

NO. _____

MARK GOLOBY,	§	IN THE _____
Plaintiff,	§	
	§	
	§	
v.	§	
	§	JUDICIAL DISTRICT OF
HARRIS COUNTY	§	
COMMISSIONERS' COURT, and	§	
ADRIAN GARCIA,	§	
Defendants.	§	HARRIS COUNTY, TEX.

PLAINTIFF'S ORIGINAL PETITION

Plaintiff MARK GOLOBY complains 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 is a taxpayer action, brought by a Harris County taxpayer, seeking a judicial declaration that Garcia resigned from his seat on the Commissioners’ Court when he accepted and qualified for the GCPD board in June 2023, and enjoining 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 June 2023.

4. But this is 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 on or about August 10, 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

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

Parties

6. Plaintiff Mark Goloby is an individual residing within Harris County at 6702 Green Stone Court, Houston. Plaintiff is a qualified voter. Plaintiff is and will

continue to be subject to Harris County ad valorem taxes on real property Plaintiff owns.

7. The last three numbers of Plaintiff's drivers license are XXX. The last three numbers of Plaintiff's social security number are XXX.¹

8. Defendant Harris County Commissioners' Court (HCCC or "Commissioners' Court") is the governing body of Harris County with the capacity to sue and to be sued. Its principal place of business is at 1001 Preston St., Houston, Harris County, 77002.

9. 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 principal office is located at 1001 Preston St., #924, Houston, Texas 77002.

Statement of Facts

10. 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.

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

¹ Plaintiff 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.

12. 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.

13. 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.

14. 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).

15. 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).

16. 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).

17. 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.

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

19. 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.”²

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

21. On or about August 10, 2021, 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.

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

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

² <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).

24. 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 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 3-2.³

25. 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.

26. 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).

³ 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?,” 2022 WLNR 36751581 (Nov. 16, 2022).

27. Harris County Commissioners' Court again appointed Garcia to be a director on the board of the District on or about May 16, 2023, this time to serve a full four-year term as director (beginning June 17, 2023 and ending in June 2027).

28. Garcia has accepted and qualified for this position as director again and has been fully participating in meetings of the District during the District term that began in June 2023.

COUNT 1

Declaratory Judgment of Automatic Resignation Under Texas Common Law Prohibition of Conflicting Loyalties

29. Plaintiff hereby incorporates by reference all of the preceding paragraphs.

30. 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.

31. 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 *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).

32. 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.

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

34. 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).

35. 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.

36. 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)).

37. 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.

38. 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.

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

40. 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.

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

42. 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.”).

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

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

49. Garcia's assumption of the office of director of the District created an immediate vacancy in the office of Precinct 2 Commissioner. Tex. Elec. Code § 201.025.

50. 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.

51. Plaintiff is entitled to a declaratory judgment that Garcia automatically resigned the office of Precinct 2 Commissioner upon assumption of the office of District director and an order and/or judgment enjoining any further payment of salary to Garcia.

Conditions Precedent

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

PRAYER FOR RELIEF

Petitioner prays for the following relief:

1. A declaratory judgment that Adrian Garcia resigned as Precinct 2 Commissioner when he accepted the District position during his first Commissioner's term in 2021;
2. An order enjoining Harris 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 from his qualification for the District board in or about August 2021 through the end of 2022;
3. A declaratory judgment that Adrian Garcia resigned as Precinct 2 Commissioner again when he accepted the District position during his second Commissioner's term in 2023;
4. An order enjoining Harris County from making any further payments to Garcia for Commissioners' salary;
5. Reasonable attorneys' fees and costs pursuant to any applicable statute or authority; and
6. Any other relief that the Court deems just and appropriate.

Respectfully submitted,

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