

WOLFGANG P. HIRCZY DE MINO, PhD

May 6 7, 2020

*Via e-file*

Hon. Christopher A. Prine  
Clerk of the Fourteenth Court of Appeals  
301 Fannin Street  
Houston, Texas 77002-2066  
~~Hon. Jeffrey D. Kyle  
Third Court of Appeals  
PO Box 12547  
Austin, Texas 78711~~

RE: Appellate Case Number: [14-20-00348-CV](#), previously [03-20-00251-CV](#) (transfer case)  
Case Style: Texas Democratic Party and Gilberto Hinojosa, In His Capacity as Chairman of The Texas Democratic Party, Joseph Daniel Cascino and Shanda Marie Sansing, Zachary Price, League of Women Voters of Texas, League of Women Voters of Austin-Area, MOVE Texas Action Fund, Workers Defense Action Fund  
Trial Court Case Info: Cause No. D-1-GN-20-001610 in the 201<sup>st</sup> District Court, Travis County, Texas

REQUEST FOR POSTING OF THE APPELLATE RECORD  
BY POLITICAL SCIENTIST AS AMICUS CURIAE

Dear Clerk:

There is considerable interest in this case, and such interest is not limited to political scientists such as myself. I respectfully request that the Court post the clerk's and the reporter's record on the Court's public-facing website.

I informally obtained a copy of the April 17, 2020 Travis County district court order being appealed. Assuming it is an authentic copy, it appears to enjoin the agents of the State of Texas from issuing guidance on the voting-by-mail issue. See excerpt below:

(4) Travis County Defendant and Intervenor-Defendant Texas and their agents, servants, employees, representatives, and all person or entities of any type whatsoever acting in concert with them or acting on their behalf are enjoined from issuing guidance or otherwise taking actions during all elections affected by the COVID-19 pandemic, that would prohibit individuals from submitting mail ballots based on the disability category of eligibility or that would suggest that individuals may be subject to penalty solely for doing so; and

Order on Application for Temporary Injunctions and Plea to the Jurisdiction in D-1-GN-20-001610

And yet, Attorney General Ken Paxton on May 1, 2020 issued a letter to County Judges and County Election Officials<sup>1</sup> that does appear to impart guidance – arguably *threatening* guidance -- and creates confusion.

First, given the Attorney General’s assertion that he immediately appealed, I am puzzled that Ken Paxton’s name does not appear on this court’s docket as one of the attorneys for the State of Texas.

Second, the appeal is classified as involving a “**Plea to jurisdiction**” rather than an appeal of a temporary injunction. Since the notice of appeal has not been posted, the public cannot tell what it says. Posting of the record would provide clarity, but it’s not the only issue.



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 1, 2020

To: County Judges and County Election Officials

Re: Ballot by Mail Based on Disability

Due to misreporting and public confusion, the Texas Attorney General provides this guidance addressing whether a qualified voter, who wishes to avoid voting in-person because the voter fears contracting COVID-19, may claim a disability entitling the voter to receive a ballot by mail regardless of whether the voter would need personal assistance to vote in-person or risk injuring their health because of a sickness or physical condition. Based on the plain language of the relevant statutory text, fear of contracting COVID-19 unaccompanied by a qualifying sickness or physical condition does not constitute a disability under the Texas Election Code for purposes of receiving a ballot by mail. Accordingly, public officials shall not advise voters who lack a qualifying sickness or physical condition to vote by mail in response to COVID-19.

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A lawsuit recently filed in Travis County District Court does not change or suspend these requirements. In that case, the District Court ordered the Travis County Clerk to accept mail ballot applications from voters who claim disability based on the COVID-19 pandemic, and to tabulate mail ballots received from those voters. The Texas Attorney General immediately appealed that order. Accordingly, pursuant to Texas law, the District Court’s order is stayed and has no effect during the appeal. Moreover, even if the order were effective, it would not apply to any county

[https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Mail-in%20Ballot%20Guidance%20Letter\\_05012020.pdf](https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Mail-in%20Ballot%20Guidance%20Letter_05012020.pdf)

<sup>1</sup> [https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Mail-in%20Ballot%20Guidance%20Letter\\_05012020.pdf](https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Mail-in%20Ballot%20Guidance%20Letter_05012020.pdf)

## Stay of further trial court proceedings pending appeal vs. validity of trial court's temporary injunction pending contrary determination by appellate court

Assuming this interlocutory appeal only targets the trial court's denial of the State's plea to the jurisdiction, there would be an **automatic stay** under CPRC 51.014(b), but this would presumably only affect any further "**proceedings**" in the trial court (including the holding of a trial on the merits),<sup>2</sup> and would not affect the **validity and binding nature of the temporary injunction** granted in favor of the plaintiffs and plaintiff-aligned intervenors.

Given the seeming contrary representation of Attorney General Paxton in his letter to local election officials ("the District Court's order is stayed and has no effect during the appeal"), it would be helpful if this Court were to promptly provide clarity on this preliminary--but nevertheless urgent and important--matter *before* the parties submit their respective briefs on the merits.

Again, this case is of tremendous importance to the integrity and efficiency of the election system in times of a declared epidemic, and the availability (or otherwise) of the vote-by-mail option potentially affects the voting rights of numerous Texans. The general public should be given access to the relevant information in the interest of transparency, and an opportunity to weigh in.

I would accordingly urge the Court to make an exception to its **policy of restricting access** to the clerk's record and reporter's record to the attorneys with a role in the case in question, and post both on the docket. This would put interested members of the public in a position to submit an amicus curiae brief informed by what happened in the court below, and with reference to the evidence and testimony that was presented at the temporary injunction hearing. I would myself be interested in submitting an amicus curiae brief in this important voting rights case.

Respectfully submitted,

/s/ Wolfgang P. Hirczy de Miño

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<sup>2</sup> See Tex. Civ. Prac. & Rem. Code § 51.014(b) (imposing automatic stay on trial court proceedings during pendency of certain interlocutory appeals).

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Amicus Curiae<sup>3</sup>

## CERTIFICATE OF SERVICE

I hereby certify that I will endeavor to serve the parties to this case through their respective attorneys' email addresses on file with the Texas eFile system at the time of filing of this submission on ~~May 5~~, **May 7**, 2020.

### CONTACTS ON FILE FOR CASE NO. 03-20-00251-CV AS OF 5/5/2020:

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/s/ Wolfgang P. Hirczy de Miño

Wolfgang P. Hirczy de Mino, PhD

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<sup>3</sup> The author holds a PhD in political science from the University of Houston. No payment was received for the preparation of this amicus curiae letter and none is expected. The parties and/or lead attorneys (as applicable) will be served through the Texas e-file system, assuming they are registered. Tex. R. App. P. 11.



## Filing Returned

Envelope Number: 42794756  
Case Number: 03-20-00251-CV  
Case Style:

The filing has been reviewed and returned for correction. **Please refile with the corrections indicated below.** For instructions on how to retain your original file stamp date, consult with your electronic filing service provider or the clerk's office. An electronically filed document is deemed filed when delivered to the electronic filing service provider, unless it is filed on a Saturday, Sunday, or legal holiday (in which case it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday)—or the document requires a motion and an order permitting the document to be filed.

Return Reason(s) from Clerk's Office	
Court	Courts of Appeals
Returned Reason	Case has been transferred to another appellate court
Returned Comments	This case was transferred to the 14th Court of Appeals.

Document Details	
Case Number	03-20-00251-CV
Case Style	
Date/Time Submitted	5/6/2020 4:02 PM CST
Filing Type	Letter
Filing Description	Initial Amicus Letter re: Appellate Record and AG's Alleged "Stay" of Appealed Order
Activity Requested	EFileAndServe
Filed By	WOLFGANG HIRCZY
Filing Attorney	

Note: The initial e-filing of the amicus letter brief of Wolfgang P. Hirczy de Mino, PhD  
was rejected because of the SCOTX-ordered transfer

## THIRD COA RECORDS POLICY

### Record Requests

72. Briefs, notices and other documents are accessible from the Courts website at [www.txcourts.gov/3rdcoa](http://www.txcourts.gov/3rdcoa). Because of the sensitive nature of certain types of cases and filings, some documents may not be posted online. Separate arrangements with the Court will need to be made in order to access these documents.
73. Attorneys practicing before the Third Court of Appeals have secure electronic access to view case documents which may not be available on the Court's website. For example, the clerk's and reporter's record are not available on the Court's website, but are available via the Attorney Portal to attorneys of record. The records are available for 24 months from the date the records are filed with the Court. Sealed records and non-pdf files are not available through the Attorney Portal, and separate arrangements with the Court will need to be made in order to access these documents. Appellate records often contain sensitive information. Any attorney who obtains copies of appellate records must respect the sensitive nature of this information. By registering to use the Attorney Portal, you agree NOT to publish, share, or otherwise post downloaded documents to any public websites. Attorneys can register for access to the Attorney Portal at [attorneyportal.txcourts.gov/account/register/](http://attorneyportal.txcourts.gov/account/register/). You will need your bar member number and the email address currently on file with the Third Court of Appeals in order to register.
74. For access to case documents not accessible by way of the Court's website or the attorney portal, requests may be sent to [recordrequest@txcourts.gov](mailto:recordrequest@txcourts.gov).
75. Requests for copying and/or inspection of judicial records must be in writing, include sufficient information to reasonably identify the record requested, and be sent to the records custodian at [recordrequest@txcourts.gov](mailto:recordrequest@txcourts.gov) or by mail at:

Records Custodian  
c/o Third Court of Appeals  
P. O. Box 12547  
Austin, TX 78711

### Suggestions

The Court welcomes suggestions concerning this memorandum. Please address any comments to the Clerk.

<https://www.txcourts.gov/3rdcoa/practice-before-the-court/>

# TEXAS INTERLOCUTORY APPEALS STATUTE

## CHAPTER 51 OF CPRC

CIVIL PRACTICE AND REMEDIES CODE

TITLE 2. TRIAL, JUDGMENT, AND APPEAL

SUBTITLE D. APPEALS

### CHAPTER 51. APPEALS

[...]

Sec. 51.014. APPEAL FROM INTERLOCUTORY ORDER. (a) A person may appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that:

- (1) appoints a receiver or trustee;
- (2) overrules a motion to vacate an order that appoints a receiver or trustee;
- (3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure;
- (4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter [65](#);
- (5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state;
- (6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article I, Section [8](#), of the Texas Constitution, or Chapter 73;

(7) grants or denies the special appearance of a defendant under Rule 120a, Texas Rules of Civil Procedure, except in a suit brought under the Family Code;

(8) grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section [101.001](#);

(9) denies all or part of the relief sought by a motion under Section [74.351](#)(b), except that an appeal may not be taken from an order granting an extension under Section [74.351](#);

(10) grants relief sought by a motion under Section [74.351](#)(1);

(11) denies a motion to dismiss filed under Section [90.007](#);

(12) denies a motion to dismiss filed under Section [27.003](#);

(13) denies a motion for summary judgment filed by an electric utility regarding liability in a suit subject to Section [75.0022](#); or

(14) denies a motion filed by a municipality with a population of 500,000 or more in an action filed under Section [54.012](#)(6) or [214.0012](#), Local Government Code.

(b) An interlocutory appeal under Subsection (a), other than an appeal under Subsection (a)(4) or in a suit brought under the Family Code, stays the commencement of a trial in the trial court pending resolution of the appeal. An interlocutory appeal under Subsection (a)(3), (5), (8), or (12) also stays all other proceedings in the trial court pending resolution of that appeal.

(c) A denial of a motion for summary judgment, special appearance, or plea to the jurisdiction described by Subsection (a)(5), (7), or (8) is not subject to the automatic stay under Subsection (b) unless the motion, special appearance, or plea to the jurisdiction is filed and requested for submission or hearing before the trial court not later than the later of:

(1) a date set by the trial court in a scheduling order entered under the Texas Rules of Civil Procedure; or

(2) the 180th day after the date the defendant files:



(A) the original answer;

(B) the first other responsive pleading to the plaintiff's petition; or

(C) if the plaintiff files an amended pleading that alleges a new cause of action against the defendant and the defendant is able to raise a defense to the new cause of action under Subsection (a) (5), (7), or (8), the responsive pleading that raises that defense.

(d) On a party's motion or on its own initiative, a trial court in a civil action may, by written order, permit an appeal from an order that is not otherwise appealable if:

(1) the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion; and

(2) an immediate appeal from the order may materially advance the ultimate termination of the litigation.

(d-1) Subsection (d) does not apply to an action brought under the Family Code.

(e) An appeal under Subsection (d) does not stay proceedings in the trial court unless:

(1) the parties agree to a stay; or

(2) the trial or appellate court orders a stay of the proceedings pending appeal.

(f) An appellate court may accept an appeal permitted by Subsection (d) if the appealing party, not later than the 15th day after the date the trial court signs the order to be appealed, files in the court of appeals having appellate jurisdiction over the action an application for interlocutory appeal explaining why an appeal is warranted under Subsection (d). If the court of appeals accepts the appeal, the appeal is governed by the procedures in the Texas Rules of Appellate Procedure for pursuing an accelerated appeal. The date the court of appeals enters the order accepting the appeal starts the time applicable to filing the notice of appeal.

## **AG Paxton Advises County Officials to Avoid Misleading the Public on Vote by Mail Laws**

May 01, 2020 | Press Release

<https://www.texasattorneygeneral.gov/news/releases/ag-paxton-advises-county-officials-avoid-misleading-public-vote-mail-laws>

May 01, 2020 | Press Release

# **AG Paxton Advises County Officials to Avoid Misleading the Public on Vote by Mail Laws**

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Attorney General Ken Paxton today issued a letter to Texas county judges and election officials, providing guidance that, under the Texas Election Code, Texans may not claim disability based on fears of contracting COVID-19 and receive a ballot to vote by mail in upcoming elections. Several county officials throughout the State, including the Harris County judge and clerk, are misleading the public about their ability to vote by mail, telling citizens that in light of COVID-19, anyone can claim a “disability” that makes them eligible for ballot by mail.

Disability, as that term is used in the Texas Election Code’s provisions allowing voting by mail, must involve a “sickness or physical condition” that prevents a voter from voting in person on election day without a likelihood of needing personal assistance or of injuring the voter’s health. A voter ill with COVID-19 and who meets those requirements may apply for a ballot by mail. Fear of contracting COVID-19, however, is a normal emotional reaction to the current pandemic and does not amount to an actual disability that qualifies a voter to receive a ballot by mail.

“Mail ballots based on disability are specifically reserved for those who are legitimately ill and cannot vote in-person without assistance or jeopardizing their health. The integrity of our democratic election process must be maintained, and law established by our Legislature must be followed consistently,” said Attorney General Paxton. “My office will continue to defend the integrity of Texas’s election laws.”

The lawsuit recently filed in Travis County District Court does not change or suspend the disability requirements required by the Texas Legislature. Pursuant to Texas law, the District Court’s order is stayed and has no effect during the ongoing appeal.

Read a [copy of the letter here](#).