

No. 20-0609

IN THE SUPREME COURT OF TEXAS

In Re The Texas General Land Office and George P. Bush,
Named in His Official Capacity as Texas Land Commissioner

Original Proceeding

From the 53rd Judicial District Court, Travis County, Texas

No. D-1-GN-20-003520

The Honorable Tim Sulak, Judge Presiding

***Amicus Curiae* Brief of Senator Paul Bettencourt, et al. in Support of the
Relators' Opposed Motion for Temporary Relief**

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TO THE HONORABLE SUPREME COURT OF TEXAS:

Senator Paul Bettencourt and other members of the Texas Legislature respectfully submit this *amicus curiae* brief in support of Relators the General Land Office and Texas Land Commissioner George P. Bush, pursuant to Texas Rule of Appellate Procedure 11.

IDENTITY AND INTEREST OF *AMICUS CURIAE*¹

Senator Paul Bettencourt represents Senate District 7, which encompasses most of West Harris County and part of the city of Houston. Other signatories represent the greater Houston metropolitan area and surrounding regions that were significantly affected by Hurricane Harvey. As elected members of the Texas Legislature, the undersigned are answerable to the residents of Houston and have a duty to oversee how governmental subdivisions conduct Harvey recovery efforts. Several signatories are members of the Senate Finance Committee and tasked with ensuring the effective use of taxpayer funds. COVID-19 and the state's response has had a significant impact on the economy and the state cannot afford to forfeit \$1.25 billion in federal funding due to ineffective administration by the City of Houston.



Senator Paul Bettencourt



Senator Joan Huffman

¹ Pursuant to Rule 11(c) of the Texas Rules of Appellate Procedure, *amicus* confirms that no person or entity other than *amicus* made a monetary contribution to the preparation or filing of this brief.



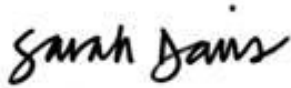
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SUMMARY OF ARGUMENT

The Supreme Court should grant the Relators' Opposed Motion for Temporary Relief. Texas Government Code Section 22.004(i) unambiguously establishes a state appellant's right to supersedeas on appeal and it is not subject to being counter-superseded under any rule. The majority panel's grant of emergency relief runs counter to statute and constitutes an abuse of discretion.

Granting temporary relief is in the public interest as it gives Houston residents much needed support from the General Land Office to repair their homes and ensures the effective distribution of federal as the August 17, 2024 deadline approaches.

ARGUMENT

I. The Third Court of Appeals Abused its Discretion by Denying the State's Statutory Right to Supersedeas

In 2015, the 85th Legislature passed House Bill 2776, which directed the Supreme Court to adopt rules to:

...provide that the right of an appellant under Section 6.001(b)(1), (2), or (3), Civil Practice and Remedies Code, to supersede a judgment or order on appeal is not subject to being counter-superseded under Rule 24.2(a)(3), Texas Rules of Appellate Procedure, or any other rule.

Tex. Gov. Code § 22.004(i). The statute leaves no room for ambiguity, a State appellant has a right to supersedeas that is not subject to being counter-superseded under any rule. Although courts are granted authority under Tex. R. App. 29.3 to

make temporary orders, that authority only exists insofar that it does not conflict with statute. *See Johnstone v. State*, 22 S.W.3d 408, 409 (Tex. 2000) (“[W]hen a rule of procedure conflicts with a statute, the statute prevails”). As the Court noted in *In re Geomet Recycling LLC*, “[i]t is not our place to ‘judicially amend the statute to add an exception not implicitly contained in the language of the state.’” 578 S.W.3d 82, 87 (Tex. 2019) (citing *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 867 (Tex. 1999)). Rule 29.3 empowers the court of appeals to preserve parties’ rights, it does not include the power to make orders contrary to statute. *See id.* at 89. When courts examine questions of statutory construction, they ascertain and give effect to the Legislature’s intent as expressed by the language of the statute. *See City of Rockwall v. Hughes*, 246 S.W.3d 621, 625-626 (Tex. 2008). Courts construe a statute’s words according to its plain and common meaning unless a contrary intention is apparent from the context or such construction leads to absurd results. *See Trapp v. Shell Oil Co.*, 198 S.W.2d 424 (Tex. 1946).

Even if a counter-supersedeas under Rule 29.3 is available under some circumstances, the majority abused its discretion in granting it in this case. In *Tex. Educ. Agency v. Houston Indep. Sch. Dist.*, the Third Court of Appeals observed that “a request for injunctive relief involves a party’s assertion that if the opposing party’s actions are not enjoined, it will suffer irreparable harm.” 2020 WL 1966314, at *5 (Tex. App.—Austin April 24, 2020). In the present case, the majority panel

concluded that "the City faces a potentially irrevocable loss of its ability to provide aid to the residents of the City." Man. App. Ex. 8 at p. 4. Nothing in the record supports a conclusion that the City of Houston would be precluded from being to provide aid to residents. In fact, the City is free to establish and operate its own disaster assistance programs irrespective of the outcome of this case. By granting the counter-supersedeas, the majority panel has not protected the City's ability to provide aid to residents, but has instead mandated the transfer of federal Community Development Block Grant Disaster Recovery ("CDBG-DR") funds from the General Land Office's ("GLO") proven program to an inefficient program that has repeatedly failed to provide aid to Houston residents. It has further reduced the efficacy of the GLO's program by precluding the GLO from accepting new disaster relief applications.

As Chief Justice Rose noted in his dissenting opinion, "the relief granted by the temporary injunction and now by this Court's order" is "essentially restraining the State from performing governmental functions and going so far as to prohibit the State from seeking assistance from the U.S. Department of Housing and Urban Development." Man. App. Ex. 9 at p. 1. The public interest in the present case is not served by imposing "additional delays to the administration of relief funds to the people of Houston while the parties resolve their contract dispute." *Id.*

II. It is not in the Public Interest to Continue Transferring Federal Funds to the City of Houston as the Parties Resolve Their Contract Dispute

For those left to rebuild their lives in the aftermath of Hurricane Harvey, there exist three realities: those who were able to rebuild quickly thanks to private insurance or similar funding, those that have been able to rebuild thanks to programs administered by the GLO, and those that have been left to languish due to the City's inability to effectively and efficiently manage their disaster assistance programs. For the last group, every hurricane season brings additional problems. Local media have reported that some homes damaged by Hurricane Harvey have sustained additional damage by Tropical Storm Imelda or other significant rainfall events in the past three years. The current hurricane season is certain to result in even more problems for Houston residents. These weather-related challenges are only compounded by issues arising due to the global health pandemic.

In court testimony, the City's witness estimated that tens of thousands of households were impacted by Hurricane Harvey. M.R. 001227. In response to the disaster, Congress appropriated \$5 billion in funding to assist with the state's recovery. The United States Department of Housing and Urban Development ("HUD") allocated these funds to the State of Texas and the GLO, as the state agency appointed by the governor to oversee the administration of federal disaster recovery funding on behalf of the state, prepared a plan outlining use of the funding for HUD's

approval. Subsequently, GLO entered into a subrecipient agreement with the City of Houston to allow the City to administer programs within the Houston city limits using approximately \$1.2 billion of the federal funds. If all allocated federal funding is not spent before August 17, 2024, the remaining unspent funds must be returned to the federal government. M.R. 001266.

According to the City's own witness, only 245 families have been assisted under the City's homebuyer assistance and homeowner assistance programs. M.R. 001227. In total, the City has rebuilt 65 homes in the last two years. M.R. 001228. The City's lack of progress has occurred despite a finding from HUD's November 2019 monitoring report that "GLO has provided significant oversight and technical assistance to the city to ensure applicant files are complete with appropriate eligibility documentation." M.R. 000212. The City's mismanagement extends beyond rebuilding structures. In the same November 2019 monitoring report, HUD found that the City's CDBG-DR program website fails to comply with requirements outlined in *Federal Register* notices applicable to the funding allocation. See M.R. 000214. Despite efforts by GLO to assist the City in correcting the website errors, the website still failed to comply with HUD requirements in March 2020. The City's failure to comply with federal regulatory standards has drawn scrutiny from the Office of the Inspector General for HUD, which has announced a monitoring review to "assess the efficiency and effectiveness" of the COH's Hurricane Harvey CDBG-

DR program and “determine why the program did not assist disaster participants in a timely manner.” M.R. 000688.

While the City of Houston has been struggling to meet a fraction of the needs of its residents and drawing scrutiny from federal officials, GLO has built 1,618 homes for Texas families through the state-run Homeowner Assistance Program in approximately the same period of time as the City’s program has been operating. *See* M.R. 001286.

The City’s failure to provide its residents with disaster relief in a timely manner has had a profound impact on the lives of Houston residents. Unfortunately for those that have suffered from the lack of organization and productivity by the City, very little has been done to alleviate growing concerns and create a correct path going forward.

Delays in the distribution of federal funds could also have a wider impact on the state budget. If the CDBG-DR funds appropriated by Congress are not spent by August 17, 2024, then the state will lose access to the funds. Any efforts by the courts to preserve the status quo among the parties pending further litigation will not only delay the distribution of federal funds but will jeopardize the receipt of those federal dollars entirely. Given the City’s track record on spending disaster recovery funds, even if they were to ultimately prevail in this case, the City is unlikely to have enough time remaining in the grant term to effectively and efficiently disburse the

remaining federal funds. M.R. 001290. The burden would then fall on to the state to make up for the shortfall in funding to assist with disaster recovery that was created by the City's inability to fulfill its fiduciary duties to its residents.

There is a significant public interest in the funds being distributed in a timely manner. Every day that goes by without adequate disaster recovery efforts compounds the harm to Houston residents. Delays in receiving assistance further damages their homes and jeopardizes their financial future. Given the City's failure to operate a program that meets federal requirements and properly distribute the grant funds to applicants in a timely manner, the GLO should be given authorization to take immediate corrective action.

PRAYER

Houstonians have spent the last three hurricane seasons waiting for the City of Houston to provide disaster recovery assistance. Instead of recognizing the limits of its competence and returning control of the funding they have mismanaged, the City has elected to spend additional time and money in litigation. Houstonians should not be forced to spend another hurricane season waiting for this case to wade through the legal system. *Amicus* respectfully requests that the Court grant the Relators' Opposed Motion for Temporary Relief.

Respectfully Submitted,

PAUL BETTENCOURT
State Senator, District 7

/s/ Benjamin Barkley

Benjamin Barkley
On Behalf of Senator Paul Bettencourt

CERTIFICATE OF COMPLIANCE

This brief contains 1,714 words, excluding portions of the brief exempted by Rule 9.4(i)(1) of the Texas Rules of Appellate Procedure.

/s/ Benjamin Barkley

Benjamin Barkley

CERTIFICATE OF SERVICE

I certify that on this August 17, 2020, a true and correct copy of the foregoing *Amicus Curiae* Brief of Senator Paul Bettencourt was served electronically on the following counsel of record:

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