



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-16-00695-CV

**IN RE RIO GRANDE CITY CONSOLIDATED INDEPENDENT SCHOOL DISTRICT;**  
Alfredo Garcia, Superintendent; Daniel Garcia; Judith Solis; Norberto Cantu; Ruben Klein;  
Eduardo Ramirez; Noe R. Gonzalez; and Benito Saenz

Original Mandamus Proceeding<sup>1</sup>

Opinion by: Patricia O. Alvarez, Justice

Sitting: Karen Angelini, Justice  
Marialyn Barnard, Justice  
Patricia O. Alvarez, Justice

Delivered and Filed: November 9, 2016

PETITION FOR WRIT OF MANDAMUS GRANTED

On October 21, 2016, Relators, the Rio Grande City Consolidated Independent School District; Alfredo Garcia, Superintendent; Daniel Garcia; Judith Solis; Norberto Cantu; Ruben Klein; Eduardo Ramirez; Noe R. Gonzalez; and Benito Saenz filed a petition for writ of mandamus complaining of a temporary restraining order signed by the trial court on October 20, 2016. We conclude the trial court abused its discretion in granting the TRO and, accordingly, we grant mandamus relief.

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<sup>1</sup> This proceeding arises out of trial court Cause No. CC-16-336, styled *Jorge Bazan, A Concerned Citizen v. Rio Grande City Consolidated Independent School District, Alfredo Garcia, Superintendent, Daniel Garcia, Judith Solis, Norberto Cantu, Ruben Klein, Eduardo Ramirez, Noe R. Gonzalez and Benito Saenz, Elected Officials in their Official Capacities and Individual Capacities*, pending in the County Court at Law, Starr County, Texas, the Honorable Romero Molina presiding.

## BACKGROUND

On August 9, 2016, the School District board of trustees voted unanimously to approve an order calling a school board election to take place on November 4, 2016. The order provided for early voting to be held at “La Victoria Community Center” and “El Cenizo Park Building.” On October 11, 2016, the School District entered into a joint election agreement with Starr County, Texas to provide for common polling places on November 4, 2016, but declaring management of early voting to be the separate and sole responsibility of the School District. Beginning on October 14, 2016, the School District began publishing notice that early voting would take place at Fort Ringgold—Old Central Cafeteria, La Victoria Community Center, and El Cenizo Park Building.

On October 17, 2016, Jorge Bazan, as a concerned citizen, filed a petition for TRO and injunctive relief to enjoin the Relators from using the La Victoria Community Center and El Cenizo Park Building as early voting locations. Starr County intervened on October 19, 2016, with a petition seeking a TRO and injunctive relief. On October 20, 2016 the trial court signed a TRO. The order specifically stated that it was based upon Starr County’s petition. The School District then filed this original proceeding on October 21, 2016.

## ANALYSIS

Mandamus will issue only to correct a clear abuse of discretion for which the relator has no adequate remedy at law. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding); *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992) (orig. proceeding). “A trial court has no ‘discretion’ in determining what the law is or applying the law to the facts,” and “a clear failure by the trial court to analyze or apply the law correctly will constitute an abuse of discretion.” *Walker*, 827 S.W.2d at 840. A TRO that is void is subject to remedy by mandamus. *See In re Office of Att’y Gen.*, 257 S.W.3d 695, 698 (Tex. 2008) (orig. proceeding) (granting mandamus to correct a void TRO).

**A. Mandamus Jurisdiction**

The County argues that this court lacks jurisdiction over this mandamus proceeding because the TRO is actually an injunction, which would be subject to an interlocutory appeal and not a mandamus. We disagree. The order is entitled “Temporary Restraining Order,” was issued *ex parte*, states that it is granting the County’s petition for temporary restraining order, sets a hearing date for the County’s petition for temporary injunction, and has no trial date setting. Therefore, we conclude the order is a TRO. This court has mandamus jurisdiction over temporary restraining orders. *See id.*

**B. Clear Abuse of Discretion**

A TRO granted without notice “shall define the injury and state why it is irreparable.” TEX. R. CIV. P. 680. A restraining order that fails to meet the requirements of Rule 680 is void. *Office of Att’y Gen.*, 257 S.W.3d at 697. The TRO states that Starr County will suffer immediate and irreparable harm if early voting on the School District’s election at the La Victoria and El Cenizo locations is not prevented. The TRO, however, does not define the injury that allegedly will befall Starr County if the School District is allowed to conduct early voting on the school board election at the La Victoria and El Cenizo locations. Therefore, the TRO fails to meet the requirements of Rule 680 and is void. *See id.*

**C. No Adequate Remedy at Law**

“[M]andamus will not issue where there is an adequate remedy by appeal,” *Walker*, 827 S.W.2d at 840, but “a temporary restraining order is generally not appealable,” *In re Newton*, 146 S.W.3d 648, 652 (Tex. 2004) (orig. proceeding); *accord Office of Att’y Gen.*, 257 S.W.3d at 698. Further, because “the November [4, 2016] election will have concluded before any proceedings in the trial court could be appealed, relators have no adequate appellate remedy.” *See In re Newton*, 146 S.W.3d at 652. Therefore, we conclude relators are entitled to mandamus relief. *See id.*

**CONCLUSION**

We grant the petition for writ of mandamus and order the trial court to vacate the temporary restraining order signed on October 20, 2016. The stay issued by this court on October 21, 2016, will remain in effect until the trial court complies with this order. A writ of mandamus will issue only if the trial court fails to comply with our opinion and order.

Patricia O. Alvarez, Justice