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SUPREME COURT OF TEXAS
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No. 23-0656

In the Supreme Court of Texas

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

Appellants,

v.

HARRIS COUNTY, TEXAS; AND CLIFFORD TATUM,

Appellees.

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

RESPONSE TO APPELLEES HARRIS COUNTY'S AND CLIFFORD TATUM'S EMERGENCY MOTIONS FOR TEMPORARY RELIEF

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To the Honorable Supreme Court of Texas:

No one disputes that Senate Bill 1750 from the last regular legislative session (the "Act") effectively abolishes the position of Harris County Elections Administrator. That does not mean that Harris County can recreate that position by suing the Secretary of State or Attorney General. It does not make it unconstitutional. And, perhaps most importantly for the purposes of the Rule 29.3 motions, it does not justify an extraordinary temporary order, given that much of the harm that Harris County identifies is self-inflicted.

To start, Harris County lacks standing to sue the Attorney General and the Secretary of State because it has not shown that either will enforce the Act against it. Its agent, Clifford Tatum, cannot cure this lack of a justiciable controversy through a collusive suit to enjoin Harris County to do the very thing that Harris County asked the court to allow it to do by means of a temporary injunction. Put simply, both Tatum and the County believe that the Act is unconstitutional. Far from defending against Tatum's suit, the County called Tatum as its own witness in its suit against the State Officials. Because these two parties are in no way adverse, there is no justiciable controversy between them, and this response will treat them both as Plaintiffs.

Even if Plaintiffs could get past this justiciability problem, their claims are facially invalid. Although Plaintiffs cite a litany of legislative history putatively showing that the Legislature passed the Act out of spite, this is not a Fourteenth Amendment claim that turns on discriminatory intent. It instead turns on whether there was a reasonable basis to pass the Act.

Here, legislators had multiple bases to think that, in large counties, the individual who manages elections should be accountable to the people rather than an appointed bureaucrat. Harris County is not only the third-largest county in the nation, it is more than 1.75 times larger than the next largest county in Texas—and projected to get bigger. *Contra* Tatum Mot. 35 (suggesting that Dallas County might grow while Harris County remains static). As a result, it was entirely rational for the Legislature to legislate based not just on the statewide impact that Harris County actually has on state elections, but also on the effect that Harris County's perceived election management problems have on public faith in the integrity of those elections. And Clifford Tatum himself admitted that the County's elections have been beset with administrative problems since Harris County first created the position of Elections Administrator in 2020.

Moreover, Harris County had plenty of time to arrange an orderly transition *back* to the system that governed its elections for decades until 2020. The County knew when the bill was filed in the Legislature in March, watched as it made its way through both Houses in May, and was aware when it was signed by the Governor in June that courts would presume it constitutional. *Nootsie, Ltd. v. Williamson Cnty. Appraisal Dist.*, 925 S.W.2d 659, 662 (Tex. 1996). Yet it chose to do nothing for weeks after the Governor signed the Act, and then sued. By its own account, it has done nothing to plan for the contingency that it might lose this lawsuit—or even that the Act might go into effect because the Court might see the delay in filing as a reason not to grant equitable relief. *In re Khanoyan*, 637 S.W.3d 762, 765 (Tex. 2022). The

court should not countenance such behavior by granting Harris County or Tatum's requests for Rule 29.3 relief.

BACKGROUND

I. Harris County and Its Election-Administration Problems

Bigger than many States, Harris County's sheer size affects elections in Texas statewide. Harris County represents about 16% of the total population of Texas, or 4,728,030 people as of July 2021. U.S. Census Bureau, *Quick Facts, Harris County, Texas*, www.census.gov, U.S. Census Bureau QuickFacts: Harris County, Texas. By contrast, Dallas County accounts for 9%, Tarrant County accounts for 7%, Bexar County accounts for 8%, and Collin County accounts for 4%. *Id.*

Since it first created the position of a County Elections Administrator in 2020, Harris County has had trouble managing its elections. Harris County's App'x Exh. B, Transcript of Hearing on Temporary Injunction and Plea to the Jurisdiction ("Tr.") at 122. Isabel Longoria, the first occupant of that post, resigned following the 2022 primary election, Tr. at 117, publicly admitting that she "didn't meet [her] own standards," *Harris County Official to Resign After Problems with Primary*, https://www.nbcdfw.com/news/local/texas-news/harris-county-official-to-resign-after-problems-with-primary/2909960/. During the primary election, both political parties in Harris County were concerned about whether their proper election workers were being utilized, which required the Secretary of State's office to "work with the party chairs, both the Republican and Democratic chair on that issue to make sure the county was compliant in that area." Tr. at 183. Even more concerning, after

the election, Harris County initially could not account for approximately 10,000 votes. Tr. at 181-82. It also delayed reporting its election results "because [Longoria's team] needed more time to count," and the County "identified that [it was] not going to be able to complete [its] returns by the statutory timeframe." Tr. at 182.

Although there is far from universal agreement about the precise cause of Harris County's election mismanagement, legislators would have been aware of wide public reporting about these problems—including that the 2022 primary election over which Ms. Longoria presided was called "one of the worst-run elections in recent memory." Michael Hardy, *Why Can't the Biggest County in Texas Run an Election*, Tex. Monthly (Mar. 10, 2022), https://www.texasmonthly.com/news-politics/harris-county-elections-2022/.

After Longoria resigned following the 2022 primary, she was replaced by current Harris County Elections Administrator Clifford Tatum. Tr. at 117-18. As Tatum testified, Harris County continued to experience problems in administering elections after he took office. Tr. at 117. During the November 2022 general election, which occurred months after Tatum was appointed Elections Administrator, there were shortages of ballot paper at multiple polling locations, including some reports of polling locations running completely out of ballot paper for periods of time. Tr. at 118-19. There were also reports that some election workers called for help but could not reach the relevant individuals. Tr. at 120-21. As with the primary election, legislators would have been aware of the issues, given that they were reported by several newspapers, Tr. at 121, and this time they resulted in fourteen candidates filing election contests to challenge the results, Tr. at 120.

Christina Adkins, Director of Elections in the Elections Division of the Texas Secretary of State's office, also testified as to these problems. She explained that "there have been very public accounts of some issues" that occurred in Harris County during the 2022 primary and general elections. Tr. at 181. During the general election, she explained, Harris County experienced problems in scanning ballots properly, and there were "allegations of ballot paper shortages in some locations that may have impacted the ability for th[o]se locations to accept and process voters." Tr. at 182.

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

By default, Texas counties run elections—as Harris County did until 2020, *see* Tr. at 80-81—through their elected county clerks and tax-assessor collectors. Tex. Elec. Code §§ 12.001, 43.002, 67.007, 83.002. Counties had the option, however, of creating the position of an appointed county elections administrator, who could be removed only for cause. Tex. Elec. Code § 31.031(a).

After Harris County's experience demonstrated the perils of ceding control over elections in large counties to an unaccountable bureaucrat, the 88th Legislature passed the Act earlier this year. The Act contains two provisions relevant here. *First*, it provides that "[t]he Commissioners Court of a county *with a population of 3.5 million or less*, by written order may create the position of a county elections administrator for the county." 2023 Tex. Sess. Law Serv. Ch. 952 (S.B. 1750) § 2(a) (emphasis added to reflect the amendment). *Second*, it provides that "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." *Id.* § 3. The Governor signed the bill in mid-June. Actions: S.B. 1750, Texas Legislature Online, https://capitol.texas.gov/billlookup/Actions.aspx?LegSess=88R&Bill=SB%201750. As with many of the most significant bills passed during the 88th Legislature, the Act takes effect on September 1, 2023. *Id.* § 5. Only Harris County will have a population of 3.5 million or more on September 1, 2023. County Motion at 11.

III. This Litigation

Harris County sued Provisional Attorney General Colmenero, Texas Secretary of State Jane Nelson (with the Attorney General, the "State Officials"), the Office of the Attorney General of Texas, the Office of the Secretary of State, and the State seeking to enjoin the enforcement of the Act. Harris County App'x D (Harris County's live petition).[1] Harris County alleged that the statute violates the prohibition against "local or special" laws found in article III, section 56(a) of the Texas Constitution. *Id.* at 18. Harris County sought a temporary injunction prohibiting defendants from enforcing the Act. *Id.* at 23. The State Defendants filed a plea to the jurisdiction. Harris County App'x F.

In what might have been a response to Harris County's standing problems in suing the State and state actors who have not yet taken any action to enforce the Act,

[1] Harris County did not initially sue the Office of the Attorney General or Office of the Secretary State, but subsequently amended its petition to sue both offices in order to satisfy the Declaratory Judgments Act. Harris County App'x D at 1. In any event, the offices' addition is not pertinent to the current appeal because the court did not enter a declaration, and they were not the parties enjoined. *See* Harris County App'x A-3 at 1-2, 5-6.

Harris County Elections Administrator Clifford Tatum intervened as a Plaintiff, seeking a temporary injunction prohibiting Harris County from implementing the Act. Clifford Tatum Motion App'x E at 1.[2] Because Harris County demonstrably had no intention to defend a law it sought itself to enjoin, the State of Texas and the Provisional Attorney General intervened as Defendants in Tatum's cross-claim to defend the Act with respect to Tatum's request for an injunction against Harris County. Tatum App'x F and G.

The trial court denied the State Defendants' plea to the jurisdiction except as to the State of Texas. Harris County App'x A-1. It granted Harris County's and Tatum's requests for temporary injunctions. Harris County App'x A-3, A-4. The Defendants' notice of direct appeal to this Court superseded the injunctions. Tex. Civ. Prac. & Rem. Code § 6.001(b); Tex. Gov't Code § 22.001(c); Tex. R. App. P. 29.1(b); *In re Abbott*, 645 S.W.3d 276, 282 (Tex. 2022); Tatum App'x I at 1-2. Harris County and Tatum now seek emergency temporary relief.

Standard of Review

"Rule 29.3 authorizes courts of appeals, during an interlocutory appeal, to make any temporary orders necessary to preserve the parties' rights until disposition of the appeal." *Abbott*, 645 S.W.3d at 282. This Court has not "articulated the standard a court of appeals asked to reinstate a temporary injunction using Rule 29.3 should

[2] Because Tatum's motion was filed second and is largely duplicative of Harris County's, this response focuses on Harris County's arguments. The same reasoning applies equally to both motions, and failure to respond to any particular comment in either motion should not be construed as a concession or waiver.

apply." *Id.* at 288 (Blacklock, J., concurring in part and dissenting in part). But as three members of this Court have indicated—and as at least Harris County does not dispute—"it would make little sense to require the Rule 29.3 movant under these circumstances to establish any more or any less than what was initially required to obtain the injunction in the district court." *Id.* at 288. *But see* Tatum Motion 15 (contending that he need only show that a temporary order is needed to preserve the rights of a party). After all, as Harris County puts it (at 7), Plaintiffs seek "temporary relief mirroring the trial court's injunction prohibiting SB 1750's enforcement."

Accordingly, Plaintiffs must establish "(1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) probable, imminent, and irreparable injury in the interim." *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). Assuming that Plaintiffs have a cause of action, they cannot show either of the other two elements—or even the Court's jurisdiction to reach them.

ARGUMENT

I. Harris County and Tatum Lack a Probable Right to Relief.

A. Harris County Lacks Standing to Sue the Attorney General and the Secretary of State.

To establish standing, and thereby a justiciable controversy, Plaintiffs must show a cognizable injury that is fairly traceable to each defendant's conduct and likely to be redressed by the requested relief. *Heckman v. Williamson County*, 369 S.W.3d 137, 155 (Tex. 2012). The injury must be "actual or imminent," not "hypothetical." *Id.* And it must be fairly traceable to *the defendant's* conduct, not the independent actions of third parties not before the court. *Id.*; *see also In re Gee*, 941 F.3d 153, 161-62

(5th Cir. 2019) (noting that standing is not dispensed "in gross" and must be established for each defendant for each claim). Here, at the very least, Harris County cannot show an injury fairly traceable to either the Attorney General or the Secretary of State—the only two defendants who were named in the injunction in its favor.

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

Harris County lists (at 20-21) several possible injuries that it may face because of the Act's existence, but Harris County cannot sue a statute. *Okpalobi v. Foster*, 244 F.3d 405, 426 (5th Cir. 2001) (en banc) (chiding the panel for "confus[ing] the *statute's* immediate coercive effect on the plaintiffs with any coercive effect that might be applied by the *defendants*").[3] Harris County insists (*e.g.*, at 21) that the Attorney General might enforce the Act against it, citing three reasons to support that theory. But an examination of each demonstrates that Harris County's injury is speculative.

First, Harris County contends (at 21) that this case is analogous to *Abbott v. Harris County*, No. 22-0124, 2023 WL 4278763, at *5 (Tex. June 30, 2023), which involved whether the Attorney General would enforce the Governor's executive order that prevented localities such as Harris County from imposing mask mandates. True, this Court has tied traceability to the notion of enforcement. *See, e.g.*, *Abbott v. MALC*, 647 S.W.3d 681, 697 (Tex. 2022). But this case is meaningfully different

[3] "Because standing is a constitutional prerequisite to maintaining a suit under both federal and Texas law, [the Court] look[s] to the more extensive jurisprudential experience of the federal courts on this subject for any guidance it may yield." *Tex. Ass'n of Business v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993).

from *Harris County* when it comes to enforcement: in *Harris County*, "the Attorney General sent a letter" to the County and others threatening legal action "in response to their violations of the Governor's prohibition on mask requirements." *Id.* at *6. On those facts, the Court held that Harris County had standing to sue the Attorney General because of a "credible threat of prosecution." *Id.* at *5; *see also, e.g.*, *NiGen Biotech, L.L.C. v. Paxton*, 804 F.3d 389, 392, 397 (5th Cir. 2015). But here, the Provisional Attorney General has not threatened to take legal action against Harris County for violations of *this Act.* Under these circumstances, there is no harm traceable to the Provisional Attorney General. *See Tex. Democratic Party v. Abbott*, 978 F.3d 168, 181 (5th Cir. 2020) (distinguishing "threatening letters" from mere restatements of the law).

Second, Harris County has argued that because Attorney General Paxton enforced other provisions of the Election Code in the past against Harris County, Provisional Attorney General Colmenero will also enforce a new, recently enacted provision of the Election Code against Harris County. Tr. at 95, 175-76. In particular, the County has relied upon a letter that Attorney General Paxton sent to the Harris County Attorney in 2020 regarding the creation of the county's elections administrator position and appointment of Isabel Longoria, Harris County App'x C at 1, as well as a lawsuit the State filed during the 2020 election cycle, Tr. at 95, 175-76; *see also State v. Hollins*, 620 S.W.3d 400 (Tex. 2020).

The Fifth Circuit has considered precisely this argument and rejected it as insufficient to demonstrate an enforcement connection between the Attorney General and a challenged statutory provision. *City of Austin v. Paxton*, 943 F.3d 993, 1002 (5th

Cir. 2019). As the Court explained, where enforcement is discretionary, that an official with general enforcement powers "has chosen to intervene to defend *different* statutes under *different* circumstances does not show that [s]he is likely to do the same here." *Id.* at 1002. Without that proof, "the mere fact that the Attorney General *has* the authority to enforce" a given provision "cannot be said to 'constrain' the county" from doing anything. *Id.* at 1001. Although this discussion was part of the court's discussion of sovereign immunity from suit in federal court, the court made clear that it also applied to standing. *Id.* at 1002-03.

Stated differently, the "mere fact that the Attorney General *has* the authority to enforce" any particular state law 'cannot be said to 'constrain' the [County] from enforcing" its laws—or "compel" it to do anything else. *Id.* at 1002. Without some coercive action in violation of the Constitution, there is nothing for this Court to enjoin the Provisional Attorney General from doing. *Id.* And it is for that reason that courts—including this one—have routinely held that "the official must have the requisite enforcement connection of the particular statutory provision that is the subject of the litigation." *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 179 (5th Cir. 2020); *see also, e.g.*, *Lewis v. Scott*, 28 F.4th 659, 664 (5th Cir. 2022). When an official's connection to enforcement is *not* established, "the plaintiff [has] failed to allege sufficient facts to satisfy the traceability element of standing." *MALC*, 647 S.W.3d at 697 (Tex. 2022). Because Harris County has not pointed to any coercive action—actual or threatened—by the Provisional Attorney General with respect to *this* Act, it has no standing to sue her.

The County counters by citing (at 22-23) *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023), for the notion that a credible threat of enforcement exists when the State has pursued similar enforcement actions and has declined to disavow future actions. *303 Creative* stands for no such thing. The discussion upon which the County relies is found in the *procedural history* section of that case, *303 Creative*, 143 S. Ct. at 2310, which confirms that "no party challenge[d] these conclusions." *Id*. at 2310. Because the issue of "enforcement" was not before the Supreme Court, any "drive-by jurisdictional rulings" it might contain "should be accorded no precedential effect." *Arbaugh v. Y&H Corp.*, 546 U.S. 600, 511 (2006) (quotation marks omitted).

Third, Harris County has pointed (Tr. at 31) to the Provisional Attorney General's stipulation that she could not commit that her office would never file a lawsuit against Harris County regarding the Act. But this gets the analysis backwards: it is Harris County that "has the burden to affirmatively demonstrate the court's jurisdiction." *Gulf Coast Ctr. v. Curry*, 658 S.W.3d 281, 286 (Tex. 2022). At most, the stipulation means that the Provisional Attorney General has not said, one way or the other, whether she intends to sue Harris County over the Act. Because such a determination requires competing enforcement priorities, any enforcement action would depend on a "chain of contingencies" that is a far cry from the type of "*certainly* impending" enforcement that creates a justiciable controversy. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409-10 (2013). For example, had Harris County attempted to comply in good faith and been unable to do so for logistical reasons, the Provisional Attorney General might conclude that enforcement was not appropriate. Or she

might have decided that other concerns in the State were more pressing. Because Harris County's putative evidence of standing "amounts to mere speculation" about what the Provisional Attorney General will do with regard to a newly enacted law, it has failed to establish standing. *Id.*

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

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

But absent proof that the Secretary *will* do any of those things, any injury possibly traceable to the Secretary is "conjectural or hypothetical" and not "actual or imminent." *Heckman*, 369 S.W.3d at 154. And such proof is notably absent—despite the presence of a representative of the Secretary, Ms. Adkins, at the temporary-injunction hearing. Indeed, before the hearing, one of Harris County's primary theories of harm was that if the Elections Administrator continued to run the upcoming November election, the Secretary might refuse to accept the results of that election. Harris County App'x D at 17. Harris County has largely abandoned that theory here because Adkins repeatedly testified that the Secretary would accept "whatever

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

Adkins also denied that the Secretary would engage in many of the other forms of enforcement that Plaintiffs insist are threatened. For example, as to paying the county for registering voters, Adkins testified that as long as there are no competing claims between two entities in Harris County for those payments, "[w]e're not going to stop providing funds or stop – we're not going to prevent people from completing their statutory duties because of a transition that's happening locally." Tr. at 152; *see* Tr. at 150. She later reiterated: "I have no plans on cutting access to the county on September 1 because there's a dispute as to who is holding that authority under the law, with respect to a tax assessor-collector or an elections administrator." Tr.

at 154. "As long as I don't have two different offices competing for the same funds, then I think we would make a distribution as we normally would." Tr. at 154.

The County counters (at 25) that the Secretary has previously asserted that the Election Administrator position was not legally created. That is irrelevant. The case law "do[es] not support the proposition that an official's public statement alone establishes authority to enforce a law, or the likelihood of his doing so." *In re Abbott*, 956 F.3d 696, 709 (5th Cir. 2020), *vacated on other grounds sub nom. Planned Parenthood Ctr. for Choice v. Abbott*, 141 S. Ct. 1261 (2021). That is particularly so here, where the Secretary's previously stated views have nothing to do with S.B. 1750. Instead, "[m]ore is needed—namely, a showing of the Secretary's connection to the enforcement of the particular statutory provision that is the subject of the litigation." *Lewis*, 28 F.4th at 664.

Harris County finally notes (at 24 n.13) that, like the Provisional Attorney General, the Secretary's representative could not commit to take *no* action if Tatum continues to run elections in Harris County. Specifically, Adkins stated: "I cannot commit to that because I don't know what might happen in the next few months that might warrant or necessitate some clarification." Tr. at 185-86. But again, this gets the analysis backwards: it is Harris County that "has the burden to affirmatively demonstrate the court's jurisdiction." *Gulf Coast*, 658 S.W.3d at 286.

Accordingly, even if the Secretary has the authority to take certain actions against Harris County, the County has not shown "a demonstrated willingness" by the Secretary to *use* that authority to "enforce the challenged statute" in a way that harms a cognizable interest of the County any more than the Attorney General. *Tex.*

Alliance for Retired Americans v. Scott, 28 F.4th 669, 672 (5th Cir. 2022). In short, without a "significant possibility that" a named defendant "will act to harm a plaintiff," there is no justiciable controversy. *City of Austin*, 943 F.3d at 1002.

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

1. Tatum's intervention as a plaintiff does not cure the lack of a justiciable controversy between Harris County and the defendants. Tatum's intervention is "collusive because it is not in any real sense adversary." *United States v. Johnson*, 319 U.S. 302, 305 (1943). When parties are not adverse, there is no "justiciable controversy." *Block Distributing Co. v. Rutledge*, 488 S.W.2d 479, 481 (Tex. Civ. App.—San Antonio 1972, no writ); *see also Tex. Ass'n of Business*, 852 S.W.2d 440, 445 (Tex. 1993) (explaining that, if standing were not jurisdictional and reviewable for the first time on appeal, then appellate courts "could not arrest collusive suits"); *cf.* Hart & Wechsler's The Federal Courts and the Federal System 81 (7th ed. 2015) (discussing collusive suits in the context of the federal Constitution's case-or-controversy requirement).

Here, there was never a justiciable controversy, or any adversity, between Tatum and Harris County. Both believe that the Act is unconstitutional. County Motion at 7; Tatum Motion at 24. And despite the fact that Tatum sought and received an injunction against Harris County, Tatum Motion at 11-12, Harris County has never argued that an injunction entered against it is improper. To the contrary, Harris County called Tatum as *its own witness* about why Harris County should be freed from the obligation of obeying the Act. Tr. at 69. When counsel for the State pointed

out the lack of adversity between the County and Tatum, Tatum's only response was to note the State's defense of the statute. Tr. at 202. That proved the State's point.

2. Tatum cannot avoid this problem by claiming (at 3) that neither the Secretary of State nor the Office of the Attorney General has standing to appeal an injunction that runs against Harris County. There are several problems with Tatum's argument, but the biggest is that it is a red herring: A single party with standing is sufficient to invoke this Court's jurisdiction. *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 6 & n.9 (Tex. 2011) (Jefferson, C.J.). Regardless of the status of the Secretary or the Office of the Attorney General, the State and the Provisional Attorney General intervened precisely so that they could defend the constitutionality of state law in the face of a collusive cross-claim. Tatum App'x F and G.

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

Attorney General were now parties to the suit against Harris County, they had the right to appeal any order entered in that suit that harmed their interest. *Id.*

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

When the State and the Provisional Attorney General filed a notice of appeal, Tatum's temporary injunction was superseded as a matter of law. Tex. Civ. Prac. & Rem. Code § 6.001(a), (b)(1), (b)(3); Tex. R. App. P. 29.1(b). And given that there was never a justiciable controversy between Tatum and Harris County, his request to reinstate that injunction under Rule 29.3 should be denied.

C. Even if Harris County or Tatum could establish standing, their claims are not facially valid.

The request for relief should also be denied because the Plaintiffs' claim that the Act is an improper special or local law is "facially invalid"—depriving Plaintiffs of both a probable right to relief and a route around the State Defendants' sovereign

immunity. *MALC*, 647 S.W.3d at 698. The Act is constitutional for two primary reasons: Plaintiffs misread the statute and misapply the Court's legal test.

1. Harris County and Tatum read pieces of the Act out of context.

Article III, section 56 of the Texas Constitution prohibits the Legislature from passing a "'local or special law.'" *Maple Run at Austin Mun. Utility Dist. v. Monaghan*, 931 S.W.2d 941, 945 (Tex. 1996) (quoting Tex. Const. art. III § 56). A "local law is one limited to a specific geographic region of the State, while a special law is limited to a particular class of persons distinguished by some characteristic other than geography." *Id.* at 945. However, "a law is not a prohibited local law merely because it applies only in a limited geographical area." *Id.* "[W]here a law is limited to a particular class or affects only the inhabitants of a particular locality, the classification must be broad enough to include a substantial class and must be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to be accomplished by the proposed legislation." *Id.*

a. No one disputes that, at present, the Act applies only to Harris County. On its face, it divides the State into two brackets: counties with fewer than 3.5 million people, which may create election administrators, 2023 Tex. Sess. Law Serv. Ch. 952 (S.B. 1750) §§ 2-3, and counties with more than 3.5 million people, which may not, *id.* At present, only Harris County has more than 3.5 million people. County Motion at 11. But as Harris County suggests (at 9), that is permissible so long as the second bracket is not "closed."

Applying ordinary rules of statutory construction, the Act does *not* create a "closed" bracket just because it says that the initial transfer of powers of the Election

Administrator will occur "on September 1, 2023." 2023 Tex. Sess. Law Serv. Ch. 952 (S.B. 1750) § 3. This Court has repeatedly stated that words are to be read in their linguistic and historic context. *In re Office of the Att'y Gen. of Tex.*, 456 S.W.3d 153, 155 (Tex. 2015). Moreover, "[s]tatutes are given a construction consistent with constitutional requirements, when possible, because the legislature is presumed to have intended compliance with state and federal constitutions." *Brady v. Fourteenth Court of Appeals*, 795 S.W.2d 712, 715 (Tex. 1990) (citing *Greyhound Lines, Inc. v. Board of Equalization*, 419 S.W.2d 345, 348-49 (Tex. 1967); Tex. Gov't Code § 311.021(1)).

Here, taken together, those rules suggest that the phrase "on September 1, 2023" does *not* mean that date is the one and only day on which powers can be transferred. Instead, it is best understood as a reference to the effective date of the statute, given the constitutionally prescribed grace period that attaches to most new laws. Put another way, the phrase modifies "transfer" by specifying when that transfer is to occur; it does not limit the transfer solely *to* Harris County even if other counties reach the same size threshold. *Contra* Harris County Motion at 10; Tatum Motion at 27. By contrast, if the Legislature wanted to limit the application of the Act to Harris County, the more natural way to do it would have been for it to apply it to "a county with a population of more than 3.5 million *as of* September 1, 2023." It did not.

This context also refutes Tatum's argument (at 29) that the Act's use of September 1 "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." But all new statues must take effect on some date, and the Constitution mandates, with limited exceptions, that "statutes not take effect until ninety days after the legislative session adjourns." *Fire Protection Serv, Inc. v. Survitec Survival Products, Inc.*, 649 S.W.3d 197, 202 (Tex. 2022) The Constitution contains that requirement exactly so that people like Tatum, or entities like Harris County, will have notice of a new statute's passage "to enable them to adjust their affairs to the change made." *Id.*

b. Even if the reference to September 1, 2023 did create some sort of "closed bracket," that still would not entitle Plaintiffs to the facial relief they seek. It would just mean that the phrase should be severed from the statute. When "the constitutional violation is unequal treatment, . . . a court theoretically can cure that unequal treatment either by extending the benefits or burdens to the exempted class, or by nullifying the benefits or burdens for all," so long as the restriction is severable. *Barr v. Am. Ass'n of Political Consultants*, *Inc.*, 140 S. Ct. 2335, 2354 (2020) (citing *Heckler v. Mathews*, 465 U.S. 728, 740 (1984)). Because the Act does not speak to severability, there is a presumption that any unconstitutional piece or application is severable. Tex. Gov't Code § 311.032(c).

There is nothing in the text or context of the Act to overcome that presumption. To the contrary, eliminating the phrase "on September 1, 2023" would have no appreciable impact as that was the presumptive effective date of the statute. Moreover, the Act would likely not sweep in any additional counties for decades. "Surely Plaintiffs do not want [such an] injunction—after all" it would mean that both Harris County and other large counties would be forbidden from having an Election

Administrator, which "would seem antithetical to the spirit of their lawsuit. But it may be the only relief courts are authorized to provide, in the event Plaintiffs ultimately prevail on the merits of their claim." *Tex. Democratic Party v. Abbott*, 961 F.3d 389, 417 (5th Cir. 2020). As a result, Plaintiffs' claims for different relief do not show a substantial likelihood of obtaining the relief they seek.

2. The Act meets this Court's ultimate test because the Legislature's classification was reasonable.

Apart from their misreading of the text—and the available remedy—Plaintiffs misapply the "[t]he primary and ultimate test" this Court has established for "whether a law is general or special": "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. That is a low bar. "The Legislature may restrict the application of law to particular counties by the use of classifications, provided the classifications are not arbitrary." *Smith v. Davis*, 426 S.W.2d 827, 830 (Tex. 1968). "It is to be presumed that the Legislature has not acted unreasonably or arbitrarily; and a mere difference of opinion, where reasonable minds could differ, is not a sufficient basis for striking down legislation as arbitrary or unreasonable." *Id.* at 831. "The wisdom or expediency of the law is the Legislature's" prerogative, not the Court's. *Id.* "If there could exist a state of facts justifying the classification or restriction complained of, [the Court] will assume that it existed." *Scurlock Permian Corp. v. Brazos County*, 869 S.W.2d 478, 485 (Tex. App.—Houston [1st Dist.] 1993, writ denied).

The Act has at least three reasonable bases. *First*, Harris County's sheer size creates a statewide interest in the proper administration of its elections, which is unlikely to dissipate even if, due to statewide population growth, other large counties eventually reach populations of over 3.5 million. *Second*, legislators may have believed reports that Harris County's elections administrators poorly managed the County's 2022 elections. *Third*, regardless of the veracity of those reports, the Legislature may have been concerned that widespread reporting about poorly managed elections in Harris County caused voters to lose confidence in the integrity of those elections.

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

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

the legislative branch of government." *Id.* And the Court has long held that "[t]he scope of such legislation should not be restricted by expanding the nullifying effect of Article 3, s[ection] 56 of the Constitution." *Id.*

For example, this Court has cited with favor a case involving a statute that "applied only to airports operated jointly by two cities with a population exceeding 400,000." *Maple Run*, 931 S.W.2d at 948 (discussing *City of Irving v. Dallas/Fort Worth Int'l Airport Bd.*, 894 S.W.2d 456, 467 (Tex. App.—Fort Worth 1995, no writ)). Even though that statute could apply only to the Dallas/Fort Worth Airport, the statute was upheld as reasonable due to "the tremendous statewide importance of the facility and the special zoning conflicts that can arise for a jointly operated airport." *Id.*

Similar reasoning applies here. Harris County's size makes it different from all other counties. As already noted, it is far larger than any other county in Texas. Harris County's impact on statewide elections in Texas is therefore far larger than any other county's. Because elections in Harris County have a statewide impact, particularly when statewide officials and measures are on the ballot, the Act is not local within the meaning of the Constitution.

Harris County dismisses that concern (at 12), asserting that if the Act were concerned with population size, it would apply prospectively to all counties that reach 3.5 million voters in the future. That argument assumes that "on September 1, 2023" is a limiting phrase and not a descriptive one. It also implausibly presumes that Harris County will remain static in population even as the State grows so much that Dallas, Tarrant, or Bexar counties reach populations of 3.5 million. That is not

borne out by the most recent census.[4] Assuming a more realistic rate of comparable growth in population, Harris County will continue to have a much larger impact on statewide elections than any other county, even if other counties reach the 3.5 million bracket created by the Act.

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

Beyond size, it was reasonable for legislators to have believed—and acted upon—reports that Harris County mismanaged its recent elections. Although Harris County and Tatum's motions largely fail to address this reality, Tatum admitted at the temporary-injunction hearing that Harris County experienced several problems in administering elections in 2022—including after he took office. Tr. at 117. As detailed above, the problems included shortages of critical supplies, Tr. at 118-19, and assistance, Tr. at 120-21. During the general election, for instance, Harris County experienced problems in scanning ballots properly, and there were "allegations of ballot paper shortages in some locations that may have impacted the ability for th[o]se locations to accept and process voters." Tr. at 182.

The result was that fourteen candidates filed election contests to challenge the results because of various problems that occurred on election day. Tr. at 120. Even now, nearly a year after the election, those disputes are still pending. The first went to trial only this month. *See*, *e.g.*, Ryan Chandler, *Trial ends in Harris County election*

[4] *Texas is growing—and fast. But that growth is not evenly distributed across the State*, The Texas Standard (Mar. 31, 2023), https://tinyurl.com/3buvws6n (listing Harris and Bexar but *not* Dallas or Tarrant as among the fastest growing counties in the United States).

challenge, KXAN (Aug. 15, 2023), https://www.kxan.com/news/texas-politics/trial-ends-in-harris-county-election-challenge/ (discussing the challenge of Erin Lunceford who "lost a race for district judge to incumbent Democrat Tamika Craft by 2, 743 votes—a margin of 0.26%).

Given the disparate outcome between different-sized counties and Harris County's own disparate outcome between methods of administration, it was reasonable for the Legislature to change who administered the County's elections. That is, based on Harris County's own experience (along with those of other counties), legislators may have believed that the elected officials of County Tax-Assessor Collector and County Clerk were better choices to run the County's elections than an unelected elections administrator. Legislators may also have believed that because those elected officials had run the County's elections only a few years ago, it would be best—and not disruptive—to return those duties to them, given all the problems that occurred during the 2022 election cycle. Plaintiffs disagree with that policy choice, but such disagreement does not render the Legislature's choice unreasonable.

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

Even if those reports were untrue (or at least unproven), legislators may have reasonably believed action was required so that voters would not lose confidence in Harris County's elections administrators and the integrity of its elections. Courts recognize that "voter confidence in the integrity of the electoral process has independent significance because it encourages citizen participation in the democratic

process." *Crawford v. Marion County Elec. Bd.*, 553 U.S. 181, 197 (2008); *see also Veasey v. Abbott*, 830 F.3d 216, 274 (5th Cir. 2016) (Higginson, J., concurring) (discussing *Crawford* in the context of Texas's Voter ID law); *accord Khanoyan*, 637 S.W.3d at 765 (emphasizing the importance of not allowing the courts "themselves [to] contribute to electoral confusion").

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

Harris County (at 4-5) and Tatum (at 36-38) try to spin this history, quoting statements by individual legislators to paint the Act as having improper purposes. But even in the rare instances, such as claims of intentional discrimination under the Fourteenth or Fifteenth Amendment, in which plaintiffs' claims turn on legislative mal-intent, such statements are of minimal value because they do not speak to the intent of the Legislature. *Brnovich v. Democratic Nat'l Committee*, 141 S. Ct. 2321, 2350 (2021). Here, where the subjective motivation is *not* an element of the Plaintiffs claims—and only the reasonableness of the Legislature's classification matters—legislative history plays no role in the analysis. Because the Legislature's classification was reasonable, Plaintiffs are unlikely to succeed on the merits. Temporary relief is therefore inappropriate—even assuming, counterfactually, the Court had jurisdiction to award it.

II. No Temporary Order is Needed to Protect This Court's Jurisdiction.

Assuming the Court ever had jurisdiction, Rule 29.3 relief is not necessary for the Court to retain that jurisdiction. *See* Tex. Gov't Code § 21.001(a). Harris County contends (at 15) that if the Act takes effect on September 1 without emergency relief from this Court, the dispute will be mooted because the office of the elections administrator would be permanently abolished. Harris County is wrong because, again, the phrase "on September 1, 2023" is best understood as a reference to the Act's effective date, not a limitation on its effectiveness. And again, Plaintiffs overlook the context in which the phrase was used.

The Act contains two relevant provisions. Section 2 states: "The Commissioners Court of a county with a population of 3.5 million or less, by written order may create the position of a county elections administrator for the county." 2023 Tex. Sess. Law Serv. Ch. 952 (S.B. 1750) § 2(a). Section 3 states: "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." *Id.* § 3.

If the Court does not issue a temporary order, then on September 1, Harris County will be required to transfer all duties of its elections administrator to the county clerk and tax-assessor collector. But that transfer would moot the County's challenge to Section 3 only if the County's challenge to Section 3 were read to apply on one day only, September 1, 2023. That makes no sense and would violate the rule that courts must "interpret statutes to avoid an absurd result." *Jose Carreras, M.D., P.A. v. Marroquin*, 339 S.W.3d 68, 73 (Tex. 2011). S.B. 1750 is not a statute setting a

rule of decision for courts, or barring activity by individuals such that it can be turned on and off on a particular day. It requires logistical planning and may require actual transition of employees between entities. *See Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring) (discussing the logistical complications of managing an election). It would be absurd to think that the Legislature expected that transition to happen in a single day or expected it to stop if not accomplished on that day. That is among the reasons why the Legislature gave Harris County months to prepare. *See infra* Part III.A.

More importantly, it is faux textualism. "Ordinary meaning and literal meaning are two different things. And judges interpreting statutes should follow ordinary meaning, not literal meaning." *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1491 (2021) (Kavanaugh, J., dissenting) (citing A. Scalia, A Matter of Interpretation 24 (1997) (a "good textualist is not a literalist.")). "As Justice Scalia, textualism's staunchest and most prominent proponent, puts it: 'In textual interpretation, context is everything.'" *Ojo v. Farmers Group, Inc.*, 356 S.W.3d 421, 451 (Tex. 2011) (Willett, J., concurring) (quoting Antonin Scalia, *Common-Law Courts in a Civil Law System: The Role of the United States Federal Courts in Interpreting the Constitution and Laws*, in A Matter of Interpretation, 3, 37 (Amy Gutmann ed., 1997)). That is because "[t]he meaning of words read in isolation is frequently contrary to the meaning of words read contextually in light of what surrounds them." *Office of the Att'y General*, 456 S.W.3d at 155 (cautioning that "courts should resist rulings anchored in hyper-technical readings of isolated words or phrases").

Reading Section 3 in context confirms that the Legislature did not pass a provision that applies on one day only. Rather, the Act imposes a continuing duty on Harris County to manage its elections using its County Tax-Assessor Collector or County Clerk rather than an Election Administrator. Under Section 3, that obligation begins on September 1, 2023, and under section 2, it continues so long as Harris County's population remains above 3.5. million. 2023 Tex. Sess. Law Serv. Ch. 952 (S.B. 1750) § 2(a). As a result, the absence of temporary relief might allow someone—though it is not clear how or by whom—to enforce the statute on September 2, but it would not moot the dispute. As a result, temporary relief is not necessary to protect the Court' jurisdiction.

III. Temporary Relief Is Not Warranted Because Neither The County Nor Tatum Has Shown Irreparable Harm.

A. Harris County's harm is self-inflicted.

Harris County argues that, if the Act takes effect on September 1 and shifts Tatum's duties to the tax assessor-collector and county clerk, many problems will arise because "neither of these officials ha[s] had any involvement in the ongoing election preparations, and neither currently has the staff or resources necessary to carry out the registration or administration functions." County Motion at 16-17. The County contends that the county clerk and tax-assessor collector are not prepared to assume these functions, and that reallocating Tatum's duties to them would cause disruption and confusion and "imperil the orderly conduct of the election." County Motion at 18. If true, *but see id.* at 3 (suggesting that Harris County can, in fact,

implement the Act in an "orderly fashion," should the State prevail), this is insufficient under Rule 29.3 because any harm is self-inflicted.

As noted above, Rule 29.3 is effectively the equivalent of a request for an injunction pending appeal. *Abbott*, 645 S.W.3d at 288 (Blacklock, J., concurring in part and dissenting in part). Injunctions are, at bottom, equitable in nature and thus controlled by the "principles, practice and procedure governing courts of equity." *State v. Tex. Pet Foods, Inc.*, 591 S.W.2d 800, 803 (Tex. 1979); *see also, e.g.*, *In re State Bd. for Educator Certification*, 452 S.W.3d 802, 809 (Tex. 2014) (Guzman, J., concurring) (collecting cases). Equity disfavors those with unclean hands, *Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644, 656 (Tex. 2006), and it should not save a party from the consequences of its own actions.

When this Court evaluates the constitutionality of a statute, it begins with a presumption of "compl[iance] with both the United States and Texas Constitutions." *EBS Solutions, Inc. v. Hegar*, 601 S.W.3d 744, 754 (Tex. 2020). "The party asserting that the statute is unconstitutional bears a high burden to show unconstitutionality." *Id.* Further, and as already noted, there is a reason the Act takes effect September 1. "[S]tatutory grace periods are required by our Constitution, which mandates that (with limited exceptions) statutes not take effect until ninety days after the Legislative session adjourns." *Fire Protection,* 649 S.W.3d at 202. "Not long after our Constitution's adoption, [this Court] explained that the object of that section was to give notice to the people of its passage, that they might obey it when it should become effective, and also to enable them to adjust their affairs to the change made, if any." *Id.* Thus, "in determining whether a law disrupts or impairs settled expectations,

[the Court considers] whether the law gives parties a 'grace period' to adapt before the law takes effect." *Id.*

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

Harris County may have the right to challenge the Act as unconstitutional, but because the statute involves elections, it must do so with maximum dispatch if it wants to obtain extraordinary relief from this Court. *In re Khanoyan*, 637 S.W.3d at 765. It may not manufacture an emergency by ignoring a new statute, failing to prepare to implement it, waiting weeks to sue, and then seeking emergency relief in this Court on the grounds that irreparable harm exists because it has not made any contingency plans in the event it loses this case or fails to obtain temporary relief.

For similar reasons, Harris County may not validly complain that an emergency order for temporary relief is needed to preserve the status quo. *See* County Motion at 6. The status quo encompasses the presumption of constitutionality and the expectation that parties will use the constitutionally prescribed grace period to implement new laws—not ignore the statute for weeks before rushing to court and seeking relief on the ground that the law is new.

B. Tatum may be reinstated if he loses his job.

Tatum asserts several alleged irreparable injuries, but none is sufficient for Rule 29.3 purposes. To the extent he asserts that he will be irreparably harmed because the elections administrator's office will be disbanded, or that it will be difficult for the county to administer an election, Tatum Motion at 14, 17, that is the County's harm. And as just explained, that harm is also self-inflicted.

Tatum's only potential real harm would be losing his job. And although that would be an injury, it would not be irreparable. "Because reinstatement is an equitable remedy and because the City is not immune from suits asserting state constitutional violations when the remedy sought is equitable relief, the City is not immune from [Plaintiff's] suit asserting state constitutional violations and seeking the remedy of reinstatement." *City of Fort Worth v. Jacobs*, 382 S.W.3d 597, 599 (Tex. App.—Fort Worth 2012, pet dism'd). That applies here. Because Tatum could pursue reinstatement, the loss of his job is not irreparable.

To the extent that Tatum alleges economic loss, "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*, 84 S.W.3d at 204. It is far from clear that Tatum would actually suffer economic harm because, while he could no longer be employed as an Election Administrator for the period between September 1 and resolution of this appeal, that does not mean he would be unemployed. As Tatum admitted through his testimony, it is possible that the County could hire him in either the County Clerk's or Tax-Assessor Collector's Offices. Tr. at 123. Indeed, that would seem probable, as Harris County insists (at 16-17) those officials currently

lack adequate staff to manage the election. As a result, on this record, Tatum has failed to establish that he will suffer economic losses at all—let alone any for which Harris County will not ultimately compensate him should he be rehired. As a result, his harm is speculative or at least not demonstrably irreparable.

Prayer

The Court should deny Harris County's and Tatum's motions for Rule 29.3 relief.

Respectfully submitted.

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