**CAUSE NO. D-1-GN-23-003523**

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| **HARRIS COUNTY, TEXAS**<br><br>***Plaintiff,***<br><br>**v.**<br><br>**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**<br><br>***Defendants.*** | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | **IN THE DISTRICT COURT OF**<br><br>**TRAVIS COUNTY, TEXAS**<br><br>**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 1750[1] ("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.



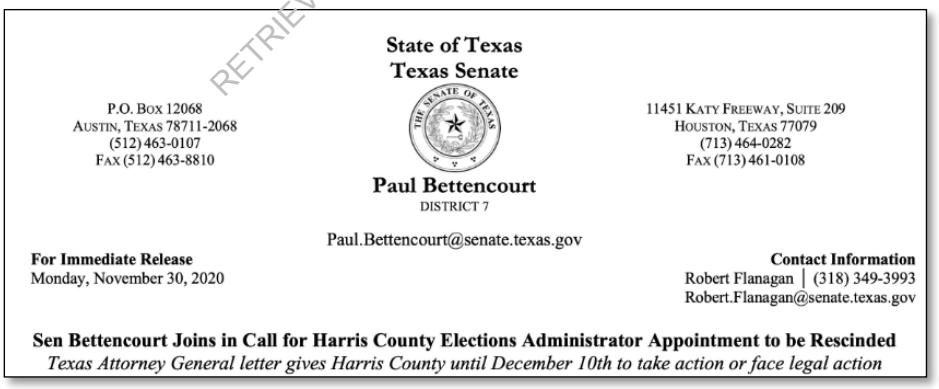
15. When a commissioners court creates the elections administrator position, a statutorily created five-person "election commission" is responsible for hiring and firing the county's elections administrator. Tex. Elec. Code § 31.032. The election commission consists of (1) the county judge, (2) the county 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 publicly[5] called on Harris County to abolish the office and rescind the administrator's appointment:





State of Texas
Texas Senate

P.O. Box 12068
Austin, Texas 78711-2068
(512) 463-0107
Fax (512) 463-8810

11451 Katy Freeway, Suite 209
Houston, Texas 77079
(713) 464-0282
Fax (713) 461-0108

**Paul Bettencourt**
DISTRICT 7

Paul.Bettencourt@senate.texas.gov

**For Immediate Release**
Monday, November 30, 2020

**Contact Information**
Robert Flanagan | (318) 349-3993
Robert.Flanagan@senate.texas.gov

**Sen Bettencourt Joins in Call for Harris County Elections Administrator Appointment to be Rescinded**
*Texas Attorney General letter gives Harris County until December 10th to take action or face legal action*

[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.

> SECTION 2. Section 31.031(a), Election Code, is amended to read as follows:
>
> (a) The commissioners court of a county with a population of 3.5 million or less by written order may create the position of county elections administrator for the county.

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.



> 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.

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.

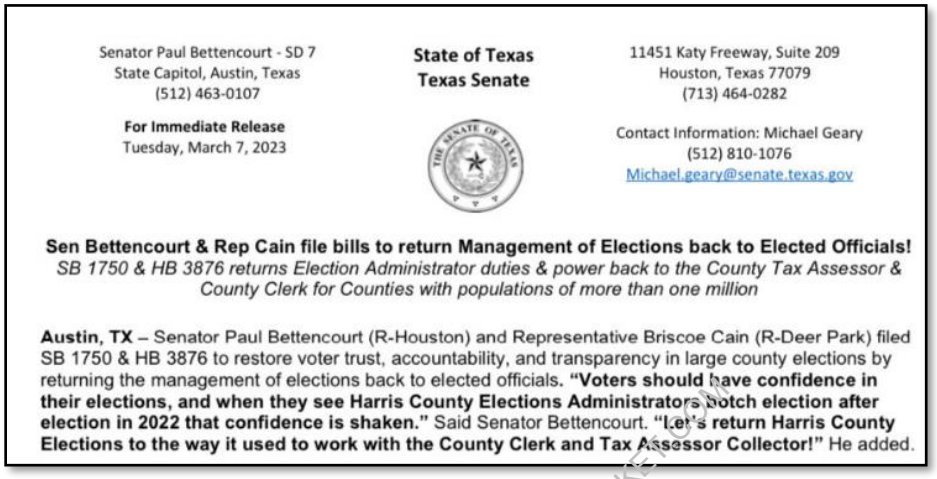
26. That SB1750's abolishment provision can only ever apply to Harris County is further apparent when read in combination with Senate Bill 1933[7] ("SB1933"), another bill Senator Bettencourt sponsored this legislative session. SB1933 applies to only counties "with a population of more than 4 million," 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]



Senator Paul Bettencourt - SD 7
State Capitol, Austin, Texas
(512) 463-0107

**For Immediate Release**
Tuesday, March 7, 2023

**State of Texas**
**Texas Senate**

11451 Katy Freeway, Suite 209
Houston, Texas 77079
(713) 464-0282

Contact Information: Michael Geary
(512) 810-1076
Michael.geary@senate.texas.gov

**Sen Bettencourt & Rep Cain file bills to return Management of Elections back to Elected Officials!**
*SB 1750 & HB 3876 returns Election Administrator duties & power back to the County Tax Assessor & County Clerk for Counties with populations of more than one million*

**Austin, TX** – Senator Paul Bettencourt (R-Houston) and Representative Briscoe Cain (R-Deer Park) filed SB 1750 & HB 3876 to restore voter trust, accountability, and transparency in large county elections by returning the management of elections back to elected officials. **"Voters should have confidence in their elections, and when they see Harris County Elections Administrators botch election after election in 2022 that confidence is shaken."** Said Senator Bettencourt. **"Let's return Harris County Elections to the way it used to work with the County Clerk and Tax Assessor Collector!"** He added.



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]

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[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 again[11] 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).

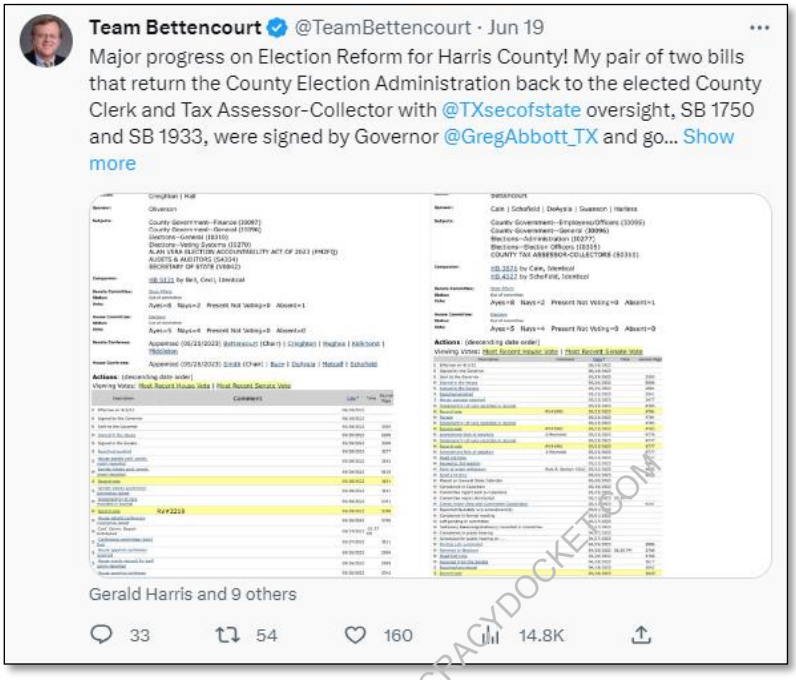
[13] Paul Bettencourt (@Team Bettencourt), Twitter (May 22, 2023, 11:22 AM), https://twitter.com/TeamBettencourt/status/1660682439176355841?s=20.

[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 County[17]:






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.

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[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*

**Christian D. Menefee**
Harris County Attorney
Texas Bar No. 24088049
Christian.Menefee@harriscountytx.gov
**Jonathan Fombonne**
First Assistant County Attorney
Texas Bar No. 24102702
Jonathan.Fombonne@harriscountytx.gov
**Tiffany S. Bingham**
Managing Counsel
Texas Bar No. 24012287
Tiffany.Bingham@harriscountytx.gov
**Neal Sarkar**
Special Assistant County Attorney
Texas Bar No. 24093106
Neal.Sarkar@harriscountytx.gov
**Christopher Garza**
Senior Assistant County Attorney
Texas Bar No. 24078543
Christopher.Garza@harriscountytx.gov
**Matthew Miller**
Senior Assistant County Attorney
Texas Bar No. 24051959
Matthew.Miller@harriscountytx.gov
**Moustapha Gassama**
Assistant County Attorney
Texas Bar No. 24083058
Moustapha.Gassama@harriscountytx.gov
**Neeharika Tumati**
Assistant County Attorney
Texas Bar No. 24101168
Neeharika.Tumati@harriscountytx.gov

**Office of Harris County Attorney**
1019 Congress, 15th Floor
Houston, Texas 77002
Office: 713-755-5101
Fax: 713-755-8924

**ATTORNEYS FOR PLAINTIFF**

## VERIFICATION

My name is Rachelle Obakozuwa. 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 Obakozuwa

## 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