



GOVERNOR GREG ABBOTT

April 19, 2018

RQ-0223-KP

FILE # ML-48343

I.D. # 48343

The Honorable Ken Paxton  
Attorney General of Texas  
Attn: Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: AG Opinion Request CD27

Dear Attorney General Paxton:

On April 8, 2018, Representative Blake Farenthold notified me of his resignation as the representative of Texas' 27th Congressional District. It is imperative to restore representation for the people of that district as quickly as possible. I am acutely concerned about this issue because many of the district's residents are still recovering from the ravages of Hurricane Harvey. Indeed, all 13 of the counties in District 27 are still covered by my most recent disaster declaration for the area devastated by the hurricane. Because so many of the hurricane relief efforts depend on action at the federal level, it is all the more important that the voters of District 27 have an effective voice in Washington, D.C., at the earliest possible opportunity. That will require me to call a special election as soon as is legally possible.

Generally, a special election must be held on the first uniform election date occurring on or after the 36th day after the date the election is ordered. *See* Tex. Elec. Code § 203.004. The only uniform election date left in 2018 that meets that statutory threshold is November 6, which is not soon enough. *Id.* § 41.001(a). In cases of emergency, the governor is authorized to order a special election to be held before the appropriate uniform election date; but in this instance, that authority is rendered ineffective by requirements found in other state and federal laws. *See id.* §§ 201.054(a) (filing deadlines), 203.004(b) (emergency election time frame), 203.012 (canvassing deadlines); 52 U.S.C. § 20302(a)(8)(A) (deadline to transmit absentee ballots to uniformed services or overseas voters). It is impossible to order an election, allow candidates to file, print ballots, mail them in accordance with federal law, and hold an emergency election within the statutorily prescribed 50-day window. Complicating the issue is that if an emergency election for District 27 results in a runoff election, the date for the runoff election cannot be sooner than the 70th day after the final canvas of the emergency election. *See* Tex. Elec. Code § 2.025(d). I am concerned that the combination of state and federal law makes it practically

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impossible to hold an emergency special election and to replace Representative Farenthold before the end of September.

As governor, I have been given “extremely broad powers to declare disaster emergencies and to deal with them.” Tex. Att’y Gen. Op. No. MW-140 (1980) (analyzing Disaster Act of 1975). Among the powers conferred on me is the authority to suspend certain statutory provisions if strict compliance with those provisions would in any way prevent, hinder or delay necessary action in coping with a disaster. Tex. Gov’t Code § 418.016. As noted above, I believe that a prolonged vacancy in this congressional seat will impede state and federal efforts in coping with the effects of Hurricane Harvey. Therefore, my question is:

**May I utilize my authority under section 418.016 of the Government Code to suspend relevant state election laws and order an emergency special election?**

Due to the time-sensitive nature of this request and the emergency disaster recovery efforts in District 27, I respectfully request your opinion as soon as possible. Thank you for your assistance with this important matter.

Sincerely,

A handwritten signature in black ink that reads "Greg Abbott". The signature is written in a cursive, flowing style.

Greg Abbott  
Governor

GA:jp