

NO. 2024-40076

MARK GOLOBY and RICHARD	§	IN THE 333rd
VEGA	§	
Plaintiffs,	§	
	§	
v.	§	
	§	JUDICIAL DISTRICT OF
LESLEY BRIONES, ADRIAN	§	
GARCIA, LINA HIDALGO,	§	
RODNEY ELLIS, and TOM	§	
RAMSEY, all in their official	§	HARRIS COUNTY, TEX.
capacities as members of Harris	§	
County Commissioners' Court,	§	
	§	
Defendants.	§	

PLAINTIFFS' FIRST AMENDED PETITION

Plaintiffs MARK GOLOBY and RICHARD VEGA complain as follows:

Preliminary Statement

1. When Adrian Garcia, Commissioner for Harris County Precinct 2, assumed his position on the board of the Gulf Coast Protection District (GCPD or “the District”), as a matter of law he automatically resigned his position as Commissioner, because (among other things) the offices involve overlapping authority to tax residents of the same jurisdiction (Harris County).

2. Texas common law has long dictated that where two public offices cannot be held simultaneously—including because of the “conflicting loyalty” problem here—acceptance of the second office operates as a resignation from the first office. This principle has now been codified at Texas Election Code § 201.025.

3. This amended petition now joins claims by two plaintiffs, Mark Goloby and Richard Vega, seeking specific relief to which they are entitled as a result of the fact that Garcia resigned as Commissioner, leaving a vacancy in the office.

4. Mark Goloby brings an action as a Harris County taxpayer. Because Garcia resigned from his seat on the Commissioners' Court when he accepted and qualified for the GCPD board in or about June 2023, Goloby seeks to enjoin any further payment of the substantial taxpayer-funded Commissioners' salary (exceeding \$180,000 per annum) to Garcia. Payment of the salary to Garcia is illegal because Garcia vacated the Commissioner's office in or about August 2023.

5. Further, the vacancy that currently exists in Precinct 2 requires an election to fill it. Richard Vega is a longtime Precinct 2 resident who intends to run in an election to fill out the unexpired term. Vega petitions for a writ of mandamus ordering Harris County Commissioners Court to call an election to be held in May 2025 to fill the vacancy that presently exists in the Precinct 2 office.

6. That is not all. Goloby has an additional taxpayer claim, because 2023 was actually the *second* time Garcia has resigned from Commissioners' Court by accepting the conflicting appointment to the District. The District was established in the summer of 2021, during Garcia's first term on Commissioners' Court, and he was immediately appointed to the board in or about August 2021. From that date in August 2021 through December 2022, the Commissioners' Court was split 3-2 along party lines on many items. Any item that was purportedly approved 3-2 during this period, with Garcia's vote in the majority, is either void or voidable, because, as a

matter of law, Garcia resigned office in August 2021 and did not have authority to represent Precinct 2. While it is unfortunately too late in this taxpayer action to stop salary payments to Garcia during the remainder of that first term, it is not too late to stop wasteful spending on any projects or budget items that were approved during that period of time on a party-line vote.

Discovery Control Plan

7. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Plaintiff intends to conduct discovery in this case under Level 3.

Parties

8. Plaintiff Mark Goloby is an individual residing within Harris County. Plaintiff is a qualified voter. Plaintiff is and will continue to be subject to Harris County ad valorem taxes on real property Plaintiff owns. The last three numbers of Plaintiff's drivers' license are XXX. The last three numbers of Plaintiff's social security number are XXX.¹

9. Plaintiff Richard Vega is an individual residing within Harris County Precinct 2. The last three numbers of Plaintiff's drivers' license are XXX. The last three numbers of Plaintiff's social security number are XXX.²

¹ Plaintiff Goloby omits this information from this public filing, because there is no dispute or mystery about his identity. If the Defendants desire this information, however, Plaintiff will provide it to them privately, and if the court desires that the information be included in the petition, Plaintiff will either amend the petition or state the information in open court at the first hearing, as directed by the court.

² Plaintiff Vega omits this information from this public filing, because there is no dispute or mystery about his identity. If the Defendants desire this information, however, Plaintiff will provide it to them privately, and if the court desires that the information be included in the

10. Vega is a qualified voter who has resided in Precinct 2 for more than fifteen years. He will run as a candidate to represent Precinct 2 on the Commissioners' Court for the remainder of the unexpired term resulting from Garcia's deemed resignation. Vega desires to run for this office because he believes Harris County Precinct 2 has suffered under Adrian Garcia's representation. Crime has risen, police officers lack the support they need to protect our communities, and critical infrastructure has been neglected. Vega is committed to restoring safety, prioritizing law enforcement, and ensuring that the residents of Precinct 2 receive the investment and leadership they deserve. He aims to be a voice for the people, bringing accountability, integrity, and real solutions to the challenges Precinct 2 faces. He seeks an order compelling the Defendants to order the required election to fill the vacancy.

11. Defendant Lesley Briones represents Precinct 4 on the Harris County Commissioners' Court (HCCC or "Commissioners' Court"). Commissioners' Court is the governing body of Harris County. Ms. Briones' principal place of business is at 1001 Preston St., Ste. 950, Houston, Harris County, 77002. She is sued in her official capacity only.

12. Defendant Adrian Garcia was elected Commissioner of Harris County Precinct 2 first in 2018, and again in November 2022, taking office for this second term in January 2023. Such term continues through the end of December 2026. His

petition, Plaintiff will either amend the petition or state the information in open court at the first hearing, as directed by the court.

principal office is located at 1001 Preston St., #924, Houston, Texas 77002. He is sued in his official capacity only.

13. Defendant Rodney Ellis represents Precinct 1 on Commissioners' Court. His principal office is located at 1001 Preston St., 9th Floor, Houston, Texas 77002. He is sued in his official capacity only.

14. Defendant Lina Hidalgo serves as Harris County Judge and, as such, as a member and, generally, presiding officer of the Commissioners' Court. Tex. Loc. Gov't Code 81.001(a). Her principal office is located at 1001 Preston St., Ste. 911, Houston, Texas 77002. She is sued in her official capacity only.

15. Defendant Tom Ramsey represents Precinct 3 on Commissioners' Court. His principal office is located at 1001 Preston St., Ste. 924, Houston, Texas 77002. He is sued in his official capacity only.

Statement of Facts

16. Adrian Garcia was elected to represent Precinct 2 on the Harris County Commissioners' Court in November 2018. He assumed office in January 2019 to serve a four-year term.

17. Members of the Harris County Commissioners' Court receive an annual salary from county public funds in excess of \$180,000.

18. In May 2021, the 87th Legislature approved a bill creating the Gulf Coast Protection District (GCPD or "the District"), an entity created to facilitate projects to address storm surge flooding along the Texas Gulf Coast. Acts 2021, 87th Leg., ch. 872 (S.B. 1160), § 1, eff. June 16, 2021. The GCPD is composed of the

territory in Chambers, Galveston, Harris, Jefferson, and Orange Counties. Tex. Spec. Dist. Loc. Law Code § 9502.0104(a). In public parlance, the GCPD is associated with responsibility for facilitating—and, importantly—paying for, the “Ike Dike,” in cooperation with the state and federal governments.

19. The District is governed by a board of eleven directors; six appointed by the Governor, and five others, with each of the five covered counties empowered to appoint one of those five. Tex. Spec. Dist. Loc. Law Code § 9502.0201.

20. The District is empowered to raise revenue in various ways, including by “issu[ing] bonds; ... impos[ing] fees; [and] impos[ing] a tax[.]” S.B. 1160 (prefatory paragraph).

21. Regarding taxing power, the District has authority to “impose [an ad valorem] tax at a rate not to exceed 5 cents on each \$100 valuation.” Tex. Spec. Dist. Loc. Law Code § 9502.0302(b). The District must secure voter approval in an election before imposing an ad valorem tax or issuing bonds payable from ad valorem taxes. *Id.* § 9502.0302(b).

22. Additionally, the District may issue bonds, notes, or other obligations secured by revenue *other* than ad valorem taxes without an election. *Id.* § 9502.0302(c).

23. This “other” revenue is a recognition of the District’s authority to collect fees or other monies pursuant to the broad and varied powers granted under subchapter C. *See, e.g.*, Tex. Spec. Dist. Loc. Law Code §§ 9502.0301, .0304, .0306, .0307.

24. S.B. 1160 was signed by Governor Abbot on June 16, 2021, and became effective immediately.

25. The authority of the District, including the revenue-raising and spending authority, is vast. The Governor’s office stated shortly after enactment of the Bill that this project—concerning flood control and surge protection needs for Texas coastal communities—will be, when completed, “the largest civil works project in US history.”³

26. Governor Abbott appointed the six gubernatorial appointees to the Board of Directors of the District on or about June 22, 2021.

27. Shortly thereafter, Harris County Commissioners Court appointed then-sitting Pct. 2 Commissioner Adrian Garica to the board of the District as a representative of Harris County. Garcia accepted the appointment and qualified for the District office, executing the oath of office as a District board member in August 2021.

28. The District began holding public meetings in August 2021.

29. Garcia served as a director of the District for this initial, two-year term.

30. After Garcia accepted the position as director of the District, he continued to participate as a member of Harris County Commissioners Court, including by casting a vote in favor of approving certain programs, and/or allocating or expending public funds as part of various projects. In fact, during this period (after

³ <https://gov.texas.gov/news/post/governor-abbott-names-temporary-executive-director-and-appoints-six-to-gulf-coast-protection-district-board-of-directors> (last visited Mar. 13, 2023).

Garcia had accepted the position of director of the District)—from approximately August 2021 through the end of December 2022—the Commissioners’ Court was divided 3-2 along party lines (three Democrats and two Republicans), and Garcia voted with the Democratic majority to approve a number of legislative initiatives, and to approve allocations and/or expenditures of County public funds, passed on a straight party-line vote of 3-2.⁴

31. Public funds remain to be expended in support of a number of the projects, allocations, and/or expenditures approved during this period (August 2021 – December 2022), during which Garcia’s vote provided the necessary third vote for approval.

32. Adrian Garcia was re-elected to represent Precinct 2 on the Harris County Commissioners’ Court in November 2022, and thus assumed office for another four-year term beginning in January 2023 (and ending in January 2027).

33. Harris County Commissioners’ Court again appointed Garcia to be a director on the board of the District in or about June 2023, this time to serve a full four-year term as director (ending in June 2027). He executed the oath of office as a District board member on August 9, 2023.

⁴ With Lesley Briones’ election as Precinct 4 Commissioner in November 2022 (defeating incumbent Jack Cagle), the Democrats’ majority increased from 3-2 to 4-1. *See Houston Chronicle*, “Lesley Briones flipped the Harris County Commissioners’ Court. What’s Next?” (Nov. 16, 2022), 2022 WLNR 36751581.

34. Garcia participated in public meetings as a Director of the District during this second term, beginning (at least) since the meeting held August 9, 2023,⁵ and otherwise participated in District business as a Director (apart from participation in the District’s public meetings) during this second term.

35. This lawsuit was originally filed on June 25, 2024. The minutes of the August 14, 2024 District meeting reflect that at that meeting, Tina Petersen was introduced to the District Board as having been “appointed” by Harris County “to replace Adrian Garcia for the term expiring June 16, 2027.”

COUNT 1

Taxpayer Action Seeking Injunction Against Payment of Salary and Any Further Expenditures of Illegally Approved Funds

36. Plaintiff Goloby hereby incorporates by reference all of the preceding paragraphs.

37. The common-law doctrine of incompatibility prohibits conflicts that may arise from holding two public offices. The doctrine recognizes and prohibits three kinds of conflicts that may arise from dual service: self-employment, self-appointment, and conflicting loyalties.

38. The conflicting loyalties aspect of common-law incompatibility precludes a person from simultaneously holding two offices that would prevent him from exercising independent and disinterested judgment in either or both offices. See

⁵ See Gulf Coast Protection District, Minutes of Aug. 9, 2023, https://gcpdtexas.com/static/fc5244ce1398ee6db72039fe210195ac/1796_001_873d24f251.pdf (last visited Mar. 14, 2024).

Thomas v. Abernathy County Line Indep. Sch. Dist., 290 S.W. 152, 153 (Tex. Comm'n App. 1927, judgm't adopted). In determining whether offices are incompatible, "the crucial question is whether the occupancy of both offices by the same person is detrimental to the public interest or whether the performance of the duties of one interferes with the performance of those of the other. *State ex rel. Hill v. Pirtle*, 887 S.W.2d 921, 930 (Tex. Crim. App. 1994).

39. The offices of Harris County Commissioner and director of the Gulf Coast Protection District each bear responsibility for discretionary powers in overlapping geographical jurisdictions which render these offices incompatible. Among the potentially conflicting authorities inviting potential conflicts of interest and loyalty are the power to tax, the power to raise revenue by means other than taxes, the authority of the District and Harris County to contract with each other, and the power of eminent domain.

40. Harris County possesses tax authority, including imposition of ad valorem taxes for property in the County.

41. The District also possesses authority to tax. This competing authority between the District and the County regarding the tax to be extracted on the same property presents an impossible conflict of loyalty. "Because 'the object of each district [having the authority to tax] is to maximize its own revenues, a single individual would have great difficulty in exercising his duties to two separate and competing masters.'" Tex. Att'y Gen. Op. No. GA-0786 (2010) (quoting Tex. Att'y Gen. Op. No. JC-0557 (2002)). For this reason, the Office of the Attorney General has

repeatedly determined that “if two districts with overlapping geographical jurisdictions each have power of taxation, ... the potential for conflict is insurmountable.” Tex. Att’y Gen. Op. No. GA-0786 (2010) (internal quotations omitted).

42. The prospect of the District and Harris County negotiating and entering into agreements with each other to facilitate the District’s objectives present another conflict.

43. The GCPD’s enabling statutes authorize the District to enter into agreements with political subdivisions for various purposes. Tex. Spec. Dist. Loc. Laws Code §§ 9502.0306(a), (b); .0307(a), (b), (d). Again, the Office of the Attorney General has repeatedly “said where two governmental bodies are authorized to contract with each other, one person may not serve as a member of both.” Tex. Att’y Gen. Op. No. GA-0786 (quoting Tex. Att’y Gen. Op. No. GA-0348 (2005)).

44. The overlapping power of eminent domain presents another potential for conflict of loyalty. Harris County possesses the power of eminent domain. Tex. Loc. Gov’t Code § 261.001. The District is authorized to “exercise the power of eminent domain to acquire a fee simple or other interest in any type of property if the interest is necessary or convenient for the exercise of the district’s functions.” Tex. Spec. Dist. Loc. Law Code § 9502.0312(a). This authority apparently extends to acquisition of public property (other than property owned or operated by a port authority, navigation district, drainage district, or common carrier railroad)—and thus potentially even to *county* property. *Id.* § 9502.0312(b). The fact that both bodies

possess eminent domain authority creates the potential for conflict regarding any exercises of such authority over private or public land.

45. Any one of the foregoing, overlapping powers alone renders these offices incompatible. The presence of all of them only further illustrates the necessity for a prompt declaration that these offices are incompatible.

46. While the foregoing reflects the most immediately obvious powers presenting potential conflicts, additional overlapping powers present even more occasions for conflict.

47. Aside from the power to tax, impose fees, and accrue other revenue (through contracts or revenue-sharing agreements), and the power of eminent domain, the District enjoys broad powers granted under Section 9502.0301, several of which expressly mirror the pre-existing statutory authority of counties over the same subject matter. These include not only authority to establish, construct, maintain, operate, etc., “a coastal barrier or storm surge gate in the same manner provided by Chapter 571, Local Government Code, for a county to establish ... a seawall,” but also the same “authority granted to counties to conduct *any* project described by Chapter 571”; authority to “establish, construct, and maintain recreational facilities for public use and environmental mitigation facilities related to” any such project under Chapter 571; and many other grants of authority. These overlapping authorities make the District and the County not only partners but potential competitors regarding projects, priorities, and funding, in an array of matters touching upon the same real estate and tax base.

48. The offices of District director and Harris County Commissioner are, therefore, legally incompatible and may not be held contemporaneously by the same individual.

49. Accordingly, both the common law and statutory law dictate that, when Adrian Garcia assumed his position as director of the District in or about June 2021, he automatically resigned as Commissioner. *Thomas*, 290 S.W. at 153; Tex. Elec. Code § 201.025 (“If an officer accepts another office and the two offices may not lawfully be held simultaneously, a vacancy in the first office occurs on the date the person qualifies for the other office.”).

50. As a result, he was not legally entitled to exercise the powers of the office of Commissioner for the remainder of his initial term as Commissioner (through the end of 2022), and any items that were purportedly approved by the Commissioners’ Court by a 3-2 vote with Garcia’s vote as part of the majority were not actually approved.

51. On information and belief, a number of projects, allocations, and/or expenditures of county public funds were purportedly approved by these 3-2 votes and funds remain to be spent on such projects or allocations.

52. Because Garcia was not actually entitled to vote on such matters, these items were not actually approved, and any expenditure(s) based on such votes were and are illegal. The court can and must enjoin any further expenditure of county funds pursuant to any project or allocation that passed 3-2 with Garcia’s support

between the time he accepted the District director office in or about June 2021 through the end of 2022.

53. Garcia ran for and won re-election to be Precinct 2 Commissioner in November 2022, thus assuming office for another four-year term in January 2023.

54. Subsequently, in or about June 2023, Garcia was appointed to, and qualified as, director of the District, for a four-year term ending in June 2027.

55. When Adrian Garcia assumed his position as director of the District again, in or about June 2023, he automatically resigned, again, as Commissioner.

56. Garcia's assumption of the office of director of the District created an immediate vacancy in the office of Precinct 2 Commissioner. *Thomas*, 290 S.W. at 153; Tex. Elec. Code § 201.025.

57. Because Garcia vacated his office on Commissioners' Court in or about June 2023, he is not entitled to the Commissioners' salary paid to him monthly from taxpayer-supported County funds. Consequently, any further payment of salary to Garcia will be an illegal expenditure and must be enjoined.

58. Harris County's apparent decision in response to this lawsuit to appoint Dr. Petersen to replace Garcia on the District board has no effect on the fact that Garcia resigned upon his qualification for the District office in August 2023. The deemed resignation was effective immediately and irreversible. Harris County's replacement of Garcia on the District board is, however, an admission that the offices are incompatible as alleged here.

59. Plaintiffs are entitled to an order enjoining any further payment of salary to Garcia.

COUNT 2

Plaintiff Vega’s Petition for Writ of Mandamus Ordering Election to Fill Remainder of Unexpired Term

60. Pursuant to longstanding common law principle now codified at Election Code § 201.025, the Precinct 2 office was vacated as a matter of law on or about August 9, 2023, when Garcia qualified for the office.

61. August 9, 2023 was more than 74 days before the November 2024 elections.

62. Consequently, the Election Code required that the remainder of the unexpired term be filled at the November 2024 General Election. Tex. Elec. Code § 202.002 (“If a vacancy occurs on or before the 74th day before the general election for state and county officers held in the next-to-last even-numbered year of a term of office, the remainder of the unexpired term shall be filled at the next general election for state and county officers, as provided by this chapter.”).

63. Because a public officer’s deemed resignation by qualifying for a second, incompatible office is effective immediately, neither *quo warranto* nor any other special procedure is required to oust the officer—the vacancy exists without need for a removal action. *Pruitt v. Glen Rose Ind. Sch. Dist. No. 1*, 84 S.W.2d 1004, 1006 (Tex. 1935); *Biencourt v. Parker*, 27 Tex. 558, 562 (1864) (“A resignation by implication will take place by being appointed to and accepting a new office incompatible with the former one. It is said to be an absolute determination of the

original office, and leaves no shadow of title to the possessor; so that neither *quo warranto* nor amotion is necessary before another may be elected.”) (citations omitted).

64. Defendants, however, who have not acknowledged the vacancy, did not place the office of Precinct 2 Commissioner on the November 2024 ballot.

65. Because a vacancy exists, Commissioners’ Court has a ministerial duty to take the required action to fill it, and the court has the corresponding authority to compel such action by mandamus. This is true even if the court must first resolve factual or legal disputes among the parties about whether the vacancy exists. *See, e.g., Anderson v. City of Seven Points*, 806 S.W.2d 791, 793 (Tex.1991) (reflecting mandamus can be appropriate where the official’s duty is clear after district court factual resolution of contested predicate questions like whether sufficient number of people signed petition).

66. Plaintiff Vega therefore requests an order requiring Defendants to call an election to fill the Precinct 2 vacancy, to effectuate the Legislature’s requirement that the vacancy be filled by voters.

67. An expeditious disposition by this Court can facilitate a special election to fill the vacancy held in conjunction with the May 3, 2025 elections.

68. Vega intends to be a candidate in the election to fill the vacancy that presently exists in Precinct 2.

Conditions Precedent

69. All conditions precedent have been performed or have occurred.

PRAYER FOR RELIEF

Petitioner prays for the following relief:

1. An order enjoining Defendants, in their official capacity as the Harris County Commissioners Court, and any employees, contractors, or other agents of the County, from making any further payments to Garcia for Commissioners' salary;
2. A writ of mandamus ordering Defendants, in their official capacity as Harris County Commissioners' Court, to call an election to fill the unexpired term of Precinct 2 Commissioner, which election should be held on May 3, 2025;
3. An order enjoining Defendants, as the Harris County Commissioners' Court, and any employees, contractors, or other agents of the County, from disbursing any further funds for any items that were purportedly enacted on a 3-2 vote with Garcia voting with the majority during the period beginning with his qualification for the District board in or about August 2021 through the end of 2022;
4. Reasonable attorneys' fees and costs pursuant to any applicable statute or authority; and
5. Any other relief that the Court deems just and appropriate.

Respectfully submitted,

/s/ Jerad Najvar

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, along with any attachments and proposed order, was served via the electronic filing system upon all counsel of record on November 21, 2024. Process will be executed as to the new Defendants named herein.

/s/ Jerad Najvar
Jerad Najvar

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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Filing Code Description: Amended Filing
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