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September 18, 2020

Via Electronic Filing

Blake Hawthorne, Clerk
Supreme Court of Texas

Re: No. 20-0715; *In re State of Texas*

Dear Mr. Hawthorne:

On September 15, the Court ordered the Harris County Clerk, Chris Hollins, "not to send or cause to be sent any unsolicited mail-in ballot applications pending disposition of the State's appeal to the Court of Appeals and any proceedings in this Court, and until further order of this Court." Today, the Court of Appeals affirmed the denial of the State's temporary injunction application. *See State of Texas v. Hollins*, No. 14-20-00627-CV. This Court's September 15 order remains in place and properly preserves the status quo pending further review.

The State now advises the Court that it respectfully disagrees with the Court of Appeals's decision issued earlier today, and that the State intends to seek prompt review of that decision in this Court. In particular, **the State intends to file a petition for review as soon as practicable, but in any event, no later than noon on Friday, September 25.**

The Court of Appeals did not address the State's likelihood of success on the merits. Hollins's view that he may "go above and beyond" what the Election Code permits has far-reaching implications. MR.268. Hollins seeks to expand the scope of county early-voter clerks' powers beyond those granted by the Legislature. *See, e.g.*, *State ex rel. City of Jasper v. Gulf State Utils. Co.*, 189 S.W.2d 693, 698 (Tex. 1945). He argues (and the trial court concluded) that he has "broad" authority and a county official is authorized to take any action not prohibited by statute. That is the opposite of longstanding Texas law and has widespread implications. The Court of Appeals declined to address these significant issues of Texas law.

Instead, the Court of Appeals concluded the State has not shown irreparable harm in the absence of a temporary injunction. That flies in the face of longstanding Texas law respecting the State's fundamental interest in compliance with and enforcement of its law. This Court has held for nearly a century that the State is injured when municipal corporations fail to comply with the law. *Yett v. Cook*, 281 S.W. 837, 842 (Tex. 1926); *see also State v. Naylor*, 466 S.W.3d 783, 790 (Tex. 2015). The court of appeals acknowledged that interest, yet it held the State is not harmed by Hollins's refusal to act in accordance with state law, Ex. A at 6-7, because the unprecedented nature of Hollins's *ultra vires* conduct meant the State could not point to evidence of precisely how similar conduct has affected past elections, *id.* at 7-9. In so doing, it created a direct conflict with not only this Court's precedent, but also that of other courts of appeals. *See, e.g.*, *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)). And its holding would allow county officials to ignore state law with impunity so long as they get creative about how they do it.

These weighty and complex issues deserve thorough analysis by the parties and careful study by this Court. The State further recognizes that a national election is fast approaching. Accordingly, the State intends to file its petition for review in this Court as soon as practicable, but in any event **no later than noon on Friday, September 25**.

* * *

Respectfully submitted.

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CERTIFICATE OF SERVICE

On September 18, 2020, this document was served electronically on Susan Hays, lead counsel for Chris Hollins, via hayslaw@me.com.

/s/ Kyle D. Hawkins
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CERTIFICATE OF COMPLIANCE

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/s/ Kyle D. Hawkins
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