

NO. 20-0729

IN THE
SUPREME COURT OF TEXAS

THE STATE OF TEXAS,

Petitioner,

v.

CHRIS HOLLINS, IN HIS OFFICIAL CAPACITY AS
HARRIS COUNTY CLERK,

Respondent

**BRIEF OF AMICI CURIAE
TEXAS STATE CONFERENCE OF THE NAACP &
ANTI-DEFAMATION LEAGUE SOUTHWEST REGION
IN SUPPORT OF APPELLEE CHRIS HOLLINS, IN HIS OFFICIAL
CAPACITY AS HARRIS COUNTY CLERK**

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TABLE OF CONTENTS

	Page
INTEREST OF AMICI CURIAE.....	1
ARGUMENT	3
I. THE STATE FAILED TO MEET ITS BURDEN OF PRODUCING EVIDENCE OF PROBABLE IRREPARABLE HARM.....	4
A. The State Offered Only Speculation, and No Proof, that the Mailing Will Likely Cause Voters to Commit a Felony	6
B. The State Offered Only Speculation, and No Proof, that the Mailing Will Likely Cause Confusion	7
II. THE EQUITIES OVERWHELMINGLY FAVOR THE CLERK’S PLAN.....	8
A. The Clerk’s Plan Increases Ballot Access And Eases Burdens On Eligible Voters.....	11
B. The Mailing Will Educate Voters And Reduce Confusion.....	16
C. The Mailing Will Streamline The Clerk’s Processing Of Ballot Applications.....	17
D. The Mailing Will Alleviate Last-Minute Demand For Applications.....	17
E. The Mailing Will Confirm Voter Addresses.....	18
F. The Mailing Will Expand Civic Engagement And Increase Voter Turnout.....	19
CONCLUSION	21

TABLE OF AUTHORITIES

Page(s)

Cases

Butnaru v. Ford Motor Co.,
84 S.W.3d 198 (Tex. 2002).....3

Cooper Valves, LLC v. ValvTechnologies, Inc.,
531 S.W.3d 254 (Tex. App.—Houston [14th Dist.] 2017, no pet.)3

Dallas Anesthesiology Assocs., P.A. v. Tex. Anesthesia Group, P.A.,
190 S.W.3d 891 (Tex. App.—Dallas 2006, no pet.)5

Int’l Paper Co. v. Harris Cty.,
445 S.W.3d 379 (Tex. App.—Houston [1st Dist.] 2013, no pet.).....8

Mattox v. Jackson,
336 S.W.3d 759 (Tex. App.—Houston [1st Dist.] 2011, no pet.).....4

Roberts v. Dotson,
272 S.W.2d 164 (Tex. Civ. App.—Austin 1954, no writ)19

In re State,
602 S.W.3d 549 (Tex. 2020)12

In re Tex. Natural Res. Conservation Comm’n,
85 S.W.3d 201 (Tex. 2002).....5

Texas Statutes and Rules

TEX. ELEC. CODE § 82.002.....10

TEX. ELEC. CODE § 84.007.....18

TEX. R. APP. P. 11(c).....3

Other Statutes, Rules, and Legislative History:

A.B. 860, 2019 - 2020 Leg., Reg. Sess. (Cal. 2020)15

Del. Code Ann. tit. 15, § 560315

H.F. 2486, 2020 88th Gen. Assemb., Reg. Sess. (Iowa 2020)14

H.R. 4820, 191st Gen. Court, Reg. Sess. (Mass. 2020).....15

New Mexico Stat. Ann. § 1-12-72(D)15

Other Authorities

Centers for Disease Control and Prevention, Health Equity
Considerations and Racial and Ethnic Minority Groups (July 24,
2020)9

Caroline Cummings, *Iowa secretary of state to send absentee ballot
applications to all registered voters*, CBS2IOWA (Jul. 17, 2020)15

Fernandez, Emma, *Reducing the Voter Turnout Gap In San
Francisco*, San Francisco Elections Commission (May 2019)16

Bernard L. Fraga, *The Turnout Gap Between Whites and Racial
Minorities is Larger Than You Think – and Hard to Change*,
WASH. POST (Sept. 25, 2018).....20

Stephen Gruber-Miller, *Iowa secretary of state will mail every
registered voter a ballot request form for June primary*, Des
Moines Register (Mar. 31, 2020).....14

Harris County Clerk’s Office, *Homepage*12

Patrick Marley, *Wisconsin Elections Commission approves sending
2.7 million absentee ballot request forms to voters*, Milwaukee
Journal Sentinel (Jun. 17, 2020, 11:19:00 AM)15

Emil Moffatt, *To Encourage Mail-In Voting In May, Georgia Will
Send Applications To All Registered Voters*, WABE (Mar. 24,
2020)15

Richard A. Oppel Jr. et al., <i>The Fullest Look Yet at the Racial Inequity of Coronavirus</i> , N.Y. TIMES (July 5, 2020)	9
Asher Price, <i>As Texas grapples with coronavirus, voter registration numbers are down</i> , AUSTIN AMERICAN STATESMAN (July 13, 2020)	12
Asher Price, <i>Coronavirus in Texas: Voter registration has flatlined in big urban counties</i> , AUSTIN AMERICAN STATESMEN (May 19, 2020)	12
Jasper Scherer, <i>Harris County Democrats had record turnout in Tuesday’s runoff. COVID-19 may have helped</i> , HOUSTON CHRONICLE (July 15, 2020).....	19, 20
Jasper Scherer, <i>Mail-in ballots drive surge in early voting turnout for Harris County runoffs</i> , HOUSTON CHRONICLE (June 29, 2020).....	18
Martha Stoddard, <i>Nebraska sending mail-in ballot applications to all registered voters</i> , OMAHA WORLD-HERALD (Aug. 19, 2020)	15
Texas Demographic Center, <i>Internet Access in Texas and the 2020 Census</i>	13
Texas Department of State and Health Services, <i>Texas Case Counts: COVID-19</i>	12
Tracey Tully, <i>New Jersey Will Hold Mail-in Election in November, Over Trump’s Objections</i> , N.Y. TIMES (Aug. 14, 2020)	15
<i>Benson: All voters receiving applications to vote by mail</i> (May 19, 2020)	15
<i>Conduct November General Election With Enhanced Voting Options</i> , Press Release, MARYLAND.GOV	15
<i>Mail-In Absentee Ballot 'Application' to be Sent to Every Registered Voter in WV</i> (Mar. 26, 2020)	15
<i>November General Election</i> , Press Release, CT.GOV (Aug. 25, 2020)	15
<i>State, First Statewide Elections Directive</i> (July 20, 2020).....	15

Amici curiae, the Texas State Conference of the NAACP (“TX NAACP”) and the Anti-Defamation League Southwest Region (“ADLSW”), respectfully submit the following brief in support of Appellee Chris Hollins, in his official capacity as Harris County Clerk (“the Clerk”) and the lower courts’ rulings below.

INTEREST OF AMICI CURIAE

Amici are nonprofit, nonpartisan organizations that conduct voter education, registration, and mobilization activities. Their members, supporters, and constituents include registered voters in Harris County who would be seriously prejudiced by the State’s requested injunction.

The TX NAACP was formally established in Texas in 1937. The organization’s primary office is in Austin, but it has over 100 chapters statewide, including in Houston. A substantial number of the TX NAACP’s more than 10,000 members are Harris County residents who are registered to vote in Texas.

The TX NAACP’s mission is to ensure the political, educational, social, economic equality of rights of all persons and to eliminate race-based discrimination. As a core part of this mission, the TX NAACP engages in voter education, registration, and mobilization activities and fights against voter suppression.

The Anti-Defamation League (“ADL”) is a national nonprofit, nonpartisan organization, founded in 1913 with a mission to “stop the defamation of the Jewish people and secure justice and fair treatment to all.” ADL, a D.C. corporation with

its headquarters in New York City, formally established ADLSW—its Southwest regional office—in Texas in 1958. ADLSW’s primary office is in Houston, but the office’s reach extends from El Paso on the west end of Texas to Beaumont on the east end, and all points south. Major cities in the region include Houston, San Antonio, Corpus Christi, El Paso, and Beaumont.

ADLSW’s mission, consistent with ADL’s overall mandate, is to protect the civil rights of all persons, eliminate vestiges of discrimination, racism, and antisemitism within communities in southwest Texas, and to fight hatred in all its forms. As a core part of this mission, ADLSW engages in and promotes voter education and registration activities. ADLSW believes that encouraging voters to be active participants in the political process and meaningfully enabling universal access to the ballot are crucial to its founding mission of securing the fair and just treatment of all people.

One of ADL’s priority initiatives at both the national and southwest regional levels this election year is to promote voting rights and help ensure safe access to the ballot. This has been a major focus of ADL’s national and regional staff, volunteer leadership, and supporters, occupying a priority position at the organization’s annual national leadership summit in June, and the subject of a series

of webinars and projects for staff, volunteer leadership, supporters and members of the community.

Amici therefore have a strong interest in the outcome of these proceedings, in their own right and through their members, supporters, and constituents. The trial court correctly denied Appellant’s request for a temporary injunction. If a temporary injunction should issue, Amici and their affiliates will be adversely affected.

No fee was paid to prepare this brief. TEX. R. APP. P. 11(c).

ARGUMENT

The trial court correctly determined that Appellant was not entitled to a temporary injunction and the appellate court properly affirmed.

It is undisputed that this Court reviews the denial of a temporary injunction for abuse of discretion. *Cooper Valves, LLC v. ValvTechnologies, Inc.*, 531 S.W.3d 254, 262-63 (Tex. App.—Houston [14th Dist.] 2017, no pet.). A temporary injunction is an extraordinary remedy. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). This Court must not substitute its judgment for that of the trial court unless the trial court’s action was so arbitrary that it exceeded the bounds of reasonable discretion, *Cooper Valves*, 531 S.W.3d at 262. The Court views the evidence “in the light most favorable to the trial court’s order, indulging every reasonable inference in its favor.” *Id.*

The trial court did not abuse its discretion here. On the contrary, the trial court's decision was well-justified on multiple, independently sufficient grounds and should again be upheld.

The State makes much of the fact that the proposed mailing is unsolicited. The State's mistake is equating unsolicited with *ultra vires*. Persuaded by the detail in the County's briefing, the trial court correctly concluded that "Mr. Hollins's contemplated conduct does not exceed his statutory authority as early voting clerk and therefore is not *ultra vires*." CR.293. On that ground alone, an affirmance is required.

Furthermore, even if the State could show that the mailing would be *ultra vires*, its petition for temporary injunction was still properly denied. The State offered only speculation, not proof, that the proposed mailing would likely cause voters to commit a felony or cause them to be confused. That ground alone, too, requires affirmance, as explained below in this memorandum.

Finally, the balance of the equities overwhelmingly favors the mailing. And that ground alone, too, requires affirmance, as set forth below.

I. The State Failed to Meet its Burden of Producing Evidence of Probable Irreparable Harm

To obtain a temporary injunction, an applicant must show, among other things, a "probable, imminent, and irreparable injury." *Id.*; *Mattox v. Jackson*, 336

S.W.3d 759, 762 (Tex. App.—Houston [1st Dist.] 2011, no pet.). The temporary injunction applicant bears the burden of production—*i.e.*, it must offer some evidence on each requirement for injunctive relief, including the probable injury requirement. See *In re Tex. Natural Res. Conservation Comm’n*, 85 S.W.3d 201, 204 (Tex. 2002) (quoting *Camp v. Shannon*, 162 Tex. 515, 348 S.W.2d 517, 519 (1961)); *Dallas Anesthesiology Assocs., P.A. v. Tex. Anesthesia Group, P.A.*, 190 S.W.3d 891, 897 (Tex. App.—Dallas 2006, no pet.).

The State claims that irreparable harm may be presumed from *ultra vires* conduct as a matter of law. However, as the court of appeals ruled, that claim is incorrect. As that court found, *ultra vires* conduct does not “*automatically* result[] in harm to the sovereign.” Order on Appeal of Temporary Injunction Denial, No. 14-20-00627-CV, at 7 (Tex. App—Houston 2020) (“Appellate Order”) (emphasis added). Therefore, even if the mailing would be *ultra vires* (and it would not), the harm requirement for a temporary injunction would not be met here as a matter of law. *Id.*

Nor has the State shown that actual harm is probable as a matter of *fact*. The *ultra vires* conduct complained of here was the County’s unsolicited mailing of ballot applications. But the State stipulated that it had no objection to the unsolicited mailing if limited to voters over the age of 65, thereby conceding that there is no

harm that results from the mere unsolicited mailing of a ballot application. Parties' Joint Stipulation of Facts, Cause No. 2020-52383, at 5 (Sept. 8, 2020).

The State also argues that the mailing will likely cause voters to commit a felony or be confused. However, the State has produced no evidence to support those contentions. On the contrary, as set forth below in this memorandum, the harms are purely speculative.

A. The State Offered Only Speculation, and No Proof, that the Mailing Will Likely Cause Voters to Commit a Felony

The State has speculated that the mailing might “walk voters into a felony” by providing them with a ballot application. However, even the State’s own witness conceded that for “most” voters, the information in the mailer would prevent any such misconduct. *See* Transcript from Temporary Injunction Hearing (Sept. 9, 2020) (“Tr.”), 86:21-23. The State provided no evidence that voters would intentionally commit any wrongdoing. Indeed, Mr. Ingram could cite no evidence that such fraud has been prosecuted in the past in Texas, despite the fact that anyone who has ever acquired a ballot application, however acquired, could commit the fraud in question.

As the court of appeals stated: “The State’s argument is based on mere conjecture; there is, in this record, no proof that voters will intentionally violate the Election Code. Appellate Order at 9-10.

B. The State Offered Only Speculation, and No Proof, that the Mailing Will Likely Cause Confusion

The trial court correctly found that the Clerk's planned action will not result in voter confusion. CR.291. The State did not submit any evidence in support of this claim aside from Mr. Ingram's testimony, CR.293, which the court of appeals correctly determined was conclusory and speculative. Appellate Order at 9-10 ("The State's argument is based on mere conjecture; there is, in this record, no proof that . . . voters will fail to understand the mailer").

Mr. Ingram was unable to point to any evidence that voters are likely to be confused by mailings such as the one planned here. Mr. Ingram testified that he "thinks" there will be confusion "based on similar occurrences from government mailings," but the only such alleged occurrence he could cite was the example of a voter calling the State to ask how to fill out a government document even though the instructions were "on the back of the form in the third paragraph down." *See* Tr. 62:5-10-64:20. Mr. Ingram did not and could not explain why he "thinks" that confusion would result in this case, when the mailer contains clear instructions as to eligibility to vote by mail, and warns voters that "not all voters are eligible to vote by mail" in bold, red, all caps lettering flanked by two red sirens. Tr. 76:6-22; Appellate Order at 4 (containing reproduction of mailer).

In fact, Mr. Ingram conceded that the Clerk’s planned mailer included accurate, helpful information for the voter, Tr. 93:11-12 (“I’ve commended the educational component of [the Harris County] mailer”), and even testified that the information in the mailer is “going to keep a lot of voters from making a mistake.” Tr. 76:13-17.

There is no evidence that the alleged potential harms cited by the State will likely result from the mailing. The mere possibility of a felony is not sufficient to meet the probable injury requirement under Texas law. Accordingly, the court’s decision below should be affirmed.

II. The Equities Overwhelmingly Favor The Clerk’s Plan

Even if the State had shown that the mailing would be *ultra vires* and had met its burden of producing evidence of probable harm—and it did not do either of things—the trial court’s denial of a temporary injunction would still have been correct. In addition to satisfying the three temporary injunction requirements referenced above, a movant seeking a temporary injunction must also show that the balance of the equities—including consideration of the public interest—weighs in favor of granting the injunction. *Int’l Paper Co. v. Harris Cty.*, 445 S.W.3d 379, 396 (Tex. App.—Houston [1st Dist.] 2013, no pet.). And the State cannot do so.

The equities at stake in this case, which implicate Amici’s specific interests and expertise, strongly favor the proposed mailing.

Amici represent and are affiliated with a number of registered voters in Harris County who will benefit from receiving an application to vote by mail and being informed of Texas law concerning mail-in voting. Many of Amici’s members and constituents are not familiar with the vote by mail process, have a need to vote by mail, and/or face obstacles to obtaining a ballot application.

The TX NAACP’s membership consists largely of African Americans, and it considers its constituents and supporters to be people of color and members of other underrepresented and vulnerable populations, including people with disabilities. As a consequence of the disproportionate impact of COVID-19 on people of color, populations represented by the TX NAACP are more likely to be affected by COVID-19,¹ and thus are more likely to have a need to vote by mail due to “a sickness or physical condition” that prevents these voters from appearing at the polls

¹ Richard A. Oppel Jr. et al., *The Fullest Look Yet at the Racial Inequity of Coronavirus*, N.Y. TIMES (July 5, 2020) (“[T]he new federal data ... reveals a clearer and more complete picture: Black and Latino people have been disproportionately affected by the coronavirus in a widespread manner that spans the country, throughout hundreds of counties in urban, suburban and rural areas, and across all age groups.”), at <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html>; Centers for Disease Control and Prevention, Health Equity Considerations and Racial and Ethnic Minority Groups (July 24, 2020) (“There is increasing evidence that some racial and ethnic minority groups are being disproportionately affected by COVID-19.”) (footnotes omitted), at <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>.

in person and a need to obtain a vote by mail ballot. *See* TEX. ELEC. CODE § 82.002. Yet many of the TX NAACP's members are unfamiliar with the vote by mail process.

Similarly, ADLSW's constituents and supporters include voters in Harris County who would benefit from receiving an application to vote by mail. Some of these individuals are not comfortable using technology to access a ballot-by-mail application online or may not be able to access an application online. *See* Tr. 154:21-155:1 (noting the government cannot make the application "readily available" to all voters when the applications are only available online, due to some voters' lack of internet access). Others are not familiar with the ballot-by-mail application process—they have never voted by mail, even though many are eligible to do so, due to various concerns. For example, some ADLSW constituents have religious beliefs that require them to prioritize protecting their health and safety and that of their family and community members. Despite being eligible to vote by mail, these voters felt at ease voting in person in prior elections; however, they no longer feel able to do so, given the COVID-19 pandemic and their religious obligations and values.

The Clerk's planned mailing will facilitate voting access for Amici's members, supporters, and constituents, and more generally, will provide voting

access to numerous elderly, disabled, and other ballot-by-mail eligible voters. It will ease a burden on eligible voters at a time when voters, many of whom have been battered and bewildered by the pandemic, are stretched thin. It will equip them with necessary information for the Election by educating them as to important deadlines and alternatives to in-person voting, which is especially important given the pandemic. The Clerk's mailer will also streamline the office's processing of ballot applications in the face of greater numbers of eligible voters applying to vote by mail. It will allow election officials to better plan for the processing of absentee ballot applications by encouraging more voters to submit their applications early. It will help election officials confirm voter addresses, which is critical to election security, when the ballots themselves are mailed out. And, finally, as the results of the July 2020 runoff demonstrate, it will increase civic engagement and voter participation.

The mailing will accomplish all of these ends by providing critically needed voter education and thereby reducing confusion.

A. The Clerk's Plan Increases Ballot Access And Eases Burdens On Eligible Voters.

COVID-19 has had a tragic and terrifying effect on nearly every aspect of American life. As of September 25, 2020, the Texas Department of State Health Services reports more than 723,000 confirmed cases and over 15,000 fatalities due

to the disease in Texas. In Harris County, 139,017 cases of COVID-19 and 2,548 fatalities have been reported.² Businesses, schools, and places of worship have been shuttered and Texans have seen their daily lives change drastically. And, as this Court has observed, “[a]ll of this is occurring in an election year.” *In re State*, 602 S.W.3d 549, 551 (Tex. 2020).

Indeed, COVID-19 has already created—and will continue to create—significant obstacles to eligible Texans’ ability to exercise their right to vote. Obtaining voting materials, like ballot-by-mail applications, is now more difficult due to government office closures, curtailment of voter mobilization efforts, and other measures taken in response to COVID-19.³ For example, the Harris County Clerk’s office is currently closed to the general public and Texas does not allow its voters to request a mail ballot online.⁴ Although Texas does allow voters to request

² See Texas Department of State and Health Services, *Texas Case Counts: COVID-19*, <https://txdshs.maps.arcgis.com/apps/opsdashboard/index.html#/ed483ecd702b4298ab01e8b9cafc8b83> (last accessed Sept. 25, 2020).

³ See, e.g., Asher Price, *Coronavirus in Texas: Voter registration has flatlined in big urban counties*, AUSTIN AMERICAN STATESMEN (May 19, 2020 5:01 AM), <https://www.statesman.com/news/20200519/coronavirus-in-texas-voter-registration-has-flatlined-in-big-urban-counties>; Asher Price, *As Texas grapples with coronavirus, voter registration numbers are down*, AUSTIN AMERICAN STATESMAN (July 13, 2020 5:00 AM), <https://www.statesman.com/news/20200713/as-texas-grapples-with-coronavirus-voter-registration-numbers-are-down>.

⁴ See Harris County Clerk’s Office, *Homepage*, <https://www.cclerk.hctx.net/> (last accessed Sept. 2, 2020) (“The County Clerk’s Office and annexes, in compliance with State and Local guidelines and the Stay Home Work Safe policy, is currently closed to the general public. Our offices are

an *application* for a mail ballot online, obtaining an application online is not an option for many Texans: according to a recent report by the Texas State Demographer, there are over 1.6 million households in Texas without internet access, making up 16.9% of Texas households.⁵ This is especially dire for Hispanic and African American Texans, of whom 14.2% and 12%, respectively, lack internet access.⁶

To respond to voters' needs during this pandemic, election officials should act to minimize the difficulty of accessing the ballot box. Mailing ballot-by-mail applications to all registered voters in Harris County, along with information about ballot-by-mail eligibility, will help ensure that eligible voters who want or need to vote by mail are not excluded from the franchise due to unfamiliarity with the process or inability to obtain an application. The challenged practice thus removes several potential confusion points for voters during a period when stress is high for many Texans, and time is in short supply. And by encouraging more eligible voters to vote by mail, the Clerk's planned mailer will also make early and Election Day

open for appointments (Assumed Names/DBA, Birth/Death Certificate, & Marriage Licenses only)").

⁵ See Texas Demographic Center, *Internet Access in Texas and the 2020 Census*, https://demographics.texas.gov/Resources/publications/2019/20191219_InternetAccess2020Census.pdf (last accessed Sept. 7, 2020).

⁶ *Id.*

voting safer for those voters who choose to vote in-person. Should more eligible voters choose to vote by mail, it will reduce the number of people in polling places and facilitate greater social distancing for poll workers and those that are not eligible to vote by mail. Tr. 126:18-127:6.

It is undisputed that the planned mailing will provide access to voters who are eligible to vote by mail. Such access is a vital in a system that functions best when every eligible voter can and does vote.

The State's request for injunctive relief is entirely contrary to the concept of a responsive government. The Clerk, a government official, is seeking to provide accurate and trusted information regarding the ballot-by-mail process, which will bolster voters' faith in the integrity of the voting process and work to minimize potential confusion arising from the unrestricted ability of third parties to send out ballot-by-mail applications without providing eligibility education.

Furthermore, far from being the radical assault on election integrity depicted by the State, the Clerk's approach has been adopted by election administrators of both parties in jurisdictions across the country. For example, election administrators in states such as Iowa, Georgia, Michigan, Nebraska, and West Virginia mailed vote

by mail applications to all registered voters in the state for their primary elections.⁷

Several states plan to send ballot applications to all voters ahead of the general election,⁸ and additional states will go even further and send ballots to all registered voters for the general election.⁹

⁷ H.F. 2486, 2020 88th Gen. Assemb., Reg. Sess. (Iowa 2020).; Stephen Gruber-Miller, *Iowa secretary of state will mail every registered voter a ballot request form for June primary*, DES MOINES REGISTER (Mar. 31, 2020, 02:23:00 PM), <https://www.desmoinesregister.com/story/news/politics/2020/03/31/iowa-voters-ballot-request-forms-june-primary-coronavirus-covid-19-secretary-state-paul-pate/5097518002/>; Emil Moffatt, *To Encourage Mail-In Voting In May, Georgia Will Send Applications To All Registered Voters*, WBE (Mar. 24, 2020), <https://www.wabe.org/to-encourage-mail-in-voting-in-may-georgia-will-send-applications-to-all-registered-voters/>; *Benson: All voters receiving applications to vote by mail*, Michigan.Gov (May 19, 2020), https://www.michigan.gov/sos/0,4670,7-127-1640_9150-529536--,00.html; Martha Stoddard, *Nebraska sending mail-in ballot applications to all registered voters*, OMAHA WORLD-HERALD (Aug. 19, 2020), https://omaha.com/news/state-and-regional/govt-and-politics/nebraska-sending-mail-in-ballot-applications-to-all-registered-voters/article_98d340c7-b4d1-57a9-8f4e-7098ed2397bd.html; *Mail-In Absentee Ballot ‘Application’ to be Sent to Every Registered Voter in WV*, Sos.Wv.Gov (Mar. 26, 2020), <https://sos.wv.gov/news/Pages/03-26-2020-A.aspx>.

⁸ *See, e.g.*, Del. Code Ann. tit. 15, § 5603; H.R. 4820, 191st Gen. Court, Reg. Sess. (Mass. 2020); New Mexico Stat. Ann. § 1-12-72(D); *Secretary Merrill Outlines Process and Timelines for November General Election*, Press Release, CT.GOV (Aug. 25, 2020), <https://portal.ct.gov/SOTS/Press-Releases/2020-Press-Releases/Secretary-Merrill-Outlines-Process-and-Timelines-for-November-General-Election>; Caroline Cummings, *Iowa secretary of state to send absentee ballot applications to all registered voters*, CBS2IOWA (Jul. 17, 2020), <https://cbs2iowa.com/news/local/iowa-secretary-of-state-to-send-absentee-ballot-applications-to-all-registered-voters>; *Governor Hogan Directs State Board of Elections to Conduct November General Election With Enhanced Voting Options*, Press Release, MARYLAND.GOV, <https://governor.maryland.gov/2020/07/08/governor-hogan-directs-state-board-of-elections-to-conduct-november-general-election-with-enhanced-voting-options/>; Patrick Marley, *Wisconsin Elections Commission approves sending 2.7 million absentee ballot request forms to voters*, MILWAUKEE JOURNAL SENTINEL (Jun. 17, 2020, 11:19:00 AM), <https://www.jsonline.com/story/news/politics/2020/06/17/wisconsin-elections-commission-finalize-mailing-absentee-ballot-request-forms/5329007002/>

⁹ *See, e.g.*, A.B. 860, 2019 - 2020 Leg., Reg. Sess. (Cal. 2020); Tracey Tully, *New Jersey Will Hold Mail-in Election in November, Over Trump’s Objections*, N.Y. TIMES (Aug. 14, 2020), <https://www.nytimes.com/2020/08/14/nyregion/nj-vote-by-mail-election.html>; State of Vermont Office of the Secretary of State, *First Statewide Elections Directive*, Sos.Vermont.Gov (July 20,

B. The Mailing Will Educate Voters And Reduce Confusion.

As noted by Mr. Ingram and discussed above, ballot-by-mail applications will give election officials a valuable opportunity to inform voters of election dates and deadlines. Tr. 93:11-12 (“MR. INGRAM: I’ve commended the educational component of that mailer, yes”). Voter education about deadlines and dates is even more important this year due to the general confusion created by COVID-19. Social science research has confirmed that any “touch” between election officials and voters is valuable in helping voters learn about important dates and deadlines.¹⁰ Moreover, providing much-needed voter information, especially at a time where there is much misinformation and disinformation, reduces voter confusion. *See* Tr. 169:10-12 (noting the State encouraged the County’s provision of educational information). In particular, receiving a ballot-by-mail application, with accompanying eligibility information, allows voters to determine their eligibility and provides eligible voters with an easy and convenient method of applying for a ballot, thereby increasing the likelihood that they will participate in the election.

2020), <https://sos.vermont.gov/media/hxgjjdkb/secretary-of-state-s-first-2020-statewide-election-procedures-directive.pdf>.

¹⁰ Emma Fernandez, *Reducing the Turnout Gap in San Francisco*, San Francisco Elections Commission (May 2019), https://sfgov.org/electionscommission/sites/default/files/Documents/meetings/2019/2019-08-21-commission/2019_08_21_Elections_Comm_Item5_Reducing_the_Voter_Turnout_Gap_in_San_Francisco_Emma%20Fernandez.pdf.

C. The Mailing Will Streamline The Clerk's Processing Of Ballot Applications.

The Clerk's planned mailer will also streamline the office's processing of ballot applications in several important ways. First, the applications will have a unique bar code for each voter. Tr. 117:6-9. Ordinarily, to process applications printed from the Internet or provided by campaigns, officials must enter the voter's information manually and match it to the correct voter, which can take additional time if the voter has a common name. *Id.* 117:8-16. The Clerk's preprinted applications will allow officials to scan a bar code instead, thus quickly identifying the correct voter. *Id.* 117:17-21. Second, by reducing the amount of manual data entry by election officials, the Clerk's preprinted application will also reduce the potential for error in processing. *Id.* 118:11-13. Third, the Clerk's planned mailer includes the application as a postcard, thus making it unnecessary for election officials to open envelopes and unfold papers to access the application. *Id.* 117:22-118:4 ("if you're doing hundreds of thousands of these, the step of opening an envelope and straightening out and unfolding that ballot is a lot of time").

D. The Mailing Will Alleviate Last-Minute Demand For Applications.

Harris County experienced a record voter turnout for the July 2020 primary runoff, and it expects to encounter record turnout for the upcoming presidential election. Tr. 129:5-15. By proactively informing voters of upcoming deadlines and

sending applications to voters, the Clerk’s office will alleviate the inevitable last-minute demand for applications.¹¹ If the majority of eligible voters submit their ballot-by-mail applications at or near the deadline, Harris County election officials will face a serious election administration problem in processing requests and mailing out a huge number of vote by mail ballots in a very short amount of time or risk disenfranchisement of thousands of voters.

E. The Mailing Will Confirm Voter Addresses.

Maintaining accurate voter address information is a challenge for any election administrator, but it is particularly important this year. As a result of the COVID-19 pandemic, Texas has already seen (and will almost certainly continue to see) a surge in absentee voting in this year’s elections.¹² By sending mail ballot applications to all registered voters prior to the election cycle beginning in earnest, the Clerk’s office can confirm, and as needed, update the databases of voter addresses. Accurate and up-to-date addresses are important to ensure that absentee ballots are received by voters in time to be returned and counted.

¹¹ Any registered voter who wants a ballot-by mail application mailed to them has until eleven days prior to Election Day to submit a ballot-by-mail application. TEX. ELEC. CODE § 84.007. However, Texas requires all ballots-by-mail to be postmarked no later than Election Day. *Id.* at § 86.007.

¹² Jasper Scherer, *Mail-in ballots drive surge in early voting turnout for Harris County runoffs*, HOUSTON CHRONICLE (June 29, 2020), <https://www.houstonchronicle.com/politics/houston/article/Mail-ballots-drive-surge-in-early-voting-turnout-15375467.php>.

F. The Mailing Will Expand Civic Engagement And Increase Voter Turnout.

As both parties to this proceeding agree, “[i]t is to the public interest that all qualified electors vote and the courts should lend encouragement to those who strive towards this end.” *Roberts v. Dotson*, 272 S.W.2d 164, 166 (Tex. Civ. App.—Austin 1954, no writ); Tr. 37:18-22 (State and County agreeing that it is in the State’s best interest that all qualified voters participate in elections). By sending ballot-by-mail applications to all registered voters, the Harris County Clerk will not only create an effective and statutorily-permissible path for residents to exercise their right to vote, but also increase civic engagement and participation among Harris County residents.

The results of the July 2020 runoff election in Harris County bear out this prediction: when the Clerk mailed ballot applications to all Harris County voters over the age of 65, voter participation set historical records, in terms of both the number of votes cast overall and the number of absentee ballots cast.¹³ These numbers demonstrate that the impact of mailing eligible voters ballot-by-mail applications on civic engagement is real and significant.

¹³ Hr’g Tr. 43:10-14; *see also* Jasper Scherer, *Harris County Democrats had record turnout in Tuesday’s runoff. COVID-19 may have helped*, HOUSTON CHRONICLE (July 15, 2020), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Harris-County-Democrats-had-record-turnout-in-15411656.php>.

The Harris County mailing will educate voters in a way that helps increase civic participation.¹⁴ Outreach such as sending out vote by mail applications can be particularly helpful for promoting voter turnout in rural or remote areas without consistent access to government services, minority communities, and low-income communities.¹⁵

In contrast to that long list of important, substantial equities favoring the mailing, there are no equities favoring the State here. The State claims that the mailing would cause voters to commit felonies and would foster confusion, but submitted no proof for those counter-intuitive, incorrect conclusions—let alone proof that there would be enough fraudulent ballot applications or confusion to outweigh the many, vitally important upsides identified above. And one of those upsides is the undisputed fact that the mailing would provide more clearly articulated critical eligibility information to all voters that would clarify—at least for “most” of them, in the words of the State’s witness—their eligibility for voting by mail.

¹⁴ *Id.*

¹⁵ *Id.*; Bernard L. Fraga, *The Turnout Gap Between Whites and Racial Minorities is Larger Than You Think – and Hard to Change*, WASH. POST (September 25, 2018), https://www.washingtonpost.com/news/monkey-cage/wp/2018/09/25/the-turnout-gap-between-whites-and-racial-minorities-is-larger-than-you-think-and-hard-to-change/?utm_term=.28dae494c677.

The equities strongly favor denial of the State's requested injunctive relief, providing an additional ground on which the Court should affirm the trial court's ruling below.

CONCLUSION

The 14th Court of Appeals correctly affirmed the trial court's denial of the State's petition for temporary injunction. The trial court did not abuse its discretion. To the contrary, it correctly concluded that the proposed mailing would not be *ultra vires*. Moreover, as the Court of Appeals held, the trial court's ruling was also proper because of the State's failure to meet its burden of producing evidence to support its allegation of probable, irreparable harm. In addition, the trial court's ruling was correct because the balance of the equities weighs overwhelmingly against entry of the temporary injunction.

Therefore, this Court should affirm the ruling below.

Dated: September 25, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on September 25, 2020, a true and correct copy of the foregoing document was served on all counsel of record using the Court's electronic case filing system.

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