

Case No. 23-0656

IN THE SUPREME COURT OF TEXAS

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

v.

HARRIS COUNTY, TEXAS,
Appellee/Cross-Defendant,

v.

CLIFFORD TATUM,
Appellee/Cross-Claimant,

v.

HARRIS COUNTY REPUBLIC PARTY,
Intervenor.

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

APPELLEE CLIFFORD TATUM'S
OPPOSED EMERGENCY MOTION FOR RULE 29.3 ORDER

TO THE HONORABLE SUPREME COURT OF TEXAS:

Clifford Tatum is the Harris County Elections Administrator. Legislation passed this past session, Senate Bill 1750, which affects only Harris County, abolishes his position, and dismantles his department effective September 1, 2023. Harris County filed suit against the State of Texas and various state officials and agencies, challenging the constitutionality of SB 1750, contending it violates article III, Section 56 of the Texas Constitution. Tatum intervened in this lawsuit and filed a cross-action against Harris County—his employer—seeking a declaration that the law that threatens his position, SB 1750, is unconstitutional, and temporary and permanent injunctive relief preventing Harris County from firing him based solely on SB 1750 and from dismantling the Office of the Harris County Elections Administrator. The State of Texas and the Attorney General intervened in Tatum’s action against Harris County, asserting SB 1750 is constitutional.

Finding he was likely to prevail and needing to preserve the status quo to ensure its jurisdiction, the trial court issued an order temporarily

restraining Harris County from discharging Tatum and abolishing the office of Harris County Elections Administrator. No order was entered against the State or the Attorney General in Tatum's action. After the trial court temporarily enjoined the County from terminating Tatum's employment and abolishing the office of Harris County Elections Administrator, the State and Attorney General filed an interlocutory appeal and claims that this notice of appeal has the effect of superseding the temporary injunction, even though neither the State nor the Attorney General are parties to the injunction.

It is not at all clear what portions of the temporary injunction, if any, in favor of Tatum and against Harris County might be superseded by the notice of appeal filed by the State and the Attorney General, since the temporary injunction granted to Tatum neither orders the State or Attorney General to do anything nor restrains them from doing anything. Indeed, it is not at all obvious what parts of the temporary injunction against Harris County, which just preserves the status quo pending resolution of the declaratory judgment action, the State and Attorney General have standing to contest.

The State's and Attorney General's assertion that their notice of appeal operates to supersede the injunction obtained by Tatum against Harris County, however, leaves Clifford Tatum at risk of being discharged, and the office of county elections administrator abolished, in a matter of days, while the judicial "process grinds on", *See, In re State Board for Educator Certification*, 452 S.W.3d 802, 808-09 (Tex. 2014), despite Tatum having persuaded the trial court he will likely prevail on the merits and is otherwise entitled to injunctive relief to prevent irreparable harm.

Recently this Court, in *In re Abbott*, 645 S.W.3d 276 (Tex. 2022), ruled that the issuance of temporary orders is appropriate in circumstances like the ones presented here, where such orders are necessary to ensure the parties' rights and the Court's jurisdiction are preserved during the pendency of an appeal. Appellee Clifford Tatum files this Emergency Motion for Temporary Orders under Rule 29.3 of the Texas Rules of Appellate Procedure, seeking an emergency order preserving the status quo and this Court's jurisdiction, by ordering that Harris County not abolish his position, discharge him, and/or dismantle

the office of the Harris County Elections Administrator and transfer any or all of its duties and powers to the Harris County Tax Assessor-Collector and/or Harris County Clerk based solely on SB 1750. **Clifford Tatum requests a ruling on this Motion no later than August 22, 2023.**

BACKGROUND

History

Counties in Texas are responsible for voter registration and the administration of elections. Every county has a choice about who oversees these matters: either (1) partisan, elected county tax assessor-collectors and county clerks, who handle these responsibilities along with their many other statutory duties; or (2) a county elections administrator, a trained, professional, non-partisan, who may manage both voter registration and the administration of elections. TEX. ELEC. CODE §31.031. Most of Texas's 254 counties have opted for a county elections administrator, including Harris County and all but one of the most

populous counties in the state.¹ (Tab B, *Transcript of the Preliminary Injunction Hearing*, p. 125).

Texas Senate Bill 1750, (Tab A), enacted this last legislative session, amends the Texas Elections Code in two critical ways relevant to this case. The first is the addition of new Section 31.050, set to take effect on September 1, 2023. New Section 31.050 abolishes the office of county elections administrator in Texas counties with a population exceeding 3.5 million on September 1, 2023, and in those counties transfers responsibilities for voter registration and election administration back to the county tax assessor-collector and county clerk. Only one county in Texas has a population exceeding 3.5 million on September 1st: Harris County.² The second change made by SB 1750 is to amend Section 31.031(a) and prohibit any county with a population of over 3.5 million that does not have a county elections administrator from

¹ Of the Texas counties with a population greater than 1 million, only Travis County does not employ a county elections administrator.

² Harris County's current population is approximately 4.9 million, making it the third largest county in the country. <https://worldpopulationreview.com/us-counties/tx/harris-county-population>. Dallas County is the next most populous county in Texas, with approximately 2.6 million residents. <https://worldpopulationreview.com/us-counties/tx/dallas-county-population>.

ever establishing the office of county elections administrator. The effect of SB 1750, new Texas Election Code Section 31.050 and newly amended Texas Election Code Section 31.031(a) is to eliminate the office of county elections administrator in Harris County, transfer all the powers and duties of that office to other county offices, and prevent Harris County from ever establishing such a position again. None of the other 253 counties in Texas are now or will ever be so affected. (Tab B, *p. 125-26*).

Clifford Tatum is the duly appointed, qualified, and serving Elections Administrator of Harris County, having been appointed to that position barely one year ago, on August 16, 2022, by the Harris County election commission, in accordance with TEX. ELEC. CODE § 31.032. (Tab B, *p.124-25*; Tab B-2, *Order Appointing Clifford Tatum as Harris County Elections Administrator admitted as Intervenor's Exhibit 2*). Tatum, an employee of Harris County,³ is a non-partisan professional trained in managing all aspects of the elections process with over twenty years of experience at both state and county levels. (Tab B, *p.70, l.7-p.74, l.2; p.124*; Tab B-1, *Clifford Tatum's CV, admitted as Intervenor's Exhibit 1*).

³ *Krier v. Navarro*, 952, S.W.2d 25, 29 (Tex. App.—San Antonio 1997, rev. denied).

TEX. ELEC. CODE §31.037 provides that the employment of county elections administrators may be terminated only “for good and sufficient cause on the four-fifths vote of the county election commission and approval of that action by a majority of the commissioners court.”⁴ No County official or employee has suggested “good and sufficient cause” exists to justify terminating Tatum. (Tab B, *p.135, l.7–p.136, l.4*).

If the office of Harris County Elections Administrator is abolished pursuant to SB 1750, Tatum will lose his job without the County complying with TEX. ELEC. CODE §31.037 and be deprived of both the tangible economic benefits of the office of Harris County elections administrator (such as salary, health insurance, retirement benefits, and automobile expense allowance) and the significant non-economic benefits of that position, including the stature and status of holding the position as elections administrator of the third most populous county in the country, a position which, if SB 1750 goes into effect, he will never again be able to obtain, the reputation as one of the leading election

⁴ The purpose of this statutory scheme is to remove the responsibility of managing voter registration and elections from the hands of partisans and place those duties in the hands of non-partisans who may only be fired for meritorious, as opposed to political, reasons.

administrators in the country, and the fulfillment of important (to Tatum) public service objectives of meaningfully ensuring the sanctity of the electoral process by spearheading both voter registration efforts and election administration functions in ways which Tatum believes will help safeguard and facilitate participatory democracy. (Tab B, *Transcript of the Preliminary Injunction Hearing*, p.128, l.10–p.130, l.13).

Further, if SB 1750 goes into effect on September 1, 2023, the whole Harris County Elections Administrator’s Office will be shuttered, its over 170 employees either fired or disbursed to new environs, and its duties, data, and documents transferred to the Harris County Tax Assessor-Collector’s and the Harris County Clerk’s offices. (Tab B, *Transcript of the Preliminary Injunction Hearing*, p.128, l.10–24). If this happens on September 1, 2023, and SB 1750 is later declared unconstitutional, reassembling the office will be like trying to “put Humpty-Dumpty back together again.” (Tab B, *Transcript of the Preliminary Injunction Hearing*, p.130, l.14–21). Further, all of this will occur weeks before the large and important November 2023 elections, which involve both statewide constitutional amendments and a host of local Harris County elections, including the hotly contested City of Houston races for Mayor,

Comptroller and City Council. (Tab B, *Transcript of the Preliminary Injunction Hearing*, p.102, l.4–p.104, l.12). It is uncontroverted that such a change this close to a major election will cause chaos among the electorate.

Procedural History

Harris County instituted a lawsuit against Appellants, seeking a declaratory judgment that SB 1750 was unconstitutional because it violates article III, § 56 of the Texas Constitution, and temporary and permanent injunctions to prevent the State and its officers from enforcing the statute. (Tab C, *Harris County's Second Amended Original Petition*). Appellants answered. (Tab D, *First Amended Original Answer of the State of Texas, et. al.*). Clifford Tatum subsequently intervened, also seeking a declaratory judgment that the statute is unconstitutional, **and** he filed a cross-action against Harris County seeking to enjoin the County—his employer and the only party against whom he can seek an injunction—from discharging him, abolishing the office of Harris County Elections Administrator, and transferring all the duties and responsibilities now located in that office to the Harris County Tax

Assessor-Collector and Harris County Clerk. (Tab E, *First Amended Original Intervention by Clifford Tatum*). Tatum gave notice of his intervention challenging the constitutionality of a state statute to the Attorney General, as required by TEX. GOV'T CODE §402.010, and both the Attorney General of Texas (Tab F), and the State of Texas, (Tab G), intervened in Tatum's crossclaim against Harris County, contending SB 1750 "does not violate the Constitution of Texas". (Tab F, ¶8; Tab G, ¶9).

On August 8, 2023, the trial court heard Clifford Tatum's Application for a Temporary Injunction against Harris County, as well as the County's Application for a Temporary Injunction against Appellants. (Tab B). On August 15, 2023, the trial court ruled that Tatum had met "the standard required for the issuance of a temporary injunction" and that the issuance of such an injunction will "maintain the status quo between the parties during the pendency of this order." (Tab H, *Order on Intervenor/Cross-Claimant Clifford Tatum's Application for Temporary Injunction Against Harris County*, p.11). The trial court then issued a temporary injunction,

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

Tab H, *p.12*.

Within hours of receiving notice of this order, Appellants⁵ filed an Amended Notice of Accelerated Interlocutory Appeal. (Tab I). Appellants claim that this notice of appeal operates to supersede the trial court's

⁵ Appellants in this appeal include the Office of the Attorney General of Texas; Angela Colmenero, in her capacity as Provisional Attorney General of Texas; Office of the Texas Secretary of State; Jane Nelson, in her official capacity as Texas Secretary of State; the State of Texas and the Attorney General of Texas. Only the latter two intervened in Tatum's cross-action against Harris County.

temporary injunction, invoking TEX. CIV. PRAC. & REM. CODE §§ 6.001 and TEX. R. APP. P. 29.1(b). (Tab I, p.2). Tatum requests that this Court, pursuant to TEX. R. APP. P. 29.3, enter an emergency order identical to the one issued by the trial court in its temporary injunction, restraining Harris County to ensure Tatum’s rights and this Court’s jurisdiction are preserved pending the resolution of this appeal.

SUMMARY OF THE ARGUMENT

Texas Rule of Appellate Procedure 29.3 provides appellate courts “great flexibility in preserving the status quo.” *In re Geomet Recycling LLC*, 578 S.W.3d 82, 89 (Tex. 2019) (orig. proceeding). The power to make temporary orders to preserve the parties' rights and an appellate court’s jurisdiction during the pendency of an appeal is especially important in cases where an individual is challenging government action. In many of these cases, without emergency orders TEX. CIV. PRAC. & REM. CODE § 6.001 and TEX. R. APP. P. 29.1(b) will operate to deprive an appellate court of jurisdiction by preventing a party from ever meaningfully challenging acts by the executive branch that the party alleges to be both unlawful and reviewable by courts and that it further alleges will cause

irreparable harm. *In re State Board for Educator Certification*, 452 S.W.3d 802, 808-09 (Tex. 2014).

This case presents the classic set of facts in which an emergency order is appropriate in order “to preserve the parties’ rights until disposition of the appeal.” TEX. R. APP. P. 29.3. According to Appellants Amended Notice of Accelerated Interlocutory Appeal, if such an order is not entered, SB 1750 will become effective on September 1, 2023. Clifford Tatum will lose his job and suffer irreparable harm; the office of Harris County Elections Administrator will be disbanded, leaving its over 170 employees who are currently responsible for managing voter registration and elections in limbo; it will be difficult to re-assemble the office of Harris County Elections Administrator if the statute is later found to be unconstitutional; and, from the public’s perspective, the voters of Harris County will suffer chaos as the duties and responsibilities of voter registration and running the November elections are transferred among departments. *Id. See, Purcell v. Gonzalez*, 549 U.S. 1 (2006) (enunciating

the principle that federal courts should avoid interfering with local election procedures weeks before an election).⁶

ARGUMENT

I. THE PLAIN LANGUAGE OF RULE 29.3 ESTABLISHES THE COURT SHOULD ISSUE A TEMPORARY ORDER PRESERVING THE PARTIES' RIGHTS PENDING RESOLUTION OF THIS APPEAL.

A. The Sole Requirement of Rule 29.3 Is That a Temporary Order Is Needed to Preserve the Rights of a Party.

TEX. R. APP. P. 29.3 provides that “[w]hen an appeal from an interlocutory order is perfected, the appellate court may make any temporary orders necessary to preserve the parties’ rights until disposition of the appeal....” It is well-established that in construing procedural rules, courts adhere to “the same rules of construction that govern the interpretation of statutes.” *In re Christus Spohn Hosp. Kleberg*, 222 S.W.3d 434, 437 (Tex. 2007). “When a rule of procedure is clear and unambiguous, we construe the rule’s language according to its

⁶ While *Purcell* only applies to federal court interference, the fundamental principles underlying this jurisprudential rule are applicable here: interference with the elections process and election procedures weeks before a major election causes chaos and diminishes public confidence in the integrity of the electoral process. *Purcell*, 549 U.S. at 4.

plain or literal meaning.” *Id.* The only requirement of Tex. R. App. P. 29.3 is that temporary orders are necessary to “preserve the parties’ rights” during the appeal.

This Court has previously recognized that Rule 29.3 only requires a party to establish temporary orders are necessary, to preserve its rights before such orders may be issued. As the Court noted in *In re Abbott*, the Rule authorizes appellate courts “during an interlocutory appeal, to ‘make any temporary orders necessary to preserve the parties’ rights until disposition of the appeal.’” *In re Abbott*, 645 S.W.3d at 282. The purpose of the Rule is to “preserve the status quo and prevent irreparable harm to the parties during the pendency of an appeal.” *Id.* at 283. There is no requirement in the text of the Rule that a party prove a likelihood of success.⁷ TEX. R. APP. P. 29.3; *In re Abbott*, 645 S.W.3d at 283; *Public Utility Commission of Texas v. AMA Communications, LLC*, 03-21-00597-

⁷ If a party was required to prove both irreparable harm and likelihood of success to obtain temporary orders, the determination of the merits of a temporary injunction order would take place during motion practice involving answering the simple question posed by Rule 29.3: should the status quo be preserved while an appellate court considers the merits of the appeal. *See, In re State*, --- S.W.3d ---, 2021 WL 4785741, at *1 (Tex. Oct. 14, 2021) (per curiam) (granting stay to preserve status quo without comment on merits of request for temporary injunction).

CV, 2022 WL 2347918, at *2 (Tex. App.—Austin June 30, 2022, no pet. filed) (repeatedly holding irreparable harm is all that must be proven to justify temporary orders preserving the status quo and preventing irreparable harm). *See, also In re State*, --- S.W.3d ---, 2021 WL 4785741, at *1 (Tex. Oct. 14, 2021) (per curiam) (granting stay to preserve status quo without comment on merits of request for temporary injunction).

B. Temporary Orders Are Needed to Preserve Tatum’s Rights.

Clifford Tatum has clearly established that if the Court does not issue temporary orders preserving the status quo by preventing Harris County from discharging Tatum solely because of SB 1750 and abolishing the office of Harris County Elections Administrator, Tatum will suffer irreparable harm. (Tab B, p.128, l.25–p.130, l.13, Tab E, attached supporting Affidavit of Clifford Tatum). He will lose his job, suffer irreparable harm including economic and non-economic losses, and the county elections administrator’s office will be disbanded, resulting in the dispersal of employees, duties, data, and documents, making it very difficult to reassemble the team in the event he prevails on appeal. *See, Krier v. Navarro*, 952, S.W.2d 25, 28 (Tex. App.—San Antonio 1997, rev.

denied) (holding threatened removal of Bexar County's elections administrator constituted sufficient imminent harm to justify injunctive relief). This is exactly the kind of evidence that justifies entry of temporary orders to preserve the status quo. *See, e.g., In re State Board for Educator Certification*, 452 S.W.3d at 808-09 (upholding entry of post-judgment temporary orders preventing a teacher from losing his certification to teach, and thus his livelihood, pending appeal); *AMA Communications, LLC*, 2022 WL 2347918, at *1-2 (issuing temporary orders preserving the status quo by requiring a state agency to continue to pay AMA Communications the full amount of financial support it was owed each month under existing rate orders due to threat of financial failure of company); *Texas Education Agency v. Houston Independent School Dist.*, 609 S.W.3d 569 (Tex. App.—Austin 2020), *aff'd sub nom., In re Texas Education Agency*, 619 S.W.3d 679 (Tex. 2021) (issuing temporary orders preventing state agency from taking over the Houston Independent School District pending resolution of the appeal). Application of the plain text of Rule 29.3 to the facts of this case establish

this Court should enter temporary orders preserving the status quo⁸ during the pendency of this appeal.

II. TATUM IS ENTITLED TO TEMPORARY ORDERS EVEN IF HE HAS TO PROVE HE IS LIKELY TO PREVAIL.

In *In re Abbott*, three justices dissented in part, arguing TEX. R. APP. P. 29.3 requires the movant to meet the three-part “well-established temporary-injunction standard” to obtain temporary orders. *In re Abbott*, 645 S.W.3d at 288 (Blacklock, J., dissenting in part).⁹ While the dissent appears to be contrary to both the majority opinion and repeated Supreme Court jurisprudence that courts interpret the rules of procedure by looking at the plain language of the text, it makes no difference in this case which test is applied because, regardless of the test, the evidence supports the issuance of temporary orders.

⁸ The “status quo” is defined as “being the last, actual, peaceable, non-contested status that preceded the pending controversy.” *State v. Southwestern Bell Tel. Co.*, 526 S.W.2d 526, 528 (Tex. 1975). In this case, that status would include the continued existence of the office of Harris County Elections Administrator with Clifford Tatum heading that office.

⁹ That test requires the party seeking the injunction to establish: “(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.” *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). As the question of irreparable injury has clearly been established, in this section of his Motion Tatum will focus solely on the first two parts.

A. Clifford Tatum Has Clearly Stated a Cause of Action.

The first prong of the three-part test for issuance of a temporary injunction requires the movant to state a cause of action against the defendant. Clifford Tatum meets this test. He has brought an action for declaratory relief and temporary and permanent injunctions against the only party with the power to discharge him and abolish the office of Harris County Elections Administrator, his employer, Harris County. *See, Krier v. Navarro*, 952, S.W.2d 25, 28 (Tex. App.—San Antonio 1997, rev. denied) (Bexar County’s elections administrator sought injunctive relief against his employer, Bexar County, to prevent the County from removing him from office). TEX. ELEC. CODE §31.037 provides that his employment as Harris County Elections Administrators may only be terminated “for good and sufficient cause on the four-fifths vote of the county election commission and approval of that action by a majority of the commissioners court.” Tatum both pled and established at the preliminary injunction hearing that no “good and sufficient cause” currently exists to justify terminating him and that no one with the County had mentioned terminating him for cause. The only basis

currently advanced by Harris County for discharging Clifford Tatum is SB 1750. If SB 1750 is found to be unconstitutional after he is fired, Tatum will have lost his job in violation of TEX. ELEC. CODE §31.037. Tatum seeks a declaratory judgment pursuant to TEX. CIV. PRAC. & REM. CODE §37.001, *et. seq.*, to determine whether SB 1750 is constitutional—a determination authorized by TEX. CIV. PRAC. & REM. CODE §37.004—to avoid being fired without cause. An employee’s claim that he or she may only be fired for good cause and was instead fired without cause clearly states a claim. *See, Lee-Wright, Inc. v. Hall*, 840 S.W.2d 572 (Tex. App.—Houston [1st Dist.] 1992, no writ hist.); *Green v. Quality Dialysis One, LP*, No. 14-05-01247-CV, 2007 WL 2239295 (Tex. App.—Houston [14th Dist.] Aug. 7, 2007, no pet.). Tatum has clearly established a cause of action against Harris County, the defendant in his claim.

B. Clifford Tatum Is Likely to Prevail.

The final prong of the three-part test Tatum must satisfy, given he has already established stating a claim and irreparable harm, is whether he has a probable right to the relief sought. Courts are “particularly careful when it comes to the element of ‘probable right of recovery,’

sometimes referred to as ‘likelihood of success on the merits,’ because, by its plain language, this element seems to infringe upon two well-engrained judicial prohibitions: against advisory opinions and against forming opinions about the merits of the case before the conclusion of the evidence.” *Intercontinental Terminals Co., LLC v. Vopak North America, Inc.*, 354 S.W.3d 887, 897 (Tex. App.—Houston [1st Dist.] 2011, no pet.). These phrases are considered “terms of art” in the injunction context. *Id.* “[T]o show a probable right of recovery, the applicant must plead a cause of action and present some evidence that tends to sustain it.” *Id.*, citing *Camp v. Shannon*, 348 S.W.2d 517, 519 (1961). *See also, T–N–T Motorsports, Inc. v. Hennessey Motorsports, Inc.*, 965 S.W.2d 18, 23-24 (Tex. App.-Houston [1st Dist.] 1998, pet. dismiss’d); *Carpenter v. Dasplit Law Firm*, NO. 01-22-00282-CV, 2023 WL 3956861, at *10 (Tex. App.—Houston [1st Dist.] June 13, 2023, no pet.) Clifford Tatum clearly meets the test of “probable right of recovery”, having pled a cause of action and presented evidence that SB 1750 is unconstitutional, as detailed below.

Article III, §56(a) of the Texas Constitution bars the legislature from passing “any local or special law” (1) “regulating the affairs of

counties”; (2) authorizing the “conducting of elections”; (3) “prescribing the powers and duties of officers” in counties; and (4) “relieving or discharging any person” from the “performance of any public duty or service imposed by general law”. TEX. CONST. art. III, §56(a)(2), (12), (14) and (30). Article III, §56(b) prohibits enactment of any local or special laws “where a general law can be made applicable.” TEX. CONST. art. III, §56(b). The purpose of Section 56 is twofold. The first is to “prevent the granting of special privileges and to secure uniformity of law throughout the State as far as possible.” *Miller v. El Paso County*, 150 S.W.2d 1000, 1001 (Tex. 1941). The second is to prevent “lawmakers from engaging in the ‘reprehensible’ practice of trading votes for the advancement of personal rather than public interests.” *Maple Run at Austin Municipal Utility District v. The City of Austin*, 931 S.W.2d 941, 945 (Tex. 1996). When interpreting the Texas Constitution, a court must rely heavily on the literal text of the Constitution and give effect to its plain language. *Bosque Disposal Systems, LLC v. Parker County Appraisal District*, 555 S.W.3d 92, 94 (Tex. 2018). The evidence shows SB 1750 violates the Texas Constitution in multiple ways.

First, Clifford Tatum has presented evidence to establish SB 1750 is unconstitutional and void because it violates the plain and clear language of the following constitutional provisions:

(a) Tex. Const. Art. III § 56(a)(2), by authorizing regulating the affairs of only one Texas county, Harris County, in the following particulars, among others:

(i) dictating the county tax assessor-collector (and only that official¹⁰) shall manage voter registration activities;

(ii) dictating the county clerk (and only the county clerk) shall manage election activities;

(iii) eliminating the authority of the Harris County Commissioners Court to: create the position of county elections administrator to conduct voter registration activities in the county and manage elections as allowed by Tex. Elec. Code §31.031(a), approve the suspension or termination of a county elections administrator as

¹⁰ There are circumstances where the county clerk, rather than the tax assessor-collector, can be designated as the voter registrar. Tex. Elec. Code § 12.031. That provision obviously does not alter SB 1750's incompatibility with Tex. Const. art. III, § 56(a)(2), just the linguistic articulation of the fatal constitutional defect.

allowed by Tex. Elec. Code § 31.037, and control funding for administration of elections as allowed by Tex. Elec. Code § 31.039, among other provisions; and

(iv) eliminating the circumstances in which Harris County's county election commission may appoint, Tex. Elec. Code § 31.032(a), or suspend or terminate (Tex. Elec. Code § 31.037) the County's elections administrator;

(b) Tex. Const. art. III, § 56(a)(12), by affecting, in Harris County only, the opening and conducting of elections, or fixing or changing the places of voting, as such functions are currently under the control of the county elections administrator, but pursuant to SB 1750, must be transferred to the county clerk.

(c) Tex. Const. art. III, § 56(a)(14), by eliminating, for Harris County only, the power of:

(i) Harris County Commissioners Court to create the position of county elections administrator, Tex. Elec. Code §31.031(a), to approve the suspension or

termination of a county elections administrator, Tex. Elec. Code § 31.037, and to control funding for administration of elections, e.g., Tex. Elec. Code § 31.039;

(ii) Harris County's Election Commission to appoint, Tex. Elec. Code § 31.032(a), and to suspend or terminate (Tex. Elec. Code § 31.037) the county elections administrator; and

(iii) the Harris County elections administrator to perform functions and discharge duties relating to the administration of voter registration activities and the conduct of elections, Tex. Elec. Code Ch. 31, Subch. B (generally), esp. § 31.043, all in);

(d) Tex. Const. art. III, § 56(a)(30), by discharging the duly appointed elections administrator of Harris County and preventing him from performing the public duties and services required by laws of the State of Texas; and

(e) Tex. Const. art. III, § 56(b), because the legislature could have enacted a general law which could have achieved all of the legitimate objectives of SB 1750.

Second, Clifford Tatum has presented evidence that SB 1750 is unconstitutional because it is a local law based on a closed population bracket (population in excess of 3.5 million on September 1, 2023) that applies only to Harris County now and can never apply to any other county that in the future that reaches a population of 3.5 million. As the Texas Supreme Court affirmed almost 100 years ago, “when a law is so drawn that it applies only to one city [or county] and can never apply to any but this one city [or county] in any possible event, the law is unconstitutional and void, because such a law is not based on classification but on isolation.” *City of Fort Worth v. Bobbitt*, 36 S.W.2d 470, 473 (Tex. Comm’n App. 1931, opinion adopted). *Suburban Utility Corp. v. State*, 553 S.W. 2d 396 (Tex. Civ. App.—Houston [1st Dist.] 1977, writ ref’d n.r.e.). See, *Bexar County v. Tynan*, 97 S.W.2d 467, 469-70 (Tex. Comm’n App., Section A 1936, opinion adopted) (a law is not unconstitutional because it may have applied to only one county in the state at the time of its passage, as long as the law is not so framed as to

exclude the probability that it would apply to other counties in the future).

Finally, Clifford Tatum has presented evidence that SB 1750 is unconstitutional because it establishes, without a reasonable basis, a classification that treats equally populated counties differently. Even though this Court has emphasized the importance of following the plain text of the Constitution, in the past the Court has not always followed this rule with respect to article III, §56, but instead has held that the Legislature has “a rather broad power to make classifications for legislative purposes and to enact laws for the regulation thereof, even though such legislation may be applicable only to a particular class or, in fact, affect only the inhabitants of a particular locality.” *Miller*, 150 S.W.2d at 1001. Even allowing for this “non-textual reading” of the Constitution, for a statute to pass muster “there must be a substantial reason for the classification. It must not be a mere arbitrary device resorted to for the purpose of giving what is, in fact, a local law the appearance of a general law.” *Id.* at 1002. “The primary and ultimate test of whether a law is general or special is whether there is a reasonable basis for the classification made by the law, and whether the law operates

equally on all within the class.” *Maple Run*, 931 S.W.2d at 945. When reviewing a statute to determine whether it is an unconstitutional local or special law, a court “reviews the reasonableness of the statute’s classifications, not the precipitating forces that led to its enactment.” *Juliff Gardens, L.L.C. v. Texas Commission on Environmental Quality*, 131 S.W.3d 271, 283 (Tex. App.—Austin 2004, no pet.).

Clifford Tatum introduced evidence that tends to prove that SB 1750 lacks a reasonable basis and is irrational for multiple reasons. First, SB 1750’s selection of September 1, 2023, as the basis for determining whether a county may have its elections and voter registration activities managed by a non-partisan, professional elections administrator is irrational. SB 1750 divides the counties of Texas into two classes: 253 counties with a current population of less than 3.5 million inhabitants on September 1, 2023, and Harris County with a population in excess of 3.5 million residents on that date. 253 counties may have a non-partisan,¹¹ professional elections administrator managing elections and overseeing

¹¹ See, Tex. Elec. Code § 31.035 (prohibiting county elections administrator, on pain of criminal penalties and mandatory termination of employment, from publicly supporting or opposing a candidate for public office, making a political contribution or expenditure, becoming a candidate, or holding an office or position in a political party).

voter registration functions, even if they later grow so their population exceeds 3.5 million residents; Harris County on the other hand, may never have a non-partisan, professional elections administrator managing elections and overseeing voter registration functions. Those activities may only be discharged in Harris County by the tax assessor-collector and the county clerk, both elected in partisan elections, and both having extensive other unrelated duties and responsibilities (such as collecting taxes, in the case of the tax assessor, and maintaining court records, issuing marriage licenses, and recording public records, in the case of the county clerk).

Clifford Tatum's evidence shows there is no rational basis for the Legislature's conclusion, crucial to SB 1750's constitutionality, that if a county's population exceeded 3.5 million *on September 1, 2023*, its voter registration functions must be forever performed by its tax assessor-collector, rather than by an appointed professional elections administrator, but if a county does not attain that population until after September 1, 2023, an appointed elections administrator may handle voter registrations matters. There is no rational basis for the Legislature's conclusion that if a county's population exceeded 3.5 million

on September 1, 2023, its elections need to be managed by its county clerk, rather than by an appointed elections administrator, while if a county does not attain that population until after September 1, 2023, an appointed elections administrator may manage the county's elections. No magical statewide transformation regarding the registration of voters or managing of elections will occur on September 1, 2023, such that counties with more than 3.5 million residents before that date forever need elected officials to run their elections and voter registration programs, but counties that reach 3.5 million residents after September 1, 2023, may have non-partisan professionals run their elections. This lack of rationality constitutes evidence that tends to prove SB 1750 is unconstitutional, satisfying the dissent's test in *In re Abbott* for the issuance of temporary orders.

Similarly, there is nothing magical or transformative about a county reaching a population of 3.5 million persons. There is no rational basis for concluding that hiring a non-partisan professional to register voters and manage elections is more pernicious or deleterious in a county which had a population of 3.5 million on September 1, 2023, than it is in

a county with a smaller population. If the voting public is better served by having voter registration functions performed by an elected official than an appointed one, there is no rational reason for imposing that requirement on Harris County because it had a population of 3.5 million on September 1, 2023, and not imposing the same requirement on every other county in the state, especially the other large Texas counties.¹² The same holds true for the performance of election management and administration activities: if hiring a non-partisan professional is a vice in a county with 3.5 million on September 1, 2023, how is it not equally pernicious in other Texas counties, especially larger ones? Yet, as Tatum's evidence shows, SB 1750 irrationally only prohibits Harris County from hiring a non-partisan, professional elections administrator to handle voter registration and managing elections.

¹² In fact, as explained below, the legislative history states that the transparency, accountability, availability, and dispersal of power needs underlying SB 1750 require that elected (rather than appointed) officials discharge the duties of an elections administrator in Dallas, Tarrant, Bexar, and Travis counties, as well as in Harris County. There is a "need" to abolish the position in three other counties, and to prohibit the fourth – Travis County – from creating it, the legislative report explains, but SB 1750 mandates abolition only in one – Harris County. See, Bill Analysis, Tex. S.B. 1750, 88th Leg., R.S. (2023).

Clifford Tatum has offered evidence tending to prove SB 1750's September 1, 2023-population-determined classification is not based upon a "real distinction", but rather is arbitrary. *Bexar County*, 97 S.W.2d at 470. None of the alleged problems sought to be alleviated by SB 1750 (the alleged "unavailability" of elections officials to the general public, and a supposed lack of transparency and accountability), is unique to the one county which happens to have a population of 3.5 million on September 1, 2023; and the presence or absence of the evils sought to be eliminated by SB 1750's abolition of the office of Harris County elections administrator are not related to the fact that the population of the one county to which the law applies happens to have had a population of 3.5 million on that one designated day. This evidence justifies the issuance of temporary orders keeping the trial court's preliminary injunction in place pending the resolution of this interlocutory appeal.

Finally, as Tatum's evidence establishes, the plain language of SB 1750 shows the classification it creates (population greater than 3.5 million on September 1, 2023) is irrational and does nothing to advance the legislative objective of the statute. While Harris County is prohibited

from having an elections administrator, purportedly because of its size on September 1, 2023, (3.5 million residents), any other county which grows to a population of 3.5 million inhabitants after SB 1750's effective date may have its elections overseen by an appointed elections administrator, regardless of the size to which its population grows (so long as the position was created in that county before it reached 3.5 million)¹³. It cannot be rational to prohibit Harris County from having an elections administrator because its population exceeded 3.5 million on

¹³ The irrationality of SB 1750 is further demonstrated by the admittedly improbable event that Harris County's population should shrink to fewer than 3.5 million. Even if the County's population shrank, it still could not have voter registration and elections administration functions performed by an elections administrator, simply because its population was more than 3.5 million on September 1, 2023. SB 1750 provides that "all powers and duties" of a county elections administrator are transferred to the county tax assessor-collector and county clerk, respectively. So even if the Harris County Commissioners Court should create the position of county elections administrator in the future (after its population fell below the 3.5 million mark), that person could not perform any voter registration or elections administration duties or functions, since "all powers" in those areas was "transferred to the county tax assessor-collector and county clerk" on September 1, 2023.

It is not rational to prohibit Harris County from creating a county elections administrator position if its population ever fell below 3.5 million, when every other county in the state could have one at that population level.

While it is conceivable the courts could interpret SB 1750 differently in this regard, the fact that such a reading of the statute is possible underscores the irrationality and arbitrariness of mooring SB 1750's remedial scheme to a population (3.5 million) on a single date (September 1, 2023).

September 1, 2023, but allow other counties with populations of 4 million or 5 million or more to choose to have a non-partisan elections administrator in charge of managing elections and voter registration.

To demonstrate the lack of connection between S.B. 1750's population-based classification scheme and its purported purpose (and therefore its irrationality), suppose Harris, Dallas, Tarrant, and Bexar counties all have populations of 3.6 million in 2028. Dallas, Tarrant, and Bexar counties could continue to have their election functions managed by a county elections administrator, but not Harris County— even if all four counties had identical populations, or even if the other three had populations greater than that of Harris County.

Since all other counties are allowed to have elections administrators despite attaining populations of 3.5 million, it is obvious that not even the Legislature which passed the bill believed that having a population in excess of 3.5 million has any relationship to whether elections should be run by county clerks or elections administrators or to whether tax assessors or elections administrators should be responsible for voter registration activities.

After the passage of SB 1750, any county in Texas—except Harris County—may have an elections administrator *even if its population exceeds 3.5 million*. As Tatum’s evidence tends to establish, this feature of SB 1750 renders the statute’s classificatory scheme transparently and unconstitutionally irrational. There is, simply, no rational basis for the distinction created by SB 1750 between counties which exceed 3.5 million inhabitants on September 1, 2023 (and for that reason alone are prohibited from having an elections administrator), and those that grow to that number in the future (and may nonetheless choose to have their elections overseen by a non-partisan elections administrator).¹⁴

The misfit between SB 1750 as enacted and the objective sought to be achieved by SB 1750 is further decisively demonstrated by the Author’s/Sponsor’s Statement of Intent, dated June 29, 2023, Bill

¹⁴ The Legislature recognized there was no rational basis for SB 1750 and that it was likely unconstitutional; that is why it enacted SB 1933, a bill introduced by the same senator who authored SB 1750. SB 1933, 88th Leg., R.S. (2023) (“SB 1933”), enacted on May 28, 2023. SB 1933 purports to allow the *Secretary of State* to terminate the employment of a county elections administrator in a county with a population of over 4 million if certain conditions are met. Tex. Elec. Code §§ 31.021(b) and 31.037(b). But if SB 1750 was in effect, the provision of SB 1933 (Tex. Elec. Code § 31.021(b) and 31.037(b)) authorizing the *Secretary of State* to suspend or terminate a county elections administrator could not have any effect, since there is no other county in Texas with a population anywhere near 4 million persons.

Analysis, Tex. S.B. 1750, 88th Leg., R.S. (2023) explaining the reason the Legislature passed this bill: “S.B. 1750 would require all counties *with a population over 1,000,000* [that is, Bexar, Collin, Dallas, Harris, Tarrant, and Travis counties] to have their elections administered by an elected official, the county clerk¹⁵, [in order to] allow for more accountability and transparency to the voting public, [particularly because e]lected officials are in the public making public appearances and are much more available to the voters than an election administrator.” (Emphasis added.) (Tab B, p. 143-44; Tab B-3, *Intervenor Exhibit 3, Bill Analysis of SB 1750*). Thus, the legislative history indicates that elected, rather than appointed, elections officials are necessary to achieve accountability,

¹⁵ Significantly, and fatal to SB 1750's abolition of the entire office of elections administrator, this explanation does not suggest any reason why election administrators in large counties should not handle voter registration functions and those should also be transferred to the tax assessor-collector in counties with populations over 3.5 million (but only in those locales). The reason for this lapse is that there is no rational, articulable reason, based on any evidence the Legislature heard or considered, why citizens in counties with more than 3.5 million residents are harmed by appointed elections officials (rather than tax assessor-collectors) performing voter registration functions more than is the case in smaller jurisdictions. Even if, hypothetically, there were a rational, legitimate reason to transfer election management from an appointed administrator to the county clerk in— but only in—counties with a population in excess of 3.5 million, there is no rational reason for transferring voter registration responsibility to the tax assessor-collector in such counties (and those counties alone), especially without regard to whether those inhabitants are registered, or eligible to register, to vote. This fact provides an additional, independent reason to declare SB 1750 to be unconstitutional.

transparency, and accessibility in any county *with a population in excess of 1,000,000* – not merely in those with a population of 3.5 million. Yet, without any explanation or mention in the legislative history, the Legislature arbitrarily made SB 1750 applicable only to the one Texas county with a population in excess of 3.5 million.

The object of SB 1750 was, according to the Sponsor's Statement of Intent constituting the Bill Analysis, to require all counties with a population in excess of 1 million to have the (elected) county clerk manage elections, because counties with populations over *one* million (not 3.5 million) needed to have elections overseen by an official accountable to the voters. But there is no possible explanation (let alone a rational one) for why a bill intended to remedy harm the Legislature found to afflict six counties is limited in its application to only one county.

The evidence offered by Clifford Tatum tends to prove SB 1750 has no rational basis, and the statement of intent reflects a total disconnect between the bill introduced and the one passed. Tatum has provided sufficient evidence tending to prove SB 1750 is an unconstitutional local or special law that violates multiple provisions of the Texas Constitution

to justify the issuance of temporary orders keeping the temporary injunction issued by the trial court in place in order to preserve the status quo during the pendency of this appeal.

PRAYER

Regardless of the standard used, Clifford Tatum has established an entitlement to temporary orders designed to preserve the status quo pending the resolution of this interlocutory appeal. Tatum respectfully prays that this Honorable Court issue temporary orders restraining Harris County and each of its instrumentalities, commissions, elected officials, agents, servants, employees, attorneys, representatives or any person or persons in active concert or participation with the County who receives actual notice of this Temporary Injunction from enforcing any provision of Texas Senate Bill 1750, including new Texas Election Code Section 31.050, to the extent that statute abolishes the position of county elections administrator in Harris County and/or requires transferring the duties and responsibilities of the office of Harris County Elections Administrator from that office to the offices of the Harris County Tax Assessor-Collector and/or the Harris County Clerk. Harris County and

each of its instrumentalities, commissions, elected officials, agents, servants, employees, attorneys, representatives or any person or persons in active concert or participation with the County who receives actual notice of this Temporary Injunction are further enjoined from terminating Clifford Tatum's employment as county elections administrator or discontinuing or reducing the compensation, employee benefits, or other emoluments of the office of county elections administrator he was receiving, or entitled to receive, from Harris County on August 31, 2023, on account of or in reliance upon SB 1750 or new Tex. Elec. Code § 31.050, set to go into effect on September 1, 2023.

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Respectfully submitted,

/s/ Gerald M. Birnberg

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Attorneys for Appellee/Cross-Claimant,
Clifford Tatum

CERTIFICATE OF CONFERENCE

I certify that on August 16, 2023, I conferred with counsel for Appellants, who indicated they are opposed to this motion. I attempted to confer with counsel for Appellee/Cross-Defendant Harris County, but as of the filing of this motion have not received a response.

/s/ Richard Schechter

Richard Schechter

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this motion was served on all parties through their counsel of record by electronic service via eFile.TXCourts.gov on August 16, 2023.

/s/ Richard Schechter
Richard Schechter

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APPENDICES

- A.** STATE BILL 1750
- B.** TRANSCRIPT OF AUGUST 8, 2023 HEARING
- B-1.** CLIFFORD TATUM CV
- B-2.** CERTIFIED COPY ORDER APPOINTING HARRIS COUNTY ELECTIONS ADMINISTRATOR (8/16/2022)
- B-3.** STATE BILL 1750 BILL ANALYSIS
- C.** PLAINTIFF'S VERIFIED SECOND AMENDED PETITION (8/4/2023)
- D.** DEFENDANT'S FIRST AMENDED ANSWER (8/7/2023)
- E.** CLIFFORD TATUM'S FIRST AMENDED PETITION IN INTERVENTION (8/7/2023)
- F.** OFFICE OF ATTORNEY GENERAL PETITION IN INTERVENTION (8/7/2023)
- G.** STATE OF TEXAS PETITION IN INTERVENTION (8/7/2023)
- H.** ORDER GRANTING CLIFFORD TATUM'S TEMPORARY INJUNCTION (8/14/2023)
- I.** DEFENDANTS' AND DEFENDANT-INTERVENORS' AMENDED NOTICE OF ACCELERATED INTERLOCUTORY APPEAL (8/15/2023)

APPENDIX A

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By: Bettencourt

S.B. No. 1750

A BILL TO BE ENTITLED

AN ACT

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

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

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

SUBCHAPTER B. COUNTY ELECTIONS ADMINISTRATOR IN CERTAIN COUNTIES

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

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

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

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

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

1 has a county elections administrator and a population of more than
2 3.5 million shall transfer employees, property, and records as
3 necessary to accomplish the abolishment of the position of county
4 elections administrator under this Act.

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

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APPENDIX B

RETRIEVED FROM DEMOCRACYDOCKET.COM

REPORTER'S RECORD
TRIAL COURT CAUSE NO. D-1-GN-23-003523

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HARRIS COUNTY, TEXAS,)	IN THE DISTRICT COURT
Plaintiff/Cross-Defendant)	
)	
v.)	
)	
THE STATE OF TEXAS;)	
OFFICE OF THE ATTORNEY)	
GENERAL OF TEXAS; ANGELA)	
COLMENERO, IN HER)	
OFFICIAL CAPACITY AS)	
PROVISIONAL ATTORNEY)	
GENERAL; OFFICE OF THE)	
TEXAS SECRETARY OF STATE)	
AND JANE NELSON, IN HER)	
OFFICIAL CAPACITY AS)	TRAVIS COUNTY, TEXAS
TEXAS SECRETARY OF STATE)	
Defendants.)	
v.)	
CLIFFORD TATUM,)	
)	
Intervenor/Cross-)	
Claimaint)	
)	
v.)	
The Attorney General of)	
Texas,)	
Defendant/Intervenor)	345th JUDICIAL DISTRICT

TEMPORARY INJUNCTION
AND PLEA TO JURISDICTION

On July 8, 2023, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Karin Crump, Judge Presiding, held in Austin, Travis County, Texas:

Proceedings reported by machine shorthand.

APPEARANCES

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INDEX

**PLEA TO JURISDICTION
AND TEMPORARY INJUNCTION**

August 8, 2023

		<u>Page</u>
4		
5	Announcements.....	6
6	PLEA TO JURISDICTION	
7	Argument by Ms. Dokupil.....	12
8	Argument by Mr. Menefee.....	36
9	Opening Statement by Mr. Schechter.....	51
10	Opening Statement by Ms. Dokupil.....	53
11	Opening Statement by Mr. Menefee.....	56
12	<u>PLAINTIFF'S WITNESSES</u>	
13		
	<u>Direct</u>	<u>Cross</u>
14	CLIFFORD TATUM	
	By Mr. Sarkar	69
15	By Ms. Cella	114, 143
	By Mr. Schechter	123
16	CHRISTINA ADKINS	
17	By Mr. Miller	146, 184
	By Mr. Birnberg	158
18	By Ms. Cella	179
19		
		<u>Page</u>
20	Closing Argument by Mr. Fombonne.....	189
21	Closing Argument by Mr. Birnberg.....	193
22	Closing Argument by Ms. Dokupil.....	197
23	Court's Ruling Taken Under Advisement....	206
24	Adjournment.....	206
25	Court Reporter's Certificate.....	207

EXHIBIT INDEXPLAINTIFF'S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>OFFER</u>	<u>ADMIT</u>
1	OAG Letter	100	100
2	Press Release	89	89
3	Twitter Post	89	89
4	Press Release	89	89
5	State of Affairs Transcript	89	89
6	Press Release	89	89
7	Twitter Post	89	89
8	Twitter Post	89	89
9	House Elections Transcript	89	89
10	Twitter Post	89	89
11	Press Release	89	89
12	Twitter Post	89	89
13	Twitter Post	89	89
14	Twitter Post	89	89
15	SB1933	63	63
16	SB1750	63	63
17	OAG Letter	100	100
18	2022 General Election Team PSA	100	100
19	OAG Letter	100	100
20	OAG Letter	100	100
21	Petition for Write of Mandamus	100	100

<u>PLAINTIFF'S</u>			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>OFFER</u>	<u>ADMIT</u>
22	Rule 29.3 Motion	100	100
23	Motion for Emergency Relief	100	100
24	Petition in Interview	100	100
25	Twitter Post	100	100
26	Press Release	100	100
27	Twitter Post	100	100
28	Twitter Post	100	100
29	Twitter	100	100
30	Twitter Post	100	100
31	Twitter Post	100	100
32	Twitter Post	100	100
33	SB1750	100	100
35	Mass E-mail	100	100
36	Mass E-mail	100	100
37	Mass E-mail	100	100
38	Mass E-mail	100	100
39	Mass E-mail	100	100
40	Party Affiliation	100	100
<u>INTERVENOR'S</u>			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>OFFER</u>	<u>ADMIT</u>
1	Clifford Tatum CV	124	124
2	Order Appointing HCEA	124	124
3	SB1780 Bill Analysis	143	--

P R O C E E D I N G S

AUGUST 9, 2023

* * * *

1 THE COURT: All right. Welcome. This is

09:02AM

2 GN-23-003523, *Harris County Texas Versus State of Texas*

3 *Office of the Attorney General of Texas, Angela*

4 *Colmenero, in Her Official Capacity As Interim Attorney*

5 *General of the State of Texas, Office of the Texas*

6 *Secretary of State and Jane Nelson, in Her Official*

09:03AM

7 *Capacity As Texas Secretary of State and Clifford Tatum,*

8 *Intervener, the Attorney General of Texas and the State*

9 *of Texas.*

10 May I have your announcement, please,

11 beginning with plaintiffs.

09:03AM

12 MR. FOMBONNE: Jonathan Fombonne from the

13 Harris County Attorney's office for Plaintiff, Harris

14 County, Texas.

15 THE COURT: Good morning.

16 MR. MENELEE: Good morning, Christian

09:03AM

17 Menefee from the Harris County Attorney's Office, as

18 well, for the Plaintiff.

19 THE COURT: Good morning.

20 MR. SARKAR: Good morning, Neal Sarkar for

21 the Harris County Attorney's Office, as well, for the

22 Plaintiff.

1 THE COURT: Good morning.

2 MR. MILLER: Good morning, Matt Miller for
3 the Harris County Attorney's Office.

4 THE COURT: Good morning, all.

09:03AM 5 And who will be presenting arguments this
6 morning, on behalf of Harris County?

7 MR. FOMBONNE: Your Honor, it will be a mix
8 of us. I'll present part of the argument. Mr. Menefee
9 will present another part, and we will also have
09:03AM 10 evidence to put on, and Mr. Sarkar and Mr. Miller will
11 be putting on that.

12 THE COURT: Okay. Since there are so many
13 of you, I do ask that you please state your name for the
14 record before you begin presenting. That will make life
09:04AM 15 a lot easier for Ms. Foley, the official court reporter
16 of the 250th.

17 And good morning in the back.

18 MR. BIRNBERG: Good morning, Your Honor, on
19 behalf of the intervenor and the cross-claimant,
09:04AM 20 Clifford Tatum, Gerald Birnberg, B-i-r-n-b-e-r-g, and
21 Richard Schechter. We will each be participating in the
22 examination of witnesses. Obviously not the same
23 witness, but--

24 THE COURT: Okay. Very good. If you-all
09:04AM 25 will take look at your microphones for just a moment.

1 Make sure that your green light is on when you're
2 speaking. Make sure you don't have any electronics
3 setting up on the desk that may be rubbing or making
4 noise. Make sure that everyone in the courtroom has all
5 devices silenced at all times during the proceedings
6 this morning. That would be very appreciated.

09:04AM

7 And on behalf of the defendants, good
8 morning.

9 MR. ELDRED: Good morning, Judge. Charles
10 Eldred for the AG's Office.

09:05AM

11 THE COURT: Good morning.

12 MS. CELLA: Good morning, Judge. Christina
13 Cella on behalf of defendants.

14 THE COURT: Good morning.

09:05AM

15 MS. DOKUPIL: I'm Susanna Dokupil, also on
16 behalf of the defendants.

17 THE COURT: Thank you.

18 MR. MENDELSON: Ben Mendelson also on
19 behalf of defendants.

09:05AM

20 THE COURT: All right. Is that everyone
21 who wishes to make an announcement for the record this
22 morning?

23 MR. BIRNBERG: Your Honor, we probably
24 should have also introduced the Court to Clifford Tatum,
25 who is the Intervenor.

09:05AM

1 THE COURT: Good morning.

2 MR. TATUM: Good morning.

3 THE COURT: I understand, today, that we
4 have a plea to the jurisdiction, which will be argued
09:05AM 5 first, just in terms of the necessity of what should be
6 heard first, and then we have a request for a temporary
7 injunction, and I know that the parties set a request to
8 strike Mr. Tatum's intervention. I received notice of
9 that, but I also noticed that there wasn't three days'
09:06AM 10 notice to Mr. Tatum, and without proper notice or
11 agreement of the parties, we won't go forward on that
12 motion.

13 Have you all had an opportunity to confer
14 about that motion, about whether there's an agreement?

09:06AM 15 MS. CELLA: Yes, Your Honor just via
16 e-mail, and the Intervenor has not agreed to that
17 motion.

18 THE COURT: Okay. What you can do -- I'm
19 the duty emergency judge this week. I've taken up this
09:06AM 20 matter just because of the request that it be heard
21 during this week, which is difficult because I'm
22 juggling other matters. I don't have a lot of time and
23 I'm trying to get to everything that you-all have set
24 this morning, and I won't have time to get to that issue
09:06AM 25 later this week when there is sufficient time, without

1 really causing a lot of undue burden on the Court in
2 trying to juggle things that happen later this week that
3 are already scheduled, but you may --if the parties
4 agree-- to submit briefing to the Court, and I can take
5 that by submission.

09:07AM

6 Is there any concern or objection with
7 that procedure?

8 MR. BIRNBERG: No, Your Honor. In fact, we
9 were on road, driving, when the motion was filed. We
10 couldn't even read it, and when we did read it, it has
11 some cases we need to research the brief and get back to
12 the Court. We'll do that by close of business tomorrow.
13 We think we'll be able to submit one, and we have no
14 objection presenting the issue to the Court by
15 submission.

09:07AM

16 THE COURT: Okay. You can have a full
17 three days, if you wish, but if you would rather the
18 Court take it up more quickly, then you may have until
19 end of day tomorrow, if that's your request.

09:07AM

20 MR. BIRNBERG: In the interest of traffic,
21 if you're giving us the three days, I will, however
22 represent to the Court and to the defendant we're going
23 to try to have it on file by tomorrow afternoon.

24 THE COURT: Okay. Very good. That's when
25 we'll look for it.

09:08AM

1 If you expect to need a reply brief, by
2 which date can you get that to me?

3 MR. ELDRED: Next morning.

4 THE COURT: Okay.

09:08AM

5 MR. ELDRED: And also, Judge, for the
6 record, I understand your position. We have to object
7 because it is jurisdictional. We believe that there's
8 no jurisdiction for suit and their main argument in this
9 case, so we would --for the record-- object to not

09:08AM

10 hearing the motion to strike at this time.

11 THE COURT: Okay. I'm not going to go
12 forward on the motion that does not have sufficient
13 notice to the other side, but I will take it by
14 submission, and I will review all pleadings by Thursday
15 afternoon. It sounds like everything should be to me by
16 that date.

09:08AM

17 Is that enough time for the Defendants'
18 reply briefing, or end of day Friday?

19 MR. ELDRED: Yes. Yes, Your Honor.

09:09AM

20 Whatever you said the first time, Thursday.

21 THE COURT: End of day Thursday. I'll look
22 for everything by 5:00 p.m. on Thursday, okay. Very
23 good.

24 Let's then go -- unless there are other
25 housekeeping matters, we'll go into the plea to the

09:09AM

1 jurisdiction.

2 MR. FOMBONNE: Judge, I understand we're
3 going to take the plea to the jurisdiction first. What
4 I would say is the issues in the plea and the issues in
09:09AM 5 our motion for temporary injunction is essentially
6 largely overlapped at least on the merits. They claim
7 sovereign immunity. We haven't pled a sufficient
8 constitutional violation. We say otherwise, so I think
9 just in terms of choreography, it makes sense that they
09:09AM 10 make their argument, and then we put on our evidence and
11 then go into the merits and the rebuttal arguments on
12 the sort of traditional jurisdictional arguments, if
13 that's okay.

14 THE COURT: Yes, that's -- that's the plan
09:09AM 15 of the Court, and so I'll hear arguments on the plea.
16 I'm likely to take the plea to the jurisdiction under
17 advisement. I have read the briefing, so I'm not going
18 to be hearing -- or at least considering the issues for
19 the first time.

09:10AM 20 We'll hear evidence in the request for
21 injunctive relief, but that request will be contingent
22 on the Court's denial of the plea or at least some
23 portion of the plea, okay, so you may begin with the
24 argument on the plea to the jurisdiction.

09:10AM 25 MR. ELDRED: Ms. Dokupil will handle that.

1 THE COURT: Will you please just make sure
2 that microphone is near you, and handle it by the base.

3 MS. DOKUPIL: This working?

4 THE COURT: Yes, that sounds good. You're
09:10AM 5 also welcome, if you wish to use the podium, and
6 hopefully you-all had some time to work with the Court's
7 electronics. You may plug in and use your laptops for
8 anything that you wish to share on the screen, okay.

9 MS. DOKUPIL: All right. Thank you very
09:10AM 10 much. I think for logistical purposes, my stuff is
11 better here than the podium, but thank you for the
12 offer.

13 So we are here to argue jurisdiction.
14 First of all, I want to talk about some background.
09:11AM 15 Legislatures are elected to solve problems. They weigh
16 pros and cons. They hear from all of the interested
17 parties, and when that law is passed, it's the
18 embodiment of the legislature's intent, as a whole, all
19 the different interests, policies, balances and
09:11AM 20 compromises. And this is why the Texas Supreme Court
21 has said over and over that legislative history is not
22 intent. Legislative history is irrelevant, and this is
23 also why we have canons of construction is this
24 deference to the legislative compromise. And, here,
09:11AM 25 with SB1750, we have such a situation where the

1 legislature tried to solve a problem.

2 The legislature was probably aware in
3 passing SB1750 that Harris County's elections had been
4 widely reported to have some challenges and concern. In
09:12AM 5 fact, some of these concerns made national news. Party
6 chairs on both sides of the aisle raised concerns.
7 Texas Monthly called the election in 2022, the primary,
8 the worst run election in recent memory. And the
9 elections administrator at that time --not Mr. Tatum--
09:12AM 10 resigned after that election.

11 The legislature would have also been
12 aware that after the election, there were reports of
13 shortages of ballot paper; ballot machine malfunctions;
14 problems in distributing supplies; problems with the
09:12AM 15 chain of custody for the ballots, and most importantly,
16 there were problems with the vote counts.

17 The legislature may have been considering
18 that Harris County's election count was not completed on
19 time. By law, it's supposed be done within 24 hours of
09:12AM 20 the poll closing, but it took 31 hours and, by contrast,
21 it only took 13-and-a-half hours in 2020, and
22 9-and-a-half hours in 2018, and the legislature would
23 have almost certainly been informed that after the final
24 votes were recorded in the 2022 primary, that an
09:13AM 25 additional 10,000 mail-in ballots were discovered later

1 that had not been counted.

2 And the legislature may have heard from
3 constituents or may have believed that Harris County
4 voters on -- for both parties were losing faith in the
09:13AM 5 integrity of the process.

6 As I mentioned, the elections
7 administrator for the 2022 primary resigned, and she
8 admitted she had not met the standards set by the
9 Commissioners Court. County Judge Lina Hidalgo
09:13AM 10 reportedly said at that primary that there were, quote,
11 unforced errors, and despite these challenges, the
12 Commissioners Court put in a new election administrator
13 and kept the system for the general election in 2022.

14 But there were problems again. There
09:13AM 15 were problems with ballot paper shortages, and without
16 ballot paper, no one can vote. There were reports of
17 issues with machine malfunctions and polling locations
18 being closed. And after the election, 14 candidates
19 filed election contests to contest the results, and the
09:14AM 20 legislature would certainly have been aware that Harris
21 County is, by far, the largest county in Texas. It
22 makes up about 16 percent of the population. It's twice
23 as big as the next largest county, and the legislature
24 would also have been aware that because Harris County is
09:14AM 25 so big, it has a significant impact on statewide

1 elections.

2 So SB1750 we can assume that the
3 legislature took action to solve these problems they
4 identified in Harris County. SB1750 applies to counties
09:14AM 5 with over three-and-a-half million in population, which
6 today is only Harris County, but it could be more in the
7 future.

8 SB1750 does two things. It prevents
9 counties with a population of three-and-a-half million
09:14AM 10 more for creating the position of election
11 administrator, and it also abolishes that position in
12 counties with three-and-a-half million or more that
13 currently have one, and that would include Harris
14 County.

09:14AM 15 In that process, it says that the county
16 should return the election administrator functions to
17 the county clerk and the tax assessor collector and
18 transfer all of the employees and property and so forth
19 that goes with that office.

09:15AM 20 Harris County and Intervenor Tatum are
21 asserting that this is an unconstitutional local law
22 under Article III, Section 56 of the Texas Constitution
23 because it targets specific local area through its
24 classification.

09:15AM 25 Harris County and Intervenor Tatum

1 explore at great length, the legislative history, the
2 alleged intent, the use of population brackets, but none
3 of these are actually critical pieces of the analysis.

4 For this reason, neither Harris County
09:15AM 5 not Intervenor Tatum have pleaded a constitutional claim
6 that SB1750 is facially invalid. And the claim that
7 SB1750 is unconstitutional because it hasn't been
8 improperly pled should be dismissed for lack of
9 jurisdiction.

09:15AM 10 And the authority for that is the *MALC*
11 case, the Texas Supreme Court, which says, although the
12 UDJA waives immunity for declaratory judgment claims
13 challenging the validity of statutes with how the
14 immunity from suit is not waived if the constitutional
09:16AM 15 claims are facially invalid. This is a jurisdictional
16 question.

17 I will also get to Harris County's lack
18 of standing, but I am going to go through and talk about
19 the facial claim first.

09:16AM 20 SB1750 is absolutely constitutional. The
21 test for the constitutionality of SB1750 is whether the
22 legislature had a reasonable basis for enacting that law
23 with the classification that it had. Whether the
24 population bracket targets local area is only the
09:16AM 25 beginning of questioning whether it's constitutional

1 under Article III, Section 56. It is not the end of the
2 analysis. Obviously, if there weren't a classification
3 that seemed to target the local area, we wouldn't be
4 talking about Article III, Section 56 at all. But the
09:16AM 5 reasonable basis is a really low bar. The test is
6 whether you can assume that a reasonable basis could
7 have existed that the legislature could have relied on,
8 and if you can figure out a situation of facts that
9 could be reasonable that exists, then we assume that it
09:17AM 10 did exist.

11 And so in this case, the reasonable basis
12 is that the legislature was trying to solve a problem
13 that it saw in a large county with elections.

14 If the legislature has a reasonable
09:17AM 15 basis, then the law is not prohibited by local law. It
16 is, in fact, a constitutional general law. And even
17 though reasonable minds may disagree about the
18 legislature's chosen course of action or the rules
19 behind it, that's not a sufficient basis for finding a
09:17AM 20 statute that has no reasonable basis a constitutional
21 matter.

22 Indeed, as *Smith versus Davis* said 1968,
23 it is to be presumed that the legislature has not acted
24 unreasonable or arbitrarily, and a mere difference of
09:17AM 25 opinion is not a sufficient basis for striking down

1 legislation that's arbitrary or unreasonable.

2 So Harris County and Mr. Tatum needed to
3 plead facts that needed to plead all possible reasonable
4 explanations for the classification in order for its
09:18AM 5 Article III, Section 56 claim to be facially valid. And
6 neither of the parties have addressed the basis that
7 Harris County is a super large county, with really big
8 logistical challenges and had a really challenging
9 election cycle. Targeting a population brackets are not
09:18AM 10 dispositive of the Article III, Section 56 issue.

11 Reasonable basis is.

12 Harris County has spent a lot of time in
13 their briefing in talking about open and closed
14 population brackets, and whether or not other counties
09:18AM 15 could potentially be considered later, but this is
16 actually a theme in the case law that was really popular
17 in the 1930s and the 1970s, and the Texas Supreme Court
18 has moved significantly away from that type of analysis
19 in more recent years. And even if hadn't, it's not a
09:19AM 20 thing that -- it's not the case that all -- every time
21 you see a bracket that includes only one county, it's
22 unconstitutional.

23 There is even a case from 1969, *Board of*
24 *Managers of Harris County Hospital District Pension*
09:19AM 25 *Board*, which is actually the population classification

1 only referred to Harris County at that time, and it
2 impacted a one-time pension transfer that had to do with
3 a set of the hospital pension system versus the
4 municipal employees pension system, and one time --
09:19AM 5 employees are transferred from one to the other, and the
6 Court upheld that and said it was perfectly fine even
7 though it was targeting only Harris County, because it
8 had a reasonable basis. It said that the city argues
9 that no city other than Houston can ever be affected by
09:19AM 10 the provision of the section. But no authority is
11 supported in -- cited in support of the position that
12 this fact renders an act a local or special law, and we
13 doubt that any could be found.

14 So the Texas Supreme Court is held up the
09:20AM 15 law targeting Harris County's administration before for
16 a one-time situation.

17 And this Supreme Court, more recently, in
18 *Maple Run Versus Monaghan* tried to harmonize the history
19 of these Article III, Section 56 precedents, and after
09:20AM 20 going through a lengthy history of which one did what
21 and why, the Court stated that the law is not a
22 prohibited local law merely because it applies only in a
23 limited geographical area.

24 The Austin Court of Appeals has held
09:20AM 25 similarly. They said, in *Public Utility Commission*

1 *Versus Southwest Water Services*, that a closed bracket
2 does not render a law constitutional. The Court gave a
3 detailed analysis. There's some cases targeting single
4 towns and districts. Some were constitutional, some
5 were not, but the Court explained the outcome was
6 determined not by the target, itself, but by the
7 presence or absence of a reasonable basis. Ultimately
8 the Court said, these cases preclude a rule that
9 declaring a statutory class which, by its terms is

10 closed to future members to be a per se violation of the
11 constitutional provision against local and special laws.

12 So courts have recognized that one subset
13 of the universe of potential reasonable bases is when
14 there is a larger statewide interest at stake. In *Maple*
15 *Run*, itself, it mentions that significance of the
16 subject matter and the number of persons affected by the
17 legislation are merely factors albeit important ones in
18 determining reasonableness.

19 As I mentioned before, the legislature
20 could clearly recognize that larger statewide interest
21 in Harris County's elections. Harris County's
22 population is larger than 26 states. As such, it has an
23 outsized impact on statewide elections as well as on
24 other election districts that overlap with Harris
25 County. So classification that encompassed only Harris

1 County for a statute that deals with elections could
2 have a reasonable basis in a larger statewide interest.

3 In other context, the Texas Supreme Court
4 has upheld similar law that target local problems where
09:22AM 5 it found a larger statewide interest. In *Cameron County*
6 *versus Wilson*, for example, the Court upheld a law that
7 classified -- that drew the classification such that
8 it's been targeted the development, and the Court found
9 a reasonable basis that the state would want to develop
09:22AM 10 beautiful beaches -- and beach islands needed maybe
11 different types of park services and mainland and so it
12 was reasonable to treat it differently.

13 The Court in that case made a very
14 sweeping statement about statewide interest. It said:
09:22AM 15 We have been and will again be faced with the need and
16 demand for legislation which affects all the people in
17 the state generally, yet when into direct operation,
18 will apply to one locality.

19 The scope of such legislation should not
09:22AM 20 be restricted by expanded nullifying fact of Article
21 III, Section 56 of the Constitution. And most directly
22 on point for this discussion, the courts have approved
23 laws that advance the larger public interest by solving
24 a local territorial dispute.

09:23AM 25 The *Maple Run* court spoke favorably at

1 the legitimate basis for upholding the statute that only
2 affected the DFW Airport.

3 This is a case where Dallas and Fort
4 Worth jointly created a board to administer the DFW
09:23AM 5 Airport, and eventually, the nearby cities of Irving,
6 and Euless and Grapevine started to object to the
7 upwards expansion. There were conflicting ordinances;
8 there was a lot of litigation, and legislature stepped
9 in to grant constituent public agencies that a joint
09:23AM 10 board who were homeowner municipalities whose population
11 exceed \$400,000 the exclusive power to administer
12 municipal airports, so it was clearly a classification
13 that was targeting this particular local problem. But
14 the Court upheld this because they said, the importance
09:23AM 15 of the Dallas public airport was so important to the
16 state that it was perfectly okay to target a local
17 jurisdiction and sort out an essentially local municipal
18 turf war because essentially airports are too important.
19 And, similarly, I would argue that the legislature here
09:24AM 20 could have had the reasonable basis that you know what,
21 elections are just too important. We're going to sort
22 this out.

23 The Court, in the DFW case specifically
24 rejected the city's argument that the attempt to fix the
09:24AM 25 local problem render the statute unconstitutional. It

1 said: There clearly is a local problem with the host
2 cities, but the legislature's attempt to alleviate this
3 problem does not place the law into the realm of an
4 unconstitutional or special measure.

09:24AM

5 So by any measure, SP1750 has a
6 reasonable basis, and considering the strong presumption
7 in favor of constitutionality, it must appear that there
8 is no reasonable basis for the classification adopted by
9 the legislature as the Court said in Cameron County.

09:25AM

10 And neither Harris County nor the intervenor pleaded any
11 set of facts that can possibly overcome this
12 presumption.

09:25AM

13 Harris County does spend a lot of time on
14 the legislative history, and they argue that because the
15 original intent of Article III, Section 56 is to
16 prevent, essentially, legislatures giving special
17 benefits to the friends and punishing enemies, that it's
18 important to look at intent in this context; however --
19 and, also, the intervenor explores all the means of the

09:25AM

20 statute to make it seem unreasonable. But neither of
21 these approaches can undermine an otherwise perfectly
22 reasonable basis because the test is: Can you assume
23 reasonable basis? And if the statute can be read as
24 constitutional, it must be. If a statute has two

09:25AM

25 possible interpretations, one of which is constitutional

1 and one of which is unconstitutional, then the
2 constitutional interpretation prevails. The Texas
3 Supreme Court said that most recently in *EBS Solutions*
4 *versus Hegar* in 2020.

09:26AM

5 The party asserting the statute is
6 unconstitutional bears a very high burden to show its
7 unconstitutionality, and, second, the legislative
8 history is irrelevant because the Texas Supreme Court in
9 recent years has declined to consider it. In *Molinet*

09:26AM

10 *versus Kimbrell*, the Texas Supreme Court said:
11 Statements made during the process by individual
12 legislators or even unanimous legislative chamber are
13 not evidence of a collective intent of the majorities of
14 both legislative chambers enacted in a statute.

09:26AM

15 And also in 2018, the Texas Supreme Court
16 said: When interpreting a statute, the text is the
17 alpha and omega of the interpretive process. While we
18 have often stated that our objective and statutory
19 interpretation is speaking of the effects of the

09:26AM

20 legislative intent, we also acknowledge that the
21 legislature expresses its intent by the words it enacts
22 and declares to be the law.

23 So if the text is the alpha and the
24 omega, it doesn't leave a lot of room to dig in to the
25 legislative history. And even this Court of Appeals in

09:27AM

1 -- *Gardens* says specifically that legislative history
2 cannot convert an otherwise reasonable basis into an
3 unreasonable one. And a quote from the case, the mere
4 fact that issues in the senator's district that was at
09:27AM 5 issue there were precipitating causes of law does not
6 render it a local or a special law. When reviewing the
7 statute to determine whether it is an unconstitutional
8 local or special law, we review the reasonableness of
9 the statute classifications, not the precipitating
09:27AM 10 forces that led to its enactment. Specific events have
11 led to numerous statutes that were enacted as law of
12 general applicability.

13 The Intervenor's brief also provides a
14 number of different unreasonable bases for the law in
09:27AM 15 great detail. But once again, that's not the test. The
16 test was whether the statute could have a reasonable
17 basis, and it could be reasonable for the legislature to
18 target Harris County in a larger statewide interest to
19 sort out problems -- local problem that affects the
09:28AM 20 entire state, so the law must be presumed
21 constitutional. And *Maple Run* is not to the contrary.
22 *Maple Run* did find the law issue in that case
23 unconstitutional, but that was fundamentally different,
24 because in *Maple Run*, a new development was scheduled to
09:28AM 25 be annexed by the City of Austin, and there was a

1 district providing utilities for the development, bonds
2 financed, and the City of Austin had backed the bonds.
3 And the district -- the legislature was going to allow
4 the district to shut down and leave the Austin City of
09:28AM 5 Austin taxpayers in debt, and the legislature did not
6 see how that created a larger statewide interest,
7 currently.

8 But here, you know, elections are
9 fundamentally a large statewide interest for the state.
09:28AM 10 There is another case that Harris County points to,
11 *Southwest County Water District* where the Austin Court
12 of Appeals declined to find a reasonable basis in the
13 larger statewide interest. Again, it was a MUD issue,
14 you know, local districts have jurisdictional dispute,
09:29AM 15 and -- but, again, it was a local water management
16 issue, and the Court said there was no larger statewide
17 interest in a local water management issue. But once
18 again, Harris County is the largest county in the state.
19 It has significant impact on statewide elections, and
09:29AM 20 it's very difficult to see how this legislature could
21 not have a larger statewide interest in its election
22 process.

23 So for those reasons, both Harris County
24 and the intervenor pleaded a facially invalid
09:29AM 25 constitutional claim under SB1750 because they have not

1 pleaded facts that overcome the presumption that is
2 constitutional or that there's a lack of any reasonable
3 basis.

4 Now, I'm going to move on to standing.

09:29AM

5 This argument applies only to Harris County. Harris
6 County lacks standing to sue any of the defendants.
7 Standards for standing are: Injury in fact that has to
8 be fairly traceable to the defendant, and it also has to
9 be likely, not speculative, that the injury will be

09:29AM

10 redressed by a favorable decision. There's been some
11 back and forth in the briefings about who's a proper
12 party. Essentially, to boil it down, in the UDJA, you
13 have to sue the office that has the enforcement
14 authority, and so the State of Texas doesn't have any
15 enforcement authority, so they are not a proper party.

09:30AM

16 Angela Colmenero and Jane Nelson, in
17 their personal capacities, do not have enforcement
18 authority so they are not a proper party, so the only
19 proper parties that could be sued here of the ones that
20 they listed on UDJA were the office of the Attorney
21 General, and the Secretary of State. That was our
22 position.

09:30AM

23 Now, just because they are the proper
24 parties doesn't mean you have standing. The UDJA does
25 not, in and of itself, convert standing. You also have

09:30AM

1 to show enforcement. So, first of all, we argue that
2 Harris County is nonspeculative. Harris County seems to
3 take different positions about, you know, whether they
4 are going to comply with the law or not. They seem to
09:30AM 5 be keeping their options open, and so to that point, you
6 know, on the one hand, they argue, well, if you comply
7 with the law, we're going to have all this harm, but on
8 the other hand, if you don't comply with the law, the
9 Secretary of the State means you're going to come get
09:31AM 10 them, and, yeah, it's kind of very -- it's speculative.
11 Which one is it? Which are we talking about?

12 In addition the harm seems speculative
13 even if they comply that 1750 transfers the authority
14 from one office of the county to a different office of
09:31AM 15 the county. So even if it does cost the county money,
16 we're just moving money from one bucket to another, and
17 it just seems -- it's just very difficult to understand
18 how the county, itself, is going to be harmed by this
19 when the county will still be maintaining control of the
09:31AM 20 county elections, but if the county does not follow the
21 law, it is also not pleaded facts to establish the
22 length between any harm that they might experience from
23 transferring elections administration from one office to
24 the other, and the AG or the Secretary of State
09:31AM 25 enforcing the law.

1 facts includes: The fact -- the agreed fact of the
2 Office of Attorney General cannot commit that it will
3 not file a lawsuit against Harris County on the basis
4 that Harris County has violated Senate Bill 1750, and
09:33AM 5 also, no. 2, that the Office of the Attorney General
6 cannot commit that it will not seek civil penalties
7 against Harris County officials, including its election
8 officials if the Harris County elections administrator
9 continues to perform the functions of registering voters
09:34AM 10 and administering elections after September 1st, 2023.

11 Are those the joint stipulations of the
12 parties?

13 MS. DOKUPII: We did stipulate to that,
14 Your Honor, and I would say that while it says we didn't
09:34AM 15 -- the stipulation both says we have not committed to
16 enforce or not to enforce, it is an open question. And
17 it does -- even to the extent that anyone would have any
18 internal discussions about enforcement -- which I'm not
19 aware of-- they would be likely subject to
09:34AM 20 attorney-client privilege.

21 There is not going to be a binding
22 pronouncement at this hearing of what the Attorney
23 General is going to do with SB1750. And -- but the
24 thing is, for standing purposes, they needed to -- they
09:34AM 25 need to plead that we would -- not that we wouldn't

1 commit, that we wouldn't. That's my position.

2 THE COURT: Did you wish to be heard?

3 MR. FOMBONNE: Not in this moment. I was
4 going to agree on the stipulation in terms of what they
09:35AM 5 said in the agreement. That's it.

6 THE COURT: Okay. Thank you.

7 MS. DOKUPIL: Uh-huh.

8 So Harris County also doesn't have
9 standing to sue the Secretary of State because it hasn't
09:35AM 10 shown either enforcement authority or an imminent threat
11 of enforcement. They point to a lot of statutes where
12 the Secretary of State maybe could possibly enforce--

13 THE COURT: Well, let me -- on the issue of
14 enforcement authority?

09:35AM 15 MS. DOKUPIL: Uh-huh.

16 THE COURT: I believe you just argued that
17 the two proper parties are the Office of Attorney
18 General and Office of Secretary State.

19 MS. DOKUPIL: That would probably be the
09:35AM 20 proper parties under the UDJA. I am not saying that
21 they would have enforcement authority. I am saying that
22 for purposes of the UDJA, you should sue an office
23 instead of a person or the State of Texas. That's it.

24 THE COURT: If not those offices, then who
09:35AM 25 would have the authority to enforce the statute?

1 MS. DOKUPIL: Well, I -- the statute is
2 actually not very clear on that. From reading the
3 statute, it could potentially -- I mean, the statute
4 directs the County Commissioners Court to do something.

09:36AM

5 THE COURT: But your office's stipulation
6 says we're not--

7 MS. DOKUPIL: We're not disclaiming all
8 enforcement responsibility; we're not claiming all
9 waiver.

09:36AM

10 THE COURT: Okay.

11 MS. DOKUPIL: I think it's also possible
12 that this could be enforced, potentially, if a -- for
13 example a candidate with standing might sue for -- sue
14 in a local court. I mean, I don't think it's -- the

09:36AM

15 statute doesn't give enforcement authority to anyone
16 specific or to anyone in its entirety. There are
17 options. Harris County does argue that SB1933 gives
18 enforcement authority to the Secretary of State, and we
19 disagree with that position because 1933, while it --

09:36AM

20 it's a completely different mechanism. 1750 requires
21 the elections administrator to be abolished on September
22 1, 2023, but 1933 -- the Secretary of State has no
23 authority under it whatsoever unless it receives a
24 complaint from one of the named people in the statute,

09:37AM

25 and then it must give notice to the county

1 administrator, and then there's a whole investigation
2 and an opportunity to correct, and there's a very long
3 process involved with it, and based on the timing of the
4 statute, even if the Secretary of State got a complaint
09:37AM 5 on September 1, 2023, the earliest the Secretary of
6 State could possibly take any type of removal action
7 could be December 31st, 2024. And so for that reason,
8 it doesn't seem that the legislature intended 1933 to be
9 enforcement mechanism of 1750. They operate
09:37AM 10 independently.

11 Further, the Secretary of State has no
12 general enforcement authority over election law, so it
13 has to be a provision by provision basis with the
14 Secretary of State to determine whether they have
09:37AM 15 enforcement authority over any particular provision, and
16 ultimately, traceability is particularly difficult to
17 show where the proper chain of causation turns on the
18 government's speculative future decisions regarding
19 whether -- to what extent. It will bring enforcement
09:38AM 20 actions in hypothetical cases. That's the *AR*
21 *Engineering Testing* decision from the Fifth Circuit
22 earlier this year.

23 So just like the Secretary of State,
24 Harris County has a provision by provision enforcement
09:38AM 25 policy. Harris County has brought up some cases and

1 briefing dealing with mask mandates, and we would argue
2 that those are different because those are about a
3 completely different statute. And in addition, that
4 there is a -- there's a clearer setup. It was clear
5 that the counties were looking at a statute where they
6 were going to do something that would conflict with
7 state law, and the AG's Office had decided to prosecute
8 that particular provision, but here -- well, I'll also
9 say they also pointed out a letter to Vince Ryan, the
10 Harris County Attorney, which was at -- from the AG, and
11 letter was asking Vince Ryan to address some technical
12 problems in the way that the County Commissioner's Court
13 created election administrator's position, but
14 significantly, and to my point, the AG enforcement
15 authority would not be exclusive on any provision of the
16 election law necessarily, the letter to Vince Ryan says:
17 Vince Ryan, please take a look at this. Please go
18 enforce this law. So the AG sometimes works through
19 local officials and doesn't take the enforcement
20 themselves, and for that reason, you know, I -- we don't
21 think that Harris County has pleaded facts sufficiently
22 to show there's a connection with the AG's enforcement
23 authority to have standing in this instance. So Harris
24 County hasn't pleaded facts sufficient to show harm in
25 enforcement, and neither Harris County nor the

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1 intervenor have pleaded facts sufficient to establish a
2 constitutional claim against SB1750 is facially invalid,
3 and so defendants request that this Court grant the plea
4 to the jurisdiction. Thank you.

09:40AM

5 THE COURT: Thank you very much.

6 Response?

09:40AM

7 MR. FOMBONNE: So I think it makes sense to
8 have Mr. Menefee present on the substance of the law
9 first, and we do have evidence that goes directly to our
10 standing arguments because it goes to enforcement so I
11 think we do that next and we conclude with arguments on
12 threat of enforcement, if that's okay.

13 THE COURT: You may proceed.

09:40AM

14 MR. MENELEE: Christian Menefee, for the
15 record, Judge.

16 Do you mind if I take a second to hook up
17 to the tech here.

18 THE COURT: Certainly. Make sure that you
19 push the silver button to control.

09:41AM

20 MR. MENELEE: Okay. Good morning, Judge,
21 Christian Menefee on behalf of Plaintiff Harris County.
22 You know, we heard a lot in the argument about kind of
23 the merits of whether SB1750 is unconstitutional, and
24 one point that I want to clear up, immediately, Judge,
09:41AM 25 is we're not arguing that the legislature doesn't have

1 the ability to target a local problem. In fact, the
2 Texas Constitution doesn't say anything about targeting
3 a local problem. What it says is you can't pass a local
4 law, so can you pass a law that targets local problems
09:41AM 5 but has general applicability, and the second point,
6 Judge, is there's a lot of talk about open brackets
7 versus closed brackets, and what's important here is
8 there's a distinguishing principle from the
9 classification that is used is population, right. If
09:41AM 10 the population is the thing that makes the problem what
11 it is, then why wouldn't it be open to any county that
12 reaches that population threshold, and I think that's
13 borne out in the case law that I'll talk about here in a
14 second.

09:42AM 15 We can talk over this quickly, Judge.
16 I'm sure you saw in the petition, but one of the
17 benefits of being in the year 2023 is we will put
18 everything on the internet, right, and so, you know,
19 there's a bunch of statements that were made by the
09:42AM 20 author of SB1750 as well the house sponsor, kind of
21 making clear that the purpose of Senate Bill 1750 is to
22 abolish the Harris County elections administrator, and
23 to be clear, Judge, you know, the basis of our case is
24 not -- there's legislative history out there that
09:42AM 25 there's extra legislative statements out there that show

1 that SB1750 is -- is unconstitutional. No, the text of
2 that law shows it, but this just gives the Court color
3 that nobody was hiding the ball on this, right. We're
4 -- we're not -- it doesn't take several steps to deduce
5 what was actually going on there.

09:42AM

6 So let's take a look at the statute.
7 What the Texas Constitution, Article III, Section 56
8 says is: The legislative shall not pass any local or
9 special law authorizing, and then it has what the courts
10 call a laundry list, right, of prohibited areas of
11 regulation, and there's several that touch on the
12 precise conduct that's going on here. This is
13 important, Judge, because in most of the cases, what you
14 see is Section 2 is what is discussed when it's a county
15 versus a state or a city versus a state such as
16 regulating the affairs of counties. That's a pretty
17 large bucket. We kind of understand what's going on
18 here, but, importantly, you don't see a lot of cases
19 talking about Section 12, right. That's exactly what
20 we're dealing with here. For the conduct -- for the
21 conducting of election, and it makes a lot of sense.
22 You don't want elections to be run differently in
23 different places, right, through local laws because the
24 legislature is trying to tie the hands of local
25 officials in a certain jurisdiction to ensure that their

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1 party is more successful in elections. And also,
2 important in some other cases, in Section 14,
3 prescribing the powers and duties of -- of officers and
4 counties, right. A county auditor in Harris County is
09:43AM 5 supposed to have the same authority as a county auditor
6 in another location.

7 Now, to be clear, Judge, we are not
8 arguing that the legislator is not able to target areas
9 of the state that are more limited than the entire
09:44AM 10 state, right. The case law is pretty clear that the
11 legislator would be able to do that, but there are very
12 clear rules of the road that the cases lay out. The
13 first part of this, I would say, Judge, is an intent
14 element, right. The Courts talk about: You can't pass
09:44AM 15 a law that has an arbitrary classification or a
16 pretended class that is intended to evade this
17 constitutional prohibition on local laws. And it makes
18 a lot of sense, right. If the state were to pass a law
19 saying this law applies to Harris County, I think we
09:44AM 20 would all in this room agree, oh, that's going to be
21 problematic, right, so you can't take out Harris County
22 and, say: This applies to a state, that has somebody
23 named Christian Menefee who lived in that county who was
24 born on April 8, 1988, right. Like they are not allowed
09:44AM 25 to evade constitution using a classification like that,

1 and that's exactly what you see in these cases.

2 Now, importantly, the State has argued in
3 all the briefing that we're getting the test wrong,
4 right. They say, Plaintiff is focused on open brackets
09:45AM 5 versus closed brackets and that's just not the -- the
6 test. I think they are misunderstanding our argument,
7 respectfully. We're not arguing that reasonable
8 relation isn't the test. The case law is being clear --
9 the Texas Supreme Court has said the primary ultimate
09:45AM 10 test is this reasonable relationship. What we're
11 arguing is they are misunderstanding what that
12 relationship is, right. It's not a reasonable basis for
13 passing the law. It's a reasonable basis for the
14 classification made by the law, and what the Court said
09:45AM 15 in *Maple Run*, which is a case that both sides have cited
16 from the Texas Supreme Court. The classification must
17 be based on characteristics legitimately distinguishing
18 such class from others with respect to the public
19 purpose sought to be accomplished by the proposed
09:45AM 20 legislation.

21 So you're looking at the reasonable basis
22 for the classification and those characteristics have to
23 be legitimately distinguishing. And that's incredibly
24 important with population because that's something that
09:45AM 25 changes every day. Harris County population today is

1 going to be different than the county population a week
2 from now.

3 This is where I think the state misses
4 the mark. They -- in their brief, they give a lot of
09:46AM 5 so-called, you know, bases for why Senate Bill 1750
6 could have been passed. One of the things they say is,
7 well, it's large in size, right. But the classification
8 that was used in this case was not geography, right. It
9 wasn't any county within 800 square miles. They say, oh
09:46AM 10 well, it's because Harris County had problems in the
11 elections. The classification here is population. That
12 is the sole classification that was used in Senate Bill
13 1750, and that's what they have to tie it to. You can't
14 tie it to all this other stuff that -- that isn't part
09:46AM 15 of that classification. It needs to be tied to the
16 classification that the legislature chose, not Harris
17 County.

18 And so that's where this open and close
19 kind of view comes because what the courts have pretty
09:46AM 20 much uniformly applied, Judge, is when you're using
21 population and that is your classification, it doesn't
22 -- it should not matter whether that population is with
23 a county that is East Texas, in West Texas and North
24 Texas. It shouldn't matter whether a county has that
09:47AM 25 population on September 1, 2023 or November 1, 2023. If

1 population really is the legitimately distinguishing
2 characteristic, which is what Texas Supreme Court says,
3 classification needs to be. So this is just an example,
4 Judge. Let's say we're in September 1, 2022, and we're
09:47AM 5 dealing with four of the most populous counties in the
6 State of Texas, and a new elections law passes, for
7 example, Senate Bill 1. It goes into effect on this
8 day, September 1, 2022 and it impacts all counties with
9 over 3.5 million residents. So this is an open
09:47AM 10 brackets, and to kind of explain that example is because
11 let's say we fast-forwarded to April 1, 2027, right, and
12 we have those same four counties, but for some reason
13 you-all in Travis County have figure out a way to make
14 it more affordable to live here, so more people would
09:47AM 15 move to Travis County, and you get Senate Bill 1. Now
16 Harris County and Travis County are subject to that law
17 because the bracket applies to any county that hits over
18 3.5 million. The calculation of the population takes
19 place in perpetuity. It's not isolated on a single
09:48AM 20 date, and it makes sense, right, because if the purpose
21 -- the public purpose, which this is language from the
22 Texas Supreme Court. If the public purpose to be
23 accomplished here is to fix elections in large counties
24 because large counties have more voters, so they are
09:48AM 25 going to have more problems, with their elections, why

1 should it matter if it's county A that hits that
2 population threshold, or county B.

3 Now, juxtapose that against a closed
4 population brackets, Your Honor, so the same example.

09:48AM

5 We're on September 1, 2022. We're dealing with the same
6 four counties, and a new election law, Senate Bill 2
7 goes into effect, and this law applies only to counties
8 that have 3.5 million on this date, September 1, 2022,
9 which is the date that the law goes into effect. So

09:49AM

10 this is a closed population bracket which only does that
11 calculation a single time in history. It doesn't do it
12 any other time. So, again, we're at April 1, 2027. The
13 Travis County population is increased. That law only
14 Harris County is going to be subject to that law, right.

09:49AM

15 This principle we can call it open/closed brackets, we
16 can call it reasonable relation. This undermines the
17 argument that there was a reasonable basis for the law
18 in the first place because if population is what you
19 used, it would apply to all large counties that are
20 having the -- you know, large numbers of voters that can
21 impact the election processes.

09:49AM

22 Now, I had planned to spend -- well,
23 actually, one point I do want to touch on with this,
24 Judge, is, you know, some of the conversation we've
25 heard or, you know, some of the arguments that the state

09:49AM

1 has made is -- to be clear, we have not seen a single
2 case, and I don't think the state has presented such a
3 case either, where a closed population bracket was held
4 to be constitutional. Not a single case. Most of the
09:50AM 5 cases that have been cited by the other side have dealt
6 with -- and I think there's one that comes to mind in
7 particular, the *Cameron County* case. It's a closed
8 geographical population bracket. That makes a lot of
9 sense. And I think it's very obviously distinguishable
09:50AM 10 from a population bracket.

11 So let's say, for example, you had a
12 county that is incredibly large, right, and if a county
13 is really big, it's going to take fire departments
14 longer to get out across the county. And the
09:50AM 15 legislature passes a law saying that a county that has X
16 hundred square miles shall have four fire marshals that
17 are designated throughout the county, right. There can
18 absolutely be a reasonable basis right, and geographic
19 is not going to change in the State of Texas unless
09:50AM 20 there's some action taken by the legislature, but it
21 would make sense to have it apply to a geographical
22 range that would treat Harris County, for example,
23 different from Bell County. That would make a lot of
24 sense, right.

09:50AM 25 Population doesn't have -- population is

1 a changing concept that changes every single day, right,
2 so it's different from like geography, for example. In
3 the Cameron County case, the case that they primarily
4 rely on, but there have been a series of population
09:51AM 5 cases, including the *Bobbitt* case, which is back in
6 1931, and I think counsel for the state mentioned that
7 the Courts back in the day looked at this issue
8 differently. The suggestion there is that the *Bobbitt*
9 case is bad law. It's not. The case has not been
09:51AM 10 overruled. And in fact, in 1974, the Texas Supreme
11 Court in the *Robinson v. Hill* case cited *Bobbitt* and
12 then noted that the population bracket in that case was
13 an open bracket, right, and every single case that deals
14 with population, you're seeing the Court either take it
09:51AM 15 head on or just mention in passing by, oh, this -- so a
16 good example is the *Hospital* case that the other side
17 has talked a lot about, right. That case was an open
18 bracket. It applied to a certain population. A county
19 with a certain population, it had teaching hospitals
09:51AM 20 right in a couple other factors. Now, it was only
21 covering a certain locale on the day it was passed, but
22 other locales could grow into it.

23 And I think the reason that you've seen
24 the Courts kind of uniformly take that approach with
09:52AM 25 population brackets is because of that intent element

1 that I mentioned earlier, right. If you allow the State
2 to pass a law that has a closed population bracket, it
3 should be pretty clear to everybody that the reason that
4 they closed it was because they didn't want it to apply,
09:52AM 5 generally, which is what the Constitution requires.

6 Now, when I was preparing this, I thought
7 we were going to talk about this particular slide, which
8 is the statute at issue, but I don't think that this is
9 highly in dispute. There are two sections of the
09:52AM 10 statute here. Section 2, which says the county with a
11 population of 3.5 million or less cannot create the
12 position of election administrator. We're challenging
13 that on our dec action, but it's not really relevant for
14 our temporary injunction because we have an elections
09:52AM 15 administrator today who's obviously here in the
16 courtroom represented by counsel.

17 This second section, Section 3 is the
18 part that we're focusing on for our temporary
19 injunction, and what this section does is it creates a
09:53AM 20 classification where you have to have 3.5 million in
21 your county on September 1, 2023. And if you have an
22 elections administrator, it is abolished. I thought
23 that there was going to be some dispute between the
24 parties about what this meant, but I think the strongest
09:53AM 25 language that the state used in their plea to the

1 jurisdiction was it's not clear. But we think it is
2 clear, but I don't have to spend much time on it because
3 it hasn't been a point of contention, Judge.

4 So then if you take kind of this same
09:53AM 5 example graph that I used earlier and apply it to Senate
6 Bill 1750 for September 1, 2023, this -- we're going to
7 be dealing with the same counties here, right. 1750 is
8 going to abolish the elections administrator, and
9 transfer those duties over on that date, and so if on
09:53AM 10 April 1, 2027, Dallas County, for example, takes that
11 3.5 million threshold, they will not impacted by Senate
12 Bill 1750, right. It's not going to abolish the Dallas
13 County elections administrator. That county does have
14 an elections administrator at this point.

09:54AM 15 Now, Judge, if you applied this same
16 reasoning from these cases -- if the issue with Harris
17 county is that it is highly populous and has a lot of
18 voters, and that's going to impact elections across the
19 state, then if another county gets to that population,
09:54AM 20 why wouldn't that law also abolish their elections
21 administrator?

22 Now, the reason that I included this
23 slide at the start of the presentation, Judge, about,
24 you know, Senator Bettencourt and all of his statements
09:54AM 25 was because we really don't have to guess here, right.

1 We understand what this was. This was, you know, a
2 senator from a local jurisdiction who had problems with
3 decisions that the local government was making, who had
4 problems with the way the local government ran elections
09:54AM 5 and wanted to pass a law that only applied to that local
6 government.

7 Now, we can't be sure why the other
8 counties were excluded. I'm sure, you know, logrolling,
9 it happened, right, in the legislature. I'm sure there
09:54AM 10 was a need to get other folks onboard, but here, there
11 doesn't seem to be much dispute that this law only
12 applies to Harris county.

13 If the Court has any questions, I'm happy
14 to hear them now. If not. I'll turn it over to my
09:55AM 15 colleague to argue, Judge.

16 THE COURT: I have no questions at this
17 time. Thank you.

18 MR. FOMBONNE: Judge, as I mentioned, we've
19 got some evidence to put on, so before we get to live
09:55AM 20 testimony, I have a box of 40 exhibits. These are
21 admissibility exceptions, as -- I think it might make
22 sense instead of going through each one, in terms of
23 categories I'm prepared to do that, if that's okay with
24 Your Honor. There -- they mostly go to threat of
09:55AM 25 enforcement and also a little bit of legislative

1 history.

2 THE COURT: Have you uploaded the documents
3 that you wish to offer into evidence--

4 MR. FOMBONNE: Just--

09:55AM

5 THE COURT: --into the Box?

6 MR. FOMBONNE: Just the list, Your Honor.

7 THE COURT: I saw the list was filed, but
8 you should have received a Box link.

9 MR. FOMBONNE: From this morning?

09:55AM

10 THE COURT: Please don't speak over me--

11 MR. FOMBONNE: Oh, I'm sorry.

12 THE COURT: --because I do have the court
13 reporter taking down all the words of our hearing this
14 morning. She sent you a link, and to the extent that
15 you can do it or someone from your office do it, you
16 should upload every exhibit that you wish to offer today
17 so that it may be electronically received by the Court
18 and placed into the admitted exhibit folder once I do
19 that, okay.

09:56AM

09:56AM

20 MR. FOMBONNE: We'll do that right now and
21 take that up, and once that's done, I'll ask
22 Mr. Sarkar...

23 THE COURT: In the meantime, you may use
24 physical documents. I don't mind that, but it's the
25 Court's preference that you-all use electronic documents

09:56AM

1 for the record.

2 MR. FOMBONNE: Understood. Most of these
3 documents go to my argument on the Plea to the
4 Jurisdiction, and will happen at the end, so I'll let
09:56AM 5 Mr. Sarkar take over on the live testimony, and once
6 we're done with the live testimony, we can go back to
7 moving those into evidence.

8 THE COURT: Okay.

9 MR. FOMBONNE: Thank you.

09:56AM 10 THE COURT: Do you want to make a bulk
11 offer of the exhibits that you included in your exhibit
12 list and take up objections? Maybe that's a good way to
13 do it.

14 Let me go ahead -- while you're sorting
09:57AM 15 out the exhibits, I know we've got some folks in the --
16 excuse me. I want to make sure that the members of the
17 media who have been invited to sit in the jury box, make
18 sure that you understand the Court's rulings with
19 respect to recording. There is a local rule that
09:57AM 20 prohibits recordings in the Travis County Courts. I've
21 made an exception to that, but a very limited exception,
22 and that is: You may sit in the box, and you may take
23 still photographs with consent of those whose picture
24 you're taking, and at breaks. So if it's disruptive, I
09:57AM 25 don't want it to happen. If it makes sound, I don't

1 want it to happen. I see that you're taking photographs
2 and I just want to make sure that you have consent of
3 anyone whose photo you're, taking okay. Those are the
4 rules of my court, okay.

09:58AM

5 Understood? Thank you.

6 Okay. Yes.

7 MR. SCHECHTER: Your Honor, Richard
8 Schechter on behalf of Mr. Tatum. Before we get into
9 evidence, we have a very brief opening statement. Since
10 the State made some allegations against the Intervenor,
11 may we have just a couple of minutes before we start
12 evidence?

09:58AM

13 THE COURT: You may.

14 MR. SCHECHTER: May I approach the podium,
15 Your Honor?

09:58AM

16 THE COURT: You may.

17 MR. SCHECHTER: Your Honor, may I approach
18 the Court and give the Court some materials?

19 THE COURT: You may approach. Thank you
20 very much.

09:58AM

21 MR. SCHECHTER: Your Honor, very briefly,
22 Richard Schechter along Gerry Birnberg on behalf of
23 Clifford Tatum. We have just a few things to add to the
24 opening statement made by Mr. Menefee.

09:59AM

25 First, Your Honor, there was no plea to

1 the jurisdiction filed against Mr. Tatum, nonetheless,
2 the State threw him in with its allegations, and I just
3 want to make a quick couple of additional points that --
4 to those made by Mr. Menefee, and, first, I want to
09:59AM 5 endorse what the State has said that the text is the
6 alpha and omega, and legislature expresses its intents
7 by its words, as that is true for the Constitution.

8 And if the Court looks under tab 3 at the
9 constitutional provision, it says: The legislature
09:59AM 10 shall not accept as otherwise provided in this
11 constitution. Pass any local or special law
12 authorizing. No. 2, the regulating of the affairs of
13 counties. No. 12, conducting of elections, and there
14 are two others that Mr. Menefee pointed out, but the
09:59AM 15 text is very clear, and we live in a textual era,
16 Your Honor, and the leading text, we'll listen, the
17 State of Texas is the Attorney General, and we are just
18 asking the Court to apply the plain language of the
19 Constitution.

10:00AM 20 Even; however, the text goes farther when
21 you look at the statutory provision. The plain language
22 of the statutory provision 1750. If you look under tab
23 2, it says that on September 1, all powers and duties of
24 the elections administrator of a county with a
10:00AM 25 population of more than 3.5 million on that date are

1 limited. It says nothing about counties that had prior
2 problems with elections. If that was a basis, we could
3 look according to the state only at the text of the
4 statute. But that isn't a reasonable basis for
10:00AM 5 determining the classification because it's not in the
6 legislation.

7 So, Your Honor, we believe that in this
8 case, Mr. Tatum has clearly alleged a facial violation
9 of the plain language of the Constitution, and even of
10:01AM 10 the language that has been engrafted by the Supreme
11 Court, judicially engrafted on to the plain language of
12 the Constitution, and he, Your Honor, is the person who
13 is directly affected by the stip. He will loss his job.
14 There is no dispute about it, and he has brought this
10:01AM 15 suit and claimed this injunction seeking this injunction
16 against the only party he can seek it from, which is his
17 employer, Harris County.

18 Thank you, Your Honor.

19 THE COURT: Thank you very much.

10:01AM 20 I may -- or I will allow the state
21 defendants, collectively, I'm going to call you the
22 state defendants, a brief rebuttal, if you wish at this
23 time.

24 MS. DOKUPIL: Yes.

10:01AM 25 THE COURT: I ask that it be brief because

1 it's already 10:00 o'clock, and I want to make sure we
2 have time for evidence.

3 MS. DOKUPIL: Sure. All right. Very
4 briefly. We did actually file a plea to the
10:02AM 5 jurisdiction against Mr. Tatum yesterday, so it -- maybe
6 some of you haven't gotten it, but we did, regarding the
7 text. The text is the intent.

8 Looking at the text to understand what
9 the legislative intent is exactly how courts have
10:02AM 10 determined which population brackets are okay and not
11 okay. And it isn't the case that no closed brackets
12 have been upheld.

13 The Austin Court of Appeals 1982 *Public*
14 *Utilities Commission Versus Southwest Water Services*.
10:02AM 15 It upheld these cases preclude a rule that declaring a
16 statutory class by terms closed to future members to be
17 a per se violation of the constitutional prohibition
18 against local and special laws, so it -- that's not the
19 rule. Closed brackets isn't a thing that makes
10:02AM 20 something constitutional.

21 *Maple Run* talks about the reasonable
22 basis. I think we're all on the same page that
23 reasonable basis is the test. Where we disagree is the
24 fact that, you know, how much can you dig into
10:03AM 25 reasonable basis to get to reasonable basis? Can you

1 look at legislative history to inform the reasonable --
2 can you look at legislative history to inform the
3 reasonable basis? We would say no; they would say yes.
4 Can you look at any other areas of legislative intent to
5 figure out what's really going on here, to determine
6 reasonable basis? They would say yes; we would say no.

7 We say the test is, according to the
8 courts, can you imagine any universe in which there was
9 a reasonable basis? If you can, it's not a local
10 special law, it is a constitutional general law.

11 Population brackets are used to target all the time.
12 There aren't these like -- you know, better and worse
13 population brackets when you really look at the greater
14 history of a precedent because like what I mentioned the
15 board of managers, the issue with the hospital pension
16 system, that was a population bracket, but it looked at
17 only the City of Houston to fix a pension system. The
18 pension system was not really related to the population
19 of Houston. Here, in fact, we even have a stronger

20 argument because the population bracket is related to
21 very large counties. Very large counties have a bigger
22 issue and a bigger logistical concern to administer
23 elections than a smaller county, and Harris County talks
24 about, you now, Travis County, Dallas County, Bexar
25 County, these are all big counties, but Houston is twice

1 as big as the next smallest one. So it is appropriate
2 and reasonable to treat Harris County differently than
3 these other counties.

4 Let's see. I'm trying to be brief. Yes.

10:04AM

5 Also, I wanted to point out about population brackets.
6 Even in the *Dallas Fort Worth Airport* case, that was
7 done on a population bracket. It was cities of 400,000
8 or more in population that happen to also administer
9 airports, you know, so it was a population that was used
10 to target this. This happens all the time, so that
11 can't possibly be the rule. The rule is, again,
12 reasonable basis.

10:05AM

13 You know -- thank you, Your Honor.

14 THE COURT: Thank you very much.

10:05AM

15 Plaintiff.

16 MR. MENEFFEE: May I have 30 seconds to
17 respond, Your Honor?

18 THE COURT: You may.

10:05AM

19 MR. MENEFFEE: So, my argument was not that
20 there have never been closed bracket cases. My argument
21 was there has never been a closed population
22 classification that has been upheld by the Court. The
23 *Public Utilities* case out of the Third Court of Appeals
24 was not a population classification, and the *airport*
25 case that was just discussed, Your Honor, again, another

10:05AM

1 open bracket, and, in fact, there was specific
2 discussion by the Court, like Look, this could happen
3 somewhere else. I mean, imagine Austin and San Antonio
4 at some point are going to need like some large
10:06AM 5 international airport that you can jointly use, right,
6 but, again, I think the same distinction between
7 population and the open versus closed exists.

8 THE COURT: What was the closed bracket in
9 the *PUC* case?

10:06AM 10 MR. MENEFFEE: It is incredibly confusing,
11 but I can read to you. It says: Water and sewer
12 utility property and service which was acquired from an
13 affiliate or a developer prior to September 1, 1976
14 included by the utility in its rate shall be the base
10:06AM 15 blah blah blah, and so they were trying to deal with
16 like a specific utility pricing issue in a certain area,
17 and they said: Folks who had water utility service that
18 was acquired from a certain developer before a date that
19 you would be included in it, right, but which, again,
10:06AM 20 the concept is different from a population which is
21 ever-changing.

22 THE COURT: Thank you.

23 Okay. Are you ready to call your first
24 witness?

10:06AM 25 MR. FOMBONNE: Your Honor, the exhibits are

1 now uploaded, so if you would like, I would like to move
2 all those into evidence, subject to any objection.

3 Obviously, if -- like I said, it might be easier if I
4 group them to explain what they are instead of

10:07AM

5 Your Honor -- I'm sorry, Jonathan Fombonne for the
6 record for Harris County. The buckets of exhibits here
7 large -- the main bucket is these are documents that we
8 believe show a threat of enforcement, and there will
9 also be testimony about that, but a lot of the documents

10:07AM

10 were cited or pasted in our petition and in our
11 application for a temporary injunction.

12 There is, for example, Exhibit 1, which
13 is a letter from the Office of the Attorney General
14 regarding the appointment -- the method by which
15 Commissioners Court in Harris County appointed the
16 elections administrator. There are press releases,
17 Tweets, e-mails about the Attorney General's Office's
18 election integrity team, and this is from 2022, and
19 those are Exhibits 18, 31, and 33.

10:07AM

10:07AM

20 We have a couple of letters to local
21 government entities, such as Galena Park ISD and Elgin
22 ISD, threatening enforcement if they don't come into
23 compliance with election laws. Those are Exhibits 19
24 and 20.

10:08AM

25 We then have a number of lawsuits, and

1 they take different forms: Petitions for writ of
2 mandamus, actual lawsuits. They were filed against the
3 county that are all related to elections, so, for
4 example, the mandamus petition filed against the prior
10:08AM 5 elections administrator back in December of 2021, and,
6 again, the focus on that was the way that she was, you
7 know, forcing election workers to wear masks, and
8 obviously not necessarily related to the enforcement of
9 election law, but certainly the targeting of Harris
10 County elections.

11 We also have the petition of intervention
12 from the State in a TR0 proceeding that was going on a
13 November 8th, 2022, filed by the Texas Civil Rights
14 Project Against Harris County. Again, the Attorney
10:08AM 15 General office intervened. Came in to essentially stay
16 the TR0; took that all way to the Supreme Court twice,
17 so we have that. Those are Exhibits 21 and 24.

18 We have Exhibit 25, that's a Tweet from
19 Ken Paxton, obviously the current status is to be
10:09AM 20 determined, but certainly something that the county
21 should consider when it thinks about the threat of
22 enforcement is he Tweets specifically about this
23 proceeding here and about 1750.

24 We have a -- a press release regarding
10:09AM 25 the Attorney General's Office's lawsuit in 2020 against

1 the County Clerk. The County Clerk, at the time was
2 proposing to send unsolicited mail-in ballot
3 applications to all residents in Harris County above the
4 age 65 -- or, I'm sorry, to all those -- all residents
10:09AM 5 of Harris County, and this is during the time of COVID,
6 and so they could increase participation.

7 THE COURT: Let me stop you, if you don't
8 mind.

9 MR. FOMBONNE: Sure.

10:09AM 10 THE COURT: But what I -- I think would be
11 more efficient is for us to ask the Defendants whether
12 they have objections to any of the exhibits. You're
13 planning to offer all 40 exhibits?

14 MR. FOMBONNE: I am. We'll hear some
10:10AM 15 objections about statutes. We're offering -- I agree
16 those are not evidence, and we won't need to enter them
17 into evidence, if that's okay, but the rest of them,
18 we're -- we're intending to offer as evidence.

19 THE COURT: Response? I -- I can either
10:10AM 20 hear those exhibits about which you have no objection,
21 if that's easier, or the exhibits about which you have
22 objections. I don't mind if either way. We can
23 pre-admit some of the exhibits or whether or not we have
24 a witness offer testimony about the exhibits before I
10:10AM 25 need to make rulings on them.

1 MR. ELDRED: Before we get there, are these
2 offers for the PTJ or the TI, because we believe they
3 are not appropriate for the PTJ.

4 MR. FOMBONNE: They are offered for both.
10:10AM 5 Again, they go to threat of enforcement. I believe my
6 friend on the other side is willing to say that it's not
7 a question of fact. It's something he said to us.

8 Before we agree -- certainly there's plenty of case law
9 that says that the Court can consider evidence in
10:11AM 10 determining a plea to the jurisdiction, so again, the
11 threat of enforcement goes to -- certainly goes to -- to
12 our PTJ and our standing. It also goes to the harm or
13 claim made and the reason why we're seeking the TI.

14 THE COURT: So I think I'm hearing the
10:11AM 15 answer is to both.

16 MR. ELDRED: Yes, Your Honor. We do object
17 to them being offered for the PTJ. We'd also object to
18 relevancy. The Bettencourt matter, I think are 3
19 through 14, have no relevance to either the pleadings.

10:11AM 20 What Senator Bettencourt said does not demonstrate a
21 legislative intent. It does not demonstrate the
22 Secretary of State or the Attorney General has any
23 particular desire to enforce the statute. And I'm
24 sorry, for the record, I'm Charles Eldred.

10:12AM 25 THE COURT: Thank you.

1 MR. ELDRED: Letters 1 and 2. 1 and 2 are
2 from the OAG. 17 through -- and correct me if I'm wrong
3 counsel for Harris County, 17 through --I believe-- 33,
4 the exception of 15 and 16, those are all, I believe,
10:12AM 5 Attorney General either press releases or lawsuits or
6 Tweets, and all they show is that sometimes the Attorney
7 General exercises his power. It does not show any
8 threat of enforcement of Senate Bill 1750 at all. It
9 doesn't show anything really because we already know the
10:12AM 10 Attorney General can and does sometimes exercise--

11 THE COURT: So I'm going to ask the same
12 request that I have for you that I had for -- I'm sorry,
13 tell me your last name again.

14 MR. FOMBONNE: It's Fombonne.

10:12AM 15 THE COURT: Okay.

16 And that is, just tell me whether you
17 have an objection or not. Tell me whether you have an
18 offer, and then I can deal with them separately.

19 Are there any of these exhibits about
10:13AM 20 which you have no objection?

21 MR. ELDRED: 15 and 16 are just copy of
22 statutes. I think we all agree they're not really
23 exhibits, but we don't mind them being marked 15 and 16,
24 so I don't object to -- calling them exhibits, I guess I
10:13AM 25 object to that.

1 THE COURT: Okay. Plaintiff Harris
2 County's 15 and 16 are admitted for that purpose.

3 Any other exhibits that you agree can be
4 admitted before we get started?

10:13AM

5 (Plaintiff's Exhibits 15 and 16 admitted)

6 MR. ELDRED: No, Your Honor.

7 THE COURT: Okay. So now you know the
8 universe of the exhibits that are subject to the Harris
9 -- to the state objections.

10:13AM

10 Yes, counsel.

11 MR. BIRNBERG: Gerald Birnberg for the
12 intervenor, Your Honor.

10:13AM

13 The statement was made by the State that
14 they filed a plea to the jurisdiction challenging the
15 intervention that we filed. We can't find it.

16 THE COURT: Okay. I don't have it either.

17 MR. BIRNBERG: They are not named -- I'm
18 wondering if that's an error, and if not, if they can
19 provide us with a copy of the motion that we're needing
20 to respond to.

10:14AM

21 THE COURT: Thank you. A couple issues on
22 that. I don't even have a plea to the -- I don't have
23 an intervention on behalf of attorney -- Office of the
24 Attorney General and State of Texas that I can see in
25 the Court's file. I do see, however, a filing on -- it

10:14AM

1 looks like last night, 8-7-2023, at 5:57 which is
2 entitled: Intervenor's Office of the Attorney General's
3 and State of Texas' Brief in Opposition to Intervenor
4 Clifford Tatum's Application For Temporary Injunction,
10:14AM 5 but I don't see that those parties actually intervened.

6 Did they?

7 MR. ELDRED: We filed an intervention on
8 the AG's behalf around 11:00 yesterday, maybe a little
9 earlier and State of Texas around 3:00, I think.

10:15AM 10 THE COURT: Okay. Do you have a copy?
11 It's not made it into the Court's file quite yet.

12 MR. SCHECHTER: Your Honor, Richard
13 Schechter on behalf of Mr. Tatum. We have received
14 those interventions by both the state and the AG. What
10:15AM 15 we have not received and what has not been filed is a
16 plea to the jurisdiction against Mr. Tatum.

17 THE COURT: Right, and I don't have that
18 either. So for the Court's purpose, I would need to see
19 the Intervention and the Plea to the Jurisdiction with
10:15AM 20 respect to Mr. Tatum. If you have copies of those, that
21 would be very helpful, before we get started.

22 With respect to the other exhibits,
23 you'll just need to make the offers when you have a
24 witness on the stand.

10:16AM 25 MR. FOMBONNE: Understood.

1 THE COURT: The time is 10:16. It is
2 probably a good time to go ahead and take a break while
3 you-all take care of those housekeeping issues and a
4 comfort break for everyone else. Court's in recess
10:16AM 5 until 10:30. That's 14 minutes. Thank you. Court's in
6 recess.

7 (Break taken)

8 THE COURT: I see on my desk a -- what
9 appears to be a notification of service, but I don't
10:31AM 10 have the actual plea.

11 Does someone have a hard copy of that?

12 MR. ELDRED: I have an electronic copy.

13 THE COURT: Okay. If you'll send that to
14 the e-mail address that's on your desk there:
10:32AM 15 250.submission@traviscountytexas.gov.

16 MR. ELDRED: Yes, Your Honor.

17 THE COURT: Okay.

18 MR. SCHECHTER: I'm sorry to interrupt.
19 What hard copy were you given?

10:32AM 20 THE COURT: It looks like Mr. Eldred sent
21 to my judicial executive assistant three notices.
22 You're welcome to approach and see what they are. It
23 appears that they include the cross-counterclaim slash
24 cross-action slash interpleader slash intervention third
10:33AM 25 party. State of Texas petition and intervention. It's

1 just notification, not the actual filings as well as an
2 answer and response to the Defendant's opposition to the
3 TI. This appears to be a copy. You can take that one,
4 if you like.

10:33AM 5 MR. SCHECHTER: We still have yet to see a
6 plea to the inter- -- a plea to the intervention in
7 Mr. Tatum's case.

8 THE COURT: Okay. I don't have it either,
9 so I won't be considering it without a copy of it.

10:33AM 10 MR. BIRNBERG: One other quick housekeeping
11 matter, Your Honor, for the record, intervenor requests
12 that this evidence be considered for his application for
13 temporary injunction also.

14 THE COURT: So noted. Thank you.

10:34AM 15 Okay. Are you-all ready to proceed?

16 MR. FOMBONNE: Yes. Judge, if I may--

17 MR. ELDRED: I'm, Your Honor, I'm really
18 sorry. We did file, I believe -- possibly miss-styled a
19 PTJ claim.

10:34AM 20 Is that true?

21 MS. DOKUPIL: We did, and I attempted to
22 send it to Ms. McGee a moment ago.

23 MR. ELDRED: I'll send that to 250
24 submission. It's the one we filed at 7:45 last night.

10:34AM 25 THE COURT: Okay. I see you sent it to the

1 Court's submission address at 10:34, just now. It was
2 just received by the Court, but the other parties are
3 not copied on it, and they need a copy. Can you resend
4 that and copy all parties.

10:34AM

5 MR. ELDRED: What I sent was the petition
6 to intervention. I'm sorry, but I'll be happy to
7 send...

10:35AM

8 THE COURT: Yes. It looks -- it sounds
9 like you also need a copy of any pleadings that are
10 specific to Mr. Tatum.

11 MR. ELDRED: Yes, Your Honor. I'll do
12 that. I'll send two interventions and the pleadings we
13 were just talking about.

14 THE COURT: Thank you.

10:35AM

15 MR. ELDRED: And I'll copy all parties.

16 THE COURT: Okay. Very good. Thank you.

10:35AM

17 MR. FOMBONNE: Again, Jonathan Fombonne for
18 the record for Harris County. Just before the break,
19 Your Honor suggested that we get the exhibits in through
20 witness, but, again, I wanted to re-urge that we move
21 them now because we have an agreement with the other
22 side as to authenticity of these records. The only
23 objection they have are about the relevancy. Given the
24 amount of time that we have left in this hearing and the
25 number of exhibits, we urge they be entered into

10:35AM

1 evidence, subject to any argument on the relevance,
2 which I'm prepared to address right now. Of course, we
3 would go through the witnesses. I just think that would
4 extend the -- the time of the hearing by way too long.

10:36AM

5 THE COURT: With a relevancy objection, I
6 need to understand the context of testimony, what the
7 evidence is. I think I can sort out most of that, just
8 by what you started to tell the Court earlier and by
9 their description, but I -- I need to know what the
10 relevance is, through the witness. Over an objection
11 that's the way I need to handle it.

10:36AM

12 MR. FOMBONNE: Understood, Your Honor.

13 THE COURT: Okay. You may call your first
14 witness.

10:36AM

15 MS. CELLA: Your Honor is this -- I'm
16 sorry, is this as to the TI?

17 THE COURT: Yes. I'm taking the Plea to
18 the Jurisdiction under advisement. I understood from
19 the plaintiffs; however, that they wish the Court to
20 consider the evidence as to the Temporary Injunction and
21 the Plea to the Jurisdiction.

10:36AM

22 MS. CELLA: Okay. Thank you, Your Honor.
23 We do object to going on to the TI without ruling on the
24 PTJ and without a ruling on that.

10:37AM

25 THE COURT: You'll have a ruling before you

1 have a ruling on the Temporary Injunction.

2 MS. CELLA: Thank you, Your Honor.

3 MR. SARKAR: Your Honor, Neal Sarkar for
4 Harris County.

10:37AM 5 Plaintiff calls Mr. Clifford Tatum.

6 THE COURT: Mr. Tatum, good morning. You
7 may approach the bench to be sworn.

8 MR. TATUM: Thank you, Your Honor.

9 May I bring water?

10:37AM 10 THE COURT: You may bring water.

11 If you'll please just approach the bench
12 and raise your right hand to be sworn.

13 (The witness was sworn)

14 THE COURT: If you'll please step over to
10:37AM 15 your -- or to my right, in front of the microphone.
16 That chair is moveable, so can you pull it out and make
17 yourself comfortable there.

18 And Mr. Sarkar, you may proceed when
19 you're ready.

10:37AM 20 MR. SARKAR: Is the witness sworn in?

21 THE COURT: He has been sworn.

22 **CLIFFORD TATUM,**

23 having been first duly sworn, testified as follows:

24 **DIRECT EXAMINATION**

10:37AM 25 **BY MR. SARKAR:**

1 Q. State your name for the record.

2 A. Clifford Tatum.

3 Q. Mr. Tatum, what is your title?

4 A. I'm the Election Administrator for Harris
10:38AM 5 County.

6 Q. Thank you, and I want to briefly walk through
7 for the Court your qualifications for that role, so
8 let's start with your education. Tell us a little bit
9 about that.

10:38AM 10 A. I'm a trained lawyer; a bachelor's degree in
11 Administration of Justice from Guilford College and law
12 degree from Thomas Cooley Law School in Western
13 Michigan.

14 Q. And what was the year of those degrees?

10:38AM 15 A. '87 for under-grad and '98 for law school.

16 Q. Thank you, Mr. Tatum.

17 Now tell us a little bit about your
18 experience working in elections.

19 A. I started working in elections for the Georgia
10:38AM 20 Secretary of State in 2002 as the assistant director of
21 legal affairs with the state elections division, and
22 I've worked in the elections from 2002 until the current
23 date.

24 Q. Okay. I briefly want to touch on -- for each
10:38AM 25 of your election experience, so let's start with your

1 experience in Georgia. Just tell the Court a little bit
2 about what you did with respect to elections in Georgia.

3 A. As the assistant director of legal affairs, I
4 was responsible for the enforcement of the Election
10:39AM 5 Code, for the state of Georgia. Georgia has 159
6 counties. Each of those counties have either combined
7 boards or a probate judge that may have been the
8 election superintendent, and the State of Georgia has a
9 state elections division and elections board that
10:39AM 10 oversaw the enforcement of the Election Code. I
11 facilitated the election and the Secretary of State was
12 the chair of the election board itself.

13 THE COURT: I'm going to just adjust the
14 microphone so you may be heard a little bit better.

10:39AM 15 THE WITNESS: Can you hear me there?

16 THE COURT: I can I hear you fine. Just
17 want to make sure all the attorneys can hear you as
18 well. It would be better if you're about two to three
19 inches from the microphone. Thank you.

10:40AM 20 Q. (BY MR. SARKAR) Now, tell the Court please a
21 little bit about your experience at Washington, D.C.

22 A. Leaving the State of Georgia, I joined the D.C.
23 Board of Elections as the Help America Vote act
24 consultant in helping them deploy their Help America
10:40AM 25 Vote in compliance activities. As a consultant until I

1 became the elections chair for the D.C. Board of
2 Elections in that role, I oversaw the operations of the
3 elections and voter registration.

4 Q. And what did you do after that, Mr. Tatum?

10:40AM

5 A. I left the D.C. Board of Elections and joined
6 the Election Assistance Commission which was created by
7 the board as general counsel, and I served in that role
8 for four years before going back to the D.C. Board of
9 Elections, and as the chief information security
10 officer, and I left the D.C. Board of Elections to come
11 to Harris County.

10:40AM

12 Q. Let me ask you briefly about your role as
13 general counsel. How did that differ from sort of the
14 Georgia role and the D.C. role and scope and what
15 elections you were looking at?

10:41AM

16 A. The general counsel role was very similar to
17 the assistant director of legal affairs role. I advised
18 the Secretary of State and oversaw enforcement for the
19 Secretary of State of the general EAC, the Election
20 Assistance Commission. We -- the agency is a
21 clearinghouse of elections information and collecting
22 data and issuing grant funds to the states, and I was
23 involved in advising the four-point commissioners that
24 oversaw the elections assistants commission, and I
25 advised those commissioners on the state of federal laws

10:41AM

10:41AM

1 and the state of -- the existing state of laws in the
2 states in the United States.

3 Q. So is that countrywide that you were looking?

4 A. That is correct.

10:41AM

5 Q. Did you interact with election directors across
6 the country?

7 A. Yes, I interacted with both the state election
8 director and county election directors and advisory
9 boards, and the different advocacy groups.

10:42AM

10 Q. Mr. Tatum, how many elections have you been
11 involved in over your career?

12 A. Since 2002, we've -- I've probably been
13 involved in over 60-plus elections, so two elections per
14 election cycle and election cycle even year/odd years.

10:42AM

15 Probably 60 elections in some fashion.

16 Q. Is it fair to say you're very familiar with how
17 elections are administered across the country?

18 A. Yes, I am very familiar with how elections are
19 administered across the country. I've actually

10:42AM

20 conducted every -- performed in every role there is in
21 the elections office as I've traversed my career in the
22 elections industry.

23 Q. So you were also familiar with all the various
24 roles within election administration.

10:42AM

25 A. Yes.

1 Q. As well as voter registration?

2 A. That is correct.

3 Q. Let me turn to the Harris County elections

4 administrator role in particular. And you said this

10:43AM

5 earlier, but just to confirm: You are the Harris County

6 elections administrator; is that correct?

7 A. Yes, I am.

8 Q. Are you familiar with elections administrators

9 across the State of Texas?

10:43AM

10 A. Yes, I am.

11 Q. How are you familiar with that?

12 A. I am a member of the Texas Association of

13 Election Administrators, which is a group of election

14 administrators for the State of Texas, and I participate

10:43AM

15 with the Georgia -- with the Texas Secretary of State's

16 advisory committee, I suppose you call it, which is

17 typically a weekly call or a biweekly call with the

18 Secretary of State's Office with election matters in the

19 State of Texas.

10:43AM

20 Q. And election matters, just put a little more

21 meat on that bone. What types of things are you talking

22 about?

23 A. The election processes and procedures, areas

24 that the Secretary of State may be considering to

10:44AM

25 seeking advice on what may be good for the state versus

1 what may not be the good for the state, so election
2 preparation and then legislative changes and the like.

3 Q. It sounds like you are discussing planning for
4 future elections. Is that fair?

10:44AM

5 A. That's -- yes; that's correct.

6 Q. How far ahead of specific elections does that
7 planning begin?

10:44AM

8 A. For any particular election, you're starting at
9 least six to nine months before an election. For
10 instance, with the November 2023 coming up, we're really
11 starting working towards November and January, meaning
12 that they were deploying, implementing activities for
13 the May 2023 to make sure they would work for the
14 November 2023.

10:44AM

15 Q. Mr. Tatum, what are the benefits of an election
16 administrator system?

10:45AM

17 A. Well, there are several. The -- as I've said,
18 on the record, on -- in communications that the -- the
19 election administrator is a nonpartisan position,
20 meaning I'm appointed by the Election Commission, and as
21 a nonpartisan, I'm responsible for conducting the
22 election regardless of any party affiliation. And
23 having the elections process under one entity allows for
24 more accountability as it relates to the synchronization
10:45AM 25 voter regulation to the elections process, and ensuring

1 that data that's coming in from the voter regulation
2 process is as clean as it can be with elections process,
3 and at the end of day, counting votes and publishing
4 results, and you have an easier window of reconciliation
5 given that it's all combined in one shop.

10:45AM

6 Q. Let me tease that out a little. So you
7 mentioned the partisanship, but as far as the EA is
8 concerned, we went through your experience.

9 Is there an element of professionalism
10 involved?

10:45AM

11 A. Yes, there is -- from generally speaking, when
12 you're applying to be an election administrator, I
13 believe that the folks who are recruiting and
14 interviewing are looking for levels of expertise;
15 understanding of the elections process; the ability to
16 manage processes and procedures, and to create strategic
17 vision as to how to move the operation forward.

10:46AM

18 Q. Okay. And you mentioned some detail earlier in
19 your answer, but just to clarify for the Court and
20 everyone in here, do you understand that when your job
21 is eliminated on September 1st -- strike that. Let me
22 ask this way: Who will have your duties and
23 responsibilities after September 1st?

10:46AM

24 A. Well, the election administrator position will
25 cease to exist, as I understand the statute, that the

10:46AM

1 elections process would go back to the -- to the County
2 Clerk and voter registration process would go back to
3 the Tax Assessor.

4 Q. And so just -- that is two separate
10:47AM 5 constitutional offices, so tell us a little bit more
6 about what you were talking about earlier about offices
7 being in synch.

8 A. So the Tax Assessor would be responsible for
9 conducting voter registration. The Tax Assessor's
10:47AM 10 Office is responsible for all the other aspects of the
11 Tax Assessors's Office, so as voter registration takes
12 place year round with the exception of this maintenance
13 that's basically stopped during nine days before the
14 election is set. We don't want to remove voters from
10:47AM 15 the election vote during the 90-day window, so the tax
16 assessor is collecting voter registration throughout the
17 year. The elections process begins roughly six months
18 to nine months before an election, and there's been an
19 exchange of information as you prepare for an election.

10:47AM 20 Q. Just the specific question here. We'll get
21 into this in more detail, but the office being -- is it
22 your testimony that if these duties and the
23 responsibilities are under one office, it's more
24 efficient than if it's under two separate offices?

10:47AM 25 A. It's certainly more efficient because one --

1 one -- one election administrator is overseeing both
2 processes to ensure that they are working in
3 synchronization and there's no delay in -- in obtaining
4 and addressing or readdressing any particular issues
10:48AM 5 that you might encounter leading up to an election
6 process.

7 Q. In your role, do you have any responsibilities
8 beyond election administrator and voter registration --
9 election administration and voter registration?

10:48AM 10 A. No, my sole function is elections and voter
11 registration.

12 Q. What about the county clerk? Will she have
13 roles beyond election administration if it goes back to
14 her?

10:48AM 15 A. Yes, the County Clerk oversees business
16 records, birth certificates, I believe, deeds, the whole
17 array of different responsibilities that she will have
18 beyond the elections process.

19 Q. How about the Tax Assessor and Collector?

10:48AM 20 A. The Tax Assessor will have responsibilities
21 beyond voter registration, collecting taxes, license --
22 driver's license, plates. Any other aspects of the Tax
23 Collector's Office.

24 Q. And just one final point on this one. You
10:49AM 25 mentioned accountability in your earlier testimony. How

1 is the EA more accountable in your view?

2 A. The EA is hired by the Election Commission,
3 which consists of the County Judge, the County Clerk,
4 the County Tax Assessor and the two elected party
10:49AM 5 chairs, and they --at any point in time-- can terminate
6 the Election Administrator for cause. The -- which
7 right away adds a higher level of accountability in that
8 if I'm not performing, then I'm removed from my job.

9 The Tax Assessor and the Clerk are both
10:49AM 10 elected officials that are elected on a four-year term.
11 If someone's not particularly happy with the way the Tax
12 Assessor or the Clerk is performing any of those
13 responsibilities, then they have to wait until the Tax
14 Assessor or Clerk appears on the ballot to then vote the
10:49AM 15 Tax Assessor or Clerk out of the office. And as an
16 example, someone may not be happy with the way the Tax
17 Assessor is handling license plates and the collection
18 of taxes, so they may vote the Tax Assessor out of
19 office, regardless of the type of duties that she's
10:50AM 20 performed for elections. And, conversely, with the --
21 with the Clerk, if they don't like the way the Clerk is
22 issuing birth certificates or any other particular
23 aspects of the office, they may elect to choose to vote
24 her out of office, regardless of how well of a job she's
10:50AM 25 doing in elections.

1 Q. Thank you, Mr. Tatum. You mentioned the
2 Election Commission briefly and you went into that. Let
3 me just ask these questions so it's clear on the record
4 later: Who hires an election administrator?

10:50AM

5 A. The Elections Commission.

6 Q. And who fires an election administrator?

7 A. The Elections Commission.

8 Q. And who -- and does anyone have to approve that
9 firing decision?

10:50AM

10 A. Yes, it is the Election Commissioner's --
11 commission's decision is approved by the Commission
12 Court.

13 Q. Okay. And that Commissioner's Court is the
14 Harris County Commissioners Court?

10:51AM

15 A. The Harris County Commissioners Court.

16 Q. Is that the governing body of Harris County?

17 A. That is the governing body in Harris County.

18 Q. And with respect to your office, who is in
19 charge of its funding?

10:51AM

20 A. The Commissioners Court provides funding to the
21 Harris County Election Administration Office.

22 Q. Are you familiar with when the Election
23 Administrator's Office was created?

24 A. Yes.

10:51AM

25 Q. When was that?

1 A. July of 2020.

2 Q. Did the office begin operations right away?

3 A. No, it -- I believe it started after the
4 November 2020 election.

10:51AM

5 Q. Okay. What is your understanding as to why
6 that implementation was delayed?

7 A. Well, you wouldn't want to implement or create
8 some sort of transition of one office to another in the
9 middle of an election cycle.

10:51AM

10 Q. Understood. So the Election Administrator's
11 Office went into effect after the November, '20
12 election?

13 A. That is correct.

10:52AM

14 Q. When were you brought on to run Harris County
15 elections?

16 A. I was sworn in as the Elections Administrator
17 on August of 22nd or 23rd or somewhere in that area.

18 Q. Of 2022?

19 A. 2022.

10:52AM

20 Q. When did you begin as an employee of Harris
21 County?

22 A. I began as an employee on July 30th or 31st.

23 Q. And why did you start on that a little bit
24 earlier?

10:52AM

25 A. The -- well, in order to be an elections

1 administrator, in the State of Texas, you have to be a
2 resident for X period of time. I moved into Texas in
3 middle of July, started in -- started as an employee on
4 July 31st and then was sworn in on the 22nd.

10:52AM

5 Q. So how, as it relates to the election, did you
6 start that earlier?

7 A. I'm not sure.

8 Q. Did you need to begin preparations earlier?

10:52AM

9 A. I see. Yes. The -- the idea was for me to
10 join as quickly as possible because the -- to at least
11 to try to get to speed on what the operations of the
12 state of the operations were for Harris County Election
13 Administration Office.

10:53AM

14 Q. So what kind of things were you doing ahead of
15 your swearing in?

10:53AM

16 A. Just understanding, asking questions about the
17 process and procedures. Why the office does what it
18 does. What our processes have -- how decisions are
19 being made; who's making those decisions; who's carrying
20 out those decisions, and then who's performing what
21 roles as it relates to moving into the elections
22 process.

10:53AM

23 Q. When you came onboard, in late July of 2022,
24 was the Election Administrator's Office already
25 preparing for the election?

1 A. Yes.

2 Q. Okay. What were they doing?

3 A. They had already started the assessment process
4 of what's necessary for the election to move forward,
10:53AM 5 meaning they selected -- indicated the number of vote
6 centers that would be deployed early voting and the
7 number of voting centers that would be deployed for
8 election day; the number of election workers that would
9 likely be presiding judges that would be recruited;
10:54AM 10 election clerks that would be hired. Determining that
11 in our central locality would be located, so the
12 mechanisms of moving the election forward had already
13 started.

14 Q. And so that stuff had begun under an existing
10:54AM 15 apparatus; is that correct?

16 A. That's correct.

17 Q. So that means you were the election
18 administrator for the November 2022 election; is that
19 right?

10:54AM 20 A. That's correct.

21 Q. Did you encounter some issues in that election?

22 A. Yes, we encountered a few challenges for that
23 election.

24 Q. And were there challenges you've identified?

10:54AM 25 A. Yes, there were. Right away, as I stepped into

1 the process of started asking questions, I'm assessing
2 operations, systems, processes and procedures and, right
3 away, I identified things that I would do differently.

10:54AM 4 Q. And are you -- throughout the course of this
5 year, have you been working to implement changes?

6 A. Yes. Right -- shortly after the November 2022,
7 we began making moves to -- taking steps to acquire
8 systems and to implement systems that would provide
9 visibility to the elections process and more
10 accountability to the elections process.

11 Q. And what happens after September 1 if the
12 County Clerk and the Tax Assessor-Collector take over
13 the role? What happens to those changes that they are
14 hoping to implement?

10:55AM 15 A. The -- so there's a number of different things
16 that can happen.

17 Q. And I didn't ask -- I'm not asking you to
18 speculate. Just sitting here today, do you know what
19 happens to those changes you're trying to implement?

10:55AM 20 A. I don't know what will happen with those
21 changes.

22 Q. Broadly speaking, what are your duties as
23 Harris County Elections Administrator?

24 A. Yeah, at a 30-thousand foot level, I oversee
10:55AM 25 the function of the elections process, which is voter

1 registration and the conducting of the election, and
2 voter registration, as I indicated, is a year-round
3 process, so we're -- I'm ensuring that managers and the
4 voter registration section and IT department are
10:56AM 5 managing the data properly; that registrations are being
6 entered. This maintenance is taking place in prep for
7 coming up to an election. As we start moving into an
8 elections cycle, then our attention turns to focusing on
9 the logistics of running an elections. There's
10:56AM 10 roughly--

11 Q. Let me get to that -- in a second.

12 How many employees do you supervise?

13 A. There's 135.

14 Q. How big is your budget?

10:56AM 15 A. Over 30 million dollars.

16 Q. And is that 30 million figure the budget for
17 the October of 2022 -- October 1, 2022 to September 30,
18 2023 year?

19 A. That's correct.

10:56AM 20 Q. And what are your priorities for the office?

21 A. The priorities are to -- to reassess continuous
22 testing, continuously adjusting processes and
23 procedures, adding, implementing new systems, adding
24 processes and procedures to streamline, create more
10:57AM 25 efficiencies in the operations of the elections office

1 as a whole.

2 Q. How many elections have you run in Harris
3 County?

4 A. Three.

10:57AM

5 Q. And did you develop your -- those priorities
6 from the experiences of having run those elections?

7 A. The strategic vision with running an election
8 I've developed over the course of my career. The
9 particular systems and processes and procedures, I've
10 identified as while being at Harris County.

10:57AM

11 Q. And do you know what the priorities of the
12 County Clerk and the Tax Assessor-Collector are with
13 respect to the same things?

14 A. I do not.

10:58AM

15 Q. Could they change?

16 A. They could change.

17 Q. So do you know what will happen to your
18 priorities and the implementation of them after
19 September 1, 2023?

10:58AM

20 A. I do not.

21 Q. Let me turn your attention to SB1750 -- if I
22 say SB1750, do you know what I'm referring to?

23 A. Yes.

24 Q. What am I referring to?

10:58AM

25 A. Senate Bill 1750 that abolishes the Election

1 Administrations Office.

2 Q. Did you follow SB1750 while it was at the
3 legislature?

4 A. Yes, I did.

10:58AM

5 Q. How did you follow it?

6 A. We -- our communications team followed the
7 legislative process. I participated in weekly calls
8 with the -- with the Texas Secretary of State Elections
9 Divisions Office on legislative updates. The Texas
10 Association of Election Administrators was following the
11 legislation. The Harris County's intergovernmental
12 affairs office was also tracking the legislation.

10:58AM

13 Q. Do you have a communications team?

14 A. Yes.

10:59AM

15 Q. And what were they following?

16 A. They were following the social media, media,
17 any news -- any press releases that were being produced.

18 Q. Were they following any particular Twitter
19 accounts?

10:59AM

20 A. Yes, I'm sure they were following them all.

21 Q. Were they following Senator Bettencourt's?

22 MS. CELLA: Objection, Your Honor,
23 relevance as to legislative history.

24 THE COURT: As to that objection, the
25 objection's overruled.

10:59AM

1 MR. SARKAR: And, Your Honor, I can go
2 through some more questions, but I guess the question is
3 on the exhibits, at least, the first block are a series
4 of press releases and Tweets from Senator Bettencourt,
10:59AM 5 so I don't know if this is the time to take them up, but
6 they are sort of all in the same vein of -- of Tweets
7 sent out -- communications from the office,
8 communicating the intent of the bill.

9 THE COURT: Okay.

11:00AM 10 Are you offering those exhibits as this
11 time?

12 MR. SARKAR: I am. Yes, Your Honor.

13 THE COURT: And, by number, which exhibits
14 are they?

11:00AM 15 BY MR. SARKAR: That would be Exhibit 2
16 through 14.

17 MS. CELLA: We would object for the same
18 reason. Irrelevant as to the legislative history.

19 THE COURT: Because the plaintiffs are
11:00AM 20 offering the exhibits for both the Temporary Injunction
21 and the Plea, the objection to relevance is overruled.
22 The Court will consider the weight of the evidence.

23 MR. SARKAR: Thank you, Your Honor.

24 THE COURT: And 2 through 14 are admitted.

11:00AM 25 (Plaintiff's Exhibits 2, 3, 4, 5, 6, 7,

1 8, 9, 10, 11, 12, 13, and 14 admitted)

2 MR. SARKAR: May I proceed, Your Honor?

3 THE COURT: Yes. You may proceed.

4 Q. (BY MR. SARKAR) Mr. Tatum, let me ask you a
5 little bit about the broad topic of enforcement.

11:01AM

6 What state agency oversees elections
7 throughout Texas?

8 A. The Texas Secretary of State.

9 Q. And why do you say that?

11:01AM

10 A. I understand the Texas Secretary of State is a
11 two-state elections official, which is responsible for
12 elections in the State of Texas.

13 Q. Okay. And what is their -- briefly tell this
14 Court because we're not as familiar with elections as
15 you are: What is sort of the high level some of their
16 roles in the election process?

11:01AM

17 A. The -- through the state elections division,
18 there's advisories that are issued relating to the Texas
19 Election Code, and I think the Texas Administrative
20 Code, and the Secretary of State provides legislative
21 updates of any changes that are made to the election
22 process to the statutes themselves. The Secretary
23 provides advisories on how to implement those statutes,
24 what the language means, and makes changes, so directs
25 changes to the elections process to adhere to the -- the

11:02AM

1 Election Code changes, themselves.

2 Q. You mentioned guidance. Do you treat those
3 advisories that you receive as suggestions, or do you
4 treat them as more?

11:02AM

5 A. No, they are -- they are not suggestions.
6 They--

7 Q. What does -- tell the Court what those
8 advisories mean to you.

11:02AM

9 A. We follow the advisories. We implement the
10 advisories into our elections processes and procedures.

11 Q. Do you have any specific examples with respect
12 to guidance that -- that Secretary of State gave such
13 that you changed how you handle something?

11:02AM

14 A. There's several. It -- all forms that are
15 created by the Secretary of State are used -- utilized
16 in our process in some form or fashion, and if changes
17 are made to the content of the forms, then from the
18 state level, we make changes to our forums. As it
19 relates to the process and procedures, if the Secretary

11:03AM

20 of State has advised us that some of our processes
21 aren't as they should be, then we make changes to our
22 process and procedures. As a recent example, for the
23 May 2023 contest, we deployed what's referred to as a
24 rally site drop-off location.

11:03AM

25 Q. And for the Court's benefit, what is a rally

1 site?

2 A. A rally site is on election night, the election
3 presiding judges have to return the materials to the
4 county locations where the ballots can be tabulated, and
11:03AM 5 we set up these drop sites so that the judges wouldn't
6 have to drive across the entire county to drop their
7 locations off at a central location, we set up regional
8 locations, and the Secretary of the State Election
9 Division advised us that the way that we have intended
11:04AM 10 to operate our rally sites was not proper, so we had to
11 make changes to our processes and procedures.

12 Q. Okay. So you made changes because of the
13 Secretary of State taking action, with respect to you?

14 A. That's correct.

11:04AM 15 Q. Do you also call the Secretary of State for
16 advice or direction?

17 A. Yes.

18 Q. What is the TEAM database?

19 A. The TEAM, T-e-a-m. Team is the statewide voter
11:04AM 20 registration system or election management system, I
21 believe.

22 Q. And who runs that?

23 A. The Secretary of State, the State Election
24 Division.

11:04AM 25 Q. And how do you get on to that?

1 A. It's--

2 Q. At a simple level, is there a password? Is
3 there some sort of portal? What is it?

11:04AM

4 A. Yeah, so the -- a little bit of backdrop,
5 there's -- TEAM is described as online -- an online
6 process where certain counties are -- are actually in
7 the TEAMS system, itself, and there's offline counties.

11:05AM

8 Those are counties that are running their own voter
9 registration systems, and we have to upload our data
10 into the TEAM system, so that's where we have a password
11 and we upload our data.

12 Q. Who controls access to that?

13 A. Secretary of State, the State Elections
14 Division.

11:05AM

15 Q. Could the Secretary of State cut you off from
16 access to that?

17 A. Sure.

11:05AM

18 Q. Tell the Court a little bit about voter
19 registration funds, and how the Secretary of State
20 relates to Harris County with respect to voter
21 registration.

11:05AM

22 A. The state has a funding category for Chapter 19
23 which reimburses an elections office that's managing
24 voter registration for transaction expenses for
25 conducting, list maintenance and the like, and so on --

1 I believe it's a monthly or quarterly basis, we receive
2 reimbursements for certain activities that our office
3 conducts from the state -- from the Secretary of State.

11:05AM

4 Q. And the Secretary of State controls the
5 disbursement of those funds?

6 A. That is correct.

11:06AM

7 Q. And just briefly tell the Court about sort of
8 the mechanics of sending in election results and sort of
9 the canvassing piece. What is the Secretary of State's
10 role, sort of, to finalize the election?

11:06AM

11 A. It becomes very technical, but at a very, very
12 high level, after the -- after the -- the office
13 conducts its canvas and has the county commissioners
14 approve the canvas, we then upload that canvas data to
15 the Secretary of State system for approval for accepting
16 of the elections office.

17 Q. Okay. And so is it your understanding that the
18 Secretary of State makes decisions whether or not to
19 accept those results?

11:06AM

20 A. Yes. I -- I don't know that there's a -- if
21 they exercise any discretion. The process is--

22 Q. It's not--

23 A. --is we upload our results. We have to upload
24 our results.

11:07AM

25 Q. The -- you mentioned a little bit about how the

1 Secretary of State, I think, polices you. Let me kind
2 of take a -- I guess, with both respect to the Secretary
3 of State and the Attorney General for a minute, what
4 other interactions have you had with those offices that
5 suggest to you that they do, in fact, enforce the laws
6 against you?

11:07AM

7 A. Well -- so, when I came in as the election
8 administrator, I immediately saw things that could
9 change and things that I would recommend for creating
10 efficiencies in the office, and right away the staff
11 said: Any particular changes that we're making have to
12 be approved by the Secretary of State. For instance,
13 even as related to putting some signage in a polling
14 location to display to the voters has to be approved by
15 the Secretary of State, so staff made me aware that the
16 Secretary of State or the Attorney General has, in the
17 past, proposed for them to take action against the
18 office for not following the elections process.

11:07AM

11:08AM

19 Q. Are you familiar with any audits?

11:08AM

20 A. Yes, I am.

21 Q. Tell us about that and how -- what the
22 Secretary of State has done.

23 A. When I joined the Harris County Administrator's
24 Office -- the Election Administrator's Office, there was
25 an ongoing 2020 audit. Both an audit that was looking

11:08AM

1 back at the November 2020 election, and so I sort of
2 brought myself up to speed to help try to close out that
3 audit, and then shortly thereafter, in the process of
4 closing out that audit, there was a -- I believe there
5 was a statutory change that was made that -- that
6 created another level of auditing, and Harris County was
7 selected out of the hat to be audited for the 2022
8 election, so--

9 Q. And let me ask this question then: Are you
10 understanding that they're auditing you for compliance
11 with the Texas Election Code?

12 A. That is correct.

13 Q. Are you aware that the Secretary of State and
14 the Attorney General have threatened legal action?

15 A. Yes, I am.

16 Q. And what sort of legal action are you aware of
17 that the State has taken against election officials?

18 A. I'm aware that they have filed lawsuits against
19 the County Clerk as -- for the 2020 election. I'm aware
20 that when the Election Administrator's Office created,
21 there were letters from the attorney -- the Secretary of
22 State and the Attorney General raising questions of
23 ultra vires activities, abolishing the office because it
24 wasn't technically set up properly according to the
25 letters, and so it's always -- it was brought to my

1 attention that there's always that level of scrutiny
2 that we need to be aware of when making decisions.

3 Q. If I refer to SB1933. Do you know what I'm
4 referring to?

11:10AM

5 A. Yes, I do.

6 Q. Okay. What does SB1933 do?

11:10AM

7 A. It's Senate Bill 1933, which provides a
8 Secretary of State with the ability to take over an
9 elections operation, and I believe perhaps even remove
10 elections from the election authority altogether.

11 Q. Okay. And sitting here as the Harris County
12 Election Administrator, do you view that as enforcement
13 by the Secretary of State?

14 A. Oh, absolutely.

11:10AM

15 Q. And what is your view as to how SB1933 and
16 SB1750 connect?

17 A. Well, it's clearly a bootstrap from the 1750 to
18 1933.

19 Q. What do you mean bootstrap?

11:10AM

20 A. So 1750, in its first phase -- in its first
21 approach is to remove the election administrator from
22 existence, and by requiring that transition by September
23 1, roughly 60 days before a November election, that the
24 anticipation is that the Clerk and the Tax Assessor will
25 have challenges with the November 2023 election, which

11:11AM

1 will then allow the State to come in under 1933, and
2 remove the elections process from the Clerk and Tax
3 Assessor.

11:11AM 4 Q. You mentioned the -- the legal action that you
5 were aware of the AG taking. Let me just ask two
6 followups on that. Does that cost the county money?

7 A. I'm sorry, what?

11:11AM 8 Q. Does that litigation that you reference, the
9 lawsuits, is that going to cost the county money
10 responding and defending those lawsuits?

11 A. Yes.

12 Q. And is that disruptive to the election
13 administration process?

11:12AM 14 A. Yes, any time that we're spending now and in
15 litigation, the election contest and the like is a
16 complete distraction from the elections process.

17 MR. SARKAR: Your Honor, we do have a
18 series of exhibits relating to enforcement. Again, I
19 can walk Mr. Tatum through some of them, or I think it
11:12AM 20 might make sense, here, to offer them into evidence
21 because like -- as Mr. Tatum was testifying, they are
22 sort of in the similar vein of past action that the AG
23 has taken to enforce these laws, letters from the SOS
24 suggesting that they attempted to enforce the laws and
11:12AM 25 just generally that enforcing the Election Code is a

1 priority of the office of Attorney General and the
2 Office of the Secretary of State.

3 THE COURT: Which exhibits, specifically,
4 are you referencing?

11:12AM

5 MR. SARKAR: That would Exhibit 1 and then
6 17 through 40. Other than 34. I'm sorry. Let me
7 restart. Exhibit 1 and then Exhibit 17, and then 35 to
8 40.

11:13AM

9 THE COURT: Okay. So as I understand it,
10 there is no objection to the authenticity?

11 MS. CELLA: Yes. Yes, Your Honor; that's
12 correct.

13 THE COURT: Any other substantive
14 objections?

11:13AM

15 MS. CELLA: Yes, Your Honor. We object as
16 to relevance. These exhibits are not related to 1750.
17 They may be related to other election code violations,
18 but they are not related to this bill.

11:13AM

19 MR. SARKAR: And our response, Your Honor,
20 under law, as you know, we're not required to show an
21 actual enforcement of SB1750. It's threats of
22 enforcement, and we believe that what this evidence
23 shows, as well as the testimony of Mr. Tatum, is that
24 the Attorney General and the Secretary of State intend
25 to enforce SB1750 in the manner that they have enforced

11:13AM

1 these laws in the past.

2 THE COURT: Okay. So I'm understanding, I
3 think, there's -- these are from 2018, 2020, 2021, and
4 October of 2022. And you're offering those to show the
5 likelihood of future action?

11:14AM

6 MR. SARKAR: That's right. The threat of
7 enforcement.

8 THE COURT: Okay. Response.

9 MS. CELLA: Yes, Your Honor, these
10 enforcement -- these threats of enforcement, as my
11 friends on the other side have said, they don't go to
12 1750. These are long before 1750 was drafted. It's
13 just irrelevant to the enforcement of this particular
14 bill.

11:14AM

15 THE COURT: Do you have the physical copies
16 of these?

11:14AM

17 MR. SARKAR: We do.

18 MR. FOMBONNE: Your Honor, just to make
19 sure, you don't want all of the exhibits. You just want
20 the ones we're talking about now?

11:14AM

21 THE COURT: It would be helpful for me to
22 look at the these, specifically. If they are in the
23 Box, I can look at them electronically.

24 MR. FOMBONNE: They are in Box, Your Honor.

11:14AM

25 THE COURT: Okay. Very good.

1 The Court finds that Plaintiff's Exhibits
2 1 and 17 through 33 should be admitted, and the Court
3 will give appropriate weight to the evidence after
4 having an opportunity to clearly -- or review all of
5 them.

11:15AM

6 (Plaintiff's Exhibits 1, 17, 18, 19, 20,
7 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33
8 admitted)

9 MR. SARKAR: Thank you, and just to be
10 clear, that also includes 35 through 40 as well?
11 Leaving off 34 because I think it was...

11:15AM

12 THE COURT: Those are e-mails?

13 MR. SARKAR: They were e-mails from the
14 Secretary of State to Mr. Tatum's office showing the
15 enforcement priority of the Secretary of State to be the
16 Texas Election Code.

11:15AM

17 THE COURT: Plaintiff's Exhibits 35 through
18 40 are also admitted

19 (Plaintiff's Exhibit 35, 36, 37, 38, 39,
20 and 40 admitted)

11:16AM

21 MR. SARKAR: Okay. Thank you, Your Honor.

22 Q. (BY MR. SARKAR) Let me -- I'll tie up this
23 enforcement piece one last question: Mr. Tatum, what do
24 you think will happen if you continue in your role as
25 elections administrator after September 1, visa vi the

11:16AM

1 state?

2 A. I'm afraid that they would--

3 MS. CELLA: Objection, Your Honor; calls
4 for speculation.

11:16AM 5 MR. SARKAR: Your Honor, may I respond?

6 THE COURT: You may.

7 MR. SARKAR: While it does call for some
8 speculation, this is Mr. Tatum's view of what will
9 happen to his own job, and I think it's not speculative
10 in the sense that the law is what it is. And Mr. Tatum,
11 presumably has to plan for his life post-September 1 and
12 I think he can share his view on what he thinks will
13 happen after that date.

14 THE COURT: You may respond as to your role
15 as the election administrator what you expect will occur
16 after September 1st, if the Court takes no action.

17 A. Without question, the Texas -- the election
18 administrator position would be abolished, which is my
19 job, and I don't know what would happen after that.

11:17AM 20 Q. (BY MR. SARKAR) Do you think the State will
21 file a lawsuit?

22 MS. CELLA: Objection, Your Honor;
23 speculation.

24 THE COURT: Sustained.

11:17AM 25 Q. (BY MR. SARKAR) Okay. Do you think the State

1 will take any actions, specifically, towards you?

2 I'll ask -- the question's withdrawn.

3 Have you seen, in the past, the State
4 file lawsuits for violations of the Texas Election Code?

11:17AM

5 A. Yes.

6 Q. Okay. Do you think that might happen again?

7 MS. CELLA: Objection; calls for
8 speculation.

9 THE COURT: Overruled.

11:17AM

10 A. If I'm still in the--

11 Q. (BY MR. SARKAR) Yes.

12 A. --Elections Administrator position, then I
13 would expect the State to file action.

14 Q. Okay. And are you only concerned for yourself?

11:17AM

15 A. Well, I would complete -- completely be without
16 any employment, and of course I'm concerned about the
17 office.

18 Q. What do you mean, of course you're concerned?
19 Are there other employees?

11:18AM

20 A. Yes.

21 Q. What are you talking about?

22 A. Yes, there's 135 employees that will go through
23 some sort of transition back between the Tax Assessor
24 and the Clerk, and, right away, the -- that calls into
11:18AM 25 question the stability of the November 2023 election

1 cycle and what the office is currently doing and what
2 would occur after September 1, with the preparations for
3 the elections, the November 2023 election, itself.

4 Q. And so on that point, from enforcement, let's
11:18AM 5 go briefly to the harm that the county will suffer.

6 When is the next election?

7 A. November 7, 2023.

8 Q. And you used the date November 7, but are there
9 dead -- are there important deadlines ahead of that?

11:18AM 10 A. So, from an election -- for an election event,
11 we count backwards. So election day -- the last day to
12 vote election is November 7 for the 2023. There's early
13 voting that starts October 23rd that runs for roughly
14 ten days and then ballot by mail which is sending out
11:19AM 15 mail ballot to voters. The deadline for sending out the
16 military or oversees ballots is September 23rd, and
17 backing out of that, the office is currently taking
18 information to create the ballot to define and design
19 the ballot so that the ballot will actually be completed
11:19AM 20 by late August to be the -- the element of logic and
21 accuracy, that's ensuring that machines are going to
22 tabulate and count the votes properly. That takes place
23 the second week of September, so you can get your
24 military ballots out by the second or third week of
11:19AM 25 September, so you can get your mailed ballots out by

1 September 23rd. So we're in the election cycle right
2 now.

3 Q. And you oversee all this, correct?

4 A. That's correct.

11:20AM

5 Q. What's on the ballot in November?

6 A. There are constitutional amendments; state and
7 constitutional amendments. There are -- there's a
8 countywide bond question. There is the City of Houston
9 mayoral election, and then there are at least -- we

11:20AM

10 anticipate there will be at least 50 small
11 municipalities on the ballot. The City of Pasadena and
12 HISD school district contests, MUDs.

13 Q. And with respect to those other entities that
14 you mentioned, MUDs, cities, do you run those elections?

11:20AM

15 A. If they contract -- if those entities contract
16 with us, then we include their contests on the ballot.

17 Q. And they are contracting currently with an
18 office of which you are the head, correct?

19 A. That is correct.

11:20AM

20 Q. Do you know what happens if you are no longer
21 the head?

22 A. We've been discussing that with the county
23 attorney as to the -- the--

24 Q. And you don't need to share any privileged

11:21AM

25 information. Do you -- do you have concern that it will

1 call those contracts into question?

2 A. Those entities have asked the question: What
3 do they -- their boards have to approve their elections
4 contests and make orders to order their elections, and
11:21AM 5 they've asked the question if we say that election
6 administrator's conducting the election, what does that
7 mean if it changes -- if the election administrator
8 abolishes, what does it do for our contract?

9 Q. Has it made it more challenging for Harris
11:21AM 10 County to contract with these entities?

11 A. It has added a level of uncertainty.

12 Q. Give us a sense of the scope of the November
13 election.

14 A. It is a countywide election, meaning that it's
11:21AM 15 eligible for 2.5 million registered voters that are
16 eligible to vote for that election, so we have to
17 prepare for that sort of turnout, so for early voting,
18 we have determined there will be at least 64 to 65 early
19 voting locations throughout the county, and for election
11:22AM 20 day, there -- we determined there would be 700 polling
21 -- voting locations throughout the entire county. We
22 projected turnout to be roughly up to 700,000 or so and
23 we are -- because we haven't received all of the
24 contests from the entities, we're not sure how long the
11:22AM 25 ballot will be.

1 Q. Okay. Given your expertise, as an election
2 administrator, would you -- would you agree that this is
3 a smaller election than the 2022 election?

11:22AM

4 A. No, it is not a smaller election than the 2022
5 election.

6 Q. And why do you say that?

11:23AM

7 A. Because we're -- we're preparing for a
8 countywide election so we're opening almost the
9 equivalent of vote centers that we did in November. We
10 know that for a midterm election, a gubernatorial
11 election, there will be a greater turnout than there
12 will be for the City of Houston election, but you still
13 have to prepare for a countywide election, so we're
14 hoping -- we describe this as a large election.

11:23AM

15 Q. You mentioned earlier that your team started
16 planning for the November election in January; is that
17 right?

18 A. Yes.

11:23AM

19 Q. Have there already been decisions made by your
20 team that then impact how the November election will be
21 administered?

22 A. Yes; that's correct.

11:23AM

23 Q. Just sort of high level, can you just say sort
24 of -- what are some of those decisions that have already
25 been made?

1 A. So it's -- as I mentioned, we've -- we've made
2 the decision as to the number of vote centers that were
3 open, which -- which leads to the number of presiding
4 judges that will be hired. It leads to the number of
5 election clerks that would be hired. It leads to the
6 proposed list for the rally site drop-offs, increasing
7 that number. It leads to the training schedule. Here's
8 how we plan to train 5,000 plus election workers, so
9 those sorts of decisions have already been made.

11:24AM

10 Q. Okay. Let me just quickly just touch on the
11 key harms, so going forward, -- so there may be a
12 transition coming up. Tell us briefly what is the
13 impact on your office of that transition taking place on
14 September 1st?

11:24AM

15 A. Right away, staff is concerned about
16 management. Who will be managing the elections process.

11:24AM

17 Q. Have folks already resigned?

18 A. Yes.

19 Q. Do you have concern that additional folks will
20 resign?

11:24AM

21 A. I am concerned.

22 Q. Have -- you mentioned the planning from -- that
23 took place from January through August. Has the County
24 Clerk and the Tax Assessor-Collector had any role in the
25 planning for the November 2023 election?

11:25AM

1 A. No, they have not.

2 Q. You heard the Attorney General's argument this
3 morning about how essentially all that is happening is
4 changing these roles from one office to another. Can
11:25AM 5 you briefly talk about the harm to the county from going
6 to a bifurcated system at this point.

7 A. It's not a matter of simply transferring
8 positions from the election administrator to the tax
9 assessor or back to the clerk. It's a matter of systems
11:25AM 10 that have been developed over the course of the last
11 three years. It's a matter of unwinding those systems
12 to send back certain portions of those systems to the
13 tax assessor and to the clerk, and then right away, you
14 step into the -- a concern about whether the -- what
11:26AM 15 level of synchronization do we lose, and basically
16 you're taking the office back two to three years from
17 where we are right now.

18 Q. Will managing that harm be costly to the
19 county?

11:26AM 20 A. Yes, I believe so.

21 Q. Will we need to hire employees and consultants
22 to manage that?

23 A. So in -- in prepping for an election year,
24 already hiring temporaries, you'd hope to hire some
11:26AM 25 permanent staff to manage those temporaries, and so

1 right now, because of this transition, I've been
2 instructed or suggested not to bring only new folks,
3 which means eventually you're going to require the
4 existing staff to spend more time and hours, which
5 results in overtime. You will hire some temporary --
6 you'll bring -- I suspect you'll bring temporaries in.
7 There will be additional costs.

8 Q. You mention the stop on hiring. Has that made
9 it more -- this is a stop on hiring because of the
10 impending transition; is that right?

11 A. That's correct.

12 Q. Has that made it more difficult to administer
13 the election?

14 A. Absolutely because things are happening now
15 that I need permanent staff for to make decisions about.

16 Q. Are you aware of -- is there any specific
17 examples of Commissioner's Court Offices relating to
18 this freeze, and how they are approaching it?

19 A. Yes.

20 Q. What is that?

21 A. One commissioner is -- and staff has advised
22 that they are not going to work with the EA, and they
23 are waiting to work with the Clerk, starting September
24 1.

25 Q. So it sounds like you're concerned about

1 confusion and disorganization as a result of this
2 upcoming transition.

3 A. We're living it right now.

4 Q. You told me earlier about litigation costs.

11:28AM

5 Let me just put a finer point on one quick question.

6 The splitting of office responsibilities. Do you
7 believe navigating that split will, itself, be costly?

8 A. Yes, there's already been a contractor
9 identified, and I believe an award made to have that

11:28AM

10 contractor come in and conduct an assessment of our
11 operations.

12 Q. What -- is the county taking steps to prepare
13 for this transition?

14 A. Yes.

11:29AM

15 Q. Do you think the steps are going to be
16 sufficient to prevent the harm that's coming to the
17 county?

18 A. I don't know. And the reason I don't know is
19 that because of delays, there's unintended consequences,
20 and as an example, when I came aboard, in August, 2022,
21 roughly 60 days before the election, it's too late to
22 make any changes, so transition takes place September 1.

11:29AM

23 The clerk's going to have some ideas, the tax assessor
24 is going to have her own ideas, and there is going to be
25 some bumps in the road. It's just -- it's a given.

11:29AM

1 Q. So just to make sure I understand you right,
2 you're concerned that the county may not be able to
3 mitigate this harm?

4 A. I am concerned.

11:29AM

5 MR. SARKAR: Thank you, Your Honor. I'll
6 pass the witness.

7 THE COURT: Cross-examination?

8 MS. CELLA: Thank you, Your Honor.

9 How much time do I have?

11:30AM

10 THE COURT: How much time do you need?

11 MS. CELLA: I'll be as quick as I can. I
12 won't take as long as direct.

13 THE COURT: Okay. It's probably a good
14 time for everyone to let me know so that I can properly
15 allocate the remaining time. It is 11:30. You-all
16 reserved three hours, but I want to make sure that I
17 receive all the information I need to make an informed
18 decision.

11:30AM

19 Plaintiffs, how much time do you still
20 need?

11:30AM

21 MR. FOMBONNE: If I could confer, briefly
22 with co-counsel.

23 THE COURT: Sure.

24 MR. FOMBONNE: I think we can do our other
25 witness in ten minutes. I probably won't have any

11:31AM

1 redirect here. I would like just a short five minutes
2 of argument on the jurisdictional issues. The PTJ has
3 not been addressed yet and one thing, just housekeeping
4 matter, I also realized as we were trying figure out
5 where all the briefs were that we filed a response to
6 their plea to the jurisdiction last night. I don't know
7 if that was circulated to the Court. I just circulated
8 it. Again it's 250 e-mail address, so we'll rest on --
9 those arguments a lot. I'll just briefly go through
10 some of the points.

11 THE COURT: Okay. That sounds like a good
12 plan. Before you-all leave, just make sure that I know
13 exactly what you-all have filed, and that I will be
14 considering because sometimes -- and it's not
15 necessarily based on when you filed it, but sometimes
16 things take a little bit longer to get into the Court's
17 file, even if they have been filed with the clerk, so
18 just make sure, before you go, that I know exactly what
19 you're expecting the Court to review in making these
20 decisions.

21 Yes, Mr. Schlechter.

22 MR. SCHECHTER: Schechter. That's okay.

23 Very briefly, Your Honor, we would
24 request permission, after the cross-examination, to put
25 on Mr. Tatum's temporary injunction evidence. It

1 shouldn't take more than about 15 minutes.

2 THE COURT: Okay.

3 MR. SCHECHTER: And that way, the Court
4 will have heard everything today that will enable the
11:32AM 5 Court to make decisions on everything pending before the
6 Court.

7 THE COURT: Thank you very much.

8 And how much time do the defendants
9 collectively need today?

11:32AM 10 MS. CELLA: Can you give me...

11 THE COURT: All of the -- to respond to all
12 the matters.

13 MS. CELLA: Just a moment to confer?

14 THE COURT: Sure.

11:32AM 15 MR. SCHECHTER: One more matter. To the
16 extent there are other witnesses called, we would like
17 to have a chance to cross-examine them as well, if--

18 THE COURT: Of course. Thank you.

19 MS. CELLA: Thank you, Your Honor. It will
11:33AM 20 take us about five minutes to close out, and then as far
21 as the Secretary of State's witness, it's going to
22 depend on what Plaintiffs ask, but if they're
23 anticipating ten minutes, maybe between five and ten
24 minutes for us as well.

11:33AM 25 THE COURT: And for this cross?

1 MS. CELLA: Let's say about 15 minutes.

2 THE COURT: Okay. I am hearing about an
3 hour -- an additional hour, total.

4 Does that sound like you-all can wrap
11:33AM 5 everything up by 12:30? If you can do that by 12:30,
6 then we'll go ahead and move forward without a lunch
7 break, but if you're going to go longer than that, we
8 probably need to take a break.

9 MS. CELLA: We're okay with trying to get
11:33AM 10 it done by 12:30.

11 MR. BIRNBERG: Is the Court anticipating
12 any closing statements or arguments, and particularly,
13 does the Court have any questions with regard to
14 anything you've heard because I don't think that was
11:34AM 15 included in the calculation of time.

16 THE COURT: I won't take any questions that
17 I have against the time announcement that you-all have
18 provided. I heard closing a five and closing a five. I
19 didn't hear from you-all.

11:34AM 20 MR. BIRNBERG: We'll go closing five, too.

21 THE COURT: I think that still keeps us
22 before 12:30, or right after, perhaps. I'm just going
23 to ask that you-all try to be as efficient with your
24 time as possible. Okay.

11:34AM 25 MS. CELLA: Thank you, Your Honor.

1 THE COURT: You may proceed.

2 MS. CELLA: Thank you.

3 CROSS-EXAMINATION

4 BY MS. CELLA:

11:34AM 5 Q. Good morning, sir.

6 A. Good morning.

7 Q. How are you?

8 A. I'll well, thank you.

9 Q. Good.

11:34AM 10 You are suing Harris County for
11 injunctive relief in this matter, correct?

12 A. Yes.

13 Q. And you're aware that Harris County is suing
14 the defendants for that same relief?

11:34AM 15 A. Yes.

16 Q. So is it fair to say that by testifying for
17 Harris County, you're not adverse to their position?

18 MR. SCHECHTER: Objection, Your Honor. He
19 has clearly a position that's adverse to the county.

11:35AM 20 He's seeking to enjoin them from firing him.

21 MS. CELLA: Your Honor, I'm asking for
22 credibility reasons, and I would like to pose the
23 question to the witness rather than his lawyer.

24 THE COURT: Okay. It's a legal question,
11:35AM 25 though, and I'll allow Mr. Schechter to respond.

1 And tell me, specifically, what is the --
2 and I know there's a brief on this issue, specifically,
3 and that is whether or not...

4 MR. SCHECHTER: This is the issue -- that
11:35AM 5 brief was filed late last night, Your Honor. We haven't
6 had a chance to respond.

7 THE COURT: And that's the Motion to Strike
8 Clifford Tatum's Intervention?

9 MR. SCHECHTER: Yes, Your Honor.

11:35AM 10 THE COURT: Okay.

11 MR. SCHECHTER: So we object to relevance.
12 It's not raised in this proceeding.

13 MS. CELLA: I would just reiterate again,
14 Your Honor, it goes to the witness' credibility as to
11:35AM 15 his lawsuit versus the county's lawsuit.

16 THE COURT: Okay. That objection's
17 overruled.

18 You may answer the question. Let me
19 see...

11:36AM 20 MS. CELLA: Would you like me to...

21 THE COURT: The objection to the question:
22 Is it fair by testifying for Harris County, you're not
23 adverse to their position.

24 That objection was sustained.

11:36AM 25 And so you may ask your next question.

1 MS. CELLA: Thank you, Your Honor.

2 Q. (BY MS. CELLA) Harris County is the second
3 largest election entity in the country; is that right?

4 A. Second or third.

11:36AM

5 Q. Okay. And they are the third largest
6 jurisdiction, county jurisdiction in the country?

7 A. Third.

11:36AM

8 Q. Okay. So -- and Harris County represents about
9 16 percent of the total population of Texas; is that
10 right?

11 A. I don't know that.

12 Q. Okay. Would you agree that Harris County is
13 important for Texas elections?

14 A. Yes.

11:36AM

15 Q. Based on the size of the county?

16 A. Just the elections, in general.

17 Q. Okay. Would you agree with me that Harris
18 County, in the past, has had some bad elections with
19 some major problems to them?

11:37AM

20 A. No.

21 Q. Would you agree that they've had some problems
22 in the past elections?

23 A. Yes.

11:37AM

24 Q. You were appointed after Harris County's
25 Election Administrator Isabel Longoria resigned; is that

1 correct?

2 A. Yes.

3 Q. And your predecessor resigned after the 2022
4 primary; is that right?

11:37AM

5 A. Yes.

6 Q. Would you agree that there were problems with
7 the 2022 primary?

8 A. That happened before I was here, but I
9 understand there were some challenges.

11:37AM

10 Q. And you were then appointed in August 2022,
11 correct?

12 A. That's correct.

13 Q. You were appointed three months before the
14 general election in 2022?

11:37AM

15 A. Not sure it was three months, but it was--

16 Q. Approximately?

17 A. Yes.

18 Q. And during the general election in 2022 -- I'm
19 going to be just be talking about the general election
20 now when I say the election.

11:38AM

21 A. Yes, ma'am.

22 Q. If that works for you.

23 There were some shortages of ballot
24 papers at multiple polling locations; is that right?

11:38AM

25 A. Yes.

1 Q. And your office allocated the same amount of
2 ballot papers per polling location; is that right?

3 A. What -- I'm not sure I understand.

11:38AM

4 Q. So in other words, at each polling location,
5 your office allocated the same of amount of paper, so if
6 it was 500 ballot papers, that happened at each polling
7 location. It was not varied?

8 A. That's not exactly right.

9 Q. It's not exactly right?

11:38AM

10 A. No.

11 Q. Is it true that traditionally some polling
12 locations get more voters than others?

13 A. That's a true statement.

11:38AM

14 Q. And is it true that you -- some of the polling
15 locations were running out of ballot paper?

16 A. Reportedly.

17 Q. And is it true that some polling locations
18 reportedly actually ran out of ballot paper?

19 A. Yes, for a certain period of time.

11:39AM

20 Q. And is it true that voters were turned away
21 because there was no ballot paper at certain polling
22 locations?

23 A. I don't know that exactly.

11:39AM

24 Q. And is it true that there were polling
25 locations that were closed when they shouldn't have

1 been?

2 A. No.

3 Q. Would you agree with me that there were some
4 polling locations that were closed when others were
5 open?

11:39AM

6 A. No.

7 Q. Would you -- is it fair to say that the role of
8 election administrator or your office was controversial
9 during the 2023 election cycle?

11:39AM

10 A. I'm sorry. Say -- help me.

11 Q. Is it fair to say that your role and your
12 office's role in the elections was controversial during
13 the 2022 election cycle?

14 A. I don't know that -- to agree with that.

11:40AM

15 Q. Are you aware that there were multiple
16 newspaper articles talking about all of the problems
17 that the 2022 general election?

18 A. After the election?

19 Q. Yes, sir.

11:40AM

20 A. Yes.

21 Q. And are you aware that 14 candidates filed
22 election contests to challenge the results as a result
23 of the problems on election day?

24 A. Yes.

11:40AM

25 Q. And some of the election workers couldn't get

1 through when they called for help; is that right?

2 A. I don't know that to be true.

3 Q. Are you aware of reports that that was true?

4 A. I'm aware of the reports.

11:40AM

5 Q. You indicated that -- in your testimony on
6 direct from the county that you were working to
7 implement changes after the 2022 general election. Is
8 that your understanding of what you said? Did I get
9 that right?

11:41AM

10 A. Yes, ma'am.

11 Q. And that you were going to implement these
12 changes based on the general election?

13 A. Yes.

11:41AM

14 Q. But you're aware that there were issues during
15 the primary election when Isabel Longoria was the
16 elections administrator.

17 A. Was I aware -- help me.

11:41AM

18 Q. You were aware -- I believe you testified a
19 little bit earlier with me that you were aware that
20 there were reports of issues in the 2022 primary.

21 A. Yes.

22 Q. Okay. But you didn't -- you didn't seek to
23 implement any changes between the primary and the
24 general in the months that you were there.

11:41AM

25 A. The issues that I understand occurred in the --

1 in the primary were some associated to the parties, so
2 it wasn't a live election for me to address that
3 particular point in time, but to the extent that I
4 recognized that systems needed to be upgraded, I didn't
11:42AM 5 have the window in time to do it from the time I got
6 there is until the November election.

7 Q. And those -- we just talked about a bunch of
8 things that you weren't sure about, but you had heard
9 reports of: Ballot papers being -- polling locations
11:42AM 10 running out of ballot papers, things of that nature.
11 You had heard reports.

12 As the elections administrator, did you
13 not take the time to find out if those reports were
14 true?

11:42AM 15 A. Oh, yes, we -- we conducted an analysis.

16 Q. I want to turn briefly to your position as the
17 elections administrator.

18 I think we talked about this, but just
19 correct me if I'm wrong: Harris County created the
11:43AM 20 elections administrator position in 2020?

21 A. Yes, ma'am.

22 Q. And when that position was created, the duties
23 and the budget were transferred from the tax
24 assessor-collector's office and the Clerk's Office to
11:43AM 25 the Election Administrator Office?

1 A. Yes, ma'am.

2 Q. So is it possible that the duties and the
3 budget of your current office can be transferred back to
4 the tax assessor-collector and the Clerk's Office?

11:43AM

5 A. Yes.

6 Q. And is it possible that you could be hired by
7 the county in either one of those offices?

8 A. I don't know.

9 Q. But is it possible?

11:43AM

10 A. Hypothetically, yes.

11 Q. And is it also possible that staff can be
12 transferred from your current office to the Clerk and
13 the Tax Assessor's Office?

14 A. Yes.

11:44AM

15 MS. CELLA: Just bear with me for one
16 second, Your Honor.

17 THE COURT: Sure.

18 MS. CELLA: That's all the questions I
19 have.

11:44AM

20 THE COURT: Redirect, if any?

21 MR. SARKAR: We don't have any redirect.

22 MR. SCHECHTER: Your Honor, may I ask some
23 questions?

24 THE COURT: You may.

11:45AM

25 MR. SCHECHTER: May I approach the witness

1 Your Honor?

2 THE COURT: You may.

3 DIRECT EXAMINATION

4 BY MR. SCHECHTER

11:45AM

5 Q. Mr. Tatum, I'm going to hand you documents that
6 have been marked as Exhibit 1 and Exhibit 2.

7 Can you identify Exhibit 1 for the Court,
8 please.

9 A. Yes, it's my CV.

11:45AM

10 Q. Is it a true and correct copy of your CV?

11 A. It is.

12 Q. Can you identify Exhibit 2 for the Court,
13 please.

11:45AM

14 A. Exhibit 2 is the order appointing me as the
15 Harris County Elections Administrator.

16 Q. Is that a true and correct copy of the order?

17 A. It appears to be.

18 MR. SCHECHTER: Your Honor, we offer 1 and
19 2 into the off the record.

11:45AM

20 THE COURT: And this should be Intervenor's
21 1 and 2?

22 MR. SCHECHTER: Yes, Your Honor.

23 THE COURT: Intervenor's 1 and 2 are
24 admitted.

11:45AM

25 (Intervenor's Exhibits 1 and 2 admitted)

1 Q. (BY MR. SCHECHTER) Mr. Tatum, so you were not
2 actually able to start the position as election
3 administrator until after that order was issued on
4 August 16th.

11:46AM

5 A. That's correct.

6 Q. I have some just general questions for you.
7 How many counties, currently, have a county elections
8 administrator as opposed to relying on a clerk or a
9 voter -- tax assessor collector to registered voters?

11:46AM

10 A. Roughly 136, I believe.

11 Q. It's over 50 percent of the counties?

12 A. I believe so, yes.

13 Q. And Senate Bill 1750 affects how many of those
14 counties currently with elections administrators?

11:46AM

15 A. Just one.

16 Q. Harris County?

17 A. Harris County.

18 Q. If other counties grow to a population that
19 exceeds 3.5 million people and they have an election
20 administrator before they hit 3.5 million people, how
21 many of those counties will have that position
22 abolished?

11:46AM

23 A. As I understand, none, except for Harris
24 County.

11:47AM

25 Q. So this is a statute that's aimed at Harris

1 County; only affects Harris County, and will never
2 affect any other county in the history of the State of
3 texas?

11:47AM

4 MS. CELLA: Objection, Your Honor. This
5 calls for a legal conclusion.

6 THE COURT: Overruled.

7 Q. (BY MR. SCHECHTER) I'm going to hand--

8 THE REPORTER: I'm sorry, what--

9 MR. SCHECHTER: May I approach the witness?

10 THE COURT: Excuse me one moment.

11 THE REPORTER: The witness started an
12 answer, but there was an objection, so I'm not sure if
13 he wants to restate his answer.

11:47AM

14 THE COURT: That is, we did not receive the
15 actual answer from the witness, so if you would, please,
16 you may respond to the question.

17 Q. (BY MR. SCHECHTER) Any other county in the
18 history of Texas going to be affected by this?

19 A. None, other than Harris.

11:47AM

20 Q. If 3.5 million people is such an important
21 marker, can you think of any rational reason why once
22 another county reached 3.5 million people, the election
23 administrator position wouldn't be abolished, and return
24 duties -- the duties return to the County Clerk and Tax
25 Assessor-Collector?

11:48AM

1 MS. CELLA: Objection, Your Honor; calls
2 for legal conclusion.

3 MR. SCHECHTER: Your Honor, just asking for
4 his experience, as running elections for 20 years, if
11:48AM 5 there's a rational reason why only on September 1, 2023,
6 the population of 3.5 million is important. It is the
7 key question in this case.

8 THE COURT: He may answer based on his own
9 experience.

11:48AM 10 A. There's no rational basis for that.

11 Q. (BY MR. SCHECHTER) Is something unique
12 happening on September 1, 2023 so that the universe is
13 shifting, and if you had a population of 3.5 million
14 people before, you can -- not have an elections
11:48AM 15 administrator, but if you have a population of 3.5
16 million after September 1, 2023, you can, because
17 there's some magical or mystical change happening in the
18 word?

19 A. No, none that I'm aware of.

11:49AM 20 Q. I'm going to show--

21 MR. SCHECHTER: May I approach again,
22 Your Honor?

23 THE COURT: You may.

24 Q. (BY MR. SCHECHTER) And, by the way, Mr. Tatum,
11:49AM 25 have you heard anybody posit that there is any rational

1 reason why there is this specific date, September 1,
2 2023, so if you had an elections administrator before
3 that date, you cannot have one after -- you're barred
4 from having one, but if you have one -- if you get to a
5 population of 3.5 million after that date, you can
6 continue to have an elections administrator. Has any
7 peer-reviewed article or substantive expert in this area
8 ever advanced any reason for that?

9 A. Not that I'm aware.

10 Q. I'd like you to look at tab 2 of the notebook,
11 please. Under -- this is the Senate Bill 30 -- SB17
12 section 31.050. And the first sentence, it says on
13 September 1, 2023, all powers and duties of the county
14 elections administrator of a county with a population of
15 more than 3.5 million under this subchapter transferred
16 the tax assessor-collector and county court clerk.

17 Do you see that?

18 A. Yes, I do.

19 Q. Does it anywhere say that the employees are
20 transferred to those positions?

21 A. No, it does not.

22 Q. Okay. Are you being transferred to either the
23 County Clerk or the Tax Assessor-Collector?

24 A. No, I am not.

25 Q. Is it your understanding, sir, that when SB1750

1 goes into effect, you will lose your job as Harris
2 County Elections Administrator?

3 A. Yes, that is my understanding.

11:51AM

4 Q. And is it your understanding that -- and you've
5 been told this by the county, have you not? You've been
6 told that by the county?

7 A. That is correct.

11:51AM

8 Q. Okay. You know that you are going to lose your
9 job if there -- this injunction is not issued until the
10 constitutionality of this bill is determined, correct?

11 A. That is correct.

12 Q. And along with losing your job, do you lose
13 your salary?

14 A. Yes.

11:51AM

15 Q. Do you lose all the other economic benefits you
16 have such as health insurance and retirement?

17 A. Yes.

18 Q. Are there noneconomic benefits you will lose?

19 A. Yes.

11:51AM

20 Q. Will you please explain to the Court what those
21 noneconomic benefits include.

22 A. The stature of being the election administrator
23 of the third largest jurisdiction of the country is a --
24 a career pinnacle. There's only two others, and if the
25 office is abolished, then I would -- I would not be the

11:51AM

1 no. 3 in the country, and I make career decisions based
2 on my altruism for the process. I'm in elections
3 because I want to be in elections, and my peers
4 recognize me as being capable -- being capable and
5 competent, a competent election official. The fact that
6 the office is being abolished is really a reputational
7 blow to me, meaning -- it's being abolished. I'm not
8 being terminated for cause. I'm being terminated
9 because someone decided they want to abolish the office.

11:52AM

11:52AM

10 Q. Your opinion, sir, based on your experience, is
11 -- if this injunction is not issued, is it going to
12 potentially affect your future employability?

13 A. I believe so.

11:53AM

14 Q. Now, if the office is abolished -- if 1750 goes
15 into the effect, the office is abolished, it's disbursed
16 on many different places, how easy would it be to
17 reassemble the office if six months from now a court
18 declared the statute to be unconstitutional?

11:53AM

19 A. It would be a mess. Forgive me. It -- it
20 would be like trying to put Humpty Dumpty back together
21 again.

11:53AM

22 Q. So in terms, not just of irreparable harm to
23 you, but irreparable harm to the public, in general, if
24 this bill is unconstitutional, then reassembling this
25 office will be extremely difficult, costly and like --

1 it's like trying to reassemble Humpty Dumpty.

2 A. Correct.

3 Q. Now, you were asked some questions by the
4 Attorney General regarding what you've heard about
11:54AM 5 problems in Harris County since the elections
6 administrator ran the elections; is that correct?

7 A. Yes.

8 Q. So I'm going to ask you some questions. You
9 heard about Harris County having problems with elections
11:54AM 10 administrations long before that when county clerks and
11 tax assessor-collectors were running elections and voter
12 registration.

13 A. Yes, I am.

14 Q. For example, you've heard that there were
11:54AM 15 employees in the tax assessor-collector's office who
16 were destroying applications to be a registered voter
17 leading to at least one criminal conviction.

18 A. Yes, I understand that.

19 Q. You're aware that there were allegations that
11:54AM 20 employees of prior elected tax assessor-collectors were
21 slow-walking--

22 MS. CELLA: Objection, Your Honor; leading
23 the witness.

24 THE COURT: Sustained.

11:54AM 25 Q. (BY MR. SCHECHTER) I'm going to ask you

1 whether you're aware of the following things or not, and
2 if you are great, and if you're not, great. Whatever
3 you're aware of.

4 Are you aware there were allegations that
11:55AM 5 employees were slow-walking the process of thousands of
6 applications to be a registered voter, thus
7 intentionally preventing people from becoming registered
8 voters for elections?

9 MS. CELLA: Objection; leading.

11:55AM 10 MR. SCHECHTER: It's a yes or no question.

11 THE COURT: Sustained. The objection is
12 sustained.

13 Q. (BY MR. SCHECHTER) Are you familiar with other
14 allegations that -- regarding the election registration?

11:55AM 15 A. Yes, I am.

16 Q. Tell us some of those you're familiar with that
17 -- only that occurred while there was elected tax
18 assessor-collector handling the election, the voter
19 registration process.

11:55AM 20 A. Your Honor, as a result of the allegations that
21 were made against the election administrator's office in
22 2022, myself and my communications team started
23 researching what has occurred in Harris County. So we
24 have reviewed newspaper articles and received -- and we
11:56AM 25 received accounts of election issues that have taken

1 place in Harris since 2006 with either the Clerk's
2 Office not deploying the voting equipment; not creating
3 ballots with the correct contest on them; the tax
4 assessor not registering people to vote; the tax
11:56AM 5 assessors being sued for not registering people to vote.
6 Criminal allegations against staff within the tax
7 assessor's office, so we gather this information in
8 order to speak to the legislatures about what you're
9 proposing to do is line it out because these type of
11:56AM 10 things that you're accusing the election administrator's
11 office of in 2022 have occurred in Harris County, going
12 back to 2006, if not further. It just didn't make sense
13 to us, so I am aware of those issues, and -- yes, I am
14 aware.

11:57AM 15 Q. And by the way, have the -- when you took
16 office, were you under an injunction from the United
17 States District Court pursuant to a consent agreement
18 with Harris County that had been entered in the early
19 2010s regarding violation of civil rights of certain
11:57AM 20 voters?

21 A. Yes, I'm aware of that.

22 Q. These were all things that happened when they
23 were elected officials running elections?

24 A. That's correct.

11:57AM 25 Q. And voter registration; is that correct?

1 A. That's correct.

2 Q. Are there other counties with election
3 administrators who had problems with administering
4 elections?

11:57AM 5 A. Yes, there are.

6 Q. Has Dallas County had problems?

7 A. Yes.

8 Q. What kind of problems has Dallas County had?

9 A. I think it's important to note that it -- it --
11:57AM 10 there's never a perfect election, Your Honor. There's
11 -- every county has some sort of issues with the voting
12 systems, the voting systems that have been certified by
13 the election commission, that's been certified by the
14 state that nonetheless cause some sort of problems on
11:58AM 15 election day. Paper jams -- every county had some issue
16 with paper jams that were using paper in the 2022
17 election, and that's a system issue that we're now
18 addressing.

19 There were counties during the November
11:58AM 20 2022 that had paper issues. Paper -- getting paper to
21 polling locations. They were able to get paper to
22 polling location, just as we were, but the -- that was
23 not held against them.

24 There were polling locations in other
11:58AM 25 counties that did not open on time. In particular, I

1 think Bell County was the county that had the order
2 extending its polling place on the hours we did in
3 Harris, and so there's -- as we talked with other
4 election administrators, everyone has a story to tell.
11:59AM 5 The question is how great was the issue and were we able
6 to mitigate and move forward into the next election.

7 Q. Mr. Tatum, in your current status, as Harris
8 County Election Administrator, under the law, the only
9 way you can be discharged is for good and sufficient
11:59AM 10 cause; is that correct?

11 A. That's correct.

12 Q. Has any -- and has any member of the Harris
13 County Commissioner's Court come to you and said there's
14 good and sufficient cause for your discharge. We want
11:59AM 15 to fire you?

16 A. No.

17 Q. Okay. Has anybody associated with county
18 attorney's office come to you said we've had allegations
19 of good sufficient cause. We're going to move for
11:59AM 20 procedures to fire you?

21 A. No.

22 Q. So at this moment in time, the only reason,
23 legally, you could be fired from your job is for good or
24 sufficient cause, or if SB1750 goes into effect.

11:59AM 25 A. That is correct.

1 Q. And there is no current good and sufficient
2 cause to fire you, so the only way you could lose your
3 job is if this SB1750 goes into effect.

4 A. That's correct.

12:00PM

5 Q. And I want to ask you just a few questions
6 based on your experience as a reason -- as an election
7 administration. Is it rational that a county with a
8 population of 3.5 million on September 1, 2023 cannot
9 have an election administrator, but a county that

12:00PM

10 reaches that population on September 2, 2023 can?

11 MS. CELLA: Objection, Your Honor; calls
12 for a legal conclusion.

13 THE COURT: Overruled.

14 A. No, it's not.

12:00PM

15 Q. (BY MR. SCHECHTER) Is there any rational basis
16 for a decision that a county with a population on
17 9-1-2023 must have its county clerk run elections, but
18 if the county grows so 9-2-2023 its population reaches
19 3.5 million, it may have an election administrator run
20 its elections?

12:00PM

21 A. No.

22 Q. Same questions for voter registration. Is it
23 rational that a county with a population of 3.5 million
24 on September 1, 2023 cannot have an elections

12:01PM

25 administrator handling voter registration, but a county

1 that reaches that population level on September 2, 2023
2 can?

3 A. No.

12:01PM

4 Q. Have you ever heard anybody advance a rational
5 explanation for those other than they wanted to get rid
6 of the Harris County elections administrator?

7 A. No.

12:01PM

8 Q. The technology -- you've described problems
9 that you had with some -- with the technology that
10 existed, correct?

11 A. Yes.

12 Q. That technology had exhibit existed for a
13 number of years; is that correct?

14 A. Yes.

12:01PM

15 Q. Were the technology -- was the lack of
16 technology that you needed in your view to effectively
17 run elections a problem that predated the elections
18 administrator and dated back to when the county clerk
19 was running election?

12:02PM

20 MS. CELLA: Objection, Your Honor; leading
21 the witness.

22 THE COURT: Overruled.

23 A. Yes.

12:02PM

24 Q. (BY MR. SCHECHTER) You were asked some
25 questions about some of the things that you do -- you

1 have to have funding for your equipment; you have to
2 have funding for your staff; you have to get election
3 judges; you have to set voting locations. All those
4 things.

12:02PM

5 Who control all of those things? Who
6 controls your budget?

7 A. The county commissioners control my budget.

8 Q. Who controls whether you get funding for your
9 equipment?

12:02PM

10 A. The commission court.

11 Q. Who actually approves appointment of judges and
12 voting locations?

13 A. The commissions court.

12:02PM

14 Q. So if somebody doesn't show up on time to own a
15 vote -- to open the voting location, who is the person
16 that selected that judge?

17 A. It depends on the election. The parties
18 nominate the judges, so from a primary location, the
19 parties are appointing the judges or dispatching the
20 judges. For the general election, the election
21 administrators dispatch the judges.

12:03PM

22 Q. And who selects -- who has to approve those
23 elections?

24 A. The county commissioners -- the commission
25 court approves the judges.

12:03PM

1 Q. Okay. In 2022, there was a change in how
2 elections were conducted in terms of where you had to
3 vote; is that correct? That is, countywide versus
4 precinct.

12:03PM

5 A. Countywide, I think took place in 20 -- in '19
6 or '20.

7 Q. Okay. Can you explain that difference please
8 to the Court.

12:03PM

9 A. So under the Election Code, Your Honor, there's
10 a precinct-based voting which means you open a polling
11 location within a particular voter's precinct. And
12 under countywide voting, you open precincts countywide
13 so that a voter can go anywhere they would like to go to
14 vote as opposed to voting at their home precinct
15 location.

12:04PM

16 Q. So 2022 was the first gubernatorial election
17 where there was countywide voting; is that correct?

18 A. That is correct.

12:04PM

19 Q. So people could vote anywhere they wanted to in
20 the county, not at their local precinct?

21 A. That's correct.

22 Q. Did that make prediction of exactly what
23 turnout was going to be at every voting location more
24 difficult because you had no historical basis?

12:04PM

25 A. That in conjunction with the redistricting

1 process that took place in 2020.

2 Q. You heard some reports that voters were turned
3 away because there were insufficient paper. Have you
4 heard any evidence from the voters, sworn under oath
5 that said they were unable to vote?

12:04PM

6 A. I have not heard.

7 Q. Okay. And, in fact, there was actually a --
8 there's a gentleman in Houston named Mr. McIngvale. He
9 runs of the leading furniture businesses in the United
10 States, and he actually posted a reward saying if you
11 didn't vote, come tell me so we can use your testimony
12 as evidence.

12:05PM

13 A. I am aware of that.

14 Q. Anybody take him up on the reward, that you
15 know of?

12:05PM

16 A. I don't know.

17 Q. There was a republican county chair named Cindy
18 Siegel, a very fine person that testified your office
19 needed to be changed before the Senate. Do you know
20 that?

12:05PM

21 A. Yes.

22 Q. Okay. You know Ms. Siegel, when asked -- and
23 she was portrayed and she is portrayed in the states
24 brief, as an election expert. Did you know that in the
25 recent trial currently ongoing, she admitted she was not

12:05PM

1 an elections expert?

2 MS. CELLA: Objection, Your Honor.
3 Relevance and leading.

4 THE COURT: Sustained.

12:05PM

5 Q. (BY MR. SCHECHTER) I want to ask you just a
6 couple more questions and then I'm done: As I
7 understand it, now is a critical moment, and if there is
8 any -- the transition is going to occur, it has the
9 serious potential of disrupting the November elections

12:06PM

10 in Harris County. Is that what you're -- you've
11 testified to?

12 A. Yes.

12:06PM

13 Q. And, in fact, did I hear you correctly in your
14 direct with the county that there -- you've been unable
15 to actually bring on people you need because of the
16 uncertainty about who is going to be able to run the
17 election?

18 A. That's correct.

12:06PM

19 Q. Okay. So the legislation -- 1750 that was
20 passed, are you telling us that is causing a problem
21 already with running the Harris County election?

22 A. Yes.

23 Q. Then, under 1933, that applies only to counties
24 with over four million in population; is that correct?

12:06PM

25 A. That's correct.

1 Q. That's only Harris County, in the State of
2 Texas?

3 A. That is correct.

12:06PM

4 Q. The state, if there is any problem, with an
5 election, the Secretary of State can come in and seize
6 control over that election over that -- that county's
7 election process from either the county election
8 administrator or can seize control over -- from the
9 county clerk or tax assessor-collector; is that correct?

12:07PM

10 MS. CELLA: Objection; calls for legal
11 conclusion.

12 MR. SCHECHTER: Just if he knows that's
13 what the statute says.

14 THE COURT: Overruled.

12:07PM

15 You should answer, if you know, but don't
16 answer if you don't.

17 A. That is correct.

12:07PM

18 Q. (BY MR. SCHECHTER) So if there is a problem,
19 the Secretary of State can come in and seize Harris --
20 control over Harris County and the legislation 1750 is
21 creating a problem.

22 A. That is correct.

12:07PM

23 Q. And there's a -- there was a lot of testimony
24 that's important to have an elected official running
25 elections in a county of 3.5 million people or more.

1 You're familiar with that testimony?

2 A. Yes, I am.

3 Q. The Secretary of State or the State of Texas
4 elected or appointed?

12:08PM 5 A. The Secretary of State is appointed.

6 Q. So under 1933, they are returning -- if that
7 goes into effect, it's simply returns control of the
8 election to an appointed official, just a different one.

9 A. That is correct.

12:08PM 10 MR. SCHECHTER: Your Honor, I have no
11 further questions.

12 At this time, we offer Exhibit 3 into
13 evidence, which is the bill analysis, that would--

14 THE COURT: Any objection to intervenor
12:08PM 15 Exhibit 3?

16 MS. CELLA: Yes, Your Honor, we object as
17 irrelevant.

18 THE COURT: What's the relevance?

19 MR. SCHECHTER: Your Honor, the bill
12:08PM 20 analysis says the whole purpose of 1750 -- this was
21 written after it was passed. The whole purpose was to
22 effect counties that have over one million persons in
23 population, but the statute only limits it to 3.5
24 million, making it very clear the statute did not --
12:09PM 25 does not have a rational purpose.

1 THE COURT: Anything else?

2 MS. CELLA: Your Honor, that's a legal
3 argument for the Court to decide, not -- it's just
4 simply not relevant to the--

12:09PM

5 THE COURT: I think it's more -- the Court
6 will accept it and take judicial notice of the bill
7 analysis for SB17 and 50. I won't admit it as evidence,
8 but certainly the Court will consider it in the purpose
9 requested.

12:09PM

10 MR. SCHECHTER: Thank you, Your Honor.

11 No further questions.

12 THE COURT: Thank you.

13 Cross -- any cross? Recross?

12:09PM

14 MS. CELLA: Just give me one second,
15 Your Honor.

16 THE COURT: Sure. And the time is 12:09,
17 just so everybody's...

18 MS. CELLA: I have just two questions,
19 Your Honor.

12:10PM

20 THE COURT: Sure.

21 RECCROSS-EXAMINATION

22 BY MS. CELLA:

23 Q. The tax assessor-collector and the clerk are
24 elected officials; is that correct?

12:10PM

25 A. That's correct.

1 Q. So they are accountable to the voters?

2 A. That is correct.

3 Q. Thank you.

4 MS. CELLA: Thank you, Your Honor.

12:10PM

5 THE COURT: Thank you.

6 Anything else?

7 MR. SARKAR: No further questions,

8 Your Honor.

9 MR. SCHECHTER: No further questions from

12:10PM

10 intervenor.

11 THE COURT: Thank you for your time and
12 testimony. You're free as a witness to return to your
13 chair.

14 THE WITNESS: Thank you, Your Honor.

12:10PM

15 THE COURT: Do plaintiffs call any other
16 witnesses at this time?

17 MR. MILLER: The county calls Christina
18 Adkins.

19 THE COURT: Is Ms. Adkins in the courtroom?

12:10PM

20 Good morning -- - good afternoon. The
21 time is 12:10, so you may approach the bench to be
22 sworn.

23 (The witness was sworn)

24 THE COURT: State your name for the record.

12:10PM

25 THE WITNESS: Christina Adkins.

1 THE COURT: Thank you very much. You may
2 have a seat to my right in the witness chair.

3 MR. MILLER: May I approach?

4 THE COURT: You may.

12:11PM

5 And you're Mr. Miller?

6 MR. MILLER: Matt Miller.

7 THE COURT: Thank you.

8 **CHRISTINA ADKINS,**

9 having been first duly sworn, testified as follows:

12:11PM

10 **CROSS-EXAMINATION**

11 **BY MR. MILLER:**

12 Q. Ready?

13 A. Yes, I am.

14 Q. Please state your name.

12:11PM

15 A. My name is Christina Adkins.

16 Q. And what is your position?

17 A. I'm the current director of elections for the
18 Texas Secretary of State.

19 Q. Are you testifying today on behalf of the
12:11PM 20 Secretary of State's office?

21 A. I believe so.

22 Q. Okay. Does that include the Secretary of State
23 herself, Jane Nelson?

24 A. I'm testifying in my official capacity as an
12:11PM 25 employee -- an employee of the Secretary of State's

1 office.

2 THE COURT: I think this is probably a good
3 time for the Court just to read the final stipulation of
4 facts, which was that the testimony of Christina Adkins,
12:11PM 5 Texas, in fact, Elections Director will be on behalf of
6 the office of the Texas Secretary of State combined
7 office of the office's official position.

8 Is that the agreement of the parties?

9 MR. MILLER: Yes, Your Honor.

12:12PM 10 MR. ELDRED: Yes, Your Honor.

11 THE COURT: Thank you very much.

12 Q. (BY Mr. Miller) If I say SB1750, do you know
13 what that is?

14 A. I do.

12:12PM 15 Q. What is it?

16 A. SB1750 was a bill that passed out of this past
17 legislative session. It's the bill that we've been
18 discussing today pertaining to the abolishment of the
19 Office the Elections Administrator.

12:12PM 20 Q. Correct. And SB1750 requires the abolishment
21 of the Election Administrator in Harris County. Is that
22 your understanding?

23 A. That's correct.

24 Q. And SB1750 requires the tax assessor-collector
12:12PM 25 to become the voter registrar; is that correct?

1 A. I believe that's correct.

2 Q. Okay, and it also returns certain electoral
3 duties and functions to the County Clerk; is that
4 correct?

12:12PM

5 A. That's correct.

6 Q. And if Harris County refused to abolish the EA
7 position and give those duties to the tax assessor
8 collector and the county clerk, it would violate the
9 express terms of 1750, right?

12:13PM

10 A. On the face of the law, I believe that's
11 correct.

12 Q. On September 1st, 2023, will the Secretary of
13 State consider the Harris County Clerk the entity
14 responsible for certain duties and functions under the
15 Texas Elections Code?

12:13PM

16 A. I think, on the face of the law, that's what --
17 that's what that change in the law implies.

18 Q. Okay. The Texas Election Code requires the
19 County Clerk to certify county election returns; is that
20 correct?

12:13PM

21 A. That's correct.

22 Q. After September 1, 2023, can the Secretary of
23 State's Office commit to accept the Harris County
24 Elections Administrator Certification?

12:13PM

25 A. I would take whatever returns were provided to

1 our office by the county, regardless of who's providing
2 those returns.

3 Q. With regards to the Harris County -- to Harris
4 County's duty to submit voting information on election
12:14PM 5 night, does the Secretary of State agree to commit --
6 commit to accept results from Harris County election
7 administrator as if 1750 had never passed?

8 A. Again, I'm going to take whatever data's
9 provided to me on behalf of the county as long as it's
12:14PM 10 data that was -- that's being provided to our office
11 pursuant to statutory obligations related to the broader
12 election.

13 Q. Okay. Election information and materials like
14 the returns we're discussing have to be submitted
12:14PM 15 through the Secretary of State's electronic systems,
16 correct?

17 A. That's correct.

18 Q. And is that the TEAM system?

19 A. That's what we refer to as the TEAM system.

12:14PM 20 Q. Okay. Will the Secretary of State commit to
21 continue allowing the Harris County elections
22 administrator to designate the person with access to
23 TEAMS after September 1, 2023?

24 A. I think the individuals that have access to
12:14PM 25 TEAM, as long as we're not notified by the county that

1 their access has been revoked, then they will continue
2 to have access.

3 Q. Okay. So nobody at the county is going to have
4 to redesignate anyone?

12:15PM 5 A. I don't believe so.

6 Q. Okay. On September 1st, 2023, who will the
7 Secretary of State's Office consider the voter registrar
8 of Harris County?

9 A. By law, it would be the tax assessor-collector.

12:15PM 10 Q. Are you familiar with Chapter 19 funds?

11 A. I am.

12 Q. Okay. Chapter 19 funds require the voter
13 registrar to submit vouchers in order to get reimbursed
14 by the state; is that correct?

12:15PM 15 A. That's correct.

16 Q. Okay. After September 1st, is the Secretary of
17 State's office going to accept those vouchers from the
18 Harris County Administrator's Office?

19 A. If there's no competing claims from the tax
12:15PM 20 assessor-collector's office -- if all of the registration
21 duties are being performed by the same office, and they
22 are the ones making those claims, I think I have no
23 reason to assume that the processing would happen in any
24 other way. This is not unlike the situation where the
12:16PM 25 office of the elections administrator was created. For

1 the most part, those individuals that were performing
2 those duties under the tax assessor-collector continue
3 to perform those duties under the elections
4 administrator, and so if -- if that's the process that's
5 continuing, we have the same people acting in those
6 roles. We're not going to change anything.

12:16PM

7 Q. What if we change it? What if we change the
8 person who is designated -- what if the Harris County
9 Elections Administrator decides that Rodney Ellis should
10 be the person who should return -- should be submitting
11 that, will the Secretary of State commit to accepting
12 that information?

12:16PM

13 A. I think that I would have to have a little more
14 facts than that. I think it depends on what -- why that
15 designation was changed, like to what individuals within
16 the office. And I think -- I mean, I think, yeah, it
17 would depend on who the change was -- like to who the
18 change was made.

12:16PM

19 Q. I guess I'm a little confused by your answer.
20 If the Harris County Elections Administrator, as of
21 right now, can change the designation of who has TEAMS
22 access or who can submit the vouchers under the Chapter
23 19 reimbursements, is that going to change on September
24 1st, 2023?

12:17PM

25 A. The example you gave was Rodney Ellis, which

12:17PM

1 is, I believe, not somebody that would be authorized to
2 perform election duties under the Election Code, so I
3 think that's what I mean it's a little fact specific
4 because of who they are changing that designation to.

12:17PM

5 Q. Right, but--

6 A. If it's another employee within the office,
7 then we're going to continue to process as we did
8 before.

12:17PM

9 Q. If it's another employee within the election
10 administrator office?

11 A. Sure, or the tax assessor-collector's office,
12 whatever is going on with that local transition -- I
13 assume that there would be some kind of transition
14 process in place, and -- I mean, that's -- that's up to
15 the county to determine what that process is going to
16 be. We're not going to stop providing funds or stop --
17 we're not going to prevent people from completing their
18 statutory duties because of a transition that's
19 happening locally.

12:17PM

12:18PM

20 Q. I guess I'm a little confused by your answer.
21 Why is -- why is it different for someone like Rodney
22 Ellis?

12:18PM

23 A. Well, because by law, there are certain offices
24 that are designated as those that can perform election
25 duties. There isn't anything in the law that says you

1 can transfer your election duties to a county
2 commissioner, a county judge. I mean, we're talking
3 about either the office of the elections administrator
4 or a tax assessor-collector when we're talking about
5 Chapter 19.

12:18PM

6 Q. Right. I understand that, but the election
7 administrator is the one who is in power to designate
8 and they can designate anyone, can't they?

9 A. If they are acting in their official capacity
10 for that office.

12:19PM

11 Q. Right, and after September 1, 2023, will the
12 Harris County Election Administrator be operating in
13 that capacity to be able to appoint whoever he wants?

14 A. I mean, I don't know. I think that's what
15 we're -- part of why we're here today is I think we're
16 trying to figure out what happens on September 1.

12:19PM

17 Q. Right. So you can't commit to -- to accepting
18 whoever Harris County elections administrator would
19 designate as having access to the TEAMS system or to
20 submit Chapter 19 vouchers.

12:19PM

21 A. I think when you're asking me in a very broad
22 way like that, I'm a little concerned because I want to
23 make sure if we're talking about the transfer of
24 government funds, that it's those individuals or there
25 is some authority in the law for them to receive those

12:19PM

1 funds on behalf of the county, but I don't think we're
2 going to -- I have no plans on cutting access to the
3 county on September 1 because there's a dispute as to
4 who is holding that authority under the law, with
12:20PM 5 respect to a tax assessor-collector or an elections
6 administrator. They are making legal requests. If they
7 are complying with Chapter 19 and submitting the right
8 documentation, as long as I don't have two different
9 offices competing for the same funds, then I think we
10 would make a distribution as we normally would.

11 Q. Are you familiar with Texas Election Code
12 18.061? It deals the statewide computer voter--

13 A. It's--

14 Q. --registration list.

12:21PM 15 A. Yes. Uh-huh.

16 Q. Okay. Under -- under Section C of that 18.061
17 of the Texas Election Code, it states that each voter
18 registrar shall provide to the Secretary of State on an
19 expedited basis the information necessary to obtain the
12:21PM 20 registration list.

21 Does that coincide with your
22 understanding of--

23 A. Yes, sir, it does. Uh-huh.

24 Q. If that information that the voter registrar's
12:21PM 25 supposed to submit is submitted by the Harris County

1 Elections Administrator, will the Secretary of State
2 commit to accepting that information?

3 A. As long as there's no competing data coming
4 from another office, like the County Clerk's Office or
5 the Tax Assessor-Collector Office, then absolutely, yes.

12:21PM

6 Q. Okay. So would the Secretary of State's Office
7 then commit to refraining from referring any submission
8 issues to the Attorney General under 18.065 as it
9 relates to the secretary of -- as it relates to the
10 voter registrar provision, the basis of which is that
11 the Harris County elections administrator had been
12 abolished under 1750?

12:22PM

13 A. I think as long as we're not getting competing
14 data from two different offices purporting to fulfill
15 the same role, we're going to take the data that the
16 county provides.

12:22PM

17 Q. Are you familiar with 1933 -- SB1933?

18 A. I am.

19 Q. Okay. And you're aware that under SB1933, the
20 Secretary of State can investigate complaints filed
21 against Harris County, correct?

12:23PM

22 A. That's correct .

23 Q. Okay, and you're also aware that under 1933,
24 the Secretary of State has the ability to impose
25 administrative oversight of Harris County elections?

12:23PM

1 A. That's correct.

2 Q. Will the -- is it fair to say that the
3 Secretary of State cannot commit to refraining to use
4 1750's abolishment as a basis for investigation under
5 1933?

12:23PM

6 A. If you look at 1933, they have a very discrete
7 list of individuals who can submit complaints. They
8 also have to establish a recurring pattern of problems
9 specific to election administration and voter
10 registration. I think an act of the legislature doesn't
11 necessarily conform to the requirements of 1933. So
12 that act of the legislature doesn't meet the
13 requirements for triggering 1933 in the administrative
14 oversight under 1933.

12:23PM

15 Q. Okay. So you would not use the abolition of
16 the EA's office under 1750 as a basis to investigate
17 Harris County under 1933.

12:24PM

18 A. That's correct. I don't see that as anything
19 that would be -- that 1933 would authorize.

20 Q. Okay. And is that the same for the -- as a
21 basis for administrative oversight of Harris County's
22 elections you wouldn't use abolishment under 1750?

12:24PM

23 A. I would agree with that. I don't think there
24 is anything in the law that says that that's something
25 that could be considered.

12:24PM

1 MR. MILLER: Okay. Pass the witness,
2 Your Honor.

3 THE COURT: Direct? How much time do you
4 need for direct?

12:24PM

5 MS. CELLA: Probably not very much, Your
6 Honor. Maybe five minutes or so, but I would request
7 the intervenor take testimony before the defendants.

8 THE COURT: Are there any cross-examination
9 questions from the intervenor? How much time do you
10 need?

12:25PM

11 MR. BIRNBERG: Yes, Your Honor.

12 THE COURT: We're almost at 12:30. I need
13 to provide a comfort break to everyone, including our
14 court reporter.

12:25PM

15 MR. BIRNBERG: I'd take a comfort break.

16 THE COURT: Why don't we take a 10-minute
17 recess. Court's in recess until 12:35. You may step
18 down. Thank you.

19 And you-all are excused. Please be back
20 and ready to go at 12:35. Thank you.

12:25PM

21 Court's in recess.

22 (Recess)

23 THE COURT: You may proceed.

24 MR. BIRNBERG: Thank you, Your Honor Gerald
25 Birnberg on behalf of the intervenor Cliff Tatum, by the

12:36PM

1 way.

2 CROSS-EXAMINATION

3 BY MR. BIRNBERG:

12:36PM

4 Q. Ms. Adkins, you are the Director of Elections
5 in the Elections Division of the Texas Secretary of
6 State's office; is that correct?

7 A. Yes, sir; that's correct.

8 Q. What does Director of Elections do?

12:36PM

9 A. So, my responsibility is to oversee the
10 elections division, which consists of several different
11 parts. We've got our team that manages the TEAM system,
12 the Texas Election Management System, which is voter
13 registration and management system provide support to
14 counties on utilizing that system to make sure that the
15 state has the data that we're required to have.

12:37PM

16 We have a team of attorneys that provide
17 advice and assistance to counties with respect to what
18 the laws are, pertaining to Texas elections. We've got
19 a training team that provides training for county
20 election officials on best practices, security issues,
21 chain of custody. We have our elections funds
22 management team that oversees the administration of
23 funds to the state or to the parties, applicable parties
24 to our counties when appropriate, so a lot of different
25 moving parts, and I oversee all of that.

12:37PM

12:37PM

1 Q. And how long have you been with the Elections
2 Division of the Texas Secretary of State's office?

3 A. I have been with the elections division since
4 2012.

12:37PM

5 Q. So have you and I dealt with one another? I
6 used to be the chair of Harris County Democratic party--

7 A. Yes, sir, I believe we have corresponded
8 before. Even spoken on the phone.

12:38PM

9 Q. We have, indeed. So your position now is the
10 director of elections is one basically of the overseeing
11 all election activities over of the 254 counties in the
12 State of Texas. Is that fair?

12:38PM

13 A. I think that's a little bit broad. I mean, my
14 obligations and duties, first and foremost, fulfilling
15 the statutory obligations that are placed on our office
16 and service to the counties. You know, we have a very
17 decentralized system of elections in Texas, and so there
18 is limitations on what I can do with respect to telling
19 the counties how to run their election.

12:38PM

20 Q. When a local county has any issue associated
21 with running of an election, they call you or your
22 office; is that correct?

23 A. We hope they do.

12:38PM

24 Q. And that includes approval of budgets for
25 running primaries is an example, correct?

1 A. That -- well, that is correct. Well, I would
2 say it's not so much on the county's part, but the state
3 does fund the primary election to a certain extent and
4 so there are funding mechanisms in place for
5 redistributing funds to local party chairs.

12:38PM

6 Q. And you only distribute them once you approve
7 the expenditure; isn't that correct?

8 A. Yes, sir.

12:39PM

9 Q. You, in fact, propose budgets of -- for the
10 running of elections. How many -- how much money can be
11 devoted to paying for voting sites and for equipment,
12 and rental equipment. Those sorts of thing?

13 A. Yes, sir. There are some rules that provide
14 some boundaries on how the primary funds can be spent.

12:39PM

15 Q. One of the things your office does is it
16 suggests how a bit more than suggests. Suggests by
17 regulatory suggestion, the -- the number of -- how to
18 predict the number of voters who will show up and vote
19 in any given voting location. Isn't that true?

12:39PM

20 A. I -- I believe you're referring to -- there's a
21 statutory provision in the Election Code that talks
22 about supplies and how much ballot paper -- how many
23 ballots you're supposed to provide at a given location;
24 that's correct.

12:39PM

25 Q. And in addition to how many -- you know, the

1 election workers should be assigned, your office
2 provides the guidance through the -- at least in primary
3 elections, the local parties in that regard?

4 A. Yes, sir, and that is what I was going to say.

12:40PM

5 With respect to the primary, we have more of a say in
6 the funding. A little bit more control there, but as
7 far as locally, most of those decisions are made by
8 local county commissioners or local entities, ordering
9 the election.

12:40PM

10 Q. And you mention the most of those decisions are
11 also made by the local commissioners. In fact, most of
12 the work that is undertaken by county elections
13 administrator has to be approved by the commissioner's
14 court. Isn't that true?

12:40PM

15 A. I would agree with that, yes, sir.

16 Q. So the elections administrator does receive
17 some significant control in supervision by the
18 commissioner's court. They control all the money?

19 A. They control the budget.

12:40PM

20 Q. They control who gets appointed to be precinct
21 -- presiding judges or alternate judges of election
22 sites, correct?

23 A. There are some statutory appointments they
24 make. Often times, with -- in conjunction with

12:41PM

25 information provided by political parties.

1 Q. They decide how many voting locations there
2 should be?

3 A. Yes, sir.

12:41PM

4 Q. Or at least they approve the decision -- the
5 recommendation in that regard in the elections?

6 A. Yes, sir, as long as it's compliant with the
7 law.

12:41PM

8 Q. Pretty much everything that the election
9 administrators does has to be approved by the elected
10 commissioners. Isn't that fair?

11 A. I wouldn't say everything that they do, but a
12 lot of the big decisions related to specific elections
13 have to go through that public process of being
14 validated by Commissioners Court.

12:41PM

15 Q. Okay. The Secretary of State's Office provides
16 guidance on how counties should predict how many people
17 that are going to appear at vote in any given election
18 at any given polling site. You got a formula
19 published--

12:41PM

20 A. Yes, sir.

21 Q. --in the Administrative Code.

22 A. Yes.

23 Q. So your office is at least making suggestions
24 as to how the number of voters is to be determined.

12:42PM

25 A. I would say that our office has a statutory

1 obligation to do two very large things in the election
2 process. We provide advice and assistance regarding the
3 application of laws in Texas and how they relate to
4 elections, and it's also our job to maintain uniformity
5 in the administration of elections in Texas and so we
6 issue a lot of guidance and directives to try to meet
7 the statutory obligation.

12:42PM

8 Q. And, by the way, your boss is the Secretary of
9 State; isn't that correct?

12:42PM

10 A. Yes, sir.

11 Q. The Secretary of State is the chief elections
12 officer of this -- of this state; isn't that right?

13 A. That's correct.

14 Q. What does that duty entail?

12:42PM

15 A. Well, I've given you a little preview of that.
16 If you look in the Texas Election Code, Chapter 31 of
17 the Election Code, it details many of the obligations
18 that are on the Office of Secretary of State's Office.
19 It provides the express statutory authority for the

12:43PM

20 creation of the elections division to help administer
21 those statutory obligations, such as: Providing advise
22 and assistance; obtain and maintain uniformity;
23 promulgation of official forms; administering certain
24 types of funding to the county; state funding or certain
25 types of federal grants that may come down. We

12:43PM

1 administer a voting rights hotline where people can call
2 in with questions, and then we do a number of other
3 things like the certification of electronic voting
4 systems. I mean, all of this is defined in the Texas
5 Election Code.

12:43PM

6 Q. You actually are the ones to certify the voting
7 equipment that the counties can purchase if they wish to
8 do so; is that right?

9 A. Yes, sir; that's correct.

12:43PM

10 Q. It sounds like relatively comprehensive
11 responsibility with the Secretary of State has to assure
12 that the elections in the state are secure and
13 efficiently and effectively performed. Would that be a
14 fair overview of the role of the Secretary of State
15 running elections?

12:43PM

16 A. I think that that is our intention to try to do
17 that. We can provide that information. We can provide
18 that guidance, and when appropriate, we can, you know,
19 meet certain statutory obligations, but it's up to the
20 county to take our guidance.

12:44PM

21 Q. And is your office accessible to the public?

22 A. I believe so.

23 Q. Is it transparent?

24 A. As much as we can be, yes, sir.

12:44PM

25 Q. Is it headed by an elected official?

1 A. No, it's a -- our secretary is appointed by the
2 governor.

3 Q. Appointed; is that correct?

4 A. Yes, sir.

12:44PM

5 Q. So apparently all of these -- Texas's elected
6 system in which the ultimate responsibility for its
7 elections so the smooth running of its elections is
8 placed upon an appointed official, not an elected
9 official; is that correct?

12:44PM

10 A. That's correct.

11 Q. Are you familiar with -- you are familiar,
12 you've already testified that you are, with Senate Bill
13 1750, right?

14 A. Yes, sir.

12:44PM

15 Q. What is the underlying theory or basis of 1750?
16 What's it about?

17 MS. CELLA: Objection, Your Honor; calls
18 for --

12:45PM

19 MR. BIRNBERG: That was -- I agree. That
20 was a poorly-worded question.

21 I'm sorry. Do you want to rule on that
22 or --

23 THE COURT: It sounds like you're going to
24 withdraw.

12:45PM

25 MR. BIRNBERG: I'm withdrawing that

1 question for sure.

2 THE COURT: So no ruling needed.

3 Q. (BY MR. BIRNBERG) Here's what I'm getting at:
4 Isn't the notion of 1750 -- we had some problems in
12:45PM 5 River City; we had some problem in Harris County, so we
6 think that the way to fix problems in big population
7 centers is to increase accessibility and transparency by
8 making the person who is in charge of the elections
9 accountable to the voters, and so we're going to move
12:45PM 10 those responsibilities -- by the way, moving the
11 personnel, we're just going to change who's ultimately
12 responsible for those two functions to an elected
13 official.

14 Isn't that the whole underlying notion
12:46PM 15 that 1750 seeks to achieve?

16 MS. CELLA: Objection, Your Honor; calls
17 for a legal conclusion.

18 THE COURT: Overruled.

19 A. I think 1750 is taking an appointed office and
12:46PM 20 moving it back to two elected official, and as for the
21 intention behind that, that's more a legislative
22 question.

23 Q. (BY MR. BIRNBERG) Well, isn't the reason for
24 that because that would increase transparency and
12:46PM 25 accessibility?

1 A. I think that was the argument that was made in
2 several hearings with respect to that bill, but putting
3 that -- putting the power of those positions back to
4 somebody that has accountability to voters.

12:46PM

5 Q. To voters.

6 A. Uh-huh.

12:46PM

7 Q. And I think the state argued that Harris County
8 is a super big county and; therefore, it needs an
9 elected head of each of the divisions, joining these
10 offices. But Texas is a super big state, isn't it?

11 A. I would agree with that.

12:47PM

12 Q. Can you explain to me why it's rational to say
13 that Harris County needs to have these functions being
14 performed by elected official as opposed to an appointed
15 official, but the entire State of Texas can have its
16 chief election official be an appointed official rather
17 than elected official.

12:47PM

18 A. Those are decisions that were made by the Texas
19 Legislature. I mean, those aren't decisions I can
20 really speak to.

12:47PM

21 Q. From your perspective, as the Director of
22 Elections in Texas, can you posit a rational explanation
23 why the Secretary of State can handle these as an
24 appointed official without being accountable to the
25 voters, but Harris County can't?

1 A. We have a decentralized nature of elections in
2 Texas. The State doesn't run elections; our counties
3 run election. When we have a large election, for
4 example, or general election for state and county
12:48PM 5 officers November of 2022 or 2024, we don't really have
6 one election that's taking place that day. We have 254
7 elections that are taking place. We coordinate the
8 dissemination of certain types of data. We have
9 statutory obligations related to voter registration
10 lists and collecting election returns.

11 Q. And auditing.

12 A. Correct. Now we have that obligation as well.
13 But the day-to-day operations of an election, actually
14 conducting the election, that's all done by counties.

12:48PM 15 Q. Except for 1933. 1933 -- Senate Bill 1933
16 becomes effective, then if there's a complaint at least
17 by any number of individuals, you have authority to --
18 -- not only authority, but an obligation to seize
19 supervisory control of how the elections are run in
12:48PM 20 those counties, if your investigation confirms the
21 allegations. Is that true?

22 A. I disagree with your characterization of that.

23 Q. Okay. Re- -- correct it.

24 A. I don't believe that the text of that bill has
12:49PM 25 anything to do with our office seizing control or

1 seizing decisionmaking from the county. If you look at
2 the text of the bill, administrative oversight involves
3 reviewing policies and procedures. It -- it involves
4 monitoring. It involves helping those -- that county
12:49PM 5 that may be impacted be compliant with the law. That's
6 not the same thing as taking over and making decisions
7 on their behalf. It's not the same thing as taking over
8 and stepping into that role. Running day-to-day
9 operations of the county. If you read the text of the
12:49PM 10 bill, it reads, to me, as though it's about ensuring
11 legal compliance.

12 Q. What about Section 31.021B, for example, and
13 Section 31.037, for example, both of which provide that
14 if at the conclusion of your audit, you determine that
12:49PM 15 an elections administrator in a county with more than
16 four million people hasn't performed the duties of the
17 office adequately, you terminate the office.

18 A. Well, I think that there's a lot of steps
19 between initiating administrative oversight, and that
12:50PM 20 part of the bill that leads to that point.

21 Q. But it -- but the bill does give you that
22 authority, doesn't it?

23 A. Eventually. After -- after a number of other
24 actions, and--

12:50PM 25 Q. And only--

1 A. Involvement.

2 Q. It only applies to a county of four million
3 population or greater, right?

4 A. That's how the bill reads.

12:50PM 5 Q. How many of those are there?

6 A. I'm not aware of any other in Texas that meet
7 the population threshold other than Harris County.

8 Q. Harris County, just that one.

9 So under 7 -- under 1933, the Secretary
12:50PM 10 of State will have the authority to terminate the
11 elections administrator after this investigation is
12 completed, right?

13 A. After an investigation and ongoing monitoring
14 and periodic reports. There's a number of transparency
12:50PM 15 measures in place in that bill that I think are
16 important to highlight.

17 Q. After that happens, the Secretary of State
18 could terminate the elections administrator in Harris
19 County, correct?

12:50PM 20 A. That's correct.

21 Q. How can that be if the elections administrator
22 has already been terminated by 1750?

23 A. You're right. If there is no elections
24 administrator in place and there's no election
12:51PM 25 administrator for our office to terminate.

1 Q. So those two sections from 1933 I mentioned are
2 inherently inconsistent with 1750, aren't they?

3 A. I believe there's some other provisions in 1933
4 speaking to elected officials in there too.

12:51PM

5 Q. Oh, there are additional 1933--

6 A. Uh-huh.

7 Q. --but the two provisions that I mentioned give
8 the Secretary of State the authority to terminate the
9 elections administrator in Harris County are meaningless

12:51PM

10 if 1750 is in effect, aren't they?

11 A. I would say the specific office of elections
12 administrator, but if you look at 1933, it addresses
13 potentially elected official as well.

14 Q. Not to be argumentative, but certainly that's
15 true with other sections of the bill that's specifically
16 with the regards to section 31.021B and 31.037B, those
17 apply only to the elections administrator, and the
18 ability to terminate and suspend, discipline that office
19 in Harris County.

12:52PM

20 A. I would agree that those particular provisions
21 that you're -- that you are referencing, specifically
22 mention the office -- office of elections administrator,
23 but I think if you're trying to characterize the bill,
24 you need to look at the rest of the provisions in that
25 subsection.

12:52PM

1 Q. Okay.

2 So the state was arguing earlier -- by
3 the way -- because -- well, first, if you didn't have
4 1750, you still have control over the office; control is
12:52PM 5 too strong of a term. If you have an ability to do
6 something to modify a misbehavior in the office, or
7 under the former office of elections administrator, if
8 you don't have 1750, you still have 1933 that gives the
9 Secretary of the State the ability to terminate those
10 offices after the investigation supervision, right?

11 A. I would agree that 1933, following that process
12 that's in place there, it does ultimately give the state
13 the ability to terminate elections administrator if 1750
14 weren't in place.

12:53PM 15 Q. So if 1750, for example, were temporarily
16 enjoined from going into effect, you still have 1933
17 that the Secretary of State could exercise some
18 supervisory authority over the Elections Administrator
19 based upon -- would that not be a fair statement?

12:53PM 20 A. I would agree assuming administrative oversight
21 is triggered. You know, there are things that would
22 have to have happen before administrative oversight is
23 ordered.

24 Q. Misconduct--

12:53PM 25 A. Assuming all of that were to happen, in this

1 hypothetical, yes, that ability for the Secretary of
2 State's Office to terminate Elections Administrator
3 exists.

12:54PM

4 Q. And earlier when 1933 was being discussed, the
5 State's objection was, well, wait a minute, that's not a
6 good enough remedy for us because the earliest the
7 Secretary of State could regulate by firing the
8 Elections Administrator, under 1933, would be December,
9 2024.

12:54PM

10 Do you recall that testimony of that
11 effect?

12 A. I recall that, yes, sir.

12:54PM

13 Q. What would be the earliest that the voter could
14 regulate the misperformance or under-performance by the
15 Tax Assessor-Collector of Harris County, about firing
16 that person by not reelected her?

17 A. The earliest?

18 Q. Yes.

19 A. 2024.

12:54PM

20 Q. Well--

21 A. I think.

22 Q. The election November 7, 2024, but that
23 wouldn't replace the office until January, 2025; isn't
24 that correct?

12:54PM

25 A. That's correct.

1 Q. All right. So on one hand, we could have 1933,
2 when we could get rid of somebody in December of 2024,
3 or on the other hand, we could have voters regulate by
4 firing the tax assessor, which would be effective in
5 2025.

12:55PM

6 A. Well, there's also another provision in the
7 local Government Code relating to removal of somebody
8 from office, and it could -- a voter that's within that
9 territory, if they find that -- if they think that
10 there's grounds for removal, it's dictated in the local
11 Government Code they could file suit to have somebody
12 removed prior to the end of their term.

12:55PM

13 Q. Correct, but if the premise of 1750 is we need
14 to give the voters the ability to basically get rid of
15 somebody who's not performing the election functions
16 properly, the earliest that could happen, that the
17 voters replacing the tax assessor-collector in Harris
18 County would be January 1st, 2025.

12:55PM

19 A. I would say the earliest that any action that
20 could occur as a result of election, that's correct, but
21 I don't want to discount the other provisions in law
22 that do provide for voters being able to initiate suits
23 for bad actions on the part of--

12:55PM

24 Q. What's the earliest date the voters could fire
25 the County Clerk in Harris County?

12:56PM

1 A. 2026.

2 Q. Pardon?

3 A. I think it's -- they were just elected in 2022,
4 so 2026.

12:56PM 5 Q. Well, actually -- yes?

6 A. Is that right?

7 Q. January 2026, so 1933 is not -- never mind.
8 Withdraw that. Let me move on.

9 Who was the last person who was in the
10 office of county clerk at the time of the county clerk
11 in Harris County was running elections?

12 A. I believe that was Chris Hollins.

13 Q. Yes, Mr. Hollands. During Mr. Hollins'
14 administration of elections in Harris County, how many
15 times did the State of Texas sue him?

16 A. Oh, I don't--

17 Q. Six-month period of time relating to 2020
18 election?

19 A. I don't know the answer to that question.
20 Several times, I believe.

21 Q. Several times. He was sued over issues
22 relating to mailing out ballot -- providing mail-in
23 ballot applications to all -- everybody in Harris
24 County, do you recall that?

12:57PM 25 A. I do recall that.

1 Q. He was sued over his willingness to accept a
2 fear of COVID as a disability. Do you remember that?

3 A. That sounds right.

12:57PM

4 Q. He was sued over 24-hour voting. Do you recall
5 that?

6 A. I do.

7 Q. He was sued over drive-through voting. Do you
8 recall that?

9 A. Yes.

12:57PM

10 Q. And, in fact, in 2020, he was sued because over
11 a dozen of the voting locations didn't open timely, and;
12 therefore, there was a lawsuit to extend the voting
13 hours by an hour in Harris County. Do you remember
14 that?

12:57PM

15 A. Yes.

16 Q. That was all when it was a county clerk who was
17 in charge of running the elections, right?

18 A. That's correct.

12:57PM

19 Q. Okay. So why -- never mind. I'll leave it at
20 that and deal with that.

12:58PM

21 The -- you made an observation that
22 moving from the elections administrator back to tax
23 assessor-collector and county clerk would be not -- not
24 unlike what happened previously when we moved from those
25 two offices to the elections administrator.

1 Do you recall that comment?

2 A. Yes, that the transition that we're talking
3 about is not entirely dissimilar from that.

12:58PM

4 Q. It's not dissimilar. And a point in fact there
5 is a statutory transition that's provided for to allow
6 several months for an elections administrator to become
7 acclimated to the job or the duties are turned over to
8 that person; isn't that right?

9 A. That's correct. They can institute that.

12:58PM

10 Q. And in fact?

11 A. That transition period.

12 Q. Sorry. The statute itself says that's an order
13 to facilitate a smooth transition, right?

14 A. That's correct.

12:59PM

15 Q. Would you agree that a smooth transition
16 requires something other than a sudden and instant
17 turning over. It requires several months and should not
18 be undertaken in the middle or near the end of an
19 ongoing election.

12:59PM

20 A. I would say that any transition like that that
21 has to occur, the parties need to plan and prepare for
22 that, so whenever that target date is for that
23 transition happening, they should work backwards to
24 figure out what they need to do to make that transition
25 happen.

12:59PM

1 Q. If the notion in 1750 is that voters can
2 basically pressure public officials to get better
3 results in the running of elections, how many public
4 officials supervise Clifford Tatum?

12:59PM

5 A. Well, the Office of Elections Administrator,
6 for the most part, it's county commissioners that handle
7 the budget issues related to that office.

8 Q. And that's five elected officials, isn't it,
9 right there?

01:00PM

10 A. That's correct.

11 Q. And he can be fired by the Elections
12 Commission, correct?

13 A. They can recommend termination, but they can't
14 actually fire him, if I recall.

01:00PM

15 Q. Well--

16 A. I believe it has to be ratified by commissioner
17 court.

18 Q. Yeah, not quibbling over terminology. I think
19 they actually pass a resolution to fire which has to be
20 approved by commissioners before--

01:00PM

21 A. Correct.

22 Q. --it becomes in effect. You would agree?

23 A. It's a two-part process.

24 THE COURT: Mr. Birnberg, you've gone well
25 over your requested time.

01:00PM

1 MR. BIRNBERG: This is going to be my last
2 question, Your Honor.

3 Q. (BY MR. BIRNBERG) So that ten elected
4 officials that he is answerable to, right? The five
01:00PM 5 elected officials on the commission of the -- on the
6 commissioners court.

7 A. Yes, I think the math is correct there.

8 MR. BIRNBERG: And the Court is correct,
9 and I apologize.

01:01PM 10 THE COURT: Thank you.

11 MR. BIRNBERG: I pass the witness.

12 THE COURT: Okay. Direct examination, if
13 the State chooses.

14 MS. CELLA: Thank you, Your Honor, I'll be
01:01PM 15 brief.

16 DIRECT EXAMINATION

17 BY MS. CELLA:

18 Q. Good afternoon. Can you explain how 1933
19 works.

01:01PM 20 A. Senate Bill 1933, this is the bill that we've
21 been discussing that involves administrative oversight.
22 In order for the state to institute any kind of
23 administrative oversight, there has to be something that
24 triggers that. What the bill outlines, the first part
01:01PM 25 of the bill discusses complaints that are filed by, you

1 know, discrete list of individuals, individuals that
2 typically have a little bit of a higher interaction with
3 the county with respect to elections, they can submit
4 this complaint.

01:01PM

5 If the complaints indicate a recurring
6 pattern of problems in the administration of elections
7 and voter registration activities, then the state can
8 initiate a process like an investigative process where
9 we go back and forth with the county to try to determine

01:01PM

10 the issue. If we're not able to obtain a resolution
11 through that process, then the state can place the
12 county under administrative oversight for a defined
13 period of time.

01:02PM

14 Q. So there has to be a complaint or can the
15 Secretary of State also initiate that action?

01:02PM

16 A. There's another provision in Senate Bill 1933
17 regarding auditing activities, and the state, based on
18 preliminary findings from some of the audits that we
19 have to conduct that by statute we have to conduct that
20 could be used as a vehicle also to place a county under
21 administrative oversight.

22 Q. We talked earlier, or you talked earlier about
23 competing claims for funds or competing returns came in.
24 Things of that nature. Has that ever happened?

01:02PM

25 A. To my knowledge, we have not had multiple

1 offices request funds on behalf of the same county.

2 Q. And how about for returns?

3 A. To my knowledge, we've never had that problem.

4 Q. Are you aware of any problems with Harris

01:03PM

5 County's elections during any of the time from 2020

6 through the current -- through the last election, I

7 should say, which is when they had the elections

8 administrative position?

9 A. I think there have been very public accounts of

01:03PM

10 some issues that have occurred, specifically in their

11 preliminary election and in their November 2022

12 election. Both elections in 2022, but the primary and

13 general election.

14 Q. And can you -- do you know -- do you personally

01:03PM

15 know of those issues or some of those problems?

16 A. There are some issues that I can speak to.

17 Q. Okay. Can you tell the Court what those issues

18 were.

19 A. With respect to the primary election, there was

01:03PM

20 an issue with respect to the accuracy of their returns.

21 The initial information that was reported on their

22 reconciliation form was missing some information that

23 had a discrepancy of about 10,000 votes. We worked with

24 the county over the next, you know, week or so to try to

01:04PM

25 help address that issue, but they did have to do some

1 things to fix the -- or address the 10,000 vote
2 discrepancy. In the primary, itself, they also had a
3 situation where the reporting of their returns were --
4 they were delays because they needed more time to count.
01:04PM 5 That was an issue that we worked with county, or
6 attempted to work with the county on prior to election
7 day, but subsequently became a problem on election
8 night, when they identified that they were not going to
9 be able to complete their returns by the statutory
01:04PM 10 timeframe.

11 In November of 2022, the two big problems
12 that were publicly known, there were some equipment
13 issues out in the field, during early voting and
14 election day. They were having problems with ballots
01:04PM 15 scanning properly, and so that was something that the
16 county I knew worked to address with their workers to
17 make sure that the right process was followed, and I
18 think there was some, you know, differing instructions
19 or processes that were followed with respect to that
01:05PM 20 issue, and then there were allegations of ballot paper
21 shortages in some locations that may have impacted the
22 ability for these locations to accept and process
23 voters.

24 Q. And were there any other issues that you're
01:05PM 25 aware of during those elections?

1 A. Those are the broad issues. With respect to
2 the primary, we had a lot of concern on the part of the
3 political parties from kind of on the administrative
4 side of elections with the assignment of workers and how
01:05PM 5 that information was being communicated, and whether
6 workers were being -- the proper workers provided by the
7 parties were being utilized. We did have to work with
8 the party chairs, both Republican and Democratic chair
9 on that issue to make sure the county was compliant in
10 that area.

11 And I think -- I think beyond that, just
12 the kind of day-to-day problems that you normally have
13 in an election where you may have difficulty opening a
14 location because of equipment problems in that location
01:06PM 15 or problems with individual places itself. Those are, I
16 think, the larger issues that we were involved in that I
17 have direct knowledge of those, and some of those
18 allegations.

19 Q. Thank you.

01:06PM 20 MS. CELLA: That's all the questions I
21 have, Your Honor.

22 THE COURT: Thank you.

23 Anything else?

24 MR. MILLER: Yes, very brief recross,
01:06PM 25 Your Honor.

1 THE COURT: Very brief, please.

2 RE-CROSS-EXAMINATION

3 BY MR. MILLER:

4 Q. Ms. Adkins, Texas Election Code 678.034
01:06PM 5 requires the county clerk to transmit election results
6 for the county unless county has lawfully transferred
7 election administrative duties to a tax assessor or a
8 county election administrator; is that right?

9 A. I believe that's what that code provision says.

01:06PM 10 Q. After September 1st, 2023, Harris County
11 Elections Administrator Clifford Tatum, will no longer
12 be the authorized elections administrator --
13 administration official in Harris County, right?

14 A. By law; that's correct.

01:07PM 15 Q. He will no longer legal -- be legally
16 authorized to submit election results; is that right?

17 A. Well, I would say that based on what you're
18 saying that the law says, there, it defines certain
19 individuals, but it's not uncommon for us to take
01:07PM 20 information from individuals other than that named
21 election official, for example that county clerk
22 administrator is not often the one that provides that
23 data. To us, it's usually other individuals in the
24 office that transmit the data.

01:07PM 25 Q. I don't really think that answers my question.

1 Clifford Tatum will no longer be the legally-authorized
2 person to submit election results; is that correct?

3 A. I think, by law, I would agree that that's what
4 that provision says.

01:07PM

5 Q. And your testimony is that despite that, you
6 will accept election results from Clifford Tatum in a
7 legally defunct office?

8 A. Absolutely. I'm not going to be in a position
9 where we're disenfranchising up to 2.5 million
10 registered voters.

01:08PM

11 Q. So you'll accept those, regardless of whether
12 accepting those results follows the Election Code.

13 A. Provided that we're not getting conflicting
14 data from another office, yes, I would take that data.
15 Again, I'm not going to jeopardize a statewide election.
16 I'm not going to jeopardize a mayoral race in Houston.
17 I'm not going to put those elections in jeopardy because
18 an administrative issue like this.

01:08PM

19 Q. And is it your testimony that the Secretary of
20 State will take no action if Mr. Tatum continues to run
21 elections despite being a legally defunct office?

01:08PM

22 A. I can't commit to that.

23 Q. You cannot commit.

24 A. I cannot commit to that because I don't know
25 what might happen in the next few months that might

01:08PM

1 warrant or necessitate some clarification.

2 Q. You would agree with me there would be no legal
3 authority for -- for example the Harris County
4 Commissioner Adrian Garcia to run elections in Harris
01:08PM 5 County, right?

6 A. I would agree with that.

7 Q. And if Commissioner Garcia were to submit
8 election results to the Secretary of State, it would run
9 afoul of that Section 68.034 and possibly other election
01:09PM 10 codes, correct?

11 A. That's possible.

12 Q. And for that reason, the Secretary of State
13 would not accept results submitted by Commissioner
14 Garcia, right?

01:09PM 15 A. Again, I think when you're looking at the plain
16 language of the law, considering what happens in
17 practice, the question for me as to whether or on I take
18 returns could be twofold. One, was the election
19 conducted properly, and under the laws of Texas? Do we
01:09PM 20 have competing elections going on, or do we know that
21 the county is operating and conducting election as they
22 should? And I think the second component to that is:
23 Is we're talking about county returns, we're talking
24 about canvas totals at the end of an election. These
01:09PM 25 have been canvassed by commissioners court. The

1 county's already signed off and authorized these
2 returns. I'm not going to reject returns that come from
3 the county, just because of who's submitting them.
4 There's a number of factors we're going to look at
01:09PM 5 there. Just as a matter law, I'm not going to
6 necessarily refuse it from somebody if there are other
7 things that have validated the accuracy and the
8 integrity of those returns.

9 Q. Is there a difference between Commissioner
01:10PM 10 Garcia submitting election returns despite having no
11 authority and Clifford Tatum doing so?

12 A. I think there's a difference. I think the
13 difference is that the law right now provides for
14 certain offices to perform those duties related to an
01:10PM 15 election. If we're talking about a transition that's
16 occurring, or with whatever's in place with the legal
17 proceedings that are going on, these are the individuals
18 that are performing the duties of that office. They are
19 not just doing an isolated act, but they are running the
01:10PM 20 election in the county, and if the county is providing
21 funding for those individuals to conduct that election,
22 the voters have voted. They are relying on those
23 results to know who their leaders are. Again, I'm not
24 going to disenfranchise the voters in Harris County
01:10PM 25 because we have a dispute as to who's submitting that

1 information to the state.

2 Q. Okay. So your binding testimony on the
3 Secretary of State's office is that you will accept
4 results in conflict with the Texas Election Code.

01:11PM

5 A. Possibly, yes.

6 Q. Okay.

7 MR. MILLER: No further questions.

8 THE COURT: Anything else for this witness?

9 Mr. Birnberg?

01:11PM

10 MR. BIRNBERG: Birnberg, Your Honor. It's
11 okay. I've heard worse.

12 We have nothing from the intervenor.

13 Nothing further for the intervenor.

14 THE COURT: Anything else?

01:11PM

15 MS. CELLA: No, Your Honor.

16 THE COURT: Thank you for your time and
17 your testimony. It's appreciated. You're excused as a
18 witness and free to step down.

19 Any other witnesses from Plaintiff's

01:11PM

20 side?

21 MR. FOMBONNE: No, Your Honor.

22 THE COURT: Thank you. Plaintiffs rest?

23 MR. FOMBONNE: Your Honor, I have a short

24 argument on the standing jurisdictional question still

01:11PM

25 haven't been addressed in rebuttal. I'm happy to do

1 that real quickly. I want to be mindful of the Court's
2 time, and so if you tell me you don't need to hear it, I
3 won't do it.

4 THE COURT: In terms of evidence though?

01:12PM

5 MR. FOMBONNE: No, in terms of evidence we
6 rest.

7 THE COURT: Mr. Tatum?

8 MR. BIRNBERG: No further from Mr. Tatum.

9 THE COURT: Okay. Thank you.

01:12PM

10 And the defendants?

11 MS. CELLA: Nothing, Your Honor.

12 THE COURT: Defendants rest?

13 Okay. Brief argument from plaintiffs,
14 please.

01:12PM

15 MR. FOMBONNE: Thank you, Your Honor and
16 again for the record Jonathan Fombonne for Harris
17 County.

01:12PM

18 We'll largely rely on the arguments in
19 our TI brief and also in the opposition to the Plea to
20 the Jurisdiction that we filed last night, but I want to
21 go briefly over what the rebuttal argument is to these
22 jurisdiction questions so the -- the defendants are
23 challenging the county's standing to sue the Secretary
24 of State, to sue the State and to sue the Attorney
01:12PM 25 General.

1 To go back to the base of the standing,
2 we have to plead an actual or threatening injury in fact
3 traceable to Defendant's conduct, re-addressable and
4 favorable decision, we think we've done that here.

01:13PM

5 Now, it is clear with respect to the
6 state that we're not seeking an injunction against the
7 state. That's not an issue here. What we're doing is
8 preserving arguments to -- to eventually get declaratory
9 judgment against the state. We acknowledge the Supreme
10 Court's decision in *MALC* from last year suggesting that
11 you can't do that anymore, but that's -- we think that
12 was wrongly decided, and can be limited in this
13 circumstance, and we'll address that as this case
14 proceeds.

01:13PM

15 With respect to the Harris County's
16 injury, you've heard testimony from Mr. Tatum about what
17 would happen, if, for example, the Attorney General's
18 Office files a lawsuit in the middle of September if he
19 continues to be the elections administrator. If that
20 happens -- it would cause the election to go to
21 disarray; would increase cost of the county. These are
22 bread and butter points of standing. I think there is
23 un-rebutted evidence today, and; therefore, we think
24 we've met that requirement and shown an injury in fact.

01:13PM

25 We also have pled a constitutional

1 injury, and, again, we briefed this in our response to
2 the plea to the jurisdiction, but if you -- the Court
3 could look at the case law from Texas Supreme Court in
4 *Neeley* and *Nootsie* where the Court specifically rejected
5 the idea of political subdivision standing depends on
6 the challenged law violating constitutional rights
7 belonging to that subdivision. The harm suffered by the
8 district in *Nootsie* in implementing the constitutional
9 law, itself, provided the district with sufficiency, and
10 the controversy to assure the presence of an actual
11 controversy. So again we think that we pled injury in
12 fact.

13 With respect to traceability, which is
14 what the evidence today was all about -- so first of
15 all, I'd like to again redirect the Court to the
16 stipulation that was entered into between the parties
17 regarding the Attorney General's Office, which is they
18 cannot commit that they will not follow a lawsuit
19 against Harris County on the basis that Harris County
20 has violated Senate Bill 1750, and they cannot commit
21 they will not seek civil penalties against county
22 officials, including its election official in Harris
23 County, election administrator continues to perform the
24 functions of the registering voters.

25 Now, all of the testimony you heard and

1 the exhibits that we've provided the Court all show a
2 pattern and practice by the Attorney General's Office of
3 suing Harris County whenever they think there is some
4 violation of the Election Code. Nobody disputes that if
01:15PM 5 Harris County continues to use elections administrator
6 after September 1st it will be in violation of the
7 Election Code.

8 We don't believe that *Abbott v. Harris*
9 *County*, which is what my friends on the other side have
01:15PM 10 cited, contradicts that requirement. *Abbott v. Harris*
11 *County* said that because the Attorney General said that
12 because the Attorney General had sent some letters that
13 was the enforcement of GA38 which was the governor's ban
14 on the local mask mandates, that was sufficient for
01:15PM 15 standing. It didn't set a clear test for what was
16 sufficient; however, and what we've seen here is
17 repeated pattern of practice -- pattern of practice of
18 taking legal action against Harris County whenever
19 there's a perceived violation of the Election Code. We
01:16PM 20 think that more than demonstrates a threatened action,
21 and that's all we have to show to connect the defendants
22 to the harm suffered by the county here.

23 Clearly redressability, if the Attorney
24 General is prevented from filing a lawsuit,
01:16PM 25 redressability will be met, so with respect to the AG's

1 Office, I think we've more than shown a threat to
2 enforce.

3 With respect to the Secretary of state's
4 office, now, we've heard the testimony here that the SOS
01:16PM 5 will apparently accept any election return, no matter
6 who provides them, as long as they think the election
7 was run -- well, it's not clear by what standard. That
8 doesn't provide Harris County with enough comfort.

9 Frankly, the Election Code does not seem
01:16PM 10 to give the SOS any discretion to do so. It may be that
11 the SOS is representing today that they will; however,
12 we have never seen the situation before. The SOS can
13 certainly not recall any situation that had happened in
14 the past, and what we are weighing that against --and
01:16PM 15 again the brief is the talk of the balance of equities--
16 is the possibility that an election would be thrown out.
17 That would be truly harmful to the county. It would be
18 harmful to the voters. It will be harmful to the many
19 contracts that govern some of the county elections that
01:17PM 20 are going to be happening in November.

21 So, again, I think with respect to the
22 SOS, we've also established traceability, and because we
23 have an injunction in place, the SOS wouldn't be able to
24 refuse to accept the county's returns or provide certain
01:17PM 25 funds. We think that we've been through redressability,

1 and with that, I would rest unless there are any
2 questions from the Court.

3 THE COURT: No questions from the Court at
4 this time. Thank you very much.

01:17PM

5 On behalf Mr. Tatum.

6 MR. BIRNBERG: Yes. Thank you, Your Honor.

01:17PM

7 It seems to me what our relief that we're
8 asking is temporary injunction that prohibits the county
9 from terminating Mr. Tatum solely on the base of 1750
10 until we have a final hearing, the ruling court can make
11 a final determination as to whether it's constitutional
12 or not. That's the relief we're seeking, and that's
13 what all we're here about. It seems to me, in that
14 regard, it's a relatively simple straightforward case.

01:18PM

15 There's no question about the fact that if the Court
16 doesn't grant this temporary injunction, Mr. Tatum loses
17 his job three weeks from now. The consequences of that
18 are not merely economic, but substantially noneconomic
19 as well, and he testified as to what those noneconomic
20 disabilities are to him, which would be irreparable.

01:18PM

21 The Court can't come back and put Humpty Dumpty together
22 six or eight or nine months from now -- something final
23 on the merits, so the question is: Is that
24 unconstitutional under the Texas Constitution? And the
01:18PM 25 answer to that is clearly it is a general or a special

1 law. We've briefed that. I'm not going to take the
2 Court's time in going over why it is, discussing that
3 any further. I think that's all relatively--

4 So here's the underlying question, here's
5 the really what it's all about for the Court, and that
6 is whether the classificatory criteria is rational or
7 irrational. That is, does the 3.5 million population on
8 September 1st, 2023 bear any rational relationship to
9 solving the problem that they are trying to solve? So

10 what's the problem they are trying to solve, and what's
11 the solution? They say, well, we've got all these
12 problems in Harris County, and so the solution is to
13 increase transparency and accessibility. That's in the
14 bill analysis, for example, that you have, and we

15 haven't heard any suggestion that's not what the bill is
16 all about. Increase accessibility and transparency by
17 making the administration elections answerable to the
18 voters, the person who is in charge of it, accountable
19 to the voters. At least you'll have some improvement in
20 the outcome.

21 Well, the -- the problem is that notion
22 is rebutted by amongst other things the very fact that
23 the chief elections officer of the State of Texas, the
24 -- super elections administrator, if you will, is an
25 appointed position, not an elected position. There is

1 no evidence whatsoever that suggests having an elected
2 official do it will improve conditions at all and
3 certainly not one that ties to the 3.5 million on
4 September 1st.

01:20PM

5 Look, Your Honor, if somehow or another,
6 Governor DeSantis moved in busloads of -- of unlawful
7 immigrants to Dallas on September the 10th, and now --
8 Dallas has a population of 3.5 notice, the population
9 --not voting age population, not registered voter, not

01:20PM

10 even just population-- if Dallas moved to 3.5 a week
11 after the September 1st or a year or five years after,
12 they still get to keep their elections administrator.

01:21PM

13 In any other of the 205 -- well, the 136 counties in
14 Texas that has election administrator reaches 3.5, they
15 can continue to have their elections administrator. The
16 only one that can't is Harris County. Why? What's the
17 rational explanation for that? Size? Well, no, the
18 fact that you could grow to the same size and still have
19 an elections administrator means it ain't about size.

01:21PM

20 Date? There's absolutely nothing magical
21 about the fact that September 1st, 2023 is the -- the
22 date in question here. So the -- our point is, it seems
23 to us that more likely than not, at the end of the day,
24 Mr. Tatum is going to prevail on -- and get an ultimate
25 finding, declaratory judgment from this Court that 1750

01:21PM

1 is a unconstitutional local law because the
2 classificatory criteria is not rationally related; it's
3 arbitrary. Just picked out of the air, and for that
4 reason we, think he's going to prevail on that issue.

01:21PM

5 So that's really what it's all about.
6 It's whether the Court will preserve the status quo and
7 say, Harris County, you can't fire Mr. Tatum yet until
8 I, the Court, can decide whether this law is
9 constitutional or not.

01:22PM

10 Balance the equities, there's going to be
11 a mess in the November election. The Court really knows
12 this, if there is some sudden change in transfer from
13 this office to two other offices in the middle of an
14 election, so the public interest is not going to be
15 served by failing to grant the temporary injunction.
16 Irreparable harm. The Court's heard testimony of that
17 and knows that it's clearly there.

01:22PM

18 For those reasons, we ask the Court to
19 grant the temporary injunction enjoining Harris County
20 during the pendency of this lawsuit from terminating
21 Mr. Tatum solely on the basis of 1750.

01:22PM

22 THE COURT: Thank you very much.

23 On behalf of the defendants?

24 MS. DOKUPIL: Thank you, Your Honor.

01:23PM

25 We've heard a lot today about population

1 brackets and reasonableness, and all of these different
2 ways that anyone might possibly coulda shoulda woulda
3 had intention to pass SB17. In the end, none of that
4 matters. The legislative history doesn't matter. The
01:23PM 5 populations brackets don't matter. What matters is
6 whether or not the legislative had a reasonable basis
7 and by reasonable basis, I mean anything that we could
8 possibly imagine might have been reasonable in passing
9 that statute. That's because the statements of
01:23PM 10 individual senators or even individual chambers of the
11 legislature do not embody the entire compromise as well
12 as the text.

13 So, in this case, Harris County elections
14 had problems. Our witnesses have both said so. Returns
01:24PM 15 were delayed; machines malfunctioned. Most importantly,
16 10,000 votes weren't counted in the final tally.

17 The legislature was very -- had a
18 reasonable basis for saying Harris County's problems are
19 fundamentally different than Dallas or Bexar or Tarrant.
01:24PM 20 Harris County's problems made the New York Times.
21 Harris County's problems were national news. So maybe
22 other counties with election administrators had issues
23 that didn't raise to the same level of Harris County's,
24 and for that reason, the legislature needed to single
01:24PM 25 out Harris County for a particular solution.

1 Could reasonable minds differ about was
2 this the correct solution? Absolutely, but is that what
3 we're here to do in determining constitutionality?
4 Absolutely not.

01:24PM

5 The legislature's prerogative is to
6 decide how to solve these problems. They heard
7 everybody's different ideas. I believe I heard
8 Mr. Tatum say he even spoke with the legislature about
9 it. And they decided, as a body, what the correct

01:25PM

10 answer was. It could be the case that one of the
11 reasonable bases underlying their new rule was that it
12 was better to have the accountability to the people of
13 an elected official.

01:25PM

14 Reasonable minds could disagree, but that
15 is not our place to question the legislature and
16 determine and overturn an otherwise constitutional rule
17 because someone could think a reasonable basis was not a
18 reasonable basis.

01:25PM

19 Couple of other quick points. The text
20 of 1750 says that the legislature is transferring the EA
21 from an appointed county official to an elected
22 official, and abolishing the Harris County Administrator
23 on September 1st. The other side has made much of the
24 fact that this could not never apply to any other

01:26PM

25 counties could potentially be grandfathered in. For

1 example, if Dallas County, which has a EA grew to the
2 three and a half million, then somehow -- but that's not
3 in the Texas statute. It's completely unclear of what
4 would -- in fact, what would happen.

01:26PM

5 We -- you know, and if that alone is a
6 reason to conclude the statute is unconstitutional,
7 then, we cannot do that because in a -- the statute must
8 be presumed constitutional if there are two possible
9 interpretations. Second, to the extent that people are

01:26PM

10 concerned that, well, wait a minute. What happened to
11 all the other counties. What if they have -- they grow
12 and have elections administrators, then to some degree,
13 the legislature doesn't address that with 1933. 1933
14 applies to very big counties. Clearly the legislature

01:26PM

15 is focused on the election administration problems of
16 very large counties, and so even if there are some
17 concerns that 1750 only targets Harris County now and
18 what's going to happen in the future. Well, the

01:27PM

19 legislature absolutely did have a reasonable basis in
20 thinking that there was a problem with large counties
21 because they had this other backup plan that they have
22 in place.

23 Further, let's talk about standing for a
24 minute. In light of the Secretary of State's testimony,
01:27PM 25 the Secretary of State's Office has repeatedly expressed

1 a willingness to take returns and validate every kind of
2 oath that they could possibly validate as long as it's
3 done according to the law. For that reason, we think
4 that Harris County has not proven any harm or
01:27PM 5 enforcement or traceability from the Secretary of
6 State's Office, and we would like to request that this
7 Court, as you're considering whether or not to grant
8 relief that you consider all of the different defendants
9 separately because the arguments against the Secretary
01:28PM 10 of State are slightly different than the arguments
11 against the state or the AG's Office.

12 And also, with regard to the AG, the AG,
13 as we said in the stipulation, we have not committed one
14 way or the other to enforcement, so they haven't proven
01:28PM 15 that we were -- that there's a link between their -- any
16 potential harm and enforcement by the AG's Office. As I
17 said before, this is done on provision by provision
18 basis, and SB1750 is a new statute, and there has been
19 no evidence that the AG has been out there advertising
01:28PM 20 enforcement on that, and, finally, we haven't heard any
21 opposition from Harris County today on Mr. Tatum's
22 temporary injunction. So it doesn't seem that the
23 parties are particularly adverse on that point.

24 So in conclusion, we do not think that
01:29PM 25 either Harris County nor Mr. Tatum have met their burden

1 to prove unconstitutionality or likelihood of success on
2 the merits for standing. Thank you.

3 THE COURT: The last thing you said: You
4 haven't heard any opposition from Harris County?

01:29PM

5 MS. DOKUPIL: Well, right. You know,
6 throughout the testimony and everything, I haven't
7 necessarily heard anybody from Harris County -- I'm
8 sorry, I haven't heard any testimony or arguments
9 saying, oh, Mr. Tatum shouldn't get an injunction
10 against Harris County.

01:29PM

11 MR. SCHECHTER: Your Honor, we just heard
12 the State of Texas make that argument for almost all
13 four hours.

14 MS. DOKUPIL: But from you.

01:29PM

15 MR. SCHECHTER: From you. You intervened
16 in Mr. Tatum's case. You're making the justiciable
17 issue before the Court.

18 THE COURT: Okay. I just wanted to make
19 sure I heard you correctly.

01:30PM

20 The Court has everything that the Court
21 needs in order to make all of the decisions before me.

22 I have, however, granted the parties some
23 leave to file a response to the following, and that is:
24 The Defendant's Motion to Strike Clifford Tatum's
25 Intervention; and pursuant to the agreement of the

01:30PM

1 parties, the Court has allowed briefing to be sent to
2 the Court through Thursday at 5:00 p.m.

3 Is that the agreement of the parties, and
4 that means that I'm going to receive the briefing from
01:30PM 5 you, Mr. Schechter, by tomorrow 5:00 p.m., and then the
6 -- the State defendants by Thursday 5 p.m.; is that
7 right?

8 MR. ELDRED: Yes, Your Honor.

9 THE COURT: Okay.

01:31PM 10 MR. SCHECHTER: Yes, Judge.

11 THE COURT: And to be clear, what I have
12 under advisement, and for which you will have rulings as
13 quickly as I can get them to you, in light of the fact
14 that time is obviously of the essence right now,
01:31PM 15 Defendant's Plea to the Jurisdiction and Plaintiff's
16 request or Application For Temporary Injunction,
17 Intervenor Clifford Tatum's Request For Injunctive
18 Relief.

19 Are there any other requests for relief
01:31PM 20 today that I did not just list?

21 MR. FOMBONNE: Not from Plaintiff Harris
22 County.

23 THE COURT: Okay. Thank you.

24 Mr. Tatum?

01:31PM 25 MR. SCHECHTER: Not from Mr. Tatum,

1 Your Honor.

2 THE COURT: And on behalf of defendants?

3 MR. ELDRED: We also have the PTJ against
4 the Intervenor's claims. We talked about a little
5 before we submitted the pleading filed last night.

01:32PM

6 Anyway at 7:45. The style does not say that, I agree
7 the paragraph says we are challenging both request for
8 temporary injunction and challenging the jurisdiction.

9 THE COURT: And do you now have that plea?

01:32PM

10 MR. SCHECHTER: Your Honor, that's in a
11 brief, but not in a pleading, entitled Challenge to the
12 Jurisdiction. I don't think that raises the issue. You
13 can't just throw something out in a brief. You've got
14 to plead it.

01:32PM

15 MR. ELDRED: It is just a miss- --

16 THE COURT: Where is your pleading?

17 MR. ELDRED: It's just a miss-title. The
18 style is -- the style does not reflect that we also
19 asked for that relief.

01:32PM

20 THE COURT: Can you direct me specifically
21 to where that request for relief may be found in a
22 briefing or a pleading?

23 MR. BIRNBERG: We think they are referring
24 to their brief in opposition to our plea and

01:33PM

25 intervention.

1 THE COURT: Okay.

2 MR. BIRNBERG: Cross-action. But there is
3 a paragraph somewhere in there that -- that might be
4 interpreted as -- as the question. That relief -- but
01:33PM 5 it's not even in a motion. Certainly not in a plea to
6 the jurisdiction.

7 THE COURT: Do you have a plea that's in
8 anywhere -- other than in a plea entitled Intervenor's
9 Office of the Attorney General's and State of Texas'
01:33PM 10 Brief in Opposition to Intervenor Clifford Tatum's
11 Application For Temporary Injunction?

12 MR. ELDRED: It's in the footer, actually,
13 Judge.

14 MS. DOKUPIL: It says just--

01:33PM 15 MR. ELDRED: And I'm sorry we didn't put it
16 in the title as well.

17 THE COURT: I cannot find that there's
18 sufficient notice of a request for hearing on plea that
19 is in a footer of a brief in opposition to an
01:34PM 20 application for temporary injunction, okay, so that's
21 not before the Court right now. Not properly before the
22 Court.

23 If you need it considered, then it has to
24 be set for hearing.

01:34PM 25 MR. ELDRED: Yes, Your Honor.

1 THE COURT: Okay. Anything else before I
2 excuse you-all? It is very late. It is 1:34, so I ask
3 for any very brief final requests of the Court at this
4 time, if you have any.

01:34PM

5 MR. FOMBONNE: None from us, and thank you
6 very much for indulging us and going above the three
7 hour.

8 THE COURT: I know some folks have long
9 distances to travel. Glad we could get it finished.

01:34PM

10 On behalf of Mr. Tatum?

11 MR. BIRNBERG: No, Your Honor, we do very
12 much appreciate the Court's indulgence for all of the
13 parties.

01:34PM

14 THE COURT: Certainly. Anything on behalf
15 of the defendants?

16 MR. ELDRED: No, Your Honor.

17 THE COURT: Thank you all very much.
18 You-all are excused. The Court will get you rulings as
19 quickly as I can. I'll look for your briefing as
20 discussed. Thank you. You're excused.

01:34PM

21 (Proceedings concluded)

22

23

24

25

REPORTER'S CERTIFICATE

1

2

3 STATE OF TEXAS)

4 COUNTY OF TRAVIS)

5 I, Jamie Foley, Official Court Reporter in and for
6 the 250th District Court of Travis County, State of
7 Texas, do hereby certify that the above and foregoing
8 contains a true and correct transcription of all

9 portions of evidence and other proceedings requested in
10 writing by counsel for the parties to be included in
11 this volume of the Reporter's Record, in the
12 above-styled and numbered cause, all of which occurred
13 in open court or in chambers and were reported by me.

14 I further certify that this Reporter's Record of
15 the proceedings truly and correctly reflects the
16 exhibits, if any, offered in evidence by the respective
17 parties.

18 WITNESS MY OFFICIAL HAND this the 10th day of
19 August, 2023.

20

21

_____/s/ Jamie Foley_____

22

Jamie Foley, Texas CSR No. 8764
Expiration Date: 11/30/2023
Official Court Reporter
250th District Court
Travis County, Texas
P.O. Box 1748, Austin, Texas 78767
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25

\$	10:30 ^[1] - 65:5	156:22, 165:13,	195:8, 196:4,	127:5, 127:12,
\$400,000 ^[1] - 23:11	10:34 ^[1] - 67:1	165:15, 166:4,	196:11, 196:21,	127:16, 128:2,
'	10th ^[2] - 196:7,	166:15, 166:19,	199:23	128:13, 136:8,
'19 ^[1] - 139:5	207:18	170:22, 171:2,		136:10, 136:24,
'20 ^[2] - 81:11, 139:6	11 ^[2] - 4:15, 89:1	171:10, 172:4,	2	137:1, 148:12,
'87 ^[1] - 70:15	11/30/2023 ^[1] -	172:8, 172:13,	2 ^[23] - 4:6, 5:23, 31:5,	148:22, 149:23,
'98 ^[1] - 70:15	207:22	172:15, 174:13,	38:14, 43:6, 46:10,	150:6, 151:24,
/	114 ^[1] - 3:15	178:1, 191:20,	52:12, 52:23, 62:1,	153:11, 184:10,
/s ^[1] - 207:21	11:00 ^[1] - 64:8	194:9, 196:25,	88:15, 88:24, 88:25,	195:8, 196:21,
0	11:30 ^[1] - 111:15	197:21, 199:20,	124:6, 124:12,	207:19
00793681 ^[1] - 2:13	12 ^[5] - 3:7, 4:16,	200:17	124:14, 124:19,	2024 ^[6] - 34:7, 168:5,
02342000 ^[1] - 2:21	38:19, 52:13, 89:1	1750's ^[1] - 156:4	124:21, 124:23,	173:9, 173:19,
1	123 ^[1] - 3:15	17735500 ^[1] - 2:24	124:25, 128:10,	173:22, 174:2
1 ^[53] - 4:5, 5:22,	124 ^[4] - 5:22, 5:23	179 ^[1] - 3:18	136:10, 137:1	2025 ^[3] - 173:23,
33:22, 34:5, 41:25,	12548 ^[1] - 2:17	18 ^[3] - 4:22, 58:19,	2.5 ^[2] - 105:15, 185:9	174:5, 174:18
42:4, 42:7, 42:8,	12:09 ^[1] - 144:16	100:6	20 ^[5] - 4:24, 58:24,	2026 ^[3] - 175:1,
42:11, 42:15, 43:5,	12:10 ^[1] - 145:21	18.061 ^[2] - 154:12,	100:6, 127:4, 139:5	175:4, 175:7
43:8, 43:12, 46:21,	12:30 ^[5] - 114:5,	154:16	2002 ^[3] - 70:20,	2027 ^[3] - 42:11,
47:6, 47:10, 52:23,	114:10, 114:22,	18.065 ^[1] - 155:8	70:22, 73:12	43:12, 47:10
57:13, 58:12, 62:1,	157:12	184 ^[1] - 3:17	2006 ^[2] - 133:1,	205 ^[1] - 196:13
84:11, 85:17, 86:19,	12:35 ^[2] - 157:17,	189 ^[1] - 3:20	133:12	206 ^[2] - 3:23, 3:24
96:23, 98:5, 98:7,	157:20	19 ^[10] - 4:23, 58:23,	2010s ^[1] - 133:19	207 ^[1] - 3:25
100:2, 100:6,	13 ^[2] - 4:17, 89:1	92:22, 100:6,	2012 ^[1] - 159:4	21 ^[3] - 4:25, 59:17,
100:25, 101:11,	13-and-a-half ^[1] -	150:10, 150:12,	2018 ^[3] - 14:22,	100:7
103:2, 109:24,	14:21	151:23, 153:5,	25:15, 99:3	22 ^[2] - 5:2, 100:7
110:22, 124:6,	135 ^[2] - 85:13, 102:22	153:20, 154:7	2020 ^[14] - 14:21, 25:4,	22nd ^[2] - 81:17, 82:4
124:7, 124:18,	136 ^[2] - 125:10,	193 ^[1] - 3:21	59:25, 81:1, 81:4,	23 ^[2] - 5:3, 100:7
124:21, 124:23,	196:13	1930s ^[1] - 19:17	94:25, 95:1, 95:19,	23rd ^[4] - 81:17,
124:25, 127:5,	14 ^[9] - 4:18, 15:18,	1931 ^[1] - 45:6	99:3, 122:20, 140:1,	103:13, 103:16,
127:12, 127:16,	39:2, 61:19, 65:5,	1933 ^[37] - 33:19,	175:17, 176:10,	104:1
128:1, 128:13,	88:16, 88:24, 89:1,	33:22, 34:8, 96:7,	181:5	24 ^[4] - 5:4, 14:19,
136:8, 136:24,	120:21	96:18, 97:1, 141:23,	2021 ^[2] - 59:5, 99:3	59:17, 100:7
148:22, 149:23,	143 ^[2] - 3:15, 5:24	143:6, 155:17,	2022 ^[43] - 4:22, 14:7,	24-hour ^[1] - 176:4
153:11, 153:16,	146 ^[1] - 3:17	155:23, 156:5,	14:24, 15:7, 15:13,	24034419 ^[1] - 2:15
154:3	15 ^[8] - 4:19, 62:4,	156:6, 156:11,	42:4, 42:8, 43:5,	24051959 ^[1] - 2:7
10 ^[2] - 4:14, 89:1	62:21, 62:23, 63:2	156:13, 156:14,	43:8, 58:18, 59:13,	24088048 ^[1] - 2:5
10,000 ^[4] - 14:25,	63:5, 113:1, 114:1	156:17, 156:19,	81:18, 81:19, 82:23,	24093106 ^[1] - 2:6
181:23, 182:1,	158 ^[1] - 3:17	168:15, 170:9,	83:18, 84:6, 85:17,	24102702 ^[1] - 2:4
198:16	159 ^[1] - 71:5	171:1, 171:3, 171:5,	95:7, 99:4, 106:3,	24106199 ^[1] - 2:14
10-minute ^[1] - 157:16	15th ^[1] - 2:8	171:12, 172:8,	106:4, 110:20,	24106297 ^[1] - 2:16
100 ^[49] - 2:24, 4:5,	16 ^[8] - 4:20, 15:22,	172:11, 172:16,	118:3, 118:7,	25 ^[3] - 5:5, 59:18,
4:21, 4:22, 4:23,	62:4, 62:21, 62:23,	173:4, 173:8, 174:1,	118:10, 118:14,	100:7
4:24, 4:25, 5:2, 5:3,	63:2, 63:5, 117:9	175:7, 179:18,	118:18, 120:13,	250 ^[2] - 66:23, 112:8
5:4, 5:5, 5:6, 5:7,	16th ^[1] - 125:4	179:20, 180:16,	120:17, 121:7,	250.submission@
5:8, 5:9, 5:10, 5:11,	17 ^[7] - 4:21, 62:2,	200:13	121:20, 132:22,	traviscountytexas.gov
5:12, 5:13, 5:14,	62:3, 98:6, 98:7,	1968 ^[1] - 18:22	133:11, 134:16,	^[1] - 65:15
5:15, 5:16, 5:17,	100:2, 100:6	1969 ^[1] - 19:23	134:20, 139:1,	250th ^[3] - 7:16, 207:6,
5:18, 5:19	1748 ^[1] - 207:24	197 ^[1] - 3:22	139:16, 168:5,	207:23
1019 ^[1] - 2:8	1750 ^[52] - 29:13, 30:3,	1970s ^[1] - 19:17	175:3, 181:11,	254 ^[2] - 159:11, 168:6
10:00 ^[1] - 54:1	30:14, 30:16, 31:4,	1974 ^[1] - 45:10	181:12, 182:11	26 ^[3] - 5:6, 21:22,
10:16 ^[1] - 65:1	33:20, 34:9, 37:21,	1976 ^[1] - 57:13	2023 ^[43] - 1:21, 3:3,	100:7
	41:5, 41:13, 47:6,	1982 ^[1] - 54:13	6:2, 31:10, 33:22,	27 ^[2] - 5:7, 100:7
	47:7, 47:12, 52:22,	1988 ^[1] - 39:24	34:5, 37:17, 41:25,	28 ^[2] - 5:8, 100:7
	59:23, 62:8, 86:25,	1:34 ^[1] - 206:2	46:21, 47:6, 75:10,	281 ^[1] - 2:23
	96:17, 96:20, 98:16,	1st ^[17] - 31:10, 76:21,	75:13, 75:14, 85:18,	29 ^[2] - 5:9, 100:7
	99:12, 125:13,	76:23, 101:16,	86:19, 90:23, 96:25,	29.3 ^[1] - 5:2
	130:14, 141:19,	107:14, 148:12,	102:25, 103:3,	
	142:20, 143:20,	150:6, 150:16,	103:7, 103:12,	3
	148:9, 149:7,	151:24, 174:18,	107:25, 120:9,	3 ^[9] - 4:7, 5:24, 46:17,
	155:12, 156:16,	184:10, 192:6,		

<p>155:25, 156:13, 156:21, 169:2, 169:19, 172:20, 172:22, 179:21, 179:23, 180:12, 180:21, 181:8, 183:3, 184:7, 185:18</p> <p>Administrative [2] - 89:19, 162:21</p> <p>administrator [98] - 14:9, 15:7, 15:12, 16:11, 16:16, 31:8, 33:21, 34:1, 37:22, 46:12, 46:15, 46:22, 47:8, 47:13, 47:14, 47:21, 52:24, 58:16, 59:5, 74:4, 74:6, 75:16, 75:19, 76:12, 76:24, 78:1, 78:8, 80:4, 80:6, 82:1, 83:18, 94:8, 96:21, 100:25, 101:15, 101:18, 105:7, 106:2, 108:8, 120:8, 121:16, 122:12, 122:17, 122:20, 125:3, 125:8, 125:20, 126:23, 127:15, 128:2, 128:6, 128:14, 129:22, 131:6, 136:9, 136:19, 136:25, 137:6, 137:18, 142:8, 149:7, 149:22, 150:25, 151:4, 152:10, 153:3, 153:7, 153:18, 154:6, 155:11, 161:13, 161:16, 169:15, 170:11, 170:18, 170:21, 170:24, 170:25, 171:9, 171:12, 171:17, 171:22, 172:7, 172:13, 176:22, 176:25, 177:6, 184:8, 184:12, 184:22, 190:19, 191:23, 192:5, 195:24, 196:12, 196:14, 196:15, 196:19</p> <p>Administrator [24] - 70:4, 79:6, 81:16, 84:23, 96:12, 102:12, 117:25, 122:25, 124:15, 129:2, 135:8, 147:19, 147:21, 148:24, 151:9,</p>	<p>151:20, 153:12, 155:1, 172:18, 173:2, 173:8, 178:5, 184:11, 199:22</p> <p>administrator's [4] - 35:13, 105:6, 132:21, 133:10</p> <p>Administrator's [7] - 80:23, 81:10, 82:24, 94:23, 94:24, 95:20, 150:18</p> <p>administrators [9] - 74:8, 74:14, 125:14, 134:3, 135:4, 138:21, 162:9, 198:22, 200:12</p> <p>Administrators [2] - 74:13, 87:10</p> <p>admissibility [1] - 48:21</p> <p>admit [2] - 60:23, 144:7</p> <p>ADMIT [3] - 4:4, 5:1, 5:21</p> <p>admitted [14] - 15:8, 49:18, 63:2, 63:4, 63:5, 88:24, 89:1, 100:2, 100:8, 100:18, 100:20, 124:24, 124:25, 140:25</p> <p>adopted [1] - 24:8</p> <p>Adrian [1] - 186:4</p> <p>advance [2] - 22:23, 137:4</p> <p>advanced [1] - 128:8</p> <p>adverse [4] - 115:17, 115:19, 116:23, 201:23</p> <p>advertising [1] - 201:19</p> <p>advice [4] - 74:25, 91:16, 158:17, 163:2</p> <p>advise [1] - 163:21</p> <p>advised [5] - 72:17, 72:25, 90:20, 91:9, 109:21</p> <p>advisement [3] - 12:17, 68:18, 203:12</p> <p>Advisement... [1] - 3:23</p> <p>advising [1] - 72:23</p> <p>advisories [6] - 89:18, 89:23, 90:3, 90:8, 90:9, 90:10</p> <p>advisory [2] - 73:8, 74:16</p> <p>advocacy [1] - 73:9</p> <p>affairs [6] - 38:16, 52:12, 70:21, 71:3,</p>	<p>72:17, 87:12</p> <p>Affairs [1] - 4:9</p> <p>affect [2] - 126:2, 130:12</p> <p>affected [5] - 20:9, 21:16, 23:2, 53:13, 126:18</p> <p>affects [4] - 22:16, 26:19, 125:13, 126:1</p> <p>affiliate [1] - 57:13</p> <p>Affiliation [1] - 5:19</p> <p>affordable [1] - 42:14</p> <p>afoul [1] - 186:9</p> <p>afraid [1] - 101:2</p> <p>afternoon [4] - 10:23, 11:15, 145:20, 179:18</p> <p>AG [11] - 29:24, 30:2, 35:10, 35:14, 35:18, 64:14, 97:5, 97:22, 201:12, 201:19</p> <p>AG's [7] - 8:10, 35:7, 35:22, 64:8, 192:25, 201:11, 201:16</p> <p>age [2] - 60:4, 196:9</p> <p>agencies [1] - 23:9</p> <p>agency [2] - 72:20, 89:6</p> <p>ago [1] - 66:22</p> <p>agree [28] - 10:4, 32:4, 39:20, 50:15, 61:8, 62:22, 63:3, 106:2, 117:12, 117:17, 117:21, 118:6, 120:3, 120:14, 149:5, 156:23, 161:15, 165:19, 167:11, 171:20, 172:11, 172:20, 177:15, 178:22, 185:3, 186:2, 186:6, 204:6</p> <p>agreed [2] - 9:16, 31:1</p> <p>agreement [8] - 9:11, 9:14, 32:5, 67:21, 133:17, 147:8, 202:25, 203:3</p> <p>ahead [6] - 50:14, 65:2, 75:6, 82:14, 103:9, 114:6</p> <p>aimed [1] - 125:25</p> <p>ain't [1] - 196:19</p> <p>air [1] - 197:3</p> <p>Airport [3] - 23:2, 23:5, 56:6</p> <p>airport [3] - 23:15, 56:24, 57:5</p> <p>airports [3] - 23:12, 23:18, 56:9</p>	<p>aisle [1] - 14:6</p> <p>al [1] - 22:16</p> <p>albeit [1] - 21:17</p> <p>allegations [11] - 51:10, 52:2, 131:19, 132:4, 132:14, 132:20, 133:6, 135:18, 168:21, 182:20, 183:18</p> <p>alleged [2] - 17:2, 53:8</p> <p>alleviate [1] - 24:2</p> <p>allocate [1] - 111:15</p> <p>allocated [2] - 119:1, 119:5</p> <p>allow [6] - 27:3, 46:1, 53:20, 97:1, 115:25, 177:5</p> <p>allowed [2] - 39:24, 203:1</p> <p>allowing [1] - 149:21</p> <p>allows [1] - 75:23</p> <p>almost [4] - 14:23, 106:8, 157:12, 202:12</p> <p>alone [1] - 200:5</p> <p>alpha [3] - 25:17, 25:23, 52:6</p> <p>alternate [1] - 161:21</p> <p>altogether [1] - 96:10</p> <p>altruism [1] - 130:2</p> <p>amendments [2] - 104:6, 104:7</p> <p>America [2] - 71:23, 71:24</p> <p>amount [3] - 67:24, 119:1, 119:5</p> <p>Analysis [1] - 5:24</p> <p>analysis [9] - 17:3, 18:2, 19:18, 21:3, 122:15, 143:13, 143:20, 144:7, 195:14</p> <p>AND [3] - 1:9, 1:19, 3:2</p> <p>Angela [1] - 6:6</p> <p>ANGELA [1] - 1:6</p> <p>angela [1] - 28:16</p> <p>annexed [1] - 26:25</p> <p>announcement [3] - 6:13, 8:21, 114:17</p> <p>Announcements..... [1] - 3:5</p> <p>answer [15] - 61:15, 66:2, 76:19, 116:18, 126:12, 126:13, 126:15, 127:8, 142:15, 142:16, 151:19, 152:20, 175:19, 194:25, 199:10</p>	<p>answerable [2] - 179:4, 195:17</p> <p>answers [1] - 184:25</p> <p>anticipate [1] - 104:10</p> <p>anticipating [2] - 113:23, 114:11</p> <p>anticipation [1] - 96:24</p> <p>Antonio [1] - 57:3</p> <p>anyway [1] - 204:6</p> <p>apologize [1] - 179:9</p> <p>apparatus [1] - 83:15</p> <p>Appeals [5] - 20:24, 25:25, 27:12, 54:13, 56:23</p> <p>appear [2] - 24:7, 162:17</p> <p>APPEARANCES [1] - 2:1</p> <p>applicability [2] - 26:12, 37:5</p> <p>applicable [1] - 158:23</p> <p>Application [3] - 64:4, 203:16, 205:11</p> <p>application [4] - 58:11, 66:12, 163:3, 205:20</p> <p>applications [4] - 60:3, 131:16, 132:6, 175:23</p> <p>applied [4] - 41:20, 45:18, 47:15, 48:5</p> <p>applies [11] - 16:4, 20:22, 28:5, 39:19, 39:22, 42:17, 43:7, 48:12, 141:23, 170:2, 200:14</p> <p>apply [8] - 22:18, 43:19, 44:21, 46:4, 47:5, 52:18, 171:17, 199:24</p> <p>applying [1] - 76:12</p> <p>appoint [1] - 153:13</p> <p>appointed [18] - 58:15, 75:20, 117:24, 118:10, 118:13, 143:4, 143:5, 143:8, 161:20, 165:1, 165:3, 165:8, 166:19, 167:14, 167:16, 167:24, 195:25, 199:21</p> <p>appointing [2] - 124:14, 138:19</p> <p>Appointing [1] - 5:23</p> <p>appointment [2] - 58:14, 138:11</p> <p>appointments [1] -</p>
--	--	---	--	--

<p>161:23 appreciate [1] - 206:12 appreciated [2] - 8:6, 188:17 approach [13] - 45:24, 51:14, 51:17, 51:19, 65:22, 69:7, 69:11, 96:21, 123:25, 126:9, 127:21, 145:21, 146:3 approaches [1] - 24:21 approaching [1] - 109:18 appropriate [5] - 56:1, 61:3, 100:3, 158:24, 164:18 approval [2] - 93:15, 159:24 approve [6] - 80:8, 93:14, 105:3, 138:22, 160:6, 162:4 approved [7] - 22:22, 80:11, 94:12, 94:14, 161:13, 162:9, 178:20 approves [2] - 138:11, 138:25 April [4] - 39:24, 42:11, 43:12, 47:10 AR [1] - 34:20 arbitrarily [1] - 18:24 arbitrary [3] - 19:1, 39:15, 197:3 area [8] - 16:23, 17:24, 18:3, 20:23, 57:16, 81:17, 128:7, 183:10 areas [4] - 38:10, 39:8, 55:4, 74:23 argue [8] - 13:13, 23:19, 24:14, 29:1, 29:6, 33:17, 35:1, 48:15 argued [4] - 9:4, 32:16, 40:2, 167:7 argues [1] - 20:8 arguing [5] - 36:25, 39:8, 40:7, 40:11, 172:2 argument [22] - 7:8, 11:8, 12:10, 12:24, 23:24, 28:5, 36:22, 40:6, 43:17, 50:3, 55:20, 56:19, 56:20, 68:1, 108:2, 112:2, 144:3, 167:1, 188:24, 189:13, 189:21, 202:12 Argument [5] - 3:7,</p>	<p>3:8, 3:20, 3:21, 3:22 argumentative [1] - 171:14 arguments [14] - 7:5, 12:11, 12:12, 12:15, 36:10, 36:11, 43:25, 112:9, 114:12, 189:18, 190:8, 201:9, 201:10, 202:8 array [1] - 78:17 article [1] - 128:7 Article [9] - 16:22, 18:1, 18:4, 19:5, 19:10, 20:19, 22:20, 24:15, 38:7 articles [2] - 120:16, 132:24 AS [2] - 1:7, 1:10 aspects [3] - 77:10, 78:22, 79:23 asserting [2] - 16:21, 25:5 assessing [1] - 84:1 assessment [2] - 83:3, 110:10 Assessor [21] - 77:3, 77:8, 78:19, 78:20, 79:4, 79:9, 79:12, 79:14, 79:15, 79:17, 79:18, 84:12, 86:12, 96:24, 97:3, 102:23, 107:24, 126:25, 128:23, 155:5, 173:15 assessor [28] - 16:17, 77:16, 108:9, 108:13, 110:23, 122:24, 123:4, 125:9, 128:16, 131:11, 131:15, 131:20, 132:18, 133:4, 142:9, 144:23, 147:24, 148:7, 150:9, 150:20, 151:2, 152:11, 153:4, 154:5, 174:4, 174:17, 176:23, 184:7 assessor's [1] - 133:7 Assessor's [2] - 77:9, 123:13 assessor-collect's [1] - 150:20 assessor-collector [12] - 123:4, 128:16, 132:18, 142:9, 144:23, 147:24, 150:9, 151:2, 153:4, 154:5, 174:17,</p>	<p>176:23 Assessor-Collector [7] - 84:12, 86:12, 107:24, 126:25, 128:23, 155:5, 173:15 assessor-collector's [3] - 122:24, 131:15, 152:11 assessor-collectors [2] - 131:11, 131:20 assessors [1] - 133:5 Assessors's [1] - 77:11 assigned [1] - 161:1 assignment [1] - 183:4 Assistance [2] - 72:6, 72:20 assistance [3] - 158:17, 163:2, 163:22 assistant [4] - 65:21, 70:20, 71:3, 72:17 assistants [1] - 72:24 associated [3] - 122:1, 135:17, 159:20 Association [2] - 74:12, 87:10 assume [6] - 16:2, 18:6, 18:9, 24:22, 150:23, 152:13 assuming [2] - 172:20, 172:25 assure [2] - 164:11, 191:10 attempt [2] - 23:24, 24:2 attempted [3] - 66:21, 97:24, 182:6 attention [3] - 85:8, 86:21, 96:1 attorney [4] - 31:20, 63:23, 95:21, 104:23 ATTORNEY [4] - 1:6, 1:8, 2:8, 2:16 Attorney [39] - 1:14, 6:6, 6:7, 6:11, 28:20, 30:12, 31:2, 31:5, 31:22, 32:17, 35:10, 52:17, 58:13, 58:17, 59:14, 59:25, 61:22, 62:5, 62:6, 62:10, 63:24, 64:2, 94:3, 94:16, 95:14, 95:22, 98:1, 98:24, 108:2, 131:4, 155:8, 189:24, 190:17, 191:17, 192:2,</p>	<p>192:11, 192:12, 192:23, 205:9 attorney's [1] - 135:18 Attorney's [4] - 6:16, 6:20, 6:24, 7:3 attorney-client [1] - 31:20 attorneys [2] - 71:17, 158:16 audit [5] - 94:25, 95:3, 95:4, 169:14 audited [1] - 95:7 auditing [4] - 95:6, 95:10, 168:11, 180:17 auditor [2] - 39:4, 39:5 audits [2] - 94:19, 180:18 AUGUST [1] - 6:2 August [8] - 3:3, 81:17, 103:20, 107:23, 110:20, 118:10, 125:4, 207:19 Austin [11] - 1:24, 2:18, 20:24, 26:25, 27:2, 27:4, 27:5, 27:11, 54:13, 57:3, 207:24 authenticity [2] - 67:22, 98:10 author [1] - 37:20 authority [30] - 17:10, 20:10, 28:14, 28:15, 28:18, 29:13, 32:10, 32:14, 32:21, 32:25, 33:15, 33:18, 33:23, 34:12, 34:15, 35:15, 35:23, 39:5, 96:10, 153:25, 154:4, 163:19, 168:17, 168:18, 169:22, 170:10, 171:8, 172:18, 186:3, 187:11 authorize [1] - 156:19 authorized [5] - 152:1, 184:12, 184:16, 185:1, 187:1 authorizing [2] - 38:9, 52:12 award [1] - 110:9 aware [37] - 14:2, 14:12, 15:20, 15:24, 31:19, 94:15, 95:13, 95:16, 95:18, 95:19, 96:2, 97:5, 109:16, 115:13, 120:15, 120:21, 121:3, 121:4, 121:14,</p>	<p>121:17, 121:18, 121:19, 127:19, 128:9, 131:19, 132:1, 132:3, 132:4, 133:13, 133:14, 133:21, 140:13, 155:19, 155:23, 170:6, 181:4, 182:25</p>
B				
<p>bachelor's [1] - 70:10 backdrop [1] - 92:4 backed [1] - 27:2 background [1] - 13:14 backing [1] - 103:17 backup [1] - 200:21 backwards [2] - 103:11, 177:23 bad [3] - 45:9, 117:18, 174:23 balance [2] - 193:15, 197:10 balances [1] - 13:19 ball [1] - 38:3 ballot [27] - 14:13, 15:15, 15:16, 60:2, 79:14, 103:14, 103:15, 103:18, 103:19, 104:5, 104:11, 104:16, 105:25, 118:23, 119:2, 119:6, 119:15, 119:18, 119:21, 122:9, 122:10, 160:22, 175:22, 175:23, 182:20 ballots [9] - 14:15, 14:25, 91:4, 103:16, 103:24, 103:25, 133:3, 160:23, 182:14 ban [1] - 192:13 bar [1] - 18:5 barred [1] - 128:3 base [4] - 13:2, 57:14, 190:1, 194:9 based [13] - 34:3, 40:17, 112:15, 117:15, 121:12, 127:8, 130:1, 130:10, 136:6, 139:10, 172:19, 180:17, 184:17 bases [4] - 21:13, 26:14, 41:5, 199:11 basis [62] - 17:22, 18:5, 18:6, 18:11,</p>				

18:15, 18:19, 18:20, 18:25, 19:6, 19:11, 20:8, 21:7, 22:2, 22:9, 23:1, 23:20, 24:6, 24:8, 24:22, 24:23, 26:2, 26:17, 27:12, 28:3, 30:10, 31:3, 34:13, 37:23, 40:12, 40:13, 40:21, 43:17, 44:18, 53:2, 53:4, 54:22, 54:23, 54:25, 55:3, 55:6, 55:9, 56:12, 93:1, 127:10, 136:15, 139:24, 154:19, 155:10, 156:4, 156:16, 156:21, 165:15, 191:19, 197:21, 198:6, 198:7, 198:18, 199:17, 199:18, 200:19, 201:18

beach [1] - 22:10

beaches [1] - 22:10

bear [2] - 123:15, 195:8

bears [1] - 25:6

beautiful [1] - 22:10

became [2] - 72:1, 182:7

become [2] - 147:25, 177:6

becomes [3] - 93:11, 168:16, 178:22

becoming [1] - 132:7

began [2] - 81:22, 84:7

begin [6] - 7:14, 12:23, 75:7, 81:2, 81:20, 82:8

beginning [2] - 6:14, 17:25

begins [1] - 77:17

begun [1] - 83:14

behalf [24] - 7:6, 7:19, 8:7, 8:13, 8:16, 8:19, 36:21, 51:8, 51:22, 63:23, 64:8, 64:13, 146:19, 147:5, 149:9, 154:1, 157:25, 169:7, 181:1, 194:5, 197:23, 204:2, 206:10, 206:14

behind [2] - 18:19, 166:21

Bell [2] - 44:23, 135:1

belonging [1] - 191:7

Ben [1] - 8:18

BEN [1] - 2:15

bench [3] - 69:7, 69:11, 145:21

benefit [1] - 90:25

benefits [6] - 24:17, 37:17, 75:15, 129:15, 129:18, 129:21

best [1] - 158:20

Bettencourt [4] - 47:24, 61:18, 61:20, 88:4

Bettencourt's [1] - 87:21

better [6] - 13:11, 55:12, 71:14, 71:18, 178:2, 199:12

between [10] - 29:22, 46:23, 57:6, 102:23, 113:23, 121:23, 169:19, 187:9, 191:16, 201:15

Bexar [2] - 55:24, 198:19

beyond [5] - 78:8, 78:13, 78:18, 78:21, 183:11

bifurcated [1] - 108:6

big [13] - 15:23, 15:25, 19:7, 44:13, 55:25, 56:1, 85:14, 162:12, 166:6, 167:8, 167:10, 182:11, 200:14

bigger [2] - 55:21, 55:22

bill [25] - 88:8, 98:18, 99:14, 129:10, 130:24, 143:13, 143:19, 144:6, 147:16, 147:17, 167:2, 168:24, 169:2, 169:10, 169:20, 169:21, 170:4, 170:15, 171:15, 171:23, 179:20, 179:24, 179:25, 195:14, 195:15

Bill [20] - 5:24, 31:4, 37:21, 41:5, 41:12, 42:7, 42:15, 43:6, 47:6, 47:12, 62:8, 86:25, 96:7, 125:13, 128:11, 165:12, 168:15, 179:20, 180:16, 191:20

binding [2] - 31:21, 188:2

Birnberg [8] - 3:17, 7:20, 51:22, 63:11,

157:25, 178:24, 188:9, 188:10

BIRNBERG [29] - 2:21, 7:18, 7:20, 8:23, 10:8, 10:20, 63:11, 63:17, 66:10, 114:11, 114:20, 157:11, 157:15, 157:24, 158:3, 165:19, 165:25, 166:3, 166:23, 179:1, 179:3, 179:8, 179:11, 188:10, 189:8, 194:6, 204:23, 205:2, 206:11

Birnberg..... [1] - 3:21

birth [2] - 78:16, 79:22

bit [18] - 48:25, 70:8, 70:17, 71:1, 71:14, 71:21, 77:5, 81:23, 89:5, 92:4, 92:18, 93:25, 112:16, 121:19, 159:13, 160:16, 161:6, 180:2

biweekly [1] - 74:17

blah [3] - 57:15

block [1] - 88:3

blow [1] - 130:7

Board [7] - 19:23, 19:25, 71:23, 72:1, 72:5, 72:8, 72:10

board [6] - 23:4, 23:10, 55:15, 71:9, 71:12, 72:7

boards [3] - 71:7, 73:9, 105:3

Bobbitt [3] - 45:5, 45:8, 45:11

body [3] - 80:16, 80:17, 199:9

boil [1] - 28:12

bond [1] - 104:8

bonds [2] - 27:1, 27:2

bone [1] - 74:21

bootstrap [2] - 96:17, 96:19

born [1] - 39:24

borne [1] - 37:13

boss [1] - 163:8

boundaries [1] - 160:14

Box [6] - 2:17, 49:5, 49:8, 99:23, 99:24, 207:24

box [3] - 48:20, 50:17, 50:22

bracket [18] - 17:24, 19:21, 21:1, 42:17,

43:10, 44:3, 44:8, 44:10, 45:12, 45:13, 45:18, 46:2, 55:16, 55:20, 56:7, 56:20, 57:1, 57:8

brackets [19] - 17:2, 19:9, 19:14, 37:6, 37:7, 40:4, 40:5, 42:10, 43:4, 43:15, 45:25, 54:10, 54:11, 54:19, 55:11, 55:13, 56:5, 198:1, 198:5

bread [1] - 190:22

break [7] - 65:2, 65:4, 67:18, 114:7, 114:8, 157:13, 157:15

Break [1] - 65:7

breaks [1] - 50:24

Brief [2] - 64:3, 205:10

brief [22] - 10:11, 11:1, 26:13, 41:4, 51:9, 53:22, 53:25, 56:4, 116:2, 116:5, 140:24, 179:15, 183:24, 184:1, 189:13, 189:19, 193:15, 204:11, 204:13, 204:24, 205:19, 206:3

briefed [2] - 191:1, 195:1

briefing [10] - 10:4, 11:18, 12:17, 19:13, 35:1, 40:3, 203:1, 203:4, 204:22, 206:19

briefings [1] - 28:11

briefly [16] - 51:21, 54:4, 70:6, 70:24, 72:12, 80:2, 89:13, 93:7, 103:5, 107:12, 108:5, 111:21, 112:9, 112:23, 122:16, 189:21

briefs [1] - 112:5

bring [7] - 34:19, 69:9, 69:10, 109:2, 109:6, 141:15

broad [4] - 89:5, 153:21, 159:13, 183:1

broader [1] - 149:11

broadly [1] - 84:22

brought [5] - 34:25, 53:14, 81:14, 95:2, 95:25

bucket [3] - 29:16, 38:17, 58:7

buckets [1] - 58:6

budget [8] - 85:14,

85:16, 122:23, 123:3, 138:6, 138:7, 161:19, 178:7

budgets [2] - 159:24, 160:9

bulk [1] - 50:10

bumps [1] - 110:25

bunch [2] - 37:19, 122:7

burden [3] - 10:1, 25:6, 201:25

business [2] - 10:12, 78:15

businesses [1] - 140:9

busloads [1] - 196:6

butter [1] - 190:22

button [1] - 36:19

BY [31] - 69:25, 71:20, 88:15, 89:4, 100:22, 101:20, 101:25, 102:11, 115:4, 117:2, 124:4, 125:1, 126:7, 126:17, 127:11, 127:24, 131:25, 132:13, 136:15, 137:24, 141:5, 142:18, 144:22, 146:11, 147:12, 158:3, 166:3, 166:23, 179:3, 179:17, 184:3

C

calculation [3] - 42:18, 43:11, 114:15

Cameron [4] - 22:5, 24:9, 44:7, 45:3

candidate [1] - 33:13

candidates [2] - 15:18, 120:21

cannons [1] - 13:23

cannot [14] - 26:2, 31:2, 31:6, 46:11, 128:3, 136:8, 136:24, 156:3, 185:23, 185:24, 191:18, 191:20, 200:7, 205:17

canvas [4] - 93:13, 93:14, 186:24

canvassed [1] - 186:25

canvassing [1] - 93:9

capable [2] - 130:4

capacities [1] - 28:17

CAPACITY [2] - 1:7, 1:10

Capacity [2] - 6:7,

<p>6:10</p> <p>capacity [3] - 146:24, 153:9, 153:13</p> <p>Capitol [1] - 2:17</p> <p>care [1] - 65:3</p> <p>career [5] - 73:11, 73:21, 86:8, 129:24, 130:1</p> <p>carrying [1] - 82:19</p> <p>case [47] - 11:9, 17:11, 18:11, 19:16, 19:20, 19:23, 22:13, 23:3, 23:23, 26:3, 26:22, 27:10, 37:13, 37:23, 39:10, 40:8, 40:15, 41:8, 44:2, 44:3, 44:4, 44:7, 45:3, 45:5, 45:9, 45:11, 45:12, 45:13, 45:16, 45:17, 53:8, 54:11, 56:6, 56:23, 56:25, 57:9, 61:8, 66:7, 127:7, 190:13, 191:3, 194:14, 198:13, 199:10, 202:16</p> <p>cases [15] - 10:11, 21:3, 21:8, 34:20, 34:25, 38:13, 38:18, 39:2, 39:12, 40:1, 44:5, 45:5, 47:16, 54:15, 56:20</p> <p>categories [1] - 48:23</p> <p>category [1] - 92:22</p> <p>causation [1] - 34:17</p> <p>CAUSE [1] - 1:1</p> <p>causes [1] - 26:5</p> <p>causing [2] - 10:1, 141:20</p> <p>cease [1] - 76:25</p> <p>Cella [3] - 3:15, 3:18, 8:13</p> <p>CELLA [53] - 2:13, 8:12, 9:15, 68:15, 68:22, 69:2, 87:22, 88:17, 98:11, 98:15, 99:9, 101:3, 101:22, 102:7, 111:8, 111:11, 113:10, 113:13, 113:19, 114:1, 114:9, 114:25, 115:2, 115:4, 115:21, 116:13, 116:20, 117:1, 117:2, 123:15, 123:18, 126:4, 127:1, 131:22, 132:9, 136:11, 137:20, 141:2, 142:10,</p>	<p>143:16, 144:2, 144:14, 144:18, 144:22, 145:4, 157:5, 165:17, 166:16, 179:14, 179:17, 183:20, 188:15, 189:11</p> <p>centers [5] - 83:6, 83:7, 106:9, 107:2, 166:7</p> <p>central [2] - 83:11, 91:7</p> <p>certain [23] - 38:25, 45:18, 45:19, 45:21, 57:16, 57:18, 92:6, 93:2, 108:12, 119:19, 119:21, 133:19, 148:2, 148:14, 152:23, 160:3, 163:23, 163:24, 164:19, 168:8, 184:18, 187:14, 193:24</p> <p>certainly [14] - 14:23, 15:20, 36:18, 59:9, 59:20, 61:8, 61:11, 77:25, 144:8, 171:14, 193:13, 196:3, 205:5, 206:14</p> <p>CERTIFICATE [1] - 207:1</p> <p>Certificate..... [1] - 3:25</p> <p>certificates [2] - 78:16, 79:22</p> <p>certification [1] - 164:3</p> <p>Certification [1] - 148:24</p> <p>certified [2] - 134:12, 134:13</p> <p>certify [4] - 148:19, 164:6, 207:7, 207:14</p> <p>chain [3] - 14:15, 34:17, 158:21</p> <p>chair [8] - 69:16, 71:12, 72:1, 140:17, 145:13, 146:2, 159:6, 183:8</p> <p>chairs [4] - 14:6, 79:5, 160:5, 183:8</p> <p>challenge [1] - 120:22</p> <p>Challenge [1] - 204:11</p> <p>challenged [1] - 191:6</p> <p>challenges [7] - 14:4, 15:11, 19:8, 83:22, 83:24, 96:25, 118:9</p> <p>challenging [8] - 17:13, 19:8, 46:12, 63:14, 105:9,</p>	<p>189:23, 204:7, 204:8</p> <p>chamber [1] - 25:12</p> <p>chambers [3] - 25:14, 198:10, 207:13</p> <p>chance [2] - 113:17, 116:6</p> <p>change [17] - 44:19, 86:15, 86:16, 94:9, 95:5, 127:17, 139:1, 148:17, 151:6, 151:7, 151:17, 151:18, 151:21, 151:23, 166:11, 197:12</p> <p>changed [3] - 90:13, 140:19, 151:15</p> <p>changes [22] - 40:25, 45:1, 75:2, 84:5, 84:13, 84:19, 84:21, 89:21, 89:24, 89:25, 90:1, 90:16, 90:18, 90:21, 91:11, 91:12, 94:11, 105:7, 110:22, 121:7, 121:12, 121:23</p> <p>changing [4] - 45:1, 57:21, 108:4, 152:4</p> <p>Chapter [7] - 92:22, 150:10, 151:22, 153:5, 153:20, 154:7, 163:16</p> <p>chapter [1] - 150:12</p> <p>characteristic [1] - 42:2</p> <p>characteristics [2] - 40:17, 40:22</p> <p>characterization [1] - 168:22</p> <p>characterize [1] - 171:23</p> <p>charge [4] - 80:19, 166:8, 176:17, 195:18</p> <p>Charles [2] - 8:9, 61:24</p> <p>CHARLES [1] - 2:12</p> <p>chief [4] - 72:9, 163:11, 167:16, 195:23</p> <p>choose [1] - 79:23</p> <p>chooses [1] - 179:13</p> <p>choreography [1] - 12:9</p> <p>chose [1] - 41:16</p> <p>chosen [1] - 18:18</p> <p>Chris [1] - 175:12</p> <p>christian [1] - 36:14</p> <p>Christian [3] - 6:19, 36:21, 39:23</p> <p>CHRISTIAN [1] - 2:5</p>	<p>Christina [5] - 8:12, 145:17, 145:25, 146:15, 147:4</p> <p>CHRISTINA [3] - 2:13, 3:16, 146:8</p> <p>Cindy [1] - 140:17</p> <p>Circuit [1] - 34:21</p> <p>circulated [2] - 112:7</p> <p>circumstance [1] - 190:13</p> <p>cited [6] - 20:11, 40:15, 44:5, 45:11, 58:10, 192:10</p> <p>cities [4] - 23:5, 24:2, 56:7, 104:14</p> <p>city [3] - 20:8, 20:9, 38:15</p> <p>City [8] - 26:25, 27:2, 27:4, 55:17, 104:8, 104:11, 106:12, 166:5</p> <p>city's [1] - 23:24</p> <p>Civil [1] - 59:13</p> <p>civil [3] - 31:6, 133:19, 191:21</p> <p>claim [9] - 12:6, 17:5, 17:6, 17:19, 19:5, 27:25, 36:2, 61:13, 66:19</p> <p>Claimant [1] - 1:13</p> <p>claimant [1] - 7:19</p> <p>claimed [1] - 53:15</p> <p>claiming [1] - 33:8</p> <p>claims [6] - 17:12, 17:15, 150:19, 150:22, 180:23, 204:4</p> <p>clarification [1] - 186:1</p> <p>clarify [1] - 76:19</p> <p>class [4] - 21:9, 39:16, 40:18, 54:16</p> <p>classification [26] - 16:24, 17:23, 18:2, 19:4, 19:25, 21:25, 22:7, 23:12, 24:8, 37:9, 39:15, 39:25, 40:14, 40:16, 40:22, 41:7, 41:11, 41:12, 41:15, 41:16, 41:21, 42:3, 46:20, 53:5, 56:22, 56:24</p> <p>classifications [1] - 26:9</p> <p>classificatory [2] - 195:6, 197:2</p> <p>classified [1] - 22:7</p> <p>clean [1] - 76:2</p> <p>clear [22] - 30:5, 33:2, 35:4, 36:24, 37:21,</p>	<p>37:23, 39:7, 39:10, 39:12, 40:8, 44:1, 46:3, 47:1, 47:2, 52:15, 80:3, 100:10, 143:24, 190:5, 192:15, 193:7, 203:11</p> <p>clearer [1] - 35:4</p> <p>clearinghouse [1] - 72:21</p> <p>clearly [11] - 21:20, 23:12, 24:1, 53:8, 96:17, 100:4, 115:19, 192:23, 194:25, 197:17, 200:14</p> <p>clerk [18] - 16:17, 78:12, 108:9, 108:13, 112:17, 125:8, 128:16, 136:17, 137:18, 142:9, 144:23, 148:8, 175:10, 176:16, 176:23, 184:5, 184:21</p> <p>Clerk [26] - 60:1, 77:2, 78:15, 79:3, 79:9, 79:12, 79:14, 79:15, 79:21, 84:12, 86:12, 95:19, 96:24, 97:2, 102:24, 107:24, 109:23, 123:12, 126:24, 128:23, 148:3, 148:13, 148:19, 174:25</p> <p>clerk's [1] - 110:23</p> <p>Clerk's [4] - 122:24, 123:4, 133:1, 155:4</p> <p>clerks [3] - 83:10, 107:5, 131:10</p> <p>client [1] - 31:20</p> <p>Cliff [1] - 157:25</p> <p>clifford [3] - 69:5, 70:2, 185:1</p> <p>Clifford [14] - 5:22, 6:10, 7:20, 8:24, 51:23, 64:4, 116:8, 178:4, 184:11, 185:6, 187:11, 202:24, 203:17, 205:10</p> <p>CLIFFORD [3] - 1:12, 3:14, 69:22</p> <p>close [4] - 10:12, 41:18, 95:2, 113:20</p> <p>closed [21] - 15:18, 19:13, 21:1, 21:10, 37:7, 40:5, 43:3, 43:10, 44:3, 44:7, 46:2, 46:4, 54:11,</p>
--	--	--	---	---

<p>54:16, 54:19, 56:20, 56:21, 57:7, 57:8, 119:25, 120:4</p> <p>Closing [3] - 3:20, 3:21, 3:22</p> <p>closing [6] - 14:20, 95:4, 114:12, 114:18, 114:20</p> <p>co [1] - 111:22</p> <p>co-counsel [1] - 111:22</p> <p>code [2] - 98:17, 184:9</p> <p>Code [29] - 71:5, 71:10, 89:19, 89:20, 90:1, 95:11, 97:25, 100:16, 102:4, 139:9, 148:15, 148:18, 152:2, 154:11, 154:17, 160:21, 162:21, 163:16, 163:17, 164:5, 174:7, 174:11, 184:4, 185:12, 188:4, 192:4, 192:7, 192:19, 193:9</p> <p>codes [1] - 186:10</p> <p>coincide [1] - 154:21</p> <p>colleague [1] - 48:15</p> <p>collect's [1] - 150:20</p> <p>collecting [4] - 72:21, 77:16, 78:21, 168:10</p> <p>collection [1] - 79:17</p> <p>collective [1] - 25:13</p> <p>collectively [2] - 53:21, 113:9</p> <p>Collector [8] - 78:19, 84:12, 86:12, 107:24, 126:25, 128:23, 155:5, 173:15</p> <p>collector [15] - 16:17, 123:4, 125:9, 128:16, 132:18, 142:9, 144:23, 147:24, 148:8, 150:9, 151:2, 153:4, 154:5, 174:17, 176:23</p> <p>collector's [3] - 122:24, 131:15, 152:11</p> <p>Collector's [1] - 78:23</p> <p>collectors [2] - 131:11, 131:20</p> <p>College [1] - 70:11</p> <p>Colmenero [2] - 6:7, 28:16</p> <p>COLMENERO [1] - 1:7</p> <p>color [1] - 38:2</p>	<p>combined [3] - 71:6, 76:5, 147:6</p> <p>comfort [4] - 65:4, 157:13, 157:15, 193:8</p> <p>comfortable [1] - 69:17</p> <p>coming [6] - 75:10, 76:1, 85:7, 107:12, 110:16, 155:3</p> <p>comment [1] - 177:1</p> <p>commission [5] - 72:24, 134:13, 138:10, 138:24, 179:5</p> <p>Commission [11] - 20:25, 54:14, 72:6, 72:20, 75:20, 79:2, 80:2, 80:5, 80:7, 80:11, 178:12</p> <p>commission's [1] - 80:11</p> <p>Commissioner [4] - 186:4, 186:7, 186:13, 187:9</p> <p>commissioner [3] - 109:21, 153:2, 178:16</p> <p>commissioner's [2] - 161:13, 161:18</p> <p>Commissioner's [5] - 35:12, 80:10, 80:13, 109:17, 135:13</p> <p>Commissioners [8] - 15:9, 15:12, 33:4, 58:15, 80:14, 80:15, 80:20, 162:14</p> <p>commissioners [12] - 72:23, 72:25, 93:13, 138:7, 138:24, 161:8, 161:11, 162:10, 178:6, 178:20, 179:6, 186:25</p> <p>commissions [1] - 138:13</p> <p>commit [17] - 31:2, 31:6, 32:1, 148:23, 149:5, 149:6, 149:20, 151:11, 153:17, 155:2, 155:7, 156:3, 185:22, 185:23, 185:24, 191:18, 191:20</p> <p>committed [2] - 31:15, 201:13</p> <p>committee [1] - 74:16</p> <p>communicated [1] - 183:5</p>	<p>communicating [1] - 88:8</p> <p>communications [5] - 75:18, 87:6, 87:13, 88:7, 132:22</p> <p>competent [2] - 130:5</p> <p>competing [7] - 150:19, 154:9, 155:3, 155:13, 180:23, 186:20</p> <p>complaint [5] - 33:24, 34:4, 168:16, 180:4, 180:14</p> <p>complaints [4] - 155:20, 156:7, 179:25, 180:5</p> <p>complete [3] - 97:16, 102:15, 182:9</p> <p>completed [3] - 14:18, 103:19, 170:12</p> <p>completely [4] - 33:20, 35:3, 102:15, 200:3</p> <p>completing [1] - 152:17</p> <p>compliance [4] - 58:23, 71:25, 95:10, 169:11</p> <p>compliant [3] - 162:6, 169:5, 183:9</p> <p>comply [4] - 29:4, 29:6, 29:8, 29:13</p> <p>comprising [1] - 154:7</p> <p>component [1] - 186:22</p> <p>comprehensive [1] - 164:10</p> <p>compromise [2] - 13:24, 198:11</p> <p>compromises [1] - 13:20</p> <p>computer [1] - 154:12</p> <p>concept [2] - 45:1, 57:20</p> <p>concern [7] - 10:6, 14:4, 55:22, 104:25, 107:19, 108:14, 183:2</p> <p>concerned [11] - 76:8, 102:14, 102:16, 102:18, 107:15, 107:21, 109:25, 111:2, 111:4, 153:22, 200:10</p> <p>concerns [3] - 14:5, 14:6, 200:17</p> <p>conclude [2] - 36:11, 200:6</p> <p>concluded [1] - 206:21</p>	<p>conclusion [7] - 126:5, 127:2, 136:12, 142:11, 166:17, 169:14, 201:24</p> <p>conditions [1] - 196:2</p> <p>conduct [7] - 38:12, 38:20, 110:10, 180:19, 187:21, 190:3</p> <p>conducted [4] - 73:20, 122:15, 139:2, 186:19</p> <p>conducting [9] - 38:21, 52:13, 75:21, 77:9, 85:1, 92:25, 105:6, 168:14, 186:21</p> <p>conducts [2] - 93:3, 93:13</p> <p>confer [3] - 9:13, 111:21, 113:13</p> <p>confirm [1] - 74:5</p> <p>confirms [1] - 168:20</p> <p>conflict [2] - 35:6, 188:4</p> <p>conflicting [2] - 23:7, 185:13</p> <p>conform [1] - 156:11</p> <p>confused [2] - 151:19, 152:20</p> <p>confusing [1] - 57:10</p> <p>confusion [1] - 110:1</p> <p>Congress [1] - 2:8</p> <p>conjunction [2] - 139:25, 161:24</p> <p>connect [2] - 96:16, 192:21</p> <p>connection [1] - 35:22</p> <p>cons [1] - 13:16</p> <p>consent [3] - 50:23, 51:2, 133:17</p> <p>consequences [2] - 110:19, 194:17</p> <p>consider [9] - 25:9, 59:21, 61:9, 68:20, 88:22, 144:8, 148:13, 150:7, 201:8</p> <p>considered [4] - 19:15, 66:12, 156:25, 205:23</p> <p>considering [8] - 12:18, 14:17, 24:6, 66:9, 74:24, 112:14, 186:16, 201:7</p> <p>consists [2] - 79:3, 158:10</p> <p>constituent [1] - 23:9</p> <p>constituents [1] - 15:3</p> <p>Constitution [10] -</p>	<p>16:22, 22:21, 37:2, 38:7, 46:5, 52:7, 52:19, 53:9, 53:12, 194:24</p> <p>constitution [2] - 39:25, 52:11</p> <p>constitutional [33] - 12:8, 17:5, 17:14, 17:20, 17:25, 18:16, 18:20, 21:2, 21:4, 21:11, 24:24, 24:25, 25:2, 26:21, 27:25, 28:2, 36:2, 39:17, 44:4, 52:9, 54:17, 54:20, 55:10, 77:5, 104:6, 104:7, 190:25, 191:6, 191:8, 194:11, 197:9, 199:16, 200:8</p> <p>constitutionality [4] - 17:21, 24:7, 129:10, 199:3</p> <p>construction [1] - 13:23</p> <p>consultant [2] - 71:24, 71:25</p> <p>consultants [1] - 108:21</p> <p>contains [1] - 207:8</p> <p>content [1] - 90:17</p> <p>contention [1] - 47:3</p> <p>contest [4] - 15:19, 90:23, 97:15, 133:3</p> <p>contests [6] - 15:19, 104:12, 104:16, 105:4, 105:24, 120:22</p> <p>context [4] - 22:3, 24:18, 30:9, 68:6</p> <p>contingent [1] - 12:21</p> <p>continue [7] - 100:24, 128:6, 149:21, 150:1, 151:2, 152:7, 196:15</p> <p>continues [5] - 31:9, 185:20, 190:19, 191:23, 192:5</p> <p>continuing [1] - 151:5</p> <p>continuous [1] - 85:21</p> <p>continuously [1] - 85:22</p> <p>contract [4] - 104:15, 105:8, 105:10</p> <p>contracting [1] - 104:17</p> <p>contractor [2] - 110:8, 110:10</p> <p>contracts [2] - 105:1, 193:19</p> <p>contradicts [1] -</p>
---	---	--	---	--

<p>192:10 contrary [1] - 26:21 contrast [1] - 14:20 control [17] - 29:19, 36:19, 138:5, 138:7, 142:6, 142:8, 142:20, 143:7, 161:6, 161:17, 161:18, 161:19, 161:20, 168:19, 168:25, 172:4 controls [4] - 92:12, 93:4, 138:6, 138:8 controversial [2] - 120:8, 120:12 controversy [2] - 191:10, 191:11 conversation [1] - 43:24 conversely [1] - 79:20 convert [2] - 26:2, 28:25 conviction [1] - 131:17 Cooley [1] - 70:12 coordinate [1] - 168:7 copied [1] - 67:3 copies [2] - 64:20, 99:15 copy [14] - 62:21, 63:19, 64:10, 65:11, 65:12, 65:19, 66:3, 66:9, 67:3, 67:4, 67:9, 67:15, 124:10, 124:16 correct [113] - 30:23, 34:2, 62:2, 73:4, 74:2, 74:6, 75:5, 81:13, 83:15, 83:16, 83:20, 85:19, 91:14, 93:6, 95:12, 98:12, 104:3, 104:4, 104:18, 104:19, 106:22, 109:11, 115:11, 118:1, 118:11, 118:12, 122:19, 124:10, 124:16, 125:5, 129:7, 129:10, 129:11, 131:2, 131:6, 133:3, 133:24, 133:25, 134:1, 135:10, 135:11, 135:25, 136:4, 137:10, 137:13, 139:3, 139:17, 139:18, 139:21, 141:18, 141:24, 141:25, 142:3, 142:9,</p>	<p>142:17, 142:22, 143:9, 144:24, 144:25, 145:2, 147:20, 147:23, 147:25, 148:1, 148:4, 148:5, 148:11, 148:20, 148:21, 149:16, 149:17, 150:14, 150:15, 155:21, 155:22, 156:1, 156:18, 158:6, 158:7, 159:22, 159:25, 160:1, 160:7, 160:24, 161:22, 163:9, 163:13, 164:9, 165:3, 165:9, 165:10, 168:12, 168:23, 170:19, 170:20, 173:24, 173:25, 174:13, 174:20, 176:18, 177:9, 177:14, 178:10, 178:12, 178:21, 179:7, 179:8, 184:14, 185:2, 186:10, 199:2, 199:9, 207:8 correctly [3] - 141:13, 202:19, 207:15 corresponded [1] - 159:7 cost [4] - 29:15, 97:6, 97:9, 190:21 costly [3] - 108:18, 110:7, 130:25 costs [2] - 109:7, 110:4 coulda [1] - 198:2 counsel [9] - 45:6, 46:16, 62:3, 63:10, 72:7, 72:13, 72:16, 111:22, 207:10 count [4] - 14:18, 103:11, 103:22, 182:4 counted [2] - 15:1, 198:16 counterclaim [1] - 65:23 counties [56] - 16:4, 16:9, 16:12, 19:14, 35:5, 38:16, 39:4, 42:5, 42:8, 42:12, 42:23, 42:24, 43:6, 43:7, 43:19, 47:7, 48:8, 52:13, 53:1, 55:21, 55:25, 56:3, 71:6, 92:6, 92:7,</p>	<p>92:8, 125:7, 125:11, 125:14, 125:18, 125:21, 134:2, 134:19, 134:25, 141:23, 143:22, 158:14, 158:17, 158:24, 159:11, 159:16, 159:19, 162:16, 164:7, 168:2, 168:14, 168:20, 196:13, 198:22, 199:25, 200:11, 200:14, 200:16, 200:20 counting [1] - 76:3 country [7] - 73:6, 73:17, 73:19, 117:3, 117:6, 129:23, 130:1 countrywide [1] - 73:3 counts [1] - 14:16 County [226] - 1:24, 6:5, 6:16, 6:17, 6:20, 6:24, 7:3, 7:6, 15:3, 15:21, 15:24, 16:4, 16:6, 16:14, 16:20, 16:25, 17:4, 19:2, 19:7, 19:12, 19:24, 20:1, 20:7, 21:25, 22:1, 22:5, 24:9, 24:10, 24:13, 26:18, 27:10, 27:11, 27:18, 27:23, 28:5, 28:6, 29:2, 30:1, 30:11, 31:3, 31:4, 31:7, 31:8, 32:8, 33:4, 33:17, 34:24, 34:25, 35:10, 35:12, 35:21, 35:24, 35:25, 36:21, 37:22, 39:4, 39:19, 39:21, 40:25, 41:10, 41:17, 42:13, 42:15, 42:16, 43:13, 43:14, 44:7, 44:22, 44:23, 45:3, 47:10, 47:13, 50:20, 53:17, 55:23, 55:24, 55:25, 56:2, 58:6, 58:15, 59:10, 59:14, 60:1, 60:3, 60:5, 62:3, 67:18, 69:4, 70:5, 72:11, 74:3, 74:5, 77:1, 78:15, 79:3, 79:4, 80:14, 80:15, 80:16, 80:17, 80:21, 81:14, 81:21, 82:12, 84:12, 84:23, 86:3, 86:10, 86:12, 92:20, 94:23, 95:6, 95:19, 96:11, 105:10, 107:23, 115:10, 115:13,</p>	<p>115:17, 116:22, 117:2, 117:8, 117:12, 117:18, 122:19, 124:15, 125:16, 125:17, 125:24, 126:1, 126:24, 128:23, 129:2, 131:5, 131:9, 132:23, 133:11, 133:18, 134:6, 134:8, 135:1, 135:8, 135:13, 137:6, 141:10, 141:21, 142:1, 142:20, 147:21, 148:3, 148:6, 148:13, 148:19, 148:23, 149:3, 149:6, 149:21, 150:8, 150:18, 151:8, 151:20, 153:12, 153:18, 154:25, 155:4, 155:11, 155:21, 155:25, 156:17, 159:6, 166:5, 167:7, 167:13, 167:25, 170:7, 170:8, 170:19, 171:9, 171:19, 173:15, 174:18, 174:25, 175:11, 175:14, 175:24, 176:13, 184:10, 184:13, 186:3, 186:5, 187:24, 189:17, 191:19, 191:23, 192:3, 192:5, 192:9, 192:11, 192:18, 193:8, 195:12, 196:16, 197:7, 197:19, 198:13, 198:25, 199:22, 200:1, 200:17, 201:4, 201:21, 201:25, 202:4, 202:7, 202:10, 203:22, 207:6, 207:23 county [154] - 15:9, 15:21, 15:23, 16:15, 16:17, 18:13, 19:7, 19:21, 27:18, 29:14, 29:15, 29:18, 29:19, 29:20, 33:25, 37:11, 38:14, 39:4, 39:5, 39:23, 41:1, 41:9, 41:23, 41:24, 42:17, 43:1, 43:2, 44:12, 44:14, 44:15, 44:17, 45:18, 46:10, 46:21,</p>	<p>47:13, 47:17, 47:19, 48:12, 52:24, 55:23, 59:3, 59:20, 73:8, 78:12, 91:4, 91:6, 93:13, 97:6, 97:9, 103:5, 104:22, 105:19, 105:21, 108:5, 108:19, 110:12, 110:17, 111:2, 115:19, 117:6, 117:15, 121:6, 123:7, 125:7, 126:2, 126:17, 126:22, 128:13, 128:14, 128:16, 129:5, 129:6, 131:10, 134:11, 134:15, 135:1, 135:17, 136:7, 136:9, 136:16, 136:17, 136:18, 136:23, 136:25, 137:18, 138:7, 138:24, 139:20, 140:17, 141:14, 142:7, 142:9, 142:25, 145:17, 148:8, 148:19, 149:1, 149:9, 149:25, 150:3, 152:15, 153:1, 153:2, 154:1, 154:3, 155:16, 158:19, 159:20, 161:8, 161:12, 163:24, 164:20, 167:8, 168:4, 169:1, 169:4, 169:9, 169:15, 170:2, 175:10, 176:16, 176:23, 178:6, 180:3, 180:9, 180:12, 180:20, 181:1, 181:24, 182:5, 182:6, 182:16, 183:9, 184:5, 184:6, 184:8, 184:21, 186:21, 186:23, 187:3, 187:20, 190:21, 191:21, 192:22, 193:17, 193:19, 194:8, 199:21 COUNTY [5] - 1:3, 1:10, 2:3, 2:8, 207:4 County's [17] - 14:3, 14:18, 17:17, 20:15, 21:21, 63:2, 87:11, 117:24, 149:4, 156:21, 181:5, 190:15, 198:18, 198:20, 198:21,</p>
---	--	--	--	--

<p>198:23 county's [6] - 116:15, 142:6, 160:2, 187:1, 189:23, 193:24 countywide [9] - 104:8, 105:14, 106:8, 106:13, 139:3, 139:5, 139:12, 139:17 couple [7] - 45:20, 51:11, 52:3, 58:20, 63:21, 141:6, 199:19 course [8] - 18:18, 68:2, 84:4, 86:8, 102:16, 102:18, 108:10, 113:18 Court [132] - 3:25, 8:24, 10:1, 10:4, 10:12, 10:14, 10:18, 10:22, 12:15, 13:20, 15:9, 15:12, 17:11, 19:17, 20:6, 20:14, 20:17, 20:21, 20:24, 21:2, 21:5, 21:8, 22:3, 22:6, 22:8, 22:13, 23:14, 23:23, 24:9, 25:3, 25:8, 25:10, 25:15, 25:25, 27:11, 27:16, 30:21, 33:4, 35:12, 36:3, 38:2, 40:9, 40:14, 40:16, 42:2, 42:22, 45:11, 45:14, 48:13, 49:17, 51:18, 52:8, 52:18, 53:11, 54:13, 56:22, 56:23, 57:2, 58:15, 59:16, 61:9, 67:2, 68:8, 68:19, 70:7, 71:1, 71:20, 76:19, 80:12, 80:13, 80:14, 80:15, 80:20, 88:22, 89:14, 90:7, 92:18, 93:7, 100:1, 100:2, 101:16, 109:17, 112:7, 112:19, 113:3, 113:5, 113:6, 114:11, 114:13, 124:7, 124:12, 129:20, 133:17, 135:13, 139:8, 144:3, 144:5, 144:8, 147:3, 162:14, 179:8, 181:17, 191:2, 191:3, 191:4, 191:15, 192:1, 194:2, 194:3, 194:15, 194:21, 195:5, 196:25, 197:6, 197:8,</p>	<p>197:11, 197:18, 201:7, 202:17, 202:20, 203:1, 203:2, 205:21, 205:22, 206:3, 206:18, 207:5, 207:6, 207:22, 207:23 court [18] - 7:15, 22:25, 33:14, 49:12, 51:4, 128:16, 130:17, 138:10, 138:13, 138:25, 157:14, 161:14, 161:18, 178:17, 179:6, 186:25, 194:10, 207:13 COURT [202] - 1:1, 1:3, 6:4, 6:18, 6:22, 7:1, 7:4, 7:12, 7:24, 8:11, 8:14, 8:17, 8:20, 9:1, 9:3, 9:18, 10:16, 10:24, 11:4, 11:11, 11:21, 12:14, 13:1, 13:4, 30:17, 30:20, 30:25, 32:2, 32:6, 32:13, 32:16, 32:24, 33:5, 33:10, 36:5, 36:13, 36:18, 48:16, 49:2, 49:5, 49:7, 49:10, 49:12, 49:23, 50:8, 50:10, 51:13, 51:16, 51:19, 53:19, 53:25, 56:14, 56:18, 57:8, 57:22, 60:7, 60:10, 60:19, 61:14, 61:25, 62:11, 62:15, 63:1, 63:7, 63:16, 63:21, 64:10, 64:17, 65:1, 65:8, 65:13, 65:17, 65:20, 66:8, 66:14, 66:25, 67:8, 67:14, 67:16, 68:5, 68:13, 68:17, 68:25, 69:6, 69:10, 69:14, 69:21, 71:13, 71:16, 87:24, 88:9, 88:13, 88:19, 88:24, 89:3, 98:3, 98:9, 98:13, 99:2, 99:8, 99:15, 99:21, 99:25, 100:12, 100:17, 101:6, 101:14, 101:24, 102:9, 111:7, 111:10, 111:13, 111:23, 112:11, 113:2, 113:7, 113:11, 113:14, 113:18, 113:25, 114:2, 114:16, 114:21,</p>	<p>115:1, 115:24, 116:7, 116:10, 116:16, 116:21, 123:17, 123:20, 123:24, 124:2, 124:20, 124:23, 126:6, 126:10, 126:14, 127:8, 127:23, 131:24, 132:11, 136:13, 137:22, 141:4, 142:14, 143:14, 143:18, 144:1, 144:5, 144:12, 144:16, 144:20, 145:5, 145:11, 145:15, 145:19, 145:24, 146:1, 146:4, 146:7, 147:2, 147:11, 157:3, 157:8, 157:12, 157:16, 157:23, 165:23, 166:2, 166:18, 178:24, 179:10, 179:12, 183:22, 184:1, 188:8, 188:14, 188:16, 188:22, 189:4, 189:7, 189:9, 189:12, 194:3, 197:22, 202:3, 202:18, 203:9, 203:11, 203:23, 204:2, 204:9, 204:16, 204:20, 205:1, 205:7, 205:17, 206:1, 206:8, 206:14, 206:17 Court's [20] - 3:23, 12:22, 13:6, 49:25, 50:18, 63:25, 64:11, 64:18, 65:4, 65:5, 67:1, 90:25, 112:16, 157:17, 157:21, 189:1, 190:10, 195:2, 197:16, 206:12 courtroom [3] - 8:4, 46:16, 145:19 Courts [4] - 39:14, 45:7, 45:24, 50:20 courts [6] - 21:12, 22:22, 38:9, 41:19, 54:9, 55:8 covering [1] - 45:21 COVID [2] - 60:5, 176:2 create [5] - 46:11, 76:16, 81:7, 85:24,</p>	<p>103:18 created [11] - 23:4, 27:6, 35:13, 72:6, 80:23, 90:15, 95:6, 95:20, 122:19, 122:22, 150:25 creates [1] - 46:19 creating [4] - 16:10, 94:9, 133:2, 142:21 creation [1] - 163:20 credibility [2] - 115:22, 116:14 criminal [2] - 131:17, 133:6 criteria [2] - 195:6, 197:2 critical [2] - 17:3, 141:7 Cross [1] - 3:13 cross [11] - 7:19, 65:23, 65:24, 111:7, 112:24, 113:17, 113:25, 144:13, 157:8, 205:2 CROSS [3] - 115:3, 146:10, 158:2 cross-action [2] - 65:24, 205:2 cross-claimant [1] - 7:19 cross-counterclaim [1] - 65:23 cross-examination [3] - 111:7, 112:24, 157:8 CROSS-EXAMINATION [3] - 115:3, 146:10, 158:2 cross-examine [1] - 113:17 Crump [1] - 1:23 CSR [1] - 207:21 current [8] - 59:19, 70:22, 123:3, 123:12, 135:7, 136:1, 146:17, 181:6 custody [2] - 14:15, 158:21 cut [1] - 92:15 cutting [1] - 154:2 CV [3] - 5:22, 124:9, 124:10 cycle [9] - 19:9, 73:14, 81:9, 85:8, 103:1, 104:1, 120:9, 120:13</p>	<p>D.C [7] - 71:21, 71:22, 72:1, 72:5, 72:8, 72:10, 72:14 Dallas [13] - 23:3, 23:15, 47:10, 47:12, 55:24, 56:6, 134:6, 134:8, 196:7, 196:8, 196:10, 198:19, 200:1 data [16] - 72:22, 76:1, 85:5, 92:9, 92:11, 93:14, 149:10, 155:3, 155:14, 155:15, 158:15, 168:8, 184:23, 184:24, 185:14 data's [1] - 149:8 database [1] - 91:18 Date [1] - 207:22 date [18] - 11:2, 11:16, 42:20, 43:8, 43:9, 47:9, 52:25, 57:18, 70:23, 101:13, 103:8, 128:1, 128:3, 128:5, 174:24, 177:22, 196:20, 196:22 dated [1] - 137:18 Davis [1] - 18:22 day-to-day [3] - 168:13, 169:8, 183:12 days [6] - 10:17, 10:21, 77:13, 96:23, 103:14, 110:21 days' [1] - 9:9 dead [1] - 103:9 deadline [1] - 103:15 deadlines [1] - 103:9 deal [3] - 57:15, 62:18, 176:20 dealing [5] - 35:1, 38:20, 42:5, 43:5, 47:7 deals [3] - 22:1, 45:13, 154:12 dealt [2] - 44:5, 159:5 debt [1] - 27:5 dec [1] - 46:13 December [4] - 34:7, 59:5, 173:8, 174:2 decentralized [2] - 159:17, 168:1 decide [4] - 144:3, 162:1, 197:8, 199:6 decided [4] - 35:7, 130:9, 190:12, 199:9 decides [1] - 151:9 decision [11] - 28:10, 30:8, 34:21, 80:9,</p>
D				
D-1-GN-23-003523 [1] - 1:1				

<p>80:11, 107:2, 111:18, 136:16, 162:4, 190:4, 190:10</p> <p>decisionmaking [1] - 169:1</p> <p>decisions [2] - 34:18, 48:3, 82:18, 82:19, 82:20, 93:18, 96:2, 106:19, 106:24, 107:9, 109:15, 112:20, 113:5, 130:1, 161:7, 161:10, 162:12, 167:18, 167:19, 169:6, 202:21</p> <p>declaratory [3] - 17:12, 190:8, 196:25</p> <p>declared [1] - 130:18</p> <p>declares [1] - 25:22</p> <p>declaring [2] - 21:9, 54:15</p> <p>declined [2] - 25:9, 27:12</p> <p>deduce [1] - 38:4</p> <p>deeds [1] - 78:16</p> <p>DEFENDANT [1] - 2:11</p> <p>defendant [3] - 10:22, 28:8, 30:6</p> <p>Defendant [1] - 1:3</p> <p>Defendant's [4] - 66:2, 190:3, 202:24, 203:15</p> <p>Defendant/ Intervenor [1] - 1:15</p> <p>Defendants [1] - 60:11</p> <p>defendants [2] - 1:11, 8:7, 8:13, 8:16, 8:19, 28:6, 36:3, 53:21, 53:22, 113:8, 115:14, 157:7, 189:10, 189:12, 189:22, 192:21, 197:23, 201:8, 203:6, 204:2, 206:15</p> <p>Defendants' [1] - 11:17</p> <p>defending [1] - 97:10</p> <p>deference [1] - 13:24</p> <p>define [1] - 103:18</p> <p>defined [2] - 164:4, 180:12</p> <p>defines [1] - 184:18</p> <p>defunct [2] - 185:7, 185:21</p> <p>degree [3] - 70:10, 70:12, 200:12</p> <p>degrees [1] - 70:14</p> <p>delay [1] - 78:3</p>	<p>delayed [2] - 81:6, 198:15</p> <p>delays [2] - 110:19, 182:4</p> <p>demand [1] - 22:16</p> <p>Democratic [2] - 159:6, 183:8</p> <p>demonstrate [2] - 61:20, 61:21</p> <p>demonstrates [1] - 192:20</p> <p>denial [1] - 12:22</p> <p>department [1] - 85:4</p> <p>departments [1] - 44:13</p> <p>deploy [1] - 71:24</p> <p>deployed [3] - 83:6, 83:7, 90:23</p> <p>deploying [2] - 75:12, 133:2</p> <p>DeSantis [1] - 196:6</p> <p>describe [1] - 106:14</p> <p>described [2] - 92:5, 137:8</p> <p>DESCRIPTION [1] - 68:9</p> <p>DESCRIPTION [3] - 4:4, 5:1, 5:21</p> <p>design [1] - 103:18</p> <p>designate [4] - 149:22, 153:7, 153:8, 153:19</p> <p>designated [3] - 44:17, 151:8, 152:24</p> <p>designation [3] - 151:15, 151:21, 152:4</p> <p>desire [1] - 61:23</p> <p>desk [3] - 8:3, 65:8, 65:14</p> <p>despite [4] - 15:11, 185:5, 185:21, 187:10</p> <p>destroying [1] - 131:16</p> <p>detail [3] - 26:15, 76:18, 77:21</p> <p>detailed [1] - 21:3</p> <p>details [1] - 163:17</p> <p>determination [1] - 194:11</p> <p>determine [7] - 26:7, 34:14, 55:5, 152:15, 169:14, 180:9, 199:16</p> <p>determined [7] - 21:6, 54:10, 59:20, 105:18, 105:20, 129:10, 162:24</p> <p>determining [5] - 21:18, 53:5, 61:10,</p>	<p>83:10, 199:3</p> <p>develop [2] - 22:9, 86:5</p> <p>developed [2] - 86:8, 108:10</p> <p>developer [2] - 57:13, 57:18</p> <p>development [3] - 22:8, 26:24, 27:1</p> <p>devices [1] - 8:5</p> <p>devoted [1] - 160:11</p> <p>DFW [3] - 23:2, 23:4, 23:23</p> <p>dictated [1] - 174:10</p> <p>differ [2] - 72:13, 199:1</p> <p>difference [5] - 18:24, 139:7, 187:9, 187:12, 187:13</p> <p>different [30] - 13:19, 22:11, 26:14, 26:23, 29:3, 29:14, 33:20, 35:2, 35:3, 38:23, 41:1, 44:23, 45:2, 57:20, 59:1, 73:9, 78:17, 84:15, 130:16, 143:8, 152:21, 154:8, 155:14, 158:10, 158:24, 198:1, 198:19, 199:7, 201:8, 201:10</p> <p>differently [5] - 22:12, 38:22, 45:8, 56:2, 84:3</p> <p>differing [1] - 182:18</p> <p>difficult [7] - 9:21, 27:20, 29:17, 34:16, 109:12, 130:25, 139:24</p> <p>difficulty [1] - 183:13</p> <p>dig [2] - 25:24, 54:24</p> <p>direct [9] - 22:17, 111:12, 121:6, 141:14, 157:3, 157:4, 179:12, 183:17, 204:20</p> <p>Direct [1] - 3:13</p> <p>DIRECT [3] - 69:24, 124:3, 179:16</p> <p>direction [1] - 91:16</p> <p>directives [1] - 163:6</p> <p>directly [3] - 22:21, 36:9, 53:13</p> <p>director [6] - 70:20, 71:3, 72:17, 73:8, 146:17, 159:10</p> <p>Director [4] - 147:5, 158:4, 158:8, 167:21</p> <p>directors [2] - 73:5,</p>	<p>73:8</p> <p>directs [2] - 33:4, 89:24</p> <p>disabilities [1] - 194:20</p> <p>disability [1] - 176:2</p> <p>disagree [5] - 18:17, 33:19, 54:23, 168:22, 199:14</p> <p>disarray [1] - 190:21</p> <p>disbursed [1] - 130:15</p> <p>disbursement [1] - 93:5</p> <p>discharge [1] - 135:14</p> <p>discharged [1] - 135:9</p> <p>discipline [1] - 171:18</p> <p>disclaiming [1] - 33:7</p> <p>discount [1] - 174:21</p> <p>discovered [1] - 14:25</p> <p>discrepancy [2] - 181:23, 182:2</p> <p>discrete [2] - 156:6, 180:1</p> <p>discretion [2] - 93:21, 193:10</p> <p>discussed [4] - 38:14, 56:25, 173:4, 206:20</p> <p>discusses [1] - 179:25</p> <p>discussing [6] - 75:3, 104:22, 147:18, 149:14, 179:21, 195:2</p> <p>discussion [2] - 22:22, 57:2</p> <p>discussions [1] - 31:18</p> <p>disenfranchise [1] - 187:24</p> <p>disenfranchising [1] - 185:9</p> <p>dismissed [1] - 17:8</p> <p>disorganization [1] - 110:1</p> <p>dispatch [1] - 138:21</p> <p>dispatching [1] - 138:19</p> <p>display [1] - 94:14</p> <p>dispositive [1] - 19:10</p> <p>dispute [8] - 22:24, 27:14, 46:9, 46:23, 48:11, 53:14, 154:3, 187:25</p> <p>disputes [1] - 192:4</p> <p>disrupting [1] - 141:9</p> <p>disruptive [2] - 50:24, 97:12</p> <p>dissemination [1] - 168:8</p> <p>dissimilar [2] - 177:3, 177:4</p>	<p>distances [1] - 206:9</p> <p>distinction [1] - 57:6</p> <p>distinguishable [1] - 44:9</p> <p>distinguishing [4] - 37:8, 40:17, 40:23, 42:1</p> <p>distraction [1] - 97:16</p> <p>distribute [1] - 160:6</p> <p>distributing [1] - 14:14</p> <p>distribution [1] - 154:10</p> <p>DISTRICT [2] - 1:3, 1:15</p> <p>district [7] - 26:4, 27:1, 27:3, 27:4, 104:12, 191:8, 191:9</p> <p>District [5] - 19:24, 27:11, 133:17, 207:6, 207:23</p> <p>districts [3] - 21:4, 21:24, 27:14</p> <p>Division [5] - 91:9, 91:24, 92:14, 158:5, 159:2</p> <p>division [6] - 70:21, 71:9, 89:17, 158:10, 159:3, 163:20</p> <p>divisions [1] - 167:9</p> <p>Divisions [1] - 87:9</p> <p>documentation [1] - 154:8</p> <p>documents [7] - 49:2, 49:24, 49:25, 50:3, 58:7, 58:9, 124:5</p> <p>DOKUPIL [20] - 2:14, 8:15, 13:3, 13:9, 30:19, 30:24, 31:13, 32:7, 32:15, 32:19, 33:1, 33:7, 33:11, 53:24, 54:3, 66:21, 197:24, 202:5, 202:14, 205:14</p> <p>Dokupil [2] - 8:15, 12:25</p> <p>Dokupil..... [1] - 3:10</p> <p>Dokupil..... [1] - 3:22</p> <p>Dokupil..... [1] - 3:7</p> <p>dollars [1] - 85:15</p> <p>done [11] - 14:19, 49:21, 50:6, 56:7, 94:22, 114:10, 141:6, 168:14, 190:4, 201:3, 201:17</p> <p>doubt [1] - 20:13</p> <p>down [7] - 18:25, 27:4, 28:12, 49:13,</p>
---	---	---	--	---

<p>157:18, 163:25, 188:18</p> <p>dozen [1] - 176:11</p> <p>drafted [1] - 99:12</p> <p>drew [1] - 22:7</p> <p>drive [2] - 91:6, 176:7</p> <p>drive-through [1] - 176:7</p> <p>driver's [1] - 78:22</p> <p>driving [1] - 10:9</p> <p>drop [4] - 90:24, 91:5, 91:6, 107:6</p> <p>drop-off [1] - 90:24</p> <p>drop-offs [1] - 107:6</p> <p>duly [2] - 69:23, 146:9</p> <p>Dumpty [3] - 130:20, 131:1, 194:21</p> <p>during [16] - 8:5, 9:21, 25:11, 60:5, 77:13, 77:15, 118:18, 120:9, 120:12, 121:14, 134:19, 175:13, 181:5, 182:13, 182:25, 197:20</p> <p>duties [28] - 39:3, 47:9, 52:23, 76:22, 77:22, 79:19, 84:22, 122:22, 123:2, 126:24, 128:13, 148:3, 148:7, 148:14, 150:21, 151:2, 151:3, 152:2, 152:18, 152:25, 153:1, 159:14, 169:16, 177:7, 184:7, 187:14, 187:18</p> <p>duty [3] - 9:19, 149:4, 163:14</p>	<p>105:18, 133:18, 182:13</p> <p>easier [4] - 7:15, 58:3, 60:21, 76:4</p> <p>East [1] - 41:23</p> <p>easy [1] - 130:16</p> <p>EBS [1] - 25:3</p> <p>economic [2] - 129:15, 194:18</p> <p>education [1] - 70:8</p> <p>effect [14] - 42:7, 43:7, 43:9, 81:11, 129:1, 130:15, 135:24, 136:3, 143:7, 143:22, 171:10, 172:16, 173:11, 178:22</p> <p>effective [2] - 168:16, 174:4</p> <p>effectively [2] - 137:16, 164:13</p> <p>effects [1] - 25:19</p> <p>efficiencies [2] - 85:25, 94:10</p> <p>efficient [4] - 60:11, 77:24, 77:25, 114:23</p> <p>efficiently [1] - 164:13</p> <p>eight [1] - 194:22</p> <p>either [17] - 32:10, 44:3, 45:14, 60:19, 60:22, 61:19, 62:5, 63:16, 64:18, 66:8, 71:6, 123:7, 128:22, 133:1, 142:7, 153:3, 201:25</p> <p>ELDRED [28] - 2:12, 8:9, 11:3, 11:5, 11:19, 12:25, 61:1, 61:16, 62:1, 62:21, 63:6, 64:7, 65:12, 65:16, 66:17, 66:23, 67:5, 67:11, 67:15, 147:10, 203:8, 204:3, 204:15, 204:17, 205:12, 205:15, 205:25, 206:16</p> <p>Eldred [3] - 8:10, 61:24, 65:20</p> <p>elect [1] - 79:23</p> <p>elected [29] - 13:15, 79:4, 79:10, 131:20, 132:17, 133:23, 142:24, 143:4, 144:24, 162:9, 164:25, 165:5, 165:8, 166:12, 166:20, 167:9, 167:14, 167:17, 171:4, 171:13,</p>	<p>175:3, 178:8, 179:3, 179:5, 195:25, 196:1, 199:13, 199:21</p> <p>Election [52] - 4:22, 70:4, 71:4, 71:10, 72:6, 72:19, 74:13, 75:20, 79:2, 79:6, 80:2, 80:10, 80:21, 80:22, 81:10, 82:12, 82:24, 86:25, 87:10, 89:19, 90:1, 91:8, 91:23, 94:24, 95:11, 95:20, 96:12, 97:25, 100:16, 102:4, 117:25, 122:25, 135:8, 139:9, 147:21, 148:18, 152:2, 153:12, 154:11, 154:17, 158:12, 160:21, 163:16, 163:17, 164:5, 184:4, 185:12, 188:4, 192:4, 192:7, 192:19, 193:9</p> <p>election [258] - 14:7, 14:8, 14:10, 14:12, 14:18, 15:12, 15:13, 15:18, 15:19, 16:10, 16:16, 19:9, 21:24, 27:21, 31:7, 34:12, 35:13, 35:16, 38:21, 43:6, 43:21, 46:12, 58:18, 58:23, 59:7, 59:9, 70:25, 71:8, 71:11, 71:12, 73:5, 73:7, 73:8, 73:14, 73:24, 74:13, 74:18, 74:20, 74:23, 75:1, 75:8, 75:9, 75:15, 75:19, 75:22, 76:12, 76:24, 77:14, 77:15, 77:18, 77:19, 78:1, 78:5, 78:8, 78:9, 78:13, 80:4, 80:6, 81:4, 81:9, 81:12, 82:5, 82:25, 83:4, 83:8, 83:10, 83:12, 83:17, 83:18, 83:21, 83:23, 85:1, 85:7, 86:7, 89:16, 89:21, 91:2, 91:20, 93:8, 93:10, 94:7, 95:1, 95:8, 95:17, 95:19, 96:10, 96:21, 96:23, 96:25, 97:12, 97:15, 98:17, 101:15, 101:17, 102:25, 103:3, 103:6, 103:10, 103:11,</p>	<p>103:12, 104:1, 104:9, 105:5, 105:6, 105:7, 105:13, 105:14, 105:16, 105:19, 106:1, 106:3, 106:4, 106:5, 106:8, 106:10, 106:11, 106:12, 106:13, 106:14, 106:16, 106:20, 107:5, 107:8, 107:25, 108:8, 108:23, 109:13, 110:21, 117:3, 118:14, 118:18, 118:19, 118:20, 120:8, 120:9, 120:13, 120:17, 120:18, 120:22, 120:23, 120:25, 121:7, 121:12, 121:15, 122:2, 122:6, 125:2, 125:19, 126:22, 129:22, 130:5, 132:14, 132:18, 132:21, 132:25, 133:10, 134:2, 134:10, 134:13, 134:15, 134:17, 135:4, 135:6, 136:6, 136:9, 136:19, 137:19, 138:2, 138:17, 138:20, 139:16, 140:24, 141:17, 141:21, 142:5, 142:6, 142:7, 143:8, 148:19, 149:4, 149:6, 149:12, 149:13, 152:2, 152:9, 152:24, 153:1, 153:6, 156:9, 158:20, 159:11, 159:19, 159:21, 160:3, 161:1, 161:9, 161:21, 162:8, 162:17, 163:1, 167:16, 168:3, 168:4, 168:6, 168:10, 168:13, 168:14, 170:24, 173:22, 174:15, 174:20, 175:18, 177:19, 181:6, 181:11, 181:12, 181:13, 181:19, 182:6, 182:7, 182:14, 183:13, 184:5, 184:7, 184:8, 184:16, 184:21,</p>	<p>185:2, 185:6, 185:15, 186:8, 186:9, 186:18, 186:21, 186:24, 187:10, 187:15, 187:20, 187:21, 190:20, 191:22, 191:23, 193:5, 193:6, 193:16, 196:14, 197:11, 197:14, 198:22, 200:15</p> <p>Elections [33] - 4:13, 71:23, 72:2, 72:5, 72:9, 72:10, 80:5, 80:7, 81:16, 84:23, 87:8, 92:13, 102:12, 124:15, 129:2, 147:5, 147:19, 148:15, 148:24, 151:9, 151:20, 155:1, 158:4, 158:5, 158:8, 159:1, 167:22, 172:18, 173:2, 173:8, 178:5, 178:11, 184:11</p> <p>elections [217] - 14:3, 14:9, 15:6, 16:1, 18:13, 21:21, 21:23, 22:1, 23:21, 27:8, 27:19, 29:20, 29:23, 31:8, 31:10, 33:21, 37:22, 38:22, 39:1, 41:11, 42:6, 42:23, 42:25, 46:14, 46:22, 47:8, 47:13, 47:14, 47:18, 47:20, 48:4, 52:13, 52:24, 53:2, 55:23, 58:16, 59:3, 59:5, 59:10, 70:18, 70:19, 70:21, 70:22, 71:2, 71:9, 72:1, 72:3, 72:15, 72:21, 72:24, 73:10, 73:13, 73:15, 73:17, 73:18, 73:21, 73:22, 74:3, 74:6, 74:8, 75:4, 75:6, 75:23, 75:25, 76:2, 76:15, 77:1, 77:17, 78:10, 78:18, 79:20, 79:25, 81:15, 81:25, 82:21, 84:9, 84:10, 84:25, 85:8, 85:9, 85:25, 86:2, 86:6, 89:6, 89:11, 89:12, 89:14, 89:17, 89:25, 90:10, 92:23, 93:16, 94:18, 96:9, 96:10, 97:2, 97:16, 100:25, 103:3, 104:14, 105:3,</p>
E				
<p>E-mail [5] - 5:14, 5:15, 5:16, 5:17, 5:18</p> <p>e-mail [3] - 9:16, 65:14, 112:8</p> <p>e-mails [3] - 58:17, 100:12, 100:13</p> <p>EA [7] - 76:7, 79:1, 79:2, 109:22, 148:6, 199:20, 200:1</p> <p>EA's [1] - 156:16</p> <p>EAC [1] - 72:19</p> <p>earliest [7] - 34:5, 173:6, 173:13, 173:17, 174:16, 174:19, 174:24</p> <p>early [6] - 83:6, 103:12, 105:17,</p>				

105:4, 107:16,
117:13, 117:16,
117:18, 117:22,
120:12, 121:16,
122:12, 122:17,
122:20, 125:7,
125:14, 127:4,
127:14, 128:2,
128:6, 128:14,
130:2, 130:3, 131:5,
131:6, 131:9,
131:11, 132:8,
133:23, 134:4,
136:17, 136:20,
136:24, 137:6,
137:17, 138:23,
139:2, 141:1, 141:9,
142:25, 146:17,
149:21, 150:25,
151:3, 153:3,
153:18, 154:5,
155:11, 155:25,
156:22, 158:10,
158:18, 158:21,
159:3, 159:10,
159:17, 160:10,
161:3, 161:12,
161:16, 162:5,
162:12, 163:4,
163:5, 163:11,
163:20, 164:12,
164:15, 165:7,
166:8, 168:1, 168:2,
168:7, 168:19,
169:15, 170:11,
170:18, 170:21,
170:23, 171:9,
171:11, 171:17,
171:22, 172:7,
172:13, 175:11,
175:14, 176:17,
176:22, 176:25,
177:6, 178:3, 180:3,
180:6, 181:5, 181:7,
181:12, 182:25,
183:4, 184:12,
185:17, 185:21,
186:4, 186:20,
190:19, 192:5,
193:19, 195:17,
195:23, 195:24,
196:12, 196:15,
196:19, 198:13,
200:12
electoral [1] - 148:2
electronic [4] - 49:25,
65:12, 149:15, 164:3
electronically [2] -
49:17, 99:23
electronics [2] - 8:2,
13:7

element [5] - 30:5,
39:14, 45:25, 76:9,
103:20
Elgin [1] - 58:21
eligible [2] - 105:15,
105:16
eliminated [1] - 76:21
Ellis [3] - 151:9,
151:25, 152:22
embodiment [1] -
13:18
embody [1] - 198:11
emergency [1] - 9:19
Emergency [1] - 5:3
employability [1] -
130:12
employee [7] - 81:20,
81:22, 82:3, 146:25,
152:6, 152:9
employees [11] -
16:18, 20:4, 20:5,
85:12, 102:19,
102:22, 108:21,
128:19, 131:15,
131:20, 132:5
employer [1] - 53:17
employment [1] -
102:16
enable [1] - 113:4
enacted [2] - 25:14,
26:11
enacting [1] - 17:22
enactment [1] - 26:10
enacts [1] - 25:21
encompassed [1] -
21:25
encounter [2] - 78:5,
83:21
encountered [1] -
83:22
end [11] - 10:19,
11:18, 11:21, 18:1,
50:4, 76:3, 174:12,
177:18, 186:24,
196:23, 198:3
endorse [1] - 52:5
enemies [1] - 24:17
enforce [13] - 30:2,
30:14, 31:16, 32:12,
32:25, 35:18, 61:23,
94:5, 97:23, 97:24,
98:25, 193:2
enforced [3] - 30:12,
33:12, 98:25
enforcement [54] -
28:13, 28:15, 28:17,
29:1, 30:9, 30:15,
31:18, 32:10, 32:11,
32:14, 32:21, 33:8,
33:15, 33:18, 34:9,

34:12, 34:15, 34:19,
34:24, 35:14, 35:19,
35:22, 35:25, 36:10,
36:12, 48:25, 58:8,
58:22, 59:8, 59:22,
61:5, 61:11, 62:8,
71:4, 71:10, 72:18,
89:5, 96:12, 97:18,
98:21, 98:22, 99:7,
99:10, 99:13,
100:15, 100:23,
103:4, 192:13,
201:5, 201:14,
201:16, 201:20
enforcing [2] - 29:25,
97:25
Engineering [1] -
34:21
engrafted [2] - 53:10,
53:11
enjoin [1] - 115:20
enjoined [1] - 172:16
enjoining [1] - 197:19
ensure [2] - 38:25,
78:2
ensuring [4] - 75:25,
85:3, 103:21, 169:10
entail [1] - 163:14
enter [1] - 60:16
entered [4] - 67:25,
85:6, 133:18, 191:16
entire [6] - 26:20,
39:9, 91:6, 105:21,
107:15, 198:11
entirely [1] - 177:3
entirety [1] - 33:16
entities [7] - 58:21,
104:13, 104:15,
105:2, 105:10,
105:24, 161:8
entitled [4] - 1:22,
64:2, 204:11, 205:8
entity [3] - 75:23,
117:3, 148:13
equipment [8] - 133:2,
138:1, 138:9,
160:11, 160:12,
164:7, 182:12,
183:14
equities [2] - 193:15,
197:10
equivalent [1] - 106:9
era [1] - 52:15
error [1] - 63:18
errors [1] - 15:11
essence [1] - 203:14
essentially [7] - 12:5,
23:17, 23:18, 24:16,
28:12, 59:15, 108:3
establish [4] - 29:21,

30:3, 36:1, 156:8
established [2] - 30:7,
193:22
Euless [1] - 23:6
evade [2] - 39:16,
39:25
event [1] - 103:10
events [1] - 26:10
eventually [4] - 23:5,
109:3, 169:23, 190:8
ever-changing [1] -
57:21
everybody's.. [1] -
144:17
evidence [37] - 7:10,
12:10, 12:20, 25:13,
36:9, 48:19, 49:3,
50:7, 51:9, 51:12,
54:2, 58:2, 60:16,
60:17, 60:18, 61:9,
66:12, 68:1, 68:7,
68:20, 88:22, 97:20,
98:22, 100:3,
112:25, 140:4,
140:12, 143:13,
144:7, 189:4, 189:5,
190:23, 191:14,
196:1, 201:19,
207:9, 207:16
exactly [9] - 38:19,
40:1, 54:9, 112:13,
112:18, 119:8,
119:9, 119:23,
139:22
examination [5] -
7:22, 111:7, 112:24,
157:8, 179:12
EXAMINATION [8] -
69:24, 115:3, 124:3,
144:21, 146:10,
158:2, 179:16, 184:2
examine [1] - 113:17
example [29] - 22:6,
33:13, 42:3, 42:7,
42:10, 43:4, 44:11,
44:22, 45:2, 45:16,
47:5, 47:10, 58:12,
59:4, 79:16, 90:22,
110:20, 131:14,
151:25, 159:25,
168:4, 169:12,
169:13, 172:15,
184:21, 186:3,
190:17, 195:14,
200:1
examples [2] - 90:11,
109:17
exceed [1] - 23:11
exceeds [1] - 125:19
except [2] - 125:23,

168:15
exception [4] - 50:21,
62:4, 77:12
exceptions [1] - 48:21
exchange [1] - 77:19
excluded [1] - 48:8
exclusive [2] - 23:11,
35:15
excuse [2] - 50:16,
206:2
Excuse [1] - 126:10
excused [4] - 157:19,
188:17, 206:18,
206:20
executive [1] - 65:21
exercise [3] - 62:10,
93:21, 172:17
exercises [1] - 62:7
EXHIBIT [1] - 4:1
Exhibit [14] - 58:12,
59:18, 88:15, 98:5,
98:7, 100:19, 124:6,
124:7, 124:12,
124:14, 143:12,
143:15
exhibit [4] - 49:16,
49:18, 50:11, 137:12
Exhibits [9] - 58:19,
58:23, 59:17, 63:5,
88:25, 100:1, 100:6,
100:17, 124:25
exhibits [29] - 48:20,
50:11, 50:15, 57:25,
58:6, 60:12, 60:13,
60:20, 60:21, 60:23,
60:24, 62:19, 62:23,
62:24, 63:3, 63:8,
64:22, 67:19, 67:25,
88:3, 88:10, 88:13,
88:20, 97:18, 98:3,
98:16, 99:19, 192:1,
207:16
exist [3] - 18:10,
30:14, 76:25
existed [3] - 18:7,
137:10, 137:12
existence [1] - 96:22
existing [3] - 73:1,
83:14, 109:4
exists [3] - 18:9, 57:7,
173:3
expanded [1] - 22:20
expansion [1] - 23:7
expect [3] - 11:1,
101:15, 102:13
expecting [1] - 112:19
expedited [1] - 154:19
expenditure [1] -
160:7
expenses [1] - 92:24

<p>experience ^[10] - 29:22, 70:18, 70:25, 71:1, 71:21, 76:8, 127:4, 127:9, 130:10, 136:6</p> <p>experiences ^[1] - 86:6</p> <p>expert ^[3] - 128:7, 140:24, 141:1</p> <p>expertise ^[2] - 76:14, 106:1</p> <p>Expiration ^[1] - 207:22</p> <p>explain ^[6] - 42:10, 58:4, 129:20, 139:7, 167:12, 179:18</p> <p>explained ^[1] - 21:5</p> <p>explanation ^[3] - 137:5, 167:22, 196:17</p> <p>explanations ^[1] - 19:4</p> <p>explore ^[1] - 17:1</p> <p>explores ^[1] - 24:19</p> <p>express ^[2] - 148:9, 163:19</p> <p>expressed ^[1] - 200:25</p> <p>expresses ^[2] - 25:21, 52:6</p> <p>extend ^[2] - 68:4, 176:12</p> <p>extending ^[1] - 135:2</p> <p>extent ^[8] - 30:11, 31:17, 34:19, 49:14, 113:16, 122:3, 160:3, 200:9</p> <p>extra ^[1] - 37:25</p> <p>extremely ^[1] - 130:25</p>	<p>190:2, 190:24, 191:12, 194:15, 195:22, 196:18, 196:21, 199:24, 200:4, 203:13</p> <p>factors ^[3] - 21:17, 45:20, 187:4</p> <p>facts ^[12] - 18:8, 19:3, 24:11, 28:1, 29:21, 30:22, 31:1, 35:21, 35:24, 36:1, 147:4, 151:14</p> <p>failing ^[1] - 197:15</p> <p>fair ^[11] - 73:16, 75:4, 115:16, 116:22, 120:7, 120:11, 156:2, 159:12, 162:10, 164:14, 172:19</p> <p>fairly ^[2] - 28:8, 30:6</p> <p>faith ^[1] - 15:4</p> <p>familiar ^[16] - 73:16, 73:18, 73:23, 74:8, 74:11, 80:22, 89:14, 94:19, 132:13, 132:16, 143:1, 150:10, 154:11, 155:17, 165:11</p> <p>far ^[5] - 15:21, 75:6, 76:7, 113:20, 161:7</p> <p>fashion ^[2] - 73:15, 90:16</p> <p>fast ^[1] - 42:11</p> <p>fast-forwarded ^[1] - 42:11</p> <p>favor ^[1] - 24:7</p> <p>favorable ^[3] - 28:10, 30:8, 190:4</p> <p>favorably ^[1] - 22:25</p> <p>fear ^[1] - 176:2</p> <p>federal ^[2] - 72:25, 163:25</p> <p>few ^[4] - 51:23, 83:22, 136:5, 185:25</p> <p>field ^[1] - 182:13</p> <p>Fifth ^[1] - 34:21</p> <p>figure ^[7] - 18:8, 42:13, 55:5, 85:16, 112:4, 153:16, 177:24</p> <p>file ^[12] - 10:23, 31:3, 54:4, 63:25, 64:11, 66:18, 101:21, 102:4, 102:13, 112:17, 174:11, 202:23</p> <p>filed ^[24] - 10:9, 15:19, 30:21, 49:7, 52:1, 59:2, 59:4, 59:13, 63:14, 63:15, 64:7,</p>	<p>64:15, 66:24, 95:18, 112:5, 112:13, 112:15, 112:17, 116:5, 120:21, 155:20, 179:25, 189:20, 204:5</p> <p>files ^[1] - 190:18</p> <p>filing ^[2] - 63:25, 192:24</p> <p>filings ^[1] - 66:1</p> <p>final ^[8] - 14:23, 78:24, 147:3, 194:10, 194:11, 194:22, 198:16, 206:3</p> <p>finalize ^[1] - 93:10</p> <p>finally ^[1] - 201:20</p> <p>financed ^[1] - 27:2</p> <p>findings ^[1] - 180:18</p> <p>fine ^[3] - 20:6, 71:16, 140:18</p> <p>finer ^[1] - 110:5</p> <p>finished ^[1] - 206:9</p> <p>fire ^[9] - 44:13, 44:16, 135:15, 135:20, 136:2, 174:24, 178:14, 178:19, 197:7</p> <p>fired ^[2] - 135:23, 178:11</p> <p>fires ^[1] - 80:6</p> <p>firing ^[5] - 30:9, 115:20, 173:7, 173:15, 174:4</p> <p>first ^[26] - 9:5, 9:6, 11:20, 12:3, 12:19, 13:14, 17:19, 29:1, 36:9, 39:13, 43:18, 51:25, 52:4, 57:23, 68:13, 69:23, 88:3, 96:20, 128:12, 139:16, 146:9, 159:14, 172:3, 179:24, 191:14</p> <p>five ^[10] - 112:1, 113:20, 113:23, 114:18, 114:20, 157:6, 178:8, 179:4, 196:11</p> <p>fix ^[5] - 23:24, 42:23, 55:17, 166:6, 182:1</p> <p>Floor ^[1] - 2:8</p> <p>focus ^[1] - 59:6</p> <p>focused ^[2] - 40:4, 200:15</p> <p>focusing ^[2] - 46:18, 85:8</p> <p>folder ^[1] - 49:18</p> <p>Foley ^[4] - 7:15, 207:5, 207:21, 207:21</p> <p>folks ^[8] - 48:10,</p>	<p>50:15, 57:17, 76:13, 107:17, 107:19, 109:2, 206:8</p> <p>follow ^[5] - 29:20, 87:2, 87:5, 90:9, 191:18</p> <p>followed ^[3] - 87:6, 182:17, 182:19</p> <p>following ^[11] - 1:21, 87:10, 87:15, 87:16, 87:18, 87:20, 87:21, 94:18, 132:1, 172:11, 202:23</p> <p>follows ^[3] - 69:23, 146:9, 185:12</p> <p>followups ^[1] - 97:6</p> <p>FOMBONNE ^[33] - 2:4, 6:15, 7:7, 12:2, 32:3, 36:7, 48:18, 49:4, 49:6, 49:9, 49:11, 49:20, 50:2, 50:9, 57:25, 60:9, 60:14, 61:4, 62:14, 64:25, 66:16, 67:17, 68:12, 99:18, 99:24, 111:21, 111:24, 188:21, 188:23, 189:5, 189:15, 203:21, 206:5</p> <p>Fombonne ^[5] - 6:15, 58:5, 62:14, 67:17, 189:16</p> <p>Fombonne..... ^[1] - 3:20</p> <p>foot ^[1] - 84:24</p> <p>footer ^[2] - 205:12, 205:19</p> <p>FOR ^[3] - 2:3, 2:11, 2:20</p> <p>forces ^[1] - 26:10</p> <p>forcing ^[1] - 59:7</p> <p>foregoing ^[1] - 207:7</p> <p>foremost ^[1] - 159:14</p> <p>forgive ^[1] - 130:19</p> <p>form ^[2] - 90:16, 181:22</p> <p>former ^[1] - 172:7</p> <p>forms ^[4] - 59:1, 90:14, 90:17, 163:23</p> <p>formula ^[1] - 162:18</p> <p>Fort ^[2] - 23:3, 56:6</p> <p>forth ^[3] - 16:18, 28:11, 180:9</p> <p>forums ^[1] - 90:18</p> <p>forward ^[8] - 9:11, 11:12, 76:17, 83:4, 83:12, 107:11, 114:6, 135:6</p> <p>forwarded ^[1] - 42:11</p> <p>four ^[11] - 42:5, 42:12,</p>	<p>43:6, 44:16, 72:8, 72:23, 79:10, 141:24, 169:16, 170:2, 202:13</p> <p>four-point ^[1] - 72:23</p> <p>four-year ^[1] - 79:10</p> <p>frankly ^[1] - 193:9</p> <p>free ^[2] - 145:12, 188:18</p> <p>freeze ^[1] - 109:18</p> <p>Friar ^[1] - 2:22</p> <p>Friday ^[1] - 11:18</p> <p>friend ^[1] - 61:6</p> <p>friends ^[3] - 24:17, 99:11, 192:9</p> <p>front ^[1] - 69:15</p> <p>fulfill ^[1] - 155:14</p> <p>fulfilling ^[1] - 159:14</p> <p>full ^[1] - 10:16</p> <p>function ^[2] - 78:10, 84:25</p> <p>functions ^[8] - 16:16, 31:9, 148:3, 148:14, 166:12, 167:13, 174:15, 191:24</p> <p>fund ^[1] - 160:3</p> <p>fundamentally ^[3] - 26:23, 27:9, 198:19</p> <p>funding ^[11] - 80:19, 80:20, 92:22, 138:1, 138:2, 138:8, 160:4, 161:6, 163:24, 187:21</p> <p>funds ^[16] - 72:22, 92:19, 93:5, 150:10, 150:12, 152:16, 153:24, 154:1, 154:9, 158:21, 158:23, 160:5, 160:14, 180:23, 181:1, 193:25</p> <p>furniture ^[1] - 140:9</p> <p>future ^[8] - 16:7, 21:10, 34:18, 54:16, 75:4, 99:5, 130:12, 200:18</p>	
F				G	
<p>face ^[2] - 148:10, 148:16</p> <p>faced ^[1] - 22:15</p> <p>facial ^[2] - 17:19, 53:8</p> <p>facially ^[5] - 17:6, 17:15, 19:5, 27:24, 36:2</p> <p>facilitate ^[1] - 177:13</p> <p>facilitated ^[1] - 71:11</p> <p>fact ^[36] - 10:8, 14:5, 18:16, 20:12, 22:20, 26:4, 28:7, 31:1, 37:1, 45:10, 54:24, 55:19, 57:1, 61:7, 94:5, 130:5, 140:7, 141:13, 147:5, 152:3, 160:9, 161:11, 176:10, 177:4, 177:10,</p>	<p>190:2, 190:24, 191:12, 194:15, 195:22, 196:18, 196:21, 199:24, 200:4, 203:13</p> <p>factors ^[3] - 21:17, 45:20, 187:4</p> <p>facts ^[12] - 18:8, 19:3, 24:11, 28:1, 29:21, 30:22, 31:1, 35:21, 35:24, 36:1, 147:4, 151:14</p> <p>failing ^[1] - 197:15</p> <p>fair ^[11] - 73:16, 75:4, 115:16, 116:22, 120:7, 120:11, 156:2, 159:12, 162:10, 164:14, 172:19</p> <p>fairly ^[2] - 28:8, 30:6</p> <p>faith ^[1] - 15:4</p> <p>familiar ^[16] - 73:16, 73:18, 73:23, 74:8, 74:11, 80:22, 89:14, 94:19, 132:13, 132:16, 143:1, 150:10, 154:11, 155:17, 165:11</p> <p>far ^[5] - 15:21, 75:6, 76:7, 113:20, 161:7</p> <p>fashion ^[2] - 73:15, 90:16</p> <p>fast ^[1] - 42:11</p> <p>fast-forwarded ^[1] - 42:11</p> <p>favor ^[1] - 24:7</p> <p>favorable ^[3] - 28:10, 30:8, 190:4</p> <p>favorably ^[1] - 22:25</p> <p>fear ^[1] - 176:2</p> <p>federal ^[2] - 72:25, 163:25</p> <p>few ^[4] - 51:23, 83:22, 136:5, 185:25</p> <p>field ^[1] - 182:13</p> <p>Fifth ^[1] - 34:21</p> <p>figure ^[7] - 18:8, 42:13, 55:5, 85:16, 112:4, 153:16, 177:24</p> <p>file ^[12] - 10:23, 31:3, 54:4, 63:25, 64:11, 66:18, 101:21, 102:4, 102:13, 112:17, 174:11, 202:23</p> <p>filed ^[24] - 10:9, 15:19, 30:21, 49:7, 52:1, 59:2, 59:4, 59:13, 63:14, 63:15, 64:7,</p>	<p>64:15, 66:24, 95:18, 112:5, 112:13, 112:15, 112:17, 116:5, 120:21, 155:20, 179:25, 189:20, 204:5</p> <p>files ^[1] - 190:18</p> <p>filing ^[2] - 63:25, 192:24</p> <p>filings ^[1] - 66:1</p> <p>final ^[8] - 14:23, 78:24, 147:3, 194:10, 194:11, 194:22, 198:16, 206:3</p> <p>finalize ^[1] - 93:10</p> <p>finally ^[1] - 201:20</p> <p>financed ^[1] - 27:2</p> <p>findings ^[1] - 180:18</p> <p>fine ^[3] - 20:6, 71:16, 140:18</p> <p>finer ^[1] - 110:5</p> <p>finished ^[1] - 206:9</p> <p>fire ^[9] - 44:13, 44:16, 135:15, 135:20, 136:2, 174:24, 178:14, 178:19, 197:7</p> <p>fired ^[2] - 135:23, 178:11</p> <p>fires ^[1] - 80:6</p> <p>firing ^[5] - 30:9, 115:20, 173:7, 173:15, 174:4</p> <p>first ^[26] - 9:5, 9:6, 11:20, 12:3, 12:19, 13:14, 17:19, 29:1, 36:9, 39:13, 43:18, 51:25, 52:4, 57:23, 68:13, 69:23, 88:3, 96:20, 128:12, 139:16, 146:9, 159:14, 172:3, 179:24, 191:14</p> <p>five ^[10] - 112:1, 113:20, 113:23, 114:18, 114:20, 157:6, 178:8, 179:4, 196:11</p> <p>fix ^[5] - 23:24, 42:23, 55:17, 166:6, 182:1</p> <p>Floor ^[1] - 2:8</p> <p>focus ^[1] - 59:6</p> <p>focused ^[2] - 40:4, 200:15</p> <p>focusing ^[2] - 46:18, 85:8</p> <p>folder ^[1] - 49:18</p> <p>Foley ^[4] - 7:15, 207:5, 207:21, 207:21</p> <p>folks ^[8] - 48:10,</p>	<p>50:15, 57:17, 76:13, 107:17, 107:19, 109:2, 206:8</p> <p>follow ^[5] - 29:20, 87:2, 87:5, 90:9, 191:18</p> <p>followed ^[3] - 87:6, 182:17, 182:19</p> <p>following ^[11] - 1:21, 87:10, 87:15, 87:16, 87:18, 87:20, 87:21, 94:18, 132:1, 172:11, 202:23</p> <p>follows ^[3] - 69:23, 146:9, 185:12</p> <p>followups ^[1] - 97:6</p> <p>FOMBONNE ^[33] - 2:4, 6:15, 7:7, 12:2, 32:3, 36:7, 48:18, 49:4, 49:6, 49:9, 49:11, 49:20, 50:2, 50:9, 57:25, 60:9, 60:14, 61:4, 62:14, 64:25, 66:16, 67:17, 68:12, 99:18, 99:24, 111:21, 111:24, 188:21, 188:23, 189:5, 189:15, 203:21, 206:5</p> <p>Fombonne ^[5] - 6:15, 58:5, 62:14, 67:17, 189:16</p> <p>Fombonne..... ^[1] - 3:20</p> <p>foot ^[1] - 84:24</p> <p>footer ^[2] - 205:12, 205:19</p> <p>FOR ^[3] - 2:3, 2:11, 2:20</p> <p>forces ^[1] - 26:10</p> <p>forcing ^[1] - 59:7</p> <p>foregoing ^[1] - 207:7</p> <p>foremost ^[1] - 159:14</p> <p>forgive ^[1] - 130:19</p> <p>form ^[2] - 90:16, 181:22</p> <p>former ^[1] - 172:7</p> <p>forms ^[4] - 59:1, 90:14, 90:17, 163:23</p> <p>formula ^[1] - 162:18</p> <p>Fort ^[2] - 23:3, 56:6</p> <p>forth ^[3] - 16:18, 28:11, 180:9</p> <p>forums ^[1] - 90:18</p> <p>forward ^[8] - 9:11, 11:12, 76:17, 83:4, 83:12, 107:11, 114:6, 135:6</p> <p>forwarded ^[1] - 42:11</p> <p>four ^[11] - 42:5, 42:12,</p>	<p>43:6, 44:16, 72:8, 72:23, 79:10, 141:24, 169:16, 170:2, 202:13</p> <p>four-point ^[1] - 72:23</p> <p>four-year ^[1] - 79:10</p> <p>frankly ^[1] - 193:9</p> <p>free ^[2] - 145:12, 188:18</p> <p>freeze ^[1] - 109:18</p> <p>Friar ^[1] - 2:22</p> <p>Friday ^[1] - 11:18</p> <p>friend ^[1] - 61:6</p> <p>friends ^[3] - 24:17, 99:11, 192:9</p> <p>front ^[1] - 69:15</p> <p>fulfill ^[1] - 155:14</p> <p>fulfilling ^[1] - 159:14</p> <p>full ^[1] - 10:16</p> <p>function ^[2] - 78:10, 84:25</p> <p>functions ^[8] - 16:16, 31:9, 148:3, 148:14, 166:12, 167:13, 174:15, 191:24</p> <p>fund ^[1] - 160:3</p> <p>fundamentally ^[3] - 26:23, 27:9, 198:19</p> <p>funding ^[11] - 80:19, 80:20, 92:22, 138:1, 138:2, 138:8, 160:4, 161:6, 163:24, 187:21</p> <p>funds ^[16] - 72:22, 92:19, 93:5, 150:10, 150:12, 152:16, 153:24, 154:1, 154:9, 158:21, 158:23, 160:5, 160:14, 180:23, 181:1, 193:25</p> <p>furniture ^[1] - 140:9</p> <p>future ^[8] - 16:7, 21:10, 34:18, 54:16, 75:4, 99:5, 130:12, 200:18</p>	

117:16, 118:14,
118:18, 118:19,
120:17, 121:7,
121:12, 121:24,
125:6, 130:23,
138:20, 168:4,
181:13, 194:25
GENERAL [3] - 1:6,
1:8, 2:16
General [31] - 1:14,
4:22, 6:6, 6:8, 6:11,
28:21, 30:12, 31:2,
31:5, 31:23, 32:18,
52:17, 58:13, 59:15,
61:22, 62:5, 62:7,
62:10, 63:24, 94:3,
94:16, 95:14, 95:22,
98:1, 98:24, 131:4,
155:8, 189:25,
192:11, 192:12,
192:24
General's [8] - 58:17,
59:25, 64:2, 108:2,
190:17, 191:17,
192:2, 205:9
generally [4] - 22:17,
46:5, 76:11, 97:25
gentleman [1] - 140:8
geographic [1] - 44:18
geographical [3] -
20:23, 44:8, 44:21
geography [2] - 41:8,
45:2
Georgia [9] - 70:19,
71:1, 71:2, 71:5,
71:8, 71:22, 72:14,
74:15
gerald [1] - 63:11
GERALD [1] - 2:21
Gerald [2] - 7:20,
157:24
Gerry [1] - 51:22
given [10] - 65:19,
67:23, 76:5, 106:1,
110:25, 160:19,
160:23, 162:17,
162:18, 163:15
glad [1] - 206:9
GN-23-003523 [1] -
6:5
govern [1] - 193:19
governing [2] - 80:16,
80:17
government [5] - 48:3,
48:4, 48:6, 58:21,
153:24
Government [2] -
174:7, 174:11
government's [1] -
34:18

Governor [1] - 196:6
governor [1] - 165:2
governor's [1] -
192:13
grad [1] - 70:15
grandfathered [1] -
199:25
grant [7] - 23:9, 36:3,
72:22, 194:16,
197:15, 197:19,
201:7
granted [1] - 202:22
grants [1] - 163:25
Grapevine [1] - 23:6
graph [1] - 47:5
great [5] - 17:1, 26:15,
132:2, 135:5
greater [3] - 55:13,
106:11, 170:3
green [1] - 8:1
Greenway [1] - 2:24
grew [1] - 200:1
grounds [1] - 174:10
group [2] - 58:4, 74:13
groups [1] - 73:9
grow [4] - 45:22,
125:18, 196:18,
200:11
grows [1] - 136:18
gubernatorial [2] -
106:10, 139:16
guess [6] - 47:25,
62:24, 88:2, 94:2,
151:19, 152:20
guidance [7] - 90:2,
90:12, 161:2,
162:16, 163:6,
164:18, 164:20
Guilford [1] - 70:11

H

half [4] - 16:5, 16:9,
16:12, 200:2
hand [7] - 29:6, 29:8,
69:12, 124:5, 126:7,
174:1, 174:3
HAND [1] - 207:18
handle [6] - 12:25,
13:2, 68:11, 90:13,
167:23, 178:6
handling [3] - 79:17,
132:18, 136:25
hands [1] - 38:24
happy [5] - 48:13,
67:6, 79:11, 79:16,
188:25
hard [2] - 65:11, 65:19
harm [19] - 29:7,
29:12, 29:22, 30:3,

30:6, 35:24, 61:12,
103:5, 108:5,
108:18, 110:16,
111:3, 130:22,
130:23, 191:7,
192:22, 197:16,
201:4, 201:16
harmed [1] - 29:18
harmful [3] - 193:17,
193:18
harmonize [1] - 20:18
harms [1] - 107:11
HARRIS [3] - 1:3, 2:3,
2:8
Harris [208] - 6:5, 6:16,
6:20, 6:24, 7:3, 7:6,
14:3, 14:18, 15:3,
15:20, 15:24, 16:4,
16:6, 16:13, 16:20,
16:25, 17:4, 17:17,
19:2, 19:7, 19:12,
19:24, 20:1, 20:7,
20:15, 21:21, 21:24,
21:25, 24:10, 24:13,
26:18, 27:10, 27:18,
27:23, 28:5, 29:2,
30:1, 30:11, 31:3,
31:4, 31:7, 31:8,
32:8, 33:17, 34:24,
34:25, 35:10, 35:21,
35:23, 35:25, 36:21,
37:22, 39:4, 39:19,
39:21, 40:25, 41:10,
41:16, 42:16, 43:14,
44:22, 47:16, 48:12,
53:17, 55:23, 56:2,
58:6, 58:15, 59:9,
59:14, 60:3, 60:5,
62:3, 63:1, 63:8,
67:18, 69:4, 70:4,
72:11, 74:3, 74:5,
80:14, 80:15, 80:16,
80:17, 80:21, 81:14,
81:20, 82:12, 84:23,
86:2, 86:10, 87:11,
92:20, 94:23, 95:6,
96:11, 105:9,
115:10, 115:13,
115:17, 116:22,
117:2, 117:8,
117:12, 117:17,
117:24, 122:19,
124:15, 125:16,
125:17, 125:23,
125:25, 126:1,
126:19, 129:1,
131:5, 131:9,
132:23, 133:1,
133:11, 133:18,
135:3, 135:7,

135:12, 137:6,
141:10, 141:21,
142:1, 142:19,
142:20, 147:21,
148:6, 148:13,
148:23, 149:3,
149:6, 149:21,
150:8, 150:18,
151:8, 151:20,
153:12, 153:18,
154:25, 155:11,
155:21, 155:25,
156:17, 156:21,
159:6, 166:5, 167:7,
167:13, 167:25,
170:7, 170:8,
170:18, 171:9,
171:19, 173:15,
174:17, 174:25,
175:11, 175:14,
175:23, 176:13,
181:4, 184:10,
184:13, 186:3,
186:4, 187:24,
189:16, 190:15,
191:19, 191:22,
192:3, 192:5, 192:8,
192:10, 192:18,
193:8, 195:12,
196:16, 197:7,
197:19, 198:13,
198:18, 198:20,
198:21, 198:23,
198:25, 199:22,
200:17, 201:4,
201:21, 201:25,
202:4, 202:7,
202:10, 203:21
hat [1] - 95:7
HCEA [1] - 5:23
head [4] - 45:15,
104:18, 104:21,
167:9
headed [1] - 164:25
health [1] - 129:16
hear [12] - 12:15,
12:20, 13:16, 48:14,
60:14, 60:20, 71:15,
71:16, 71:17,
114:19, 141:13,
189:2
heard [37] - 1:22, 9:6,
9:20, 15:2, 32:2,
36:22, 43:25, 71:14,
108:2, 113:4,
114:14, 114:18,
122:8, 122:11,
127:25, 131:4,
131:9, 131:14,
137:4, 140:2, 140:4,

140:6, 188:11,
190:16, 191:25,
193:4, 195:15,
197:16, 197:25,
199:6, 199:7,
201:20, 202:4,
202:7, 202:8,
202:11, 202:19
hearing [11] - 11:10,
12:18, 31:22, 49:13,
61:14, 67:24, 68:4,
114:2, 194:10,
205:18, 205:24
hearings [1] - 167:2
Hegar [1] - 25:4
held [5] - 1:23, 20:14,
20:24, 44:3, 134:23
help [6] - 95:2, 120:10,
121:1, 121:17,
163:20, 181:25
Help [2] - 71:23, 71:24
helpful [2] - 64:21,
99:21
helping [2] - 71:24,
169:4
HER [2] - 1:7, 1:9
hereby [1] - 207:7
herself [1] - 146:23
Hidalgo [1] - 15:9
hiding [1] - 38:3
high [4] - 25:6, 89:15,
93:12, 106:23
higher [2] - 79:7,
180:2
highlight [1] - 170:16
highly [2] - 46:9,
47:17
hill [1] - 45:11
hire [3] - 108:21,
108:24, 109:5
hired [5] - 79:2, 83:10,
107:4, 107:5, 123:6
hires [1] - 80:4
hiring [3] - 108:24,
109:8, 109:9
HISD [1] - 104:12
historical [1] - 139:24
history [20] - 13:21,
13:22, 17:1, 20:18,
20:20, 24:14, 25:8,
25:25, 26:1, 37:24,
43:11, 49:1, 55:1,
55:2, 55:14, 87:23,
88:18, 126:2,
126:18, 198:4
hit [1] - 125:20
hits [2] - 42:17, 43:1
holding [1] - 154:4
Hollands [1] - 175:13
Hollins [1] - 175:12

Hollins' [1] - 175:13
home [1] - 139:14
homeowner [1] - 23:10
Honor [120] - 7:7, 7:18, 8:23, 9:15, 10:8, 11:19, 31:14, 43:4, 48:24, 49:6, 51:7, 51:15, 51:17, 51:21, 51:25, 52:16, 53:7, 53:12, 53:18, 56:13, 56:17, 56:25, 57:25, 58:5, 61:16, 63:6, 63:12, 64:12, 65:16, 66:11, 66:17, 67:11, 67:19, 68:12, 68:15, 68:22, 69:2, 69:3, 69:8, 87:22, 88:1, 88:12, 88:23, 89:2, 97:17, 98:11, 98:15, 98:19, 99:9, 99:18, 99:24, 100:21, 101:3, 101:5, 101:22, 111:5, 111:8, 112:23, 113:19, 114:25, 115:18, 115:21, 116:5, 116:9, 116:14, 117:1, 123:16, 123:22, 124:1, 124:18, 124:22, 126:4, 127:1, 127:3, 127:22, 131:22, 132:20, 134:10, 136:11, 137:20, 139:9, 141:2, 143:10, 143:16, 143:19, 144:2, 144:10, 144:15, 144:19, 145:4, 145:8, 145:14, 147:9, 147:10, 157:2, 157:6, 157:11, 157:24, 165:17, 166:16, 179:2, 179:14, 183:21, 183:25, 188:10, 188:15, 188:21, 188:23, 189:11, 189:15, 194:6, 196:5, 197:24, 202:11, 203:8, 204:1, 204:10, 205:25, 206:11, 206:16
Honorable [1] - 1:23
hook [1] - 36:16
hope [2] - 108:24, 159:23

hopefully [1] - 13:6
hoping [2] - 84:14, 106:14
Hospital [2] - 19:24, 45:16
hospital [2] - 20:3, 55:15
hospitals [1] - 45:19
host [1] - 24:1
hotline [1] - 164:1
hour [4] - 114:3, 176:13, 206:7
hours [9] - 14:19, 14:20, 14:21, 14:22, 109:4, 111:16, 135:2, 176:13, 202:13
house [1] - 37:20
House [1] - 4:13
housekeeping [4] - 11:25, 65:3, 66:10, 112:3
Houston [11] - 2:9, 2:22, 2:25, 20:9, 55:17, 55:19, 55:25, 104:8, 106:12, 140:8, 185:16
Humpty [3] - 130:20, 131:1, 194:21
hundred [1] - 44:16
hypothetical [2] - 34:20, 173:1
hypothetically [1] - 123:10

I

idea [2] - 82:9, 131:5
ideas [3] - 110:23, 110:24, 199:7
identified [6] - 16:4, 83:24, 84:3, 86:10, 110:9, 182:8
identify [2] - 124:7, 124:12
Ill [9] - 16:22, 18:1, 18:4, 19:5, 19:10, 20:19, 22:21, 24:15, 38:7
imagine [3] - 55:8, 57:3, 198:8
immediately [2] - 36:24, 94:8
immigrants [1] - 196:7
imminent [1] - 32:10
immunity [3] - 12:7, 17:12, 17:14
impact [7] - 15:25, 21:23, 27:19, 43:21, 47:18, 106:20,

107:13
impacted [4] - 20:2, 47:11, 169:5, 182:21
impacts [1] - 42:8
impending [1] - 109:10
implement [10] - 81:7, 84:5, 84:8, 84:14, 84:19, 89:23, 90:9, 121:7, 121:11, 121:23
implementation [2] - 81:6, 86:18
implementing [3] - 75:12, 85:23, 191:8
importance [1] - 148:17
importance [1] - 23:14
important [16] - 21:17, 23:15, 23:18, 23:21, 24:18, 37:7, 38:13, 39:2, 40:24, 103:9, 117:13, 126:20, 127:6, 134:9, 142:24, 170:16
importantly [4] - 14:15, 38:18, 40:2, 198:15
impose [1] - 155:24
improperly [1] - 17:8
improve [1] - 136:2
improvement [1] - 195:19
IN [3] - 1:7, 1:9, 1:3
inches [1] - 71:19
include [5] - 16:13, 65:23, 104:16, 129:21, 146:22
included [6] - 47:22, 50:11, 57:14, 57:19, 114:15, 207:10
includes [4] - 19:21, 31:1, 100:10, 159:24
including [4] - 31:7, 45:5, 157:13, 191:22
inconsistent [1] - 171:2
increase [6] - 60:6, 166:7, 166:24, 190:21, 195:13, 195:16
increased [1] - 43:13
increasing [1] - 107:6
incredibly [3] - 40:23, 44:12, 57:10
indeed [2] - 18:22, 159:9
independently [1] - 34:10
INDEX [2] - 3:1, 4:1
indicate [1] - 180:5

indicated [3] - 83:5, 85:2, 121:5
individual [4] - 25:11, 183:15, 198:10
individuals [13] - 149:24, 151:1, 151:15, 153:24, 156:7, 168:17, 180:1, 184:19, 184:20, 184:23, 187:17, 187:21
indulgence [1] - 206:12
indulging [1] - 206:6
industry [1] - 73:22
inform [2] - 55:1, 55:2
information [20] - 72:9, 72:21, 77:19, 103:18, 104:25, 111:17, 133:7, 149:4, 149:13, 151:12, 154:19, 154:24, 155:2, 161:25, 164:17, 181:21, 181:22, 183:5, 184:20, 188:1
informed [2] - 14:23, 111:17
inherently [1] - 171:2
initial [1] - 181:21
initiate [3] - 174:22, 180:8, 180:15
initiating [1] - 169:19
INJUNCTION [2] - 1:18, 3:2
Injunction [6] - 64:4, 68:20, 69:1, 88:20, 203:16, 205:11
injunction [22] - 9:7, 12:5, 46:14, 46:19, 53:15, 58:11, 66:13, 112:25, 129:9, 130:11, 133:16, 190:6, 193:23, 194:8, 194:16, 197:15, 197:19, 201:22, 202:9, 204:8, 205:20
Injunctive [1] - 203:17
injunctive [2] - 12:21, 115:11
injury [8] - 28:7, 28:9, 30:7, 190:2, 190:16, 190:24, 191:1, 191:11
instance [3] - 35:23, 75:10, 94:12
instant [1] - 177:16
instead [3] - 32:23, 48:22, 58:4

institute [2] - 177:9, 179:22
instructed [1] - 109:2
instructions [1] - 182:18
insufficient [1] - 140:3
insurance [1] - 129:16
integrity [3] - 15:5, 58:18, 187:8
intend [1] - 98:24
intended [3] - 34:8, 39:16, 91:9
intending [1] - 60:18
intent [15] - 13:18, 13:22, 17:2, 24:15, 24:18, 25:13, 25:20, 25:21, 39:13, 45:25, 54:7, 54:9, 55:4, 61:21, 88:8
intention [3] - 164:16, 166:21, 198:3
intentionally [1] - 132:7
intents [1] - 52:6
inter [1] - 66:6
interact [1] - 73:5
interacted [1] - 73:7
interaction [1] - 180:2
interactions [1] - 94:4
interest [14] - 10:20, 21:14, 21:20, 22:2, 22:5, 22:14, 22:23, 26:18, 27:6, 27:9, 27:13, 27:17, 27:21, 197:14
interested [1] - 13:16
interests [1] - 13:19
intergovernmental [1] - 87:11
Interim [1] - 6:7
internal [1] - 31:18
international [1] - 57:5
internet [1] - 37:18
interleader [1] - 65:24
interpretation [2] - 25:2, 25:19
interpretations [2] - 24:25, 200:9
interpreted [1] - 205:4
interpreting [1] - 25:16
interpretive [1] - 25:17
interrupt [1] - 65:18
intervened [3] - 59:15, 64:5, 202:15
Intervener [1] - 6:11
intervenor [14] - 7:19, 24:10, 24:19, 27:24,

<p>36:1, 63:12, 66:11, 143:14, 145:10, 157:7, 157:9, 157:25, 188:12, 188:13</p> <p>INTERVENOR [1] - 2:20</p> <p>Intervenor [9] - 8:25, 9:16, 16:20, 16:25, 17:5, 51:10, 64:3, 203:17, 205:10</p> <p>INTERVENOR'S [1] - 5:21</p> <p>Intervenor's [5] - 26:13, 124:20, 124:25, 204:4, 205:8</p> <p>intervenor's [2] - 64:2, 124:23</p> <p>Intervenor/Cross [1] - 1:13</p> <p>intervention [10] - 9:8, 59:11, 63:15, 63:23, 64:7, 65:24, 65:25, 66:6, 67:6, 204:25</p> <p>Intervention [3] - 64:19, 116:8, 202:25</p> <p>interventions [2] - 64:14, 67:12</p> <p>Interview [1] - 5:4</p> <p>interviewing [1] - 76:14</p> <p>introduced [1] - 8:24</p> <p>invalid [4] - 17:6, 17:15, 27:24, 36:2</p> <p>investigate [2] - 155:20, 156:16</p> <p>investigation [6] - 34:1, 156:4, 168:20, 170:11, 170:13, 172:10</p> <p>investigative [1] - 180:8</p> <p>invited [1] - 50:17</p> <p>involved [6] - 34:3, 72:23, 73:11, 73:13, 76:10, 183:16</p> <p>involvement [1] - 170:1</p> <p>involves [4] - 169:2, 169:3, 169:4, 179:21</p> <p>irrational [1] - 195:7</p> <p>irrelevant [5] - 13:22, 25:8, 88:18, 99:13, 143:17</p> <p>irreparable [4] - 130:22, 130:23, 194:20, 197:16</p> <p>Irving [1] - 23:5</p> <p>Isabel [2] - 117:25, 121:15</p>	<p>ISD [2] - 58:21, 58:22</p> <p>islands [1] - 22:10</p> <p>isolated [2] - 42:19, 187:19</p> <p>issue [33] - 9:24, 10:14, 19:10, 26:5, 26:22, 27:13, 27:16, 27:17, 32:13, 45:7, 46:8, 47:16, 55:15, 55:22, 57:16, 116:2, 116:4, 134:15, 134:17, 135:5, 159:20, 163:6, 180:10, 181:20, 181:25, 182:5, 182:20, 183:9, 185:18, 190:7, 197:4, 202:17, 204:12</p> <p>issued [4] - 89:18, 125:3, 129:9, 130:11</p> <p>issues [30] - 12:4, 12:18, 15:17, 26:4, 63:21, 65:3, 78:4, 83:21, 112:2, 121:14, 121:20, 121:25, 132:25, 133:13, 134:11, 134:20, 155:8, 158:20, 175:21, 178:7, 181:10, 181:15, 181:16, 181:17, 182:13, 182:24, 183:1, 183:16, 198:22</p> <p>issuing [2] - 72:22, 79:22</p> <p>IT [1] - 85:4</p> <p>itself [13] - 21:6, 21:15, 28:25, 29:18, 30:16, 71:12, 92:7, 103:3, 110:7, 177:12, 182:2, 183:15, 191:9</p>	<p>jeopardy [1] - 185:17</p> <p>job [14] - 53:13, 76:20, 79:8, 79:24, 101:9, 101:19, 129:1, 129:9, 129:12, 135:23, 136:3, 163:4, 177:7, 194:17</p> <p>join [1] - 82:10</p> <p>joined [3] - 71:22, 72:5, 94:23</p> <p>joining [1] - 167:9</p> <p>joint [5] - 23:9, 30:18, 30:21, 30:25, 31:11</p> <p>jointly [2] - 23:4, 57:5</p> <p>Jonathan [4] - 6:15, 58:5, 67:17, 189:16</p> <p>JONATHAN [1] - 2:4</p> <p>judge [7] - 9:19, 12:2, 48:18, 66:16, 71:7, 138:16, 153:2</p> <p>Judge [24] - 1:23, 8:9, 8:12, 11:5, 15:9, 36:15, 36:20, 36:24, 37:6, 37:15, 37:23, 38:13, 39:7, 39:13, 41:20, 42:4, 43:24, 47:3, 47:15, 47:23, 48:15, 79:3, 203:10, 205:13</p> <p>judges [13] - 83:9, 91:3, 91:5, 107:4, 138:3, 138:11, 138:18, 138:19, 138:20, 138:21, 138:25, 161:21</p> <p>judgment [3] - 17:12, 190:9, 196:25</p> <p>judicial [2] - 65:21, 144:6</p> <p>JUDICIAL [1] - 1:15</p> <p>judicially [1] - 53:11</p> <p>juggle [1] - 10:2</p> <p>juggling [1] - 9:22</p> <p>July [6] - 1:21, 81:1, 81:22, 82:3, 82:4, 82:23</p> <p>jurisdiction [26] - 9:4, 11:8, 12:1, 12:3, 12:16, 12:24, 13:13, 17:9, 23:17, 36:4, 38:25, 47:1, 48:2, 52:1, 54:5, 61:10, 63:14, 64:16, 112:6, 117:6, 129:23, 189:22, 191:2, 204:8, 205:6</p> <p>JURISDICTION [3] - 1:19, 3:2, 3:6</p> <p>Jurisdiction [7] - 50:4, 64:19, 68:18, 68:21,</p>	<p>189:20, 203:15, 204:12</p> <p>jurisdictional [6] - 11:7, 12:12, 17:15, 27:14, 112:2, 188:24</p> <p>jury [1] - 50:17</p> <p>Justice [1] - 70:11</p> <p>justiciable [1] - 202:16</p> <p>juxtapose [1] - 43:3</p>	<p>27:21, 183:16</p> <p>largest [6] - 15:21, 15:23, 27:18, 117:3, 117:5, 129:23</p> <p>last [15] - 62:13, 64:1, 66:24, 100:23, 103:11, 108:10, 112:6, 116:5, 175:9, 179:1, 181:6, 189:20, 190:10, 202:3, 204:5</p> <p>late [5] - 82:23, 103:20, 110:21, 116:5, 206:2</p> <p>laundry [1] - 38:10</p> <p>law [95] - 13:17, 14:19, 16:21, 17:22, 18:15, 18:16, 19:16, 20:12, 20:15, 20:21, 20:22, 21:2, 22:4, 22:6, 24:3, 25:22, 26:5, 26:6, 26:8, 26:11, 26:14, 26:20, 26:22, 29:4, 29:7, 29:8, 29:21, 29:25, 34:12, 35:7, 35:16, 35:18, 36:8, 37:4, 37:13, 38:2, 38:9, 39:10, 39:15, 39:18, 39:19, 40:8, 40:13, 40:14, 42:6, 42:16, 43:6, 43:7, 43:9, 43:13, 43:14, 43:17, 44:15, 45:9, 46:2, 47:20, 48:5, 48:11, 52:11, 55:10, 59:9, 61:8, 70:11, 70:15, 98:20, 101:10, 135:8, 148:10, 148:16, 148:17, 150:9, 152:23, 152:25, 153:25, 154:4, 156:24, 162:7, 169:5, 174:21, 184:14, 184:18, 185:3, 186:16, 187:5, 187:13, 191:3, 191:6, 191:9, 195:1, 197:1, 197:8, 201:3</p> <p>Law [1] - 70:12</p> <p>lawfully [1] - 184:6</p> <p>laws [15] - 21:11, 22:23, 38:23, 39:17, 54:18, 58:23, 72:25, 73:1, 94:5, 97:23, 97:24, 99:1, 158:18, 163:3, 186:19</p> <p>lawsuit [10] - 31:3, 59:25, 101:21,</p>
			K	
			<p>Karin [1] - 1:23</p> <p>keep [1] - 196:12</p> <p>keeping [1] - 29:5</p> <p>keeps [1] - 114:21</p> <p>Ken [1] - 59:19</p> <p>kept [1] - 15:13</p> <p>key [2] - 107:11, 127:7</p> <p>Kimbrell [1] - 25:10</p> <p>kind [16] - 23:10, 36:22, 37:20, 38:17, 41:19, 42:10, 45:24, 47:4, 82:14, 94:1, 134:8, 152:13, 179:22, 183:3, 183:12, 201:1</p> <p>knowledge [3] - 180:25, 181:3, 183:17</p> <p>known [1] - 182:12</p> <p>knows [3] - 142:12, 197:11, 197:17</p>	
			L	
			<p>lack [4] - 17:8, 17:17, 28:2, 137:15</p> <p>lacks [1] - 28:6</p> <p>Lane [1] - 2:22</p> <p>language [9] - 42:21, 46:25, 52:18, 52:21, 53:9, 53:10, 53:11, 89:24, 186:16</p> <p>laptops [1] - 13:7</p> <p>large [19] - 18:13, 19:7, 27:9, 38:17, 41:7, 42:23, 42:24, 43:19, 43:20, 44:12, 55:21, 57:4, 58:7, 106:14, 163:1, 168:3, 200:16, 200:20</p> <p>largely [2] - 12:6, 189:18</p> <p>larger [12] - 21:14, 21:20, 21:22, 22:2, 22:5, 22:23, 26:18, 27:6, 27:13, 27:16,</p>	
	J			
	<p>Jamie [3] - 207:5, 207:21, 207:21</p> <p>jams [2] - 134:15, 134:16</p> <p>JANE [1] - 1:9</p> <p>Jane [3] - 6:9, 28:16, 146:23</p> <p>January [6] - 75:11, 106:16, 107:23, 173:23, 174:18, 175:7</p> <p>jeopardize [2] - 185:15, 185:16</p>			

<p>116:15, 176:12, 190:18, 191:18, 192:24, 197:20</p> <p>lawsuits [7] - 58:25, 59:2, 62:5, 95:18, 97:9, 97:10, 102:4</p> <p>lawyer [2] - 70:10, 115:23</p> <p>lay [1] - 39:12</p> <p>leaders [1] - 187:23</p> <p>leading [8] - 52:16, 78:5, 131:17, 131:22, 132:9, 137:20, 140:9, 141:3</p> <p>leads [5] - 107:3, 107:4, 107:5, 107:7, 169:20</p> <p>least [15] - 12:6, 12:18, 12:22, 75:9, 82:10, 88:3, 104:9, 104:10, 105:18, 131:17, 161:2, 162:4, 162:23, 168:16, 195:19</p> <p>leave [5] - 25:24, 27:4, 112:12, 176:19, 202:23</p> <p>leaving [2] - 71:22, 100:11</p> <p>led [2] - 26:10, 26:11</p> <p>left [3] - 67:24, 72:5, 72:10</p> <p>legal [19] - 70:21, 71:3, 72:17, 95:14, 95:16, 97:4, 115:24, 126:5, 127:2, 136:12, 142:10, 144:2, 154:6, 166:17, 169:11, 184:15, 186:2, 187:16, 192:18</p> <p>legally [5] - 135:23, 184:15, 185:1, 185:7, 185:21</p> <p>legally-authorized [1] - 185:1</p> <p>legislation [10] - 19:1, 21:17, 22:16, 22:19, 40:20, 53:6, 87:11, 87:12, 141:19, 142:20</p> <p>legislative [30] - 13:21, 13:22, 13:24, 17:1, 24:14, 25:7, 25:12, 25:14, 25:20, 25:25, 26:1, 37:24, 37:25, 38:8, 48:25, 54:9, 55:1, 55:2, 55:4, 61:21, 75:2, 87:7, 87:9, 87:23,</p>	<p>88:18, 89:20, 147:17, 166:21, 198:4, 198:6</p> <p>legislator [2] - 39:8, 39:11</p> <p>legislators [1] - 25:12</p> <p>Legislature [1] - 167:19</p> <p>legislature [44] - 14:1, 14:2, 14:11, 14:17, 14:22, 15:2, 15:20, 15:23, 16:3, 17:22, 18:7, 18:12, 18:14, 18:23, 21:19, 23:8, 23:19, 24:9, 25:21, 26:17, 27:3, 27:5, 27:20, 34:8, 36:25, 38:24, 41:16, 44:15, 44:20, 48:9, 52:6, 52:9, 87:3, 156:10, 156:12, 198:11, 198:17, 198:24, 199:8, 199:15, 199:20, 200:13, 200:14, 200:19</p> <p>legislature's [4] - 13:18, 18:18, 24:2, 199:5</p> <p>legislatures [3] - 13:15, 24:16, 133:8</p> <p>legitimate [1] - 23:1</p> <p>legitimately [3] - 40:17, 40:23, 42:1</p> <p>length [2] - 17:1, 29:22</p> <p>lengthy [1] - 20:20</p> <p>less [1] - 46:11</p> <p>Letter [4] - 4:5, 4:21, 4:23, 4:24</p> <p>letter [4] - 35:9, 35:11, 35:16, 58:13</p> <p>letters [6] - 58:20, 62:1, 95:21, 95:25, 97:23, 192:12</p> <p>level [13] - 79:7, 84:24, 89:15, 90:18, 92:2, 93:12, 95:6, 96:1, 105:11, 106:23, 108:15, 137:1, 198:23</p> <p>levels [1] - 76:14</p> <p>license [3] - 78:21, 78:22, 79:17</p> <p>life [2] - 7:14, 101:11</p> <p>light [3] - 8:1, 200:24, 203:13</p> <p>likelihood [2] - 99:5, 202:1</p> <p>likely [5] - 12:16, 28:9, 31:19, 83:9, 196:23</p>	<p>limitations [1] - 159:18</p> <p>limited [5] - 20:23, 39:9, 50:21, 53:1, 190:12</p> <p>limits [1] - 143:23</p> <p>Lina [1] - 15:9</p> <p>line [1] - 133:9</p> <p>link [3] - 49:8, 49:14, 201:15</p> <p>list [11] - 38:10, 49:6, 49:7, 50:12, 92:25, 107:6, 154:14, 154:20, 156:7, 180:1, 203:20</p> <p>listed [1] - 28:20</p> <p>listen [1] - 52:16</p> <p>lists [1] - 168:10</p> <p>litigation [4] - 23:8, 97:8, 97:15, 110:4</p> <p>live [6] - 42:14, 48:19, 50:5, 50:6, 52:15, 122:2</p> <p>lived [1] - 39:23</p> <p>living [1] - 110:3</p> <p>local [52] - 16:21, 16:23, 17:24, 18:3, 18:15, 20:12, 20:22, 21:11, 22:4, 22:24, 23:13, 23:16, 23:17, 23:25, 24:1, 26:6, 26:8, 26:19, 27:14, 27:15, 27:17, 33:14, 35:19, 37:1, 37:3, 37:4, 38:8, 38:23, 38:24, 39:17, 48:2, 48:3, 48:4, 48:5, 50:19, 52:11, 54:18, 55:9, 58:20, 139:20, 152:12, 159:20, 160:5, 161:3, 161:8, 161:11, 174:7, 174:10, 192:14, 197:1</p> <p>locale [1] - 45:21</p> <p>locales [1] - 45:22</p> <p>locality [2] - 22:18, 83:11</p> <p>locally [2] - 152:19, 161:7</p> <p>located [1] - 83:11</p> <p>location [17] - 39:6, 90:24, 91:7, 94:14, 119:2, 119:4, 119:7, 134:22, 138:15, 138:18, 139:11, 139:15, 139:23, 160:19, 160:23, 183:14</p> <p>locations [22] - 15:17,</p>	<p>91:4, 91:7, 91:8, 105:19, 105:21, 118:24, 119:12, 119:15, 119:17, 119:22, 119:25, 120:4, 122:9, 134:21, 134:24, 138:3, 138:12, 162:1, 176:11, 182:21, 182:22</p> <p>logic [1] - 103:20</p> <p>logistical [3] - 13:10, 19:8, 55:22</p> <p>logistics [1] - 85:9</p> <p>logrolling [1] - 48:8</p> <p>Longoria [2] - 117:25, 121:15</p> <p>look [25] - 7:25, 10:25, 11:21, 24:18, 35:17, 38:6, 52:21, 52:22, 53:3, 55:1, 55:2, 55:4, 55:13, 99:22, 99:23, 128:10, 156:6, 163:16, 169:1, 171:12, 171:24, 187:4, 191:3, 196:5, 206:19</p> <p>Look [1] - 57:2</p> <p>looked [2] - 45:7, 55:16</p> <p>looking [8] - 35:5, 40:21, 54:8, 72:15, 73:3, 76:14, 94:25, 186:15</p> <p>looks [4] - 52:8, 64:1, 65:20, 67:8</p> <p>lose [7] - 108:15, 129:1, 129:8, 129:12, 129:15, 129:18, 136:2</p> <p>loses [1] - 194:16</p> <p>losing [2] - 15:4, 129:12</p> <p>loss [1] - 53:13</p> <p>low [1] - 18:5</p> <p>lunch [1] - 114:6</p>	<p>9:16, 14:25, 60:2, 65:14, 103:14, 103:15, 112:8, 175:22</p> <p>mail-in [3] - 14:25, 60:2, 175:22</p> <p>mailed [1] - 103:25</p> <p>mailing [1] - 175:22</p> <p>mails [3] - 58:17, 100:12, 100:13</p> <p>main [2] - 11:8, 58:7</p> <p>mainland [1] - 22:11</p> <p>maintain [2] - 163:4, 163:22</p> <p>maintaining [1] - 29:19</p> <p>maintenance [3] - 77:12, 85:6, 92:25</p> <p>major [1] - 117:19</p> <p>majorities [1] - 25:13</p> <p>MALC [2] - 17:10, 190:10</p> <p>malfunctioned [1] - 198:15</p> <p>malfunctions [2] - 14:13, 15:17</p> <p>manage [3] - 76:16, 108:22, 108:25</p> <p>management [6] - 27:15, 27:17, 91:20, 107:16, 158:13, 158:22</p> <p>Management [1] - 158:12</p> <p>Managers [1] - 19:24</p> <p>managers [2] - 55:15, 85:3</p> <p>manages [1] - 158:11</p> <p>managing [4] - 85:5, 92:23, 107:16, 108:18</p> <p>Mandamus [1] - 4:25</p> <p>mandamus [2] - 59:2, 59:4</p> <p>mandates [2] - 35:1, 192:14</p> <p>manner [1] - 98:25</p> <p>Maple [7] - 20:18, 21:14, 22:25, 26:21, 26:24, 40:15, 54:21</p> <p>maple [1] - 26:22</p> <p>mark [1] - 41:4</p> <p>marked [2] - 62:23, 124:6</p> <p>marker [1] - 126:21</p> <p>marshals [1] - 44:16</p> <p>mask [2] - 35:1, 192:14</p> <p>masks [1] - 59:7</p> <p>Mass [5] - 5:14, 5:15,</p>
M				
		<p>ma'am [4] - 118:21, 121:10, 122:21, 123:1</p> <p>machine [3] - 1:25, 14:13, 15:17</p> <p>machines [2] - 103:21, 198:15</p> <p>magical [2] - 127:17, 196:20</p> <p>mail [13] - 5:14, 5:15, 5:16, 5:17, 5:18,</p>		

<p>5:16, 5:17, 5:18 materials [3] - 51:18, 91:3, 149:13 math [1] - 179:7 mat [1] - 146:6 Matt [1] - 7:2 matter [18] - 9:20, 18:21, 21:16, 41:22, 41:24, 43:1, 61:18, 66:11, 108:7, 108:9, 108:11, 112:4, 113:15, 115:11, 187:5, 193:5, 198:4, 198:5 matters [7] - 9:22, 11:25, 74:18, 74:20, 113:12, 198:4, 198:5 MATTHEW [1] - 2:7 mayoral [2] - 104:9, 185:16 McGee [1] - 66:22 McIngvale [1] - 140:8 me.. [1] - 113:10 mean [17] - 28:24, 33:3, 33:14, 57:3, 90:8, 96:19, 102:18, 105:7, 151:16, 152:3, 152:14, 153:2, 153:14, 159:13, 164:4, 167:19, 198:7 meaning [5] - 75:11, 75:20, 83:5, 105:14, 130:7 meaningless [1] - 171:9 means [8] - 24:19, 29:9, 83:17, 89:24, 109:3, 139:10, 196:19, 203:4 meant [1] - 46:24 meantime [1] - 49:23 measure [2] - 24:4, 24:5 measures [1] - 170:15 meat [1] - 74:21 mechanics [1] - 93:8 mechanism [2] - 33:20, 34:9 mechanisms [2] - 83:12, 160:4 media [3] - 50:17, 87:16 meet [4] - 156:12, 163:6, 164:19, 170:6 member [2] - 74:12, 135:12 members [3] - 21:10, 50:16, 54:16 memory [1] - 14:8</p>	<p>MENDELSON [2] - 2:15, 8:18 Mendelson [1] - 8:18 Menefee [6] - 6:20, 7:8, 36:14, 36:21, 39:23, 51:24 menefee [3] - 36:8, 52:4, 52:14 MENEFEE [7] - 2:5, 6:19, 36:14, 36:20, 56:16, 56:19, 57:10 Menefee..... [1] - 3:11 Menefee..... [1] - 3:8 mention [4] - 45:15, 109:8, 161:10, 171:22 mentioned [19] - 15:6, 21:19, 45:6, 46:1, 48:18, 55:14, 76:7, 76:18, 78:25, 80:1, 90:2, 93:25, 97:4, 104:14, 106:15, 107:1, 107:22, 171:1, 171:7 mentions [1] - 21:15 mere [2] - 18:24, 26:3 merely [3] - 20:22, 21:17, 194:18 merits [5] - 12:6, 12:11, 36:23, 194:23, 202:2 mess [2] - 130:19, 197:11 met [4] - 15:8, 190:24, 192:25, 201:25 method [1] - 58:14 Michigan [1] - 70:13 microphone [4] - 13:2, 69:15, 71:14, 71:19 microphones [1] - 7:25 middle [5] - 81:9, 82:3, 177:18, 190:18, 197:13 midterm [1] - 106:10 might [12] - 29:22, 33:13, 48:21, 58:3, 78:5, 97:20, 102:6, 185:25, 198:2, 198:8, 205:3 miles [2] - 41:9, 44:16 military [2] - 103:16, 103:24 MILLER [11] - 2:7, 7:2, 145:17, 146:3, 146:6, 146:11, 147:9, 157:1,</p>	<p>183:24, 184:3, 188:7 Miller [6] - 3:17, 7:2, 7:10, 146:5, 146:6, 147:12 million [35] - 16:5, 16:9, 16:12, 42:9, 42:18, 43:8, 46:11, 46:20, 47:11, 52:25, 85:15, 85:16, 105:15, 125:19, 125:20, 126:20, 126:22, 127:6, 127:13, 127:16, 128:5, 128:15, 136:8, 136:19, 136:23, 141:24, 142:25, 143:22, 143:24, 169:16, 170:2, 185:9, 195:7, 196:3, 200:2 mind [8] - 36:16, 44:6, 49:24, 60:8, 60:22, 62:23, 175:7, 176:19 mindful [1] - 189:1 minds [3] - 18:17, 199:1, 199:14 minute [4] - 94:3, 173:5, 200:10, 200:24 minutes [10] - 51:11, 65:5, 111:25, 112:1, 113:1, 113:20, 113:23, 113:24, 114:1, 157:6 misbehavior [1] - 172:6 misconduct [1] - 172:24 misperformance [1] - 173:14 miss [3] - 66:18, 204:15, 204:17 miss-styled [1] - 66:18 miss-title [1] - 204:17 misses [1] - 41:3 missing [1] - 181:22 misunderstanding [2] - 40:6, 40:11 mitigate [2] - 111:3, 135:6 mix [1] - 7:7 modify [1] - 172:6 Molinet [1] - 25:9 moment [7] - 7:25, 32:3, 66:22, 113:13, 126:10, 135:22, 141:7 Monaghan [1] - 20:18 money [6] - 29:15,</p>	<p>29:16, 97:6, 97:9, 160:10, 161:18 monitoring [2] - 169:4, 170:13 month [1] - 175:17 Monthly [1] - 14:7 monthly [1] - 93:1 months [11] - 75:9, 77:17, 77:18, 118:13, 118:15, 121:24, 130:17, 177:6, 177:17, 185:25, 194:22 morning [29] - 6:18, 6:19, 6:22, 6:23, 7:1, 7:2, 7:4, 7:6, 7:17, 7:18, 8:6, 8:8, 8:9, 8:11, 8:12, 8:14, 8:22, 9:1, 9:2, 9:24, 11:3, 36:20, 49:9, 49:14, 69:6, 108:3, 115:5, 115:6, 145:20 most [14] - 14:15, 22:21, 25:3, 38:13, 42:5, 44:4, 50:2, 68:7, 151:1, 161:7, 161:10, 161:11, 178:6, 198:15 mostly [1] - 48:24 motion [9] - 9:12, 9:14, 9:17, 10:9, 11:10, 11:12, 12:5, 63:19, 205:5 Motion [4] - 5:2, 5:3, 116:7, 202:24 move [11] - 28:4, 42:15, 58:1, 67:20, 76:17, 83:4, 114:6, 135:6, 135:19, 166:9, 175:8 moveable [1] - 69:16 moved [5] - 19:18, 82:2, 176:24, 196:6, 196:10 moves [1] - 84:7 moving [9] - 29:16, 50:7, 82:21, 83:12, 85:7, 158:25, 166:10, 166:20, 176:22 MR [177] - 6:15, 6:19, 6:23, 7:2, 7:7, 7:18, 8:9, 8:18, 8:23, 9:2, 10:8, 10:20, 11:3, 11:5, 11:19, 12:2, 12:25, 32:3, 36:7, 36:14, 36:20, 48:18, 49:4, 49:6, 49:9, 49:11, 49:20, 50:2, 50:9, 51:7, 51:14,</p>	<p>51:17, 51:21, 56:16, 56:19, 57:10, 57:25, 60:9, 60:14, 61:1, 61:4, 61:16, 62:1, 62:14, 62:21, 63:6, 63:11, 63:17, 64:7, 64:12, 64:25, 65:12, 65:16, 65:18, 66:5, 66:10, 66:16, 66:17, 66:23, 67:5, 67:11, 67:15, 67:17, 68:12, 69:3, 69:8, 69:20, 69:25, 71:20, 88:1, 88:12, 88:15, 88:23, 89:2, 89:4, 97:17, 98:5, 98:19, 99:6, 99:17, 99:18, 99:24, 100:9, 100:13, 100:21, 100:22, 101:5, 101:7, 101:20, 101:25, 102:11, 111:5, 111:21, 111:24, 112:22, 113:3, 113:15, 114:11, 114:20, 115:18, 116:4, 116:9, 116:11, 123:21, 123:22, 123:25, 124:4, 124:18, 124:22, 125:1, 126:7, 126:9, 126:17, 127:3, 127:11, 127:21, 127:24, 131:25, 132:10, 132:13, 136:15, 137:24, 141:5, 142:12, 142:18, 143:10, 143:19, 144:10, 145:7, 145:9, 145:17, 146:3, 146:6, 146:11, 147:9, 147:10, 157:1, 157:11, 157:15, 157:24, 158:3, 165:19, 165:25, 166:3, 166:23, 179:1, 179:3, 179:8, 179:11, 183:24, 184:3, 188:7, 188:10, 188:21, 188:23, 189:5, 189:8, 189:15, 194:6, 202:11, 202:15, 203:8, 203:10, 203:21, 203:25, 204:3, 204:10, 204:15, 204:17, 204:23,</p>
---	---	---	--	---

205:2, 205:12,
205:15, 205:25,
206:5, 206:11,
206:16
MS [71] - 8:12, 8:15,
9:15, 13:3, 13:9,
30:19, 30:24, 31:13,
32:7, 32:15, 32:19,
33:1, 33:7, 33:11,
53:24, 54:3, 66:21,
68:15, 68:22, 69:2,
87:22, 88:17, 98:11,
98:15, 99:9, 101:3,
101:22, 102:7,
111:8, 111:11,
113:10, 113:13,
113:19, 114:1,
114:9, 114:25,
115:2, 115:4,
115:21, 116:13,
116:20, 117:1,
117:2, 123:15,
123:18, 126:4,
127:1, 131:22,
132:9, 136:11,
137:20, 141:2,
142:10, 143:16,
144:2, 144:14,
144:18, 144:22,
145:4, 157:5,
165:17, 166:16,
179:14, 179:17,
183:20, 188:15,
189:11, 197:24,
202:5, 202:14,
205:14
MUD [1] - 27:13
MUDs [2] - 104:12,
104:14
multiple [3] - 118:24,
120:15, 180:25
municipal [3] - 20:4,
23:12, 23:17
municipalities [2] -
23:10, 104:11
must [8] - 24:7, 24:24,
26:20, 30:1, 33:25,
40:16, 136:17, 200:7
MY [1] - 207:18
mystical [1] - 127:17

N

name [6] - 7:13, 62:13,
70:1, 145:24,
146:14, 146:15
named [6] - 33:24,
39:23, 63:17, 140:8,
140:17, 184:20
national [2] - 14:5,

198:21
nature [3] - 122:10,
168:1, 180:24
navigating [1] - 110:7
Neal [2] - 6:23, 69:3
NEAL [1] - 2:6
near [2] - 13:2, 177:18
nearby [1] - 23:5
necessarily [6] -
35:16, 59:8, 112:15,
156:11, 187:6, 202:7
necessary [2] - 83:4,
154:19
necessitate [1] - 186:1
necessity [1] - 9:5
need [35] - 10:11,
11:1, 22:15, 31:25,
48:10, 57:4, 60:16,
60:25, 64:18, 64:23,
67:3, 67:9, 68:6,
68:9, 68:11, 82:8,
96:2, 104:24,
108:21, 109:15,
111:10, 111:17,
111:20, 113:9,
114:8, 141:15,
157:4, 157:10,
157:12, 171:24,
174:13, 177:21,
177:24, 189:2,
205:23
needed [10] - 19:2,
19:3, 22:10, 31:24,
122:4, 137:16,
140:19, 166:2,
182:4, 198:24
needing [1] - 63:19
needs [5] - 41:15,
42:3, 167:8, 167:13,
202:21
Neeley [1] - 191:4
NELSON [1] - 1:9
Nelson [3] - 6:9,
28:16, 146:23
never [10] - 56:20,
56:21, 126:1,
134:10, 149:7,
175:7, 176:19,
181:3, 193:12,
199:24
new [8] - 15:12, 26:24,
42:6, 43:6, 85:23,
109:2, 199:11,
201:18
New [1] - 198:20
news [3] - 14:5, 87:17,
198:21
newspaper [2] -
120:16, 132:24
next [9] - 11:3, 15:23,

36:11, 56:1, 103:6,
116:25, 135:6,
181:24, 185:25
night [9] - 64:1, 66:24,
91:2, 112:6, 116:5,
149:5, 182:8,
189:20, 204:5
nine [4] - 75:9, 77:13,
77:18, 194:22
NO [14] - 1:1, 2:4, 2:5,
2:6, 2:7, 2:13, 2:14,
2:15, 2:16, 2:21,
2:24, 4:4, 5:1, 5:21
nobody [3] - 38:3,
150:3, 192:4
noise [1] - 8:4
nominate [1] - 138:18
none [6] - 17:2,
125:23, 126:19,
127:19, 198:3, 206:5
noneconomic [4] -
129:18, 129:21,
194:18, 194:19
nonetheless [2] -
52:1, 134:14
nonpartisan [2] -
75:19, 75:21
nonspeculative [1] -
29:2
Nootsie [2] - 191:4,
191:8
normally [2] - 154:10,
183:12
North [1] - 41:23
not.. [1] - 116:3
note [1] - 134:9
notebook [1] - 128:10
noted [2] - 45:12,
66:14
nothing [5] - 53:1,
188:12, 188:13,
189:11, 196:20
notice [8] - 9:8, 9:10,
11:13, 33:25, 144:6,
196:8, 205:18
noticed [1] - 9:9
notices [1] - 65:21
notification [2] - 65:9,
66:1
notified [1] - 149:25
notion [4] - 166:4,
166:14, 178:1,
195:21
November [32] -
41:25, 59:13, 75:10,
75:11, 75:14, 81:4,
81:11, 83:18, 84:6,
95:1, 96:23, 96:25,
102:25, 103:3,
103:7, 103:8,

103:12, 104:5,
105:12, 106:9,
106:16, 106:20,
107:25, 122:6,
134:19, 141:9,
168:5, 173:22,
181:11, 182:11,
193:20, 197:11
nullifying [1] - 22:20
number [22] - 21:16,
26:14, 58:25, 67:25,
83:5, 83:7, 83:8,
84:15, 88:13, 107:2,
107:3, 107:4, 107:7,
137:13, 160:17,
160:18, 162:24,
164:2, 168:17,
169:23, 170:14,
187:4
numbered [2] - 1:22,
207:12
numbers [1] - 43:20
numerous [1] - 26:11

O

o'clock [1] - 54:1
OAG [5] - 4:5, 4:21,
4:23, 4:24, 62:2
oath [2] - 140:4, 201:2
object [12] - 11:6,
11:9, 23:6, 61:16,
61:17, 62:24, 62:25,
68:23, 88:17, 98:15,
116:11, 143:16
objection [33] - 10:6,
10:14, 58:2, 60:20,
62:17, 62:20, 67:23,
68:5, 68:10, 87:22,
87:24, 88:21, 98:10,
101:3, 101:22,
102:7, 115:18,
116:21, 116:24,
126:4, 126:12,
127:1, 131:22,
132:9, 132:11,
136:11, 137:20,
141:2, 142:10,
143:14, 165:17,
166:16, 173:5
objection's [2] -
87:25, 116:16
objections [6] - 50:12,
60:12, 60:15, 60:22,
63:9, 98:14
objective [1] - 25:18
obligation [4] - 163:1,
163:7, 168:12,
168:18
obligations [7] -

149:11, 159:14,
159:15, 163:17,
163:21, 164:19,
168:9
observation [1] -
176:21
obtain [3] - 154:19,
163:22, 180:10
obtaining [1] - 78:3
obviously [8] - 7:22,
18:2, 44:9, 46:15,
58:3, 59:8, 59:19,
203:14
occur [5] - 101:15,
103:2, 141:8,
174:20, 177:21
occurred [6] - 121:25,
132:17, 132:23,
133:11, 181:10,
207:12
occurring [1] - 187:16
October [4] - 85:17,
99:4, 103:13
OF [9] - 1:5, 1:6, 1:6,
1:8, 1:9, 1:10, 2:16,
207:3, 207:4
offer [11] - 13:12, 49:3,
49:16, 50:11, 60:13,
60:18, 60:24, 62:18,
97:20, 124:18,
143:12
OFFER [3] - 4:4, 5:1,
5:21
offered [3] - 61:4,
61:17, 207:16
offering [4] - 60:15,
88:10, 88:20, 99:4
offers [2] - 61:2, 64:23
Office [55] - 6:6, 6:8,
6:20, 6:24, 7:3, 8:10,
31:2, 31:5, 32:17,
32:18, 35:7, 58:13,
63:23, 64:2, 74:18,
77:10, 77:11, 78:23,
80:21, 80:23, 81:11,
82:13, 82:24, 87:1,
87:9, 94:24, 95:20,
98:2, 122:24,
122:25, 123:4,
123:13, 133:2,
147:19, 148:23,
150:7, 150:18,
155:4, 155:5, 155:6,
162:15, 163:18,
173:2, 178:5,
190:18, 191:17,
192:2, 193:1,
200:25, 201:6,
201:11, 201:16,
205:9

<p>OFFICE [4] - 1:6, 1:8, 2:8, 2:16</p> <p>office [113] - 6:16, 16:19, 28:13, 28:20, 29:14, 29:23, 32:22, 49:15, 59:15, 73:21, 77:21, 77:23, 79:15, 79:19, 79:23, 79:24, 80:18, 81:2, 81:8, 82:17, 85:20, 85:25, 87:12, 88:7, 92:23, 93:2, 93:12, 93:16, 94:10, 94:18, 95:23, 98:1, 100:14, 102:17, 103:1, 103:17, 104:18, 107:13, 108:4, 108:16, 110:6, 119:1, 119:5, 120:8, 122:24, 123:3, 123:12, 129:25, 130:6, 130:9, 130:14, 130:15, 130:17, 130:25, 131:15, 132:21, 133:7, 133:11, 133:16, 135:18, 140:18, 146:20, 147:1, 147:6, 147:7, 149:1, 149:10, 150:17, 150:20, 150:21, 150:25, 151:16, 152:6, 152:10, 152:11, 153:3, 153:10, 155:4, 156:16, 158:6, 159:2, 159:15, 159:22, 160:15, 161:1, 162:23, 162:25, 164:21, 166:19, 168:25, 169:17, 170:25, 171:11, 171:18, 171:22, 172:4, 172:6, 172:7, 173:23, 174:8, 175:10, 178:7, 184:24, 185:7, 185:14, 185:21, 187:18, 188:3, 193:4, 197:13</p> <p>office's [3] - 33:5, 120:12, 147:7</p> <p>Office's [2] - 58:17, 59:25</p> <p>officer [3] - 72:10, 163:12, 195:23</p> <p>officers [2] - 39:3, 168:5</p> <p>offices [15] - 32:24,</p>	<p>77:5, 77:6, 77:24, 94:4, 123:7, 152:23, 154:9, 155:14, 167:10, 172:10, 176:25, 181:1, 187:14, 197:13</p> <p>Offices [1] - 109:17</p> <p>official [28] - 7:15, 89:11, 130:5, 142:24, 143:8, 146:24, 147:7, 153:9, 163:23, 164:25, 165:8, 165:9, 166:13, 166:20, 167:14, 167:15, 167:16, 167:17, 167:24, 171:13, 184:13, 184:21, 191:22, 196:2, 199:13, 199:21, 199:22</p> <p>Official [4] - 6:7, 6:9, 207:5, 207:22</p> <p>OFFICIAL [3] - 1:7, 1:10, 207:18</p> <p>officials [16] - 31:7, 31:8, 35:19, 38:25, 79:10, 95:17, 133:23, 144:24, 158:20, 171:4, 178:2, 178:4, 178:8, 179:4, 179:5, 191:22</p> <p>offline [1] - 92:7</p> <p>offs [1] - 107:6</p> <p>often [3] - 25:18, 161:24, 184:22</p> <p>omega [3] - 25:17, 25:24, 52:6</p> <p>onboard [2] - 48:10, 82:23</p> <p>once [7] - 26:15, 27:17, 49:18, 49:21, 50:5, 126:21, 160:6</p> <p>one [69] - 10:13, 15:16, 16:13, 19:21, 20:2, 20:4, 20:5, 20:16, 20:20, 21:12, 22:18, 24:25, 25:1, 26:3, 29:6, 29:11, 29:14, 29:16, 29:23, 33:24, 36:24, 37:16, 41:6, 43:23, 44:6, 48:22, 56:1, 66:3, 66:10, 66:24, 75:23, 76:5, 77:23, 77:25, 78:1, 78:24, 81:8, 100:23, 108:4, 109:21, 110:5, 112:3, 113:15, 123:7, 123:15,</p>	<p>125:15, 126:10, 128:3, 128:4, 131:17, 143:8, 143:22, 144:14, 153:7, 159:5, 159:10, 160:15, 168:6, 170:8, 174:1, 184:22, 186:18, 196:3, 196:16, 199:10, 201:13</p> <p>One [1] - 2:24</p> <p>one-time [2] - 20:2, 20:16</p> <p>ones [5] - 21:17, 28:19, 99:20, 150:22, 164:6</p> <p>ongoing [4] - 94:25, 140:25, 170:13, 177:19</p> <p>online [2] - 92:5</p> <p>open [20] - 19:13, 29:5, 31:16, 37:6, 37:11, 40:4, 41:18, 42:9, 45:13, 45:17, 57:1, 57:7, 107:3, 120:5, 134:25, 138:15, 139:10, 139:12, 176:11, 207:13</p> <p>open/closed [1] - 43:15</p> <p>Opening [3] - 3:9, 3:10, 3:11</p> <p>opening [4] - 51:9, 51:24, 106:8, 183:13</p> <p>operate [2] - 34:9, 91:10</p> <p>operating [2] - 153:12, 186:21</p> <p>operation [3] - 22:17, 76:17, 96:9</p> <p>operations [9] - 72:2, 81:2, 82:11, 82:12, 84:2, 85:25, 110:11, 168:13, 169:9</p> <p>opinion [2] - 18:25, 130:10</p> <p>opportunity [3] - 9:13, 34:2, 100:4</p> <p>opposed [3] - 125:8, 139:14, 167:14</p> <p>Opposition [2] - 64:3, 205:10</p> <p>opposition [6] - 66:2, 189:19, 201:21, 202:4, 204:24, 205:19</p> <p>options [2] - 29:5, 33:17</p> <p>order [12] - 19:4,</p>	<p>81:25, 105:4, 124:14, 124:16, 125:3, 133:8, 135:1, 150:13, 177:12, 179:22, 202:21</p> <p>Order [1] - 5:23</p> <p>ordered [1] - 172:23</p> <p>ordering [1] - 161:8</p> <p>orders [1] - 105:4</p> <p>ordinances [1] - 23:7</p> <p>original [1] - 24:15</p> <p>otherwise [5] - 12:8, 24:21, 26:2, 52:10, 199:16</p> <p>outcome [2] - 21:5, 195:20</p> <p>outlines [1] - 179:24</p> <p>outsized [1] - 21:23</p> <p>overcome [2] - 24:11, 28:1</p> <p>overlap [1] - 21:24</p> <p>overlapped [1] - 12:6</p> <p>overruled [10] - 45:10, 87:25, 88:21, 102:9, 116:17, 126:6, 136:13, 137:22, 142:14, 166:18</p> <p>oversaw [4] - 71:10, 72:2, 72:18, 72:24</p> <p>oversee [4] - 84:24, 104:3, 158:9, 158:25</p> <p>overseeing [2] - 78:1, 159:10</p> <p>oversees [4] - 78:15, 89:6, 103:16, 158:22</p> <p>oversight [11] - 155:25, 156:14, 156:21, 169:2, 169:19, 172:20, 172:22, 179:21, 179:23, 180:12, 180:21</p> <p>overtime [1] - 109:5</p> <p>overturn [1] - 199:16</p> <p>overview [1] - 164:14</p> <p>own [5] - 92:8, 101:9, 110:24, 127:8, 138:14</p>	<p>119:21, 134:15, 134:16, 134:20, 134:21, 140:3, 160:22, 182:20</p> <p>papers [5] - 118:24, 119:2, 119:6, 122:9, 122:10</p> <p>paragraph [2] - 204:7, 205:3</p> <p>pardon [1] - 175:2</p> <p>park [1] - 22:11</p> <p>Park [1] - 58:21</p> <p>part [14] - 7:8, 7:9, 39:13, 41:14, 46:18, 151:1, 153:15, 160:2, 169:20, 174:23, 178:6, 178:23, 179:24, 183:2</p> <p>participate [1] - 74:14</p> <p>participated [1] - 87:7</p> <p>participating [1] - 7:21</p> <p>participation [1] - 60:6</p> <p>particular [19] - 23:13, 34:15, 35:8, 44:7, 46:7, 61:23, 74:4, 75:8, 78:4, 79:22, 86:9, 87:18, 94:11, 99:13, 122:3, 134:25, 139:11, 171:20, 198:25</p> <p>particularly [4] - 34:16, 79:11, 114:12, 201:23</p> <p>parties [36] - 9:7, 9:11, 10:3, 13:17, 15:4, 19:6, 28:19, 28:24, 30:23, 31:12, 32:17, 32:20, 46:24, 64:5, 67:2, 67:4, 67:15, 122:1, 138:17, 138:19, 147:8, 158:23, 161:3, 161:25, 177:21, 183:3, 183:7, 191:16, 201:23, 202:22, 203:1, 203:3, 206:13, 207:10, 207:17</p> <p>partisanship [1] - 76:7</p> <p>parts [2] - 158:11, 158:25</p> <p>Party [1] - 5:19</p> <p>party [13] - 14:5, 25:5, 28:12, 28:15, 28:18, 39:1, 53:16, 65:25, 75:22, 79:4, 159:6, 160:5, 183:8</p>
P				
<p>p.m [4] - 11:22, 203:2, 203:5, 203:6</p> <p>p.O [1] - 2:17</p> <p>P.O [1] - 207:24</p> <p>Page [2] - 3:4, 3:19</p> <p>page [1] - 54:22</p> <p>paper [17] - 14:13, 15:15, 15:16, 119:5, 119:15, 119:18,</p>				

<p>Pasadena [1] - 104:11</p> <p>pass [13] - 37:3, 37:4, 38:8, 39:14, 39:18, 46:2, 48:5, 52:11, 111:6, 157:1, 178:19, 179:11, 198:3</p> <p>passed [7] - 13:17, 41:6, 45:21, 141:20, 143:21, 147:16, 149:7</p> <p>passes [2] - 42:6, 44:15</p> <p>passing [4] - 14:3, 40:13, 45:15, 198:8</p> <p>password [2] - 92:2, 92:10</p> <p>past [9] - 30:12, 94:17, 97:22, 99:1, 102:3, 117:18, 117:22, 147:16, 193:14</p> <p>pasted [1] - 58:10</p> <p>pattern [5] - 156:8, 180:6, 192:2, 192:17</p> <p>Paxton [1] - 59:19</p> <p>paying [1] - 160:11</p> <p>peer [1] - 128:7</p> <p>peer-reviewed [1] - 128:7</p> <p>peers [1] - 130:3</p> <p>penalties [2] - 31:6, 191:21</p> <p>pendency [1] - 197:20</p> <p>pending [1] - 113:5</p> <p>Pension [1] - 19:24</p> <p>pension [6] - 20:2, 20:3, 20:4, 55:15, 55:17, 55:18</p> <p>people [21] - 22:16, 33:24, 42:14, 125:19, 125:20, 126:20, 126:22, 127:14, 132:7, 133:4, 133:5, 139:19, 141:15, 142:25, 151:5, 152:17, 162:16, 164:1, 169:16, 199:12, 200:9</p> <p>per [4] - 21:10, 54:17, 73:13, 119:2</p> <p>perceived [1] - 192:19</p> <p>percent [3] - 15:22, 117:9, 125:11</p> <p>perfect [1] - 134:10</p> <p>perfectly [3] - 20:6, 23:16, 24:21</p> <p>perform [6] - 31:9, 151:3, 152:2, 152:24, 187:14,</p>	<p>191:23</p> <p>performance [1] - 173:14</p> <p>performed [6] - 73:20, 79:20, 150:21, 164:13, 167:14, 169:16</p> <p>performing [6] - 79:8, 79:12, 82:20, 151:1, 174:15, 187:18</p> <p>perhaps [2] - 96:9, 114:22</p> <p>period [5] - 82:2, 119:19, 175:17, 177:11, 180:13</p> <p>periodic [1] - 170:14</p> <p>permanent [2] - 108:25, 109:15</p> <p>permission [1] - 112:24</p> <p>perpetuity [1] - 42:19</p> <p>person [13] - 32:23, 53:12, 138:15, 140:18, 149:22, 151:8, 151:10, 166:8, 173:16, 175:9, 177:8, 185:2, 195:18</p> <p>personal [1] - 28:17</p> <p>personally [1] - 181:14</p> <p>personnel [1] - 166:11</p> <p>persons [2] - 21:16, 143:22</p> <p>perspective [1] - 167:21</p> <p>pertaining [2] - 147:18, 158:18</p> <p>Petition [2] - 4:25, 5:4</p> <p>petition [6] - 37:16, 58:10, 59:4, 59:11, 65:25, 67:5</p> <p>petitions [1] - 59:1</p> <p>phase [1] - 96:20</p> <p>phone [3] - 2:9, 2:18, 159:8</p> <p>Phone [2] - 2:23, 2:25</p> <p>photo [1] - 51:3</p> <p>photographs [2] - 50:23, 51:1</p> <p>physical [2] - 49:24, 99:15</p> <p>picked [1] - 197:3</p> <p>picture [1] - 50:23</p> <p>piece [2] - 93:9, 100:23</p> <p>pieces [1] - 17:3</p> <p>pinnacle [1] - 129:24</p> <p>place [27] - 24:3, 42:19, 43:18, 77:12,</p>	<p>85:6, 103:22, 107:13, 107:23, 110:22, 133:1, 135:2, 139:5, 140:1, 152:14, 160:4, 168:6, 168:7, 170:15, 170:24, 172:12, 172:14, 180:11, 180:20, 187:16, 193:23, 199:15, 200:22</p> <p>placed [3] - 49:18, 159:15, 165:8</p> <p>places [3] - 38:23, 130:16, 183:15</p> <p>plain [5] - 52:18, 52:21, 53:9, 53:11, 186:15</p> <p>PLAINTIFF [1] - 2:3</p> <p>plaintiff [2] - 56:15, 63:1</p> <p>Plaintiff [7] - 6:16, 6:21, 6:25, 36:21, 40:4, 69:5, 203:21</p> <p>Plaintiff's [8] - 63:5, 88:25, 100:1, 100:6, 100:17, 100:19, 188:19, 203:15</p> <p>PLAINTIFFS [3] - 3:12, 4:3, 5:1</p> <p>Plaintiff/Cross [1] - 1:3</p> <p>Plaintiff/Cross-Defendant [1] - 1:3</p> <p>plaintiffs [7] - 6:14, 68:19, 88:19, 111:19, 145:15, 188:22, 189:13</p> <p>Plaintiffs [1] - 113:22</p> <p>plan [6] - 12:14, 101:11, 107:8, 112:12, 177:21, 200:21</p> <p>planned [1] - 43:22</p> <p>planning [6] - 60:13, 75:3, 75:7, 106:16, 107:22, 107:25</p> <p>plans [1] - 154:2</p> <p>plates [2] - 78:22, 79:17</p> <p>Plaza [1] - 2:24</p> <p>PLEA [3] - 1:19, 3:2, 3:6</p> <p>plea [28] - 9:4, 11:25, 12:3, 12:4, 12:15, 12:16, 12:22, 12:23, 12:24, 36:3, 46:25, 51:25, 54:4, 61:10, 63:14, 63:22, 64:16, 65:10, 66:6, 112:6,</p>	<p>191:2, 204:9, 204:24, 205:5, 205:7, 205:8, 205:18</p> <p>Plea [7] - 50:3, 64:19, 68:17, 68:21, 88:21, 189:19, 203:15</p> <p>plead [5] - 19:3, 31:25, 190:2, 204:14</p> <p>pleaded [8] - 17:5, 24:10, 27:24, 28:1, 29:21, 35:21, 35:24, 36:1</p> <p>pleading [4] - 204:5, 204:11, 204:16, 204:22</p> <p>pleadings [4] - 11:14, 61:19, 67:9, 67:12</p> <p>pled [4] - 12:7, 17:8, 190:25, 191:11</p> <p>plenty [1] - 61:8</p> <p>plug [1] - 13:7</p> <p>plus [1] - 107:8</p> <p>podium [3] - 13:5, 13:11, 51:14</p> <p>point [22] - 22:22, 29:5, 32:11, 35:14, 36:24, 37:5, 43:23, 47:3, 47:14, 56:5, 57:4, 72:23, 78:24, 79:5, 103:4, 108:6, 110:5, 122:3, 169:20, 177:4, 196:22, 201:23</p> <p>pointed [2] - 35:9, 52:14</p> <p>points [5] - 27:10, 52:3, 112:10, 190:22, 199:19</p> <p>policies [1] - 94:1</p> <p>policies [2] - 13:19, 169:3</p> <p>policy [1] - 34:25</p> <p>political [3] - 161:25, 183:3, 191:5</p> <p>poll [1] - 14:20</p> <p>polling [20] - 15:17, 94:13, 105:20, 118:24, 119:2, 119:4, 119:6, 119:11, 119:14, 119:17, 119:21, 119:24, 120:4, 122:9, 134:21, 134:22, 134:24, 135:2, 139:10, 162:18</p> <p>poorly [1] - 165:20</p> <p>poorly-worded [1] - 165:20</p> <p>popular [1] - 19:16</p>	<p>population [80] - 15:22, 16:5, 16:9, 17:2, 17:24, 19:9, 19:14, 19:25, 21:22, 23:10, 37:9, 37:10, 37:12, 40:24, 40:25, 41:1, 41:11, 41:21, 41:22, 41:25, 42:1, 42:18, 43:2, 43:4, 43:10, 43:13, 43:18, 44:3, 44:8, 44:10, 44:25, 45:4, 45:12, 45:14, 45:18, 45:19, 45:25, 46:2, 46:11, 47:19, 52:25, 54:10, 55:11, 55:13, 55:16, 55:18, 55:20, 56:5, 56:7, 56:8, 56:9, 56:21, 56:24, 57:7, 57:20, 117:9, 125:18, 127:6, 127:13, 127:15, 128:5, 128:14, 136:8, 136:10, 136:16, 136:18, 136:23, 137:1, 141:24, 143:23, 166:6, 170:3, 170:7, 195:7, 196:8, 196:9, 196:10, 197:25</p> <p>populations [1] - 198:5</p> <p>populous [2] - 42:5, 47:17</p> <p>portal [1] - 92:3</p> <p>portions [2] - 108:12, 207:9</p> <p>portrayed [2] - 140:23</p> <p>pose [1] - 115:22</p> <p>posit [2] - 127:25, 167:22</p> <p>position [30] - 11:6, 16:10, 16:11, 20:11, 28:22, 32:1, 33:19, 35:13, 46:12, 75:19, 76:24, 101:18, 102:12, 115:17, 115:19, 116:23, 122:16, 122:20, 122:22, 125:2, 125:21, 126:23, 146:16, 147:7, 148:7, 159:9, 181:8, 185:8, 195:25</p> <p>positions [4] - 29:3, 108:8, 128:20, 167:3</p> <p>possibility [1] - 193:16</p> <p>possible [11] - 19:3, 24:25, 33:11, 82:10,</p>
--	---	--	---	---

<p>114:24, 123:2, 123:6, 123:9, 123:11, 186:11, 200:8</p> <p>possibly [10] - 24:11, 32:12, 34:6, 56:11, 66:18, 186:9, 188:5, 198:2, 198:8, 201:2</p> <p>Post [13] - 4:7, 4:11, 4:12, 4:14, 4:16, 4:17, 4:18, 5:5, 5:7, 5:8, 5:10, 5:11, 5:12</p> <p>post [1] - 101:11</p> <p>post-September [1] - 101:11</p> <p>posted [1] - 140:10</p> <p>potential [3] - 21:13, 141:9, 201:16</p> <p>potentially [7] - 19:15, 30:13, 33:3, 33:12, 130:12, 171:13, 199:25</p> <p>potion [1] - 12:23</p> <p>power [4] - 23:11, 62:7, 153:7, 167:3</p> <p>powers [3] - 39:3, 52:23, 128:13</p> <p>practice [4] - 186:17, 192:2, 192:17</p> <p>practices [1] - 158:20</p> <p>pre [1] - 60:23</p> <p>pre-admit [1] - 60:23</p> <p>precedent [1] - 55:14</p> <p>precedents [1] - 20:19</p> <p>precinct [6] - 139:4, 139:10, 139:11, 139:14, 139:20, 161:20</p> <p>precinct-based [1] - 139:10</p> <p>precincts [1] - 139:12</p> <p>precipitating [2] - 26:5, 26:9</p> <p>precise [1] - 38:12</p> <p>preclude [2] - 21:8, 54:15</p> <p>predated [1] - 137:17</p> <p>predecessor [1] - 118:3</p> <p>predict [2] - 160:18, 162:16</p> <p>prediction [1] - 139:22</p> <p>preference [1] - 49:25</p> <p>preliminary [2] - 180:18, 181:11</p> <p>premise [1] - 174:13</p> <p>prep [1] - 85:6</p> <p>preparation [1] - 75:2</p> <p>preparations [2] - 82:8, 103:2</p>	<p>prepare [5] - 77:19, 105:17, 106:13, 110:12, 177:21</p> <p>prepared [2] - 48:23, 68:2</p> <p>preparing [3] - 46:6, 82:25, 106:7</p> <p>prepping [1] - 108:23</p> <p>prerogative [1] - 199:5</p> <p>prescribing [1] - 39:3</p> <p>presence [2] - 21:7, 191:10</p> <p>present [3] - 7:8, 7:9, 36:8</p> <p>presentation [1] - 47:23</p> <p>presented [1] - 44:2</p> <p>presenting [3] - 7:5, 7:14, 10:14</p> <p>preserve [1] - 197:6</p> <p>preserving [1] - 190:8</p> <p>Presiding [1] - 1:23</p> <p>presiding [4] - 83:9, 91:3, 107:3, 161:21</p> <p>press [5] - 58:16, 59:24, 62:5, 87:17, 88:4</p> <p>Press [5] - 4:6, 4:8, 4:10, 4:15, 5:6</p> <p>pressure [1] - 178:2</p> <p>presumably [1] - 101:11</p> <p>presumed [3] - 18:23, 26:20, 200:8</p> <p>presumption [3] - 24:6, 24:12, 28:1</p> <p>pretended [1] - 39:16</p> <p>pretty [5] - 38:16, 39:10, 41:19, 46:3, 162:8</p> <p>prevail [2] - 196:24, 197:4</p> <p>prevails [1] - 25:2</p> <p>prevent [3] - 24:16, 110:16, 152:17</p> <p>prevented [1] - 192:24</p> <p>preventing [1] - 132:7</p> <p>prevents [1] - 16:8</p> <p>preview [1] - 163:15</p> <p>previously [1] - 176:24</p> <p>pricing [1] - 57:16</p> <p>primaries [1] - 159:25</p> <p>primarily [1] - 45:3</p> <p>primary [20] - 14:7, 14:24, 15:7, 15:10, 40:9, 118:4, 118:7, 121:15, 121:20, 121:23, 122:1, 138:18, 160:3,</p>	<p>160:14, 161:2, 161:5, 181:12, 181:19, 182:2, 183:2</p> <p>principle [2] - 37:8, 43:15</p> <p>priorities [5] - 85:20, 85:21, 86:5, 86:11, 86:18</p> <p>priority [2] - 98:1, 100:15</p> <p>privilege [1] - 31:20</p> <p>privileged [1] - 104:24</p> <p>probate [1] - 71:7</p> <p>problem [22] - 14:1, 18:12, 23:13, 23:25, 24:1, 24:3, 26:19, 37:1, 37:3, 37:10, 137:17, 141:20, 142:4, 142:18, 142:21, 166:5, 181:3, 182:7, 195:9, 195:10, 195:21, 200:20</p> <p>problematic [1] - 39:21</p> <p>problems [46] - 13:15, 14:14, 14:16, 15:14, 15:15, 16:3, 22:4, 26:19, 35:12, 37:4, 41:10, 42:25, 48:2, 48:4, 53:2, 117:19, 117:21, 118:6, 120:16, 120:23, 131:5, 131:9, 134:3, 134:6, 134:8, 134:14, 137:8, 156:8, 166:4, 166:6, 180:6, 181:4, 181:15, 182:11, 182:14, 183:12, 183:14, 183:15, 195:12, 198:14, 198:18, 198:20, 198:21, 199:6, 200:15</p> <p>procedure [1] - 10:7</p> <p>procedures [13] - 74:23, 76:16, 82:17, 84:2, 85:23, 85:24, 86:9, 90:10, 90:19, 90:22, 91:11, 135:20, 169:3</p> <p>proceed [7] - 36:13, 66:15, 69:18, 89:2, 89:3, 115:1, 157:23</p> <p>proceeding [3] - 59:12, 59:23, 116:12</p> <p>Proceedings [2] - 1:25, 206:21</p> <p>proceedings [5] -</p>	<p>1:21, 8:5, 187:17, 207:9, 207:15</p> <p>proceeds [1] - 190:14</p> <p>process [57] - 15:5, 16:15, 25:11, 25:17, 27:22, 34:3, 75:23, 75:25, 76:2, 76:15, 77:1, 77:2, 77:17, 78:6, 78:18, 82:17, 82:22, 83:3, 84:1, 84:9, 84:10, 84:25, 85:3, 87:7, 89:16, 89:22, 89:25, 90:16, 90:19, 90:22, 92:6, 93:21, 94:18, 95:3, 97:2, 97:13, 97:16, 107:16, 130:2, 132:5, 132:19, 140:1, 142:7, 151:4, 152:7, 152:14, 152:15, 162:13, 163:2, 172:11, 178:23, 180:8, 180:11, 182:17, 182:22</p> <p>processes [13] - 43:21, 74:23, 76:16, 78:2, 82:18, 84:2, 85:22, 85:24, 86:9, 90:10, 90:20, 91:11, 182:19</p> <p>processing [1] - 150:23</p> <p>produced [1] - 87:17</p> <p>professionalism [1] - 76:9</p> <p>prohibited [3] - 18:15, 20:22, 38:10</p> <p>prohibition [2] - 39:17, 54:17</p> <p>prohibits [2] - 50:20, 194:8</p> <p>Project [1] - 59:14</p> <p>projected [1] - 105:22</p> <p>promulgation [1] - 163:23</p> <p>pronouncement [1] - 31:22</p> <p>proper [11] - 9:10, 28:11, 28:15, 28:18, 28:19, 28:23, 32:17, 32:20, 34:17, 91:10, 183:6</p> <p>properly [8] - 85:5, 95:24, 103:22, 111:14, 174:16, 182:15, 186:19, 205:21</p> <p>property [2] - 16:18, 57:12</p>	<p>propose [1] - 160:9</p> <p>proposed [3] - 40:19, 94:17, 107:6</p> <p>proposing [2] - 60:2, 133:9</p> <p>pros [1] - 13:16</p> <p>prosecute [1] - 35:7</p> <p>prove [1] - 202:1</p> <p>proven [2] - 201:4, 201:14</p> <p>provide [15] - 63:19, 84:8, 154:18, 157:13, 158:13, 158:16, 160:13, 160:23, 163:2, 164:17, 169:13, 174:22, 193:8, 193:24</p> <p>provided [11] - 52:10, 114:18, 148:25, 149:9, 149:10, 161:25, 177:5, 183:6, 185:13, 191:9, 192:1</p> <p>provides [13] - 26:13, 80:20, 89:20, 89:23, 96:7, 155:16, 158:19, 161:2, 162:15, 163:19, 184:22, 187:13, 193:6</p> <p>providing [6] - 27:1, 149:1, 152:16, 163:21, 175:22, 187:20</p> <p>provision [22] - 20:10, 21:11, 30:10, 34:13, 34:15, 34:24, 35:8, 35:15, 52:9, 52:21, 52:22, 155:10, 160:21, 174:6, 180:16, 184:9, 185:4, 201:17</p> <p>PROVISIONAL [1] - 1:8</p> <p>provisions [5] - 171:3, 171:7, 171:20, 171:24, 174:21</p> <p>PSA [1] - 4:22</p> <p>PTJ [8] - 61:2, 61:3, 61:12, 61:17, 66:19, 68:24, 112:2, 204:3</p> <p>Public [3] - 20:25, 54:13, 56:23</p> <p>public [13] - 22:23, 23:9, 23:15, 40:18, 42:21, 42:22, 130:23, 162:13, 164:21, 178:2, 178:3, 181:9, 197:14</p>
--	--	---	---	--

<p>publicly ^[1] - 182:12 published ^[1] - 162:19 publishing ^[1] - 76:3 PUC ^[1] - 57:9 pull ^[1] - 69:16 punishing ^[1] - 24:17 purchase ^[1] - 164:7 purporting ^[1] - 155:14 purpose ^[11] - 37:21, 40:19, 42:20, 42:21, 42:22, 63:2, 64:18, 143:20, 143:21, 143:25, 144:8 purposes ^[3] - 13:10, 31:24, 32:22 pursuant ^[3] - 133:17, 149:11, 202:25 push ^[1] - 36:19 put ^[12] - 7:10, 12:10, 15:12, 37:17, 48:19, 74:20, 110:5, 112:24, 130:20, 185:17, 194:21, 205:15 putting ^[4] - 7:11, 94:13, 167:2, 167:3</p>	<p style="text-align: center;">R</p> <p>race ^[1] - 185:16 raise ^[2] - 69:12, 198:23 raised ^[2] - 14:6, 116:12 raises ^[1] - 204:12 raising ^[1] - 95:22 rally ^[5] - 90:24, 90:25, 91:2, 91:10, 107:6 ran ^[3] - 48:4, 119:18, 131:6 range ^[1] - 44:22 rate ^[1] - 57:14 rather ^[3] - 10:17, 115:23, 167:16 ratified ^[1] - 178:16 rational ^[14] - 126:21, 127:5, 127:10, 127:25, 136:7, 136:15, 136:23, 137:4, 143:25, 167:12, 167:22, 195:6, 195:8, 196:17 rationality ^[1] - 197:2 re ^[3] - 67:20, 168:23, 190:3 re-addressable ^[1] - 190:3 re-urge ^[1] - 67:20 reached ^[1] - 126:22 reaches ^[5] - 37:12, 136:10, 136:18, 137:1, 196:14 read ^[7] - 10:10, 12:17, 24:23, 57:11, 147:3, 169:9 readdressing ^[1] - 78:4 reading ^[1] - 33:2 reads ^[2] - 169:10, 170:4 ready ^[5] - 57:23, 66:15, 69:19, 146:12, 157:20 real ^[1] - 189:1 realized ^[1] - 112:4 really ^[23] - 10:1, 18:5, 19:7, 19:8, 19:16, 42:1, 44:13, 46:13, 47:25, 55:5, 55:13, 55:18, 62:9, 62:22, 66:17, 75:10, 130:6, 167:20, 168:5, 184:25, 195:5, 197:5, 197:11 realm ^[1] - 24:3 reason ^[23] - 17:4, 34:7, 35:20, 42:12,</p>	<p>45:23, 46:3, 47:22, 61:13, 88:18, 110:18, 126:21, 127:5, 128:1, 128:8, 135:22, 136:6, 150:23, 166:23, 186:12, 197:4, 198:24, 200:6, 201:3 reasonable ^[55] - 17:22, 18:5, 18:6, 18:9, 18:11, 18:14, 18:17, 18:20, 19:3, 19:11, 20:8, 21:7, 21:13, 22:2, 22:9, 22:12, 23:20, 24:6, 24:8, 24:22, 24:23, 26:2, 26:16, 26:17, 27:12, 28:2, 40:7, 40:10, 40:12, 40:13, 40:21, 43:16, 43:17, 44:18, 53:4, 54:21, 54:23, 54:25, 55:1, 55:3, 55:6, 55:9, 56:2, 56:12, 198:6, 198:7, 198:8, 198:18, 199:1, 199:11, 199:14, 199:17, 199:18, 200:19 reasonableness ^[3] - 21:18, 26:6, 198:1 reasoning ^[1] - 47:16 reasons ^[3] - 27:23, 115:22, 197:18 reassemble ^[2] - 130:17, 131:1 reassembling ^[1] - 130:24 reassess ^[1] - 85:21 rebuttal ^[4] - 12:11, 53:22, 188:25, 189:21 rebutted ^[2] - 190:23, 195:22 receive ^[7] - 90:3, 93:1, 111:17, 126:14, 153:25, 161:16, 203:4 received ^[9] - 9:8, 49:8, 49:17, 64:13, 64:15, 67:2, 105:23, 132:24, 132:25 receives ^[1] - 33:23 recent ^[5] - 14:8, 19:19, 25:9, 90:22, 140:25 recently ^[2] - 20:17, 25:3 recess ^[6] - 65:4, 65:6, 157:17, 157:21,</p>	<p>157:22 recognize ^[2] - 21:20, 130:4 recognized ^[2] - 21:12, 122:4 recommending ^[2] - 94:9, 178:13 recommendation ^[1] - 162:5 reconciliation ^[2] - 76:4, 181:22 Record ^[2] - 207:11, 207:14 record ^[16] - 7:14, 8:21, 11:6, 11:9, 36:15, 50:1, 58:6, 61:24, 66:11, 67:18, 70:1, 75:18, 80:3, 124:19, 145:24, 189:16 RECORD ^[1] - 1:1 recorded ^[1] - 14:24 recording ^[1] - 50:19 recordings ^[1] - 50:20 records ^[2] - 67:22, 78:16 recross ^[2] - 144:13, 183:24 RECROSS ^[2] - 144:21, 184:2 RECROSS-EXAMINATION ^[2] - 144:21, 184:2 recruited ^[1] - 83:9 recruiting ^[1] - 76:13 recurring ^[2] - 156:8, 180:5 redesignate ^[1] - 150:4 redirect ^[4] - 112:1, 123:20, 123:21, 191:15 redistributing ^[1] - 160:5 redistricting ^[1] - 139:25 redressability ^[4] - 30:3, 192:23, 192:25, 193:25 redressed ^[2] - 28:10, 30:8 reelected ^[1] - 173:16 reevaluated ^[1] - 30:15 refer ^[2] - 96:3, 149:19 reference ^[1] - 97:8 referencing ^[2] - 98:4, 171:21 referred ^[2] - 20:1, 90:23</p>	<p>referring ^[6] - 86:22, 86:24, 96:4, 155:7, 160:20, 204:23 reflect ^[1] - 204:18 reflects ^[1] - 207:15 refraining ^[2] - 155:7, 156:3 refuse ^[2] - 187:6, 193:24 refused ^[1] - 148:6 regard ^[5] - 114:13, 161:3, 162:5, 194:14, 201:12 regarding ^[10] - 34:18, 54:6, 58:14, 59:24, 131:4, 132:14, 133:19, 163:2, 180:17, 191:17 regardless ^[5] - 75:22, 79:19, 79:24, 149:1, 185:11 regards ^[2] - 149:3, 171:16 regional ^[1] - 91:7 registered ^[7] - 105:15, 125:9, 131:16, 132:6, 132:7, 185:10, 196:9 registering ^[4] - 31:9, 133:4, 133:5, 191:24 registrar ^[5] - 147:25, 150:7, 150:13, 154:18, 155:10 registrar's ^[1] - 154:24 registration ^[31] - 72:3, 74:1, 77:2, 77:9, 77:11, 77:16, 78:8, 78:9, 78:11, 78:21, 85:1, 85:2, 85:4, 91:20, 92:9, 92:19, 92:21, 92:24, 131:12, 132:14, 132:19, 133:25, 136:22, 136:25, 150:20, 154:14, 154:20, 156:10, 158:13, 168:9, 180:7 registrations ^[1] - 85:5 regulate ^[3] - 173:7, 173:14, 174:3 regulating ^[2] - 38:16, 52:12 regulation ^[3] - 38:11, 75:25, 76:1 regulatory ^[1] - 160:17 reimbursed ^[1] - 150:13 reimbursements ^[2] - 93:2, 151:23</p>
<p style="text-align: center;">Q</p> <p>qualifications ^[1] - 70:7 quarterly ^[1] - 93:1 question's ^[1] - 102:2 questioning ^[1] - 17:25 questions ^[30] - 48:13, 48:16, 80:3, 82:16, 84:1, 88:2, 95:22, 114:13, 114:16, 123:18, 123:23, 125:6, 131:3, 131:8, 136:5, 136:22, 137:25, 141:6, 143:11, 144:11, 144:18, 145:7, 145:9, 157:9, 164:2, 183:20, 188:7, 189:22, 194:2, 194:3 quibbling ^[1] - 178:18 quick ^[5] - 52:3, 66:10, 110:5, 111:11, 199:19 quickly ^[7] - 10:18, 37:15, 82:10, 107:10, 189:1, 203:13, 206:19 quite ^[1] - 64:11 quo ^[1] - 197:6 quote ^[2] - 15:10, 26:3</p>				

<p>reimburses [1] - 92:23 reiterate [1] - 116:13 reject [1] - 187:2 rejected [2] - 23:24, 191:4 relate [1] - 163:3 related [14] - 55:18, 55:20, 59:3, 59:8, 94:13, 98:16, 98:17, 98:18, 149:11, 162:12, 168:9, 178:7, 187:14, 197:2 relates [7] - 75:24, 82:5, 82:21, 90:19, 92:20, 155:9 relating [6] - 89:18, 97:18, 109:17, 174:7, 175:17, 175:22 relation [2] - 40:8, 43:16 relationship [3] - 40:10, 40:12, 195:8 relatively [3] - 164:10, 194:14, 195:3 release [1] - 59:24 Release [5] - 4:6, 4:8, 4:10, 4:15, 5:6 releases [4] - 58:16, 62:5, 87:17, 88:4 relevance [9] - 61:19, 68:1, 68:10, 87:23, 88:21, 98:16, 116:11, 141:3, 143:18 relevancy [3] - 61:18, 67:23, 68:5 relevant [2] - 46:13, 144:4 relied [1] - 18:7 Relief [2] - 5:3, 203:18 relief [10] - 12:21, 115:11, 115:14, 194:7, 194:12, 201:8, 203:19, 204:19, 204:21, 205:4 rely [2] - 45:4, 189:18 relying [2] - 125:8, 187:22 remaining [1] - 111:15 remedy [1] - 173:6 remember [2] - 176:2, 176:13 removal [3] - 34:6, 174:7, 174:10 remove [4] - 77:14, 96:9, 96:21, 97:2 removed [2] - 79:8, 174:12</p>	<p>render [3] - 21:2, 23:25, 26:6 renders [1] - 20:12 rental [1] - 160:12 repeated [1] - 192:17 repeatedly [1] - 200:25 replace [1] - 173:23 replacing [1] - 174:17 reply [2] - 11:1, 11:18 reported [4] - 1:25, 14:4, 181:21, 207:13 reportedly [3] - 15:10, 119:16, 119:18 reporter [3] - 7:15, 49:13, 157:14 REPORTER [2] - 126:8, 126:11 Reporter [2] - 207:5, 207:22 REPORTER'S [2] - 1:1, 207:1 Reporter's [3] - 3:25, 207:11, 207:14 reporting [1] - 182:3 reports [10] - 14:12, 15:16, 121:3, 121:4, 121:20, 122:9, 122:11, 122:13, 140:2, 170:14 represent [1] - 10:22 represented [1] - 46:16 representing [1] - 193:11 represents [1] - 117:8 republican [1] - 140:17 Republican [1] - 183:8 reputational [1] - 130:6 request [16] - 9:6, 9:7, 9:20, 10:19, 12:20, 12:21, 36:3, 62:12, 112:24, 157:6, 181:1, 201:6, 203:16, 204:7, 204:21, 205:18 Request [1] - 203:17 requested [3] - 144:9, 178:25, 207:9 requests [4] - 66:11, 154:6, 203:19, 206:3 require [2] - 109:3, 150:12 required [2] - 98:20, 158:15 requirement [2] - 190:24, 192:10 requirements [2] -</p>	<p>156:11, 156:13 requires [8] - 33:20, 46:5, 147:20, 147:24, 148:18, 177:16, 177:17, 184:5 requiring [1] - 96:22 research [1] - 10:11 researching [1] - 132:23 resend [1] - 67:3 reserved [1] - 111:16 resident [1] - 82:2 residents [3] - 42:9, 60:3, 60:4 resign [1] - 107:20 resigned [5] - 14:10, 15:7, 107:17, 117:25, 118:3 resolution [2] - 178:19, 180:10 respect [28] - 40:18, 50:19, 64:20, 64:22, 71:2, 80:18, 86:13, 90:11, 91:13, 92:20, 94:2, 104:13, 154:5, 158:17, 159:18, 161:5, 167:2, 180:3, 181:19, 181:20, 182:19, 183:1, 190:5, 190:15, 191:13, 192:25, 193:3, 193:21 respectfully [1] - 40:7 respective [1] - 207:16 respond [8] - 56:17, 63:20, 101:5, 101:14, 113:11, 115:25, 116:6, 126:16 responding [1] - 97:10 response [8] - 36:6, 60:19, 66:2, 98:19, 99:8, 112:5, 191:1, 202:23 responsibilities [8] - 76:23, 77:23, 78:7, 78:17, 78:20, 79:13, 110:6, 166:10 responsibility [4] - 33:8, 158:9, 164:11, 165:6 responsible [7] - 71:4, 75:21, 77:8, 77:10, 89:11, 148:14, 166:12 rest [7] - 60:17, 112:8, 171:24, 188:22,</p>	<p>189:6, 189:12, 194:1 restart [1] - 98:7 restate [1] - 126:13 restricted [1] - 22:20 result [4] - 110:1, 120:22, 132:20, 174:20 results [19] - 15:19, 76:4, 93:8, 93:19, 93:23, 93:24, 109:5, 120:22, 149:6, 178:3, 184:5, 184:16, 185:2, 185:6, 185:12, 186:8, 186:13, 187:23, 188:4 retirement [1] - 129:16 return [7] - 16:16, 91:3, 126:23, 126:24, 145:12, 151:10, 193:5 returning [1] - 143:6 returns [2] - 143:7, 145:2, 148:19, 148:25, 149:2, 149:14, 168:10, 180:23, 181:2, 181:20, 182:3, 182:9, 186:18, 186:23, 187:2, 187:8, 187:10, 193:24, 198:14, 201:1 review [4] - 11:14, 26:8, 100:4, 112:19 reviewed [2] - 128:7, 132:24 reviewing [2] - 26:6, 169:3 revoked [1] - 150:1 reward [2] - 140:10, 140:14 Richard [4] - 7:21, 51:7, 51:22, 64:12 RICHARD [1] - 2:23 rid [3] - 137:5, 174:2, 174:14 rights [3] - 133:19, 164:1, 191:6 Rights [1] - 59:13 River [1] - 166:5 road [3] - 10:9, 39:12, 110:25 Robinson [1] - 45:11 Rodney [3] - 151:9, 151:25, 152:21 role [22] - 70:7, 72:2, 72:7, 72:12, 72:14, 72:16, 72:17, 73:20, 74:4, 78:7, 84:13,</p>	<p>93:10, 100:24, 101:14, 107:24, 120:7, 120:11, 120:12, 155:15, 164:14, 169:8 roles [6] - 73:24, 78:13, 82:21, 89:16, 108:4, 151:6 room [2] - 25:24, 39:20 roughly [7] - 77:17, 85:10, 96:23, 103:13, 105:22, 110:21, 125:10 round [2] - 77:12, 85:2 rubbing [1] - 8:3 rule [9] - 21:8, 50:19, 54:15, 54:19, 56:11, 165:21, 199:11, 199:16 Rule [1] - 5:2 rules [4] - 18:18, 39:12, 51:4, 160:13 Ruling [1] - 3:23 ruling [6] - 68:23, 68:24, 68:25, 69:1, 166:2, 194:10 rulings [4] - 50:18, 60:25, 203:12, 206:18 Run [8] - 20:18, 21:15, 22:25, 26:21, 26:22, 26:24, 40:15, 54:21 run [18] - 14:8, 38:22, 81:14, 86:2, 86:6, 104:14, 136:17, 136:19, 137:17, 141:16, 159:19, 168:2, 168:3, 168:19, 185:20, 186:4, 186:8, 193:7 running [2] - 85:9, 86:7, 92:8, 119:15, 122:10, 127:4, 131:11, 133:23, 137:19, 141:21, 142:24, 159:21, 159:25, 160:10, 164:15, 165:7, 169:8, 175:11, 176:17, 178:3, 187:19 runs [3] - 91:22, 103:13, 140:9 Ryan [4] - 35:9, 35:11, 35:16, 35:17</p>
S				
salary [1] - 129:13				

<p>San [1] - 57:3</p> <p>SARKAR [29] - 2:6, 6:23, 69:3, 69:20, 69:25, 71:20, 88:1, 88:12, 88:15, 88:23, 89:2, 89:4, 97:17, 98:5, 98:19, 99:6, 99:17, 100:9, 100:13, 100:21, 100:22, 101:5, 101:7, 101:20, 101:25, 102:11, 111:5, 123:21, 145:7</p> <p>Sarkar [6] - 3:14, 6:23, 7:10, 50:5, 69:3, 69:18</p> <p>Sarkar.. [1] - 49:22</p> <p>saw [4] - 18:13, 37:16, 49:7, 94:8</p> <p>SB17 [3] - 128:11, 144:7, 198:3</p> <p>SB1750 [31] - 4:20, 5:13, 13:25, 14:3, 16:2, 16:4, 16:8, 17:6, 17:7, 17:20, 17:21, 27:25, 31:23, 36:2, 36:23, 37:20, 38:1, 86:21, 86:22, 87:2, 96:16, 98:21, 98:25, 128:25, 135:24, 136:3, 147:12, 147:16, 147:20, 147:24, 201:18</p> <p>SB1780 [1] - 5:24</p> <p>SB1933 [7] - 4:19, 33:17, 96:3, 96:6, 96:15, 155:17, 155:19</p> <p>SBOT [10] - 2:4, 2:5, 2:6, 2:7, 2:13, 2:14, 2:15, 2:16, 2:21, 2:24</p> <p>scanning [1] - 182:15</p> <p>SCHECHTER [45] - 2:23, 51:7, 51:14, 51:17, 51:21, 64:12, 65:18, 66:5, 112:22, 113:3, 113:15, 115:18, 116:4, 116:9, 116:11, 123:22, 123:25, 124:4, 124:18, 124:22, 125:1, 126:7, 126:9, 126:17, 127:3, 127:11, 127:21, 127:24, 131:25, 132:10, 132:13, 136:15, 137:24,</p>	<p>141:5, 142:12, 142:18, 143:10, 143:19, 144:10, 145:9, 202:11, 202:15, 203:10, 203:25, 204:10</p> <p>Schechter [7] - 3:15, 7:21, 51:22, 64:13, 112:22, 115:25, 203:5</p> <p>Schechter..... [1] - 3:9</p> <p>schedule [1] - 107:7</p> <p>scheduled [2] - 10:3, 26:24</p> <p>Schlechter [1] - 112:21</p> <p>School [1] - 70:12</p> <p>school [2] - 70:15, 104:12</p> <p>scope [3] - 22:19, 72:14, 105:12</p> <p>screen [1] - 13:8</p> <p>scrutiny [1] - 96:1</p> <p>se [2] - 21:10, 54:17</p> <p>seat [1] - 146:2</p> <p>second [14] - 25:7, 36:16, 37:5, 37:14, 46:17, 85:11, 103:23, 103:24, 117:2, 117:4, 123:16, 144:14, 186:22, 200:9</p> <p>seconds [1] - 56:16</p> <p>Secretary [110] - 6:9, 29:24, 30:2, 30:13, 32:9, 32:12, 32:18, 33:18, 33:22, 34:4, 34:5, 34:11, 34:14, 34:23, 61:22, 70:20, 71:11, 72:18, 72:19, 74:15, 74:18, 74:24, 87:8, 89:8, 89:10, 89:20, 89:22, 90:12, 90:15, 90:19, 91:8, 91:13, 91:15, 91:23, 92:13, 92:15, 92:19, 93:3, 93:4, 93:9, 93:15, 93:18, 94:1, 94:2, 94:12, 94:15, 94:16, 94:22, 95:13, 95:21, 96:8, 96:13, 98:2, 98:24, 100:14, 100:15, 113:21, 142:5, 142:19, 143:3, 143:5, 146:18, 146:20, 146:22, 146:25, 147:6, 148:12, 148:22, 149:5,</p>	<p>149:15, 149:20, 150:7, 150:16, 151:11, 154:18, 155:1, 155:6, 155:20, 155:24, 156:3, 158:5, 159:2, 162:15, 163:8, 163:11, 163:18, 164:11, 164:14, 167:23, 170:9, 170:17, 171:8, 172:9, 172:17, 173:1, 173:7, 180:15, 185:19, 186:8, 186:12, 188:3, 189:23, 193:3, 200:24, 200:25, 201:5, 201:9</p> <p>secretary [2] - 155:9, 165:1</p> <p>SECRETARY [2] - 1:9, 1:10</p> <p>Section [17] - 16:22, 18:1, 18:4, 19:5, 19:10, 20:19, 22:21, 24:15, 38:7, 38:14, 38:19, 39:2, 46:17, 154:16, 169:12, 169:13, 186:9</p> <p>section [7] - 20:10, 46:10, 46:17, 46:19, 85:4, 128:12, 171:16</p> <p>sections [3] - 46:9, 171:1, 171:15</p> <p>secure [1] - 164:12</p> <p>security [2] - 72:9, 158:20</p> <p>see [19] - 19:21, 27:6, 27:20, 38:14, 38:18, 40:1, 51:1, 56:4, 63:24, 63:25, 64:5, 64:18, 65:8, 65:22, 66:5, 66:25, 82:9, 128:17, 156:18</p> <p>see.. [1] - 116:19</p> <p>seeing [1] - 45:14</p> <p>seek [4] - 31:6, 53:16, 121:22, 191:21</p> <p>seeking [6] - 53:15, 61:13, 74:25, 115:20, 190:6, 194:12</p> <p>seeks [1] - 166:15</p> <p>seem [6] - 24:20, 29:4, 34:8, 48:11, 193:9, 201:22</p> <p>seize [4] - 142:5, 142:8, 142:19, 168:18</p> <p>seizing [2] - 168:25,</p>	<p>169:1</p> <p>selected [3] - 83:5, 95:7, 138:16</p> <p>selects [1] - 138:22</p> <p>Senate [20] - 31:4, 37:21, 41:5, 41:12, 42:7, 42:15, 43:6, 47:5, 47:11, 62:8, 86:25, 96:7, 125:13, 128:11, 140:19, 165:12, 168:15, 179:20, 180:16, 191:20</p> <p>Senator [4] - 47:24, 61:20, 87:21, 88:4</p> <p>senator [1] - 48:2</p> <p>senator's [1] - 26:4</p> <p>senators [1] - 198:10</p> <p>send [6] - 60:2, 65:13, 66:22, 66:23, 67:12, 108:12</p> <p>send.. [1] - 67:7</p> <p>sending [3] - 93:8, 103:14, 103:15</p> <p>sense [13] - 12:9, 36:7, 38:21, 39:18, 42:20, 44:9, 44:21, 44:24, 48:22, 97:20, 101:10, 105:12, 133:12</p> <p>sent [7] - 49:14, 65:20, 66:25, 67:5, 88:7, 192:12, 203:1</p> <p>sentence [1] - 128:12</p> <p>separate [2] - 77:4, 77:24</p> <p>separately [2] - 62:18, 201:9</p> <p>September [56] - 31:10, 33:21, 34:5, 41:25, 42:4, 42:8, 43:5, 43:8, 46:21, 47:6, 52:23, 57:13, 76:21, 76:23, 84:11, 85:17, 86:19, 96:22, 100:25, 101:11, 101:16, 103:2, 103:16, 103:23, 103:25, 104:1, 107:14, 109:23, 110:22, 127:5, 127:12, 127:16, 128:1, 128:13, 136:8, 136:10, 136:24, 137:1, 148:12, 148:22, 149:23, 150:6, 150:16, 151:23, 153:11, 153:16, 154:3, 184:10,</p>	<p>190:18, 192:6, 195:8, 196:4, 196:7, 196:11, 196:21, 199:23</p> <p>series [3] - 45:4, 88:3, 97:18</p> <p>serious [1] - 141:9</p> <p>served [2] - 72:7, 197:15</p> <p>service [4] - 57:12, 57:17, 65:9, 159:16</p> <p>services [1] - 22:11</p> <p>Services [2] - 21:1, 54:14</p> <p>session [1] - 147:17</p> <p>set [12] - 9:7, 9:23, 15:8, 20:3, 24:11, 77:14, 91:5, 91:7, 95:24, 138:3, 192:15, 205:24</p> <p>setting [1] - 8:3</p> <p>setup [1] - 35:4</p> <p>several [10] - 38:4, 38:11, 75:17, 90:14, 158:10, 167:2, 175:20, 175:21, 177:6, 177:17</p> <p>sewer [1] - 57:11</p> <p>shall [5] - 38:8, 44:16, 52:10, 57:14, 154:18</p> <p>share [3] - 13:8, 101:12, 104:24</p> <p>Shechter [1] - 51:8</p> <p>shipping [1] - 127:13</p> <p>ship [1] - 76:5</p> <p>short [2] - 112:1, 188:23</p> <p>shortages [4] - 14:13, 15:15, 118:23, 182:21</p> <p>shorthand [1] - 1:25</p> <p>shortly [2] - 84:6, 95:3</p> <p>shoulda [1] - 198:2</p> <p>show [18] - 25:6, 29:1, 30:1, 34:17, 35:22, 35:24, 37:25, 58:8, 62:6, 62:7, 62:9, 98:20, 99:4, 127:20, 138:14, 160:18, 192:1, 192:21</p> <p>showing [1] - 100:14</p> <p>shown [3] - 32:10, 190:24, 193:1</p> <p>shows [2] - 38:2, 98:23</p> <p>shut [1] - 27:4</p> <p>side [10] - 11:13, 44:5, 45:16, 61:6, 67:22, 99:11, 183:4, 188:20, 192:9,</p>
--	--	--	---	--

<p>199:23</p> <p>sides [4] - 14:6, 30:22, 30:23, 40:15</p> <p>Siegel [2] - 140:18, 140:22</p> <p>signage [1] - 94:13</p> <p>signed [2] - 30:23, 187:1</p> <p>significance [1] - 21:15</p> <p>significant [3] - 15:25, 27:19, 161:17</p> <p>significantly [2] - 19:18, 35:14</p> <p>silenced [1] - 8:5</p> <p>silver [1] - 36:19</p> <p>similar [3] - 22:4, 72:16, 97:22</p> <p>similarly [2] - 20:25, 23:19</p> <p>simple [2] - 92:2, 194:14</p> <p>simply [3] - 108:7, 143:7, 144:4</p> <p>single [8] - 21:3, 42:19, 43:11, 44:1, 44:4, 45:1, 45:13, 198:24</p> <p>sit [2] - 50:17, 50:22</p> <p>site [5] - 90:24, 91:1, 91:2, 107:6, 162:18</p> <p>sites [4] - 91:5, 91:10, 160:11, 161:22</p> <p>sitting [2] - 84:18, 96:11</p> <p>situation [7] - 13:25, 18:8, 20:16, 150:24, 182:3, 193:12, 193:13</p> <p>six [5] - 75:9, 77:17, 130:17, 175:17, 194:22</p> <p>six-month [1] - 175:17</p> <p>size [5] - 41:7, 117:15, 196:17, 196:18, 196:19</p> <p>slash [3] - 65:23, 65:24</p> <p>slide [2] - 46:7, 47:23</p> <p>slightly [1] - 201:10</p> <p>slow [2] - 131:21, 132:5</p> <p>slow-walking [2] - 131:21, 132:5</p> <p>small [1] - 104:10</p> <p>smaller [3] - 55:23, 106:3, 106:4</p> <p>smallest [1] - 56:1</p> <p>Smith [1] - 18:22</p> <p>smooth [3] - 165:7,</p>	<p>177:13, 177:15</p> <p>so-called [1] - 41:5</p> <p>social [1] - 87:16</p> <p>sole [2] - 41:12, 78:10</p> <p>solely [2] - 194:9, 197:21</p> <p>solution [4] - 195:11, 195:12, 198:25, 199:2</p> <p>Solutions [1] - 25:3</p> <p>solve [7] - 13:15, 14:1, 16:3, 18:12, 195:9, 195:10, 199:6</p> <p>solving [2] - 22:23, 195:9</p> <p>someone [6] - 49:15, 65:11, 79:16, 130:9, 152:21, 199:17</p> <p>sometimes [5] - 35:18, 62:6, 62:10, 112:14, 112:15</p> <p>somewhere [3] - 57:3, 81:17, 205:3</p> <p>sorry [17] - 49:11, 58:5, 60:4, 61:24, 62:12, 65:18, 66:18, 67:6, 68:16, 97:7, 98:6, 120:10, 126:8, 165:21, 177:12, 202:8, 205:15</p> <p>sort [22] - 12:12, 23:17, 23:21, 26:19, 68:7, 72:13, 81:8, 88:6, 89:15, 92:3, 93:7, 93:8, 93:10, 95:1, 95:16, 97:22, 102:23, 105:17, 106:23, 134:11, 134:14</p> <p>sorting [1] - 50:14</p> <p>sorts [2] - 107:9, 160:12</p> <p>SOS [7] - 97:23, 193:4, 193:10, 193:11, 193:12, 193:22, 193:23</p> <p>sought [1] - 40:19</p> <p>sound [2] - 50:25, 114:4</p> <p>sounds [9] - 11:15, 13:4, 67:8, 75:3, 109:25, 112:11, 164:10, 165:23, 176:3</p> <p>Southwest [3] - 21:1, 27:11, 54:14</p> <p>sovereign [1] - 12:7</p> <p>SP1750 [1] - 24:5</p> <p>speaking [5] - 8:2, 25:19, 76:11, 84:22,</p>	<p>171:4</p> <p>special [11] - 20:12, 21:11, 24:4, 24:16, 26:6, 26:8, 38:9, 52:11, 54:18, 55:10, 194:25</p> <p>specific [15] - 16:23, 26:10, 33:16, 57:1, 57:16, 67:10, 75:6, 77:20, 90:11, 109:16, 128:1, 152:3, 156:9, 162:12, 171:11</p> <p>specifically [13] - 23:23, 26:1, 59:22, 98:3, 99:22, 102:1, 116:1, 116:2, 171:15, 171:21, 181:10, 191:4, 204:20</p> <p>speculate [1] - 84:18</p> <p>speculation [4] - 101:4, 101:8, 101:23, 102:8</p> <p>speculative [5] - 28:9, 29:10, 29:12, 34:18, 101:9</p> <p>speed [2] - 82:11, 95:2</p> <p>spend [4] - 24:13, 43:22, 47:2, 109:4</p> <p>spending [1] - 97:14</p> <p>spent [2] - 19:12, 160:14</p> <p>split [1] - 110:7</p> <p>splitting [1] - 110:6</p> <p>spoken [1] - 159:8</p> <p>sponsor [1] - 37:20</p> <p>square [2] - 41:9, 44:16</p> <p>stability [1] - 102:25</p> <p>staff [10] - 94:10, 94:15, 107:15, 108:25, 109:4, 109:15, 109:21, 123:11, 133:6, 138:2</p> <p>stake [1] - 21:14</p> <p>stand [1] - 64:24</p> <p>standard [1] - 193:7</p> <p>standards [2] - 15:8, 28:7</p> <p>standing [20] - 17:18, 28:4, 28:6, 28:7, 28:24, 28:25, 31:24, 32:9, 33:13, 35:23, 36:10, 61:12, 188:24, 189:23, 190:1, 190:22, 191:5, 192:15, 200:23, 202:2</p> <p>start [8] - 47:23,</p>	<p>51:11, 70:8, 70:25, 81:23, 82:6, 85:7, 125:2</p> <p>started [14] - 23:6, 63:4, 64:21, 68:8, 70:19, 81:3, 82:3, 83:3, 83:13, 84:1, 106:15, 126:11, 132:22</p> <p>starting [3] - 75:8, 75:11, 109:23</p> <p>starts [1] - 103:13</p> <p>STATE [4] - 1:5, 1:9, 1:10, 207:3</p> <p>State [138] - 4:9, 6:5, 6:8, 6:9, 6:10, 6:11, 28:14, 28:21, 29:9, 29:24, 30:2, 30:13, 32:9, 32:12, 32:18, 32:23, 33:18, 33:22, 34:4, 34:6, 34:11, 34:14, 34:23, 40:2, 42:6, 44:19, 46:1, 51:10, 52:2, 52:5, 52:17, 59:12, 61:22, 63:13, 63:24, 64:3, 64:9, 65:25, 70:1, 70:20, 71:8, 71:11, 71:22, 72:18, 72:19, 74:9, 74:14, 74:19, 74:24, 82:1, 87:8, 89:8, 89:10, 89:12, 89:20, 90:12, 90:15, 90:20, 91:8, 91:13, 91:15, 91:23, 92:13, 92:15, 92:19, 93:3, 93:4, 93:15, 93:18, 94:1, 94:3, 94:12, 94:15, 94:16, 94:22, 95:13, 95:17, 95:22, 96:8, 96:13, 97:1, 98:2, 98:24, 100:14, 100:15, 101:20, 101:25, 102:3, 102:13, 126:2, 142:1, 142:5, 142:19, 143:3, 143:5, 146:18, 146:22, 147:6, 148:13, 149:5, 149:20, 151:11, 154:18, 155:1, 155:20, 155:24, 156:3, 159:12, 163:9, 163:11, 164:11, 164:14, 167:15, 167:23, 168:2, 170:10, 170:17, 171:8, 172:9, 172:17,</p>	<p>173:7, 175:15, 179:13, 180:15, 185:20, 186:8, 186:12, 189:24, 195:23, 201:10, 202:12, 203:6, 205:9, 207:6</p> <p>state [68] - 7:13, 22:9, 22:17, 23:16, 26:20, 27:9, 27:18, 35:7, 38:15, 39:9, 39:10, 39:18, 39:22, 41:3, 43:25, 44:2, 45:6, 46:25, 47:19, 53:3, 53:20, 53:22, 63:9, 64:14, 70:21, 71:5, 71:9, 72:25, 73:1, 73:7, 74:25, 75:1, 82:12, 89:6, 89:11, 89:17, 90:18, 92:22, 93:3, 101:1, 104:6, 134:14, 142:4, 145:24, 146:14, 150:14, 158:15, 158:23, 160:2, 163:12, 163:24, 164:12, 167:7, 167:10, 168:4, 172:2, 172:12, 179:22, 180:7, 180:11, 180:17, 188:1, 190:6, 190:7, 190:9, 201:11</p> <p>State's [21] - 74:15, 74:18, 93:9, 113:21, 146:20, 146:25, 148:23, 149:15, 150:7, 150:17, 155:6, 158:6, 159:2, 162:15, 163:18, 173:2, 173:5, 188:3, 200:24, 200:25, 201:6</p> <p>state's [1] - 193:3</p> <p>statement [6] - 22:14, 51:9, 51:24, 63:13, 119:13, 172:19</p> <p>Statement [3] - 3:9, 3:10, 3:11</p> <p>statements [6] - 25:11, 37:19, 37:25, 47:24, 114:12, 198:9</p> <p>States [3] - 73:2, 133:17, 140:10</p> <p>states [5] - 21:22, 72:22, 73:2, 140:23, 154:17</p> <p>statewide [17] - 15:25, 21:14, 21:20, 21:23, 22:2, 22:5, 22:14,</p>
---	---	--	--	---

26:18, 27:6, 27:9,
27:13, 27:16, 27:19,
27:21, 91:19,
154:12, 185:15
Station [1] - 2:17
statures [1] - 17:13
stature [1] - 129:22
status [3] - 59:19,
135:7, 197:6
statute [40] - 18:20,
22:1, 23:1, 23:25,
24:20, 24:23, 24:24,
25:5, 25:14, 25:16,
26:7, 26:9, 26:16,
32:25, 33:1, 33:3,
33:15, 33:24, 34:4,
35:3, 35:5, 38:6,
46:8, 46:10, 53:4,
61:23, 76:25,
125:25, 130:18,
142:13, 143:23,
143:24, 177:12,
180:19, 198:9,
200:3, 200:6, 200:7,
201:18
statutes [6] - 26:11,
32:11, 60:15, 62:22,
89:22, 89:23
statutory [19] - 21:9,
25:18, 52:21, 52:22,
54:16, 95:5, 149:11,
152:18, 159:15,
160:21, 161:23,
162:25, 163:7,
163:19, 163:21,
164:19, 168:9,
177:5, 182:9
stay [1] - 59:15
step [4] - 69:14,
108:14, 157:17,
188:18
stepped [2] - 23:8,
83:25
stepping [1] - 169:8
steps [5] - 38:4, 84:7,
110:12, 110:15,
169:18
still [13] - 29:19,
50:23, 66:5, 102:10,
106:12, 111:19,
114:21, 172:4,
172:8, 172:16,
188:24, 196:12,
196:18
stip [1] - 53:13
stipulate [1] - 31:13
stipulation [8] - 30:22,
30:25, 31:15, 32:4,
33:5, 147:3, 191:16,
201:13

stipulations [2] -
30:18, 31:11
stop [5] - 60:7, 109:8,
109:9, 152:16
stopped [1] - 77:13
story [1] - 135:4
straightforward [1] -
194:14
strategic [2] - 76:16,
86:7
streamline [1] - 85:24
Street [1] - 2:8
strike [3] - 9:8, 11:10,
76:21
Strike [2] - 116:7,
202:24
striking [1] - 18:25
strong [2] - 24:6,
172:5
stronger [1] - 55:19
strongest [1] - 46:24
stuff [3] - 13:10,
41:14, 83:14
style [3] - 204:6,
204:18
styled [2] - 66:18,
207:12
subchapter [1] -
128:15
subdivision [2] -
191:5, 191:7
subject [7] - 21:16,
31:19, 42:16, 43:14,
58:2, 63:8, 68:1
submission [6] - 10:5,
10:15, 11:14, 66:24,
67:1, 155:7
submit [12] - 10:4,
10:13, 149:4,
150:13, 151:22,
153:20, 154:25,
156:7, 180:3,
184:16, 185:2, 186:7
submitted [4] -
149:14, 154:25,
186:13, 204:5
submitting [5] -
151:10, 154:7,
187:3, 187:10,
187:25
subsection [1] -
171:25
subsequently [1] -
182:7
subset [1] - 21:12
substance [1] - 36:8
substantially [1] -
194:18
substantive [2] -
98:13, 128:7

success [1] - 202:1
successful [1] - 39:1
sudden [2] - 177:16,
197:12
sue [10] - 28:6, 28:13,
32:9, 32:22, 33:13,
175:15, 189:23,
189:24
sued [7] - 28:19,
133:5, 175:21,
176:1, 176:4, 176:7,
176:10
suffer [1] - 103:5
suffered [2] - 191:7,
192:22
sufficiency [1] - 191:9
sufficient [16] - 9:25,
11:12, 12:7, 18:19,
18:25, 35:24, 36:1,
110:16, 135:9,
135:14, 135:19,
135:24, 136:1,
192:14, 192:16,
205:18
sufficiently [1] - 35:21
suggest [1] - 94:5
suggested [2] - 67:19,
109:2
suggesting [2] -
97:24, 190:10
suggestion [3] - 45:8,
160:17, 195:15
suggestions [3] -
90:3, 90:5, 162:23
suggests [4] - 160:16,
196:1
suing [3] - 115:10,
115:13, 192:3
suit [4] - 11:8, 17:14,
53:15, 174:11
Suite [1] - 2:24
suits [1] - 174:22
super [4] - 19:7,
167:8, 167:10,
195:24
superintendent [1] -
71:8
supervise [2] - 85:12,
178:4
supervision [2] -
161:17, 172:10
supervisory [2] -
168:19, 172:18
supplies [2] - 14:14,
160:22
support [2] - 20:11,
158:13
supported [1] - 20:11
suppose [1] - 74:16
supposed [4] - 14:19,

39:5, 154:25, 160:23
Supreme [19] - 13:20,
17:11, 19:17, 20:14,
20:17, 22:3, 25:3,
25:8, 25:10, 25:15,
40:9, 40:16, 42:2,
42:22, 45:10, 53:10,
59:16, 190:9, 191:3
SUSANNA [1] - 2:14
Susanna [1] - 8:15
suspect [1] - 109:6
suspend [1] - 171:18
sustained [6] -
101:24, 116:24,
131:24, 132:11,
132:12, 141:4
swearing [1] - 82:15
sweeping [1] - 22:14
sworn [12] - 69:7,
69:12, 69:13, 69:20,
69:21, 69:23, 81:16,
82:4, 140:4, 145:22,
145:23, 146:9
synch [1] - 77:7
synchronization [3] -
75:24, 78:3, 108:15
System [1] - 158:12
system [22] - 15:13,
20:3, 20:4, 55:16,
55:17, 55:18, 75:16,
91:20, 92:7, 92:10,
93:15, 108:6,
134:17, 149:18,
149:19, 153:19,
158:11, 158:13,
158:14, 159:17,
165:6
systems [14] - 84:2,
84:8, 85:23, 86:9,
92:9, 108:9, 108:11,
108:12, 122:4,
134:12, 149:15,
164:4

T

T-e-a-m [1] - 91:19
tab [3] - 52:8, 52:22,
128:10
tabulate [1] - 103:22
tabulated [1] - 91:4
talks [3] - 54:21,
55:23, 160:21
tally [1] - 198:16
target [10] - 18:3, 21:6,
22:4, 23:16, 26:18,
37:1, 39:8, 55:11,
56:10, 177:22
targeted [1] - 22:8
targeting [7] - 19:9,

20:7, 20:15, 21:3,
23:13, 37:2, 59:9
targets [4] - 16:23,
17:24, 37:4, 200:17
Tarrant [1] - 198:19
Tatum [60] - 5:22,
6:10, 7:20, 8:24,
9:10, 14:9, 16:20,
16:25, 17:5, 19:2,
51:8, 51:23, 52:1,
53:8, 54:5, 64:13,
64:16, 64:20, 67:10,
69:5, 69:6, 70:2,
70:3, 70:16, 72:4,
73:10, 75:15, 80:1,
89:4, 97:19, 97:21,
98:23, 100:23,
101:10, 124:5,
125:1, 127:24,
135:7, 157:25,
178:4, 184:11,
185:1, 185:6,
185:20, 187:11,
189:7, 189:8,
190:16, 194:5,
194:9, 194:16,
196:24, 197:7,
197:21, 199:8,
201:25, 202:9,
203:24, 203:25,
206:10
TATUM [5] - 1:12,
3:14, 9:2, 69:8,
69:22
Tatum's [12] - 9:8,
64:4, 66:7, 100:14,
101:8, 112:25,
116:8, 201:21,
202:16, 202:24,
203:17, 205:10
tax [30] - 16:17, 77:15,
108:8, 108:13,
110:23, 122:23,
123:4, 125:9,
128:16, 131:11,
131:15, 131:20,
132:17, 133:3,
133:4, 133:6, 142:9,
144:23, 147:24,
148:7, 150:9,
150:19, 151:2,
152:11, 153:4,
154:5, 174:4,
174:17, 176:22,
184:7
Tax [25] - 77:3, 77:8,
77:9, 77:11, 78:19,
78:20, 78:22, 79:4,
79:9, 79:11, 79:13,
79:15, 79:16, 79:18,

84:12, 86:12, 96:24, 97:2, 102:23, 107:24, 123:13, 126:24, 128:23, 155:5, 173:15 taxes [2] - 78:21, 79:18 taxpayers [1] - 27:5 teaching [1] - 45:19 team [10] - 58:18, 87:6, 87:13, 106:15, 106:20, 132:22, 158:11, 158:16, 158:19, 158:22 Team [2] - 4:22, 91:19 TEAM [8] - 91:18, 91:19, 92:5, 92:10, 149:18, 149:19, 149:25, 158:11 TEAMS [2] - 149:23, 151:21 TEAMS [2] - 92:7, 153:19 tease [1] - 76:6 tech [1] - 36:17 technical [2] - 35:11, 93:11 technically [1] - 95:24 technology [5] - 137:8, 137:9, 137:12, 137:15, 137:16 Telephone [1] - 207:24 temporaries [3] - 108:24, 108:25, 109:6 temporarily [1] - 172:15 temporary [15] - 9:6, 12:5, 46:14, 46:18, 58:11, 66:13, 109:5, 112:25, 194:8, 194:16, 197:15, 197:19, 201:22, 204:8, 205:20 TEMPORARY [2] - 1:18, 3:2 Temporary [6] - 64:4, 68:20, 69:1, 88:20, 203:16, 205:11 ten [5] - 103:14, 111:25, 113:23, 179:3 term [3] - 79:10, 172:5, 174:12 terminate [10] - 79:5, 169:17, 170:10, 170:18, 170:25, 171:8, 171:18,	172:9, 172:13, 173:2 terminated [3] - 130:8, 170:22 terminating [2] - 194:9, 197:20 termination [1] - 178:13 terminology [1] - 178:18 terms [11] - 9:5, 12:9, 21:9, 32:4, 48:22, 54:16, 130:22, 139:2, 148:9, 189:4, 189:5 territorial [1] - 22:24 territory [1] - 174:9 test [12] - 17:21, 18:5, 24:22, 26:15, 26:16, 40:3, 40:6, 40:8, 40:10, 54:23, 55:7, 192:15 testified [7] - 69:23, 121:18, 140:18, 141:11, 146:9, 165:12, 194:19 testifying [5] - 97:21, 115:16, 116:22, 146:19, 146:24 testimony [28] - 48:20, 50:5, 50:6, 58:9, 60:24, 68:6, 77:22, 78:25, 98:23, 121:5, 140:11, 142:23, 143:1, 145:12, 147:4, 157:7, 173:10, 185:5, 185:19, 188:2, 188:17, 190:16, 191:25, 193:4, 197:16, 200:24, 202:6, 202:8 Testing [1] - 34:21 testing [1] - 85:22 TEXAS [7] - 1:3, 1:5, 1:6, 1:9, 1:10, 1:10, 207:3 texas [1] - 126:3 Texas [107] - 1:15, 1:24, 2:9, 2:18, 2:22, 2:25, 6:5, 6:6, 6:8, 6:10, 6:11, 6:12, 6:17, 13:20, 14:7, 15:21, 16:22, 17:11, 19:17, 20:14, 22:3, 25:2, 25:8, 25:10, 25:15, 28:14, 32:23, 37:2, 38:7, 40:9, 40:16, 41:23, 41:24, 42:2, 42:6, 42:22, 44:19, 45:10, 52:17,	59:13, 63:24, 64:9, 65:25, 74:9, 74:12, 74:14, 74:15, 74:19, 82:1, 82:2, 87:8, 87:9, 89:7, 89:8, 89:10, 89:12, 89:18, 89:19, 95:11, 100:16, 101:17, 102:4, 117:9, 117:13, 126:18, 142:2, 143:3, 146:18, 147:5, 147:6, 148:15, 148:18, 154:11, 154:17, 158:5, 158:12, 158:18, 159:2, 159:12, 159:17, 163:3, 163:5, 163:16, 164:4, 167:10, 167:15, 167:18, 167:22, 168:2, 170:6, 175:15, 184:4, 186:19, 188:4, 191:3, 194:24, 195:23, 196:14, 200:3, 202:12, 207:7, 207:21, 207:23, 207:24 Texas' [2] - 64:3, 205:9 Texas's [1] - 165:5 text [16] - 25:16, 25:23, 38:1, 52:5, 52:15, 52:16, 52:20, 53:3, 54:7, 54:8, 168:24, 169:2, 169:9, 198:12, 199:19 textual [1] - 52:15 THE [212] - 1:5, 1:6, 1:8, 1:3, 2:3, 2:11, 2:20, 6:4, 6:18, 6:22, 7:1, 7:4, 7:12, 7:24, 8:11, 8:14, 8:17, 8:20, 9:1, 9:3, 9:18, 10:16, 10:24, 11:4, 11:11, 11:21, 12:14, 13:1, 13:4, 30:17, 30:20, 30:25, 32:2, 32:6, 32:13, 32:16, 32:24, 33:5, 33:10, 36:5, 36:13, 36:18, 48:16, 49:2, 49:5, 49:7, 49:10, 49:12, 49:23, 50:8, 50:10, 51:13, 51:16, 51:19, 53:19, 53:25, 56:14, 56:18, 57:8, 57:22,	60:7, 60:10, 60:19, 61:14, 61:25, 62:11, 62:15, 63:1, 63:7, 63:16, 63:21, 64:10, 64:17, 65:1, 65:8, 65:13, 65:17, 65:20, 66:8, 66:14, 66:25, 67:8, 67:14, 67:16, 68:5, 68:13, 68:17, 68:25, 69:6, 69:10, 69:14, 69:21, 71:13, 71:15, 71:16, 87:24, 88:9, 88:13, 88:19, 88:24, 89:3, 98:3, 98:9, 98:13, 99:2, 99:8, 99:15, 99:21, 99:25, 100:12, 100:17, 101:6, 101:14, 101:24, 102:9, 111:7, 111:10, 111:13, 111:23, 112:11, 113:2, 113:7, 113:11, 113:14, 113:18, 113:25, 114:2, 114:16, 114:21, 115:1, 115:24, 116:7, 116:10, 116:16, 116:21, 123:17, 123:20, 123:24, 124:2, 124:20, 124:23, 126:6, 126:8, 126:10, 126:11, 126:14, 127:8, 127:23, 131:24, 132:11, 136:13, 137:22, 141:4, 142:14, 143:14, 143:18, 144:1, 144:5, 144:12, 144:16, 144:20, 145:5, 145:11, 145:14, 145:15, 145:19, 145:24, 145:25, 146:1, 146:4, 146:7, 147:2, 147:11, 157:3, 157:8, 157:12, 157:16, 157:23, 165:23, 166:2, 166:18, 178:24, 179:10, 179:12, 183:22, 184:1, 188:8, 188:14, 188:16, 188:22, 189:4, 189:7, 189:9, 189:12, 194:3, 197:22, 202:3, 202:18, 203:9,	203:11, 203:23, 204:2, 204:9, 204:16, 204:20, 205:1, 205:7, 205:17, 206:1, 206:8, 206:14, 206:17 theme [1] - 19:16 themselves [3] - 35:20, 89:22, 90:1 theory [1] - 165:15 thereafter [1] - 95:3 therefore [3] - 167:8, 176:12, 190:23 they've [2] - 105:5, 117:21 thinking [1] - 200:20 thinks [2] - 59:21, 101:12 third [6] - 65:24, 103:24, 117:4, 117:5, 117:7, 129:23 Third [1] - 56:23 Thomas [1] - 70:12 thousands [1] - 132:5 threat [10] - 32:10, 36:12, 48:24, 58:8, 59:21, 61:5, 61:11, 62:8, 99:6, 193:1 threatened [2] - 95:14, 192:20 threatening [2] - 58:22, 190:2 threats [2] - 98:21, 99:10 three [17] - 9:9, 10:17, 10:21, 16:5, 16:9, 16:12, 65:21, 71:18, 86:4, 108:11, 108:16, 111:16, 118:13, 118:15, 194:17, 200:2, 206:6 three-and-a-half [3] - 16:5, 16:9, 16:12 threshold [4] - 37:12, 43:2, 47:11, 170:7 threw [1] - 52:2 throughout [7] - 44:17, 77:16, 84:4, 89:7, 105:19, 105:21, 202:6 throw [1] - 204:13 thrown [1] - 193:16 Thursday [6] - 11:14, 11:20, 11:21, 11:22, 203:2, 203:6 Ti [6] - 61:2, 61:13, 66:3, 68:16, 68:23, 189:19 tie [4] - 38:24, 41:13,
--	--	--	--	--

<p>41:14, 100:22 tied [1] - 41:15 ties [1] - 196:3 timeframe [1] - 182:10 timely [1] - 176:11 timing [1] - 34:3 title [3] - 70:3, 204:17, 205:16 TO [3] - 1:19, 3:2, 3:6 to.. [1] - 116:20 today [17] - 9:3, 16:6, 40:25, 46:15, 49:16, 84:18, 113:4, 113:9, 146:19, 147:18, 153:15, 190:23, 191:14, 193:11, 197:25, 201:21, 203:20 together [2] - 130:20, 194:21 tomorrow [4] - 10:12, 10:19, 10:23, 203:5 took [8] - 14:20, 14:21, 16:3, 59:16, 107:23, 133:15, 139:5, 140:1 topic [1] - 89:5 total [2] - 114:3, 117:9 totals [1] - 186:24 touch [4] - 38:11, 43:23, 70:24, 107:10 towards [2] - 75:11, 102:1 towns [1] - 21:4 traceability [5] - 30:4, 34:16, 191:13, 193:22, 201:5 traceable [3] - 28:8, 30:6, 190:3 tracking [1] - 87:12 traditional [1] - 12:12 traditionally [1] - 119:11 traffic [1] - 10:20 train [1] - 107:8 trained [1] - 70:10 training [3] - 107:7, 158:19 transaction [1] - 92:24 Transcript [2] - 4:9, 4:13 transcription [1] - 207:8 transfer [6] - 16:18, 20:2, 47:9, 153:1, 153:23, 197:12 transferred [8] - 20:5, 122:23, 123:3, 123:12, 128:15, 128:20, 128:22,</p>	<p>184:6 transferring [3] - 29:23, 108:7, 199:20 transfers [1] - 29:13 transition [23] - 81:8, 96:22, 102:23, 107:12, 107:13, 109:1, 109:10, 110:2, 110:13, 110:22, 141:8, 152:12, 152:13, 152:18, 177:2, 177:5, 177:11, 177:13, 177:15, 177:20, 177:23, 177:24, 187:15 transmit [2] - 184:5, 184:24 transparency [5] - 166:7, 166:24, 170:14, 195:13, 195:16 transparent [1] - 164:23 travel [1] - 206:9 traversed [1] - 73:21 TRAVIS [2] - 1:10, 207:4 Travis [9] - 1:24, 42:13, 42:15, 42:16, 43:13, 50:20, 55:24, 207:6, 207:23 treat [5] - 22:12, 44:22, 56:2, 90:2, 90:4 trial [1] - 140:25 TRIAL [1] - 1:1 tried [2] - 14:1, 20:18 triggered [1] - 172:21 triggering [1] - 156:13 triggers [1] - 179:24 TRO [2] - 59:12, 59:16 true [18] - 52:7, 66:20, 119:11, 119:13, 119:14, 119:17, 119:20, 119:24, 121:2, 121:3, 122:14, 124:10, 124:16, 160:19, 161:14, 168:21, 171:15, 207:8 truly [2] - 193:17, 207:15 try [8] - 10:23, 82:11, 95:2, 114:23, 163:6, 164:16, 180:9, 181:24 trying [15] - 9:23, 10:2, 18:12, 38:24, 56:4, 57:15, 84:19, 112:4,</p>	<p>114:9, 130:20, 131:1, 153:16, 171:23, 195:9, 195:10 Tuck [1] - 2:22 turf [1] - 23:18 turn [4] - 48:14, 74:3, 86:21, 122:16 turned [3] - 119:20, 140:2, 177:7 turning [1] - 177:17 turnout [4] - 105:17, 105:22, 106:11, 139:23 turns [2] - 34:17, 85:8 Tweet [1] - 59:18 Tweets [5] - 58:17, 59:22, 62:6, 88:4, 88:6 twice [3] - 15:22, 55:25, 59:16 Twitter [15] - 4:7, 4:11, 4:12, 4:14, 4:16, 4:17, 4:18, 5:5, 5:7, 5:8, 5:9, 5:10, 5:11, 5:12, 87:18 two [28] - 16:8, 24:24, 32:17, 46:9, 52:14, 67:12, 71:18, 73:13, 77:4, 77:24, 79:4, 89:11, 97:5, 108:16, 129:24, 144:18, 154:8, 155:14, 163:1, 166:12, 166:20, 171:1, 171:7, 176:25, 178:23, 182:11, 197:13, 200:8 two-part [1] - 178:23 two-state [1] - 89:11 twofold [1] - 186:18 type [4] - 19:18, 34:6, 79:19, 133:9 types [5] - 22:11, 74:21, 163:24, 163:25, 168:8 typically [2] - 74:17, 180:2</p>	<p>un-rebutted [1] - 190:23 unable [2] - 140:5, 141:14 unanimous [1] - 25:12 uncertainty [2] - 105:11, 141:16 unclear [1] - 200:3 uncommon [1] - 184:19 unconstitutional [16] - 16:21, 17:7, 19:22, 23:25, 24:4, 25:1, 25:6, 26:7, 26:23, 36:23, 38:1, 130:18, 130:24, 194:24, 197:1, 200:6 unconstitutionality [2] - 25:7, 202:1 Under [1] - 3:23 under [52] - 12:16, 16:22, 18:1, 27:25, 32:20, 33:23, 52:8, 52:22, 68:18, 70:15, 75:23, 77:23, 77:24, 83:14, 97:1, 98:20, 128:11, 128:15, 133:16, 135:8, 139:9, 139:12, 140:4, 141:23, 143:6, 148:14, 151:2, 151:3, 151:22, 152:2, 154:4, 154:16, 155:8, 155:12, 155:19, 155:23, 156:4, 156:14, 156:16, 156:17, 156:22, 170:9, 172:7, 173:8, 173:14, 180:12, 180:20, 186:19, 194:24, 203:12 under-grad [1] - 70:15 under-performance [1] - 173:14 underlying [4] - 165:15, 166:14, 195:4, 199:11 undermine [1] - 24:21 undermines [1] - 43:16 understood [6] - 50:2, 51:5, 64:25, 68:12, 68:18, 81:10 undertaken [2] - 161:12, 177:18 undue [1] - 10:1 unforced [1] - 15:11 uniformity [2] - 163:4,</p>	<p>163:22 uniformly [2] - 41:20, 45:24 unintended [1] - 110:19 unique [1] - 127:11 United [3] - 73:2, 133:16, 140:9 universe [4] - 21:13, 55:8, 63:8, 127:12 unlawful [1] - 196:6 unless [5] - 11:24, 33:23, 44:19, 184:6, 194:1 unlike [2] - 150:24, 176:24 unreasonable [5] - 18:24, 19:1, 24:20, 26:3, 26:14 unsolicited [1] - 60:2 unwinding [1] - 108:11 up [28] - 8:3, 9:19, 10:18, 15:22, 20:14, 34:25, 36:16, 36:24, 49:21, 50:12, 75:10, 78:5, 85:7, 88:5, 91:5, 91:7, 95:2, 95:24, 100:22, 105:22, 107:12, 114:5, 138:14, 140:14, 152:14, 160:18, 164:19, 185:9 upcoming [1] - 110:2 updates [2] - 87:9, 89:21 upgraded [1] - 122:4 upheld [7] - 20:6, 22:4, 22:6, 23:14, 54:12, 54:15, 56:22 upholding [1] - 23:1 upload [6] - 49:16, 92:9, 92:11, 93:14, 93:23 uploaded [2] - 49:2, 58:1 upwards [1] - 23:7 urge [2] - 67:20, 67:25 utilities [1] - 27:1 Utilities [2] - 54:14, 56:23 Utility [1] - 20:25 utility [4] - 57:12, 57:14, 57:16, 57:17 utilized [2] - 90:15, 183:7 utilizing [1] - 158:14</p>
U				
<p>UDJA [6] - 17:12, 28:12, 28:20, 28:24, 32:20, 32:22 ultimate [3] - 40:9, 165:6, 196:24 ultimately [4] - 21:7, 34:16, 166:11, 172:12 ultra [1] - 95:23</p>				

V				
<p>valid [1] - 19:5 validate [2] - 201:1, 201:2 validated [2] - 162:14, 187:7 validity [1] - 17:13 varied [1] - 119:7 various [1] - 73:23 vehicle [1] - 180:20 vein [2] - 88:6, 97:22 Versus [4] - 6:5, 20:18, 21:1, 54:14 versus [13] - 18:22, 20:3, 22:6, 25:4, 25:10, 37:7, 38:15, 40:5, 57:7, 74:25, 116:15, 139:3 vi [1] - 100:25 via [1] - 9:15 view [7] - 41:19, 79:1, 96:12, 96:15, 101:8, 101:12, 137:16 Vince [4] - 35:9, 35:11, 35:16, 35:17 violate [1] - 148:8 violated [2] - 31:4, 191:20 violating [1] - 191:6 violation [8] - 12:8, 21:10, 53:8, 54:17, 133:19, 192:4, 192:6, 192:19 violations [2] - 98:17, 102:4 vires [1] - 95:23 visa [1] - 100:25 visibility [1] - 84:9 vision [2] - 76:17, 86:7 volume [1] - 207:11 vote [22] - 14:16, 15:16, 77:15, 79:14, 79:18, 79:23, 83:5, 103:12, 105:16, 106:9, 107:2, 133:4, 133:5, 138:15, 139:3, 139:14, 139:19, 140:5, 140:11, 160:18, 162:17, 182:1 Vote [2] - 71:23, 71:25 voted [1] - 187:22 voter [43] - 72:3, 74:1, 75:25, 76:1, 77:2, 77:9, 77:11, 77:16, 78:8, 78:9, 78:10, 78:21, 84:25, 85:2, 85:4, 91:19, 92:8, 92:18, 92:20, 92:24,</p>	<p>125:9, 131:11, 131:16, 132:6, 132:18, 133:25, 136:22, 136:25, 139:13, 147:25, 150:7, 150:12, 154:12, 154:17, 154:24, 155:10, 156:9, 158:12, 168:9, 173:13, 174:8, 180:7, 196:9 voter's [1] - 139:11 voters [37] - 15:4, 31:9, 42:24, 43:20, 47:18, 77:14, 94:14, 103:15, 105:15, 119:12, 119:20, 125:9, 132:8, 133:20, 140:2, 140:4, 145:1, 160:18, 162:24, 166:9, 167:4, 167:5, 167:25, 174:3, 174:14, 174:17, 174:22, 174:24, 178:1, 182:23, 185:10, 187:22, 187:24, 191:24, 193:18, 195:18, 195:19 votes [5] - 14:24, 76:3, 103:22, 181:23, 198:16 voting [30] - 83:6, 83:7, 103:13, 105:17, 105:19, 105:21, 133:2, 134:11, 134:12, 138:3, 138:12, 138:15, 139:10, 139:12, 139:14, 139:17, 139:23, 149:4, 160:11, 160:19, 162:1, 164:1, 164:3, 164:6, 176:4, 176:7, 176:11, 176:12, 182:13, 196:9 vouchers [4] - 150:13, 150:17, 151:22, 153:20</p>	<p>walk [2] - 70:6, 97:19 walking [2] - 131:21, 132:5 wants [2] - 126:13, 153:13 war [1] - 23:18 warrant [1] - 186:1 was.. [1] - 100:11 Washington [1] - 71:21 water [6] - 27:15, 27:17, 57:11, 57:17, 69:9, 69:10 Water [3] - 21:1, 27:11, 54:14 ways [1] - 198:2 wear [1] - 59:7 week [9] - 9:19, 9:21, 9:25, 10:2, 41:1, 103:23, 103:24, 181:24, 196:10 weekly [2] - 74:17, 87:7 weeks [1] - 194:17 weigh [1] - 13:15 weighing [1] - 193:14 weight [2] - 88:22, 100:3 welcome [3] - 6:4, 13:5, 65:22 West [1] - 41:23 Western [1] - 70:12 whatever's [1] - 187:16 whatsoever [2] - 33:23, 196:1 whole [7] - 13:18, 34:1, 78:16, 86:1, 143:20, 143:21, 166:14 widely [1] - 14:4 willing [1] - 61:6 willingness [2] - 176:1, 201:1 Wilson [1] - 22:6 window [3] - 76:4, 77:15, 122:5 wish [9] - 10:17, 13:5, 13:8, 32:2, 49:3, 49:16, 53:22, 68:19, 164:7 wishes [1] - 8:21 withdraw [2] - 165:24, 175:8 withdrawing [1] - 165:25 withdrawn [1] - 102:2 witness [26] - 7:23, 57:24, 60:24, 64:24, 67:20, 68:10, 68:14,</p>	<p>69:13, 69:20, 111:6, 111:25, 113:21, 115:23, 123:25, 126:9, 126:11, 126:15, 131:23, 137:21, 145:12, 145:23, 146:2, 157:1, 179:11, 188:8, 188:18 WITNESS [4] - 71:15, 145:14, 145:25, 207:18 witness' [1] - 116:14 WITNESSES [1] - 3:12 witnesses [6] - 7:22, 68:3, 113:16, 145:16, 188:19, 198:14 wondering [1] - 63:18 word [1] - 127:18 worded [1] - 165:20 words [4] - 25:21, 49:13, 52:7, 119:4 workers [9] - 59:7, 83:8, 107:8, 120:25, 161:1, 182:16, 183:4, 183:6 works [3] - 35:18, 118:22, 179:19 worse [2] - 55:12, 188:11 worst [1] - 14:8 Worth [2] - 23:4, 56:6 woulda [1] - 198:2 wrap [1] - 114:4 writ [1] - 59:1 Write [1] - 4:25 writing [1] - 207:10 written [1] - 143:21 wrongly [1] - 190:12</p>	<p>66:15, 111:15, 112:12, 112:13, 114:4, 114:17, 114:19, 114:23, 157:19, 206:2, 206:18 yourself [2] - 69:17, 102:14</p>
	<p style="text-align: center;">W</p> <p>wait [3] - 79:13, 173:5, 200:10 waiting [1] - 109:23 waived [1] - 17:14 waiver [1] - 33:9 waives [1] - 17:12</p>		<p style="text-align: center;">Y</p> <p>year [12] - 34:22, 37:17, 70:14, 77:12, 77:17, 79:10, 84:5, 85:2, 85:18, 108:23, 190:10, 196:11 year-round [1] - 85:2 year/odd [1] - 73:14 years [9] - 19:19, 25:9, 72:8, 73:14, 108:11, 108:16, 127:4, 137:13, 196:11 yesterday [2] - 54:5, 64:8 York [1] - 198:20 you-all [18] - 7:24, 9:13, 9:23, 13:6, 42:13, 49:25, 65:3,</p>	

APPENDIX B-1

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CLIFFORD D. TATUM, ESQ.

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ACCOMPLISHED OPERATIONS EXECUTIVE

ELECTIONS / CYBER SECURITY / POLICY / LEGAL

- Executive Administrator with 20 years of senior leadership experience in Federal, State, and local Governments directing multi-million-dollar budgets. Subject Matter Expertise in election administration including voter registration, voting systems, election management, technology management and human capital management.
- Leadership expertise that spans technical and cyber security support, strategic operations, compliance, program management, financial management, human resources, government affairs, policy and ethics, and mission-critical environments.
- Proven track record for delivering secure innovative business strategies and stakeholder-focused solutions that improve both productivity and efficiency. Recognized as a change agent and strategic thinker for transforming operations significantly through outstanding communication skills, flexibility, acute political awareness, and strong leadership capabilities.
- Expertise in leading and advising presidential appointees, elected officials, C-suite executives, and national stakeholders in the implementation of effective strategies that improve productivity while meeting required controls, security, operating and fiscal targets and achieving operational goals and objectives.
- Successfully defining and tracking cross-functional business knowledge and key performance indicators to measure progress against strategy and mission goals. Consistently identifies opportunities for improvement in operations with demonstrated experience in complex change management.
- Demonstrated record in establishing and cultivating relationships, and leveraging human capital, mentoring staff, encouraging development, team building and implementing required organizational change.

AREAS OF EXPERTISE

- ✓ Driving Substantial Performance Gains and Synergies
- ✓ Legal Counsel in FOIA, Ethics, Records, Government Affairs, Audits, and Compliance
- ✓ Risk Management and Performance Metrics
- ✓ Complex Negotiations
- ✓ Strategic Business Planning and Execution
- ✓ Communications and Public Relations
- ✓ Policy Development
- ✓ High Productivity with Collaborative Approachability
- ✓ Operations: IT, Security, HR, Finance, Budget
- ✓ Process Improvement & Simplification
- ✓ Cross-Cultural Talent training and Development
- ✓ Builds, Retains and Leads Highly Qualified Teams

PROFESSIONAL EXPERIENCE

8/2022 TO CURRENT: HARRIS COUNTY ELECTIONS ADMINISTRATION, HOUSTON, TX

An independent agency of the Harris County Texas government responsible for the administration of election in the third largest jurisdiction in the United States.

Elections Administrator

Administers the coordination of logistical, operational, and outreach services for over 2.5 million registered voters during 3-5 election events per calendar year. As the Administrator, I work collaboratively with county leadership, elected officials, major political parties, law enforcement, government agency partners, and community stakeholders to facilitate an organizational infrastructure that provides access to the voting process for all county residents.

- Leading management activities related to strategic development and alignment of agency mission with technology and human capital expansion.
- Providing strategic guidance and overseeing program deployment of system upgrades related to help desk functionality, supply distribution, logistical tracking of equipment and personnel, and stakeholder engagement.
- Successfully interacting with internal and external partners and governmental bodies to facilitate agency mission and goals.
- Developed and implemented policy and budget formulation, guaranteeing effective and efficient operations of the agency.
- Conducting risk and operational assessments of agency programs and operations to ensure compliance with policies and procedures and state and federal law.
- Managed a 30 million dollar budget for logistical, personnel and operational aspects of the organization.

2020 TO 2022: DC BOARD OF ELECTIONS, WASHINGTON DC (DCBOE)

An independent agency of the District of Columbia government responsible for the administration of elections, ballot access, and voter registration. DCBOE consists of three active Board members, an Executive Director, a General Counsel, and support staff who run the day-to-day operations of the Agency.

Chief Information Security Officer

Partnering with the Executive Management and Chief Technology Officer to achieve and maintain compliance with security protocols and risk mitigations associated to agency programs, assets, and modernization of technology designed to accomplish agency mission. These activities include:

- Leading management discussions related to strategic development and alignment of agency mission with technology and human capital expansion.
- Providing strategic guidance and overseeing program deployment of technology upgrades related to electronic signature capture, Ballot on Demand printing solutions deployed at vote centers, high speed mail ballot sorting equipment deployed for high volume mail delivery, and expansion of call center operations using remote desktop solutions designed to provide remote access for employees during early voting and election day activities.
- Collaborating with District of Columbia and federal partners to improve technology relationships designed to expand infrastructure security and election operation support related to early voting and election day voting at vote centers.
- Conducting Risk assessments of agency programs and operations to ensure compliance with agency policies and procedures.
- Supporting the expansion of voter registration with online services and designated District government agencies.

2015 TO 2019: THE UNITED STATES ELECTION ASSISTANCE COMMISSION, SILVER SPRING, MD

The Election Assistance Commission is an independent agency of the United States government created by the Help America Vote Act of 2002.

General Counsel

Lead vision, strategy, and execution of all legal and operational facets of the agency, including development of the annual budget and oversight of senior management and staff; served as the attorney advisor to presidential appointees, the Executive director and senior leadership.

- Partnered and advised CIO/CISO on FISMA compliance, modernization of technology, leveraging Cloud solutions, Cyber security solutions, incident management and breach response, critical infrastructure management, records management procedures, data governance, procurement, enterprise risk management strategies, audits, and customer support. Resulting in enhanced processes, improved customer support, cost savings, modernized technology, and a closeout of numerous IG findings.
- Built coalitions through collaboration with federal, State, and local partners on the development of agency materials related to critical infrastructure, cyber support, the development of voting system standards, and best practices for conducting elections.
- Provided strategic guidance to program offices to meet and surpass short and long-term milestones and deliverables contained in strategic roadmaps aligning with the agency's mission established by the Help America Vote Act.
- Successfully directed the development of training protocols for achieving regulatory compliance with the Ethics Act, the Privacy Act, Records Management, Travel Regulations, the No Fear Act, the Hatch Act, and Prohibited Personnel Practices.
- Collaborated with members of Congress on legislative topics related to agency operations leading to a productive dialogue and a collaborative relationship. Provided draft testimony for Congressional hearings and responses to Congressional inquiries.
- Directed management to successful outcomes by reviewing regulations and advising on processes relating to the National Voter Registration Act (NVRA), the Freedom of Information Act, the Privacy Act, Records Management, Federal Travel Regulations, the Federal Acquisition Regulations, and the Ethics in Government Act.

- Advised Communications director on government affairs and media interaction.
- Provided legal guidance and support for the disbursement of 380MM in Federal grant funds.
- Responded effectively to Congressional oversight committees in the House and Senate and appropriations committees leading to additional Grant funding to support states' efforts to modernize and secure voting equipment and systems.
- Partnered with the CIO in the development of an enterprise risk strategy, including the development of disaster recovery plan, business continuity plan, vulnerability assessments, business impact analysis, and protocols in line with the requirements of The Federal Information Security Management Act (FISMA).
- Supported the formulation of strategic agency roadmap and recommendations in consideration of potential budget reductions and cost containment during appropriations Continuing Resolutions.

2011 TO 2015: DC BOARD OF ELECTIONS, WASHINGTON DC

The DC Board of Elections is an independent agency of the District of Columbia government responsible for the administration of elections, ballot access, and voter registration. DCBOE consists of three active Board members, an Executive Director, a General Counsel, and support staff who run the day-to-day operations of the Agency.

Executive Director

Managed all agency operations for scheduled election events throughout the District of Columbia. Provided leadership and guidance to 40+ full time employees and 1,800+ seasonal employees. Consistently carried out the mission of the organization through successfully interacting with internal and external partners and governmental bodies. Planned, reviewed, adjusted, and implemented policy and budget formulation, guaranteeing effective and efficient operations.

- Led change by deploying a new document management system and implementing key changes to the voter registration processes, and internal training programs. Drastically improved the system and reduced errors in processing paper and electronic voter registration records via U.S. Mail, the Department of Motor Vehicle's electronic records transfer and the Board's on-line voter registration system.
- Directed the development and deployment of one of the first states to adopt a mobile application to facilitate voter registration. Incorporated data privacy protocols and increased the data processing time of system operators, leading to more efficient records management and storage.
- Supervised a reorganization, strategically implementing organizational change aligning duties and skills to better serve the agency's mission. Supervised employee onboarding, promotions, training, and discipline; on a routine basis, analyzed the effectiveness of performance evaluations. Mentored subordinate staff and created roadmaps for technical and leadership development.
- Successfully advised a three-member board on the development and implementation of new policies and procedures for expanding the voting systems and streamlining operational procedures resulting in: an online voter registration system, cutting edge mobile application, electronic pollbooks, and a private network system for voter check-in.
- Modernized technology providing an enhanced capability to communicate data from all polling locations to headquarters in real time on Election Day. Expanded early voting operations and facilities from four to thirteen locations throughout the District of Columbia, which resulted in greater voter convenience District-wide.
- Implemented enhanced protocols to train poll workers. Provided guidance and feedback to trainers and poll workers while monitoring progress and making necessary adjustments to the training curriculum resulting in improved operational efficiency and customer satisfaction.
- Improved operational productivity, and efficacy of programs by providing complex quantitative and qualitative analysis to measure program success. Analyzed data to determine compliance with established regulations and organizational policies, management principles, rules, and guidelines.
- Implemented performance evaluation plans and an employee recognition program in accordance with Board policy, leading to staff retention and staffing improvements.
- Partnered with the CTO to improve security posture and the consistency and reliability across IT services through the adoption of templates, standard operating procedures, best practices, and other processes. Created and employed methodologies, templates, guidelines, checklists, policies, and other documents to establish repeatable processes across the Boards' information technology security services.
- Orchestrated and executed risk assessments for programs, identifying and remediating weaknesses and defining solutions to minimize organizational risk.

2007 TO 2011: ELECTION CONSULTING AND LEGAL SERVICES

Attorney / Election Consultant

Provided operational, legal, and management consulting services to federal and local election offices including multiple local jurisdictions throughout Georgia and the District of Columbia during mayoral elections. Served as Deputy Solicitor General for the City of East Point, GA. Provided legal, policy, and counseling services to small businesses and individual clients. Reviewed documents and analyzed content for relevance, privilege, and sensitive information. Provided the DC Board of Elections recommendations to develop a plan to procure a new voting system and led reform efforts to prepare the agency for local and federal audits of Federal election grants.

- Used investigative and research skills to conduct extensive analysis on complex legal, and policy issues. Assembled, correlated, and analyzed voluminous materials into reports and briefings. Provided logical conclusions and formulated opinions based on sound legal positions.
- Drafted and responded to motions and various legal pleadings and documents. Drafted recommendations and summarized complex legal documents, wrote memoranda, and developed strategies for resolving legal issues. Reviewed documents for alignment with established Federal regulations and policies.
- Presented election policy updates to federal, state, and local governing officials, and participated in federal and state symposiums. Coordinated and conducted training for county and municipal election officials and governing authorities.
- Created partnerships both internally and externally identifying mutual interests in the election community establishing cooperative relationships with legal and regulatory representatives, and associated communities to gather feedback and other information, valued for exceptional customer service.
- Consulted with the U.S. Election Assistance Commission in the development of voting system guidelines and standards by working with advisory boards, the NIST and agency staff.

2000 TO 2007: GEORGIA SECRETARY OF STATE, ATLANTA GA

The Georgia Secretary of State is a State Constitutional Officer responsible for the administration of elections, ballot access, and voter registration and chairs the State Election Board. The State Election Board enforces the Georgia Election Code and ensures compliance with the Help America Vote Act, the National Voter Registration Act and UOCAVA.

INTERIM DIRECTOR / ASSISTANT DIRECTOR of LEGAL AFFAIRS / SECURITIES ENFORCEMENT ATTORNEY

Successfully managed and supported a bi-partisan, five-member State Election Board in the development and implementation of policies and procedures related to the implementation and deployment of a uniform statewide voting system. Develop new policies and procedures and training materials for statewide deployment. Implemented statewide training program in support of new voting system. Deployed change management protocols to facilitate system implementation.

- Implemented scheduled and managed operational processes related to the deployment of the uniform statewide voting system and election processes statewide. Oversaw all functions including customer service, human resources, budget, training, election-related contracts, agreements, and legal matters.
- Responsible for interpreting statutory and administrative rules related to the enforcement of the Georgia Election Code and the Help America Vote Act.
- Conducted enforcement of election code violations and election management compliance by leading enforcement actions that included oversight of hundreds of investigations, presentation of cases to the State Election Board, and preparing memos and Executive Orders which included findings of fact, conclusions of law, and recommendations.

- Managed a culturally diverse staff on assigned projects, including managing remote staff. Balanced a variety of competing cultural and political interests, while making staff development a priority. Sharpened analytical and problem-solving skills and developed program management techniques that cultivate greater organizational effectiveness and success.
- Facilitated and participated in regular meetings with program representatives, technical divisions, and legal teams to review documentation, requirements, and assist in long term resource planning. Developed management briefs for senior leaders, including conducting risk assessments and executive program reviews.
- Collaborated and engaged with coworkers and managers to encourage ideas and initiatives for program support. Served as a liaison between federal and state government legislative bodies and agencies to provide professional assistance to co-workers and other staff on program operational issues.
- Communicated and presented election policy updates to federal, state, and local governing officials, and participated in federal and state symposiums.
- Served as an Enforcement Attorney in the Securities Division enforcing the Georgia Uniform Securities Act.
- Investigated investment scams, reviewed Broker Dealer registrations and the offering of securities in the State of Georgia.
- Reviewed securities filings, inspected firms and individuals selling securities or providing investment advice.
- Conducted criminal, civil, and administrative proceedings regarding alleged violations of the Georgia Uniform Securities Act.

EARLY LEGAL CAREER

1998 – 2000, ATTORNEY, *Ed Downs & Associates, P.C. Attorney at Law; and Bryant, Davis, & Cowden, P.C. Atlanta*

- Conducted civil and criminal representation; participated in trials, discovery, mediation, arbitration and alternative dispute resolution processes.

EDUCATION / LICENSES / CERTIFICATIONS

Juris Doctorate – Western Michigan University - COOLEY LAW SCHOOL, LANSING, MI

Bachelor of Science Degree in Administration of Justice – GUILFORD COLLEGE, GREENSBORO, NC

Licenses – Georgia State Bar License, United States District Court

Certifications – Lean Six Sigma, The Performance Institute, 2016

Cyber Security Certification, Department of Homeland Security (DHS) – Federal Virtual Training Environment

CISSP, ISC² - In Progress

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APPENDIX B-2

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ORDER APPOINTING THE HARRIS COUNTY ELECTIONS ADMINISTRATOR

We, the members of the Harris County Elections Commission did meet on August 16, 2022 for the purpose of filling the position of County Elections Administrator for Harris County.

It is the order of the County Elections Commission of Harris County that Clifford D. Tatum be appointed as the Harris County Elections Administrator, to perform the duties provided by law according to Section 31.043, Texas Election Code.

Signed this the 16 day of August, 2022.

Ann Harris Bennett
Tax Assessor-Collector

[Signature]
County Chairman, Democratic Party

County Chairman, Republican Party

The State of Texas

County Of Harris

[Signature]
County Judge

Tenesha E. Hudspeth
County Clerk

FILED
2022 AUG 16 PM 3:06
HARRIS COUNTY CLERK'S OFFICE

I, TENESHIA E. HUDSPETH, County Clerk of Harris County do hereby certify that the above is a true and correct copy of the order of appointment of County Elections Administrator by the County Elections Commission.

Witness my hand and seal of the office this the 17 day of August, 2022



Tenesha E. Hudspeth
County Clerk

HARRIS COUNTY, TX
County

Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy - Page 1 of 1
Attest: 8/17/2022
Tenesha Hudspeth, County Clerk
Harris County, Texas

Maricela V. Martinez Deputy

MARICELA V. MARTINEZ



CON:865301|0



APPENDIX B-3

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BILL ANALYSIS

Senate Research Center

S.B. 1750
By: Bettencourt
State Affairs
6/29/2023
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under the Texas Election Code, elections can be managed mainly by either the county clerk or an election administrator. The county clerk is an elected position and the election administrator is an appointed position.

The only means to remove an election administrator is by four out of five votes of the election commission, which is comprised of the county judge, county clerk, tax assessor-collector, and the party chairs for the parties that nominated their candidates by primary election. There is little oversight of the election administrator ("EA") under Texas law. While the secretary of state is the election administration official for Texas, the secretary of state's enforcement authority is limited. Currently, Bexar, Collin, Dallas, Harris, and Tarrant counties have an EA.

Bexar, Collin, Dallas, Harris, Tarrant, and Travis counties each have over 1,000,000 in population and their voters make up close to 40 percent (40%) of the registered voters in Texas. Yet, if all of these counties had an EA, only 25 people would have control over who is running the election for 40 percent of the Texas electorate. Currently, Travis County is the only one of those six counties with a county clerk administering elections.

S.B. 1750 would require all counties with a population over 1,000,000 to have their elections administered by an elected official, the county clerk. This requirement would allow for more accountability and transparency to the voting public. Elected officials are in the public making public appearances and are much more available to the voters than an election administrator.

(Original Author's/Sponsor's Statement of Intent)

S.B. 1750 amends current law relating to abolishing the county elections administrator position in certain counties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Subchapter B, Chapter 31, Election Code, to read as follows:

SUBCHAPTER B. COUNTY ELECTIONS ADMINISTRATOR IN CERTAIN COUNTIES

SECTION 2. Amends Section 31.031(a), Election Code, to authorize the commissioners court of a county with a population of 3.5 million or less by written order to create the position of county elections administrator for the county.

SECTION 3. Amends Subchapter B, Chapter 31, Election Code, by adding Section 31.050, as follows:

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

SECTION 4. Requires a county that has a county elections administrator and a population of more than 3.5 million, on the effective date of this Act, to transfer employees, property, and records as necessary to accomplish the abolishment of the position of county elections administrator under this Act.

SECTION 5. Effective date: September 1, 2023.

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APPENDIX C

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CAUSE NO. D-1-GN-23-003523

HARRIS COUNTY, TEXAS	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
v.	§	
THE STATE OF TEXAS, OFFICE OF THE ATTORNEY GENERAL OF TEXAS, ANGELA COLMENERO, in her Official Capacity as Interim Attorney General of Texas, OFFICE OF THE TEXAS SECRETARY OF STATE, JANE NELSON, in her Official Capacity as Texas Secretary of State	§	TRAVIS COUNTY, TEXAS
<i>Defendants.</i>	§	345TH JUDICIAL DISIRICT

PLAINTIFF’S VERIFIED SECOND AMENDED PETITION AND APPLICATION FOR TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

Plaintiff Harris County, Texas files this Verified Second Amended Petition and Application for Temporary Injunction and Permanent Injunction against the State of Texas; Office of the Attorney General of Texas; Angela Colmenero, in her Official Capacity as Interim Attorney General of Texas; Office of the Texas Secretary of State; and Jane Nelson, in her Official Capacity as Texas Secretary of State (collectively, “Defendants”) and states as follows:

INTRODUCTION

The State has singled out Harris County, to the exclusion of the other 253 Texas counties, to disrupt its local control over elections. Senate Bill 1750¹ (“SB1750”), which abolishes the Harris County elections administrator, can never apply to any other county because its relevant provision

¹ TEXAS LEGISLATURE ONLINE, SENATE BILL 1750, *available at*: <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/SB01750F.pdf#navpanes=0>.

applies only to counties the size of Harris County on a single date. This intentional targeting violates the Texas Constitution, as interpreted by clear Supreme Court of Texas precedent. Harris County seeks declaratory and injunctive relief protecting its local control over elections from this unconstitutional interference.

To prevent legislators from “granting [] special privileges and to secure the uniformity of law throughout the State as far as possible,”² Article III, section 56 of the Texas Constitution bars the legislature from passing local or special laws targeting certain jurisdictions (including counties) and subject matters (including elections). That prohibition exists to “stop the legislature from meddling in local matters” and to prevent legislators from “trading votes to advance personal rather than public interests.”³

Elections for every public office in Texas—from Governor to Justice of the Peace to city council—are run by county governments. In every Texas county, volunteers and county officials work in tandem to run polling sites, educate voters on the process, and tabulate results. For nearly 50 years, Texas has given *every* county the power to create an elections administrator position to manage voter registration and elections. This structure is designed to add professionalism and remove partisanship from a county’s management of elections and voter registration, placing these duties in the hands of a nonpartisan official who is prohibited from making campaign contributions, publicly supporting candidates, or any similar political activity. Creating distance between elections and partisan officials has become increasingly important to protect the electoral process from bad faith actors and conspiracy theorists who have, in many instances, targeted

² *Miller v. El Paso Cnty.*, 136 Tex. 370, 150 S.W.2d 1000, 1001 (1941).

³ *City of Austin v. City of Cedar Park*, 953 S.W.2d 424, 432 (Tex. App.—Austin 1997, no writ) (quoting 1 George D. Braden, *The Constitution of the State of Texas: An Annotated and Comparative Analysis* 276 (1977) and citing *Miller*, 150 S.W.2d at 1001).

election officials with baseless claims of fraud and issued death threats to people who are providing the public service of administering an election. Nearly half of Texas counties—including nine of the ten largest, representing nearly 40% of registered voters—use an elections administrator system.

Since November 2020, Harris County’s election administrator’s office has run the County’s elections. The current elections administrator, Clifford Tatum, is an experienced election official recruited to the County from out of state. He runs an office of more than 170 employees with a budget of more than \$30 million.

SB1750 will abolish that office in Harris County—and only Harris County. This surgical targeting of Harris County’s elections operations was the express intention of the bill’s drafter, its House sponsor, and other legislators who supported it. The Legislature prohibits counties with a population of 3.5 million or greater—a category that describes Harris County alone—from creating the office of elections administrator. But crucially, SB1750’s provision abolishing existing elections administrator positions will apply exactly once: to a county that has a population over 3.5 million on September 1, 2023. The provision thus applies to Harris County on that date, and then it will never apply again.

The Texas Constitution’s plain text prohibits this sort of legislative meddling in a single county’s local affairs. Harris County therefore requests that this Court declare that SB1750 violates the Texas Constitution and enjoin state officials from enforcing it.

PARTIES

1. Harris County, Texas is the largest county in Texas and operates through the Harris County Commissioners Court, the County’s principal governing body.
2. Defendant, the State of Texas, may be served with process through the Texas Secretary of State, 1019 Brazos Street, Austin, TX 78701.

3. Defendant, Office of the Attorney General of Texas (“Attorney General’s Office”), may be served at 300 West 15th Street, Austin, Texas, 78701.

4. Defendant Angela Colmenero (the “Attorney General” or “Attorney General Colmenero”) is the Interim Attorney General of Texas and is sued in her official capacity. She may be served at 300 West 15th Street, Austin, Texas, 78701.

5. Defendant, Office of the Texas Secretary of State (“Secretary of State’s Office”), may be served at 1019 Brazos Street, Austin, TX 78701.

6. Defendant Jane Nelson (the “Secretary of State” or “Secretary of State Nelson”) is the Texas Secretary of State and is sued in her official capacity. She may be served at 1019 Brazos Street, Austin, TX 78701.

DISCOVERY CONTROL PLAN

7. Pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, Plaintiff intends that discovery be conducted under Level 3.

JURISDICTION AND VENUE

8. This Court has personal jurisdiction over each Defendant because Defendants reside in Texas.

9. This Court has jurisdiction over the subject matter pursuant to article V, section 8, of the Texas Constitution and Section 37.004 of the Civil Practice and Remedies Code.

10. Venue is appropriate in Travis County pursuant to sections 15.002(a)(1), 15.014, and 65.023 of the Texas Civil Practice and Remedies Code.

FACTUAL BACKGROUND

I. Harris County created its elections administrator office in 2020 over the objection of state officials.

11. The Texas Election Code charges counties with managing voter registration and

election administration under one of three systems.

12. The default system places the county's tax assessor-collector in charge of voter registration, and the county's clerk in charge of administering elections. *See, e.g.*, Tex. Elec. Code §§ 12.001, 43.002, 67.007, 83.002. These are both elected positions.

13. A county commissioners court may decide to place both voter registration and election administration duties under either the tax assessor-collector or county clerk, if those two officials agree. Tex. Elec. Code §§ 12.031, 31.071.

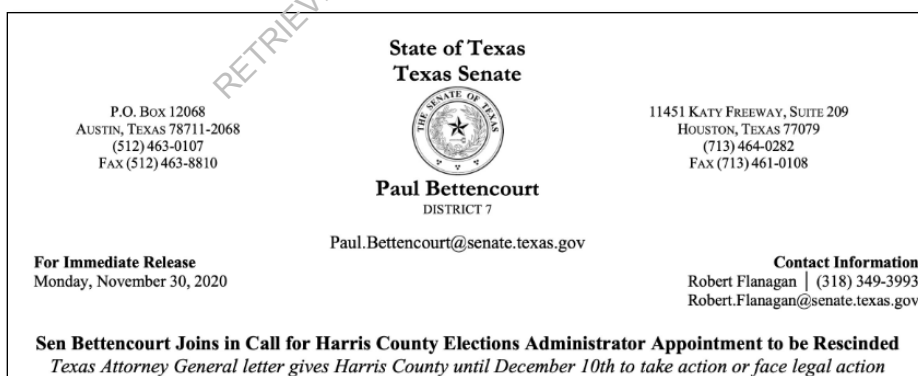
14. Finally, counties have a third option: a county commissioners court may create an elections administrator position to administer both voter registration and elections. Tex. Elec. Code § 31.031-.049. This is the option chosen by nearly half of Texas's 254 counties, including nine of the State's ten largest. This structure is designed to add professionalism and remove partisanship from a county's management of elections and voter registration, placing these duties in the hands of a nonpartisan official who is prohibited from making campaign contributions, publicly supporting candidates, or any similar political activity. Tex. Elec. Code § 31.035. This structure also has the added benefit of consolidating all elections-related duties in a single official, rather than splitting those duties between two offices that may not always be in sync.

15. When a commissioners court creates the elections administrator position, a statutorily created five-person "election commission" is responsible for hiring and firing the county's elections administrator. Tex. Elec. Code § 31.032. The election commission consists of (1) the county judge, (2) the county clerk, (3) the county tax assessor-collector, and (4) the county chair of each political party. *Id.* A commissioners court continues to control the funding for voter registration and election administration through its funding of the elections administrator.

16. In July 2020, the Harris County Commissioners Court created the Harris County

Elections Administrator position (the “Harris County EA”), transferring voter registration and election administration duties to that office. The order provided the office would begin operations on November 18, 2020, so as not to interrupt the then-ongoing November 2020 general election. Following that election, Harris County completed the transition, with the office receiving more than 100 employees and an eight-figure budget.

17. Republican state officials—including Senator Paul Bettencourt, the author of SB1750—immediately began working to abolish the Harris County EA. In November 2020, the Texas Secretary of State alleged Harris County violated the election code in creating the Harris County EA and appointing an individual to that position. Then-Attorney General Ken Paxton then sent Harris County a letter asserting that due to a minor paperwork error, the Harris County EA was “null and void” and “[did] not exist,” threatening legal action if the office continued operating and the County refused to rescind the appointment of its first elections administrator.⁴ That same day, Senator Bettencourt publicly⁵ called on Harris County to abolish the office and rescind the administrator’s appointment:



⁴ Letter from Ken Paxton, Att’y Gen. of Tex. to Vince Ryan, Harris County Att’y (Nov. 25, 2020) <https://s3.documentcloud.org/documents/20418715/states-letter-to-harris-county.pdf>.

⁵ Press Release, Paul Bettencourt, Sen Bettencourt Joins in Call for Harris County Elections Administrator Appointment to be Rescinded (Nov. 30, 2020), <https://senate.texas.gov/press.php?id=7-20201130a&ref=1>.

18. The current Harris County EA is Clifford Tatum, who the election commission appointed in August 2022.

19. Following the November 2022 general election, 22 losing candidates filed election contests to overturn the results of those elections, alleging issues with how the Harris County EA ran the election. Senator Bettencourt encouraged them, expressed his support for the suits, and started the process of leveraging those allegations to achieve his longstanding goal of abolishing the Harris County EA.

II. By Senator Bettencourt’s design, SB1750 abolishes the elections administrator in only Harris County.

20. Unable to bully the Harris County Commissioners Court to undo its decision to create the elections administrator position, Senator Bettencourt devised a new plan: use the Texas Legislature to do precisely what Harris County Commissioners Court would not.

21. As originally enacted in 1977, the elections administrator statute allowed “any county in this state” to transfer election duties to an election administrator.⁶ In the almost half century since, the Legislature has never diminished that equal treatment—until now. Senator Bettencourt’s SB1750 has two main provisions, both of which impact only Harris County—and one of which will *only* ever affect Harris County. Section 2(a) prohibits a county with more than 3.5 million residents—currently only Harris County—from creating an elections administrator for the county:

⁶ Act of May 28, 1977, 65th Leg., R.S., ch. 609, § 3, sec. 56a, 1977 Tex. Gen. Laws 1497, 1499.

8 SECTION 2. Section 31.031(a), Election Code, is amended to
9 read as follows:
10 (a) The commissioners court of a county with a population of
11 3.5 million or less by written order may create the position of
12 county elections administrator for the county.

22. This is an “open” bracket provision because although it will be binding on only Harris County when SB1750 goes into effect (because Harris County is the only county with a population greater than 3.5 million), it could be binding on other counties in the future. For example, if Travis County—which currently has a population of 1.3 million and does not have an elections administrator—reaches 3.5 million residents at some point in the future, Section 2 would preclude Travis County from “creat[ing]” a county elections administrator position.

23. Section 3 provides that if (1) a county has a population of more than 3.5 million on September 1, 2023, and (2) the county has an elections administrator, then (3) the administrator’s office is abolished, and the county’s voter registration and election administrator duties transfer to the county tax-assessor collector and clerk, respectively.

13 SECTION 3. Subchapter B, Chapter 31, Election Code, is
14 amended by adding Section 31.050 to read as follows:
15 Sec. 31.050. ABOLISHMENT OF POSITION AND TRANSFER OF DUTIES
16 IN CERTAIN COUNTIES. On September 1, 2023, all powers and duties of
17 the county elections administrator of a county with a population of
18 more than 3.5 million under this subchapter are transferred to the
19 county tax assessor-collector and county clerk. The county tax
20 assessor-collector shall serve as the voter registrar, and the
21 duties and functions of the county clerk that were performed by the
22 administrator revert to the county clerk, unless a transfer of
23 duties and functions occurs under Section 12.031 or 31.071.

24. This is a “closed” bracket provision—it will apply to Harris County on September 1, 2023, and then never again, even if some other county with an elections administrator passes

the 3.5 million threshold. This is because the abolishment and transfer occur only “[o]n September 1, 2023.” And on that date, Harris County will be the only county fitting the population criteria. Thus, other large counties will be able to avoid SB1750’s effect entirely by creating an elections administrator before passing the population threshold—as all but one of Texas’s large counties already have. Their existing elections administrators are grandfathered in, unlike Harris County’s.

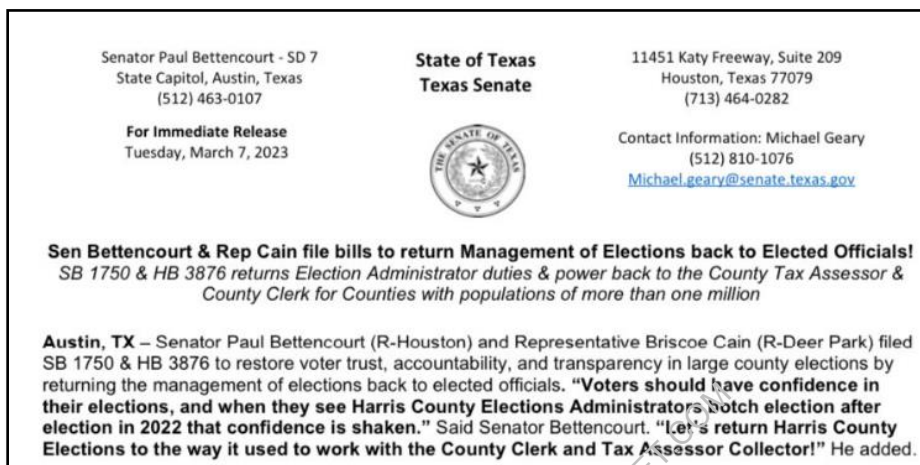
25. The plain text of SB1750 permits no other reading. The “On September 1, 2023” clause in Section 3 cannot be a mere effective-date provision because SB1750 explicitly already takes effect September 1, 2023. Thus, to create a broadly applicable abolishment/transfer provision taking effect on the law’s effective date, the Legislature could have stayed silent—as the Legislature did in Section 2.

26. That SB1750’s abolishment provision can only ever apply to Harris County is further apparent when read in combination with Senate Bill 1933⁷ (“SB1933”), another bill Senator Bettencourt sponsored this legislative session. SB1933 applies to only counties “with a population of more than 4 million,” and empowers the Secretary of State to “terminate the employment of a county elections administrator, in a county that has the position.” *See* Tex. Elec. Code §§ 31.017, 31.021 (effective September 1, 2023). This law would be superfluous if SB1750 automatically abolished the elections administrator position in any county that grows to a population of more than 3.5 million after September 1, 2023.

27. The Legislature’s decision to ensure that SB1750 applies only to Harris County, while offering other large counties an escape valve, shows the explicit intention of the bill’s sponsor and other officials. An early draft of SB1750 would have applied to counties with over

⁷ TEXAS LEGISLATURE ONLINE, SENATE BILL 1933, *available at*: <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/SB01933F.pdf#navpanes=0>.

one million residents. Yet Senator Bettencourt stated publicly that his intended target was the Harris County EA: “Let’s return Harris County Elections to the way it used to work with the County Clerk and Tax Assessor Collector!”⁸



28. Senator Bettencourt quickly revealed that the one million population bracket was a smoke screen. At the start of SB1750’s first and only senate committee hearing, Senator Bettencourt announced that the committee would not consider a bill with a one-million-person population bracket, but instead a committee substitute that increased the population threshold to 3.5 million. And at that hearing he made clear his reason for doing so: “This bill will effectively transition the election administrator back to the Harris County clerk and tax assessor-collector.”⁹

29. When the entire Senate passed SB1750 a few weeks after the hearing, Senator Bettencourt reaffirmed the goal of his bill in a press release, stating “[l]et’s return Harris County Elections to the way it used to work with the County Clerk and Tax Assessor Collector!”¹⁰

⁸ Press Release, Paul Bettencourt, Sen Bettencourt & Rep Cain file bills to return Management of Elections back to Elected Officials! (Mar. 7, 2023), <https://senate.texas.gov/press.php?id=7-20230307a&ref=1>.

⁹ Hearing on S.B. 1750 Before the Senate Committee on State Affairs, 88th Leg., R.S. (March 30, 2023) (tape available at https://tlcsenate.granicus.com/MediaPlayer.php?view_id=53&clip_id=17555) (quote at 4:09:41).

¹⁰ Press Release, Paul Bettencourt, Senator Bettencourt’s bill returns Harris County Elections back to Elected Officials! (Apr. 18, 2023), <https://senate.texas.gov/press.php?id=7-20230418a&ref=1>.

30. He did so again¹¹ a week later, when SB1750 was posted for hearing in the House Elections Committee:



31. In that hearing, Representative Briscoe Cain, the bill’s House sponsor, reaffirmed that SB1750 was intended to impact only Harris County:

CAIN: In 2020, shortly after the November election, Harris County changed the leadership of the elections operations, from the elected office of the Harris County Clerk and Tax Assessor-Collector to an appointed position of the elections administrator.

...

CAIN: I believe it’s time for Harris County elections to return the accountability of Harris County elected officials, the Harris County Clerk and the Harris County Tax Assessor-Collector ...

¹¹ Paul Bettencourt (@Team Bettencourt), Twitter (Apr. 26, 2023, 10:31 AM), <https://twitter.com/TeamBettencourt/status/1651247641987096578?s=20>.

...

BUCY: ... at one point it was a million threshold, I think it's been changed to three and a half million. Is there a reason for that change?

CAIN: *Yea, so, my bill was filed only for Harris County.* This is a committee substitute in the Senate.¹²

32. After the Texas House of Representatives passed SB1750, Senator Bettencourt publicly reaffirmed multiple times that the bill's goal was to abolish only the Harris County EA. On May 22, he tweeted "The @HoustonChron Editorial Board recognizes the obvious, 'Bettencourt election bill swipes at Harris County leaders, not at democracy'! YES, my SB1750, that returns the management of Harris County elections to the county clerk and tax assessor-collector, is about performance, not politics!"¹³ On May 24, he stated, "SB1750 will restore voter trust, accountability, and transparency in Harris County elections by returning the management of elections back to elected officials."¹⁴ On June 2, he tweeted the "[Harris County] Elections Administrator Office is 'adios' per, my Senate Bill 1750 and elections are being returned to the Elected County Clerk or County Tax Assessor."¹⁵ On June 6, he tweeted SB1750 "replace[s] the failed Elections Administrations Office with two Elected Officials, @harriscotxclerk and @HarrisCountyTAC."¹⁶

¹² Hearing on S.B. 1750 Before the House Committee on Elections, 88th Leg., R.S. (April 27, 2023) (tape available at https://tlchouse.granicus.com/MediaPlayer.php?view_id=78&clip_id=24729) (testimony at 2:05:35 – 2:08:32) (emphasis added).

¹³ Paul Bettencourt (@Team Bettencourt), Twitter (May 22, 2023, 11:22 AM), <https://twitter.com/TeamBettencourt/status/1660682439176355841?s=20>.

¹⁴ Press Release, Paul Bettencourt, Sen. Bettencourt's bills return Harris County Elections from EA back to Elected Officials passes! (May 24, 2023), <https://senate.texas.gov/press.php?id=7-20230524a&ref=1>.

¹⁵ Paul Bettencourt (@Team Bettencourt), Twitter (June 2, 2023, 6:14 PM), <https://twitter.com/TeamBettencourt/status/1664772385487085568>.

¹⁶ Paul Bettencourt (@Team Bettencourt), Twitter (June 6, 2023, 5:22 PM), <https://twitter.com/TeamBettencourt/status/1666209017322954759?s=20>.

33. Governor Abbott signed SB1750 on June 18, 2023. The next day, Senator Bettencourt took a victory lap over successfully passing a bill that targeted only Harris County¹⁷:



34. Senator Bettencourt’s SB1750 is even more harmful to Harris County when paired with SB1933. As previously discussed, SB1933 empowers the Secretary of State to terminate the elections administrator in only Harris County. The law also grants the Secretary of State the authority to oversee only Harris County’s elections and to initiate lawsuits to remove from office Harris County’s Clerk and Tax Assessor-Collector.¹⁸

III. Harris County will be harmed if SB1750 takes effect.

35. Pursuant to SB1750, the Harris County EA is set to be abolished effective September 1, 2023. Harris County will be harmed considerably, in a variety of ways.

¹⁷ Paul Bettencourt (@Team Bettencourt), Twitter (June 19, 2023, 5:47 PM), <https://twitter.com/TeamBettencourt/status/1670926247713439746>.

¹⁸ As SB1933 provides for different penalties for an elections administrator versus a county clerk and tax assessor, the courts’ rulings in this case will guide how SB1933 impacts Harris County. Harris County will challenge any potential action taken by the Secretary of State pursuant to SB1933.

36. First, because SB1750 is unconstitutional, Harris County will be harmed by having to implement a statute that it believes violates the Texas constitution. Harris County also suffers by being singled out by SB1750. Article III, section 56's intent is in part to protect counties from baseless attacks from legislators with a grudge. SB 1750 does just that, and thus deprives Harris County from a right granted by the Texas Constitution.

37. Beyond being required to implement an unconstitutional statute, Harris County would also suffer harm because implementing SB1750 would require massive transfers of employees and resources from the EA's office to the Harris County Clerk and the Harris County Tax Assessor-Collector just 6 weeks before voters will go to the polls in elections run by Harris County. Not only will this transfer lead to inefficiencies, disorganization, confusion, office instability, and increased costs to the County, but it will also disrupt an election the Harris County EA has been planning for months. The County is legally required to host a Texas constitutional amendment election as well as a countywide bond election and will also be conducting elections for the City of Houston and 50 other entities (e.g., other municipalities, municipal utility districts, other local government entities). The County anticipates providing around 700 polling sites to more than 2.5 million registered voters in the County. The deadline to finalize in person and absentee ballots is September 23, which is also the deadline to mail absentee ballots to Military and Overseas voters. The last day to register to vote is October 10, and early voting by personal appearance begins on October 23.

38. The county tax assessor and clerk have had no role in preparing for the November election. Transferring responsibility for that election just weeks before voting starts will therefore disrupt existing processes and risk the efficient administration of the election.

39. Over the next few months, the elections department will have to undertake a

multitude of tasks, including the following: inventorying election supplies, learning and implementing new election laws, training election workers, testing voting equipment, designing and proofing ballots, mailing ballots to overseas military voters, preparing a mass mail out of voter registration cards, submitting appointment lists for presiding and alternate judges, making emergency appointments of presiding and alternate judges, serving as early voting clerk, ensuring a sufficient number of facilities to use as polling locations, and allocating election supplies among the polling places.

40. Harris County will be forced to hire additional permanent and temporary workers, as well as consultants, at a great cost to ensure it can meet its many obligations and to navigate the management structure to be used, the personnel to be retained, and the numerous decisions that need to be made in hopes of orderly administering the county as well as this November's election.

41. Harris County seeks court intervention because it does not wish to comply with an unconstitutional law. But should Harris County run the November 2023 election and March 2024 primary elections through its elections administrator's office without a court order related to SB1750's constitutionality, the full weight of the Election Code and the Secretary of State's mandatory rules are set to come crashing down on the County. Dozens of provisions in the code and rules require that counties manage voter registration and administer elections through the proper, statutorily authorized elections officials. Harris County running elections through a legally defunct office would jeopardize not only the results of those elections, but the validity of voter lists, polling locations, thousands of financial transactions, and contracts with other entities (including the City of Houston, the Harris County Republican Party, and the Harris County Democratic party). Funds for registering voters owed by the Secretary of State to the Harris County EA under Tex. Elec. Code § 19.002 would be withheld. The County's voter registration activities

would be impacted if the Secretary of State refuses to check voter registration applications against the state's TEAM (Texas Election Administration Management) system, which is an essential part of the voter registration process. In all facets of the upcoming election (e.g., voter outreach, voter registration, ballot language, candidate verification, election technology, election administration, vote tallying), to ensure positive outcomes, the Secretary of State's Office must work hand-in-hand with the Harris County EA; without an injunction, Harris County's entire election apparatus is plunged into uncertainty. Ultimately, without court intervention, the public's selection of their elected representatives—the core process on which our democracy rests—will be risked in Harris County.

42. The County is at immediate risk of harm through enforcement actions by Defendants. The Attorney General's Office has explicitly made enforcement of the Election Code a priority in recent years.¹⁹ Harris County is at significant risk of suit, including civil penalties, by the Attorney General's Office for its refusal to follow an unconstitutional law.

43. In fact, there is a clear precedent for such action. As referenced above, the Secretary of State's Office referred the creation of the Harris County EA to the Attorney General's Office.²⁰ The Attorney General's Office demanded the rescission of the EA's appointment and threatened legal action. The Attorney General's Office has made a cottage industry out of suing

¹⁹ See, Texas Attorney General (@TXAG), Twitter (Aug. 22, 2022, 9:06 AM), <https://twitter.com/TXAG/status/1561716384794542081?s=20>; Attorney General Ken Paxton (@KenPaxtonTX), Twitter (Nov. 4, 2021, 4:38 PM), <https://twitter.com/KenPaxtonTX/status/1456375255530889225?s=20>. The Attorney General's Office has sent out cease and desist letters based on perceived election code violations and provided legal advice on criminal liability for third parties providing mail-in ballots. The Attorney General's Office formed an Election Integrity Unit to litigate election laws. See <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-announces-formation-2021-texas-election-integrity-unit>.

²⁰ Letter from Ken Paxton, Att'y Gen. of Tex. to Vince Ryan, Harris County Att'y (Nov. 25, 2020) <https://s3.documentcloud.org/documents/20418715/states-letter-to-harris-county.pdf>.

Harris County for any perceived violation of state law or regulation.²¹ Even while suspended, Ken Paxton has noted his interest in litigation involving SB1750 and Harris County elections.²²

44. Harris County is also under threat of enforcement by the Secretary of State. After September 1, 2023, SB1933 provides the Secretary of State with the power to order administrative oversight of a “county office administering elections or voter registration.” *See* Tex. Elec. Code § 31.017(a) (effective September 1, 2023). This grant of authority includes the authority to demand responses from county election officials, conduct investigations of county election officials, impose administrative oversight over county elections, and remove county election officials. *See id.* §§ 31.017(b), 31.019, 31.020, 31.021. The Secretary of State may also take action to harm Harris County by actively refusing to take part in the process for the November election, including by: refusing to accept from the Harris County Elections Administrator the results of any Harris County election; refusing to coordinate with, and approve election action taken by, the Harris County Elections Administrator; refusing to provide official election reporting forms and voting by mail forms; refusing to provide funds entitled under Tex. Elec. Code § 19.002; refusing to check voter registration applications against the state’s TEAM system; taking any actions under SB1933 on the sole basis that the Harris County Elections Administrator position is abolished; and refusing

²¹ *See* Texas Attorney General (@TXAG), Twitter (Aug.31, 2020, 3:06 PM) <https://twitter.com/TXAG/status/1300525513237245954?s=20>; Press Release, Texas Attorney General’s Office, AG Paxton Sues Harris County Clerk to Prevent Him from Unlawfully Sending Out Millions of Unsolicited Mail-In Ballot Applications (August 31, 2020), <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-sues-harris-county-clerk-prevent-him-unlawfully-sending-out-millions-unsolicited-mail>; Texas Attorney General (@TXAG), Twitter (Sep. 12, 2020, 10:58 AM), <https://twitter.com/TXAG/status/1304811527250350080?s=20>; Texas Attorney General (@TXAG), Twitter (Sep. 15, 2020, 5:36 PM), <https://twitter.com/TXAG/status/1305998951448031237?s=20>; Petition in Intervention by the State of Texas, *Texas Organizing Project v. Harris County, Texas, et al.*, Cause No. 2022-73765 in the 295th Judicial District; Appellants’ Emergency Motion for Temporary Order, *Abbott, et al. v. Harris County, Texas, et al.*, Cause No. 03-21-00429-CV, Third Court of Appeals; Relator’s Emergency Motion for Temporary Relief, *In re Greg Abbott*, Cause No. 21-0923, Texas Supreme Court.

²² *See* Attorney General Ken Paxton (@KenPaxtonTX), Twitter (July 29, 2023, 7:27 PM), <https://twitter.com/KenPaxtonTX/status/1685446868933709825?s=20>.

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

CAUSES OF ACTION

DECLARATORY JUDGMENT: SB1750 VIOLATES ARTICLE III, SECTION 56 OF THE TEXAS CONSTITUTION

45. Plaintiff incorporates by reference and re-alleges the facts and allegations contained in the foregoing paragraphs, as if set forth verbatim herein

46. Under the Uniform Declaratory Judgments Act (“UDJA”), a person “whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under [] statute . . . and obtain a declaration of rights, status, or other legal relations thereunder.” Tex. Civ. Prac. & Rem. Code § 37.004(a). The UDJA is properly used to “settle and afford relief from uncertainty and insecurity with respect to rights, and [is] to be liberally construed.” *City of Waco v. Tex. Nat. Res. Conservation Comm’n*, 83 S.W.3d 169, 177 (Tex. App.—Austin 2002, pet. denied). The State, the Attorney General’s Office, Interim Attorney General Colmenero, the Secretary of State’s Office, and Secretary of State Nelson, believe that SB1750 is constitutional and that Harris County must abolish its elections administrator’s office on September 1, 2023, creating a live controversy between the parties. The UDJA is thus a proper vehicle for challenging the constitutionality of SB1750.

47. Article III, section 56(a) of the Texas Constitution provides that “[t]he Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing,” and then lists 30 prohibited subject matters, including:

- “(2) regulating the affairs of counties, cities, towns, wards or school districts”;
- “(12) for the opening and conducting of elections, or fixing or changing the places of voting”;

- “(14) creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts”; and
- “(30) relieving or discharging any person or set of persons from the performance of any public duty or service imposed by general law”.

TEX. CONST., art. III, § 56(a).

48. Similarly, Article III, section 56(b) of the Texas Constitution provides “[t]he Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law ... where a general law can be made applicable, no local or special law shall be enacted”

TEX. CONST., art. III, § 56(b).

49. Although the Legislature may pass laws that apply to a class more limited than all of Texas, courts have consistently held unconstitutional laws that apply to only one locality and make it impossible for other localities to later be subject to the law. *See, e.g., City of Fort Worth v. Bobbitt*, 36 S.W.2d 470, 471-72 (Tex. 1931) (“the act is so constructed that it is absolutely impossible for any other city in the state to ever be included within the terms or under the provisions of the act. It is therefore our opinion that this act is confined in its application to the city of Fort Worth only, just as clearly, and just as effectively as if the stipulation with reference to population had been omitted and the name ‘Fort Worth’ written therein in its stead. The Constitution in plain and simple terms prohibits the enactment of any local or special law regulating the affairs of cities, or changing their charters”). Courts have similarly struck down laws that exempt one locality from a law that applies to all of Texas. *See, e.g., Hall v. Bell Cnty.*, 138 S.W. 178 (Tex. App.—Austin 1911), *aff’d*, 105 Tex. 558 (1913) (holding unconstitutional a law that abolished the county auditor’s office in only Bell County).

50. Laws that apply to a limited class pass constitutional muster only if there is a “reasonable basis” for the classification—*i.e.*, the classification must be broad enough to include a substantial class and must be based on characteristics legitimately distinguishing such class from

others with respect to the public purpose sought to be accomplished by the law. *Maple Run at Austin Mun. Util. Dist. v. Monaghan*, 931 S.W.2d 941, 945 (Tex. 1996).

51. SB1750 cannot withstand constitutional scrutiny. By setting a population threshold of 3.5 million, the law abolishes the elections administrator office in only Harris County, and in no other locality in this state. *See* Tex. Elec. Code § 31.050 (effective September 1, 2023). Moreover, it is impossible for SB1750's abolition of the elections administrator's office to be binding on counties other than Harris County in the future because the provision applies only to counties that have a population of 3.5 million on September 1, 2023, and not to counties that grow to a population above 3.5 million residents after September 1, 2023.

52. The law's population bracket is thus permanently closed, no different than if the statute purported to apply to "Harris County and only ever Harris County" or only "counties with a population of more than 3.5 million people according to the United States Census of 2020." The law is not creating a classification that happens to capture only Harris County; it is instead using a sham classification to evade the constitutional ban on local laws and make Harris County the only county to which it applies.

53. Accordingly, pursuant to the UDJA, Harris County seeks the following prospective declaratory judgment from the Court:

- SB1750 violates article III, section 56(a) of the Texas Constitution by abolishing the elections administrator office in only counties that have a population of more than 3.5 million on September 1, 2023.
- SB1750 violates article III, section 56(b) of the Texas Constitution by abolishing the elections administrator office in only counties that have a population of more than 3.5 million on September 1, 2023.
- SB1750 violates article III, section 56(a) of the Texas Constitution by prohibiting counties with a population of more than 3.5 million from creating an elections administrator position.

- SB1750 violates article III, section 56(b) of the Texas Constitution by prohibiting counties with a population of more than 3.5 million from creating an elections administrator position.

INJUNCTIVE RELIEF

54. Harris County expressly incorporates by reference each of the foregoing paragraphs of the pleading as if fully set forth herein.

55. Harris County intends to seek temporary and permanent injunctive relief to enjoin state officials from enforcing SB1750 against the County.

56. Harris County has properly pleaded a cause of action for declaratory judgment.

57. Harris County has a probable right to relief because, for the reasons set forth above, SB1750 violates article III, section 56 of the Texas Constitution.

58. If the Court does not grant temporary relief in this case pending a decision on a permanent injunction and declaratory judgment, Harris County will suffer imminent and irreparable harm. Should Harris County run the November 2023 election through its elections administrator's office without a court order declaring SB1750 unconstitutional, it will run afoul of the dozens of provisions in the Election Code and Secretary of State rules requiring that counties manage voter registration and administer elections through the proper, statutorily authorized elections officials. The Attorney General's Office, the Attorney General, the Secretary of State's Office, and the Secretary of State will be the lead agents enforcing SB1750, putting the County at risk of a suit to remove its EA, civil penalties, the disruption of election processes for the November 2023 election, the invalidation of contracts and financial transactions, and the potential rejection of results for the November election.

59. A temporary injunction maintains the *status quo* for the upcoming November election.

60. Harris County has no other adequate remedy at law.

CONDITIONS PRECEDENT

61. All conditions precedent have been performed or have occurred.

REQUEST FOR HEARING

62. Plaintiff requests that upon the filing of its application for temporary injunction, the Court set it for hearing, and after hearing the application, issue a temporary injunction against Defendants enjoining them from the acts described above. Plaintiff further requests that the Court set this matter for trial and, upon final hearing, issue the foregoing declarations and permanently enjoin Defendants from the acts described above.

BOND

63. Harris County is exempt by law from the requirement to file a bond for a request for an injunction. *See* Tex. Civ. Prac. & Rem. Code § 6.001(c).

PRAYER

64. For these reasons, Harris County asks that Defendants be cited to appear and answer and, on final trial, that Harris County have judgment against Defendants for:

- A declaration that SB1750 violates article III, section 56(a) of the Texas Constitution by abolishing the elections administrator office in only counties that have a population of more than 3.5 million on September 1, 2023.
- A declaration that SB1750 violates article III, section 56(b) of the Texas Constitution by abolishing the elections administrator office in only counties that have a population of more than 3.5 million on September 1, 2023.
- A declaration that SB1750 violates article III, section 56(a) of the Texas Constitution by prohibiting counties with a population of more than 3.5 million from creating an elections administrator position.
- A declaration that SB1750 violates article III, section 56(b) of the Texas Constitution by prohibiting counties with a population of more than 3.5 million from creating an elections administrator position.

- Temporary and permanent injunctions preventing the Office of the Texas Secretary of State and the Secretary of State from refusing to recognize the Harris County Elections Administrator's Office as a lawful elections office on account of SB1750's purported efficacy after SB1750's effective date, including by, on the basis of SB1750: refusing to accept from the Harris County Elections Administrator the results of any Harris County election; refusing to coordinate with, and approve election action taken by, the Harris County Elections Administrator; refusing to provide official election reporting forms and voting by mail forms; refusing to provide funds entitled under Tex. Elec. Code § 19.002; refusing to check voter registration applications against the state's TEAM system; taking any actions under SB1933 on the sole basis that the Harris County Elections Administrator position is abolished; refusing to cooperate with the Harris County Elections Administrator to perform election-related responsibilities.
- Temporary and permanent injunctions preventing the Office of the Attorney General of Texas and the Attorney General from enforcing SB1750 by seeking civil penalties against the County or its elections officials.

65. Plaintiff requests such other and further relief, general or special, whether in law or equity, to which it may be justly entitled.

[SIGNATURE PAGE BELOW]

Dated: August 4, 2023

Respectfully submitted,

/s/ Christian D. Menefee

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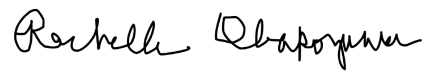
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ATTORNEYS FOR PLAINTIFF

VERIFICATION

My name is Rachelle Obakojuwa. I am an employee of the following governmental agency: Harris County Elections Administration Office. I am executing this declaration as part of my assigned duties and responsibilities as the Director of Logistics. Based on my experience, my assigned duties and responsibilities, and my review of County documents, I have personal knowledge of the facts contained in the **Plaintiff's Verified Second Amended Petition and Application for Temporary Injunction and Permanent Injunction**. I declare under penalty of perjury that the facts stated therein are true and correct.

Executed in Harris County, State of Texas on August 4, 2023.



Rachelle Obakojuwa

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CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2023, a copy of this Plaintiff's Verified Second Amended Petition and Application for Temporary Injunction and Permanent Injunction was transmitted in accordance with the Texas Rules of Civil Procedure to all parties of record as follows:

Lief Olson, Chief Litigation Division

Leif.Olson@oag.texas.gov

Susanna Dokupil

Susanna.Dokupil@oag.texas.gov

Office of the Attorney General

P.O. Box 12548 (MC-009)

Austin, Texas 78711-2548

Phone: (512) 463-4139

Attorneys for Defendants

/s/ Neal A. Sarkar

Neal A. Sarkar

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APPENDIX D

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AFFIRMATIVE DEFENSE

Defendants assert the affirmative defense of sovereign immunity.

PRAYER

State Defendants respectfully ask the Court to (1) deny Plaintiff's requests for relief, (2) grant such other and further relief, both general and special, at law and in equity, to which they may be justly entitled.

Dated: August 7, 2023

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Provisional Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

RALPH MOLINA
Deputy Attorney General for Legal Strategy

RYAN D. WALTERS
Deputy Chief, Special Litigation Division

Respectfully submitted,

CHARLES K. ELDRED
Chief, Legal Strategy Division
Tx. State Bar No. 00793681

/s/ Susanna Dokupil

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*Counsel for Defendants and
Intervenor the Attorney General of Texas*

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2023, a true and correct copy of the foregoing document was served via the Court's electronic filing system to all counsel of record.

/s/ Susanna Dokupil
SUSANNA DOKUPIL

APPENDIX E

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

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

**INTERVENOR/CROSS-CLAIMANT CLIFFORD TATUM’S VERIFIED
FIRST AMENDED ORIGINAL PETITION IN INTERVENTION,
ORIGINAL PETITION FOR DECLARATORY JUDGMENT,
AND APPLICATION FOR TEMPORARY INJUNCTION AND
PERMANENT INJUNCTION AGAINST HARRIS COUNTY**

Pursuant to Texas Rule of Civil Procedure 60, Clifford Tatum files this Verified¹ First Amended Original Petition in Intervention and cross-claims against Harris County, Texas, seeking both a declaratory judgment and injunctive relief. In support of these claims, Tatum would respectfully show this Honorable Court as follows:

¹ See attached Affidavit of Clifford Tatum in Support of Applications for Writs of Preliminary and Permanent Injunction.

PARTIES

1. Intervenor/Cross-claimant Clifford Tatum is an individual and a resident of Harris County, Texas.

2. Plaintiff/Cross-defendant Harris County, Texas is a county in the State of Texas, and operates through the Harris County Commissioners Court, the Plaintiff/cross-defendant's governing body. Harris County may be served by serving its counsel of record: Harris County Attorney Christian D. Menefee, Office of Harris County Attorney; 1019 Congress, 15th Floor; Houston, Texas 77002.

3. Defendant/Intervenor the Attorney General of Texas is an agency of the State of Texas and may be served by serving its counsel of record: Charles K. Eldred and Susanna Dokupil, Office of the Attorney General; P.O. Box 12548; Austin, Texas 78711-2548.

DISCOVERY CONTROL PLAN

1. For purposes of Tex. R. Civ. P. 190.1, Intervenor/Cross-claimant alleges that insomuch as Plaintiff/Cross-defendant, in its Verified Plaintiff's Original Petition in this case, has pled that it "intends that discovery be conducted under Level 3," a Level 3 discovery plan is appropriate for this cross-claim.

JURISDICTION AND VENUE

2. The Court has personal jurisdiction over Harris County, Texas as it is a governmental entity located in the State of Texas.

3. This Court possesses jurisdiction to render judgment in this matter pursuant to Tex. Civ. Prac. & Rem. Code §§ 37.003 and 65.021, Tex. Gov't Code §§ 24.008 and 24.011, and Tex. Const. art. V, § 8.

4. Venue is appropriate in Travis County as Harris County brought its claim for declaratory and injunctive relief here and Intervenor/Cross-claimant's claim is intimately related to the County's lawsuit.

PROCEDURAL BACKGROUND

5. Texas Senate Bill 1750, which amends the Texas Elections Code and adds a new Section 31.050, is set to take effect on September 1, 2023. New Section 31.050 abolishes the position of elections administrator in only one county in the State of Texas: Harris County. On July 6, 2023, Harris County, Texas, filed its Verified Original Petition and Application for Temporary Injunction and Permanent Injunction in this case, complaining that the abolition of the election administrator office in Harris County pursuant to Tex. S.B. 1750, 88th Leg., R.S. (2023) ("SB 1750") (adding Tex. Elec. Code § 31.050), should that enactment become effective, would violate Tex. Const. art. III §§ 56(a) and (b). The County seeks a declaratory judgment that SB 1750 is unconstitutional and temporary and permanent injunctive relief barring enforcement of SB 1750 by the defendants. That lawsuit, referred to in this pleading as the "Harris County lawsuit", is currently pending before this Court.

6. Intervenor/Cross-claimant Clifford Tatum is the current Elections Administrator of Harris County. If the office of Harris County Elections Administrator is

abolished, he will lose his job and be deprived of tangible economic benefits of the office of Harris County elections administrator (such as salary, health insurance, retirement benefits, and automobile expense allowance) as well as non-economic emoluments of that position (such as those described below).

7. Should SB 1750 go into effect on September 1, 2023, Harris County will have a duty to comply with its provisions and has indicated an intention to do so.

8. The outcome of the Harris County lawsuit will directly impact and affect Intervenor/Cross-claimant's vested rights to continued employment in the role of statutory county elections administrator (and the emoluments and other benefits attendant to that official position). Intervenor/cross-claimant therefore has a justiciable interest in the Harris County lawsuit and, accordingly, is entitled to intervene as a matter of right. Tex. R. Civ. P. 60; *Nghiem v. Sajib*, 567 S.W.3d 718, 721 (Tex. 2019); *In re Union Carbide Corp.*, 273 S.W.3d 152, 154 (Tex. 2008) (*per curiam*) (orig. proceeding).

9. Intervenor/cross-claimant would further show that intervention is appropriate because:

- (a) Intervenor/cross-claimant could have brought the same action in his own name;
- (b) his intervention will not complicate the case by excessive multiplication of the issues; and/or
- (c) his intervention is almost essential to protect Intervenor/Cross-claimant's interest. *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990).

FACTUAL BACKGROUND

10. Clifford Tatum is a non-partisan professional trained in managing all aspects of the elections process with over twenty years of experience at both state and county levels. He is the duly appointed, qualified, and serving county elections administrator of Harris County, Texas, having been appointed to that position on August 16, 2022, by the Harris County election commission, pursuant to and in accordance with Tex. Elec. Code § 31.032.

11. As a result of that appointment, Tatum is entitled to receive a salary and various employment benefits and emoluments of office (such as health insurance, retirement benefits, and automobile expense allowance) appropriated and provided by Harris County Commissioners Court.

12. He also benefits from Tex. Elec. Code §31.037, which provides that a county elections administrator's employment can be terminated only "for good and sufficient cause on the four-fifths vote of the county election commission and approval of that action by a majority of the commissioners court."² Thus, Tatum has a vested interest in not being suspended or terminated as Harris County's elections administrator except for "good and sufficient cause," and on the vote of the Harris County election commission and approval of that action by a majority of the commissioners court.

13. Currently there is no "good and sufficient cause" for the termination of Tatum's employment as Harris County elections administrator.

² The purpose of this provision is to insulate the position of county elections administrator from political pressure and the vicissitudes of partisan elections.

14. SB 1750, should it go into effect, would add Section 31.050 to the Texas Election Code. Section 31.050 abolishes the position of county elections administrator in Harris County as of September 1, 2023. Tatum has been advised by officials of Harris County that should SB 1750 go into effect, his employment as elections administrator will be terminated as required by the statute, and he will no longer be paid the salary or other benefits to which he is currently entitled by virtue of his holding this official position.³ Further, the whole Harris County Elections Administrator’s Office will be closed and its duties transferred to the Harris County Tax Assessor-Collector’s and the Harris County Clerk’s offices. In short, once SB1750 becomes effective, Clifford Tatum will be fired, even though there is no “good and sufficient cause” to dismiss him from his employment.

SB 1750 VIOLATES TEX. CONST. ARTICLE III, § 56

SB 1750 Violates Multiple Provisions of Article III, § 56 of the Texas Constitution

15. SB 1750 and Tex. Elec. Code § 31.050, which it adds, do not constitute “good and sufficient cause” to terminate Tatum’s employment as Elections Administrator because SB 1750 is an unconstitutional local and/or special law⁴, violative of Tex. Const. Art. III §§ 56(a)(2), (12), (14) and (30), and Tex. Const. Art. III § 56(b).

³ Of course, it is theoretically possible Tatum could be hired (and paid) by the County in some other position—potentially even one involving elections administrator or voter registration (but not both). Tatum has been offered no such position and moreover, it could not be as a department head.

⁴ A “local law” is one limited to a specific geographic area of the state. *Maple Run v. Monaghan*, 931 S.W.2d 941, 945 (Tex. 1996); *Williams v. Houston Firemen’s Relief and Retirement Fund*, 121 S.W.3d 415, 432 (Tex. App.—Houston [1st Dist.] 2003, no writ hist.). A “special law” is one which is “limited to a particular class of persons distinguished by some characteristic other than geography.” *Id.* SB 1750 is both a “local law” (in that it affects only Harris County, and forever can only affect that one geographic area of the state) and a “special law” (as it only impacts

16. SB 1750 is unconstitutional and void because, among other provisions, it:
- (a) violates Tex. Const. Art. III § 56(a)(2) by authorizing regulating the affairs of only one Texas county, Harris County, in the following particulars, among others:
 - (i) dictating the county tax assessor-collector (and only that official⁵) shall manage voter registration activities;
 - (ii) dictating the county clerk (and only the county clerk) shall manage election activities;
 - (iii) eliminating the authority of the Harris County Commissioners Court to: create the position of county elections administrator to conduct voter registration activities in the county and manage elections as allowed by Tex. Elec. Code §31.031(a), approve the suspension or termination of a county elections administrator as allowed by Tex. Elec. Code § 31.037, and control funding for administration of elections as allowed by Tex. Elec. Code § 31.039, among other provisions; and

individuals living in a county populated with more than 3.5 million residents on September 1, 2023).

⁵ There are circumstances where the county clerk, rather than the tax assessor-collector, can be designated as the voter registrar. Tex. Elec. Code § 12.031. That provision obviously does not alter SB 1750's incompatibility with Tex. Const. art. III, § 56(a)(2), just the linguistic articulation of the fatal constitutional defect.

- (iv) eliminating the circumstances in which Harris County's county election commission may appoint, Tex. Elec. Code § 31.032(a), or suspend or terminate (Tex. Elec. Code § 31.037) the County's elections administrator;
- (b) violates Tex. Const. art. III, § 56(a)(12) by affecting, in Harris County only, the opening and conducting of elections, or fixing or changing the places of voting, as such functions are currently under the control of the county elections administrator, but pursuant to SB 1750, must be transferred to the county clerk.
- (c) violates Tex. Const. art. III, § 56(a)(14) by eliminating, for Harris County only, the power of:
- (i) Harris County Commissioners Court to create the position of county elections administrator, Tex. Elec. Code §31.031(a), to approve the suspension or termination of a county elections administrator, Tex. Elec. Code § 31.037, and to control funding for administration of elections, e.g., Tex. Elec. Code § 31.039;
 - (ii) Harris County's county election commission to appoint, Tex. Elec. Code § 31.032(a), and to suspend or terminate (Tex. Elec. Code § 31.037) the county elections administrator; and
 - (iii) the Harris County elections administrator to perform functions and discharge duties relating to the administration of voter registration

activities and the conduct of elections, Tex. Elec. Code Ch. 31, Subch. B (generally), esp. § 31.043, all in);

- (d) violates Tex. Const. art. III, § 56(a)(30) by discharging the duly appointed elections administrator of Harris County and preventing him from performing the public duties and services required by laws of the State of Texas; and
- (e) violates Tex. Const. art. III, § 56(b) because the legislature could have enacted a general law which could have achieved all of the legitimate objectives of SB 1750.

There Is No Rational Basis for SB 1750

17. SB 1750 is irrational for multiple reasons. First, SB 1750's selection of September 1, 2023, as the basis for determining whether a county may have its elections and voter registration activities managed by a non-partisan, professional elections administrator is irrational. SB 1750 divides the counties of Texas into two classes: 253 counties with a current population of less than 3.5 million inhabitants on September 1, 2023, and Harris County with a population in excess of 3.5 million residents on that date. 253 counties may have a non-partisan,⁶ professional elections administrator managing elections and overseeing voter registration functions for the county, even if they later grow to more than 3.5 million residents; Harris County on the other hand, may never have a non-

⁶ See, Tex. Elec. Code § 31.035 (prohibiting county elections administrator, on pain of criminal penalties and mandatory termination of employment, from publicly supporting or opposing a candidate for public office, making a political contribution or expenditure, becoming a candidate, or holding an office or position in a political party).

partisan, professional elections administrator managing elections and overseeing voter registration functions. Those activities can only be discharged in Harris County by the tax assessor-collector and the county clerk, both elected in partisan elections, and both having extensive other unrelated duties and responsibilities (such as collecting taxes, in the case of the tax assessor, and maintaining court records, issuing marriage licenses, and recording public records, in the case of the county clerk).

18. That division is irrational and therefore unconstitutional. There is no rational basis for the Legislature's conclusion, crucial to SB 1750's constitutionality, that if a county's population exceeded 3.5 million *on September 1, 2023*, its voter registration functions must be forever performed by its tax assessor-collector, rather than by an appointed professional elections administrator, but if a county does not attain that population until after September 1, 2023, an appointed elections administrator may handle voter registrations matters. There is no rational basis for the Legislature's conclusion that if a county's population exceeded 3.5 million *on September 1, 2023*, its elections need to be managed by its county clerk, rather than by an appointed elections administrator, while if a county does not attain that population until after September 1, 2023, an appointed elections administrator may manage the county's elections. No magical statewide transformation regarding the registration of voters or managing of elections will occur on September 1, 2023, such that counties with more than 3.5 million residents before that date forever need elected officials to run their elections and voter registration programs, but counties that reach 3.5 million residents after September 1, 2023, may have non-partisan

professionals run their elections. This lack of rationality dooms the constitutionality of SB 1750.

19. Similarly, there is nothing magical or transformative about a county reaching a population of 3.5 million persons. There is no rational basis for concluding that hiring a non-partisan professional to register voters and manage elections is more pernicious or deleterious in a county which had a population of 3.5 million on September 1, 2023, than it is in a county with a smaller population. If the voting public is better served by having voter registration functions performed by an elected official than an appointed one, there is no rational reason for imposing that requirement on Harris County because it had a population of 3.5 million on September 1, 2023, and not imposing the same requirement on every other county in the state, especially the other large Texas counties.⁷ The same holds true for the performance of election management and administration activities: if hiring a non-partisan professional is a vice in a county with 3.5 million on September 1, 2023, how is it not equally pernicious in other Texas counties, especially larger ones? Yet SB 1750 irrationally only prohibits Harris County from hiring a non-partisan, professional elections administrator to handle voter registration and managing elections.

⁷ In fact, as explained below, the legislative history states that the transparency, accountability, availability, and dispersal of power needs underlying SB 1750 require that elected (rather than appointed) officials discharge the duties of an elections administrator in Dallas, Tarrant, Bexar, and Travis counties, as well as in Harris County. There is a “need” to abolish the position in three other counties, and to prohibit the fourth – Travis County – from creating it, the legislative report explains, but SB 1750 mandates abolition only in one – Harris County. See, Bill Analysis, Tex. S.B. 1750, 88th Leg., R.S. (2023).

20. SB 1750's September 1, 2023-population-determined classification is not based upon a "real distinction"; it is arbitrary. *Bexar v. Tynan*, 97 S.W.2d 467, 470 (Tex. Comm'n App. 1936, opin. adopted). None of the alleged problems sought to be alleviated by SB 1750 (the alleged "unavailability" of elections officials to the general public, and a supposed lack of transparency and accountability), is unique to the one county which happens to have a population of 3.5 million on September 1, 2023; and the presence or absence of the evils sought to be eliminated by SB 1750's abolition of the office of Harris County elections administrator are not related to the fact that the population of the one county to which the law applies happens to have had a population of 3.5 million on that one designated day.

21. That the classification created by SB 1750 (population greater than 3.5 million on September 1, 2023) is irrational and does nothing to advance the legislative objective of the statute is established by the plain language of the Act itself: while Harris County is prohibited from having an elections administrator, purportedly because of its size on September 1, 2023, (3.5 million residents), any other county which grows to a population of 3.5 million inhabitants after SB 1750's effective date may have its elections overseen by an appointed elections administrator, regardless of the size to which its population grows (so long as the position was created in that county before it reached 3.5 million)⁸. It cannot be rational to prohibit Harris County from having an elections

⁸ The irrationality of SB 1750 is further demonstrated by the admittedly improbable event that Harris County's population should shrink to fewer than 3.5 million. Even if the County's population shrank, it still could not have voter registration and elections administration functions

administrator because its population exceeded 3.5 million on September 1, 2023, but allow other counties with populations of 4 million or 5 million or more to choose to have a non-partisan elections administrator in charge of managing elections and voter registration.

22. To demonstrate the lack of connection between S.B. 1750's population-based classification scheme and its purported purpose (and therefore its irrationality), suppose Harris, Dallas, Tarrant, and Bexar counties all have populations of 3.6 million in 2028. Dallas, Tarrant, and Bexar counties could continue to have their election functions managed by an elections administrator, but not Harris County— even if all four counties had identical populations, or even if the other three had populations greater than that of Harris County.

23. Since all other counties are allowed to have elections administrators despite attaining populations of 3.5 million, it is obvious that not even the Legislature which passed the bill believed that having a population in excess of 3.5 million has any relationship to

performed by an elections administrator, simply because its population was more than 3.5 million on September 1, 2023. SB 1750 provides that “all powers and duties” of a county elections administrator are transferred to the county tax assessor-collector and county clerk, respectively. So even if the Harris County Commissioners Court should create the position of county elections administrator in the future (after its population fell below the 3.5 million mark), that person could not perform any voter registration or elections administration duties or functions, since “all powers” in those areas was “transferred to the county tax assessor-collector and county clerk” on September 1, 2023.

It is not rational to prohibit Harris County from creating a county elections administrator position if its population ever fell below 3.5 million, when every other county in the state could have one at that population level.

While it is conceivable the courts could interpret SB 1750 differently in this regard, the fact that such a reading of the statute is possible underscores the irrationality and arbitrariness of mooring SB 1750's remedial scheme to a population (3.5 million) on a single date (September 1, 2023).

whether elections should be run by county clerks or elections administrators or to whether tax assessors or elections administrators should be responsible for voter registration activities.

24. Any county in Texas— except Harris County— may have an elections administrator *even if its population exceeds 3.5 million*. This feature of SB 1750 renders the statute’s classificatory scheme transparently and unconstitutionally irrational. There is, simply, no rational basis for the distinction created by SB 1750 between counties which exceed 3.5 million inhabitants on September 1, 2023 (and for that reason alone are prohibited from having an elections administrator), and those that grow to that number in the future (and may nonetheless choose to have their elections overseen by a non-partisan elections administrator).⁹

25. The misfit between SB 1750 as enacted and the objective sought to be achieved by SB 1750 is further decisively demonstrated by the Author’s/Sponsor’s Statement of Intent, dated June 29, 2023, Bill Analysis, Tex. S.B. 1750, 88th Leg., R.S. (2023) explaining the reason the Legislature passed this bill: “S.B. 1750 would require all counties *with a population over 1,000,000* [that is, Bexar, Collin, Dallas, Harris, Tarrant,

⁹ The Legislature recognized there was no rational basis for SB 1750 and that it was likely unconstitutional; that is why it enacted SB 1933, a bill introduced by the same senator who authored SB 1750. SB 1933, 88th Leg., R.S. (2023) (“SB 1933”), enacted on May 28, 2023. SB 1933 purports to allow the *Secretary of State* to terminate the employment of a county elections administrator in a county with a population of over 4 million if certain conditions are met. Tex. Elec. Code §§ 31.021(b) and 31.037(b). But if SB 1750 was in effect, the provision of SB 1933 (Tex. Elec. Code § 31.021(b) and 31.037(b)) authorizing the *Secretary of State* to suspend or terminate a county elections administrator could not have any effect, since there is no other county in Texas with a population anywhere near 4 million persons.

and Travis counties] to have their elections administered by an elected official, the county clerk¹⁰, [in order to] allow for more accountability and transparency to the voting public, [particularly because e]lected officials are in the public making public appearances and are much more available to the voters than an election administrator.” (Emphasis added.) Thus, the legislative history indicates that elected, rather than appointed, elections officials are necessary to achieve accountability, transparency, and accessibility in any county *with a population in excess of 1,000,000* – not merely in those with a population of 3.5 million. Yet, without any explanation or mention in the legislative history, the Legislature arbitrarily made SB 1750 applicable only to the one Texas county with a population in excess of 3.5 million.

26. The object of SB 1750 was, according to the Sponsor’s Statement of Intent constituting the Bill Analysis, to require all counties with a population in excess of 1 million to have the (elected) county clerk manage elections, because counties with populations over *one* million (not 3.5 million) needed to have elections overseen by an

¹⁰ Significantly, and fatal to SB 1750’s abolition of the entire office of elections administrator, this explanation does not suggest any reason why election administrators in large counties should not handle voter registration functions and those should also be transferred to the tax assessor-collector in counties with populations over 3.5 million (but only in those locales). The reason for this lapse is that there is no rational, articulable reason, based on any evidence the Legislature heard or considered, why citizens in counties with more than 3.5 million residents are harmed by appointed elections officials (rather than tax assessor-collectors) performing voter registration functions more than is the case in smaller jurisdictions. Even if, hypothetically, there were a rational, legitimate reason to transfer election management from an appointed administrator to the county clerk in– but only in– counties with a population in excess of 3.5 million, there is no rational reason for transferring voter registration responsibility to the tax assessor-collector in such counties (and those counties alone), especially without regard to whether those inhabitants are registered, or eligible to register, to vote. This fact provides an additional, independent reason to declare SB 1750 to be unconstitutional.

official accountable to the voters. But there is no possible explanation (let alone a rational one) for why a bill intended to remedy harm the Legislature found to afflict six counties is limited in its application to only one county.

27. SB 1750 has no rational basis, and the statement of intent reflects a total disconnect between the bill introduced and the one passed. SB 1750 is an unconstitutional local or special law that violates multiple provisions of the Texas Constitution.

**CAUSE OF ACTION NUMBER 1:
DECLARATORY JUDGMENT THAT SB 1750 IS UNCONSTITUTIONAL**

28. Intervenor/Cross-claimant Clifford Tatum incorporates by reference all the facts contained in the foregoing paragraphs, as if set forth *verbatim*.

29. For the reasons discussed in detail above, SB 1750 violates multiple provisions of Article III, §56 of the Texas Constitution. If this Court does not issue a declaratory judgment acknowledging the unconstitutionality of this statute, Clifford Tatum's job as Harris County Elections Administrator will be abolished and he will suffer tremendous losses.

30. The Uniform Declaratory Judgment Act allows a "person ... whose rights, status, or other legal relations are affected by a statute...[to] have determined any question of construction or validity arising under the ...statute and obtain a declaration of rights, status or other legal relations thereunder." Tex. Civ. Prac. & Rem. Code §37.004(a). This statute is a frequently used and entirely appropriate means to test the constitutionality of Texas statutes. *See, e.g., Patel v. Texas Department of Licensing and Regulation*, 469 S.W.3d 69 (Tex. 2016).

31. Clifford Tatum has properly pleaded a cause of action for declaratory relief.

32. Pursuant to the Uniform Declaratory Judgment Act, Clifford Tatum seeks the following declarations from this Honorable Court:

- (a) SB 1750 is unconstitutional because it violates Article III, Section 56(a) of the Texas Constitution by abolishing the office of county elections administrator in only counties that have a population of more than 3.5 million on September 1, 2023;
- (b) SB 1750 is unconstitutional because it violates Article III, Section 56(b) of the Texas Constitution by abolishing the office of county elections administrator in only counties that have a population of more than 3.5 million on September 1, 2023;
- (c) Because it is unconstitutional, SB 1750 does not provide a basis for abolishing the office of county elections administrator in Harris County, transferring the duties of the Harris County elections administrator to the Harris County Tax Assessor-Collector or the Harris County Clerk, terminating the employment of Clifford Tatum as elections administrator in Harris County or discontinuing or reducing his salary, employee benefits and emoluments of office; and
- (d) Because it is unconstitutional, SB 1750 does not provide a “good and sufficient cause” basis, as required by Texas Elections Code §31.037, for terminating the employment of Clifford Tatum as elections administrator in Harris County.

33. Because the filing of this declaratory judgment action was necessitated by Plaintiff/Cross-defendant's threat to abolish the office of county elections administrator and terminate Intervenor/Cross-claimant's employment as Harris County's elections administrator, in reliance on SB 1750, Intervenor/Cross-claimant is entitled to recover his costs and reasonable and necessary attorney's fees incurred in this matter, pursuant to Tex. Civ. Prac. & Rem. Code § 37.009. An award of reasonable and necessary attorney's fees to Intervenor/Cross-claimant would be equitable and just.

**CAUSE OF ACTION NUMBER 2:
TEMPORARY AND PERMANENT INJUNCTIVE RELIEF
REQUESTED AGAINST HARRIS COUNTY**

34. Clifford Tatum incorporates by reference all allegations set forth above.

35. Unless restrained, Harris County intends (a) to abolish the position of county elections administrator in Harris County on September 1, 2023, as required by law, solely because SB 1750 becomes effective on that date, and (b) terminate Tatum's employment as county elections administrator of Harris County and discontinue payment of all compensation, benefits, and other emoluments of that office to him.

36. Such action would be unlawful for the reasons set forth above and incorporated herein by reference, including that SB 1750 is an unconstitutional law that violates multiple provisions of Article III, §56 of the Texas Constitution.

37. The imminent threatened unlawful abolition of the office of county elections administrator in Harris County and consequent termination of Tatum from that position would cause irreparable harm to Tatum, namely the loss of employment in the position to

which he has been duly appointed, despite the statutory protections of continued employment in that position provided by Tex. Elec. Code § 31.037, and the salary, benefits and emoluments of office that accompany the office of county elections administrator.

38. In addition to the economic loss he will suffer, the position of county elections administrator for Harris County, Texas, is unique, and the non-monetary benefits of serving in that position are irreplaceable. They would be lost to Tatum if Harris County is allowed to abolish the office on September 1, 2023, or terminate Tatum's employment in that position as of that date, which, unless restrained and enjoined from doing so, it will do on September 1, 2023, or immediately thereafter. Such imminently threatened acts, if not restrained and enjoined, would cause irreparable harm to Tatum.

39. Tatum has no adequate remedy at law which would redress the injuries he would sustain if the office of elections administrator of Harris County is abolished.

40. The status quo is that Tatum is the duly appointed county elections administrator of Harris County, Texas, with all the perks and emoluments, both economic and non-monetary, attendant to such office. A temporary injunction is necessary to preserve that status quo and enable the Court to grant the declaratory and permanent injunctive relief requested by Tatum in this pleading.

41. As shown above, Tatum has shown a substantial likelihood that he will prevail on the merits of his claims once this matter is tried and decided by the Court.

42. Without a temporary injunction, Tatum will suffer irreparable harm that trial on the merits will not be able to fully or adequately redress, resolve, or remedy.

43. There is no remedy at law available to Tatum which would adequately redress or remedy the wrongs he would suffer if SB 1750 is allowed to go into effect and Harris County is not restrained and enjoined from acting in reliance upon, following, or complying with it.

44. The balance of equities and hardships strongly favor granting a preliminary injunction in this case. Harris County will suffer no harm if a temporary injunction is granted; indeed, the County itself seeks such an injunction in this very case, claiming that it will suffer irreparable harm should SB 1750 be allowed to go into effect. Clifford Tatum will also be grievously and irreparably injured if his position is abolished and his employment as county elections administrator is terminated, especially if, as has been shown will likely happen, those actions are later determined to have occurred in violation of the constitution and laws of the State of Texas.

45. Further, for the reasons set forth in Paragraph 48 of the Plaintiff/Cross-defendant's Verified Original Petition, the public interest will best be served by the Court granting a temporary injunction and maintaining the position of county elections administrator in Harris County at least through the City of Houston elections to be held on November 7, 2023, which the county election administrator's office is currently responsible for conducting. Substantial disruption to that election will result if voter registration functions must be transferred from the county elections administrator's office to the Harris County Tax Assessor-Collector's office barely a month before the voter registration deadline before the November election and during the historically most active

time for voter registration activity; and transferring elections administration responsibility from the county elections administrator to the Harris County Clerk less than two months before the start of early voting in a major election will inevitably result in chaos in the City of Houston election. Therefore, it is decidedly in the public interest that such drastic changes not occur during this time frame, especially when there is a substantial likelihood the changes will have to be undone when, after final hearing hereon, the Court rules that SB 1750 is unconstitutional and must restore the situation to *status quo ante*.

46. In summary, the interests of Clifford Tatum, Harris County and the public are all best served by the granting of a temporary injunction. There is no equity supporting denial of the injunction sought by both Intervenor/Cross-claimant and Harris County.

47. For the foregoing reasons, Clifford Tatum is entitled to (a) a temporary (pending trial on the merits), and (b) after trial, a permanent, injunction restraining and enjoining Harris County from (i) abolishing the position of elections administrator of Harris County, Texas, (ii) terminating Tatum's employment as county elections administrator, (iii) discontinuing payment of salary and providing of other benefits and emoluments of the office of county elections administrator to the same extent he is currently receiving and enjoying the same, or (iv) transferring the duties and responsibilities of the Harris County elections administrator to any other state or county official, including the Harris County Tax Assessor-Collector and/or the Harris County Clerk for any reason based upon or related to Tex. S.B. 1750, 88th Leg., R.S. (2023) or Tex. Elec. Code § 31.050.

CONDITIONS PRECEDENT

48. All conditions precedent have been performed or have occurred.

REQUEST FOR HEARING

49. Clifford Tatum requests that the Court set for hearing his application for a temporary injunction and, after hearing the application, issue a temporary injunction against Harris County enjoining the County from taking any of the actions described above. Intervenor/Cross-claimant further requests that after the Court issues the temporary injunction, the Court set this matter for trial and, upon final hearing, issue the declarations sought by Clifford Tatum, permanently enjoin Harris County from the acts described above and award Tatum attorney's fees.

BOND

50. Clifford Tatum stands ready to post the bond required by the Court. The preliminary injunction that he seeks is quite unique; not only will the County sustain no monetary damages if the injunction is granted, but the County will save money and hardship. Accordingly, the amount of the bond should be *de minimis*. See, *Wilson v. United Farm Workers of America, AFL-CIO*, 774 S.W.2d 760, 764 (Tex. App.—Corpus Christi-Edinburg 1989, no writ history) (affirming appropriateness of bond set at \$25 where no money damages were at issue).

NOTICE TO ATTORNEY GENERAL

51. Although probably not required because the Acting Attorney General of Texas is a party to, and involved in, this litigation, out of an abundance of caution, since

this pleading challenges the constitutionality of SB 1750 and Tex. Elec. Code § 31.050 and the words “of a county with a population of 3.5 million or less” added to Tex. Elec. Code § 31.031(a) by SB 1750, pursuant to Tex. Gov’t Code § 402.010(a), Tatum is, simultaneously with the filing of this pleading, filing with this Court the form adopted by the Office of Court Administration of the Texas Judicial System required by Tex. Gov’t Code § 402.010(a-1), so the Court can serve notice of the constitutional challenge and a copy of this pleading on the attorney general.

PRAYER FOR RELIEF

Clifford Tatum prays that this Court enter judgment and/or orders (as may be appropriate):

1. Declaring:

(i) that Tex. S.B. 1750, 88th Leg. R.S. (2023) is an unconstitutional and void special or local law, violative of Tex. Const. art. III, §§ 56(a)(2), (12), (14), and (30) and 56(b), by abolishing the elections administrator office in only counties that have a population of more than 3.5 million on September 1, 2023;

(ii) that SB 1750's classification based on whether a county had a population of more than 3.5 million on September 1, 2023, is irrational and arbitrary and that SB 1750 is, therefore, unconstitutional and void;

(iii) that SB 1750 cannot provide the basis for abolishing the office of county elections administrator in Harris County, terminating the

employment of Clifford Tatum from that position or discontinuing paying him salary and employee benefits for his discharge of the duties of that office;

(iv) that terminating Intervenor/Cross-claimant's employment as Harris County elections administrator on the basis of SB 1750 would not be for "sufficient cause" as required by Tex. Elec. Code § 31.037; and

(v) that SB 1750 cannot be the basis for transferring the duties and responsibilities of the office of Harris County Elections Administrator from that office to the offices of the Harris County Tax Assessor-Collector and/or the Harris County Clerk.

2. Temporarily enjoining and restraining Harris County, pending completion of trial on the merits:

(i) from abolishing the position of county elections administrator in Harris County or doing any other act in furtherance of or seeking to enforce Tex. S.B. 1750, 88th Leg., R.S. (2003) or Tex. Elec. Code § 31.050,

(ii) from terminating Clifford Tatum's employment as county elections administrator or discontinuing or reducing the compensation, employee benefits, or other emoluments of the office of county elections administrator he was receiving, or entitled to receive, from

Harris County on August 31, 2023, on account of or in reliance upon SB 1750 or Tex. Elec. Code § 31.050, and

(iii) from transferring the duties and responsibilities of the office of Harris County Elections Administrator from that office to the offices of the Harris County Tax Assessor-Collector and/or the Harris County Clerk on account of or in reliance upon SB 1750 or Tex. Elec. Code § 31.050.

3. Permanently enjoining Harris County, after trial on the merits, from doing any of acts described in the immediately preceding section 2 of the Prayer for Relief in this pleading.

4. Awarding Clifford Tatum his reasonable and necessary attorneys' fee, as may be just and equitable, as provided for by Tex. Civ. Prac. & Rem. Code § 37.009¹¹ and costs of court herein incurred.

5. Granting Clifford Tatum such other and further relief as to which he may be justly entitled in law or in equity.

¹¹ Tatum does not seek attorneys' fees for services rendered by Richard Schechter, for the reason that Schechter has agreed to provide representation in this case on an entirely *pro bono* basis.

Respectfully submitted,

/s/ Gerald M. Birnberg

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Attorneys for Intervenor/Cross-Claimant,
Clifford Tatum

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the forgoing document has been forwarded to all known counsel of record, pursuant to Rule 21a of the Texas Rules of Civil Procedure, on August 7, 2023.

/s/ Richard Schechter

Richard Schechter

HARRIS COUNTY, TEXAS,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
and	§	
	§	
CLIFFORD TATUM,	§	
	§	
<i>Intervenor,</i>	§	TRAVIS COUNTY, TEXAS
	§	
v.	§	
	§	
THE STATE OF TEXAS, JOHN	§	
SCOTT, in his official capacity as	§	
Acting Attorney General of Texas,	§	
and JANE NELSON, in her official	§	
capacity as Texas Secretary of State	§	345th JUDICIAL DISTRICT

AFFIDAVIT OF CLIFFORD TATUM IN SUPPORT OF
 APPLICATIONS FOR WRITS OF PRELIMINARY
 AND PERMANENT INJUNCTION

Before me, the undersigned authority, on this day personally appeared
 CLIFFORD TATUM, known by me to be the same, who, first being duly sworn,
 on his oath did depose and say:

My name is Clifford Tatum. I am over the age of twenty-one
 years and fully competent to make this affidavit. All of the facts
 set forth herein are based upon my personal knowledge, unless
 expressly otherwise stated.

I am the duly appointed and serving county election administrator of Harris County, Texas, having been appointed to that position by the county election commission on August 16, 2022. A true and correct copy of the Resolution appointing me to that position is attached to this Affidavit denominated "Exhibit A."

I have been informed by representatives of Harris County, Texas, that if Tex. S.B. 1750, 88th Leg., R.S. (2023) takes effect on September 1, 2023 (or thereafter) my position as county election administrator will be abolished and my employment in that position will thereupon immediately cease. While I currently receive a salary from Harris County, Texas, as compensation for my services as county election administrator, as well as perks and emoluments of that office (including health insurance benefits, participation in the county's retirement plan, and a vehicle allowance, as well as non-economic benefits from serving as election administrator for a large county, if the position is abolished and my employment in that position is terminated, I will no longer receive that compensation and other emoluments or non-economic benefits, from the position of county election administrator.

Beside the harm from the loss of the economic benefits of employment as county election administrator, the position of elections administrator for Harris County, Texas, is unique, and the non-monetary benefits of serving in that position would be irreplaceable.

No “sufficient cause” exists for termination of my employment and position as Harris County election administrator (assuming SB 1750 does not provide such “cause”). I am fully qualified and eligible to continue my service in that position.

In my capacity as county election administrator, I have become familiar with both voter registration activities in Harris County and the functions which must be performed to administer an election properly. I have also served as General Counsel to the United States Elections Assistance Commission, as Executive Director of the District of Columbia Board of Elections, and as the Interim Director for the Georgia State Elections Division. The Harris County election administrator’s office currently has responsibility for running the November 7, 2023, City of Houston elections for mayor and city council (as well as for managing the countywide election on state constitutional amendments on that

date). In my opinion, transferring responsibility for voter registration activities from the county election administrator to the county tax assessor-collector less than six weeks before the voter registration deadline for that election would result in substantial disruption to the election and significantly adversely impact the process of registering new voters and producing accurate and current voter rolls for the November election.

Similarly, in my opinion, transferring responsibility for administering the November election to the county clerk less than 60 days before early voting by personal appearance will begin and barely two months before election day itself would produce significant chaos and wreak substantial havoc of the conduct of that election. It is impractical, in my opinion, to shift responsibilities for election activities to a different entity (the county clerk's office) so near the date of the election, given all the aspects which go into running an election (including, for example, selecting voting sites, preparing ballots, processing applications for mail in ballots and returned ballots, hiring and training election workers, delivery of election equipment and supplies to voting locations, maintaining required records and reports,

preparing for counting and processing ballots, informing the public about election details, and various other matters involved in conducting an election).

I am also an attorney at law, having attended and graduated from the Western Michigan University Thomas M. Cooley Law School, and being admitted to (and in good standing before) the State Bar of Georgia. In that capacity, and with the background, experience, and expertise set forth elsewhere hereinabove in this declaration, I state that, in my opinion, the legal conclusions expressed in the Plea in Intervention and Cross-Claim are correct.

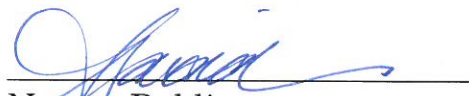
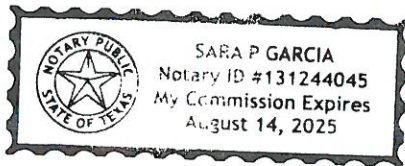
Further affiant sayeth not.

Signed this 31 day of July, 2023.



Clifford D. Tatum

SWORN TO AND SUBSCRIBED before me, the undersigned authority, on this 31st day of July, 2023.



Notary Public
In and for the State of Texas

ORDER APPOINTING THE HARRIS COUNTY ELECTIONS ADMINISTRATOR

We, the members of the Harris County Elections Commission did meet on August 16, 2022 for the purpose of filling the position of County Elections Administrator for Harris County.

It is the order of the County Elections Commission of Harris County that Clifford D. Tatum be appointed as the Harris County Elections Administrator, to perform the duties provided by law according to Section 31.043, Texas Election Code.

Signed this the 16 day of August, 2022.

Ann Harris Bennett
Tax Assessor-Collector

Demetrius
County Chairman, Democratic Party

County Chairman, Republican Party

The State of Texas

County Of Harris

[Signature]
County Judge

Tenesha E. Hudspeth
County Clerk

FILED
2022 AUG 16 PM 3:06

I, TENESHA E. HUDSPETH, County Clerk of Harris County do hereby certify that the above is a true and correct copy of the order of appointment of County Elections Administrator by the County Elections Commission.

Witness my hand and seal of the office this the 17 day of August, 2022



Tenesha E. Hudspeth
County Clerk

HARRIS COUNTY, TX
County

Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy - Page 1 of 1
Attest: 8/17/2022
Tenesha Hudspeth, County Clerk
Harris County, Texas

Maricela V. Martinez Deputy
MARICELA V. MARTINEZ

CON:8653010



Exhibit A

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Alyce Young on behalf of Richard Schechter

Bar No. 17735500

alyce@rs-law.com

Envelope ID: 78277762

Filing Code Description: Amended Filing

Filing Description: INTERVENOR/CROSS-CLAIMANT CLIFFORD TATUMS VERIFIED FIRST AMENDED ORIGINAL PETITION IN INTERVENTION

Status as of 8/10/2023 4:46 PM CST

Associated Case Party: HARRIS COUNTY, TEXAS

Name	BarNumber	Email	TimestampSubmitted	Status
Christian D.Menefee		Christian.Menefee@harriscountytx.gov	8/7/2023 3:34:36 PM	SENT
Andrea Mintzer		andrea.mintzer@harriscountytx.gov	8/7/2023 3:34:36 PM	SENT
Jonathan Fombonne		Jonathan.Fombonne@harriscountytx.gov	8/7/2023 3:34:36 PM	SENT
Neal Sarkar		Neal.Sarkar@harriscountytx.gov	8/7/2023 3:34:36 PM	SENT
Tiffany Bingham		Tiffany.Bingham@harriscountytx.gov	8/7/2023 3:34:36 PM	SENT
Christopher Garza		Christopher.Garza@harriscountytx.gov	8/7/2023 3:34:36 PM	SENT
Matthew Miller		Matthew.Miller@harriscountytx.gov	8/7/2023 3:34:36 PM	SENT
Moustapha Gassama		Moustapha.Gassama@harriscountytx.gov	8/7/2023 3:34:36 PM	SENT
Neeharika Tumati		Neeharika.Tumati@harriscountytx.gov	8/7/2023 3:34:36 PM	SENT

Associated Case Party: CLIFFORD TATUMS

Name	BarNumber	Email	TimestampSubmitted	Status
Alyce Young		alyce@rs-law.com	8/7/2023 3:34:36 PM	SENT
Richard Schechter		richard@rs-law.com	8/7/2023 3:34:36 PM	SENT
Gerald Birnberg		gbirnberg@wba-law.com	8/7/2023 3:34:36 PM	SENT

Associated Case Party: THE STATE OF TEXAS

Name	BarNumber	Email	TimestampSubmitted	Status
Charles Kenneth Eldred	793681	Charles.Eldred@oag.texas.gov	8/7/2023 3:34:36 PM	SENT
Sharron Lee		sharron.lee@oag.texas.gov	8/7/2023 3:34:36 PM	SENT

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Alyce Young on behalf of Richard Schechter

Bar No. 17735500

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Status as of 8/10/2023 4:46 PM CST

Associated Case Party: THE STATE OF TEXAS

Christina Cella		christina.cella@oag.texas.gov	8/7/2023 3:34:36 PM	SENT
Leif Olson		leif.olson@oag.texas.gov	8/7/2023 3:34:36 PM	SENT
Jessica Yvarra		Jessica.Yvarra@oag.texas.gov	8/7/2023 3:34:36 PM	SENT
Susanna Dokupil		Susanna.Dokupil@oag.texas.gov	8/7/2023 3:34:36 PM	SENT

Associated Case Party: JANE NELSON TEXAS SECRETARY OF STATE

Name	BarNumber	Email	TimestampSubmitted	Status
Charles Kenneth Eldred	793681	Charles.Eldred@oag.texas.gov	8/7/2023 3:34:36 PM	SENT
Christina Cella	24106199	christina.cella@oag.texas.gov	8/7/2023 3:34:36 PM	SENT

APPENDIX F

RETRIEVED FROM DEMOCRACYDOCKET.COM

3. Defendant the Office of the Attorney General of Texas is an agency of the State of Texas.

4. Defendant Angela Colmenero is the Provisional Attorney General of Texas. She is sued in her official capacity.

5. Defendant the Office of the Texas Secretary of State is an agency of the State of Texas.

6. Defendant Jane Nelson is the Secretary of State of Texas. She is sued in her official capacity.

7. Intervenor Clifford Tatum is the Election Administrator of Harris County, Texas.

INTERVENOR'S CAUSE OF ACTION

8. Senate Bill 1750, adopted at the Regular Session of the 88th Legislature, does not violate the Constitution of Texas.

9. Defendants are entitled to sovereign immunity.

PRAYER

10. For these reasons, Intervenor the Attorney General of Texas asks the Court to render judgment that Senate Bill 1750, adopted at the Regular Session of the 88th Legislature, does not violate the Constitution of Texas.

Dated: August 7, 2023.

ANGELA COLMENERO
Provisional Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

RALPH MOLINA
Deputy Attorney General for Legal Strategy

RYAN D. WALTERS
Deputy Chief, Special Litigation Division

Respectfully submitted,

CHARLES K. ELDRED
Chief, Legal Strategy Division
Tx. State Bar No. 00793681

/s/ Susanna Dokupil

SUSANNA DOKUPIL
Special Counsel
Texas Bar No. 24034419

CHRISTINA CELLA
Assistant Attorney General
Tex. Bar No. 24106199

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Charles.Eldred@oag.texas.gov
Christina.Cella@oag.texas.gov

*Counsel for Defendants and
Intervenor State of Texas*

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2023, a true and correct copy of the foregoing document was served via the Court's electronic filing system to all counsel of record.

/s/ Susanna Dokupil

SUSANNA DOKUPIL

APPENDIX G

RETRIEVED FROM DEMOCRACYDOCKET.COM

3. Defendant the Office of the Attorney General of Texas is an agency of the State of Texas.

4. Defendant Angela Colmenero is the Provisional Attorney General of Texas. She is sued in her official capacity.

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11. For these reasons, Intervenor the State of Texas asks the Court to render judgment that Senate Bill 1750, adopted at the Regular Session of the 88th Legislature, does not violate the Constitution of Texas.

Dated: August 7, 2023.

ANGELA COLMENERO
Provisional Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

RALPH MOLINA
Deputy Attorney General for Legal Strategy

RYAN D. WALTERS
Deputy Chief, Special Litigation Division

Respectfully submitted,

CHARLES K. ELDRED
Chief, Legal Strategy Division
Tx. State Bar No. 00793681

/s/ Susanna Dokupil

SUSANNA DOKUPIL
Special Counsel
Texas Bar No. 24034419

CHRISTINA CELLA
Assistant Attorney General
Tex. Bar No. 24106199

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Christina.Cella@oag.texas.gov

*Counsel for Defendants and Intervenors the
Attorney General of Texas and the State of Texas*

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2023, a true and correct copy of the foregoing document was served via the Court's electronic filing system to all counsel of record.

/s/ Susanna Dokupil

SUSANNA DOKUPIL

APPENDIX H

RETRIEVED FROM DEMOCRACYDOCKET.COM

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

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

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

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

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

FINDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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


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

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

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

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

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



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

APPENDIX I

RETRIEVED FROM DEMOCRACYDOCKET.COM

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

HARRIS COUNTY, TEXAS
Plaintiff,

v.

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

CLIFFORD TATUM,
Plaintiff-Intervenor,

THE STATE OF TEXAS AND
THE ATTORNEY GENERAL OF TEXAS,

Defendant-Intervenors,

v.

HARRIS COUNTY REPUBLICAN PARTY,

Intervenor-Cross Plaintiff.

IN THE DISTRICT COURT OF

TRAVIS COUNTY

345TH JUDICIAL DISTRICT

**DEFENDANTS' AND DEFENDANT-INTERVENORS' AMENDED NOTICE OF
ACCELERATED INTERLOCUTORY APPEAL**

The Defendants Office of the Attorney General of Texas; Angela Colmenero, in her official capacity as Provisional Attorney General of Texas; Office of the Texas Secretary of State; Jane Nelson, in her official capacity as Texas Secretary of State; and Intervenor-Defendants the State of Texas and Attorney General of Texas desire to appeal the Order on Defendants' Plea to the Jurisdiction, Order Granting Plaintiff's Application for Temporary Injunction, and the Order on Intervenor/Cross-Claimant Clifford Tatum's Application for Temporary Injunction Against

Harris County signed by the trial court on August 14, 2023.¹ These Defendants and Defendant-Intervenors desire to take a direct appeal to the Supreme Court of Texas because the trial court granted an interlocutory injunction on the ground of the constitutionality of a statute of this State. Tex. Gov't Code § 22.001(c); Tex. R. App. P. 57. This is an accelerated appeal because it is an appeal from interlocutory orders. Tex. Civ. Prac. & Rem. Code § 51.014(a)(4), (a)(8); Tex. Gov't Code § 22.001(c); Tex. R. App. P. 28.1. This is not a parental-termination or child-protection case or an appeal from an order certifying a child to stand trial as an adult.

Defendants are not required to file a bond for court costs incident to this appeal. Tex. Civ. Prac. & Rem. Code § 6.001(a), (b)(1)-(3). Upon filing of this instrument, any injunction is superseded pursuant to Texas Civil Practice and Remedies Code section 6.001(b) and Texas Rule of Appellate Procedure 29.1(b). The Defendants and Intervenor-Defendants' appeal is therefore perfected upon the filing of the notice of appeal.

Pursuant to Texas Civil Practice and Remedies Code section 51.014(b), all further proceedings in this court are stayed pending resolution of this appeal. The orders are attached.

¹ The trial court issued all but the order on the Defendants' plea after the Defendants filed a valid notice of appeal. To prevent unnecessary litigation unrelated to the merits of the appealed orders and based on the court's representation that it had filed the orders before the notice, Defendants waived their rights under the automatic stay solely to the extent necessary to allow the orders to properly issue and this amended notice to be filed.

Dated: August 15, 2023.

ANGELA COLMENERO
Provisional Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

RALPH MOLINA
Deputy Attorney General for Legal Strategy

RYAN D. WALTERS
Deputy Chief, Special Litigation Division

Respectfully submitted,

CHARLES K. ELDRED
Chief, Legal Strategy Division
Texas State Bar No. 00793681

/s/ Susanna Dokupil

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*Counsel for Defendants and Defendant-
Intervenors*

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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2023, a true and correct copy of the foregoing document was served via the Court's electronic filing system to Christian Menefee, lead counsel for Harris County via Christian.Menefee@harriscountytexas.gov, Gerald Birnberg, lead counsel for Clifford Tatum, via birnberg@wba-law.com, and Andy Taylor, lead counsel for Harris County Republican Party, via ataylor@andytaylorlaw.com.

Their addresses are listed below:

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Houston, Texas 77002

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Law Office of Gerald Birnberg
843 W. Friar Truck Ln.
Houston, Texas 77024

Andy Taylor
Andy Taylor & Associates, P.C.
2628 Highway 36S, #288
Brenham, Texas 77833

/s/ Susanna Dokupil
SUSANNA DOKUPIL

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

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

ORDER ON DEFENDANTS' PLEA TO THE JURISDICTION

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



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

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

SIGNED this 14th day of August, 2023.



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

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

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

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

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



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

FINDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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


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

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

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

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

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



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

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

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

**ORDER GRANTING PLAINTIFF'S
APPLICATION FOR TEMPORARY INJUNCTION**

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

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

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

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

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

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

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

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

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

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

- e. refusing to provide funds to which Harris County is entitled under Texas Election Code Section 19.002;
- f. taking any actions on the sole basis that the Harris County Elections Administrator position is abolished; and
- g. refusing to cooperate with the Harris County Elections Administrator to perform election-related responsibilities.

3. The Attorney General is enjoined from:

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

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

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

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

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

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



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

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Automated Certificate of eService

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Sharron Lee on behalf of Christina Cella

Bar No. 24106199

sharron.lee@oag.texas.gov

Envelope ID: 78547781

Filing Code Description: Notice of Appeal

Filing Description: DEFENDANTS' AND DEFENDANT-INTERVENORS' AMENDED NOTICE OF ACCELERATED INTERLOCUTORY APPEAL

Status as of 8/15/2023 3:45 PM CST

Associated Case Party: CLIFFORD TATUMS

Name	BarNumber	Email	TimestampSubmitted	Status
Alyce Young		alyce@rs-law.com	8/15/2023 1:40:42 PM	SENT
Richard Schechter		richard@rs-law.com	8/15/2023 1:40:42 PM	SENT
Gerald Birnberg		gbirnberg@wba-law.com	8/15/2023 1:40:42 PM	SENT

Associated Case Party: THE STATE OF TEXAS

Name	BarNumber	Email	TimestampSubmitted	Status
Charles Kenneth Eldred	793681	Charles.Eldred@oag.texas.gov	8/15/2023 1:40:42 PM	SENT
Sharron Lee		sharron.lee@oag.texas.gov	8/15/2023 1:40:42 PM	SENT
Christina Cella		christina.cella@oag.texas.gov	8/15/2023 1:40:42 PM	SENT
Leif Olson		leif.olson@oag.texas.gov	8/15/2023 1:40:42 PM	SENT
Jessica Yvarra		Jessica.Yvarra@oag.texas.gov	8/15/2023 1:40:42 PM	SENT
Susanna Dokupil		Susanna.Dokupil@oag.texas.gov	8/15/2023 1:40:42 PM	SENT

Associated Case Party: JANE NELSON TEXAS SECRETARY OF STATE

Name	BarNumber	Email	TimestampSubmitted	Status
Charles Kenneth Eldred	793681	Charles.Eldred@oag.texas.gov	8/15/2023 1:40:42 PM	SENT
Christina Cella	24106199	christina.cella@oag.texas.gov	8/15/2023 1:40:42 PM	SENT

Associated Case Party: HARRIS COUNTY, TEXAS

Name	BarNumber	Email	TimestampSubmitted	Status
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Sharron Lee on behalf of Christina Cella

Bar No. 24106199

sharron.lee@oag.texas.gov

Envelope ID: 78547781

Filing Code Description: Notice of Appeal

Filing Description: DEFENDANTS' AND DEFENDANT-INTERVENORS' AMENDED NOTICE OF ACCELERATED INTERLOCUTORY APPEAL

Status as of 8/15/2023 3:45 PM CST

Associated Case Party: HARRIS COUNTY, TEXAS

Christian D.Menefee		Christian.Menefee@harriscountytexas.gov	8/15/2023 1:40:42 PM	SENT
Andrea Mintzer		andrea.mintzer@harriscountytexas.gov	8/15/2023 1:40:42 PM	SENT
Jonathan Fombonne		Jonathan.Fombonne@harriscountytexas.gov	8/15/2023 1:40:42 PM	SENT
Neal Sarkar		Neal.Sarkar@harriscountytexas.gov	8/15/2023 1:40:42 PM	SENT
Tiffany Bingham		Tiffany.Bingham@harriscountytexas.gov	8/15/2023 1:40:42 PM	SENT
Christopher Garza		Christopher.Garza@harriscountytexas.gov	8/15/2023 1:40:42 PM	SENT
Matthew Miller		Matthew.Miller@harriscountytexas.gov	8/15/2023 1:40:42 PM	SENT
Moustapha Gassama		Moustapha.Gassama@harriscountytexas.gov	8/15/2023 1:40:42 PM	SENT
Neeharika Tumati		Neeharika.Tumati@harriscountytexas.gov	8/15/2023 1:40:42 PM	SENT

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Alyce Young on behalf of Richard Schechter

Bar No. 17735500

alyce@rs-law.com

Envelope ID: 78615971

Filing Code Description: Motion for Emergency Relief

Filing Description: CLIFFORD TATUM OPPOSED EMERGENCY

MOTION FOR RULE 29.3 ORDER

Status as of 8/17/2023 8:10 AM CST

Associated Case Party: Office of the Attorney General of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Susanna Dokupil		Susanna.Dokupil@oag.texas.gov	8/16/2023 6:22:35 PM	SENT

Associated Case Party: Harris County, Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Nicholas Bacarisse		nbacarisse@adjtlaw.com	8/16/2023 6:22:35 PM	SENT
Matthew Miller	24051959	Matthew.Miller@harriscountytexas.gov	8/16/2023 6:22:35 PM	SENT
Christian Menefee	24088049	christian.menefee@harriscountytexas.gov	8/16/2023 6:22:35 PM	SENT
Jonathan Fombonne	24102702	jonathan.fombonne@harriscountytexas.gov	8/16/2023 6:22:35 PM	SENT
Wallace B. Jefferson		wjefferson@adjtlaw.com	8/16/2023 6:22:35 PM	SENT
Neal Sarkar		neal.sarkar@harriscountytexas.gov	8/16/2023 6:22:35 PM	SENT
Ginger Grimm		ggrimm@adjtlaw.com	8/16/2023 6:22:35 PM	SENT