

No. \_\_\_\_\_

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**In the Supreme Court Texas**

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*In re* THE STATE OF TEXAS,

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*Relator.*

On Petition for Writ of Mandamus  
to the Fifteenth Court of Appeals, Austin

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**PETITION FOR WRIT OF MANDAMUS**

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“App.” refers to the appendix to this petition. “MR” refers to the mandamus record. “RR” refers to the Reporter’s Record.

## STATEMENT OF THE CASE

*Nature of the underlying proceeding:* The State of Texas brought an ultra-vires claim and a statutory claim under Government Code Section 411.209 against the City of Dallas, the City Manager of Dallas, and the State Fair of Texas seeking to enjoin them from preventing individuals licensed to carry a handgun from entering the State Fair of Texas. The State requested a temporary injunction, which the trial court denied. MR.2. The State then sought emergency temporary relief under Texas Rule of Appellate Procedure 29.3 in the Fifteenth Court of Appeals.

*Respondent:* The Court of Appeals for the Fifteenth Judicial District, Austin.

*Respondents’ challenged actions:* The Court of Appeals denied the State’s motion for emergency relief pending appeal under Texas Rule of Appellate Procedure 29.3. MR.4–5.

## STATEMENT OF JURISDICTION

This Court has jurisdiction under Texas Government Code Section 22.002(a).

## ISSUES PRESENTED

Whether the respondent clearly abused its discretion by failing to grant emergency relief prohibiting the City and the City Manager from excluding handgun-license holders (or stating or implying that they may be excluded) carrying handguns from the state fair during the pendency of the State’s underlying appeal.



## **TO THE HONORABLE SUPREME COURT OF TEXAS:**

The Texas Legislature could hardly have been clearer: “[A] political subdivision of the [S]tate may not take *any* action ... that states *or implies*” that a law-abiding Texan “is prohibited from entering *or remaining* on a premises or other place *owned or leased* by the governmental entity” just because that person is carrying a handgun. Tex. Gov’t Code § 411.209(a) (emphasis added). Nevertheless, the City of Dallas is attempting to do exactly that. The State Fair of Texas, Inc. (“SFOT”) announced that, for the first time, handgun-license holders may not enter the state fair this year if they choose to exercise their statutorily and constitutionally protected right to carry a firearm. Such a rule cannot be enforced against the state fair’s patrons without the City’s assistance, including by allowing the Dallas Police Department (“DPD”) to enforce the State’s criminal trespass laws. *See* Tex. Penal Code §§ 30.06–.07 (making unauthorized entry onto the property of another a form of trespass). Because the City owns the property on which the state fair is held and apparently intends to allow DPD to assist with enforcing SFOT’s no-gun rule, its conduct violates state law.

“As a sovereign entity, the State has an intrinsic right to enforce its own laws,” particularly “in the maintenance and operation of its municipal corporations in accordance with that law.” *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020) (cleaned up) (citations omitted). As a result, the State was entitled as a matter of law to interim relief against the City’s violation of law through its police department—relief that would have then applied to all city employees acting in concert with the City Manager. *See* Tex. R. Civ. P. 683. Even if not directly applicable to SFOT, because

SFOT intends to ask DPD to assist in enforcing its rules, such relief would have substantially ameliorated (if not entirely eliminated) the State's harm.

Nevertheless, the trial court denied relief to the State, thereby forcing thousands of law-abiding Texans to choose: forgo a right guaranteed to them by the Constitution and recognized by statute or be excluded from property admittedly owned by the government. *See* MR.198–99. The Court of Appeals clearly abused its discretion by denying emergency relief from the trial court's order because the City's ultra-vires acts violate state law. MR.202–13. And, absent temporary relief now, an appellate court will almost certainly be unable to review that decision in time for this year's fair, which begins on September 27 and ends on October 20. *See* MR.170.

## **STATEMENT OF FACTS**

### **I. Factual Background**

As this Court well knows, the state fair is held at Fair Park in Dallas, a 277-acre fairground owned by the City and operated by SFOT, MR.61. This year, the state fair will be held from September 27, 2024, to October 20, 2024. MR.170. And, for the first time ever, SFOT's website states that “[t]he State Fair of Texas prohibits fairgoers from carrying all firearms;” that “[p]reviously, our weapons policy allowed licensed concealed carry” but that “[n]ow it does not;” and that the State Fair has purchased a “Weapons Detection System” to screen fair goers for weapons. MR.180.

Between August 8 and August 10, 2024, the Attorney General received 12 complaints from concerned Texans alleging that SFOT intended to exclude handgun-

license holders from the state fair should they exercise their statutory (indeed, constitutional) right to carry a handgun in self-defense. MR.7–23. On August 14, State Representative Dustin Burrows and State Senator Mayes Middleton formally requested an Attorney General opinion “on whether local governments can create gun bans, that would be otherwise prohibited under the law, by simply working through a 501(c)(3) or other private entity.” MR.28–29. The request specifically asked about Section 411.209’s impact on SFOT. MR.28–29.

On August 13, 2024, after investigating the citizen complaints and looking into the opinion request in the light of current law, the Attorney General sent a letter to the City informing it that the exclusion violated Section 411.209. MR.25–26. On August 28, 2024, the City sent a responsive letter to the Attorney General disavowing any participation in SFOT’s decision to exclude handgun-license holders but implicitly endorsing that exclusion as lawful. MR.36–40.

## **II. Procedural Background**

On August 29, 2024, in response to Defendants’ refusal to correct the policy, the State sued the City and the City Manager on the ground that Section 411.209 prohibits the exclusion of handgun-license holders from the state fair. MR.42, 45–47. To avoid any assertions that it had failed to join a necessary party, that suit also named SFOT. MR.42. Asserting an ultra-vires claim and multiple statutory claims, the State sought a temporary injunction to prevent the City and its officials from engaging in further ultra-vires acts. MR.62–74.

The State asserted three relevant claims for relief. *First*, the State generally asserted a statutory claim under Section 411.209 for equitable relief. *See* MR.65–66.

*Second*, the State asserted an ultra-vires claim seeking to enjoin the City Manager from allowing DPD to arrest “license holders who are carrying handguns.” *See* MR.67. *Third*, the State sought to enjoin both the City Manager and the City itself from violating the Texas Constitution by allowing SFOT to post notices described by Penal Code Sections 30.06 and 30.07. MR.70–71.<sup>1</sup> Although the City continued to maintain that it had no control over SFOT’s actions, *see* MR.94, it also still implied that SFOT’s actions were lawful, MR.37, 95.

On September 19, the trial court held a hearing on the State’s request for a temporary injunction. The trial court denied the request in an unreasoned order. MR.2. The State appealed from the denial of the temporary injunction, MR.197–99, and sought an emergency temporary order under Texas Rule of Appellate Procedure 29.3 in the Fifteenth Court of Appeals. The Court of Appeals denied the State’s request for emergency relief in an unreasoned order, MR.4–5, and the State now seeks a writ of mandamus ordering the Court of Appeals to grant emergency relief.

### **ARGUMENT**

Mandamus relief is available where the trial court’s error “constitute[s] a clear abuse of discretion” and the relator lacks “an adequate remedy by appeal.” *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992). “A trial court has no discretion to determine what the law is. Accordingly, a clear failure by the trial court to analyze or apply the law correctly will constitute an abuse of discretion.” *Hollins*, 620 S.W.3d at 405 (cleaned up) (citations omitted). Both elements are met here.

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<sup>1</sup> The State also brought additional claims, but they are not at issue in this petition.

## **I. The Court of Appeals Clearly Abused Its Discretion by Denying Emergency Relief.**

### **A. Defendants' conduct is unlawful.**

Texas law prohibits municipalities like the City of Dallas from taking any action that would even *imply* that an individual licensed to carry a gun under state law may not do so on property the municipality owns.

Dallas, as a home-rule city, typically “possess[es] the full power of self government and look[s] to the Legislature not for grants of power, but only for limitations on their power.” *Dall. Merchant's & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 490 (1993) (citation omitted). Here, the City and SFOT do not seriously suggest that the City may *directly* exclude an individual entitled to carry a handgun from property that it owns. No principle of law allows it to accomplish the same outcome *indirectly* by actions of its lessee taken with the City's support via its police department.

#### **1. The City may not *directly* exclude a handgun-license holder.**

Texas law unequivocally prohibits a political subdivision of the State from taking “any action ... that states or implies that a license holder who is carrying a handgun ... is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity,” with certain exceptions. Tex. Gov't Code § 411.209(a). Courts must interpret statutes according to their contemporaneous plain meaning. *See Bexar Appraisal Dist. v. Johnson*, 691 S.W.3d 844, 847 (Tex. 2024). By its plain text, that statute applies to the circumstances presented here. Cities are political subdivisions of the State. *See Reata Const. Corp. v. City of Dallas*,

197 S.W.3d 371, 374 (Tex. 2006). And the City owns Fair Park even if it has leased the property to SFOT. Because an owner does not relinquish its ownership interest merely by leasing its property to another, *see, e.g.*, Tex. Prop. Code § 201.003(3), the City remains responsible as relevant here for what happens at Fair Park.

**2. The City may not *indirectly* exclude a handgun-license holder by enforcing trespass laws.**

True, a political subdivision may exclude a handgun license-holder under several specific, enumerated exceptions. Tex. Penal Code § 46.03. But the City and SFOT do not argue that those exceptions apply. MR.94–146.<sup>2</sup> Rather, they take the position that SFOT alone has made the decision to exclude licensed gun-holders, and that the City has nothing to do with it. MR.94–146. Specifically, in response to the Attorney General’s letter, the City insisted “SFOT occupies and controls the Fair Park grounds and decides who is admitted into or prohibited from entering Fair Park” and that “during the Fair Operations Period, SFOT – not the City – controls who is allowed entry into Fair Park and what they can bring with them.” MR.37. This argument fails for at least three reasons.

a. To start, the Government Code prohibits the City not just from forbidding the carrying of firearms on its property but from taking “any action ... that states or *implies* that a license holder who is carrying a handgun ... is prohibited from entering

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<sup>2</sup> Given that the “State of Fair of Texas” is hardly obscure, it is “fair to suppose” that the Legislature “considered the unnamed possibility and meant to say no to it,” *In re J.S.*, 670 S.W.3d 591, 602 n.9 (Tex. 2023) (cleaned up), particularly as one exception is for “amusement park[s].” Tex. Penal Code § 46.03(a)(8). SFOT, with its 24-day duration, simply is not open long enough to qualify for that exception. *Compare id.*, with MR.170.

or remaining on a premises or other place owned ... by the governmental entity.” Tex. Gov’t Code § 411.209(a) (emphasis added). The City’s letter “implies” that a license holder may not carry a firearm at the state fair simply by insisting that “SFOT occupies and controls the Fair Park grounds and decides who is admitted into or prohibited from entering Fair Park” and that “during the Fair Operations Period, SFOT – not the City – controls who is allowed entry into Fair Park and what they can bring with them.” MR.37. The City has continued endorsing this exclusion as lawful in this suit, alleging that “[a]s a private actor on property that it exclusively controls during the lease period, Texas law permits SFOT (like any other private actor) to decide whether it wishes to allow individuals carrying firearms onto the leased premises and the State Fair.” MR.95. Although the City insists that it “takes no position on” the no-gun rule,<sup>3</sup> the City has never disclaimed its statements supporting the lawfulness of the no-gun rule and its implication that handgun-license holders will not be allowed to carry at the state fair. *See, e.g.*, MR.94–112.

The City also incorrectly relies, MR.106, 259–61, on the Fifth Circuit’s holding in *Rundus v. City of Dallas*, 634 F.3d 309 (5th Cir. 2011), interpreting the extent of municipal liability under 42 U.S.C. § 1983. There, the Court held that the City was not responsible for SFOT’s decision, in which the City was uninvolved, to prohibit a person from distributing Bible tracts at the state fair. *Id.* at 312, 315. But that case

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<sup>3</sup> Ironically, this assertion immediately followed another implication by the City that SFOT may lawfully prohibit firearms. *See* MR.232 (“SFOT exercised its right as an independent party lessee hosting a private event to choose whether to allow attendees to bring guns to that event.”).

is inapposite. “Under *Monell* ... and its progeny, a claim of ‘municipal liability under Section 1983 requires proof of three elements: a policymaker; an official policy; and a violation of constitutional rights whose ‘moving force’ is the policy or custom.’” *Doe v. Edgewood Indep. Sch. Dist.*, 964 F.3d 351, 364 (5th Cir. 2020) (citation omitted). Section 411.209 goes much farther than prohibiting the City from adopting an official policy that infringes upon a constitutional right: It prohibits the City from even “implying” that it endorses SFOT’s decision to preclude Texans from exercising their statutory right to carry while on government property.

In defense of its reliance on *Rundus*, the City has equated Section 411.209’s “implied endorsement” prohibition with Section 1983’s “fair attribution” element. MR.260–61. But the State is unaware of any principle that would allow Congress—or, more specifically, a federal court interpreting congressional language—to define the meaning of a *state* statute. Apart from these federalism concerns, it would be particularly odd to treat the Texas Legislature as having implicitly adopted the “fair attribution” element from *Rundus* given that the relevant language in Section 411.209 post-dates the case by eight years. Act of May 10, 2019, 86th Leg. R.S., ch. 784, 2019 Tex. Gen. Laws 2229 (H.B. 1791). If the Legislature had intended to codify the same test, one would have expected it to have spoken in the same terms. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 322–26 (2012) (discussing the prior construction canon). It did not. Instead, it barred implied endorsement, which depends on the City’s conduct, Tex. Gov’t Code § 411.209—not conduct that could be fairly attributed to the City, which depends on SFOT’s conduct, *see Rundus*, 634 F.3d at 312.



**b.** Moreover, apart from its own endorsement of SFOT’s position, the City has never actually disclaimed an intent to assist SFOT in enforcing its unlawful ban. To be sure, SFOT argued yesterday that the role of DPD at the state fair “is to keep peace and enforce the laws and ordinances of the State and City,” and that DPD will “not enforce SFOT’s conduct rules.” MR.299. The record, however, tells a different story. It is undisputed that DPD intends to be present during the fair. MR.456. Although the president of SFOT testified that DPD would only enforce SFOT’s no-gun rule in circumstances when a fairgoer becomes “belligerent” or “disorderly,” he admitted there will be circumstances when DPD will be expected to enforce SFOT’s rules. MR.468–69.<sup>4</sup>

That is, he explained, SFOT intends to “avail itself” of Penal Code Sections 30.06 and 30.07, MR.476, which make it a criminal trespass for a handgun-license holder to carry on prohibited property, Tex. Penal Code §§ 30.06–.07. He explained that if a fairgoer refused to comply such that the problem rose “to the level where an arrest would need to be made due to unruly behavior, and it rose to the level where our security folks could not handle that situation, then, yes, DPD would certainly be involved in an arrest.” MR.470. But that is misleading—and should not be displayed on signs—as Sections 30.06 and 30.07 do not apply when the license holder carries a handgun on property that “is owned or leased by a governmental entity,” with exceptions that do not extend to the state fair. Tex. Penal Code §§ 30.06(e), .07(e).

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<sup>4</sup> SFOT’s president also stated that if the police officers discovered that a fairgoer had a gun, then he would expect them to “alert our safety team and the State Fair.” RR.113.

If anything, that the Legislature created exceptions to Section 30.06 and 30.07 to protect the right of licensed gun owners to carry on government property underscores that the City can *not* hide behind a private lessee's putatively independent decision to ban guns. In sum, SFOT president testified as to several situations in which he would ask DPD to assist in enforcing SFOT's no-gun rule, including actions that DPD cannot take.

The State Fair President also testified that private security personnel would be the first to enforce SFOT's no gun rule, MR.467-71, but that testimony ignores one crucial fact: A private security officer is just that—a private citizen subject to potential criminal or civil liability if he were to interfere physically with a law abiding Texan carrying a firearm.<sup>5</sup> Citizen's arrests in Texas are limited to felonies or “offense[s] against the public peace.” Tex. Code Crim. Pro. Art. 14.01(a). Unauthorized entry onto the property of another with a firearm is a misdemeanor under Texas law. Tex. Penal Code §§ 30.06(d), .07(d). And it is not an “offense against the public peace” because it does not inherently involve “any act or conduct inciting to violence or tending to provoke or excite others to break the peace.” *Miles v. State*, 241 S.W.3d 28, 40 (Tex. Crim. App. 2007). As a result, if a fairgoer were to disregard a private security guard's instruction, only the police could lawfully intervene. *See, e.g.*, Dan B. Dobbs et al., *The Law of Torts* § 92 (2d ed.) (“The traditional common law recognized no privilege of private persons to detain for investigation.”); *accord* Tex. Penal

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<sup>5</sup> *See, e.g., Dillard's, Inc. v. Newman*, 299 S.W.3d 144, 148 (Tex. App. — Amarillo 2008, pet. denied) (examining whether an off-duty police officer could be held liable for tort committed while acting as private security).

Code § 9.03 (making the prevention of trespass on the property of a third party a defense to criminal liability); *id.* § 9.06 (leaving civil remedies unaffected).

Thus, even if the City did not directly participate in the original decision to ban firearms from the fair, it apparently does intend to continue to take “any action ... that states or implies” that a license holder carrying a handgun is prohibited from entering a premises that it “own[s].” Tex. Gov’t Code § 411.209(a). It is irrelevant that DPD would only assist SFOT in enforcing its no-gun rule in certain situations because “any action” means “*any* action.”<sup>6</sup> In other words, SFOT cannot contend that “DPD does not enforce SFOT’s conduct rules,” MR.299, when SFOT does in fact expect DPD to enforce its rules in at least some circumstances.

c. The City’s effort to avoid its obligations depends largely on a now-withdrawn Attorney General opinion stating that, in certain circumstances, a private lessor could lawfully prohibit firearms on premises leased from a political subdivision. Tex. Att’y Gen. Op. No. KP-0108, at 1 (2016). As the State has elsewhere explained, it disputes the City’s reading of that opinion. MR.211-13. Regardless, that opinion is outdated because significant legal changes have occurred since 2016. Indeed, the Legislature amended Section 411.209 itself in 2019 to prohibit municipalities from “tak[ing] any action, including any action ... that states or implies” that a license holder may not carry a firearm on municipal property. *See* Act of May 10, *supra* at

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<sup>6</sup> The State obviously does not contend that DPD could not arrest a fairgoer who engages in violent or disruptive behavior merely because she happens to carry a gun. But if SFOT were to order a peaceable person to leave merely because she is lawfully carrying a gun, and she objects by standing on her rights, that could not itself be a basis for a lawful arrest.

§ 1. In 2021, the Legislature amended Texas’s firearm laws to allow permitless carry. *See* Act of May 24, 2001, 87th Leg. R.S., ch. 809, 2021 Tex. Gen. Laws 1960. The Legislature has also barred a landlord from “prohibit[ing] a tenant or a tenant’s guest from lawfully possessing” a firearm. Texas Prop. Code § 92.026. It has likewise barred the owner of a property subject to an easement from excluding an easement holder on the basis of firearm possession. *Id.* § 5.020. Then, in 2022, the U.S. Supreme Court has since held that the Second Amendment prohibits firearm restrictions absent a historically analogous restriction. *See N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 29–30 (2022).

Applying ordinary statutory rules of construction, these legal developments suggest that even if entirely correct at the time it was issued, KP-0108 likely cannot stand—but, at minimum, requires reconsideration.<sup>7</sup> The whole-text canon directs that an entire statutory scheme, including the “logical relation of its many parts,” should be considered in construing a statute because “[c]ontext is a primary determinant of meaning.” Scalia & Garner, *supra*, at 167. This canon applies across subject-matter codes. *See City of Round Rock v. Rodriguez*, 399 S.W.3d 130, 134–35 (Tex. 2013) (construing the Labor Code together with the Government Code in constructing a Labor-Code provision’s meaning). Under this canon, the Legislature’s recent

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<sup>7</sup> For this reason, among others, the City wrongly suggests that the Attorney General has improperly withdrawn KP-0108 as a result of the State’s request for a temporary injunction. *See* MR.107-09. The complaints that led to the Attorney General to bring this lawsuit also caused two members of the Texas Legislature to submit a request that the Attorney General consider the issue in the light of these recent legal developments and the circumstances of the state fair. *Supra* p.7–8. Withdrawing KP-0108 prevents confusion while he conducted that analysis.

enactments demonstrate that Section 411.209(a) protects the right of individuals to carry firearms on government property by restricting the property rights of municipalities. Although they predate *Bruen*, the Legislature’s recent enactments demonstrate prescience because *Bruen* held that a government must have a historical analogue to restrict firearm possession. *See* 597 U.S. at 29–30. Given that the state fair has itself allowed firearms for 138 years (with the full knowledge of the City), it is far from clear how the City will be able to find such an analogue.

**B. The Attorney General satisfied the jurisdictional prerequisites to suit.**

Nonetheless, the City has argued that the State could not have brought this suit for equitable relief to enforce its own laws. MR.238–47. Specifically, the City alleged that the Attorney General did not comply with the statutory prerequisites for seeking civil penalties under Section 411.209. MR.239–41. The State disputes this claim, MR.64–65, but even if true, the City conflates the question of whether the State has a cause of action—a question often confusingly labeled “statutory standing”—with whether it has an injury sufficient to satisfy the Constitution. *Pike v. Tex. EMC Mgmt., LLC*, 610 S.W.3d 763, 773–74 (Tex. 2020) (citation omitted) (distinguishing the two concepts). Here, regardless of whether it has a statutory claim, the State indisputably has both an *ultra vires* cause of action and the standing to bring it—as this Court has repeatedly held in recent years.

1. Starting with jurisdiction, the Supreme Court has established a three-part test: “(1) an ‘injury in fact’ that is (2) ‘fairly traceable’ to the defendant’s challenged action and (3) redressable by a favorable decision.” *Abbott v. Mex. Am. Legis. Caucus*,

*Tex. House of Representatives*, 647 S.W.3d 681, 690 (Tex. 2022). *First*, the State has suffered a concrete, particularized, and actual or imminent injury, *Heckman v. Williamson County*, 369 S.W.3d 137, 155 (Tex. 2012), because its law is not being properly enforced. *Patel v. Texas Dep’t of Licensing & Regul.*, 469 S.W.3d 69, 77 (Tex. 2015) (citation omitted). This Court has clearly held that the State has a “justiciable interest in its sovereign capacity in the maintenance and operation of its municipal corporations in accordance with law.” *Hollins*, 620 S.W.3d at 410.

*Second*, the State also adequately pleaded that its injuries are fairly traceable to the challenged actions of Defendants. *Heckman*, 369 S.W.3d at 155. Here, the State has sued (among others) the City Manager, who oversees the City’s day-to-day operations, including the actions of DPD. *See Organizational Chart*, Dall. City Hall (June 2024), <https://dallascityhall.com/government/citymanager/Documents/Org-Chart.pdf>. And, as discussed above, DPD apparently will assist the City in enforcing SFOT’s policy prohibiting handgun-license holders from the state fair. *Supra* p.14–15.

*Third*, the State’s requested relief will likely redress the Plaintiffs’ harms. *Heckman*, 369 S.W.3d at 155. Importantly, this element of standing does *not* require proof to a degree of mathematical certainty; substantial likelihood suffices. *Id.* Moreover, the injury need not be entirely redressed to establish a justiciable controversy; partial redressability is enough. *E.g.*, *Uzuegbunam v. Preczewski*, 141 S.Ct. 792, 798–99 (2021); *Larson v. Valente*, 456 U.S. 228, 243 (1982). Here, an order preventing the City from taking further steps to assist SFOT would remedy the damage at least in part.

2. Because “the State has an intrinsic right to ... enforce its own laws,” Defendants’ unlawful actions also give rise to a cause of action on behalf of the State. *Hollins*, 620 S.W.3d at 410. This Court has repeatedly recognized that a violation of the State’s justiciable interest in the enforcement of its laws through “‘*ultra vires* conduct’ by local officials ‘automatically results in harm to the sovereign as a matter of law.’” *In re State*, No. 24-0325, 2024 WL 2983176, at \*4 (Tex. June 14, 2024) (quoting *Hollins*, 620 S.W.3d at 410). “Indeed, the violation of duly enacted state law by local government officials ‘clearly inflicts irreparable harm on the State.’” *Id.* (citation omitted). Accordingly, the trial court—and by extension the Court of Appeals—clearly abused its discretion because the City’s conduct is unlawful, and the Attorney General may sue to enforce state laws.

## **II. The State Has No Adequate Appellate Remedy.**

For similar reasons, the State also meets the second element of the traditional mandamus test “that no adequate appellate remedy exists.” *In re Sherwin-Williams Co.*, 668 S.W.3d 368, 370 (Tex. 2023) (per curiam). “The operative word, ‘adequate,’ has no comprehensive definition; it is simply a proxy for the careful balance of jurisprudential considerations” that “depend[] heavily on the circumstances” of the case. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 136-37 (Tex. 2004) (orig. proceeding). An appellate remedy is inadequate where the party is “in danger of permanently losing substantial rights, such as when the court would not be able to cure the error, the party’s ability to present a viable claim would be vitiated, or the error cannot be made part of the appellate record.” *In re Tex. Collegiate Baseball League, Ltd.*, 367 S.W.3d 462, 469 (Tex. 2012). When the ordinary appellate process cannot afford

timely relief, mandamus is proper. *See In re Woodfill*, 470 S.W.3d 473, 480–81 (Tex. 2015) (per curiam). The State cannot appeal the denial of the State’s request for temporary relief. Given that the state fair begins this week, the ordinary appellate process will not offer an opportunity to prevent the injury to its sovereignty that the State will begin suffering in mere days absent mandamus relief.

**PRAYER**

The Court should grant the petition for a writ of mandamus and order the Court of Appeals to grant the State’s request for emergency relief.

Respectfully submitted.

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Counsel for Relator



## **MANDAMUS CERTIFICATION**

Pursuant to Texas Rule of Appellate Procedure 52.3(j), I certify that I have reviewed this petition and that every factual statement in the petition is supported by competent evidence included in the appendix or record. Pursuant to Rule 52.3(k)(1)(A), I certify that every document contained in the appendix is a true and correct copy.

/s/ Aaron L. Nielson  
AARON L. NIELSON

## **CERTIFICATE OF COMPLIANCE**

Microsoft Word reports that this brief contains 4,452 words, excluding exempted text.

/s/ Aaron L. Nielson  
AARON L. NIELSON

No. \_\_\_\_\_

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**In the Supreme Court Texas**

*In re* THE STATE OF TEXAS,  
*Relator.*

On Petition for Writ of Mandamus  
to the Fifteenth Court of Appeals, Austin

**APPENDIX**

	Tab
1. District Court’s Order Denying State’s Motion for Temporary Injunction ....	MA.1
2. Court of Appeals’ Order Denying State’s Rule 29.3 Motion for Emergency Relief Pending Appeal .....	MA.3
3. Government Code Section 411.209 .....	MA.6
4. Penal Code Section 30.06 .....	MA.9
5. Penal Code Section 30.07.....	MA.14

**TAB A: DISTRICT COURT'S ORDER DENYING  
STATE'S MOTION FOR TEMPORARY INJUNCTION**

STATE OF TEXAS, MAXX JUUSOLA,  
TRACY MARTIN, and ALAN CRIDER,

*Plaintiffs,*

v.

CITY OF DALLAS, KIMBERLY BIZOR  
TOLBERT, in her official capacity as the  
Interim City Manager for the City of  
Dallas, and the STATE FAIR OF  
TEXAS,

*Defendants.*

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

298th JUDICIAL DISTRICT

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**ORDER DENYING PLAINTIFFS' APPLICATION FOR TEMPORARY INJUNCTION**

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Before the Court is Plaintiffs the State of Texas, by and through Ken Paxton, Attorney General of Texas, Maxx Juusola, Tracy Martin, and Alan Crider's ("Plaintiffs") Verified Application for Temporary Injunction, filed August 29, and Motion for Temporary Injunction, filed September 13, 2024 (the "Motions"). Having considered the Motions, all responsive briefing, any arguments of counsel thereon, and the evidence submitted, the Court determines that the Motions and relief requested therein should be **DENIED**.

**IT IS THEREFORE ORDERED** that Plaintiffs' Verified Application for Temporary Injunction and Motion for Temporary Injunction, and all relief requested therein, are denied.

SIGNED this 19 day of September, 2024.

  
\_\_\_\_\_  
HONORABLE EMILY TOBOLOWSKY

**TAB B: COURT OF APPEALS' ORDER DENYING  
STATE'S RULE 29.3 MOTION FOR EMERGENCY  
RELIEF PENDING APPEAL**

**Order filed September 24, 2024**



**In The  
Fifteenth Court of Appeals**

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**NO. 15-24-00103-CV**

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**THE STATE OF TEXAS, Appellant**

**V.**

**THE CITY OF DALLAS, KIMBERLY BIZOR TOLBERT, IN HER  
CAPACITY AS THE INTERIM CITY MANAGER FOR THE CITY  
OF DALLAS, AND THE STATE FAIR OF TEXAS, Appellees**

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**On Appeal from the 298th District Court  
Dallas County, Texas  
Trial Court Cause No. DC-24-14434**

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**ORDER**

Appellant The State of Texas (“State”) filed an Emergency Motion for Relief Pending Appeal with this Court on September 20, 2024, seeking temporary injunctive relief under Texas Rule of Appellate Procedure 29.3.

The Court, having reviewed the motion and the briefing filed by both the State and Defendants, hereby **DENIES** the State’s request for temporary relief and

the State's alternative request for an administrative stay.

PER CURIAM

Before Chief Justice Brister and Justices Field and Farris.

**TAB C: GOVERNMENT CODE SECTION 411.209**



Vernon's Texas Statutes and Codes Annotated  
Government Code (Refs & Annos)  
Title 4. Executive Branch (Refs & Annos)  
Subtitle B. Law Enforcement and Public Protection  
Chapter 411. Department of Public Safety of the State of Texas (Refs & Annos)  
Subchapter H. License to Carry a Handgun

V.T.C.A., Government Code § 411.209

§ 411.209. Wrongful Exclusion of Handgun License Holder

Effective: September 1, 2021

Currentness

(a) Except as provided by Subsection (i), a state agency or a political subdivision of the state may not take any action, including an action consisting of the provision of notice by a communication described by Section 30.06 or 30.07, Penal Code, that states or implies that a license holder who is carrying a handgun under the authority of this subchapter is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless license holders are prohibited from carrying a handgun on the premises or other place by Section 46.03, Penal Code, or other law.

(b) A state agency or a political subdivision of the state that violates Subsection (a) is liable for a civil penalty of:

(1) not less than \$1,000 and not more than \$1,500 for the first violation; and

(2) not less than \$10,000 and not more than \$10,500 for the second or a subsequent violation.

(c) Each day of a continuing violation of Subsection (a) constitutes a separate violation.

(d) A resident of this state or a person licensed to carry a handgun under this subchapter may file a complaint with the attorney general that a state agency or political subdivision is in violation of Subsection (a) if the resident or license holder provides the agency or subdivision a written notice that describes the location and general facts of the violation and the agency or subdivision does not cure the violation before the end of the third business day after the date of receiving the written notice. A complaint filed with the attorney general under this subsection must include evidence of the violation and a copy of the written notice provided to the agency or subdivision.

(e) A civil penalty collected by the attorney general under this section shall be deposited to the credit of the compensation to victims of crime fund established under Subchapter J, Chapter 56B, Code of Criminal Procedure.

(f) Before a suit may be brought against a state agency or a political subdivision of the state for a violation of Subsection (a), the attorney general must investigate the complaint to determine whether legal action is warranted. If legal action is warranted, the attorney general must give the chief administrative officer of the agency or political subdivision charged with the violation a written notice that:

(1) describes the violation;

(2) states the amount of the proposed penalty for the violation; and

(3) gives the agency or political subdivision 15 days from receipt of the notice to cure the violation to avoid the penalty, unless the agency or political subdivision was found liable by a court for previously violating Subsection (a).

(g) If the attorney general determines that legal action is warranted and that the state agency or political subdivision has not cured the violation within the 15-day period provided by Subsection (f)(3), the attorney general or the appropriate county or district attorney may sue to collect the civil penalty provided by Subsection (b). The attorney general may also file a petition for a writ of mandamus or apply for other appropriate equitable relief. A suit or petition under this subsection may be filed in a district court in Travis County or in a county in which the principal office of the state agency or political subdivision is located. The attorney general may recover reasonable expenses incurred in obtaining relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(h) Sovereign immunity to suit is waived and abolished to the extent of liability created by this section.

(i) Subsection (a) does not apply to a written notice provided by a state hospital under Section 552.002, Health and Safety Code.

(j) In this section, "premises" has the meaning assigned by Section 46.03, Penal Code.

#### **Credits**

Added by Acts 2015, 84th Leg., ch. 593 (S.B. 273), § 1, eff. Sept. 1, 2015. Amended by Acts 2017, 85th Leg., ch. 1143 (H.B. 435), §§ 5, 6, eff. Sept. 1, 2017; Acts 2019, 86th Leg., ch. 469 (H.B. 4173), § 2.44, eff. Jan. 1, 2021; Acts 2019, 86th Leg., ch. 784 (H.B. 1791), § 1, eff. Sept. 1, 2019; Acts 2021, 87th Leg., ch. 809 (H.B. 1927), § 11, eff. Sept. 1, 2021.

#### Notes of Decisions (12)

V. T. C. A., Government Code § 411.209, TX GOVT § 411.209

Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

**TAB D: PENAL CODE SECTION 30.06**

Vernon's Texas Statutes and Codes Annotated  
Penal Code (Refs & Annos)  
Title 7. Offenses Against Property (Refs & Annos)  
Chapter 30. Burglary and Criminal Trespass (Refs & Annos)

V.T.C.A., Penal Code § 30.06

§ 30.06. Trespass by License Holder with a Concealed Handgun

Effective: September 1, 2023

Currentness

(a) A license holder commits an offense if the license holder:

(1) carries a concealed handgun under the authority of Subchapter H, Chapter 411, Government Code,<sup>1</sup> on property of another without effective consent; and

(2) received notice that entry on the property by a license holder with a concealed handgun was forbidden.

(b) For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

(c) In this section:

(1) “Entry” has the meaning assigned by Section 30.05(b).

(2) “License holder” has the meaning assigned by Section 46.03.

(3) “Written communication” means:

(A) a card or other document on which is written language identical to the following: “Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun”; or

(B) a sign posted on the property that:

(i) includes the language described by Paragraph (A) in both English and Spanish;

(ii) appears in contrasting colors with block letters at least one inch in height; and

(iii) is displayed in a conspicuous manner clearly visible to the public.

(d) An offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$200, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, the license holder was personally given the notice by oral communication described by Subsection (b) and subsequently failed to depart.

(e) It is an exception to the application of this section that the property on which the license holder carries a handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Section 46.03.

(e-1) It is a defense to prosecution under this section that:

(1) the license holder is:

(A) an owner of an apartment in a condominium regime governed by Chapter 81, Property Code;

(B) an owner of a condominium unit governed by Chapter 82, Property Code;

(C) a tenant or guest of an owner described by Paragraph (A) or (B); or

(D) a guest of a tenant of an owner described by Paragraph (A) or (B); and

(2) the license holder:

(A) carries or stores a handgun in the condominium apartment or unit owner's apartment or unit;

(B) carries a handgun directly en route to or from the condominium apartment or unit owner's apartment or unit;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for residents or guests of the condominium property; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for residents or guests of the condominium property.

(e-2) It is a defense to prosecution under this section that:

(1) the license holder is a tenant of a leased premises governed by Chapter 92, Property Code, or the tenant's guest; and

(2) the license holder:

(A) carries or stores a handgun in the tenant's rental unit;

(B) carries a handgun directly en route to or from the tenant's rental unit;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises.

(e-3) It is a defense to prosecution under this section that:

(1) the license holder is a tenant of a manufactured home lot governed by Chapter 94, Property Code, or the tenant's guest; and

(2) the license holder:

(A) carries or stores a handgun in the tenant's manufactured home;

(B) carries a handgun directly en route to or from the tenant's manufactured home;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises.

(e-4) It is a defense to prosecution under this section that the license holder is a guest of a hotel, as defined by Section 2155.101, Occupations Code, and the license holder:

(1) carries or stores a handgun in the license holder's hotel room;

(2) carries a handgun directly en route to or from the hotel or the license holder's hotel room;

(3) carries a handgun directly en route to or from the license holder's vehicle located on the hotel property, including a vehicle in a parking area provided for hotel guests; or

(4) carries or stores a handgun in the license holder's vehicle located on the hotel property, including a vehicle in a parking area provided for hotel guests.

(f) It is a defense to prosecution under this section that the license holder is volunteer emergency services personnel, as defined by Section 46.01.

(f-1) It is a defense to prosecution under this section that the license holder is a first responder, as defined by Section 46.01, who:

(1) holds an unexpired certificate of completion under Section 411.1883 , Government Code, at the time of engaging in the applicable conduct;

(2) was engaged in the actual discharge of the first responder's duties while carrying the handgun; and

(3) was employed or supervised by a municipality or county to which Chapter 179, Local Government Code, applies.

(g) It is a defense to prosecution under this section that the license holder was personally given notice by oral communication described by Subsection (b) and promptly departed from the property.

#### Credits

Added by Acts 1997, 75th Leg., ch. 1261, § 23, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, § 9.24, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1178, § 2, eff. Sept. 1, 2003; Acts 2015, 84th Leg., ch. 437 (H.B. 910), §§ 41 to 43, eff. Jan. 1, 2016; Acts 2017, 85th Leg., ch. 1143 (H.B. 435), § 8, eff. Sept. 1, 2017; Acts 2019, 86th Leg., ch. 39 (H.B. 302), § 2, eff. Sept. 1, 2019; Acts 2019, 86th Leg., ch. 250 (H.B. 121), § 1, eff. Sept. 1, 2019; Acts 2021, 87th Leg., ch. 809 (H.B. 1927), §§ 18, 19, eff. Sept. 1, 2021; Acts 2021, 87th Leg., ch. 1008 (S.B. 20), § 5, eff. Sept. 1, 2021; Acts 2021, 87th Leg., ch. 1026 (H.B. 1069), § 5, eff. Sept. 1, 2021; Acts 2023, 88th Leg., ch. 768 (H.B. 4595), § 24.002(18), eff. Sept. 1, 2023.

Notes of Decisions (7)

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#### Footnotes

1 V.T.C.A., Government Code § 411.171 et seq.

V. T. C. A., Penal Code § 30.06, TX PENAL § 30.06

Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

**TAB E: PENAL CODE SECTION 30.07**



Vernon's Texas Statutes and Codes Annotated  
Penal Code (Refs & Annos)  
Title 7. Offenses Against Property (Refs & Annos)  
Chapter 30. Burglary and Criminal Trespass (Refs & Annos)

V.T.C.A., Penal Code § 30.07

§ 30.07. Trespass by License Holder with an Openly Carried Handgun

Effective: September 1, 2023  
Currentness

(a) A license holder commits an offense if the license holder:

- (1) openly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, on property of another without effective consent; and
- (2) received notice that entry on the property by a license holder openly carrying a handgun was forbidden.

(b) For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

(c) In this section:

- (1) “Entry” has the meaning assigned by Section 30.05(b).
- (2) “License holder” has the meaning assigned by Section 46.03.
- (3) “Written communication” means:

(A) a card or other document on which is written language identical to the following: “Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly”; or

(B) a sign posted on the property that:

- (i) includes the language described by Paragraph (A) in both English and Spanish;
- (ii) appears in contrasting colors with block letters at least one inch in height; and

(iii) is displayed in a conspicuous manner clearly visible to the public at each entrance to the property.

(d) An offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$200, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, the license holder was personally given the notice by oral communication described by Subsection (b) and subsequently failed to depart.

(e) It is an exception to the application of this section that the property on which the license holder openly carries the handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Section 46.03.

(e-1) It is a defense to prosecution under this section that:

(1) the license holder is:

(A) an owner of an apartment in a condominium regime governed by Chapter 81, Property Code;

(B) an owner of a condominium unit governed by Chapter 82, Property Code;

(C) a tenant or guest of an owner described by Paragraph (A) or (B); or

(D) a guest of a tenant of an owner described by Paragraph (A) or (B); and

(2) the license holder:

(A) carries or stores a handgun in the condominium apartment or unit owner's apartment or unit;

(B) carries a handgun directly en route to or from the condominium apartment or unit owner's apartment or unit;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for residents or guests of the condominium property; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for residents or guests of the condominium property.

(e-2) It is a defense to prosecution under this section that:

(1) the license holder is a tenant of a leased premises governed by Chapter 92, Property Code, or the tenant's guest; and

(2) the license holder:

(A) carries or stores a handgun in the tenant's rental unit;

(B) carries a handgun directly en route to or from the tenant's rental unit;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises.

(e-3) It is a defense to prosecution under this section that:

(1) the license holder is a tenant of a manufactured home lot governed by Chapter 94, Property Code, or the tenant's guest; and

(2) the license holder:

(A) carries or stores a handgun in the tenant's manufactured home;

(B) carries a handgun directly en route to or from the tenant's manufactured home;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises.

(e-4) It is a defense to prosecution under this section that the license holder is a guest of a hotel, as defined by Section 2155.101, Occupations Code, and the license holder:

(1) carries or stores a handgun in the license holder's hotel room;

(2) carries a handgun directly en route to or from the hotel or the license holder's hotel room;

(3) carries a handgun directly en route to or from the license holder's vehicle located on the hotel property, including a vehicle in a parking area provided for hotel guests; or

(4) carries or stores a handgun in the license holder's vehicle located on the hotel property, including a vehicle in a parking area provided for hotel guests.

(f) It is not a defense to prosecution under this section that the handgun was carried in a holster.

(g) It is a defense to prosecution under this section that the license holder is volunteer emergency services personnel, as defined by Section 46.01.

(g-1) It is a defense to prosecution under this section that the license holder is a first responder, as defined by Section 46.01, who:

(1) holds an unexpired certificate of completion under Section 411.1883 , Government Code, at the time of engaging in the applicable conduct;

(2) was engaged in the actual discharge of the first responder's duties while carrying the handgun; and

(3) was employed or supervised by a municipality or county to which Chapter 179, Local Government Code, applies.

(h) It is a defense to prosecution under this section that the license holder was personally given notice by oral communication described by Subsection (b) and promptly departed from the property.

#### **Credits**

Added by Acts 2015, 84th Leg., ch. 437 (H.B. 910), § 44, eff. Jan. 1, 2016. Amended by Acts 2017, 85th Leg., ch. 1143 (H.B. 435), § 9, eff. Sept. 1, 2017; Acts 2019, 86th Leg., ch. 39 (H.B. 302), § 3, eff. Sept. 1, 2019; Acts 2019, 86th Leg., ch. 250 (H.B. 121), § 2, eff. Sept. 1, 2019; Acts 2021, 87th Leg., ch. 481 (H.B. 2112), § 2, eff. Sept. 1, 2021; Acts 2021, 87th Leg., ch. 518 (S.B. 550), § 3, eff. Sept. 1, 2021; Acts 2021, 87th Leg., ch. 809 (H.B. 1927), §§ 20, 21, eff. Sept. 1, 2021; Acts 2021, 87th Leg., ch. 1008 (S.B. 20), § 6, eff. Sept. 1, 2021; Acts 2021, 87th Leg., ch. 1026 (H.B. 1069), § 6, eff. Sept. 1, 2021; Acts 2023, 88th Leg., ch. 768 (H.B. 4595), § 24.002(19), eff. Sept. 1, 2023.

#### Notes of Decisions (3)

V. T. C. A., Penal Code § 30.07, TX PENAL § 30.07

Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.