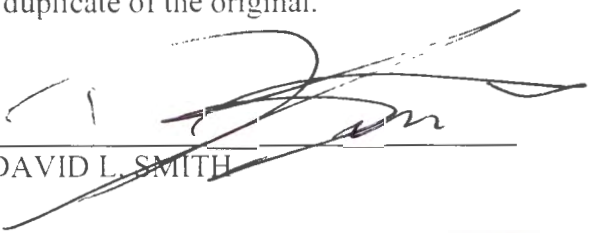
Before me, the undersigned notary, on this day personally appeared David L. Smith, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

"My name is David L. Smith. I am over 18 years of age, of sound mind, capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

I am the custodian of records for the Bexar County Manager's Office located at 101 W. Nueva, 10th Floor, San Antonio, Texas 78205.

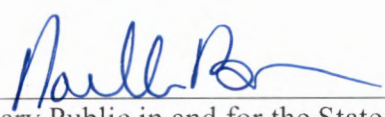
3. Attached to this affidavit is 1 page of records from the Bexar County Manager's Office file.

4. This record is kept by the Bexar County Manager's Office and it was the regular course of business of Bexar County Manager's Office or other individual, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The record attached hereto is the original or exact duplicate of the original."



DAVID L. SMITH

SUBSCRIBED AND SWORN TO BEFORE ME on this, the 13th day of September, 2024.



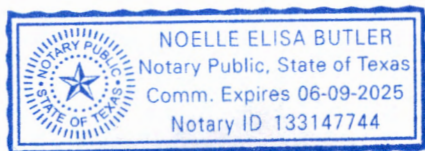
Notary Public in and for the State of Texas

Noelle Butler

Notary's Printed Name

06/09/2025

My Commission Expires



Guevara, Thomas

From: Jeremy Smith <jeremy@civicgs.com>
Sent: Tuesday, September 10, 2024 8:44 PM
To: Caballero, Francesca; Torres, Patricia; Guevara, Thomas; Roberson, Larry L.
Cc: Rodriguez, Justin
Subject: VR Work completed

You don't often get email from jeremy@civicgs.com. [Learn why this is important](#)

NOTICE:

This email originated from an EXTERNAL email address outside of bexar.org. Please use caution when clicking links or opening attachments from email senders that you do not know.
If you feel it is suspicious, please forward this email to BCERT@bexar.org

Bexar county team,

All voter registration forms are now in the mail. Voters have begun receiving them and will continue to until the end of the weekend. We have enjoyed working with you and look forward to sharing ongoing updates.

- After the feedback from county officials and the commissioner's court, we set more limited parameters for targeting. Instead of everyone who moved this year, we limited it to the past 6 months. We held out the spring college student rosters because it's post semester. We would suggest including the fall college students in a November mailing. These are normal parameters and no analyses were conducted on demographics, locations, or partisanship.
- We reached out to nonprofits that indicated they were conducting voter registration in the county and worked to deconflict as much as possible any duplicative efforts
- As a result, 139,610 unregistered individuals were targeted, which is every available public record after comparing against the most up to date voterfile.
- We can confirm that all actions taken have been entirely nonpartisan.

--

Jeremy Smith

CEO

512-677-5075 | jeremy@civicgs.com | civicgs.com

Civic Government Solutions

**APP. 9: STATE'S APPLICATION FOR EMERGENCY
TEMPORARY RESTRAINING ORDER
AND TEMPORARY INJUNCTION, AND RESPONSE TO
DEFENDANTS' PLEA TO THE JURISDICTION**

Cause No. 2024CI19710

THE STATE OF TEXAS,
Plaintiff,

v.

JACQUELYN CALLANEN in her official
capacity as Bexar County Election
Administrator; *et al.*

Defendants.

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In the District Court of

Bexar County, Texas

73rd Judicial District

**PLAINTIFF’S APPLICATION FOR EMERGENCY TEMPORARY RESTRAINING ORDER AND
TEMPORARY INJUNCTION, AND RESPONSE TO DEFENDANTS’ PLEA TO THE JURISDICTION**

Actions speak louder than words. Defendants’ words whisper harmless voter registration efforts, but their actions scream bad faith and partisanship. Despite proclaiming the lawfulness of registering ineligible residents to vote, Defendants carried out their scheme in secret while intentionally misleading the State in this litigation. Defendants sought to delay the hearing on the State’s application for temporary injunction under false pretenses—pleading an insufficient time to respond—while simultaneously attempting to moot the claims against them. These are not the actions of litigants who believe their actions to be lawful or just.

Defendants’ duplicity does not moot this case. Instead, Defendants’ bad faith conduct has forced the State to seek additional emergency relief. Moreover, their cut-and-paste, boilerplate arguments against this Court’s jurisdiction fail as a matter of law, as the State has a longstanding right to enforce its own law against county officials.

The Court should grant the State’s applications for temporary restraining order and temporary injunction and should deny Defendants’ attempted *post hoc* attack on the Court’s jurisdiction.

Background

Bexar County, as a political subdivision, is “a subordinate and derivative branch of [Texas] state government;” it may only exercise what powers the Texas Legislature expressly or impliedly conferred upon it. *State v. Hollins*, 620 S.W.3d 400, 403 (Tex. 2020) (quoting *Avery v. Midland Cty.*, 406 S.W.2D 422, 426 (Tex. 1966)) (cleaned up). This limitation applies to all Bexar County’s employees and officers, up to and including the Bexar County Commissioners Court. *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003).

Nevertheless, on September 2, 2024, the Office of the Attorney General learned that the Bexar County Commissioners Court, in violation of state law, intended to vote on a proposal at its September 3 meeting that would award \$392,700 of taxpayer money to a partisan organization—Civic Government Solutions (CGS)—to mass mail unsolicited voter registration applications to thousands of Bexar County residents regardless of whether those residents requested said application or are even eligible to vote.

Attorney General Ken Paxton sent a demand letter to the Commissioners Court in response, warning that the proposal, if adopted, would constitute an *ultra vires* act because: (1) the Election Code does not authorize the County to distribute voter registration forms unsolicited and (2) the Texas County Purchasing Act does not grant a discretionary exemption to the competitive bidding process that applies to the GSC contract. The Attorney General then advised the Commissioners Court that he would pursue legal action to enforce state law should it decide to move forward with its plan.

The Commissioners Court held its scheduled public meeting on September 3. After a contentious public debate, the Commissioners Court approved the agenda item in a 3–1 vote, hiring CGS to print and mass mail unrequested voter registration applications. During the hearing, the Commissioners Court discussed the Attorney General’s letter. The recommendation offered by the Commissioners Court’s attorney was that “the Attorney General can file a lawsuit” if he believed the contracted services contradicted state law.

Following the public meeting, the Attorney General acted promptly to secure emergency injunctive relief. He filed an Original Verified Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction mere hours after the Commissioners Court voted in favor of entering an illegal contract with CGS. He then had his office email two

attorneys in the Bexar County District Attorney's Office the morning of September 4 to inquire about their availability for a TRO hearing as well as whether counsel could accept service. The two attorneys contacted were the Chief of the Civil Division Larry Roberson and Assistant District Attorney Lisa Cubriel, who had worked alongside state counsel in an unrelated election lawsuit.

Because of the urgency of Texas's claims, the September 4 email requested an answer from Bexar County by close of business. The only response that state counsel received was an automatic out-of-office message from Ms. Cubriel, stating that she would return on Monday, September 9. Recognizing the difficulty of coordinating with multiple clients, state counsel decided to give Mr. Roberson an additional day to respond before scheduling a TRO hearing. They received no response. Accordingly, state counsel contacted the clerk's office to inquire about scheduling a hearing the following week. After getting confirmation of the Court's availability, they filed a notice of hearing, which set the hearing for 9:00 am on Tuesday, September 9.

Despite the State's efforts to provide Defendants an opportunity to respond and confer regarding the necessary TRO hearing, Defendants' counsel undertook a bizarre strategy. On Friday, September 6, the Bexar County District Attorney—not an assistant district attorney, not simply someone from his office, but the elected official himself—arrived at the Bexar County courthouse to attend a hearing no one set. Since there was no scheduled hearing, state counsel were not present. The only people prepared to discuss this case with the Bexar County District Attorney that Friday afternoon were a bevy of reporters who just happened to arrive at the same time, microphones and cameras at the ready.¹

The Bexar County District Attorney told reporters his office had reason to believe the State had set the TRO for hearing that afternoon—a docket typically reserved, as Defendants' counsel well knew, for uncontested matters. He claimed state counsel had wasted the County's time and had attempted to sneak a hearing past his office. In truth, state counsel only learned of Defendants' courthouse press conference the following Monday, because Defendants never contacted state counsel about the putative hearing even though state counsel's e-mail addresses and telephone

¹ <https://x.com/robertpricetv/status/1832243985911513201?s=46>

numbers appear on the signature block of the Petition. Defendants' only response to state counsel's efforts to confer was a dishonest political stunt.

After learning about the news story, state counsel again attempted to contact the Bexar County District Attorney's Office, first by email, and later by leaving a message on Ms. Cubriel's voicemail since she was scheduled to be back in the office. The attempt was successful. Ms. Cubriel informed state counsel via email that her office "[was] not authorized to accept service on behalf of Bexar County officials." She expressed concern about the hearing date since Mr. Roberson was allegedly unaware of the State's emails and was scheduled to attend a Commissioners Court meeting that same morning. State counsel attempted to confer further by phone to avoid the possibility of miscommunication, but Ms. Cubriel refused.

In an attempt to negotiate in good faith and give Defendants a fair opportunity to respond to the Attorney General's claims, state counsel offered the following proposal: the Attorney General would agree to move the hearing back to either Friday, September 13 or Monday, September 16 if Bexar County agreed to either convert the hearing to a combined TRO/ TI hearing or enter a Rule 11 agreement. The email specifically noted that the Attorney General's reluctance to move the hearing date stemmed from the office's concern that Bexar County would move forward with the mailing in the interim. Ms. Cubriel notified state counsel that Bexar County would agree to a join TRO/ TI hearing on Monday September 16 about an hour before the September 9 hearing was scheduled to convene. State counsel informed the court of the change and issued an amended notice.

In the time since the State acquiesced to Defendants' plea for additional notice, Defendants have—by their own telling—undertaken a profound effort to subvert the very notion of notice. As of the date on which the State negotiated a later hearing date with Defendants, the Defendants had not only—apparently—fully executed a complete contract with their vendor, but the vendor had undertaken considerable performance. *See* Defs.' Plea and Answer, Ex. A.

If this telling is to be believed, Defendants evidently undertook a mammoth effort to implement their scheme before the Court could intervene. At the time of Defendants' initial vote to approve the scheme, the contract was not yet final, and the vendor anticipated the first phase of the project would take *weeks*. Ex. A at 8. Yet Defendants now claim that the finalization of the contract, and additional negotiation and alteration of its initial terms—as well as nearly 140,000

individual mailings—were all complete within just seven days of Defendants’ vote. Defs.’ Plea and Answer, Ex. A. Despite having represented that triable issues would remain on the agreed hearing date, Defendants willfully undermined their own representations.

The rushed timeline is important because it demonstrates the lengths to which Defendants have gone in hopes that no Court could consider or stop their scheme. Defendants played for time not so they could better address the merits of the State’s legal challenge to their novel scheme, but rather to ensure completion of their scheme without judicial review. Politics and competition aside, these extreme measures hearken to ancient times when tyrants assumed their subjects too hungry and distractable to notice the loss of fundamental freedoms. This is no way to run a county, or an election. Had Defendants believed their actions lawful, they would have agreed to a hearing date allowing a court—in their home jurisdiction, no less—to evaluate their scheme. Instead, they misled the State and carried out their scheme in complete and utter secrecy.

Yet portions of that plan remain unfulfilled. Defendants authorized 210,000 initial mailings, but only two thirds of that have issued. Ex. A at 7; Defs.’ Plea and Answer, Ex. A. Defendants have also authorized quarterly additional mailings numbering in the tens of thousands, but those remain incomplete. Defendants’ own evidence acknowledges additional mailings contemplated as soon as November of this year, which have not yet issued. Defs.’ Plea and Answer, Ex. A.

Texas has successfully served Defendants as they carried out their plan, despite considerable efforts to avoid service. Ex. B; Ex. C. This gamesmanship, when combined with Defendants’ Friday afternoon publicity stunt, evidence Defendants’ unmoored approach to supervising the core democratic function: elections.

Defendants’ putative evidence in support of their scheme hardly lends confidence to the scheme’s propriety. First, Defendants acknowledge their partisan intent by alleging the State only brings this action out of a purported fear of registering only Democratic voters. The State has consistently sought to stop the registration of ineligible voters of any description; that Defendants are protective of registering only Democratic voters is an unmistakable tell.

Second, Defendants’ assurance that their scheme is nonpartisan hardly resolves concern. Their vendor confidently explains that it did not analyze the recipients’ partisanship. Defs.’ Plea

and Answer, Ex. A. But no such analysis is necessary if the recipients are harvested exclusively from partisan sources.

Moreover, the *ipse dixit* of the admittedly partisan vendor CEO that the mailings were entirely nonpartisan is hardly reassuring, particularly when evaluating his carefully parsed language. CGS CEO Jeremy Smith states the vendor's actions were completely nonpartisan, *id.*, but even taking this assertion as true, it leaves open the very likelihood that the vendor *received* partisan information and then simply sent mailers based on that information.

In short, Defendants' scheme was dishonest, partisan, and unlawful.

II. Application for Emergency Temporary Restraining Order and Temporary Injunction

This case is not moot, and Defendants' attempt to show otherwise lays bare why the Court must issue an emergency TRO. Defendants have proven themselves willing and able to prey deceptively upon the State's good faith in order to avoid this Court's authority to halt Defendants' unlawful actions. What they have not proven is that the unlawful actions this lawsuit seeks to enjoin are complete or unrepeatable.

A. The Case is Not Moot, and Emergency Relief is Necessary

A case is not moot if some issue is still in controversy. *In re Gruebel*, 153 S.W.3d 686, 689 (Tex. App.—Tyler 2005, no pet.) (citing *James v. City of Round Rock*, 630 S.W.3d 466, 468 (Tex. App.—Austin 1982, no writ)) (additional citations omitted). The mootness doctrine also admits of at least two exceptions: capable of repetition yet evading review, and public interest. *Texas A&M Univ.-Kingsville v. Yarbrough*, 347 S.W.3d 289, 290-91 (Tex. 2011) (defining the capable-of-review exception as those situations where “the named plaintiff can make a reasonable showing that he will again be subjected to the alleged illegality”) (citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983); *City of Georgetown v. Putnam*, 646 S.W.3d 61, 73 (Tex. App.—El Paso 2022, pet. denied) (defining the public interest exception as “broader in...scope” than the capable-of-repetition exception, and as (1) of “considerable importance”; (2) capable of repetition between either the same parties or other members of the public; and (3) for some reason evades appellate review) (citing *Univ. Interscholastic League v. Buchanan*, 848 S.W.2d 298, 304 (Tex. App.—Austin 1993, no writ)) (additional citations omitted); *see also Bragg v. Edwards Aquifer Authority*, 71 S.W.3d 729, 734 (Tex. 2002) (treating the two exceptions as identical where, although circumstances may

“differ in some substantive respects...none of the changes...affects the legal analysis. Thus the live issues in this case have not changed....”).

This case meets both exceptions to the mootness doctrine. Defendants argue that the State would have sufficient notice to stop any additional mass mailings, yet their actions in this case demonstrate that the opposite is true.

Defendants voted to approve an agreement with their vendor to mail unsolicited voter registration applications that contemplated multiple mailings. Ex. A. Yet despite failing to reach the amount of mailings contemplated for the first mailing, Defendants say no additional mailings will issue. This contravenes the plain language of their contractor’s scope of work. It also means Defendants, if they are telling the truth, suffer no prejudice from the State’s proposed TRO.

Defendants’ vote also approved an agreement with their vendor to issue quarterly mailings to tens of thousands of additional recipients. *Id.* at 1. The State’s proposed TRO prevents such additional contemplated mailings from issuing. Moreover, Defendants’ own exhibit demonstrates that Defendants intend to issue additional mailings in fewer than sixty days. Defs.’ Plea and Answer, Ex. A at 2 (“We would suggest including the fall college students in a November mailing.”).

These agreed facts demonstrate that Defendants’ unlawful conduct has not concluded. Defendants’ arguments that any future mailings cannot evade review, because such mailings may require additional action by Defendants, also fail.

First, it is not clear that additional mailings require additional votes. Because Defendants approved a contract for up to 210,000 initial mailings and acknowledge that less than 140,000 such mailings have issued, there is no basis to believe additional action by Defendants. Defendants could therefore attempt to issue some 70,000 additional mailings without additional authorization. This alone suffices to demonstrate that the conduct the State seeks to halt could occur again—*en masse*—without notice and at any moment.

Moreover, Defendants’ own evidence beggars belief—that their vendor, who suggested the mailing of so many unlawful applications would take three weeks, *id.*, in fact only took a matter of days. The evidence provides the Court no basis to believe that additional mailings are not, or will not shortly, issue.

Second, Defendants' demonstrated use of dishonest brokering to play for time constitutes a more than adequate showing that such additional mailings may yet again avoid review.

The State has demonstrably complied with its ethical obligations:

- The State notified opposing counsel as soon as practicable of hearings in this case;
- The State agreed to a putatively reasonable request for extension of time; and
- The State served no motions or pleadings in a manner unfairly limiting Defendants' opportunity to respond.

TX. R. LWYR'S CREED III.5, 6, 7.

In disappointing contrast, Defendants have failed in their responsibilities:

- Defendants failed to engage in proper or expected behavior;
- Defendants failed to treat adverse parties with fairness and due consideration, or to refrain from abusive or offensive conduct; and
- Defendants pursued tactics intended primarily for delay.

TX. R. LWYR'S CREED II.5, 6, 8.

Defendants' actions should, if nothing else, deprive them of the very benefit of the doubt on which their "sufficient notice" argument relies. Where a party uses notice periods to act in bad faith, that party should receive no additional notice period.

Third, this issue is undoubtedly of considerable public interest, which expands the province of the mootness exception. This is particularly true here, where at least one additional county has contracted for similar services with the same vendor. *See, Texas v. Elfant, et al.*, D-1-GN-005849; In the 200th District Court of Travis, County, Texas. In short, this case is not moot because other counties intend to engage in the same or similar unlawful conduct, and stopping such unlawful conduct is undoubtedly in the public interest.

B. The Court Should Grant the State's Emergency TRO

Because this case is not moot, the court should issue a TRO preventing Defendants from issuing additional mailings or otherwise taking any action to perform under their contract with the mailing vendor. This limitation includes preventing any additional mailings and ceasing any payments to the vendor. The State incorporates by reference the evidence and allegations contained in its Original Application for TRO.

“The purpose of a TRO is to preserve the status quo, which we have defined as the last, actual, peaceable, non-contested status which preceded the pending controversy.” *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (footnote and internal quotation marks omitted).

If the Court does not issue the requested temporary restraining order and temporary injunction, the status quo will be irrevocably broken. Defendants’ demonstrated duplicity proves their willingness to issue additional mailings. Once that happens, there will be no way to recall potentially tens of thousands of additional pieces of mail.

The State will suffer irreparable injury in that event. As a sovereign entity, Texas has an inherent right to enforce its own law. *Naylor*, 466 S.W.3d at 790. And the State “indisputably has a compelling interest in preserving the integrity of its election process.” *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). That right will be fundamentally undermined the moment that mail goes out. And no other way exists to make Plaintiff whole. The State’s sovereign interest cannot be remedied with monetary damages. *See Hollins*, 620 S.W.3d at 410. State officers will be required to combat the confusion that will inevitably result from Defendants’ actions. Even if state officers were able to divert their full attention to that task, it likely will not repair the resulting damage. Moreover, time they spend on this issue will distract them from their other critical duties just weeks before an election. Finally, preventing payment to Defendants’ partisan vendor disincentivizes additional bad faith from Defendants.

Therefore, the State is entitled to a temporary restraining order that:

- (1) Prevents any issuance of payment to the vendor;
- (2) Prevents any additional mailings under the current contract; and
- (3) Prevents Defendants from authorizing any additional contracts for such mailings; and
- (4) Grants such other and further relief as may be necessary to preserve the status quo and serve the interests of justice.

C. The Court Should Grant the State’s Emergency TI

For similar reasons, the State is entitled to a temporary injunction. A temporary injunction’s purpose is to preserve the status quo of the litigation’s subject matter pending a trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). A plaintiff must prove three elements to obtain a temporary injunction: (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. *Id.*

The State describes its probable right to recovery above. Plaintiff is not required to establish that it will prevail at trial to obtain a temporary injunction. *Butnaru* at 211.

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* at 204. If Defendants are not enjoined and send additional applications, contract for additional mailings, or reward their vendor for such mailing, damages are not available as a remedy and would not compensate the State in any event for the reasons discussed above. *See Hollins*, 620 S.W.3d at 410.

Therefore, the State is entitled to a temporary injunction mirroring the requested TRO.

III. Response to Defendants' Plea to the Jurisdiction

Defendants' plea to the jurisdiction should be denied because it is based on flawed assertions and misrepresentations that fail as a matter of law. Despite claiming that their actions were lawful, Defendants concealed their scheme to distribute unsolicited voter registration applications to ineligible residents, violating state and local procurement laws. Their covert conduct, intentional delays, and attempts to moot the State's claims reveal bad faith and partisanship, not good governance. Additionally, Defendants' argument that this case is moot ignores the significant public interest at stake along with the potential for ongoing and future violations, which remain capable of repetition yet evading review. The State's request for a temporary restraining order and temporary injunction is both necessary and appropriate to prevent further unlawful acts that exceed Defendants' statutory authority and threaten the integrity of Texas elections. Defendants' plea fails to establish any grounds that would deprive this Court of jurisdiction over the State's well-founded claims. The State has responded to Defendants' mootness arguments, *supra*, and now turns to Defendants' remaining arguments.

A. Defendants Have No Governmental Immunity for Their Ultra Vires Actions

Neither sovereign immunity nor governmental immunity applies to the State of Texas's *ultra vires* claim. "The basic justification for th[e] *ultra vires* exception to sovereign immunity is that *ultra vires* acts—or those acts without authority—should not be considered acts of the state at all." *Hall v. McRaven*, 508 SW.3d 232, 238 (Tex. 2017) (internal quotation marks and citations

omitted). As a result, “*ultra vires* suits do not attempt to exert control over the state—they attempt to reassert the control of the state over one of its agents.” *Id.*

Far from “merely asserting legal conclusions,” Defs.’ Plea and Answer at 10, as Texas has argued in detail: There is no statute empowering Defendants to circumvent statutory procurement procedures or to send voter registration applications to recipients who may or may not be registered to vote. Nor do those acts constitute exercises of power necessarily implied to perform Defendants’ duties.

To the contrary, Defendants’ actions undermine Texas law. A governmental entity sending voter registration applications may cause recipients who are ineligible to vote to believe they may register. At best, applications sent to these individuals will simply go unused. More likely, these excess applications will become ripe material for voter fraud.

Sending voter registration applications to every voter, without any attempt at all to tailor such a mass-mailing to persons who definitively are eligible to vote, is certain to result in large numbers of applications from voters who are ineligible to vote. Regardless of whether Defendants includes literature in their mailing attempting to explain voter eligibility criteria, it is inevitable that recipients of applications from a public official with the imprimatur of state authority will wrongly assume they are eligible to vote.

Similarly, circumventing statutorily mandated procurement processes to award a no-bid contract to a partisan vendor exceeds Defendants’ authority and undermines the integrity of Texas’s electoral process and Texans’ faith in that integrity. The court must thus infer that some of those ineligible voters will submit the applications and be incorrectly approved to vote.

Defendants’ plan to send voter registration applications *en masse* to recipients who may or may not be eligible to vote is *ultra vires*. Likewise, Defendants’ contract with a partisan vendor outside the statutory procurement process is *ultra vires*.

Nothing in the Texas Administrative Code changes this calculus. To be sure, Tex. Admin. Code § 81.25 lists certain “[v]oter registration drive efforts” that counties may undertake using certain state allocated funds issued to voter registrars. But this provision cannot trump the inexorable command of the Election Code, that provides officials “shall furnish forms in a reasonable quantity to a person requesting them for the purpose of submitting or filing the document or paper.” § 1.010(b) (emphasis added). And in the case of the Election Code, the Legislature

further cabined the power of political subdivisions, instructing that “[a] public official or election official may not create, alter, modify, waive, or suspend any election standard, practice, or procedure mandated by law or rule in a manner not expressly authorized by this [election] code.” Id. § 276.019 (emphasis added).

Indeed, the Election Code provides that it “supersedes a conflicting statute outside this code unless this code or the outside statute expressly provides otherwise.” Tex. Elec. Code Ann. § 1.002(b). Because neither the Election Code nor the Texas Administrative Code expressly provides otherwise, the Election Code supersedes Tex. Admin. Code § 81.25. *See State v. Salinas*, 982 S.W.2d 9, 12 (Tex. App.—Hous. [1st Dist.] 1997). Beyond that, because the legislature requires that the Election Code applies uniformly and local election officials must comply with its requirements in conducting elections, *see, e.g.*, § 31.003, any allowance for the unsolicited mass mailing of voter registration applications must be found in the Election Code, which it is not.

B. Defendants Did Not Act Pursuant to Lawful Authority

It is well-established that “[t]he authority vested in Texas counties—and county officials—is limited.” *State v. Hollins*, 620 S.W.3d 400, 406 (Tex. 2020). This is because political subdivisions of the state—such as counties, municipalities, and school districts—“represent no sovereignty distinct from the state and possess only such powers and privileges as have been expressly or impliedly conferred upon them.” *Id.* They are “a subordinate and derivative branch of state government.” *Avery v. Midland Cty.*, 406 S.W.2D 422, 426 (Tex. 1966).

Bexar County is a political subdivision of the State of Texas; it therefore possesses only those powers granted to it by the Texas Constitution or the Texas Legislature. *E.g., Town of Lakewood v. Bizios*, 493 S.W.3d 527, 536 (Tex. 2016). More precisely, it:

possesses and can exercise the following powers, and no others: First, those *granted in express words*; second, those *necessarily or fairly implied* in or incident[] to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but *indispensable*. “Any fair, *reasonable*, substantial *doubt* concerning the existence of power is resolved by the courts against the corporation, *and the power is denied*.”

Foster v. City of Waco, 113 Tex. 352, 355 (Tex. 1923). In the case of the Election Code, the Legislature further cabined the power of political subdivisions, instructing that “[a] public official

or election official may not create, alter, modify, waive, or suspend any election standard, practice, or procedure mandated by law or rule in a manner not *expressly* authorized by this [election] code.” *Id.* § 276.019 (emphasis added). “Any reasonable doubt must be resolved against an implied grant of authority.” *Hollins*, 620 S.W.3d at 406.

Here, Defendants illegally entered into the CGS contract for two independent reasons. First, the Election Code prohibits the County from mass mailing unsolicited voter registration forms. Second, the County improperly circumvented the competitive-bidding procedures required under the County Purchasing Act.

1. Defendants’ Actions Violate the Election Code.

Defendants cannot point to any express or implied authority authorizing them to mass mail thousands of voter registration applications because the Election Code *prohibits* them from doing so. Under the Election Code, “a public official or election official *may not* create, alter, modify, waive, or suspend any election standard, practice, or procedure mandated by law or rule in a manner not expressly authorized by this code.” Tex. Elec. Code § 276.019. That no public official may “create,” “alter,” or “modify” any election “practice or procedure,” in a manner not “expressly” authorized by the Election Code ends this case. That is because Defendants cannot point to a specific Election Code provision permitting the County to mass mail unsolicited voter registration forms. They cannot point to such a provision because the opposite exists. Election authorities “shall furnish forms in a reasonable quantity *to a person requesting them* for the purpose of submitting or filing the document or paper.” Tex. Elec. Code § 1.010(b). That means the county registrar may furnish voter registration forms to those who “request” them, but neither she nor other county officials may not “alter” or modify” that “practice or procedure” by mass mailing *unrequested* forms because such a “practice” is not “expressly authorized by” the Election Code. *Id.* § 276.019. Indeed, interpreting a different Election Code provision when a different county proposed to mail out unsolicited mail-in ballot applications, the Texas Supreme Court explained that while the statute “does not prohibit mass mailings, it expressly contemplates that ballot applications are to be requested by voters.” *Hollins*, 620 S.W.3d at 408.

In response, Defendants have pointed to an administrative rule promulgated by the Secretary of State stating that “efforts to increase the number of registered voters in the county are payable with Chapter 19 funds,” and that “voter registration drive efforts include but are not

limited to mailouts of applications of households, insertion of applications into newspapers, distributing applications at public locations, and other forms of advertising.” 1 Tex. Admin. Code § 81.25(a)-(b). But that administrative rule does not give the County the power to mass mail unsolicited voter applications. Most fundamentally, “[b]efore a county official can take any action, that action’s legal basis must be grounded ultimately in the constitution or statutes.” *Hollins*, 620 S.W.3d at 404. An administrative rule cannot give a county power that the Constitution or Legislature did not. Second, to the extent that the Secretary’s rule was once good law, it is no longer. The provision on which the County relies was first promulgated in 1995. *See* 20 Tex. Reg. 5841 (showing the original proposed rule). But in 2021, the Legislature amended the Election Code clearly stating that “a public official or election official may not create, alter, modify, waive, or suspend any election standard, practice, or procedure mandated by law or rule in a manner not expressly authorized by *this code*.” Tex. Elec. Code § 276.019 (effective Dec. 2, 2021) (emphasis added). “This code” means the Election Code. And the Election Code nowhere permits counties to mass mail unsolicited registration applications and Defendants do not contend that it does. That is because the Election Code states that election authorities “shall furnish forms in a reasonable quantity *to a person requesting them* for the purpose of submitting or filing the document or paper.” Tex. Elec. Code § 1.010(b) (emphasis added).

Defendants has also suggested that they have discretionary authority to do their mass mailing, and at most, made a mistake or misinterpretation of the law. That is wrong. This is not a case involving a state official “allegedly exceeding his granted authority to interpret and apply a law.” *Hall v. McRaven*, 508 S.W.3d 232, 241 (Tex. 2017). That is because “a public officer generally lacks discretion or authority to misinterpret the law,” *id.* and Defendants cite no authority giving them the power to do so because none exists. This is not a case in which a state official such as the county is given the *authority to interpret the law* such that a mistake in doing so may not be ultra vires. “When the ultimate and unrestrained objective of an official’s duty is to interpret collateral law, a misinterpretation is not overstepping such authority; it is a compliant action even if ultimately erroneous.” *Id.* at 242. But here, Defendants have been given no authority to interpret election law. Because the County’s actions were “unauthorized,” its officials “shed the cloak of the sovereign and act[ed] ultra vires.” *Id.* at 243.

Defendants' suggestion that it has the implied authority to enter into a contract to mass mail unsolicited voter registration applications also gets it nowhere. A county has only the power granted to it in "express words," powers "necessarily or fairly implied in or incident to those powers expressly granted" or powers "essential to the accomplishment of the declared objects and purposes" of the county "not simply convenient, but indispensable." *Hollins*, 620 S.W.3d at 406. And any powers "necessarily or fairly implied must also be indispensable." *Id.* at 406. Defendants do *not* have "broad discretion to accomplish the purposes intended," and the cases they cite for that proposition predate our Supreme Court's decision in *Hollins*. Defendants have pointed to no express authority giving them the power to do a mass mailing because the administrative rule on which it relies is outdated, and it cannot point to any implied power that is "indispensable" to a declared purpose. That is because the Election Code affirmatively prohibits Defendants from creating or changing any election practice not specifically listed in the Election Code, Tex. Elec. Code § 276.019, and further prohibits Defendants from sending out unsolicited applications by negative implication, *id.* § 1.010(b). Defendants cannot argue that they have an implied power to send out applications that the Legislature has prohibited.

Finally, Defendants have pointed to an irrelevant constitutional provision stating that a county commissioners court "shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed." Tex. Const. art V, § 18(b) (emphasis added); MR. __ (PTJ 11). Because the Legislature has expressly taken away a county's power to create or modify any election practice not in the Election Code, this provision does not give Defendants the authority to mass mail its applications.

2. Defendants' Actions Violate the County Purchasing Act.

Texas has standing to bring this claim because Defendants' violation of the County Purchasing Act is ultra vires. A commissioners court's authority is limited to those powers conferred either expressly or by necessary implication from the constitution and laws of this state. *See Guynes v. Galveston Cnty.*, 861 S.W.2d 861, 863 (Tex. 1993) (citing *Canales v. Laughlin*, 147 Tex. 169 (1948)); *see also* Tex. Const. art. V, § 18(b). When the County Purchasing Act governs the

commissioners court's authority to enter into a contract, the commissioners court lacks authority to enter into a contract outside its provisions.²

To that end, there is nothing moot about this claim. Rather, any contract awarded in violation of the County Purchasing Act may be declared void by a court when challenged. *See Tex. Highway Comm'n v. Tex. Ass'n of Steel Importers, Inc.*, 372 S.W.2d 525, 527–30 (Tex. 1963); *see also Kelly v. Cochran Cnty.*, 125 Tex. 424 (Comm'n App. 1935) (holding contracts for continuous stretch of road construction void due to violation of bid law); *Base-Seal, Inc. v. Jefferson Cnty.*, 901 S.W.2d 783, 785–788 (Tex. App.—Beaumont 1995, writ denied) (noting county precluded as a matter of law from paying equipment invoice because of failure to comply with bid law); *Darnell v. McLennan Cnty.*, 671 S.W.2d 686 (Tex. App.—Waco 1984, writ ref'd n.r.e.) (finding where contract for purchase of gravel was subject to competitive bid requirement and county did not comply with requirement, contract was void); *cf. Limestone Cnty. v. Knox*, 234 S.W. 131 (Tex. App.—Dallas 1921, no writ) (addressing similar language in former article 2268b and concluding that a contract was void because the commissioners court awarded it without complying with statutory requirements).

True, under section 262.033 of the Local Government Code, “[a]ny tax paying citizen may enjoin performance under a contract made by a county in violation of” the County Purchasing Act. Tex. Loc. Gov’t Code Ann. § 262.033. But the conferral of taxpayer standing does not change the fact that the commissioners court is without legal authority to enter a contract that illegally bypasses the competitive bidding requirements of the statute. That is *ultra vires*.

Nor can the commissioners court moot a challenge under the County Purchasing Act by signing the contract or accepting benefits from the contract. Rather, since it lacks authority to enter into a contract in violation of the County Purchasing Act in the first place, a commissioners court lacks authority to subsequently ratify such a contract.

Indeed, the authority to ratify is premised on the authority to enter into the contract in the first place. *See Stratton v. Liberty Cnty.*, 582 S.W.2d 252, 254 (Tex. App.—Beaumont 1979, writ ref’d n.r.e.) (“That which the Commissioners’ Court could authorize in the first instance could

² The County Purchasing Act was enacted for the benefit of the public, to protect taxpayers from fraud and favoritism in the expenditure of government funds. *Securtec, Inc. v. Cnty. of Gregg*, 106 S.W.3d 803, 815 (Tex. App.—Texarkana 2003, pet. denied). Defendants’ dishonest actions in this litigation are exacerbated by the very serious nature of what violations of the competitive bidding process entail. Beyond harming public trust and showing an astounding lack of fiscal responsibility, criminal penalties exist for a violation of the bid statutes. § 262.034.

be ratified by it at a subsequent date.”); *Angelina Cnty. v. Kent*, 374 S.W.2d 313, 317 (Tex. App.—Beaumont 1963, no writ) (“[W]hat the Commissioners Court could approve in the first instance, it may ratify”); *Cameron Cnty. v. Fox*, 61 S.W.2d 483, 487 (Tex. Comm’n App. 1933) (Tex. Comm’n App. 1933, holding approved) (“What the commissioners’ court could have authorized in the beginning, that court could subsequently ratify.”).

Conversely, a commissioners court may not subsequently ratify a contract that it lacked authority to make. See *Wyatt Metal & Boiler Works v. Fannin Cnty.*, 111 S.W.2d 787, 790 (Tex. App.—Texarkana 1937, writ dism’d) (“These purchases having been made in violation of the provisions of the articles requiring competitive bids, the [commissioners court] was without authority to ratify same, for this would grant them a power to do something indirectly they could not do directly.”); *Limestone County*, 234 S.W. at 134 (a commissioners court could not ratify a contract awarded in violation of competitive bidding requirements); *Jack v. State*, 694 S.W.2d 391, 397 (Tex. App.—San Antonio 1985, writ ref’d n.r.e.) (“Ratification may not be used to justify the making of an illegal contract. A contract which is made in violation of a statute is illegal and void and therefore not subject to ratification.”); Op. Tex. Att’y Gen. No. JM-1027 (1989) at 8 (“[The purchase] cannot be ‘ratified’ by the commissioners court since the commissioners court cannot bind the county by ratification of a contract the court itself had no authority to make in the first place.”).

And while it is generally true that a reviewing court should not substitute “its judgment and discretion for that of the Commissioners Court,” Defs.’ Plea and Answer at 16, the court must have something more than Defendants’ bare assertions that they used sound judgment in deciding to bypass the competitive bidding process. For example, in analyzing a different, but similar, exemption under § 262.024(a), the court in *Davray v. City of Midlothian, Texas*, 2005 WL 1586574 (N.D. Tex. 2005), found that there “must be *evidence* that entry of a no-bid contract” met the exemption. There, a city adopted a policy that only fire hydrants from a particular manufacturer could be used in the city, resulting in no-bid purchases. The city argued that the policy was to further public health and safety, and thus was exempt from bidding requirements. The court denied the city’s summary judgment motion, noting that “[t]o simply accept the City’s *ipse dixit* that its Mueller-only fire hydrant policy is necessary for the health and safety of Midlothian’s residents

would, to the Court’s mind, eviscerate Texas’ requirement that City expenditures for projects totaling more than \$25,000 be competitively bid.” *Id.* at 11.

A three-page self-serving memorandum from an eager supplier claiming it fits under the sole source exemption is akin to the kind of flawed “*ipse dixit*” in *Davray*. Nor did the meeting produce any more clarity. Rather, when asked the basis for CGS’s sole source exemption, the head of the purchasing department for the county stated that the decision was based off “what was sent by CGS.” Meeting Tr. at 85. The head of the purchasing department also stated she “went through. . . a database” to look for a “vendor who provides the same services” and that she did not find any. Meeting Tr. at 86. Of course, given that this is the first time in at least nineteen years (and likely ever) the county would be using a third party to send out voter registration applications, it seems likely that any vendor search *would* come up empty. That is what the competitive bidding process is for.

Because Plaintiffs have brought a valid ultra vires challenge here, Defendants “must produce some evidentiary basis for its actions,” *Davray, Inc.*, 2005 WL 1586574, to exempt CGS from the competitive bidding process outside of the “just trust us” reasoning offered by Defendants.

C. The Absence of Bexar County and CGS Does Not Bar Relief to Texas

Texas’s request for injunctive relief is not defective for failure to join Bexar County and CGS as necessary parties. Indeed, “the parties’ failure to join a person will rarely deprive the court of jurisdiction.” *Matter of Tr. A and Tr. C*, 690 S.W.3d 80, 86 (Tex. 2024). Rule 39 was designed “to avoid questions of jurisdiction,” and it “would be rare indeed if there were a person whose presence was so indispensable in the sense that his absence deprives the court of jurisdiction to adjudicate between the parties already joined.” *Cooper v. Tex. Gulf Indus., Inc.*, 513 S.W.2d 200, 203–04 (Tex. 1974). This is not such a “rare” case as Texas is requesting a TRO which is binding on the “parties to the action, their officers, agents, servants, employees, and attorneys, *and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise*.” Tex. R. Civ. P. 683 (emphasis added). So by its plain terms, any TRO would necessarily include Bexar County and CGS as these are “persons in active concert” with the named Defendants in the action.

Prayer

Therefore, the Court should deny Defendants' plea to the jurisdiction and issue a temporary restraining order and temporary injunction that:

- (1) Prevents any issuance of payment to the vendor;
- (2) Prevents any additional mailings under the current contract;
- (3) Prevents Defendants from authorizing any additional contracts for such mailings;
- (4) Grants the State such other and further relief as may be necessary to preserve the status quo and to serve the interests of justice.

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Dated: September 14, 2024.

Respectfully submitted,

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Attorney General

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

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ATTORNEYS FOR PLAINTIFF

THE STATE OF TEXAS,
Plaintiff,

v.

JACQUELYN CALLANEN in her official
capacity as Bexar County Election
Administrator; *et al.*

Defendants.

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In the District Court of

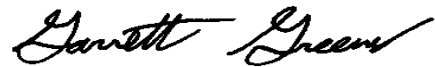
Bexar County, Texas

73rd Judicial District

Declaration of Garrett Greene

My name is Garrett Greene. I am over eighteen years of age, am of sound mind, and am capable of making this declaration. I am an employee of the following governmental agency: the Office of the Attorney General of Texas. I am executing this declaration as part of my assigned duties and responsibilities as an Assistant Attorney General in the Special Litigation Division.

I have read the above Applications for Emergency Temporary Restraining Order and Temporary Injunction. I verify under penalty of perjury that the facts stated therein are within my personal knowledge and are true and correct.



GARRETT GREENE

APP. 10: STATE'S AMENDED PETITION

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THE STATE OF TEXAS,
Plaintiff,

V.

JACQUELYN CALLANEN in her official capacity as Bexar County Election Administrator; PETER SAKAI, in his official capacity as Bexar County Judge; REBECA CLAY-FLORES, in her official capacity as Bexar County Commissioner; JUSTIN RODRIGUEZ, in his official capacity as Bexar County Commissioner; GRANT MOODY, in his official capacity as Bexar County Commissioner; TOMMY CALVERT, in his official capacity as Bexar County Commissioner.

Defendant.

In the District Court of

Bexar County, Texas

73rd Judicial District

**Plaintiff's Amended Verified Petition and
Application for Temporary Restraining Order,
Temporary Injunction, and Permanent Injunction**

1. The State of Texas, by and through Ken Paxton, the Attorney General of Texas, files this Amended Verified Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction against Defendants Jacquelyn Callanen, in her official capacity as Bexar County Election Administrator; Peter Sakai, in his official capacity as Bexar County Judge; as well as Rebeca Clay-Flores, Justin Rodriguez, Grant Moody, and Tommy Calvert, in their official capacity as Bexar County Commissioners.

2. The State seeks emergency injunctive relief against the named defendants to prevent them from giving a partisan organization, in violation of state and local procurement procedures, hundreds of thousands of taxpayer dollars to mail unsolicited voter registration applications to an untold number of Bexar County residents, regardless of whether those residents have requested such an application or are even eligible to vote. Defendants' actions will create confusion, facilitate fraud, undermine confidence in elections, and are illegal *ultra vires* acts because they exceed statutory authority.

Discovery Control Plan

3. Discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.3.

Claims for Relief

4. Plaintiff seeks injunctive relief. Therefore, this suit is not governed by the expedited actions process in Tex. R. Civ. P. 169.

Venue

5. Venue is proper in Bexar County under section 15.002(a)(1), (a)(2), and (a)(3) of the Texas Civil Practices and Remedies Code.

Waiver of Sovereign Immunity

6. Neither sovereign immunity nor governmental immunity applies to the State of Texas's *ultra vires* claim. "The basic justification for th[e] *ultra vires* exception to sovereign immunity is that *ultra vires* acts—or those acts without authority—should not be considered acts of the state at all." *Hall v. McRaven*, 508 SW.3d 232, 238 (Tex. 2017) (internal quotation marks and citations omitted). As a result, "*ultra vires* suits do not attempt to exert control over the state—they attempt to reassert the control of the state over one of its agents." *Id.*

Parties

7. The plaintiff is the State of Texas, by and through its Attorney General, Ken Paxton. *Yett v. Cook*, 115 Tex. 205, 221, 281 S.W. 837, 842 (1926) (“That the state has a justiciable ‘interest’ in its sovereign capacity in the maintenance and operation of its municipal corporations in accordance with law does not admit of serious doubt.”); *see also State v. Naylor*, 466 S.W.3d 783, 790 (Tex. 2015) (“As a sovereign entity, the State has an intrinsic right to enact, interpret, and enforce its own laws.”).

8. The defendants include Jacquelyn Callanen, in her official capacity as the Bexar County Election Administrator. *See Hall*, 508 S.W. at 240 (stating that “an ultra vires suit must lie against the allegedly responsible government actor in his official capacity”) (internal quotation marks omitted). She may be served with process at 1103 S. Frio, Suite 100, San Antonio, TX 78207.

9. The defendants include Peter Sakai, in his official capacity as the Bexar County Judge. *Id.* He may be served with process at 101 W. Nueva, 10th Floor, San Antonio, TX 78205.

10. The defendants include Rebeca Clay-Flores, in her official capacity as Bexar County Commissioner. *Id.* She may be served with process at 101 W. Nueva, Suite 1009, San Antonio, TX 78205.

11. The defendants include Justin Rodriguez, in his official capacity as Bexar County Commissioner. *Id.* He may be served with process at 101 W. Nueva, 10th Floor, San Antonio, TX 78205.

12. The defendants include Grant Moody, in his official capacity as Bexar County Commissioner. *Id.* He may be served with process at 101 W. Nueva, Suite 1007, San Antonio, TX 78205.

13. The defendants include Tommy Calvert, in his official capacity as Bexar County Commissioner. *Id.* He may be served with process at 101 W. Nueva, Suite 1029, San Antonio, TX 78205.

Factual Background

14. On September 2, 2024, Attorney General Ken Paxton sent a letter to the Bexar County Commissioners Court expressing concerns over a proposal involving mass mailing of voter registration applications. Letter from Texas Attorney General Ken Paxton, *Bexar County Voter Registration*, (Sep. 2, 2024), <https://tinyurl.com/mudk3f83>.

15. In the letter, the Attorney General warned the Bexar County Commissioners Court that such a proposal is *ultra vires* since Bexar County has no authority granted to it by law to print and mail unsolicited voter registration forms. *Id.*

16. The letter pointed out that, in addition to being *ultra vires*, the agenda item makes elections in Texas less secure by indiscriminately inviting county residents to vote regardless of legal status. *Id.*

17. Over 6,500 non-citizens have been removed from Texas voter rolls since 2021. Press Release, Office of the Texas Governor, *Governor Abbott Announces Over 1 Million Ineligible Voters Removed from Voter Rolls* (Aug. 26, 2024), <https://gov.texas.gov/news/post/governor-abbott-announces-over-1-million-ineligible-voters-removed-from-voter-rolls>. Of those non-citizens, nearly 2,000 have voted. *Id.*

18. On September 3, 2024, the Bexar County Commissioners Court held a public meeting. *See generally* Bexar County Commissioners Court, Agenda for Sept. 3, 2024, Bexar County, <https://www.bexar.org/AgendaCenter/ViewFile/Agenda/0903>

[2024-1621](#) (last visited Sept. 3, 2024) (Recording to be available at <https://bexarcountytx.new.swagit.com/videos/313881>)

19. At this meeting, the Commissioners Court approved an agenda item hiring the company Civic Government Solutions (CGS) to conduct services for the County that the County is unauthorized to perform.

20. CGS claims to have the “most comprehensive database of unregistered voters.” Home, Civic Government Solutions (last visited Sept. 3, 2024), <https://civicgs.com/>. It states it has “broad range of expertise, including data scientists, voting law experts, and mail logistics experience” that enables it to “deliver the market’s most reliable and effective voter registration solutions.” *Id.*

21. It has sent more than 10 million mailers since 2018 and has registered approximately 2 million people since 2018. *Id.*

22. Agenda item 66 called for approving a purchase order paying CGS hundreds of thousands of dollars to print and mass mail voter registration applications.

23. Agenda item 66 read:

Discussion and appropriate action regarding granting a discretionary exemption to the competitive bidding requirements set forth in the Texas County Purchasing Act for the purpose of awarding a purchase order to Civic Government Solutions, LLC to print and mail State Voter Registration Forms, with postage paid return envelopes, to unregistered voters in location(s) based on targeting agreed to by the County, to include data and reporting in the amount of \$392,700, on a discretionary exemption basis, in accordance with Texas Local Government Code § 262.024(7)(a), as requested by Commissioners Court; and authorizing the Purchasing Agent to execute contract and file the appropriate award documents for record.

24. According to the County, CGS will mail out 210,000 applications in hopes of getting 75,000 new registrants, resulting in a 3-4% upswing in votes cast in the county.

25. The CEO of CGS, Jeremy Smith, (Smith) told the Bexar County Commissioners Court that CGS would register these voters at an estimated cost of about \$7 per voter.

26. During the meeting, several members of the public voiced concerns over how the agenda item could negatively affect the integrity of elections in Texas.

27. Several citizens expressed concerns over Smith's prior public comments made on a podcast about his interest in getting people to vote for progressive candidates. *See Jeremy Smith of Civitech Discusses Data and Tools for Progressive Politics*, THE GREAT BATTLEFIELD (Sep. 2, 2022), <https://greatbattlefield.com/episode/data-and-tools-for-progressive-politics-with-jeremy-smith-of-civitech/>.

28. Smith is also listed as CEO of the company Civitech. *See Texas Comptroller of Public Accounts, Taxable Entity Search Results*, "Civitech, INC." <https://mycpa.cpa.state.tx.us/coa/coaSearchBtn>. (last visited Sep. 3, 2024).

29. Civitech is listed as the registrant contact of the CGS internet domain. *See WHOIS.com*, <https://www.whois.com/whois/civicgs.com>. (last visited Sept. 3, 2024),

30. Civitech has been described as a "Progressive data startup." Sara Fischer, *Progressive data startup Civitech raises \$10M*, Axios, <https://www.axios.com/2022/01/12/dem-startup-civitech-raises-10-million-midterm> (last visited Sep. 3, 2024).

31. Its website claims that the company's goal is to "drive support for progressive causes and candidates" and that "[r]egistering the unregistered likely

Democratic voters across the nation could be the key to securing Democratic victory in 2024.” *Closing the Voter Registration Gap*, Civitech, <https://civitech.io/post/closing-the-voter-registration-gap/> (last visited Sep. 4, 2024).

32. During the meeting, Smith maintained that the efforts of CGS to mail voter registrations would remain nonpartisan.

33. But given the appearance of partisanship, at least one member of the Commissioners Court expressed concern over the County dispensing with the competitive bidding process in retaining CGS. *See* Texas County Purchasing Act § 262.024(7)(a).

34. Elections Administrator Jacquelyn Callanen objected to the measure. Her concerns included the potential for the mass mailing of voter registration applications to worsen the backlog that already exists in the Bexar County Elections Department.

35. After extensive public comment and significant pushback, the agenda item passed 3-1 in approving the purchase order with one member of the Commissioners Court abstaining.

36. Following the public meeting, the Attorney General acted promptly to secure emergency injunctive relief. He filed an Original Verified Petition, Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction mere hours after the Commissioners Court voted in favor of entering an illegal contract with CGS.

37. He then had his office email two attorneys in the Bexar County District Attorney’s Office the morning of September 4 to inquire about their availability for a TRO hearing as well as whether counsel could accept service. The two attorneys contacted were the Chief of the Civil Division Larry Roberson and Assistant District

Attorney Lisa Cubriel, who had worked alongside state counsel in an unrelated election lawsuit.

38. Because of the urgency of Texas's claims, the September 4 email requested an answer from Bexar County by close of business. The only response that state counsel received was an automatic out-of-office message from Ms. Cubriel, stating that she would return on Monday, September 9. Recognizing the difficulty of coordinating with multiple clients, state counsel decided to give Mr. Roberson an additional day to respond before scheduling a TRO hearing. They received no response.

39. Accordingly, state counsel contacted the clerk's office to inquire about scheduling a hearing the following week. After getting confirmation of the Court's availability, they filed a notice of hearing, which set the hearing for 9:00 am on Tuesday, September 9.

40. Despite the State's efforts to provide Defendants an opportunity to respond and confer regarding the necessary TRO hearing, Defendants' counsel undertook a bizarre strategy. On Friday, September 6, the Bexar County District Attorney—not an assistant district attorney, not simply someone from his office, but the elected official himself—arrived at the Bexar County courthouse to attend a hearing no one set.

41. Since there was no scheduled hearing, state counsel were not present. The only people prepared to discuss this case with the Bexar County District Attorney that Friday afternoon were a bevy of reporters who just happened to arrive at the same time, microphones and cameras at the ready. See <https://x.com/robertpricetv/status/1832243985911513201?s=46>.

42. The Bexar County District Attorney told reporters his office had reason to believe the State had set the TRO for hearing that afternoon—a docket typically

reserved, as Defendants' counsel well knew, for uncontested matters. He claimed state counsel had wasted the County's time and had attempted to sneak a hearing past his office.

43. In truth, state counsel only learned of Defendants' courthouse press conference the following Monday, because Defendants never contacted state counsel about the putative hearing even though state counsel's e-mail addresses and telephone numbers appear on the signature block of the Petition. Defendants' only response to state counsel's efforts to confer was a dishonest political stunt.

44. After learning about the news story, state counsel again attempted to contact the Bexar County District Attorney's Office, first by email, and later by leaving a message on Ms. Cubriel's voicemail since she was scheduled to be back in the office. The attempt was successful. Ms. Cubriel informed state counsel via email that her office "[was] not authorized to accept service on behalf of Bexar County officials." She expressed concern about the hearing date since Mr. Roberson was allegedly unaware of the State's emails and was scheduled to attend a Commissioners Court meeting that same morning. State counsel attempted to confer further by phone to avoid the possibility of miscommunication, but Ms. Cubriel refused.

45. In an attempt to negotiate in good faith and give Defendants a fair opportunity to respond to the Attorney General's claims, state counsel offered the following proposal: the Attorney General would agree to move the hearing back to either Friday, September 13 or Monday, September 16 if Bexar County agreed to either convert the hearing to a combined TRO/ TI hearing or enter a Rule 11 agreement.

46. The email specifically noted that the Attorney General's reluctance to move the hearing date stemmed from the office's concern that Bexar County would move forward with the mailing in the interim. Ms. Cubriel notified state counsel that

Bexar County would agree to a join TRO/ TI hearing on Monday September 16 about an hour before the September 9 hearing was scheduled to convene. State counsel informed the court of the change and issued an amended notice.

47. In the time since the State acquiesced to Defendants' plea for additional notice, Defendants have—by their own telling—undertaken a profound effort to subvert the very notion of notice. As of the date on which the State negotiated a later hearing date with Defendants, the Defendants had not only—apparently—fully executed a complete contract with their vendor, but the vendor had undertaken considerable performance. *See* Defs.' Plea and Answer, Ex. A.

48. If this telling is to be believed, Defendants evidently undertook a mammoth effort to implement their scheme before the Court could intervene. At the time of Defendants' initial vote to approve the scheme, the contract was not yet final, and the vendor anticipated the first phase of the project would take *weeks*. Ex. A at 8. Yet Defendants now claim that the finalization of the contract, and additional negotiation and alteration of its initial terms—as well as nearly 140,000 individual mailings—were all complete within just seven days of Defendants' vote. Defs.' Plea and Answer, Ex. A. Despite having represented that triable issues would remain on the agreed hearing date; Defendants willfully undermined their own representations.

49. Yet portions of that plan remain unfulfilled. Defendants authorized 210,000 initial mailings, but only two thirds of that have issued. Ex. A at 7; Defs.' Plea and Answer, Ex. A. Defendants have also authorized quarterly additional mailings numbering in the tens of thousands, but those remain incomplete. Defendants' own evidence acknowledges additional mailings contemplated as soon as November of this year, which have not yet issued. Defs.' Plea and Answer, Ex. A.

50. Texas has successfully served Defendants as they carried out their plan, despite considerable efforts to avoid service. Ex. B; Ex. C. This gamesmanship, when combined with Defendants’ Friday afternoon publicity stunt, evidence Defendants’ unmoored approach to supervising the core democratic function: elections.

51. Because of these actions taken by Defendants, on September 14, Texas filed a new Application for Emergency TRO and TI as well as a response to Defendants’ plea to the jurisdiction.

Legal Background

52. It is well-established that “[t]he authority vested in Texas counties—and county officials—is limited.” *State v. Hollins*, 620 S.W.3d 400, 406 (Tex. 2020). This is because political subdivisions of the state—such as counties, municipalities, and school districts—“represent no sovereignty distinct from the state and possess only such powers and privileges as have been expressly or impliedly conferred upon them.” *Id.* They are “a subordinate and derivative branch of state government.” *Avery v. Midland Cty.*, 406 S.W.2D 422, 423 (Tex. 1966).

53. Bexar County is a political subdivision of the State of Texas; it therefore possesses only those powers granted to it by the Texas Constitution or the Texas Legislature. *E.g., Town of Lakewood v. Bizios*, 493 S.W.3d 527, 536 (Tex. 2016). More precisely, it:

possesses and can exercise the following powers, and no others: First, those *granted in express words*; second, those *necessarily or fairly implied* in or incident[] to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but *indispensable*. “Any fair, *reasonable*, substantial *doubt* concerning the existence of power is resolved by the courts against the corporation, *and the power is denied*.”

Foster v. City of Waco, 113 Tex. 352, 355 (Tex. 1923).

54. In the case of the Election Code, the Legislature further cabined the power of political subdivisions, instructing that “[a] public official or election official may not create, alter, modify, waive, or suspend any election standard, practice, or procedure mandated by law or rule in a manner not *expressly* authorized by this [election] code.” *Id.* § 276.019 (emphasis added).

55. Defendant Jacquelyn Callanen is an agent of Bexar County; she cannot take any action in her official capacity that exceeds the scope of the County’s powers. She “possesses only those powers ‘granted in express words’ or ‘necessarily or fairly implied in’ an express grant—powers ‘not simply convenient’ but ‘indispensable.’” *Hollins*, 620 S.W.3d at 406.

56. Defendants Peter Sakai, Rebeca Clay Flores, Justin Rodriguez, Grant Moody, and Tommy Calvert make up the Bexar County Commissioners Court. They too “possess[] only those powers ‘granted in express words’ or ‘necessarily or fairly implied in’ an express grant—powers ‘not simply convenient’ but ‘indispensable.’” *Id.*; see also *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003) (noting the limited nature of commissioner courts’ powers).

57. “Any reasonable doubt must be resolved against an implied grant of authority.” *Hollins*, 620 S.W.3d at 406.

A. Voter Registration

58. According to the Election Code, “[a] person desiring to register to vote” in Texas “must submit an application to the registrar of the county in which the person resides.” § 13.002(a).

59. Not everyone is qualified to register to vote, however. A person is eligible for registration, only if he or she is (1) “18 years of age or older;” (2) “a United States citizen;” (3) has not “been determined by a final judgment of a court exercising

probate jurisdiction to be: (A) totally mentally incapacitated; or (B) partially mentally incapacitated without the right to vote;” (4) has not “been finally convicted of a felony;” and (5) is “a resident of the county in which application for registration is made.” § 13.001.

60. Traditionally, “[t]he county tax assessor-collector was the voter registrar for the county,” but the Election Code also allows certain counties to appoint an election administrator to “perform[] the duties and functions of the voter registrar.” §§ 31.043; 12.001. Defendant Callanen, as the election administrator, is the voter registrar for Bexar County.

61. The Election Code does not empower the voter registrar or any other county official to arrange for the mass mailing of voter registration forms unsolicited. To the contrary, the Election Code provides, officials “shall furnish forms in a reasonable quantity *to a person requesting them* for the purpose of submitting or filing the document or paper.” § 1.010(b) (emphasis added).

62. The county registrar, as an election official to whom a document is required to be submitted, “shall make printed forms for that purpose, as officially prescribed, readily and timely available.” § 1.10(a). The Texas Supreme Court explained in *Hollins* that this provision, when read in context, simply means that the relevant officials must have the forms on hand to distribute to voters on request. 620 S.W.3d at 407.

63. The voter registrar has the authority to appoint persons who volunteer to serve as deputy registrars. Tex. Elec. § 13.031. Although a deputy registrar may distribute voter registration application forms, *id.* at § 13.038, “a person may not receive compensation from the county for service as a volunteer deputy registrar unless compensation is authorized by the commissioners court.” *Id.* at § 13.037.

64. For a commissioners court to authorize said compensation, it must follow proper procurement procedures. *See infra*. The Bexar County Commissioners Court failed to do so here.

65. In addition, even if compensation is properly authorized by the Commissioners Court, the Election Code prohibits performance-based compensation for registering voters. §§ 13.008(a)(1-4). Compensation may not be “based on the number of voter registrations . . . successfully facilitate[d]” or conditioned on a “quota of voter registrations to facilitate.” *Id.* § 13.008(a)(1-2). Violations of this section constitute a Class A misdemeanor.

66. From all available evidence, it appears that the Bexar County Commissioners Court has premised the contract price on the number of voters contacted and/or registered. This arrangement violates the statute.

B. Improper Procurement

67. The Texas Local Government Code provides statutorily-mandated procurement procedures for counties contracting with vendors for more than \$50,000.00. Tex. Loc. Govt. Code § 262.023. These procedures require competitive bidding, a reverse auction, or compliance with Texas Government Code Section 2269. *Id.* On information and belief, Defendants complied with none of these procedures.

68. Instead, according to the Commissioners Court agenda, Defendants claim their proposed contract with CGS is exempt from the requirements of Section 262.023 under Section 262.024(7)(a). *See* Agenda Item 66, reproduced *supra*. But the exceptions of Section 262.024(7)(a) are inapplicable. Those exceptions occur only

where there is no competition for the contracted services due to “patents, copyrights, secret processes, or monopolies.” Tex. Loc. Govt. Code § 262.024(7)(a).

69. Defendants make no mention of what patent, copyright, secret process, or monopoly prevents them from undergoing the transparent bidding process mandated by Texas procurement laws governing counties. The reason is simple: there is no such basis to forego statutorily-mandated procurement procedures. This is particularly true where Defendants are entrusting a partisan vendor with responsibilities in Texas elections.

70. By skipping mandatory procurement procedures in selecting a partisan vendor to send voter registration applications to recipients who may or may not be eligible to vote, Defendants exceed their authority, and any implied authority necessary to carry out their duties. Defendants’ vote to contract with CGS is there for *ultra vires*, and the Court should enjoin any further action by Defendants to complete the procurement process.

**The State of Texas requests an injunction against
Defendants’ *ultra vires* acts**

71. The Court should issue such an injunction because Defendants lack the authority to contract with a vendor outside the statutory procurement process, and similarly lack authority to send unsolicited voter registration applications to recipients who may or may not be eligible to vote. Defendants’ acts are therefore *ultra vires*.

72. In an *ultra vires* case, a plaintiff must allege, and ultimately prove, that an officer acted without legal authority or failed to perform a purely ministerial act. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

73. Counties in Texas are limited to exercising those powers that are specifically conferred on them by statute or the constitution. *Guynes v. Galveston Cty.*, 861 S.W.2d 861, 863 (Tex. 1993). The County has no sovereign power of its own: It “is a subordinate and derivative branch of state government.” *Avery v. Midland Cty.*, 406 S.W.2d 422, 426 (Tex. 1966), *rev’d on other grounds*, 390 U.S. 474 (1968); see TEX. CONST. art. IX, § 1 (“The Legislature shall have power to create counties for the convenience of the people”); *id.* art. XI, § 1 (“The several counties of this State are hereby recognized as legal subdivisions of the State.”). As a political subdivision, the County “represent[s] no sovereignty distinct from the state and possess[es] only such powers and privileges” as the State confers upon it. *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 430 (Tex. 2016) (quotation omitted); accord *Quincy Lee Co. v. Lodal & Bain Engineers, Inc.*, 602 S.W.2d 262, 264 (Tex. 1980).

74. A commissioners court also has power “necessarily implied to perform its duties.” *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 29 (Tex. 2003). Such powers must, however, be “indispensable” to perform such an express grant of authority, *Foster v. City of Waco*, 255 S.W. 1104, 1105–06 (Tex. 1923). “Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.” *Id.*

75. There is no statute empowering Defendants to circumvent statutory procurement procedures or to send voter registration applications to recipients who may or may not be registered to vote. Nor do those acts constitute exercises of power necessarily implied to perform Defendants’ duties.

76. In fact, Defendants’ actions undermine Texas law. A governmental entity sending voter registration applications may cause recipients who are ineligible to vote to believe they may register. At best, applications sent to these individuals

will simply go unused. More likely, these excess applications will become ripe material for voter fraud.

77. Sending voter registration applications to every voter, without any attempt at all to tailor such a mass-mailing to persons who definitively are eligible to vote, is certain to result in large numbers of applications from voters who are ineligible to vote. Regardless of whether Defendants includes literature in their mailing attempting to explain voter eligibility criteria, it is inevitable that recipients of applications from a public official with the imprimatur of state authority will wrongly assume they are eligible to vote.

78. Similarly, circumventing statutorily-mandated procurement processes in order to award a no-bid contract to a partisan vendor exceeds Defendants' authority and undermines the integrity of Texas's electoral process and Texans' faith in that integrity. The court must thus infer that some of those ineligible voters will submit the applications and be incorrectly approved to vote.

79. Defendants' plan to continue sending voter registration applications *en masse* to recipients who may or may not be eligible to vote is *ultra vires*. Likewise, Defendants' contract with a partisan vendor outside the statutory procurement process is *ultra vires*. Defendants should be enjoined and the illegal contract should be declared void.

Application for a Temporary Restraining Order

80. "The purpose of a TRO is to preserve the status quo" which is defined as "the last, actual, peaceable non-contested status which preceded the pending controversy." *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

81. Here, that means that the contract remains at least partially unperformed. If the County were allowed to make payments or otherwise continue to

perform the contract, then prospective relief in an ultra vires suit could not undo those acts. Under such circumstances, the Supreme Court has stated that the status quo “should remain in place while the court of appeals, and potentially this Court, examine the parties’ merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought.” Order at 1, *In re Abbott*, No. 21-0720 (Tex. Aug. 26, 2021)

82. The State stands to suffer irreparable injury. As a sovereign entity, Texas has an inherent right to enforce its own law. *Naylor*, 466 S.W.3d at 790. And the State “indisputably has a compelling interest in preserving the integrity of its election process.” *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). That right will be fundamentally undermined the moment that mail goes out. And no other way exists to make Plaintiff whole. The State’s sovereign interest cannot be remedied with monetary damages. *See Hollins*, 620 S.W.3d at 410. State officers will be required to combat the confusion that will inevitably result from Defendants’ actions. Even if state officers were able to divert their full attention to that task, it likely will not repair the resulting damage. Moreover, time they spend on this issue will distract them from their other critical duties just weeks before an election.

83. At the very least, the County cannot show that it will be harmed by having to wait a short fourteen days before continuing to perform the contract that the State has asserted in its sovereign capacity is a violation of core public policy. *See Tex. R. Civ. P. 680*.

84. Therefore, the State is entitled to a temporary restraining order preserving the status quo by enjoining Defendants from sending any more unsolicited voter registration applications until the temporary injunction hearing.

85. This Court should enter an order preventing the County from engaging in any further performance of the contract, including making payments under it.

Application for a Temporary Injunction

86. For similar reasons, the State is entitled to a temporary injunction. A temporary injunction's purpose is to preserve the status quo of the litigation's subject matter pending a trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

87. Plaintiff must prove three elements to obtain a temporary injunction: (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. *Id.*

88. Plaintiff describes its probable right to recovery above. Plaintiff is not required to establish that it will prevail at trial to obtain a temporary injunction. *Butnaru* at 211.

89. 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* at 204. If Defendants are not enjoined and send the remaining applications, damages are not available as a remedy and would not compensate Plaintiff in any event for the reasons discussed above. *See Hollins*, 620 S.W.3d at 410.

90. Because "ultra vires conduct automatically results in harm to the sovereign as a matter of law, *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020), and because the County's decision to execute the contract was ultra vires for the reasons explained below, at least part of the State's injuries may be still be redressed by a court via an order preventing the County from engaging in any further performance of the contract, including making payments under it.

91. Therefore, Plaintiff is entitled to a temporary injunction enjoining Defendants from committing the *ultra vires* act of sending unsolicited voter registration applications to recipients who may or may not be eligible to vote.

Application for a Permanent Injunction

92. Plaintiff requests trial on the merits, where it will seek a permanent injunction enjoining Defendants from committing the *ultra vires* acts of sending unsolicited voter registration applications and contracting with a partisan vendor in violation of statutory procurement procedures.

Declaratory Judgment

93. Under its own terms, the Uniform Declaratory Judgment Act (UDJA) is to be “liberally construed and administered”. Tex. Civ. Prac. & Rem. Code § 37.002(b). Under the UDJA, a court of record otherwise within its jurisdiction has the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. Tex. Civ. Prac. & Rem. Code § 37.003(a).

94. “[G]overnmental immunity is generally waived for declaratory relief under the [UDJA].” *Labrado v. Cnty. of El Paso*, 132 S.W.3d 581, 592 (Tex. App.—El Paso 2004).

95. Any contract awarded in violation of the County Purchasing Act may be declared void by a court when challenged. *See Tex. Highway Comm’n v. Tex. Ass’n of Steel Importers, Inc.*, 372 S.W.2d 525, 527–30 (Tex. 1963).

96. The commissioners court lacks the authority to ratify a void contract by accepting its benefits because the authority to ratify a contract is premised on the authority to enter into the contract in the first place. *See Stratton v. Liberty Cnty.*, 582 S.W.2d 252, 254 (Tex. App.—Beaumont 1979, writ ref’d n.r.e.) (“That which the Commissioners’ Court could authorize in the first instance could be ratified by it at a

subsequent date.” So the commissioners court cannot subsequently ratify a contract that it lacked authority to make in the first place—like a contract in violation of the County Purchasing Act. *See Wyatt Metal & Boiler Works v. Fannin Cnty.*, 111 S.W.2d 787, 790 (Tex. App.—Texarkana 1937, writ dism’d) (“These purchases having been made in violation of the provisions of the articles requiring competitive bids, the [commissioners court] was without authority to ratify same, for this would grant them a power to do something indirectly they could not do directly.”).

97. This Court should declare that the contract between Defendants and CGS is void because Defendants failed to comply with the competitive bidding requirements of the Texas County Purchasing Act.

Prayer

98. Therefore, Plaintiff seeks a temporary restraining order, temporary injunction, and permanent injunction enjoining Defendants from continuing to send any unsolicited voter registration applications to the residents of Bexar County. This Court should enjoin all future performances under the CGS contract, including preventing the County from making payments, and declare the contract void for violating the competitive bidding requirements of the Texas County Purchasing Act.

Request for Disclosure

99. Plaintiff requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Texas Rules of Civil Procedure 194.2.

Dated: September 16, 2024.

Respectfully submitted,

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First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

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ATTORNEYS FOR PLAINTIFF

THE STATE OF TEXAS,
Plaintiff,

v.

JACQUELYN CALLANEN in her official
capacity as Bexar County Election
Administrator; *et al.*

Defendants.

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In the District Court of

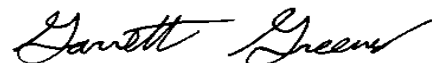
Bexar County, Texas

73rd Judicial District

Declaration of Garrett Greene

My name is Garrett Greene. I am over eighteen years of age, am of sound mind, and am capable of making this declaration. I am an employee of the following governmental agency: the Office of the Attorney General of Texas. I am executing this declaration as part of my assigned duties and responsibilities as an Assistant Attorney General in the Special Litigation Division.

I have read the above Amended Verified Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction. I verify under penalty of perjury that the facts stated therein are within my personal knowledge and are true and correct.



GARRETT GREENE

**APP. 11: BEXAR COUNTY'S AMENDED PLEA TO THE
JURISDICTION**

RETRIEVEDFROMDEMOCRACYDOCKET.COM

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities related to the business. It emphasizes the need for transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It includes a detailed description of the experimental setup and the procedures followed during the data collection process.

3. The third part of the document presents the results of the experiments and discusses the implications of the findings. It compares the observed outcomes with the theoretical predictions and provides a comprehensive analysis of the data.

4. The fourth part of the document concludes the study and provides a summary of the key findings. It also discusses the limitations of the study and suggests areas for future research.

5. The fifth part of the document contains the references and bibliography, listing the sources used in the study.

6. The sixth part of the document contains the appendices, which provide additional information and data related to the study.

7. The seventh part of the document contains the index, which helps in locating specific information within the document.

8. The eighth part of the document contains the glossary, which defines the key terms and concepts used in the study.

9. The ninth part of the document contains the acknowledgments, where the author expresses gratitude to those who have supported the research.

10. The tenth part of the document contains the conclusion, which summarizes the overall findings and provides a final statement on the significance of the study.

BEXAR COUNTY, TEXAS

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**RESPONSE TO PLAINTIFF'S AMENDED
 APPLICATION FOR TEMPORARY RESTRAINING
 INJUNCTION, AND PERMANENT INJUNCTION
 DEFENDANTS' PLEA TO THE JURISDICTION
 OF THE JUDGE OF THE DISTRICT COURT.**

ES, in her official §
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 County Commissioner. §

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ES, in her official §
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 County Commissioner; §
 in his official capacity §
 County Commissioner; §
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**RESPONSE TO PLAINTIFF'S AMENDED
 APPLICATION FOR TEMPORARY RESTRAINING
 INJUNCTION, AND PERMANENT INJUNCTION
 DEFENDANTS' PLEA TO THE JURISDICTION
 OF THE JUDGE OF THE DISTRICT COURT.**

Defendants”) in the above-styled and numbered cause, represented by and through the undersigned Assistant District Attorneys, and files this, their response to Plaintiff’s Amended Verified Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction¹ and Defendants’ Plea to the Jurisdiction and in support thereof would respectfully show the following:

I. General Denial

Defendants assert a general denial as authorized by the Texas Rules of Civil Procedure to the allegations of material fact contained in Plaintiff’s Original Petition and request that Plaintiff be required to prove such allegations by a preponderance of the credible evidence as required by law. Defendants also deny each and every, all and singular, the allegations contained in Plaintiff’s Original Petition, and demand strict proof thereof.

II. Background

The Bexar County commissioners court is composed of the county judge and the county commissioners. Tex. Const. art. V, § 18(b); Tex. Local Gov’t Code Ann. § 81.001 et seq. Although it is called a “court,” it serves as the county’s principal governing body, and its primary function is the administration of the county’s business. Tex. Const. art. V, § 18(b); *Commissioners Court of Titus County v. Agan*, 940 S.W.2d 77, 79 (Tex. 1997). In the exercise of its powers and jurisdiction over county business, a commissioners court

¹ Plaintiff filed its Amended Verified Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction on Monday, September 16, 2024 at 6:46 a.m.

has implied authority to exercise broad discretion to accomplish the purposes intended. *Canales v. Laughlin*, 214 S.W.2d 451, 453 (Tex. 1948).

This case arises from a contract procurement between Bexar County and Civic Government Solutions (“CGS”), a third-party vendor. It is no secret that Americans have been moving to Texas in large droves in the past decade; Texas is where people want to live and work. San Antonio added more new residents than any other city in the United States in the last year alone.² San Antonio, of course, is within Bexar County, Texas. With so many new residents moving into Bexar County in the past year, and with a national federal election on the horizon, the Bexar County Commissioners Court voted to approve the hiring of a third-party vendor, CGS, to simply mail out voter registration applications to a targeted population of unregistered Bexar County residents in a limited voter outreach effort designed to expand and encourage participation in the democratic process in Bexar County. Defendants acted in accordance with the National Voter Registration Act (“NVRA”), the Texas Election Code, and the Texas Administrative Code.

In an effort to sow distrust and undermine the public’s confidence in elections, Plaintiff accuses Defendants of “facilitat[ing] fraud” through its targeted outreach to eligible residents who have not yet registered to vote. Pl’s Orig. Pet., ¶¶ 2. Plaintiff conveniently ignores all of the safeguards put into place by the Texas Legislature through the Texas Election Code to ensure that only eligible Texas citizens are actually successfully registered to vote. *See* Tex. Elec. Code Chapters 13, 18 (setting out eligibility requirements; the process for registering to vote including the mandatory confidential,

² <https://www.expressnews.com/news/article/san-antonio-population-growth-2023-19761294.php> (last visited September 14, 2024).

sensitive personal information required to be on the application to register to vote; and procedures for identifying registered voters). Plaintiff overlooks the fact that every single voter registration application received by the Voter Registrar goes through a mandatory verification process with the Texas Secretary of State's Office to determine whether the applicant meets the criteria necessary to be eligible to vote. *See* Texas Election Code, Chapter 13, Subchapter C. An applicant can only be registered to vote after completion of the statutory verification process. *Id.*

Defendants are entitled to governmental immunity from Plaintiff's suit because Defendants acted lawfully. In an attempt to deflect attention away from the fatal deficiencies of their lawsuit and request for emergency relief, Plaintiff filed an amended petition that is rife with material omissions and blatant misrepresentations of the procedural history of this case.

Plaintiff filed its Original Verified Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction on September 3, 2024 against the above-named Defendants. Plaintiff sought to enjoin performance of a contract between Bexar County and third-party vendor Civic Government Solutions ("CGS"). Plaintiff did not sue Bexar County or CGS, who are both indispensable parties to their action. *See* Tex. R. Civ. P. 39; *McCharen v. Bailey*, 87 S.W.2d 284, 285 (Tex. App.—Eastland, 1935, no writ) ("Where the injunction in effect sets aside a contract all parties to the contract are necessary parties"); *Davis v. Wildenthal*, 241 S.W.2d 620, 622 (Tex. App. — El Paso 1951, writ ref's n.r.e.) (overruled in part on other grounds by *Scott v. Graham*, 156 Tex. 97, 292 S.W.2d 324 (1956)); *see also Henry v. Cox*, 520 S.W.3d 28, 34 (Tex. 2017) (failure to name indispensable party "deprived the trial court the authority to

bind them”). Individual commissioners have no authority to bind the County by their separate action. *Canales v. Laughlin*, 147 Tex. 169, 176 (Tex. 1948).

A suit by or against a county must be brought in the county’s corporate name. Tex. R. Civ. P. 33. A county is not made a party when the commissioners court or other county officials have been named as parties, even if the county officials and commissioners are parties in their official capacities. *Scott*, 292 S.W.2d at 326-27; *Childress County v. Sachse*, 310 S.W.2d 414, 418 (Tex. Civ. App.—Amarillo 1958), writ ref’d n.r.e., 312 S.W.2d 380 (Tex. 1958). The county must be joined as a party defendant in an action to enjoin the performance and execution of a contract made by the commissioners court. *See Davis*, 241 S.W.2d at 622. Bexar County and CGS’s absence from this suit means any TRO or future TI is ineffectual. Plaintiff attempts to distract from this fact by claiming Defendants engaged in delay tactics to moot the issue, when Plaintiff’s own errors are what is really at issue.

As the Court is well aware, Texas law and Bexar County Local Rules provide a party with the ability to obtain a TRO without notice to the adverse party if the party can demonstrate “immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served.” *See* Tex. R. Civ. P. 680; Bexar County Local Rule 6(C), and comment. Absolutely nothing prevented Plaintiff from seeking an emergency hearing on its TRO after it filed its suit on September 3, 2024.

While Texas Rule of Civil Procedure provides an exception to obtaining a TRO without notice to the adverse party, Texas Rule of Civil Procedure 681 *requires* notice to the adverse party before a temporary injunction can issue. Tex. R. Civ. P. 680, 681. On Monday, September 9, 2024, Plaintiff’s counsel emailed Defendants’ counsel notice of an

in-person hearing on Plaintiff's motion for TRO, temporary injunction, and permanent injunction for Tuesday, September 10, 2024 at 9:00 a.m. Defendants reached out to Plaintiff to notify them that their notice did not comply with Texas Rule of Civil Procedure 21 and Bexar County Local Rules, which require at least 3 days' notice of a hearing to all parties. Defendants requested that Plaintiff properly serve the Defendants with their suit, and to send out an amended notice of hearing that complied with Texas Rules of Civil Procedure 21 and Bexar County Local Rules, and that if Plaintiff failed to do so, Defendant's counsel would object at the hearing. Plaintiff also intentionally set its hearing at the exact same date and time it knew Defendants were unavailable because the entire Bexar County Commissioners Court was scheduled to hold its public meeting to discuss and approve the Bexar County budget – among other County business – on September 10, 2024, starting at 9:00 a.m., the exact same time Plaintiff requested a hearing. The Bexar County Commissioners Court meeting was scheduled at the beginning of the current fiscal year and is set in stone. Contrary to Plaintiff's assertion, Defendants were not seeking to "delay" Plaintiff's hearing under false pretenses. Plaintiff conveniently omits its failure to follow the Texas Rules of Civil Procedure in initially setting a hearing on its request TRO and temporary injunction for Tuesday, September 10, 2024 and selecting a date and time when it knew the Bexar County Commissioners Court, i.e., the Defendants, were unavailable due to a scheduled Commissioners Court meeting.

Plaintiff suggested rescheduling its TRO/temporary injunction hearing to Friday, September 13 or Monday, September 16, and stated "[w]e are willing to push back today's hearing to either date, regardless of a Rule 11 agreement, so long as we have assurance that it will be a combined hearing." *See* Exhibit A. Defendants agreed to one of the dates

proposed by Plaintiff, and never represented that performance of the contract between Bexar County and CGS would be halted.

It is axiomatic that the right to vote is a core principle embedded in the foundations of the American democratic process. *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 12 (Tex. 2011) (“The right to vote is fundamental, as it preserves all other rights.”). However, without full and free participation in the democratic process by registered voters, that core principle rings hollow. Full participation for those who are legally entitled to participate in our democratic process must be protected and defended and this includes the action that is at issue in this proceeding.

Plaintiff’s claims for relief fail because this Court does not have jurisdiction over this cause of action: Plaintiff’s claim for a temporary restraining order and injunctive relief is moot, and Defendants retain governmental immunity for their actions, which are authorized by law. Moreover, the Bexar County Commissioner Defendants did not violate the County Purchasing Act in voting to award the contract to CGS because it did not abuse its discretion in determining the sole source exception to the County Purchasing Act applied in this instance. Finally, this Court does not have the authority to issue injunctive relief because Plaintiff failed to name and serve the indispensable parties to this cause of action: Bexar County and CGS, the parties to the contract.

III. Plea to the Jurisdiction

The State of Texas, by and through Ken Paxton, the Attorney General of Texas, filed an Original Verified Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction against Defendants Jacquelyn

Callanen, in her official capacity as Bexar County Election Administrator³; Peter Sakai, in his official capacity as Bexar County Judge; and Bexar County Commissioners Rebeca Clay-Flores, Justin Rodriguez, Grant Moody, and Tommy Calvert, in their official capacity, seeking emergency and other forms of injunctive relief. Plaintiff alleges that the Bexar County Commissioners Court – Defendants Sakai, Clay-Flores, Rodriguez, Moody, and Calvert – did not have legal authority to vote on an agenda item hiring a third-party vendor, CCGS, to mail out applications to register to vote to unregistered residents of Bexar County.

Plaintiff's legal arguments have no merit, and Defendants retain their governmental immunity from this cause of action.

A. Standard of Review

It is a fundamental rule of Texas jurisprudence that the State of Texas, its agencies, and its officers may not be sued without the consent of the Texas Legislature. *Hosner v. DeYoung*, 1 Tex. 764 (1847); *Griffin v. Hawn*, 341 S.W.2d 151 (Tex. 1960). As with the State of Texas, political subdivisions of the State, such as Bexar County and its employees, enjoy the protection afforded by this governmental immunity, except in instances where immunity has been expressly waived by statute. Tex. Civ. Prac. & Rem. Code §§ 101.001(3); 101.021-.022; *Harris County v. Annab*, 547 S.W.3d 609, 613 (Tex. 2018).

³ The Elections Administrator is not an elected public official, but an employee of Bexar County. *Krier v. Navarro*, 952 S.W.2d 25, 26 (Tex. App – San Antonio 1997, writ denied). The Texas Election Code permits the commissioners court of a county with a population of 3.5 million or less to create the position of county elections administrator Tex. Elec. Code §§ 31.031-32. Bexar County has certain duties related to elections and voter registration and the Elections Administrator is appointed in order to carry out those duties on its behalf. *See* Tex. Elec. Code § 12.001, 31.043-45 (duties of elections administrator); 1 T.A.C. § 81.9 (duties of election administrator).

When a governmental unit and its employees are immune from suit under the doctrine of governmental immunity, courts lack subject-matter jurisdiction over the claims. *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 95 (Tex. 2012); *Jones*, 8 S.W.3d at 638.

B. This Court lacks jurisdiction to decide a moot controversy.

Plaintiff's claim for a temporary restraining order, temporary injunction and permanent injunction has become moot. A case is moot when a justiciable controversy does not exist between the parties or when the parties do not have a legally cognizable interest in the outcome. *Abbott v. Mex. Amer. Leg. Caucus, Tex. House of Representatives*, 647 S.W.3d 681, 689 (Tex. 2002); *Heckman v. Williamson County*, 369 S.W.3d 137, 162 (Tex. 2012). Courts lack subject-matter jurisdiction to decide a moot controversy. *Tex. Dep't of Fam. & Protective Servs. v. N.J.*, 644 S.W.3d 189, 192 (Tex. 2022). If the act sought to be enjoined has been completed prior to the granting of a temporary injunction, and is not likely to recur, the issue has become moot and the temporary injunction should be denied. *Cameron v. Saathoff*, 162 Tex. 124, 345 S.W.2d 281 (1961); *Krenek v. South Texas Electric Cooperative Inc.*, 502 S.W.2d 605 (Tex. Civ. App. Corpus Christi 1975, no writ); *Southwestern Bell Telephone Co. v. Communications Workers of America, AFL-CIO*, 454 F.2d 1333 (5th Cir. 1971).

CGS has recognized expertise in performing the work for which they were hired by the Bexar County Commissioners Court. CGS diligently performed their services and have flawlessly executed the performance of identifying potentially eligible Bexar County residents in a targeted voter registration drive and have fully completed the mailout of all voter registration applications under the contract. Plaintiff is therefore requesting the Court to prohibit actions that have already been completely performed, and such a request cannot be maintained by the Court. No effect can be given to an order enjoining the doing

of that which has already been done. Plaintiff's petition and all claims for requested relief should be dismissed in their entirety by this Court for want of jurisdiction. *Heckman*, 369 S.W.3d at 161.

Defendants would note that there is an exception to the mootness doctrine "capable of repetition, yet evading review" under Texas law⁴. However, this exception applies only in "rare" circumstances not applicable here. *Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001). For it to apply, two elements must be satisfied: (1) the challenged conduct must be of such short duration that it cannot be reviewed before the issue becomes moot and (2) there must be a reasonable expectation that the challenged conduct will occur again. *Id.* Neither element is satisfied here.

For the Court to entertain this exception to the mootness doctrine, the Court would have to engage in a long train of supposition and guesswork, a proposition that is inappropriate for the application of this exception. For instance, the Court would have to presume that the narrow 3-1-1 vote which led to the approval of the contract would repeat itself and another contract could be approved. In addition, the court would have to disregard that the voter registration deadline for the November general election is October 7, 2024 and the next meeting of the Bexar County Commissioners Court does not occur until the next following day on October 8, 2024. Finally, and most importantly, the Court would have to ignore that Plaintiffs would have 72 hours prior notice of any attempt by the Bexar County Commissioners Court to approve another contract to perform similar services as a result of the requirement that all items to be considered by commissioners

⁴ Another exception exists for "inherently transitory" claims but the exception is only available where a population as a whole retains a live claim against a defendant, but the individual membership of that population is always changing due to the short-lived nature of the claim. See *Heckman v. Williamson County*, 369 S.W.3d 137, 164 (Tex. 2012). A circumstance clearly not presented in this case.

court be posted with 72 hours advance public notice. *See* Tex. Gov't Code 551.041 (“A governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body.”); *see also*, Tex. Gov't Code 551.043 (“The notice of a meeting...must be posted...for at least 72 hours before the scheduled time of the meeting.”). In short, Plaintiff would have more than sufficient time to obtain any appropriate relief thus vitiating this exception to mootness.

In its initial response to Defendants' first Plea to the Jurisdiction, Plaintiff cites a questionable exception to the mootness doctrine in the “public interest exception” that the Texas Supreme Court has yet to decide is viable theory of law in this state. *In Re Smith County*, 521 S.W.3d 447, 454 (Tex. App.—Tyler 2017, orig. proceeding) (declining to apply the exception). The First Court of Appeals has recognized a split in authority among the appellate courts regarding the viability of the public interest exception, and ultimately declined to follow the exception. *Houston Chronicle Pub. Co. v. Thomas*, 196 S.W.3d 396, 400 (Tex. App.—Houston [1st Dist.] 2006, no pet.). Though the application of the “public interest exception” would be a very first in this jurisdiction, Plaintiff seems to imply there is essentially no real difference between the very recognized “capable of repetition, yet evading review” exception to the mootness doctrine and the quite questionable legal theory of the “public interest exception.” In fact, the case cited by Plaintiff as holding that the two doctrines were identical did not address mootness but in fact agreed that the issues in the case were not moot and did not apply either exception. *Bragg v. Edwards Aquifer Authority*, 71 S.W.3d 729 734 (Tex. 2002) (“We agree with the parties that this case is not moot. We are presented with a live controversy...”). This case did stand for the proposition for which it is cited and did not review the exception.

The shaky legal theory asserted by Plaintiffs as an exception in an attempt to avoid the jurisdictional bar in this case if this Court were to agree that it were a viable theory of law in this jurisdiction (an issue of first impression) has an element which Plaintiff conveniently downplays and makes its application in a trial court setting questionable. The public interest exception includes an issue that is of (1) of “considerable importance”; (2) capable of repetition between either the same parties or other members of the public; and (3) for some reason *evades appellate review*. *City of Georgetown v. Putnam*, 646 S.W.3d 61, 73 (Tex. App.—El Paso 2022, pet. denied) (emphasis added). Defendants would highlight the third element of “evading appellate review.” No such appellate review is pending, thus, no such element exists to date. Additionally, as Plaintiff points out, it has sued Travis County for hiring Civic Government Solutions in the matter of *Texas v. Elfant*, et al., D-1-GN-005849; in the 200th District Court of Travis, County, Texas. To the extent that Plaintiff is seeking judicial review, it has it. The not quite viable legal exception to mootness asserted by Plaintiff is inapplicable.

C. Defendants retain their governmental immunity because they acted pursuant to lawful authority in voting to approve the contract at issue.

The Attorney General attempts to defeat Defendants’ governmental immunity by bringing forth an *ultra vires* claim. He contends that Defendants “have no authority granted to [them] by law to print and mail unsolicited voter registration forms.” Pl.’s Orig. Pet., ¶ 15.

A suit against a state official in his or her official capacity can proceed in the absence of a waiver of immunity if the official’s actions are *ultra vires*. *Hall v. McRaven*, 508 S.W.3d 232, 238 (Tex. 2017). An *ultra vires* action requires a plaintiff to “allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely

ministerial act.” *Id.* However, not every mistake or misinterpretation of the law amounts to an *ultra vires* act. *Id.* at 241. To be cognizable, an *ultra vires* claim must challenge the government official’s authority, not whether the government official made an incorrect decision. *See Creedmoor-Maha Water Supply Corp. v. Tex. Comm’n on Env’tl. Quality*, 307 S.W.3d 505, 517-18 (Tex. App.—Austin 2010, no pet.) An official’s erroneous decision, made within the bounds of his authority, does not give rise to an *ultra vires* claim. *Id.* at 241; *see also N. Alamo Water Supply Corp. v. Texas Dep’t of Health*, 839 S.W.2d 455, 459 (Tex. App.—Austin 1992, writ denied) (The fact that the agency might decide ‘wrongly’ in the eyes of an opposing party does not vitiate the agency’s jurisdiction to make decision.).

Merely asserting legal conclusions and labeling actions of a governmental actor as *ultra vires* acts is insufficient to properly plead an *ultra vires* claim. *Edinburg Consol. Indep. Sch. Dist. v. Smith*, Nos. 13-16-00253-CV, 13-16-00254-CV, 2016 WL 3068119 at *13 (Tex. App.—Corpus Christi May 26, 2016, no pet.) (mem. op.) The sole question before this court to determine if immunity bars Plaintiff’s requested relief and one that the Plaintiff must properly demonstrate is whether there is a complete absence of authority for the acts of the Bexar County Commissioners Court, not whether the Bexar County Commissioners made an incorrect or improvident decision.

Plaintiff cannot carry its *ultra vires* burden and Defendants’ plea to the jurisdiction should be granted. While accusing Defendants of acting without any legal authority in approving the hiring of CGS, Plaintiff entirely disregards the National Voter Registration Act (“NVRA”). The National Voter Registration Act (NVRA) was enacted by the United States Congress in 1993 to enhance voting opportunities for every American; to make it

easier for all Americans to register to vote; and to maintain their voter registration. *See* 52 U.S.C., Chapter 205. Congress, in enacting the NVRA, stressed that the right of citizens of the United States to vote is a fundamental right and it is ***the duty*** not just of the Federal, and State governments to promote the exercise of that right, but the duty of ***local governments*** as well. *Id.*, § 20501(a). The NVRA was specifically enacted, in part, to establish procedures to increase the number of eligible citizens to register to vote in elections for federal office, and make it possible for local governments to implement the NVRA to enhance participation of eligible citizens as voters in elections for federal office. *Id.*, § 20501(b). Section 20505 of the NVRA requires States to accept and use the mail voter registration application form under the section 20508(a)(2) for registration of voters for elections for federal office. *Id.* § 20505. With regard to the availability of voter registration application forms, the NVRA provides that “***The chief State election office of a State shall make the forms described in subsection (a) available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.***” *Id.* § 20501(b) (emphasis added). The Texas Secretary of State, the State’s highest elections officer⁵, enacted Section 81.25 of the Texas Administrative Code⁶ and “[e]ncourage[d]” counties to engage in Voter Registration Drives:

Voter Registration drive efforts include but are not limited to *mailouts of applications to households*,” insertion of applications into newspapers, distributing applications at public locations, and other forms of advertising.

⁵ Section 31.001 of the Texas Election Code provides that the Texas Secretary of State is the “chief election officer of the state.” Tex. Elec. Code § 31.001.

⁶ With the passage of the Administrative Code Act, the Texas Legislature intended for the Secretary of State to contract with public entities to publish the Texas Administrative Code. *See* <https://www.sos.state.tx.us/tac/index.shtml> (last visited September 11, 2024).

1 T.A.C. § 81.25 (emphasis added). This activity is expressly authorized by the NVRA; this is the very same activity the Texas Attorney General now complains of, which is clearly authorized under federal and state law.

Plaintiff asserts that section 1.010 of the Texas Election Code essentially strips the duty of Defendants to enhance the opportunities for Bexar County residents to exercise their right to vote because the Texas Election Code, through negative implication, prohibits sending a voter registration form to a person who did not specifically request it. A generic provision from the Texas Election Code cannot remove the authority given to local governments to encourage voter registration as authorized by the NVRA. The NVRA further protects the rights of voters by making it a criminal offense to (1) knowingly and willfully intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any person for urging or aiding any person to register to vote, to vote, or to attempt to register or vote. *Id.* § 20511.

Additionally, the Texas Legislature, through enactment of Chapter 19 of the Texas Election Code, gave the Secretary of State the authority to set up the procedures to obtain Chapter 19 funding. *See* Tex. Elec. Code § 19.004. Chapter 81 of the Texas Administrative Code specifies that section 19.004 of the Texas Election Code “was amended by the NVRA.” 1 T.A.C. § 81.28. Plaintiff asserts that “[b]ecause neither the Election Code nor the Texas Administrative Code expressly provides otherwise, the Election Code supersedes Tex. Admin. Code § 81.25.” It is not a reasonable proposition that one provision supersedes the other; rather, the proper and reasonable interpretation of the Texas Election Code and Tex. Admin. Code § 81.25 is that the two were meant to work in

harmony, one clarifying the other.⁷ A local voter registrar, in this case the Bexar County Elections Administrator, receives a per registration fee pursuant to Section 19.002 of the Texas Elections Code. The fees received by the Elections Administrator may be used to “defray expenses of the registrar’s office in connection with voter registration...” Tex. Elec. Code 19.004(a)(1). Tex. Admin. Code § 81.25 merely helps clarify what those appropriate “expenses” may include in the engagement of the activities of voter registration by specifically defining them, an activity that Plaintiff wants to define so strictly as to create an absurdity under the law that runs afoul of the NVRA.

In enacting section 81.25 of the Texas Administrative Code, the Secretary of State follows the NVRA’s mandate that “[t]he chief State election office of a State shall make the forms described in subsection (a) available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.” *Id.* § 20501(b). The Secretary of State encourages counties to engage in voter registration efforts. 1 T.A.C. § 81.25. It should also be noted that the Secretary of State amended Chapter 81 of the Texas Administrative Code this year, and did not amend section 81.25, which “encourages” counties to engage in voter registration drives: “[v]oter registration drive efforts include but are not limited to mailouts of applications to households, insertion of applications into newspapers, distributing applications at public locations, and other forms of advertising.” And to the extent the NVRA conflicts with the Texas Election Code, the NVRA clearly preempts the Election Code.

⁷ <https://www.sos.state.tx.us/elections/funds/chapter-19/funds-defined.shtml>.

Additionally, the Texas Constitution provides that the commissioners court “shall exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State, or as may be hereafter prescribed.” Tex. Const. art. V, § 18. Thus, the Texas Constitution establishes the Commissioners Court as the county’s principal governing body. *Comm’s Court of Titus County v. Agan*, 940 S.W.2d 77, 79 (Tex. 1997). In the exercise of its powers and jurisdiction over county business, the commissioners court has implied authority to exercise broad discretion to accomplish the purposes intended. *Canales v. Laughlin*, 147 Tex. 169, 214 S.W.2d 451, 453 (1948); *Cosby v. County Commissioners of Randall County*, 712 S.W.2d 246, 248 (Tex. App. – Amarillo 1986, writ ref’d n.r.e.). A commissioners court’s power is limited to that which is expressly delegated to it by the Texas Constitution or Legislature, *or necessarily implied to perform its duties*. *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 29 (Tex. 2003) (emphasis added).

The Bexar County Commissioners Court remains responsible for voter registration in Bexar County as well as conducting federal, state, and local elections within its jurisdiction. *Krier v. Navarro*, 952 S.W.2d 25, 28-29 (Tex. App. – San Antonio 1997, writ denied). Bexar County has created the position of elections administrator, who is an “agent or employee of the county, retained to discharge the administrative duties necessary to carry out the State and county’s responsibilities regarding elections and voter registration.” *Id.* at 29 (emphasis added). Although the Bexar County Elections Administrator is a named Defendant in this suit, she is not a party to the contract at issue, and she has not been tasked with providing voter registration forms. Rather, CGS has

been retained to independently print and mail out voter registration forms. (Refer to Contracts exhibit).

The Bexar County Commissioners Court had legal authority on which to make a discretionary decision to engage in a limited voter outreach drive in an effort to target a limited population of unregistered or new Bexar County residents to engage them in the democratic process in Bexar County. The Texas Attorney General may disagree with that decision or believe it was made in error. However, even if made in error, such a basis does not serve as sufficient predicate for an *ultra vires* exception to governmental immunity. Accordingly, Bexar County's Plea to the Jurisdiction should be in all things granted and all relief requested by the Texas Attorney General should be denied.

D. Plaintiff states no viable *ultra vires* claim for relief against any defendant

Plaintiff does not meet its burden to show that this Court has subject matter jurisdiction because its claims focus exclusively on a past alleged instance of *ultra vires* conduct—specifically, the Commissioners Court's "plan" to mail registration applications, as reflected in the Commissioner's Court's approval of an agenda item to contract with CGS to conduct the mailing. *See* Pl's Orig. Pet. at 13. But Plaintiff does not, and cannot, allege that any of the named defendants have any ongoing responsibilities with regard to the mailing of registration applications. In fact, the petition makes clear that only CGS, which is not a party to this lawsuit, is responsible for printing and mailing the applications. *See id.* at 5, ¶¶ 22, 24. "The *ultra vires* exception to sovereign immunity permits only prospective declaratory or injunctive relief restraining *ultra vires* conduct, as opposed to retroactive relief." *Combs v. Texas Civil Rights Project*, 410 S.W.3d 529, 537 (Tex. App.—Austin 2013, pet. denied) (citing *City of El Paso v. Heinrich*, 284 S.W.3d

366, 372 (Tex. 2009)) (holding that plaintiffs “failed to sufficiently allege facts demonstrating that any relief sought would not be barred by sovereign immunity” where ultra vires claim was based on past conduct, and concluding trial court would not have jurisdiction; “[a]ny declaration as to whether [the government official’s] past conduct exceeded her authority is purely retrospective in nature and therefore could not constitute valid ultra vires relief”). *See also Hailey v. Glaser*, No. 06-12-00065-CV, 2012 WL 5872869, at *11 (Tex. App. — Texarkana Nov. 21, 2012, no pet.) (holding allegations regarding past acts were not claims for prospective declaratory relief). There are no alleged future actions of any named Defendant to which Plaintiff might be entitled to injunctive relief under the doctrine of *ultra vires*. Accordingly, the *ultra vires* exception to immunity does not apply, and Plaintiff’s claims for injunctive relief must fail.

III. Defendants did not violate the County Purchasing Act

Plaintiff contends that the Bexar County Commissioner Defendants failed to abide by the requirements of the County Purchasing Act. The County Purchasing Act is located in Chapter 262 of the Texas Local Government Code, and generally sets forth the competitive bidding procedures that Counties must follow.

Plaintiff lacks standing to challenge a contract allegedly made in violation of the Act. Section 262.033 of the County Purchasing Act provides that a “property-tax paying citizen of the County” may seek to enjoin performance of a contract made in violation of the County Purchasing Act.” *See* Tex. Local Gov’t Code § 262.033. First, Plaintiff lacks standing to seek injunctive relief under the County Purchasing Act. This lawsuit has not been brought by a property-tax paying citizen of Bexar County.

When standing is conferred by statute, a court must analyze the statute itself to determine whether the Legislature intended to confer standing on a particular party. See *Labrado v. County of El Paso*, 132 S.W.3d 581, 594 (Tex. App. – El Paso 2004, no pet.). Texas courts have analyzed section 252 of the Texas Local Government Code, pertaining to the purchasing and contracting authority of municipalities, which is analogous to Chapter 262. See *City of El Paso v. Waterblasting Techs., Inc.*, 491 S.W.3d 890, 900-01 (Tex. App – El Paso 2016, no pet.) (interpreting an analogous statute waiving a city’s immunity for violating the bid requirements of Chapter 252 of the Local Government Code.); see also Tex. Loc. Gov’t Code Ann. § 252.061 (which allows a property tax paying citizen of the municipality to enjoin performance of a contract in violation of the requirements of Chapter 252 by any “property tax paying resident of the municipality.”). Other courts considering Section 252.061 have reached a similar conclusion. See e.g., *City of Austin v. Util. Assocs., Inc.*, 517 S.W.3d 300, 310 (Tex. App. – Austin 2017, pet. denied) (“only resident municipal taxpayers are authorized to seek the injunctive relief authorized by the statute.”).

To the extent that Plaintiff is challenging the award of the contract under Chapter 262, that portion of the lawsuit has not been brought by a property-tax paying citizen of Bexar County and may not be maintained by Plaintiff.

Second, even if this Court were to find that Plaintiff had standing to challenge the decision of Defendants to award the contract to CGS, Plaintiff is simply incorrect in its assertion the Defendants violated the County Purchasing Act. Plaintiff asserts that Defendants failed to comply with the requirements of section 262.023, which allegedly required competitive bidding for the contract. This is incorrect. The sole source exception under section 262.024(a)(7)(A) permits Counties to exempt certain contracts from the

typical bidding competitive bidding process if the Commissioners Court determines that an item or service “can be obtained through only one source” including items for which competition is precluded because of the existence of, among others, “secret processes”. Tex. Loc. Gov’t Code § 262.024(a)(7)(A). CGS represented to the Bexar County Purchasing Agent that it had developed its own proprietary database and proprietary methodologies to identify eligible voters in Bexar County who are unregistered. The Purchasing Agent for Bexar County determined that this procurement met the exemption outlined in section 262.024(a)(7)(A) of the County Purchasing Act, and advised the Commissioners Court as such. The Bexar County Commissioners Court exercised its discretion in granting this exemption to procurement. Tex. Loc. Gov’t Code § 262.024(a)(7)(A).

As a general rule, a district court’s supervisory control over a commissioners court is limited to determining whether the commissioners court has abused its discretion or acted illegally or arbitrarily. *Commissioners Court of Titus County v. Agan*, 940 S.W.2d 77, 80 (Tex. 1997). However, in reviewing a commissioners court judgment for abuse of discretion, the district court has no right to substitute its judgment and discretion for that of the Commissioners Court. *Id.* It is quite clear the Attorney General disagrees with the Commissioners Court’s decision to award a contract to CGS because the Attorney General believes that CGS will target eligible voters to register to vote in Bexar County who will end up voting for Democratic candidates. But mere disagreement with Commissioners Court’s decision does not rise to an abuse of discretion under the County Purchasing Act. And, it does not rise to an *ultra vires* act.

IV. No Temporary Injunction Can Issue without Bexar County and CGS, which are indispensable parties.

Plaintiff's request for injunctive relief is also defective for failure to join necessary parties. Plaintiff's petition acknowledges that the substance of Plaintiff's grievance is "an agenda item hiring the company Civic Government Solutions (CGS) to conduct services *for the County* that the County is unauthorized to perform." Original petition at 5, ¶ 2. Bexar County and CGS are necessary parties to this suit because they are parties to the contract that Plaintiff seeks to enjoin. *See* Tex. R. Civ. P. 39; *McCharen v. Bailey*, 87 S.W.2d 284, 285 (Tex. App.—Eastland, 1935, no writ) ("Where the injunction in effect sets aside a contract all parties to the contract are necessary parties"); *Davis v. Wildenthal*, 241 S.W.2d 620, 622 (Tex. App. – El Paso 1951, writ ref's n.r.e.) (overruled in part on other grounds by *Scott v. Graham*, 156 Tex. 97, 292 S.W.2d 324 (1956)); *see also Henry v. Cox*, 520 S.W.3d 28, 34 (Tex. 2017) (failure to name indispensable party "deprived the trial court the authority to bind them"). Bexar County's status as a necessary and indispensable party is especially evident in light of the fact that, as discussed above, the contract already has been executed and CGS already has performed the printing and mailing of registration applications. But Plaintiff names as defendants only the members of the Bexar County Commissioners Court and Elections Administrator Jacque Callanen. This is insufficient to bring Bexar County into the lawsuit. *Scott v. Graham*, 156 Tex. 97, 101 (1956) ("A county is not made a party to a suit by joining the commissioners and other officials of the county as parties. Petitioner having failed to make the county a party, his suit is subject to dismissal at any time.") Plaintiff's failure to join Bexar County, a necessary and indispensable party, is fatal to its claims for relief.

Prayer

Defendants request that the Court dismiss Plaintiff's suit, that all costs be assessed against Plaintiff, and for any other relief to which Defendants may be justly entitled.

Respectfully Submitted,

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Bexar County Criminal District Attorney

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CERTIFICATE OF SERVICE

I do hereby certify compliance with TEX. R. CIV. P. 21a. A true and correct copy of the foregoing instrument has been served on all counsel, by electronic transmission to the electronic mail address on file with the electronic filing manager Rule 21a.(1). If a party has not designated an electronic mail address with the electronic filing manager, the party was served a true and correct copy of the foregoing instrument in person, by certified/regular mail, by commercial delivery service, by fax or by email, or by such other manner as the Court in its discretion may direct. Rule 21a.(2). Service was made on all parties as provided on September 16, 2024.

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Attorneys for Plaintiff

/s/ Larry L. Roberson

LARRY L. ROBERSON

From: [Kathleen Hunker](#)
To: [Cubriel, Lisa](#); [Ryan Kercher](#); [Roberson, Larry L.](#)
Cc: [Garrett Greene](#); [Amaireny Rodriguez](#)
Subject: RE: OAG v. Bexar County Lawsuit
Date: Tuesday, September 10, 2024 7:52:28 AM

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Lisa,

Thanks for your email.

The process server should be effectuating service this morning. In regard to the hearing, my office will contact the court and inform them of the change. I look forward to seeing you on Monday.

Kathleen Hunker

Special Litigation Unit
Office of the Attorney General of Texas
209 W. 14th Street
Austin, TX 78711
512-936-2275
Kathleen.Hunker@oag.texas.gov

From: Cubriel, Lisa <Lisa.Cubriel@bexar.org>
Sent: Tuesday, September 10, 2024 7:34 AM
To: Kathleen Hunker <Kathleen.Hunker@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Roberson, Larry L. <lroberson@bexar.org>
Cc: Garrett Greene <Garrett.Greene@oag.texas.gov>; Amaireny Rodriguez <Amaireny.Rodriguez@oag.texas.gov>
Subject: RE: OAG v. Bexar County Lawsuit

Kathleen,

I only have authority to agree to a combined TRO and TI hearing for Monday, September 16, 2024. Are you going to serve the County officials?

Sincerely,

Lisa V. Cubriel
Assistant District Attorney – Civil Section
Bexar County District Attorney's Office
th

7 Floor Paul Elizondo Tower
101 W. Nueva
San Antonio, Texas 78205
(210) 335-2142 – Direct
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From: Kathleen Hunker <Kathleen.Hunker@oag.texas.gov>

Sent: Tuesday, September 10, 2024 6:34 AM

To: Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Cubriel, Lisa <Lisa.Cubriel@bexar.org>; Roberson, Larry L. <lroberson@bexar.org>

Cc: Garrett Greene <Garrett.Greene@oag.texas.gov>; Amaireny Rodriguez <Amaireny.Rodriguez@oag.texas.gov>

Subject: RE: OAG v. Bexar County Lawsuit

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Good morning, Lisa.

In my email yesterday, I had raised two proposals. Rereading your response, I don't think you answered whether Bexar County would be interested in holding a combined TRO/ TI hearing either this Friday or Monday in lieu of today's TRO.

That offer is still on the table. We are willing to push back today's hearing to either date, regardless of a Rule 11 agreement, so long as we have assurance that it will be a combined hearing.

Please let me know if your office agrees. If so, I will notify the court of the change. Thank you.

Kathleen Hunker

Special Litigation Unit
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APP. 12: NOTICE OF APPEAL

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In the District Court of

Bexar County, Texas

73rd Judicial District

§
§
§

NOTICE OF APPEAL BY PLAINTIFF THE STATE OF TEXAS’S NOTICE OF APPEAL

of Texas (“Texas”), by and through the Office of the Attorney General, hereby appeals the Court’s Order denying Texas’s Application for a writ of habeas corpus and an order of adjunction.

to an interlocutory appeal pursuant to Tex. Civ. App. Rule 51a.

PLAINTIFF THE STATE OF TEXAS'S NOTICE OF APPEAL

of Texas ("Texas"), by and through the Office of the Attorney General, appeals the Court's Order denying Texas's Application for a writ of habeas corpus and an injunction.

to an interlocutory appeal pursuant to Tex. Civ. App. Rule 130a.

to an interlocutory appeal pursuant to Tex. Civ.

defined in Tex. R. App. P. 28.4.

Date: September 16, 2024

Respectfully submitted.

KEN PAXTON
Attorney General

S/KATHLEEN T. HUNKER
KATHLEEN T. HUNKER

BRENT WEBSTER
First Assistant Attorney General

SPECIAL COUNSEL
STATE BAR NO. 24118415

RALPH MOLINA
Deputy First Assistant Attorney General

GARRETT GREENE
SPECIAL COUNSEL
STATE BAR NO. 24096217

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing has been served has been served on all counsel of record in accordance with e-file and serve.

/s/Kathleen T. Hunker
KATHLEEN T. HUNKER

APP. 13: TEXAS ELECTION CODE § 276.019

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Vernon's Texas Statutes and Codes Annotated
Election Code (Refs & Annos)
Title 16. Miscellaneous Provisions
Chapter 276. Miscellaneous Offenses and Other Provisions

V.T.C.A., Election Code § 276.019

§ 276.019. Unlawful Altering of Election Procedures

Effective: December 2, 2021

Currentness

A public official or election official may not create, alter, modify, waive, or suspend any election standard, practice, or procedure mandated by law or rule in a manner not expressly authorized by this code.

Credits

Added by Acts 2021, 87th Leg., 2nd C.S., ch. 1 (S.B. 1), § 7.04, eff. Dec. 2, 2021

V. T. C. A., Election Code § 276.019, TX ELECTION § 276.019

Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

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APP. 14: 1 TEXAS ADMINISTRATIVE CODE § 81.25

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Texas Administrative Code
Title 1. Administration
Part 4. Office of the Secretary of State
Chapter 81. Elections
Subchapter A. Voter Registration

1 TAC § 81.25

§ 81.25. Voter Registration Drives Encouraged

Effective: January 17, 2024

Currentness

(a) Pursuant to §81.12 of this title (relating to Applicable Sections of the Texas Election Code), efforts to increase the number of registered voters in the county are payable with Chapter 19 funds.

(b) Voter registration drive efforts include but are not limited to mailouts of applications to households, insertion of applications into newspapers, distributing applications at public locations, and other forms of advertising.

(c) "Promotional items" are not payable with Chapter 19 funds. Examples of non-payable promotional items include but are not limited to memorabilia, models, gifts, souvenirs, and other such novelties or items of nominal, non-educational value. Materials with public information value, such as items that provide a website address or other information relevant to voter registration, are permissible. Items purchased with Chapter 19 funds may include only the county and title of the voter registrar's office.

(d) Names of specific individuals may not be included on such materials. Chapter 19 funded voter registration drives must not promote a particular party, candidate, or issue. Chapter 19 funds may not be used for food and drink purchases, except for travel expenses allowed under §81.23 of this title (relating to Travel Using Chapter 19 Funds Authorized).

Credits

Source: The provisions of this §81.25 adopted to be effective October 1, 1995, 20 TexReg 7277; amended to be effective December 30, 2010, 35 TexReg 11569; amended to be effective January 17, 2024, 49 TexReg 133.

Current through 49 Tex.Reg. No. 5826, dated August 2, 2024, as effective on or before August 9, 2024. Some sections may be more current. See credits for details.

1 TAC § 81.25, 1 TX ADC § 81.25

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APP. 15: TEXAS LOCAL GOVERNMENT CODE § 262.023

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Vernon's Texas Statutes and Codes Annotated
Local Government Code (Refs & Annos)
Title 8. Acquisition, Sale, or Lease of Property
Subtitle B. County Acquisition, Sale, or Lease of Property
Chapter 262. Purchasing and Contracting Authority of Counties (Refs & Annos)
Subchapter C. Competitive Bidding in General (Refs & Annos)

V.T.C.A., Local Government Code § 262.023

§ 262.023. Competitive Requirements for Certain Purchases

Effective: September 1, 2013

Currentness

(a) Before a county may purchase one or more items under a contract that will require an expenditure exceeding \$50,000, the commissioners court of the county must:

- (1) comply with the competitive bidding or competitive proposal procedures prescribed by this subchapter;
- (2) use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing; or
- (3) comply with a method described by Chapter 2269, Government Code.

(b) The requirements established by Subsection (a) apply to contracts for which payment will be made from current funds or bond funds or through anticipation notes authorized by Chapter 1431, Government Code, or time warrants. Contracts for which payments will be made through certificates of obligation are governed by The Certificate of Obligation Act of 1971 (Subchapter C, Chapter 271).¹

(b-1) A county that complies with a method described by Chapter 2269, Government Code, as provided by Subsection (a)(3), to enter into a contract for which payment will be made through anticipation notes authorized by Chapter 1431, Government Code, may not issue anticipation notes for the payment of that contract in an amount that exceeds the lesser of:

- (1) 20 percent of the county's budget for the fiscal year in which the county enters into the contract; or
- (2) \$10 million.

(c) In applying the requirements established by Subsection (a), all separate, sequential, or component purchases of items ordered or purchased, with the intent of avoiding the requirements of this subchapter, from the same supplier by the same county officer, department, or institution are treated as if they are part of a single purchase and of a single contract. In applying this provision to the purchase of office supplies, separate purchases of supplies by an individual department are not considered to be part of a single purchase and single contract by the county if a specific intent to avoid the requirements of this subchapter is not present.

Credits

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 57(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1250, § 9, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, § 13.02(b), eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 757, §§ 13, 38, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 442, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 505, § 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 436, § 4, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 1063, § 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1409, § 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, § 12.004, eff. Sept. 1, 2003; Acts 2007, 80th Leg., ch. 689, § 1, eff. Sept. 1, 2007; Acts 2009, 81st Leg., ch. 1266, § 4, eff. June 19, 2009; Acts 2011, 82nd Leg., ch. 1129 (H.B. 628), § 4.04, eff. Sept. 1, 2011; Acts 2013, 83rd Leg., ch. 161 (S.B. 1093), § 22.002(23), eff. Sept. 1, 2013.

Notes of Decisions (37)

Footnotes

1 V.T.C.A., Local Government Code § 271.041 et seq.

V. T. C. A., Local Government Code § 262.023, TX LOCAL GOVT § 262.023

Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

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APP. 16: TEXAS LOCAL GOVERNMENT CODE § 262.024

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Vernon's Texas Statutes and Codes Annotated
Local Government Code (Refs & Annos)
Title 8. Acquisition, Sale, or Lease of Property
Subtitle B. County Acquisition, Sale, or Lease of Property
Chapter 262. Purchasing and Contracting Authority of Counties (Refs & Annos)
Subchapter C. Competitive Bidding in General (Refs & Annos)

V.T.C.A., Local Government Code § 262.024

§ 262.024. Discretionary Exemptions

Effective: September 1, 2007

Currentness

(a) A contract for the purchase of any of the following items is exempt from the requirement established by Section 262.023 if the commissioners court by order grants the exemption:

- (1) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county;
- (2) an item necessary to preserve or protect the public health or safety of the residents of the county;
- (3) an item necessary because of unforeseen damage to public property;
- (4) a personal or professional service;
- (5) any individual work performed and paid for by the day, as the work progresses, provided that no individual is compensated under this subsection for more than 20 working days in any three month period;
- (6) any land or right-of-way;
- (7) an item that can be obtained from only one source, including:
 - (A) items for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies;
 - (B) films, manuscripts, or books;
 - (C) electric power, gas, water, and other utility services; and

(D) captive replacement parts or components for equipment;

(8) an item of food;

(9) personal property sold:

(A) at an auction by a state licensed auctioneer;

(B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code;¹ or

(C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government;

(10) any work performed under a contract for community and economic development made by a county under Section 381.004; or

(11) vehicle and equipment repairs.

(b) The renewal or extension of a lease or of an equipment maintenance agreement is exempt from the requirement established by Section 262.023 if the commissioners court by order grants the exemption and if:

(1) the lease or agreement has gone through the competitive bidding procedure within the preceding year;

(2) the renewal or extension does not exceed one year; and

(3) the renewal or extension is the first renewal or extension of the lease or agreement.

(c) If an item exempted under Subsection (a)(7) is purchased, the commissioners court, after accepting a signed statement from the county official who makes purchases for the county as to the existence of only one source, must enter in its minutes a statement to that effect.

(d) The exemption granted under Subsection (a)(8) of this section shall apply only to the sealed competitive bidding requirements on food purchases. Counties shall solicit at least three bids for purchases of food items by telephone or written quotation at intervals specified by the commissioners court. Counties shall award food purchase contracts to the responsible bidder who submits the lowest and best bid or shall reject all bids and repeat the bidding process, as provided by this subsection. The purchasing officer taking telephone or written bids under this subsection shall maintain, on a form approved by the commissioners court, a record of all bids solicited and the vendors contacted. This record shall be kept in the purchasing office for a period of at least one year or until audited by the county auditor.

Credits

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 59(c), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 962, § 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1001, § 2, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1060, § 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 16, § 13.03, eff. Aug. 26, 1991; Acts 1997, 75th Leg., ch. 442, § 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1065, § 1, eff. June 15, 2001; Acts 2007, 80th Leg., ch. 1272, § 3, eff. Sept. 1, 2007.

Notes of Decisions (12)

Footnotes

1 V.T.C.A., Bus. & Com. Code § 17.81 et. seq.

V. T. C. A., Local Government Code § 262.024, TX LOCAL GOVT § 262.024

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Maria Mendoza-Williamson on behalf of Lanora Pettit

Bar No. 24115221

maria.williamson@oag.texas.gov

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Filing Description: 20240916200710979_873216_Notice of Appeal

Status as of 9/17/2024 6:32 AM CST

Associated Case Party: Bexar County

Name	BarNumber	Email	TimestampSubmitted	Status
Larry Roberson	24046728	lroberson@bexar.org	9/16/2024 5:57:36 PM	SENT
Robert Piatt	24041692	robert.piatt@bexar.org	9/16/2024 5:57:36 PM	SENT
Lisa Cubriel	24045731	Lisa.Cubriel@bexar.org	9/16/2024 5:57:36 PM	SENT
Jose Herrera	24073024	Jose.Herrera@bexar.org	9/16/2024 5:57:36 PM	SENT
Brittany Malloy	24094574	brittany.malloy@bexar.org	9/16/2024 5:57:36 PM	SENT
Nicole O'Connor		Nicole.O'Connor@bexar.org	9/16/2024 5:57:36 PM	ERROR

Associated Case Party: State of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
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