

HENRY W. JONES, III, ESQ.
2246 WOODLAND SPRINGS ST., HOUSTON, TX 77077
MOBILE: 512-695-4673; E-MAIL: memphishank@gmail.com

via efiletexas.gov

September 29, 2020

Blake A. Hawthorne, Clerk
Supreme Court of Texas
201 W. 14th St., Room 104
Austin, TX 78701

Re: State of Texas v. Hollins (#20-0729): Amicus Curiae Letter

Dear Mr. Hawthorne:

Henry W. Jones, III respectfully submits the attached amicus curiae letter in support of the Appellee Chris Hollins in the above-referenced proceeding. Please distribute this letter to the Court.

Pursuant to Rule 11(c), Tex. R. App. P., no fee has been paid or will be paid in connection with this amicus curiae letter.

Respectfully submitted,

Henry W. Jones, III
S.B. #24010140

attachment: amicus curiae letter

HENRY W. JONES, III, ESQ.
2246 WOODLAND SPRINGS ST., HOUSTON, TX 77077
MOBILE: 512-695-4673; E-MAIL: memphishank@gmail.com

via efiletexas.gov

September 29, 2020

Blake A. Hawthorne, Clerk
Supreme Court of Texas
201 W. 14th St., Room 104
Austin, TX 78701

Re: State of Texas v. Hollins (#20-0729): Amicus Curiae Letter

Dear Chief Justice Hecht and members of the Supreme Court of Texas:

1. Published, Partisan Politicking = Predominate Predicate Of This Litigation?

The same day that this lawsuit was filed, Attorney General Paxton also pro-actively published in a non-Texas periodical an op-ed expressing his opinions regarding the secret bad-faith and malevolent motives of other citizens across the State and country:

“ ... Not wanting to let the crisis caused by COVID-19 go to waste, they’ve [the “Democrats”] disguised their plot to manipulate the integrity of our election system by arguing that voters fear contracting COVID-19 if they physically show up to the polls. ... Democrat leadership clearly wants noncitizens to vote ... The Left is willing to mar our democracy ... Democrats distract the public with talk of foreign involvement in our elections, yet they have been brazenly creating election interference themselves. ...”¹

The Attorney General also published this same opinion piece to the taxpayers-funded website of the State Attorney General.²

The Court may and should question whether or not merely assessing the accurate parameters of authority of local officials under Texas law is the actual trigger of this litigation.

2. Pandemic Risk Assessment: Qualified Versus Politicized Counseling: Paxton’s Medical Assertion Ignores and Contravenes Emerging Scientific Assessment and Covid Mitigation Knowledge

General Paxton asserts, without evidence, with supposed certainty, and *against the analysis of scientists, epidemiologist, and public health officials*, that

¹ <https://www.washingtonexaminer.com/opinion/op-eds/how-mail-in-ballots-threaten-democracy> .

² <https://www.texasattorneygeneral.gov/news/releases/op-ed-mail-ballots-threat-democracy> .

“ ... Election officials have many options available to hold in-person elections safely ...”³

Paxton’s safety promise is unfounded.

Now, *aerosol* covid transmission is the late-recognized, *third*, longer-distance, unquantified, and longer-“floating” danger to Texans that, in recent weeks and months, actual, qualified medical experts and scientists have identified and warned.

For example, the World Health Organization has *modified* its guidance over time, and *now* notes the covid-contagion risk of indoor spaces. Contrast the W.H.O.’s superseded March 29, 2020 “Scientific Brief” with its July 9, 2020 update, which it flags on its website as “new version ... based on updated scientific evidence”:

“... Main Findings: ... Some outbreak reports related to indoor crowded spaces have suggested the possibility of aerosol transmission, combined with droplet transmission, for example, during choir practice, in restaurants or in fitness classes ...”⁴.

Similarly, on September 10, 2020 (i.e., *after* General Paxton’s evidence-free epidemiology assertion), long-serving pandemic expert Dr. Anthony Fauci advised “Bottom line is, there’s much more aerosol [transmission] than we thought.”⁵

Other medical, virology, and epidemiology experts advise that “six feet may not be enough.”⁶

As a Texas federal judge held on September 25 - again, *after* General Paxton’s August 31 health claim - the evolving epidemiology evidence is that polling stations will be dangerous:

“... predicted injuries are certainly impending ... these new developments are so compelling ...”
(p. 10)

³ *Ibid.*

⁴ Contrast earlier guidance (at <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations>) with later, superseding guidance (at <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>).

⁵ Quoted from Harvard Medical School publicly-available “Grand Rounds” epidemiology teaching and update webinar (available at <https://partners.mediasite.com/mediasite/Play/17db07327ba3458cb647cb511c3aa2f71d>).

⁶ E.g., “Two metres or one: what is the evidence for physical distancing in covid-19?” (subtitled “Rigid safe distancing rules are an oversimplification based on outdated science and experiences of past viruses”), published August 25, 2020 in the *British Medical Journal* (at www.bmj.com, as 10.1136/bmj.m3223); “COVID-19 Is Transmitted Through Aerosols. We Have Enough Evidence, Now It Is Time to Act,” published August 25, 2020 in *TIME* magazine (at https://time.com/5883081/covid-19-transmitted-aerosols/?mc_cid=17f42a047a&mc_eid=fa8f43e9c4) (“... droplets move ballistically ... Aerosols on the other hand, act like smoke: after being expelled, they don’t fall to the ground, but rather disperse throughout the air, getting diluted by air currents, and being inhaled by others present in the same space. ... the CDC says that 15 minutes of close proximity to a COVID-19 infected person often leads to contagion ...”).

“... Today, the number of confirmed infections is 7 million and the number of dead Americans is over 200,000. It is thus understandable that voter anxiety about exercising their voting rights [i.e., on-site at polling stations] is higher than at any time in recent memory. ...” (p. 11)

“... these logistical challenges ... about the viability of an election where nearly every voter must, during a pandemic caused by an airborne disease, vote in person. ...” (p. 12)

“... The pandemic shows no signs of abating before the November 2020 election ...” (p. 24, fn. 3)

“ Longer wait times ... place the health of Texas voters at risk. The longer a voter must stand in line before voting this fall ... the higher the risk of virus transmission ...” (p. 25)⁷

The real-world, common-sense likely *inability* of polling station managers to actually enforce masking, enforce farther physical distancing, or either identify or exclude covid-infected persons, means General Paxton’s public health assurance seems unwarranted.

3. “Pre-Crime” Prognostication and Prevention Should Remain Science Fiction

General Paxton’s briefing at trial and the 14th Appellate Court and State Elections Director Ingram’s sworn trial testimony are predicated on their prediction of *future* citizens felonies. As noted in the famous (infamous?) 2002 film “Minority Report,” allocating “future-crime” preclusion powers to law enforcement is dangerous and injurious, contrary to democracy.

The undersigned respectfully urges the Court to not permit political partisanship and unqualified epidemiology assertions to push citizens further into the pandemic (i.e., via increased aerosol exposure in polling places), unnecessarily.

Respectfully submitted,

Henry W. Jones, III
S.B. #24010140

⁷ *Texas Alliance For Retired Persons, et al. v. Hughs*, USDC SDTX Laredo Div., C.A. 5:20-CV-128 (J. Marmolego) (injunction stayed by Fifth Circuit Court Of Appeals pending appeal).

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below:

Envelope ID: 46670685
Status as of 9/29/2020 1:36 PM CST

Associated Case Party: Texas State Conference of the NAACP

Name	BarNumber	Email	TimestampSubmitted	Status
Lindsey Cohan		lindsey.cohan@dechert.com	9/29/2020 1:28:43 PM	SENT

Associated Case Party: Anti-Defamation League Southwest Region

Name	BarNumber	Email	TimestampSubmitted	Status
Lindsey Cohan		lindsey.cohan@dechert.com	9/29/2020 1:28:43 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Hollis Duncan		hollis.duncan@oag.texas.gov	9/29/2020 1:28:43 PM	SENT
Kyle Hawkins		kyle.hawkins@oag.texas.gov	9/29/2020 1:28:43 PM	SENT
Maria Williamson		maria.williamson@oag.texas.gov	9/29/2020 1:28:43 PM	SENT
Cecilia Hertel		cecilia.hertel@oag.texas.gov	9/29/2020 1:28:43 PM	SENT
Natalie Thompson		natalie.thompson@oag.texas.gov	9/29/2020 1:28:43 PM	SENT
Wolfgang PHirczy de Mino		wphdmphd@gmail.com	9/29/2020 1:28:43 PM	SENT
Susan Hayes		hayslaw@me.com	9/29/2020 1:28:43 PM	SENT
Lanora Pettit		lanora.pettit@oag.texas.gov	9/29/2020 1:28:43 PM	SENT
Beau Carter		Beau.Carter@oag.texas.gov	9/29/2020 1:28:43 PM	SENT
Joseph S.Jaworski		joejaws@laworskilawfirm.com	9/29/2020 1:28:43 PM	ERROR

Associated Case Party: League of Women Voters of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Thomas Buser-Clancy		tbuser-clancy@aclutx.org	9/29/2020 1:28:43 PM	SENT