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Via Email and E-Filing

Blake Hawthorne, Clerk
Supreme Court of Texas

Re: No. 20-0847, *In re Greg Abbott, et al.*

Dear Mr. Hawthorne:

The State Officials file this letter in reply to Plaintiffs' response, filed this afternoon, to the petition for a writ of mandamus. Plaintiffs' response misapprehends the effect of the court of appeals' mandate, the proper use of Texas Rule of Appellate Procedure 18.6, and this Court's role in making the final determinations of the Texas judicial branch.

As the State Officials previously explained, they have a statutory right to supersedeas, and that right continues until this Court disposes of a timely filed petition for review. Mand. Pet. 11-13. Plaintiffs do not deny either of those points. Yet by immediately issuing the mandate in the underlying appeal, the court of appeals prematurely terminated the State Officials' appeal before this Court could consider it. Doing so effectively extinguished the State Officials' statutory right to supersedeas.

Plaintiffs defend the court of appeals' reliance on Rule 18.6, which allows a court in an accelerated appeal to "issue the mandate with its judgment." But a rule may not trump a statute. *In re Geomet Recycling LLC*, 578 S.W.3d 82, 88 (Tex. 2019) (orig. proceeding). And the Legislature recently confirmed that no rule may overcome the State Officials' right under section 6.001 of the Texas Civil Practice and Remedies Code to supersede an adverse judgment. Tex. Gov't Code § 22.004(i). Here, the court of appeals effectively allowed counter-supersedeas by immediately issuing its mandate under Rule 18.6, and thus it clearly abused its discretion.

Plaintiffs suggest that Rule 18.6 is properly invoked in any interlocutory appeal. Mand. Resp. 6. But courts of appeals routinely follow Rule 18.1, not Rule 18.6, in

interlocutory appeals. Rule 18.6 provides an exception that should be judiciously invoked, and it cannot properly be invoked in litigation, such as this, that all courts and parties recognize is likely to be ultimately resolved by this Court. Otherwise, a court of appeals could decide which interlocutory appeals this Court hears. That, of course, is exactly backwards.

Finally, Plaintiffs inaccurately accuse the State Officials of "running out the clock until this case is mooted by the passage of the election." Mand. Resp. at 8. But throughout these proceedings, the State Officials have moved expeditiously. Most recently, they prepared and filed a petition for review, a mandamus petition, and a motion for temporary relief within eight hours of receiving the court of appeals' opinion, judgment, and mandate. The State Officials' actions do not render the Texas judiciary, led by this Court, "a bystander in the review of executive action and election law." *Id.* To the contrary, the State Officials have sought to ensure this Court's ability to speak for the judicial branch on this important matter.

Respectfully submitted.

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Certificate of Service

On October 26, 2020, this letter was served electronically on Lindsey B. Cohan, lead counsel for the Real Parties in Interest, via Lindsey.Cohan@dechert.com.

/s/ Lanora C. Pettit
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Certificate of Compliance

Microsoft Word reports that this letter brief contains 444 words, excluding exempted text.

/s/ Lanora C. Pettit
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