



VIA E-Filing

September 30, 2020

Blake Hawthorn
Clerk, Supreme Court of Texas
201 West 14th Street
Austin, Texas 78701

RE: *State v. Hollins*, No. 20-0729 – Post-Argument Letter

Dear Mr. Hawthorne,

Please circulate this letter to the Justices

On rebuttal, the State argued it did not concede that the content of the mailer is accurate and acceptable. To the contrary, the State’s witness, Secretary of State Director of Elections Keith Ingram testified in the temporary injunction hearing:

“I’ve read this full mailer and I think it’s very good. I appreciate the language that’s been used. I appreciate the highlighting in red and that’s going to keep a lot of voters from making a mistake.” RR 76.

[In response to a question of whether any part of the mailer is incorrect:]
“Other than the fact that it includes an application, no, the mailer is fine.” RR 76-77.

“I’ve commended the educational component of that mailer, yes.” RR 93

Also, procedurally, the content of the mailer is not at issue. The State stipulated that it did not object to Hollins sending unsolicited educational materials regarding the eligibility to vote by mail to voters under 65, and the State stipulated that it did not object to sending applications to voters over 65. CR.232 ¶¶ 5, 7. Hollins sent applications to voters over 65 **after** the State filed suit as the Secretary of State and the Office of Attorney General as its counsel agreed doing was acceptable. *See* CR 14 (Rule 11 Agreement), CR 97 (Ingram: “. . . there was nothing we could criticize about it . . .” (Transcript of Ingram-Hollins conference).

During the temporary injunction hearing, the State also conceded the Election Code’s division of power between the State and local election officials:



LAW OFFICE OF
SUSAN HAYS, P.C.

Law § Public Affairs § Ethics § Strategy

“We don’t allow or disallow counties to do anything. Counties are the ones that run elections in Texas, we assist and advise. The limited exception to that is whenever a county election official is abusing voters by misleading them and walking them into a felony.” RR84.

Two points here. First, county clerks are free to innovate and implement programs within the context of managing and conducting election. For example, Harris County will have drive-through voting at certain of its early voting locations. In addition, today Harris County launched a mail-in-ballot tracking system where voters can check the location of their application or their ballot just as they would track the shipment of a package. *See* <https://www.harrisvotes.com/tracking>. **No statute authorizes this**, yet the State’s position would prohibit this innovation that both serves voters and discourages fraud.

Second, contrary to the rebuttal argument that Hollins seeks to “fundamentally upset the balance of power” between state and local governments, it is the State that seeks to fundamentally shift that power while aggrandizing power into the Office of the Attorney General. The State cited no *ultra vires* case concerning elections — because there are none. The State’s power in election management is specified by statute. *See e.g.*, TEX. ELEC. CODE § 31.005. No statute gives the Office of the Attorney General the power to second-guess election management decisions unless they are impeding voting rights and the Secretary requests OAG involvement.

Finally, the State’s invocation of Section 84.0041 in its pleadings, argument, Ingram’s letter of August 27, and the testimony quoted above should give this Court pause to hand that power over. *See e.g.*, CR 19. Voters acting in good faith to decide whether they are entitled to vote by mail should not be subject to felony prosecution — or unfounded threats thereof — nor should the election authorities who are fulfilling their duties to make voting safe and accessible to all Texas citizens.

Sincerely,

/s/ Susan Hays

Susan Hays
Law Office of Susan Hays, P.C.
Counsel for Chris Hollins
Harris County Clerk

Cc: Kyle Hawkins (via e-filing)

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:

Susan Hays
Bar No. 24002249
hayslaw@me.com
Envelope ID: 46707168
Status as of 9/30/2020 11:59 AM CST

Associated Case Party: Texas State Conference of the NAACP

Name	BarNumber	Email	TimestampSubmitted	Status
Lindsey Cohan		lindsey.cohan@dechert.com	9/30/2020 11:56:42 AM	SENT

Associated Case Party: Anti-Defamation League Southwest Region

Name	BarNumber	Email	TimestampSubmitted	Status
Lindsey Cohan		lindsey.cohan@dechert.com	9/30/2020 11:56:42 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Christopher Hollins	24090168	info@hollinslawgroup.com	9/30/2020 11:56:42 AM	SENT
Hollis Duncan		hollis.duncan@oag.texas.gov	9/30/2020 11:56:42 AM	SENT
Kyle Hawkins		kyle.hawkins@oag.texas.gov	9/30/2020 11:56:42 AM	SENT
Maria Williamson		maria.williamson@oag.texas.gov	9/30/2020 11:56:42 AM	SENT
Cecilia Hertel		cecilia.hertel@oag.texas.gov	9/30/2020 11:56:42 AM	SENT
Natalie Thompson		natalie.thompson@oag.texas.gov	9/30/2020 11:56:42 AM	SENT
Wolfgang PHirczy de Mino		wphdmphd@gmail.com	9/30/2020 11:56:42 AM	SENT
Susan Hayes		hayslaw@me.com	9/30/2020 11:56:42 AM	SENT
Lanora Pettit		lanora.pettit@oag.texas.gov	9/30/2020 11:56:42 AM	SENT
Beau Carter		Beau.Carter@oag.texas.gov	9/30/2020 11:56:42 AM	SENT
Henry WJones III		memphishank@gmail.com	9/30/2020 11:56:42 AM	SENT
Joseph S.Jaworski		joejaws@laworskilawfirm.com	9/30/2020 11:56:42 AM	ERROR

Associated Case Party: League of Women Voters of Texas

Name

Automated Certificate of eService

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

Susan Hays
Bar No. 24002249
hayslaw@me.com
Envelope ID: 46707168
Status as of 9/30/2020 11:59 AM CST

Associated Case Party: League of Women Voters of Texas

Thomas Buser-Clancy		tbusser-clancy@aclutx.org	9/30/2020 11:56:42 AM	SENT
---------------------	--	---------------------------	-----------------------	------