

NO. \_\_\_\_\_

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## In the Supreme Court of Texas

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IN RE STEVEN HOTZE, M.D., HARRIS COUNTY REPUBLICAN PARTY,  
HON. KEITH NIELSEN, WENDELL CHAMPION, SHARON HEMPHILL, AND  
AL HARTMAN

*Relators,*

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**On Petition for Writ of Mandamus to the Harris County Clerk**

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**PETITION FOR WRIT OF MANDAMUS**

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## Identity of Parties and Counsel

### 1. Relators

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Dr. Hotze is a registered voter in Harris County and will be voting in the general election.

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Houston, Texas 77092-7716  
Phone: (713) 838-7900

The Harris County Republican Party is a political party established under the Texas Election Code.

Hon. Keith Nielsen  
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Hon. Keith Nielson is its elected chairman.

Wendell Champion  
[REDACTED]  
Houston, Texas 77002

Mr. Champion is the Republican nominee for Texas' 18<sup>th</sup> Congressional District. He is on the ballot in the general election on November 3, 2020.

Sharon Hemphill  
[REDACTED]  
Spring, Texas 77379

Sharon Hemphill is a registered voter in Harris County. Sharon Hemphill is the Republican nominee for judge of the Texas 80th District Court, Harris

County, Texas. She is on the ballot in the general election on November 3, 2020. She advanced from the Republican primary on March 3, 2020.

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**2. Respondent**

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## **Record References**

“App.” refers to the appendix to this petition.

## **Statement of the Case**

**Nature of the underlying proceeding:** Pursuant to section 273.061 of the Texas Election Code [App. A], this is a petition for a writ of mandamus compelling Harris County Clerk Chris Hollins to perform his statutory duties to administer early voting in person consistent with Texas Election Code §85.001(a) which requires “early voting by personal appearance [to] begin[] on the 17<sup>th</sup> day before election day and continue[] through the fourth day before election day....” [App. B]. This petition for writ of mandamus also seeks to compel Respondent Hollins to perform his statutory duties under Texas Election Code §86.006(a-1) and allow a voter to deliver a marked ballot in person to the early voting clerk's office only while the polls are open on election day. The Petition for Writ of Mandamus request that the “voting clerk’s office” be limited to the central location and not be expanded to eleven (11) annexes in violation of Texas Election Code 86.006(a-1).

**Respondent:** Harris County Clerk Chris Hollins

**Respondent’s challenged actions:** Respondent intends to move early voting up by a week, October 13, 2020, despite the Texas Election Code mandate that “early voting by personal appearance begins on the 17<sup>th</sup> day before election day and continues through the fourth day before election day....”, October 19, 2020. Tex. Elect. Code § 85.001(a). Additionally, for the November 3<sup>rd</sup>, 2020 general election, Respondent intends to violate Texas Election Code §86.006 (a-1) by allowing “a

voter to deliver a marked ballot [by mail] in person to the early voting clerk's office prior to and including election day," beginning Monday, September 28, 2020 at 8:00 a.m. [App. C].

Finally, Respondent Hollins has identified eleven (11) annexes where individuals can deliver marked ballots in person beginning September 28, 2020 at 8:00 a.m.

Texas Election Code §86.006(a-1) states, "The voter may deliver a marked ballot in person to the early voting clerk's office only while the polls are open on election day." Thus, Respondents' actions are unlawful in that she is administering the November 3, 2020 election in a manner contrary to the Texas Election Code. Because statewide voting is fast approaching, mandamus relief is necessary.

### **Statement of Jurisdiction**

Texas Election Code §273.061 gives the Court original jurisdiction to issue a writ of mandamus "to compel the performance of any duty imposed by law in connection with the holding of an election." The Relators have a compelling reason to request mandamus from this Court in the first instance. *See* Tex. R. App. P. 52.3. The November 3<sup>rd</sup>, 2020 general election is quickly approaching and Respondent intends to move early voting up by a week, October 13, 2020, despite the Texas Election Code mandate that "early voting by personal appearance begins on the 17th day before election day and continues through the fourth day before election

day....”, October 19, 2020. Tex. Elec. Code § 85.001(a). Additionally, for the November 3<sup>rd</sup>, 2020 general election, Respondent intends to violate Texas Election Code §86.006 (a-1) by allowing “a voter to deliver a marked ballot [by mail] in person to the early voting clerk’s office prior to and including election day.” [App. C]. Hollins will begin receiving delivery of marked ballots at eleven (11) different annexes throughout Harris County beginning Monday, September 28, 2020 at 8:00 a.m. [App. D]. Texas Election Code §86.006(a-1) states, “The voter may deliver a marked ballot in person to the early voting clerk's office only while the polls are open on election day.”

This Court has stated "that an election in this state is not a single event, but a *process*, and that the entire *process* is subject to contest." *Dickson v. Strickland*, 265 S.W. 1012, 1018 (Tex. 1924). This case involves the enforcement by mandamus of duties involved with the "holding of an election," an election being the *entire process* including the date early voting begins and when a voter can deliver a marked ballot by mail in person to the early voting clerk’s office. *Grant v. Ammerman*, 437 S.W.2d 547, 548-49 (Tex. 1969). Mandamus will lie to enforce ministerial duties arising in connection with an election. *Id.*

In this Petition for Writ of Mandamus, Relators are challenging the *process* of the election, i.e., the Respondents authority to implement and enforce changes to the Texas Election Code that have not been made by the Texas Legislature. Relators

include a candidate on the November 3, 2020 ballot in Harris County, Texas, the Harris County Republican Party and its Chairman, and a voter/activist.

Relators ask the Court to use the power granted by the Election Code “to compel the performance of any duty imposed by law in connection with the holding of an election.” Tex. Elec. Code § 273.061.

When time is of the essence, this Court has not hesitated to exercise its mandamus authority. *See, e.g., In re Woodfill*, 470 S.W.3d 473, 481 (Tex. 2015) (per curiam); *In re Carlisle*, 209 S.W.3d 93, 95-96 (Tex. 2006) (per curiam); *In re Tex. Senate*, 36 S.W.3d 119, 121 (Tex. 2000); *Sears v. Bayoud*, 786 S.W.2d 248, 250 & n.1 (Tex. 1990). The Court should exercise its original mandamus authority again in that Hollins illegal actions will begin on Monday, September 24, 2020.

## **Issues Presented**

1. Whether Respondent is violating Texas Election Code § 85.001(a) by moving the early voting date from Tuesday, October 19, 2020 to Tuesday, October 13, 2020.
2. Whether Respondent is violating Texas Election Code §86.006(a-1) by allowing “a voter to deliver a marked ballot [by mail] in person to the early voting clerk’s office prior to and including election day” beginning Monday, September 28, 2020 at 8:00 a.m. and continuing through 7:00 p.m. on November 3, 2020?
3. Whether Respondent is violating Texas Election Code §86.001(a-1) by allowing a voter to deliver a marked ballot in person to any of the County Clerk’s eleven (11) annexes in Harris County?

## Statement of Facts

“The Texas Constitution is not a document of convenient consultation. It is a steadfast, uninterrupted charter of governmental structure. Once this structure erodes, so does the promise of liberty.” *In re Hotze*, 2020 Tex. LEXIS 680) (Devine, J., concurring).

### **I. Ballot Harvesting Operation Identified in Harris County**

As a result of Governor Abbott suspending Texas Election laws that were intended to prevent voter fraud, ballot harvesting is likely occurring in Harris County. [App. C]. Respondent Hollins is unlawfully allowing in person marked ballots to be received on September 28, 2020 at eleven (11) different locations, and has unlawfully moved in person early voting back to October 13, 2020. [App. D].

### **II. On July 27, 2020, Governor Abbott Unilaterally Suspended the Texas Election Code**

On July 27, 2020, Governor Abbott issued an order suspending the Texas Election Code. [App. E]. Section 85.001(a) of the Texas Election Code provides that the period for early voting by personal appearance begins 17 days before election day. Section 86.006(a-1) of the Texas Election Code states that a voter may deliver a marked mail ballot in person to the early voting clerk’s office while the polls are open on election day. In his July 27, 2020 Proclamation/Order, Abbott and Respondent concluded, “[I]t has become apparent that for the November 3, 2020 elections, strict compliance with the statutory requirements in Sections 85.001(a)

and 86.006(a-1) of the Texas Election Code would prevent, hinder, or delay necessary action in coping with the COVID-19 disaster, and that providing additional time for early voting will provide Texans greater safety while voting in person....” [App. E].

In his July 27, 2020 Proclamation, Abbott ordered, “ NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and laws of the State of Texas, do hereby suspend Section 85.001(a) of the Texas Election Code to the extent necessary to require that, for any election ordered or authorized to occur on November 3, 2020, early voting by personal appearance shall begin on Tuesday, October 13, 2020, and shall continue through the fourth day before election day. I further suspend Section 86.006(a-1) of the Texas Election Code, for any election ordered or authorized to occur on November 3, 2020, to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk’s office prior to and including on election day.” [App. E]

**III. Article I §28 of the Texas Constitution Prohibits Abbott and Respondent from Suspending Laws**

The Texas Bill of Rights, article I of the Texas Constitution, unequivocally addresses Governor Abbott’s and Respondent Hollins’ attempt to suspend the Texas Election Code. Specifically, article I, §28 of the Texas Constitution states, “No power of suspending laws in this State shall be exercised except by the Legislature.”



a. **Abbott Responds to Harris County Clerk’s Request by Amending Code**

On July 22, 2020, Harris County Clerk Chris Hollins asked Governor Abbott to extend the early voting period for the November 2020 general election. [App. C]. Specifically, Clerk Hollins asked Abbott to “please increase Early Voting by at least one week, to begin not later than Tuesday, October 13, 2020.” [App. C]. Soon thereafter, July 27, 2020, Governor Abbott unilaterally amended the Texas Election Code to extend early voting by six (6) days, October 13, 2020, and allowing a voter to deliver a marked mail ballot in person to the early voting clerk’s office prior to and including on election day. [App. E].

b. **Respondent Hollins is Implementing Abbott’s Unlawful Order**

Respondent Hollins is prepared to begin receiving marked ballots in person at eleven (11) annexes on Monday, September 28, 2020 at 8:00 am until Tuesday, November 3, 2020 at 7:00 p.m. [App. D]. Additionally, Hollins is opening over 120 in person early voting locations on October 13, 2020. [App. D]. Hollins’ conduct violates the clear language of the Texas Election Code.

**Argument and Authorities**

I. **Hollins’ violations of the Texas Election Code are Promoting a Ballot Harvesting Program in Harris County**

Ballot harvesting is the gathering and submitting of completed absentee or mail in voter ballots by third-party individuals, volunteers or workers, rather than

submission by the voters themselves directly to ballot collection sites. Gomez, Luis, “What is Ballot Harvesting and How Was it Used in California Elections,” sandiegouniontribune.com (December 4, 2018). Voting by mail and the applications related thereto, lack the protections that voting in person provides. Among other things, the application to vote by mail can be completed and returned by others, sometimes with false information. Ballots, when they arrive in the mail, can be intercepted by political operatives or delivered in person to annexes where there are no safeguards to guarantee that the person turning in the application is the voter. And, in some cases, large scale fraud can take place where voter intimidation, deception, or a paid ballot harvester can substitute his or her vote for the voter’s and turn in the ballot.

In 2017 the Texas Legislature passed Senate Bill 5. The law, in effect for the 2018 election cycle, tightened mail-in ballot rules and increased criminal penalties for ballot fraud. But just because a law was passed in Texas does not mean the practice of illegal ballot harvesting has ended or has even been curtailed. Hollins’ illegal early application to vote by mail plan provides an opportunity for ballot harvesting to thrive.

**a. Ballot Harvesting is Occurring in Harris County**

Licensed Private Investigators, former Houston Police Officers, and an investigator formerly trained and employed by the Federal Bureau of Investigation

as an Investigative Specialist conducting undercover work on Espionage and Terrorist targets, have been investigation ballot harvesting in Harris County for many months. [App. F and App. G]. Working with Relators, these investigators have uncovered an illegal ballot harvesting operation in Harris County. [App. F and App. G]. The investigation has identified witnesses and documents corroborating an illegal ballot harvesting operation in Harris County, Texas. [App. F and App. G]. The organization and operation of the illegal harvesting program is being used to commit fraud in the November 3, 2020 election. The programs employed by Respondent Hollins are facilitating the vote harvesting operation.

According to the investigators, witnesses have identified Harris County Commissioner Rodney Ellis, Precinct (1), and Texas State Senator, District 13, Borris Miles as leading the organization tasked with harvesting ballots. [App. F and App. G]. The investigators further state that witnesses have identified Houston businessman Gerald Womack and political consultant Dallas Jones as lieutenants working directly under Commissioner Ellis and Senator Miles. [App. F and App. G]. Participants in the Harris County ballot harvesting election fraud have investigators how the ballot harvesters take absentee ballots from the elderly in nursing homes, from the homeless, and from unsuspecting residences' mailboxes and cast the respective votes. [App. F and App. G]. According to the investigators, ballot harvesters then sign and then fill out the ballots according to harvesters' preferred

candidate. [App. F and App. G]. Two witnesses have stated to investigators that there are two individuals employed at Harris County Clerk Hollins' office who receive the illegal ballots and help facilitate the voting and then mask the processing of the ballots into the legal stream of ballots. [App. F and App. G]. Participants in the ballot harvesting operation have informed investigators that Commissioner Ellis has moved forward with the mass mail out plan to expand the illegal ballot harvesting scam. [App. F and App. G]. One witness told investigators that an employee of Commissioner Rodney Ellis, Tyler James, was caught bragging that he could guarantee that the illegal ballot harvesting operation, with the help of mass mail-in ballots, could harvest 700,000 thousand illegal ballots. [App. F and App. G]. According to investigators, law enforcement agencies are currently investigating the allegations of ballot harvesting in Harris County. [App. F and App. G].

**b. Ballot Harvesting Under Hollins' Watch Could Impact the Presidential Election**

In the November 3, 2020 presidential election, as Texas goes so too will the rest of the country. If President Trump loses Texas, it would be difficult, if not impossible, for him to be reelected. As Harris County goes, so too will Texas. Accordingly, investigators have linked the ballot harvesting scheme to the Biden/Harris campaign. "Based on interviews, review of documents, and other information, [investigator Captain Mark Aguirre has] identified the individuals in charge of the ballot harvesting scheme. These individuals include political

consultant Dallas Jones who was recently hired by the Joe Biden for President campaign to oversee their Harris County initiative, District 13 Texas State Senator Borris Miles, who is the handler of Mr. Jones, political consultant Gerald Womack, and Precinct 1 Harris County Commissioner Rodney Ellis. One of the companies these individuals are using as a front for this operation is AB Canvassing, although there are others that have been identified that we are investigating.” [App. F and App. G].

If this Court fails to timely act, there may be implications for the national election. Accordingly, Realtors request immediate relief in their Emergency Motion for Temporary Relief file concurrently with this motion.

**c. Ballot Harvesting Schemes Are Being Exposed Across Texas**

Attorney General Ken Paxton recently announced that authorities arrested Gregg County Commissioner Shannon Brown, Marlena Jackson, Charlie Burns, and DeWayne Ward on charges in connection with an organized vote harvesting scheme during the 2018 Democratic primary election. [App. H]. To increase the pool of ballots needed to swing the race in Brown’s favor, the group targeted young, able-bodied voters to cast ballots by mail by fraudulently claiming the voters were “disabled,” in most cases without the voters’ knowledge or consent. [App. H]. Under Texas election law, mail ballots based on disability are specifically reserved for those who are physically ill and cannot vote in-person as a result.

In total, the state filed 134 felony charges against the four defendants, including engaging in organized election fraud, illegal voting, fraudulent use of an application for a mail-in ballot, unlawful possession of a mail-in ballot, tampering with a governmental record, and election fraud. [App. H]. Penalties for these offenses range from six months in state jail to 99 years in prison. It appears that similar conduct is occurring in Harris County.

Attorney General Paxton's indictments demonstrate that elections can be stolen outright by mail ballot fraud. Election fraud, particularly an organized mail ballot fraud scheme orchestrated by elected officials and political operatives, compromise the integrity of the voting process and disenfranchises voters who lawfully cast their ballot.

As the Attorney General has stated, "Mail ballots are vulnerable to diversion, coercion, and influence by organized vote harvesting schemes." [App. H]. Attorney General Paxton has further stated that he is committed to ensure Texas has the most secure elections in the country. [App. H]. To achieve this goal, it is incumbent upon this Court to order Hollins to follow the Texas Election Code. Those who try to manipulate the outcome of elections in Texas must be held accountable. Unfortunately, Respondent and Governor Abbott have created an environment that is contrary to this goal.

## **II. Harris County Clerk Hollins is Violating the Texas Election Code**

Respondent Chris Hollins is responsible for administering elections in Harris County. On July 27, 2020, Governor Abbott issued a Proclamation suspending Texas Election Code sections 85.001(a) and 86.006(a-1) for the November 3<sup>rd</sup>, 2020 general election.

### **a. Texas Election Code Sets Early Voting Dates**

Texas Election Code Sec. 41.001(a)(3) provides uniform election dates:

UNIFORM ELECTION DATES.

(a) Except as otherwise provided by this subchapter, each general or special election in this state shall be held on one of the following dates:

(3) the first Tuesday after the first Monday in November.

The general election is set for November 3, 2020.

The Texas Election Code §85.001 identifies dates for early voting:

Sec. 85.001. EARLY VOTING PERIOD.

(a) The period for early voting by personal appearance begins on the 17th day before election day and continues through the fourth day before election day, except as otherwise provided by this section.

The Texas Election Code contains a provision specifically addressing the situation where it is not possible for early voting to begin on the prescribed date, stating, “If because of the date for which an election is ordered it is not possible to

begin early voting by personal appearance on the prescribed date, the early voting period shall begin on the earliest date practicable after the prescribed date as set by the authority ordering the election.” Texas Elect. Code § 85.001(d). Unlike Governor Abbott’s July 27, 2020 Order, the Texas Election Code does not move the date back, instead it sets the new date to begin early voting after the prescribed date. Here, Governor Abbott is unilaterally taking the opposite approach, extending the early voting period by almost a week.

**b. The Texas Election Code Establishes When A Voter Can Deliver A Marked Ballot By Mail In Person To The Early Voting Clerk’s Office.**

The Texas Election Code §86.006(a-1) states: “The voter may deliver a marked ballot in person to the early voting clerk's office only while the polls are open on election day. A voter who delivers a marked ballot in person must present an acceptable form of identification described by Section 63.0101.” The provision limits the in person delivery of a marked ballot to the early voting clerk’s office to election day. *Id.* Texas Election Code § 86.006(a-1) does not allow Respondent Collins to amend the Texas Election Code to extend the time a voter can deliver a marked ballot to the early voting clerk’s office.

**c. The plain language of Texas Election Code §85.001(a) prohibits Respondent from moving the beginning of early voting up to October 13, 2020. The plain language of Texas Election Code §86.006(a-1) prohibits Respondent from extending the time a voter can deliver a marked ballot to the early voting clerk’s office.**



Texas statutes are to be interpreted based on their plain language. *See Leland v. Brandal*, 257 S.W.3d 204, 206 (Tex. 2008). The Court presumes the Legislature included each word for a purpose and that words not included were purposefully omitted. *In re M.N.*, 262 S.W.3d 799, 802 (Tex. 2008). It also presumes the Legislature understood and followed the rules of English grammar. Tex. Gov't Code § 311.011; *See also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 140 (2012) (describing the presumption as “unshakeable”).

The plain language of Texas Election Code §85.001(a) makes it clear that early voting can begin no earlier than the 17<sup>th</sup> day before election day. *Id.* Texas Election Code § 85.001 does not allow Respondent Collins to move early voting beyond the 17<sup>th</sup> day before the election.

If the Legislature had wanted to give the Respondent the discretion to move the start of early voting, they could have done so. Instead, the Legislature limited the start of early voting by personal appearance to the 17<sup>th</sup> day before election day.

The plain language of Texas Election Code §86.006(a-1) limits the in person delivery of a marked ballot to the early voting clerk's office to election day. *Id.* Texas Election Code § 86.006(a-1) does not allow Respondent Collins to amend the Texas Election Code to extend the time a voter can deliver a marked ballot to the early voting clerk's office.

If the Legislature had wanted to give the Respondent the discretion to allow a voter to deliver a marked ballot by mail in person to the early voting clerk's office prior to election day, they could have done so. Instead, the Legislature limited the in person delivery of a marked ballot to the early voting clerk's office to election day.

**d. The plain language of Texas Election Code §86.006(a-1) does not allow Hollins to have eleven (11) different locations to deliver a marked ballot.**

The plain and clear language of Texas Election Code §86.006(a-1) only allows the voter to “deliver a marked ballot in person to the early voting clerk's office.” The term office is singular and does not include annexes or satellite offices. If the Legislature had intended to expand the definition of “clerk's office” they could have done so. Instead, they chose to limit the drop-off venue to one identifiable location, the “voting clerk's office.” By allowing eleven (11) different drop-off locations, Hollins' violates the Texas Election Code and opens up additional opportunities for voter fraud.

**e. Due to the early date delivery of marked in person ballots begins, and the large number of locations Hollins has created for dropping off marked in person ballots, it will not be possible for poll watchers to be present to view the drop-off process and the security related to the ballots.**

Under Hollins' scheme, early voting does not begin until October 13, 2020, but in-person marked ballots can be delivered beginning Monday, September 28,

2020. [App. D]. From September 28, 2020 until October 13, 2020, Hollins allows ballots can be delivered to eleven (11) different locations throughout Harris County; however, during the same period, the law does not allow candidates or parties to assign poll watchers to these locations. Tex. Elec. Code § 33.007. Additionally, even after early voting begins, many of the eleven (11) drop-off locations are not voting locations and, therefore, a poll-watcher, election judge, and alternate election judge will not be present. This scenario creates an opportunity ripe for fraud and is inconsistent with Texas law regarding ballots by mail and the safe-guards built into the process to protect the integrity of the ballot box.

**III. Respondent Hollins’ Conduct and the July 27, 2020 Order Suspending the Texas Election Code are Unconstitutional**

**a. Respondent Hollins’ Conduct Violates Article I, Section 28 of the Texas Constitution**

“The Constitution is not suspended when the government declares a state of disaster.” *In re Abbott*, No. 20-0291, 2020 WL 1943226, at \*1 (Tex. Apr. 23, 2020). During a pandemic “the judiciary, the other branches of government, and our fellow citizens—must insist that every action our governments take complies with the Constitution, especially now. If we tolerate unconstitutional government orders during an emergency, whether out of expediency or fear, we abandon the Constitution at the moment we need it most.” *Id.* “When properly called upon, the judicial branch must not shrink from its duty to require the government’s anti-virus

orders to comply with the Constitution and the law, no matter the circumstances.”

*Id.*

Government power cannot be exercised in conflict with the constitution, even in a pandemic. *In re Abbott*, 2020 WL 1943226 at \*1 (Tex. Apr. 23, 2020). Texas law does not and cannot empower a Governor to unilaterally suspend the laws of the State of Texas. Article I, § 28 of the Texas Constitution states, “No power of suspending laws in this State shall be exercised except by the Legislature.” The Texas Supreme Court has long held that the Legislature cannot delegate “to anyone else the authority to suspend a statute law of the state.” *Brown Cracker & Candy Co. v. City of Dallas*, 104 Tex. 290, 294-95 (1911); *Arroyo v. State*, 69 S.W. 503, 504 (Tex. Crim. App. 1902) (“Under the constitution, the legislature ha[s] no right to delegate its authority . . . to set aside, vacate, suspend, or repeal the general laws of this state.”).

“[P]rior to 1874 this section was as follows: ‘No power of suspending laws in this state shall be exercised, except by the legislature, **or its authority**’” (emphasis added). *Arroyo*, 69 S.W. at 504. This constitutional provision was then specifically amended to remove the provision allowing the Legislature to delegate its suspension power by “its authority.” *Id.* This was expressly done to remedy “the history of the oppressions which grew out of the suspension of laws by reason of such delegation of legislative authority and the declaration of martial law.” *Id.*

Article I, § 28 was created in part in response to then-Governor F.J. Davis “declar[ing] . . . counties under martial law” and depriving of liberty “offenders by

court martial in Houston,” George D. Braden, *The Constitution of the State of Texas: An Annotated and Comparative Analysis* 84 (1977). Texas Government Code §418 is therefore unconstitutional on its face because it purports to delegate legislative power to suspend laws to the Governor in contravention of Texas Constitution, Art. I, §28 and Art. II, §1.

As Abbott’s July 27, 2020 Order suspends several provisions of the Texas Election Code, and on its face admits that Abbott and Respondent are suspending laws in accordance with Texas Gov’t Code Chapter 418, the Order itself is an unconstitutional suspension of the laws and, therefore, violate Article I, §28 of the Texas Constitution and are “null and void.” See *Arroyo*, 69 S.W. at 504. Additionally, to the extent the Texas Disaster Act allows for the suspension of laws by the Governor, it is unconstitutional and void.

The Texas Constitution limits Abbott’s and Respondent Hollins’ authority even in times of crisis or “extraordinary occasions.” See Tex. Const. art IV, §8 (stating on “extraordinary occasions” Governor may convene the Texas Legislature). If not limited, and if Constitutional rights may be suspended or infringed unilaterally and for unlimited duration whenever a Governor “declares” an emergency, then such rights are wholly illusory. Governor Abbott’s July 27, 2020 Order and Respondent Hollins’ enforcement of same, violates the Texas Constitution and therefore should be declared void and unenforceable.

**b. Hollins' Conduct Violates Texas Government Code, Chapter 418**

Assuming, arguendo, the Texas Disaster Act is constitutional, Hollins' conduct and the July 27, 2020 Order violate the Texas Government Code § 418 et seq., the Texas Disaster Act. Specifically, the Disaster Act limits Governor Abbott's power to those provisions expressly described in the statute. The Disaster Act does not contain any language expressly allowing Governor Abbott to amend the Texas Election Code in the manner he has chosen to do so.

**c. Texas Government Code, Chapter 418, Violates the Texas Constitution**

Texas Government Code Chapter 418 is unconstitutional on its face and as applied. Texas Government Code Chapter 418 is unconstitutional on its face because it is an improper delegation of legislative authority expressly prohibited by Texas Constitution, Art. II, §1. Abbott's July 27, 2020 Order is facially unconstitutional because Defendant issued the Order pursuant to Chapter 418 (an unconstitutional statute) and because they purport to exercise the power to suspend laws which authority is reserved exclusively to the legislature. Tex. Const. art. I, §28. As such, Texas Government Code Chapter 418, and all orders issued pursuant thereto, should be declared unconstitutional and rendered null and void.

**d. Abbott's July 27, 2020 Order Violates the Separation of Powers Doctrine**

The July 27, 2020 Order Respondent Hollins is tasked with implementing/enforcing, violates the separation of powers provision of the Texas Constitution because it suspends laws. Article II, §1 of the Texas Constitution provides that “The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.” Tex. Const. art. II, §1. The Texas Constitution vests the Legislature with “legislative power, *i.e.*, the law-making power of the people.” Tex. Const. art. 3, § 1.

Only the Legislature can exercise law-making power, subject to restrictions imposed by the constitution. Tex. Const. art. II, § 1. Because of the Texas Constitution’s “explicit prohibition against one government branch exercising a power attached to another,” *Perry v. Del Rio*, 67 S.W.3d 85, 91 (Tex. 2001), exceptions to the constitutionally-mandated separation of powers may “never be implied in the least; they must be ‘expressly permitted’ by the Constitution itself.” *Fin. Comm'n of Texas v. Norwood*, 418 S.W.3d 566, 570 (Tex. 2013). These restrictions must be expressed or clearly implied. *Jones v. State*, 803 S.W.2d 712,

716 (Tex. Crim. App. 1991)(citing *Gov't Servs. Ins. Underwriters v. Jones*, 368 S.W.2d 560, 563 (Tex. 1963)).

The Legislature may delegate some of its powers to another branch, but only if those powers are not more properly attached to the legislature by Constitutional mandate. For example, Legislative power cannot be delegated to the executive branch, either directly or to an executive agency. *State v. Rhine*, 297 S.W.3d 301, 306 (Tex. Crim. App. 2009). The issue becomes a question of the point at which delegation becomes unconstitutional. *Id.* The Texas Supreme Court has described the problem: "the debate over unconstitutional delegation becomes a debate not over a point of principle but over a question of degree." *Tex. Boll Weevil Eradication Found., Inc.*, 952 S.W.2d 454, 466 (Tex. 1997).

The Texas Court of Criminal Appeals in *Ex parte Granviel*, 561 S.W.2d 503 (Tex. Crim. App. 1978), stated that sufficient standards are necessary to keep the degree of delegated discretion below the level of legislating. The existence of an area for exercise of discretion by the executive branch requires that standards are formulated for guidance and there is limited discretion. *Ex parte Granviel*, 561 S.W.2d at 514. The statute must be sufficiently complete to accomplish the regulation of the particular matters falling within the legislature's jurisdiction, the matters of detail that are reasonably necessary for the ultimate application, operation and enforcement of the law may be expressly delegated to the authority charged with



the administration of the statute. *Ex parte Granviel*, 561 S.W.2d at 514. Therefore, if the Legislature has not provided sufficient standards to guide the executive's discretion and the delegated power is legislative, that executive has been granted a power that is more properly attached to the legislature and the delegation is an unconstitutional violation of separation of powers. *State v. Rhine*, 297 S.W.3d 306 (Tex. Crim. App. 2019).

Texas Government Code Chapter 418 not only does not provide robust, specific standards related to delegation of legislative authority, it provides **NO** standards to guide Defendant's discretion when identifying penalties, including fines and incarceration.

### **Prayer**

For the reasons detailed above, Relators respectfully request this Court issue a writ of mandamus ordering Respondent Chris Hollins to perform his duties in accordance with the law, and not deviate from the express provisions in the Texas Election Code. Relators request this Court order Respondent not to receive in-person deliver of marked ballots until election day, November 3, 2020 and only at the early voting clerk's office at 201 Caroline St., Houston, Texas 77002. Relators further request this Court issue a writ of mandamus to require the first date of early voting by personal appearance to begin on the 17<sup>th</sup> day before election day and

declare Texas Government Code §418 unconstitutional to the extent it allows the Governor or a local official to suspend laws.

Respectfully submitted,

*/s/ Jared R. Woodfill*

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## CERTIFICATE OF SERVICE

By affixing my signature above, I, Jared Woodfill, hereby certify that a true and correct copy of the above Original Petition for Writ of Mandamus has been delivered via electronic mail to the parties below on the 27th day of September, 2020.

/s/Jared Woodfill

Jared Woodfill