KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 25, 2025

Ms. Kimberly M. Buchanan, CPA
Tarrant County Auditor
100 East Weatherford, Room 506
Fort Worth, Texas 76196-0103

Opinion No. KP-0490

Re: Authority of the Texas Supreme Court to require district and county clerks to integrate their case management systems with the proprietary re:SearchTX database (RQ-0556-KP)

Dear Ms. Buchanan:

You ask whether Government Code section 74.024 confers authority to the Texas Supreme Court to "order how district clerks and county clerks operate their respective offices," which includes "requiring all clerks to integrate their case management systems with re:SearchTX," a database allowing individuals to search "for any document eFiled in participating courts across all 254 Texas counties."[1] In addition, you ask whether the Court's order "violate[s] the separation of powers doctrine by improperly infringing on the Legislature's conveyance" of authority to district clerks, via Local Government Code subsection 191.008(a) and Government Code section 51.304, granting the public access to court records. Request Letter at 1.

The Court's order implemented use of re:searchTX, a database for court records.

We start by examining the order at issue.[2] In May 2024, the Court adopted changes to Texas Rules of Civil Procedure Rule 21, Texas Rules of Appellate Procedure Rule 9.2, and Rule 2.7 of the Statewide Rules Governing Electronic Filing in Criminal Cases.[3] Attachments at 10−16.

[1] Letter and Attachments from Ms. Kimberly M. Buchanan, Tarrant Cnty. Auditor, to Hon. Ken Paxton, Tex. Att'y Gen. at 1 (Aug. 5, 2024), https://texasattorneygeneral.gov/sites/default/files/request-files/request/2024/RQ0556KP.pdf ("Request Letter" and "Attachments," respectively). Re:searchTX is located at https://research.txcourts.gov/CourtRecordsSearch/Home#!/home.

[2] Since your question focuses on the Court's order, we refer to that order in the singular even though the Court of Criminal Appeals also issued a similar order, which the Court's order incorporates by reference. Attachments at 4−19; *see also* Misc. Docket No. 24-9030 (Tex. May 28, 2024), https://www.txcourts.gov/media/1458615/249030.pdf.

[3] The order also identified other court rules that were impacted by the amendments or had amendments not relevant to this opinion. Attachments at 4−16.

The changes implement new Government Code subsection 80.002(b).[4] *See* Misc. Docket No. 23-9071 (Tex. Sept. 8, 2023); *see also* Attachments at 4 (referencing Misc. Docket No. 23-9071 (Tex. Sept. 8, 2023)). In addition to a delivery method "required or authorized by law or supreme court rule," subsection 80.002(b) requires statutory county courts, district courts, and appellate courts to "deliver through the electronic filing system established under [Government Code] [s]ection 72.031 to all parties in each case in which the use of the electronic filing system is required or authorized all court orders the court enters for the case." TEX. GOV'T CODE § 80.002(b). In turn, section 72.031 states that "an electronic filing system" may be implemented "by supreme court rule or order[,] . . . for use in the courts of this state." *Id.* § 72.031(b)(1). "Electronic filing system" means "the filing system established by supreme court rule or order for the electronic filing of documents in courts of this state." *Id.* § 72.031(a)(2). Following this statutory change, the Court issued an order amending various rules to now require clerks send court documents electronically to the parties "through an electronic filing system approved by the Supreme Court." [5] Attachments at 10−16. The order also "mandates district and county clerks . . . to integrate their local case management systems with re:SearchTX," the electronic filing system approved by the Court.[6] *Id.* at 7.

The Court is responsible for the efficient administration of the judicial branch and, under section 74.024, may promulgate rules to effectuate that responsibility.

We begin by addressing your first question, which asks about the Court's authority under Government Code section 74.024 to make such a mandate. Request Letter at 1. The Court, like all Texas courts, has constitutional authority to exercise the judicial power of the State. TEX. CONST. art. V, §§ 1, 3. The Texas Constitution makes the Court "responsible for the efficient administration of the judicial branch" and directs it to "promulgate rules of administration not inconsistent with the laws of the state as may be necessary for the efficient and uniform administration of justice in the various courts." *Id.* § 31(a). Section 31 further provides that "[t]he [L]egislature may delegate to the Supreme Court . . . the power to promulgate such other rules as may be prescribed by law or this Constitution, subject to such limitations and procedures as may be provided by law." *Id.* § 31(c). In sum, the Constitution bestows independent rulemaking authority upon the Court while also empowering the Legislature to delegate other rulemaking power. Although the Court has constitutional rulemaking authority, we focus our discussion on the Court's statutory rulemaking authority raised in your first question. Request Letter at 1.

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[4] Act of May 28, 2023, 88th Leg., R.S., ch. 861, § 18.003, 2023 Tex. Gen. Laws 2672, 2724−25 (codified at TEX. GOV'T CODE § 80.002(b)).

[5] TEX. R. CIV. P. 21(f)(10)(A); TEX. R. APP. P. 9.2(c)(7)(A)(i), (ii); STATEWIDE RULES GOVERNING ELECTRONIC FILING IN CRIMINAL CASES RULE 2.7(b), https://www.txcourts.gov/media/1458665/statewide-rules-governing-electronic-filing-in-criminal-cases.pdf.

[6] The Court issued Order No. 24-9030 which also incorporated the Criminal Court of Appeals Order No. 24-004. Attachments at 4−9. Both courts preliminarily approved the amendments in September 2023. Misc. Docket Nos. 23-9071 (Tex. Sept. 8, 2023), 23-004 (Sept. 8, 2023). As part of that approval the Judicial Committee on Information Technology ("JCIT") was directed to study and make recommendations "on copying court orders, notices, and other documents to re:SearchTX." Attachments at 4. The final order adopts some of JCIT's recommendations and finalized amendments to the court rules. *Id.* at 4−19.

Employing its delegation authority, the Legislature enacted the Court Administration Act, a "comprehensive act for the administration of the Texas courts."[7] *Franklin v. State*, 742 S.W.2d 66, 68 (Tex. App.—Houston [14th Dist.] 1987, pet. ref'd); *see also In re Canales*, 52 S.W.3d 698, 702–03 (Tex. 2001) ("Th[e] Act's purpose was to provide a statewide framework for court administration and case management[] . . . ."). This legislation included what is now section 74.024 of the Government Code. Under that provision, the Court may "adopt rules of administration setting policies and guidelines necessary or desirable for the operation and management of the court system and for the efficient administration of justice." TEX. GOV'T CODE § 74.024(a). The Court may also "consider the adoption of rules relating to" various aspects of court administration including, *inter alia*, "a uniform dockets policy" or "transfer of related cases for consolidated or coordinated pretrial proceedings." *Id.* § 74.024(c)(7), (10); *see generally id.* § 74.024(c). Rules adopted under section 74.024 "remain in effect unless and until disapproved by the [L]egislature." *Id.* § 74.024(d).

Section 74.024 gives the Court wide latitude in its rulemaking endeavors concerning administration of the statewide court system and judicial proceedings. Subsection 74.024(a) reflects this broad authority as the Court may enact rules that are not only "necessary" but also those that are merely "desirable." *Id.* § 74.024(a). Such "desirable" rules need only be "worth having or wanting; pleasing, excellent, or fine . . . [a]dvisable; recommendable." THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 539 (2d ed. unabridged 1987); *see also Tex. State Bd. of Exam'rs of Marriage & Fam. Therapists v. Tex. Med. Ass'n*, 511 S.W.3d 28, 34 (Tex. 2017) (relying on dictionary definitions to determine the "common, ordinary meaning" where a statutory term is not defined). The purpose for these necessary or desirable rules is also broad, allowing for rulemaking to effectuate the "operation and management of the court system." TEX. GOV'T CODE § 74.024(a); *see also* THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1357 (2d ed. unabridged 1987) (defining "operation" as "an act or instance, process, or manner of functioning or operating" or "the power to act; efficacy, influence, or force"), *id.* at 1166 (defining "management" as "the act or manner of managing; handling, direction, or control"). And the Court's rulemaking authority even extends beyond general operation and management of the court system, permitting rules effectuating the "efficient administration of justice." TEX. GOV'T CODE § 74.024(a); *see also* THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 622 (2d ed. unabridged 1987) (providing that "efficient" means "performing or functioning in the best possible manner with the least waste of time and effort; having and using requisite knowledge, skill, and industry; competent; capable"), 26 (defining "administration" as "the management of any office, business, or organization; direction" or "the duty or duties of an administrator in exercising the executive functions of the position").

"[I]n 'exercising the powers and the broad authority granted by the Legislature, the only requirement is that [the Court's] rules and regulations must be consistent with the Constitution and Statutes of this State.'" *State v. Rhine*, 255 S.W.3d 745, 751 (Tex. App.—Fort Worth 2008), *aff'd*, 297 S.W.3d 301 (Tex. Crim. App. 2009) (quoting *Gerst v. Oak Cliff Sav. & Loan Ass'n*, 432 S.W.2d 702, 706 (Tex. 1968)). To answer your first question, we must review if the Court's order is within the bounds of section 74.024. *See Pruett v. Harris Cnty. Bail Bond Bd.*, 249 S.W.3d 447,

[7] Act of May 27, 1985, 69th Leg., R.S., ch. 732, § 2, 1985 Tex. Gen. Laws 2533, 2534–43 (amended 1987) (current version at TEX. GOV'T CODE §§ 74.001–.257).

452 (Tex. 2008) ("An agency may adopt only such rules as are authorized by and consistent with its statutory authority." (citing *R.R. Comm'n of Tex. v. Lone Star Gas Co.*, 844 S.W.2d 679, 685 (Tex. 1992))).

Subsection 74.024(a) grants the Court authority to promulgate rules that impact court records, including mandating integration of those records with an electronic filing system.

The Court's order creates a standardized repository and increases access to court records across the State through the adoption of the re:SearchTX case information database. *See* Attachments at 4−19. The resulting uniform record-access system benefits both officers of the court and the public. *Id.* at 18 (stating the purpose for adoption was "to establish a robust system that would allow parties and the public access to public records, including orders, notices, and other court-generated documents.").[8] "The case alerts combined with the clerk's integration, mean[] that orders and notices . . . appear on re:SearchTX when docketed by the clerk and parties/attorneys . . . [are] notified[] . . . ." *Id.* Near instant access to court documents across the State through a uniform court-record database supports the efficient administration of justice and is at least desirable, if not necessary, for the operation and management of the court system. This conclusion is supported by the Legislature's express acknowledgment of the Court's authority to implement an electronic filing system that would be "approved by the Court," "by rule or court order," as was done here. *See* TEX. GOV'T CODE §§ 80.002(b), 72.031. And this makes sense in practice as the Court cannot efficiently administer justice or operate and manage Texas court systems without some degree of control over court records.[9] Accordingly, the order mandating that clerks integrate their case management systems with re:SearchTX is consistent with the Court's statutory authority. We now turn to your second question concerning separation of powers.

The judicial branch possesses express and inherent authority to administer justice efficiently and uniformly in Texas courts, and the legislative branch may not enact laws interfering with that authority.

You also suggest that the Court's order violates the separation of powers doctrine by infringing on the Legislature's grant of power to district clerks.[10] Request Letter at 1. You ask specifically about the district clerk's authority under Local Government Code subsection 191.008(a) and Government Code section 51.304. *Id.* We first address separation of powers.

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[8] Per the Court's directive in its preliminary order issued in 2023, No. 23-9071, the JCIT "stud[ied] and ma[de] recommendations on copying court orders, notices, and other documents in civil cases to re:SearchTX." Attachments at 4. These recommendations are included as part of the order in Exhibit 1. *Id.* at 17−19.

[9] This execution of the Court's authority is not new. In the past, the Court has entered orders imposing requirements on clerks or other judicial officers, including orders impacting court records. *See, e.g.*, Misc. Docket No. 12-9206 (Tex. Dec. 11, 2012) (addressing electronic filing requirement in certain courts).

[10] Your second question asks only about the district clerk's authority, but we include the county clerk's authority as well for sake of consistency with your first question. Request Letter at 1.

"The separation of the powers of government into three distinct, rival branches—legislative, executive, and judicial—is the absolutely central guarantee of a just Government." *Fin. Comm'n of Tex. v. Norwood*, 418 S.W.3d 566, 569 (Tex. 2013) (internal quotations omitted) (quoting *Morrison v. Olson*, 487 U.S. 654, 697 (1988) (Scalia, J., dissenting)). The Texas Constitution, in its Separation of Powers Clause, mandates "[t]he powers of the Government of the State of Texas shall be divided into three distinct departments" each of which "shall be confided to a separate body of magistracy, to wit: those which are Legislative to one, those which are Executive to another, and those which are Judicial to another." TEX. CONST. art. II, § 1. The Clause prohibits any "person, or collection of persons, being of one of these departments, [from] exercis[ing] any power properly attached to either of the others." *Id.* Authority bestowed upon one department of government cannot be exercised by another "unless expressly permitted by the [C]onstitution." *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993). When scrutinizing the actions of a coordinate branch of government, courts presume the relevant department acted in good faith and intended to comply with the Constitution. *In re Tex. House of Representatives*, 702 S.W.3d 330, 343 (Tex. 2024); *see also Webster v. Comm'n for Law. Discipline*, 704 S.W.3d 478, 488 (Tex. 2024) ("The doctrines of constitutional avoidance and of presuming good faith on the part of other governmental actors . . . manifest the judiciary's commitment to the separation of powers, respect for the other branches, and desire to prevent constitutional friction unless and until unavoidable."). Problems can arise, however, where one branch "exercis[es] its core authority in a way that negates the ability of a coordinate branch to do so." *In re Tex. House of Representatives*, 702 S.W.3d at 345; *see, e.g.*, *In re D.W.*, 249 S.W.3d 625, 641–42 (Tex. App.—Fort Worth 2008, no pet.) (discussing instances where one branch of government encroached upon the substantive powers of another).

But the Separation of Powers Clause is not "rigid and absolute," as "such a construction would be impossible to implement in all cases because not every governmental power fits logically and clearly into any particular department." *Tex. Comm'n on Env't Quality v. Abbott*, 311 S.W.3d 663, 671 (Tex. App.—Austin 2010, pet. denied) (internal quotations omitted) (citation omitted). Thus, Texas courts have "long held that some degree of interdependence and reciprocity is subsumed within the separation of powers principle." *Id.* at 672. Consequently, the separation of powers doctrine "enjoins upon its branches separateness but interdependence, autonomy but reciprocity." *Id.*

The judicial power of the state is vested in the courts. TEX. CONST. art. V, § 1. "Judicial power" encompasses "the power to adjudicate upon, and protect the rights and interests of individual citizens and to that end to construe and apply the laws . . . . Under the judicial power determination is made of what the law is in relation to some existing thing already done or happened." *Id.* interp. commentary (West 2007). "The Supreme Court shall exercise the judicial power of the state," *id.* § 3(a), "is responsible for the efficient administration of the judicial branch," and "shall promulgate rules of administration . . . as may be necessary for the efficient and uniform administration of the justice in the various courts, *id.* § 31(a). "In addition to the express grants of judicial power to each court, there are other powers which courts may exercise though not expressly authorized or described by constitution or statute." *Greiner v. Jameson*, 865 S.W.2d 493, 498 (Tex. App.—Dallas 1993, writ denied). These are referred to as "inherent powers." *Id.* Inherent powers are derived from "the very fact that the state constitution has created and charged the court with certain duties and responsibilities." *Id.* at 499.

Flowing from the Court's constitutional judicial power are inherent powers "of the administrative kind"—that are "not secured by any legislative grant" and are "necessarily implied to enable the Court to discharge its constitutionally imposed duties." *Webster*, 704 S.W.3d at 489–90 (citation omitted); *see also Greiner*, 865 S.W.2d at 499 ("The inherent powers of a court are those that it may call upon to aid . . . in the administration of justice[] . . . ." (citing *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398 (Tex. 1979))). The Court also possesses express powers that authorize the same. *See* TEX. GOV'T CODE §§ 74.001−.257; *see also, e.g.*, §§ 22.004−.022. Like inherent powers, "[a] statutory grant of an express power carries with it, by implication, every incidental power that is necessary and proper to the execution of the power expressly granted." *Austin Rd. Co. v. Evans*, 499 S.W.2d 194, 203 (Tex. App.—Fort Worth 1973, writ ref'd n.r.e.). The judicial branch "may call upon [these powers] to aid in the exercise of its jurisdiction, in the administration of justice, and in the preservation of its independence and integrity." *Eichelberger* 582 S.W.2d at 398; *see also Brewer v. Lennox Hearth Prods.*, *LLC*, 601 S.W.3d 704, 718 (Tex. 2020).

The power to make law, of course, is vested in the Legislature. TEX. CONST. art. III, § 1; *see also id.* interp. commentary (West 2007) ("[Article III, section 1] creates the Texas Legislature and vests therein the legislative power, *i.e.*, the law-making power of the people."). This power encompasses "the power to make, alter, and repeal laws," unless limited "by [some] other provisions of the state Constitution." *In re Tex. Dep't of Fam. & Protective Servs.*, 660 S.W.3d 161, 169–70 (Tex. App.—San Antonio 2022, no pet.) (quoting *Diaz v. State*, 68 S.W.3d 680, 685 (Tex. App.—El Paso 2000, pet. denied); *see also* TEX. CONST. art. III, § 1 interp. commentary (West 2007). Carrying out this core function, the Legislature detailed the duties of district and county clerks. Clerks as "records management officer[s]" are charged with "maintain[ing] and arrang[ing]" court records, "develop[ing] policies and procedures for the administration of an active and continuing records management program," and "administer[ing] the records management program and provid[ing] assistance . . . for the purposes of reducing the costs and improving the efficiency of recordkeeping." TEX. GOV'T CODE § 51.303(a) (regarding district clerks); TEX. LOC. GOV'T CODE §§ 203.001, .002(1), .023(2) (regarding both district and county clerks); *see also* Tex. Att'y Gen. Op. No. JM-1224 (1990) at 9–10 (observing that the district clerk's office is among those "classified as county offices for the purposes of" the Local Government Records Act, which includes chapter 203). As the lawmaking body, the Legislature is within its authority to specify the role of clerks' offices as well as their authority where the Constitution provides no such limitations. *See* TEX. CONST. art. V, §§ 9, 20 (related constitutional provisions do not prohibit the Legislature from enacting laws detailing the offices' power); *see also Owens v. State*, 19 S.W.3d 480, 484 (Tex. App.—Amarillo 2000, no pet.) ("Where, as here, a constitutional provision is not self-executing, it is incumbent on the Legislature to enact legislation to implement public policy.").

This legislative authority, however, has limits. It is well-established that the Legislature may enact laws to "define certain parameters within the operation of the judicial branch" but "may not interfere with the . . . powers of the judicial branch so as to usurp those . . . powers." *Williams v. State*, 707 S.W.2d 40, 45–46 (Tex. Crim. App. 1986). Although the Legislature enacted laws granting the district clerk statutory authority over certain records, "[t]he [L]egislature may not 'infringe upon the *substantive* power of the Judicial department . . . thus rendering the separation

of powers doctrine meaningless.'" *In re D.W.*, 249 S.W.3d at 640–41 (quoting *Meshell v. State*, 739 S.W.2d 246, 255 (Tex. Crim. App. 1987)).

The Court's order is within the realm of its judicial power.

Making court records easily accessible to the public in an electronic filing system flows directly from the substantive powers of the judicial department to manage the operation of the court system and ensure efficient and uniform administration of justice. *See supra* pp. 5−6. And as discussed in response to your first question, the Court's order is also within its express statutory authority to enact rules that efficiently administer justice and impact the operation and management of the judicial branch. *See supra* pp. 2−4. Accordingly, the relevant authority of the Court "is at its maximum, for it includes all that [the Court] possesses in [its] own right plus all that [the Legislature] can delegate." *Cf. Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring) (addressing acts taken by a president "pursuant to an express or implied authorization of Congress"). To carry out both its constitutional and statutory purposes, the Court must be able to enact rules that may impact, directly or indirectly, court records—documents born within the judicial department. The Court's order therefore falls within the heartland of judicial power and does not infringe on or conflict with the Legislature's lawmaking function.

The statutes you raise do not undermine this conclusion. Subsection 191.008(a) of the Local Government Code, for example, authorizes a commissioners court to establish and operate a computerized electronic information system. TEX. LOC. GOV'T CODE § 191.008(a). This system "may provide . . . direct access to information that relates to all or some county and precinct records and records of the district courts and courts of appeals having jurisdiction in the county, that is public information, and that is stored or processed in the system." *Id.* A district clerk's records, however, may only be made available through the system if the clerk "agrees in writing to allow public access under this section to the records." *Id.*; *see also* Tex. Att'y Gen. Op. No. GA-0566 (2007) at 2 (observing that a commissioners court's authority to provide access to a district or county clerk's records is "[s]ubject to the clerk's written agreement and the other requirements of section 191.008").

But nowhere in the Court's order is a clerk prohibited from or hindered in giving written approval permitting the commissioners court to facilitate electronic access to the clerk's records. *See* TEX. LOC. GOV'T CODE § 191.008(a); *cf.* Attachments at 4−16. In fact, a commissioners court may still use the electronic filing system it has chosen. *See* TEX. GOV'T CODE § 80.002(b) (providing that delivery through an electronic filing system may be "[i]n addition to any other delivery method required or authorized by law or supreme court rule"). The Court's order recognizes this by acknowledging continued use of current case management systems with the "integrat[ion] with re:SearchTX [occurring] on the back end" permitting "clerks' offices to docket and store documents using their current systems and processes while maintaining appropriate security." Attachments at 18. The clerk's authority is intact as the order does not impact subsection 191.008(a) or section 191.008 generally.

The same is true for section 51.304. The associated subchapter generally relates to district clerks, TEX. GOV'T CODE §§ 51.301–.322, and establishes the record-based responsibilities of that

position—explaining that clerks have "custody of and shall carefully maintain and arrange the records relating to or lawfully deposited in the clerk's office," *id.* § 51.303(a); *see also, e.g.*, *id.* § 51.303(b) (enumerating associated obligations). Section 51.304 likewise speaks to a district clerk's general authority concerning preservation of records and permits these clerks to "provide a plan for the storage of records." *Id.* § 51.304(a); *see also id.* § 51.304(b) (enumerating minimum standards). But nothing in the Court's order alters this landscape as the order neither addresses section 51.304 nor prohibits a clerk from maintaining its current record preservation policies. In fact, the order contemplates the opposite: explaining that clerks can keep their "current systems and processes." Attachments at 18. Thus, the clerk's authority under section 51.304 remains untouched—a clerk may still implement a record preservation plan for the records within the clerk's authority. *See* TEX. GOV'T CODE § 51.304; *cf.* Attachments at 4−16.

As courts have recognized, separation of powers contemplates separateness but also interdependence. *Abbott*, 311 S.W.3d at 672. Powers concerning the management and availability of court records contemplates the same. Here, the Court's order does not infringe on the Legislature's authority to institute laws of the People. Neither does the order hinder or nullify clerks' authority under subsection 191.008(a) or section 51.304. Instead, these duly enacted laws grant the clerks' authority over court records, and the Court's order, addressing accessibility of the same, work in harmony to ensure the People have equal and ready access to justice.

S U M M A R Y

The Texas Supreme Court has authority under Government Code section 74.024 to order county and district clerks to integrate their case management systems with re:SearchTX, the Court's approved electronic filing system. The Court's order is also within the scope of the judicial power to implement rules for efficient and uniform administration of the various courts; thus, it does not violate the separation of powers between the judicial and legislative branches.

Very truly yours,

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