

**No. 03-24-00610-CV**

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**IN THE COURT OF APPEALS  
THIRD DISTRICT OF TEXAS  
AUSTIN, TEXAS**

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***IN RE* MAYOR LYLE NELSON**

**RELATOR**

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**AMICUS CURIAE BRIEF OF  
JOHN KIRKLAND**

---

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**IN THE INTEREST OF TIME, ORAL ARGUMENT NOT REQUESTED**

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**MAYOR LYLE NELSON**

Relator is the Mayor of Bastrop, Texas and the subject of a Recall Petition submitted to Respondent Interim City Secretary, Irma Parker.

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**STATEMENT OF THE CASE**

Substantially more people signed the recall petition than have ever voted in any Bastrop city election in the history of the city. Nearly three times the number of people who initially voted for the Mayor have signed the recall petition.

If the recall election does not take place, the harm to these voters is constitutional in nature – it impacts their suffrage rights.

Both the original and the amended versions of the recall petition have sufficient signature counts to meet the 25% statutory minimum. Both petitions contain the required affidavits. Any errors made in the circulation of the recall petition are technical in nature, and it would be against the spirit and intent of the Power of Recall granted to the voters of Bastrop to invalidate the petition for technical errors.

**ISSUES PRESENTED**

In assessing the validity of the recall petition, the issues presented are as follows:

1. Whether voter rights are affected by invalidating a recall petition for technical errors;
2. Whether invalidating all signatures because of a duplicate signature, or requiring a unique qualified voter to swear an oath to each petition paper, is reasonable; and

3. Whether the terms “signer” and “statements” should be interpreted to exclude the validity of the petition circulator’s oath that is on each page of the petition.

### **INTRODUCTION**

My name is John Kirkland. I am a registered and qualified voter in the city of Bastrop, and one of the circulators of the recall petition at issue in this case. Additionally, I serve as an elected city council member and Mayor Pro Tem for Bastrop. I write this brief in my capacity as a signer, circulator of the petition, and concerned citizen.

I am an engineer and not an attorney. I have researched these issues which I respectfully submit to this court, together with facts and arguments. I submit this brief in hopes of the court’s consideration of the issues presented herein, and respectfully ask for the court’s understanding.

### **STANDING**

The Uniform Declaratory Judgments Act authorizes a "person ... whose rights, status, or other legal relations are affected by a ... municipal ordinance" to "have determined any question of construction or validity arising under the . . . ordinance . . . ." TEX. CIV. PRAC. & REM. CODE ANN. § 37.004(a) (West 2008). To establish standing under the Act, a party "must show a particularized, legally protected interest that is actually or imminently affected by the alleged harm." *Save Our Springs*

*Alliance, Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 882 (Tex. App.-Austin 2010, pet. denied). As a petitioner seeking the removal of Mayor Nelson from office, my voting rights are imminently affected by the harm of invalidating the recall petition.

“It has been specifically held that where a City Charter confers a right upon the qualified electors to petition the City Council for a recall election, a signer of the petition has a justiciable interest in the subject matter of the litigation . . .” *Leggitt v. Nesbitt*, 415 S.W.2d 696 (Tex. Civ. App.—12th Dist. 1967).

### **STATEMENT OF FACTS**

1. In June 2023, Mayor Nelson was elected by 567 of the 6,314 registered voters in the City of Bastrop on that date. Election results are attached as Exhibit A.
2. On April 11, 2024, after conducting an evidentiary hearing, the Bastrop Board of Ethics unanimously issued the strongest penalty they can levy against an elected official, a Letter of Reprimand, to Mayor Nelson for abusing his position to interfere with an administrative investigation. A copy of the Letter of Reprimand is attached as Exhibit B.
3. On July 25, 2024, as a result of the ethics reprimand against Mayor Nelson, the recall petitioners of Bastrop submitted a 96-page recall petition to the City Secretary with 1,738 total signatures. The city secretary determined the recall



petition contained 1,598 qualified voter signatures, exceeding the 25% statutory requirement of 1,557.

4. Each of the 96 petition papers was signed by the petition circulator, who provided the required statement of the circulator in an affidavit affirming that the “statements contained therein are true”. A notary verified the affidavit on each petition paper, signing and stamping each page. An empty petition form is attached as Exhibit C.

5. On August 24, 2024, the City Secretary incorrectly determined that the petition was insufficient, citing non-compliance with §10.07 of the Bastrop Charter requirement that “one of the signers of each petition paper make an affidavit affirming that the statements made therein are true.” This was interpreted as requiring the Petition Circulator to re-sign each petition paper before submitting an amended petition.

6. Rather than file a Writ of Mandamus petition to request the court to validate the original petition, on September 3, 2024, to satisfy the City Secretary’s requirement of an additional signature on each petition paper, the petitioners submitted an amended recall petition. The amended petition added the circulator as an additional signature to 94 of the 96 original petition papers. Of the remaining 2 petition papers, one was already signed by the circulator as a qualified voter, and the other page, containing a single voter signature, was withdrawn. The additional

signatures were not intended or needed to count towards the statutory minimum signature total.

7. On September 13, 2024, as a result of the requested amendments, the City Secretary certified the petition as “sufficient to present to the voters at a May 2025 Election”.

8. On September 25, 2024, Mayor Nelson filed a writ of mandamus petition arguing the recall petition should be invalidated on the basis of technical errors in the form of the petition.

## **ARGUMENT**

### **1. The People Have Spoken – Impact on Voter Rights**

The Texas Constitution recognizes suffrage rights of qualified voters. Tex. Const. Art. VI, "Suffrage". To invalidate the recall efforts on a technicality would be to deny the voters of Bastrop their suffrage rights and violate the spirit of the Texas Constitution.

Mayor Nelson received 567 votes in the June 10, 2023, City of Bastrop Runoff Election. Following his official reprimand by the Bastrop Board of Ethics, the petition to recall the Mayor yielded 1,738 signatures, with 1,598 qualified voter signatures. It is significant to the citizenry of Bastrop that nearly three times the number of people who voted for the Mayor have demanded his recall.

The Texas Supreme Court, in discussing citizen petition efforts, stated that the “Election Code disfavors local technicalities that hamper the people's right to amend their charter.” *In re Dorn*, 471 S.W.3d 823, 826 (Tex. 2015). Given that the petition in this case is facing invalidation based on local technicalities, the same principal protecting charter amendments ought to apply to the protection of recall efforts.

Additionally, the purpose of the charter provisions should be considered. To invalidate the recall efforts due to a technicality goes against the spirit and intent of providing for a recall option in the first place. Texas courts have long established that ambiguity in a statute should be construed in favor of its objective:

The cardinal rule in statutory interpretation and construction is to seek out the legislative intent from a general view of the enactment as a whole, and, once the intent has been ascertained, to construe the statute so as to give effect to the purpose of the Legislature . . . It is recognized that a statute is to be construed with reference to its manifest object, and if the language is susceptible of two constructions, one of which will carry out and the other defeat such manifest object, it should receive the former construction.

*Citizens Bank of Bryan v. First State Bank, Hearne*, 580 S.W.2d 344, 347–48 (Tex. 1979) (internal citations omitted).

The manifest object of the Bastrop charter’s recall provision in §10.07 is to provide people of the city of Bastrop with the power to exercise their political rights. Construing the language in a manner opposite to the intention of the charter goes against the established law in *Citizens Bank of Bryan v. First State Bank, Hearne*.

The issue in this case is not one of formalities, but of protecting the citizenry's constitutionally protected suffrage rights. The technicalities argued in Relator's writ of mandamus should not drown out the voices of Bastrop's qualified voters.

## **2. Relator's reasons for invalidating the recall petition are unreasonable**

The thrust of Relator's argument is that the original recall petition was invalid, because a unique voter on each petition paper, and not the petition circulator, must swear an oath to the veracity of the statements contained on each petition paper. Relator also suggests, harshly, that 1,598 petition signatures ought to be invalidated because of a single duplicate voter signature on each petition page. Such assertions are patently unreasonable.

Reasonableness is paramount in the context of voter rights. "To be valid a registry law or ordinance must be reasonable, neither impairing the right of suffrage guaranteed by the constitution nor depriving a person of his right where there is no fault or negligence on his part." *Holt v. Trantham*, 575 S.W.2d 83, 86 (Tex. Civ. App. 1979). "In the determination of the compliance or non-compliance . . . the test may require the consideration of the 'reasonableness' of the provisions relating to qualification of a petition as sufficient." *Id.*

The reasonableness of the assertion that the Circulator cannot qualify as a signer of the petition paper, can be illustrated by comparison with the City of Austin's recall provisions.

In near-identical language to the City of Bastrop’s charter, the city of Austin’s current “Power of Recall” provision requires that the recall petition “shall contain a general statement of the grounds for which the removal is sought, and one of the signers of each petition paper shall make an affidavit that the statements therein made are true.” City of Austin Charter, art. IV § 6.

This scenario can be played out to its logical conclusion. The Austin city secretary reports on the Austin city web site that there are 585,433 qualified voters as of January 31, 2024. To recall the mayor of Austin would require 10%, or 58,544 signatures. If each petition paper holds 20 signatures, the recall efforts would yield at minimum nearly 3,000 pages. If, as Relator argues, one qualified voter from each page must attest to the veracity of the statements therein, such a requirement would result in nearly 3,000 unique individuals swearing nearly 3,000 affidavits.

The bulk of petition work is done by a small group of dedicated volunteers. Such a proposition would yield an absurd result. It would require taking a notary door-to-door to request signers if they will swear as true the “statements” made on the petition paper. Then, if the Relator gets his way, the circulator gets to deal with the definition of the word, “statements”, and try to convince each potential affidavit signer that they only need to swear an oath to the truthfulness of one statement on the page (general statement of the grounds for removal) but not any of the other statements therein made even though the word “statements” is plural. Only a foolish

person would sign such an affidavit under those conditions, and the likelihood of success would be near zero.

Even though the population of Bastrop is smaller than that of Austin, the same principals of reasonableness apply. Requiring 96 affidavits for 96 petition papers signed by 96 different people cannot be what the charter intended, and it would be a hindrance to the recall process.

It is likewise unreasonable to invalidate an entire petition paper because of the existence of a duplicate signature. To do so would be to impair the suffrage rights of the remaining petitioners and deprive them of their constitutional rights, in the absence of fault or negligence on their part. In this instance, the Petition Circulator's added signature on each amended petition paper was done to satisfy the City Secretary's request. Further, the added signature was not used and was not intended to be used to meet the statutory minimum signature count for petition validity, as they were signing the petition page a second time in their capacity as a circulator of that page. Even if such addition was erroneous or negligent, the original 20 petitioners on each page should not have their voice taken away due one voter's error. To do so would be contrary to constitutional right of suffrage.

Relator's counsel demands in the Original Petition for Writ of Mandamus that the city secretary "refuse to count the duplicate signatures added to the supplement

for any purpose at all, including the requirement for the Signer’s Truth Affidavit.”

However, the court cases Relator cites don’t support this position:

In *In re Holcomb*, 186 S.W.3d 553, 555 (Tex. 2006), the court held that “a petition containing duplicate signatures is invalid” only if it fails to meet the statutory minimum. The court allowed the petitioner to gather five additional signatures without invalidating the entire petition, any pages, or the duplicate signatures themselves—duplicates simply didn’t count toward the statutory minimum.

In *Cohen v. Rains*, 745 S.W.2d 949, 954 (Tex. App.—Houston [14th Dist.] 1988, no writ), the court stated that “duplicate signatures... cannot be counted to satisfy the statutory minimum of 750.”

Both cases specify that duplicates don’t count toward statutory minimums but don’t require their forcible removal. In the Bastrop recall petition, circulator signatures were neither needed nor intended to meet the statutory minimum signature counts. Neither the Bastrop Charter nor Tex. Elec. Code § 277 requires duplicate signatures to be excised; therefore, Relator’s demand to exclude them “for any purpose at all” lacks support in statute or case law.

To invalidate nearly 1600 signatures for one duplicate signature on each page is unreasonable, and to require a unique qualified voter to swear an oath to the veracity of each petition page is also unreasonable. Reasonableness is important,

because without it we risk “impairing the right of suffrage guaranteed by the constitution.” *Holt v. Trantham*, 575 S.W.2d at 86.

**3. The terms “signer” and “statements” should be interpreted to validate the petition circulator’s oath.**

The City Secretary’s initial refusal of the original recall petition was based on the interpretations of the term “signer”, and the requirement that a “signer” of each petition paper swear to the truth of the “statements” therein. The City Secretary concluded that “signer” did not include the Petition Circulator.

Beyond the arguments about reasonableness, above, I would like to state the obvious – the Petition Circulator has in fact signed every petition paper in a dedicated signature line at the lower left of each paper, therefore Petition Circulator is a signer of each petition paper. The statements on the petition paper include voter identification rows and a “statement of the circulator”, and only the Petition Circulator can attest to the veracity of those statements. Therefore, the Oath sworn by Circulator as a signer of both the original and amended petitions is valid and both petitions should have been accepted.

More clarity can be gained by examining the terms “statements” and “signer” in Bastrop Charter §10.07, Power of Recall, “... one of the signers of **each petition paper** shall make an affidavit that the **statements made therein** are true.” (emphasis added)



*a. Where should one look to determine which statements should be verified by affidavit?*

The “statements” that must be verified are “made therein” on “each petition paper”. Thus, each petition paper must be inspected to determine the statements to be verified by affidavit.

*b. Is there a petition form that can be inspected to identify the “statements” on each petition paper?*

The city of Bastrop does not provide a specified form for recall. Prior to circulation, I created the petition form shown in Exhibit C to conform to the Bastrop Charter’s requirements and provided it to the city secretary to confirm the form was acceptable. The city secretary validated that the form was acceptable for use for the recall effort for Mayor Lyle Nelson. This petition form was used 96 times for each petition paper of the submitted recall petition.

Independently of the city’s approval of the form used for this petition, the charter says that the statements that must be verified are contained on each petition paper, so each petition paper must be inspected to identify its statements.

*c. What statements are “made therein” on “each petition paper”?*

Because the charter’s affidavit requirement uses the plural term, “statements”, it can be presumed using the rules of statutory construction that such usage is intentional. Further, if the charter had intended to create limitations on which

statements must be included or excluded from the “affidavit that the statements made therein are true”, then it would have stated those limitations. For example, if the intent of the Bastrop Charter was to include exclusively the grounds for removal as asserted by the Relator, the language would more likely be “shall make an affidavit that the **grounds upon which the removal is sought** are true” rather than “shall make an affidavit that the **statements made therein** are true”.

The word “statements” has a standard definition of “a written or spoken expression of facts or opinions.” There are 4 types of statements on each petition paper as seen on the petition form in Exhibit C:

- 1) General statement of the grounds upon which the removal is sought, as required per Bastrop Charter §10.07,
- 2) “Statement of the circulator”, as required per Bastrop Charter’s §10.07 requirement that the petition paper be verified in the same manner as an initiative petition in §10.03,
- 3) A statement with the phrase “the statements made therein are true”, verified by affidavit, as required per Bastrop Charter §10.07, and
- 4) Statements by each qualified voter that they agree with the grounds for removal by providing their signature, name, address, date of signature, birthdate, and voter ID.

*d. Who is a “signer”?*

The Bastrop Charter does not define the term “signer”. The generic definition of signer is “a person that has signed an official document.” There are three types

of individuals who are signers of each petition paper in their respective capacities who meet the generic definition:

- 1) **Qualified voters**, who sign on the inline signature lines, are signers demanding the removal of the city official, asserting their agreement with the grounds for removal,
- 2) **Petition Circulator**, who signs a dedicated signature line at the lower left of each petition paper, has made a statement that each signature was made in their presence and that the statements made therein are true, and
- 3) **Notary**, who signs, stamps, and verifies the Statement of the Circulator and the sworn statement of truth from the Circulator.

*e. Which “signer” can verify the “statements made therein” without perjuring themselves?*

Out of the three different types of “signers of each petition paper”, only the petition Circulator can attest to the truthfulness of all the statements made on the petition paper without committing perjury. Only the Circulator is capable of truthfully stating that all the signatures were made in their presence. The Circulator signed and made the required affidavit on every petition paper to this end.

The Texas Supreme Court says, “It is a rule of statutory construction that every word of a statute must be presumed to have been used for a purpose. Likewise, we believe every word excluded from a statute must also be presumed to have been excluded for a purpose.” *In re Bell*, 91 SW 3d 784, 790 (Tex, 2002). If the Charter

had intended for the affidavit signer to be limited to unique qualified voters, as Relator suggests, then surely the Charter would have specified such a requirement.

*f. Why is an affidavit required for a recall petition and not an initiative petition?*

The City of Bastrop's charter in §10.07 requires that a recall petition "be signed and verified in the same manner required for an initiative petition", but then adds an additional requirement for "an affidavit that the statements made therein are true." The key difference between the Initiative and Recall processes is that while an initiative petition only requires a statement of the circulator (not a sworn affidavit), the recall petition requires an affidavit to verify the truth of the statements made therein.

The language of the charter is clear that each recall affidavit must cover the statements on each, individual petition paper, not just the grounds for removal as proposed by the Relator. This includes the circulator's statement, which affirms that the signatures were made in their presence and are believed to be genuine. In contrast to an initiative petition, where the circulator's statement alone is sufficient, the recall petition requires this statement to be verified under oath, adding an important layer of protection to the integrity of the recall process.

This heightened affidavit requirement ensures that someone is swearing to the authenticity of the signatures and the manner in which they were collected, as well

as the grounds for removal. The added affidavit requirement serves as a safeguard to prevent fraud or misconduct in the recall process, recognizing the gravity of removing an elected official from office.

Because the Petition Circulator has signed each page of both the original and amended petitions, the Petition Circulator is clearly a “signer” of each petition paper. Because “statements” consist of all statements made on each petition paper, including the circulator’s statement that all signatures were made in their presence AND each statement made by a qualified voter, only the Petition Circulator is qualified to swear an oath to the veracity of the “statements made therein” on the petition paper. Therefore, the Petition Circulator’s Oath in both the original and amended petitions is valid and should have been accepted by the City Secretary.

### **CONCLUSION**

The spirit and intent of the Power of Recall provision in Bastrop’s charter is to provide its people with the ability to exercise their constitutional suffrage rights. The requirement that unique qualified voters swear an oath on each petition page is not reasonable, and excluding the petition circulator as a signer of the petition page to invalidate the petition paper’s sworn oath creates absurd results. It is likewise unreasonable to invalidate 1,598 valid signatures due to duplicate signatures. The petition should not be invalidated on the basis of technicalities without considering the very serious effect on voter rights.

## PRAYER

In the Original Writ of Mandamus petition before this court, Mayor Nelson states he is confident “he would prevail with the voters and defeat a recall election.”

Given the choice between actual harm to the suffrage rights of a substantial percentage of the citizens of Bastrop, Texas, and the relatively low harm anticipated by the mayor himself, I pray that you would choose to protect the suffrage rights of the citizens of Bastrop and deny this Writ of Mandamus. Let the People Decide!

Respectfully submitted this 28 day of October, 2024.

*/s/ John Kirkland*  
JOHN KIRKLAND, *pro se*

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### **CERTIFICATE OF COMPLIANCE**

I, John Kirkland, certify that this document was computer generated and the word count of the document, except for those items “excluded” by section Tex. R. App. P. 9.4(i)(2)(D), is 3,583 based on the count of the computer program used to prepare the document.

*/s/ John Kirkland*  
JOHN KIRKLAND

### **CERTIFICATION OF FEES**

I, John Kirkland, certify that no fees were paid in the preparation of this document, pursuant to Tex. R. App. P. 11(c).

*/s/ John Kirkland*  
JOHN KIRKLAND

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served electronically on the following counsel of record for Relator and Respondent on October 28, 2024:

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JOHN KIRKLAND

**APPENDIX INDEX**

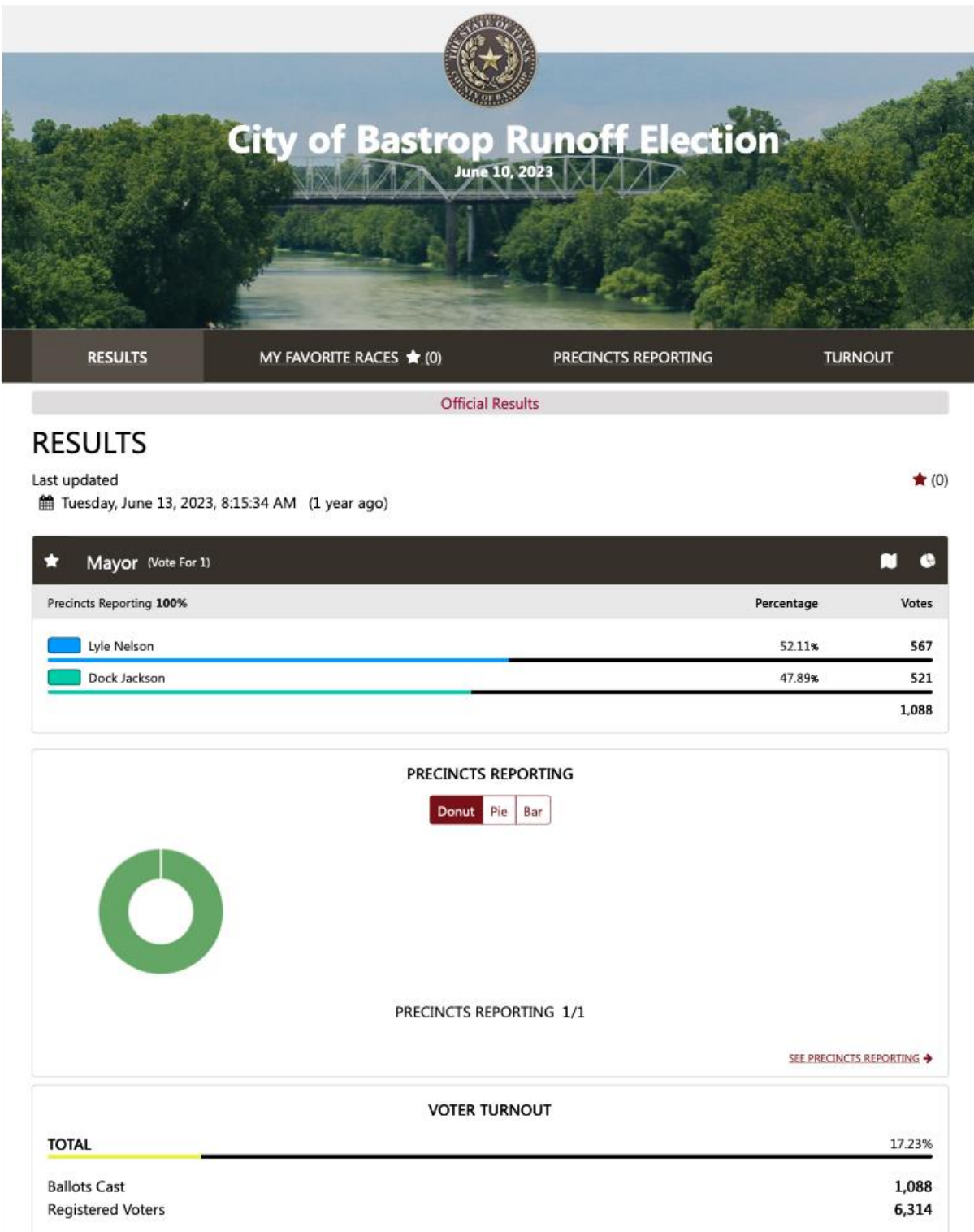
APP TAB A – Exhibit A – Official Election Results for June 10, 2023, City of Bastrop Runoff Election for Relator Lyle Nelson ..... 26

APP TAB B – Exhibit B – Bastrop Board of Ethics Letter of Reprimand for Lyle Nelson ..... 27

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Exhibit A – Official Election Results for June 10, 2023, City of Bastrop Runoff Election for Relator Lyle Nelson.



<https://results.enr.clarityelections.com/TX/Bastrop/117971>

## Exhibit B – Bastrop Board of Ethics Letter of Reprimand for Lyle Nelson



### Letter of Reprimand

April 11, 2024

Lyle Nelson  
Mayor, City of Bastrop  
1311 Chestnut Street  
Bastrop, TX 78602

Mayor Nelson:

Pursuant to Section 1.15.018(b)(3) of the Bastrop Code of Ethics, the City of Bastrop Board of Ethics issues this **Letter of Reprimand** and, in support thereof, finds the following:

- You were alleged to have violated Section 1.15.009(h)(2) of the City of Bastrop Code of Ethics by interfering with an administrative investigation;
- An evidentiary hearing was conducted on April 10, 2024, at which you were present, represented by counsel, and afforded the opportunity to present evidence and cross-examine the complainant;
- At the conclusion of the evidentiary hearing, the Board of Ethics unanimously determined that, based on the evidence admitted at the hearing, you violated Section 1.15.009(h)(2) of the Bastrop Code of Ethics by abusing your position to interfere with an administrative investigation; and
- After considering the severity and intent of your conduct, the Board of Ethics voted to issue a **Letter of Reprimand**.



In accordance with Section E.27 of the Board of Ethics Rules of Procedure, a copy of this Letter of Reprimand is being furnished to the City Secretary, the City Attorney, and the City Council (through the Mayor Pro Tem).

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Duggan". The signature is fluid and cursive, with the first name being the most prominent.

Chris Duggan  
Chair, Bastrop Board of Ethics

Cc: Ann Franklin, City Secretary  
Alan Bojorquez, City Attorney  
Mayor Pro Tem John Kirkland on behalf of the Bastrop City Council



## City of Bastrop Charter Requirements for Petitions

### **§10.03 Form of Petition for Initiative and Referendum**

All petition papers circulated for the purpose of an initiative or referendum shall be uniform in size and style. Initiative petition papers shall contain the full text of the proposed ordinance. The signatures to initiative and referendum petitions need not all be appended to one paper, but to each separate paper there shall be attached a statement of the circulator that he/she personally circulated the foregoing paper, that all the signatures appended thereto were made in his/her presence and that he/she believes them to be the genuine signatures of the persons whose names they purport to be. Each signer of any such petition shall sign his/her name in ink, shall indicate after his/her name his/her place of residence by street, street number and zip code, shall indicate his/her voter registration certificate number and shall record the date of signature.

### **§10.07 Power of Recall**

The people of the City reserve the power to recall the Mayor or any other member of the Council and may exercise such power by filing with the City Secretary a petition, signed by qualified voters of the City equal in number to at least twenty-five (25) percent of the number of registered voters residing in the City at the time of the last regular municipal election of the City demanding the removal of the Mayor or other member of the Council. The petition shall be signed and verified in the manner required for an initiative petition, shall contain a general statement of the grounds upon which the removal is sought and one of the signers of each petition paper shall make an affidavit that the statements made therein are true.

### **§10.08 Recall Election**

All papers comprising a recall petition shall be assembled and filed with the City Secretary. Within thirty (30) days after the petition is filed, the City Secretary shall determine its sufficiency and, if found to be sufficient, shall certify this fact to the Council at its next regular meeting. If a recall petition is found to be insufficient, it may be amended within ten (10) days after notice of such insufficiency by the City Secretary, by filing a supplementary petition. In that event, the same procedures shall then be followed by the City Secretary and the Council as in the case of an original petition. The finding of insufficiency of a recall petition shall not prejudice the filing of a new petition for the same purpose.

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