No. 07-26-00168-CV

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

IN RE GARY BOREN,
Relator

RESPONSE OF RESPONDENT COURTNEY PAZ, CITY SECRETARY OF THE CITY OF LUBBOCK, TO EMERGENCY PETITION FOR WRIT OF MANDAMUS

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TO THE HONORABLE COURT OF APPEALS:

Respondent Courtney Paz, City Secretary of the City of Lubbock, Texas, files this Response to Relator's Emergency Petition for Writ of Mandamus and respectfully shows the Court that the petition should be denied.

ISSUE PRESENTED

Whether a home-rule city charter requiring residency at the time of filing for elected office, but which is silent on durational district residency, displaces the six-month residency requirement of Texas Election Code § 141.001(a)(5).

STATEMENT OF THE CASE

This is a ballot access mandamus proceeding under Section 273.061 of the Texas Election Code. On March 26, 2026, Relator Gary Boren applied for a place on the June 2026 Lubbock City Council District 4 Special Election ballot. On his

sworn application, Relator stated that he had resided in the territory from which District 4 is elected for two months. MR 1. On March 31, 2026, the City Secretary declared him ineligible under Texas Election Code § 141.001(a)(5), which requires continuous residence in the territory from which the office is elected for six months immediately preceding the filing deadline. MR 2. On April 7, 2026, Relator submitted a corrected application that did not change the controlling fact: by his own sworn statement, his District 4 residency stood at two months. MR 6.

The longstanding position of the City of Lubbock requiring the 6-month residency requirement is public knowledge. The City Secretary for the City of Lubbock has published the requirements for an individual to be eligible for public office and specifically references the 6-month residency requirement as stated in section 141.001 of the Texas Election Code. *See* https://ci.lubbock.tx.us/departments/city-secretary/elections/2021-street-bond-election. Further, the City Secretary provides a Candidate Packet for the June 2026 Special Election to those interested in being placed on the ballot. That Candidate Packet includes the language from § 141.001 under the tab labeled "Candidate Eligibility Requirements Texas Election Code." Therefore, it is undeniable that the City of Lubbock has a longstanding tradition of requiring the six-month district

residency requirement and that the Relator himself knew, or should have known, of the requirement prior to filing his application. MR at 3.

The facts are undisputed because Relator swore to them himself. The sole issue is one of law: whether § 141.001(a)(5)'s six-month district residency requirement governs the office of Lubbock City Council, District 4, or whether the Lubbock City Charter has displaced it via silence. It has not. The City Secretary applied the correct law and performed the ministerial duty Section 145.003 assigns to her.

The District from which Relator seeks election was created by federal court order. In *Jones v. City of Lubbock*, 640 F.2d 777 (5th Cir. 1981), and *Jones v. City of Lubbock*, 682 F.2d 504 (5th Cir. 1982), the Fifth Circuit twice considered litigation challenging the City of Lubbock's at-large city council election system under Section 2 of the Voting Rights Act and the Fifteenth Amendment. On remand, Chief Judge Halbert O. Woodward of the United States District Court for the Northern District of Texas found a violation and entered a Final Judgment on March 4, 1983, restructuring the Lubbock City Council into six single-member districts with a Mayor elected at large. *Rev. Jones v. City of Lubbock*, No. CA-5-76-34 (N.D.

Tex. Mar. 4, 1983) (Woodward, C.J.).[1] District 4, the office Relator seeks, is one of the six districts created by that judgment.

Paragraph 1 of the Final Judgment provided that, to be eligible for election from any district, "the candidate must be a bona fide resident within such district at the time of filing for office and, if elected, must continue to reside therein during the term of his office." *Id.* The Lubbock City Charter, Article IX, Section 4, adopts that formulation almost verbatim, modifying it only to add concurrent City residency. The "at the time of filing" language on which Relator now relies is therefore not a considered municipal displacement of state durational law. It is a transcription of a federal remedial decree addressed solely to the geographic *bona fides* of district candidates. The 1983 Final Judgment is silent on duration. It neither set a durational floor nor purported to displace Section 141.001(a)(5).

In fact, the City of Lubbock has been applying a six month residency requirement in determining eligibility for a city council position before the Final Judgment was issued in *Jones.* It is important for this Court to know that home rule cities were not granted the authority to prescribe "different" state-or-city residency requirements until 1975 but that the State of Texas has required residency requirements long before the *Jones* decision. *See* Acts 1975, 64th Leg., p. 2080, ch.

682, § 1; *see also* Acts 1975, 64th Leg., p. 2080, ch. 682, § 1; Acts 1967, 60th Leg., p. 1861, ch. 723, § 4; Acts 1963, 58th Leg., p. 1017, ch. 424, § 4; Acts 1951, 52nd Leg., p. 1017, ch. 424, § 5; Vernon's Ann.Civ.St. art. 2927; Acts 1947, 50th Leg., p. 778, ch. 386, § 1; Rev.Civ.St.1911, art. 3082; Acts 1919, 36th Leg., p. 17; Acts 1895, 24th Leg., p.81. G.L. vol. 10, p.811.

ARGUMENT

1. Section 141.001(a)(5) Governs the Office of Lubbock City Council, District 4, and the Lubbock City Charter Does Not Displace It.

Relator's petition stands or falls on a single proposition: that the Lubbock City Charter's requirement of bona fide residency "at the time of filing for office" displaces the six-month district residency requirement of Texas Election Code § 141.001(a)(5). It does not. The text of

§ 141.003(a) does not authorize the displacement Relator asserts; the Charter does not affirmatively prescribe any "different" durational requirement; and the only construction Relator offers proves far too much.

a. Section 141.003(a)'s charter-modification authority is co-extensive with its ceiling, and the ceiling reaches only "state or city" residency.

Section 141.003(a) provides:

> Different age and residence requirements from those prescribed by Section 141.001 may be prescribed by a home-rule city charter, but a minimum age may not be more than 21 years and

> a minimum length of residence in the **state or city** may not be more than 12 months immediately preceding election day.

Tex. Elec. Code § 141.003(a) (emphasis added). Relator quotes this section but glides past its most important words. The Legislature's ceiling clause — the express limit on charter modification authority — reaches only "residence in the state or city." It says nothing about residence in a district or territory.

That omission is dispositive, and it is not accidental. Section 141.001(a)(5) itself draws the very distinction the ceiling clause omits: it requires continuous residence "in the territory from which the office is elected" for six months immediately preceding the filing deadline. The "territory from which the office is elected" is District 4, a sub-municipal geographic unit, not the City of Lubbock at large. The Legislature plainly knows the difference between "state or city" residency on the one hand and "territory" or district residency on the other; it used the distinct terms in adjacent statutory provisions because they address distinct requirements. *See. i.e.*, Tex. Elec. Code Section141.031(a)(4)(J) (ballot application must include candidate's length of continuous residence in the state and *in the territory* from which the office sought).

Relator will respond that the omission cuts the other way — that if "territory" is missing from the ceiling, charters enjoy unlimited authority over district residency rather than no authority. The argument inverts the structure of § 141.003(a). The grant of charter-modification authority and the ceiling that bounds it are co-extensive: the Legislature delegated exactly what it cabined, and no more. A charter may prescribe "different" state-or-city residency requirements within the twelve-month ceiling. It received no delegation at all over district residency, which therefore remains governed by the default rule of § 141.001(a)(5). Any contrary reading would mean the Legislature granted charters greater authority over the residency requirements it left unbounded than over those it expressly bounded. That result is an absurd inversion of normal drafting practice. Courts presume the entire statute is intended to be effective and that every word does work. Tex. Gov't Code § 311.021(2). The Legislature's deliberate use of "state or city" in the ceiling, combined with its deliberate use of "territory from which the office is elected" in § 141.001(a)(5), forecloses Relator's reading.

b. The Lubbock City Charter does not affirmatively prescribe a "different" durational residency requirement.

Even if § 141.003(a) authorized charter modification of the district residency requirement (and it does not) Relator would still lose, because the Lubbock City Charter has not exercised any such authority. Section 141.003(a) requires that a

charter affirmatively "prescribe" a requirement "different" from § 141.001's defaults. Article IX, Section 4 of the Lubbock City Charter prescribes no durational period at all.

The Charter requires candidates to be bona fide residents within the City and within the applicable District "at the time of filing for office." That provision identifies the moment at which residency is assessed. It establishes a point-in-time test. It is silent as to how long the candidate must have maintained that residency before filing. The verb "prescribe" demands an affirmative act — the establishment of a definite, stated standard. Omitting a durational requirement is not the same as prescribing a shorter one. Where the Charter is silent on duration, the default requirement of § 141.001(a)(5) clearly fills the gap. Courts construe statutes to give effect to every provision, including default rules that operate absent a contrary local enactment. Tex. Gov't Code § 311.021(2).

The uniformity of charter practice across Texas reinforces this reading. Major Texas home-rule cities that have chosen to address district residency duration have done so by prescribing a specific period in express, quantified terms; Lubbock's silence stands as the outlier rather than as a tacit displacement of state law. *See, i.e.,* Dallas, Tex., City Charter Chapter IV, Section 6 (requiring six month residency

prior to the date of the election); Austin, Tex., City Charter Art. II, Section 2 (requiring a candidate to have resided in the state for twelve months and for six months preceding the filing deadline in the council district for which office is sought); New Braunfels, Tex., City Charter Article III, Section 3.01 (requiring a six month district residency before filing for office); Houston, Tex., City Charter Article V, Section 4 (requiring an applicant to have resided within the City or territory, depending on the elected position sought, for 12 months immediately preceding election day); Plano, Tex., City Charter Article III, Section 3.02 (requiring a 12 month residency prior to election); *but see* Alpine, Tex., City Charter Article III, Section 3.02 (requiring each member of the City Council and the Mayor to "reside" within the corporate limits of the City if a candidate for Mayor or within the district if a candidate for Councilmember, without prescribing a specific timeframe); Mathis, Tex., City Charter Article II, Section 1 (any qualified person who is a resident of the city shall be eligible to apply for office; no duration is provided).

The consequences of Relator's interpretation would extend well beyond this case. As illustrated above, City charters across Texas vary in how they address residency requirements, and some, like Lubbock, Alpine, and Mathis do not specify a durational requirement for residency. Treating such silence as displacement would

impact a number of municipalities and create inconsistent eligibility standards across the state.

The Charter's silence on duration is not the silence of inadvertent drafting. It is the silence of the federal remedial decree from which the Charter's residency language is taken. The court that created District 4 addressed the *kind* of relationship a candidate must have to the district (bona fide residency) and the *moment* at which that relationship is measured (at filing). It said nothing about *duration*. The City, in adopting the *Jones* formulation into Article IX, Section 4 of its Charter, said nothing about duration either. Neither the federal court nor the City has ever spoken to how long that residency must have existed before filing. Section 141.001(a)(5) supplies the answer the Charter and the *Jones* judgment leave open. That is precisely what Section 141.003(a) contemplates: state defaults govern unless a charter affirmatively prescribes something different, and on the question of duration, the Lubbock City Charter has prescribed nothing.

Home rule municipalities in Texas derive their authority to adopt charters from Tex. Const. Art. XI, Section 5, which permits the adoption of local charters so long as they are not inconsistent with the Texas Constitution or state laws. Accordingly, the Lubbock City Charter should be read in harmony with the

applicable state statutes allowing state law supplementation rather than conflict with or override them. Here, the Lubbock City Charter does not expressly displace the Texas Elections Code Section 141.001(a)(5) and it should therefore be construed consistently with that provision.

This is consistent with longstanding residency requirements in Texas. "…[F]or almost a century the fixed public policy of this state, as well as its established political tradition has been that a candidate for public office must have been a resident of the particular district or precinct from which he is elected for at least six months." *Brown v. Patterson*, 609 S.W.2d 287, 290 (Tex. Civ. App. – Dallas 1980, no writ).

This rationale, in interpreting the residency requirement, was discussed in *Brown, supra*. In *Brown*, the case pertained, similarly, to a separate and subsequently enacted provision where a school district was transitioning from an "at large" electoral system to single-member districts. The statute in *Brown*, just as the court pronouncement in *Jones,* which was subsequently enacted verbatim in the City of Lubbock's Charter, did not alter the residency duration. The court in *Brown* found this did not change the six-month residency requirement holding:

"…[T]here is no indication in the amendment of any intent to change the previous requirement of six months' residence within each trustee district, as previously applicable…Such a departure from the long-established policy and political tradition of the state should not be attributed to the legislature in the absence of express and mandatory language." *Brown*, 609 S.W.2d at 290-91.

This Court should find likewise. There is no indication in the Court's pronouncement in *Jones* to change the long-standing six-month residency requirement. The court's decision in *Jones* pertained to voting rights and transitioning from the City's at large system to single member districts. There is no indication, and certainly no express and mandatory language, indicating that it intended to supplant the state's six-month residency requirement for city council districts.

c. Relator's construction proves too much: it would equally eliminate the state residency requirement.

The *reductio ad absurdum* of Relator's argument exposes its error. The Lubbock City Charter requires that candidates be "resident citizen[s] of the City of Lubbock" and bona fide residents within the City and District "at the time of filing." It prescribes no durational floor for state residency, just as it prescribes none for district residency. Under Relator's construction — that an "at the time of filing"

provision silently displaces § 141.001(a)(5)'s six-month district residency requirement — the identical logic simultaneously eliminates § 141.001(a)(5)'s twelve-month state residency requirement. A person who had lived in Texas for a single day before the filing deadline would be eligible for Lubbock City Council on Relator's theory.

There exists no principled basis for distinguishing that result under Relator's argument. The Charter is equally silent on state residency duration as it is on district residency duration. If silence displaces one durational floor, it displaces both. Because Relator's construction requires an outcome no one would argue the Legislature intended, resulting in the wholesale elimination of all state residency durational requirements for every home-rule city in Texas whose charter uses "at the time of filing" language. That construction must be rejected. Courts will not adopt a statutory reading that produces absurd results. Tex. Gov't Code § 311.021.

Relator's strict-construction authorities do not save him. *In re Morris*, 683 S.W.3d 396, 397 (Tex. 2024) (orig. proceeding), and *In re Francis*, 186 S.W.3d 534, 542 (Tex. 2006) (orig. proceeding), require that provisions restricting access to the ballot be strictly construed against ineligibility. Strict construction means applying the actual governing law *as written*; it does not authorize courts to bend the actual

governing law toward a candidate's preferred result. *Francis* itself enforced the statutory requirement at issue rather than excusing non-compliance. Applied here, strict construction confirms Respondent's position: § 141.001(a)(5) is the actual governing law, and it must be applied as the Legislature wrote it.

d. Section 26.041 and Section 141.001(b) do not supersede § 141.001(a)(5) because there is no conflict to supersede.

Relator argues independently that Texas Local Government Code § 26.041(3), which authorizes home-rule cities to prescribe qualifications for their officers, is a "statute outside" the Election Code that supersedes § 141.001(a) under § 141.001(b). The argument fails at its predicate, for two reasons.

First, § 26.041 is an enabling statute. It authorizes the City to act; it does not itself prescribe any specific qualification. The supersession rule of § 141.001(b) is triggered only when an outside statute itself prescribes a substantive rule that conflicts with § 141.001(a). A pure delegation cannot conflict with a default rule; only the exercise of the delegation can. The question therefore returns to whether the Lubbock City Charter, exercising § 26.041 authority, in fact created a conflict with § 141.001(a)(5). It did not.

Second, no conflict exists. A charter provision requiring bona fide residency at the time of filing does not conflict with a state statute imposing a six-month durational floor for that same residency. The two requirements are entirely compatible: a candidate may be required to be a bona fide resident at the time of filing (Charter) and to have continuously maintained district residency for six months before the filing deadline (§ 141.001(a)(5)). Courts do not strain to find conflict where a reasonable construction leaves both provisions in effect. *City of Pearsall v. Tobias*, 533 S.W.3d 516, 525 (Tex. App.—San Antonio 2017, pet. denied). This preference to leave both provisions in effect is bolstered by the Election Code. Specifically, § 1.003 states that "a conflict exists only if the substance of the superseding and any related provisions is irreconcilable with the substance of the referenced provision. If the substance of the superseding provision, together with any related provisions, and the substance of the referenced provision can each be applied to the same subject or set of circumstances, both provisions shall be given effect." Once again, when the requirement for a candidate to be a bona fide resident at the time of filing **and** to have continuously maintained district residency for six months before the filing deadline are not irreconcilable and should both be given effect. Relator meets the first requirement by his own account. He does not meet the second.

2. Boren's Own Sworn Statement Demonstrated Non-Compliance, and the City Secretary's Ministerial Duty Was to Declare Him Ineligible.

Once § 141.001(a)(5) is recognized as the governing law, the rest of this case follows mechanically from Relator's own application. Relator swore under penalty of perjury that he had resided in the territory from which District 4 is elected for two months. MR 1, 6. Section 145.003(f) of the Texas Election Code authorizes the City Secretary to declare a candidate ineligible when the information on the application indicates that the candidate does not meet a qualification for the office. Tex. Elec. Code § 145.003(f). That is precisely what occurred here.

The City Secretary had no fact-finding authority, and no obligation to look beyond the four corners of the application. *In re Jackson*, 14 S.W.3d 843, 848 (Tex. App.—Waco 2000, no pet.); *Garcia v. Carpenter*, 525 S.W.2d 160, 161 (Tex. 1975) (neither the city secretary nor the city council itself has authority to determine facts concerning eligibility). The application disclosed a two-month residency. The statute requires six months. The declaration of ineligibility was not merely permitted; it is required. Relator cannot now seek a writ of mandamus compelling the City Secretary to accept as compliant an application that, on its face and by Relator's own sworn admission, demonstrates non-compliance with the governing law.

3. Mandamus Will Not Issue Because Respondent Has Correctly Performed Her Ministerial Duty.

Mandamus compels the performance of a ministerial duty under the governing law. To obtain mandamus relief, a relator must establish (1) that the respondent has a legal duty to perform a non-discretionary act, (2) that the relator demanded performance, and (3) that the respondent refused to act. *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). The relator must establish a clear legal right to the performance he seeks. *Jones*, 978 S.W.2d at 652.

This Court's own precedent in *Jones* controls the framework. The City Secretary's ministerial duty was to review Relator's application and determine whether it complied with the constitutional and statutory requirements applicable to the office of Lubbock City Council, District 4. She did exactly that. She reviewed Relator's application. She determined that his sworn statement of two-month district residency demonstrated non-compliance with § 141.001(a)(5)'s six-month requirement. She issued the written notice required by Section 145.003(i). That is the complete performance of the ministerial function the Legislature assigned to her.

Mandamus does not lie to compel an official who has correctly applied the governing law to apply a different, incorrect legal standard instead. The duty Relator seeks to enforce arises only if his legal premise is correct. It is not. Section 141.001(a)(5) governs. Relator admitted non-compliance on the face of his own application. The City Secretary acted exactly as the Election Code required. There is no failure of ministerial duty for this Court to correct, and accordingly Relator has not established the clear legal right to relief that mandamus demands.

PRAYER

Respondent Courtney Paz, City Secretary of the City of Lubbock, Texas, respectfully requests that the Court deny Relator's Emergency Petition for Writ of Mandamus in its entirety and grant Respondent all other and further relief to which she may be justly entitled.

Respectfully submitted,

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[1] Not to be confused with *In re Jones*, 978 S.W.2d 648 (Tex. App.—Amarillo 1998, orig. proceeding), the Seventh Court of Appeals' ballot-access mandamus decision cited in Argument 3 of this Response. The two cases share a surname and a Lubbock connection but are unrelated.

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 3642 words.

William M. McKamie

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Response was served on all parties via e-filing in compliance with Texas Rule of Appellate Procedure 9.5 on this the 13th day of April 2026, as follows:

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