No. 07-26-00168-CV

In the Court of Appeals
Seventh Court of Appeals District
Amarillo, Texas

IN RE GARY BOREN,
Relator

REPLY BRIEF OF RELATOR

ERIC OPIELA PLLC
Eric Opiela
State Bar No. 24039095
9415 Old Lampasas Trail
Austin, Texas 78750
Telephone: 512.791.6336
eopiela@ericopiela.com
Counsel for Relator

EMERGENCY RELIEF REQUESTED

Identity of Parties and Counsel

Pursuant to Rule of Appellate Procedure 52.3(a), Relator provides this list of parties and counsel:

Relator:
Gary Boren, Candidate for Lubbock City Council, District 4
Represented by:
ERIC OPIELA PLLC
Eric Opiela
State Bar No. 24039095
9415 Old Lampasas Trail
Austin, Texas 78750
Telephone: 512.791.6336
Facsimile: 512.729.0226
eopiela@ericopiela.com

Respondent:
Ms. Courtney Paz, City Secretary, City of Lubbock, Texas
Represented by:
TAYLOR, OLSON, ADKINS, SRALLA & ELAM, L.L.P.
William M. McKamie (Attorney in Charge)
State Bar No. 13686800
mmckamie@toase.com
Maria K. Garcia
State Bar No. 24112320
mkgarcia@toase.com
6000 Western Place, Suite 200
Fort Worth, Texas 76107
(817) 332-2580

Matthew L. Wade
City Attorney
State Bar No. 00794803
mwade@mylubbock.us
P.O. Box 2000
Lubbock, Texas 79457
P: (806) 775-2222

TABLE OF CONTENTS

INDEX OF AUTHORITIES

CASES

CONSTITUTIONS, STATUTES, AND RULES

OTHER SOURCES

SUMMARY OF ARGUMENT

Respondent's Response confirms that this case presents a pure question of law on undisputed facts. Resp. at 7. Respondent does not dispute that Relator is a bona fide resident of the City of Lubbock and of District 4, that he was such a resident at the time of filing, or that he satisfies every eligibility requirement prescribed by Article IX, Section 4 of the Lubbock City Charter. *Id.* Respondent's sole contention is that the six-month durational residency requirement of Texas Election Code Section 141.001(a)(5) applies to the office of Lubbock City Council, District 4, notwithstanding the Lubbock City Charter's express prescription to the contrary.[1] That contention is wrong.

As demonstrated in the Petition and reinforced below, Respondent's arguments rest on a misreading of Section 141.003(a)'s scope, a conflation of supposed charter silence on duration with the absence of a "different" requirement,

[1] Respondent states, without evidence, that "The longstanding position of the City of Lubbock requiring the 6-month residency requirement is public knowledge." Resp. at 6-7. The opposite is true. The City's longstanding position was, until recently, that residency is only required at the time of filing. Respondent's immediate predecessor as city secretary, Becky Garza, who served for 26 years prior to her retirement on February 28, 2023, stated in 2012 that District 4 candidate Dwight Fullingim "would just have to be a resident of that applicable district … at the time of filing." https://www.kcbd.com/story/17259458/district-4-candidate-explains-paperwork-error/ ; https://ci.lubbock.tx.us/news/1672756007-lubbock-city-council-announces-retirement-of-city-secretary-becky-garza. Indeed, the city website Respondent cited in her brief setting out the requirements to run for office, until December 9, 2023, stated only the City Charter's requirement that a candidate had to be a resident at the time of filing. https://web.archive.org/web/20230609023136/https://ci.lubbock.tx.us/departments/city-secretary/elections/2021-street-bond-election A search of archived copies of this page show it was changed on this date to add the reference to Section 141.001's six month rule, leaving the City Charter's requirement in place as well. https://web.archive.org/web/20231209061045/https://ci.lubbock.tx.us/departments/city-secretary/elections/2021-street-bond-election The City's "longstanding position" is anything but, dating to at the earliest the run-up to the 2024 election for the current serving members of Council.

and a *reductio ad absurdum* that, upon examination, refutes Respondent's own position rather than Relator's.

ARGUMENT

I. SECTION 141.003(A)'S GRANT OF RESIDENCY MODIFICATION AUTHORITY IS NOT LIMITED TO "STATE OR CITY" RESIDENCY.

Respondent's lead argument is that the ceiling clause of Section 141.003(a), Election Code—which caps charter-prescribed "residence in the state or city" at twelve months—defines the outer boundary of charter authority, such that a home-rule city received "no delegation at all over district residency." Resp. at 10–11. This argument confuses a limitation on what a charter may *impose* with a limitation on what a charter may *address*.

The operative grant of authority in Section 141.003(a) is its first clause: "*Different age and residence requirements from those prescribed by Section 141.001 may be prescribed by a home-rule city charter...*" TEX. ELEC. CODE § 141.003(a) (emphasis added). The phrase "residence requirements … prescribed by Section 141.001" is unqualified. Section 141.001 prescribes several residence requirements, including the six-month district residency requirement of subsection (a)(5). The grant of charter-modification authority thus encompasses *all* of them.

The ceiling clause that follows—"a minimum length of residence in the state or city may not be more than 12 months"—does not narrow the grant. It constrains the *maximum* a charter may affirmatively demand for state or city residency. The Legislature had no occasion to set a ceiling on district residency duration because the city-residency ceiling clause itself serves as a ceiling clause for district residency. One cannot be a resident of the district without being a resident of the city. The absence of a separate ceiling for district residency reflects the Legislature's judgment that the existing ceiling adequately bounds charter authority, not that district residency was placed beyond a charter's reach.

Respondent's reading produces its own anomaly. Under Respondent's construction, a home-rule charter could prescribe a *twelve-month* city residency requirement under Section 141.003(a)—doubling the statutory default—yet could not prescribe *any* district residency requirement, even one identical to or shorter than the statutory default. That is, a charter could make it harder to run for a city-wide office but would be powerless to address the qualifications for the very district seats the charter creates. No rational legislature would design such a scheme, and this Court should not attribute that design to the Texas Legislature. *See* TEX. GOV'T CODE § 311.021(3) (courts presume legislature intended a just and reasonable result).

II. THE LUBBOCK CITY CHARTER AFFIRMATIVELY PRESCRIBES A "DIFFERENT" RESIDENCY REQUIREMENT.

Respondent next argues that even if Section 141.003(a) authorizes charter modification of district residency, the Lubbock City Charter has not exercised that authority because it "prescribes no durational period at all." Resp. at 12. This argument treats "different" as synonymous with "longer" or "more detailed." It is not.

Section 141.003(a) permits "different … residence requirements." The word "different" is directionally neutral: a charter requirement may be shorter than, longer than, or structurally distinct from the Section 141.001 default. *See* Petition at 6. The Lubbock City Charter, Article IX, Section 4, requires that candidates "shall be bona fide residents within the City and within the applicable District at the time of filing for office." That is a residency requirement. It is structurally and substantively different from Section 141.001(a)(5)'s requirement of six months' continuous residence in the territory preceding the filing deadline. The Charter establishes a point-in-time test of bona fide residency; the statute establishes a durational test. Those are different requirements, and the Charter's requirement is the one that governs under Section 141.003(a).

Respondent's insistence that the Charter's supposed silence on duration means Section 141.001(a)(5) "fills the gap" (Resp. at 13) inverts the statutory

framework. Indeed, Respondent's argument would render the Charter language surplusage; the Charter need not require a candidate to be resident at the time of filing if he had to be a resident for six months *prior* to the time of filing. *In re Tex. Educ. Agency*, 619 S.W.3d 679, 687-88 (Tex. 2021) (orig. proceeding) (Courts must "endeavor to afford meaning to all of a statute's language so none is rendered surplusage."). Section 141.003(a) does not provide that state defaults fill gaps in charter provisions. It provides that charters may prescribe "different" requirements. Where a charter prescribes a complete residency standard—bona fide residency at the time of filing—there is no "gap" to fill. The Charter addresses the same subject (candidate residency qualifications) and resolves it differently (point-in-time rather than durational).

Respondent points to other Texas cities that have expressly specified a durational period in their charters. Resp. at 13–14. But this comparison undermines Respondent's position, not Relator's. Those cities exercised their Section 141.003(a) authority one way; Lubbock exercised it another. The variety of approaches confirms that Section 141.003(a) affords charters broad discretion—precisely the discretion Relator's reading gives effect to. If anything, the fact that Alpine and Mathis also prescribe residency requirements without specifying a durational floor (Resp. at 14–15) shows that the voters of Lubbock are not alone in exercising their charter authority in this manner.

III. RESPONDENT'S *REDUCTIO AD ABSURDUM* FAILS.

Respondent argues that if the Charter's "at the time of filing" language displaces the six-month district residency requirement, it must equally eliminate the state residency requirement, because the Charter is "equally silent on state residency duration." Resp. at 16–17. This argument contains a factual error that is fatal to its logic.

The Charter is *not* silent on state residency. Article IX, Section 4 requires that each Councilmember "shall be a resident citizen of the City of Lubbock and have the qualifications of electors therein." CITY OF LUBBOCK, TX CHARTER, ART. IX, § 4. To be a "resident citizen of the City of Lubbock" one must, by definition, be a resident of Texas. And to "have the qualifications of electors" in Lubbock, one must satisfy the state's voter qualification requirements, which themselves include state residency. TEX. CONST. ART. VI, §2 ("Every person subject to none of the disqualifications provided by … law … who is a citizen of the United States *and who is a resident of this state* shall be deemed a qualified voter.") (emphasis added); and § 3 ("All qualified voters of the State, as herein described, who reside within the limits of any city or corporate town, shall have the right to vote for Mayor and all other elective officers."). The Charter thus independently requires state residency—

not by specifying a durational floor, but by requiring elector qualification, which incorporates the Texas Constitution's own residency requirement.

More fundamentally, the *reductio* proves too much against Respondent. Under Respondent's theory, every home-rule city whose charter requires residency "at the time of filing" without specifying a durational floor must be treated as though Section 141.001(a)(5) governs—regardless of the charter's language. That reading nullifies Section 141.003(a)'s express grant of charter-modification authority for any city whose charter speaks in point-in-time rather than durational terms. The Legislature would not have enacted Section 141.003(a) merely to authorize charters that parrot the state default. Courts must presume the entire statute is intended to be effective. TEX. GOV'T CODE § 311.021(2); *Tex. Edu. Agency,* 619 S.W.3d at 687-88. Respondent is asking this Court to violate the fundamental principle of never rewriting a statute "under the guise of interpreting it." *Colo. Cty. v. Staff*, 510 S.W.3d 435, 444 (Tex. 2017), *citing In re Ford Motor Co.*, 442 S.W.3d 265, 284 (Tex. 2014).

IV. SECTION 26.041, LOC. GOV'T. CODE AND SECTION 141.001(B), ELEC. CODE INDEPENDENTLY SUPPORT RELATOR'S POSITION.

Respondent contends that Texas Local Government Code Section 26.041 is merely an "enabling statute" that "does not itself prescribe any specific

qualification," and therefore cannot trigger the supersession rule of Section 141.001(b), Election Code. Resp. at 19. This argument ignores the plain text of Section 141.001(b).

Section 141.001(b) provides: "A statute outside this code supersedes Subsection (a) to the extent of any conflict." TEX. ELEC. CODE § 141.001(b). Section 26.041 *is* a statute outside the Election Code. It provides that the governing body of a home-rule municipality may, by charter, "prescribe the qualifications, duties, and tenure of office for the offices." TEX. LOC. GOV'T CODE § 26.041(3). When the voters of the City of Lubbock exercised that authority through Article IX, Section 4 of its Charter, the Charter's residency qualification became a qualification prescribed "under" Section 26.041, Loc. Gov't Code—that is, under a statute outside the Election Code. To the extent that qualification conflicts with Section 141.001(a)(5), Election Code, § 141.001(b) resolves the conflict in the Charter's favor.

Respondent also argues that "no conflict exists" because a candidate can comply with both the Charter's at-filing requirement and Section 141.001(a)(5)'s six-month requirement simultaneously. Resp. at 19–20. But the definition of conflict under Section 1.003 of the Election Code asks whether the two provisions are "irreconcilable" when "applied to the same subject or set of circumstances." TEX. ELEC. CODE § 1.003(b). Applied to Relator—a candidate with two months' district

residency who satisfies the Charter's requirement but not Section 141.001(a)(5)'s—the two provisions produce irreconcilable results: eligible under one, ineligible under the other. That is the very definition of a conflict. *City of Pearsall v. Tobias*, 533 S.W.3d 516, 525 (Tex. App.—San Antonio 2017, pet. denied), does not hold otherwise; it merely states the preference for harmonization *where possible*. Where, as here, harmonization is impossible on the facts, the conflict must be resolved—and § 141.001(b) resolves it.

V. *BROWN V. PATTERSON* IS EASILY DISTINGUISHED.

Respondent relies heavily on *Brown v. Patterson*, 609 S.W.2d 287 (Tex. Civ. App.—Dallas 1980, no writ), for the proposition that the six-month residency requirement represents "longstanding policy" that should not be deemed displaced absent "express and mandatory language." Resp. at 15–16. *Brown* is distinguishable as it concerned implied repeal or displacement in a very different statutory setting. In *Brown*, a school district transitioned from at-large to single-member districts under a *legislative amendment* that added a new residency requirement ("at the time of filing") to an existing statute. The court found no legislative intent to *repeal* the pre-existing six-month durational requirement by implication. *Id.* at 290–91. That holding rests on the canon that repeals by implication are disfavored.

This case does not involve repeal by implication. Here, the Legislature *expressly* enacted § 141.003(a) to authorize home-rule charters to prescribe "different" residency requirements. The Lubbock City Charter's residency provision is not a silent amendment to the Election Code; it is an affirmative exercise of expressly delegated authority. When a charter prescribes a different requirement under § 141.003(a), the default yields *by the statute's own terms*—not by implication. *Brown*'s concern about implied repeal is therefore inapplicable.

Respondent also cites the 1983 *Jones* Final Judgment's "at the time of filing" language as the source of the Charter's residency provision, arguing it was merely a "transcription of a federal remedial decree" not intended to displace state law. Resp. at 8–9. But regardless of its historical origin, the provision was adopted into the Lubbock City Charter through the democratic process of charter adoption by Lubbock's voters. It is now a charter provision, operative under § 141.003(a), and must be given effect as such. The provenance of the language does not diminish its legal force.

VI. STRICT CONSTRUCTION FAVORS RELATOR, NOT RESPONDENT.

Both Relator and Respondent agree that provisions restricting ballot access must be "strictly construed against ineligibility." *In re Morris*, 683 S.W.3d 396, 397

(Tex. 2024); *In re Francis*, 186 S.W.3d 534, 542 (Tex. 2006). Respondent argues that strict construction confirms § 141.001(a)(5) as the "actual governing law." Resp. at 17–18. But that conclusion assumes the very point in dispute: *which* law governs. Strict construction operates on the law *as applied*. When two provisions offer competing answers—one that restricts ballot access (the six-month default) and one that does not (the Charter's point-in-time requirement)—the principle of strict construction against ineligibility resolves that ambiguity against disqualification and in favor of ballot access. Applying this principle, the Charter governs, and Relator's two months' bona fide residency at the time of filing satisfies the applicable legal standard.

Respondent invokes *Francis* for the proposition that strict construction means applying the law "as written." Resp. at 17–18. Relator agrees. The law as written includes § 141.003(a)'s express authorization of charter-prescribed residency requirements. Applying the law as written means giving effect to that authorization—which is precisely what Relator asks this Court to do.

VII. THE CITY SECRETARY APPLIED THE WRONG LEGAL STANDARD, AND *MANDAMUS* IS THE PROPER REMEDY.

Respondent frames this case as one in which the City Secretary "correctly performed her ministerial duty." Resp. at 21–22. But the correctness of the City Secretary's performance depends entirely on whether she applied the right legal standard. If Section 141.001(a)(5) does not govern the office of Lubbock City Council, District 4—and it does not—then the City Secretary applied the wrong law, and her declaration of ineligibility was a mistake of law.

A filing authority's ministerial duty is to determine whether an application "complies with constitutional and statutory requirements." *In re Miller*, 641 S.W.3d 924, 926 (Tex. App.—Fort Worth 2022, orig. proceeding). A filing authority, like a court, has no discretion to choose which legal standard to apply; she must apply the correct one. *In re Lee,* 411 S.W.3d 445, 463 (Tex. 2013); *citing Walker v. Packer,* 827 S.W.2d 833, 839 (Tex. 1992) (orig. proceeding). Here, the correct standard is the Lubbock City Charter's point-in-time bona fide residency requirement, not the inapplicable six-month default of § 141.001(a)(5).

CONCLUSION

Relator has satisfied every element for *mandamus* relief. The City Secretary has a legal duty to accept an application that satisfies the governing legal requirements. Relator demanded performance. Respondent refused. *In re Jones*, 978 S.W.2d 648, 651 (Tex. App.—Amarillo 1998, orig. proceeding); *In re Cullar*, 320 S.W.3d 560, 564 (Tex. App.—Dallas 2010, orig. proceeding). Relator has no other adequate remedy at law given the time constraints of the upcoming election. *In re Williams*, 470 S.W.3d 819, 823 (Tex. 2015). Mandamus should issue.

Respectfully submitted,

Eric Opiela PLLC
9415 Old Lampasas Trail
Austin, Texas 78750
Phone:512.791.6336

By: _____
Eric C. Opiela
State Bar No. 24039095
eopiela@ericopiela.com

Attorney for Relator,
Gary Boren

CERTIFICATION OF WORD COUNT COMPLIANCE

I certify that this document complies with Rule of Appellate Procedure 9.4. Excluding the portions listed in Rule 9.4(i)(1), and according to the word count of the computer program used, this document contains 2,665 words.

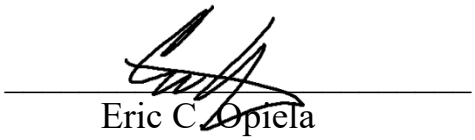
/s/ Eric Opiela
Eric Opiela

CERTIFICATE OF SERVICE

By my signature above, I hereby certify that a true and correct copy of this document was served as required Texas Rule of Appellate Procedure 9.5 to the parties to the proceeding, via-efiling on this the 14th day of April, 2026.

William M. McKamie
Maria K. Garcia
TAYLOR, OLSON, ADKINS, SRALLA & ELAM, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107
(817) 332-2580
mmckamie@toase.com
mkgarcia@toase.com

Matthew L. Wade
City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457
(806) 775-2222
mwade@mylubbock.us



Eric C. Opiela