No. 22-149 In the Supreme Court of the United States

NOTE: This snippet from a US Supreme Court

Sections 31.003 & .004: Preparing directives, instructions, or advice to encourage uniformity in the interpretation and application of election laws is not enforcement authority, either. It is merely giving a nonbinding opinion about Texas’s election laws that local 14 election officials may choose to follow or not follow. See, e.g., In re Stalder, 540 S.W.3d 215, 218 (Tex. App.—Houston [1st Dist.] 2018, no pet.); see also McBurney v. Cuccinelli, 616 F.3d 393, 400 (4th Cir. 2010) (duty to issue advisory opinions is not enforcement). Indeed, that is the reason for section 31.005(c), which allows the Attorney General to take action against election officials who violate state law. Section 31.005: The Secretary’s discretion to issue orders to officials to protect voting rights does not create a connection to the enforcement of the signature-verification laws. As this Court explained in Ex parte Young itself, “[t]here is no doubt that the court cannot control the exercise of the discretion of an officer.” 209 U.S. at 158. Rather, a court can “only direct affirmative action where the officer having some duty to perform not involving discretion, but merely ministerial in its nature, refuses or neglects to take such action.” Id. Neither section 31.005 nor any other provision of Texas law imposes a ministerial obligation on the Secretary to independently assess the constitutionality of state election laws and then order election officials to follow or not follow the laws accordingly. See In re Hotze, 627 S.W.3d at 649 (Blacklock, J., concurring). And, even if he could, local officials are not bound by the Secretary’s orders and have been known to ignore them, as petitioners implicitly acknowledge (at 9 n.7). See State v. Hollins, 620 S.W.3d 400 (Tex. 2020) (per curiam). Such a discretionary duty to issue precatory orders, enforceable only by an independently elected constitutional officer, is hardly enough to justify stripping the Secretary of his sovereign status within the meaning of Ex parte Young. 7