NO. PD-0881-20

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

CRYSTAL MASON,
Appellant,
V.

STATE OF TEXAS,
Appellee.

From the Second Court of Appeals,
Cause No. 02-18-00138-CR

Trial Court Cause No. 148710D
From the 432nd District Court of Tarrant County, Texas
The Honorable Ruben Gonzalez, Jr. Presiding

APPELLANT'S PETITION FOR DISCRETIONARY REVIEW

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ORAL ARGUMENT REQUESTED

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Tarrant County, Texas

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STATEMENT REGARDING ORAL ARGUMENT

Oral argument is merited in this case as it involves issues of first impression regarding the scope and meaning of Election Code Section 64.012(a)(1)—Texas's Illegal Voting statute—and the statute's interaction with the federal Help America Vote Act. These issues have far reaching implications for Texas voters who make innocent mistakes concerning their eligibility to vote and could potentially be prosecuted for such mistakes, including the tens of thousands of voters who submit provisional ballots in general elections believing in good faith they are eligible to vote but turn out to be incorrect in that belief.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In the November 2016 general election, Crystal Mason went to her normal polling place; however, her name was not on the list of registered voters, and so she submitted a provisional ballot pursuant to the federal Help America Vote Act (HAVA). RR2.116:18-119:23. At the time, Ms. Mason was on federal supervised release after having served her prison sentence for a federal tax offense. RR2.20:6-21:2. Because election officials subsequently determined she was not registered to vote, Ms. Mason's provisional ballot was rejected and never counted. RR3.Ex.6.

On March 28, 2018, the trial judge convicted Ms. Mason of illegal voting under Section 64.012(a)(1) of the Election Code, which makes it a second degree felony to "vote[] … in an election in which the person knows the person is not

eligible to vote." CR.33. She was sentenced to five years in prison for this offense. *Id.*

On March 19, 2020, the Second Court of Appeals affirmed Ms. Mason's conviction in a published opinion. *Mason v. State*, 598 S.W.3d 755 (Tex. App—Fort Worth 2020) (hereinafter "Op.") (App'x.A).

On June 1, 2020, Ms. Mason sought reconsideration en banc. After requesting a response from the State, the court denied the motion on September 27, 2020. Justices Gabriel and Womack, however, would have granted it. App'x.B.

GROUNDS FOR REVIEW

1. The Illegal Voting statute requires that "the person knows the person is not eligible to vote." Tex. Elec. Code §64.012(a)(1). This Court's precedent, notably *Delay v. State*, 465 S.W.3d 232 (Tex. Crim. App. 2014), confirms that the State must prove that the person knew her conduct violated the Election Code. Did the court of appeals err in holding that "the fact that [Ms. Mason] did not know she was legally ineligible to vote was irrelevant to her prosecution"? Op.770.

2. Did the court of appeals err by adopting an interpretation of the Illegal Voting statute that is preempted by the federal Help America Vote Act—specifically by interpreting the Illegal Voting statute to criminalize the good faith submission of provisional ballots where individuals turn out to be incorrect about their eligibility to vote? Op.775-76.

3. In an issue of first impression, did the court of appeals misinterpret the Illegal Voting statute by holding that submitting a provisional ballot that is rejected constitutes "vot[ing] in an election"? Op.774-75.

INTRODUCTION

The court of appeals held that individuals who submit provisional ballots that are rejected may be prosecuted for illegal voting even if they did not know they were ineligible to vote.

This holding contradicts the language of the Illegal Voting statute—Election Code Section 64.012(a)(1)—which requires that the "person knows the person is not eligible to vote." It also directly conflicts with this Court's precedent, most notably *Delay v. State*, 465 S.W.3d 232 (Tex. Crim. App. 2014), which involved another criminal prosecution under the Election Code and held that when the statutory mens rea element of an Election Code offense is "knowingly," the accused must "actually realize[]" the conduct violated the Election Code. *Id.* at 251-52.

The lower court's opinion also is irreconcilable with the purpose of HAVA because it criminalizes the very conduct that HAVA was designed to enable. HAVA is not an obscure statute that affects a handful of citizens. For instance, in the 2016 general election, 44,046 provisional ballots were rejected in Texas because the individuals were not properly registered where they submitted their ballots, including citizens who moved but had not re-registered, went to the wrong polling location, or registered too late. Appellant's Post-Submission Letter to Second Court of Appeals at 1-2 (hereinafter "Letter"). While presumably these individuals, like

Ms. Mason, did not actually know that they were considered ineligible to vote, the opinion subjects them to potential felony prosecution.

Because the court of appeals's opinion misinterprets an important and broadly applicable statute in a manner that conflicts with the text of the statute, this Court's precedent, and federal law, this Court should grant review. Tex. R. App. P. 66.3 (b), (c), (d).

ARGUMENT

1. The court of appeals erred in holding that "the fact that [Ms. Mason] did not know she was legally ineligible to vote was irrelevant to her prosecution."

The court of appeals misinterpreted Section 64.012(a)(1) by holding that the statute's express mens rea requirement—that "the person knows the person is not eligible to vote"—is irrelevant to prosecution under the statute. This interpretation contradicts Section 64.012(a)(1)'s plain language and this Court's precedent, including *Delay v. State*, 465 S.W.3d 232 (Tex. Crim. App. 2014). Tex. R. App. P. 66.3 (c), (d). This Court's review is necessary to clarify that Section 64.012(a)(1)'s knowledge requirement cannot be presumed or read out of the statute, as the court of appeals did below.

A. The court of appeals's opinion conflicts with the statute's plain language.

Under Section 64.012(a)(1) of the Election Code, "a person commits an offense if the person … votes or attempts to vote in an election in which the person **knows** the person is not eligible to vote." (emphasis added).

On appeal, Ms. Mason challenged the sufficiency of the evidence that she knew she was ineligible to vote as a result of being on federal supervised release. Ms. Mason unequivocally testified that she did not know she was considered ineligible to vote, and would not have jeopardized her newly rebuilt life to cast a ballot if she had known. RR2.126:4-8. There was no evidence that Ms. Mason had any personal interest in the election. The supervisor of her release program testified that Ms. Mason was not told that being on federal supervised release rendered her ineligible to vote. RR2.20:9-17. The State's only evidence regarding Ms. Mason's knowledge of her ineligibility was based on speculation that she had read the provisional ballot affidavit, but the State's primary witness on this point admitted he was not certain she read the part of the affidavit about eligibility, RR2.86:24-87:2, and Ms. Mason testified that she did not, RR2:122:13-22.

The court of appeals agreed that Ms. Mason was not aware she was ineligible to vote: "Mason may not have known with certainty that being on supervised release as part of her federal conviction made her ineligible to vote under Texas law…." Op.779; *see also* Op.770 (evaluating significance of "[t]he fact that [Ms. Mason] did

not know she was legally ineligible to vote"); Op.779-80 (noting "the fact that [Ms. Mason] was not certain [about her eligibility] and may not have read the warnings on the affidavit form").

Under Section 64.012(a)(1)'s plain language, this lack of knowledge should have resulted in a reversal of Ms. Mason's conviction, as the evidence failed to demonstrate that she "kn[ew] [she was] not eligible to vote."

Instead, the court held that Ms. Mason's knowledge that she was on federal supervised release alone met Section 64.012(a)(1)'s mens rea element. Op.768–70. The court asserted that the law presumes her knowledge of the legal consequences of that underlying fact—per the State, that being on federal supervised release rendered her ineligible to vote. *Id.* Accordingly, the court of appeals concluded that "[t]he fact that [Ms. Mason] did not know she was legally ineligible to vote was irrelevant to her prosecution." Op.770.

The court's holding impermissibly nullifies the express mens rea element of Section 64.012(a)(1), which requires that the individuals "know[]" they are "not eligible to vote" under the Election Code. Where a criminal statute specifies a culpable mental state, the State bears the burden of proving that mental state beyond a reasonable doubt. *King v. State*, 895 S.W.2d 701, 703 (Tex. Crim. App. 1995) ("As with all elements of a criminal offense, the State must prove the mens rea element beyond a reasonable doubt.").

This Court has made clear that when the State fails to meet that burden, reversal is warranted. For instance, this Court interpreted Texas's Official Oppression statute to require that "a defendant must 'know' that his conduct … is unlawful." *State v. Edmond*, 933 S.W.2d 120, 127 (Tex. Crim. App. 1996). Accordingly, in *Ross v. State*, 543 S.W.3d 227 (Tex. Crim. App. 2018), this Court reversed a conviction where the "evidence was insufficient to prove beyond a reasonable doubt that [the defendant] knew that her conduct was unlawful." *Id.* at 234–35.

This Court should grant review to clarify that Section 64.012(a)(1)'s mens rea requirement cannot be presumed, and the State's conviction must be reversed.

B. The opinion conflicts with *Delay v. State*.

In *Delay*, former Congressman Tom Delay was convicted of money laundering and conspiracy to launder money based on a series of corporate political contributions that were alleged to violate Section 253.003(a) of the Election Code. 465 S.W.3d 232. Section 253.003(a) criminalizes "knowingly mak[ing] … a political contribution in violation of [the Election Code]."

This Court reversed the conviction, holding that "knowingly" undertaking an action "in violation of the Election Code" means "that the actor be aware, not just of the particular circumstances that render his otherwise-innocuous conduct unlawful, **but also of <u>the fact</u> that undertaking the conduct under those circumstances <u>in</u>**

<u>fact</u> constitutes a 'violation of' the Election Code." *Delay*, 465 S.W.3d at 250 (emphasis added).

In other words, a statutory requirement that an individual "knowingly" commit an offense under the Election Code, requires the State to prove **both** knowledge of underlying facts giving rise to a circumstance (here, that Ms. Mason knew she was on federal supervised release), **and an "actual[] realiz[ation]"** that those underlying facts **"in fact constitute[]"** the specified circumstance rendering the conduct unlawful (here, that Ms. Mason "actually realized" being on federal supervised release meant, per the State, she was not eligible to vote). *Id.* at 250, 252.

Despite the precedential importance of *Delay*, the court of appeals only briefly discusses the case in a footnote. Op.769 n.12. The court of appeals observed that *Delay* found statutory ambiguity with respect to determining "whether the word 'knowingly' … modified merely the making of a campaign contribution," or whether it also modified the phrase "'in violation of' the Election Code." *Delay*, 465 S.W.3d at 250; Op.769 n.12. Therefore, the court asserted that *Delay* was distinguishable because, here, Section 64.012(a)(1)'s knowledge requirement clearly applies to the person's knowledge of the conduct. Op.769 n.12.

However, this is a distinction without a meaningful difference. In resolving Section 253.003(a)'s ambiguity, *Delay* determined that the statute required the person to know the contribution violated the Election Code. *Delay*, 465 S.W.3d at

250. This interpretation directly aligns Section 253.003(a) with Section 64.012(a)(1)—both require knowledge that the actions taken were in violation of the Election Code. Section 253.003(a) requires that a person may not knowingly make a campaign contribution **which that person knows is in violation of the Election Code**. *Delay*, 465 S.W.3d at 250-51. Section 64.012(a) makes it an offense to "vote[]… in an election **in which the person knows the person is not eligible to vote**," where eligibility is established by Section 11.001 of the Election Code. (emphasis added).

Once this Court resolved the statutory ambiguity in *Delay*, it still had to determine what it substantively means to "knowingly … violat[e] the Election Code." *Delay*, 465 S.W.3d at 250-51. Here, the court of appeals likewise had to determine what it means for a person to "know[] the person is not eligible to vote" under the Election Code. Op.768.

In *Delay*, the Court did not conclude, as the court of appeals concluded here, that because the sophisticated individuals and corporations were charged with knowledge of the Election Code, whether they had actual knowledge that their contributions violated the Code was irrelevant. In fact, the Court reached the opposite conclusion. The Court held that the State did not prove a violation of Section 253.003(a) because, although the contributing corporations may have known that their contributions would be steered to specific candidates, "nothing in the

record shows that anyone associated with the contributing corporations **actually realized** that to make a political contribution under these circumstances **would in fact** violate … the Texas Election Code." *Delay*, 465 S.W.3d at 252 (emphasis added). It is this part of *Delay* which should have controlled the outcome here.

Applying this holding in *Delay* to determine whether Ms. Mason voted when she knew she was ineligible to vote (*i.e.*, knowingly acted in violation of the Election Code's requirements for eligibility to vote, Section 11.001), the State was required to prove not only that Ms. Mason knew she was on supervised release, but also that she **"actually realized"** that "those circumstances … in fact" rendered her ineligible to vote. *Id*. at 252 (emphasis added).

The court of appeals affirmed Ms. Mason's conviction based on nothing more than her knowledge that she was on supervised release. According to this Court's holding in *Delay*, the Election Code requires actual knowledge of her ineligibility to vote. Thus, the opinion below directly conflicts with *Delay*, and this Court should grant review pursuant to Tex. R. App. P. 66.3(c).

C. The opinion conflicts with other precedents from this Court.

Voting is not criminal conduct. Rather, it is the circumstance of the individual—eligible or ineligible—that renders the conduct unlawful under Section 64.012(a)(1). Accordingly, a defendant like Ms. Mason who does not know that she

is ineligible to vote does not have the guilty state of mind the statute's language and purpose requires.

This Court has consistently affirmed that where an offense criminalizes otherwise innocuous conduct based on particular circumstances, "the culpable mental state of 'knowingly' must apply to those surrounding circumstances." *See McQueen v. State*, 781 S.W.2d 600, 603 (Tex. Crim. App. 1989) (analyzing Tex. Penal Code §31.07).

For instance, this Court held that "[t]he word 'knowingly,' as used in the context that the defendant knowingly receives property that has been stolen" requires "actual subjective knowledge, rather than knowledge that would have indicated to a reasonably prudent man that the property was stolen," because such actual knowledge is what makes unlawful the otherwise innocent conduct of receiving property. *Dennis v. State*, 647 S.W.2d 275, 280 (Tex. Crim. App. 1983) (analyzing Tex. Penal Code §31.03(a), (b)(2)).

Similarly, with respect to a statute that prohibits "intentionally or knowingly ... display[ing] a firearm … in a manner calculated to alarm," this Court held that "persuading a jury that the actor's display was objectively alarming would not, by itself, be enough for a conviction." *State v. Ross*, 573 S.W.3d 817, 826 (Tex. Crim. App. 2019) (analyzing Tex. Penal Code §42.01(a)(8)). "The State would also ultimately have to prove … that the actor knew that his display was objectively likely

to alarm." *Id.*; *see also Jackson v. State*, 718 S.W.2d 724, 726 (Tex. Crim. App. 1986) (for the evading arrest offense, Tex. Penal Code §38.04, "it is essential that a defendant know the peace officer is attempting to arrest him").

Recent U.S. Supreme Court precedent reaches the same conclusion. In *Rehaif v. United States*, a case involving unlawful possession of a firearm on the basis of immigration status, the Court found that the statute required the government to prove that the defendant actually knew he was in the United States illegally. 139 S. Ct. 2191 (2019) (analyzing 18 U.S.C. §924(a)(2)). The Court rejected arguments similar to those adopted by the court of appeals here, including that defendant's status was a question of law and ignorance of the law was not a defense. It explained: "[a] defendant who does not know that he is an alien 'illegally or unlawfully in the United States' does not have the guilty state of mind that the statute's language and purposes require." *Id.* at 2198; *see also Liparota v. United States*, 471 U.S. 419, 425 (1985) (statute requires government to show defendant knew conduct was unauthorized).

This Court's review is necessary to ensure that Section 64.012(a)(1) is interpreted consistently with this case law and to clarify that its knowledge requirement cannot be read out of the statute.

D. The opinion's reasoning is unpersuasive.

The court of appeals attempts to justify its negation of Section 64.012(a)(1)'s mens rea element by noting that ignorance of the law is not a defense. Op.768-69 (citing Tex. Penal Code §8.03(a)). However, this general principle cannot override the State's duty to prove the specified culpable mental state beyond a reasonable doubt. *King*, 895 S.W.2d at 703. In *Delay*, the State made this same argument. *See Delay*, State's Post-Submission Supplemental Letter Brief at 3. However, this Court held that the State bore the burden of showing that the sophisticated actors actually realized their conduct violated the Election Code. *Delay*, 465 S.W.3d at 250-52.

Instead of *Delay*, the court of appeals relied primarily on a century-old, single-paragraph decision, *Thompson v. State*, 9 S.W. 486 (Tex. Ct. App. 1888), and decisions from other courts of appeals. Op.768-70 (citing *Jenkins v. State*, 468 S.W.3d 656, 672-73 (Tex. App.—Houston [14th Dist.] 2015), pet. dism'd, improvidently granted); and *Medrano v. State*, 421 S.W.3d 869, 884-85 (Tex. App.—Dallas 2014, pet. ref'd)). To the extent there is tension between these cases and this Court's clear precedent requiring the State to prove the mens rea element of a criminal statute beyond a reasonable doubt, this Court should grant review to resolve any conflict in the case law and to clarify *Delay*'s precedential significance for offenses arising out of the Election Code.

2. The court of appeals erred by adopting an interpretation of the Illegal Voting statute that is preempted by HAVA.

The court of appeals has interpreted Section 64.012(a)(1) in a manner that directly conflicts with federal law and could subject potentially tens of thousands of Texans in every federal election to felony prosecution. Tex. R. App. P. 66.3 (c), (d). This Court should grant review to clarify that Section 64.012(a)(1) does not criminalize good faith but mistaken submissions of provisional ballots.

A. HAVA preempts state law when there is a conflict.

Under the Elections Clause, "the States' role in regulating congressional elections—while weighty and worthy of respect—has always existed subject to the express qualification that it terminates according to federal law." *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 14-15 (2013). If state law criminalizes a right guaranteed by federal election law, the state law must give way and "ceases to be operative." *Id.* at 9 (citation omitted).

The court of appeals should not have adopted an interpretation that is unconstitutional because it is preempted by HAVA. *Alobaidi v. State*, 433 S.W.2d 440, 442 (Tex. Crim. App. 1968) ("A statute susceptible of more than one construction will be so interpreted … so that it will be constitutional.").

B. The court of appeals's interpretation conflicts with HAVA.

HAVA permits individuals, like Ms. Mason, who believe in good faith that they are eligible to vote to cast a provisional ballot, even when their belief turns out to be incorrect. As the State has conceded, HAVA "ensures that anyone who *believes they are eligible* to vote is given a provisional ballot if their name does not appear on the list of qualified voters." State's Response to Motion for En Banc Reconsideration at 17. The court of appeals's interpretation of Section 64.012(a)(1) impermissibly criminalizes such conduct.

The intent of HAVA was to alleviate

> a significant problem voters experience [, which] is to arrive at the polling place believing that they are eligible to vote, and then to be turned away because the election workers cannot find their names on the list of qualified voters.

Sandusky County Democratic Party v. Blackwell, 387 F.3d 565, 569 (6th Cir. 2004) (citation omitted). Accordingly, "HAVA's provisional voting section … ensure[s] that voters are allowed to vote (and to have their votes counted) when they appear at the proper polling place and are otherwise eligible to vote." *Common Cause Georgia v. Kemp*, 347 F. Supp. 3d 1270, 1292 (N.D. Ga. 2018).

The court of appeals misread *Common Cause Georgia* and concluded that because HAVA exists to serve individuals who are "otherwise eligible to vote," criminalization of those who turn out to be ineligible is not preempted. Op.775-76.

This interpretation directly conflicts with HAVA's text, which contemplates both a right to submit a provisional ballot and the eventuality that some individuals will be incorrect.

The right to cast a provisional ballot under HAVA is "mandatory" and "unambiguous." *Sandusky*, 387 F.3d at 572-73 (citation omitted). HAVA provides that if an individual "declares" (1) "that such individual is a registered voter in the jurisdiction in which the individual desires to vote" and (2) "that the individual is eligible to vote in an election for Federal office," then the individual must be "permitted to cast a provisional ballot." 52 U.S.C. §21082(a). Importantly, HAVA also contemplates that individuals may turn out to be incorrect regarding their eligibility to vote despite those declarations, and requires that states provide a mechanism for informing those individuals that their ballot was not counted. 52 U.S.C. §21082(a)(5)(B). Nothing in HAVA contemplates criminal prosecution for individuals who made such good faith mistakes.

The court of appeals's interpretation also eviscerates HAVA's purpose. HAVA exists because at the polling place there can be uncertainty about whether someone is eligible to vote. *Sandusky*, 387 F.3d at 569-70. In light of that uncertainty, HAVA creates a right to cast a provisional ballot that assures that nobody is "turned away" from the polls. *Id.* at 576. Congress's intent was to permit voters in Ms. Mason's situation to cast a provisional ballot, and have the State

determine whether to count that ballot after the individual leaves the polling place: "Any error by the state authorities may be sorted out later, when the provisional ballot is examined .... [I]f the voter is not eligible, the vote will then not be counted." *Id.*

The opinion below inverts this system and places tremendous risk on the prospective voter. Under the court's reasoning, where ambiguity exists about a citizen's eligibility to vote, she is forced to gamble with her liberty. She has a theoretical right to cast a provisional ballot, but if she is wrong about her eligibility, she faces potential prosecution. This eviscerates the right to cast a provisional ballot under HAVA. The looming possibility of prosecution would deter most citizens from casting a provisional ballot—including those who are correct about their eligibility.

This is not a theoretical concern: tens of thousands of Texans cast provisional ballots in each federal election but have them ultimately rejected. As noted above, in the 2016 general election, more than 44,000 provisional ballots were rejected in Texas because the individual was not properly registered. Letter at 1-2. The rejections included individuals who moved but did not re-register, who appeared at the wrong polling location, or who registered too late. Like Ms. Mason, those individuals filled out a provisional ballot affidavit attesting to their eligibility, and specifically represented that they are "a registered voter in this political subdivision

and in the precinct in which [they are] attempting to vote." RR3.Ex.8. And, like Ms. Mason, they turned out to be incorrect. Under the court of appeals's interpretation, these individuals could potentially face felony charges.

3. The court of appeals misinterpreted Section 64.012(a)(1) when it held that submitting a provisional ballot that is rejected constitutes "vot[ing]."

The court of appeals held that Ms. Mason's submission of a provisional ballot that was rejected met Section 64.012(a)(1)'s statutory requirement of "vot[ing] in an Election." This holding ignores the Rule of Lenity's requirement that ambiguities be resolved in favor of Ms. Mason, renders superfluous the separate statutory offense of "attempt to vote," and leads to illogical results that could criminalize a host of innocent conduct. The application of Section 64.012(a)(1) to rejected provisional ballots is an issue of first impression, and this Court should grant review to clarify the statute's correct scope. Tex. R. App. P. 66.3 (b), (d).

A. The court of appeals failed to acknowledge ambiguity that must be resolved in favor of Ms. Mason.

In holding that submitting a provisional ballot that is rejected constitutes "vot[ing]" in an election, Op. 778-79, the court of appeals erroneously failed to resolve statutory ambiguity in favor of Ms. Mason.

The Election Code repeatedly uses the term "vote" to refer only to counted ballots. Section 2.001 provides that "to be elected to a public office, a candidate must receive **more votes** than any other candidate." (emphasis added); *id.* §2.002(a)

(discussing procedures where candidates "tie for the number of votes required to be elected"). Of course, uncounted ballots are not considered "votes" that determine who wins an election.

Moreover, although the court of appeals recognized that "the Election Code's provisional-ballot provisions speak in terms of 'casting' such a ballot," Op.775 n.20, it erroneously assumed that the Code uses the verb "casts" interchangeably with the verb "votes." *See, e.g.*, Tex. Elec. Code §63.011 (establishing requirements for when a person "may **cast** a provisional ballot") (emphasis added). This assumption contradicts the principle that "when the legislature uses certain language in one part of the statute and different language in another, we presume different meanings were intended." *Ineos USA, LLC v. Elmgren*, 505 S.W.3d 555, 564 (Tex. 2016) (citation omitted).

And, although the court of appeals considered selected dictionary definitions, it failed to consider contrary definitions, even those from the same source. Op.774. Webster's Dictionary defines vote as "to express one's views in response to a poll **especially: to exercise a political franchise**."[1] (emphasis added). Similarly, Black's Law Online Dictionary's first definition of vote is "suffrage."[2] Ms. Mason did not exercise her political franchise or suffrage when she submitted a provisional

[1] *Vote*, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/vote.
[2] *Vote*, Black's Law Online Dictionary, https://thelawdictionary.org/vote/.

ballot that was rejected; indeed, the State claims that until she completes her federal supervised release she has no franchise.

These contrary examples demonstrate that Section 64.012(a)(1) is ambiguous because the "statutory language may be understood by reasonably well-informed persons in two or more different senses," including a sense that does not consider submitting a provisional ballot that is rejected and never counted to constitute voting in an election. *Price v. State*, 434 S.W.3d 601, 605 (Tex. Crim. App. 2014).

Because Section 64.012(a)(1) is a criminal statute arising outside the Penal Code, such ambiguity must be resolved in Ms. Mason's favor. *Delay*, 465 S.W.3d at 251. The failure to do so was erroneous.

B. The opinion renders superfluous the separate "attempt to vote" offense.

Section 64.012(a)(1) creates two criminal offenses: "a person commits an offense if the person: votes **or attempts to vote** in an election." (emphasis added). Illegal voting is a second degree felony—"unless the person is convicted of an attempt," which is "a state jail felony." Tex. Elec. Code §64.012(b). The State did not charge Ms. Mason with attempting to vote.

The court's view that "to vote—can be broadly defined as expressing one's choice, regardless of whether the vote actually is counted," Op.775, renders superfluous the separate offense of attempting to vote because any attempt to vote would be subsumed by that definition. This violates the fundamental principle of

statutory interpretation that each term in a statute must be given meaning. *Heckert v. State,* 612 S.W.2d 549, 552 (Tex. Crim. App. [Panel Op.] 1981) (rejecting interpretation that would render distinct statutory provisions a nullity).

C. The court of appeals's definition of "vote" leads to illogical results.

A plain language interpretation should be rejected where it "lead[s] to absurd consequences." *Boykin v. State,* 818 S.W.2d 782, 785 (Tex. Crim. App. 1991). The definition of voting as "expressing one's choice, regardless of whether the vote actually is counted," Op.775, leads to illogical consequences that could criminalize a host of acts that would not be considered to be "voting." For example, if an individual walked into a polling place with a ballot filled out, but because the election judge told her the ballot would not be accepted she failed to submit it, no one would believe that she had "voted in an election."

The same is true if that individual handed her ballot to the election judge, who deposited it in a box marked "rejected ballots." This is equivalent to what occurred with Ms. Mason: her provisional ballot was placed in a separate envelope pending review and then ultimately rejected. Tex. Elec. Code §64.008(b); *id.* §65.056.

This Court's review is necessary to clarify that Section 64.012(a)(1) does not illogically criminalize such conduct.

PRAYER

Ms. Mason prays that the Court grant her petition, order briefing on the merits, reverse her conviction, and order a judgment of acquittal.