Motion Granted in Part; Order and Dissent to Order filed May 14, 2020.

In The

Fourteenth Court of Appeals

NO. 14-20-00358-CV

STATE OF TEXAS, Appellant

V.

TEXAS DEMOCRATIC PARTY, GILBERTO HINOJOSA, IN HIS CAPACITY AS CHAIRMAN OF THE TEXAS DEMOCRATIC PARTY, JOSEPH DANIEL CASCINO, SHANDA MARIE SANSING, ZACHARY PRICE, LEAGUE OF WOMEN VOTERS OF TEXAS, LEAGUE OF WOMEN VOTERS OF AUSTIN AREA, WORKERS DEFENSE ACTION FUND, AND MOVE TEXAS ACTION FUND, Appellees

On Appeal from the 201st District Court
Travis County, Texas
Trial Court Cause No. D-1-GN-20-001610

D I S S E N T T O O R D E R

Appellees Joseph Daniel Cascino, Shanda Marie Sansing, Texas Democratic Party, Gilberto Hinojosa in his capacity as Chairman of the Texas Democratic Party, Zachary Price, League of Women Voters of Texas, League of Women Voters of Austin Area, Workers Defense Action Fund, and MOVE Texas Action Fund

(collectively the "Cascino Parties") filed an emergency motion asserting that (1) this court should enforce under Texas Rule of Appellate Procedure 29.4 the trial court's temporary injunction against appellant the State of Texas based on the State's alleged open defiance of the temporary injunction, an injunction that the Cascino Parties claim has not been superseded and thus remains in effect, or (2) if this court were to conclude that the temporary injunction has been superseded, then they urge this court to grant emergency relief under Texas Rule of Appellate Procedure 29.3 and this court's inherent power by ordering that the trial court's temporary injunction remains in effect, which the Cascino Parties claim is necessary to preserve their rights until the court disposes of this appeal. All of the alleged conduct that the Cascino Parties claim violated the injunction occurred after the State of Texas filed its notice of appeal. The State's filing of the notice of appeal automatically superseded the temporary injunction. Therefore, this court should deny the Cascino Parties' motion for Rule 29.4 relief.

The relief that the Cascino Parties seek under Rule 29.3 and this court's inherent power conflicts with the Legislature's determination that the State automatically supersedes an order or judgment by filing a notice of appeal and that courts cannot countermand the State's ability to supersede unless the case arises from a contested case in an administrative-enforcement action. The Legislature's statutes in this subject area and Texas Rule of Appellate Procedure 24.2(a)(3) do not violate the Texas Constitution's separation-of-powers provision. Because this court cannot use Rule 29.3 or its inherent power to nullify Texas statutes, this court should deny the Cascino Parties' request for relief under Rule 29.3 and the court's inherent power.

Because the majority does not address the request for Rule 29.4 relief and grants the request for relief under Rule 29.3 and the court's inherent power, I respectfully dissent.

The trial court's injunction

On April 17, 2020, the trial court granted a temporary injunction (the "Injunction") in which it ordered the following:

- Defendant Dana DeBeauvoir, in her official capacity as the Travis County Clerk and Election Administrator ("DeBeauvoir"), her agents, servants, employees, representatives, and all persons or entities of any type whatsoever acting in concert with them or acting on their behalf are enjoined from rejecting any mail ballot applications received from registered voters who use the disability category of eligibility as a result of the COVID-19 pandemic for the reason that the applications were submitted based on the disability category.
- DeBeauvoir, her agents, servants, employees, representatives, and all persons or entities of any type whatsoever acting in concert with them or acting on their behalf are enjoined from refusing to accept and tabulate any mail ballots received from voters who apply to vote by mail based on the disability category of eligibility as a result of the COVID-19 pandemic for all elections affected by the pandemic for the reason that the ballots were submitted based on the disability category.
- DeBeauvoir, the State of Texas, and their agents, servants, employees, representatives, and all persons or entities of any type whatsoever acting in concert with them or acting on their behalf are enjoined from issuing guidance or otherwise taking actions that would prevent "Counties"[1] from accepting and tabulating any mail ballots received from voters who apply to vote by mail based on the disability category of eligibility as a result of the COVID-19 pandemic for all elections affected by the pandemic for the reason that the ballots were submitted based on the disability category.
- DeBeauvoir, the State of Texas, and their agents, servants, employees, representatives, and all persons or entities of any type whatsoever

[1] The term "Counties" in the trial court's temporary injunction was not a defined term.

> acting in concert with them or acting on their behalf are enjoined from issuing guidance or otherwise taking actions during all elections affected by the COVID-19 pandemic, that would prohibit individuals from submitting mail ballots based on the disability category of eligibility or that would suggest that individuals may be subject to penalty solely for doing so.

The State of Texas filed a notice of interlocutory appeal.

DeBeauvoir did not file an interlocutory appeal from the Injunction. Thirty minutes after the trial court signed the Injunction, the State of Texas filed a notice of interlocutory appeal, perfecting its appeal from the Injunction. In the notice, the State of Texas stated that pursuant to Civil Practice and Remedies Code section 6.001 and Texas Rule of Appellate Procedure 29.1(b) the filing of the State's notice of appeal superseded the Injunction.

The Cascino Parties are not entitled to relief under Rule 29.4.

In their emergency motion, the Cascino Parties take issue with the State of Texas's statement in the notice of appeal. They assert that for the State to supersede the Injunction the State must seek to supersede the Injunction in the trial court under Rule of Appellate Procedure 24. The Cascino Parties assert that because the State did not do so, the Injunction has never been superseded and remains in effect. The Cascino Parties do not allege that the State of Texas violated the Injunction during the thirty-minute period between the trial court's signing of the Injunction and the State's filing of its notice of appeal. Instead, the Cascino Parties assert that the Attorney General of the State of Texas violated the Injunction by issuing a May 1, 2020 letter.

The Cascino Parties assert that Rule 24.2(a)(3) required the State to request that the Injunction be superseded, pointing to the following language: "When the judgment is for something other than money or an interest in property, the trial court

must set the amount and type of security that the judgment debtor must post."[2] Though this sentence addresses the procedure for superseding a judgment under Rule 24 by providing alternate security ordered by the trial court, nothing in Rule 24 states that the rule stands as the exclusive means for superseding a judgment. To the contrary, the first sentence of Rule 24.1 provides that "[u]nless the law or these rules provide otherwise, a judgment debtor **may** supersede the judgment by: [the four means of superseding under Rule 24]."[3] Thus, under its unambiguous language, Rule 24 does not prevent a judgment debtor from superseding an order or judgment under another rule or statute.[4]

Texas Rule of Appellate Procedure 29.1 provides that "[p]erfecting an appeal from an order granting interlocutory relief does not suspend the order appealed from unless: (a) the order is suspended in accordance with [Rule] 29.2; or (b) the appellant is entitled to supersede the order without security by filing a notice of appeal."[5] Under Rule 29.2, the trial court may permit an order granting interlocutory relief to be superseded under Rule 24 pending an appeal from the order.[6] Thus, under Rule 29.1, an interlocutory appeal does not suspend the order from which an appeal is taken unless (1) the trial court allows the appealing party to supersede the order under Rule 24, or (2) the appellant is entitled to supersede the order without security by filing a notice of appeal.[7] Under the plain text of Rule 29.1, if the State of Texas is entitled to supersede the Injunction without security by filing a notice of appeal,

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[2] Tex. R. App. P. 24.2 (a)(3).

[3] Tex. R. App. P. 24.1 (emphasis added).

[4] *See* Tex. R. App. P. 24.

[5] Tex. R. App. P. 29.1.

[6] Tex. R. App. P. 29.2.

[7] *See* Tex. R. App. P. 29.1.

then the State of Texas need not take any action under Rule 24 to supersede the Injunction.[8]

Under Civil Practice and Remedies Code section 6.001, the Legislature provides that "[a] governmental entity or officer listed in Subsection (b) may not be required to file a bond for court costs incident to a suit filed by the entity or officer or for an appeal or writ of error taken out by the entity or officer. . . ."[9] This provision applies to the State of Texas, a department of the State of Texas, and the head of a department of the State of Texas.[10] Under the plain text of this statute and long-standing Texas precedent interpreting this statute and its predecessors, the State of Texas is entitled to supersede an interlocutory order or final judgment without security by filing a notice of appeal.[11] So, under Rule 29.1, the State's perfection of an appeal from the Injunction superseded the Injunction.[12]

In 1984, the Supreme Court of Texas amended the predecessor rule to Rule 24.2(a)(3) to provide that the trial court may decline to permit a judgment debtor to supersede a judgment if the plaintiff filed a bond or deposit fixed by the court in such an amount as would secure the defendant in any loss or damage occasioned by any relief granted if it was determined on final disposition that such relief was

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[8] *See id*.

[9] Tex. Civ. Prac. & Rem. Code § 6.001(a) (West, Westlaw through 2019 R.S.).

[10] Tex. Civ. Prac. & Rem. Code § 6.001(b) (West, Westlaw through 2019 R.S.).

[11] *See* Tex. Civ. Prac. & Rem. Code § 6.001; *In re State Board for Educator Certification*, 452 S.W.3d 802, 805–06 (Tex. 2014); *Neeley v. West Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 754 & n.19 (Tex. 2005); *Ammex Warehouse Co. v. Archer*, 381 S.W.2d 478, 480–81 (Tex. 1964).

[12] *See* Tex. R. App. P. 29.1; *In re State Board for Educator Certification*, 452 S.W.3d at 805–06; *Neeley*, 176 S.W.3d at 754 & n.19; *Ammex Warehouse Co.*, 381 S.W.2d at 480–81.

improper.[13] This rule change raised the potential issue of whether a trial court had discretion under this rule to decline to permit a governmental entity to supersede a judgment, even though the entity had the right to supersede a judgment automatically by filing a notice of appeal.[14]

In *In re Long*, the Supreme Court of Texas stated that, "as a general rule," the state's perfection of appeal "automatically supersedes the trial court's judgment, and that suspension remains in effect until all appellate rights are exhausted."[15] In that case, the court stated that the filing of a notice of appeal "operated as a supersedeas bond."[16] The high court noted that the plaintiffs could have invoked the predecessor to Rule of Appellate Procedure 24.2(a)(3) and asked the trial court to decline to permit the judgment to be superseded, but the plaintiffs in that case did not do so.[17] Thus, the *Long* court suggested that a trial court might have discretion under the predecessor rule to Rule 24.2(a)(3) to deny an appealing governmental entity the ability to supersede the judgment, but the high court did not have to address that point in its holding.[18]

In *In re State Board for Educator Certification*, the supreme court addressed that issue for the first time and held that under Texas cases and Rule 25.1(h)[19] a

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[13] *See In re State Board for Educator Certification*, 452 S.W.3d at 806, n.22.

[14] *See id*. at 805–06.

[15] 984 S.W.2d 623, 625 (Tex. 1999).

[16] *Id*. at 626.

[17] *Id.*

[18] *See id*.

[19] Rule 25.1(h), the analogue to Rule 29.1(b) in the context of appeals from final judgments, provides as follows: "The filing of a notice of appeal does not suspend enforcement of the judgment. Enforcement of the judgment may proceed unless: (1) the judgment is superseded in

governmental entity's notice of appeal automatically suspends enforcement of the judgment.[20] If the filing of a notice of appeal were enough to suspend the judgment under Rule 25.1(h) or Rule 29.1, there would seem to be no reason for a governmental entity to seek to supersede a judgment under Rule 24, and the "counter-supersedeas" language in Rule 24.2(a)(3) appears only to apply to an appellant seeking to supersede a judgment under Rule 24.1(a)(4) based on the security found to be adequate by the trial court under Rule 24.2(a)(3). Even so, the *In re State Board for Educator Certification* court determined that even though the filing of a notice of appeal by a governmental entity automatically suspends enforcement of the judgment, the judgment creditor still may ask the trial court to exercise its discretion under Rule 24.2(a)(3) to "decline supersedeas if the judgment creditor posts security."[21] Under this holding a judgment creditor may offer to post the security ordered by the trial court and ask the trial court to "decline supersedeas" under Rule 24.2(a)(3) as to a judgment against a governmental entity, even though the governmental entity already superseded the judgment by perfecting appeal and even though the governmental entity never sought to supersede the judgment under Rule 24.[22] Though Rule 24.2(a)(3) says, "the trial court may decline to permit the judgment to be superseded," the *In re State Board for Educator Certification* court effectively held that the trial court has discretion under this rule to declare that a judgment that already had been superseded would no longer be superseded if the judgment creditor posted the security specified by the trial court.[23] The supreme

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accordance with Rule 24, or (2) the appellant is entitled to supersede the judgment without security by filing a notice of appeal." Tex. R. App. P. 25.1(h) (footnote omitted).

[20] *See In re State Board for Educator Certification*, 452 S.W.3d at 804–09.

[21] *Id*. at 808.

[22] *See id*.

[23] *See id*.

court premised this holding on the judgment creditor offering to post the security the trial court ordered and asking the trial court to "decline supersedeas" under Rule 24.2(a)(3) as to a judgment against a governmental entity.[24] In today's case, the Cascino Parties did not offer to post the security, nor did they ask the trial court to "decline supersedeas" under Rule 24.2(a)(3) as to the Injunction.

The Texas Legislature did not look favorably upon the supreme court's reconciliation of Rules 25.1(h) and Rule 24.2(a)(3) and the resulting ability of a trial court to decline supersedeas as to an order or judgment against the State of Texas, a department of the State of Texas, or the head of a department of the State.[25] In 2017, the Legislature decided to abrogate the *In re State Board for Educator Certification* holding as to those parties, except as to contested cases in administrative enforcement actions.[26] The Legislature required that "[t]he supreme court shall 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. Counter-supersedeas shall remain available to parties in a lawsuit concerning a matter that was the basis of a contested case in an administrative enforcement action."[27] In response, the supreme court amended Rule 24.2(a)(3) to add the following sentence: "When the judgment debtor is the state, a department of this state, or the head of a department of this state, the trial

[24] *See id*.

[25] *See* Tex. Gov't Code Ann. § 22.004(i) (West, Westlaw through 2019 R.S.).

[26] *See id*.

[27] *Id*.

court must permit a judgment to be superseded except in a matter arising from a contested case in an administrative enforcement action."[28]

Today's case does not involve a matter arising from a contested case in an administrative enforcement action. Thus, under the plain text of Rule 24.2(a)(3) and Government Code section 22.004(i), the Injunction is not subject to counter-supersedeas under Rule 24.2(a)(3), and under *In re State Board for Educator Certification* and prior cases, the State of Texas's perfection of appeal automatically superseded the Injunction.[29] Even if, contrary to these authorities, the Cascino Parties had the ability to "counter-supersede" the Injunction by offering to post the security ordered by the trial court and asking the trial court to "decline supersedeas" under Rule 24.2(a)(3), the Cascino Parties never offered to do so and never sought this relief under Rule 24.2(a)(3).

The Cascino Parties interpret *In re State Board for Educator Certification* as holding that the governmental entity's notice of appeal does not automatically supersede the judgment and that the governmental entity must ask the trial court to supersede the judgment. The *In re State Board for Educator Certification* court did not pronounce either holding.[30] Instead, if the Cascino Parties wanted to counter-supersede the Injunction, they had to offer to post the security ordered by the trial court and ask the trial court to "decline supersedeas" under Rule 24.2(a)(3).[31] Their failure to do so did not prejudice them because the trial court had no discretion to "decline supersedeas" under the current version of Rule 24.2(a)(3), given that the

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[28] Tex. R. App. P. 24.2(a)(3).

[29] *See* Tex. Gov't Code Ann. § 22.004(i); Tex. R. App. P. 24.2(a)(3); *In re State Board for Educator Certification*, 452 S.W.3d at 804–09; *Ammex Warehouse Co.*, 381 S.W.2d at 480–81.

[30] *See In re State Board for Educator Certification*, 452 S.W.3d at 804–09.

[31] *See id.*

case does not fall within the exception (involving a matter arising from a contested case in an administrative enforcement action).[32]

For the foregoing reasons, the State of Texas's filing of a notice of appeal superseded the Injunction. From that point to the present, the Injunction has been superseded.[33] Because all of the alleged violations of the Injunction occurred after the State of Texas filed the notice of appeal superseding the judgment, this court need not address whether the State of Texas violated the Injunction or go forward with a proceeding to enforce the Injunction under Rule 29.4.[34] This court should deny the Cascino Parties' request for relief under Rule 29.4.

The Cascino Parties are not entitled to relief under Rule 29.3 or the court's inherent power.

The Cascino Parties assert in the alternative that if this court were to conclude that the Injunction has been superseded, this court should grant emergency relief under Rule of Appellate Procedure 29.3 and this court's inherent power by ordering that the Injunction remains in effect, an action the appellees claim is necessary to preserve their rights until the disposition of this appeal.[35] The Cascino Parties assert that a recent published order from the Third Court of Appeals is binding precedent

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[32] *See* Tex. Gov't Code Ann. § 22.004(i); Tex. R. App. P. 24.2(a)(3); *In re State Board for Educator Certification*, 452 S.W.3d at 804–09.

[33] *See* Tex. Gov't Code Ann. § 22.004(i); Tex. R. App. P. 24.2(a)(3); *In re State Board for Educator Certification*, 452 S.W.3d at 804–09; *Neeley*, 176 S.W.3d at 754 & n.19; *Ammex Warehouse Co.*, 381 S.W.2d at 480–81.

[34] *See* Tex. R. App. P. 29.4.

[35] Texas Rule of Appellate Procedure Rule 29.3 states that "[w]hen an appeal from an interlocutory order is perfected, the appellate court may make any temporary orders necessary to preserve the parties' rights until disposition of the appeal and may require appropriate security." Tex. R. App. P. 29.3.

on this issue.[36] The majority agrees that this published order binds this court and grants the requested relief.[37]

The supreme court ordered this appeal transferred to this court from the Third Court of Appeals. Under the Texas Rule of Appellate Procedure 41.3, this court must decide the appeal in accordance with the Third Court of Appeals's precedent under principles of stare decisis if this court's decision otherwise would have been inconsistent with the Third Court of Appeals's precedent.[38] Under principles of stare decisis, the Third Court of Appeals's published order in *Texas Education Agency v. Houston Independent School District* is not on point and so would not bind this court even if this court were the Third Court of Appeals. The *Texas Education Agency* court "conclude[d] that under the particular circumstances presented here, where the appellee alleges irreparable harm from ultra vires action that it seeks to preclude from becoming final, to effectively perform our judicial function and to preserve the separation of powers, we must exercise our inherent authority and use Rule 29.3 to make orders to prevent irreparable harm to parties that have properly invoked [our] jurisdiction in an interlocutory appeal."[39] Thus, the Third Court of Appeals based that order on the "particular circumstances presented" and the appellee's allegation of irreparable harm from ultra vires action that it sought to preclude from becoming final.[40] In today's case, the Cascino Parties do not seek relief based on ultra vires action that they seek to preclude from becoming final; so, under stare decisis principles, the published order in *Texas Education Agency* is not a binding precedent

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[36] *See Texas Education Agency v. Houston Indep. Sch. Dist*., No. 03-20-00025-CV, 2020 WL 1966314, at *4–6 (Tex. App.—Austin Apr. 24, 2020) (published order).

[37] *See id*.

[38] Tex. R. App. P. 41.3.

[39] *See Texas Education Agency*, 2020 WL 1966314, at *6 (internal quotations omitted).

[40] *See id*.

for today's case.[41]

Under Texas statutes and binding precedent from the Supreme Court of Texas, the State of Texas has a statutory right to supersede the Injunction by filing a notice of appeal, and the State invoked that right in its notice of appeal.[42] By granting the Cascino Parties' request for relief under Rule 29.3 and decreeing that "the trial court's temporary injunction remains in effect until disposition of this appeal,"[43] this court takes action that conflicts with the State of Texas's statutory right to supersede the Injunction by filing a notice of appeal. Under binding supreme-court precedent, because the State's notice of appeal automatically superseded the Injunction, the Injunction has not been in effect since April 17, 2020.[44] Yet, today the majority orders that the Injunction "remains in effect," thus indicating that the Injunction has been in effect since April 17, 2020, when under binding statutes and precedent, it has not.[45]

When a rule of procedure conflicts with a statute, the statute prevails.[46] A court cannot exercise an inherent power in a manner that conflicts with an applicable

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[41] *See id*.; Tex. R. App. P. 41.3.

[42] *See* Tex. Civ. Prac. & Rem. Code § 6.001(b); Tex. Gov't Code Ann. § 22.004(i); *In re State Board for Educator Certification*, 452 S.W.3d at 804–09; *Neeley*, 176 S.W.3d at 754 & n.19; *Ammex Warehouse Co.*, 381 S.W.2d at 480–81.

[43] *Ante* at 3.

[44] *See* Tex. Civ. Prac. & Rem. Code § 6.001(b); Tex. Gov't Code Ann. § 22.004(i); *In re State Board for Educator Certification*, 452 S.W.3d at 804–09; *Neeley*, 176 S.W.3d at 754 & n.19; *Ammex Warehouse Co.*, 381 S.W.2d at 480–81.

[45] *See* Tex. Civ. Prac. & Rem. Code § 6.001(b); Tex. Gov't Code Ann. § 22.004(i); *In re State Board for Educator Certification*, 452 S.W.3d at 804–09; *Neeley*, 176 S.W.3d at 754 & n.19; *Ammex Warehouse Co.*, 381 S.W.2d at 480–81.

[46] *See Univ. of Tex. Health Science Ctr. at Houston v. Rios*, 542 S.W.3d 530, 538 (Tex. 2017).

statute.[47] By using its inherent power and Rule 29.3 to grant a temporary order that reinstates and revives an injunction that has been superseded for the past month, the majority violates applicable statutes and goes against high-court cases applying them.[48] Because this action is not a proper use of Rule 29.3 or the court's inherent power, this court should deny the Cascino Parties' request for relief under Rule 29.3 and the court's inherent power.[49]

The Cascino Parties assert that the supreme court's 2018 amendment to Rule 24.2(a)(3) violated the Texas Constitution's separation-of-powers provision by giving the State of Texas, a department of the State, and the head of a department of the State an unqualified right to supersede an order or judgment on appeal.[50] The Cascino Parties cite *In re State Board for Educator Certification* for this proposition, but based on the court's holding that Rule 24.2's counter-supersedeas provisions applied to the governmental entity in that case, the *In re State Board for Educator Certification* court did not rule on any constitutional issue.[51] Though the *In re State Board for Educator Certification* court suggested in obiter dicta that there might be separation-of-powers issues with the State's argument, the court did not say that a separation-of-powers violation would occur if a plaintiff had no ability under Rule

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[47] *See Ashford v. Goodwin*, 131 S.W. 535, 538 (Tex. 1910).

[48] *See* Tex. Civ. Prac. & Rem. Code § 6.001(b); Tex. Gov't Code Ann. § 22.004(i); *In re State Board for Educator Certification*, 452 S.W.3d at 804–09; *Neeley*, 176 S.W.3d at 754 & n.19; *Ammex Warehouse Co.*, 381 S.W.2d at 480–81.

[49] *See Rios*, 542 S.W.3d at 538; *Ashford*, 131 S.W. at 538.

[50] *See* Tex. Const. art. II, § 1. As noted above, the high court added the following language to Rule 24.2(a)(3): "When the judgment debtor is the state, a department of this state, or the head of a department of this state, the trial court must permit a judgment to be superseded except in a matter arising from a contested case in an administrative enforcement action."

[51] *See In re State Board for Educator Certification*, 452 S.W.3d at 804–09.

24.2(a)(3) to seek counter-supersedeas against a governmental entity.[52] What is binding on this court is the supreme court's statements that (1) "[w]e see nothing in this exemption statute [exempting the State of Texas and other governmental entities from having to post a bond to supersede a judgment] which is repugnant to any constitutional provision"[53]; (2) "[t]he Legislature was well within its constitutional boundaries in providing that the State and the heads of its departments are exempt from giving bond when they elect to supersede a judgment of a trial court"[54]; and (3) "[i]t may be that litigants' substantive rights would be better protected by allowing enforcement of a trial court's judgment pending appeal. . . However, when and how supersedeas should be allowed is a policy question peculiarly within the legislative sphere and the Legislature has determined that the State and certain political subdivisions thereof may supersede judgments of trial courts."[55]

The Legislature did not violate the Texas Constitution's separation-of-powers provision in determining that counter-supersedeas should not be allowed in appeals by the State of Texas except in cases arising from a contested case in an administrative-enforcement action.[56] Nor did the supreme court violate the Texas Constitution's separation of powers in promulgating the 2018 revision to Rule 24.2

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[52] *See id*. at 808–09.

[53] *Ammex Warehouse Co.*, 381 S.W.2d at 481.

[54] *Id*. at 482.

[55] *Id.*

[56] *See* Tex. Const. art. II, § 1; Tex. Gov't Code Ann. § 22.004(i); *In re Dean*, 393 S.W.3d 741, 748 (Tex. 2012); *General Servs. Com'n v. Little-Tex Insulation Co*., 39 S.W.3d 591, 599–600 (Tex. 2001); *Ammex Warehouse Co.*, 381 S.W.2d at 481–82.

under Texas Government Code section 22.004(i).[57]

Because the Cascino Parties have not shown themselves entitled to the relief they seek under Rule 29.3 and this court's inherent power, this court should deny this part of the Cascino Parties' motion.

Conclusion

The majority errs in failing to address the Cascino Parties' request for relief under Rule 29.4 and in granting relief under Rule 29.3 and the court's inherent power without first determining whether the Injunction has been superseded. In any case, the court errs in granting relief under Rule 29.3 and the court's inherent power because granting that relief conflicts with Texas statutes. The court should deny the Cascino Parties' emergency motion in its entirety.

/s/ Kem Thompson Frost
Kem Thompson Frost
Chief Justice

Panel consists of Chief Justice Frost and Justices Zimmerer and Poissant (Poissant, J., majority).

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[57] *See* Tex. Const. art. II, § 1; Tex. Gov't Code Ann. § 22.004(i); Tex. R. App. P. 24.2(a)(3); *In re Dean*, 393 S.W.3d at 748; *General Servs. Com'n*, 39 S.W.3d at 599–600; *Ammex Warehouse Co.*, 381 S.W.2d at 481–82.