

No. 14-20-00627-CV

**In the Court of Appeals
for the Fourteenth Judicial District
Houston, Texas**

FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS
9/11/2020 3:55:18 PM
CHRISTOPHER A. PRINE
Clerk

THE STATE OF TEXAS,

Appellant,

v.

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

Appellee.

On Appeal from the
127th Judicial District Court, Harris County

**APPELLANT’S EMERGENCY MOTION FOR RELIEF
UNDER RULE 29.3 OR IN THE ALTERNATIVE FOR A
WRIT OF INJUNCTION**

TO THE HONORABLE FOURTEENTH COURT OF APPEALS:

Pursuant to Rule 29.3, the State of Texas, by and through Attorney General Ken Paxton, respectfully requests an emergency order preserving the status quo and protecting this Court’s appellate jurisdiction to resolve the lawfulness of Harris County’s plan to distribute unsolicited vote by mail applications to over 2 million registered voters in Harris County, even though the vast majority of those voters are not eligible to vote by mail, and even though the Election Code does not authorize such action. Appellee Chris Hollins, the Harris County Clerk, has indicated his intention to distribute these applications as soon as five days from today—and

should that happen, this Court will lose jurisdiction over this appeal before it is able to decide the lawfulness of Hollins's actions. **Therefore, the State requests an order granting temporary relief as soon as possible, but in any event, no later than Monday, September 14, 2020, at 5:00 p.m.** The State further requests that such an order remain in effect for the duration of this important appeal.

On August 25, 2020, Appellee Hollins announced that he intends to send two million applications for mail-in ballots to registered voters in Harris County under the age of 65—regardless of whether any given voter qualifies to vote by mail or has requested such an application. Hollins's actions exceed his statutory authority under the Election Code. Moreover, they will sow confusion just weeks ahead of a major national election and facilitate voter fraud.

There is little time to stop Hollins's *ultra vires* efforts to circumvent the careful limits the Constitution places on county officials' authority. Hollins can take only such actions as are authorized by the Legislature, and the Legislature has granted him precise powers relating to mail-in ballots in this State. Within hours of Hollins's announcement, the Secretary of State asked Hollins to stop his illegal actions. Hollins refused. The State then filed this *ultra vires* suit and sought a preliminary injunction. The trial court rejected the request. County clerks across the State must distribute mail-in ballots to certain voters in only eight days on September 19. Tex. Elec. Code §§ 101.001, .004. Yet Hollins's *ultra vires* conduct threatens to flood the State's largest county with applications from voters who are likely ineligible. This will fundamentally undermine the Legislature's design.

As Hollins has acknowledged, the proper function of Texas’s mail-in-ballot system depends on the honesty and good faith of Texas voters. Voters must decide in the first—and usually the last—instance whether they are eligible to vote by mail. App. A (Response) at 3. Requiring voters to affirmatively seek out an application is an important first step in that process. There has already been widespread confusion regarding who is and is not eligible to vote by mail during this election cycle. Sending applications to millions of ineligible voters—applications that will bear the imprimatur of the Harris County Clerk—will only exacerbate this situation.

This Court should issue an order preventing Hollins’s planned distribution pending resolution of this appeal, which should be decided on an accelerated basis. Texas Rule of Appellate Procedure 29.3 permits this Court to issue “any temporary orders necessary to preserve the parties’ rights” and this Court’s own appellate jurisdiction. *See Lamar Builders, Inc. v. Guardian Savings & Loan Ass’n*, 786 S.W.2d 789, 791 (Tex. App.—Houston [1st Dist.] 1990, no writ). Such an order is necessary here because if Hollins consummates his plans while this appeal is pending, this Court will be unable to afford the State any effective remedy. Put simply, there is no way to unsend more than two million unsolicited vote-by-mail applications. At the same time, the State recognizes that the election is fast approaching. The Court should therefore grant immediate, temporary relief and set this case for briefing and resolution as expeditiously as possible, while preserving the status quo and appellate jurisdiction in the meantime.

STATEMENT OF FACTS

I. Background

“The history of absentee voting legislation in Texas shows that the Legislature has been both engaged and cautious in allowing voting by mail.” *In re State*, 602 S.W.3d 549, 558 (Tex. 2020). A qualified voter may vote by mail only (a) “if the voter expects to be absent from the county of the voter’s residence on election day,” Tex. Elec. Code § 82.001; (b) if the voter “has a sickness or physical condition” that prevents the voter from voting in person, *id.* § 82.002; (c) if the voter is at least 65 years of age on election day, *id.* § 82.003; or (d) if “at the time the voter’s early voting ballot application is submitted, the voter is confined in jail,” *id.* § 82.004. To receive a ballot to vote by mail, an eligible voter “must make an application for an early voting ballot to be voted by mail as provided by this title,” *id.* § 84.001(a), and send it to the early-voting clerk in the voter’s jurisdiction, *id.* § 84.001(d).

Appellee Chris Hollins is the early-voting clerk for Harris County. Because Harris County is a subdivision of the State of Texas, it—and by extension its agents—possess only those powers granted by the Legislature. *See, e.g., Town of Lakewood v. Bizios*, 493 S.W.3d 527, 536 (Tex. 2016). The limits of this power are “strictly construe[d].” *Id.* “Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.” *Foster v. City of Waco*, 255 S.W. 1104, 1106 (Tex. 1923).

As an early-voting clerk, Hollins “is an officer of the election in which [he] serves.” Tex. Elec. Code § 83.001(b). He is to “conduct the early voting in each election” in accordance with the terms of the Election Code. *Id.* § 83.001(a).

Relevant here, Hollins is empowered (and required) to “mail without charge an appropriate official application form for an early voting ballot to each applicant requesting” such an application. *Id.* § 84.012. The Legislature has not, however, granted county early voting clerks the power to send out unsolicited applications for mail-in ballots. App. F (Joint Ex. 19) (indicating [x] total ballots cast under these categories in 2016).

Hollins has ignored these limitations on his power. On August 25, 2020, his office announced on Twitter that it “will be mailing every registered voter an application to vote by mail.” Harris County Clerk, (@HarrisVotes), Twitter (Aug. 25, 2020), <https://twitter.com/HarrisVotes/status/1298372637912072193>. The tweet also stated “Check your mail! Every Harris County registered voter will be sent an application to vote by mail next month.” *Id.* This is in addition to the “nearly 400,000 mail-in ballot applications [sent] to Harris County voters who are 65 and older” ahead of the July primary runoff. Shelley Childers, *Nearly 400K vote-by-mail applications sent to Harris Co. seniors ahead of election*, ABC, June 11, 2020, <https://abc13.com/texas-mail-in-ballot-voting-coronavirus-during/6243587/>.

Most of the individuals targeted by Hollins’s latest proposed mass mailing are not eligible to vote by mail. Currently, there are approximately 2.4 million people registered to vote in Harris County. Harris County Clerk’s Office, *Cumulative Report—Harris County, Texas—General and Special Elections*, Nov. 8, 2016, <https://harrisvotes.com/HISTORY/20161108/cumulative/cumulative.pdf>. As of July 1, 2019, only 10.9% of the Harris County population is 65 years old or older. U.S. Census Bureau, *Quick Facts: Harris County, Texas*, <https://www.census.gov/>

quickfacts/fact/table/harriscountytexas/PST045219. Only an estimated 6.4% of the remainder has a disability, and it is unclear how many of those disabilities prevent a voter from voting in person. *Id.* Finally, the number of eligible voters who are confined in jail or expect to be absent from the county is necessarily small.

On August 27, 2020, Keith Ingram, Director of Elections for the Texas Secretary of State, sent a letter asking Hollins to halt his unlawful mailing under Texas Election Code section 31.005. App. B (Petition) Ex. 1. Ingram's letter stated that the Secretary had concluded that Hollins's proposed mailing was an abuse of voters' rights. *Id.* Specifically, Ingram explained that "[a]n official application from [Hollins's] office will lead many voters to believe that they are allowed to vote by mail, when they do not qualify." *Id.* Moreover, sending applications to every registered voter would "impede the ability of persons who need to vote by mail to do so" by "[c]logging up the vote by mail infrastructure with potentially millions of applications from persons who do not qualify to vote by mail." *Id.*

The Secretary gave Hollins until noon on August 31, 2020 to cease his unlawful actions and to issue a retraction before she referred the case to the Attorney General for "appropriate steps." *Id.* He refused to comply with the deadline. *Cf.* App. B Ex. 2 at 2. The Secretary immediately referred the case to the Attorney General.

II. Procedural History

Following the Secretary's referral, the State acting by and through its Attorney General filed this suit seeking temporary and permanent injunctive relief against Hollins's *ultra vires* action. App. B. The Attorney General also sought a temporary restraining order to prevent Hollins from acting in advance of a hearing on the

State's requested relief. *Id.* at 10-11. The trial court never ruled on that request, however, because the parties reached a Rule 11 agreement that Hollins would not seek to mail the applications until five days after the trial court resolved the temporary injunction to allow for the non-prevailing party to seek relief on appeal. App. C (Rule 11 Agreement).¹

In his response to the State's petition, Hollins defended his conduct on various grounds, asserting that (1) there is no statute prohibiting him from sending out these applications, App. A at 2; (2) the State did not sue him when he sent applications to voters over 65 (who are, by definition, eligible to vote by mail), *id.* at 15; (3) Texas Election Code section 84.013 requires the Secretary of State to maintain a supply of applications for potential distribution, *id.* at 5, 10; (4) the Secretary of State posts a copy of the application on her website for voters to download as an alternative to requesting an application from Hollins, *id.* at 6; and (5) private parties have periodically opted to distribute mail-in-ballot applications. But he pointed to no statute authorizing his actions. More importantly for the purpose of this motion, Hollins did not contest that if the State is right on the law, it will suffer an irreparable injury absent immediate relief.

The trial court held a hearing on the State's petition on September 9. After requesting additional briefing, the trial court denied the State's requested relief on September 11. App. E. It reasoned that the Election Code grants early voting clerks

¹ In an independent lawsuit, the Texas Supreme Court issued an order that stayed Hollins's action for a similar period. App. D (Hotze Order).

“broad powers,” and that there is nothing in section 84.012 limiting that authority. *Id.* at 5.²

The State filed an immediate notice of interlocutory appeal under Civil Practice and Remedies Code section 51.014(a)(4). It now asks this Court to issue emergency interim relief under Texas Rule of Appellate Procedure 29.3 to prevent Hollins’s *ultra vires* conduct pending resolution of its appeal.³ Absent such relief, Hollins will undoubtedly follow through on his threat to mail out two million applications to vote by mail within a matter of days, depriving this Court of the ability to afford the State any effective relief or to resolve the merits of this appeal.

² Though the trial court also discussed a “Section 31.005 Claim,” App. E at 5-7, that was in error. The State has brought a single claim based on *ultra vires* action.

³ In the alternative, the State asks this Court to issue a writ of injunction to preserve its jurisdiction under Government Code section 22.221(a). *See In re Olson*, 252 S.W.3d 747, 747-48 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding) (When the court of appeals has appellate jurisdiction, it may issue a writ of injunction to “enforce or protect the appellate court’s jurisdiction.”). This Court has held that though these two avenues for relief vary in form, the standards for seeking them are similar. *Lamar Builders, Inc.*, 786 S.W.2d at 790. *But see Oryon Techs., Inc. v. Marcus*, 429 S.W.3d 762, 766 (Tex. App.—Dallas 2014, no pet.) (noting that some courts hold that the standards under Rule 29.3 “are not as stringent as the requirements of the Section 22.221 of the Texas Government Code”). The State asks for both in an abundance of caution.

ARGUMENT

I. To Preserve the Status Quo and Appellate Jurisdiction, the Court Should Order Hollins Not to Mail Unsolicited Mail-in Ballots Pending Resolution of this Appeal.

“When an appeal from an interlocutory order is perfected, the appellate court may make any temporary orders necessary to preserve the parties’ rights until disposition of the appeal.” Tex. R. App. P. 29.3; *see also In re Olson*, 252 S.W.3d at 747-48. To establish entitlement to that relief, movants must state the relief sought, the legal basis for the relief, and the facts necessary to establish a right to that relief. *See, e.g., Lamar*, 786 S.W.2d at 791; *see also, e.g., McNeeley v. Watertight Endeavors, Inc.*, No. 03-18-00166-CV, 2018 WL 157866, at *1 (Tex. App.—Austin Mar. 23, 2018, no pet.) (per curiam). Such relief is appropriate here.

A. The State is entitled to an order preventing Hollins from sending out unsolicited mail-in-ballot applications because it is the only way “to preserve the parties’ rights” pending that appeal. *See* Tex. R. App. P. 29.3. “As a sovereign entity, the State has an intrinsic right to enact, interpret, and enforce its own laws.” *State v. Naylor*, 466 S.W.3d 783, 790 (Tex. 2015). And the State “indisputably has a compelling interest in preserving the integrity of its election process.” *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989).

That right will be irrevocably violated the moment that mail goes out—a proposition Hollins does not dispute. *See generally* App. A (focusing entirely on the merits of Plaintiff’s claim). Put simply, there is no way to unsend two million unsolicited vote-by-mail applications. And there is no other way to make the State whole. The State’s sovereign interest cannot be remedied with monetary damages.

State officers will be required to combat the confusion that will inevitably result from Hollins’s action. Even if they were able to divert their full attention to that task, it likely will not repair the resulting damage. *See* App. J (Transcript) at 60-62, 64-65 (receiving testimony from Director of Elections that Hollins’s action is likely to lead to (1) a depletion of the Secretary of State’s resources, (2) voters making decisions without assistance and potentially opening themselves up to liability, and (3) decreased turnout).⁴ Moreover, the time State officers spend on this issue will distract them from their other critical duties just weeks before a major election.

Courts routinely order Rule 29.3 relief under such circumstances.⁵ Indeed, the Supreme Court has held that refusal to grant such relief where necessary to preserve

⁴ The transcript attached to this motion is a draft, which was received from the court reporter. It is being provided for the Court’s use in considering this motion. A final copy will be provided when it is complete.

⁵ *E.g., Texas Gen. Land Office v. City of Houston*, No. 03-20-00376-CV, 2020 WL 4726695, at *2 (Tex. App.—Austin July 31, 2020, no pet.) (granting Rule 29.3 relief where “City face[d] a potentially irrevocable loss of its ability to provide aid to the residents of the City”); *WC 1st & Trinity, LP v. Roy F. & JoAnn Cole Mitte Found.*, No. 03-19-00905-CV, 2020 WL 544748, at *4 (Tex. App.—Austin Feb. 3, 2020, no pet.) (“leav[ing] in place the portions of our prior partial stay order prohibiting the alienation of the real property”); *Mulcahy v. Cielo Prop. Grp., LLC*, No. 03-19-00117-CV, 2019 WL 2384150, at *1 (Tex. App.—Austin June 6, 2019, no pet.) (ordering “appellant’s counsel to obtain and maintain possession of the hard drive and all copies of appellee’s confidential business information”); *accord In re Lasik Plus of Tex., P.A.*, No. 14-13-00036-CV, 2013 WL 816674, at *4 (Tex. App.—Houston [14th Dist.] Mar. 5, 2013, orig. proceeding) (refusing Rule 29.3 relief where “the subject matter of this appeal *will not be invaded* if the trial court’s order stands”) (emphasis added).

the court's jurisdiction is an abuse of discretion and subject to a petition for writ of mandamus. *See generally H & R Block, Inc. v. Haese*, 992 S.W.2d 437, 438 (Tex. 1999).

B. Though the merits are not at issue in a Rule 29.3 motion, the State is also likely to prevail on appeal. Counties in Texas are limited to exercising those powers that are specifically conferred on them by statute or the constitution. *Guynes v. Galveston County*, 861 S.W.2d 861, 863 (Tex. 1993). The County has no sovereign power of its own: It “is a subordinate and derivative branch of state government.” *Avery v. Midland County*, 406 S.W.2d 422, 426 (Tex. 1966), *rev'd on other grounds*, 390 U.S. 474 (1968); *see also* Tex. Const. art. XI, § 1 (“The several counties of this State are hereby recognized as legal subdivisions of the State.”). As a political subdivision, the County “represent[s] no sovereignty distinct from the state and possess[es] only such powers and privileges” as the State confers upon it. *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 430 (Tex. 2016) (quotation omitted); *accord Quincy Lee Co. v. Lodal & Bain Eng'rs, Inc.*, 602 S.W.2d 262, 264 (Tex. 1980). And when a county acts without legal authority, “[t]he ‘inability [of the State] to enforce its duly enacted [laws] clearly inflicts irreparable harm on the State.’” *Tex. Ass’n of Bus. v. City of Austin*, 565 S.W.3d 425, 441 (Tex. App.—Austin 2018, pet. denied) (quoting *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018)).

Hollins must send vote-by-mail applications only to voters who request them. Tex. Elec. Code § 84.012. But neither he nor the trial court pointed to any statute empowering him to send applications *without* such a request.

Hollins seeks to reverse this presumption and argue that he has “broad” power to send out applications because there is no statute that prohibits the activity. App.

A at 2.⁶ But tellingly, the only case he can find to support this contention involved not whether a county had authority to act in the first place, but *which* county officer had authority to “employ and discharge the court house engineer, janitor, and elevator operators.” *Anderson v. Wood*, 152 S.W.2d 1084, 1085 (Tex. 1941). In *Anderson*, the Court looked carefully at how the Texas Constitution and various statutes divided authority to enter contracts relating to the county jail between the Commissioners Court and the Sheriff. *Id.* The Court concluded that the specific contract at issue did not fall within the specific grant of authority to the Sheriff, and by default fell into the contracting authority of the Commissioners Court, which possesses general statutory authority to contract for a County. *Id.* at 209. But Hollins can point to no such general grant of authority. Put another way, he is the Sheriff in *Anderson*. Here, the Election Code spells out very specific authorities granted to the early-voting clerk, *see, e.g.*, Tex. Elec. Code §§ 84.012, 84.014, & 84.033, to the Commissioners Court, *see, e.g., id.* §§ 32.002, 42.001, and to other public officials, *see, e.g., id.* § 87.0431. Nowhere in the code is the early-voting clerk granted the authority Hollins claims.

The trial court erred by presuming that Hollins had powers unless they were explicitly denied. App. E at 3, 5. Harris County and Hollins have only such power as

⁶ *See also, e.g.*, App. J at 134 (receiving testimony from Hollins that his power is “really broad”); *id.* at 141 (“I think a lot of the [Election Code] . . . lays out generally what I’m allowed to do and then I can take from that and go above and beyond.”); *id.* at 143 (“I would say that my authority to conduct and manage early voting gives me very broad authority”); *id.* at 171 (opining that the Election Code “lays out minimums” but that he is empowered “to go above and beyond”).

explicitly granted or “*necessarily implied* to perform [their] duties.” *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 29 (Tex. 2003) (emphasis added). It is not enough that Hollins views the additional powers as potentially helpful to carrying out a duty assigned to Hollins under the Election Code. The Supreme Court has repeatedly held that “a municipal power will be implied only when without its exercise the expressed authority would be nugatory.” *State ex rel. City of Jasper v. Gulf State Utils. Co.*, 189 S.W.2d 693, 648 (Tex. 1945) (cleaned up) (quoting *Foster*, 255 S.W. at 1106); *see also, e.g., Bizios*, 493 S.W.3d at 536 (county’s implied powers are only those that are “*indispensable*” to carrying out the powers expressly granted).

Far from being necessary to perform his functions as an early-voting clerk, Hollins’s actions actively undermine the proper function of the Election Code. For example, Keith Ingram, the Secretary of State’s long-serving Director of Elections, testified that sending unsolicited vote-by-mail applications to every registered voter, bearing the imprimatur of Harris County, will needlessly confuse voters and will invite potential voter fraud by those who improperly maintain their own eligibility to vote by mail. *E.g.*, App. J (Transcript) at 60-62, 64-65. Indeed, this concern is fully supported by the content of the information put out by Hollins, which is incomplete at best, *see, e.g.*, App. G (Ex. 10) (agreeing with assessment that “A disability is something that YOU define for yourself”), and affirmatively misleading at worst, *compare, e.g.*, App. H (Ex. 21) (implying that drive-through voting is available for all voters), *with* Tex. Elec. Code § 64.009 (allowing curbside voting only for those “physically unable to enter the polling place”), *and* App. I (Ex. 2 at 2) (stating that a voter is disabled if she is pregnant), *with* Tex. Elec. Code § 83.002 (defining

disability to include “[e]xpected or likely confinement for childbirth on election day”).

Moreover, Hollins’s *ultra vires* actions harm the very voters that he claims to be trying to help. Specifically, due to Hollins’s *ultra vires* actions, many Harris County residents who are eligible to vote by mail may be under the impression that they need not request an application. This confusion could lead a voter not to receive a ballot in a timely fashion and ultimately not to be able to vote. The Court should take action to preclude that outcome.

As a result, the State is likely to prevail in showing that Hollins’s actions should have been enjoined as *ultra vires*.

II. The Court Should Expedite Its Consideration of Both this Motion and the Appeal.

Moreover, it is vital that the Court move quickly. At present, the only thing preventing Hollins from taking irrevocable action is a Rule 11 agreement—adopted by the Texas Supreme Court to address other litigation regarding Hollins’s conduct—that will expire in mere days. App. C. Therefore, the State requests an order granting temporary relief as soon as possible, but in any event, no later than Monday, September 14, 2020, at 5:00 p.m.

If the Court concludes that is not enough time to fully consider the Rule 29.3 motion, it should at minimum order relief on an administrative basis and require Harris County to respond to this motion forthwith. Such a brief, administrative order is warranted when the Court reaches “the tentative opinion that [the moving party] is entitled to the relief sought” and “the facts show that [that party] will be

prejudiced in the absence of such relief.” *Republican Party of Tex. v. Dietz*, 924 S.W.2d 932, 932 (Tex. 1996) (per curiam) (citing former Tex. R. App. P. 121). It allows the Court a “meaningful opportunity to consider” relevant issues “upon less hurried deliberation.” *Del Valle ISD v. Dibrell*, 830 S.W.2d 87, 87-88 (Tex. 1992) (Cornyn, J., joined by Hecht, J., dissenting); *cf. June Medical Servs., L.L.C. v. Gee*, 139 S. Ct. 661 (2019) (ordering a temporary stay because “the Justices need[ed] time to review the[stay-related] filings”).⁷ Such an order would allow Hollins to respond to this motion without a lapse in the existing Rule 11 agreement.

The State also recognizes that this case should be resolved as expeditiously as possible. To that end, it requests the Court expedite its consideration of the appeal on the merits. Rule 38.6(d) allows this Court to “shorten the time for filing briefs and for submission of the case” in the interests of justice. Tex. R. App. P. 38.6(d). The State would suggest that such relief is appropriate here. By law, certain ballots must be mailed no later than September 19. *Cf.* Tex. Elec. Code §§ 101.001, .004. All voters who want to vote by mail must apply for an absentee ballot no later than October 23. *Id.* § 84.007(c). The United States Postal Service has warned that due to limitations on *its* capacity, those applications should be sent no later than October 19. Letter from Thomas J. Marshall to Ruth Hughs, July 30, 2020,

⁷ The U.S. Supreme Court routinely enters temporary stays while considering important filings. *See, e.g., Trump v. Mazars USA, LLP*, 140 S. Ct. 581 (2019) (temporary stay of seven days); *June Medical Servs.*, 139 S. Ct. 661 (six days); *In re Grand Jury Subpoena*, 139 S. Ct. 914 (2019) (16 days); *In re United States*, 139 S. Ct. 452, 453 (2018) (13 days); *In re Dep’t of Commerce*, 139 S. Ct. 16 (2018) (13 days).

<https://tinyurl.com/USPSTexasLetter>. This Court—and potentially the Supreme Court—should resolve this dispute well ahead of that deadline.

The State therefore requests that this Court accelerate briefing in this action such that it may be resolved no later than October 5.

P R A Y E R

To maintain the status quo and preserve its jurisdiction, the Court should grant relief under Rule 29.3 directing Appellee not to send (or cause to be sent) any unsolicited mail-in ballot applications pending resolution of this appeal. The Court should further grant expedited consideration of this appeal. The State respectfully requests an order granting relief as soon as possible, but in any event, no later than Monday, September 14, 2020, at 5:00 p.m.

Respectfully submitted.

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CERTIFICATE OF SERVICE

On September 11, 2020, this document was served electronically on Susan Hays, lead counsel for Chris Hollins, via hayslaw@me.com.

/s/ Kyle D. Hawkins

KYLE D. HAWKINS

CERTIFICATE OF CONFERENCE

On September 11, 2020, counsel for the State conferred with counsel for the Defendant regarding this motion. He was informed that Defendant is opposed to the relief sought.

/s/ Kyle D. Hawkins

KYLE D. HAWKINS

CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this brief contains 4,374 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

/s/ Kyle D. Hawkins

KYLE D. HAWKINS

No. 14-20-00627-CV
In the Court of Appeals
for the Fourteenth Judicial District
Houston, Texas

THE STATE OF TEXAS,

Appellant,

v.

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

Appellee.

On Appeal from the
127th Judicial District Court, Harris County

APPENDIX

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**TAB A: RESPONSE TO MOTION FOR
TEMPORARY INJUNCTION**

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official capacity
as Harris County Clerk
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

**Defendant Chris Hollins's Opposition to Plaintiff's Application for Temporary
Restraining Order, Temporary Injunction and Permanent Injunction**

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Christopher Hollins, in his official capacity as the Harris County Clerk, files this Brief in Opposition to The State of Texas's Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction, and would respectfully show the Court the following:

I. Preliminary Statement

The Texas Election Code permits and in fact facilitates the broad distribution of vote-by-mail applications to registered voters. The broad distribution of vote-by-mail applications is consistent with the Election Code's empowerment of voters to decide for themselves whether they meet the statutory criteria for mail voting and, if so, whether to exercise that option. To that end, Chris Hollins—Harris County's top elections officer—plans to send vote-by-mail applications to all registered voters in Harris County, including those under 65 years of age, along with educational information about the eligibility criteria for voting by mail. By providing applications and educational information, Hollins's plan will allow Harris County voters to make an informed decision of how to vote this November and will facilitate access to the franchise for those voters who are entitled to vote by mail due to a disability or other qualifying reason.

Nevertheless, the State of Texas has brought this lawsuit seeking to block Hollins from sending vote-by-mail applications to all registered voters in Harris County. The State does not dispute that Hollins may send applications to voters age 65 and over, nor does the State dispute that Hollins may send educational information to all voters. But according to the State, Texas law purportedly prohibits Hollins and other county elections officers from sending vote-by-mail applications to voters age 18 to 64 who do not request an application because some subset of those voters will determine that they do not meet the criteria to vote by mail.

The State's view turns the Texas Election Code upside down. Section 84.013 of the Election Code specifically contemplates that individuals and organizations will broadly distribute vote-by-mail applications to voters, without limitation. Indeed, the Code *requires* the Secretary of

State to facilitate such distribution by providing vote-by-mail applications to individuals and organizations free of charge. And the Elections Code gives Hollins, in his role as Harris County's early voting clerk, broad discretion to conduct and manage early voting, including by providing vote-by-mail applications along with educational information about the criteria.

The State cites no statute that prohibits Hollins from sending vote-by-mail applications to registered voters, and the State's position that Hollins may not do so would lead to absurd results. Under the State's theory, everyone in the State of Texas, and potentially nationwide, may distribute vote-by-mail applications to Texas voters—except for the county elections officers charged with administering early voting. That makes no sense and cannot possibly be correct.

County elections officers have not only the discretion to make voting easier for eligible voters, but in the context of the pandemic, the solemn duty to ensure that voting is both safe and accessible. The State and its election officials should be working cooperatively to educate and empower Texas voters so that those whose health would be jeopardized by voting in person due to underlying physical conditions can safely cast their ballots this November. The State's motion for injunctive relief should be denied, and it claims should be rejected.¹

¹ Several other pending lawsuits may be relevant to the parties' dispute here. For one, Steven Hotze, the Harris County Republican Party, and Sharon Hemphill filed a petition for writ of mandamus against Hollins in the Texas Supreme Court, likewise seeking to block Hollins from sending vote-by-mail applications to all registered voters in Harris County. *See In re Hotze*, No. 20-0671, Tex. Sup. Ct., filed Aug. 31, 2020. On September 2, 2020, the Supreme Court issued an order mirroring the Rule 11 Agreement in this case and requiring Hollins to advise the Court of any developments in this case that may affect its order. Ex. 13. There are also multiple cases pending in federal court against the State, including *Texas Democratic Party v. Abbott* challenging the age limitation for no-excuse mail voting under the federal Twenty-Sixth Amendment, which was argued to the Fifth Circuit on August 31, and *Lewis v. Hughs*, in which the Fifth Circuit issued a summary affirmance in an interlocutory appeal concerning the ability of the Secretary of State to be sued. *See Order, Lewis v. Hughs*, No. 20-50654 (5th Cir. Sept. 4, 2020).

II. Background

A. The Texas Election Code Allows Voters to Determine Their Own Eligibility to Vote by Mail

To vote by mail, an eligible voter must submit an application; a voter who has not submitted an application to vote by mail cannot receive a mail ballot. Tex. Elec. Code § 84.001(a), (f).² The Texas Election Code permits eligible voters to vote by mail if they meet one of several criteria. Those criteria include (1) if the voter is age 65 or older, or (2) if the voter is under age 65 and (a) will be out of the county throughout the election period, (b) is in jail but otherwise eligible to vote, or (c) has a “disability,” defined broadly as a “a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter’s health.” *Id.* §§ 82.001-82.004.

The Texas Supreme Court has held that “[t]he decision to apply to vote by mail based on a disability is the voter’s, subject to a correct understanding of the statutory definition of ‘disability,’” and that election officials have no power to question or investigate a ballot application that is valid on its face. *In re State*, 602 S.W.3d 549, 550, 560-61 (Tex. 2020). With respect to the definition of “disability,” the Court held that while “a voter’s lack of immunity to COVID-19, without more, is not a ‘disability’ as defined by the Election Code,” “a voter can take into consideration aspects of his health and his health history that are physical conditions in deciding whether, under the circumstances, to apply to vote by mail because of a disability.” *Id.* at 550, 561. The Court explained, as an example, that a “heart condition” is the type of physical condition that a voter could consider in deciding whether she is entitled to vote by mail. *Id.* at 560.

² A qualified voter is a person who is 18 or over, a citizen, and registered to vote. Tex. Elec. Code § 11.002. An eligible voter is a qualified voter who satisfies the requirements, such as residency, for a particular election. *Id.* § 11.001.

Highly relevant to a voter’s determination of whether she has a qualifying “sickness or physical condition” under § 82.002 during the COVID-19 pandemic, the Centers for Disease Control and Prevention (CDC) has issued guidance that “[p]eople of any age with certain underlying medical conditions” face an “increased risk of severe illness from COVID-19.” Ex. 2, CDC, *Coronavirus Disease 2019 (COVID-19): People with Certain Medical Conditions* (emphasis added).³ These underlying medical conditions include cancer, obesity, diabetes, high blood pressure, asthma, pregnancy, smoking, and many other conditions. *Id.* As described in the attached declaration of Dr. Deborah Bujnowski from Harris County Public Health, large percent-ages of Harris County residents between the ages of 18 to 64 have these conditions: 32.4% are obese, 14.3% are smokers, 24.0% have high blood pressure, 6.9% have asthma, 4.2% had or currently have cancer, and 2.2% have chronic obstructive pulmonary disease. Ex. 11, Bujnowski Decl. ¶ 4.

B. The Texas Election Code Grants Clerk Hollins Broad Authority over Early Voting

Texas law gives Hollins both the responsibility and the authority to manage early voting in Harris County. Hollins serves as the County’s “early voting clerk” for the November 2020 elections. *See* Tex. Elec. Code § 83.002(1). In that role, Hollins has the responsibility to “conduct the early voting” in Harris County. *Id.* § 83.001(a). Hollins also maintains “the same duties and authority with respect to early voting as a presiding election judge has with respect to regular voting.” *Id.* § 81.001(c). Thus, Hollins is “in charge of and responsible for the management and conduct of” Harris County’s early voting. *Id.* § 32.071 (powers of a presiding election judge).

Within this broad charge, the Elections Code assigns Hollins certain specific duties. As early voting clerk, Hollins “shall mail without charge an appropriate official application form for an early voting ballot” to anyone who requests one. Tex. Elec. Code § 84.012. Additionally,

³ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

Hollins is required to make applications “readily and timely available.” *Id.* § 1.010(a). Hollins also is responsible for accepting applications. *Id.* § 84.001(d). Upon receiving an application, Hollins “shall review” it. *Id.* § 86.001(a). Crucially, this review is limited to the application itself; Hollins has no “duty” to “investigate” the applicant or to “look beyond the application.” *In re State*, 602 S.W.3d at 561. So long as an application is “valid on its face,” *id.* at 550, Hollins “shall provide an official [mail] ballot to the applicant.” Tex. Elec. Code § 86.001(b).

C. The Texas Election Code Obligates the SOS to Support County Elections Officers and to Make Vote-by-Mail Applications Available for Distribution by Anyone

The Secretary of State (“SOS”) is the “chief election officer of the state.” Tex. Elec. Code § 31.001(a). In that capacity, the SOS “shall assist and advise all election authorities with regard to the application, operation, and interpretation of this code and of the election laws outside of this code.” *Id.* § 31.004(a). In addition to this mandate, the SOS “may take appropriate action to protect the voting rights of the citizens of this state from abuse by the authorities administering the state’s electoral processes.” *Id.* § 31.005(a). The SOS accomplishes its obligations and responsibilities through its election division. *See id.* § 31.001(b).

As part of its responsibilities to facilitate voting, the SOS is required by law to “maintain a supply of the official application forms for ballots to be voted by mail and shall furnish the forms in reasonable quantities without charge to *individuals or organizations requesting them for distribution to voters.*” Tex. Elec. Code § 84.013 (emphasis added). The Texas Election Code therefore specifically contemplates that any “individual[] or organization[]” may engage in the “distribution to voters” of “official application forms for ballots to be voted by mail.” *Id.*

Private parties and political campaigns avail themselves of this ability to send voters unsolicited applications to vote by mail. For instance, the Republican Party of Texas has sent unsolicited vote-by-mail applications to registered voters in Texas. *See, e.g., Ex. 5, Mailer*,

attached to @CGHollins Tweet Regarding Mailed Applications to Vote by Mail. The application is accompanied by a flyer with an image of President Trump that states: “Make a plan today to fill out one of the attached Absentee Ballot Request forms.” *Id.* The flyer contains no guidance or information for voters about the legal definition of “disability” under the Texas Election Code or the Texas Supreme Court’s recent ruling on the matter. *See id.*

The SOS also makes vote-by-mail applications available to the entire public on its website. The SOS’s website links to a PDF of a vote-by-mail application that any member of the public can print, and the site also allows anyone to submit an online request to have up to five applications mailed to them in hard copy. *See* Ex. 4, *Application for a Ballot by Mail*, <https://www.sos.texas.gov/elections/voter/reqabbm.shtml>. The requesting party (or any person who prints the PDF from the website) can distribute these applications to anyone, including people who have not asked for an application and people who may not meet any of the statutory criteria to vote by mail. Neither the SOS’s website nor the linked application form contains any guidance or information for voters about the legal definition of “disability” under the Texas Election Code or the Texas Supreme Court’s recent ruling on the matter. *See id.*

D. The SOS Seeks to Prevent Hollins from Sending Vote-by-Mail Applications to Registered Voters

On August 25, 2020, Hollins announced that he would send vote-by-mail applications to all registered voters in Harris County. Plaintiff’s Ex. 1, @CGHollins Tweet. Two days later, without requesting clarification or more information from Hollins about his plan, the SOS sent Hollins a letter demanding that he “immediately halt any plan to send an application for ballot by mail to all registered voters.” Ex. 6. Despite not knowing Hollins’s plan, the letter asserted that Hollins’s plan would “confuse voters about their ability to vote by mail,” “may cause voters to provide false information on the form,” and would “clog[] up the vote by mail infrastructure.” *Id.*

Hollins responded to the letter immediately. He explained that his office “intend[s] to include detailed guidance along with the applications to inform voters that they may not qualify and to describe who does qualify.” Ex. 7. Hollins added that he would “welcome a conversation” and asked the SOS Director of Elections about his availability to speak. *Id.*

On the evening of August 31, 2020—after this lawsuit was filed and in compliance with the parties’ Rule 11 Agreement—the SOS and Hollins discussed the SOS’s August 27 letter and asserted concerns with Hollins’s plan. During this telephone conversation, the SOS agreed that Hollins may send unsolicited vote-by-mail applications to all registered voters age 65 and over. Ex. 8, Hollins–Ingram Call Tr. at 9:23–10:15. The SOS further agreed that Hollins may send educational materials about voting by mail to all registered voters in Harris County, including those under age 65. *Id.* at 13:1–13:3, 13:7–13:9, 14:15–14:20, 15:17–15:19. And there can be no genuine dispute that *all* registered voters may obtain an *application* to vote by mail regardless of whether they meet any of the eligibility criteria to receive an actual mail ballot. *See* Tex. Elec. Code § 84.012; Pet. ¶ 13. The SOS, however, expressed the view that Hollins may not lawfully send unsolicited vote-by-mail applications to registered voters under age 65 even when accompanied by educational information about the criteria to be entitled to vote by mail.

Given the SOS’s concessions that Hollins may send unsolicited vote-by-mail applications to voters aged 65 or over and may send educational information about the criteria for mail voting to all registered voters, the question for decision is narrow. This case concerns whether Hollins may send unsolicited vote-by-mail applications to registered voters ages 18 to 64 whether accompanied by educational materials that Hollins undisputedly can send to all registered voters describing the criteria to vote by mail or not. The mailer that Hollins intends to send (Ex. 1) is reproduced in full on the following page:

Para recibir esta información o la Solicitud de Voto por Correo en Español, comuníquese con:

Để nhận được thông tin này hoặc Đơn Xin Bầu Cử Bằng Thư bằng Tiếng Việt, xin liên lạc:

要接收此信息或中英文的郵遞投票申請表格, 請聯繫:

QUESTIONS? CONTACT:
vbm@harrisvotes.com
713-755-6965



DO YOU QUALIFY TO VOTE BY MAIL?



READ THIS BEFORE APPLYING FOR A MAIL BALLOT
The Harris County Clerk's Office is sending you this application as a service to all registered voters.
However, NOT ALL VOTERS ARE ELIGIBLE TO VOTE BY MAIL.
READ THIS ADVISORY TO DETERMINE IF YOU ARE ELIGIBLE BEFORE APPLYING.



You are eligible to vote by mail if:

1. You are age 65 or older by Election Day, November 3, 2020;
2. You will be outside of Harris County for all of the Early Voting period (October 13th - October 30th) and on Election Day (November 3rd);
3. You are confined in jail but otherwise eligible to vote;
4. You have a disability. Under Texas law, you qualify as disabled if you are sick, pregnant, or if voting in person will create a likelihood of injury to your health.
 - The Texas Supreme Court has ruled that lack of immunity to COVID-19 can be considered as a factor in your decision as to whether voting in person will create a likelihood of injury to your health, but it cannot be the only factor. You can take into consideration aspects of your health and health history that are physical conditions in deciding whether, under the circumstances, voting in person will cause a likelihood of injury to your health.
 - **YOU DO NOT QUALIFY TO VOTE BY MAIL AS "DISABLED" JUST BECAUSE YOU FEAR CONTRACTING COVID-19. YOU MUST HAVE AN ACCOMPANYING PHYSICAL CONDITION. IF YOU DO NOT QUALIFY AS "DISABLED," YOU MAY STILL QUALIFY IN CATEGORIES 1 - 3 ABOVE.**
 - It's up to you to determine your health status—the Harris County Clerk's Office does not have the authority or ability to question your judgment. If you properly apply to vote by mail under any of the categories of eligibility, the Harris County Clerk's Office must send you a mail ballot.
 - To read guidance from the U.S. Centers for Disease Control and Prevention (CDC) on which medical conditions put people at increased risk of severe illness from COVID-19, please visit: www.HarrisVotes.com/CDC

If you have read this advisory and determined that you are eligible to vote by mail, please complete the attached application and return it to the Harris County Clerk's Office! Voting by mail is a secure way to vote, and it is also the safest and most convenient way to vote.

To receive CRITICAL ELECTION UPDATES, sign up at: www.harrisvotes.com/text

For Official Use Only: H/C/O #/County Election Pct #
1230000000/906

APPLICATION FOR BALLOT BY MAIL

CHRIS HOLLINS



- ☐ Fill in (or verify) your name and address
- ☒ Select your reason for using Ballot By Mail
- ☒ Select your Election(s)
- ☒ Sign your application, affix a stamp, and place in the mail

PROTECTING YOUR RIGHT TO VOTE

1 APPLICANT'S VOTER REGISTRATION:

Name/Address/City/State/Zip Code

JOHN Q. PUBLIC
123 MAIN STREET
HOUSTON, TEXAS 77078-0044

PHONE NUMBER:
(Optional)

PREFERRED MAILING ADDRESS

(REQUIRED FOR OUT OF COUNTY & IN JAIL):

Address/City/State/Zip Code



1230000000

2 REASON FOR APPLYING FOR BALLOT BY MAIL:

- ☐ Age 65 or older
- ☐ Have a disability
- ☐ **Outside the county throughout Early Voting & Election Day (Oct. 13 - Oct. 30, 2020 & Nov. 3, 2020)
- ☐ Confined in jail

(**Dates You Will Be Outside the County: / / - / /)

3 ELECTIONS FOR WHICH YOU ARE APPLYING:

- ☐ ALL 2020 ELECTIONS
- ☐ November 3, 2020

SIGN YOUR APPLICATION: If you cannot sign, you must have a person witness your mark. If a person helped you fill out this application you must give the name of that person on the line immediately below your signature. In any single election, it is a Class A misdemeanor for any person to sign a ballot application as a witness for more than one applicant. Unless the second and subsequent application are rejected to the witness as a parent, spouse, child, sibling, or grandparent. If you need additional information call the Texas Secretary of State at 1-800-252-8623. COMMON CONTRACT CARRIER: You may submit via a common or contract carrier which is a bona fide for-profit carrier.

4 I certify that the information given on this application is true, and I understand that giving false information on this application is a crime. SIGN HERE X

Signature of Applicant As Registered

5 OPTIONAL - FILL OUT THIS SECTION ONLY IF YOU ASSISTED A VOTER WITH THIS FORM

☐ Check this box if acting as an ASSISTANT

X Signature of Assistant:

PRINT FULL NAME of Assistant

Assistant's Address of Residence or Title of Elections Official

Assistant's Relationship to Applicant

6 OPTIONAL - FILL OUT THIS SECTION ONLY IF YOU ARE A WITNESS FOR A VOTER WITH THIS FORM

☐ Check this box if acting as a WITNESS

X FOR WITNESS: Applicant, if unable to sign, shall make a mark in the presence of witness. If applicant is unable to make mark, the witness shall check here

X Signature of Witness:

PRINT FULL NAME of Witness:

Witness' Address of Residence or Title of Elections Official

Witness' Relationship to Applicant

III. Legal Standards

The State bears the burden on both its *ultra vires* claim and its claim under Texas Election Code § 31.005. To succeed on its *ultra vires* claim, the State “must allege, and ultimately prove, that [Hollins] acted without legal authority or failed to perform a purely ministerial act.” *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). To succeed on its claim under Texas Election Code § 31.005, the State must demonstrate that Hollins has “abuse[d]” the “voting rights of the citizens of this state” by “administering the state’s electoral processes” in a way that “impedes the free exercise of a citizen’s voting rights.” Tex. Elec. Code § 31.005(a)-(b).

The State’s burden is magnified here because it seeks a temporary injunction. “A temporary injunction is an extraordinary remedy and does not issue as a matter of right.” *Tex. Black Iron, Inc. v. Arawak Energy Int’l Ltd.*, 527 S.W.3d 579, 584 (Tex. App. – Houston [14th Dist.] 2017, no pet.). “To obtain a temporary injunction, the applicant must plead and prove: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.” *Id.* “The applicant bears the burden of production to offer some evidence of each of these elements.” *Id.* Even if the applicant meets these elements, the decision whether to grant a temporary injunction “rests within the trial court’s sound discretion.” *Id.*

For multiple reasons set forth below, the State cannot meet its heavy burden here to show that a temporary injunction is warranted.

IV. Legal Argument

A. Texas Election Code Section 84.013 Authorizes Any Individual or Organization to Distribute Unsolicited Vote-by-Mail Applications to Voters

Contrary to the State’s contention, the Texas Election Code does not restrict access to vote-by-mail applications. To the contrary, the Code expressly permits any individual or organization

to distribute such applications to voters, regardless of whether a voter has requested an application or is ultimately entitled to vote by mail. While some individual voters may not ultimately be entitled to vote by mail, the Election Code plainly authorizes Hollins (as an individual) and the Harris County Clerk's Office (as an organization) to distribute applications to voters.

Specifically, Texas Election Code § 84.013 provides:

The secretary of state shall maintain a supply of the official application forms for ballots to be voted by mail and shall furnish the forms in reasonable quantities without charge to individuals or organizations requesting them for distribution to voters.

On its face, § 84.013 expressly permits any “individual[] or organization[]” to “distribut[e]” vote-by-mail applications to “voters,” without limitation. This provision in fact allows for broad distribution of vote-by-mail applications to voters, as it requires the SOS to facilitate such distribution by making the application forms available “without charge.” And neither § 84.013 nor any other provision of the Election Code restricts this “distribution” only to those voters who are entitled to vote by mail, or only to those voters who requested an application.

The plain text of § 84.013 thus permits Hollins to distribute vote-by-mail applications to voters. Hollins is an “individual” and the Harris County Clerk's Office is an “organization” for purposes of § 84.013. The terms “individual” and “organization” are not defined by statute. *See* Tex. Elec. Code § 1.005 (“Definitions”). “When, as here, a statute does not define a term, we typically apply the term's common, ordinary meaning, derived first from applicable dictionary definitions, unless a contrary meaning is apparent from the statute's language.” *City of Fort Worth v. Rylie*, 602 S.W.3d 459, 466 (Tex. 2020). Hollins obviously is an “individual” in any ordinary sense of the term, and nowhere does the Texas Election Code exclude government officers from the definition of an “individual.” To the contrary, the Code in at least one chapter defines a “County election officer” as an “*individual* employed by a county as an elections administrator, voter registrar, county clerk, or other officer with responsibilities relating to the administration of

elections.” Tex. Elec. Code § 279.001 (emphasis added). Likewise, the “ordinary meaning” of the term “organization” does not exclude governmental bodies like the Clerk’s office. *See, e.g.*, “Organization,” Office of the Texas Governor, <https://gov.texas.gov/organization>.

Moreover, it would make no sense to interpret the Texas Election Code as allowing private individuals and organizations free rein to distribute unsolicited vote-by-mail applications while preventing Harris County’s top elections officer from doing the same. *See El Paso Educ. Initiative, Inc. v. Amex Properties, LLC*, 602 S.W.3d 521, 531 (Tex. 2020) (courts should avoid “absurd or nonsensical results”). Not only do political organizations like the Republican Party of Texas distribute vote-by-mail applications, Ex. 5, but numerous third-party organizations participate in vote-by-mail application programs, with the active encouragement of federal, State and local organizations such as non-profits or political campaigns. These applications constitute about half of those the Harris County Clerk’s Office received during the primary run off. *See* Ex. 10, de Leon Decl. Ex. A. No restrictions or limitations are placed on third parties by the Secretary of State or county elections officers as to who may send or receive a vote-by-mail application. It simply cannot be that everyone in the State of Texas—and, indeed, the entire United States of America—is authorized to send unsolicited vote-by-mail applications to registered Texas voters *except for* the county elections officers who are charged with administering the vote-by-mail process.

The fact that private individuals and organizations can and do distribute unsolicited vote-by-mail applications powerfully undermines the State’s purported concerns that Hollins’s distribution of such applications will lead to “confusion” or “voter fraud” or will otherwise “undermine[] the function of the system.” Pet. ¶¶ 30-32. The State offers no explanation as to why Hollins’s distribution of vote-by-mail applications will purportedly cause these harms, but the mass distribution of such applications by private individuals and organizations—and by the

SOS on its website—would not. In fact, the opposite is true. As described above, Hollins intends to include a prominent and rigorous explanation of the criteria for being entitled to vote by mail, *see* Ex. 1, whereas private distributors of applications like the Republican Party of Texas include no explanation of the relevant eligibility criteria and the SOS has failed to provide voters with much-needed guidance on the disability category in light of the *In re State* decision. Hollins’s conscientious efforts to ensure that registered Harris County voters can make an informed decision about whether to apply to vote by mail should be encouraged, not met with threats and legal action.

B. Hollins May Distribute Vote-by-Mail Applications as Early Voting Clerk

In addition to the authorization for any individual or organization to distribute vote-by-mail applications under Texas Election Code § 84.013, Hollins’s role as Harris County’s early voting clerk also authorizes him to send such applications to all registered voters in the County.

As previously described, in his role as the “early voting clerk” for Harris County, Hollins possesses broad authority to oversee the “management and conduct” of mail voting. Tex. Elec. Code § 32.071; *see id.* §§ 83.001(a), 83.001(c), 83.002(1). Hollins has a specific duty to make vote-by-mail applications “readily and timely available.” *Id.* § 1.010(a). And his responsibility to “conduct” mail voting carries with it an “implied authority to exercise a broad discretion to accomplish the purposes intended.” *Anderson v. Wood*, 152 S.W.2d 1084, 1085 (Tex. 1941).

Hollins’s plan to send vote-by-mail applications—along with educational information about the eligibility criteria—falls well within his broad authority and discretion to “manage” and “conduct” the vote-by-mail process. Indeed, like many other county clerks, Hollins makes the application available on the Clerk’s Office official website, where it may be downloaded and printed by anyone. *See* Harris County Clerk, Voting Information, Application for Ballot by Mail, <https://www.harrisvotes.com/Docs/VotingInfo/Ballot%20By%20Mail%20Application%20-%20English.pdf>; *see also, e.g.* Carson County Clerk, Application for Ballot by Mail,

<http://www.co.carson.tx.us/upload/page/1423/APPLICATION%20FOR%20BALLOT%20BY%20MAIL%201.pdf>. Despite the fact that no provision of the Texas Election Code specifically deals with the posting of vote-by-mail applications on county websites, the State of Texas has never objected to this routine practice. And the State offers no principled or textual distinction between this universally accepted practice, which makes the vote-by-mail application available to any Internet user, and Hollins’s plan to send applications to Harris County’s registered voters along with detailed educational information about the eligibility criteria for voting by mail.

Hollins’s plan also comports with both the letter and spirit of the Texas Supreme Court’s recent decision in *In re State*. There, the Supreme Court held that Texas law “place[s] in the hands of the voter the determination” of whether that voter is entitled to vote by mail “due to a physical condition,” *i.e.*, a “disability,” “subject to a correct understanding of the statutory definition.” 602 S.W.3d at 550, 561. Hollins’s plan does just this—it “place[s] in the hands of the voter” information that allows the voter to assess her entitlement to vote by mail and the application form for the voter to complete if she determines that she meets the eligibility criteria. In distributing such educational information and applications to voters in a single packet, Hollins is empowering Harris County voters to make their own determinations of whether they can and will apply to vote by mail, exactly as the Texas Supreme Court and the Legislature intended.

C. No Provision of Texas Law Forbids Distributing Unsolicited Vote-by-Mail Applications to Voters

As described above, Texas Election Code § 84.013 and the statutory provisions setting forth Hollins’s responsibilities as early voting clerk plainly authorize him to distribute vote-by-mail applications to voters. No provision of Texas law forbids him from doing so.

The State points to Texas Election Code § 84.012 (*see* Pet. ¶ 26), which requires Hollins to send vote-by-mail applications to those who request them, but that provision in no way precludes

Hollins from exercising his discretion to send applications to other voters as well. To read § 84.012 as limiting Hollins’s authority in this respect would be bizarre. In the first place, § 84.012 contains no words of limitation and makes no mention at all of voters who do not request an application. It thus would be strange to read such a limitation as implied, since the Legislature knows how to expressly limit the powers of a public servant to distribute applications. For example, the Legislature has expressly limited the authority of high school deputy registrars to distribute voter-registration applications. Tex. Elec. Code § 13.046(c) (“A high school deputy registrar may distribute registration application forms to and receive registration applications submitted to the deputy in person from students and employees of the school only.”); *see also* Tex. Loc. Gov’t Code § 143.1018 (limiting the scope of information a government official may send by stating the municipal employee “shall only send” certain information).

Second, § 84.012 does not “empower[]” Hollins, as the State erroneously claims. Pet. ¶ 26. On the contrary, it *requires* him to send applications to voters who request one. Tex. Elec. Code § 84.012. Section 84.012 is thus a floor, setting the lower bound of what a clerk must do in conducting the early vote. The State argues that this floor is also a ceiling—that the requirement to send applications to those who request them impliedly forbids clerks from sending applications to anyone else. But this novel approach to statutory interpretation is unsustainable. Consider, for example, how the State’s approach would apply to Texas Election Code § 31.125. That statute requires county elections officers to post on their website the office contact information and the name, address, and hours of each polling location. *Id.* § 31.125. Under the State’s interpretative approach, this provision would impliedly prohibit county elections officers from posting *any* other helpful information for voters on their websites. Of course, the statute does nothing of the sort.

Indeed, the State's reading of § 84.012 is flatly inconsistent with concessions it has already made in this case. In June, the Harris County Clerk's Office sent vote-by-mail applications to every registered voter over 65 for the July primary runoff. The SOS did not complain. In his discussion with Hollins after the State filed this lawsuit, the Director of Elections conceded that Hollins may again send unsolicited vote-by-mail applications to voters age 65 and over. Ex. 8, Hollins-Ingram Call at 10:151. But § 84.012 makes no distinctions on the basis of age; any implied limitation from that statute would apply equally to the mailing of unsolicited applications to voters of any age. Rather than live with the consequences of its strained interpretation of § 84.012, the State tries to pick and choose which voters may receive unsolicited applications from Hollins, completely unmoored from any statutory text.

D. Texas Election Code § 31.005 Was Not Designed to Deter or Punish Efforts by Local Election Officials to Help Voters Exercise the Franchise Safely and Lawfully

The State brought this action under Texas Election Code § 31.005, which enables the Secretary of State to “take appropriate action to protect the voting rights of the citizens of this state from abuse by the authorities administering the state’s electoral processes.” Tex. Elec. Code § 31.005(a). Under this statute, if the SOS determines that an election official is exercising his or her powers “in a manner that impedes the free exercise of a citizen’s voting rights, the secretary may order the person to correct this offending conduct.” *Id.* § 31.005(b). And “[i]f the person fails to comply, the *secretary* may seek enforcement of the order by a temporary restraining order or writ of injunction or mandamus obtained through the attorney general.” *Id.* (emphasis added).⁴

⁴ While the State insists that the SOS can order Hollins as a local election official to conduct the pre-election planning exactly as the Secretary dictates, the Secretary has taken the opposite position in voting rights cases pending against her in federal court. *See* Ex. 15, Tex. Sec. of State's Mot. to Dismiss at 3, *Lewis v. Hughs*, No. 5:20-cv-00577-OLG, Doc. 17 at 2-4 (W.D. Tex. June 30, 2020) (“The Secretary does not oversee the local officials who *do* enforce the challenged [vote-by-mail] provisions. Local officials do not report to the Secretary. They are elected or appointed

Even setting aside that the Secretary of State is not a party to this lawsuit, § 31.005 does not remotely apply here for the simple reason that sending educational information about mail voting and vote-by-mail applications does not “impede[] the free exercise of a citizen’s voting rights.” Quite the contrary, Hollins’s plan to send educational information and applications to all registered voters in Harris County manifestly *promotes* the exercise of people’s voting rights. In fact, Hollins’s decision to provide applications to all voters age 65 or older was highly successful as it was by far the most productive application mailer: it was responsible for more than one-third of the applications received and its design enabled staff to process the applications in half the time. Ex. 10 de Leon Decl. ¶¶ 7-8, Ex. A.

The State’s cynical notion that educating voters about mail voting and giving them vote-by-mail applications violates § 31.005 turns the text and purpose of § 31.005 on its head. The statute affords voters the opportunity to freely exercise the right to vote, without interference by local officials in the “free exercise of a citizen’s voting rights.” Hollins’s plan to provide vote-by-mail applications accompanied by voter education on the criteria for voting by mail to all registered voters is consistent with this statute. By contrast, it is this lawsuit and the Secretary of State’s letter raising the specter of felony charges that seek to “impede[] the free exercise of a citizen’s voting rights.” Tex. Elec. Code § 31.005(b); *see* Ex. 6.

Simply put, increasing access to information and vote-by-mail applications expands rather than impedes the free exercise of voting rights. Hollins’s plan will assist citizens—such as those with physical conditions that place them at severe risks from COVID-19—to learn about their

locally.”) (emphasis in original), *denied* __ F. Supp. 3d __ 2020 WL 4344432 (July 28, 2020), *summary affirmance on sovereign immunity grounds*, Order, No. 20-50654 (5th Cir. Sept. 4, 2020); *see also In re Stadler*, 540 S.W.3d 215, 218, n.9 (Tex. App. – Houston [1st Dist.] 2018, no pet.) (doubting that a local official is bound by the SOS’s “assistance and advice”).

vote-by-mail options and to exercise their right to vote by mail if they determine they have a qualifying disability. Empowering such persons will, in turn, assist all other voters in allowing more space to socially distance during in-person voting. *See* Ex. 14, Amicus Ltr. of Charles Butt.

Along with his efforts to educate Harris County voters on their potential eligibility to vote by mail, Hollins has secured and employed a substantial amount of additional resources to adequately process and administer the anticipated increase in vote-by mail-applications. Ex. 16, Harris County Commissioner's Court Order Regarding Budget for Harris County Clerk to Administer Safe, Secure, Accessible, Fair, and Efficient Election (25 August 2020). Accordingly, the Secretary of State's concerns about the administrative burden of processing vote-by-mail applications are unfounded.

The State's claim that providing voters with vote-by-mail applications unsolicited somehow impedes their voting rights—rather than empowering voters to make their own decision about whether they qualify as *In re State* instructs—is specious. The State's use of a statute designed to protect and expand the franchise to attempt to limit voters' access to reliable information about how to safely and legally vote is perverse. Rather, Hollins as the early voting clerk charged by law with conducting the election during a pandemic has a duty to make voting safe and accessible to all 2.4 million registered voters in Harris County no matter what their individual circumstances.

V. Conclusion

For the foregoing reasons, Plaintiff's application for temporary restraining order, preliminary injunction, and permanent injunction should be denied and judgment should be issued in Defendant's favor.

Respectfully submitted,

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* *Pro hac vice* motions filed on this day.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing instrument was served on all parties of record via eFiling on September 8, 2020.

/s/ Susan Hays

EXHIBITS⁵

1. Under 65 Voter Information and Application to Vote by Mail Mailer from the Harris County Clerk
2. CDC Website – “People with Certain Medical Conditions” (website redirected from URL www.harrisvotes.com/cdc)
3. Harris County 65+ Mailer from June 2020
4. SOS Website “Application for a Ballot by Mail”
5. @CGHollins Tweet Regarding Mailed Applications to Vote by Mail
6. Ingram Letter of 27 August 2020
7. Email Correspondence between Ingram & Hollins (27 August 2020 through 30 August 2020)
8. Transcript of Audio Recorded Telephone Call between Ingram & Hollins (31 August 2020)
9. Audio Recorded Telephone Conversation between Ingram & Hollins (31 August 2020)
 - 9A. Audio Excerpt – “A County Choice to Make”
 - 9B. Audio Excerpt – “You’re Not Very Interested”
 - 9C. Audio Excerpt – “Love Educational Materials”
 - 9D. Audio Excerpt – “Nobody’s Making You Send the Educational Materials, But if You Are, That’s Good.”
 - 9E. Audio Excerpt – “That’s Texas Law”
 - 9F. Audio Excerpt – “More Information is Better than Less”
10. Declaration of Hector de Leon (see Defendant’s Witness List)
11. Declaration of Dr. Bujnowski (see Defendant’s Witness List)
12. Declaration of Lindsey Clark (see Defendant’s Witness List)
 - 12A. “Request Your Ballot” Email

⁵ For the convenience of the Court, this exhibit list is the same as that submitted by Defendants but only those items cited herein are attached.

- 12B. “Make Sure You’re Ready to Vote” (vote.donaldjtrump.com)
- 12C. “Make Sure You’re Ready to Vote” (vote.donaldjtrump.com)
- 12D. “You’ve Got Options” (vote.donaldjtrump.com)
- 12E. “Request by Mail” (vote.donaldjtrump.com)
- 12F. “Request by Mail” / Disability (vote.donaldjtrump.com)
- 12G. Screenshot of SOS Website “Request an Application for Ballot by Mail”
- 13. Texas Supreme Court Order
- 14. Charles Butt Amicus Letter
- 15. Texas Sec. of State’s Mot. to Dismiss, *Lewis v. Hughs*, CA No. 5:20-cv-577, Doc. 17, June 3, 2020 (W.D. Tex.) (excerpt)
- 16. Harris County Commissioner’s Court Order Regarding Budget for Harris County Clerk to Administer Safe, Secure, Accessible, Fair, and Efficient Election (25 August 2020)
- 17. [Withdrawn from consideration for pre-admission by Defendant]
- 18. Demonstrative Exhibit of Defendant’s Exhibits 1, 4, and 5

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official capacity
as Harris County Clerk
Defendant.

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§
§

In the District Court of

Harris County, Texas

127th Judicial District

DEFENDANT'S EXHIBIT 1

Under 65 Voter Information and Application to Vote by
Mail from the Harris County Clerk

CHRIS HOLLINS
Harris County Clerk
P.O. BOX 1148
HOUSTON, TX 77251-1148




FIRST-CLASS MAIL
U.S. POSTAGE
PAID
HOUSTON, TX
PERMIT NO. 3111



JOHN Q. PUBLIC
123 MAIN STREET
HOUSTON, TEXAS 77078-0044



TO RECEIVE CRITICAL ELECTION UPDATES, SIGN UP AT:
 www.harrisvotes.com/text



HARRIS COUNTY CLERK



S.A.F.E.

ELECTIONS

SECURE • ACCESSIBLE • FAIR • EFFICIENT

OFFICE OF CHRIS HOLLINS

PROTECTING YOUR RIGHT TO VOTE

Did you sign your application?
Did you affix a stamp?

FROM: _____

First Class
Stamp
Required



CHRIS HOLLINS
Harris County Clerk
P.O. BOX 1148
HOUSTON, TX 77251-1148

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official capacity
as Harris County Clerk
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

DEFENDANT’S EXHIBIT 2

CDC Website – “People with Certain Medical Conditions”
(website redirected from URL www.harrisvotes.com/cdc)

Coronavirus Disease 2019 (COVID-19)

[MENU >](#)

People with Certain Medical Conditions People with Certain Medical Conditions

Updated Aug. 14, 2020

[Print](#)

Summary of Recent Changes

Revisions were made on July 17, 2020 to reflect recent data supporting increased risk of severe COVID-19 among individuals with cancer. The listed underlying medical conditions in children were also revised to indicate that these conditions **might** increase risk to better reflect the quality of available data currently. We are learning more about COVID-19 every day, and as new information becomes available, CDC will update the information below.

People of any age with **certain underlying medical conditions** are at increased risk for severe illness from COVID-19:

People of any age with the following conditions **are at increased risk** of severe illness from COVID-19:

- [Cancer](#)
- [Chronic kidney disease](#)
- [COPD \(chronic obstructive pulmonary disease\)](#)
- [Immunocompromised state \(weakened immune system\) from solid organ transplant](#)
- [Obesity \(body mass index \[BMI\] of 30 or higher\)](#)
- [Serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies](#)
- [Sickle cell disease](#)
- [Type 2 diabetes mellitus](#)

COVID-19 is a new disease. Currently there are limited data and information about the impact of underlying medical conditions and whether they increase the risk for severe illness from COVID-19. Based on what we know at this time, people with the following conditions **might be at an increased risk** for severe illness from COVID-19:

- [Asthma \(moderate-to-severe\)](#)
- [Cerebrovascular disease \(affects blood vessels and blood supply to the brain\)](#)
- [Cystic fibrosis](#)
- [Hypertension or high blood pressure](#)

- Immunocompromised state (weakened immune system) from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines
- Neurologic conditions, such as dementia
- Liver disease
- Pregnancy
- Pulmonary fibrosis (having damaged or scarred lung tissues)
- Smoking
- Thalassemia (a type of blood disorder)
- Type 1 diabetes mellitus

Want to see the evidence behind these lists?

Children who have medical complexity, who have neurologic, genetic, metabolic conditions, or who have congenital heart disease might be at increased risk for severe illness from COVID-19 compared to other children.

The list of underlying conditions is meant to inform clinicians to help them provide the best care possible for patients, and to inform individuals as to what their level of risk may be so they can make individual decisions about illness prevention. We are learning more about COVID-19 every day. This list is a living document that may be updated at any time, subject to potentially rapid change as the science evolves.

Reduce your risk of getting COVID-19

It is especially important for people at increased risk of severe illness from COVID-19, and those who live with them, to protect themselves from getting COVID-19.

The best way to protect yourself and to help reduce the spread of the virus that causes COVID-19 is to:

- Limit your interactions with other people as much as possible.
- Take [precautions to prevent getting](#) COVID-19 when you do interact with others.

If you start feeling sick and think you may have COVID-19, get in touch with your healthcare provider within 24 hours.

Venturing out into a public setting? What to consider before you go.

As communities and businesses across the United States are opening, you may be thinking about [resuming some activities](#), [running errands](#), and attending [events and gatherings](#). **There is no way to ensure you have zero risk of infection**, so it is important to understand the risks and know how to be as safe as possible.

People at increased risk of severe illness from COVID-19, and those who live with them, should consider their level of risk before [deciding to go out](#) and ensure they are taking steps to [protect themselves](#). Consider avoiding activities where taking protective measures may be difficult, such as activities where social distancing can't be maintained. **Everyone should take steps to prevent getting and spreading COVID-19** to protect themselves, their communities, and people who are at increased risk of severe illness.

In general, **the more people you interact with, the more closely you interact with them, and the longer that interaction, the higher your risk of getting and spreading COVID-19.**

- If you decide to engage in public activities, continue to protect yourself by [practicing everyday preventive actions](#).
- Keep these items on hand and use them when venturing out: a mask, tissues, and a hand sanitizer with at least 60% alcohol, if possible.
- If possible, avoid others who are not wearing [masks](#) or ask others around you to wear masks.

Are you considering in-person visits with family and friends? Here are some things to consider to help make your visit as safe as possible:

When to delay or cancel a visit

- Delay or cancel a visit if you or your visitors have [symptoms](#) of COVID-19 or have been exposed to someone with COVID-19 in the last 14 days.
- Anyone who has had [close contact](#) with a person with COVID-19 should [stay home and monitor for symptoms](#).

In general, the more people you interact with, the more closely you interact with them, and the longer that interaction, the higher the risk of COVID-19 spread. So, [think about](#):

- How many people will you interact with?
- Can you keep 6 feet of space between you and others?
- Will you be outdoors or indoors?
- What's the length of time that you will be interacting with people?

Encourage social distancing during your visit

- Visit with your friends and family **outdoors**, when possible. If this is not feasible, make sure the room or space is well-ventilated (for example, open windows or doors) and large enough to accommodate [social distancing](#).
- Arrange tables and chairs to allow for social distancing. People from the same household can be in groups together and don't need to be 6 feet apart from each other.
- Consider activities where social distancing can be maintained, like sidewalk chalk art or yard games.
- Try to avoid close contact with your visitors. For example, don't shake hands, elbow bump, or hug. Instead wave and verbally greet them.
- If possible, avoid others who are not wearing masks or ask others around you to wear masks.
- Consider keeping a list of people you visited or who visited you and when the visit occurred. This will help with [contact tracing](#) if someone becomes sick.

Wear masks

- [Masks](#) should be worn over the nose and mouth. Masks are especially important when it is difficult to stay at least 6 feet apart from others or when people are indoors to help protect each other.
- Masks may slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others
 - Wearing a mask helps protects others in case you're infected, while others wear one to protect you should they be infected.
- **Who should NOT use masks:** Children under age 2 or anyone who has trouble breathing, is unconscious, or is incapacitated or otherwise unable to remove the mask without assistance.

Wash hands often

- Everyone should [wash their hands](#) for at least 20 seconds at the beginning and end of the visit and whenever you think your hands may have become contaminated.
- If soap and water are not readily available, such as with outdoor visits or activities, use a hand sanitizer that contains at least 60% alcohol. Cover all surfaces of your hands and rub them together until they feel dry.
- Remind guests to wash or sanitize their hands before serving or eating food.
- Use single-use hand towels or paper towels for drying hands so visitors do not share towels. Have a no-touch trash can available for guests to use.

Limit contact with commonly touched surfaces or shared items

- Encourage your visitors to bring their own food and drinks.

- **Clean and disinfect** commonly touched surfaces and any shared items between use.
- If you choose to use any shared items that are reusable (e.g., seating covers, tablecloths, linen napkins), wash, clean, and sanitize them after the event.

If you are thinking about participating in an event or gathering:

If you are at increased risk for severe illness, consider avoiding high-risk gatherings. The risk of COVID-19 spreading at events and gatherings increases as follows:

Lowest risk: Virtual-only activities, events, and gatherings.

More risk: Smaller outdoor and in-person gatherings in which individuals from different households remain spaced at least 6 feet apart, wear masks, do not share objects, and come from the same local area (e.g., community, town, city, or county).

Higher risk: Medium-sized in-person gatherings that are adapted to allow individuals to remain spaced at least 6 feet apart and with attendees coming from outside the local area.

Highest risk: Large in-person gatherings where it is difficult for individuals to remain spaced at least 6 feet apart and attendees travel from outside the local area.

Stay healthy during the COVID-19 pandemic

Staying healthy during the pandemic is important. Talk to your healthcare provider about whether your vaccinations and other preventive services are up to date to help prevent you from becoming ill with other diseases.

- It is particularly important for those at increased risk of severe illness, including older adults, to receive recommended vaccinations against influenza and pneumococcal disease.
- Talk with your healthcare provider about maintaining preventive services like **cancer screenings** during the pandemic.
- Remember the importance of staying **physically active** and practicing healthy habits to **cope with stress**.
- If you have a medical emergency, do not delay seeking emergency care.

If you have an underlying medical condition, you should continue to follow your treatment plan:

- **Continue your medicines** and do not change your treatment plan without talking to your healthcare provider.
- **Have at least a 30-day supply** of prescription and non-prescription medicines. **Talk to a healthcare provider**, insurer, and pharmacist about getting an extra supply (i.e., more than 30 days) of prescription medicines, if possible, to reduce your trips to the pharmacy.
- **Do not delay getting emergency care for your underlying medical condition** because of COVID-19. Emergency departments have contingency infection prevention plans to protect you from getting COVID-19 if you need care.
- **Call your healthcare provider if you have any concerns** about your underlying medical conditions or if you get sick and think that you may have COVID-19. If you need emergency help, call 911 right away.
- **If you don't have a healthcare provider**, contact your nearest **community health center** [or health department](#).



COVID-19 Associated Hospitalization Related to Underlying Medical Conditions



COVID-19 Hospitalization and Death by Age



COVID-19 Hospitalization and Death by Race/Ethnicity

Actions you can take based on your medical conditions and other risk factors

Asthma (moderate-to-severe)

Having moderate-to-severe asthma may increase your risk for severe illness from COVID-19.

Actions to take

- Keep your asthma under control by following your [Asthma Action Plan](#).
- Continue your current medicines, including any inhalers with steroids in them ("steroids" is another word for corticosteroids). Know [how to use your inhaler](#). Avoid your [asthma triggers](#).
- Make sure that you have at least a 30-day supply of your medicines.
- Call your healthcare provider if you have concerns about your condition or feel sick. **If you don't have a healthcare provider**, contact your nearest [community health center](#) [↗](#) or [health department](#).
- Have another member of your household who doesn't have asthma clean and disinfect your house for you. When they use cleaning and disinfecting products, have them:
 - Make sure that people with asthma are not in the room.
 - Avoid using [disinfectants known to trigger asthma attacks](#).
 - Open windows or doors and use a fan that blows air outdoors.
 - Always follow the instructions on the product label.
 - Spray or pour spray products onto a cleaning cloth or paper towel instead of spraying the product directly onto the cleaning surface (if the product label allows).

[Learn more about asthma.](#)

Cancer

Having cancer currently increases your risk of severe illness from COVID-19. At this time, it is not known whether having a history of cancer increases your risk.

Actions to take:

- Have a conversation with your healthcare provider or care team to discuss your individual level of risk based on your condition, your treatment, and the level of transmission in your community.
- Do not stop taking your medicines or alter your treatment plan without talking to your healthcare provider.
- Make sure that you have at least a 30-day supply of your medicines.
- Do not delay life-saving treatment or emergency care.
- Call your healthcare provider or care team if you have concerns about your condition, your treatment, think you may have been exposed to COVID-19, or any other questions.
- For more information on [preventing infections for people with cancer](#).

Chronic kidney disease

Having chronic kidney disease of any stage increases your risk for severe illness from COVID-19.

Actions to take

- Continue your medicines and your diet as directed by your healthcare provider.
- Make sure that you have at least a 30-day supply of your medicines.

- Stay in contact with your healthcare team as often as possible, especially if you have any new signs or symptoms of illness. Also reach out to them if you can't get the medicines or foods you need.
- **If you don't have a healthcare provider**, contact your nearest [community health center](#) or [health department](#).
- Have shelf-stable food choices to help you follow your kidney diet.
- If you are on dialysis:
 - Contact your dialysis clinic and your healthcare provider if you feel sick or have concerns.
 - Do NOT miss your treatments.
 - Plan to have enough food on hand to follow the [KCER 3-Day Emergency Diet Plan](#) for dialysis patients in case you are unable to maintain your normal treatment schedule.

[Learn more about kidney disease.](#)

[Learn how to take care of your kidneys.](#)

COPD, cystic fibrosis, pulmonary fibrosis, and other chronic lung diseases

Having COPD (including emphysema and chronic bronchitis) is known to increase your risk of severe illness from COVID-19. Other chronic lung diseases, such as idiopathic pulmonary fibrosis and [cystic fibrosis](#), may increase your risk of severe illness from COVID-19.

Actions to take

- Keep taking your current medicines, including those with steroids in them ("steroids" is another word for corticosteroids).
- Make sure that you have at least a 30-day supply of your medicines.
- Avoid triggers that make your symptoms worse.
- Call your healthcare provider if you have concerns about your condition or feel sick.
- **If you don't have a healthcare provider**, contact your nearest [community health center](#) or [health department](#).

[Learn more about COPD.](#)

Diabetes

Having type 2 diabetes increases your risk of severe illness from COVID-19. Based on what we know at this time, having type 1 or gestational diabetes may increase your risk of severe illness from COVID-19.

Actions to take

- Continue taking your diabetes pills and insulin as usual.
- Test your blood sugar and keep track of the results, as directed by your healthcare provider.
- Make sure that you have at least a 30-day supply of your diabetes medicines, including insulin.
- Follow your healthcare provider's instructions if you are feeling ill as well as the [sick day tips for people with diabetes](#).
- Call your healthcare provider if you have concerns about your condition or feel sick.
- **If you don't have a healthcare provider**, contact your nearest [community health center](#) or [health department](#).

[Learn more about diabetes.](#)

Hemoglobin disorders such as sickle cell disease and thalassemia

Having sickle cell disease (SCD) increases your risk for severe illness from COVID-19. Having other hemoglobin disorders,

like thalassemia, may increase your risk for severe illness from COVID-19.

Actions to take

- Ask your healthcare provider about telemedicine or remote healthcare visits, and know [when to go to the emergency department](#).
- Work with your healthcare provider to manage [medicines and therapies](#) for your disorder (including hydroxyurea, chelation therapy, blood transfusions, and prescriptions for pain management) and any other health condition you may have (such as diabetes, high blood pressure, and arthritis).
- **If you don't have a healthcare provider**, contact your nearest [community health center](#) [↗](#) or [health department](#).
- Try to prevent vaso-occlusive episodes or pain crises by [avoiding possible triggers](#).
- Review CDC's [healthy living with SCD guide](#) or our [healthy living with thalassemia guide](#) for tips to help you stay healthy.
- Find [SCD resources](#) and [thalassemia resources](#) to help navigate care and increase knowledge and awareness of SCD and thalassemia.
- Let friends and family know about the need for [healthy blood donors](#).

Immunocompromised state (weakened immune system) from blood, bone marrow, or organ transplant; HIV; use of corticosteroids; or use of other immune weakening medicines

Many conditions and treatments can cause a person to be immunocompromised or have a weakened immune system. These include: having a solid organ transplant, blood, or bone marrow transplant; [immune deficiencies](#); [HIV](#) with a low CD4 cell count or not on HIV treatment; prolonged use of corticosteroids; or use of other immune weakening medicines. Having a weakened immune system may increase your risk of severe illness from COVID-19.

Actions to take

- Continue any recommended medicines or treatments and follow the advice of your healthcare provider.
- Do not stop taking your medicines without talking to your healthcare provider.
- Make sure that you have at least a 30-day supply of your medicines.
- Do not delay life-saving treatment or emergency care.
- Call your healthcare provider if you have concerns about your condition or feel sick.
- **If you don't have a healthcare provider**, contact your nearest [community health center](#) [↗](#) or [health department](#).

[Information for people living with HIV.](#)

Liver disease

Having chronic liver disease, especially cirrhosis (scarring of the liver), may increase your risk for severe illness from COVID-19.

Actions to take

- Take your medicines exactly as prescribed.
- Make sure that you have at least a 30-day supply of your medicines.
- Call your healthcare provider if you have concerns about your condition or feel sick.
- **If you don't have a healthcare provider**, contact your nearest [community health center](#) [↗](#) or [health department](#).

[Learn more about chronic liver disease.](#)

Pregnancy

Based on what we know at this time, **pregnant people might be at an increased risk for severe illness from COVID-19** compared to non-pregnant people. Additionally, there may be an increased risk of adverse pregnancy outcomes, such as preterm birth, among pregnant people with COVID-19.

Actions to take

- Do not skip your prenatal care appointments.
- Make sure that you have at least a 30-day supply of your medicines.
- Talk to your healthcare provider about how to stay healthy and take care of yourself during the COVID-19 pandemic.
- If you don't have a healthcare provider, contact your nearest [community health center](#) or [health department](#).
- Call your healthcare provider if you have any questions related to your health.
- Seek care immediately if you have a medical emergency.
- You may feel increased stress during this pandemic. Fear and anxiety can be overwhelming and cause strong emotions. Learn about [stress and coping](#).

[Learn more about pregnancy and COVID-19.](#)

Serious Heart Conditions and Other Cardiovascular and Cerebrovascular Diseases

Having any of the following serious heart conditions increases your risk of severe illness from COVID-19:

- Heart failure
- Coronary artery disease
- Cardiomyopathies
- Pulmonary hypertension

Having other cardiovascular or cerebrovascular disease, such as hypertension (high blood pressure) or stroke, may increase your risk of severe illness from COVID-19.

[Learn more about serious heart conditions](#)

Actions to take

- Take your medicines exactly as prescribed and follow your healthcare provider's recommendations for diet and exercise while maintaining social distancing precautions.
- Continue angiotensin converting enzyme inhibitors (ACE-I) or angiotensin-II receptor blockers (ARB) as prescribed by your healthcare provider for indications such as heart failure or high blood pressure.
- Make sure that you have at least a 30-day supply of your heart disease medicines, including high cholesterol and high blood pressure medicines.
- Call your healthcare provider if you have concerns about your condition or feel sick.
- **If you don't have a healthcare provider**, contact your nearest [community health center](#) or [health department](#).
- Do not delay life-saving treatment or emergency care.

[Learn more about heart disease.](#)

[Learn more about stroke.](#)

[Learn more about high blood pressure.](#)

Obesity

Having obesity, defined as a [body mass index](#) (BMI) of 30 or above, increases your risk of severe illness from COVID-19.

Actions to take

- Take your medicines for any underlying health conditions exactly as prescribed.
- Follow your healthcare provider's recommendations for nutrition and physical activity, while maintaining social distancing precautions.
- Call your healthcare provider if you have concerns or feel sick.
- **If you don't have a healthcare provider**, contact your nearest [community health center](#) [↗](#) or [health department](#).

[Learn more about obesity in adults.](#)

[Learn about obesity in children.](#)

Neurologic conditions such as dementia

Having neurologic conditions such as dementia may increase your risk of severe illness from COVID-19.

Actions to take

- Take your medicines as prescribed.
- Make sure that you have at least a 30-day supply of your medicines.
- Call your healthcare provider if you have concerns about your condition or feel sick.
- **If you don't have a healthcare provider**, contact your nearest [community health center](#) [↗](#) or [health department](#).

[Learn more about dementia.](#)

[Learn about caring for people living with dementia during COVID-19.](#)

[Learn about amyotrophic lateral sclerosis \(ALS\).](#)

Smoking

Being a current or former cigarette smoker may increase your risk of severe illness from COVID-19.

Actions to take

- If you currently smoke, quit. If you used to smoke, don't start again. If you've never smoked, don't start.
- [Counseling from a healthcare provider and Food and Drug Administration \(FDA\)-approved medications](#) can double the chances of quitting smoking.
- For help quitting smoking, call 1-800-QUIT-NOW or visit [smokefree.gov](#) [↗](#).
- Call your healthcare provider if you have concerns or feel sick.
- **If you don't have a healthcare provider**, contact your nearest [community health center](#) [↗](#) or [health department](#).

[Learn about smoking and tobacco use.](#)

[Learn about the health effects of cigarette smoking.](#)

Children with Certain Underlying Conditions

While children have been less affected by COVID-19 compared to adults, children with certain conditions may be at increased risk for severe illness. Children who are medically complex, who have serious genetic, neurologic, metabolic disorders, and with congenital (since birth) heart disease might be at increased risk for severe illness from COVID-19. Similar to adults, children with obesity, diabetes, asthma and chronic lung disease, or immunosuppression might be at increased risk for severe illness from COVID-19. CDC is investigating a rare but serious complication associated with COVID-19 in children called Multisystem Inflammatory Syndrome in Children (MIS-C). We do not yet know what causes MIS-C and who is at increased risk for developing it. Learn about [MIS-C](#).

Actions to take

- Give medicines as prescribed for your child's underlying conditions.
- Make sure that you have at least a 30-day supply of your child's medicines.
- Call your child's healthcare provider if you have concerns and to discuss your child's specific conditions and risk for severe illness from COVID-19.
- Well-child visits and vaccines are still important during the COVID-19 pandemic. Stay in contact with your child's healthcare provider and make sure your child is up to date with vaccines to prevent other diseases. Learn more about [how to protect yourself and your family](#) during the COVID-19 pandemic.
- **If you don't have a healthcare provider**, contact your nearest [community health center](#) [↗](#) or [health department](#).

[Learn about preventing illness in your children.](#)

[Learn more about congenital heart disease and specific genetic and neurologic disorders in children.](#)

People with Multiple Underlying Conditions

The more underlying medical conditions someone has, the greater their risk is for severe illness from COVID-19.

Actions to take

- Continue your medicines and treatment plans as directed by your healthcare provider.
- Make sure that you have at least a 30-day supply of your medicines.
- Call your healthcare provider if you have any concerns or feel sick.
- **If you don't have a healthcare provider**, contact your nearest [community health center](#) [↗](#) or [health department](#).
- Do not delay emergency care.

Last Updated Aug. 14, 2020

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official capacity
as Harris County Clerk
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

DEFENDANT’S EXHIBIT 4

SOS Website “Application for a Ballot by Mail”



COVID-19 - As recommended precautions continue to increase for COVID-19, the James E. Rudder Building will be closed to visitors and customers beginning Wednesday, March 18, 2020. The Office of the Secretary of State is committed to continuing to provide services to ensure business and public filings remain available 24/7 through our online business service, [SOSDirect](#) or use the new [SOSUpload](#). Thank you in advance for your patience during this difficult time. [Information on Testing Sites is now available.](#)

WE WILL BE CLOSED MONDAY, SEPTEMBER 7TH IN OBSERVANCE OF LABOR DAY. [HOLIDAY CLOSURE DETAILS](#)

Note - Navigational menus along with other non-content related elements have been removed for your convenience. Thank you for visiting us online.

Application for a Ballot by Mail

To be eligible to vote early by mail in Texas, you must:

- be 65 years or older;
- be disabled;
- be out of the county on election day and during the period for early voting by personal appearance; or
- be confined in jail, but otherwise eligible.

Instructions for submitting an Application for Ballot by Mail (“ABBM”):

1. [Print \(PDF\)](#) the ABBM form
2. OR submit an [order online](#) and an ABBM will be mailed to you.
3. Complete Sections 1 through 8.
4. Sign and Date Section 10.
5. If you were unable to sign the application and someone witnessed your signature, that person must complete Section 11.
6. If someone helped you complete the application or mailed the application for you, that person must complete Section 11.
7. Affix postage.
 - a. If you printed the application you must place it in your own envelope and add postage.
 - b. If you ordered the application online and it was mailed to you - fold the application in half, moisten top tab, seal and add postage.
8. Address and mail the completed ABBM to the Early Voting Clerk in your county. You may also fax the application if a fax machine is available in the early voting clerk's office. You also have the option of submitting a **scanned** copy of the **completed and signed** application to the Early Voting Clerk via email. If an ABBM is faxed or emailed, then the original, hard copy of the application **MUST** be mailed and received by the early

voting clerk no later than the 4th business day.

- a. The Early Voting Clerk is the County Clerk or Elections Administrator for your county
- b. [Contact information](#), including mailing addresses, fax numbers if available, and email addresses for the Early Voting Clerks are available on this website.

NOTICE: DO NOT MAIL, FAX, OR EMAIL COMPLETED APPLICATIONS FOR BALLOT BY MAIL TO THE SECRETARY OF STATE'S OFFICE. ALL APPLICATIONS RECEIVED BY THIS OFFICE WILL BE REJECTED.

Military and overseas voters are welcome to use the regular registration and early voting by mail process available to all voters away from their home county on Election Day. However, there are also [special provisions for military and overseas voters](#).

For more information, please [read](#) the Early Voting in Texas pamphlet.

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

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CHRIS HOLLINS, in his official capacity
as Harris County Clerk
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

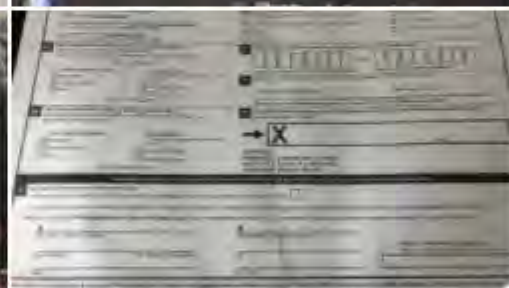
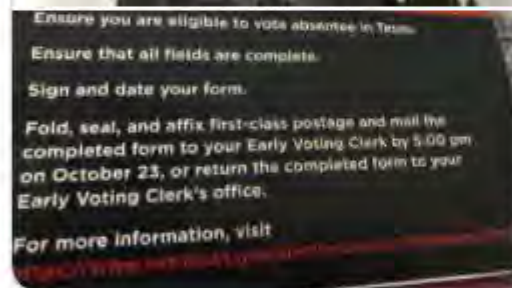
DEFENDANT'S EXHIBIT 5

@CGHollins Tweet Regarding Mailed Applications to
Vote by Mail



Chris Hollins  @CGHollins · Sep 2

Heads up @AllenWest someone is masquerading as @TexasGOP and sending mail ballot applications to thousands (perhaps millions) of Texans who haven't requested them. I know that you're opposed to mail ballots, so this couldn't possibly be you! Find these people and stop them!!



 **Texas GOP**  @TexasGOP · Aug 28

Chairman @AllenWest discusses the important distinction between universal mail-in ballots & absentee ballots. Please RT. Chairman youtu.be/aCKOPTTpVMU #KeepTexasRed #ElectionIntegrity #LeadRight #HoldTexas #Election2020 #2020Election



46



346



583



THE BEST IS YET TO COME
PRESIDENT TRUMP NEEDS YOU TO ACT NOW.

President Trump will
always put America First by:

- Fighting for law and order
- Protecting us from the radical left
- Leading our Great American Comeback



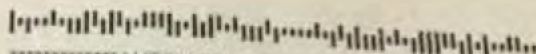
TEXAS
TRUMP
...
VICTORY

Support our Great American
Comeback. Make a plan
today to fill out one of
the attached Absentee
Ballot Request forms.

Paid for by the Republican Party of Texas.
WWW.TEXASGOP.ORG

P.O. Box 22506
Austin, TX 78758

NONPROFIT
U.S. MAIL



*****AUTO**SCH 5-DIGIT 77056 416812 843 1_17649
THE OLIVER HOUSEHOLD
OR CURRENT RESIDENT

[REDACTED]
HOUSTON TX [REDACTED]

THE LAND OF GREATNESS

"My fellow citizens: America's destiny is in our sights.
America's heroes are embedded in our hearts. America's future is
in our hands. And ladies and gentlemen: the best is yet to come."

- President Donald J. Trump, Speech at Mt Rushmore, July 3, 2020



President Trump is Counting on You.

Join millions of your fellow Americans doing their part to support our Great American Comeback. Make a plan today to fill out one of the attached Absentee Ballot Request forms.

"I will be an absentee voter. We have a lot of absentee voters. It works, so we are in favor of absentee."

- President Donald J. Trump, 7/30/20

Fill Out One Of The Attached Forms In Order To Request Your Absentee Ballot Today!

In order to complete your request, you will need to:

- ⊙ Review the absentee ballot application and confirm that you meet the eligibility requirements for voting absentee.
- ⊙ Fill out the application completely.
- ⊙ Submit the request to your local election office. Deadline to request a ballot by mail is (received by) Friday, October 23, 2020.
- ⊙ When your ballot arrives, read it carefully and follow the instructions to complete it and return it.

TO ENSURE YOUR ABSENTEE BALLOT REQUEST IS RECEIVED, PLEASE DO THE FOLLOWING:

Ensure you are eligible to vote absentee in Texas.

Ensure that all fields are complete.

Sign and date your form.

Fold, seal, and affix first-class postage and mail the completed form to your Early Voting Clerk by 5:00 pm on October 23, or return the completed form to your Early Voting Clerk's office.

For more information, visit

<https://www.sos.texas.gov/elections/voter/reqabbm.shtml>

Application for Ballot by Mail

1 Last Name (Please print information)

Suffix (Jr., Sr., etc.)

First Name

Mobile Email

2 Residence Address: One back of this application for instructions

City

,TX

ZIP Code

3 Mail my ballot to: If mailing without office from residence address, please complete Box #7

City

State

ZIP Code

4 Date of Birth (mm/dd/yyyy) (Optional)

□□/□□/□□□□

Contact Information (Optional)

Please list phone number and/or email address.

* Used to make our office have questions.

5 Reason for Voting by Mail:

- ☐ 65 years of age or older (Complete Box #6a)
☐ Disability (Complete Box #6a)
☐ Expected absence from the county (Complete Box #6b and Box #9)
 You will receive a ballot for the upcoming election only
☐ Confinement in jail (Complete Box #6b)
 You will receive a ballot for the upcoming election only

7 If you are requesting this ballot be mailed to a different address (other than residence), indicate where the ballot will be mailed. See reverse for instructions.

- ☐ Mailing Address as listed on my voter registration certificate
☐ Nursing home, assisted living facility or long term care facility
☐ Hospital
☐ Retirement Center
☐ Address of the poll
☐ Postage relationship
☐ Address outside the county (see Box #11)

6a ONLY Voters 65 Years of Age or Older or Voters with a Disability:

If applying for one election, select appropriate box.
 If applying once for elections in the calendar year, select "Annual Application."

☐ Annual Application

Uniform and Other Elections:

- ☐ May Election
☐ November Election
☐ Other

Primary Elections:

You must declare one political party to vote in a primary.

- ☐ Democratic Primary
☐ Republican Primary

☐ Any Resulting Runoff

8 If you selected "expected absence from the county," see reverse for instructions

□□/□□/□□□□

Date you can begin to receive mail at this address

□□/□□/□□□□

Date of return to residence address

9 Voters may submit a completed, signed, and scanned application to the Early Voting Clerk at:

(early voting clerk's e-mail address)

(early voting clerk's fax)

NOTE: If you fax or e-mail this form, please be aware that you must also mail the form to the early voting clerk within four business days. See "Submitting Application" on the back of this form for additional information.

6b ONLY Voters Absent from County or Voters Confined in Jail:

You may only apply for a ballot by mail for one election, and any resulting runoff.
 Please select the appropriate box.

Uniform and Other Elections:

- ☐ May Election
☐ November Election
☐ Other

Primary Elections:

You must declare one political party to vote in a primary.

- ☐ Democratic Primary
☐ Republican Primary

☐ Any Resulting Runoff

10 "I certify that the information given in this application is true, and I understand that giving false information in this application is a crime."

→ X

Date

SIGN HERE

If applicant is unable to sign or make a mark in the presence of a witness, the witness shall complete Box #11.

If someone helped you to complete this form or mails the form for you, then that person must complete the sections below.

11 See back for Witness and Assistant definitions.

If applicant is unable to mark Box #10 and you are acting as a **Witness** to that fact, please check this box and sign below.

☐

If you assisted the applicant in completing this application in the applicant's presence or e-mailed/mailed or faxed the application on behalf of the applicant, please check this box as an **Assistant** and sign below.

☐

★ If you are acting as **Witness and Assistant**, please check **both boxes**. Failure to complete this information is a Class A misdemeanor if signature was witnessed or applicant was assisted in completing the application.

X

Signature of Witness/Assistant

X

Printed Name of Witness/Assistant

Street Address

Apt Number (if applicable)

City

State

ZIP Code

Witness' Relationship to Applicant

(Refer to instructions on back for clarification)

formulario está disponible en Español. Para conseguir la version en Español favor de llamar sin cargo al 1.800.252.8683 a la oficina del Secretario de Estado o la Secretaria de Votación por

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official capacity
as Harris County Clerk
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

DEFENDANT'S EXHIBIT 6

Ingram Letter of 27 August 2020

The State of Texas



Elections Division
P.O. Box 12060
Austin, Texas 78711-2060
www.sos.state.tx.us

Phone: 512-463-5650
Fax: 512-475-2811
For Relay Services
(800) 252-VOTE (8683)

Ruth R. Hughs
Secretary of State

August 27, 2020

Chris Hollins
Harris County Clerk
201 Caroline St., 3rd Floor
Houston, Texas 77002

Dear Mr. Hollins:

It has come to our office's attention that Harris County intends to send an application to vote by mail to every registered voter in the county. Such action would be contrary to our office's guidance on this issue and an abuse of voters' rights under Texas Election Code Section 31.005.

As you know, the Texas Election Code requires that voters have a qualifying reason to vote by mail. They must be 65 years or older, disabled, out of the county while voting is occurring, or confined in jail but otherwise eligible to vote. It is not possible that every voter in Harris County will satisfy one or more of these requirements.

By sending applications to all voters, including many who do not qualify for voting by mail, your office may cause voters to provide false information on the form. Your action thus raises serious concerns under Texas Election Code Section 84.0041(a)(1), (2).

At a minimum, sending an application to every registered voter will confuse voters about their ability to vote by mail. Earlier this year and continuing, there have been a number of lawsuits challenging the fact that Texas law requires a reason to vote by mail. Thus far the challenged law remains the same in spite of these lawsuits. An official application from your office will lead many voters to believe they are allowed to vote by mail, when they do not qualify.

Finally, by sending an application to every registered voter, you could impede the ability of persons who need to vote by mail to do so. Clogging up the vote by mail infrastructure with potentially millions of applications from persons who do not qualify to vote by mail will make it more difficult for eligible mail voters to receive their balloting materials in a timely manner and will hamper efforts to qualify and count these ballots when received by your office.

For all of these reasons, you must immediately halt any plan to send an application for ballot by mail to all registered voters and announce its retraction. If you have not done so by noon on Monday, August 31, 2020, I will request that the Texas Attorney General take appropriate steps under Texas Election Code 31.005.

Sincerely,

A handwritten signature in dark ink, appearing to read "Keith Ingram", is positioned above the printed name. The signature is fluid and cursive, with a prominent initial "K".

Keith Ingram
Director of Elections

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official capacity
as Harris County Clerk
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

DEFENDANT'S EXHIBIT 7

Email Correspondence between Ingram & Hollins (27
August through 30 August 2020)

From: Hollins, Chris (CCO)

Sent: Sunday, August 30, 2020 4:52 PM

To: Keith Ingram <KIngram@sos.texas.gov>

Cc: Winn, Michael (CCO) <Michael.Winn@cco.hctx.net>; Adam Bitter <ABitter@sos.texas.gov>; Ray, Douglas (CAO) <Douglas.Ray@cao.hctx.net>; Aiyer, Jay (CAO) <Jay.Aiyer@cao.hctx.net>; Stevens, Beth (CCO) <Beth.Stevens@cco.hctx.net>; O'Rourke, Terence (CAO) <Terence.O'Rourke@cao.hctx.net>

Subject: RE: Letter regarding ABBM mailing

Sensitivity: Personal

Keith,

I'm glad that you said you are willing to speak, but a bit disappointed that it seems like your mind is made up before speaking with me.

If you had conferred with me before sending your letter, you would have learned that we are not just sending mail-in ballot applications, but providing voters with information on how to legally and safely vote. With our current plan, there is no way a voter could receive the provided information and think that they were automatically qualified to vote by mail or that my office was encouraging them to vote fraudulently. I ask that the Secretary of State's office take the time to confer with us before moving forward with any threatened enforcement actions.

It's also worth noting that Harris County is prepared to handle over a million applications and mail ballots. I'd like to share details about our vote by mail infrastructure with you to allay any concerns you might have (and to share information that you may want to share with other counties facing this challenging election).

You didn't provide your availability to meet with me in our previous emails. Are you available to connect at 4PM Monday? I can circulate a Zoom link for us to dial into. I can assure you that we are not mailing out ballot applications before that time, and I ask that you agree to confer with us before taking any steps on your end.

I look forward to speaking with you.

Best,

Chris

Christopher G. Hollins

County Clerk

Harris County, Texas



713.274.8600 (o)
713.899.3204 (m)
www.cclerk.hctx.net
www.harrisvotes.com
him/his

From: Keith Ingram <KIngram@sos.texas.gov>
Sent: Friday, August 28, 2020 5:28 PM
To: Hollins, Chris (CCO) <Chris.Hollins@cco.hctx.net>
Cc: Winn, Michael (CCO) <Michael.Winn@cco.hctx.net>; Adam Bitter <ABitter@sos.texas.gov>; Ray, Douglas (CAO) <Douglas.Ray@cao.hctx.net>; Aiyer, Jay (CAO) <Jay.Aiyer@cao.hctx.net>; Stevens, Beth (CCO) <Beth.Stevens@cco.hctx.net>
Subject: RE: Letter regarding ABBM mailing
Sensitivity: Personal

Dear Mr. Hollins:

Thank you for your response to my letter. Our office appreciates and shares your concern to prevent unqualified voters from applying to vote by mail. Unfortunately, indiscriminately sending millions of applications for mail ballots to all registered voters in Harris County, regardless of whether they requested an application or whether they even qualify to vote by mail, will only lead to confusion and undermine our shared goal of ensuring an efficient and fair election process. The Election Code clearly empowers clerks to send mail ballot applications to voters who request them. Clerks lack authority, however, to undertake the unsolicited mass mailing you propose, and for good reason. Flooding the County with millions of unrequested applications on the eve of an election is certain to result in large numbers of improper mail ballot requests. That reality most certainly raises serious concerns under Section 84.0041. Specifically, the mailing likely will cause voters who are not qualified to vote by mail to apply nonetheless.

I am happy to speak with you prior to the Monday deadline about options for better educating voters who qualify to vote by mail about their statutory rights and the availability of applications. But, I stand by my letter of August 27, and I must reiterate our demand that you immediately halt any plan to send an application for ballot by mail to all registered voters and announce its retraction no later than by noon on Monday, August 31, 2020.

Keith Ingram
Director, Elections Division
Office of the Secretary of State
800-252-VOTE(8683)
www.sos.state.tx.us/elections/index.shtml

For Voter Related Information, please visit:



The information contained in this email is intended to provide advice and assistance in election matters per §31.004 of the Texas Election Code. It is not intended to serve as personal legal advice to you for any matter. Please review the law yourself, and consult with an attorney when your legal rights are involved.

From: Hollins, Chris (CCO) <Chris.Hollins@cco.hctx.net>
Sent: Friday, August 28, 2020 2:18 PM
To: Keith Ingram <KIngram@sos.texas.gov>
Cc: Winn, Michael (CCO) <Michael.Winn@cco.hctx.net>; Adam Bitter <ABitter@sos.texas.gov>; Ray, Douglas (CAO)

<Douglas.Ray@cao.hctx.net>; Aiyer, Jay (CAO) <Jay.Aiyer@cao.hctx.net>; Stevens, Beth (CCO) <Beth.Stevens@cco.hctx.net>

Subject: Re: Letter regarding ABBM mailing

Sensitivity: Personal

CAUTION: This email originated from OUTSIDE of the SOS organization. Do not click on links or open attachments unless you are expecting the email and know that the content is safe. If you believe this to be a malicious or phishing email, please send this email as an attachment to Informationsecurity@sos.texas.gov.

Hi Keith,

Haven't heard back from you here. Given the deadline you included in your letter, it would behoove us to connect by Monday. When can you meet?

Thanks,

Chris

Christopher G. Hollins
County Clerk, Harris County, Texas
(m) 713.899.3204

On Aug 27, 2020, at 11:42 PM, Hollins, Chris (CCO) <Chris.Hollins@cco.hctx.net> wrote:

Hi Keith,

We share your concerns of voters who do not qualify to vote by mail applying. We intend to include detailed guidance along with the applications to inform voters that they may not qualify and to describe who does qualify. They would then have to complete the application and sign the application, stating that what they put on it is true.

I am sure you know the law back to front, but I am pasting it here for everyone's convenience. I don't see how providing information and resources to voters in any way touches on (a)(1), (2).

(a) A person commits an offense if the person:

- (1) knowingly provides false information on an application for ballot by mail;
- (2) intentionally causes false information to be provided on an application for ballot by mail;
- (3) knowingly submits an application for ballot by mail without the knowledge and authorization of the voter; or
- (4) knowingly and without the voter's authorization alters information provided by the voter on an application for ballot by mail.

I would welcome a conversation on the topic. Please let me know your availability.

Best,

Chris

From: Keith Ingram <KIngram@sos.texas.gov>
Sent: Thursday, August 27, 2020 5:13 PM
To: Hollins, Chris (CCO) <Chris.Hollins@cco.hctx.net>

Cc: Winn, Michael (CCO) <Michael.Winn@cco.hctx.net>; Adam Bitter <ABitter@sos.texas.gov>

Subject: Letter regarding ABBM mailing

Sensitivity: Personal

Mr. Hollins,

Attached is a letter from our office regarding the ABBM mailing.

Keith Ingram

Director, Elections Division

Office of the Secretary of State

800-252-VOTE(8683)

www.sos.state.tx.us/elections/index.shtml

For Voter Related Information, please visit:

<image001.png>

The information contained in this email is intended to provide advice and assistance in election matters per §31.004 of the Texas Election Code. It is not intended to serve as personal legal advice to you for any matter. Please review the law yourself, and consult with an attorney when your legal rights are involved.

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official capacity
as Harris County Clerk
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

DEFENDANT'S EXHIBIT 8

Transcript of Audio Recorded Telephone Call between
Ingram & Hollins (31 August 2020)

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2 Audio Transcription of
3 "Telephone Conference,
4 Monday, August 31, 2020, 6 p.m."
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1 CHARLIE ELDRED: Hi everybody. Chris Hollins just
2 joined the call. Hi, Mr. Hollins. This is Charlie Eldred from
3 the Attorney General's Office.

4 CHRIS HOLLINS: Hey, Charlie. How are you doing?

5 CHARLIE ELDRED: I'm doing great. How are you?

6 CHRIS HOLLINS: I'm doing well. I think there are
7 about ten folks on this call. Do other folks want to announce
8 themselves?

9 SETH HOPKINS: Hi. This is Seth Hopkins with the
10 Harris County Attorney's Office.

11 MALE SPEAKER: Can you hear me?

12 CHRIS HOLLINS: I can hear you.

13 MICHAEL WINN: Hi. This is Michael Winn for
14 the Harris County Clerk's Office.

15 CAMERON HETZEL: Hello. This is Cameron Hetzel with
16 the County Attorney's Office

17 BETH STEVENS: Hey, everybody. Beth Stevens with the
18 Harris County Clerk's Office.

19 CHRIS HOLLINS: Susan Hays, are you still on the
20 line?

21 SUSAN HAYS: I am. (Inaudible). This is Susan Hays
22 (inaudible) counsel for Harris County Clerk.

23 CHARLIE ELDRED: Is that everybody from Harris County?
24 Okay. How about -- will -- will state people announce

1 themselves.

2 STEPHANIE HUNTER: This is Stephanie Hunter from the
3 Attorney General's Office.

4 ADAM BITTER: This is Adam Bitter from the Secretary
5 of State's Office.

6 KEITH INGRAM: And Keith Ingram from the Secretary of
7 State's Office.

8 CHARLIE ELDRED: And I believe that is it. That's
9 certainly it from the Secretary of State now.

10 CHRIS HOLLINS: So we have Keith and Adam from the
11 SOS, and then we have Charles and Kathleen from the AG's Office;
12 is that correct?

13 CHARLIE ELDRED: Yes, sir.

14 CHRIS HOLLINS: Okay. Well, here we are. Thank you
15 for taking the time to -- to get on the phone with us. I must
16 say I -- I wish we would have been able to talk before, you know,
17 legal action was taken per my multiple emails, you know, to that
18 regard, but I'm glad that we're able to speak now. About how --
19 how much time do we have right now?

20 MALE SPEAKER: I'll let Keith answer that one.

21 KEITH INGRAM: Yeah, we're at your disposal.

22 CHRIS HOLLINS: Okay. Well, Keith, you know, before
23 the end of last week, you know, I -- I think that, you know, my
24 office and the Secretary of State's Office, and particularly, you

1 know, the Elections Division, had had a pretty smooth
2 relationship. I believe that you and Michael have a longstanding
3 relationship, and so -- you know, it was my understanding that --
4 that we could work together as, you know, mutual public servants
5 of the people of Texas and the people of Harris County, and, you
6 know, it's my hope that despite this particular issue and going
7 forward, that we can continue to serve in that manner. I think
8 that takes being able to pick up the phone and talk to one
9 another, share ideas, share disagreements before we jump into a
10 courtroom, but, again, that having all been said, I'm -- I'm glad
11 that you're on the phone now, and, you know, I -- I hope that we
12 can, you know, spend some time today talking in a -- you know, in
13 a way that's not adversarial, frankly. And so I wanted to talk
14 about a couple of things and, of course, want to hear from you
15 about what you want to cover. You know, in your letter you --
16 you know, you mentioned concerns with, you know, our
17 infrastructure to handle vote by mail. You -- you mentioned, you
18 know, what happens if millions of people apply and, you know,
19 will that sort of gum up the works and -- and make it less
20 feasible for people -- yeah, for -- for everyone to have their --
21 their votes counted that way; and so I want to talk to you about
22 that a little bit. I -- I want to talk to you more broadly just
23 about things we're doing down here. You know, I think we've
24 been, you know, on the innovative side and -- and so since I have

1 you on the phone, I would like to talk through a couple things
2 that we're doing and hear from you, you know, for good or for bad
3 on those and -- yeah, and then, I think, we can talk more
4 specifically about -- about this mailer as well as other mailers
5 that my office put out just to -- to understand where -- where
6 you're coming from. And I don't want to get too much into
7 legalese. Of course, if you need to state a legal position,
8 that's fair; I -- I get it, but I do just want to kind of
9 understand, you know, conversationally, you know, what the issues
10 are from your side and see if we can't talk about how to -- to
11 allay some of those concerns. Is there anything else on your
12 side that you want to cover?

13 KEITH INGRAM: No.

14 CHRIS HOLLINS: All right. So -- so vote by mail
15 infrastructure. So we have 2.4 million registered voters here in
16 Harris County. That might tick up just a little bit before the
17 October 5th deadline, but I don't think it's going to go too much
18 further than that, and, you know, we, here in Harris County have,
19 -- you know, been using data, looking at what happened from our
20 July elections, particularly as it related to the mailer that was
21 sent out then and then understanding who's -- who's likely to
22 vote by mail, and then also what are just some -- you know, some
23 very high turnout scenarios essentially as it relates to vote by
24 mail to understand what we need to be prepared for. We're doing

1 the same thing for in-person voting as well. We're trying to
2 understand what does a very high turnout scenario look like, and
3 in those scenarios will we be prepared with the right number of
4 locations and the right number of machines both for early vote
5 and for election day. And so given that, you know, we -- we
6 prepared and are preparing for what would be far beyond record
7 turnout in Harris County. What -- what we've seen -- and you
8 probably know some of this stuff better than I do since I'm a few
9 months into the job and -- and you've been on the job for quite
10 some time, but, you know, the -- the past few presidential
11 elections going all the way back to 2008 we've had 60 or 62
12 percent turnout, right in that range, and what we've been
13 preparing for this time around is what happens in 72 percent
14 turnout which is unlikely to happen, but, again, if there is
15 dramatically high turnout, we want to be prepared. And then if
16 there is 72 percent turnout, what happens if a huge chunk of
17 those folks vote by mail, and then what happens if, you know, a
18 huge -- or even, you know, traditional chunk of those folks, vote
19 in person, both from early vote and election day. And so given
20 all that, you know, we're prepared for more than 1.5 million
21 people to vote in person which, again, would be far higher than
22 anything we've ever seen here in Harris County, but on the mail
23 side we're prepared for nearly a million people, you know, nearly
24 half of all registered voters to send in applications as well as

1 to have those -- those -- you know, those potentially approved
2 and processed as ballots ultimately. And so we've walked through
3 all the math, all the timing at which some of those ballots might
4 come in, given the timing of the election itself but also the
5 timing of any mailers that went out. We've used data from our
6 65-year-old mailer that we sent out at the beginning of June to
7 understand how quickly people turn those applications around,
8 what percentage of people, you know, turn those applications
9 around and -- and so on and so forth. And what we found
10 essentially is -- you know, we know, of course, and, I think,
11 you've -- you've stated in -- in some of your documents and
12 emails that all voters who are over the age of 65 are eligible to
13 vote by mail. And so given that, we saw that, you know, a fairly
14 low percentage of voters, who we know are 100 eligible to vote by
15 mail, sent those applications back to us when we sent them to
16 them in June. And so given that -- because -- because we know
17 that not all Harris County voters are eligible to vote by mail,
18 our assumption -- and I'd like to hear it from you if you
19 disagree with it -- is that, you know, the same or a lower of a
20 percentage of voters who receive an application across the county
21 would ultimately return those applications. What do you think
22 about that assumption?

23 KEITH INGRAM: Well, I don't know anything about what
24 assumption to make here. My question is why in the world do you

1 want to lead your voters into committing a felony. That is just
2 outrageous on its face. Why in the world would you even consider
3 misleading somebody into thinking that they could vote by mail
4 when they can't. That is outrageous, and it's a violation of
5 their rights, and I do not appreciate treating voters that way.

6 CHRIS HOLLINS: So I would agree with you that if
7 someone was trying to mislead voters and get them to commit a
8 felony that that would be really disappointing and a -- an issue.

9 KEITH INGRAM: Well, that is exactly the outcome in
10 this particular instance.

11 CHRIS HOLLINS: Well, let's -- let's talk about it,
12 but, I think, I've addressed you very collegially, and -- and you
13 sound a little bit annoyed and aggressive. I think we should try
14 to --

15 KEITH INGRAM: Well, I'm annoyed that you're talking
16 about everything except the problem. The problem is you are
17 misleading voters; you're confusing voters; and you're
18 potentially gumming up the works. The only one you're talking
19 about is the potential gumming up of the works, and that's
20 probably the least important of the three.

21 CHRIS HOLLINS: Okay. And I -- I mean, I laid out my
22 -- my agenda before we started talking, and it sounded like you
23 were fine with that. And the first one was vote by mail (Talking
24 over) infrastructure. Say that one more time. I'm sorry. I

1 didn't hear you.

2 KEITH INGRAM: I said I didn't have anything to add; I
3 didn't say I was okay with it.

4 CHRIS HOLLINS: All right. I'm -- I apologize for --
5 for making that assumption; and so are you not okay with my
6 agenda?

7 KEITH INGRAM: It seems to me like you're tackling the
8 least important one first.

9 CHRIS HOLLINS: Okay.

10 KEITH INGRAM: That's my frustration.

11 CHRIS HOLLINS: All right. So -- so we've covered
12 "gumming up the works"; and so I just want to be clear on the
13 "gumming up the works" piece that we're prepared for an
14 inordinately high amount of mail ballots, one that's almost sure
15 not to come to pass, but, you know, we're -- we're in the -- the
16 mode of being over prepared. And so are you -- are you
17 comfortable with -- with having covered that?

18 KEITH INGRAM: Yeah. I don't necessarily agree or
19 disagree. I don't care very much about that one; I care a whole
20 lot about why you think it's a good idea to mislead voters by
21 sending them an official piece of mail leading them to believe
22 they can vote by mail when they can't.

23 CHRIS HOLLINS: Okay. And so before jumping into
24 that, I did want to just cover the -- because you've -- you

1 mentioned the 65 and up mailer that we sent back in -- in June.
2 And so because those folks are all 100 percent qualified, you
3 thought that was fine?

4 KEITH INGRAM: I didn't think it was advisable, but it
5 certainly -- there was nothing we could criticize about it, and
6 what we've advised counties is if you're going to mail to voters
7 unsolicited AVBMs, you need to do it with a population that
8 you're 100 percent sure is eligible so that you do not mislead
9 them into taking they can vote by mail when they cannot.

10 CHRIS HOLLINS: All right. So on the 65 and up
11 mailer, you didn't think it was the most efficient use of our
12 resources, but you didn't have -- you didn't take issue with it?

13 KEITH INGRAM: That's right.

14 CHRIS HOLLINS: Okay.

15 KEITH INGRAM: A county choice to make.

16 CHRIS HOLLINS: All right. And so -- so why don't we
17 pivot then since we've -- we've -- we covered vote-by-mail
18 infrastructure, we talked about the 65 and up mailer. I wanted
19 to talk about some of the more innovative stuff that we were
20 doing generally, but it sounds like you're not very interested;
21 is that correct?

22 KEITH INGRAM: That would be correct. Unless, you
23 know, you're going to try and count results over the Internet or
24 something, then I would be concerned about that.

1 CHRIS HOLLINS: No, sir. We're going to continue to -
2 - to -- to drive those results from voting locations to -- to our
3 drop-off points under the same levels of security that -- that we
4 have been and so -- so nothing -- nothing to worry about there.
5 So -- so our mailer. And -- and I -- I had -- I initially wanted
6 to kind of jump on a Zoom with you and kind of show it to you,
7 but just to describe it to you visually, when you first open up
8 that mailer, the application -- it's -- it's a postcard -- or
9 it's set up as a series of postcards, and the application itself
10 you don't see it until you get to page 3. The first two pages
11 are full of very bold and, in fact, big and red ink language, and
12 I'm just going to read it to you for a moment just so you can
13 have a feel for what it says. So the very, very first words you
14 see at the top next to our -- our logo says, "Do you qualify to
15 vote by mail?" And then it says in red ink -- and, by the way,
16 there are huge -- I'd say about -- the size roughly of about size
17 50 or 60 font -- red sirens like you would on an ambulance.
18 There are two -- two of them -- one on the left side of the page,
19 one on the right side of the page -- big sirens. And in red ink
20 it says, "Read this before applying for a mail ballot." Then in
21 black ink it says, "The Harris County Clerk's Office is sending
22 you this application as a service to all registered voters."
23 Then it turns back to bold red ink in all caps -- I forgot to
24 mention all caps -- bold red ink and all caps. It says,

1 "However, not all voters are eligible to vote by mail. Read this
2 advisory to determine if you are eligible before applying." From
3 there it goes into the code and says, "You're eligible to vote by
4 mail if you're 65 or older." I'm paraphrasing a little bit to
5 save us time. You know, you'll be outside of the county during
6 the voting period, you're confined to jail but otherwise eligible
7 to vote, or you have a disability. And where it says,
8 "disability," it says, "Under Texas Law you're qualified if
9 you're sick or pregnant or voting in person will create a
10 likelihood of injury to your health." Now right under that in
11 bold red ink again in all caps, it says, "You do not qualify to
12 vote by mail as disabled just because you fear contracting Covid-
13 19." Continuing in all caps in red bold ink, it says, "You must
14 have an accompanying physical condition." If you do not qualify
15 as disabled, you may still qualify in categories one through
16 three above." -- one through three being age 65, outside the
17 county, or confined in jail. And so when you read that -- when
18 you hear that -- red ink, huge sirens on the page that says,
19 "Read this before applying for a mail ballot" and having to go
20 through this for multiple pages before you even get to an
21 application -- what about that to you, Keith, sounds misleading
22 to a voter?

23 KEITH INGRAM: Because you're sending them a voter --
24 an application to vote by mail. You're sending it as the County

1 Clerk of Harris County. Sending educational materials, like I
2 said in my email the other night, is fine. We would encourage
3 that. So the educational materials -- great. Send it. Don't
4 send an application to every voter when you know most of those
5 people who are receiving it do not qualify to vote by mail, and
6 some portion of them are going to commit a felony by returning it
7 when they don't qualify. Don't do that. Send the educational
8 materials. Love educational materials. Send more educational
9 materials, but don't send the application. That's where the
10 voters are going to get misled. That's where they're going to
11 get confused, and that's where they're going to get walked into a
12 felony.

13 CHRIS HOLLINS: What is confusing and misleading about
14 saying in red ink "Not all voters are eligible to vote by mail.
15 Read this advisory to determine if you are eligible before
16 applying"?

17 KEITH INGRAM: I told you what was confusing.

18 CHRIS HOLLINS: The fact that we've also for
19 convenience supplied them with --

20 KEITH INGRAM: The fact that -- (Talking over)

21 CHRIS HOLLINS: -- an application if --

22 KEITH INGRAM: That's right.

23 CHRIS HOLLINS: -- if they deem themselves eligible.

24 KEITH INGRAM: Instead of telling them where they can

1 get one if they think they're eligible. That's exactly it.

2 CHRIS HOLLINS: So we should essentially create
3 another hurdle to them applying by having them have to go call us
4 and have it mailed to them.

5 KEITH INGRAM: It is -- it is absolutely not creating
6 a hurdle. It is a hurdle that already exists. It is not
7 creating an extra hurdle. That is -- that is inflammatory talk
8 that -- that shouldn't be.

9 CHRIS HOLLINS: Yeah, I understand where you're coming
10 from. What I meant to say was we're already sending them
11 something in the mail, and so I -- I know you were talking about
12 --

13 KEITH INGRAM: That's right.

14 CHRIS HOLLINS: -- like, the cost benefit of --

15 KEITH INGRAM: (Talking over) educational materials
16 through the mail, send educational materials through the mail.
17 Nobody's making you do that. And the fact that you view that as
18 then creating an extra hurdle, shows the position that you're
19 coming from. And what I'm saying is nobody's making you send the
20 education materials, but if you are that's good. But you don't
21 send an application with it and mislead voters into thinking it's
22 going to be okay for them to do it.

23 CHRIS HOLLINS: And I -- and I said I heard what you
24 were saying on the extra hurdle piece. What I -- what I -- and I

1 was trying to explain what I meant. What I meant was --

2 KEITH INGRAM: I do understand what you mean. What
3 you mean is that you're -- you're doing this thing, and then the
4 voters are going to have to do another thing, and that doesn't
5 necessarily mean it's an extra hurdle just because you're doing a
6 thing.

7 CHRIS HOLLINS: Right. But I know on -- when we were
8 talking about our 65 and up mailer earlier, you know, you
9 mentioned that it -- you didn't think it was the best use of
10 resources. And so my question is if we're already sending them a
11 mailer -- right? -- so we're paying the cost of postage, we're
12 paying a thing to print, yada, yada, yada, yada, yada -- wouldn't
13 it be inefficient to not provide them with the application if
14 they deem themselves eligible?

15 KEITH INGRAM: It's only inefficient if you -- it's
16 only inefficient if you think they belong together, and they do
17 not belong together. That is not inefficient to tell people how
18 they can qualify to vote by mail and where they can get an
19 application to do it. That's not inefficient; that's Texas law.

20 CHRIS HOLLINS: So an application to vote by mail and
21 information about who qualifies to vote by mail do not go
22 together?

23 KYLE BARBER: Not when you're sending it to a
24 population -- the large majority of which you know will not

1 qualify -- and then you're walking them right into thinking they
2 do.

3 CHRIS HOLLINS: All right. And so it sounds like it's
4 your position that sending information to voters -- good thing;
5 correct?

6 KEITH INGRAM: More information is better than less
7 usually, yes.

8 CHRIS HOLLINS: Okay. But it's also your position
9 that under no circumstances -- even with warnings, et cetera, et
10 cetera, et cetera, should all voter -- or all registered voters
11 be sent an application from our office.

12 KEITH INGRAM: That's correct.

13 CHRIS HOLLINS: Okay. And -- and it sounds like
14 there's nothing that's going to change your mind on that.

15 KEITH INGRAM: That is correct.

16 CHRIS HOLLINS: Okay. Do you have any -- any other
17 questions for me, Keith?

18 KEITH INGRAM: No, I -- I'm -- like you started off,
19 I've always appreciated the cooperation of Harris County Clerk's
20 Office. I don't want anything to mess that up, but this is a
21 very bad idea.

22 CHRIS HOLLINS: All righty. And then any -- outside
23 of questions, any -- anything else, like, worth sharing with us
24 whether related to this or -- or not?

1 KEITH INGRAM: No.

2 CHRIS HOLLINS: All right. I know we've got a bunch
3 of other folks on the phone, and it's been you and I dominating
4 here. Other folks on the phone, anything worth -- worth -- worth
5 mentioning here or -- or discussing while we are all here with
6 this meeting of the minds?

7 CHARLIE ELDRED: Nothing from the AG.

8 MALE SPEAKER: Nothing from me.

9 FEMALE SPEAKER: Nothing from me.

10 MALE SPEAKER: Nothing from me either.

11 CHRIS HOLLINS: All right. So I've heard nothing from
12 the AG. Anything else from SOS side?

13 ADAM BITTER: This is Adam. There's nothing more --

14 CHRIS HOLLINS: Okay.

15 ADAM BITTER: -- nothing more with that beyond what
16 Keith said.

17 CHRIS HOLLINS: Okay. Thanks, Adam. Anything else
18 from the Harris County Attorney or -- or outside counsel?

19 SUSAN HAYS: I'm good. I think they made their
20 position clear.

21 CHRIS HOLLINS: All right. And then -- and then
22 County Clerk's Office. Anything else?

23 MALE SPEAKER: I'm good. I'm good.

24 FEMALE SPEAKER: Nothing. Same.

1 CHRIS HOLLINS: Okay. All right. Well, Keith and --
2 and everybody else from -- from the Secretary's Office --
3 Secretary of State's Office as well as the AG's office, thanks
4 for taking the -- the -- the time to join us on the call this
5 evening and have this chat.

6 KEITH INGRAM: Thank you.

7 MALE SPEAKER: Thank you.

8 FEMALE SPEAKER: Thank you everybody. Take care.

9 CHRIS HOLLINS: Thank you.

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1 CERTIFICATE OF TRANSCRIBER

2 I, JENNIFER CANDELA-ALVAREZ, do hereby certify that
3 this transcript was prepared from audio the best of my ability.
4

5 I am neither counsel for, related to, nor employed by
6 any of the parties to this action, nor financially or otherwise
7 interested in the outcome of this action.
8
9

10 September 1, 2020

11 DATE

JENNIFER CANDELA-ALVAREZ



Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official capacity
as Harris County Clerk
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

DEFENDANT'S EXHIBIT 10

Declaration of Hector de Leon

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official capacity
as Harris County Clerk
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

UNSWORN DECLARATION OF HECTOR DE LEON

1. I am a Public Information Officer and Senior Election Official with the Elections Division of the Harris County Clerk's Office. The following facts are within my personal knowledge.

2. I conducted queries on the Harris County voter management system to pull reports of statistical data to provide the facts in this declaration.

3. Beginning June 4, 2020, the Harris County Clerk's Office sent out a mailer of voter information accompanied by a vote-by-mail application to every registered voter aged 65 or older in the voter roll ("HCC 65+ Mailer"). This mailer totaled 375,578.

4. As of June 10, the date I estimate any applications could be returned after (1) the mailer went out on June 4, (2) the voter received the mailer through the mail and decided to apply, and (3) the applications began arriving at the Harris County Clerk's office through the mail, our office already had 78,430 vote-by-mail applications from other sources including voters who submitted applications during the March primary election and selected the "annual" option.

5. In total vote-by-mail applications we received for the 65+ age category for the July run-off was 133,233 with a grand total including absentee, disability, and confined to jail of 141,131 applications. I ran a query of our data searching based on a source code the office

maintains to indicate what form was used and who provided that form. The resulting report is attached as Exhibit A. The “Request Source” column contains codes which begin with the source of the application and end with the category the application selected. Codes with names like “Abbott,” “Anna,” “Cagle,” “Davis,” “MJ,” “MMoore,” “Wall,” and “West” are from candidates’ campaigns. “TXDP,” “HCDP,” and “HCRP” are from political parties. “CRHC” is the Conservative Republicans of Harris County and totaled 9,016 applications. “SOS” indicates that the voter downloaded and printed the SOS official form and totaled 4,157 applications.

6. “CCO” indicates a Harris County Clerk’s webform that was returned as a folded card that can simply be split open to process. These totaled only 660. “CC WEB” indicates forms downloaded from the Harris County Clerk’s website that were printed out and returned in an envelope. These are more time consuming to process because the envelope must be opened and totaled 16,283.

7. “65&OLD” is the code for the HCC 65+ Mailer. “65&OLD Y65” indicates the applications that selected an “annual” application and thus will automatically receive a ballot for the November election. We received a total of 50,945 applications from the HCC 65+ Mailer by far the most successful source. This makes for a return rate on the mailer of 13.6%.

8. The HCC 65+ Mailer’s application form was designed for ease of processing. The folded card design enables fast opening compared to an envelope. In addition, the mailers were pre-printed with known eligible voters’ VIUD number, name, and address, then bar coded so that when an application was returned the elections department could simply scan the bar code which would populate the correct data in the system rather than require staff to manually key in the data. Staff could then confirm eligibility as the Election Code requires. These two design changes allow

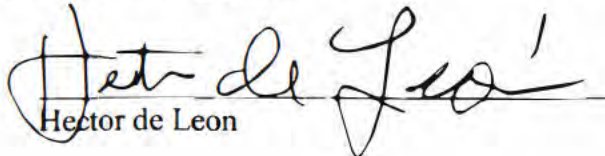
staff to process applications in about half the time than a hand-filled application mailed in an envelope requires.

9. Typically, a lower number of ballots are sent to voters than there were applications submitted because of duplicate requests, and a still lower number of ballots are actually returned than were sent to voters as some voters decide not to vote after all. For the July primary run off, with its low voter turn-out of 9.6%, 65+ voters returned 80,123 ballots out of a total of 83,770 ballots voted by mail in that election. This was a record number of vote-by-mail ballots for a primary run-off. By comparison in the 2016 general election, when 61.33% of the voters turned out to vote, there were slightly less than 100,000 vote-by-mail ballots. Thus, the efforts to encourage voting-by-mail, including the HCC 65+ Mailer, resulted in the total number of vote-by-mail ballots in the primary run off that resembled that of a presidential year general election.

10. As of September 6, we have already received 182,350 vote-by-mail applications of which 171,374 are from voters aged 65 or more.

My name is Hector de Leon, my date of birth is _____, and my address is 1001 Preston, 4th Floor, Houston, Texas 77002, United States. I declare under penalty of perjury that the facts stated in this document are true and correct.

Executed in Harris County, State of Texas, on September 8, 2020.


Hector de Leon

HARRIS COUNTY TX: Count of Mail Ballot Requests by Request Source	
Date: 09/07/2020	For Election 0520 - a_cntsrc v.130925
Time 10:41 am	Includes all requests including cancelled and replaced
Request Source	Count
4X5 BL	3
4X5 BL Y65	472
4X5 Y65	405
4X5 YDIS	3
65&OLD	10,283
65&OLD Y65	40,662
ABBOTT Y65	33
AC	2,487
AC/FPCA	40
ANNA ABS	20
ANNA NR	3
ANNA Y65	995
ANNA YDIS	517
BLK/WHTY65	878
BLK123 Y65	1
BR Y65	479
BRL Y65	1,659
BRL YDIS	3
CAGLE Y65	2,367
CAGLE YDIS	5
CARTER Y65	2
CAYTEN Y65	2
CC WEB ABS	674
CC WEB DIS	248
CC WEB Y65	12,699
CC WEBJAIL	346
CC WEBYDIS	2,316
CCO 65	4
CCO ABS	14
CCO DIS	9
CCO WEB 65	501
CCO WEB NR	2
CCO Y65	86
CCO YDIS	44
CD Y65	537
CRHC Y65	9,014
CRHC YDIS	2
CSOS Y65	118
CSOS YDIS	4
DAVIS	209
DAVIS Y65	3
DP Y65	2
HCDP Y65	2
HCRP Y65	290

EXHIBIT A

Request Source	Count
HCRP YDIS	1
HCTD Y65	1
HISD Y65	1
JN Y65	813
LETTERS	271
MISC	59
MISC Y65	1,211
MISC YDIS	31
MJ Y65	1,379
MJ YDIS	2
MM Y65	158
MMOORE Y65	629
MSOS	2
MSOS Y65	8
PAUL Y65	7,724
PAUL YDIS	1
RED	1
RED&WHITE	4
RED&WHTY65	116
S SOS Y65	4
SARA Y65	137
SD 17	71
SD 17 Y65	35
SENATE 17	1
SHERMN Y65	772
SOS 65	69
SOS ABS	184
SOS DIS	27
SOS E 65	59
SOS E ABS	632
SOS E DIS	44
SOS E YDIS	348
SOS Y65	758
SOS YDIS	262
SOSWEB Y65	1,774
SRW Y65	2,144
SS	4
SS WEB Y65	1
SUSAN Y65	922
TARSHA Y65	2
TURNER	1
TXDP	58
TXDP DIS	4
TXDP Y65	32,630
WALL	1
WALL Y65	103
WALL YDIS	15

Request Source	Count
WEST	1
WEST Y65	1,918
WEST Y65 N	10
WHITE	123
WHITE Y65	106
Total:	144,075

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official capacity
as Harris County Clerk
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

DEFENDANT'S EXHIBIT 11

Declaration of Dr. Bujnowski

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official capacity
as Harris County Clerk
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

UNSWORN DECLARATION OF DEBORAH BUJNOWSKI, PhD, MPH, RD

1. I am a nutritional and cardiovascular epidemiologist and research scientist and the data analytics manager at Harris County Public Health's Office of Science, Surveillance and Technology. I have a master's degree in public health in epidemiology from Tulane University and earned my PhD in public health studies at Saint Louis University.

2. The Office of Science, Surveillance and Technology in the regular course of business collects, analyzes, and tracks health data including on the prevalence of disease in the population of Harris County. Among the data my office reviews regularly is the University of Texas School of Public Health's Health of Houston Survey which may be viewed at the following websites: <https://hhs2010.sph.uth.tmc.edu/SingleMapReport> / ("Health of Houston Survey") and <https://nesstar.sph.uth.edu/webview/>.

3. I compared the Health of Houston Survey with the list of underlying medical conditions that are known or suspected to increase the risk of serious illness from COVID-19 maintained by the United States Centers for Disease Control and Prevention ("CDC") available to the public at this website: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical->

[conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk).

4. Based on the Health of Houston Survey, in Harris County among people aged 18-64:

- a. 4.2% or slightly more than one in twenty-four have had, or currently have, cancer;
- b. 6.9% or slightly more than one in fifteen currently have asthma;
- c. 32.4% or about one in three are obese (body mass index (“BMI”) of 30 or greater);
- d. 24.0% or slightly more than one in four have high blood pressure;
- e. 5.7% or slightly more than one in eighteen have cardiovascular disease, including heart attack, stroke, coronary heart disease, or angina;
- f. 8.5% or slightly more than one in twelve have type 2 diabetes;
- g. 2.2% or slightly more than one in forty-six have chronic obstructive pulmonary disease (“COPD”); and
- h. 14.3% or slightly more than one in seven are smokers.

5. There are other underlying conditions listed by the CDC but these are those that are either the most common or for which we have the most readily available data.

My name is Deborah Bujnowski, my date of birth is __ __, and my address is 2223 West Loop South, Houston, Texas 77027. I declare under penalty of perjury that the facts stated in this document are true and correct.

Executed in Harris County, State of Texas, on September 8__, 2020.



Deborah Bujnowski

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official capacity
as Harris County Clerk
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

DEFENDANT'S EXHIBIT 13

Texas Supreme Court Order

IN THE SUPREME COURT OF TEXAS

No. 20-0671

IN RE STEVEN HOTZE, M.D., HARRIS COUNTY REPUBLICAN PARTY, AND
SHARON HEMPHILL

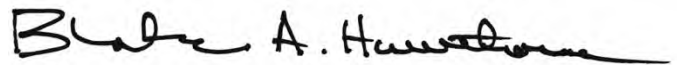
ON PETITION FOR WRIT OF MANDAMUS

ORDERED:

1. The Emergency Motion for Temporary Relief is GRANTED in part. In conformance with the Rule 11 agreement in *State of Texas v. Hollins* (No. 2020-52383, 61st Judicial District Court, Harris County), Real Party in Interest Hollins is ordered to refrain from sending applications to vote by mail to registered voters under the age of 65 who have not requested them until five days after a temporary injunction ruling in *State of Texas v. Hollins*. The Real Party in Interest should inform the Court of any developments in *State of Texas v. Hollins* that may affect this order.

3. The petition for writ of mandamus remains pending before this Court.

Done at the City of Austin, this Wednesday, September 2, 2020.



BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official capacity
as Harris County Clerk
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

DEFENDANT'S EXHIBIT 14

Charles Butt Amicus Letter



www.adjtlaw.com

Wallace B. Jefferson
Board Certified-Civil Appellate Law
Texas Board of Legal Specialization
P: (512) 482-9300
wjefferson@adjtlaw.com

September 2, 2020

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

Re: No. 20-0671; *In re Stephen Hotze, et al.*; In the Supreme Court of Texas

Dear Mr. Hawthorne:

Charles Butt respectfully submits the attached amicus curiae letter in support of the Respondent Chris Hollins in the above-referenced mandamus 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.

AUSTIN

515 Congress Avenue, Suite 2350
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DALLAS

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HOUSTON

1844 Harvard Street
Houston, Texas 75008-4342
TEL 713.523.2358 FAX 713.522.4553

Respectfully submitted,

/s/ Wallace B. Jefferson

Wallace B. Jefferson

State Bar No. 00000019

wjefferson@adjtlaw.com

Rachel A. Ekery

State Bar No. 00787424

rekery@adjtlaw.com

ALEXANDER DUBOSE & JEFFERSON LLP

515 Congress Avenue, Suite 2350

Austin, Texas 78701-3562

Telephone: (512) 482-9300

Facsimile: (512) 482-9303

ATTORNEYS FOR AMICUS CURIAE CHARLES BUTT

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2020, this letter was served via electronic service through eFile.TXCourts.gov on all parties through counsel of record, listed below:

Vince Ryan
State Bar No. 17489500
vince.ryan@cao.hctx.net
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Robert Soard
FIRST ASSISTANT COUNTY
ATTORNEY
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Attorneys for Respondent Harris County Clerk

Blake A. Hawthorne
September 2, 2020
Page 4

Jared Woodfill
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3 Riverway, Ste. 750
Houston, Texas 77056
(713) 751-3080 (Telephone)
(713) 751-3058 (Facsimile)

Counsel for Relators

/s/ Wallace B. Jefferson
Wallace B. Jefferson

September 2, 2020

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

I send my best wishes to you with my thanks for your service to the State.

As you likely know, when the Coronavirus began to impact Texas, our company and many other retailers expanded their programs of allowing pickup of online orders at the store. In addition, our home delivery offerings were expanded. A significant portion of our sales are now transacted without the customer having to interact face-to-face with another individual.

We've worked hard to give customers opportunities to buy their food in the safest way. In light of this, I also support efforts to allow voting by mail, which is the safest means for people to exercise this vital right during this time. The plan announced by the Honorable Chris Hollins, Harris County Clerk, to send applications for mail-in ballots to registered voters in Harris County is permissible under the Election Code and facilitates the execution of the constitutional right to vote.

Texas requires an excuse to vote absentee but, as your Court has recently held, does not permit election officials to second-guess a voter's exercise of that option. Thus, Clerk Hollins's effort to make absentee ballots widely available trusts voters, protecting those who are vulnerable from unnecessary exposure in this new Covid world in which we're living.


It's always been my impression that the more people who vote, the stronger our democracy will be.

My knowledge of the judicial world is not deep, but it seems to me that it is important for both state and federal courts to retain their non-partisan reputation, which today seems to be in jeopardy.

Based on our experience at H-E-B, many people, including those of all ages, are nervous about contracting the virus. By extension, in my opinion, many would be anxious about voting in person. Clerk Hollins has reasonably given these voters a chance to guard against perilous exposure in a manner consistent with this Court's opinion and the Election Code.

Thank you for considering this view.

All good wishes to you.

Respectfully submitted,

Charles Butt

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:

Kennon Welch on behalf of Wallace Jefferson
Bar No. 19
kwelch@adjtlaw.com
Envelope ID: 45926668
Status as of 9/2/2020 4:07 PM CST

Associated Case Party: Steven Hotze

Name	BarNumber	Email	TimestampSubmitted	Status
Jared R.Woodfill		woodfillservice@gmail.com	9/2/2020 4:01:15 PM	SENT

Associated Case Party: Harris County Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Vince Ryan		vince.ryan@cao.hctx.net	9/2/2020 4:01:15 PM	SENT
Cameron Hatzel		Cameron.Hatzel@hctx.net	9/2/2020 4:01:15 PM	SENT
Robert Soard		Robert.Soard@cao.hctx.net	9/2/2020 4:01:15 PM	SENT
Terence O'Rourke		Terence.O'Rourke@cao.hctx.net	9/2/2020 4:01:15 PM	SENT
Susan Hays		hayslaw@me.com	9/2/2020 4:01:15 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Wolfgang PHirczy de Mino, PhD		wphdmphd@gmail.com	9/2/2020 4:01:15 PM	SENT

Associated Case Party: Charles Butt

Name	BarNumber	Email	TimestampSubmitted	Status
Wallace B.Jefferson		wjefferson@adjtlaw.com	9/2/2020 4:01:15 PM	SENT
Rachel A.Ekery		rekery@adjtlaw.com	9/2/2020 4:01:15 PM	SENT

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official capacity
as Harris County Clerk
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

DEFENDANT’S EXHIBIT 15

SOS Excerpts from Briefing in *Lewis v. Hughs*, CA No. 5:20-cv-577 in the United States District Court for the Western District of Texas, San Antonio Division

voting to *the denial or abridgment of the right to vote.*” *Id.* at 600–01. Moreover, any inconvenience is more than outweighed by Texas’s obligation to prohibit “all undue influence in elections from power, bribery, tumult, or other improper practice.” Tex. Const. art. VI, § 2(c). Texas is constitutionally bound to enforce such “regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box.” Tex. Const. art. VI, § 4. That is why Plaintiffs’ claims should be dismissed.

But the Court need not reach the merits because Plaintiffs’ claims suffer from threshold jurisdictional and procedural defects. Sovereign immunity bars their claims because the Secretary does not enforce the laws being challenged. Moreover, Plaintiffs lack standing because any prediction that these laws will affect their ballots is speculative.

ARGUMENT

I. Sovereign Immunity Bars Plaintiffs’ Claims

Sovereign immunity precludes claims against state officials unless the *Ex parte Young* exception applies. *See McCarthy ex rel. Travis v. Hawkins*, 381 F.3d 407, 412 (5th Cir. 2004). *Ex parte Young* “rests on the premise—less delicately called a ‘fiction’—that when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes.” *Va. Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 255 (2011) (citation omitted). Consequently, *Ex parte Young* applies only when the defendant enforces the challenged statute. *See Ex parte Young*, 209 U.S. 123, 157 (1908); *City of Austin v. Paxton*, 943 F.3d 993, 1001–02 (5th Cir. 2019); *Morris v. Livingston*, 739 F.3d 740, 746 (5th Cir. 2014) (a proper defendant has both “the particular duty to enforce the statute in question and a demonstrated willingness to exercise that duty”).

The Secretary does not implement the four aspects of Texas law that Plaintiffs challenge. Local officials do. The four injunctions Plaintiffs request in their prayer for relief make this plain. First, Plaintiffs request an injunction “requiring . . . prepaid postage on the ballot carrier envelopes used to return the marked mail-in ballots to the counties.” ECF 1 at 41. The Secretary does not provide ballot

carrier envelopes—local officials do. *See* Tex. Elec. Code § 86.002(a). Second, Plaintiffs seek an injunction prohibiting “rejecting vote-by-mail ballots if those ballots are postmarked by 7:00 p.m. on election day and received by the county election administrator before it canvases the election.” ECF 1 at 41. The Secretary does not reject (or accept) vote-by-mail ballots—local officials do. *See* Tex. Elec. Code § 86.011(a), (c). Third, Plaintiffs pray for an injunction either prohibiting “rejecting mail-in ballots on signature verification grounds” or requiring that voters be provided “the opportunity to cure any issues with signature verification before their ballots are rejected.” ECF 1 at 41–42. The Secretary is not responsible for accepting vote-by-mail ballots or providing notice—local officials are. *See* Tex. Elec. Code § 87.041(a) (“The early voting ballot board shall open each jacket envelope for an early voting ballot voted by mail and determine whether to accept the voter’s ballot.”); *id.* § 87.0431(a) (providing “the presiding judge of the early voting ballot board shall deliver written notice of the reason for the rejection of a ballot to the voter”); *id.* § 87.027 (a signature verification committee can be established by the county). Fourth, Plaintiffs ask for an injunction prohibiting “implementing, enforcing, or giving any effect to the Voter Assistance Ban.” ECF 1 at 42. Plaintiffs complain that Texas law “criminalizes” certain conduct. *Id.* ¶ 105. The Secretary does not prosecute criminal offenses—local officials do. *See, e.g.,* Tex. Gov’t Code § 44.115.

Plaintiffs do not identify any enforcement action the Secretary could take. Instead, they cite the Secretary’s title, “chief elections officer,” ECF 1 ¶ 26 (citing Tex. Elec. Code § 31.001(a)). But that title is not “a delegation of authority to care for any breakdown in the election process.” *Bullock v. Calvert*, 480 S.W.2d 367, 372 (Tex. 1972). The Secretary does not oversee the local officials who *do* enforce the challenged provisions. Local officials do not report to the Secretary. They are elected or appointed locally, and they are not bound by the Secretary’s advice. *In re Stalder*, 540 S.W.3d 215, 218 n.9 (Tex. App.—Hous. [1st Dist.] 2018, no pet.) (expressing doubt that a local party chair is bound by the “assistance and advice” provided by the Secretary of State when administering party primary); *see*

also *United States v. State of Texas*, 445 F. Supp. 1245, 1261 (S.D. Tex. 1978) (“[this county official] has, for a number of years (in the face of advice from the Secretary of State) continued to apply . . . an erroneous rule of law.”), *aff’d sub nom. Symm v. United States*, 439 U.S. 1105 (1979); *Ballas v. Symm*, 351 F. Supp. 876, 888 (S.D. Tex. 1972), *aff’d*, 494 F.2d 1167 (5th Cir. 1974) (observing that “the Secretary’s opinions are unenforceable at law and are not binding.”).¹

Even if the Secretary could coerce local officials, a federal court could not order her to do so. The *Ex parte Young* exception is limited to injunctions “prevent[ing] [a state official] from doing that which he has no legal right to do.” *Ex parte Young*, 209 U.S. at 159. It does not authorize injunctions directing “affirmative action.” *Id.*; see also *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 691 n.11 (1949) (noting sovereign immunity applies “if the relief requested cannot be granted by merely ordering the cessation of the conduct complained of but will require affirmative action by the sovereign”). Thus, sovereign immunity bars “cases where the [defendant] sued could satisfy the court decree only by acting in an official capacity.” *Zapata v. Smith*, 437 F.2d 1024, 1026 (5th Cir. 1971).

II. Plaintiffs Lack Standing

A. Injury in Fact

1. Individual Plaintiffs Allege Speculative Possible Future Injuries, Not Certainly Impending Ones

The Supreme Court has “repeatedly reiterated that ‘threatened injury must be *certainly impending* to constitute injury in fact,’ and that ‘[a]llegations of *possible* future injury’ are not sufficient.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013). Plaintiffs have not plausibly alleged such an injury here.

Plaintiffs do not allege they *will be* prevented from voting. Instead, they allege they *may* have trouble voting. Plaintiffs are “*concerned* that [their] ballot[s] *may* be rejected because of the Signature

¹ Thus, a recent dispute about the interpretation of the Election Code was resolved, not when the Secretary issued advice to local officials, but when the Attorney General filed a petition for a writ of mandamus against local officials charged with approving or rejecting mail-in ballot applications under the Election Code. See *In re State of Texas*, No. 20-0394, 2020 WL 2759629 (Tex. May 27, 2020).

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official capacity
as Harris County Clerk
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

DEFENDANT'S EXHIBIT 16

Harris County Commissioner's Court Order Regarding
Budget for Harris County Clerk to Administer Safe,
Secure, Accessible, Fair, and Efficient Election (25 August
2020)



CHRIS HOLLINS

COUNTY CLERK

Recording the Major Events of Your Life and Protecting Your Right to Vote

August 18, 2020

COVID-19

Honorable Judge and Commissioners Court
1001 Preston, 9th Floor
Houston, Texas 77002

	YES	NO	ABSTAIN
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Judge Lina Hidalgo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Steve Radack	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

RE: Budget Request for the November 2020 General Election

Dear Court Members:

As you know, the County Clerk’s Office has made it our top priority to administer a safe, secure, accessible, fair, and efficient election for the voters of Harris County this November. To ensure this outcome, our office is executing the S.A.F.E. Elections Plan, a robust set of 24 initiatives, many of which were rolled out or piloted in the July Primary Runoff Election. These initiatives will need to be continued or expanded in November to guarantee voter safety. We expect to be operating in a prolonged global pandemic, and we further expect record voter turnout – as many as 1.7 million voters across Harris County.

The initiatives include, but are not limited to:

- Providing personal protective equipment (PPE) to all election workers and all voters who need it;
- Increasing the number of voting centers, to a record 120 Early Voting sites and a record 808 Election Day sites;
- Increasing the number of election workers to as many as 12,000 to accommodate the increase in voting centers;
- Extending the Early Voting period to a record three weeks;
- Extending Early Voting hours, to include multiple nights open until 10:00 PM and one night of 24-hour voting;
- Promoting Vote-By-Mail within the bounds of the law, and ensuring the proper infrastructure to process a record number of mail ballots;
- Introducing Drive-Thru Voting at multiple sites across Harris County;
- Relocating our entire elections operation to NRG Arena (already approved by this Court); and
- Increasing our call center responsiveness and reserve staff during this time of unprecedented change and uncertainty.

We are requesting a total of \$17.171 million in additional funding to execute the S.A.F.E. Elections Plan, to be distributed as follows:

- \$16.069 million to PIC Fund 1020 - 51600000 (eligible for C.A.R.E.S. Act);
- \$1.002 million to General Fund 1000 - 51600000 (Election Cost Center); and
- \$0.100 million to General Fund 1000 - 51620000 (ADA Cost Center).

We will continue to work with the Office of Budget Management to confirm all cost estimates. If you have any questions regarding this request, please contact Danny Sumrall at 713.274.8674.

Respectfully,

Christopher G. Hollins
County Clerk
Harris County, Texas

CH/ch

Attachments (2)

cc: Douglas Ray, Office of Vince Ryan, Harris County Attorney
Kevin Seat, Budget Management Department

Presented to Commissioners Court

August 25, 2020

Approve: G/E



CHRIS HOLLINS

COUNTY CLERK

Recording the Major Events of Your Life and Protecting Your Right to Vote

FOR IMMEDIATE RELEASE

June 15, 2020

CONTACT: Rosio Torres-Segura

rosio.torres-segura@cco.hctx.net

(713) 274-9725

Harris County Clerk Chris Hollins Launches 23-Point S.A.F.E. Plan Ahead of July Primary Runoff Elections

(Houston, TX) – Today, Clerk Hollins announced S.A.F.E., a robust set of 23 initiatives to ensure the July Primary Runoff Elections and the November General Election are safe, secure, accessible, fair, and efficient. The framework addresses the challenges of administering an election during an unprecedented global pandemic through thoughtful consideration of voter and poll-worker safety and innovating conventional practices to make voting more efficient.

“Since taking office on June 1st, I’ve spent my first two weeks learning, meeting with staff and stakeholders, and creating dedicated working groups to tackle the challenges we are facing as we head into July and November. Through these discussions, we developed S.A.F.E. to communicate to voters and staff what they can expect at the polls,” **said Harris County Clerk Chris Hollins**. “My commitment to all the residents of Harris County is to administer a safe, secure and fair election this July and again in November. This office will do everything we can to give every Harris County voter an equal say at the polls and give you the peace of mind that your vote will be counted.”

More information on the 23 S.A.F.E. initiatives below:

SAFE is our commitment to voters that you can exercise your right to vote without putting your health at risk. We will:

1. Provide PPE to all poll workers and voters who need it;
2. Optimize the floor plans of polling locations for safety and social distancing; and
3. Promote and maximize vote-by-mail within the bounds of the law.

Our election will be **SECURE**. It is ours—no one else’s—and we will not allow any tampering. We will:

4. Ensure the security of our voting systems and hardware; and
5. Respond proactively to any reports of voter intimidation, coercion, or fraud.

Our election will be **ACCESSIBLE**. Harris County voters can cast their votes at more polling sites and can do so quickly and conveniently. We will:

6. Utilize data to increase the number and optimize the locations of polling sites;
7. Procure sufficient additional machines from other jurisdictions and provide them with exceptional technical support;
8. Allocate machines across polling sites based on known traffic patterns and expected turnout;
9. Accurately report wait times across the County during the Early Voting period and on Election Day;
10. Provide increased voting hours during the Early Voting period;
11. Ensure ADA accessibility across County polling sites; and
12. Increase curbside voting and potentially introduce drive-thru-voting.



CHRIS HOLLINS

COUNTY CLERK

Recording the Major Events of Your Life and Protecting Your Right to Vote

Our election will be **FAIR**. Every Harris County voter has equal access to the polls, and your vote is your voice in our democracy. We will:

13. Increase outreach to all voters and groups traditionally left out of the democratic process;
14. Seek and incorporate meaningful feedback from all stakeholders;
15. Count every vote and ensure the accuracy of election results;
16. Reduce the time it takes to report results on Election Day; and
17. Proactively engage provisional ballot voters on how to cure their ballots so they may be counted.

And our election will be **EFFICIENT**. We will ensure that the resources are in place for our elections to run smoothly despite today's unprecedented conditions. We will:

18. Recruit more than enough poll workers to operate polling locations during the Early Voting period and on Election Day;
19. Train poll workers and clarify standard operating procedures for effective operation in today's historic challenges;
20. Prepare resources in anticipation of increased vote-by-mail usage by Harris County voters;
21. Put key performance indicators (KPIs) in place to measure our preparedness in ensuring a S.A.F.E. election for the voters of Harris County;
22. Optimize the ballot layout to allow voters to cast their votes more quickly; and
23. Procure the next generation of voting machines for use beyond 2020.

The first election of Clerk Hollins's administration will be the 2020 Primary Runoff. The Early Voting Period for this election will be June 29-July 10, and Election Day is on July 14.

For more information go to harrisvotes.com and follow @harrisvotes on Twitter, Facebook and Instagram.

###

NOTE: "Establish COVID-19 testing and tracing protocols for CCO staff, election workers, and potentially affected voters" was later formalized as a 24th S.A.F.E. initiative, and it became necessary to relocate elections operations to NRG Arena in order to function at full strength while enforcing safety and social distancing protocols.

Details of CCO budget request for November 2020 General Election

Sum of Total Cost Initiative	CRF Eligible		Prior Budgets	Grand Total
	No	Yes		
01 - PPE		\$ 2,527,256		\$ 2,527,256
02 - Floorplans		\$ 58,300		\$ 58,300
03 - Promote VBM		\$ 2,071,440		\$ 2,071,440
05 - Intimidation Call Center		\$ 84,999		\$ 84,999
06 - Optimize Locations		\$ 662,400	\$ (60,000)	\$ 602,400
07 - Tech Support		\$ 364,800		\$ 364,800
09 - Wait Times		\$ 61,500		\$ 61,500
10 - Increase Hours		\$ 192,406		\$ 192,406
11 - ADA	\$ 100,000	\$ 382,000		\$ 482,000
12 - Curbside & DTV		\$ 704,664		\$ 704,664
13 - Increase Outreach		\$ 1,675,044	\$ (886,000)	\$ 789,044
14 - Stakeholder Feedback	\$ 400			\$ 400
16 - Reduce Reporting Times	\$ 84,000			\$ 84,000
17 - Curing		\$ 147,300		\$ 147,300
18 - Recruitment		\$ 12,375,194	\$ (2,674,000)	\$ 9,701,194
19 - Training & SOP		\$ 728,200		\$ 728,200
20 - VBM Infrastructure		\$ 4,965,775		\$ 4,965,775
21 - KPI	\$ 80,000			\$ 80,000
24 - COVID Testing Protocol		\$ 249,000		\$ 249,000
Adjustment of July expenses	\$ (3,000,000)	\$ 3,000,000		\$ -
GF needs (net)	\$ 3,837,500			\$ 3,837,500
Grand Total	\$ 1,101,900	\$ 30,250,278	\$ (3,620,000)	\$ 27,732,178

	PIC	GF
Total SAFE Request (net of GF budget)	\$ 23,894,678	
SAFE (CARES-eligible)	\$ 23,630,278	
SAFE (not CARES-eligible)		\$ 264,400
Total GF needs (net)		\$ 3,837,500
Available Funds to Use	\$ (10,561,837)	
1020	\$ (5,318,275)	
2602	\$ (3,696,620)	
2699	\$ (708,914)	
2601	\$ (120,000)	
2306	\$ (718,027)	
Corrections	\$ 3,000,000	\$ (3,000,000)
Needed Funds	\$ 16,068,441	\$ 1,101,900

TAB B: ORIGINAL PETITION

Cause No. _____

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official
capacity as Harris County Clerk,
Defendant.

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In the District Court of

Harris County, Texas

_____ Judicial District

**Plaintiff's Original Verified Petition and
Application for Temporary Restraining Order,
Temporary Injunction, and Permanent Injunction**

The State of Texas, by and through Ken Paxton, the Attorney General of Texas, files this Original Verified Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction against Defendant Chris Hollins, in his official capacity as Harris County Clerk. The State seeks an injunction against Hollins to prevent him from sending over two million applications for mail ballots to every registered voter in Harris County, irrespective of whether any given voter requested an application or even qualifies to vote by mail. Hollins' actions will create confusion, facilitate fraud, and is an illegal *ultra vires* act because it exceeds his statutory authority.

Discovery Control Plan

1. Discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.3.

Claims for Relief

2. Plaintiff seeks injunctive relief. Therefore, this suit is not governed by the expedited actions process in Tex. R. Civ. P. 169.

Venue

3. Venue is proper in Harris County under section 15.002(a)(1), (a)(2), and (a)(3) of the Texas Civil Practices and Remedies Code.

Waiver of Sovereign Immunity

4. Neither sovereign immunity nor governmental immunity applies to the State of Texas's *ultra vires* claim. "The basic justification for th[e] *ultra vires* exception to sovereign immunity is that *ultra vires* acts—or those acts without authority—should not be considered acts of the state at all." *Hall v. McRaven*, 508 SW.3d 232, 238 (Tex. 2017) (internal quotation marks and citations omitted). As a result, "*ultra vires* suits do not attempt to exert control over the state—they attempt to reassert the control of the state over one of its agents." *Id.*

5. In addition, Section 31.005(b) waives Defendant's sovereign immunity to this enforcement action.

Parties

6. The plaintiff is the State of Texas, by and through its Attorney General, Ken Paxton. *Yett v. Cook*, 115 Tex. 205, 221, 281 S.W. 837, 842 (1926) ("That the state has a justiciable 'interest' in its sovereign capacity in the maintenance and operation of its municipal corporations in accordance with law does not admit of serious doubt."); *see also State v. Naylor*, 466 S.W.3d 783, 790 (Tex. 2015) ("As a sovereign entity, the State has an intrinsic right to enact, interpret, and enforce its own laws."); Tex. Elec. Code § 31.005(b) (providing that "the secretary may seek enforcement of [an] order [under section 31.005] by a temporary restraining order or a writ of injunction or mandamus obtained through the attorney general").

7. The defendant is Chris Hollins in his official capacity as the Harris County Clerk. *See Hall*, 508 S.W. at 240 (stating that "an *ultra vires* suit must lie against the allegedly responsible government actor in his official capacity") (internal

quotation marks omitted); Tex. Elec. Code § 31.005 (proper defendant is “a person performing official functions in the administration of any part of the electoral processes” who “fails to comply” with an order from the Secretary of State).

8. Defendant may be served with process at the Harris County Civil Courthouse, 201 Caroline, Suite 310, Houston, Texas 77002.

Legal Background

9. It is well-established law that, as a subdivision of the State of Texas, Harris County possesses only those powers granted to it by the state legislature. *E.g.*, *Town of Lakewood v. Bizios*, 493 S.W.3d 527, 536 (Tex. 2016). Defendant Chris Hollins is an agent of that County and cannot take any action in his official capacity that exceeds the scope of the County’s powers.

10. It is also well-established law that Texas has a strong presumption that voters will cast their ballots in person. “The history of absentee voting legislation in Texas shows that the Legislature has been both engaged and cautious in allowing voting by mail.” *In re State*, 602 S.W.3d 549, 558 (Tex. 2020). A qualified voter may vote by mail only (a) “if the voter expects to be absent from the county of the voter’s residence on election day,” Tex. Elec. Code § 82.001; (b) if the voter has a sickness or physical condition that prevents the voter from appearing at the polling place on election day, *id.* §82.002; (c) “if the voter is 65 years of age or older on election day,” *id.* § 82.003; or (d) if “at the time the voter’s early voting ballot application is submitted, the voter is confined in jail,” *id.* § 82.004.

11. “To be entitled to vote an early voting ballot by mail, a person who is eligible for early voting must make an application for an early voting ballot to be voted by mail as provided by this title.” *Id.* § 84.001(a). “An application must be submitted by mail to the early voting clerk.” *Id.* § 84.001(c). Hollins is the early voting clerk for Harris County. *See id.* § 83.002.

12. “The early voting clerk shall conduct the early voting in each election.” *Id.* § 83.001(a). “The clerk is an officer of the election in which the clerk serves.” *Id.* § 83.001(b). “The clerk has the same duties and authority with respect to early voting as a presiding election judge has with respect to regular voting, except as otherwise provided by this title.” *Id.* § 83.001(c). “The presiding judge is in charge of and responsible for the management and conduct of the election at the polling place of the election precinct that the judge serves.” *Id.* § 32.071.

13. As an early voting clerk, Hollins is empowered (and required) to “mail without charge an appropriate official application form for an early voting ballot to each applicant requesting the clerk to send the applicant an application form.” *Id.* § 84.012. No statute, however, empowers an early voting clerk to send a vote-by-mail application form to any applicant who does not request one from the clerk. And power to send unsolicited applications to millions of voters, *the vast majority of whom do not qualify to vote by mail*, cannot fairly be implied from the statutory scheme.

Factual Background

14. On August 25, 2020, the Harris County Clerk announced on Twitter, “Update: our office will be mailing every registered voter an application to vote by mail. To learn more about voting by mail in Harris County, Please visit <http://HarrisVotes.com/votebymail>.” The tweet also stated, “Check your mail! Every Harris County registered voter will be sent an application to vote by mail next month.” <https://twitter.com/HarrisVotes/status/1298372637912072193>.

15. Currently, there are approximately 2.37 million registered voters in Harris County. During the 2016 general election, based on votes cast for presidential candidates, a little over 100,000 voters in Harris County voted by mail. *See* Cumulative Report, Harris County, Texas, General and Special Elections, November 8, 2016, available at <https://harrisvotes.com/HISTORY/20161108/cumulative/cumulative.pdf>. Moreover, the majority of those who chose not to vote by mail are not eligible to do so.

As of July 1, 2019, only 10.9% of the Harris County population is 65 years or older. *See* U.S. Census Bureau, QuickFacts, Harris County, Texas, *available at* <https://www.census.gov/quickfacts/fact/table/harriscountytexas/PST045219>. And from 2014-2018, only 6.4% of the Harris County population under 65 had a disability based on ACS survey data. *Id.* In addition, the number of voters eligible but confined or absent from the county on election day is necessarily limited. Thus, one can safely conclude the vast majority of registered Harris County voters to whom Hollins intends to send applications to vote by mail are not legally eligible to cast mail-in ballots.

16. Harris County has already sent vote-by-mail applications to every eligible voter over the age of 65, all of whom *are* eligible to vote by mail. “Nearly 400K vote-by-mail applications sent to Harris Co. seniors ahead of election,” Shelley Childers, Thursday, June 11, 2020 (<https://abc13.com/texas-mail-in-ballot-voting-coronavirus-during/6243587/>) (“[Hollins] said the county clerk’s office sent out nearly 400,000 mail-in-ballot applications to Harris County voters who are 65 and older.”).

17. On August 27, 2020, Keith Ingram, Director of Elections for the Texas Secretary of State, sent a letter to Hollins, stating, “It has come to our office’s attention that Harris County intends to send an application to vote by mail to every registered voter in the county. Such action would be contrary to our office’s guidance on this issue and an abuse of voters’ rights under Texas Election Code Section 31.005.” Exhibit 1.

18. Ingram further stated that sending unsolicited vote-by-mail application forms “will confuse voters about their ability to vote by mail.... An official application from your office will lead many voters to believe they are allowed to vote by mail, when they do not qualify,” and “by sending an application to every registered voter, you could impede the ability of persons who need to vote by mail to do so. Clogging up the vote by mail infrastructure with potentially millions of applications from persons who do not qualify to vote by mail will make it more difficult for eligible mail voters to receive their balloting materials in a timely manner and will hamper efforts to qualify and count these ballots when received by your office.” *Id.*

19. The letter concluded, “[Y]ou must immediately halt any plan to send an application for ballot by mail to all registered voters and announce its retraction. If you have not done so by noon on Monday, August 31, 2020, I will request that the Texas Attorney General take appropriate steps under Texas Election Code 31.005.” *Id.*

20. On August 28, 2020, Hollins responded that he disagreed with Ingram and would not halt his plans to distribute applications to vote by mail to all registered voters of Harris County regardless of whether such applications were requested or whether the voter is eligible to vote by mail. Exhibit 2. Rather, Hollins indicated that he would include literature with the mailings that would explain the criteria for voting mail ballots. *Id.*

21. As of noon, August 31, 2020, Hollins had not complied with Ingram’s demand.

**The State of Texas requests that
Hollins’s *ultra vires* acts be enjoined**

22. The Court should issue such an injunction because Hollins lacks the authority to send vote-by-mail applications to every registered voter in Harris County. His decision to do so is therefore *ultra vires*. That is particularly true here, where Hollins plans to send millions of applications regardless of whether those recipients request such applications and regardless of whether they even qualify to vote a mail ballot.

23. In an *ultra vires* case, a plaintiff must allege, and ultimately prove, that an officer acted without legal authority or failed to perform a purely ministerial act. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

24. Counties in Texas are limited to exercising those powers that are specifically conferred on them by statute or the constitution. *Guynes v. Galveston Cty.*, 861 S.W.2d 861, 863 (Tex. 1993). The County has no sovereign power of its own: It “is a subordinate and derivative branch of state government.” *Avery v. Midland Cty.*, 406

S.W.2d 422, 426 (Tex. 1966), *rev'd on other grounds*, 390 U.S. 474 (1968); see TEX. CONST. art. IX, § 1 (“The Legislature shall have power to create counties for the convenience of the people”); *id.* art. XI, § 1 (“The several counties of this State are hereby recognized as legal subdivisions of the State.”). As a political subdivision, the County “represent[s] no sovereignty distinct from the state and possess[es] only such powers and privileges” as the State confers upon it. *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 430 (Tex. 2016) (quotation omitted); accord *Quincy Lee Co. v. Lodol & Bain Engineers, Inc.*, 602 S.W.2d 262, 264 (Tex. 1980).

25. A commissioners court also has power “necessarily implied to perform its duties.” *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 29 (Tex. 2003). Such powers must, however, be “indispensable” to perform such an express grant of authority, *Foster v. City of Waco*, 255 S.W. 1104, 1105–06 (Tex. 1923). “Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.” *Id.*

26. Hollins is expressly empowered to send vote-by-mail applications to anyone who applies. Tex. Elec. Code § 84.012.

27. But there is no statute empowering County Clerks to send applications to vote by mail to voters who have *not* requested such an application. And Hollins’s plan to send vote-by-mail applications to *every* registered voter, regardless of whether the application was requested or whether the recipient is qualified to vote a mail ballot, is not an exercise of power that is necessarily implied to perform his duties.

28. To the contrary, sending millions of unsolicited vote-by-mail applications will affirmatively undermine the Election Code. Unlike some other states, Texas allows ballot by mail only under limited circumstances. Though early voting clerks are charged with reviewing ballot applications, the integrity of the system relies heavily on voters to make good-faith determinations of whether they may vote by mail.

29. The first step in that process is sending applications to vote by mail to voters who first ask for them. Voters who take the step of requesting a vote-by-mail application have presumably reviewed the eligibility criteria in good faith.

30. By contrast, there is no such check in sending vote-by-mail applications to every registered voter. As an initial matter, there is no guarantee that every individual registered to vote in Harris County remains eligible to vote at all in Harris County. Leaving aside death or disqualification of voters (e.g., for committing a felony), Texas is a diverse and mobile society. When people move, they often do not inform the County Clerk in their old place of residence that they have registered elsewhere. At best, applications sent to these individuals will simply go unused. More likely, these excess applications will become ripe material for voter fraud. *See Veasey v. Abbott*, 830 F.3d 216, 239 (5th Cir. 2016) (en banc) (“[T]he potential and reality of fraud is much greater in the mail-in-ballot context than with in-person voting.”).

31. Even if the voter rolls in Harris County were perfect, however, sending out applications to vote by mail undermines the function of the system. Voting by mail is a cumbersome process with many steps to limit fraud. Most voters do not qualify for voting by mail. Flooding Harris County with millions of unrequested applications on the eve of an election may thus prevent the timely processing of those who *are* eligible to vote by mail. This is especially true since, as noted above, Harris County has already sent applications to every voter over the age of 65, who *are* eligible to vote by mail.

32. But sending vote-by-mail applications to every voter, without any attempt at all to tailor such a mass-mailing to persons who definitively are eligible to vote by mail, is certain to result in large numbers of vote-by-mail applications from voters who are ineligible to vote by mail. Regardless of whether Hollins includes literature in his mailing attempting to explain vote-by-mail criteria, it is inevitable that voters who receive applications from a public official with the imprimatur of state authority will wrongly assume they are eligible to vote a mail ballot. This confusion is especially

likely to occur given the large amounts of misinformation provided over the last several months regarding who is and is not eligible to vote by mail in light of the COVID-19 epidemic. *See In re State*, 602 S.W.3d 549, 557-560 (Tex. 2020) (rejecting argument by Harris County Clerk that lack of immunity to COVID-19 constitutes a “disability” qualifying voters to cast mail ballots); Letter to County Officials from Attorney General Ken Paxton, May 1, 2020, at 1 (providing guidance on qualifications to vote by mail based on disability in light of “misreporting and public confusion” surrounding that issue).

33. The court must thus infer that some of those ineligible voters will submit the applications and be incorrectly approved to vote. Even if Hollins’ office is perfect in screening out ineligible voters, this could itself lead to disenfranchisement because voters who submit deficient applications to vote by mail after a certain date may not receive notice that they must attend the polls in person. Tex. Elec. Code. § 86.008(c). The Election Code cannot give the Harris County Clerk the implied power to cause such confusion and disenfranchisement.

34. This interpretation of the Election Code is consistent with guidance issued by the State’s Chief Election Officer. In keeping with her role to “maintain uniformity in the application, operation, and interpretation of” the Election Code, Tex. Elec. Code § 31.003, the Secretary of State advised Collins that sending a vote-by-mail application to every registered voter “impedes the free exercise of a citizen’s voting rights.” Specifically, the Secretary determined that mailing vote-by-mail application forms “will confuse voters about their ability to vote by mail.” Exhibit 1.

35. The Secretary’s office also observed that “by sending an application to every registered voter, you could impede the ability of persons who need to vote by mail to do so. Clogging up the vote by mail infrastructure with potentially millions of applications from persons who do not qualify to vote by mail will make it more difficult for eligible mail voters to receive their balloting materials in a timely manner and will hamper efforts to qualify and count these ballots when received by your office.” *Id.*

36. Hollins has rejected that guidance and declared his intent to proceed with his plan to send a vote-by-mail application to every registered voter in Harris County, regardless of whether that application was requested or whether the recipient qualifies to vote by mail.

37. Hollins' plan to send a vote-by-mail application to every registered voter is *ultra vires*. He should be enjoined.

Application for a Temporary Restraining Order

38. "The purpose of a TRO is to preserve the status quo, which we have defined as the last, actual, peaceable, non-contested status which preceded the pending controversy." *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (footnote and internal quotation marks omitted).

39. If the Court does not issue the requested temporary restraining order, the status quo will be irrevocably broken. Hollins' public statements and communications with the Secretary's office indicate that he intends to carry out his plan soon. Once that happens, there will be no way to recall more than two million pieces of mail.

40. The State will suffer irreparable injury in that event. As a sovereign entity, Texas has an inherent right to enforce its own law. *Naylor*, 466 S.W.3d at 790. And the State "indisputably has a compelling interest in preserving the integrity of its election process." *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). That right will be fundamentally undermined the moment that mail goes out. And no other way exists to make Plaintiff whole. The State's sovereign interest cannot be remedied with monetary damages. State officers will be required to combat the confusion that will inevitably result from Hollins's action. Even if they were able to divert their full attention to that task, it likely will not repair the resulting damage. Moreover, time they spend on this issue will distract them from their other critical duties just weeks before an election.

41. Therefore, the State is entitled to a temporary restraining order preserving the status quo by enjoining Hollins from sending unsolicited vote-by-mail applications until the temporary injunction hearing.

Application for a Temporary Injunction

42. For similar reasons, the State is entitled to a temporary injunction. A temporary injunction's purpose is to preserve the status quo of the litigation's subject matter pending a trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

43. Plaintiff must prove three elements to obtain a temporary injunction: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Id.*

44. Plaintiff describes its probable right to recovery above. Plaintiff is not required to establish that it will prevail at trial to obtain a temporary injunction. *Butnaru* at 211.

45. An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard. *Butnaru* at 204. If Hollins is not enjoined and sends the applications, damages are not available as a remedy and would not compensate Plaintiff in any event for the reasons discussed above.

46. Therefore, Plaintiff is entitled to a temporary injunction enjoining Hollins from committing the *ultra vires* act of sending unsolicited vote-by-mail applications to every registered voter.

Application for a Permanent Injunction

47. Plaintiff requests trial on the merits, where it will seek a permanent injunction enjoining Hollins from committing the *ultra vires* act of sending unsolicited vote-by-mail applications to every registered voter.

Prayer

48. Therefore, Plaintiff seeks a temporary restraining order, temporary injunction, and permanent injunction enjoining Hollins from sending unsolicited vote-by-mail applications to every eligible voter in Harris County.

Request for Disclosure

49. Plaintiff requests that Defendant disclose, within 50 days of the service of this request, the information or material described in Texas Rules of Civil Procedure 194.2.

Notice of Hearing

50. Please take notice that a hearing on Plaintiff's Application for a Temporary Restraining Order will take place on _____, 2020 at [time] by remote videoconference.

Dated: August 31, 2020.

Respectfully submitted,

KEN PAXTON
Attorney General

JEFFERY C. MATEER
First Assistant Attorney General

RYAN L. BANGERT
Deputy First Assistant Attorney General

DARREN L. MCCARTY
Deputy Attorney General for Civil Litigation

CHARLES K. ELDRED
Assistant Attorney General

KATHLEEN HUNKER
Assistant Attorney General

/s/ Charles K. Eldred
CHARLES K. ELDRED
State Bar No. 00793681

Special Litigation Division
OFFICE OF THE ATTORNEY GENERAL OF TEXAS
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 936-1706 • fax (512) 320-0167
charles.eldred@oag.texas.gov

ATTORNEYS FOR PLAINTIFF

Cause No. _____

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official
capacity as Harris County Clerk,
Defendant.

§
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§
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§
§
§
§

In the District Court of

Harris County, Texas

_____ Judicial District

Declaration of Keith Ingram

My name is Keith Ingram. I am over eighteen years of age, am of sound mind, and am capable of making this declaration. I am the Director of Elections for the Texas Secretary of State.

I have read the above Original Verified Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction. I verify that the facts stated therein are within my personal knowledge and are true and correct.

Keith Ingram

Sworn and subscribed before me on _____, 2020.

Notary Public, State of Texas

EXHIBIT 1

The State of Texas



Elections Division
P.O. Box 12060
Austin, Texas 78711-2060
www.sos.state.tx.us

Phone: 512-463-5650
Fax: 512-475-2811
For Relay Services
(800) 252-VOTE (8683)

Ruth R. Hughes
Secretary of State

August 27, 2020

Chris Hollins
Harris County Clerk
201 Caroline St., 3rd Floor
Houston, Texas 77002

Dear Mr. Hollins:

It has come to our office's attention that Harris County intends to send an application to vote by mail to every registered voter in the county. Such action would be contrary to our office's guidance on this issue and an abuse of voters' rights under Texas Election Code Section 31.005.

As you know, the Texas Election Code requires that voters have a qualifying reason to vote by mail. They must be 65 years or older, disabled, out of the county while voting is occurring, or confined in jail but otherwise eligible to vote. It is not possible that every voter in Harris County will satisfy one or more of these requirements.

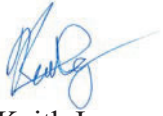
By sending applications to all voters, including many who do not qualify for voting by mail, your office may cause voters to provide false information on the form. Your action thus raises serious concerns under Texas Election Code Section 84.0041(a)(1), (2).

At a minimum, sending an application to every registered voter will confuse voters about their ability to vote by mail. Earlier this year and continuing, there have been a number of lawsuits challenging the fact that Texas law requires a reason to vote by mail. Thus far the challenged law remains the same in spite of these lawsuits. An official application from your office will lead many voters to believe they are allowed to vote by mail, when they do not qualify.

Finally, by sending an application to every registered voter, you could impede the ability of persons who need to vote by mail to do so. Clogging up the vote by mail infrastructure with potentially millions of applications from persons who do not qualify to vote by mail will make it more difficult for eligible mail voters to receive their balloting materials in a timely manner and will hamper efforts to qualify and count these ballots when received by your office.

For all of these reasons, you must immediately halt any plan to send an application for ballot by mail to all registered voters and announce its retraction. If you have not done so by noon on Monday, August 31, 2020, I will request that the Texas Attorney General take appropriate steps under Texas Election Code 31.005.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Keith Ingram', with a stylized flourish extending from the end.

Keith Ingram
Director of Elections

From: Keith Ingram <KIngram@sos.texas.gov>
Sent: Friday, August 28, 2020 5:28 PM
To: Hollins, Chris (CCO)
Cc: Winn, Michael (CCO); Adam Bitter; Ray, Douglas (CAO); Aiyer, Jay (CAO); Stevens, Beth (CCO)
Subject: RE: Letter regarding ABBM mailing

Sensitivity: Personal

Dear Mr. Hollins:

Thank you for your response to my letter. Our office appreciates and shares your concern to prevent unqualified voters from applying to vote by mail. Unfortunately, indiscriminately sending millions of applications for mail ballots to all registered voters in Harris County, regardless of whether they requested an application or whether they even qualify to vote by mail, will only lead to confusion and undermine our shared goal of ensuring an efficient and fair election process. The Election Code clearly empowers clerks to send mail ballot applications to voters who request them. Clerks lack authority, however, to undertake the unsolicited mass mailing you propose, and for good reason. Flooding the County with millions of unrequested applications on the eve of an election is certain to result in large numbers of improper mail ballot requests. That reality most certainly raises serious concerns under Section 84.0041. Specifically, the mailing likely will cause voters who are not qualified to vote by mail to apply nonetheless.

I am happy to speak with you prior to the Monday deadline about options for better educating voters who qualify to vote by mail about their statutory rights and the availability of applications. But, I stand by my letter of August 27, and I must reiterate our demand that you immediately halt any plan to send an application for ballot by mail to all registered voters and announce its retraction no later than by noon on Monday, August 31, 2020.

Keith Ingram
Director, Elections Division
Office of the Secretary of State
800-252-VOTE(8683)
www.sos.state.tx.us/elections/index.shtml
For Voter Related Information, please visit:



The information contained in this email is intended to provide advice and assistance in election matters per §31.004 of the Texas Election Code. It is not intended to serve as personal legal advice to you for any matter. Please review the law yourself, and consult with an attorney when your legal rights are involved.

From: Hollins, Chris (CCO) <Chris.Hollins@cco.hctx.net>
Sent: Friday, August 28, 2020 2:18 PM
To: Keith Ingram <KIngram@sos.texas.gov>
Cc: Winn, Michael (CCO) <Michael.Winn@cco.hctx.net>; Adam Bitter <ABitter@sos.texas.gov>; Ray, Douglas (CAO) <Douglas.Ray@cao.hctx.net>; Aiyer, Jay (CAO) <Jay.Aiyer@cao.hctx.net>; Stevens, Beth (CCO) <Beth.Stevens@cco.hctx.net>
Subject: Re: Letter regarding ABBM mailing
Sensitivity: Personal

CAUTION: This email originated from OUTSIDE of the SOS organization. Do not click on links or open attachments unless you are expecting the email and know that the content is safe. If you believe this to be a malicious or phishing email, please send this email as an attachment to informationsecurity@sos.texas.gov.

Hi Keith,

Haven't heard back from you here. Given the deadline you included in your letter, it would behoove us to connect by Monday. When can you meet?

Thanks,

Chris

Christopher G. Hollins
County Clerk, Harris County, Texas
(m) 713.899.3204

On Aug 27, 2020, at 11:42 PM, Hollins, Chris (CCO) <Chris.Hollins@cco.hctx.net> wrote:

Hi Keith,

We share your concerns of voters who do not qualify to vote by mail applying. We intend to include detailed guidance along with the applications to inform voters that they may not qualify and to describe who does qualify. They would then have to complete the application and sign the application, stating that what they put on it is true.

I am sure you know the law back to front, but I am pasting it here for everyone's convenience. I don't see how providing information and resources to voters in any way touches on (a)(1), (2).

(a) A person commits an offense if the person:

- (1) knowingly provides false information on an application for ballot by mail;
- (2) intentionally causes false information to be provided on an application for ballot by mail;
- (3) knowingly submits an application for ballot by mail without the knowledge and authorization of the voter; or
- (4) knowingly and without the voter's authorization alters information provided by the voter on an application for ballot by mail.

I would welcome a conversation on the topic. Please let me know your availability.

Best,

Chris

From: Keith Ingram <KIngram@sos.texas.gov>
Sent: Thursday, August 27, 2020 5:13 PM
To: Hollins, Chris (CCO) <Chris.Hollins@cco.hctx.net>
Cc: Winn, Michael (CCO) <Michael.Winn@cco.hctx.net>; Adam Bitter <ABitter@sos.texas.gov>
Subject: Letter regarding ABBM mailing
Sensitivity: Personal

Mr. Hollins,

Attached is a letter from our office regarding the ABBM mailing.

Keith Ingram

Director, Elections Division

Office of the Secretary of State

800-252-VOTE(8683)

www.sos.state.tx.us/elections/index.shtml

For Voter Related Information, please visit:

<image001.png>

The information contained in this email is intended to provide advice and assistance in election matters per §31.004 of the Texas Election Code. It is not intended to serve as personal legal advice to you for any matter. Please review the law yourself, and consult with an attorney when your legal rights are involved.

TAB C: RULE 11 AGREEMENT



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 31, 2020

Seth Hopkins
Harris County Attorney
Via email: Seth.Hopkins@cao.hctx.net

Re: Cause No. 2020-52383; *The State of Texas v. Chris Hollins, in his official capacity as Harris County Clerk*, In the 61st Judicial District Court, Harris County, Texas

Dear Mr. Hopkins:

In tweet dated August 25, 2020 (<https://twitter.com/HarrisVotes/status/1298372637912072193>), the Harris County Clerk announced, "Update: our office will be mailing every registered voter an application to vote by mail. To learn more about voting by mail in Harris County, Please visit <http://HarrisVotes.com/votebymail>." The tweet also stated, "Check your mail! Every Harris County registered voter will be sent an application to vote by mail next month." The Office of the Attorney General has filed a lawsuit seeking to enjoin the Harris County Clerk from following through with this plan.

This letter serves as an agreement under Rule 11 of the Texas Rules of Civil Procedure that (1) the Harris County Clerk will not send applications to vote by mail to registered voters under the age of 65 who have not requested them until five days after a ruling on our application for a temporary injunction, (2) the parties will request a temporary injunction hearing at a mutually agreeable time no later than September 9, (3) the Office of the Attorney General will not seek a temporary restraining order, and (4) representatives from the Harris County Clerk and the Secretary of State will discuss this matter today at a mutually agreeable time after 4:00 p.m. CT.

If you agree, please sign and return this letter to me, or email me your agreement. Thank you for your attention.

Sincerely,

/s/ Charles K. Eldred
Charles K. Eldred
Assistant Attorney General
Attorney for Plaintiff

/s/ Seth Hopkins by Charles K. Eldred by permission
Seth Hopkins
Assistant County Attorney
Attorney for Defendant

TAB D: ORDER,
***IN RE HOTZE*, NO. 20-0671 (TEX. SUP. CT.)**

IN THE SUPREME COURT OF TEXAS

No. 20-0671

IN RE STEVEN HOTZE, M.D., HARRIS COUNTY REPUBLICAN PARTY, AND
SHARON HEMPHILL

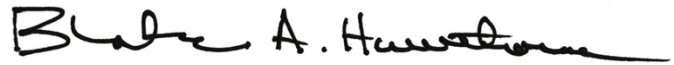
ON PETITION FOR WRIT OF MANDAMUS

ORDERED:

1. The Emergency Motion for Temporary Relief is GRANTED in part. In conformance with the Rule 11 agreement in *State of Texas v. Hollins* (No. 2020-52383, 61st Judicial District Court, Harris County), Real Party in Interest Hollins is ordered to refrain from sending applications to vote by mail to registered voters under the age of 65 who have not requested them until five days after a temporary injunction ruling in *State of Texas v. Hollins*. The Real Party in Interest should inform the Court of any developments in *State of Texas v. Hollins* that may affect this order.

3. The petition for writ of mandamus remains pending before this Court.

Done at the City of Austin, this Wednesday, September 2, 2020.



BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

**TAB E: ORDER ON TEMPORARY INJUNCTION
APPLICATION, *STATE V. HOLLINS*,
NO. 2020-52383 (HARRIS CTY. DIST. CT.)**

CAUSE NO. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

vs.

CHRIS HOLLINS, in his official
Capacity as Harris County Clerk,
Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

127TH JUDICIAL DISTRICT

ORDER ON TEMPORARY INJUNCTION APPLICATION

Background

On August 25, 2020, the Harris County Clerk, Chris Hollins, tweeted the following:



Two days later, Keith Ingram, the Elections Director for the Secretary of State, sent a letter to Mr. Hollins asking him to “immediately halt any plan to send an application for ballot by mail to all registered voters.”

Ingram and Hollins spoke by phone on August 31 and discussed Hollins’s plan and Ingram’s objections. The State of Texas filed its Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction on that same day. The Parties agreed to litigate the issues at a temporary injunction hearing on September 9.

The State seeks to restrain Hollins pursuant to section 31.005 of the Texas Election Code, which states:

Sec. 31.005. PROTECTION OF VOTING RIGHTS.

(a) The secretary of state may take appropriate action to protect the voting rights of the citizens of this state from abuse by the authorities administering the state's electoral processes.

(b) If the secretary determines that a person performing official functions in the administration of any part of the electoral processes is exercising the powers vested in that person in a manner that impedes the free exercise of a citizen's voting rights, the secretary may order the person to correct the offending conduct. If the person fails to comply, the secretary may seek enforcement of the order by a temporary restraining order or a writ of injunction or mandamus obtained through the attorney general.

TEX. ELEC. CODE § 31.005.

The State also contends that Hollins is acting *ultra vires* under the State's interpretation of Election Code section 84.012, which reads, "[t]he early voting clerk shall mail without charge an appropriate official application form for an early voting ballot to each applicant requesting the clerk to send the applicant an application form." *Id.* § 84.012. In the State's view, section 84.012 prohibits the clerk from sending an application for mail ballot unless and until the voter has requested one.¹

¹ Voting by mail is a multi-step process. First, a registered voter must submit to the early voting clerk an application indicating the basis on which the voter is qualified to vote by mail. TEX. ELEC. CODE §§ 84.001, 84.007-.009. The early voting clerk must then process the application and mail a ballot to the voter. *Id.* at § 86.001. Finally, the voter must return the marked ballot to the early voting clerk within the statutorily prescribed deadlines. *Id.* at §§ 86.006, 86.007. Importantly, Mr. Hollins plans to send only applications, not ballots, to all registered voters.

Having considered the evidence and arguments presented by the Parties, the Court finds that Mr. Hollins's contemplated action is not *ultra vires* and does not impede the free exercise of voting rights. No writ shall issue.

Analysis

1. *Ultra Vires* Claim

A government official acts *ultra vires* if the official “acted without legal authority or failed to perform a ministerial act.” *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). Here, the Court must determine whether the statutory provisions of the Texas Election Code permit the conduct contemplated by Mr. Hollins. The Court's primary objective in construing a statute is to ascertain the Legislature's intent. *City of Rockwall v. Hughes*, 246 S.W.3d. 621, 625 (Tex. 2008). To do so, the Court reads the statute as a whole, not individual provisions in isolation. *Union Carbide Corp. v. Synatzske*, 438 S.W.3d 39, 51 (Tex. 2014).

As County Clerk, Mr. Hollins serves as the “early voting clerk” for the November 2020 election in Harris County. TEX. ELEC. CODE § 83.002. The early voting clerk has “the same duties and authority with respect to early voting as a presiding election judge has with respect to regular voting” *Id.* at § 83.001(c). Thus, as it relates to early voting, Mr. Hollins “is in charge of and responsible for the management and conduct of the election” *Id.* at § 32.071. In Texas, early voting is conducted in person and by mail. *Id.* at § 81.001. Accordingly, the Election Code gives Mr. Hollins a broad grant of authority to conduct and manage mail-in voting, subject only to any express limitation on that power by the Legislature. *See Chambers-Liberty Counties Navigation District v. State*, 575 S.W.3d 339,

352 (Tex. 2019) (finding officials’ conduct to be *ultra vires* where the conduct conflicted with statutes circumscribing an otherwise broad grant of authority).

The Legislature has spoken at length on the mechanisms for mail-in voting. There are no fewer than 42 Election Code provisions on the subject. *See* TEX. ELEC. CODE, Chs. 84, 86 & 87. In those provisions, the Legislature has made clear that in order to vote by mail a voter first “must make an application for an early voting ballot.” *Id.* at § 84.001. But, as to how the voter is to obtain the application, the Election Code is silent.

There is no code provision that limits an early voting clerk’s ability to send a vote by mail application to a registered voter. Section 84.012 contains no prohibitive language whatsoever, but rather, requires the early voting clerk to take affirmative action in the instance a voter does request an application to vote by mail. That the clerk must provide an application upon request does not preclude the clerk from providing an application absent a request.

Indeed, there are a number of code provisions that demonstrate the Legislature’s desire for mail voting applications to be freely disseminated. For example, section 1.010 mandates that a county clerk with whom mail voting applications are to be filed (*e.g.*, Mr. Hollins) make the applications “readily and timely available.” *Id.* at § 1.010. In addition, section 84.013 requires that vote by mail applications be provided “in reasonable quantities without charge to individuals or organizations requesting them for distribution to voters.” *Id.* at § 84.013. Further, the Court notes that, consistent with these provisions, both the Secretary of State and the County make the application for a mail ballot readily available on their respective websites.

Against the backdrop of this statutory scheme, the Court cannot accept the State's interpretation of section 84.012. To do so would read into the statute words that do not exist and would lead to the absurd result that any and every private individual or organization may without limit send unsolicited mail voting applications to registered voters, but that the early voting clerk, who possesses broad statutory authority to manage and conduct the election, cannot. Mr. Hollins's contemplated conduct does not exceed his statutory authority as early voting clerk and therefore is not *ultra vires*.

2. Section 31.005 Claim

With respect to the State's invocation of section 31.005 — a statute intended to *protect* Texans' exercise of the right to vote — as a basis to restrain Mr. Hollins, the Court is confounded. It appears the State contends that Mr. Hollins's actions “may impede[] the free exercise of a citizen's voting rights,” *id.* at § 31.005, by fostering confusion over voter eligibility to vote by mail. That contention rings hollow, however. The State offered no evidence to support such a claim, and the document Mr. Hollins intends to send to voters, as set forth below, accurately and thoroughly informs them of Texas law concerning mail-in voting.

Para recibir esta información o la Solicitud de Voto por Correo en Español, comuníquese con:

Để nhận được thông tin này hoặc Đơn Xin Bầu Cử Bằng Thư bằng Tiếng Việt, xin liên lạc:

要接收此信息或中英文的郵遞投票申請表格，請聯繫：

QUESTIONS? CONTACT:
vbm@harrisvotes.com
713-755-6965



DO YOU QUALIFY TO VOTE BY MAIL?



READ THIS BEFORE APPLYING FOR A MAIL BALLOT
The Harris County Clerk's Office is sending you this application as a service to all registered voters.
However, NOT ALL VOTERS ARE ELIGIBLE TO VOTE BY MAIL.
READ THIS ADVISORY TO DETERMINE IF YOU ARE ELIGIBLE BEFORE APPLYING.



You are eligible to vote by mail if:

1. You are age 65 or older by Election Day, November 3, 2020;
2. You will be outside of Harris County for all of the Early Voting period (October 13th - October 30th) and on Election Day (November 3rd);
3. You are confined in jail but otherwise eligible to vote;
4. You have a disability. Under Texas law, you qualify as disabled if you are sick, pregnant, or if voting in person will create a likelihood of injury to your health.
 - The Texas Supreme Court has ruled that lack of immunity to COVID-19 can be considered as a factor in your decision as to whether voting in person will create a likelihood of injury to your health, but it cannot be the only factor. You can take into consideration aspects of your health and health history that are physical conditions in deciding whether, under the circumstances, voting in person will cause a likelihood of injury to your health.
 - **YOU DO NOT QUALIFY TO VOTE BY MAIL AS "DISABLED" JUST BECAUSE YOU FEAR CONTRACTING COVID-19. YOU MUST HAVE AN ACCOMPANYING PHYSICAL CONDITION. IF YOU DO NOT QUALIFY AS "DISABLED," YOU MAY STILL QUALIFY IN CATEGORIES 1 - 3 ABOVE.**
 - It's up to you to determine your health status—the Harris County Clerk's Office does not have the authority or ability to question your judgment. If you properly apply to vote by mail under any of the categories of eligibility, the Harris County Clerk's Office must send you a mail ballot.
 - To read guidance from the U.S. Centers for Disease Control and Prevention (CDC) on which medical conditions put people at increased risk of severe illness from COVID-19, please visit: www.HarrisVotes.com/CDC

If you have read this advisory and determined that you are eligible to vote by mail, please complete the attached application and return it to the Harris County Clerk's Office! Voting by mail is a secure way to vote, and it is also the safest and most convenient way to vote.

To receive CRITICAL ELECTION UPDATES, sign up at: www.harrisvotes.com/text

For Official Use Only: VUID #/County Election Pct #
1230000000/906

APPLICATION FOR BALLOT BY MAIL

CHRIS HOLLINS



Fill in (or verify) your name and address

☒ Select your reason for using Ballot By Mail

☒ Select your Election(s)

Sign your application, affix a stamp, and place in the mail

PROTECTING YOUR RIGHT TO VOTE

1 APPLICANT'S VOTER REGISTRATION:

Name/Address/City/State/Zip Code

JOHN Q. PUBLIC
123 MAIN STREET
HOUSTON, TEXAS 77078-0044

PHONE NUMBER:
(Optional)

PREFERRED MAILING ADDRESS
(REQUIRED FOR OUT OF COUNTY & IN JAIL):
Address/City/State/Zip Code



1230000000

2 REASON FOR APPLYING FOR BALLOT BY MAIL:

☐ Age 65 or older
☐ Have a disability
☐ **Outside the county throughout Early Voting & Election Day (Oct. 13 - Oct. 30, 2020 & Nov. 3, 2020)
☐ Confined in jail

(**Dates You Will be Outside the County: / / - / / - / /)

3 ELECTIONS FOR WHICH YOU ARE APPLYING:

☐ ALL 2020 ELECTIONS
☐ November 3, 2020

SIGN YOUR APPLICATION: If you cannot sign, you must have a person witness your mark. If a person helped you fill out this application you must give the name of that person on the line immediately below your signature. In any single election, it is a Class A misdemeanor for any person to sign a ballot application as a witness for more than one applicant, unless the second and subsequent application are related to the witness as a parent, spouse, child, sibling, or grandparent. If you need additional information call the Texas Secretary of State at 1-800-252-8683. COMMON CONTRACT CARRIER: You may submit via a common or contract carrier which is a bona fide, for profit carrier.

4 I certify that the information given on this application is true, and I understand that giving false information on this application is a crime. SIGN HERE X

5 OPTIONAL - FILL OUT THIS SECTION ONLY IF YOU ASSISTED A VOTER WITH THIS FORM

☐ Check this box if acting as an ASSISTANT

X Signature of Assistant

PRINT FULL NAME of Assistant

Assistant's Address of Residence or Title of Elections Official

Assistant's Relationship to Applicant

6 OPTIONAL - FILL OUT THIS SECTION ONLY IF YOU ARE A WITNESS FOR A VOTER WITH THIS FORM

☐ Check this box if acting as a WITNESS

X FOR WITNESS: Applicant, if unable to sign, shall make a mark in the presence of witness. If applicant is unable to make mark, the witness shall check here _____.

X Signature of Witness

PRINT FULL NAME of Witness

Witness' Address of Residence or Title of Elections Official

Witness' Relationship to Applicant

The Texas Supreme Court has instructed that the decision to apply for a ballot to vote by mail is within the purview of the voter. *In re State of Texas*, 602 S.W.3d 549 (Tex. 2020). This Court firmly believes that Harris County voters are capable of reviewing and understanding the document Mr. Hollins proposes to send and exercising their voting rights in compliance with Texas law.

Finally, the irony and inconsistency of the State's position in this case is not lost on the Court. The State has stipulated that it has no objection to unsolicited mail ballot applications being sent to voters age 65 or over. But being 65 or older is only one of four statutorily permitted bases for voting by mail in Texas, the others being disability,² absence and incarceration. TEX. ELEC. CODE §§ 82.001-.004. The State offers no evidence or compelling explanation for its arbitrary and selective objection to the mailing of vote by mail applications to registered voters under the age of 65.

The Court DENIES the State of Texas's application for temporary injunction.

Signed on September 11, 2020.



R.K. Sandill
Judge, 127th District Court
Harris County, Texas

² The Parties dedicated a great deal of briefing and argument to the issue of whether and to what degree Texas voters may qualify to vote by mail under the disability category during the COVID-19 pandemic. This issue, however, is not before this Court, having been decided by the Texas Supreme Court in *In Re State of Texas*, 602 S.W.3d 549 (Tex. 2020).

TAB F: JOINT EXHIBIT 19

Harris County Method of Voting VBM Categories - 2016-2020

Year	Election	By mail	Early	Election Day	Total	in person	Percent by mail	VBM Category as Mailed Out (not returned or counted)									
			in person	in person				Age	A%	Disability	D%	Jail	J%	Absentee	Ab%	Total	
<u>2016</u>																	
	Dem Primary	14,828	72,777	139,675	227,280	212,452	6.5%	17,221	92.5%	391	2.1%	1	0.0%	1,010	5.4%	18,623	
	Rep Primary	24,459	110,368	194,941	329,768	305,309	7.4%	27,626	95.3%	224	0.8%	0	0.0%	1,150	4.0%	29,000	
	Primary Total	39,287	183,145	334,616	557,048	517,761	7.1%	44,847	94.2%	615	1.3%	1	0.0%	2,160	4.5%	47,623	
	Dem PrimRO	11,433	10,364	8,537	30,334	18,901	37.7%	18,465	92.6%	543	2.7%	0	0.0%	943	4.7%	19,951	
	Rep PrimRO	16,119	12,111	9,624	37,854	21,735	42.6%	29,398	95.6%	276	0.9%	0	0.0%	1,086	3.5%	30,760	
	PRO total	27,552	22,475	18,161	68,188	40,636	40.4%	47,863	94.4%	819	1.6%	0	0.0%	2,029	4.0%	50,711	
	General	101,594	883,977	353,327	1,338,898	62,371	7.6%	92,187	80.0%	2,640	2.3%	32	0.0%	20,391	17.7%	115,250	
<u>2018</u>																	
	Dem Primary	22,695	70,152	75,135	167,982	145,287	13.5%	31,367	96.8%	523	1.6%	22	0.1%	495	1.5%	32,407	
	Rep Primary	24,500	61,425	70,462	156,387	131,887	15.7%	29,472	98.9%	115	0.4%	6	0.0%	219	0.7%	29,812	
	Primary Total	47,195	131,577	145,597	324,369	277,174	14.5%	60,839	97.8%	638	1.0%	28	0.0%	714	1.1%	62,219	
	Dem PrimRO	19,472	15,601	22,517	57,590	38,118	33.8%	33,827	96.3%	621	1.8%	10	0.0%	680	1.9%	35,138	
	Rep PrimRO	16,549	17,914	16,496	50,959	34,410	32.5%	31,386	98.6%	151	0.5%	6	0.0%	290	0.9%	31,833	
	PRO total	36,021	33,515	39,013	108,549	72,528	33.2%	65,213	97.4%	772	1.2%	16	0.0%	970	1.4%	66,971	
	General	98,709	767,162	354,000	1,219,871	106,938	8.1%	95,998	86.7%	1,700	1.5%	108	0.1%	12,944	11.7%	110,750	
<u>2020</u>																	
	Dem Primary	28,346	116,812	183,338	328,496	300,150	8.6%	34,877	93.4%	375	1.0%	153	0.4%	1,948	5.2%	37,353	
	Rep Primary	25,564	82,025	88,134	195,723	170,159	13.1%	29,699	97.8%	168	0.6%	51	0.2%	456	1.5%	30,374	
	Primary Total	53,910	198,837	271,472	524,219	470,309	10.3%	64,576	95.3%	543	0.8%	204	0.3%	2,404	3.5%	67,727	
	Dem PrimRO	54,299	65,979	42,191	162,469	108,170	33.4%	77,411	92.2%	3,249	3.9%	258	0.3%	3,038	3.6%	83,956	
	Rep PrimRO	29,448	17,800	18,943	66,191	36,743	44.5%	55,822	97.7%	460	0.8%	74	0.1%	784	1.4%	57,140	
	PRO total	83,747	83,779	61,134	228,660	144,913	36.6%	133,233	94.4%	3,709	2.6%	332	0.2%	3,822	2.7%	141,096	

TAB G: PLAINTIFF'S EXHIBIT 10

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official
capacity as Harris County Clerk,
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

Temporary Injunction Hearing

September 9, 2020

PLAINTIFF'S EXHIBIT 10

HarrisVotes 8-26-20 Tweet (Disability determination)



Harris County Clerk ✓

@HarrisVotes



This is correct - It is the responsibility of voters to make their own health determinations, and the County Clerk's Office does not have the authority to question the voter's judgement. For more info on voting by mail visit HarrisVotes.com/votebymail.



Dat Le @DatLe · Aug 26

Replying to @HarrisVotes

NOTE: A disability is something that YOU define for yourself—nobody can ask you for proof.

Voters can take the possibility of being infected into consideration along with health/health history to determine whether they need to vote by mail under the "Disability" provision.

9:45 AM · Aug 26, 2020 · Sprout Social

2 Retweets 1 Quote Tweet 3 Likes



TAB H: PLAINTIFF'S EXHIBIT 21

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official
capacity as Harris County Clerk,
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

Temporary Injunction Hearing

September 9, 2020

PLAINTIFF'S EXHIBIT 21

Media Release – Harris County Clerks Drive-Thru
Voting Pilot is Highly Successful

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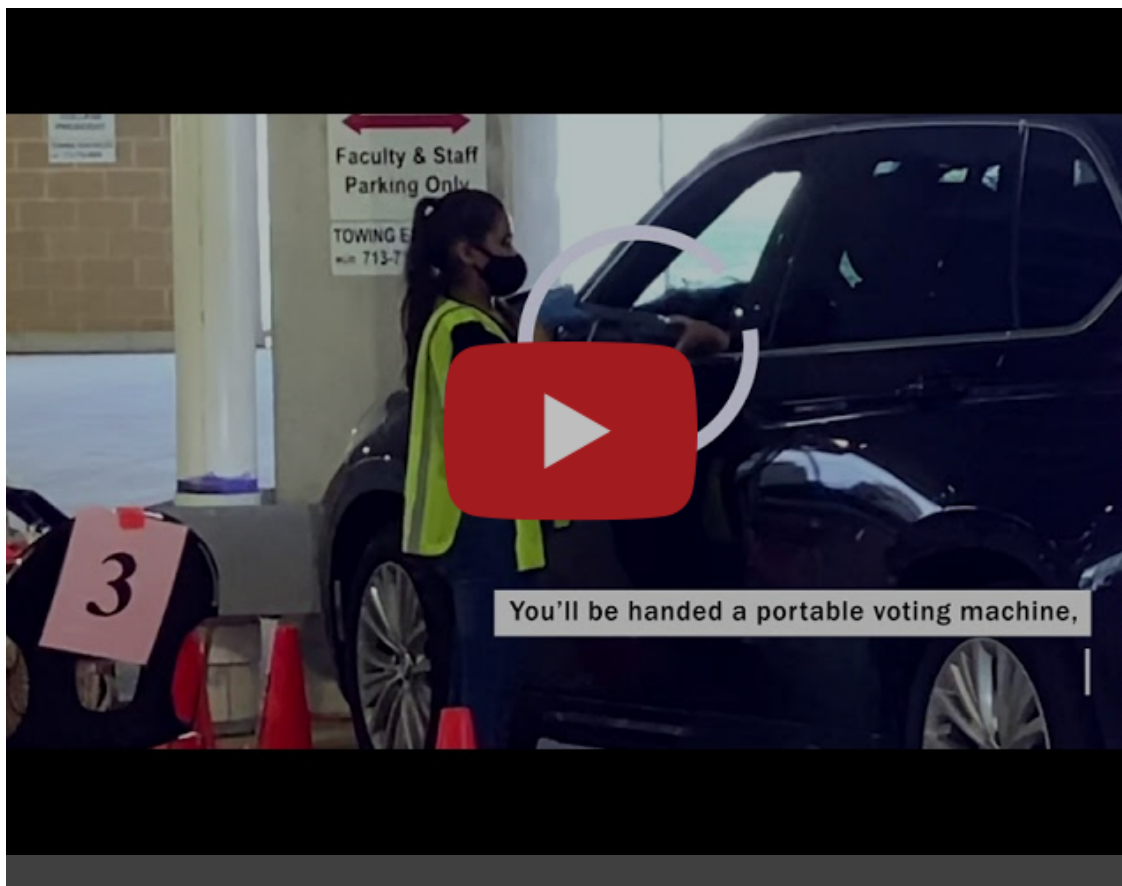
CHRIS HOLLINS
Harris County Clerk



FOR IMMEDIATE RELEASE
July 22, 2020

CONTACT: Rosio Torres-Segura
rosio.torres-segura@cco.hctx.net
(713) 274-9725

Harris County Clerk's Drive-Thru Voting Pilot Is Highly Successful
Voters Would Overwhelmingly Use the Service Again and Recommend It to Others



(Houston, TX) — On Friday, July 10, the last day of Early Voting during the July Primary Runoff Elections, the Harris County Clerk's Office piloted Drive-Thru Voting as an additional option for voters to cast their ballot safely in the midst of the COVID-19 pandemic. This was the first time in Texas history that an elections office held Drive-Thru Voting, where many voters at a time could cast their ballot without leaving the comfort and safety of their car.

"My number one priority is to keep voters and poll workers safe," said **Harris County Clerk Chris Hollins**. "The feedback we received from the Drive-Thru Voting pilot proves that voters felt safe exercising their right to vote and that it was an easy and efficient alternative to going inside a voting

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Voters raved about the experience. Of the 200 voters who voted at the Drive-Thru Voting site, 141 completed an optional survey reviewing the new service. Some wrote that Drive-Thru Voting was “easy to use” and others cited how the service “made voters feel safe.” One respondent even wrote that it was their “best voting experience EVER!”

Voters would overwhelmingly use the service again and recommend it to others. When asked on a scale of 0 through 10, with 10 being extremely likely, whether they would consider using the same service if it is provided again in the future, voters on average gave a score of 9.70. On the same scale, when asked whether they would recommend Drive-Thru Voting to another voter, voters on average gave a score of 9.66.

Fear of exposure to COVID-19 was the top reason for using Drive-Thru Voting. When asked why voters chose to vote using the Drive-Thru Voting service as opposed to the traditional walk-in voting method, 82 (58%) cited worries about health and safety in the midst of the pandemic. Other frequently mentioned reasons included the convenience of the service and pure curiosity about the experience of Drive-Thru Voting.

Drive-Thru Voting was piloted from 7:00 AM to 10:00 PM on Friday, July 10th, 2020, at Houston Community College – West Loop.

Raw anonymous survey results can be found [HERE](#). The survey was available in English, Spanish, Chinese and Vietnamese. Out of 200 voters, 141 completed the survey.

###



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[201 Caroline, 4th Floor, Rm. 460](#)

[Houston, TX 77002](#)

[\(713\) 274-8600](#)

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TAB I: PLAINTIFF'S EXHIBIT 2

Cause No. 2020-52383

THE STATE OF TEXAS,
Plaintiff,

v.

CHRIS HOLLINS, in his official
capacity as Harris County Clerk,
Defendant.

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In the District Court of

Harris County, Texas

127th Judicial District

Temporary Injunction Hearing

September 9, 2020

PLAINTIFF'S EXHIBIT 2

Harris County Vote by Mail FAQs



Who can Vote by Mail?

You are [eligible to Vote by Mail](#) in Texas if:

- (1) You are age 65 or older by Election Day, November 3, 2020;
- (2) You will be outside of Harris County for all of the Early Voting period (October 13th - October 30th) and on Election Day (November 3rd);
- (3) You are confined in jail but otherwise eligible to vote; or
- (4) You have a disability.

What qualifies as having a disability, and what does that mean in the age of coronavirus (COVID-19)?

Under Texas law, you qualify as having a disability if you are sick, pregnant, or if voting in person will create a likelihood of injury to your health.

The Texas Supreme Court has ruled that lack of immunity to COVID-19 can be considered as a factor in your decision as to whether voting in person will create a likelihood of injury to your health, but it cannot be the only factor. **You do not qualify to vote by mail as “disabled” if you have a fear of contracting COVID-19 but are otherwise healthy. To qualify, you must have an accompanying physical condition.** If you do not qualify as “disabled,” you may still qualify in one of the other categories (1-3 above).

When can I apply to Vote by Mail? Is there a deadline?

You can [apply to Vote by Mail](#) at any time, but our office must receive (not just postmarked) your application by October 23 in order to send you a mail ballot for the November General Election. You can also drop off your application in-person to any of our [County Clerk office locations](#) across Harris County.

Due to potential delays with the postal service, **PLEASE DO NOT WAIT – [APPLY NOW!](#)**

ADVISORY:



CHRIS HOLLINS

COUNTY CLERK

Recording the Major Events of Your Life and Protecting Your Right to Vote



Mail delivery in Texas is currently experiencing delays. Please take this into consideration when planning to send your Vote by Mail application or ballot so that it arrives in time to be processed and counted.

Where can I get an application to Vote by Mail?

[Registered voters](#) may obtain an application by:

- Downloading it from [HarrisVotes.com/VoteByMail](https://www.harrisvotes.com/votebymail)
- Calling 713.755.6965, or
- Sending an email to bbm@cco.hctx.net

What if I'm not registered to vote?

You can check your voting status at Vote411.org.

To register to vote, there are currently two Texas organizations that will assist you with your registration remotely, Register2Vote.org and [The League of Women Voters - Houston](https://www.leagueofwomen.org/). Both of these organizations will supply you with a no contact, postage-paid voter registration card.

Do I have to apply to Vote by Mail for each election?

If you are 65 years of age or older, or have a disability, you can apply for an annual ballot – this means that your Vote by Mail option will be registered for that entire calendar year. For example, if you apply now your option will be registered for the November 2020 Election and any additional election through December 31, 2020. You will need to [reapply each calendar year](#) for an annual Vote by Mail ballot.

Can I receive assistance with filling out the Vote by Mail application?

Yes, [you may receive assistance](#) in completing and submitting your application from a friend or a relative. Your assistant MUST carefully review the instructions and complete the additional WITNESS/ASSISTANT section of the application.

ADVISORY:

Mail delivery in Texas is currently experiencing delays. Please take this into consideration when planning to send your Vote by Mail application or ballot so that it arrives in time to be processed and counted.



How do I submit my application to Vote by Mail?

An application to Vote by Mail can be submitted in any of the following manners:

- (5) Regular residential mail via United States Postal Service;
- (6) In-person drop off at any of the [Harris County Clerk Annex locations](#) during regular business hours through October 12, 2020;
- (7) Common or contract carrier (e.g., personal courier, FedEx, UPS, or other contracted mail service); or
- (8) Fax machine or e-mail. **If you choose this option, the Harris County Clerk's office MUST receive your original, completed paper application by one of the above methods (1-3) within four (4) business days of your email or fax.**

When will I get my Vote by Mail ballot?

Domestic ballots will begin to be mailed out in mid-September for those who have submitted applications by that time. If you submit an application after mid-September, your ballot will be mailed out within seven (7) days of your application being received.

Voters outside the United States: Your ballots will be mailed on or before September 26 (the 45th day before Election Day), or within seven (7) days of your application being received.

How do I return my completed ballot to the Election office? Is there a deadline?

A completed mail ballot MUST be returned to the Harris County Clerk's Office in the Official Carrier Envelope provided to you. It may be returned in any of the following manners:

- (1) Regular residential mail via United States Postal Service;
 - a. Ballot must be postmarked by 7:00 p.m. on Election Day and must be received by 5:00 p.m. on November 4 (the day after Election Day)
- (2) In-person drop off at any of the [Harris County Clerk Annex locations](#) during regular business hours through Election Day, November 3, 2020, at 7:00 p.m.;
 - a. You must present an acceptable form of [photo identification](#)
 - b. If a voter does not possess and cannot reasonably obtain an acceptable form of photo identification, the voter [may show a List B identification](#) and complete a reasonable impediment declaration (RID)
 - c. Only the voter may deliver their ballot in person



CHRIS HOLLINS

COUNTY CLERK

Recording the Major Events of Your Life and Protecting Your Right to Vote



- (3) Common or contract carrier; such as personal courier, or FedEx or UPS, or other contracted mail service
- Ballot must be received by 7:00 p.m. on Election Day
 - If the carrier provides receipt mark indicating a time before 7:00 p.m. on Election Day, it may be received by 5:00 p.m. on November 4 (the day after Election Day)

Are there different deadlines if I am overseas or serving in the military?

All ballots being **returned in person** must be received by 7:00 p.m. on Election Day. If you are **overseas** and returning your ballot through the mail or a common or contract carrier, our office must receive it by 5 P.M. on November 8 (five days after Election Day). If you are **serving in the military** and returning your ballot through the mail or a common or contract carrier, our office must receive it by 5 P.M. on November 9 (six days after Election Day).

ADVISORY:

Mail delivery in Texas is currently experiencing delays. Please take this into consideration when planning to send your Vote by Mail application or ballot so that it arrives in time to be processed and counted.

Will my Vote by Mail ballot count if I choose not to vote on certain issues or candidates?

Yes. All the votes you cast will be counted. You have the right to skip any measure or contest.

How does the Harris County Clerk's Office process my Vote by Mail ballot securely?

When your completed Vote by Mail ballot is received at our office, it goes through a rigorous validation system.

The Carrier Envelope is verified for signature authentication, logged, and securely stored. Your Vote by Mail ballot is not counted until voting centers close at 7:00 p.m. on Election Day. At that time, all Vote by Mail ballots will be tabulated and submitted into the official record.



How is my signature verified?

The voter's signature on the Vote by Mail ballot return envelope is compared to the signature from your Vote by Mail application and/or your voter registration application to maintain voter integrity.

When is my Vote by Mail ballot counted?

Your Vote by Mail ballot is counted when voting centers close at 7:00 p.m. on Election Day. At that time, all Vote by Mail ballots will be tabulated and submitted into the official record. The total number of votes cast by mail are included in the final tally.

ADVISORY:

Mail delivery in Texas is currently experiencing delays. Please take this into consideration when planning to send your Vote by Mail application or ballot so that it arrives in time to be processed and counted.

Can I vote in person if I received a Vote by Mail ballot? What about if I submitted a Vote by Mail application and never received a ballot?

You may vote in person even if you applied for a Vote by Mail ballot, but you can only vote once. To vote in person, take your Vote by Mail ballot to a voting center to surrender it and receive a regular ballot. If you do not have the mail ballot with you, you may still vote in person using a provisional ballot.

Can I change my vote after I Vote by Mail?

If you have returned your completed Vote by Mail Ballot, you cannot vote in person to change your vote.

Does my Vote by Mail ballot need stamps?

Yes, you will need two standard stamps when mailing your ballot (\$1.10 total postage). If you do not have stamps, you may place your ballot in the mail without postage, and it will still be delivered to our office and counted.

How can I check to see if my Vote by Mail ballot has been mailed or received?

Please call our Election Help Line at 713.755.6965 in order to check the status of your application or ballot.



CHRIS HOLLINS

COUNTY CLERK

Recording the Major Events of Your Life and Protecting Your Right to Vote



ADVISORY:

Mail delivery in Texas is currently experiencing delays. Please take this into consideration when planning to send your Vote by Mail application or ballot so that it arrives in time to be processed and counted.

**TAB J: TRANSCRIPT OF
SEPTEMBER 9, 2020 HEARING**

REPORTER'S RECORD

CAUSE NO. 2020-52383

THE STATE OF TEXAS) IN THE DISTRICT COURT OF
)
)
VS.)
) HARRIS COUNTY, TEXAS
)
CHRIS HOLLINS, in his)
official capacity as)
Harris County Clerk) 127TH JUDICIAL DISTRICT

TEMPORARY INJUNCTION HEARING

SEPTEMBER 9, 2020

On the 9th day of September, 2020, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable R. K. Sandill, Judge presiding, held in Houston, Harris County, Texas.

Proceedings reported by Certified Shorthand Reporter and Machine Shorthand/Computer-Aided Transcription.

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. Charles K. Eldred SBOT 00793681
Ms. Kathleen T. Hunker SBOT 24118415
ATTORNEY GENERAL OF TEXAS
P.O. Box 12548
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FOR THE DEFENDANTS:

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Mr. Cameron Hatzel - SBOT 24074373
1019 Congress Street, Floor 15
Houston, Texas 77002

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C H R O N O L O G I C A L I N D E X

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2	PLAINTIFF'S EXHIBIT
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P R O C E E D I N G S

THE COURT: All right. It looks like everyone is connected.

Cause Number 2020-52383, the State of Texas v. Chris Hollins.

Counsel, if you'll please make your appearance.

MR. ELDRED: Charles Eldred and Kathleen Hunker for plaintiff, State of Texas.

You're mute, Susan.

MS. HAYS: Susan Hays and Cameron Hatzel for the defendant, Chris Hollins, the Harris County Clerk.

THE COURT: Okay. Couple of issues before we begin sort of housekeeping. First and foremost for all of those that are watching the live stream I do want to remind you that it is against Harris County local rules to videotape, photograph or record any of the proceedings. If you need a copy of this court's transcript you can get one from our official court reporter.

And so with that, I've got a couple of issues. There was an intervention filed it looks like from the Anti-Defamation League and the NAACP.

Is there any objection to the intervention?

1 MR. ELDRED: Yes. We object but we haven't
2 had time to file an objection.

3 THE COURT: And is anyone here for the
4 NAACP or ADL?

5 Okay. So what I'm going to do is I'm going
6 to -- I'm going to consider that filing as an amicus,
7 much like the League of Woman Voters filing since they
8 don't -- no one is here. It doesn't seem like they
9 intend to participate in the hearing so unless any party
10 objects to me considering their filing as an amicus,
11 that's what I intend to do. Any objection?

12 MR. ELDRED: No.

13 THE COURT: Okay. Next issue is we've got
14 a litany of pro hac motions, all filed in this case, all
15 done without a certificate of conference and I'm trying
16 to figure out why we have so many pro hacs when we're
17 litigating such a narrow point of law.

18 Ms. Hays, I believe they're all your pro
19 hacs.

20 MS. HAYS: They are my pro hacs. Your
21 Honor, we had an offer of assistance from the Arnold &
22 Porter firm to help on this case. So they provided
23 assistance with the briefing. And it may be -- I will
24 fully own up the lack of certificate of conference. We
25 did confer with Mr. Eldred, he was not opposed.

1 THE COURT: So my concern is how many folks
2 does the County believe they're going have arguing
3 today?

4 MS. HAYS: Just Mr. Hatzel and myself.
5 I'll be handling the legal issues, he'll be handling
6 witnesses.

7 THE COURT: Okay. And so you want me to --
8 why am I signing pro hacs?

9 MS. HAYS: Because they're on the
10 pleadings, your Honor. And if that was unnecessary, we
11 apologize.

12 THE COURT: Okay. Let me ask -- Mr.
13 Eldred, how many folks are arguing on behalf of the
14 State today.

15 MR. ELDRED: Just me and Ms. Hunker.

16 THE COURT: Okay. And it seems that y'all
17 sent over some stipulated facts and I think they're in
18 the file. I just want to make sure that I have the
19 agreement of both parties that the Court can consider
20 these as -- as facts that are not going to be -- that
21 there's going to be no evidence that comes in contrary
22 to?

23 MR. ELDRED: Yes.

24 MS. HAYS: Yes, your Honor.

25 THE COURT: Okay, great. All right. So

1 what do y'all want to do?

2 MR. ELDRED: We have some objections to
3 their exhibits.

4 THE COURT: Yeah, I mean, I just don't -- I
5 mean, it is a -- it's essentially a bench hearing so we
6 can go through the exhibits if you want. I just don't
7 know how much time that's going to take, if it's worth
8 everyone's time. But we can look at whatever exhibits
9 you want to look at, I'll pull them upright now.

10 MR. HATZEL: And, your Honor, we would just
11 simply say that at the status conference that we held
12 last week -- at the status conference we held last week
13 the -- the -- we discussed exhibits and the State has
14 not filed any exhibits prior to this hearing but -- our
15 understanding would be that they waived any objections
16 by not previously filing with the court.

17 MR. ELDRED: Your Honor, that's not my
18 understanding. And we did send all our objections to
19 Mr. Syptak today and we shared them with the opposing
20 side. They told us they have no objections to our
21 exhibits. And I thought we were going to have a
22 conference about exhibits with you before the hearing.

23 THE COURT: Yeah, I mean, we can do it
24 either way. I'm understanding Mr. Hatzel's requesting
25 -- saying that the State didn't put forward any

1 exhibits?

2 MR. HATZEL: No, I'm sorry. The State did
3 not file written objections as was discussed at the
4 status conference that we held last week.

5 THE COURT: Yeah, but I've got -- I'm
6 looking at the Dropbox that I've gotten from Ms. Hays
7 and it specifically states "Not agreed to by State."
8 You're aware of their objections, correct?

9 MR. HATZEL: Correct, your Honor, yes.

10 THE COURT: Okay. I mean, this is -- this
11 is a TI hearing so we're not playing gotcha here.

12 So what do we want to talk about? I'm
13 just -- I don't want to spend a lot of time on this
14 because, once again, it's -- you know, if I admit them,
15 I'll admit them and give them the weight that they
16 deserve. But which ones do you want to go through, Mr.
17 Eldred?

18 MR. ELDRED: I'll keep it quick, I promise.
19 Exhibit 5 and Exhibit 12 are concerned mailings by, I
20 think, the Trump Campaign and the Republican Party of
21 Texas. We don't think those are relevant to this case.
22 This case is limited whether or not the Harris County
23 Clerk has statutory authority to submit -- I'm sorry, to
24 send applications unsolicited to people. And, of
25 course, the Harris County Clerk is limited by statute --

1 has limited powers unlike private people, unlike the
2 Trump Campaign and the Republican Party of Texas which
3 are governed by entirely different laws. And so the
4 fact that they may have done this, we don't think is
5 relevant and we would like you to not consider 5 or 12.
6 And also 18 -- 18 to the extent it includes part of 5.

7 MR. HATZEL: And, your Honor, from the
8 defendant's position, these are official tweets that
9 were put forth by the Clerk that are clearly relevant
10 because they go to this issue of whether these
11 applications to vote by mail are out there in the
12 public, that is certainly what the whole subject of this
13 hearing is about.

14 THE COURT: Well, let's -- let's reign this
15 in because I don't want -- this is not a -- this hearing
16 is not about --

17 (Interruption.)

18 THE COURT: Who is Mr. Tobin and why is he
19 talking in the middle of this hearing?

20 Mr. Tobin, if you'll please tell me who you
21 are?

22 Does anyone know who he is?

23 MR. ELDRED: I do not.

24 THE COURT: Ms. Hays?

25 MS. HAYS: I do not know who he is.

1 THE COURT: Mr. Tobin, Would you please
2 identify yourself and tell me how you're related to this
3 matter?

4 (INTERRUPTION.)

5 THE COURT: Okay. I'm going to remove
6 Mr. Tobin. If he needs to, he can watch it on the live
7 stream.

8 Do we know everyone else that's on here?

9 MS. FRAISER: Your Honor, my name is Rachel
10 Fraiser from the County Attorney's Office. I am just
11 here watching and supporting my colleague.

12 THE COURT: Okay.

13 MR. BITTER: Your Honor, this is Adam
14 Bitter. I'm the general counsel at the Texas Secretary
15 of State. I am here as well given that Mr. Ingram is
16 one of the witnesses in this case.

17 THE COURT: Okay. Mr. Hawkins looks like
18 he's with the County Attorney's Office. All right.

19 So what I wanted -- what I want to make
20 sure that we're -- we're all on the same page about I
21 guess is, this is limited to whether or not the Harris
22 County Clerk has the ability to mail out VBM
23 applications, correct? Everyone knows what VBM means,
24 vote by mail.

25 MR. ELDRED: Yes.

1 MS. HAYS: Uh-huh.

2 THE COURT: We can use that vernacular.

3 So, I mean, this is not whether or not the Trump
4 Campaign has the ability to do it, whether the Biden
5 Campaign has the ability to do it. Can we agree that
6 this -- I mean, we're solely litigating this narrow
7 point?

8 MR. ELDRED: That's our position.

9 MR. HATZEL: Yes, your Honor, but we would
10 take the position as well that -- part of it would be --
11 argument that the State is making is that every person
12 in the state can provide these applications to one
13 another under no restrictions whatsoever but that the
14 Harris County Clerk cannot. And so to the extent that
15 others can --

16 THE COURT: But Mr. Hatzel, you would agree
17 with me that Mr. Hollins, if he wants to be a private
18 citizen and sit at the -- on the corner and pass out VBM
19 applications, he's free to do so but he's acting in his
20 official capacity when he's doing this, correct?

21 MR. HATZEL: Correct, he is.

22 THE COURT: And all authority delegated to
23 Mr. Hollins is done by the State by a statute.

24 MR. HATZEL: Correct.

25 THE COURT: Okay. So why are we -- I mean,

1 he's not the Trump Campaign, he's not the Biden
2 Campaign, he's not Joe Smith at the corner of, you know,
3 Tuam and Milam passing out campaigns. He's Chris
4 Hollins, the Harris County Clerk, the elections
5 administrator for Harris County, State of Texas.

6 MR. HATZEL: Correct. And, your Honor, we
7 would take the position that even though that he is
8 acting in his official capacity, he is also an
9 individual under the statute and the Harris County
10 Clerk's Office is also an organization under the statute
11 and just as anyone else in the State of Texas can
12 distribute these applications to vote by mail, so can
13 Mr. Hollins and the Harris County Clerk's Office.

14 MS. HAYS: And, your Honor --

15 THE COURT: Ms. Hays, is that the position
16 y'all are taking?

17 MS. HAYS: It is and I'll add to it.

18 THE COURT: I just want to tell you -- I
19 just want to go through this because I want to make sure
20 that we're all on the same page. What I received as
21 stipulated documents was Mr. Hollins sending out
22 documents with the seal of the county clerk on them; is
23 that correct?

24 MS. HAYS: That is correct.

25 THE COURT: So when Mr. Hollins sends that

1 out is he acting in his personal capacity or official
2 capacity?

3 MS. HAYS: Our point is the election code
4 as it's written --

5 THE COURT: Ms. Hays, if you'll please
6 answer my question because Mr. Hatzel said that he was
7 acting in his personal capacity.

8 MS. HAYS: I'm answering both.

9 THE COURT: Ms. Hays, please --

10 MS. HAYS: And the election code allows for
11 both.

12 THE COURT: Okay.

13 MS. HAYS: And the other piece -- legal
14 issue with that point is the ubiquity of applications
15 that are out there. Many --

16 THE COURT: Mr. Hollins, if you'll please
17 raise your right hand. Do you swear to the tell truth
18 the whole truth and nothing but the truth, sir?

19 MR. HOLLINS: Yes, I do.

20 THE COURT: Sir, when you send out mail
21 with the seal of the County Clerk's Office are you
22 acting in your official capacity or your personal
23 capacity?

24 MR. HOLLINS: Your Honor, I'm acting in my
25 official capacity but that having been said I still

1 remain an individual according to the law.

2 THE COURT: Okay. Thank you.

3 MR. HOLLINS: And my office remains an
4 organization according to the law.

5 THE COURT: And Mr. Hollins, related to
6 Exhibits 5, 12 and 18, you have both the County Clerk
7 Twitter account, correct, and a CD Hollins Twitter
8 account?

9 MR. HOLLINS: So --

10 THE COURT: That's a yes or no.

11 MR. HOLLINS: There are two Twitter
12 accounts, your Honor. The County Clerk's Office has --
13 has one, that's correct.

14 THE COURT: Okay. Do you use your CD
15 Hollins in your official capacity or your personal
16 capacity?

17 MR. HOLLINS: Largely in my personal
18 capacity.

19 THE COURT: Mr. Eldred, do you want to take
20 that up because, I mean, I don't know if this really
21 matters to the litigation because, I mean, it's -- I
22 understand your objection to the relevancy but I
23 don't -- we can argue about exhibits that are -- are or
24 are not relevant but the main issue here as I've
25 articulated is whether or not the Clerk has the ability

1 to do this, so. It's up to you, it's your objection.

2 MR. ELDRED: We still object because as you
3 have already stated it's not the issue in the case.

4 THE COURT: Yeah. I'm going to allow it
5 over the objection and given it the weight that it
6 deserves.

7 MR. ELDRED: Thank you, Judge.

8 I actually cannot access the Dropbox right
9 now so I'm not sure if 8 or 9 are listed as admitted or
10 not.

11 THE COURT: They're -- parties do not agree
12 on admission, that's the transcript. 8 is the
13 transcript of the Ingram/Hollins call and 9 is the cover
14 sheet for seven audio files.

15 MR. ELDRED: Right. And we've agreed that
16 that can be used kind of as impeachment if necessary but
17 they're not admitted as evidence. I just wanted to make
18 sure they weren't admitted and I don't think we're
19 disagreeing right now about 8 and 9.

20 THE COURT: Okay.

21 MR. ELDRED: Exhibit 14 we object to
22 because that's an amicus brief filed by a private
23 citizen and we just don't think it should be evidence.

24 THE COURT: No, I agree. I'll consider as
25 amicus but it's not evidence in this matter. 14 is

1 excluded.

2 MR. ELDRED: Thank you. 15 we object to
3 because it is part of a legal pleading that our office
4 filed on behalf of Secretary of State in another case
5 with completely different issues and I'm going to turn
6 over to Ms. Hunker to explain that. It's one of her
7 cases.

8 MS. HUNKER: Thank you, your Honor.
9 Firstly, there are two arguments on why --

10 THE COURT: Ms. Hunker, I can barely hear
11 you. Can you speak up a little, please?

12 MS. HUNKER: Of course, your Honor. My
13 apologies.

14 THE COURT: Not a problem.

15 MS. HUNKER: Anyway, what I was going to
16 say is that this -- the exhibit is excerpts from *Lewis*
17 *v. Hughs*, which was a challenge filed against the
18 Secretary of State on four specific provisions. None of
19 those provisions are here today. They involved the city
20 (indiscernible transmission) requirement, the ballot
21 receipt deadline, whether or not the State should
22 provide postage -- prepaid postage and then also whether
23 or not someone should be able to assist an individual
24 deliver their ballot.

25 Many of these provisions don't even involve

1 the Early Voting Clerk, most of -- almost all of them
2 involve after the ballot has been issued and what the
3 voter is allowed to do with it. They don't necessarily
4 pertain to the Early Voting Clerk and therefore are
5 irrelevant. They certainly are an issue here today.

6 Moreover, even if you were to expand the
7 generality and say it's State talking about how the
8 County has a predominant role, that misclassifies the
9 issue here. We're not arguing whether or not the County
10 or the Early Voting Clerk have a predominant role in
11 conducting elections or even conducting vote by mail
12 elections. We're stating that he's exceeding his burden
13 in this specific instant on a specific right of power.

14 THE COURT: And Ms. Hunker, is that
15 pleading that -- I guess, it's Exhibit 15 and I'm sorry
16 I'm having to go back and forth to screens -- is
17 Exhibit 15 verified? I mean, is it -- was it part of
18 the verified petition?

19 MS. HUNKER: It was part of the motion to
20 dismiss.

21 THE COURT: Okay. So it was verified.

22 And so I don't know who all in County is
23 going to take that up. Can y'all explain to me why --
24 and that was Judge Garcia's or Judge Garza's court; is
25 that correct?

1 MS. HUNKER: That was in San Antonio and
2 his name is Garcia.

3 THE COURT: -- why that has any relevancy
4 to what we're determining today?

5 MR. HATZEL: Your Honor, from Mr. Hollins'
6 standpoint, the exhibits -- to the extent the State has
7 made these essentially sworn statements about it's
8 relationship with -- about the Secretary of State's
9 relationship is relevant to arguments that are being
10 raised here as well as the fact that the State of Texas
11 is suing as the State of Texas as opposed to the
12 Secretary of State and we believe that these prior
13 statements could be used to impeach to the extent that a
14 witness offered by the State were to testify to the
15 contrary.

16 MS. HAYS: And, your Honor, I would add
17 that the Court can take judicial notice of pleadings
18 taken under -- made in other cases and when the pleading
19 is presented to the Court has to take judicial notice of
20 them under Rule 203.

21 THE COURT: I mean, once again, I will -- I
22 will admit it and give it the weight that it deserves.

23 Mr. Hatzel, let me -- I'm curious, I guess
24 more for my edification than anything else, doesn't the
25 Secretary of State have to file suit under the State of

1 Texas, aren't they just part of the executive branch?

2 MR. HATZEL: Our reading of Section 31.005
3 indicates that the lawsuit would need to be brought by
4 the Secretary of State, that the granting authority is
5 that the Secretary of State would be the plaintiff. I'm
6 unaware of any statute that would provide the State to
7 bring this lawsuit as the State of Texas.

8 THE COURT: So y'all are asserting the
9 standing argument?

10 MS. HAYS: A capacity argument, your Honor.

11 THE COURT: Okay. Where is that in your
12 papers?

13 MS. HAYS: It's in our answer.

14 THE COURT: Yeah, but it's not in your
15 briefing for today.

16 MS. HAYS: It is not and we do view it as a
17 lesser issue in this case. And may I say, we've kind of
18 gotten sidetracked on evidentiary issues before I got to
19 an opening but I would like to state that the Harris
20 County Clerk would like this case to get to it's merits,
21 get to it's meat and move on because we know this case
22 is going to go up and there's not much time left before
23 the deadline to submit an early voting ballot by mail
24 application.

25 THE COURT: I don't know what means.

1 MS. HAYS: Times a wasting is what it means
2 and --

3 THE COURT: Y'all are the parties that
4 agreed to a TI hearing. I mean, I don't -- what are you
5 asking me to do, Ms. Hays?

6 MS. HAYS: I'm asking -- what I'm saying,
7 your Honor, is we didn't brief the capacity issue
8 because it's the much -- it's lesser issue in the case.
9 We did raise it in the verified answer as a party should
10 under the rules.

11 THE COURT: Okay.

12 MS. HAYS: And there has been an ongoing --
13 as the Court is probably aware, there's a lot of
14 election cases flying around right now and the State has
15 been engaging in a lot of game playing of whether the
16 Secretary is a proper party or the State. Here they're
17 using a statute that by it's plain language allows the
18 Secretary of State to seek an action to protect voting
19 rights and the Secretary of State isn't the plaintiff,
20 it's State. So that's why we pled capacity in the
21 answer and because it is not the meat of this case and
22 ultimately we do need a decision on the meat of this
23 case quickly, we did not spend time in the briefing on
24 it.

25 THE COURT: Okay.

1 MR. ELDRED: I have a quick answer if you'd
2 like it.

3 THE COURT: I do. I'm concerned, right,
4 because as a trial court capacity and standing are huge
5 issues.

6 MR. ELDRED: Yes. We're not suing under
7 30.1005 though.

8 THE COURT: And to just sort of glass over
9 them befuddles me. So, Mr. Eldred, if you'll -- I mean,
10 if you'll -- I mean, we're not getting to the meat of
11 the issue because I think there's some preliminary stuff
12 that we have to deal with, Ms. Hays. Mostly the
13 exhibits that -- we're dealing with the exhibits that
14 they've objected to that you, I think, want admitted; is
15 that correct?

16 MS. HAYS: That is correct.

17 THE COURT: So, I mean, these are -- these
18 are issues that are -- I don't think Mr. Eldred is
19 bringing up nor the Court. These are issues that the
20 County is bringing up, would you agree with me?

21 MS. HAYS: You mean by proffering exhibits?

22 THE COURT: Correct.

23 MS. HAYS: And, your Honor, I was looking
24 at the remaining list of Charlie's objections and I
25 think we're down to this last one with the excerpt from

1 the Lewis pleading, but the rest were resolved largely
2 but Charlie can correct me if I'm wrong -- or excuse me,
3 Mr. Eldred, can correct me if I'm wrong.

4 THE COURT: Yeah, if we'll please -- yeah,
5 please use last names.

6 MS. HAYS: And the Paxton issue does not
7 concern me as much because unlike standing it cannot be
8 a -- it can't overturn a case later on. Excuse me I
9 didn't quite phrase that the right way. But the Supreme
10 Court and the Lobato Decision does a pretty good job
11 distinguishing between capacity and standing. It's
12 non-jurisdictional. It's a proper party issue. Mr.
13 Eldred can easily fix it if it's problem.

14 THE COURT: Mr. Bitter is that a problem
15 for your office?

16 MR. ELDRED: Did you ask Mr. Bitter?

17 THE COURT: Correct. I mean, he's here as
18 general council for the Secretary of State, right?

19 MR. ELDRED: Yes, your Honor. I think I
20 could actually derail all this entire discussion if you
21 give me a second.

22 THE COURT: Please.

23 MR. ELDRED: First of all, I think we are
24 done with exhibits. Second of all, we have not filed
25 suit under 31.005. We have filed a ultravirus suit with

1 the State of Texas as the plaintiff alleging that the
2 Harris County Clerk in it's official capacity is acting
3 outside of it's statutory authority. We believe the
4 State of Texas is the proper plaintiff for that lawsuit
5 and I don't have my petition right in front of me but
6 there is a paragraph on justiciability in our
7 application where I cite a case from 1926 and another
8 case, I think, from 1995, which says the State of Texas
9 is the proper party when a municipal corporation is
10 alleged to be violating the law. And that's what we see
11 the clerk is doing. So we're not suing under 31.005.

12 THE COURT: Okay. Now that we've cleared
13 that up let's -- well, we don't have any more exhibits
14 on the plaintiff side. Do we have any exhibits on the
15 on the defendant's side that we need to deal with?

16 MR. HATZEL: The defendant --

17 MR. ELDRED: We submitted 1 to 26 and my
18 understanding is that they don't object to any of them.

19 THE COURT: Okay, great.

20 MR. HATZEL: That's correct, your Honor.

21 THE COURT: So Plaintiff's 1 through --
22 State's 1 through 26 are admitted and I think at this
23 point we're admitting all of Defendant's Exhibits --
24 Exhibits 5, 12, 18 over objection. The Court admitted
25 them and will give them the weight that they deserve and

1 I believe the last one was 15 which was a pleading out
2 of a federal case. The Court will take judicial notice
3 of such pleading.

4 MR. ELDRED: And, your Honor, I think you
5 also said no 14.

6 THE COURT: And 14 is excluded -- 14 will
7 be considered not as an exhibit but will be considered
8 as amicus -- as an amicus filing in this matter.

9 MR. ELDRED: And I'm sorry, there's
10 actually one more. There's a joint exhibit -- I think
11 we're calling it Joint Exhibit 19; Ms. Hays, is that
12 right?

13 MS. HAYS: Yeah. I think it's labeled
14 Joint Exhibit -- Joint Stipulated Defendant's Exhibit
15 because we used the defendant's numbering just to keep
16 it from being confusing. And, your Honor, that's a
17 compilation of data on election results that Mr. Eldred
18 and I communicated about yesterday and had the Harris
19 County Clerk's Office pull the data so you wouldn't be
20 burdened by -- I think they had ten different exhibits
21 of raw data.

22 MR. ELDRED: And that's true. I'm glad she
23 brought that up. First of all, I thank the Harris
24 County Attorney's Office for pulling this stuff for us.
25 Plaintiff's Exhibit 5 and Plaintiff's Exhibit 18 are

1 kind of our incomplete data and Exhibit 18 is based on
2 Exhibits 12 through 17. So 5 and 12 through 18 probably
3 we don't need them and we could probably withdraw them
4 actually, I think. Joint Exhibit 19 replaces those
5 exhibits that we pleaded last night.

6 THE COURT: And so we have the record
7 straight for appeal. We're -- we're withdrawing which
8 ones again, Mr. Eldred?

9 MR. ELDRED: I don't know if we have to
10 withdraw them but we could.

11 THE COURT: It's up to you. I mean, I'm
12 not -- they're not objecting to them so if you want to
13 withdraw them it's completely within your discretion but
14 I just want to make sure that we have the record -- the
15 record as clean as it can been.

16 MR. ELDRED: Just because of time pressure
17 I'm going to say let's keep them in there but I don't
18 plan on referring to 5 or 12 through 18, Joint
19 Exhibit 19 replaces all those.

20 THE COURT: Okay, great. All right. Since
21 we've got the exhibits taken care of is there anything
22 else we need to chat about before we begin proceeding?

23 MR. ELDRED: Nothing from Plaintiff.

24 THE COURT: Anything from the County?

25 MS. HAYS: Nothing from the County, your

1 Honor.

2 THE COURT: All right. State, whenever
3 you're ready.

4 MR. ELDRED: You'd like an opening
5 statement?

6 THE COURT: I don't need an opening
7 statement, I've read the briefing. Like I said, it's a
8 really narrow issue. So that's up to you, it's your
9 time.

10 MR. ELDRED: Well, I think we do need an
11 opening statement because so many facts are stipulated,
12 in particular Joint Exhibit 19 and I'd just like to talk
13 about it a little bit.

14 THE COURT: Sure.

15 MR. ELDRED: But I'll go ahead and tell you
16 what I think about the case.

17 OPENING STATEMENT BY MR. ELDRED

18 MR. ELDRED: This began on August 25th when
19 the Harris County Clerk's Office tweeted that they
20 planned to send vote by mail applications unsolicited to
21 every voter in Harris County. And the State of Texas
22 does not have a problem with Harris County or other
23 counties sending unsolicited vote by mail applications
24 to people who are over 65.

25 THE COURT: Can you say that again, please.

1 MR. ELDRED: Sure. The State of Texas does
2 not object the Harris County sending out unsolicited
3 vote by mail applications to voters who are over 65.
4 And, in fact, that was done for the July runoff by
5 Harris County and a few other counties.

6 THE COURT: So let me -- let me ask a
7 couple of questions then based on that statement -- and
8 that's part of the stipulation as well, right, that the
9 State is not -- has no issues with unsolicited mail
10 going out to those over the age of 65.

11 MR. ELDRED: Mr. Ingram will explain that
12 better than I can, yes.

13 THE COURT: So my concern here is, there
14 are four categories of folks that can vote by mail and
15 correct me I'm wrong. There's those 65 years and older,
16 those that are disabled, those that are out of the
17 county on Election Day and during the period for early
18 voting by personal appearance, or those confined in jail
19 but otherwise eligible. Those are the four categories,
20 correct?

21 MR. ELDRED: Yes.

22 THE COURT: Why is the State being selected
23 in preferring one category over the others?

24 MR. ELDRED: No. What we're doing is
25 we're -- first of all, most people who vote by mail are

1 over 65.

2 THE COURT: But Mr. Eldred, you're telling
3 me today, the statement in your stipulation is that for
4 all those over the age -- because if you're over the age
5 of 65 you can vote in person as well, correct?

6 MR. ELDRED: Correct.

7 THE COURT: You're not limited to just VBM.

8 MR. ELDRED: That's right.

9 THE COURT: So for those folks you're okay
10 with unsolicited forms, right? And then I'm going to
11 talk about this and then I want to talk about 1.010 of
12 the Election Code to follow up. And so you're okay with
13 65 and older getting --

14 When I say you I mean the State of Texas,
15 the Attorney General is -- and I'm sorry, I'll always
16 say you but I always mean your client, I never mean you
17 personally.

18 MR. ELDRED: Sure.

19 THE COURT: You're okay with -- you're okay
20 with everyone over the age of 65 getting a VBM
21 application. Somehow you're not okay with the other
22 categories getting a VBM application, right, and it's my
23 understanding -- because I've never had the ability to
24 vote by mail so I'm going to ask you questions since
25 you're litigating this -- the person who receives the

1 application makes the decision on whether or not they're
2 eligible under any one of these four categories,
3 correct?

4 MR. ELDRED: You say receives. You need to
5 apply for them and that's the way --

6 THE COURT: Well, no -- no, Mr. Eldred, I'm
7 asking you. Let's say they don't -- because over 65,
8 according to the State of Texas, doesn't even need to
9 apply, correct?

10 MR. ELDRED: Well, they need to apply but
11 they don't need to ask for the application -- or let's
12 put it this way, it's okay --

13 THE COURT: Can you clarify -- can you Venn
14 diagram what that means to me.

15 MR. ELDRED: I can try. Harris County
16 already has a list of voters who are going to be 65 or
17 older on Election Day. So they can find those voters,
18 they can send those voters applications and if those
19 voters -- here's the real -- well, we haven't got to yet
20 -- those voters aren't going to be confused about
21 whether they can vote by mail or not. They can vote by
22 mail. Everyone knows they can vote by mail.

23 THE COURT: But your action as you stated
24 earlier is an ultra vires action. You're not here
25 intervening or suing on behalf of the citizens of the

1 State of Texas, you're saying that the Clerk is acting
2 ultra vires but when it comes to people over the age of
3 65 you're waiving that ultra vires argument, correct?

4 MR. ELDRED: No, because --

5 THE COURT: I mean, you've stated it in
6 your opening and you've also put it as a joint
7 stipulated fact.

8 MR. ELDRED: One answer is no one is
9 challenging sending them to over 65 and that's just not
10 before you today. What we're really challenging is
11 under 65.

12 THE COURT: So what I'm trying to get at is
13 the selective enforcement of the statute.

14 MR. ELDRED: It's not selective because
15 over 65 --

16 THE COURT: Well, it is -- I mean, there's
17 four categories, correct? And three of the four
18 you're -- you're wanting to enforce the acts and on one
19 you don't -- the State doesn't have a problem with it.

20 MR. ELDRED: Here's the problem, the Harris
21 County Clerk does not know who is going to be absentee,
22 who is going to be incarcerated or who is going to be
23 disabled. They don't have those lists. They're going
24 to send 2 million -- there's about 2.4 million
25 registered voters in Harris County, about 400,000 of

1 them are over 65. So the other 2 million are under 65.
2 We don't know which one of those 2 million voters are
3 disabled, are going to be absentee or going to be
4 incarcerated, and they don't know either. And we do
5 know that hardly any of them will fall into those
6 categories. We're going to send a lot of applications
7 to people who are not eligible to vote by mail unlike
8 when they send them to people who are over 65, they are
9 eligible to vote by mail. Mr. Ingram will explain this
10 to you in as much detail as you'd like why we are -- why
11 we have a problem with them sending the 2 million
12 applications to people, most of whom who cannot vote by
13 mail and will be confused and will be disenfranchised.
14 This plan will disenfranchise voters, we are convinced
15 of that. They are going to mess up the application.
16 They're going to apply when they're not eligible or
17 otherwise mess it up. I'm going to defer to Mr. Ingram,
18 he's been dealing with this as his professional career.
19 That's the difference, your Honor.

20 THE COURT: I know that there's some
21 factual element to this and I understand that there -- I
22 mean, y'all are looking at the harm provision of the TI
23 here. And I'm just curious, right, because it seems to
24 me that the statute says ABC and D, y'all are saying we
25 don't care about A, we only care about C -- BC and D.

1 And it -- it sort of -- I mean, I'll get to this -- go
2 ahead. I interrupted you, Mr. Eldred. I have all the
3 time in the world to do whatever I want so I'll let you
4 continue.

5 MR. ELDRED: Your time is our time.

6 THE COURT: I know that's why I'm saying I
7 can ask questions all day but I'll let you finish.

8 MR. ELDRED: If the Clerk's office had a
9 list of disabled voters or a list of incarcerated voters
10 or a list of absentee voters, I don't think we'd be here
11 right now. And if they were only sending to those
12 voters, I don't think we'd be here right now. And that
13 list -- those lists would be very -- a very small number
14 of people according to history. But instead of sending
15 it to 2 million people, they're going to --

16 Do you live in Harris County, your Honor?
17 If you do, you are going to get --

18 THE COURT: I am a Harris County District
19 Court judge so I think I'm obligated by statute to live
20 in the County of Harris.

21 MR. ELDRED: I never looked that up, I
22 didn't know but now I do. But under this plan you are
23 going to receive a vote by mail application even though
24 you've already told me, I think, that you are not
25 eligible to vote by mail.

1 THE COURT: No, I haven't said that. I
2 actually am a recipient of a stem cell transplant so I'm
3 not quite sure whether or not I'm disabled but I haven't
4 made that determination yet.

5 MR. ELDRED: Sure.

6 THE COURT: But that determination is mine
7 to make, correct?

8 MR. ELDRED: It is.

9 THE COURT: Okay. I just want to make
10 sure. I just want to make sure that -- because, I mean,
11 that was one of the questions I asked you is the people
12 who received the application are the ones with the onus
13 of making the correct determination, it's not the County
14 -- it's not the Counties that have the onus in making
15 the correct determination.

16 MR. ELDRED: That's true but they are
17 required to make determination correctly. And I --
18 Mr. Hollins has emphasized what you just said that it's
19 your own decision for instance to say you're disabled
20 depending on your own medical history and how you feel
21 about situations. That's all true but what he's not
22 saying is that these applications are public information
23 after the election. Anybody can look at these
24 applications after the election including the Secretary
25 of State, including partisans who will look -- if they

1 find your application and you checked disability but
2 you've been swimming every day, you may get a call from
3 somebody. Secretary of State can investigate that. If
4 someone reports you to the sheriff, the sheriff can
5 investigate that. It's true the County Clerk has no
6 role in second guessing your determination in whether
7 you're eligible to vote by mail. But we know people are
8 going to mess it up. We know people are going to commit
9 felonies. We know the over 65s are not going to mess it
10 up because they're already eligible to vote by mail.
11 And it just a fact of life that people -- you send out 2
12 million applications, some people are going to mess them
13 up and they're going to commit felonies. Some people
14 are going do it them purpose, some people are going to
15 do them by mistake. Other people are going to assume
16 that because they got an application they are eligible
17 to vote by mail and they may or may not go through the
18 steps to actually make that happen and Election Day may
19 come and go and they may not understand what's
20 happening. And I keep talking about that Mr. Ingram can
21 point this out more than I can because he's been dealing
22 with it, I'm just a lawyer. I don't personally deal
23 with it. He does and he can explain this far better
24 than I can, I'm sure.

25 THE COURT: Sure.

1 MR. ELDRED: Hopefully I'm answering your
2 question.

3 THE COURT: I mean, it's fine. I don't
4 know if you are but it's okay because, I mean, I
5 don't -- I think it will get answered eventually so I'm
6 not worried about it and if it doesn't, I'll just ask it
7 again, so.

8 MR. ELDRED: Well, I'm sorry I didn't
9 answer it.

10 THE COURT: No, I'm not saying that you
11 didn't, Mr. Eldred. I'm just -- you know, I think I may
12 have even forgotten my question, so.

13 MR. ELDRED: Gotcha. We just don't think
14 there's a legislate reason for the Clerk to send 2
15 million applications to people who are under 65, and
16 most of whom are not disabled, will not be absentee and
17 will not be incarcerated in Election Day.

18 THE COURT: Can I -- and this wasn't on the
19 joint stipulate facts but I -- can I get the parties to
20 agree that it's in the State's best interest that all
21 qualified voters participate in elections?

22 MR. ELDRED: Yes.

23 MS. HAYS: Harris County Clerk very much
24 agrees with that.

25 THE COURT: Okay. I just want to -- it's

1 not part of the stipulated facts but I imagine that all
2 parties agree to that, so. Because then I want to
3 get -- I want to talk about 1.010 of the Election Code.
4 Do you have that, Mr. Eldred?

5 MR. ELDRED: No.

6 THE COURT: And I don't know --

7 MR. ELDRED: I can pull it up.

8 THE COURT: Well yeah, you probably have
9 the ability to pull it up better than I do or my ability
10 to share the screen because although I require that of
11 counsel I'm not as good at it as I should be.

12 MR. ELDRED: Is it availability of official
13 forms, that one?

14 THE COURT: Correct. And so I'm trying to
15 figure out -- because 1.010 seems, to me, very
16 expansive. And what to me is, you know, sort of the
17 crux of the issue that we're dealing with and what Ms.
18 Hays, I think, was trying to get to earlier was that the
19 forms need to be readily and timely available. And I'm
20 just trying to figure out that in this unique
21 circumstance, making the forms readily and timely
22 available seems to comport with the genesis of the -- I
23 mean, 1.010 is like the sixth thing in election code,
24 right? I mean, it's the genesis -- it's part of the
25 genesis of the Election Code. So would you address

1 that.

2 MR. ELDRED: Sure. They are readily and
3 timely available. Anyone who ask for them, gets them.
4 You can download them from the Secretary of State's
5 website and I believe from the Harris County Clerk
6 website. That's just a different issue than sending 2
7 million applications to people, most of whom don't want
8 them, didn't ask for them and can't use them anyway but
9 will use them and will be confused by them. I don't
10 think that 1.010 really changes the issue.

11 THE COURT: Okay. I'm not --

12 MR. ELDRED: And -- go ahead.

13 THE COURT: That's fine. No, I'm intrigued
14 by the -- by the statement that they will use them in a
15 wrongful way but I guess that's going to be Mr. Ingram,
16 correct?

17 MR. ELDRED: Yes, sir.

18 THE COURT: That's a fact based analysis.
19 Okay.

20 MR. ELDRED: And then that leads to another
21 thing. The Secretary of State's Office is very, very
22 happy with the Harris County Clerk's great efforts to
23 expand in-person voting. In fact, Mr. Hollins -- some
24 of our exhibits he brags, justifiably so, about all
25 those great efforts.

1 It's not like in person voting is going to
2 be a problem this time around. It wasn't even a problem
3 last July in the middle of Covid. If you look at our
4 Joint Exhibit 19 you'll see that lots of people voted in
5 person. I'm looking at it right now. For the runoff
6 election in July 228,000 people in Harris County voted
7 in person. I'm sorry, that was total. 144,000 people
8 voted in person. About 83,000 voted by mail. That's
9 more people that voted in person in 2016 and 2018 when
10 there was no Covid. So whatever Harris County Clerk is
11 doing, they're doing a good job. They're making it safe
12 and making people understand that it's safe to go vote
13 in person. I think I'd have a different case if voting
14 in person was a problem, maybe we'd have to try other
15 ways to get people to vote.

16 THE COURT: But that's not the analysis
17 that we're doing here today, right? It doesn't matter
18 what the conditions on ground are, right? I mean,
19 that's not what the State is arguing I imagine, right?
20 The State is making -- I just want to make sure that
21 we're making this very compressed. I mean, the issue is
22 whether or not Mr. Hollins has the ability to mail out
23 applications to qualified voters. That's the only issue
24 that I'm dealing with today, correct?

25 MR. ELDRED: I would -- I wouldn't quite

1 agree with the way you phrased it. It's unsolicited
2 applications to people who are under 65, most of whom
3 are not eligible to vote. I think that's -- those are
4 the --

5 THE COURT: Most of who are not eligible to
6 vote? I mean, I think he's --

7 MR. ELDRED: I'm sorry.

8 THE COURT: -- only sending them to
9 registered voters.

10 MR. ELDRED: Not eligible to vote by mail,
11 I apologize, Judge.

12 THE COURT: Okay.

13 MR. ELDRED: Like I am not eligible to vote
14 by mail as far as I know. I don't live in Harris County
15 but if did I would get an application and I wouldn't be
16 eligible.

17 THE COURT: Mr. Eldred, there's always
18 time. You can -- as long as you get here by October 5th
19 I think we're okay.

20 MR. ELDRED: Well, hopefully I will still
21 be working here in Austin at that point.

22 THE COURT: All right. Anything else, Mr.
23 Eldred?

24 MR. ELDRED: Judge, let me just -- bear
25 with me for a second.

1 THE COURT: And we'll probably -- just so
2 everyone knows, we'll probably take a break around
3 1:30ish. And during the breaks I'll just ask everyone
4 to mute themselves and they can turn off their screen so
5 you can do whatever you need to do. We don't have to
6 look at you.

7 MR. ELDRED: Your Honor -- oh, I'm sorry.
8 Can we -- everyone look at Joint Exhibit 19?

9 THE COURT: Sure.

10 MR. ELDRED: And again, I really thank the
11 Harris County Attorney's Office, I think it was them,
12 and the clerk's office for pulling this data for us
13 literally late last night.

14 I want to make a few points about these --
15 these numbers. Let's look at 2016. You're going to see
16 on a row called PRO Total, that stands for Primary
17 Runoff Total. So in 2016 about 27,000 people voted by
18 mail, about 22,000 voted early in person, about 18,000
19 voted Election Day in person. So about 40 percent voted
20 by mail. In 2018 similarly about 33 percent voted by
21 mail, that's the second line from the bottom on 2018.
22 And in 2020, this last election in July, about
23 36 percent voted by mail. So 40/33/36. I just want to
24 point out that despite the Covid crisis the vote by mail
25 numbers did not significantly change in terms of

1 percentages which cuts against the Clerk's position that
2 they need to send out these 2 million applications to
3 people, most of whom cannot vote by mail.

4 THE COURT: But Mr. Eldred, I mean, you
5 know, numbers can tell whatever story you want them to
6 tell. You'd agree with me, correct?

7 MR. ELDRED: Yes.

8 THE COURT: 36 percent of 100 -- 200,000 is
9 way more in a raw number than 40 percent of 100,000.

10 MR. ELDRED: Yes. The turnout was gigantic
11 for the primary run off in 2020.

12 THE COURT: So the raw numbers are higher
13 in 2020 than they were in 2016 or 2018, correct?

14 MR. ELDRED: That's correct.

15 THE COURT: So the raw numbers -- the raw
16 numbers of VBM votes were actually higher in 2020 than
17 they were in 2016 and 2018.

18 MR. ELDRED: True but the proportions were
19 about the same.

20 THE COURT: Yeah, but I'm just -- I mean, I
21 just want to make sure that we're talking about raw
22 numbers here. Because, I mean, there's only a certain
23 percentage of people that are 65, right? Not everyone
24 is 65.

25 MR. ELDRED: We think it's about 400,000

1 out of 2.4 million in Harris County.

2 THE COURT: And I think according to
3 y'all's stipulated facts I think 3.7 percent of Harris
4 County is disabled; is that right? Or 6.7.

5 MR. ELDRED: No, Ms. Hays will -- does not
6 agree with that. That's what the Census said but, of
7 course, that's not -- a definition of disabled does not
8 necessarily track the definition of --

9 THE COURT: Yeah, but, I mean, just for --
10 we just had numbers though, right? I mean, you're
11 talking about 25 percent, one in four, 6 percent, 31,
12 and then there's another -- let's say using your 36
13 percent number just to get to that -- that number
14 there's some -- almost nobody who's in prison and
15 eligible votes. I mean, it looks like those numbers are
16 always around one if not smaller. And so the other
17 folks are people that just aren't in town.

18 And Mr. Hollins, I don't know if you know
19 these numbers better than I do, I'm just sort of
20 guessing but --

21 MR. ELDRED: I'm not saying these numbers
22 prove that we're right. All I'm saying is they don't
23 prove that they need to do anything about -- for voting
24 by mail because of Covid. I think that's what they're
25 going to say, that Covid --

1 THE COURT: But that's not the issue in
2 front of me, Mr. Eldred. I mean -- that's why I want to
3 make sure we've got -- I find my job to figure out -- my
4 job is to figure out if Mr. Hollins is acting ultra
5 vires.

6 MR. ELDRED: Yes.

7 THE COURT: And it doesn't matter if he's
8 acting ultra vires because he thinks it's going to rain
9 on that day or it's going to snow or, you know -- or if
10 paper on November 3rd is automatically going to combust
11 in fire. I mean, those aren't -- those aren't my issues
12 today. Covid is not my issue. My issue is whether
13 Mr. Hollins is acting ultra vires by mailing out
14 applications to folks in Harris County that are under
15 the age of 65. I mean, that's what I'm trying -- can we
16 agree on that issue because -- and I'm only saying that
17 because I don't want to get into a Covid discussion
18 because I'm -- I don't think we have epidemiologist. I
19 don't think we have anyone here to talk about Covid and
20 it's effects and I don't think -- I mean, that issue has
21 been resolved anyhow to my understanding, so.

22 MR. ELDRED: We don't have that but we do
23 have the number from the July election compared to other
24 numbers.

25 THE COURT: Yeah, no, I agree.

1 MR. ELDRED: And that's all I'm trying to
2 say. I'm not trying to be an epidemiologist if I --

3 THE COURT: No.

4 MR. ELDRED: -- said that right.

5 THE COURT: And let me ask the County this,
6 I guess, because I think it's fair to ask.

7 Is it the County's position that if
8 Mr. Hollins is not acting ultra vires, if this Court or
9 a Court above this Court determines that Mr. Hollins is
10 not -- or the County Clerk -- let's not make it about
11 Mr. Hollins, let's make it about the position -- the
12 elections administrator starting, I guess, in 2021 --
13 the elections administrators in Harris County will
14 continually send out applications for VBM from this
15 point till the end of time?

16 MS. HAYS: Are you asking us to promise
17 we'll do that? I'm not quite sure.

18 THE COURT: Well, I'm just asking because
19 I'm asking is this a Covid only situation or is this a
20 situation to give more people the ability to vote?

21 MS. HAYS: Our position is it's always both
22 the authority and one might argue the duty for any
23 elections administrator, whether it's the SOSs, the
24 chief elections officer of the State or the local
25 election authorities like the county clerk here in

1 Harris County or as you know election administrator
2 going forward to educate voters on the law, how to vote.
3 Where Covid changes it some is how to vote safely
4 because we are in such extraordinary conditions. But
5 that does not have any effect whatsoever on his legal
6 ability to mail these out. And I may -- it may be more
7 appropriate for me to wait till my turn but since we're
8 talking --

9 THE COURT: Yeah, please. I just had the
10 quick question there.

11 MS. HAYS: Okay.

12 THE COURT: Thank you, Ms. Hays.

13 MS. HAYS: Yeah.

14 THE COURT: Mr. Eldred?

15 MR. ELDRED: I think I might suggest that
16 this is a good time to call Mr. Ingram and let him
17 explain why we're saying it's different.

18 THE COURT: Ms. Hays, is it okay if we wait
19 for your opening until your case in chief?

20 MS. HAYS: Absolutely, your Honor.

21 THE COURT: Great. Mr. Ingram, how are
22 you?

23 MR. INGRAM: Fine if I can get myself
24 unmuted. Sorry about that.

25 THE COURT: It's okay. I mean, I haven't

1 had to say yet that you're muted or you're -- you need
2 to unmute so it's a good hearing so far in my
3 estimation. So if you'll do me the favor of raising
4 your right hand, Mr. Ingram.

5 Do you swear to tell the truth and nothing
6 but the truth, sir?

7 MR. INGRAM: I do.

8 THE COURT: Okay. Mr. Eldred.

9 MR. ELDRED: Thank you.

10 **Keith Ingram,**
11 being called as a witness, and having been first duly
12 sworn, testified as follows:

13 EXAMINATION

14 Q. BY MR. ELDRED: Mr. Ingram, can you tell us who
15 you are and what your background is?

16 A. Sure. My name is Keith Ingram and I am an
17 attorney.

18 Q. What is your current job?

19 A. I'm the director of the elections division at
20 the Texas Secretary of State's Office.

21 Q. How long have you had that job?

22 A. Since January 5th, 2012.

23 Q. What are your duties in that job?

24 A. We -- the Secretary of State is the chief
25 election official for the State of Texas and the

1 division that I am the director of assists her in
2 accomplishing that function.

3 Q. And just for the record could you just describe
4 the three ways that Texas -- Texans may vote.

5 A. Texans can vote by mail. They can vote early
6 in person and they can vote on Election Day in person.

7 Q. And what kind of people can vote by mail?

8 A. In Texas you have to have an excuse to vote by
9 mail or you need to be over the age of 65, disabled, out
10 of the county during the entire early voting period and
11 Election Day or confined in jail but otherwise eligible
12 to vote.

13 THE COURT: Mr. Ingram, can I ask you a
14 quick question. Mr. Eldred, I'm sorry to -- I just want
15 to make sure that we have this straight for the record.
16 Are you testifying as an expert or are you testifying as
17 a fact witness?

18 MR. INGRAM: I don't know. I'm here to
19 testify and answer any questions that I can answer.

20 THE COURT: Mr. Eldred, do you have --
21 where is he fitting into -- because right now he's
22 answering question about the law so I'm trying to figure
23 out if we're going to get into factual stuff or he's
24 just talking about the law in the state of Texas.

25 MR. ELDRED: He's a factual witness but he

1 also does this for a living. It's just kind of a
2 combination. It's like you describing your job, it's
3 part legal and part factual. I'm not -- I don't plan on
4 dwelling on the law. I'm just trying to make sure we're
5 all on the same page. I'm sorry if I'm doing that.

6 Q. BY MR. ELDRED: Let's just cut to the chase.
7 Before 2020 did counties send unsolicited vote by mail
8 applications to voters?

9 A. No.

10 Q. And if they did would you know that they did in
11 your position?

12 A. It would be very likely that I would know about
13 it, yes. It's not impossible that some small county
14 might have sent unsolicited applications for ballot by
15 mail but it would have been a small county.

16 Q. But you've never heard of it and you think you
17 would have heard of it if someone had done that before
18 this year; is that correct?

19 A. That is correct.

20 Q. Now, the July primary runoff was delayed from
21 it's original schedule; is that right?

22 A. That is correct. The government by
23 proclamation delayed the runoff to July 14th.

24 Q. And I believe the Secretary of State and you in
25 particular talked to some counties about how to -- how

1 to handle the July runoff; is that true?

2 A. What we did is we put together an advisory
3 board of counties, about 30 or 32 counties, and we've
4 had biweekly calls with those counties since the
5 beginning of April and we talked about a number of
6 things with regard to the election to make it safe for
7 voters.

8 Q. Was Harris County in on those calls?

9 A. Harris County has been on most of those calls,
10 yes.

11 Q. Do you remember the actual people from Harris
12 County who was?

13 A. Well, Michael Nguyen and Dr. Trautman were on
14 the calls until she resigned and since then I believe
15 only Michael Nguyen has been on the calls.

16 Q. Who is Michael Nguyen?

17 A. Michael Nguyen is the director of elections for
18 the Harris County. I don't know his exact title but
19 he's the one in charge of putting on the election.

20 Q. And does Mr. Nguyen still work for Harris
21 County?

22 A. As far as I know he does, yes.

23 Q. Was it an issue of mailing vote -- I'm sorry,
24 was the issue of sending vote-by-mail applications
25 unsolicited to voters addressed in these meetings for

1 the July runoff?

2 A. Yes. We talked to this advisory group about
3 whether or not it would be permissible or advisable to
4 send unsolicited applications for ballot by mail to
5 voters.

6 Q. And what were the conclusions?

7 A. We concluded that if -- if you send it to
8 persons who are 100 percent eligible to vote by mail,
9 that it's arguably okay. But that if you send it to
10 people other than that that you would be perhaps
11 misleading them into thinking they could vote by mail
12 and committing a felony under 84.0041.

13 Q. What's 84.0041?

14 A. That's in the Texas Election Code and it says
15 that providing false information on an application for a
16 ballot by mail is a state jail felony. It also says
17 that intentionally causing false information to be put
18 on an application for ballot by mail is a state jail
19 felony.

20 Q. So if a voter says they are incarcerated and
21 they're not incarcerated and they submit a ballot by
22 mail, do they violate that statute?

23 A. They do.

24 Q. Similarly for disabled or over 65 or out of the
25 county?

1 A. True. The ones that are -- that put over 65,
2 that's something the voter registrar can check and is
3 suppose to check. So if they put that they're over 65
4 and their date of birth in the voter registration file
5 is less than 65, that application can will be rejected.

6 Q. Okay. So explain why y'all decided for the
7 July election that sending to over 65 -- I'm sorry, that
8 sending applications to vote by mail to people who are
9 going to be over 65 was okay.

10 A. Because all of those voters are eligible to
11 vote by mail. There's not any doubt about their
12 eligibility to vote by mail. There's not any
13 possibility that they would be misled into putting false
14 information on the application in order to qualify for a
15 ballot by mail.

16 Q. So contrast that with the Harris County Clerk's
17 plan to send unsolicited voter applications -- I'm
18 sorry, vote by mail applications to every registered
19 voter in the county. Why is that different than the
20 plan you just talked about?

21 A. Well, we know from experience that not very
22 many people fall into any of these other vote by mail
23 categories so there's not any -- so we're talking single
24 digits usually in most elections that are disabled, out
25 of the county or in jail. And if you send unsolicited

1 applications for ballot by mail as a government official
2 the persons who are not eligible to vote by mail, some
3 portions of them are going to be mislead into thinking
4 that they do qualify because the government sent me the
5 application and they will put false information on that
6 application and they will potentially commit a felony.

7 THE COURT: Mr. Ingram, the penalties --
8 the felonies that you speak of under Chapter 84 of the
9 elections code, are those only limited to elections
10 administrators or are those same penalties available to
11 anyone who may mislead a voter into believing that they
12 are eligible to vote by mail?

13 MR. INGRAM: It's a generic crime. If you
14 intentionally cause false information to be put on an
15 application, no matter who you are, you've committed a
16 state jail felony.

17 THE COURT: So can you explain to me in
18 sort of a factual basis how it's possible if I send you
19 a blank application how I can mislead you?

20 MR. INGRAM: Well, if you were to send it
21 to me, the odds of me being misled are pretty slim. If
22 the Harris County Clerk sends it to me then the odds go
23 up.

24 THE COURT: And why -- do you have analysis
25 on that or is that -- what's the -- can you peel the

1 onion back for me on that because as much as -- as much
2 as experience as you have I just don't know if the ipse
3 dixit -- I mean, I don't know if I follow it.

4 MR. INGRAM: I understand that, but we in
5 the Secretary of State's Office, we send out mailings --
6 we just sent out a mailing for eligible but unregistered
7 voters in the State of Texas and so the official, you
8 know, Secretary of State seal on the card went to two
9 and half million households and it says, Information in
10 our files indicates that you may not be registered to
11 vote or someone in your household may not be registered
12 to vote or you may not be registered at this address.
13 So it's the official state of Texas telling voters that
14 they may not be registered or personal's eligible to
15 register to vote that they may not be registered. And
16 people take that differently than they would from
17 mailing by the Legal Woman Voters or by a campaign or
18 Engage Texas or whoever. Then when the State says you
19 may not be registered, people say, Oh, yes, I am, and
20 they get very upset and they call us to make sure that
21 everything is okay because it's the State that says it.
22 It's just a different -- it's different thing.

23 We have the county send out notices of
24 examination for potentially deceased. And so they get a
25 notification from their county voter registrar that says

1 information in our records indicates that you may be
2 deceased. If you're not, let us know. And that also
3 will -- if people aren't deceased, they get very upset
4 about it.

5 Back in 2012 we did the death master file
6 mailing and, you know, a number of people in Harris
7 County, about 9,000, got a letter like that. One of
8 them was Representative Wayne Smith and he summoned me
9 over to his office and wanted to know why the State
10 thought he was dead. So it's just a different thing
11 when it comes from a government official. It has an
12 prominent, however you say that word, of officialness
13 that makes people believe it.

14 THE COURT: And so you're -- what you've
15 given me are two examples of where the State messed up,
16 got it wrong, right? But what I'm trying to get at is
17 the premise that the State has is that getting a vote by
18 mail application by the county clerk or any other
19 official government actor misleads people into thinking
20 that they're eligible even -- even if -- is it my -- and
21 you know this better than I do Mr. Ingram because what I
22 got in the stipulated agreements is a -- is this which I
23 can barely read. I'm getting older but I think the
24 print was really small. It also -- isn't there a
25 warning that if you are doing this incorrectly that

1 you're subject to penalties under Chapter 84.

2 MR. INGRAM: Absolutely. And that's a
3 great thing for them to include on it but it doesn't
4 mean that voters won't be mislead. In my experience,
5 you know, voters will call our 1800 number with
6 questions about a form they received in the mail and
7 many of the --

8 THE COURT: So Mr. Ingram --

9 MR. INGRAM: -- questions they have are
10 answered by the instructions on that form.

11 THE COURT: So my -- I just want to make
12 sure that you're answering my question. Your testimony
13 today is that if anyone receives a application for vote
14 by mail without soliciting one, they are automatically
15 mislead?

16 MR. INGRAM: That is not the case. And
17 it's difficult to answer because before this year --
18 before 2020, the only people who received unsolicited
19 applications for ballot by mail were over 65. You know,
20 campaigns, politicians, they -- interested groups, they
21 send unsolicited applications for ballot by mail to
22 persons over 65. John Oldham, the election
23 administrator in Fort Bend County testified that when he
24 turned 65 the first election he got, I think, 12 or 15
25 unsolicited ABBMs.

1 So that's -- that's a thing that happens
2 out there that's confusing to voters but it's not the
3 same thing as being a 28-year old otherwise healthy
4 person and receiving an unsolicited application for
5 ballot by mail. That's, in my experience, not happened
6 in Texas before this year.

7 THE COURT: Well, that's not true because
8 Mr. Eldred agreed that that's happened before because
9 years -- what we're saying is that -- you're saying an
10 elections administrator has never sent one out.

11 MR. INGRAM: No --

12 THE COURT: Because third parties send them
13 out all the time.

14 MR. INGRAM: But to over 65. This is the
15 first year in which people who are registered to vote
16 and under the age of 65 have received unsolicited
17 applications for ballot by mail.

18 THE COURT: You know -- I mean, and I don't
19 know if that's true, I'm just -- I'm intrigued by that
20 statement because how do you know what every third party
21 organization is doing?

22 MR. INGRAM: Well, I don't know about every
23 third party organization but a lot of third party
24 organizations run their plan by our office before they
25 do it. And then when somebody does something that they

1 didn't run by us, voters will call us because they're
2 concerned about the potential for fraud. And so when --
3 if something like this had happened, we would have
4 received phone calls on it and we have not.

5 THE COURT: How many Chapter 84 indictments
6 have been done in the last 20 years?

7 MR. INGRAM: I do not know. That would be
8 a question for the Attorney General and local law
9 enforcement.

10 THE COURT: Great. I'm glad that we have
11 the AG here.

12 MR. INGRAM: We've made several referrals
13 under 84.0041 this year.

14 THE COURT: And then my next question is --
15 because -- and I'm just -- and once again, for my own
16 edification because I find this interesting. Some of
17 the people that are over 65 that get unsolicited mail
18 ballots, I mean, it's just a matter of, you know, of
19 life that some of them are obviously dead, right, by the
20 time they receive their over 65 mail ballot. How many
21 of those have been filled out and sent back in and have
22 received a ballot and voted?

23 MR. INGRAM: I don't know how many of those
24 have happened. I know --

25 THE COURT: Has it happened in your -- do

1 you know of any that have happened?

2 MR. INGRAM: Yes.

3 THE COURT: Okay. And those have been
4 prosecuted under Chapter 84?

5 MR. INGRAM: Well, not under 84, we
6 referred them for illegal voting under 64.012.

7 THE COURT: So Mr. Eldred, how many folks
8 in the last 20 years have been prosecuted for a Chapter
9 84 violation?

10 MR. ELDRED: I don't have that information.

11 THE COURT: But you're -- I mean, you're
12 telling me that you're trying to protect, I guess, the
13 public so they're not mislead and don't violate
14 Chapter 84, correct?

15 MR. ELDRED: In part. It's not -- yeah,
16 felony is a possibility. Another possibility and I'd
17 ask Mr. Ingram to expand on this, is that they're just
18 going to be confused. They're going to not vote for
19 whatever reason. And if you don't mind, Mr. Ingram,
20 will you explain what I just said.

21 MR. INGRAM: Well, they -- I don't know how
22 to describe it. I use to say in 2012, my first election
23 was a presidential year and I use to say that there's
24 just not a lot of trust out there. You know, voters are
25 not trusting of the process and that issue has only

1 become exacerbated in the last almost nine years that
2 I've been in this job. People are very leery of the
3 process and that the other side or somebody nefarious, a
4 foreign country or whoever, is manipulating the process
5 in a way that's benefitting that group. And so the
6 suspicious level is really high in this year. And when
7 something strange or unusual or new happens, voters are
8 very concerned that this is fraud and that it's an
9 opportunity for fraud and that they -- you know, when
10 they think that the other side is cheating, they tend to
11 stay home. And so that's -- that's the concern about a
12 mass mailing like this that would be a new unprecedented
13 event. It would create a lot of confusion among the
14 voters and potentially turn some of them completely off.

15 MR. ELDRED: Would you like me to keep
16 going, Judge?

17 THE COURT: Yeah, it's your examination.
18 Every now and then I'll have questions but feel free to
19 continue.

20 MR. ELDRED: Thanks. Just making sure that
21 you were done for now.

22

23 Q. BY MR. ELDRED: And you talked about that a
24 little bit, Mr. Ingram. In fairness, we do not have
25 experience -- you do not have experience in what's going

1 to happen if the clerks who send unsolicited voting by
2 mail applications to everybody. That's never happened
3 before; is that right?

4 A. This is an unprecedented attempt, yes.

5 Q. So you're not telling the Judge that you
6 know -- this has happened before and there's been
7 confusion before but you're telling him that you think
8 there will be confusion; is that correct?

9 A. Based on similar occurrences from government
10 mailings, yes.

11 Q. Okay. And did you --

12 THE COURT: Mr. Eldred, can you -- and I'm
13 missing that piece. What similar occurrences? That's
14 the piece that I'm missing. I'm not understanding that
15 so -- so if you'll please -- maybe I'm just -- and I
16 apologize and I'm just not getting that. I get the
17 statement that it may be misleading and then when
18 Mr. Ingram says that -- because it's happened in the
19 past, he hasn't explained what he -- at which point in
20 time it's happened in the past, how it's happened,
21 what's happened and what the -- what -- how it ended.
22 He hasn't told me the story. I want to know the story.

23 Q. BY MR. ELDRED: Mr. Ingram, you've -- you
24 touched on that before, I think, a little bit. Can you
25 give the Judge more details or details about other

1 examples of official government mailings that have
2 caused confusion and that you know about.

3 A. Well --

4 THE COURT: I'm sorry. You're talking
5 about just confusion generally. I mean, you know, and
6 Mr. Ingram I received a you're not registered at this
7 address mail -- postcard the other day and so, I mean,
8 it didn't cause any confusion but I understand what
9 you're talking about. But is that what you're -- when
10 you say the confusion and the misleading, is that what
11 you're talking about is these, Hey, you're dead or you
12 may not be registered here sort of mailings?

13 MR. INGRAM: That's what we have experience
14 with. We also have experience with voters who have --
15 who have an official government document in front of
16 them and they call us to ask how to fill it out and the
17 answer to their questions is in the instructions. And
18 so all you do is say, Well, if you look on the back of
19 the form in the third paragraph down you'll see that
20 this question is answered. And so it's -- it's been my
21 experience that voters don't read the instructions, they
22 just try to fill in the blanks and then -- so the whole
23 point is that when we send, you know, 2 million
24 applications to ballot by mail and maybe only 150,000 of
25 them were actually eligible to vote by mail, that other

1 -- the remaining number -- some number of them are going
2 to be mislead and confused. Fill out the document, turn
3 it in when they don't qualify to vote by mail.

4 Q. And how can that cause the voter to not be able
5 to vote?

6 A. Well, I think they -- if they turn in their
7 application to vote by mail they'll be able to vote.
8 The clerk will send them a ballot and they'll vote it.
9 The part about surpressing the vote is the general
10 confusion that comes from believing that the game is
11 rigged and staying home as a result.

12 THE COURT: And Mr. Ingram, is there
13 evidence on that point, the game is rigged so we're
14 going to stay home point?

15 MR. INGRAM: I don't know of a specific
16 example. I do know that there is a great deal of angst
17 and concern on the part of the voting population about
18 the fairness of the process and, you know -- there is
19 some number who will throw up their hands and just say,
20 I'm out.

21 THE COURT: Ms. Hays, when y'all send --
22 when your plan to send out these applications were you
23 only going to send to libertarian voters or were you
24 going to send them to all voters?

25 A. We're -- our plan is to send them to every

1 voter under 65 who has not already requested a ballot by
2 mail.

3 THE COURT: So you were go to send them to
4 everybody? You were not looking to empower one
5 particular ethnicity, age group, partisan?

6 MS. HAYS: Correct. The position of the
7 Harris County Clerk's Office is as an elections
8 authority it is his job and his duty to make voting easy
9 and understandable for every voter no matter what their
10 circumstance. Whether they have access to the internet
11 and a printer or not.

12 THE COURT: Mr. Eldred?

13 MR. ELDRED: Thank you.

14 Q. MR. ELDRED: Mr. Ingram, before 2020 how did a
15 person get an application to vote by mail?

16 A. Well, there's a number of ways you can get an
17 application to vote by mail. You can go to the Early
18 Voting Clerk's Office and pick one up. You can call the
19 Early Voting Clerk's Office and have them mail you one.
20 You can call our office and have us mail you one. You
21 can request one be mailed to you by our office or by the
22 Early Voting Clerk. Or you can print one off of our
23 website.

24 Q. But in all of the examples and all the possible
25 ways before 2020, the voter has to in some way make an

1 affirmative step and ask for an application; is that
2 true?

3 A. Right. And that's 1010b says upon request and
4 it has to be furnished for free. And same with 84.012
5 and 84.013, both of them in the specific ballot by mail
6 context say that when someone requests one, it gets sent
7 to them at no charge.

8 Q. So --

9 THE COURT: Mr. Ingram, when you've worked
10 with third -- like you stated earlier that the Secretary
11 of State's Office has worked with third party mail
12 out -- to do these mail outs in the past, correct?

13 MR. INGRAM: That's correct.

14 THE COURT: When you've worked with these
15 third parties and you -- did you know who they were
16 mailing to?

17 MR. INGRAM: Well, the mailers that we
18 reviewed are always to over 65 and they pre-check the
19 over 65 box on them. So the ones that are reviewed have
20 had the over 65 box checked.

21 THE COURT: Okay. And how did these third
22 parties get the forms? Do they get them from you?

23 MR. INGRAM: Well, there's not -- there's
24 not a necessity to use our form and so they use a lot of
25 different looking forms whenever they're sending

1 unsolicited applications for ballot by mail. And that's
2 the reason why we would very much like to look at it to
3 make sure it has all the required information because
4 otherwise voters will have their application rejected
5 because it's incomplete.

6 THE COURT: So, I mean, I'm just trying to
7 get a feel for that. In the past the Secretary of State
8 has been involved in sending unsolicited pieces of mail
9 to third parties. They may not have been under your
10 seal but you worked with the third parties to mail these
11 out?

12 MR. INGRAM: So we definitely work with
13 third parties, political campaigns and interest groups,
14 to make sure that their mailing is going to be something
15 that's useful to the voter and won't let the voter be
16 rejected. You know, I sort of resist the idea that
17 we're involved in it other than that because there's a
18 group called Voter Participation Centers and they have a
19 notorious problem with their mailing list accuracy and
20 so just because we reviewed their application doesn't
21 mean that we're saying the State of Texas approves of
22 this mailing and, you know, just about every time I tell
23 them please work on your address list.

24 Q. BY MR. ELDRED: And following up on that just
25 to make sure we got that in the record. Every time the

1 Secretary of State has worked with or at least discussed
2 these mailers with third parties it's always been to
3 over 65; is that correct?

4 A. For applications for ballot by mail, yes. We
5 also look that voter registration solicitations that go
6 to everybody.

7 Q. Yeah, I apologize. I meant for applications
8 for vote by mail, always to 65 and older?

9 A. That's right.

10 Q. So you've -- the Secretary of State has never
11 approved of a third party mailing that went to everybody
12 or it went to people other than over 65; is that
13 correct?

14 A. In fact, it's opposite. We've -- we've called
15 campaigns and asked them to retract such mailings this
16 year.

17 Q. So not only have you not approved campaigns to
18 do that to send to people who are 65 and older, when you
19 find out they have done it you tell them that's it's to
20 stop; isn't that true?

21 A. That they need to stop and they need to inform
22 to the voters that they've mailed to that -- what the
23 qualifications are to vote by mail and to do their best
24 to undue the damage.

25 Q. And why is that? Why do you do that?

1 A. So that voters don't inadvertently commit a
2 felony.

3 Q. Okay. I want to go back to the old way. It
4 use to be that you had to ask for an application to get
5 an application to vote by mail; is that right? There's
6 no other way to get it?

7 A. That's correct. And that remains the way.

8 Q. Well, other than -- unless somebody sends you
9 one unsolicited; is that right?

10 A. That's correct.

11 Q. And people who ask for an application -- maybe
12 that's a leading question -- presumably they've already
13 decided they wanted to vote by mail, would you agree
14 with me on that?

15 A. I would agree with that. That they've made the
16 decision that they would like to apply for a ballot by
17 mail.

18 Q. But if people just get an application in the
19 mail they didn't ask for, does that say anything about
20 whether they actually want to vote by mail?

21 A. Well, it certainly doesn't answer the question.
22 I mean, they may or may not have planned to ask for an
23 application but if they get it sent to them that
24 obligates the necessity.

25 Q. Okay. A few other things, Judge. Is it true

1 that vote by mail applications are public information
2 after the election?

3 A. That is correct. 86.01 forces that an
4 application for a ballot by mail is an open record after
5 the first election that it's used for.

6 Q. And, of course, they'll be redacting personal
7 information that if someone asks for -- if I apply to
8 vote by mail and someone asks for it, will my personal
9 information be redacted before someone gives it to me?

10 A. Well, confidential information will be redacted
11 which usually on an application for ballot by mail is
12 just the date of birth.

13 Q. Okay. So the point being that if I -- if I
14 fraudulently fill out an application form and I mail it
15 in and I get a ballot and I vote, it's possible I could
16 get caught; would you agree?

17 A. Absolutely.

18 Q. And, in fact, I think you mentioned this
19 already, the Secretary of State's Office has gotten some
20 referrals for that very thing; isn't that true?

21 A. That's correct.

22 Q. Let me change gears here.

23 What is your opinion of the Harris County
24 Clerk's efforts in ensuring in-person voting for this
25 election?

1 A. I have been very, very pleased with all of
2 Texas counties and their creativity and their
3 innovations in coming up with ways to -- for voters to
4 vote safely in person. And what I've been reading about
5 from Harris County's plans for this November's election
6 go above and beyond.

7 Q. Isn't it true that Harris County plans to have
8 a drive-thru voting procedure?

9 A. I believe so. I think they might have one or
10 -- more than one but I don't know for sure. You would
11 have to ask Mr. Hollins.

12 Q. Okay. Have people complained to the Secretary
13 of State's Office about the drive-thru procedure?

14 A. Not yet.

15 Q. Okay. I'll move on.

16 A. They probably will.

17 Q. Well, if someone did complain about the
18 drive-thru procedure would you -- do you have any
19 opinion about if that's allowed into the law or not?

20 A. You know, it's -- it's a creative approach that
21 is probably okay legally. You know, the requirement is
22 that polling places be located in a building so what
23 we've told counties who want to try this is that they
24 need to have the location associated with a physical
25 building and that they need to take whoever shows up at

1 that location, whether they're walking, riding a bicycle
2 or driving a car, they need to be able to provide all of
3 those folks with an opportunity to vote.

4 Q. Okay. And to your knowledge is there any
5 particular reason to justify -- let me try that again.

6 Is there going to be -- are there going to
7 be problems with in-person voting that would justify a
8 need to send vote by mail applications to everybody as
9 far as you know?

10 A. I'm convinced that the counties have got a plan
11 for safe in-person voting. So voters who qualify to
12 vote by mail and want to vote by mail then they should.
13 And voters who want to vote in person, we would
14 encourage them to do so. It'll be safe for them to do
15 it and the counties will have a good experience for
16 those voters.

17 I would, if I have the opportunity,
18 encourage voters to vote during early voting and to vote
19 in the middle of the week during early voting to have
20 the most contact-free experience. The best opportunity
21 to vote quickly and not encounter a great number of
22 other folks.

23 Q. And just to be sure you're talking about
24 in-person early voting?

25 A. That's correct.

1 Q. And I'm almost done, Judge.

2 Just can we circle back to -- if someone
3 receives an unsolicited vote by mail application,
4 submits it and then maybe never hears back from the
5 county for some reason or loses what they hear back from
6 the county, is that an issue that you think you're
7 concerned about?

8 A. I don't know what you mean.

9 Q. If I -- if I get an application to vote by mail
10 and I send it in, do I think I'm going to get a ballot?

11 A. You will either receive a ballot or you'll
12 receive a rejection notice.

13 Q. And with 2 million people and that kind of
14 population, would you expect that some of them will
15 submit an application but lose their ballot maybe?

16 A. That happens. People misplace the ballot that
17 gets sent back to them, sure.

18 THE COURT: I mean, and Mr. Eldred, I don't
19 know this but I've only recently started reading the
20 Election Code but you can -- if you go vote in person
21 you cancel your VBM, right? Is that right, Mr. Ingram?

22 MR. INGRAM: If you have it with you then
23 you can surrender the ballot by mail and cancel it and
24 then vote in person. If you don't have it with you and
25 you sign an affidavit that says that you haven't

1 received it and you vote in person, you'll vote
2 provisionally and then if the ballot by mail never comes
3 back the provisional ballot will count.

4 MR. ELDRED: I'll pass the witness.

5 MR. HATZEL: Good afternoon, Mr. Ingram.

6 THE COURT: Hold on, one second. We're
7 about 80 minutes into this so let's go ahead and take a
8 ten minute break and we come back with the cross of
9 Mr. Ingram.

10 (Break taken.)

11 THE COURT: Mr. Hatzel, whenever you're
12 ready. Mr. Ingram, are you ready to continue?

13 MR. INGRAM: Yes, sir.

14 THE COURT: All right. Mr. Hatzel.

15 CROSS EXAMINATION

16 Q. BY MR. HATZEL: Good afternoon, Mr. Ingram.
17 Listening to your testimony I heard -- we talked a lot
18 about speculation and other mailers but I thought to
19 narrow this down we might look at the actual mail that's
20 been proposed by the Harris County Clerk. So if I could
21 I would like to show you Defendant's Exhibit Number 1.

22 So this is Defendant's Exhibit Number 1 and
23 this is the mailer that's being offered -- that is being
24 proposed to be sent out by Clerk Hollins. And the first
25 question is -- you see the first and it says, Do you

1 qualify to vote by mail and there's a question mark.
2 That's a lot different than a mailer that would direct
3 -- that indicates that you are qualified to vote by
4 mail, would you agree?

5 A. Yes. I mean, I would agree that it's better
6 than one that has a pre-checked box for the reason for
7 voting by mail, you bet.

8 Q. So -- and this is also different than the other
9 mailers that you were testifying to that might indicate
10 to a voter make a plan to vote by mail or might not
11 provide any information about what the qualifications
12 are to vote by mail; is that true?

13 A. Well, I mean, definitely some mailers have that
14 kind of language on them but not all of them -- not very
15 many of them.

16 Q. Would it be fair to -- I mean, in addition to
17 the question, do you qualify to vote by mail, have you
18 ever seen any mailer that asks the potential voter if
19 they're qualified to vote by mail that includes a vote
20 by mail application?

21 A. I don't know if you heard my testimony earlier
22 but we've never before this year experienced the sending
23 of applications to people who didn't qualify to vote by
24 mail as far as I know. So there would be no reason for
25 this question. Everybody that received the application

1 was over 65 and qualified.

2 Q. Let me ask it a better way. Do you believe the
3 question, do you qualify to vote by mail, is in any way
4 confusing?

5 A. Do I think so?

6 Q. I mean, how would a voter be confused by the
7 question, do you qualify to vote by mail?

8 A. Well, they would have to read it.

9 Q. They would have to read it to fill out an
10 application to vote by mail as well, right?

11 A. I don't understand your question. I'm not
12 trying to be obstreperous. What I'm trying to say is
13 that that's a good question to ask. I've read this full
14 mailer and I think it's very good. I appreciate the
15 language that's been used. I appreciate the
16 highlighting in red and that's going to keep a lot of
17 voters from making a mistake. But it doesn't change the
18 fact that -- the fact that it's coming from the County
19 Clerk's Office means that some number of voters are
20 going to go right past all of that, they're going to
21 fill out the application and they're not going to
22 qualify.

23 Q. All right. So backing up. Is there any part
24 of the mailer that you reviewed that you take issue with
25 or that you believe is incorrect?

1 A. Other than the fact that it includes an
2 application, no, the mailer is fine.

3 Q. And you would agree with me that this mailer
4 includes education to the voter about what the
5 qualifications to vote by mail are, right?

6 A. I agree with that, yes, sir.

7 Q. And you agree that we have included -- or the
8 Harris County Clerk's Office has included these red
9 sirens and red language that would draw attention to the
10 eye, correct?

11 A. I agree with that.

12 Q. I mean, you can say that this application to
13 vote -- or this mailer which includes education as well
14 as an application to vote by mail is quite conspicuous?

15 A. I don't know what that means.

16 Q. You would agree that red all point bolded --
17 all cap typed base red is conspicuous to the eye,
18 correct?

19 A. I mean, I'm not a mail design expert. It's
20 conspicuous to me.

21 THE COURT: Yeah. It's like the Expressed
22 Negligence Rule. Let me ask Mr. Eldred a question
23 because I want to short circuit this a little bit.
24 You're not -- you don't take any issue with the actual
25 design of the mailer, do you? Your only issue is

1 whether or not the Clerk can do it?

2 Sir, you're muted.

3 MR. ELDRED: Can you hear me now? The
4 issue is sending the application with the mailer not so
5 much the mailer. By mailer I mean the directions.

6 THE COURT: Yeah. And so, I just want to
7 make sure -- I want to short circuit this for Mr. Hatzel
8 a little bit because I don't think we need to get into
9 whether or not, you know, it's in -- it's conspicuous
10 and whether it's in different font or -- and once again,
11 I'm just going by the Dresser-Rand factors here but --

12 I don't think that's an issue for the State
13 today. The State is merely arguing the ability for
14 Mr. Hollins to reach out to qualified voters and send
15 them this application.

16 MR. ELDRED: Of course we wouldn't spin it
17 that way because he's reaching out to most people who
18 are not qualified to vote by mail.

19 THE COURT: We're -- but, I mean -- so let
20 me -- I want to make sure that we get this right because
21 I want to make sure that we're talking -- we're not
22 doing apples to oranges, we're doing oranges to oranges
23 here, right?

24 Mr. Hatzel, is the county clerk, the
25 elections administrator for 2020, he would only -- if he

1 mails these out he's only mailing them to registered
2 voters, correct?

3 MR. HATZEL: That's correct.

4 THE COURT: People who are deemed as
5 qualified voters in the November election?

6 MR. HATZEL: That is correct.

7 THE COURT: Mr. Eldred, your argument is
8 that not everyone who receives this is qualified to vote
9 by mail; is that correct?

10 MR. ELDRED: That's the fact and the
11 legal -- yes, we think legally that makes the mailing
12 illegal.

13 THE COURT: Mr. Hatzel, you can continue.

14 MR. HATZEL: So given that you've testified
15 that it provides education on what the qualifications to
16 vote by mail are, it's still your testimony that voters
17 are going to be confused by this mailer if I understand
18 you correctly?

19 A. If it includes the application to vote by mail,
20 yes. It's going to mislead a certain number of voters
21 into thinking that they can vote by mail when they
22 can't -- when they don't qualify.

23 Q. And isn't it true that you don't have any
24 information or a study or any evidence that would
25 substantiate that claim?

1 A. What I have is an alligate situation because
2 obviously this is an unprecedented mailing.

3 Q. Let's talk about those inalligate situations.
4 Earlier on you were testifying about unsolicited
5 registration applications as I understand it, correct?

6 A. That's correct.

7 Q. And those registration applications, those go
8 out to a large number of people some of who may not even
9 be eligible to vote; is that correct?

10 A. That is correct.

11 Q. Now, if you're not eligible to vote why doesn't
12 that raise -- doesn't that raise the same fraud
13 concerns? I mean, why wouldn't that be a fraud concern?

14 A. It is definitely a fraud concern and that's why
15 whenever the democratic party did a mailing like that in
16 2018, we referred them to the Attorney General for
17 possible investigation into whether or not they were
18 soliciting false statements on a voter registration.

19 Q. But isn't it true that the Secretary of State
20 itself participates in mailing unsolicited applications
21 to register to vote to -- to voters who may or may not
22 be eligible?

23 A. That is not correct.

24 Q. And Mr. Ingram, can you -- can you identify the
25 specific statute or provision of the election code that

1 indicates that Mr. Hollins cannot distribute these as
2 the Harris County Clerk?

3 A. That's not the way the Election Code works.
4 The Election Code allows things. It doesn't prohibit
5 everything that's possible. It allows people to do
6 stuff. And what it allows in 84.012 is for the Clerk to
7 send applications to people who requests them.

8 There's nothing in the Election Code that
9 allows of sending of unsolicited applications for ballot
10 by mail. That's why whether or not they should have
11 done it for people over 65 is questionable but at least
12 you know that every single one of those people who
13 received it is eligible to vote by mail. Here, we do
14 not have that comfort. In fact, we know that most of
15 the people who receive it are not eligible to vote by
16 mail.

17 Q. Well, there's nothing in the Election Code that
18 allows a local election official to maintain a website
19 with voter information on it, is there?

20 A. There absolutely is, it's required.

21 Q. And what code provision -- well, never mind.
22 Well, there's a number of issues though. Earlier -- you
23 were recall your testimony earlier when you were talking
24 specifically about the efforts that many counties around
25 the state are making to provide for in-person voting

1 in this -- for this election, you recall that testimony?

2 A. Yes, sir.

3 Q. And you said that lots of these counties are
4 going above and beyond in order to facilitate in-person
5 voting for the 2020 general election?

6 A. That's not exactly what I said. What I said
7 was Harris County was going above and beyond. What I
8 also said is that I've been very pleased with the
9 creativity and innovation of all Texas counties in
10 approaching in-person voting in this pandemic and making
11 it safe for voters.

12 Q. But you would agree with me that going above
13 and beyond goes beyond what is specifically allowed for
14 in Election Code, correct?

15 A. Well, the Election Code -- if we're talking
16 about let's just suppose early voting hours, requires
17 that all early voting locations be open at least 8:00 to
18 5:00. There's nothing that prohibits them being open
19 longer than that -- and again, it's one of those things
20 that it's like mailing to unsolicited applications to
21 voter over 65. Arguably there's not any power to do it
22 but it doesn't hurt anything. Nobody is going to be
23 confused or mislead by it. Nobody is going to be
24 committing a felony because the Clerk walked them into
25 it, so that's the difference.

1 Q. So the difference is not that the local
2 election officials have the authority to do these things
3 that may be outside the election code. It's solely if
4 the State -- Secretary of State sees a harm; is that
5 your testimony?

6 A. Well, our obligation is to the voters of the
7 state of Texas and we have an obligation to protect them
8 from abuse by election officials. It's not going to
9 abuse voters of the state of Texas for an early voting
10 location to be open more than 8:00 to 5:00 or even
11 24 hours.

12 Q. Can election officials go outside the code in
13 some scenarios?

14 A. Generally, no. That's what I'm telling you.
15 The Election Code allows things, it doesn't prohibit
16 everything that's possible. That's the way you read the
17 Election Code in general. There's some exceptions but
18 generally that's the way you read the code.

19 Q. And to the extent that you're allowing -- that
20 we've already cleared up that there's no issue with the
21 mailing of applications to vote by mail to voters that
22 are 65 and older are you admitting then that you're
23 allowing election officials to act ultra vires in
24 mailing to people over 65?

25 A. Well, I want to be real careful on this point.

1 We don't allow or disallow counties to do anything.
2 Counties are the ones that run elections in Texas, we
3 assist and advise. The limited exception to that is
4 whenever a county election official is abusing voters by
5 misleading them and walking them into a felony.

6 This is if first time in almost nine years
7 in this job that we've had to send a letter like this to
8 a county.

9 Q. Okay. And so looking at Exhibit Number 1 it's
10 your -- it's the Secretary of State's position that
11 providing a huge mailer asking if they qualify,
12 providing details on whether they qualify, red sirens,
13 that's walking voters into committing a felony?

14 A. When you include the application you're
15 implying to a certain number of voters that they are
16 qualified to vote by mail no matter what the words say.

17 THE COURT: Mr. Ingram, and I want to get
18 back to this because this is -- Mr. Eldred -- and
19 Mr. Eldred, maybe you can ask the question better than I
20 can because I'm not getting a response that I think
21 meets what you're trying to get at. This is your
22 imminent harm issue I imagine, right, because I'm
23 just -- I'm just a judge and I know -- I just know the
24 requirements needed for a TI and one of them is imminent
25 harm, right?

1 MR. ELDRED: Yes.

2 THE COURT: And so I'm trying to trying to
3 figure out what the imminent harm here is because no one
4 has articulated it. All I've heard is speculation.

5 MR. INGRAM: Judge, can I try?

6 THE COURT: Please do.

7 MR. INGRAM: And the reason why it's
8 speculation is because nobody has ever done this before.
9 This is unprecedented. This is something that is just
10 frankly until now unimaginable.

11 THE COURT: Mr. Ingram, I just want to --
12 you would agree with me that -- and I can go to the
13 Texas -- anybody -- let's not use me. Anybody can go to
14 the Texas Secretary of State website, anybody can go to
15 any county registrar's website and get a -- maybe not a
16 county registrar but an election official's website and
17 download an application, correct?

18 MR. INGRAM: That is correct. Anybody can
19 request one and will have it provided to them whether or
20 not they have a printer.

21 THE COURT: Okay. And they can fill it out
22 and mail it in, correct?

23 MR. INGRAM: They can.

24 THE COURT: And how long has that been
25 available?

1 MR. INGRAM: I don't know. A very long
2 time.

3 THE COURT: How many cases of felony fraud
4 have been brought because people have printed out and
5 mailed in applications and voted by mail?

6 MR. INGRAM: I don't know. We'd have to
7 talk to the Attorney General but we have definitely
8 referred cases like that where someone was convinced to
9 fill out an application to vote by mail when they didn't
10 qualify.

11 Q. BY MR. HATZEL: Well, Mr. Ingram, to that
12 point, the criminal statute that you made reference to,
13 both statutes would require knowing --

14 A. I'm sorry.

15 Q. I'm sorry.

16 A. Right, intentionally or knowingly.

17 Q. Okay. And so how could then a voter knowingly
18 or intentionally violate that statute when they've been
19 presented with all this information about whether they
20 qualified to vote by mail or not?

21 A. I don't know the answer to that question. I
22 mean, for most voters I agree this is sufficient but not
23 for all of them. And if they have the attitude, Well,
24 I'm not really disabled but nobody is checking so I'm
25 just going to do it then that is exactly what 84.0041

1 is. And I've got the application in my hand and the
2 Clerk sent it to me.

3 Q. Well, doesn't that already -- doesn't that risk
4 already exist? I mean, this -- you've already testified
5 that this -- that an application to vote by mail is
6 available on the Secretary of State's website, right?

7 A. I agree with that. It's available upon request
8 which is exactly like the statute says.

9 Q. All right. So if an eligible voter were to say
10 to themselves I want to vote by mail even though I think
11 I don't qualify, they could just as easily go to
12 Secretary of State's website and download the
13 application to vote by mail and send that in, right?

14 A. It's not just as easily, no. It's not just as
15 easily at all, it didn't show up in my mailbox
16 unsolicited.

17 Q. If a voter truly wanted to send an application
18 with falsified information on it as you were suggesting
19 in your hypothetical, this application is available on
20 the internet to anyone that accesses the Secretary of
21 State's website?

22 A. If people are interested in committing a crime
23 they can do so, yes.

24 THE COURT: Mr. Hatzel, can we move?

25 MR. HATZEL: Yeah.

1 Q. BY MR. HATZEL: Additionally, Mr. Ingram, I
2 wanted to point out that -- I wanted specifically to
3 talk to you about section -- specifically about
4 Section 82.004 and this is -- I'm sorry, not -- the
5 qualification to vote by mail and specifically the
6 statute that's entitled Disability, which I think is
7 actually 82.002.

8 A. Right.

9 Q. All right. Now under this statute you would
10 agree with me that there's no -- it does not use the
11 word disabled at all, correct?

12 THE COURT: Is this germane to the issue at
13 hand today? I mean, hasn't this issue been resolved?
14 Disability has been resolved by a court higher than the
15 127th.

16 MR. HATZEL: Yes, your Honor. I'll -- let
17 me ask -- let me move on.

18 Q. BY MR. HATZEL: What I'd like to do,
19 Mr. Ingram, is show you what's been marked as
20 Defendant's Exhibit Number 4. This is a website from
21 the Secretary of State's website.

22 Now are you familiar with this web page?

23 A. I am.

24 Q. All right. And we see at the top -- and it's
25 true that this is the page from which a voter can print

1 the application for ballot by mail, correct?

2 A. That's correct.

3 Q. And at the top the Secretary of State provides
4 -- it says, To be eligible to vote early by mail in
5 Texas you must meet at least four bullet point, correct?

6 A. That's correct.

7 Q. Okay. And this web page doesn't provide any
8 other additional education to a potential voter about
9 whether they qualify to vote by mail, does it?

10 A. It does not. You know, the page from which
11 most voters get here is on VoteTexas and it has a little
12 more words, few more words about different ways to vote.

13 Q. But the actual Secretary of State's website is
14 not -- as the chief election officer in the state of
15 Texas does not promote any additional education to
16 voters about what these specific bullet points mean,
17 does it?

18 A. I would agree there's not anymore words on this
19 page but the VoteTexas.gov website is an official
20 Secretary of State website.

21 Q. Okay. And I wanted to just direct you to
22 second bullet point, Be disabled. This is a reference
23 to Section 82.002, correct?

24 A. That's correct.

25 Q. And that section does not actually use the word

1 disabled, does it?

2 A. Well, it's titled, Disability.

3 Q. It's titled, Disability, but that's different
4 than disabled, isn't it?

5 A. I guess it's a different form of the same word
6 -- I don't know -- sure.

7 Q. What does disabled mean to you?

8 A. Disabled means what 82.002 says it means.

9 Q. Okay. And what is -- what is 82.002 -- what
10 guidance has the -- what's the -- okay.

11 But you would agree with me that disabled
12 doesn't mean -- it's specific to what it means under the
13 Election Code, right?

14 A. I don't know what that question means.

15 THE COURT: The Court will take notice that
16 disabled under 82.002 doesn't fit the ADA definition of
17 disability. It is a singular disability clause which
18 has been expanded on by our Supreme Court within the
19 last year.

20 MR. INGRAM: I agree with that.

21 Q. BY MR. HATZEL: You would agree with me that a
22 that comes to the Secretary of State's website wouldn't
23 necessary be able to determine what the definition of
24 disability under the Election Code is though, right?

25 A. I agree with that. Not on this page.

1 Q. They'd have to do some more investigation,
2 correct?

3 A. They would.

4 Q. All right. You would agree with me that the
5 application that Mr. Hollins intends to send to
6 registered voters in Harris County does provide some
7 detail and some color on what it means to have a
8 disability under the Election Code, correct?

9 A. I agree with that.

10 Q. And you'd also agree with me that given the
11 Supreme Court's illumination of this issue, voters are
12 entitled to consider physical conditions that they may
13 have in determining whether they have a disability,
14 correct?

15 A. That's the definition under 82.002, yes.

16 Q. And nowhere on the Secretary of State's website
17 does it make any notice to a voter that they can
18 consider physical conditions they have when evaluating
19 whether or not they might have a disability or not?

20 A. I don't necessarily agree with that. I'm
21 agreeing that it's not on this page.

22 Q. So why doesn't your website actually explain
23 that -- explain that to voters?

24 THE COURT: Counsel --

25 A. We've never had the need to explain it. We can

1 certainly add more words here.

2 THE COURT: The Secretary of State website
3 has nothing to do with whether or not Mr. Hollins has --
4 is allowed under the statute to send out applications.
5 But I agree with Mr. Ingram, they should add more words.

6 MR. INGRAM: We can do that.

7 Q. BY MR. HATZEL: And isn't it true that you
8 don't -- in reviewing Exhibit 1, the proposed mailing
9 from Clerk Hollins, you don't take any issues with the
10 form of the application to vote by mail itself, do you?

11 A. No other than it's included in the mailer.

12 Q. Okay. And previously you testified -- you
13 testified about these third parties and the fact that
14 third parties were only targeting voters to -- sorry,
15 they were only targeting people that were 65 and older,
16 do you recall that testimony?

17 A. I agree.

18 Q. And --

19 A. I said before this year but --

20 Q. Okay. So even this year there are third
21 parties that are sending these applications to people
22 that are under 60 -- under 65?

23 A. We've heard of a couple of campaigns who have
24 done that, yes.

25 Q. And you're not aware of any information on

1 those mailers that provides voters with the education
2 that Clerk Hollins is proposing to provide with his
3 application to vote by mail?

4 A. They did not have the sort of educational
5 materials that would be included in Clerk Hollins'
6 mailer, no.

7 Q. So wouldn't you agree then compared to the
8 third party mailers that are out there already Clerk
9 Hollins is a better -- is better educational tool for
10 voters?

11 A. I agree with that. I've commended the
12 educational component of that mailer, yes.

13 Q. And so the harm of someone under the age of 65
14 that may not be eligible to vote by mail filling out an
15 application to vote by mail incorrectly, that risk
16 already exists based upon the proliferation of mailers
17 from these third parties, does it not?

18 A. I don't know about proliferation. We've heard
19 of two campaigns who have done it.

20 MR. HATZEL: I think -- I think those are
21 all the questions I had for this witness.

22 THE COURT: Mr. Eldred, anything on
23 redirect?

24 MR. ELDRED: No, your Honor.

25 THE COURT: Mr. Ingram, you are excused.

1 Is he allowed to leave the Zoom or do we need him on the
2 Zoom for anything else?

3 MR. ELDRED: I think he can go.

4 THE COURT: Mr. Hatzel?

5 MR. HATZEL: No objection.

6 THE COURT: Thank you, Mr. Ingram. Thank
7 you for your work and your dedication to our state.

8 MR. INGRAM: Thank you, Judge. Appreciate
9 it.

10 THE COURT: Mr. Eldred, your next witness?

11 MR. ELDRED: We have no more witnesses.

12 THE COURT: Ms. Hays? You're muted. You
13 and Mr. Eldred are now both one for one so it's good.

14 MS. HAYS: We're even -- we're even. I
15 like to keep it that way. I was beginning with saying I
16 sense that the Court is more interested in a
17 conversation than a lecture so we can go at it if you'd
18 like but I'm happy to just jump in.

19 THE COURT: We can -- I mean, y'all can do
20 whatever you like. What I'm having a hard time with and
21 I've tried to be fairly articulate about it, is -- I
22 mean, there's multiple issues here, right? There's the
23 likelihood of success on the merits.

24 MS. HAYS: Uh-huh.

25 THE COURT: I mean, just because you're the

1 State and the County fighting, doesn't mean that the TI
2 law goes out the window. So TI law is still there. I'm
3 looking for imminent harm, irreparable injury and issues
4 like that and I'm just -- nothing has been articulated
5 to me on both the imminent harm or the irreparable
6 injury especially when the suit is brought -- and as
7 I've been trying -- and I tried to articulate this to
8 Mr. Eldred and that's why I'm having a little bit of
9 trouble, the State has brought because of ultra vires
10 act, right? It's not -- it -- the procedural posture is
11 a little bit different and so I'm trying to figure out
12 where we land on those factors because whether or not
13 you're going to win on the merits I think is a legal
14 question. I think that's a question of law, the merits.
15 Now the issue is, what's the impact of Mr. Hollins
16 sending this out? What's the imminent harm? What's the
17 irreparable injury? I've asked multiple times the AG
18 and the Secretary of State how many folks have been
19 prosecuted under 84, I've gotten no answer. There's no
20 testimony as to that. I've asked multiple times what --
21 what evidence is there that people are misled. There is
22 no evidence on that. There's no statistical analysis.
23 There is we just think it's going to happen.

24 So I don't know -- I mean, and I'm -- and I
25 guess I'm going to throw this to Mr. Eldred because he's

1 got the onus here more than you Ms. Hays, and I
2 apologize for butting into your opening but I don't want
3 to be in a position where I'm not articulating what I
4 want or need and not getting it because there's a
5 misunderstanding. So Mr. Eldred?

6 MR. ELDRED: Sure. The three factors, of
7 course, are the cause of action against defendant, I
8 think we have that, it's called the ultra vires cause of
9 action. Probable right to release sought, that's what
10 we're arguing about, I think you don't need -- say much
11 more about that. So imminent harm, an injury is
12 irreparable if the injured party can not be adequately
13 compensated in damages or if the damages cannot be
14 measured by any certain pecuniary standard. And so the
15 reason it's imminent harm is because this is not a
16 damages case. If the Harris County -- you know, if it's
17 found out later they do this and they shouldn't have
18 done and they can make us whole by giving us money then
19 we wouldn't have irreparable harm.

20 THE COURT: And Mr. Eldred I'm not -- I'm
21 not -- and, you know, I'm just -- we're all lawyers
22 here, we understand this is not a monetary issue.

23 MR. ELDRED: Yes, sir.

24 THE COURT: But you've got to articulate
25 the harm. Just because it's not monetary doesn't mean

1 that the harm can't be articulated. As you know I'm
2 sitting ancillary, about half the cases I get are, Hey,
3 our trade secrets are going out the window. There's not
4 a monetary component to that. It's hey, once we lose
5 them, we lose them. Right? So, I mean, the Court is
6 very comfortable in dealing with conceptual and
7 abstracts. So what I'm not getting is a conceptual or
8 abstract.

9 MR. INGRAM: Thank you for clarifying.
10 That's the -- that's what we have here, if the ballots
11 go out and they weren't suppose to go out, there's not
12 way to recall the ballots. The harm, if you think there
13 is harm -- the harm has happened. There's nothing that
14 can be done about it.

15 THE COURT: But the harm has to be somehow
16 tangible, right? We -- everyone -- everyone on this
17 hearing agree that voter participation by qualified
18 voters in a democracy is what everybody wants. That's
19 everyone agreed to that, both the plaintiff and the
20 defendant agreed to that. The issue -- what I don't
21 understand is sending an application to vote by mail --
22 and maybe I'm -- I'm mishearing this, right, you're
23 saying the act in and of itself is the harm because your
24 witness Mr. Ingram what was conveyed to me was the act
25 wasn't the harm, it was the misleading of the voter

1 which was the harm. And so that's why I'm unclear. And
2 so will you clear that up for me, Mr. Eldred. I'm
3 sorry. I'm not trying to be obtuse, I'm just trying to
4 figure out which line to -- which train to take.

5 MR. ELDRED: Well, I don't know if you like
6 my answer. I think it's all of above. If they send it
7 and they don't have the authority to send it then the
8 harm is to the law of Texas. And if it confuses voters
9 then it's further harm because it will be voter
10 confusion and disenfranchisement.

11 There's going to be -- we've -- I mean,
12 it's hard to say because honestly this has never
13 happened before. We're doing our best. We think it's
14 going to be harm. We've tried to tell you why. We
15 can't point to a situation and say, Well, here's where
16 something happened exactly like this. There's a first
17 time for everything and this is it. We think there's
18 going to be harm and I hope Mr. Ingram explained and if
19 he didn't, he didn't. But he really believes and the
20 Secretary of State Office really believes that there's
21 going to be harm. That the voters are going to be
22 confused. Voters are not going to do this correctly.
23 They're going to assume that they can vote by mail.
24 They're going to vote by mail illegally. We think
25 that's going to happen. And that's -- I think -- I

1 think -- so I think the answer is both, both the harm to
2 the law and the harm to voters.

3 THE COURT: And I completely understand.
4 And Mr. Eldred, for what it's worth, I mean, it's really
5 only worth the paper that this is being transcribed on
6 but I think everyone is trying to do their best so I
7 completely agree with you. This is an issue of first
8 impression and I think everyone is doing their darndest
9 best to protect -- to protect the interest of Texans, so
10 thank you.

11 MR. ELDRED: We're trying and I appreciate
12 you as well. It's just -- it's kind of the difference
13 between enforcing the speed limit against someone who
14 goes five miles per hour over versus 25 miles per hour
15 over. Maybe you sending to over 65 is five miles over
16 and sending to everybody is 25 over. You're going to
17 get a ticket for 25 over even if you don't get a ticket
18 for five over. I think that's one of our points too
19 that maybe we haven't been able to articulate well yet.

20 THE COURT: No, that's I think articulated
21 well. It's the amount of discretion you use is
22 basically what you're saying, right? I mean, you've got
23 some discretion under the statute, at least the State's
24 argument is there's some discretion because you can send
25 unsolicited to people over 65 but you don't have

1 ultimate discretion as to everyone. Am I articulating
2 that point a little bit better?

3 MR. ELDRED: Not quite. We're not
4 necessarily saying that sending to over 65 is not ultra
5 vires. We're saying it's more like speeding going five
6 miles per hour over and we're not going to enforce that
7 right now. We don't know. That's not really -- it's
8 not at issue in this case and I know that may be a
9 copout but it's just not an issue this in case. This --
10 what they're doing is not that. It's very different.
11 It's sending 2 million applications to people that we
12 know aren't qualify as opposed to sending to people that
13 we know are qualified. As Mr. Ingram said, the harm is
14 very limited in the latter case. In the former case,
15 which is our case, we think the harm is more real and
16 it's -- you know, driving 25 miles an hour over the
17 speed limit might not harm anybody but it's still
18 illegal and you can't do it and they're going to get a
19 ticket for that even if you might not have got one for
20 five miles an hour.

21 And so I don't want you to think that we're
22 saying that sending over 65 is absolutely not ultra
23 vires. We just don't think it's at issue in this case.
24 We think that the parties involved come to an agreement
25 about that they'd allow it this time, maybe next time

1 they won't. Again we're in unprecedented territory and
2 I hope I didn't mislead you there about what we think
3 about over 65 -- about sending to over 65.

4 MS. HAYS: Your Honor, if I may begin?

5 THE COURT: Yeah. I would just say this is
6 fascinating, right, because --

7 MS. HAYS: I think I can answer some of the
8 questions you have of the State and I think that
9 Mr. Eldred just raised that selected prosecution is the
10 big problem that is implicit in this case.

11 Your Honor, you've repeatedly about the
12 statute, 84, how many prosecutions. The applicable
13 provision in that statute, subsections A1 and A2 were
14 only enacted in 2017. They are in effect the new toy in
15 Ken Paxton's toolbox to prosecute voters when he does
16 not like what they're doing.

17 THE COURT: And Ms. Hays, just because we
18 are in a civil court we'll just call him the Attorney
19 General.

20 MS. HAYS: Okay, we will. And the -- as
21 you can see from the plain language of the statute, I'm
22 leaning back to read, it requires that a voter knowingly
23 provide false information.

24 So let's talk about that under the law.
25 The definition under -- that we call the disability

1 category which is a misnomer, it's a much broader
2 category than that and it includes a judgment by the
3 voter as the Texas Supreme Court has made clear of
4 whether voting in person poses a likelihood of harming
5 your health because of an underlying physical condition
6 and that is for the voters to decide.

7 So query, how can a voter who makes that
8 decision knowingly provide false information? And
9 likewise moving to subsection two, intentionally causes
10 false information to be provided. How can someone
11 whether the county clerk, the State of Texas or a
12 campaign who hands a voter under 65 an application and
13 says, you know -- think about applying under disability,
14 maybe they go above and beyond like that clerk is doing
15 here and provides that definition and the guides from
16 the Texas Supreme Court and a link to the CDC conditions
17 you might consider because of the pandemic and then the
18 voter makes that decision as they're entitled to do
19 under the Supreme Court decision and the Election Code.
20 How is that intentionally causing false information to
21 be provided? It can't be. Not logically. And that's
22 what underlies their whole case and that's what they
23 seem to be jumping at the bit to get out there and do.
24 Now, they their complaints about the mailer --

25 THE COURT: So ma'am --

1 MS. HAYS: Go ahead.

2 THE COURT: I don't -- and this again --
3 this is where I'm getting confused, right, because I
4 think this is a pretty -- pretty straightforward issue
5 and Mr. Eldred articulated that. It's whether or not
6 Mr. Hollins, the county -- the county election
7 administrator, I don't know what to call him so I just
8 keep calling him various --

9 MS. HAYS: Local election authorities is a
10 universal term.

11 THE COURT: Okay. Whether or not the
12 statute proscribes his activity -- am I saying that
13 correctly? Whether or not the Election Code proscribes
14 which means for all those listening out there in the
15 world, whether or not it curtails what he can do? If he
16 can only do what is written or his authority is broader
17 than that. And that's why I brought up Election Code
18 1.010. Because Election Code 1.010 tends to believe in
19 the parties' agreement that everyone whose qualified
20 should participate. So if 1.010 says that, how can we
21 proscribe the authority of the clerk?

22 MS. HAYS: We cannot and that's the point.
23 The code doesn't prohibit it and the legislature knows
24 how to write a prohibition in the code when they want
25 to.

1 For example, the section of the code
2 regarding --

3 THE COURT: But Ms. Hays, I bring that up
4 because that's really the only thing I want to talk
5 about.

6 MS. HAYS: Is the Election Code?

7 THE COURT: Well, I mean -- I don't know
8 what else is --

9 MS. HAYS: No, I'm -- that's what I'm
10 trying to do. There's a provision in the code about
11 high school voter registrars. They can register people
12 to vote but the code explicitly restricts them to only
13 employees and students at their high school. They can't
14 walk down the street and register voters, it's
15 prohibited. That doesn't appear anywhere in the code
16 vis-a-vie sending out vote by mail applications. And
17 further, if you look at the overall statutory scheme as
18 early voting clerk and local election administrator
19 Mr. Hollins has the power to conduct the election and
20 manage it. He's the guy who gets to decide that we're
21 going to rent the NRG Center or make a deal with the
22 Houston Rockets to use the Toyota Center because we need
23 space to make in-person voting safer and space for the
24 election workers and the early voting ballot board to
25 work where it's safer. And that's part of his broader

1 discretion with the code. There's not a prohibition on
2 renting a big space. There's not a prohibition on doing
3 something extra. Thankfully, there's not a prohibition
4 on a public servant or an elected official going the
5 extra mile and providing extra services.

6 They're wrong about the code for that
7 reason under it's plain language. He has to make
8 applications readily available. And back when a lot of
9 this code was written, there was no internet so getting
10 these things meant going to the printer and you could go
11 to the Secretary of State and pick up boxes of them to
12 hand out. Now they put it up on their website.

13 And let when we talk about another
14 management issue with this mailer and handling volumes
15 that we know are going to happen because people are less
16 likely to go out in public this year because of the
17 pandemic and already saw it in the increase and vote by
18 mail applications during the runoff, which I think is
19 both because of people not wanting to go in person and
20 also because of higher turn out. And we anticipate
21 there will be a larger number come the fall as more
22 people look up these requirements and are not getting
23 requirements and information they need about the
24 quote/unquote disability provision on the Secretary of
25 State's website. Even now a few months after the

1 Supreme Court opinion they've chosen not to educate
2 voters about that. So the Harris County Clerk has
3 decided to educate voters about that so they can exactly
4 what the Supreme Court told them to do, make their own
5 decision based on their own individual circumstances,
6 their own healthcare condition, talk to the doctors
7 they'd like and decide whether they want to risk going
8 in public unnecessarily when they otherwise would
9 qualify under the Election Code to vote by mail.

10 And I'm going to raise another issue that
11 the State throughout earlier that I think they're wrong
12 about legally. That this would somehow disenfranchise
13 voters, put their votes at risk. They're wrong about
14 that legally. Under the Election Code if a -- if for
15 some (speaker audio disruption) no harm, no foul. There
16 are other provisions that are very clear that if you
17 violate them your vote, quote, must not be counted. And
18 if you search the code you see that phrase come up.
19 That's not there when it comes to selecting your
20 category of vote by mail that you may or may not
21 qualify. And it's also not there if it turns out that
22 the category turns out to be untrue. And I'll give,
23 your Honor, an example, you know, I and my husband are
24 sheltering the pandemic out of our own county because he
25 has underlying health conditions. We've applied to vote

1 absentee because we don't plan to be in our home county.
2 The law on absentee voting is pretty strict. It's not
3 just about being in your county on Election Day, it's
4 the whole early voting period that's now almost a month.
5 Now, if I go back into my home county because I have a
6 business meeting come up that I can't Zoom into, that
7 doesn't nullify my vote. And what I think I'm hearing
8 from the State, that it might make me susceptible to a
9 felony prosecution. That's absurd. That's not what the
10 code says. It's not what the code means. And it is --
11 runs entirely contrary to the whole system of the
12 Election Code and these election administrators trying
13 to encourage people to exercise the franchise.

14 So if anything should an injunction be
15 issued against this mailer, it creates a harm to voters.
16 There's voters who don't have access to the internet,
17 who have underlying conditions. You see the word
18 disability and think, you know what, I'm not disabled
19 but I have high blood pressure or I have a respiratory
20 issue or I'm a smoker. The Center for Disease Control
21 says all of those should be considered because if you
22 are to be exposed to Covid, it's a lot more likely to
23 kill you. And that's a decision that voter gets to make
24 but they're only going to get to make it if they know
25 it's available and the State seems to be working extra

1 hard to keep voters from knowing that. So -- and those
2 voters may decide they're not going to vote at all
3 because they're afraid of going to vote in person given
4 their personal health circumstances and they should have
5 that option and should have that option to learn the
6 law, have it put in plain language under their nose and
7 not this misleading word "disability" on the State's
8 website. And that's what Mr. Hatzel was getting at with
9 his question. The word disabled or disability does not
10 appear in the body of 82.002 at all. And under the Code
11 Construction Act the title of a statute doesn't mean
12 anything. You look at the words of the statute and
13 voters have a right to see those words of the statute
14 and have the added convenience of having that application
15 with them because there's no prohibition in the Election
16 Code for them to do that.

17 Any questions or thoughts, your Honor? I
18 can see your wheels turning.

19 THE COURT: Lot of thoughts but I won't
20 subject you to them.

21 MS. HAYS: Bring it.

22 THE COURT: No. I'm -- it's -- do you have
23 any witnesses?

24 MS. HAYS: We were going to call
25 Mr. Hollins but I'm not sure -- let me see what Mr.

1 Hatzel thinks about that. Are there any fact issues you
2 have questions about, your Honor? And while you're --

3 THE COURT: I can't read this well and so
4 -- like I said, I had never seen an application for
5 ballot by mail so this portion underneath the
6 applicant's voter registration, can someone share their
7 screen and blow that up so we can --

8 MS. HAYS: While they're doing that I'll
9 add a little bit more opening. There's more to this
10 mailer than just making it convenient. There's also the
11 management of vote by mail and this is something
12 Mr. Hollins can and should testify to.

13 This was designed in a particular fashion
14 and when he testifies he can show you what the real
15 thing looks like and I apologize its bigger than 8
16 1/2x11 so the font size you see on the pleading is
17 smaller than it would be in real life. These are --
18 there's a problem when you process these coming and when
19 people print them off the internet, they get stuck in an
20 envelope -- that takes more time to open. So the
21 Clerk's Office designed this as a fold over card that
22 can just be flipped back open and then run through the
23 mail. It will also be preprinted to the voter and I
24 believe there's an exhibit in the pile that's a mailer
25 from the Republican Party of Texas that is addressed to

1 a household.

2 How do we know everybody in that household
3 is over 65 who is registered vote? We don't. But a
4 party just made that available to them. It will be
5 preprinted with their voter identification number off
6 their registration so it is personalized only to
7 eligible voters for this election. It will have a bar
8 code on it so when it comes back instead of staff having
9 to key in and read someone's handwriting, they can just
10 scan it, boom and it's in. And it takes about half the
11 time to process as the other mailers.

12 There's also some data that's in a -- and
13 Charlie, I'll have to ask him, did we agree to
14 Exhibits 10 and 11, the declarations of the public
15 information officer and of --

16 MR. ELDRED: Yes.

17 MS. HAYS: Okay. You'll see in Exhibit 10
18 which is a declaration from a Harris County Clerk's
19 staff has attached to it a spreadsheet of all the
20 different kinds of applications they got in the runoff
21 and where they came from. They use this coding system
22 to indicate what campaign or committee or if it came
23 from the SOS or the Harris County Clerk and then what
24 category. And this mailing of over 65 in June and July
25 was in a way an experiment, will this work better? Will

1 we get a better return? Can we process them faster?

2 And the answer to all of that -- and thank you, Mr.

3 Hatzel, for pulling up the spreadsheet for us. Go

4 ahead. Cam, can you go ahead and control down to

5 spreadsheet which should be at the back of that.

6 All right. See here, that 65 and old, that
7 was the mailer of the Clerk's Office sent out to 65 and
8 up. Over 50,000 of them came back. It was by and large
9 -- by and away the most successful mailer in terms of
10 applications sent in and it was a lot faster and easier
11 and more secure because we knew the data was good. You
12 heard Mr. Ingram talk about campaigns using bad data or
13 old data, that is a problem. Here the voters are
14 getting -- the mailer uses the most up-to-date data so
15 there are fewer voters -- applications that come in
16 where the voter's information seems to be wrong or
17 they're on the suspense list or other such things that
18 require either slowing it down or them ultimately being
19 rejected. That's a management choice that's within his
20 discretion on top of the overall framework of the
21 Election Code where there's no prohibition on doing
22 this. He's the manager, he's the guy who conducts the
23 early voting. He gets to decide if this is good idea
24 and a good use of public monies because it makes voting
25 more available and it makes it easier and quicker to

1 process when it comes back in.

2 THE COURT: Mr. Hol- -- I mean, I think we
3 all agreed at the very beginning Mr. Hollins' duties and
4 powers all emanate from the State.

5 MS. HAYS: In terms of a county official?

6 THE COURT: Correct.

7 MS. HAYS: Yeah. Well, certainly, under
8 our constitutional scheme.

9 THE COURT: I mean, he only has the powers
10 that the State has given him.

11 MS. HAYS: He does. But there are powers
12 implied from the powers that are given to any county
13 official. And, for example, there is a provision in the
14 code that requires local election authorities to put the
15 date, time and location of polling places on their
16 website. That doesn't imply he can't put anything else
17 on his website. He can put lots of things on the
18 website about polling and the voting and should and
19 ought to so that voters have information so they can go
20 and poll the vote by mail. He's not required to do that
21 but he certainly can. You know, there are -- and I
22 think what is remarkable about the reading of 012, that
23 you somehow prohibited because that section requires him
24 to send an application if a voter requests. There is no
25 prohibitory language in that section. The legislature

1 could have added the word "only", it did not. And it's
2 certainly within the purviews of his other powers to
3 conduct an election, manage it, make voting accessible
4 to voters to mail them an application. And I'll also
5 say on top of it that's more appropriate this year than
6 perhaps other because of the issues with the US Post
7 Office. Everyone's mail has been slowed down right now.
8 If he just mails the information -- and let's say the
9 Court grants the injunction and he can only mail
10 information. Well maybe that takes a week to hit
11 mailboxes, maybe some get lost. Then the voter has to
12 go get an application and mail it back. Maybe they
13 don't have access -- maybe they have the internet but
14 not access to printer because they're sheltering at home
15 and not going into the office. Maybe they don't have an
16 office to go into because they're working class or
17 retired or poor. You know, his job is to make voting
18 accessible to everyone and by doing this mailer and
19 sending out an application that will be easier and
20 faster for his office to process when it comes back,
21 he's doing that.

22 Cam, will you take the exhibit down unless
23 the Judge would like to look at it longer.

24 THE COURT: Y'all can take it down. Thank
25 you.

1 MS. HAYS: Thank you. So with that, your
2 Honor, perhaps we'll call Mr. Hollins to stand and he
3 can explain his program to you and put in evidence what
4 I just argued.

5 THE REPORTER: You're on mute, Judge.

6 MS. HAYS: And your Honor, we've been going
7 another hour, did you intend to break every hour? You
8 just muted yourself.

9 THE COURT: I muted myself, I'm sorry. I'm
10 looking at statutes while y'all are talking so --

11 MS. HAYS: Now you're two to one.

12 THE COURT: No, I'm okay unless anyone
13 needs a break, I think we can probably go for another
14 half hour before we break again.

15 And Mr. Hollins has already been sworn in
16 so he can start answering questions whenever you're
17 ready, Ms. Hays.

18 MS. HAYS: Mr. Hatzel will be doing direct.

19 EXAMINATION OF MR. CHRIS HOLLINS

20 Q. BY MR. HATZEL: Mr. Hollins, now as the Harris
21 County -- the Harris County Clerk I wanted to talk about
22 specifically about the application that you designed and
23 brought up in our -- and so if you could -- would you
24 please describe how the application is going to be
25 mailed -- or would you please describe the design of the

1 application.

2 A. Yeah, absolutely. I think y'all have it as an
3 exhibit but I have a physical copy here. I'll try to
4 make sure y'all can see my screen. But it shows up to
5 you almost in a postcard form and so, you know, this is
6 of course, you know, your address. Pardon me, I had the
7 folder on, sorry. This is your address and our return
8 address. This is just some branding on the back
9 essentially. The moment that you open it up, you know,
10 the very first thing, and again, you all have seen this,
11 is do you qualify to vote by mail, red sirens, bright
12 red ink, read this before applying for a mail ballot.
13 The Harris County Clerk's Office is sending this to you
14 as a service however not all voters are eligible to vote
15 by mail and it goes on. Of course at this point as
16 you're seeing these red sirens you haven't even seen
17 that there's an application in there yet, you just see
18 the red ink and the red sirens. So it says read this
19 advisory. Of course you have to unfold it so they can
20 read the rest of the advisory. There's more guidance
21 here. Additional more red ink in particular saying you
22 do not qualify to vote just mail as disabled just
23 because you fear contracting Covid 19. You must have an
24 accompanying physical condition. If you do not qualify
25 as disabled, you may still qualify in categories one

1 through three above which are age, traveling outside the
2 county and being confined in jail.

3 Once you get to very bottom of having read
4 that it says, If you've read this advisory and
5 determined that you are eligible to vote by mail please
6 complete the attached application and return it to the
7 Harris County Clerk's Office. And then so down here you
8 see the application. And I know -- I think the Judge
9 mentioned earlier sort of the details of what's on the
10 application. I'll try to get a little bit closer here.
11 But it's preprinted with your particular name, your
12 particular address, up in this top corner it has your
13 particular voter ID, the instructions are here, you
14 know, verify your name and address, select your reason
15 for using ballot by mail, select your elections, would
16 you rather choose all 2020 elections which is an annual
17 ballot or just the November 3rd election. And then you
18 sign -- you have to affix a stamp and you have to put it
19 back in the mail, of course.

20 For those who have assistance or a witness
21 in filling it out then they would fill out these other
22 parts where the witness signs and attest to what they're
23 doing. And if you're traveling outside the county or in
24 jail then you can provide an additional address where
25 you'd actually receive that ballot.

1 Q. And Mr. Hollins, can you please describe the
2 process by which receiving these applications to vote by
3 mail specifically what you've just showed us and what is
4 Defendant's Exhibit 1 is easier for your office to
5 process?

6 A. Yeah. And so that's actually a great question
7 because the one thing I didn't touch on here is this bar
8 code. So if you were to print out an application either
9 from the SOS website or from our website and fill it out
10 by hand and send it back to us, whenever we get that,
11 you know, a human being has to key in all your
12 information, your name, address, so on and so forth, has
13 to try and, you know, match it to the right person. And
14 so if your name is John Smith, there might be many of
15 those, they'd have to find the right John Smith and make
16 sure that that attaches to you.

17 At that point to make things easier for the
18 rest of the people in the process they would go and
19 find, you know, a bar code to assign to you, put it
20 right here and then the rest of the proces from there on
21 they would use that bar code.

22 The other thing I didn't mention is that if
23 you filled out the application from the SOS website or
24 from our website you would put it in an envelope and
25 mail it back to us. This one is a little bit different.

1 You would -- you would perforate and tear off this
2 postcard. It would come to us as a postcard. You put
3 your stamp right there. And so there's no need to open
4 the envelope, which is -- if you're doing hundreds of
5 thousands of these, the step of opening an envelope and
6 straightening out and unfolding that ballot is a lot of
7 time. Of course, also keying in hundreds of thousands
8 of people's information takes a lot of time and there's
9 an opportunity to, you know, have error in that. But if
10 it comes in as this postcard there's no envelope so
11 that's eliminated. You scan the bar code so the process
12 of keying in all that information is eliminated and the
13 potential for any error in the process is eliminated.
14 And I believe I might have said ballot as I was
15 referring to this -- this is application, clearly -- an
16 application for ballot by mail. It's not a ballot
17 itself.

18 So when that application comes in, if you
19 use ours it is much easier for our staff to process and
20 there is a significantly higher likelihood of reductions
21 in error. In fact, there's a zero error rate because
22 the bar code is tied specifically to you in the system.

23 Now once those have been through that
24 process then there's a person who walks through and
25 verifies certain things. They're verifying what you

1 checked off. Not digging into the details except if you
2 checked age 65 or older, they compare your age in the
3 voter registrar's records. But if you check off any of
4 the others it's simply, you know, noted. And then from
5 there there are a couple of other steps that are just
6 sort of processing and at that point you're -- you're
7 entitled to get a mail ballot.

8 Q. And in addition to the design of the mailer,
9 what other resources has your office made available to
10 process a large number of mail-in applications to vote
11 by mail?

12 A. So --

13 THE COURT: Mr. Hollins, let me ask this
14 question first before you get to that because it's going
15 to skip over what I wanted to ask.

16 While you were testifying you mentioned
17 hundreds of thousands, right. In 2016 which is the --
18 2012, sorry, which seems to be the biggest election to
19 date, your office only processed 101,000 mail-in
20 ballots. So what -- I mean, if you're -- if you're
21 allowed to do this what numbers are you thinking you're
22 going to get?

23 MR. HOLLINS: So what we've seen, your
24 Honor -- we've modeled this out. We know that in the
25 past for -- for general elections, November elections,

1 what you see is that normally we're talking about five
2 to seven percent of voters vote by mail. Mr. Eldred
3 earlier mentioned, you know, 30 percent, 40 percent, et
4 cetera in some of these primary runoffs. The reason for
5 that is primary runoffs are extremely low turnout
6 elections. The voters who vote in them tend to be much
7 more engaged and educated than other voters and thus
8 more aware of vote by mail as an option. And so you see
9 a higher proportion in these smaller low turnout
10 elections of mail ballots being casts and a much lower
11 proportion in general elections.

12 Now, that having been said, we -- you know,
13 Susan described -- Ms. Hays described what we did in
14 June and July sending those out to those -- the voters
15 over age 65 as an experiment. I don't like to use that
16 term because we did it in good faith hoping to serve
17 those voters but we did learn from it, right? And what
18 we learned was, you know, of the -- of the just less
19 than 400,000 that we sent out, I believe is about
20 375,000, we got something like a 20 percent return on
21 those.

22 THE COURT: And Mr. Hollins, you may not
23 know this but I'm interested in this number, of the 375
24 that you sent out 20 percent returned for an actual VBM.
25 How many of those 375 actually voted?

1 MR. HOLLINS: So I believe -- so we know
2 the total number of mail ballots that were voted, your
3 Honor. We don't know -- we haven't parsed out which of
4 those -- we -- let me try and explain this. We know how
5 many mail ballots came back. We also know how many mail
6 ballot applications came back and we know when they came
7 back. And so we know that 50,000 of those vote by mail
8 applications that we sent out specifically to seniors
9 came back. We also know that about just under 90,000
10 voters voted by mail in -- in the July primary runoff
11 election. And so you can draw some -- some comparisons
12 between those two numbers but it's not an exact apples
13 to apples and I know that you prefer apples to apples.

14 THE COURT: That's okay. I'm just -- I'm
15 just trying to get to the point because the parties have
16 agreed that having people vote is important. So what
17 I -- what I'd like to know is how many of those people
18 aren't voting, right? Or how many of them are voting
19 because I think that's important to the analysis, you
20 know, are we leaving -- are we leaving people on the
21 table that otherwise are qualified voters who should be
22 voting?

23 MR. HOLLINS: Yes. Well, we certainly saw
24 -- you know, what we can compare to in the past, your
25 Honor, is if you go back to 2016 or 2012 you can look at

1 how many new vote by mail applications came in between
2 the primary and the primary runoff and normally that
3 answer is essentially zero, right? I mean, you might
4 have 1, 2000 which is minimal in a county like Harris
5 County.

6 And so for us to send this mailer out
7 proactively to about 375,000 people and get 50,000 of
8 those returned to us in a very short timeframe, that is
9 remarkable in terms of what you would see normally.

10 THE COURT: And Mr. Hollins, when you sent
11 those applications out to the -- to people in the runoff
12 and in the primary, you just did -- you just did it in
13 the runoff; is that correct?

14 MR. HOLLINS: Yes, your Honor. In fact,
15 for the primary I was not even in office. I took office
16 on June 1st of this year.

17 THE COURT: Okay. And so when you sent
18 those out did you coordinate that with the Secretary of
19 State's Office?

20 MR. HOLLINS: Did I coordinate the mailer
21 to seniors?

22 THE COURT: Were they aware that you were
23 doing -- you were doing unsolicited mailing to seniors
24 -- to those over the age of 65?

25 MR. HOLLINS: To my knowledge they were

1 aware, your Honor, and had no objection to it.

2 THE COURT: You can continue, sir.

3 MR. HOLLINS: And so coming back to, you
4 know, the number that we sent out about 375,000, just
5 for simple math we can say 400,000 just for the moment.
6 We got about 50,000 of those back. And so, you know,
7 what that means is for every -- for every eight that we
8 sent out, we got one back. And so in a world where you
9 send out 2.4 million and everyone is qualified then
10 you'd get about 300,000 back if you were to extrapolate
11 that. Of course, in a world where not everyone was
12 qualified and they make that determination themselves,
13 my office does not make that determination, you would
14 expect less than 300,000. But the question that Mr.
15 Hatzel asked which is about our preparation and we are
16 certainly over prepared to handle a deluge of vote by
17 mail applications and ultimately mail ballots to come
18 back if a large number of Harris County voters make that
19 decision to -- to apply to vote by mail and ultimately
20 vote by mail.

21 Again, we're just reminding you that the
22 highest absentee rate that we've had in the past was
23 just less than eight percent. Our minimum threshold
24 that we're expecting is double that but we're preparing
25 for a very high mail turn out scenario. Even up to, you

1 know, roughly half of voters voting by mail which I
2 personally believe is an unrealistic scenario but that's
3 why -- that's the point of being over prepared.

4 You know, what we're doing to prepare for
5 that? We've modelled out when theoretically those
6 returned applications would come back in and ultimately
7 when those mail ballots would come back in. We've
8 mapped out to the second every single step in the
9 process of processing applications and processing mail
10 ballots and then multiplying that, of course, by the
11 volume and on the days and weeks when those are
12 expected. We've understood that given various scenarios
13 we know how many people need to be employed by our
14 office doing that work in those scenarios. We've also
15 sought and -- and it was approved by Commissioners
16 Court to purchase additional equipment.

17 So while we're very happy that our postcard
18 application doesn't require an envelope, when you mail
19 back your mail ballot it, in fact, has two envelopes.
20 And so you need machinery if you're going to open those
21 envelopes quickly and efficiently. Of course you also
22 need machinery to scan those mail ballots not only for
23 the first level of signature check where those
24 signatures are then scanned and imagined over to a
25 bipartisan signature verification committee, but it also

1 ultimately would scan the -- the votes themselves and
2 store them on a device that gets tabulated on Election
3 Day. And so those -- those machines, that equipment
4 that's necessary, those scanners, those envelope openers
5 for lack of a better term, we've purchased multiple more
6 of those and we also understand their processing speed
7 and know how many hours, days, weeks that it would take
8 for us to process a certain number of mail ballots
9 should they be returned.

10 Q. And Mr. Hollins, do you have an opinion about
11 whether increasing the number of voters that vote by
12 mail will affect the safety of in-person voting?

13 A. Yes, absolutely. In addition to modelling out
14 this entire vote by mail infrastructure that we just
15 talked about, we've modeled out in-person voting
16 scenarios as well, both for early voting and on Election
17 Day. And we base the number of locations that we've
18 chosen in order to ensure, you know, hopefully a safe
19 Election Day based on the number -- the average number
20 of voters that will show up at any given voting center.
21 And so that number of locations both for Election Day,
22 which we're going to have a record of 808 I believe, and
23 for early voting which we're going to have a record 120
24 locations which is about triple what we had in 2016,
25 those are based on an understanding of -- those are

1 based on estimates of turnout. Not only if they're
2 going to turnout at all but on what specific day they
3 will turnout. And the hope is that we ensure an average
4 number of voters at each voting center that's
5 sustainable.

6 And what we saw in July for an average
7 sized voting center is that things started to sort of
8 pile up in terms of lines and so on and so forth at
9 about five, potentially 600 voters per center per day.

10 And what we tried to do in our -- in our
11 estimates and in our location selections as well as our
12 machine allocation is to ensure that each -- each voting
13 center on average stays below that. And so on the
14 earlier votes -- pardon me, the earlier days of early
15 voting, we don't see much of an issue but when we get to
16 the later days of early voting and we get to Election
17 Day itself these -- these places are going to be tight.
18 And of course the more people that are there, the more
19 people that are in line, the more risk that there is of
20 any sort of safety issue related to Covid 19. And so if
21 more people vote by mail that's going to make our system
22 a lot safer even for in-person voters. It's one less
23 person who -- who could potentially, you know, expose
24 others to Covid 19. It's one less person who could
25 themselves be exposed to Covid 19. And frankly, in --

1 in this election which will be the first election -- the
2 first general election in Texas that does not have
3 straight ticket voting, it will be one less person who
4 is in line, you know, making the wait longer and
5 lengthening the time for potential exposure for every
6 other voter in Harris County.

7 THE COURT: Let me ask a couple of
8 questions related to statute at hand.

9 In your office now if I -- if I was to walk
10 in or, you know, Jane Doe was to walk in, does she have
11 to talk to somebody to get an application to vote by
12 mail or are they laying out?

13 MR. HOLLINS: So right now, your Honor,
14 especially with the Covid 19 scenario they'd have to --
15 if they got to our Preston building which is where we
16 are at this moment, the security there would first tell
17 them that the door was closed. They'd probably have
18 to -- not that the door is closed but the building is
19 closed to the public. They would have to then probably
20 call us or something of that scenario either to get
21 allowed up or for somebody from my office to come down
22 to hand them an application. Very soon for safety and
23 social distancing reasons removing our entire election
24 operation to NRG Arena, which -- which would be open for
25 someone to walk into to request an application. There

1 are also of course security protocols and Covid 19
2 protocols there at NRG Arena. And so someone might be
3 denied, you know, for instance if you had a fever or if
4 you said -- you know, if you answered yes to a number of
5 questions, you know, that have you been exposed to
6 somebody or are you awaiting a test or anything like
7 that, you would be turned away from NRG at that point
8 because -- because you couldn't pass the safety
9 protocol.

10 THE COURT: Okay. But these applications
11 aren't just laying on a desk somewhere? I mean, y'all
12 don't even keep voter registration cards laying around,
13 do you?

14 MR. HOLLINS: Well, my office is not in
15 charge of voter registration, your Honor. After
16 November 2020 when we have the EA that will all be
17 housed in one office here in Harris County. But as of
18 now voter registration is in the Tax Assessor's Office.
19 But to answer your question, no, there is not a pile of
20 voter applications sitting on a desk.

21 THE COURT: Do you track who accesses
22 applications for VBM -- for people who get them off your
23 website?

24 MR. HOLLINS: Absolutely not.

25 Mr. Eldred, do you know if the Secretary of

1 State tracks who downloads applications from VBM off
2 their website?

3 MR. ELDRED: I do not know. I suspect the
4 answer is they do not but I do not know.

5 THE COURT: And so Mr. Hollins, you were
6 talking about earlier that y'all are modelling out this
7 election. What is your estimate of the number of folks
8 that are going to vote in the Harris County election in
9 2020?

10 MR. HOLLINS: So, your Honor, in our high
11 scenario -- in our very high scenario we're expecting as
12 many as about 1.8 million. I think that is on the high
13 side but with record turnout that we just saw in July,
14 it's not out of the question and that's why again we
15 need to be prepared and over prepared.

16 THE COURT: And how long -- and how long
17 because of the lack of straight party voting in Texas
18 now, how long are you estimating each voter spends at
19 any election center?

20 MR. HOLLINS: If they vote the whole ballot
21 it could easily take 15 minutes per person to cast their
22 ballot.

23 THE COURT: And is there any historical --
24 does the office keep historical numbers on the amount of
25 time it took people prior -- I mean, and I'm thinking of

1 the election prior to this one.

2 MR. HOLLINS: So I'm not aware of any sort
3 of timing of the ballot in previous elections before we
4 took office. We did in July literally sit with stop
5 watches to time voters to understand how long it might
6 take. And so what we've seen that it's -- you know, is
7 using the math from those ballots in July and how long
8 those took for voters to vote and then the -- the length
9 of the ballot here which not only is already the largest
10 ballot in Texas but because of delayed municipal
11 elections we now have, you know, we have races on the
12 ballot for November that normally wouldn't be there such
13 as, like, you know, Pasadena City Council --

14 MS. HAYS: Sorry, about that.

15 MR. HOLLINS: It scared me. So we believe
16 that the range would actually be about 12 to 20 minutes
17 if you think about sort of the fast voter versus the
18 slow voter but the average for the ballpark range is
19 about 15 minutes.

20 THE COURT: And Mr. Eldred, he's brought up
21 a number of, I think, issues that we need to be aware of
22 and I'm sure that he'll ask them in his cross but to
23 sort of take away some of his thunder let me ask this
24 question. Mr. Ingram spent a lot of time about
25 misleading voters. And so what I'm -- I want to sort of

1 piggy back on that. If I receive an application to vote
2 by mail and I called your office, are they going to walk
3 me through it or are you leaving that onus completely up
4 to the voter?

5 MR. HOLLINS: So we have call centers, your
6 Honor. And that's another one -- our office has a set
7 of 24 initiatives around ensuring a safe, secure,
8 accessible, fair and efficient election. One of those
9 initiatives -- and of course voting by mail takes aback
10 two of those, promoting vote by mail within the bout of
11 the law and ensuring a vote by mail infrastructure that
12 can handle increased ballots are two of those but
13 another one is responsiveness. And within that we've
14 strengthened and bolstered our call centers to ensure
15 that if folks are calling -- and of course, we've also
16 predicted the demand of the call center and so on and so
17 forth to make hiring decisions. But when folks are
18 calling we're there to answer any questions that they
19 might have.

20 THE COURT: And to that same point, you
21 mentioned earlier that in the -- in the primary runoff
22 you sent -- I think you said 375,000 applications --
23 unsolicited applications to people 65 years and over,
24 correct?

25 MR. HOLLINS: That's correct.

1 THE COURT: And you got a 20 percent
2 response rate?

3 MR. HOLLINS: I misspoke there, your Honor.
4 It was more so one out of eight, there were about 50,000
5 response --

6 THE COURT: So about 12.5 percent of
7 response rate?

8 MR. HOLLINS: There you go.

9 THE COURT: So you -- because one of the
10 issues that Mr. Ingram brought up multiple times was the
11 misleading coming from a governmental authority. So
12 you're telling me that when a governmental authority
13 sends out a mailing to people who are definitely
14 qualified to vote you're still only getting 12.5 percent
15 response rate?

16 MR. HOLLINS: Yeah, and in addition to that
17 I will add that we know that seniors are much more
18 likely to be -- one is much more likely to read their
19 mail, much more likely to be engaged in political
20 processes and ultimately cast ballots. And so if you
21 were to extrapolate that you would think that younger
22 voters and many of whom are not -- sorry, some of who
23 may not be qualified to vote by mail would return those
24 at a much lower rate.

25 THE COURT: Or, I mean, who may never check

1 their mail, right? I mean, I'm just -- you know --

2 MR. HOLLINS: Yeah, exactly. Who might not
3 ever see it, might toss it when it gets there.

4 THE COURT: And that was anecdotal for my
5 life so I apologize for bringing that in.

6 Okay. Let's do this -- Mr. Hatzel, how
7 much more do you have for Mr. Hollins?

8 MR. HATZEL: I'm ready for a break but not
9 much more, ten minutes maybe.

10 THE COURT: Do you want to take your break
11 now or do you want to do your ten minutes and then
12 break?

13 MR. HATZEL: I'd prefer to take a break.

14 THE COURT: You seem like you needed a
15 break. Let's go ahead and -- it's 2:55, let's come back
16 at 310.

17 MR. HATZEL: Thank you.

18 (Break taken.)

19 THE COURT: All right, great. Mr. Hatzel?

20 Q. BY MR. HATZEL: Yes.

21 Mr. Hollins, as the Early Election Clerk of
22 Harris County the Election Code gives you the authority
23 to conduct and manage early voting. How does sending
24 applications to vote by mail fit into that statutory
25 scheme?

1 A. I mean, I think it fits directly into my
2 authority to conduct and manage early voting. And so as
3 the Early Voting Clerk, I manage both in-person voting
4 and vote by mail voting. And with that administration,
5 you know, I sort of look at that broadly and I also look
6 at them not necessarily independently but as connected
7 to one another. And so this goes from everything --
8 it's really broad. It goes from choosing the number of
9 locations that we have, choosing where those locations
10 are, choosing how many machines we're going to deploy
11 across the entire county and choosing exactly how many
12 machines each specific location will have, choosing how
13 many number of you know staff, judges and clerks that
14 each location would have, educating voters, you know,
15 ensuring that voter have access to the franchise, both,
16 you know, in person -- providing that information,
17 making sure the locations are near to them. In this
18 scenario, making sure that the locations are as safe as
19 they can be, providing new and innovated ways to vote
20 like drive-thru voting, like extended voting hours which
21 we're going to have until 10:00 p.m. on multiple days
22 and we're going to have 24-hour voting on one day to
23 ensure that shift workers and first responders and folks
24 with different family and work obligations have that
25 opportunity to cast their votes.

1 And so sending applications to vote by mail
2 along with, you know, information about who qualifies to
3 vote by mail and who does not to educate the voters of
4 course is squarely within my -- my duty and my
5 responsibility and my authority to conduct and manage
6 the election.

7 Q. And speaking also on the point about the health
8 and safety of voting -- of voting by mail for certain --
9 certain voters, I wanted to -- well, first of all, the
10 application -- the application to vote by mail, that
11 mailer includes a link to your website *Harrisvotes/cdc*,
12 does it not?

13 A. It does. It's says -- yes, it says to read
14 guidance from the Center for Disease Control and
15 Prevention on which medical conditions could put people
16 at increased risk of severe illness from Covid 19 please
17 visit *Harrisvotes.com/cdc*.

18 Q. And what I would like to do is I'll share with
19 you our Defendant's Exhibit Number 2, and this is a copy
20 of that website that you are directed to when you go to
21 *Harrisvotes.com/cdc*. And the title of this website as
22 you can see is people with certain medical conditions
23 and then CDC provides various advice about certain
24 medical conditions.

25 And my question to you is, how would this

1 information help a voter make the determination of
2 whether they might be disabled under the Election Code?

3 A. So I would distinguish -- and I know we've been
4 saying, Is a person disabled? I would like to be clear
5 about having a disability versus being disabled.
6 Because when people say hearing -- you know, are you
7 disabled? Then --

8 THE COURT: But Mr. Hollins, you have no
9 discretion in deciding who is disabled and who is not
10 disabled, correct?

11 MR. HOLLINS: You're absolutely correct,
12 your Honor.

13 THE COURT: So, I mean -- I'm not quite
14 sure where we're going with this question and
15 Mr. Hollins doesn't get to exercise any discretion on
16 that issue.

17 MR. HOLLINS: I believe, your Honor, and of
18 course I will let Mr. Hatzel speak on this, but people
19 seeing something like, Are you disabled? There would be
20 a huge chunk of people who would say no. But if asked
21 the question, Do you have a physical condition that
22 creates a likelihood of injury if you vote in person or
23 a likelihood that you will need assistance if you vote
24 in person? I think people's answers to the question
25 would be -- would be different. And that's why we have

1 to educate voters on what this means under Texas law and
2 it's not about being disabled, it's about having a
3 physical condition, et cetera, et cetera.

4 And, of course, I'm not making that
5 decision, you're correct, your Honor, that is the voter
6 that makes the decision for him or herself. You know, I
7 can't tell you that -- that, you know, having stem cell
8 treatment does or does not create this physical
9 condition for you. That's your decision to decide for
10 yourself if that treatment and any other things in your
11 medical background create this likelihood of injury to
12 your health by voting in person.

13 Q. BY MS. HAYS: So how is voting by mail safer
14 and more convenient for voters that may have a history
15 of a physical condition?

16 A. I mean, I -- I think it's obvious but if you're
17 sitting at your home, you're essentially able to
18 maintain quarantine as it were but certainly social and
19 physical distancing. Not having any exposure to any
20 anybody else and being able to exercise your right to
21 vote is, of course, the safest way to vote. You know,
22 even with -- with drive-thru or curbside voting, even
23 that exposes you to one person who has been exposed to
24 hundreds of other people within the last couple of
25 hours, right? And so the -- this sort of -- we're

1 trying to make all voting as safe as we can but there's
2 an exponential, you know, risk involved as compared to
3 -- of voting in person as compared to voting by mail.
4 Voting by mail is the least risk by far.

5 Q. And the other thing I would like to show would
6 be Defendant's Exhibit Number 11. And Defendant Exhibit
7 Number 11 is the declaration of Dr. Bujnowski with
8 Harris County Public Health with -- and we can see here
9 that based upon a Health of Houston survey, there's a
10 large percentage of the population in Harris County
11 under -- between the ages of 18 and 64 that may have
12 certain physical conditions. And does that -- based on
13 that public health information does that -- do you have
14 an opinion about how that plays into the number of
15 voters that may return an application to vote by mail?

16 A. Yeah. So ultimately again it's going to be up
17 to the voter, him or herself, to make that decision.
18 But if you look at these numbers of these various
19 conditions, cancer, asthma, obesity, high blood
20 pressure -- all of which if I'm not mistaken are on that
21 CDC website as being high risk -- you add these
22 percentages up and it's a lot. And, you know, these
23 aren't mutually exclusive so I'm not saying that you add
24 them all up but they certainly aren't all the same
25 people either.

1 And so when you see a number like 30 plus
2 percent of people are obese -- and that's in Harris
3 County specifically -- 24 percent have high blood
4 pressure, 8.5 percent have diabetes, you know,
5 14 percent are smokers, you end up with quite a few
6 people. And I would guess -- I'm not a, you know, a
7 mathematical modeler in this since -- I would guess that
8 ultimately all of these things added up together, these
9 seven or so categories, gets you to more than half of
10 the population and that's not even going through all of
11 the other items that are listed on the CDC website.

12 Q. I think my last question, Mr. Hollins, if these
13 applications are not sent by your office do you have an
14 opinion on what that will do to voter turnout for the
15 upcoming election?

16 A. A couple of things. So one, you know, we saw
17 that, you know, a proportion of people who received
18 these in July used them, right? And I know anecdotally
19 because, you know, I talk to voters on a regular basis
20 at community meetings, Zoom community meetings of
21 course, who said, you know, I, you know, would not have
22 voted or my parent or family member would not have voted
23 if not for the ability to vote by mail. And so we know
24 that some people will not vote if they are not aware of
25 this option and educated about the fact that they --

1 that they may or may not be eligible to vote by mail.
2 The other thing that we know is, you know, some
3 proportion of those people, if they're not aware of this
4 option to vote by mail or if they're not aware of what
5 disability truly means under the Texas statute will say,
6 you know, look, the right to vote to me is that
7 important and so I'm going to go out and vote in person.
8 And that will -- one, it will make our voting centers
9 less safe because every person you add increases the
10 likelihood of exchange of this deadly virus. But what
11 it will also do is, you know, increase the number of
12 people who are voting in person which would ultimately,
13 you know, complicate our -- our administration of
14 in-person voting. Because, again, we've modeled out
15 some base expectations about who is going to vote and
16 how and so if more people vote in person than we expect
17 then we're risking those -- those lines being much
18 longer and as I've already mentioned we're risking
19 increased potential exchange of Covid 19.

20 MR. HATZEL: Your Honor, we'll pass the
21 witness.

22 THE COURT: Mr. Eldred?

23 MR. ELDRED: Thank you.

24 CROSS EXAMINATION BY MR. ELDRED

25 Q. BY MR. ELDRED: Thank you, Mr. Hollins. As

1 Early Voting Clerk do you agree with me that you do not
2 have unlimited power?

3 A. I don't believe I have unlimited power.

4 Q. Do you agree with me that your power is set by
5 statute and by necessary applications of statutes?

6 A. Yes, my powers are given to me by statute.

7 Q. Okay. And some statutes for instance tell you
8 you need to have locations but they don't tell you where
9 the locations have to be, they don't tell you how many
10 you have to have; is that accurate?

11 A. Correct. I think a lot of the code, you know,
12 lays out generally what I'm allowed to do and then I can
13 take from that and go above and beyond.

14 Q. Well, in the example of locations you get to --
15 the code basically empowers you to decide what the
16 locations are going to be within the county; is that
17 right?

18 A. I would assume so. I honestly haven't read
19 that part of the code but I would assume that you're
20 correct.

21 Q. Okay. But the provision that says what you can
22 do with vote by mail applications is Section 84.012 of
23 the Election Code -- I don't know if you're familiar
24 with that right now but you agree with me that that only
25 authorizes -- or only says that you will give a voter an

1 application upon request; is that true?

2 A. No, that's not what it says. If you want to
3 read it out verbatim, I would agree with what it says
4 verbatim.

5 Q. Okay. The Early Voting Clerk shall mail
6 without charge an appropriate official application form
7 for an early voting ballot to each applicant requesting
8 the clerk to send the applicant an application form,
9 does that sound right?

10 A. Yes.

11 Q. And do you agree that that section in any way
12 does not say -- not specifically say that the clerk may
13 send unsolicited applications to people?

14 A. Yeah that part of the code creates a
15 requirement for me, that's different than sort after a
16 right. It's a requirement that if someone asks us for
17 an application we have to send it to them and we have to
18 send it to them free of charge.

19 Q. Sure. So which provision allows you to send
20 applications unsolicited without a request?

21 MR. HATZEL: Your Honor, we're going to
22 have to object. These legal -- these are calling for
23 legal conclusions which I don't think -- they're for the
24 Court and not for the witness.

25 THE COURT: Mr. Hollins can answer if we

1 knows.

2 A. So I would say that my authority to conduct and
3 manage early voting gives me very broad authority as I
4 was talking with Mr. Hatzel a moment ago to make
5 decisions about the administration of the election.

6 Q. Okay. I'm going to change gears on you.
7 People who applied to vote for the reason of age and
8 disability, I believe they can -- and correct me if I'm
9 wrong -- they can -- their application can be for the
10 entire year; is that right?

11 A. That is correct. They can have an annual
12 application.

13 Q. So I could apply in January of 2021 for
14 instance and that would apply to the entire year of
15 2021, all elections, if I -- excuse me, if I had the
16 category of age or disability; is that right?

17 A. That's correct.

18 Q. And so likewise in 2020 people can have applied
19 for applications to vote by mail in the November 2020
20 general election starting in January 1st of this year;
21 is that right?

22 A. That's correct.

23 Q. And of course this is a dumb question but they
24 could've also have done it in March since the Covid
25 crisis happened; is that correct?

1 A. That is also correct.

2 Q. So it's not necessary that you send them
3 something, they already could have done this -- I'm
4 sorry, it's not necessary to do it right now, it could
5 have been done before. Would you agree with me?

6 A. Yes. Any registered voter who determines that
7 they are eligible to vote by mail can apply at any time
8 and it's only restricted by the deadlines before each
9 individual election if they'll be able to vote by mail
10 in that election.

11 Q. Let me change topics on you again. I think you
12 said for the July 14th runoff election of the
13 applications that were sent unsolicited you got response
14 to about one in eight; is that right?

15 A. Thereabouts. I was using round numbers for
16 simplicity but thereabouts, yes.

17 Q. Sure. Does that number take into account the
18 fact that a lot of people had already requested
19 applications to vote by mail?

20 A. No, because we didn't send them to voters who
21 had already requested an application -- pardon, we
22 didn't send them to voters who had already applied to
23 vote by mail.

24 Q. Thank you. You did say that and I forgot. I
25 gotcha. But if you send the applications this time to

1 people who are under 65, don't you think the return rate
2 is going to be a lot lower than one in eight since so
3 many of them are not going to be qualified?

4 A. Again, I don't know who is qualified and who is
5 not. That's up to the voters to decide. I don't know
6 who has disabilities and who doesn't. I don't know who
7 has physical conditions and medical conditions and who
8 doesn't. I don't know who during this time is traveling
9 outside the county and who is not. I would say that --
10 you know, I could say that less than 100 percent of
11 those who receive them will decide that they qualify.
12 And, you know, per I think my exchange with the Judge
13 earlier, I do think that young people are a little bit
14 less likely to check the mail regularly. And so if --
15 if the -- the one in eight statistic holds from July,
16 then you would expect less than one in eight to actually
17 send it back but that doesn't mean that they don't
18 qualify, because of course 100 percent of those who
19 received it in June and July did qualify and only one in
20 eight sent it back. Yeah, I think that's my answer
21 there.

22 Q. Okay.

23 A. Sorry. If I could continue.

24 Q. Sure.

25 A. The one thing that I intended to say was the

1 extrapolation of one in eight, you know, although it's
2 2020 and people are paying attention to the election, et
3 cetera, et cetera, we also know that far fewer people
4 are paying attention to elections or care about
5 elections in June than they do in September and October.
6 And so, you know, if you -- you could say that given
7 that we're right ahead of the election and people are
8 now sort of tuned into this kind of stuff, that they
9 would look at this -- that they might be more likely to
10 respond to it and find it important. So it could go
11 either way is sort of what I'm getting at.

12 Q. Is it fair to say that it could be one in
13 eight, it could be lower, could be higher; is that all
14 fair to say?

15 A. That is fair to say.

16 Q. Okay. Fair enough. So you're not promising
17 like a 50 percent return rate or anything like; is that
18 right?

19 A. I'm not promising a thing. I do not know who
20 is going to self-identify as having a physical condition
21 that creates a livelihood of injury to their health. I
22 do not know who is going to say that they're outside the
23 county during the early voting period and on Election
24 Day and I honestly don't know who is confined in jail
25 right now.

1 Q. Okay.

2 THE COURT: I can tell you that number is
3 going to be very low since historically I think one
4 person is asked per election, so.

5 Q. BY MR. ELDRED: According to our Exhibit 19 it
6 went up --it's gone up a little bit lately.

7 THE COURT: Has it?

8 A. Yeah. I mean, one thing, Judge, that hasn't
9 been mentioned in this case is that we supplied
10 applications to people in Harris County Jail in June and
11 July and we had about 402 who applied ultimately.

12 THE COURT: Okay. And Mr. -- and I don't
13 want to interrupt your questioning but I do want to ask
14 you to question on a specific topic because you brought
15 it up with Mr. Ingram and I want you to -- and I want to
16 hear what answers Mr. Hollins may give and I didn't --
17 you talked about disenfranchisement. And so I want -- I
18 didn't know if that was part of your outline but I want
19 you to ask those questions to Mr. Hollins because I want
20 to make sure that I get it from the State and the
21 county, so.

22 MR. ELDRED: Fair. I can do that.

23 Q. BY MR. ELDRED: So Mr. Hollins, you were here
24 for Mr. Ingram's testimony; is that right?

25 A. Yes.

1 Q. Okay. He believes that voters are going to be
2 confused by receiving an application from the Harris
3 County Clerk with the Harris County Clerk seal on it.
4 Do you disagree with that?

5 A. Yes.

6 Q. And I'm trying to -- I'm sorry, he thinks more
7 specifically that they are going to think that the
8 application is something that they're suppose to fill
9 out and that they're not going to necessarily read the
10 directions or understand the directions. And when I say
11 they, I mean, a significant number -- obviously many
12 people will but many people won't; would you agree with
13 that?

14 A. So the one -- one thing I'll say is that
15 there's no basis in fact or evidence that in any way
16 demonstrates that claim or that concern. The other
17 thing with this particular mailer -- and I think I
18 described it earlier, is that when you get this and you
19 open it you don't even know that there's an application
20 in there. What you first see before you open it fully
21 is advisory guidance. And so you actually have to,
22 like, take interest in what's in here before you even
23 notice that there was an application at the bottom.

24 And so for someone to say, Oh, I got this
25 application, it's -- it would be a very bizarre outcome

1 and a highly unlikely outcome that somehow someone would
2 unfold this fully, go to the very bottom, rip it off and
3 think I need to fill this out without having ever looked
4 up here.

5 Q. So you just disagree with Mr. Ingram that
6 people who receive applications will fill them out -- if
7 too many people get them you don't think anyone is going
8 to do that?

9 A. So what I said was I think that it is
10 impossible -- actually, I know that it is impossible to
11 see what's down here and get to this application without
12 first seeing the advisory with big red sirens and bold
13 red capitalized ink that's informing the voter about his
14 or her rights and eligibility.

15 Q. I think I agree with you that the mailer is
16 designed to do that but I'll just try one more time
17 before I move on. Do you really think that every single
18 voter is actually going to comply with it as designed?

19 A. Again, I have no facts or evidence about what
20 voters or normal citizens do with forms when they
21 receive them. I think people normally use forms in, you
22 know, the way they find them to be intended to be used.

23 THE COURT: This question -- I'm going to
24 ask this question to both Mr. Eldred and Mr. Hollins
25 because I don't know the answer so this is -- I'm being

1 a bad lawyer today. I'm asking a question which I have
2 no idea what the answer is going to be.

3 But is there any portion of the Election
4 Code that proscribes, other than what the State is
5 arguing under 84, that proscribes the duties of the
6 election administrator?

7 MR. HOLLINS: And you're saying
8 proscribes --

9 THE COURT: Correct.

10 MR. HOLLINS: -- that means things that I
11 cannot do?

12 THE COURT: Correct.

13 MR. HOLLINS: I'm not an election lawyer,
14 your Honor.

15 MS. HAYS: And, your Honor, I'll represent
16 that I looked for them and couldn't find them but maybe
17 Mr. Eldred has a different answer this.

18 THE COURT: Well, I'm just asking because,
19 Mr. Elder, you went through a lot of the statutory
20 schemes so I'm just -- and I don't know the answer so, I
21 mean, I'm just -- I think that's, you know.

22 MR. ELDRED: Can I -- can I let Ms. Hunker?
23 I think she may know about that than I do.

24 BY MS. HUNKER: Yes, Judge. The code is a
25 collection of expressed grants with the limitations

1 written into the grant itself.

2 THE COURT: Okay. Where other than -- the
3 provision that you're -- you're trying to get this
4 injunction on is there a limitation.

5 MS. HUNKER: So to give the example of
6 voting locations and polling times, legislature recently
7 passed HB1888 which requires that all polling locations
8 be open from eight-hour block either from 8:00 to 5:00
9 p.m. and it must be the same amount of time as the
10 permanent branch location. Before that, the counties
11 had discretion to exercise what's called mobile voting
12 and they could move the voting locations around and they
13 also could do it for small amount of hours, so two
14 hours, four hours, six hours. If you look at prior
15 calendars when it comes to poll location we'll often see
16 that for large counties in particular were in rural
17 districts.

18 THE COURT: So they expanded the discretion
19 of the --

20 MS. HUNKER: They contracted it. So by
21 passing HB --

22 THE COURT: Contracted it.

23 MS. HUNKER: In passing HB1888 they
24 contracted discretion by stating that it was no longer
25 permitted. But that wasn't stating -- it didn't say

1 that -- the statute does not say that Texas -- the early
2 voting clerk cannot do this, it says this is what he can
3 now do and he can only open it for these hours for these
4 days.

5 THE COURT: Okay.

6 MS. HUNKER: So the limitation is in the
7 actual grant itself. And that's the same here with
8 using the word requesting. It's conditioning the
9 expressed grant and that it can only be in response to a
10 request from the voter. It does not actually have lists
11 of things it can't do.

12 THE COURT: So you're saying the expressed
13 grant in this -- because I'm try to -- I started at the
14 very beginning with 101 -- 1.010.

15 MS. HUNKER: Uh-huh.

16 THE COURT: Right? I'm trying to figure
17 out the argument that the State is making today is
18 84 point -- I forgot what pro- -- 84.011 or 84.012?

19 MS. HUNKER: 84.012.

20 THE COURT: 84.012 proscribes the
21 discretion in 1.010.

22 MS. HUNKER: That's correct. We read them
23 in conjunction with one another, the 84.0012 illuminates
24 what the actual authority is in 1.010 as it pertains to
25 applications.

1 THE COURT: So at some point in time the
2 State of Texas wanted everyone to have a huge discretion
3 in voting -- wanted everyone to participate and then at
4 some point we decided that that's not what we wanted.

5 MS. HUNKER: That there was a limitation,
6 yes. And also the -- 1.010 simply says that they need
7 to be readily and timely available.

8 THE COURT: Correct.

9 MS. HUNKER: They can be readily and timely
10 available on a website. This is for --

11 THE COURT: But the -- I don't know --
12 we've -- I've asked that question multiple times on how
13 that's a request, right? Because you're already -- I
14 mean, someone has to request it and then you mail it.

15 MS. HUNKER: Because they're actually
16 printing it out then they're -- they're actually
17 printing it out.

18 THE COURT: Then how is that a -- I mean --

19 MS. HUNKER: So it's an implicit request.
20 Now, mind you, in 1985 which is when Section 1.010 was
21 enacted, websites did not exist at least not
22 (indiscernible transmission) that a voter could go to a
23 website and access the form directly. So that was
24 possibly a interpretation of the code that wasn't
25 necessarily intended but people thought it was implied.

1 However, when it comes to 84.012 with requests, in this
2 case this isn't the voter taking a voluntary act, this
3 is the County Clerk or in this case the Early Voting
4 Clerk taking an affirmative position and affirmative act
5 to give it to the voter without the voter taking that
6 initial first step and that's really the difference, is
7 who is taking the first steep step.

8 THE COURT: And the harm --

9 MS. HUNKER: The first step is the voter or
10 the first step is the County Clerk.

11 THE COURT: And harm in and of itself is
12 the violation of the statute, correct?

13 MS. HUNKER: The violation of the statute
14 and we argue the confusion that can occur and will
15 occur. Now we don't have the exact numbers on hand but
16 Keith Ingram did testify that he has, in fact, this year
17 forwarded complaints under the provisions that there
18 could be a felony by putting in false information for an
19 application.

20 THE COURT: Okay.

21 MS. HAYS: Your Honor, if I may, I'm
22 unclear how only having these forms -- the government
23 only providing these forms on their website makes it
24 readily available to people who aren't like the folks on
25 this Zoom call who have internet access and a printer by

1 their side. I mean, the job of election administrators
2 is to conduct and manage the election, make these
3 applications readily available -- and that means to all
4 voters.

5 BY MS. HUNKER: There are always incidental
6 burdens when it comes to any activity. So, for
7 instance, an individual who is blind and cannot read and
8 so they're going to have to have perhaps certain
9 accommodations in that aspect. But that doesn't change
10 the requirement of the rule itself which is what 84.012
11 that there has to be some sort of initial act by the
12 voter as opposed to the County acting voluntarily on
13 it's own.

14 Now, in terms of readily and timely
15 available, there are two terms there. It's not just
16 readily, it's also timely. And so there are ways for
17 instance by the County Clerk once they receive notice,
18 once there's communication -- like there are ways for
19 the County Clerk to get that information if the voter
20 wants an application.

21 MS. HAYS: Your Honor, I think what Ms.
22 Hunker is not understanding is the Election Code sets
23 the floor for election authorities, not the seal.

24 MS. HUNKER: It also sets the seal because
25 it is not unlimited authority. Any type of expressed --

1 MS. HAYS: Your Honor --

2 MS. HUNKER: -- authority automatically
3 include in limitation. Unless you're going to argue
4 that somehow in a country of unlimited government that's
5 specifically designed for limited government --

6 (Simultaneous crosstalk.)

7 THE COURT: Ms. Hays, I can't -- I'm unable
8 to hear you because you're speaking over Ms. Hunker. So
9 Ms. Hunker if you'll continue and then I'll give Ms.
10 Hays a chance to respond.

11 MS. HUNKER: My argument is that an
12 expressed grant of authority is not unlimited. It
13 contains within itself boundaries. And those boundaries
14 have to be anchored to the Texas statute itself and in
15 this case Section 84.012 has a limitation within the
16 provision itself.

17 THE COURT: And Ms. Hunker, is there any
18 case law that supports the AG's reading of this statute.

19 MS. HUNKER: I am not familiar with any
20 cases that involve 84.012.

21 THE COURT: Okay. So this is -- this for
22 y'all is a case of first impression as well?

23 MS. HUNKER: That's correct. That is also
24 --

25 THE COURT: And let me ask this because we

1 keep on bringing up this fraud -- this fraud -- the
2 fraud issues under 84. I mean, those fraud allegations
3 are -- any allegation of fraud would be against the
4 voter, correct?

5 MS. HUNKER: I do believe that the
6 provision allows it to also be somebody who facilitates
7 or knowingly facilitates but most would be against the
8 voter.

9 THE COURT: Yeah. But, I mean, I'm just --
10 I'm no criminal judge but knowingly facilitates is not
11 putting a piece of paper in front of someone; is it in
12 your opinion?

13 MS. HUNKER: I will --

14 MR. HOLLINS: And I'm not the Office's
15 lawyer here but I read this part of the code because I
16 got a nasty letter from the Secretary of State's Office
17 sort of accusing me of doing this. And so what it calls
18 for -- it says, a person commits an offense if the
19 person intentionally causes false information to be
20 provided on an application for ballot by mail. And
21 that's what they -- that's what it felt like I was being
22 accused of, your Honor. And also states for the
23 individual filling it out, a person commits an offense
24 if they knowingly provide false information on an
25 application for ballot by mail.

1 THE COURT: That's what I -- I'm trying to
2 figure this out and I'm not trying to be flippant or
3 factitious here. I'm trying to figure out -- we've
4 heard it a lot and Mr. Ingram almost mentioned it every
5 single time he opened his mouth was this 84 fraud,
6 right? And so I'm trying to figure out who is that
7 directed towards? Is that directed towards the election
8 clerk or is that directed towards the voter who the
9 legislature is empowered to make these decisions?

10 MS. HUNKER: I'm sorry. Your Honor, could
11 you repeat the last part of the question you stated you
12 faded out.

13 THE COURT: I'm asking when these
14 allegations of fraud by your witness are made in talking
15 about criminal penalties associated to felony fraud, is
16 he talking about allegations being made against the
17 election clerk or is he talking about allegations being
18 made against the voter and the State of Texas who the
19 legislature has empowered to make the decision of
20 whether or not they can vote by mail? Because I have
21 haven't empowered them. You haven't empowered them.
22 The Texas ledge has, right?

23 MS. HUNKER: The legislature has empowered
24 them to a degree so long as the information that they
25 provide is accurate.

1 THE COURT: And that's not the question I'm
2 asking you. The person who makes the decision on
3 whether or not they're going to fill out this
4 application and mail it back in has the power to do that
5 because of the Texas Legislature. Because Mr. Hollins
6 as he's admitted doesn't have any discretion in saying,
7 Hey, you're not disabled or no, you're not out of the
8 county. So the only person that can falsify that record
9 is the voter or the alleged voter.

10 MS. HUNKER: Or the alleged voter, yes.

11 THE COURT: Okay. I just wanted to make
12 sure.

13 Ms. Hays, you wanted to say something?

14 MS. HAYS: Well, I have sort of a lot to
15 say but I'll save some of it for closing. But I will
16 point out and counsel brought up that one -- 101 was
17 enacted in 1985. I think some of the provisions may
18 predate that but 1985 --

19 THE COURT: One thing I learned as an
20 appellate clerk, it doesn't matter when the law was
21 enacted as long as it's still a law.

22 MS. HAYS: Okay. Yeah, but I'll say this
23 about what happened in 1985 and I regret that more of
24 the legislative history isn't readily available. There
25 was about a six-year project to completely rewrite the

1 Election Code to make it easier for people to vote.
2 There's -- and I think you have to hunt them down at the
3 Legislative History Library at the Capital to get a copy
4 of the reports but it was six year undertaking. Many
5 civil rights organizations were involved. The goal was
6 to enfranchise people, make it easier. That's the whole
7 scope of the Election Code. It's meant to do that.
8 It's not meant to trick voters into felonies. And by
9 educating voters about the law, we're doing precisely
10 the opposite. We're showing them how to vote.

11 If anything, what the secretary has been
12 doing is hiding information about the definition of
13 the -- quote/unquote disability category and not
14 publicizing the ruling In re State, and then laying
15 behind the law and saying, Ah-hah, I'm going to refer
16 you to Attorney General.

17 That's problematic and it's not what the
18 Election Code means. It's not even what 84.0041 means,
19 knowingly make a false statement. It's not knowingly
20 false if I have consulted with my doctor, I'm worried
21 about voting in person because the pandemic has surged
22 back, as just about every epidemiologist thinks it will
23 this fall.

24 THE COURT: Yeah. I'm not -- and, you
25 know, I'm getting a little bit far field from where I

1 need to be anyhow but I just -- I was -- I've been
2 intrigued by that, right? I've been intrigued by the
3 felony fraud elements that we've been talking about.

4 MS. HAYS: And you --

5 THE COURT: Any ways, Mr. Eldred, go ahead.
6 You were questioning Mr. Hollins.

7 MR. ELDRED: Okay.

8 Q. BY MR. ELDRED. Let's go ahead and keep on that
9 for just a second. Do you agree with me that a
10 applicant who wants to vote by mail cannot lie about
11 whether he qualifies -- he or she qualifies into one of
12 the four categories?

13 A. Yes.

14 Q. Okay. So we looked at -- I think it was
15 Exhibit 11, some certain medical conditions such as
16 obesity, having asthma or smoking -- all right. You're
17 not saying that those people who have those conditions
18 are disabled under the Election Code, are you?

19 A. I do not have that decision power, sir.
20 Individuals decide for themselves if they qualify.

21 Q. Okay. So if I have asthma and I go out all the
22 time for everything but I decide that I can't go vote
23 and I check disabled, does that sound like a legal thing
24 they can do or is that fraud?

25 A. I believe it's up to the voter to decide for

1 him or herself if they have a physical condition that
2 creates a likelihood of injury to their health by voting
3 in person.

4 Q. I'm not sure I agree with you on that but --

5 THE COURT: But, Mr. Eldred, I mean -- and
6 I don't -- you can ask Mr. Hollins what you want but
7 this question has been resolved, right? I mean, we're
8 not resolving the question of what disability means
9 under 82.002 today. That's been resolved. And so
10 whatever -- even if Mr. Hollins says, Yes, I think if
11 you have asthma and you go out and you file this -- I
12 mean, unless he puts it in paper and communicates it to
13 every single voter in Harris County, he's not misleading
14 anybody. I mean, he -- if he tells you today, you know,
15 you've got -- I've got asthma and I'm a smoker, I'm
16 disabled -- not that Mr. Hollins is either but -- I
17 don't know where that gets us in -- in figuring out
18 whether or not he's acting ultra vires by sending out
19 the applications.

20 MR. ELDRED: I think I'm following you.
21 I'm going to -- the point is --

22 THE COURT: It's my fault I think because I
23 sort of led us far field on the fraud issue so I
24 apologize.

25 Q. BY MR. ELDRED: If you send someone an

1 application and also tell them, Hey, just check
2 disability we're not going to check -- we're not going
3 to check it, you'll be fine. Don't you think that
4 facilitates fraud -- arguably facilitates fraud? I
5 mean, that's kind of more like breaking the speed
6 limited by 25 miles an hour instead of by five miles an
7 hour. That's the --

8 A. No --

9 Q. -- point I'm --

10 A. -- say that.

11 Q. -- trying to make. And I know that Mr. Hollins
12 doesn't say it that way and I know he's not going to say
13 it that way. He's saying -- he's saying the law
14 correctly. But we just saw the Harris County crossing
15 evidence saying that perhaps obesity and asthma might be
16 a disability for the purposes of election. And my only
17 point is, you can't just say you're disabled. You have
18 to actually be disabled and if you are disabled for
19 election purposes but no other purposes, I don't think
20 that's correct. I think that is a fraudulent statement
21 to make to say I'm disabled on Election Day but I'm not
22 disabled on any other day?

23 THE COURT: But is that a -- is that an
24 issue for Mr. Hollins or is that for the individual
25 voter who decided that?

1 MS. HUNKER: Your Honor, I think that's --

2 MR. ELDRED: I was going to say it's for
3 both because it's the voter's problem but it's also in a
4 way Mr. Hollins' problem -- not as big a problem -- the
5 problem being that he's sending these applications to
6 people without authority and unlike the other --

7 THE COURT: That's not true. He has the
8 authority to send that application. You've never argued
9 he doesn't have authority to send out applications.

10 MR. ELDRED: Unsolicited, I meant, your
11 Honor.

12 THE COURT: Well, that's not true either
13 because you said that he's allowed to send out
14 unsolicited applications.

15 MR. ELDRED: No, your Honor.

16 THE COURT: Multiple times. Yes, you did.
17 You said that people over 65.

18 MR. ELDRED: I believe if I said that I
19 misspoke.

20 THE COURT: Well, I mean, because the issue
21 becomes -- I mean, regardless of what the AG decides to
22 prosecute, you have the ability to discretion. Some of
23 us on this call don't have the ability to discretion.

24 MR. ELDRED: It's kind of like Ms. Hays
25 hypothetical of they can put anything they want on the

1 website, that's not actually true but they can -- they
2 only can do what the law says they could do.

3 THE COURT: I understand --

4 MR. ELDRED: Now if they put something on
5 the website --

6 THE COURT: But my only concern is we're
7 relitigating something that's already been litigated. I
8 mean, I haven't read the Supreme Court decision but it
9 seems to me that it says that each -- each person -- I'm
10 just reading off the application, the Texas Supreme
11 Court has ruled that the lack of immunity Covid 19 can
12 be considered as a factor in your decision. So I don't
13 think -- the way I see it, Mr. Hollins and his office
14 isn't saying if you're obese you're disabled. They're
15 saying you can consider along with Covid 19. Is that --
16 Mr. Hollins, am I -- I'm just reading off your thing.
17 Is that what you intend it to be or are you saying that
18 those CDC factors acting alone -- and I don't know why
19 I'm asking you because you're a doctor but you're not an
20 MD, you're a lot of things but you're definitely not a
21 medical doctor. And so how -- what's the intent?

22 MR. HOLLINS: Is that a question for me,
23 your Honor?

24 THE COURT: I believe so because I think
25 that's -- that's where Mr. Eldred is going, right?

1 You're saying that if someone thinks -- I'll take me,
2 for example, I'm a fat guy that's gone through stem cell
3 transplant, right? So does that in and of itself mean
4 that I'm disabled? Now that's a decision that I'm going
5 to have to make and face the consequences of but I think
6 what Mr. Eldred is asking is those single factors that
7 y'all have enjoined in Exhibit 19, are you saying those
8 factors alone qualify you as disabled?

9 MR. HOLLINS: Well first, your Honor, you
10 look to be very in shape from where I'm sitting.

11 THE COURT: That's the best part of being a
12 judge.

13 MR. HOLLINS: But second, you know, we want
14 the people of Harris County to know what the law is in
15 this area, to know what their rights are and to make
16 decisions about their own medical health and their
17 physical safety under the law, right? I mean, even
18 on -- I think we all -- it sounds like we all agree that
19 people who are over the age of 65 in this scenario have
20 an increased rate of, you know, potential exposure to
21 Covid 19 or sort of downside from that. But if someone
22 who is 65 and doesn't, you know, that they feel like
23 they're very healthy, they can still apply 65, that's
24 not an issue.

25 Here, under Texas law, any other category

1 if they judge for themselves that they fit in that
2 category then they can apply under that category and
3 that's the end of the discussion from my understanding.
4 But again, I'm not the elections lawyer.

5 THE COURT: Yeah, okay. Mr. Elders, sorry
6 to interrupt.

7 MR. ELDRED: Your Honor, may Ms. Hunker
8 address the issue of what the Supreme Court said earlier
9 this year?

10 THE COURT: Sure.

11 MS. HUNKER: Your Honor, I certainly want
12 to point out that the Supreme Court did not take out all
13 objective components to the question of whether or not a
14 voter is disabled. Yes --

15 THE COURT: But Ms. Hunker, I mean -- and
16 I'm only going to interrupt to this point which I've
17 been trying to make and I've been doing a bad job of
18 following it is, that's not an issue for me to decide in
19 whether or not Mr. Hollins sending out this application
20 is ultra vires.

21 MS. HUNKER: It applies to the harm. So
22 you were talking before about the speculation in regards
23 to whether or not an individual would be confused and be
24 walked into committing a felony. The response that the
25 other side posed was that, Well, it's left up to the

1 discretion of the voter and so therefore they cannot be
2 putting false information and would be highly
3 speculative that an individual be referred to the
4 investigation or prosecution by the AG. However, there
5 has to be an objective component to the test in that if
6 the individual is completely fabricating whether or not
7 they believe that their condition does, in fact, put
8 them at risk of Covid and that can be shown through
9 their otherwise behaviors or going into public, well
10 then a complaint can be filed and likely will be filed
11 because of all the political interest groups that are
12 observing the election and investing the matter on their
13 own volition. And that will be brought up to our
14 attention. And so there is a very real risk that
15 individuals will be walk into felonies specifically
16 because there's an objective component that hasn't been
17 eliminated by the Supreme Court's determination.

18 THE COURT: And what I will say today is
19 that I don't know if this is part of the harm, I'm not
20 quite sure which is more harmful, not educating the
21 public or educating the public but that's not -- I don't
22 have a prosecutorial discretion in this matter and your
23 office does. So, I mean, I don't get to make those
24 decisions but you're -- what I'm looking at is -- I've
25 got two exhibits in front of me that are part of today's

1 record. One is the Texas Secretary of State that
2 basically says, lays out the four issues and then you've
3 got this that says, hey, this is the definition by the
4 Texas Supreme Court, go figure it out for yourself.

5 MS. HUNKER: The county is more than
6 welcome to put the front half of that sheet of paper in
7 everyone's mailbox in Harris County. It is only the
8 inclusion of that application that the State objects to.

9 THE COURT: Okay.

10 MS. HUNKER: The information that's
11 educational we, in fact, encourage the county to
12 provide.

13 THE COURT: No, I understand that. I mean,
14 I understand for anyone that's under the age of 65 y'all
15 have an objection.

16 Mr. Eldred?

17 Q. BY MR. ELDRED: Let's wrap it up a high note.
18 Maybe give you a chance to brag about how great and how
19 safe your in-person voting is. Is in-person voting
20 going to be safe in Harris County this election?

21 A. That is what we're working our hardest to try
22 and ensure.

23 Q. Okay. And would you agree we've mentioned a
24 few of these before that Harris County has accomplished
25 some maybe new ideas such as 24-hour voting, curbside

1 voting, drive-thru voting, try to make that even more
2 safe and more effective, is that the goal of all those
3 projects?

4 A. Absolutely.

5 Q. Okay. I'm going to pass the witness.

6 THE COURT: Okay. Mr. Hatzel, anything
7 else?

8 MR. HATZEL: Just one quick question, your
9 Honor.

10 (REDIRECT EXAMINATION BY MR. HATZEL)

11 Q. Mr. Hollins, when you're managing and
12 conducting early voting as Harris County's Early
13 Election Clerk, what are some of the things that you do
14 that are outside of the Election Code?

15 A. And when you mean outside of Election Code, do
16 you mean like not explicitly granted to me in the
17 Election Code?

18 Q. Correct.

19 A. I think there are a number of examples.
20 Drive-thru voting is a prime exact. There's no --
21 there's nothing that in anyway mentions drive-thru
22 voting in the code to my knowledge. This -- the website
23 piece that came up earlier was an example. The code
24 lays out some things that, you know, must be on our
25 website. You would have to tell me what -- what the

1 code says there. And, you know, the reason I haven't
2 read it is because obviously we understand ourselves to
3 be able to provide any helpful information to voters on
4 our website. Right? And so whatever was listed in
5 that -- that part of the code that you know better than
6 I do lays out the bare minimum. And likewise, you know,
7 what Ms. Hunker mentioned earlier as her example from
8 the law about when -- what voting hours have to be was
9 also a bare minimum. It was provided that you have to
10 at least have these hours but we go above and beyond,
11 10:00 p.m. voting in Harris County is not in the code.
12 24-hour voting in Harris County is not in code. You
13 know, I think customer service in general is not in the
14 code. And so anything that I would do to create, you
15 know -- to go above and beyond as I think you've said a
16 couple of times, whether as the chief elections officer
17 or as the chief record keeper for Harris County is not
18 laid out in the code because the code lays out minimums.

19 Q. Thank you, Mr. Hollins.

20 MR. HATZEL: Your Honor, that's all the
21 questions.

22 THE COURT: Okay. Anything else, Mr.
23 Eldred, in recross?

24 MR. ELDRED: No, your Honor.

25 THE COURT: Okay, great. Thank you,

1 Mr. Hollins. You can stay on if you'd like but if not I
2 think you're excused.

3 MR. HOLLINS: Thank you.

4 THE COURT: Ms. Hays, Mr. Hatzel anything
5 else?

6 MS. HAYS: Not no terms of evidence, your
7 Honor.

8 THE COURT: Mr. Elder, anything else that
9 y'all need to put on as evidence?

10 MR. ELDER: No, your Honor.

11 THE COURT: Okay. Mr. Eldred, you want to
12 close? How do y'all want to do this?

13 MR. ELDRED: I'd like to do a close, yes.

14 THE COURT: I just -- and I just want y'all
15 to know, I don't know if y'all looked at the chat but I
16 looked at it. I didn't look at it often but I think Ms.
17 Cohan was on here at some point and she was representing
18 some of the intervening defendants and wanted to clarify
19 something but then she left, so. I just wanted to get
20 that on the record just in case -- because the chat will
21 not be part of the record, so.

22 All right, Mr. Eldred.

23 MR. ELDRED: Sure. Just a few points.

24 The big point is that Mr. Hollins does not
25 have and unlimited grant of authority. He cannot point

1 to granted authority that allows him to comply with his
2 plan. When I asked him for the granting authority he
3 said it's just general authority. And that really gets
4 into the whole philosophy of the case. Clerks do not
5 have general authority, they have delegated authority by
6 statute. Well, they talk about going above and beyond,
7 well you can't go above and beyond but in many areas of
8 life if you go above and beyond the stuff that the
9 statute says you can do, no one is going to complain
10 about it and it's going to be fine. And that's kind of
11 what the over 65 mailer situation is.

12 Is it allowed? Is it specifically
13 authorized? It absolutely is not specifically
14 authorized but no one is complaining about it.

15 THE COURT: But let me ask that -- because
16 this -- I've been harping on it but that's -- you know,
17 I made the comment earlier because I knew this was going
18 to be part of closing. You have that discretion. Your
19 office has the discretion to prosecute or to do whatever
20 they feel like they need to do when it comes ultra
21 vires. When it comes to me applying the law, do I have
22 that discretion? If you've waived it -- if you've
23 waived your enforcement of the statute as to those over
24 the age of 65, how have you not waived it? Because the
25 statute doesn't delineate. 82.001 is no different --

1 sorry, 82.002 is not any different than any -- sorry,
2 I'm pulling out the statute here -- than 82.003, than
3 82.004, than 82.005, right? They are not -- there's no
4 delineation and no differentiation in the statute to any
5 one of those qualifications. You waived it. The
6 Secretary of State has waived it. Mr. Hollins has told
7 me that he sent out unsolicited applications to people
8 in jail in June or July; is that right, Mr. Hollins?

9 MR. HOLLINS: Yes, it was just before the
10 deadline. So I can't recall if it was June 30th or July
11 1st but right around there.

12 THE COURT: So, I mean, it seems to me that
13 if there is harm in acting ultra vires, you've known
14 about it, you've let it happen and haven't done
15 anything. And so address that issue because I don't
16 have the ability to apply the law as I see fit. I have
17 to apply the law the same because I'm -- I'm not a
18 policymaking court. I'm a court that applies the law.
19 So how do I not apply the law to all portions of 82
20 because you haven't -- because it seems to me that
21 there's a prosecutorial discretion there.

22 MR. ELDRED: I'll turn it around. We are
23 not a court that has to apply the law as robotically as
24 possible. We have discretion and we have decided not to
25 go after the --

1 THE COURT: But Mr. Eldred what I'm saying
2 here -- what I'm saying and this is why -- this is why
3 procedurally where we're at is important, right, because
4 I'm -- I'm looking at harm and irreparable injury,
5 right?

6 MR. ELDER: I don't think you are,
7 actually.

8 THE COURT: And so what I'm getting at --
9 huh?

10 MR. ELDRED: I should have said this
11 before, I want to quote that statute from the case in
12 1926. That the State has a justiciable interest in it's
13 sovereign capacity in the maintenance and operation of
14 it's municipal corporations in accordance with law does
15 not admit of serious doubt. That's kind of old
16 fashioned language but it says we have justiciable
17 interest in making sure that the Harris County Clerk
18 violates -- complies with --

19 THE COURT: Does not violate.

20 MR. ELDRED: Yeah, complies with the law,
21 yes, sir. If we have justiciable interest then we don't
22 really need harm. I think we have harm anyway, don't
23 get me wrong, but the Texas Supreme Court has already
24 told us we have justiciable interest in make sure that
25 they comply with the law. But Judge, I read justiciable

1 to mean we can bring this lawsuit whether we prove harm
2 or not, but again, I do think we also proved harm to the
3 extent --

4 THE COURT: No, I mean, I don't think
5 anyone is arguing -- I think Ms. Hays may have been
6 earlier but she's not arguing your capacity to bring
7 this lawsuit. I don't think that's an issue.

8 MR. ELDRED: I wasn't -- I wasn't making
9 that point.

10 THE COURT: Are you saying that the --
11 because what I'm talking about is the standard for me to
12 enjoin Mr. Hollins. Are you saying the standard is
13 different for you because you're the State?

14 MR. ELDRED: To the extent that -- if you
15 find he's violating Texas law, yes, you may enjoin him
16 with or without harm but --

17 THE COURT: Okay. But there's other -- I
18 mean, you know, I sit both in law and equity in these
19 hearings.

20 MR. ELDRED: Yes, sir.

21 THE COURT: And so I'm trying the figure
22 out both pieces, right. Waiver is a legal piece, laches
23 is an equity piece. So my job is not as -- your job
24 isn't easy, I'm not saying that -- that's not what I'm
25 trying to come across as -- but my job is multifaceted

1 here, right? My job is what is -- if I'm to interpret
2 the statute as written and you haven't seen any harm in
3 82.00 -- sorry, is that 82.003, right? You don't see
4 any harm in any 82.003 unsolicited mailing of
5 applications to those individuals. What's -- where
6 is -- where do I go from there?

7 MR. ELDRED: Well, it is different with the
8 State because if I were a private litigant I would have
9 to prove harm. The 1926 case says that the State --
10 actually, the State has a different kind of harm. It's
11 a harm to our laws. Our laws are being violated so we
12 say, you may disagree.

13 THE COURT: You've allowed them -- but what
14 I'm asking you is you've allowed them to be violated.
15 So that's what I'm asking. I mean, maybe we're mis
16 communicating. You have allowed them -- you have used
17 your discretion as the Attorney General, the chief
18 prosecutorial attorney for this state and allowed them
19 to be violated. You have said, Oh, we know it's
20 happening, it's only five hours an hour but it's okay.
21 But now that Mr. Hollins wants to go 20 miles an hour,
22 we're going to prosecute those cases. But to me, in my
23 job, five miles per hour is illegal. The application of
24 the law would be the same to five and 25 as to
25 liability, correct?

1 MR. ELDRED: Correct. But --

2 THE COURT: But you're saying that there's
3 no liability at five.

4 MR. ELDRED: Only if we bring it. It's
5 like the example of the website with information on it.

6 THE COURT: I just want to -- I just want
7 that to be clear in the record that you're -- you're
8 using -- you're selectively prosecuting and applying
9 statutes here. Because that's what -- I just want to
10 that to be clear because I don't -- you're going to have
11 to brief that for me to and I'm going to need that
12 probably by noon tomorrow because I want to be clear
13 because I don't want to get the law wrong. I mean, what
14 I don't want to do is get the law wrong in the standard
15 that I'm doing this on. But it seems to me that -- any
16 ways, I made my point.

17 MR. ELDRED: Judge, you talked about we
18 waived argument. That's not correct. We haven't waived
19 the argument anymore than a police officer has waived
20 enforcing speed limits because he let someone go because
21 who was little bit over. It's just not correct. And
22 the issue of over 65 or incarcerated, which I just found
23 out for the first time today, but both of those are --
24 for the purposes of this case they're immutable
25 categories. Because I think he said that he gave the

1 incarcerated applications shortly before the elections.
2 So I assume he's giving it to people who are going to be
3 incarcerated on the day of the election and to the
4 extent that's immutable because they're incarcerated on
5 the day of the election and people over 65 are going to
6 be over 65 on the day of the election. I just think
7 that's different, yes, we could go after them for that.

8 THE COURT: I'm just saying that I'm not a
9 court of policy. I'm a court of law in equity, you're
10 making policy arguments.

11 MR. ELDRED: That's how it works, Judge.
12 That's how it works in --

13 THE COURT: No, I understand that. I
14 understand that. Mr. Eldred, and I'm not disagreeing
15 with you but I'm just telling you I'm a court of law and
16 equity. I'm not a court of policy. The courts above me
17 which is where this will end up at are courts of policy.

18 MR. ELDRED: I don't think any courts are
19 policy? This isn't a policy question. We have decided
20 not to enforce --

21 THE COURT: It is a policy question because
22 you've decided that it's not within -- it's not worth
23 your discretion to pro- -- to say Mr. Hollins is ultra
24 vires when he violates according to your interpretation
25 84.012 when it comes to age.

1 MR. ELDRED: Yeah. And governments
2 violate the law -- governments --

3 THE COURT: Mr. Eldred, I just want to get
4 this across, you've decided to make that policy decision
5 that you're not going to prosecute that case.

6 MR. ELDRED: Well, again, you refers to the
7 Secretary of State really. But I don't think it's a
8 policy -- maybe it is, I'm not sure if calling it a
9 policy decision changes the analysis because --

10 THE COURT: Yeah, and I think it's probably
11 above both our pay grades.

12 MR. ELDRED: Maybe. You know, if the
13 Secretary of State doesn't go after someone for putting
14 something on their website that they're not technically
15 authorized to do, it doesn't mean that they've waived
16 forever the power to go after someone who puts blatantly
17 illegal stuff on their website, Hey, go vote for this
18 party or that party on your website -- that would be
19 illegal. And we haven't waived enforcement of -- the
20 idea that we can do something about that just because --
21 well, we let them off so put some announcement that they
22 weren't authorized to do. We let the announcement go
23 but we're going to come back -- we're going to come down
24 on you if you do something really, really illegal. It's
25 similar to that. I just don't think it's a waiver of

1 argument, Judge.

2 THE COURT: I just -- I'm -- it's just
3 interesting to me, right? Everything -- the other
4 portions are really illegal but the other things are
5 just kind of okay illegal.

6 MR. ELDRED: Well, that's true because
7 people who get the -- over 65s and the people who are
8 incarcerated on Election Day, they are absolutely
9 qualified to vote. They're not going to walk into a
10 felony, it's impossible unlike the other categories.

11 So I think it is different and I think
12 it's -- you know, can you can disagree or not but I
13 think it's a call that's not unreasonable.

14 THE COURT: The beauty of my job is I don't
15 have the -- it doesn't matter if I agree or disagree,
16 you're asking me to do a statutory interpretation.

17 MR. ELDRED: Yes. And also you're limited
18 as you know by the case of controversy requirement.
19 There is no case or controversy about age -- over age 65
20 right now. It's the separation of the power system we
21 have. It's just -- we can talk about this all day, I'm
22 sure. And I know Ms. Hays wants to get to it too. I
23 think you know our position. It's not just the floor
24 the code sets, it 's a floor and a ceiling many times.
25 And we think the ceiling is you can't -- but you've

1 heard me say that before.

2 THE COURT: Yeah.

3 MR. ELDRED: I'll move onto the next point
4 unless you really want to hear more.

5 Very quickly, Ms. Hays suggested that we
6 know that people don't want to vote in person this time.
7 I think Joint Exhibit 19 is contrary to that assertion
8 because the numbers of voting in person -- well, the
9 percentage of voting in person for the runoff of this
10 year during Covid -- I had a point and it's going to
11 come back to me. Okay, I'm sorry. The percentage of
12 voting by mail during the primary runoff this year is
13 not significantly different than the percentage of
14 voting by mail in 2018 or 2016. So she may or may not
15 be right but there's no evidence that she's right on the
16 record that we have right now. I don't think you should
17 assume that's going to be the case, that people really
18 want to vote by mail this time. There's no evidence
19 that's true.

20 And again, Mr. Hollins, to his credit have
21 made voting in person very safe so I don't think you can
22 assume that there's going to be a particularly excessed
23 demand to vote by mail this election. Bear with me for
24 just one second, please.

25 THE COURT: Take all the time you want.

1 You guys still have an hour and a half before I kick
2 y'all off.

3 MR. ELDRED: Let me check a few more notes
4 to see I've written down anything really brilliant.
5 Your Honor, I think with that I'll close.

6 THE COURT: Thank you, sir. Ms. Hays?

7 CLOSING STATEMENT BY MS. HAYS

8 MS. HAYS: Thank you, your Honor. I'm
9 going to address some small things and then get to the
10 big picture and I direct the Court's attention to the
11 stipulation of facts because I think it does help us
12 narrow the issues and as y'all just had a lengthy
13 discussion about the Secretary of State does not object
14 to sending unsolicited vote by mail applications to
15 voters over 65 because in our view they're eligible to
16 vote by mail and they are.

17 The Secretary does object to sending to
18 voters under 65 because she believes that very few of
19 them will be eligible. And our point is we don't know
20 how many but we do know it's probably a lot more than it
21 would be in a typical year because of the pandemic. And
22 it's an issue that puts voter's health at risk and they
23 shouldn't have to risk their health to vote.

24 And I think that the State has backed away
25 from this a little bit but just in case they have not,

1 they have cited the statistic from the Census Bureau
2 about disability and the prevalence of that in Harris
3 County being 6.7 percent. However that is, of course, a
4 completely different definition of disability than what
5 is in the Election Code. The actual text of the statute
6 in the Election Code doesn't even use the word disabled
7 or disability. It describes a circumstance and that's a
8 circumstance that the voters can decide for themselves.
9 And if there's any doubt about whether that is a very
10 unique definition, there is an Attorney General's
11 opinion, it's KP009 from 2015 where this exact issue was
12 brought up where someone asked whether the definition
13 under the social security administration was the same
14 and the Attorney General's Office said no. And that
15 instead a voter should believe that they have a sickness
16 or condition which prevents them from voting by personal
17 appearance without assistance or injuring their health.
18 That voter's subjective belief is theirs to make. And
19 the Supreme Court has made it very, very clear.

20 And I want to make one side point because
21 there's an error in a footnote in this advisory, this
22 letter opinion. There's a footnote that claims the vote
23 -- a voter who votes who wasn't qualified to vote that
24 particular way may have their vote subject to challenge
25 citing a case called Tiller, T-I-L-L-E-R. That's

1 incorrect. I've gone down that line of cases. The only
2 time votes are thrown out in election contest is when
3 the voter was not eligible to vote in that election, not
4 when they voted by a method but that they were not
5 eligible to vote. Unless the code has that specific
6 language in it must not be counted and that's not the
7 case when it comes to qualifying under a category to
8 vote by mail.

9 Now to the big issue. What's the harm?
10 What's the irreparable harm if this mailer goes out
11 where voters are given an application and are given
12 detailed instructions on how to use it and what the
13 standards are to qualify. The State is arguing that
14 somehow voters are too stupid to understand those
15 instructions, even when there's big red lettering and an
16 order to please make sure you are eligible before you do
17 this, that they will somehow accidentally commit fraud.
18 And they're making it very clear in this hearing that
19 they will prosecute. So where is the harm to voters
20 coming from? It's manufactured by the Attorney
21 General's Office itself, in their strained reading and,
22 I think, frankly disregard for the Supreme Court's
23 opinion that voters can't decide and if we decide after
24 the fact they're wrong because we gotcha then walking
25 down the street when they said they had COPD --

1 THE COURT: Well, I say, I mean, I'm not --
2 it is an issue of first impression but the statute says
3 what the statute says, right? And so the issue is --
4 and I don't -- I don't have any ill will towards the
5 AG's office for bringing this point up. I understand
6 their reading, they just -- they feel it's a
7 prescription on the duties of the clerk and they read it
8 as a limiting of 1.010, right? And so that's the issue
9 here, is whether or not 84.012 limits 1.010 and it's
10 never both of those statutes have been around since the
11 -- I think 1.010 since '85; is that right?

12 MS. HAYS: It probably predates that
13 because that was a massive recodification and
14 substantive rewriting of the Election Code in that year.

15 THE COURT: And then 84.012 when was that
16 put in?

17 MS. HAYS: I think it also predates. I
18 know 1.010 does predate because I looked it up on one of
19 the breaks.

20 THE COURT: And so the issue is, I mean, it
21 hasn't been litigated in almost 40 years but here we
22 are.

23 MS. HAYS: Right. I think because it was
24 extraordinary to question that an election's authority
25 could make it easier for voters to vote and provide them

1 with information about voting, that's their job broadly.

2 THE COURT: But I don't think we agreed on
3 that. The one thing we did agree on is that the more
4 qualified voters that we -- everybody wants qualified
5 voters to participate in an election. But I don't think
6 we addressed the question that you're bringing up, so.

7 MS. HAYS: I'm sorry. Which question was
8 that because I have many?

9 THE COURT: It's okay. It's not a problem.

10 MS. HAYS: All right. Back to the
11 standard, the harm. They say the law, that's of course
12 circular. There's no harm to the law if they're wrong
13 about the law. And the Court has correctly brought up
14 laches and waiver which I believe we have pled in our
15 answer. And then harm to the voters, again, speculative
16 that the voters would be unable to follow instructions
17 and honestly fill out the card. And to the contrary,
18 particularly given the context of the pandemic it's
19 likely to cause harm to voters if the mailer doesn't go
20 out.

21 And if the State is allowed to come in and
22 micromanage the local election authority's conduct and
23 management of the election -- and I'm going to emphasize
24 those words again -- conduct and management of the early
25 voting process, those are broad words. They're not a

1 floor -- I mean, excuse me, they're not a ceiling,
2 they're the floor. And it's up to the local election
3 authorities to decide how best to do that in their
4 communities in the circumstances of a given election.
5 And that's exactly what Mr. Hollins is trying to do with
6 this mailer. And that's all I have, your Honor.

7 THE COURT: Mr. Eldred, anything in
8 rebuttal?

9 REBUTTAL CLOSING ARGUMENT BY MR. ALDRED

10 MR. ELDRED: Real quick. It's not
11 micromanagement, this is the first time it's ever
12 happened. This is an unprecedented situation. I don't
13 think micromanaging is the proper characterization. The
14 characterization should be is this authorized or not and
15 you know we think it's not.

16 MS. HAYS: I will take issue with that. It
17 is micromanagement. Rarely does the Secretary of
18 State's Office use a civil rights statute to attack --
19 at all, I'll say, I mean, we've looked and I think we
20 could find two occasions in the last couple of decades.
21 And then to use that civil rights action -- rights
22 statute that's designed to prevent election authorities
23 from impeding voting rights, making it harder to vote
24 and turn it on it's head to attack a local elections
25 authority who is trying to make it easier to vote and

1 accuse him of committing fraud, I think you said Mr.
2 Eldred, we could go after him in your argument and
3 threaten voters. That's a perversion of the Election
4 Code.

5 MR. ELDRED: I'm not sure what she's
6 referring to but I'll -- I'll be happy to answer the
7 Judge's question, if any.

8 THE COURT: I don't have any questions.
9 We've spent a lot of time together today. If there's
10 any post hearing briefing that y'all want to get to me,
11 if you'll limit it to no more than ten page including
12 exhibits. And have it filed by noon tomorrow. I'm
13 hoping to get y'all something -- because I know that I'm
14 just the first step of many on this -- on this train
15 route, I'll keep going with that analogy. I'll try to
16 get y'all something big close of business on Friday.

17 MR. ELDRED: Can I ask a question? You
18 mentioned you specifically want some briefing on
19 prosecutorial discretion, I think.

20 THE COURT: Well, no, no, no. You were
21 talking about that 1926 case which I -- when I read it
22 in your briefing I had to read it like six times because
23 they use language that, you know -- that I've never used
24 before, let's just say that. And so you were -- you
25 were -- what I understood that you're using it to be

1 is -- what I was confused about was is justiciability
2 argument. I don't think anyone here has ever argued
3 that you don't have a justiciable claim but what I was
4 getting -- what was confounding me was whether or not --
5 just because you have a claim, that implies harm.

6 MR. ELDRED: Okay.

7 THE COURT: That's what I thought you were
8 saying. I thought you were saying because you have a
9 claim you automatically have harm and that's not an
10 element -- because that's part of the -- the TI issue,
11 right? And that's what I'm trying to get at is whether
12 or not you have to prove anything in the TI because
13 you're the State and it's kind of confounding any ways
14 because the County is the State too, right? They're
15 just a political subdivision of the State.

16 MR. ELDRED: But that case distinguishes
17 between the political subdivision and the state. It
18 says the State has the justiciable interest in making
19 sure the political subdivisions follow the law.

20 THE COURT: No, no, I understand that. I
21 understand the justiciable controversy thing. What I'm
22 getting to is the TI factors.

23 MR. ELDRED: Right. And --

24 THE COURT: My understanding is that just
25 because you're the State doesn't mean you win every TI.

1 MR. ELDRED: No, we don't win every TI but
2 I think with -- we have to still prove a -- a probable
3 right of success. You know, that we -- that we might be
4 right on our lawsuit. If we're wrong on the law then
5 obviously we don't win.

6 THE COURT: Yeah, yeah.

7 MR. ELDRED: But if we're right on the law
8 we also have, we win on the third as well because of the
9 harm to the law.

10 MS. HAYS: And, your Honor, if I may, one
11 more thing I would like to emphasize and I greatly
12 appreciate the need of the Court to think carefully
13 about this. It is a very important case. You mentioned
14 a ruling by Friday. If at all possible can we have it
15 early Friday morning so both parties have a chance to
16 get this upstairs as quickly as possible.

17 THE COURT: If you want to sit ancillary
18 for me tomorrow and Friday morning, I am -- I am more
19 than happy to let you have people -- listen to what
20 people have to say and what they think is emergent.

21 MS. HAYS: I'm about ten hours away from
22 you but if you send a private plane I can do it.

23 THE COURT: You know, you don't have to let
24 anyone know, it's all Zoom.

25 MS. HAYS: Right. There you go.

1 THE COURT: I will do my best to have it to
2 you before close of business. It's -- it's a Covid
3 world with virtual schooling and ancillary so that's the
4 only thing -- those are the three things that sit
5 between -- well, my noon deadline for y'all to give me
6 the brief -- if y'all want to agree to move the briefing
7 up to earlier that's fine. I'm not going to start
8 working on anything until I get your briefing so that's
9 going to be my lift off point.

10 MR. ELDRED: Noon is fine with us.

11 THE COURT: And I'm not a court of
12 precedent so it's not like my opinion is going to be
13 long and windy, and you know, it's not going to light
14 the legal world to flame but I have to write something.

15 So if there's nothing else, y'all be safe,
16 be well and be kind and I will get y'all something
17 sooner rather than later.

18 MS. HAYS: All right. Appreciate it, your
19 Honor.

20 THE COURT: All right. Take care.
21
22
23
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25

REPORTER'S RECORD
CAUSE NO. 2020-52383

THE STATE OF TEXAS) IN THE DISTRICT COURT OF
)
VS.)
)
) HARRIS COUNTY, TEXAS
)
CHRIS HOLLINS, in his)
official capacity as)
Harris County Clerk) 127TH JUDICIAL DISTRICT

THE STATE OF TEXAS :
COUNTY OF HARRIS :

I, Cynthia M. Grijalva, Official Reporter, in and
for the 127th Judicial District Court of Harris County,
Texas, do hereby certify that the above and foregoing
contains a true and correct transcription of all
portions of evidence and other proceedings requested by
counsel for the parties to be included in this volume of
the Reporter's Record in the above-styled and numbered
cause, all of which occurred in open court or in
chambers and were reported by me.

I further certify that the total cost for the
preparation of this Reporter's Record is \$2,770 and will
be paid by Ms. Susan Hays.

1 Witness my OFFICIAL HAND this the 11th day of
2 September, 2020.

3
4
5 /S/ CYNTHIA M. GRIJALVA
6 Cynthia M. Grijalva, CSR
7 Texas CSR 10996
8 Official Court Reporter
9 127th District Court
10 Harris County, Texas
11 201 Caroline, 10th Floor
12 Houston, Texas
13 Telephone: (832) 927-2530
14 Expiration: 4/30/2021
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