

No. _____

**IN THE COURT OF APPEALS
FOR THE FOURTEENTH DISTRICT OF TEXAS
HOUSTON, TEXAS**

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HOUSTON, TEXAS
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CHRISTOPHER A. PRINE
Clerk

In re
**JUAN GERARDO PEREZ PICHARDO AND THE REPUBLICAN
PARTY OF TEXAS**
Relators

Chris Hollins, in his official capacity as
Harris County Clerk for Harris County, Texas,
Respondent

PETITION FOR WRIT OF MANDAMUS

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The attached Appendix (“App.”) consists of the following:

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STATEMENT OF THE CASE

Nature of the Case

Using the COVID-19 pandemic as his pretext, Respondent Hollins has announced that the Harris County Clerk's Office will allow any and all Harris County registered voters—regardless of whether they are permitted to do so under the Texas Election Code or not—to engage in early and election day “drive-thru” or curbside voting. Under Texas Election Code Sections 64.009, 82.02 and 104.001-005, curbside voting is restricted to three distinct categories: (i) a voter is presently sick at the time of the vote; (ii) a voter has a physical condition requiring personal assistance (e.g., is physically handicapped); or (iii) voting inside the polling location would create a likelihood of injuring the voter's health. The aforementioned criteria for curbside voting is equally applicable with ballots by mail voting. With respect to ballot by mail voting, the Texas Supreme Court has already held that a voter's lack of immunity to COVID-19, without more, is not a “disability” as defined by the Election Code, and therefore, is not a sufficient basis to permit a voter to validly vote by mail. Accordingly, by indiscriminately encouraging any and all Harris County registered voters to cast their ballots curbside on this invalid basis, Respondent's ultra vires act of permitting innocent voters who lack a qualifying sickness or physical condition to vote curbside in violation of state law must be stopped. Moreover, it appears that even legal instances of curbside voting will be illegally conducted due to the fact that the contemplated curbside voting activity will be conducted adjacent to polling locations with are not located inside of a building. Accordingly, Relators seek mandamus relief to compel Respondent to perform his nondiscretionary, ministerial duties to restrict curbside voting to only those Harris County registered voters who have submitted sworn applications which facially satisfy at least one of the three specific categories permitting curbside voting under the Texas Election Code, and to restrict any and all legal curbside voting to curbside activities which solely occur adjacent to a polling location which is located inside of a building.

Respondent

Chris Hollins, in his official capacity as the Harris County Clerk, who, under Section 83.002 of the Texas Election Code (early voting) and Section 104.001 of the Texas Election Code (election day voting), is designated as the “Early Voting Clerk.”

Relief Requested

Respondent should be required to reject curbside voting to any Harris County registered voter who has not submitted the required sworn application to vote curbside or who submitted an application which does not facially satisfy any of the required criteria for curbside voting. Further, no curbside voting should be permitted by eligible curbside voters unless and until such voting occurs adjacent to a polling location which is located inside a building.

STATEMENT OF JURISDICTION

This Court has jurisdiction over this petition for a writ of mandamus. *See* Tex. Election Code § 273.061 (“The supreme court or a court of appeals may issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election or a political party convention, regardless of whether the person responsible for performing the duty is a public officer.”).

**STATEMENT REGARDING ORAL ARGUMENT AND
REQUEST FOR EXPEDITED BRIEFING AND DECISION**

Harris County early in-person voting begins on October 13th.¹ Election Day voting for the 2020 General Election will take place on November 3, 2020, which is less than a month away. Because time is of the extreme essence, Relators respectfully request that the Court expedite this Petition and issue a decision immediately. *See Davis v. Taylor*, 930 S.W.2d 581, 582 (Tex. 1996) (expediting briefing and oral argument in election-related proceeding). Because the duties described herein are clear and mandatory, this Petition should be granted without oral argument.

¹ https://www.harrisvotes.com/Docs/VotingInfo/VotingByMailFAQs_en-US.pdf (last accessed October 8, 2020).

STATEMENT OF THE ISSUES PRESENTED

1. Is Respondent failing to perform his nondiscretionary, ministerial duties by encouraging and permitting Harris County registered voters to cast their ballots curbside even though they do not satisfy any of the three specific categories permitting curbside voting under the Texas Election Code?

2. Is Respondent failing to perform his nondiscretionary, ministerial duties under Section 43.031 of the Texas Election Code by encouraging and permitting Harris County registered voters to cast their ballots curbside adjacent to polling locations which are not located inside of a building?

INTRODUCTION

Under Section 83.002 of the Texas Election Code, Respondent Hollins is the early voting clerk for Harris County by virtue of his position as Harris County Clerk. Pursuant to Section 104.001 of the Texas Election Code, Respondent Hollins is also the clerk for Election Day voting. As such, Respondent has the responsibility of enforcing the election laws to ensure a fair and honest election in Harris County.

Despite the fact that the Texas Election Code restricts curbside voting to only three (3) specific and narrowly defined categories of voters, Respondent has publicly announced his intention—using the COVID-19 pandemic as his pretext—of permitting any and all Harris County registered voters to vote curbside. This is not the first time Respondent has attempted to engage in ultra vires conduct. Indeed, Respondent previously tried to use the same improper rationale to wrongly issue over 2.37 million unsolicited ballot by mail applications. On May 15, 2020, the Texas Supreme Court rejected this same Respondent’s contention that a voter’s lack of immunity from COVID-19 and concern about contracting it at a polling place constitutes a “disability” within the meaning of the statute permitting a voter to cast a ballot by mail. The exact same rationale applies with equal force to condemn Respondent’s latest attempt to ignore the narrow confines of the carefully defined standards for the three types of situations where a voter may properly vote curbside under the Texas Election Code. Simply put, none of those instances are satisfied by

a voter's lack of immunity to COVID-19, or by a generalized subjective fear of contracting a virus, or by a desire for "convenience" or to enjoy the "comfort" of one's vehicle while voting. Furthermore, even for those voters who are legally entitled to vote curbside, Respondent Hollins is threatening to violate Section 43.031 of the Texas Election Code by permitting curbside voting which is not adjacent to a polling location which is inside a building. Unless stopped, each of these instances of illegal voting will cast a cloud over the results of the General Election, as illegal votes will be cast and counted in direct violation of the Texas Election Code.

STATEMENT OF FACTS

Relator The Republican Party of Texas's Purpose and Mission

Relator RPT is committed to advancing limited government, lower taxes, less spending and individual liberty. Relator's specific goals are to grow the Republican Party by reaching new voters, advance the Platform, which is grounded in conservative principle, and to keep Texas prosperous and free. The Republican Party of Texas serves:

To promote a conservative philosophy of government:

By promoting conservative principles; and

By providing the infrastructure through which those who share our conservative principles can get involved in the political process, run for and be elected to public office, and govern according to our principles when elected.

See App. at 4.

Relator Juan Gerardo Perez Pichardo

Relator Pichardo was born in 1942 in Mexico. In 1969, Relator immigrated to the United States of America and became a legal permanent resident. In 2000, Relator became a naturalized citizen of the United States of America. Pichardo is a registered voter in Harris County, Texas. He intends to vote in the 2020 General Election and in other future elections in Harris County, Texas.

See App. at 9.

Respondent Hollins' Ministerial Duties Under the Texas Election Code

Under Section 83.002 of the Texas Election Code, Respondent Hollins is the early voting clerk for Harris County by virtue of his position as Harris County Clerk. Pursuant to Section 104.001 of the Texas Election Code, Respondent Hollins is also the clerk for Election Day voting. As such, Respondent has the responsibility of enforcing the election laws to ensure a fair and honest election in Harris County.

One of the statutory election mandates for which Respondent Hollins is responsible deals with curbside voting. This is a method of voting whereby a qualifying voter may vote from a vehicle in lieu of coming inside to vote at a polling location. In order to take advantage of curbside voting, a registered voter must prepare and sign a sworn application. The application is similar to the application for vote by mail, and a voter must affirmatively check specific boxes on the form in order to facially demonstrate to the Early Voting Clerk (Respondent Hollins) compliance with the curbside voting statutes under the Texas Election Code.

Under Texas Election Code Sections 64.009, 82.02 and 104.001, curbside voting is restricted to three distinct categories: (i) a voter is presently sick at the time of the vote; (ii) a voter has a physical condition requiring personal assistance (e.g., is physically handicapped); or (iii) voting inside the polling location would create a likelihood of injuring the voter's health. Despite the fact that the Texas Election Code restricts curbside voting to only three (3) specific and narrowly defined

categories of voters, Respondent has publicly announced his intention—using the COVID-19 pandemic as his pretext—of permitting any and all Harris County registered voters to vote curbside. This is not the first time Respondent has attempted to engage in ultra vires conduct. Indeed, Respondent previously tried to use the same improper rationale to wrongly issue over 2.37 million unsolicited ballot by mail applications. On May 15, 2020, the Texas Supreme Court rejected this same Respondent’s contention that a voter’s lack of immunity from COVID-19 and concern about contracting it at a polling place constitutes a “disability” within the meaning of the statute permitting a voter to cast a ballot by mail. The exact same rationale applies with equal force to condemn Respondent’s latest attempt to ignore the narrow confines of the carefully defined standards for the three types of situations where a voter may properly vote curbside under the Texas Election Code. Simply put, none of those instances are satisfied by a voter’s lack of immunity to COVID-19, or by a generalized subjective fear of contracting a virus, or by a desire for “convenience” or to enjoy the “comfort” of one’s vehicle while voting.

In addition, it appears likely that Respondent Hollins intends to permit curbside voting adjacent to polling locations which are not located inside of a building, which directly violates Section 43.031 of the Texas Election Code.

Respondent Hollins Announces His Intention to Permit Countywide Drive-Thru Voting In Direct Violation of the Texas Election Code.

On September 10, 2020, Respondent Hollins held a press conference to announce his intentions to implement a countywide “drive-thru” voting program for every registered voter in Harris County. A true and correct transcription of the pertinent excerpt of this press conference is attached to the Appendix to this Mandamus Petition. See App. at 5-6. Beginning at the 4-minute mark, and continuing on to 4:33, Respondent Hollins said the following:

“Drive-thru voting is an option for all voters who would like to be able to vote from the safety and comfort of your vehicle. Drive-thru voting allows who don’t qualify to vote by mail to minimize your exposure to other voters and to election workers. While we hope to have short lines across the county, drive-thru voters waiting in line will be able to wait in the comfort of your vehicle where you can listen to the radio or converse with loved ones until you are pointed to your drive-thru voting booth. We hope that Harris County voters will consider utilizing drive-thru voting.”

See App. at 5-6. In addition to Respondent Hollins’ press conference, he also released a video on YouTube, which is also posted on the Harris County Clerk’s Office website, just this past Friday, October 9, 2020. See App. at 6. This video is entitled “Drive-Thru Voting in five steps.” Nowhere in this demonstrative video of a voter voting curbside in his vehicle is there any discussion or caution or depiction about how a voter may determine his or her eligibility to vote curbside. Nor is there any mention or depiction that a voter desiring to vote curbside must fill out a sworn application to vote curbside. To the contrary, the clear impression of this video is that anyone and everyone may vote curbside in Harris County should they wish to

do so. Finally, the video depicts curbside voting taking place outside of a polling location and that polling location is not inside of a building. See App. at 6.

Because Respondent Hollins is clearly requesting Harris County registered voters to vote curbside without regard to whether they are eligible to vote curbside, and because of the very clear threat of imminent harm which will result from ineligible curbside voting taking place in violation of the Texas Election Code, Relators bring this Mandamus Petition to mandate compliance by the Respondent with his clear and non-discretionary ministerial duties. As will be shown below, Respondent's directive is in conflict with the Texas Election Code, and should not be countenanced by this Court.

ARGUMENT

I. Mandamus is Appropriate to Compel Compliance with a Non-Discretionary, Ministerial Duty.

“A writ of mandamus will issue to compel a public official to perform a ministerial act.” *Anderson v. Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991) (citing *Womack v. Berry*, 156 Tex. 44, 291 S.W.2d 677, 682 (1956); *Turner v. Pruitt*, 161 Tex. 532, 342 S.W.2d 422, 423 (1961)). “An act is ministerial when the law clearly spells out the duty to be performed by the official with sufficient certainty that nothing is left to the exercise of discretion.” *Anderson*, 291 S.W.2d at 793. That is the case here.

II. Respondent Hollins Has a Ministerial Duty to Comply with and Enforce the Requirements of the Texas Election Code.

A. Respondent Hollins Has a Ministerial Duty to Review Each Sworn Application in Order to Verify that the Applicant Has Supplied All of the Required Information to Permit Curbside Voting.

Pursuant to Section 83.002 of the Texas Election Code, Respondent Hollins, as the Harris County Clerk, is designated as the “Early Voting Clerk.” Because Section 64.009 of the Texas Election Code permits curbside voting under limited circumstances during Early Voting, Respondent Hollins’s duties as the Early Voting Clerk include the enforcement of curbside voting during Early Voting. Moreover, under Section 104.001 of the Texas Election Code, Respondent Hollins is designated as the “Early Voting Clerk” for Election Day curbside voting. In order to enable an eligible voter to legally vote curbside, the registered voter must submit a sworn application for ballot similar to the application for a ballot by mail described in Section 84.001 (eligible voter must make an application for an early voting ballot to be voted by mail).

The pertinent statutes for curbside voting are as follows:

Sec. 64.009. VOTER UNABLE TO ENTER POLLING PLACE.

- (a) If a voter is physically unable to enter the polling place without personal assistance or likelihood of injuring the voter’s health, on the voter’s request, an election officer shall deliver a ballot to the voter at the polling place entrance or curb.
- (b) The regular voting procedures may be modified by the election officer to the extent necessary to conduct voting under this section.

(c) After the voter is accepted for voting, the voter shall mark the ballot and give it to the election officer who shall deposit it in the ballot box.

(d) On the voter's request, a person accompanying the voter shall be permitted to select the voter's ballot and deposit the ballot in the ballot box.

Sec. 82.002. DISABILITY.

(a) A qualified voter is eligible for early voting by mail if the voter has a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter's health.

TITLE 7. EARLY VOTING

SUBTITLE B. SPECIAL FORMS OF EARLY VOTING

CHAPTER 104. VOTING ON ELECTION DAY BY DISABLED VOTER FROM VOTING SYSTEM PRECINCT

Sec. 104.001. ELIGIBILITY.

A qualified voter in whose precinct polling place voting is conducted by voting machine is eligible to vote by the early voting procedure provided by this chapter if the voter has a sickness or physical condition that prevents the voter from voting in the regular manner without personal assistance or a likelihood of injuring the voter's health.

Sec. 104.002. FORM AND CONTENTS OF APPLICATION.

An application for a ballot voted under this chapter must:

- (1) be in the form of an affidavit; and
- (2) include, in addition to the information required by the applicable provisions of Section 84.002, a statement that the applicant has not previously voted in the election.

Sec. 104.003. TIME AND PLACE FOR VOTING.

Voting under this chapter shall be conducted on election day, beginning at 7 a.m. and concluding at 7 p.m., at the main early voting polling place. However, if the early voting ballots voted by mail are processed

at a location other than the main early voting polling place, the early voting clerk may require the voting to be conducted at that location.

Sec. 104.004. VOTING PROCEDURE.

(a) On submission of an application to the early voting clerk, the clerk shall review the application and verify the applicant's registration status in accordance with the procedure applicable to early voting by mail.

(b) The voting shall be conducted with the balloting materials for early voting by mail.

(c) The voter must mark and seal the ballot in the same manner as if voting by mail except that the certificate on the carrier envelope need not be completed.

(d) On sealing the carrier envelope, the voter must give it to the clerk, who shall note on the envelope that the ballot is voted under this chapter.

(e) If the voter is physically unable to enter the early voting polling place without personal assistance or a likelihood of injuring the voter's health, the clerk shall deliver the balloting materials to the voter at the polling place entrance or curb.

Sec. 104.005. PROCESSING RESULTS.

The results of voting under this chapter shall be processed in accordance with the procedures applicable to processing early voting ballots voted by mail.

The duty to review each application is not discretionary; it is mandatory. *In re Robinson*, 175 S.W.3d 824, 830 (Tex. App. 2005) ("The use of the word *shall* in a statute is generally construed as creating a nondiscretionary duty."). This duty includes the specific obligation to ensure that each sworn application satisfies the criteria set forth in the Texas Election Code to permit a specific voter to vote curbside during both Early Voting and Election Day voting.

B. Respondent Hollins Has a Ministerial Duty to Reject an Application for Curbside Voting That Does Not Contain the Required Information to Permit Curbside Voting.

Under Texas Election Code Sections 64.009, 82.02 and 104.001, curbside voting is restricted to three distinct categories: (i) a voter is presently sick at the time of the vote; (ii) a voter has a physical condition requiring personal assistance (e.g., is physically handicapped); or (iii) voting inside the polling location would create a likelihood of injuring the voter's health. Respondent Hollins, however, has announced his policy to permit *any registered Harris County voter* to cast their ballot via drive-thru voting. This illegal policy, which is grounded on the dubious notion that a lack of immunity from COVID-19 justifies a wholesale repudiation of the Texas Election Code, *has already been expressly rejected by the Texas Supreme Court. In re State of Texas, 602 S.W.3d 549 (Tex. 2020).* Rejecting Respondent Hollins' argument in that case that a voter's lack of immunity from the disease and concern about contracting it at a polling place justifies a voter's choice to cast a ballot by mail, the Supreme Court made clear that a generalized fear of contracting a virus would not, standing alone, be sufficient to trigger a statutory right to vote by mail. More specifically, the Court stated the following:

“Under the Texas Election Code, qualified voters are eligible to vote by mail only in five specific circumstances. One is if the voter has a “disability” as defined by statute. In this original proceeding, amidst the COVID-19 pandemic, and with elections upcoming in July and November, the parties ask us to determine whether a voter's lack of

immunity from the disease and concern about contracting it at a polling place is a “disability” within the meaning of the statute.”

In re State of Texas, 602 S.W.3d 549 (Tex. 2020).

The High Court also explained the various positions of the Harris County Clerk and the State of Texas as follows:

“Eligibility for voting by mail is provided by Chapter 82. Section 82.002(a), entitled “Disability”, provides that “[a] qualified voter is eligible for early voting by mail if the voter has a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter’s health.” TEX. ELEC. CODE § 82.002(a). The County Clerk of Harris County argues that a lack of immunity to COVID-19 is a “physical condition” that is, a physical state and that “likelihood” does not mean a probability. Thus, a voter without immunity has a “disability” under the statute. The State contends that lack of immunity in an otherwise healthy person is not a “physical condition” because it does not distinguish the person from the general populace. “No one can be immune to all possible diseases.” What does distinguish people without immunity, the State argues, is at most a fear of contracting COVID-19, and fear is not a “physical condition”. The State argues that because a lack of immunity is not a “physical condition”, whether “likelihood” can mean something less than a probability need not be decided.” *In re State of Texas, 602 S.W.3d 549 (Tex. 2020).*”

In re State of Texas, 602 S.W.3d 549 (Tex. 2020).

After a review of the history roots of early voting by mail and the various statutes to be applied, the Texas Supreme Court ruled as follows:

“Section 82.002 describes the physical condition that entitles a voter to vote by mail as a “disability”. It is the same word the Legislature has used consistently since 1935. “Disabled” normally means “incapacitated by or as if by illness, injury, or wounds”. The phrase, “physical condition”, must be read in this light. In no sense can a lack

of immunity be said to be such an incapacity. Accordingly, we conclude that a lack of immunity to COVID-19 is not itself a “physical condition” for being eligible to vote by mail within the meaning of § 82.002(a).”

In re State of Texas, 602 S.W.3d 549 (Tex. 2020).

Accordingly, the Court’s above-quoted reasoning in *In re State of Texas, 602 S.W.3d 549 (Tex. 2020)*, should apply with equal force to the Respondent’s intention in this case to permit curbside voting to anyone who wants to vote curbside. The “disability” language contained in Section 82.002(a) regarding ballots by mail tracks the same language as is contained in Sections 64, 82 and 104 regarding curbside voting. More specifically, under Texas Election Code Sections 64.009, 82.02 and 104.001, curbside voting is restricted to three distinct categories: (i) a voter is presently sick at the time of the vote; (ii) a voter has a physical condition requiring personal assistance (e.g., is physically handicapped); or (iii) voting inside the polling location would create a likelihood of injuring the voter’s health. Given the Texas Supreme Court’s decision on mail-in ballots, see *In re State of Texas, 602 S.W.3d 549 (Tex. 2020)*, it is abundantly clear that Respondent Hollins may not, consistent with his ministerial duties to comply with the Texas Election Code, encourage or permit registered Harris County voters to engage in drive-thru voting who do not satisfy one or more of the statutorily prescribed exceptions to voting inside the polling place.

The obligation to reject insufficient applications to vote curbside is not discretionary; it is mandatory. *See In re Robinson*, 175 S.W.3d at 830. The duty to challenge ineligible curbside voting is not discretionary; it is mandatory. *Id.*

C. Polling Locations Must Be Inside of a Building.

In addition to the above-referenced statutory requirements for a voter to be eligible to vote curbside, the Texas Election Code also mandates that the physical location of a polling place be located inside of a building. Section 43.031 of the Texas Election Code provides as follows:

Sec. 43.031. POLLING PLACE IN PUBLIC BUILDING.

(a) In this subchapter, "public building" means a building owned or controlled by the state or a political subdivision.

(b) Each polling place shall be located inside a building.

(c) The building selected for a polling place shall be a public building if practicable. The entity that owns or controls a public building shall make the building available for use as a polling place in any election that covers territory in which the building is located. If more than one authority requests the use of the building for the same day and simultaneous use is impracticable, the entity that owns or controls the building shall determine which authority may use the building.

(d) If a suitable public building is unavailable, the polling place may be located in some other building, including a building on a federal military base or facility with the permission of the post or base commander, and any charge for its use is an election expense. A polling place may not be located in a building under this subsection unless electioneering is permitted on the building's premises outside the prescribed limits within which electioneering is prohibited, except that a polling place may be located in a building at which electioneering is not permitted if it is the only building available for use as a polling place in the election precinct.

(e) A polling place may not be located at the residence of a person who is:

(1) a candidate for an elective office, including an office of a political party; or

(2) related within the third degree by consanguinity or the second degree by affinity, as determined under Chapter 573, Government Code, to a candidate described by Subdivision (1).

The Appendix to this Petition establishes that the YouTube video depicts curbside voting in a polling location which is not inside of a building. See App. at 6. This is a clear violation of Respondent Hollins' ministerial and non-discretionary duties under the Texas Election Code. The duty to comply with this portion of the Texas Election Code is not discretionary; it is mandatory. *In re Robinson*, 175 S.W.3d 824, 830 (Tex. App. 2005) ("The use of the word *shall* in a statute is generally construed as creating a nondiscretionary duty."). Accordingly, to the extent any eligible registered Harris County voter is permitted to vote curbside, that activity must be immediately adjacent to an polling location which is actually located inside of a building.

III. The Record Demonstrates that Respondent Hollins Has Established a Policy to Permit Curbside Voting to Voters Not Entitled to Vote Curbside in Breach of His Ministerial Duties under the Texas Election Code.

The Appendix attached to this Petition contains a true and correct copy of Respondent Hollins' announcement that he will, in his official capacity as the Early Voting Clerk, permit curbside voting for all 2.37 million registered voters in Harris County. See App. at 5. This is a clear and direct violation of his duties to enforce

the Texas Election Code. Respondent Hollins has a non-discretionary, ministerial duty to limit curbside voting solely to those registered voters who submit facially valid sworn applications to vote curbside. All other requests to vote curbside must be denied. “Failure to perform his duty subjects [Respondent Hollins] to mandamus.” *Bejarano v. Hunter*, 899 S.W.2d 346, 350 (Tex. App. 1995). Absent an order compelling Respondent Hollins to comply with his ministerial duties under the Texas Election Code, ineligible applicants and/or facially invalid sworn applications will be approved.

IV. Relators Are Being Harmed, Have Standing, and Will Continue to be Harmed, Absent Relief.

Respondent Hollins’ non-compliance with the law is harming the interests of both Relators. With respect to The Republican Party of Texas, and as specifically demonstrated in paragraph 4 of the affidavit attached hereto, see App. at 4, Respondent’s policy of permitting the counting of ineligible and illegal ballots cast curbside, will continue to harm this Relator’s mission and purpose, absent relief. Relator RPT has standing to complain because, as an integral part of its public interest mission, this Relator is committed to advancing limited government, lower taxes, less spending and individual liberty. This Relator’s specific goals are to grow the Republican Party by reaching new voters, advance the Platform, which is grounded in conservative principle, and to keep Texas prosperous and free. As explained in its affidavit, Relator RPT serves:

To promote a conservative philosophy of government:

By promoting conservative principles; and

By providing the infrastructure through which those who share our conservative principles can get involved in the political process, run for and be elected to public office, and govern according to our principles when elected.

See App. at 4. Accordingly, Relator RPT promotes election integrity and compliance with state statutes that ensure the integrity of elections. Respondent Hollins' non-compliance with Texas Law has impaired and will continue to impair this Relator from carrying out its mission. See App. at 6.

With respect to Relator Pichardo, he has standing because he is threatened with a violation of his right to vote. "Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections." *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). This right "can neither be denied outright . . . nor destroyed by alteration of ballots . . . nor diluted by ballot-box stuffing." *Id.* "The right to vote is 'individual and personal in nature,' and 'voters who allege facts showing disadvantage to themselves as individuals have standing to sue' to remedy that disadvantage." *Gill v. Whitford*, 138 S. Ct. 1916, 1920 (2018) (quoting *Reynolds*, 377 U. S. at 561 and *Baker v. Carr*, 369 U.S. 186, 206 (1962)). As demonstrated in his attached affidavit, Mr. Pichardo is a registered voter in Harris County, Texas. See App. at 9. Mr. Pichardo intends to vote in the 2020 General Election and in other future elections in Harris County, Texas. See

App. at 9. Although he respects and supports every Harris County registered voter's right to vote, he is very concerned that the Harris County Clerk has announced a policy to permit curbside voting by persons who are ineligible to vote curbside. If this is permitted, then the outcome of the election will be in doubt. Accordingly, Relator Pichardo objects to the casting and to the counting of any ineligible or illegal curbside voting, as the consequence of permitting such activity hurts not only the integrity and the reported outcomes of the election for all of the candidates and all of the voters who voted, but it could also dilute or otherwise diminish and cancel Relator Pichardo's casting of a legal vote for the candidates of his choice in the General Election.

The evidence in the Appendix shows that there is an imminent threat that illegal curbside votes will be cast and counted during both Early Voting and Election Day voting in Harris County. Pursuant to Section 221.003(b) of the Texas Election Code, illegal votes are votes which may not properly be cast and counted. Should Respondent Hollins be permitted to accept illegal curbside votes, then the only remedy would be for a defeated candidate to file an election contest after the results of the election are certified by the canvassing authority pursuant to Section 221 of the Texas Election Code. But Relator Pichardo has no control over whether an election contest may be filed, as he is not a candidate on the ballot. Further, a defeated candidate will not likely file an election contest unless and until the margin

of victory or defeat is small enough to justify filing an election contest. Irrespective of whether a contest is filed, the harm to Mr. Pichardo is the same: his legal vote is at risk of being cancelled by an illegal vote. Mr. Pichardo is therefore at risk of having his vote canceled out by an ineligible vote. The risk of injury to his right to vote gives Mr. Pichardo standing.

V. Relators Have No Other Adequate Remedy.

“Mandamus will not issue where there is ‘a clear and adequate remedy at law[.]’” *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (quoting *State v. Walker*, 679 S.W.2d 484, 485 (Tex. 1984)). Neither Relator has an adequate remedy, as neither is entitled to file an election contest or any other type of legal proceeding to rectify this transgression of the Texas Election Code.

Remedies found in Texas law are also not “clear and adequate” to achieve the remedy sought in this petition. Texas Election Code Section 273.081 is limited to “injunctive relief” to “prevent” violations from occurring. Relators do not seek injunctive relief; they seek affirmative compliance with ministerial duties. It is therefore not “clear” that Section 273.081 is “adequate” under these circumstances.

Even where “a remedy at law may technically exist . . . it may nevertheless be so uncertain, tedious, burdensome, slow, inconvenient, inappropriate or ineffective as to be deemed inadequate.” *Smith v. Flack*, 728 S.W.2d 784, 792 (Tex. Crim. App. 1987). Whether mandamus is appropriate “depends heavily on the

circumstances and is better guided by general principles than by simple rules.” *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 137 (Tex. 2004) (orig. proceeding). Given the proximity to election day and the importance of the issues presented, “the benefits of mandamus review outweigh the detriments.” *Id.* at 136. To proceed in any other manner would be too uncertain, slow, inconvenient, and ineffective under these circumstances. *Flack*, 728 S.W.2d at 792.

Conclusion and Prayer for Relief

For these reasons, Relators respectfully request that the Court grant this Petition for Writ of Mandamus and enter an order compelling Respondent Hollins to do the following:

1. Review all curbside voting applications submitted by any person requesting to vote curbside during either Early Voting or Election Day Voting in Harris County for facial compliance with Texas Election Code Sections 64.009, 82.002 and 104.001-104.005, as required by the Texas Election Code Sections 83.002 and 104.001;
2. Reject all curbside voting applications submitted by any person requesting to vote curbside during either Early Voting or Election Day Voting in Harris County which lack facial compliance with Texas Election Code Sections 64.009, 82.002 and 104.001-104.005, as required by the Texas Election Code Sections 83.002 and 104.001;

3. Reject any curbside voting efforts during either Early Voting or Election Day Voting in Harris County which are not in compliance with Texas Election Code Sections 64.009, 82.002 and 104.001-104.004, as required by the Texas Election Code Sections 83.002 and 104.001; and
4. Limit curbside voting activity which is adjacent to only those polling locations which are inside of a building, as required by Section 43.031 of the Texas Election Code.

Dated: October 12, 2020.

Respectfully submitted,

/s/ Andy Taylor

Andy Taylor
Andy Taylor & Associates, P.C.
2628 Highway 36S, #288
Brenham, TX 77833
Office: (713) 222-1817
Fax: (713) 222-1855

Counsel for Relators

RULE 52.3(J) CERTIFICATION

I have reviewed this Petition and concluded that every factual statement herein is supported by competent evidence in the appendix or record.

/s/ Andy Taylor
Andy Taylor

CERTIFICATE OF SERVICE

I certify that, because of the imminent nature of this proceeding, courtesy copies of the foregoing were provided in electronic form at the same time the foregoing document was filed with the Court to the counsel below. I also certify that true and correct copies of the foregoing document will be formally served on Respondent Hollins, by and through his counsel listed below.

Chris Hollins
Harris County Clerk
Harris County Civil Courthouse
201 Caroline, Suite 310
Houston, Texas 77002

Vince Ryan
Harris County Attorney
1019 Congress St., 15th Floor
Houston, Texas 77002
Attorney for Harris County, Texas
Email: vince.ryan@cao.hctx.net

Dated: October 12, 2020

 /s/ Andy Taylor
Andy Taylor

CERTIFICATE OF COMPLIANCE

This Petition complies with the type-volume limitation of Tex. R. App. P. 9(i)(2)(B) because it contains _____ words, excluding the parts of the petition exempted by Tex. R. App. P. 9.4(i)(1).

This Petition also complies with the typeface requirements of Tex. R. App. P. 9.4(e) because it has been prepared in a proportionally spaced typeface in 14-point font.

/s/ Andy Taylor
Andy Taylor

No. _____

**IN THE COURT OF APPEALS
FOR THE FOURTEENTH DISTRICT OF TEXAS
HOUSTON, TEXAS**

In re
**JUAN GERARDO PEREZ PICHARDO AND THE REPUBLICAN
PARTY OF TEXAS**
Relators

Chris Hollins, in his official capacity as
Harris County Clerk for Harris County, Texas,
Respondent

**APPENDIX IN
SUPPORT OF PETITION FOR WRIT OF MANDAMUS**

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Counsel for Relators

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No. _____

**IN THE COURT OF APPEALS
FOR THE FOURTEENTH DISTRICT OF TEXAS
HOUSTON, TEXAS**

In re
**JUAN GERARDO PEREZ PICHARDO AND THE REPUBLICAN
PARTY OF TEXAS**
Relators

Chris Hollins, in his official capacity as
Harris County Clerk for Harris County, Texas,
Respondent

**AFFIDAVIT OF JENNIFER HALL IN
SUPPORT OF PETITION FOR WRIT OF MANDAMUS**

State of Texas §
 §
County of Travis §

BEFORE ME, the undersigned personally appeared Jennifer Anne Hall who, swore the following:

1. My name is Jennifer Anne Hall. I am over 18 years of age, of sound mind, and competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.

2. I am resident of Texas and Tarrant County.

3. I am the Organization Assistant for The Republican Party of Texas. .

4. We are committed to advancing limited government, lower taxes, less spending and individual liberty. Our specific goals are to grow the Republican Party by reaching new voters, advance the Platform, which is grounded in conservative principle, and to keep Texas prosperous and free. The Republican Party of Texas serves:

To promote a conservative philosophy of government:

By promoting conservative principles; and

By providing the infrastructure through which those who share our conservative principles can get involved in the political process, run for and be elected to public office, and govern according to our principles when elected.

5. Chris Hollins currently serves as the County Clerk of Harris County, Texas. Under the Texas Election Code, Mr. Hollins serves as the Early Voting Clerk for Harris County and is responsible for administering curbside voting in compliance with Sections 64.009, 83.002 and 104.001-104.005 of the Texas Election Code, for both Early Voting and Election Day Voting. This Petition for Writ of Mandamus names Mr. Hollins as the Respondent.

6. On September 10, 2020, Chris Hollins held a press conference to announce his office's implementation of a countywide "drive-thru" voting program for every registered voter in Harris County. The Texas Election Code does not use the term "drive-thru" voting. Rather, the term "curbside" voting is used instead. It is clear, however, that Respondent Hollins is using these terms interchangeably.

7. I have personally watched and listened to the press conference. I can personally swear that a true and correct transcription of what Respondent Hollins said in a 33 second segment of that press conference appears verbatim below in Paragraph 8. Beginning at the 4-minute mark of his press conference, and continuing on to 4:33, Respondent Hollins said the following:

8. "Drive-thru voting is an option for all voters who would like to be able to vote from the safety and comfort of your vehicle. Drive-thru voting allows those who don't qualify to vote by mail to minimize your exposure to other voters and to election workers. While we hope to have short lines across the county, drive-

thru voters waiting in line will be able to wait in the comfort of your vehicle where you can listen to the radio or converse with loved ones until you are pointed to your drive-thru voting booth. We hope that Harris County voters will consider utilizing drive-thru voting.”

9. In addition to Respondent Hollins’ press conference, he also released a video on YouTube, which is also posted on the Harris County Clerk’s Office website, just this past Friday, October 9, 2020. This video is entitled “Drive-Thru Voting in five steps.” Nowhere in this demonstrative video of a voter voting curbside in his vehicle is there any discussion or caution or depiction about how a voter may determine his or her eligibility to vote curbside. Nor is there any mention or depiction that a voter desiring to vote curbside must fill out a sworn application to vote curbside. To the contrary, the clear impression of this video is that anyone and everyone may vote curbside in Harris County should they wish to do so. Finally, the video depicts curbside voting taking place outside of a polling location and that polling location is not inside of a building. Because Respondent Hollins is clearly requesting Harris County registered voters to vote curbside without regard to whether they are eligible to vote curbside, and because of the very clear threat of imminent harm which will result from ineligible curbside voting taking place in violation of the Texas Election Code, Relator RPT brings this Mandamus Petition to mandate compliance by the Respondent with his clear and non-discretionary ministerial duties.

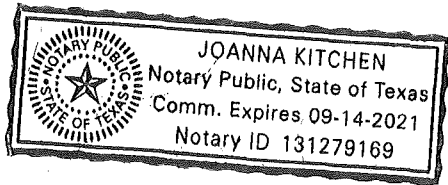
SIGNED this 12th day of October 2020.

Jennifer Wall

SUBSCRIBED and SWORN TO before me, the undersigned authority, on the 12th day of October, 2020.

J. Kitchen

Notary in and for the State of Texas



No. _____

**IN THE COURT OF APPEALS
FOR THE FOURTEENTH DISTRICT OF TEXAS
HOUSTON, TEXAS**

In re
**JUAN GERARDO PEREZ PICHARDO AND THE REPUBLICAN
PARTY OF TEXAS**
Relators

Chris Hollins, in his official capacity as
Harris County Clerk for Harris County, Texas,
Respondent

**AFFIDAVIT OF JUAN GERARDO PEREZ PICHARDO IN
SUPPORT OF PETITION FOR WRIT OF MANDAMUS**

Andy Taylor
Andy Taylor & Associates, P.C.
2628 Highway 36S, #288
Brenham, TX 77833
Office: (713) 222-1817
Fax: (713) 222-1855
Counsel for Relators

State of Texas §
 §
County of Harris §

BEFORE ME, the undersigned personally appeared Juan Gerardo Perez Pichardo who, swore the following:

My name is Juan Gerardo Perez Pichardo. I am over 18 years of age, of sound mind, and competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.

1. I was born in 1942 in Mexico.
2. In 1969, I immigrated to the United States of America and became a legal permanent resident.
3. In 2000, I became a naturalized citizen of the United States of America.
4. I am currently a registered voter in Harris County, Texas.
5. I intend to vote in the 2020 General Election and in other future elections in Harris County, Texas. Although I respect and support every Harris County registered voter's right to vote, I am very concerned that the Harris County Clerk has announced a policy to permit curbside voting by persons who are ineligible to vote curbside. If this is permitted, then the outcome of the election will be in doubt. Accordingly, I object to the casting and to the counting of any ineligible or illegal curbside voting. Allowing this to occur hurts not only the integrity and the reported outcomes of the election for all of the candidates and all of the voters who

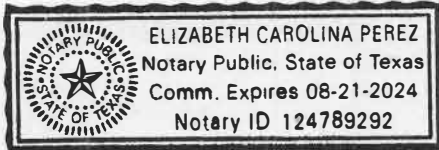
voted, but it could also dilute or otherwise diminish and cancel my casting of a legal vote for the candidates of my choice in the General Election. I have therefore joined in this Petition for Writ of Mandamus to ensure the integrity of the upcoming election.

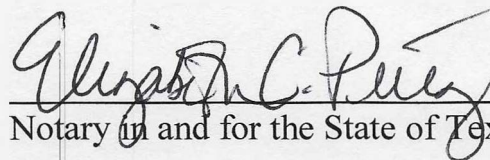
SIGNED this 12th day of October 2020.



Juan Gerardo Perez Pichardo

SUBSCRIBED and SWORN TO before me, the undersigned authority, on the 12th day of October 2020.





Notary in and for the State of Texas