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September 15, 2020

Via Electronic Filing

Blake Hawthorne, Clerk
Supreme Court of Texas

Re: No. 20-0671; *In re Hotze*

Dear Mr. Hawthorne:

The State of Texas, by and through Attorney General Ken Paxton, submits this amicus letter brief in the above case in support of Relators' application for temporary relief.* In the view of the State, the Court should grant temporary relief to maintain the status quo and protect its jurisdiction to consider Relators' claims. Absent temporary relief, Relators' claims are likely to become moot as soon as this Thursday, September 17.

Relators filed this mandamus petition on August 30 asking the Court to issue a writ of mandamus against the Harris County Clerk, Chris Hollins, to order him to refrain from sending out two million unsolicited vote-by-mail applications to registered voters in Harris County. The next day, Relators filed a motion for temporary relief consistent with their mandamus petition.

Hollins's planned mass mailing is an unlawful *ultra vires* action because it exceeds the authority the Texas Election Code confers on county clerks like Hollins. Accordingly, the State of Texas brought an action in Harris County District Court to permanently enjoin Hollins's planned mass mailing. *See State of Texas v. Hollins*, No. 2020-52383 (127th Dist. Ct., Harris County). The State requested a temporary restraining order and a temporary injunction.

* No fee has been or will be paid for the preparation of this letter brief.

The State and Hollins then agreed, pursuant to Texas Rule of Civil Procedure 11, that the State would withdraw its request for a temporary restraining order if Hollins would refrain from sending unsolicited mail-in-ballot applications until five days after a ruling on the State's request for a temporary injunction. On September 2, this Court granted in part Relators' request for temporary relief and ordered Hollins to comply with the terms of that Rule 11 agreement.

On September 11, the Harris County District Court denied the State's motion for a temporary injunction, which started the five-day clock. That clock runs out at 11:59 p.m. on Wednesday, September 16. The State immediately appealed to the Fourteenth Court of Appeals, and concurrently sought temporary relief pursuant to Rule 29.3 to maintain the status quo and thereby preserve the jurisdiction of the appellate courts during the pendency of the appeal. *See State of Texas v. Hollins*, No. 14-20-00627-CV (Tex. App.—Hous. [14th Dist.]).

Yesterday, September 14, the Fourteenth Court constructively denied the State's request for temporary relief. Instead, the Fourteenth Court issued a briefing schedule that would require the parties to complete merits briefing by 3:00 p.m. on Wednesday, September 16, with the case to be submitted to the court on the briefs at 5:00 p.m. that same day. However, the Fourteenth Court offered no assurance that it would decide the appeal before 11:59 p.m. on September 16.

Because the Fourteenth Court neither issued an order maintaining the status quo nor indicated that it would resolve the pending appeal before the Rule 11 agreement lapses, it is possible that as soon as this Thursday, September 17, Hollins may begin mailing millions of unsolicited applications to Harris County voters who are not eligible to vote by mail. Indeed, Hollins has indicated that he intends to begin work on that mailing "immediately" upon the lapse of the Rule 11 agreement, and that he intends to complete the mass mailing no later than October 6. *See Appellee's Opp. to Rule 29.3 Motion 4*, No. 14-20-00627-CV (filed Sept. 13, 2020). Once that mass mailing occurs, it cannot be undone. Therefore, the State's pending action in the Fourteenth Court and Relators' mandamus petition now pending before this Court would become largely moot. Relators and the State both would suffer irreparable harm caused by an unlawful governmental action that is both contrary to the Texas Election Code and effectively immune from review.

Accordingly, the State agrees with Relators that it would be appropriate for this Court to extend its order for temporary relief in order to protect its own jurisdiction

to decide the merits of the pending mandamus petition. The State will shortly be filing a parallel request that the Court prohibit Hollins from sending out unsolicited mail-in-ballot applications during the pendency of the State's appeal in *State of Texas v. Hollins*—including disposition of any petition for review in this Court. Such an order—whether granted in this case or in the State's forthcoming petition—is necessary to protect this Court's jurisdiction over Relators' mandamus petition. It will also allow the State to brief and argue its interlocutory appeal in *State of Texas v. Hollins* without allowing Hollins's actions to moot that appeal—an appeal that this Court will likely be asked to resolve, regardless of how the Fourteenth Court rules.

Respectfully submitted.

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CERTIFICATE OF SERVICE

On September 15, 2020, this document was served electronically on Susan Hays, lead counsel for Real Party in Interest Chris Hollins, via hayslaw@me.com; and Jared R. Woodfill, lead counsel for Relators, at woodfillservice@gmail.com.

/s/ Kyle D. Hawkins
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CERTIFICATE OF COMPLIANCE

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/s/ Kyle D. Hawkins
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