

Reversed and Remanded and Opinion filed March 17, 2026.



In the

Fourteenth Court of Appeals

NO. 14-24-00829-CV

CITY OF KEMAH, TEXAS, Appellant

V.

**MERGER THREE, LLC; VOODOO HUT, LLC; 605, LLC; BK STEPHENS
INVESTMENT, LLC; AND THE GRECO, LLC, Appellees**

**On Appeal from the 405th District Court
Galveston County, Texas
Trial Court Cause No. 24-CV-1738**

O P I N I O N

The City appeals a temporary injunction requiring it to restore and maintain the status quo that existed before its city council passed Resolution No. 2024-10, in which the City resolved that “Sixth Street between Kipp Avenue and Bradford Avenue is restricted to pedestrians and emergency vehicles for an initial period of ten (10) years.” The City argues that the trial court lacked subject-matter jurisdiction to grant the temporary injunction, or alternatively, abused its discretion in doing so.

Although we conclude the trial court has subject-matter jurisdiction over the claims at issue for declaratory and injunctive relief, we agree with the City that the trial court abused its discretion in granting the temporary injunction. Our sister court concluded in *Jordan v. Landry’s Seafood Restaurant, Inc.*, that a street to which access is restricted to pedestrians and emergency vehicles is not “closed.” 89 S.W.3d 737, 742 (Tex. App.—Houston [1st Dist.] 2002, pet. denied) (op. on reh’g). We agree, and because the street is not “closed,” the plaintiffs in this case have failed to show a probable right to relief. We accordingly reverse the trial court’s order, dissolve the temporary injunction, and remand the case for further proceedings consistent with this opinion.

I. BACKGROUND

The City of Kemah is a Type A general-law municipality. Unlike home-rule municipalities, general-law municipalities possess “only those powers and privileges that the State expressly confers upon them,”¹ and “[a]ll acts beyond the scope of the powers granted are void.”² This lawsuit challenges as void Kemah’s City Council Resolution No. 2024-10. Because all of the parties treat, and refer to, the Resolution as an ordinance, we do likewise.

Under Texas Transportation Code section 311.008, “[t]he governing body of a general-law municipality by ordinance may vacate, abandon, or close a street or alley of the municipality if a petition signed by all the owners of real property abutting the street or alley is submitted to the governing body.” TEX. TRANSP. CODE § 311.008. An injunction staying or preventing a municipality from vacating, abandoning, or closing a street or alley may be granted only in a suit by a person

¹ *Town of Lakewood Vill. v. Bizios*, 493 S.W.3d 527, 531, 536 (Tex. 2016) (quoting *Tex. Dep’t of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 645 (Tex. 2004)) (cleaned up).

² *Foster v. City of Waco*, 113 Tex. 352, 355, 255 S.W. 1104, 1106 (1923).

“(1) who is the owner or lessee of real property abutting the part of the street or alley vacated, abandoned, or closed; and (2) whose damages have neither been ascertained and paid in a condemnation suit by the city nor released.” TEX. CIV. PRAC. & REM. CODE § 65.015. The plaintiffs have asserted claims under these statutes, and the facts giving rise to those claims are as follows.

In 2024, the City of Kemah’s city council passed the Ordinance, resolving that “Sixth Street between Kipp Avenue and Bradford Avenue is restricted to pedestrians and emergency vehicles for an initial period of ten (10) years.”³ The City thereafter installed traffic signs and striping that prohibit vehicles from entering the street and that reroute traffic around it. The City also installed bollards at the ends of the street, physically blocking vehicular traffic from entering.

The plaintiffs in this suit include all of the owners of the real property on the north side of this section of Sixth Street, as well as the landowners’ commercial tenants; we refer to the plaintiffs collectively as “the Occupants.”⁴ The Occupants sued for injunctive and declaratory relief to prevent the City from enforcing the Ordinance on the ground that the City is not authorized to close the street without the abutting landowners’ consent. In the alternative, the Occupants have asserted claims for compensation for a physical or regulatory taking.

The trial court granted the Occupants’ request for a temporary injunction to preserve the status quo as it existed before the Ordinance. The City has brought this interlocutory appeal challenging the temporary injunction, thereby staying all further proceedings pending resolution of this appeal. *See* TEX. CIV. PRAC. & REM. CODE

³ The parties refer to this street variously as 6th Street or Sixth Street, but to increase readability, we will refer to it as Sixth Street.

⁴ The plaintiffs are all limited-liability companies. Merger Three and BK Stephens Investment are the landowners, and Voodoo Hut, 605, and The Greco are the tenants.

§ 51.014(a)(5) (authorizing interlocutory appeal); *id.* § 51.014(b) (staying proceedings).

In two issues, the City argues that the trial court lacked subject-matter jurisdiction to grant the temporary injunction, or alternatively, abused its discretion in doing so.

II. STANDARD OF REVIEW

Temporary injunctions preserve the status quo concerning the contested matter pending a trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). An applicant for a temporary injunction must plead and prove (a) a cause of action against the party to be enjoined; (b) a probable right to recover on that claim after a trial on the merits; and (c) a probable, imminent, and irreparable injury absent the temporary injunction. *Harley Channelview Props., LLC v. Harley Marine Gulf, LLC*, 690 S.W.3d 32, 37 (Tex. 2024).

We will uphold the trial court’s grant or denial of a temporary injunction unless the ruling was “so arbitrary that it exceeded the bounds of reasonable discretion.” *Id.* A trial court abuses its discretion if it misapplies the law to established facts, but the court does not abuse its discretion if the evidence, even if conflicting, reasonably supports the trial court’s decision. *INEOS Grp. Ltd. v. Chevron Phillips Chem. Co., LP*, 312 S.W.3d 843, 848 (Tex. App.—Houston [1st Dist.] 2009, no pet.). We review the evidence in the light most favorable to the trial court’s order, and we draw all reasonable inferences in support of it. *Id.* We do not review or decide the merits of the underlying claim. *Henry v. Cox*, 520 S.W.3d 28, 33–34 (Tex. 2017).

Although we review the merits of the temporary injunction for abuse of discretion, a different standard applies to the City’s arguments concerning subject-

matter jurisdiction. Whether a trial court has subject-matter jurisdiction is a question of law, which we review de novo. *Bonsmara Nat. Beef Co., LLC v. Hart of Tex. Cattle Feeders, LLC*, 603 S.W.3d 385, 390 (Tex. 2020). Many of the City’s arguments turn on the construction of a statute, which is likewise a question of law reviewed de novo. *City of Houston v. Houston Mun. Emps. Pension Sys.*, 549 S.W.3d 566, 580 (Tex. 2018).

III. SUBJECT-MATTER JURISDICTION

We begin our analysis, as we must, with the City’s challenges to the trial court’s subject-matter jurisdiction. *See Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993) (subject-matter jurisdiction is essential to a court’s authority to decide a case). But some of the City’s jurisdictional arguments are not at issue in this appeal. Were this an appeal from a ruling on a plea to the jurisdiction, we would review the trial court’s subject-matter jurisdiction on a “claim-by-claim basis.” *San Jacinto River Auth. v. City of Conroe*, 688 S.W.3d 124, 133 (Tex. 2024). But the same is not true of an appeal from a ruling enjoining enforcement of a law or ordinance. *State v. Loe*, 692 S.W.3d 215, 226 (Tex. 2024). Because the trial court’s jurisdiction to grant a temporary injunction can be based on a single claim by a single plaintiff, such a claim-by-claim analysis is unwarranted. *Id.*⁵

Here, the trial court granted the temporary injunction based on findings that the Occupants have valid causes of action for declaratory and injunctive relief, as well as a probable right to relief, because the City closed Sixth Street “without a ‘petition signed by all the owners of real property abutting the street or alley’ as

⁵ The City filed a plea to the jurisdiction, but the trial court had not ruled on it before all proceedings were stayed pending the resolution of this appeal. *See Oncor Elec. Delivery Co. NTU, LLC v. Wilbarger Cnty. Appraisal Dist.*, 691 S.W.3d 890, 910 (Tex. 2024) (explaining that it could not review the governmental immunity argument raised in a plea to the jurisdiction over which the trial court had not yet ruled (citing TEX. CIV. PRAC. & REM. CODE § 51.014(a)(8))).

required by Tex. Transp. Code § 311.008.” The trial court further found that the Occupants have suffered and will continue to suffer irreparable harm if the City is not enjoined to reopen the Street and restrained from closing it or otherwise obstructing vehicular access to it, because the closure has caused and will continue to cause the Occupants “to lose the right to use and enjoy their real property and operate their businesses, which will result in loss of goodwill, employees, customers, tenants, and other irreparable harm.”

It is therefore sufficient for us to address those of the City’s jurisdictional arguments that deal with the landowners’ claims for declaratory and injunctive relief. *Patel v. Tex. Dep’t of Licensing & Regulation*, 469 S.W.3d 69, 77 (Tex. 2015) (when multiple plaintiffs seek the same injunctive or declaratory relief, “the court need not analyze the standing of more than one plaintiff—so long as that plaintiff has standing to pursue as much or more relief than any of the other plaintiffs” (quoting *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 152 n.64 (Tex. 2012))).⁶

As we have reordered the jurisdictional arguments properly before us and necessary to the disposition of this appeal, the City contends that (a) the Uniform Declaratory Judgments Act (the UDJA)⁷ does not waive the City’s governmental immunity; (b) Texas Local Government Code section 211.001 authorized the City to pass the Ordinance; and (c) the Ordinance is a penal statute, and civil courts lack jurisdiction to enjoin the enforcement of a penal ordinance unless the movant establishes both that the ordinance is unconstitutional or otherwise void and that its enforcement will irreparably injure vested property rights.

⁶ We accordingly do not address the City’s arguments about waiver of immunity under the Texas Tort Claims Act, or about the tenants’ standing (as opposed to the property owners’ standing), or about the Occupants’ alternative takings claims.

⁷ TEX. CIV. PRAC. & REM. CODE §§ 37.001–.011.

A. The UDJA Waives the City’s Governmental Immunity from a Suit to Declare an Ordinance Invalid.

Unless waived by the legislature, governmental immunity insulates political subdivisions of the State from suit and liability. *Chambers-Liberty Cnty. v. State*, 575 S.W.3d 339, 344 (Tex. 2019). It is the plaintiffs’ burden to plead facts affirmatively demonstrating that the trial court has subject-matter jurisdiction because governmental immunity either does not apply or has been waived. *Perez v. Turner*, 653 S.W.3d 191, 198 (Tex. 2022).

The City first argues that the trial court lacks subject-matter jurisdiction over the Occupants’ claims for declaratory and injunctive relief because the UDJA does not waive a city’s governmental immunity “when a plaintiff seeks a declaration of rights under a statute or challenges governmental entity’s actions under a statute or ordinance.” *Martinez v. Northern*, No. 01-22-00435-CV, 2023 WL 162743, at *9 (Tex. App.—Houston [1st Dist.] Jan. 12, 2023, pet. denied) (mem. op.). But there is a difference between seeking a declaration about rights or actions “under” an ordinance and seeking a declaration that the ordinance itself is invalid. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 n.6 (Tex. 2009). The Occupants challenge both.

First, the Occupants seek a declaration that the Ordinance is invalid because it restricts access to Sixth Street to emergency vehicles and pedestrians, thereby closing Sixth Street without their consent in contravention of Texas Transportation Code section 311.008. In a suit challenging the validity of a statute or ordinance, the UDJA “requires that the relevant governmental entities be made parties, and thereby waives immunity.” *Id.* (citing TEX. CIV. PRAC. & REM. CODE § 37.006(b)). Thus, the UDJA waives the City’s governmental immunity from a claim that the Ordinance is void.

Second, the Occupants maintain that “regardless of the language used in the ordinance, [the City] did, in fact, close [Sixth Street] without legal authority by installing barricades and street signage permanently blocking all vehicular travel by the public.” At this point, the Occupants’ arguments go beyond a challenge to the Ordinance’s validity. For example, the Ordinance does not purport to bar emergency vehicles from using the contested section of Sixth Street, but the Occupants presented uncontroverted evidence that the City placed bollards at the ends of Sixth Street that physically blocked an emergency vehicle from reaching one of the Occupants’ premises when called to respond to a medical emergency. To the extent that the Occupants’ claims for injunctive and declaratory relief are based on the City’s “de facto closure” of the street to a greater extent than the Ordinance purports to authorize, the claims appear to be *ultra vires* claims that must be asserted against a governmental official rather than the governmental entity itself.⁸ But no governmental officials have been sued in this case, and the City itself is immune from *ultra vires* claims. *Chambers-Liberty Cnty. Navigation Dist.*, 575 S.W.3d at 348.

We accordingly conclude that the trial court has subject-matter jurisdiction under the UDJA to determine if the Ordinance *as written* is valid, but not, under the current pleadings, to address the placement of physical barriers blocking access to emergency vehicles.

⁸ An *ultra vires* claim is a claim asserted against a governmental official, in that person’s official capacity, for actions taken “without legal or statutory authority.” *Phillips v. McNeill*, 635 S.W.3d 620, 628 (Tex. 2021); *see also id.* at 628 (“Action without legal authority occurs when a government officer with some discretion to interpret and apply a law . . . exceeds the bounds of his granted authority or if his acts conflict with the law itself.”) (cleaned up).

B. Texas Local Government Code Section 211.001 Does Not Affect the Jurisdictional Analysis.

The City’s argument regarding Texas Local Government Code section 211.001 consists of two sentences. In the first, the City quotes the statute, which states, “The powers granted under this subchapter [Subchapter A, entitled “General Zoning Regulations”]⁹ are for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance.” TEX. LOC. GOV’T CODE § 211.001. In its second sentence, the City concludes, “Thus, the City was authorized by statute to issue [the Ordinance], restricting access to a portion of [Sixth Street] to pedestrians and emergency vehicles.” Although this argument appears under the heading, “No Subject[-]Matter Jurisdiction” and the subheading, “The Ordinance is authorized by statute,” the City does not explain how this statute applies to the facts or why this argument is jurisdictional. Indeed, section 211.001 describes the purposes for which zoning regulations may be enacted, but the Ordinance is not a zoning ordinance, nor does the City argue otherwise. *See Powell v. City of Houston*, 628 S.W.3d 838, 849 (Tex. 2021) (“[T]he ordinary meaning of zoning is the district-based regulation of the uses to which land can be put and of the height, bulk, and placement of buildings on land, with the regulations being uniform within each district and implementing a comprehensive plan.”).

We conclude that Texas Local Government Code section 211.001 does not affect the jurisdictional analysis.

C. The Ordinance Is Not a Penal Statute.

The City next states that a civil court has jurisdiction to enjoin enforcement of a criminal statute only when (1) there is evidence that the statute “is

⁹ TEX. LOC. GOV’T CODE §§ 211.001–.020.

unconstitutionally applied by a rule, policy, or other noncriminal means subject to a civil court’s equity powers and irreparable injury to property or personal rights is threatened, *or* (2) the enforcement of an unconstitutional statute threatens irreparable injury to property rights.” *State v. Morales*, 869 S.W.2d 941, 942 (Tex. 1994). The City argues that the trial court lacks jurisdiction to enjoin enforcement of the Ordinance because the Ordinance is such a penal statute. According to the City, “[t]he test whether a law is penal, in the strict and primary sense, is whether the wrong sought to be redressed is a wrong to the public, or a wrong to the individual.” *Becker v. Computer Scis. Corp.*, 541 F. Supp. 694, 700 (S.D. Tex. 1982) (quoting *Huntington v. Attrill*, 146 U.S. 657, 668, 13 S. Ct. 224, 36 L.Ed.2d 1123 (1892)).

We disagree that this is the correct test.

As the Supreme Court of Texas explained in *Texas Propane Gas Association v. City of Houston*, courts determine the boundary between civil and criminal jurisdiction by “look[ing] to the essence of the case to determine whether the issues it entails are more substantively criminal or civil.” 622 S.W.3d 791, 798 (Tex. 2021) (quoting *Heckman*, 369 S.W.3d at 146). Disputes that arise from statutes governed by the Texas Code of Criminal Procedure or “‘as a result of or incident to a criminal prosecution’ are usually criminal law matters.” *Id.* at 799 (quoting *Passel v. Fort Worth Indep. Sch. Dist.*, 440 S.W.2d 61, 62 (Tex. 1969)). “But the mere existence of some criminal-law question, characteristic, or context will not transform a dispute that is fundamentally civil into a criminal law matter.” *Id.* at 798.

The Ordinance at issue in this case is not a penal statute whose enforcement cannot be enjoined by a civil court. On its face, the Ordinance carries no penalties for its violation. The issue presented—whether the Ordinance validly closed a section of Sixth Street over the objections of the abutting landowners—is a civil one. Even if a person who operates a motor vehicle on that section of Sixth Street is cited

for a traffic violation, any prosecution of the offense is merely incidental to that civil-law issue. Moreover, the legislature has specifically authorized trial courts to enjoin “the governing body of an incorporated city from vacating, abandoning, or closing a street” in a suit by the owner or lessee of property abutting the street if that person’s damages have not been ascertained and paid or released. TEX. CIV. PRAC. & REM. CODE § 65.015. If the City were correct that an ordinance closing a street is a penal statute that cannot be declared invalid or enjoined in a civil proceeding, then section 65.015’s references to “closing” a street or alley would be rendered meaningless. *But see Randol Mill Pharmacy v. Miller*, 465 S.W.3d 612, 617 (Tex. 2015) (“[W]e may not interpret a statute in a way that renders any part of it meaningless.”).

We conclude that the trial court has subject-matter jurisdiction to grant the Occupants’ the requested declaratory and injunctive relief. *See City of Dallas v. Millwee-Jackson Joint Venture*, No. 05-20-00611-CV, 2023 WL 1813499, at *3–5 (Tex. App.—Dallas Feb. 8, 2023, pet. denied) (mem. op.) (pursuant to section 65.015, trial court had subject-matter jurisdiction to grant abutting landowners’ request to permanently enjoin a street closure).

IV. CHALLENGE ON THE MERITS

As previously stated, a party seeking a temporary injunction must plead and prove (a) a cause of action against the party to be enjoined; (b) a probable right to recover on that claim after a trial on the merits; and (c) a probable, imminent, and irreparable injury absent the temporary injunction. The City argues that the trial court abused its discretion in granting the temporary injunction because the Occupants have established none of these three things.

The City’s arguments concerning the first two requirements rely, directly or indirectly, on *Jordan v. Landry’s Seafood Restaurant, Inc.*, 89 S.W.3d 737, 742 (Tex. App.—Houston [1st Dist.] 2002, pet. denied) (op. on reh’g). The City contends

that, under *Jordan*, the street is not “closed” and thus, the Occupants have neither a valid cause of action under Texas Transportation Code section 311.008 nor a probable right to recover under Texas Civil Practice and Remedies Code section 65.015.

Jordan arose from a resolution strikingly similar to this one. In *Jordan*, the City of Kemah passed a resolution affecting 2nd Street (which we will refer to as Second Street). Landry’s Crab Shack, Inc., bought nearly all of the real property abutting the three blocks of Second Street between Kipp Avenue and the bulkhead at the Lafayette Landing Marina. *Jordan*, 89 S.W.3d at 739–40. The sole exception to Landry’s purchase was the undeveloped “Jordan” property, for which Landry’s had a twenty-year lease with options for three additional five-year terms. *Id.* The City passed Resolution 97-16 by which it sold to Landry’s all of Second Street that abutted the property that Landry’s had purchased, leaving the City only the portion of Second Street that abutted the Jordan property. *Id.* at 740. Under the terms of Resolution 97-16, the portion of Second Street abutting the Jordan property was “limited to pedestrian and emergency traffic for the duration of the lease” to Landry’s, after which the City would return that portion of Second Street to its original condition. *Id.*

Like the Occupants in this case, the owners of the Jordan property sued for permanent injunctive relief and asserted an alternative inverse-condemnation claim. *Id.* The trial court denied both claims by summary judgment. *Id.*

The *Jordan* court affirmed the denial of injunctive relief, explaining that, “[t]o be entitled to a permanent injunction, Jordan had to plead and prove: (1) a wrongful act; (2) imminent harm; (3) irreparable injury; and (4) no adequate remedy at law.” *Id.* at 742 (citing *Morris v. Collins*, 881 S.W.2d 138, 140 (Tex. App.—Houston [1st Dist.] 1994, writ denied)). The *Jordan* court concluded that the City was not required

to obtain Jordan’s consent to sell the portions of the street abutting Landry’s property,¹⁰ and as to the remaining section of the street abutting Jordan’s property, the court held that Jordan failed to raise a genuine issue of material fact as to whether the City committed a wrongful act. The court stated, “[The City] did not ‘vacate, abandon, or close’ Second Street but only *restricted* traffic on the street to emergency vehicles and pedestrians based on public safety concerns.” *Id.*

In support of its ruling, the *Jordan* court quoted the Supreme Court of Texas: “A city has the general power to regulate the use of its streets, and is authorized to enact traffic regulations and to impose reasonable restraints by means of ordinances for the protection of the welfare of the public in the proper use of its streets.” *Id.* (quoting *Town of Ascarate v. Villalobos*, 148 Tex. 254, 262, 223 S.W.2d 945, 949 (1949)). In summarizing, the authoring court added, “After the lease expires, the street will return to its original unrestricted state.” *Id.* at 743.

The Occupants argue that *Jordan* is distinguishable both because the Jordan property was undeveloped land and because the lease in that case gave Landry’s the exclusive right to use and access the property while the lease remained in effect; thus, Resolution 97-16 did not impair Jordan’s use of, or access to, its property. But the question of whether a street is closed does not depend on the property owner’s use of the property or whether the property owner has a legal right to access it, and thus, the *Jordan* court did not rely on these factors in concluding that the street was not closed. The court discussed Jordan’s access to the property only in connection with an inverse-condemnation claim, for which access to the property is a material

¹⁰ The City sold the street abutting Landry’s property pursuant to the version of Texas Local Government Code section 272.001 then in effect. That statute, both then and now, authorizes a political subdivision to sell a street to “abutting property owners in proportion to their abutting ownership,” and it does not require the non-purchasing landowners’ consent to the sale. *See* TEX. LOC. GOV’T CODE § 272.001(c)(2).

factor. *See id.* at 743 (citing *City of San Antonio v. Olivares*, 505 S.W.2d 526, 530 (Tex. 1974); *Olivares*, 505 S.W.2d at 530 (“[P]roperty has been damaged for a public use within the meaning of the Constitution when access is materially and substantially impaired even though there has not been a deprivation of all reasonable access.” (quoting *City of Waco v. Texland Corp.* 446 S.W.2d 1, 2 (Tex.1969))).

As an additional reason for distinguishing *Jordan*, the Occupants point out that the resolution in that case restricted access only during the duration of the lease, after which the street would “return to its original unrestricted state.” *Jordan*, 89 S.W.3d at 743. The *Jordan* court cited that fact without explanation, and although the Ordinance in this case does not require unrestricted access to Sixth Street to be restored at some determinable date in the future, we are not persuaded that this distinction requires a different result in this case. A street closure can be temporary or permanent,¹¹ and the *Jordan* court’s holding was grounded in the street’s current use rather its use in the future, for the court emphasized that the City did not close the street when it “only *restricted* traffic on the street to emergency vehicles and pedestrians. *Id.* at 742 (emphasis in original). We agree with that conclusion. Describing a street as vacated, abandoned, or closed suggests that it is not open to motor vehicles at all. The Ordinance does not prevent motor vehicles from continuing to use Sixth Street as a street, but emergency vehicles are the only motor vehicles permitted to do so.

In light of *Jordan*, and our agreement with it, we conclude that the trial court abused its discretion in ruling that the Occupants had established a probable right to

¹¹ *See, e.g.*, TEX. TRANSP. CODE § 311.053 (general-law or special-law municipality “may close temporarily or permanently any part of a street or alley for the exclusive use by a railroad company or other corporation having the right of eminent domain”).

relief. We accordingly reverse the trial court's order, dissolve the temporary injunction, and remand the case for further proceedings consistent with this opinion.

V. CONCLUSION

To resolve all of the issues properly before us in this appeal, it was necessary only to address the property owners' claims for declaratory and injunctive relief based on the allegation that the Ordinance, enacted without their consent, is void. As to those claims, we overrule the City's challenge to the trial court's subject-matter jurisdiction, but we sustain their challenge on the merits. Because the Occupants have not shown a probable right to relief, we dissolve the temporary injunction and remand the case for further proceedings consistent with this opinion. We express no opinion on matters unnecessary to the disposition of this appeal.

/s/ Tracy Christopher
Chief Justice

Panel consists of Chief Justice Christopher and Justices Wilson and Bridges.