

No. 20–50867

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*In the United States Court of Appeals*

*for the Fifth Circuit*

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TEXAS LEAGUE OF UNITED LATIN AMERICAN CITIZENS; NATIONAL  
LEAGUE OF UNITED LATIN AMERICAN CITIZENS; LEAGUE OF WOMEN  
VOTERS OF TEXAS; RALPH EDELBACH; BARBARA MASON; MEXICAN  
AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES;  
TEXAS LEGISLATIVE BLACK CAUCUS,  
*Plaintiffs-Appellees,*

v.

RUTH HUGHS, IN HER OFFICIAL CAPACITY  
AS TEXAS SECRETARY OF STATE  
*Defendant-Appellant.*

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LAURIE-JO STRATY; TEXAS ALLIANCE FOR RETIRED AMERICANS;  
BIGTENT CREATIVE,  
*Plaintiffs-Appellees,*

v.

RUTH HUGHS, IN HER OFFICIAL CAPACITY  
AS TEXAS SECRETARY OF STATE  
*Defendant-Appellant.*

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Appeals from the United States District Court  
for the Western District of Texas, Austin Division  
USDC Nos. 1:20-CV-1006 & 1:20-CV-1015

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**BRIEF OF *AMICI CURIAE* JOHN W. OLDHAM, IN HIS  
OFFICIAL CAPACITY AS FORT BEND COUNTY ELECTIONS  
ADMINISTRATOR, AND CHRIS HOLLINS, IN HIS OFFICIAL  
CAPACITY AS HARRIS COUNTY CLERK, IN SUPPORT OF  
PLAINTIFFS-APPELLEES**

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**CERTIFICATE OF INTERESTED PERSONS**

Under the fourth sentence of Fifth Circuit Rule 28.2.1, *amici curiae*, as governmental parties, need not furnish a certificate of interested persons.

DATED:       OCTOBER 12, 2020

*/s/ Justin C. Pfeiffer*  
JUSTIN C. PFEIFFER

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## **IDENTITY AND INTEREST OF *AMICI CURIAE***

John W. Oldham, a defendant below in 1:20-cv-01006-RP, is the Fort Bend County Elections Administrator (“Oldham”). Chris Hollins, the Harris County Clerk, also a defendant below, is the early voting clerk for Harris County, Texas (“Hollins”). As the election administrators and county clerk, Oldham and Hollins are the early voting clerks for Fort Bend County and Harris County, Texas, respectively. *See* TEX. ELEC. CODE § 83.001. As “early voting clerk,” Oldham and Hollins have the authority and duty to “conduct the early voting,” which includes early voting both in person and by mail. TEX. ELEC. CODE §§ 83.001, 83.002.

Fort Bend County, the ninth-most-populous county in Texas, is the second-largest County by population in the Houston-metropolitan region and one of the most diverse and fastest-growing counties in the country. The County’s population has nearly tripled since 2000 while the ratio of its Anglo population has decreased to 29%, the remainder is almost evenly divided among Latinos, African-Americans, and East and South Asians. Dkt. 21, ¶ 4, Ex. B. Fort Bend County has 480,000 registered voters in its 885 square miles. In the last presidential election, around 15,000 mail-in ballots were cast, which was then a record. *Id.* The July 14, 2020, primary runoff saw a sharp increase in the ratio of voters who vote by mail with over 10,000 of the 80,000 ballots cast by mail. *Id.*, ¶ 12. Already, Elections



Administration has processed more than 34,000+ applications to vote by mail.<sup>1</sup> *Id.*, ¶ 11.

Chris Hollins, also a defendant below, is the interim County Clerk of Harris County, Texas, by far the most-populous county in Texas. Hollins has the duty to administer elections with 2.4 million registered voters and a highly diverse electorate spread out over 1,777 square miles by far the largest urban county. Dkt. 8-1, ¶ 4, Ex. A. Recently, COVID-19 cases have surged in Harris County and the rest of Texas. He anticipates at least 1.6 million of those voters will exercise their right to vote during the general election, with in excess of 300,000 voting by mail. *Id.*, ¶ 11. Traveling from the County's northwest corner to the current location of the main election office is more than a 100-mile round trip. *Id.*, ¶ 4. Oldham and Hollins submit this *amicus* brief to advise this Court on the mechanics of election administration and the impact of any ruling granting the stay in this proceeding.

All parties have consented to the filing of this brief. *See* FED. R. APP. P. 29(a)(2). No party's counsel authored this brief in whole or in part; moreover, no party, party's counsel, or person contributed money to fund the preparation or

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<sup>1</sup> Fort Bend County has not always been at the forefront of voting rights. In 2009, the United States sued the County, principally asserting Voting Rights Act violations, and the County entered into a consent decree agreeing to federal monitoring, increased training, and electoral reporting to the Department of Justice. *See United States v. Fort Bend Cnty.*, No. 4:09-cv-01058 (S.D. Tex. Apr. 9, 2009).

submission of this brief. *See* FED. R. APP. P. 29(a)(4)(E). Moreover, the undersigned counsels of record have endeavored to add novel arguments rather than merely recite those already advanced. 5th Cir. R. 29.2.

### SUMMARY OF THE ARGUMENT

Appellant Ruth Hughs, in her capacity as the Secretary of State of Texas (“Secretary Hughs”), asserts that the district court “interfered with state election laws on the eve of an election.” [Mot. at 7 (citing *Texas All. for Retired Americans v. Hughs*, No. 20–40643, 2020 WL 5816887, at \*2, — F.3d — (5th Cir. Sept. 30, 2020)).] That is incorrect. It was the Governor of Texas, who changed the election rules, *after* the election had already started.<sup>2</sup> Regardless, Secretary Hughs’s motion for a stay, if granted, would create a circuit split with the United States Court of Appeals for the Sixth Circuit. Secretary Hughs’ motion should, therefore, be denied.<sup>3</sup>

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<sup>2</sup> The district court’s thorough decision appropriately rejected the jurisdictional and merits arguments raised by Secretary Hughs. For example, this court has already concluded that Secretary Hughs has “some connection” to the enforcement of election statutes. *Tex. Democratic Party v. Abbott*, No. 20-50407, 2020 WL 5422917 at \*\*6–7, — F.3d — (5th Cir. Sept. 10, 2020), *cert. pending*, No. 19-1389. Secretary Hughs requested more time to determine whether to file a petition for rehearing en banc on that issue. Mot. to Extend Time for En Banc Consideration, *Tex. Democratic Party v. Abbott*, No. 2020 WL 5422917, — F.3d — (5th Cir. Sept. 10, 2020) (No. 20-50407) (5th Cir. Sept. 17, 2020). Secretary Hughs did not file the petition. The mandate will accordingly issue by October 15. *See* FED. R. APP. P. 41(b).

<sup>3</sup> *Amici* rely on the district court’s through decision and argument by appellees’ counsel regarding Secretary Hughs’s arguments. *Amici* files this brief to caution

## ARGUMENT

Under *Purcell v. Gonzalez*, 549 U.S. 1 (2006), and its progeny, the Supreme Court has repeatedly emphasized that “lower federal courts should ordinarily not alter the election rules on the eve of an election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020). Applying this doctrine, the Sixth Circuit granted a stay of the district court’s injunction in *A. Philip Randolph Inst. of Ohio v. LaRose*, No. 20-4063, slip op. (6th Cir. Oct. 9, 2020). Secretary Hughs includes the decision as Exhibit K to her motion and heavily relies upon it. [Mot. at 2, 13, 16 & Exh. K.] *LaRose*, however, supports district court’s decision. The Sixth Circuit preserved the *status quo* after the election had begun. Because Governor Abbott issued a proclamation *after* the election had already started, *LaRose* stands for the exact opposite proposition for which Secretary Hughs cites it.

### **I. THE GOVERNOR’S PROCLAMATION INTERRUPTED THE STATUS QUO OF THE RETURN OF MAIL-IN BALLOTS AND CAUSED VOTER CONFUSION**

For the July 14 run-off, Harris County utilized its ten annex locations and its historic downtown main office early voting office for the return of mail-in ballots by hand delivery. Dkt. 8-1, ¶ 9, Ex. A. There were no complaints from the Governor or the Secretary of State about doing so. *Id.*, ¶ 9. Since the Governor’s July 27 Proclamation, Harris County has made plans to again make the annex offices and

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against creating a circuit split.

available for mail ballot returns, and added a the NRG Arena where it has moved the Early Voting Ballot Board and all other operations so that election workers can socially distance and work safely. *Id.*, ¶¶ 8, 15.<sup>4</sup> Harris County has advertised the multiple delivery locations since early August on its Harris Votes website, through social media, and through media interviews. *Id.*, ¶ 21.

Security protocols at the annex locations are the same as those at the headquarters. *Id.* ¶¶ 16-17; Dkt. 21, ¶ 14. The County Clerk trains staff on election laws and ensures at least two such trained staff members are present at all times. Dkt. 8-1, ¶¶ 16-17, Ex. B. For all hand-delivery locations in both counties, the voters sign a roster (just as they would when voting in person), Dkt. 8-1, ¶¶ 16-17, Ex. C., present valid identification (just as they would when voting in person), and sign the carrier envelope so their signature can be matched to that on file (just as they would when returning their envelope by mail). Dkt. 8-1, ¶¶ 16-17, Dkt. 21, ¶ 14. There were no issues with security during the July run-off nor were there since Harris County began collecting ballots for the general election. Dkt. 8-1, ¶ 9; Dkt. 51-1, ¶ 4; *see also* Dkt. 21, ¶ 15.

Both mail-in voting and returning ballots by hand delivery have been very popular among voters. As of October 7, the Harris County Clerk's office received

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<sup>4</sup> The Governor of the State of Texas, Proclamation No. 41–3752, 45 Tex. Reg. 5449, 5456–57 (July 27, 2020), [Mot. Ex. B] (“July 27 Proclamation”).

more than 230,000 applications to vote by mail 87% of which are for voters over the age of 65. Dkt. 51-1, ¶ 3, Ex. C. As of October 7, 22% of the 6,000 plus ballots returned were returned by hand delivery. *Id.* If that ratio continues, the Harris County Clerk expect more than 50,000 ballots to be hand delivered by voters with an increasing demand in the days leading up to and on Election Day. *Id.*, ¶¶ 5, 8.

The October 1 Proclamation has caused a great deal of voter confusion especially because it was issued *after* voters were already returning ballots and extensive county planning and public announcements of the multiple locations and with one-day's notice for implementation. Dkt. 8-1, ¶ 20, 25; Dkt. 21, ¶ 16.<sup>5</sup> Thus, the October 1 Proclamation disturbed the election that had already begun. Because Fort Bend County has its population centered in the east side of the County with its elections administration office west of the Brazos River on the least populated side of the County, returning ballots to that one location will be far more difficult and burdensome to voters. Dkt. 21, ¶¶ 19-20. Some ballots will not be counted because they arrive late even though the voter timely submitted them in the mail as happened to 299 ballots during the July primary run-off. *Id.*, ¶ 20. Because Harris County is so large, populous, and difficult to navigate, many voters will be unable to return their ballots by secure hand delivery. Dkt. 8-1, ¶ 20. The Proclamation and its

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<sup>5</sup> The Governor of the State of Texas, Proclamation No. 41–\_\_\_\_, 45 Tex. Reg. \_\_\_\_, \_\_\_\_ (Oct. 1, 2020) [Mot. Ex. C] (“October 1 Proclamation”).

timing are disruptive to election operations and burdensome and confusing to voters. Consequently, the district court's order should remain in place.

## II. THE SIXTH CIRCUIT STAYED AN INJUNCTION WHERE THE DISTRICT COURT OBVIOUSLY VIOLATED *PURCELL*

### A. The Ohio Secretary of State Issued a Directive Limiting Drop Boxes to the County Election Boards Two Months Before the Election Began.

Frank LaRose is the 54th Secretary of State of Ohio (“Secretary LaRose”). When the COVID-19 pandemic hit Ohio in March, Mike DeWine, the 70th Governor of Ohio, cancelled the primary election.<sup>6</sup> Governor DeWine and the Ohio Legislature set the primary for April 28 with almost exclusively mail-in voting. 2020 Am.Sub.H.B. 197, §32.

As part of this mail-in primary, the Ohio Legislature *required* each county board of elections to install a drop box outside its office. *See* 2020 Am.Sub.H.B. 197, §§32(C) & (E)(1). Although this legislation expired, Secretary LaRose determined that delivery to a drop box located at the board's office constituted a method of “personally deliver[ing]” a ballot “to the director” under Ohio Revised Code §3509.05(A). OHIO SEC. OF STATE DIRECTIVE 2020–16 (Aug. 12, 2020) <https://www.ohiosos.gov/globalassets/elections/directives/2020/dir2020-16.pdf>.

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<sup>6</sup> Scott Wartman and Jessie Balmer, “*We’re in the Fog of War.*” *Here’s How Ohio Canceled an Election and Sent the State into Confusion*, CINCINNATI ENQUIRER (Mar. 17, 2020), available at <https://www.cincinnati.com/story/news/-politics/2020/03/17/coronavirus-canceled-ohios-primary-heres-how-dewine-and-state-leaders-made-decision/5066319002/> (last visited Oct. 11, 2020).

Absentee voting in Ohio began on October 6, 2020, and extends through November 2, 2020.

Secretary LaRose has the authority to issue directives to county election boards. OHIO REV. CODE §3501.05(B) & (C). The Ohio appellate court sitting in the state capital concluded that Secretary LaRose’s action in promulgating Directive 2016–16 was within his authority. *Ohio Democratic Party v. LaRose*, 2020-Ohio-4778, slip op. at 16–18 (Ohio Ct. App. Oct. 2, 2020).

B. The Federal District Court Enjoined Enforcement of the Secretary’s Directive after Absentee Balloting Began in Ohio.

The A. Philip Randolph Institute of Ohio and other plaintiffs filed suit in the Northern District of Ohio on August 26, 2020. No. 1:20-cv-01908 (N.D. Ohio), Dkt. No. 1. Plaintiffs filed for a preliminary injunction on September 4, 2020. *Id.* at Dkt. No. 13. On October 8, 2010, the district court granted the preliminary junction. *Id.* at Dkt. No. 91.

The Sixth Circuit, 2–1, stayed the injunction the following day. *LaRose*, No. 20–4063, slip op. Conducting an analysis under both rational-basis and mid-level scrutiny in its application of *Anderson-Burdick*,<sup>7</sup> the Sixth Circuit motions panel concluded that Secretary LaRose’s rational for the challenged directive was both “reasonable and non-discriminatory.” *Id.* at 4. The *LaRose* panel also relied on

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<sup>7</sup> See *Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

*Purcell*. *Id.* at 5–6 (quoting *Purcell*, 549 U.S. at 4–5 (“Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.”)). Here, for the purposes of returning mail-in ballots, the election had already begun.

### III. THE SIXTH CIRCUIT WOULD NOT HAVE GRANTED HUGHS’S MOTION FOR A STAY PENDING APPEAL

Nothing about *LaRose* supports Hughs’s emergency motion for a stay pending appeal. Secretary LaRose issued his directive on August 12, 2020. Here, Governor Abbott’s Proclamation issued on October 1, 2020. Governor Abbott *changed* the number of locations allowed for the in-person delivery of a mail-in ballot to limit such to just one per county.<sup>8</sup> Harris County utilized the County Clerk’s multiple annex locations during the July 14 primary run-off election day. Dkt. 8-1, ¶ 9.

When the election started in Ohio on October 6, Ohio law required that drop boxes—that are open 24/7 and require no I.D.—be placed at the singular county board of elections. Texas law allowed voters to submit their mail-in ballots, showing

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<sup>8</sup> Secretary Hughs asserts that such was a mere “clarification” of the Governor’s July 27, 2020 Proclamation. [Mot. at 4.] The day before the “clarification,” the Texas Solicitor General wrote to the Texas Supreme Court that that mail-in ballots may “be returned to any early-voting clerk office” because the Code Construction Act “provides that singular includes the plural.” Letter Brief of Solicitor General, *In re Hotze, et al.*, at 5 (No. 20–0751) (Tex. Sept. 30, 2020) (citing TEX. GOV’T CODE § 311.012(b)).



I.D. as required by section 63.0101 of the Election Code, to any of the offices of the early voting clerk up to and including October 1, 2020.<sup>9</sup> In fact, the Governor’s October 1 Proclamation had to allow votes submitted pursuant to the Governor’s July 27 Proclamation to count because the election had already started in Texas.<sup>10</sup> The Sixth Circuit granted a stay because the district court’s injunction “would facilitate a grave risk of voter confusion.” *LaRose*, at 5–6 (citing *Purcell*). The opposite is true here.

And there is more. The Sixth Circuit concluded that Secretary LaRose’s directive was reasonable because, “notably,” voters in Ohio “may (1) vote in person on election day, (2) vote in-person for more than four weeks before election day, (3) mail in an absentee ballot; or (4) drop off an absentee ballot at a drop box.” *Id.* at 3, 4. The Sixth Circuit also concluded that Secretary LaRose accomplished “the state’s efficiency interests in administering elections” and promoted the accuracy because a ballot returned to the wrong drop box could invalidate the ballot under Ohio law. *LaRose*, at 4, 5 (citing OHIO REV. CODE §3509.05(A)).<sup>11</sup> No such concern was present here because, as already practiced in Harris County, voters interacted elections staff. [See Dkt. 8-1 ¶ 16; Dkt. 21, ¶ 14.]

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<sup>9</sup> October 1 Proclamation at 3.

<sup>10</sup> Compare the July 27 Proclamation *with* the October 1 Proclamation at 3.

<sup>11</sup> The “efficiency interest is particularly important where, as here, voting is already in progress.” *Id.* at 4.

To sum up, Ohio's statewide *elected* chief elections officer, followed a statute promulgated by the Ohio Legislature and announced a change almost *two months* before the election began. On this matter's facts where the enjoined state action was an action that occurred after voting began, it can be said with confidence that the Sixth Circuit motions panel would have denied Hughs's stay pending appeal.

### CONCLUSION

For the foregoing reasons, the Secretary's motion for a stay pending appeal should be denied.

DATED: OCTOBER 12, 2020

RESPECTFULLY SUBMITTED,

*/s/ Justin C. Pfeiffer*

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**CERTIFICATE OF ELECTRONIC COMPLIANCE**

I certify that (1) the required privacy redactions have been made, 5th. Cir. R. 25.2.13; (2) the electronic submission is an exact copy of the paper document, 5th Cir. R. 25.2.1; and (3) the document has been scanned for viruses with the most recent version of a commercial virus scanning program and is free of viruses. I will mail the correct number of paper copies of the foregoing document to the Clerk of the Court when requested.

DATED: OCTOBER 12, 2020

*/s/ Justin C. Pfeiffer*  
\_\_\_\_\_  
JUSTIN C. PFEIFFER

**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Appellate Procedure 25(d)(3) and Fifth Circuit Rule 25.2.5, I hereby that on October 12, 2020, I electronically filed the

**BRIEF OF *AMICI CURIAE* JOHN W. OLDHAM, IN HIS OFFICIAL CAPACITY AS THE FORT BEND COUNTY ELECTIONS ADMINISTRATOR, AND CHRIS HOLLINS, IN HIS OFFICIAL CAPACITY AS HARRIS COUNTY CLERK, IN SUPPORT OF PLAINTIFFS-  
APPELLEES**

with the Clerk of the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

DATED: OCTOBER 12, 2020

*/s/ Justin C. Pfeiffer*  
JUSTIN C. PFEIFFER

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT**

Pursuant to Federal Rule of Appellate Procedure 32(g) and Fifth Circuit Rules 32.2 and 32.3, I certify that the foregoing brief in opposition of plaintiff-appellant complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(2)(B).

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f):

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2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because:

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\_\_\_ this brief has been prepared in a monospaced typeface using \_\_\_\_\_ with \_\_\_\_\_.

DATED: OCTOBER 12, 2020

*/s/ Justin C. Pfeiffer*  
\_\_\_\_\_  
JUSTIN C. PFEIFFER

**EXHIBITS**

DECLARATION OF CHRISTOPHER G. HOLLINS [DKT. 8-1]..... A  
DECLARATION OF JOHN OLDHAM [DKT. 21].....B  
SUPPLEMENTAL DECLARATION OF CHRISTOPHER G. HOLLINS [DKT. 51-1].....C

STATE of TEXAS

§  
§  
§  
§  
§

COUNTY OF HARRIS

**DECLARATION OF CHRISTOPHER G. HOLLINS,**  
**HARRIS COUNTY CLERK**

Pursuant to 20 U.S.C. § 1746, I, Christopher G. Hollins, declare as follows:

1. My name is Christopher G. Hollins. I am over the age of 18, have personal knowledge of the facts stated in this declaration, and can competently testify to their truth.

2. I am submitting this declaration to explain the impact of the Governor’s Proclamation of October 1, 2020 (the “Proclamation”), on the election process in Harris County, and to provide the Court with current information about election planning, conduct, and implementation.

**Early Voting Clerk Role, Harris County, and the Governor’s Proclamations**

3. As Harris County Clerk, I am the early voting clerk for Harris County, Texas. *See* TEX. ELEC. CODE § 83.002. As “early voting clerk,” I have the authority and duty to “conduct the early voting,” which includes early voting both in person and by mail. TEX. ELEC. CODE §§ 83.001, 83.002. Before serving as County Clerk, I spent the majority of my career with one of the world’s leading management consulting firms, where I flourished in applying analytics and organizational best practice to revamp public safety, defense, and security agencies. My experience includes vastly improving safety and operational outcomes for one of the largest public safety agencies in the United States and advising the Pentagon on cost savings related to the Joint Strike Fighter (F-35) program, the most expensive military program in human history



4. I have the duty to administer elections in the most populous county in Texas, with 4.7 million people, 2.4 million registered voters (14% of the registered voters in Texas)<sup>1</sup>, and a highly diverse electorate. Harris County is also the fourteenth largest county in Texas geographically, and by far the largest urban county, stretching over nearly 1,800 square miles. Traveling from the County’s northwest corner to the current location of the main election office is more than a 100-mile round trip. As an urban county, Harris County often has extreme traffic congestion — even during the pandemic — and traveling across the county to a central location and back can easily take at least half a day by car and all day by public transportation (if any public transportation is available in the voter’s home area).

5. Greg Abbott, Governor of Texas, announced plans to expand early voting for the November General Election in May and issued a proclamation doing so on July 27. This was not unexpected, or unprecedented, since Governor Abbott issued a similar proclamation to expand early voting in the July Primary Runoff Election. Patrick Svitek, *Texas will extend early voting period this fall, Gov. Greg Abbott says*, Tex. Trib., May 28, 2020, <https://www.texastribune.org/2020/05/28/texas-2020-early-voting-greg-abbott-coronavirus/>; Gov. Greg Abbott, Proclamation, July 27, 2020 (“July 27 Proclamation”).

6. Governor Abbott’s decision to expand the number of early voting days was crucial because it enabled voters to cast their ballots while maintaining social distance and empowered those who plan and conduct elections to help voters avoid long lines and maintain social distance in what is sure to be the highest turnout election in Texas history. Governor Abbott’s July 27 Proclamation also allowed voters to return their completed mail-in ballot in person at any time, not just on Election Day. Prior to his Proclamation, Texas law provided that voters may return their ballots by mail, by common carrier, or in person, but if they do so in-person they may only

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<sup>1</sup> See data.census.gov.; [https://www.hctx.net/Voter/Voter\\_Demographic/VoterVisualization](https://www.hctx.net/Voter/Voter_Demographic/VoterVisualization).  
**DECLARATION OF CHRISTOPHER G. HOLLINS – Page 2 of 12**

do so on Election Day to the early voting clerk's office while the polls are open and show identification just as they would if voting in person. TEX. ELEC. CODE § 86.006. If a ballot is returned in violation of Section 86.006 it "may not be counted." *Id.*, § 86.006(h). Thus, it is **very important** that the legality of methods of returning mail-in ballots be very clear, or votes may be challenged in an election contest.

### **Logistics of Planning an Election During the Pandemic**

7. Elections are extraordinarily complex to plan and implement in a democracy, even when there is not a global pandemic raging. American democracy requires that **every** eligible voter have effective access to a ballot and be provided reasonable and safe opportunities to cast their votes securely and privately because voting is an individual right, not a collective one. *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018). The larger and more diverse a community, and the higher the expected turnout, the more difficult this becomes. Multiple mechanisms of voting are useful, as they are more likely to accommodate voters. These include voting by mail, voting in-person during the Early Voting period, voting in-person on Election Day, curbside voting for people with disabilities, and other accommodations for voters with special needs.

8. Prompted by the challenges of conducting an election during a pandemic, our office has engaged in several innovative practices for the general election. We moved our elections office from a downtown, crowded location with limited parking and interior space to the NRG Arena—a large convention-hall style space. The early voting ballot board ("EVBB"), which has been dramatically expanded in size, will work at NRG rather than downtown. This enables all election workers to socially distance while working. NRG Arena will also serve as an early voting location and an Election Day location.

9. The day before the July 14 runoff election, I announced that voters had multiple drop-off locations for mail-in ballots available to them. Exhibit A, Harris County Clerk Chris

Hollins Announces Vote by Mail Drop-Off Locations, July 13, 2020, [https://www.harrisvotes.com/PressReleases/Vote%20By%20Mail%20Drop-off\\_en-US.pdf](https://www.harrisvotes.com/PressReleases/Vote%20By%20Mail%20Drop-off_en-US.pdf). These locations included our then-election headquarters, as well as our ten County Clerk annex offices. In-person drop-off was only available on Election Day, as ballots could legally only be returned in-person on that day before the July 27 Proclamation. We had no security or other logistical issues related to in-person ballot drop-off on July 14—the use of multiple drop-off locations was a success and a needed service for Harris County voters. Neither the Governor’s Office nor the SOS complained to me about using our annex offices for this purpose. In fact, our office received no complaints whatsoever until the last several days, when certain partisan elements began to attack the use of multiple drop-off locations. These complaints culminated in the Governor’s October 1 Proclamation.

**10.** Although voter behavior can be unpredictable, especially when implementing new election or business processes, or when conducting an election in unusual circumstances such as during the ongoing pandemic, deep analysis of past voting data and current voting conditions is extremely helpful toward planning a given election.

**11.** I anticipate at least 1.6 million Harris County voters will exercise their right to vote during this fall’s general election. For planning purposes, the Clerk’s office has encouraged voters to vote by mail if they are eligible, or otherwise to vote during the Early Voting period (and as early as possible during that voting period). Our goal is to frontload voters as much as possible so that on Election Day itself, lines will be minimized to better enable social distancing for the safety of voters and election workers alike. Because of the ongoing pandemic and the highly anticipated nature of the election, I expect higher than usual rates of voting by mail in the upcoming general election. I estimate there will be 300,000-600,000 voters who vote by mail, one million to 1.3

million voters who vote early in person, and 300,000 to 500,000 voters who vote on Election Day in person.

12. In past general elections, there have typically been around 100,000 mail-in ballots cast. The July runoff saw a sharp increase both in voter turnout and the ratio of voters who vote by mail. As of today, we have received more than 200,000 applications to vote by mail, more than double the total mail-in ballots received in prior elections. Of these 200,000+ applications, 89% are from voters aged 65 or older.

13. As part of our efforts to encourage voting by mail so that fewer voters have to pass through polling location doors, in mid-September we mailed applications to all registered voters over the age of 65 who had not already requested a ballot. We had planned on mailing to all registered voters who had not yet requested a ballot by mail, but we have been slowed by a lawsuit filed by the State of Texas at the request of the Texas Secretary of State (“SOS”), *State v. Hollins*, No. 2020-52383 (127<sup>th</sup> Dist. Court, Harris County). That case is currently awaiting decision at the Supreme Court of Texas after a September 30 oral argument. *See State v. Hollins*, No. 20-0739, Tex. Sup. Ct.), <http://www.search.txcourts.gov/Case.aspx?cn=20-0729&coa=cossup>. Should we succeed in the case, approximately 1.9 million additional applications, accompanied by detailed information on who is eligible to vote by mail, will be sent through the U.S. Postal Service (“USPS”).

14. I have conducted detailed modeling and analysis to determine the likely turnout, methods of voting that voters may choose (mail-in ballots, early voting in person, or Election Day), and the best allocation of resources to meet voter demand without creating long lines or other circumstances where social distancing would not be possible. The quantity and location of early voting locations have been set for over a month, and the ballot drop-off locations have been set since mid-July.

15. Since the Governor's July 27 Proclamation, Harris County has made plans to again make our annex offices available for mail ballot returns.

16. We arranged to apply the same ballot collection and security protocols at each drop-off location, whether at election administration headquarters or elsewhere. All ballot drop-off locations are equally secure. We trained enough staff at each location in election protocols and rules so that two such trained employees are present at all times while the location is accepting ballots. Attached as Exhibit B is a document we used for training staff. It requires staff to ensure that (1) the voter signs a roster (just as they would when voting in-person), *See* Exhibit C, Hand-Delivery Signature Roster, (2) the voter presents valid identification to comply with Section 63.0101 (just as they would when voting in-person), and (3) the voter signs the carrier envelope (just as they would when sending their ballot by mail).

17. Ballots are then placed in a "mail ballot tub." This is a locked ballot box designed by our long-time vote-by-mail director, which has a slit large enough for a ballot carrier envelope but small enough that fingers or tools cannot be forced inside the box to tamper with ballots. The box is sealed by tamper-proof seals. Working in pairs, staff delivers these sealed, tamper-proof boxes to NRG Arena daily for processing. This process is more secure than the voter using the mail system, in that the ballots are kept in sealed, secure boxes from the moment they leave the voter's hand. There is no unexpected administrative burden to collect ballots from the eleven annexes and transport them to our headquarters — we have planned and budgeted for this effort in order to provide the best and most secure service to Harris County voters.

#### **Issues with the Mail-In Ballot Drop-Off Locations and Poll Watchers**

18. The training document also describes the presence of poll watchers, which we welcomed to the annex drop-off locations. The first few days of ballot drop-off, poll watchers were present at multiple locations. Unfortunately, there were issues with persons engaging in poll

watching acting inappropriately, such as standing very close to voters (which is very discomforting during the pandemic), photographing voters (which is illegal in polling places, as you may not have recording devices in a polling place, TEX. ELEC. CODE § 61.014), and refusing to sign their poll watcher forms. TEX. ELEC. CODE § 33.051(b). These disruptions prompted our office to seek guidance from the SOS. Attached as Exhibit D is the legal guidance we received from that office declaring that poll watchers were not allowed at such locations at all. This was contrary to our plans and intentions as indicated by the training materials in Exhibit B.

**19.** Because of these issues, I support the aspects of the Proclamation that make it clear that Chapter 33 of the Election Code applies to drop-off locations. I welcome poll watchers to ensure transparency and confidence in the election process. I also welcome the Governor's support of poll watchers following the law and not illegally recording or harassing voters or election staff.

#### **The Effect of the Governor's Proclamation**

**20.** This last-minute change to election procedures is causing voter confusion. Reducing our drop-off locations from twelve (the ten annexes, our historical headquarters, and our new headquarters at NRG Arena) to one will increase congestion as the volume of ballot returns increases over the next few weeks. Particularly because of the widely-publicized problems with the U.S. Postal Service, some voters may have trouble receiving their ballot until close to Election Day, and will thus have to return their ballot in person in order to ensure it is returned on time. *See* Exhibit E, USPS Ltr. to SOS, July 30, 2020 (warning that first-class U.S. mail will take one week for delivery). If we are forced to reduce to one location, I anticipate that toward the end of early voting and especially on Election Day, we will see massive lines to return ballots in person. In addition, voters without reliable transportation will be unable to get to NRG Arena from their homes (which could be more than fifty miles away) in time to have their vote counted.

21. Our multiple ballot drop-off locations have been advertised to voters via social media, media interviews, and other methods. The *Harris Votes* website contained instructions on where and how to hand-deliver ballots referencing the twelve distinct locations. Exhibit F, Harris Votes, Frequently Asked Questions, visited Sept. 27, 2020 (referencing Find an Office, <https://www.cclerk.hctx.net/ContactUs.aspx>).

22. Since the Governor's October 1 Proclamation, we have chosen NRG Arena as the single mail-in ballot drop-off location because it is our headquarters for the general election. Reducing the drop-off locations from twelve to one will not enhance security of the ballots in any way, as it will force more voters to use USPS rather than see their ballot securely delivered straight to a sealed, secure ballot box.

23. The Proclamation will make it much more difficult for some voters to return their ballots by limiting counties to only one drop-off location during the early voting period. Harris County is a large county. NRG Arena sits in the southern portion of the County. The size of the County, and the location of our Houston headquarters, would make it difficult, if not impossible, for some voters to return their ballots to only that single drop-off location. This will undoubtedly force some voters to decide if they will risk their health by voting in person or if they instead will not vote at all. No Texas voter should have to make that decision.

24. In my experience, rural voters, voters who live furthest from the county drop-off location, lower-income voters, and voters without access to transportation have the hardest time traveling significant distances to vote or drop off their ballots.

25. This change also burdens the Clerk's Office administratively and was already extremely disruptive especially given the one-day notice for the change. We are having to change our voter education materials, our website, and our staff training. I also expect that the Proclamation will cause substantial confusion among voters as to where they can drop off their

ballots during the early voting period. Our call centers have been inundated with voter inquiries about their rights in light of the Proclamation, and we have had to field calls from other elected officials' offices, who are themselves flooded with calls.

### **Security of Mail-In Ballots**

26. In my experience, and given the careful planning and process vetting by my office, the ballot drop-off locations are secure. We have chain-of-custody documentation for the ballot boxes. We have rosters requiring signatures so that each batch has an audit trail as to the count of ballots and a way of verifying that it was in fact the voter who dropped off the ballot. Further, Clerk's Office personnel check the identification of every voter as they would if the voter was voting in person. In my experience, Texas does not have a wide-scale problem with election fraud. Mail-in ballots are highly regulated and loaded with paper trails so that any irregularity is spotted and addressed.

27. The mail-in ballot process contains many, heavily regulated steps.

28. We send ballots out to voters on a continuous basis. Typically, about forty-five (45) days before an election, we prioritize sending ballots to military and overseas voters, then to others who requested to vote by mail. This was done on September 19. On September 28, we sent the first batch of non-FPCA mail-in ballots, more than 180,000. From here, we send out ballots on a rolling basis as the requests come in and are processed.

29. After voters mark their ballots, they must place the ballot in a ballot envelope, which is then placed in a carrier envelope. The carrier envelope must be sealed, and the outside of the envelope must be signed by the voter. TEX. ELEC. CODE § 86.005. After voters send their ballot to our office, whether by in-person delivery or not, a very labor-intensive process begins.

30. The EVBB processes the mail-in ballots. TEX. ELEC. CODE § 87.001 *et seq.* The ballot board is selected according to TEX. ELEC. CODE § 87.001 to 87.006. The signature



verification committee is selected according to TEX. ELEC. CODE § 87.027. The EVBB must review ballots that have been returned and verify signatures via its Signature Verification Committee. TEX. ELEC. CODE § 87.027. This is a manual ballot-by-ballot process conducted on a continuous basis during the early voting period. The individuals who serve on the EVBB tend to have significant experience and work in pairs, with a representative of each major political party present.

**31.** Both the EVBB and the Signature Verification Committee are bi-partisan committees of citizens who are compensated with a modest sum. They process the ballots by:


- Determining if the carrier envelope has been properly executed;
- Reviewing the voter's signature on the carrier envelope to ensure it matches that on the mail ballot application, and that both signatures have been executed by the voter; unless the voter chose to use a witness;
- Making sure the voter's application states a legal ground for voting by mail;
- Making sure the voter is in fact registered to vote; and
- Ensuring the ballot was mailed to the proper address, among other tasks.

TEX. ELEC. CODE § 87.041(b). Only when the EVBB has determined the ballot meets these requirements will it accept the ballot for counting. TEX. ELEC. CODE § 87.041(a), (c). Then the ballots are separated from the envelopes and prepared for counting. TEX. ELEC. CODE § 87.042; *see also* Tex. Sec. of State, *Processing and Counting Early Voting by Mail Ballots*, Elec. Adv. No. 2020-20, July 2, 2020. To ensure voters do not vote twice, a "poll book" is kept electronically where election workers note when a ballot has been issued to a voter whether by mail or in person. TEX. ELEC. CODE §§ 63.003, 86.001(g), 87.122(a). If a voter who applied for and received a mail-in ballot then wishes to vote in person, the voter must surrender that ballot, and documentation is kept. TEX. ELEC. CODE § 84.032(c).

32. Ironically, voters returning mail-in ballots in person is more secure than returning by mail because (1) there is no danger of tampering or loss of the ballot in transit and (2) voters who return ballots in person must sign a roster and present voter ID. Thus, any concern about security of in-person drop-off of mail ballots is unfounded.

I declare under penalty of perjury that the foregoing is true and correct.

Date: October 3, 2020

  
By: \_\_\_\_\_  
Christopher G. Hollins  
Harris County Clerk

**Exhibits**

Harris County Clerk Chris Hollins Announces Vote by Mail Drop-Off Locations, July 13, 2020, [https://www.harrisvotes.com/PressReleases/Vote%20By%20Mail%20Drop-off\\_en-US.pdf](https://www.harrisvotes.com/PressReleases/Vote%20By%20Mail%20Drop-off_en-US.pdf). .....A

Harris County Clerk, Process to Hand-Deliver Mail Ballots to the Early Voting Clerk’s Office .....B

Hand-Delivery Signature Roster, SOS form 5-11A .....C

SOS email, Sept. 29, 2020 re poll watchers.....D

USPS Ltr. to SOS, July 30, 2020 (highlighted) ..... E

Harris Votes, Frequently Asked Questions, visited Sept. 27, 2020 ..... F



# Chris Hollins · Harris County Clerk

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**FOR IMMEDIATE RELEASE**

July 13, 2020

**CONTACT:** Communications & Voter Outreach

[County.Clerk@cco.hctx.net](mailto:County.Clerk@cco.hctx.net)

(713) 274-9550

## **Harris County Clerk Chris Hollins Announces Vote by Mail Drop-Off Locations**

*Voters Can Drop Off Their Vote by Mail Ballots at 11 Locations Across the County on Election Day*

**(Houston, TX)** – On Election Day, July 14, voters who received mail ballots but were unable to mail in their ballots on time can go in-person to 11 locations across the County to drop off their ballot. This is the first time in recent history that there has been more than a single drop-off location in Harris County. The voter must go in-person to one of the 11 locations to verify their identity for their vote to be counted. Locations will be open during polling center hours, from 7:00 AM to 7:00 PM on Election Day, Tuesday July, 14.

“We increased mail ballot drop-off locations for Election Day as another method for voters to cast their ballots safely and expand voter access for the people of Harris County,” **said Harris County Clerk Chris Hollins.** “Voters who applied to vote by mail but were unable to mail in their ballots on time can now take their completed ballots to any one of the 11 locations and know their vote will be counted. No Harris County resident should have to make a decision between their health and their Constitutional right to vote.”

### Vote by Mail Drop-off Locations:

1. Baytown  
701 West Baker Rd., Baytown TX 77521
2. Chimney Rock  
6000 Chimney Rock Road, Houston TX 77081
3. Clay Road  
16715 Clay Road, Houston TX 77084
4. Clear Lake  
16603 Buccaneer Lane, Houston TX 77062
5. Cypresswood  
6831 Cypresswood Drive, Spring TX 77379
6. Humble  
7900 Will Clayton Pkwy, Humble TX 77338
7. North Shepherd  
7300 N. Shepherd Drive, Houston TX 77091
8. Pasadena  
101 S. Richey Street, Pasadena TX 77506
9. South Belt  
10851 Scarsdale Blvd., Houston TX 77089
10. Wallisville  
14350 Wallisville Road., Houston TX 77049
11. Downtown  
1001 Preston Street, Houston TX 77002

For more election information, visit [HarrisVotes.com](http://HarrisVotes.com) and follow @HarrisVotes on Facebook, Twitter, and Instagram.

###

**EXHIBIT A**



## PROCESS TO HAND-DELIVER MAIL BALLOTS TO THE EARLY VOTING CLERK'S OFFICE

Office of Chris Hollins, Harris County Clerk

201 Caroline St., Suite 640, Houston, TX 77251-1525

1

## Introduction

On July 27, 2020, Texas Governor Greg Abbott issued a Proclamation expanding the period in which marked mail-in ballots may be hand-delivered in person by the voter to the early voting clerk's office. The Proclamation provides that marked ballots sealed in the fully executed carrier envelope may be hand-delivered to the early voting clerk's office by the voter prior to the start of early voting, during early voting and by 7:00 p.m. on Election Day. Under normal circumstances, the Election Code limits hand-delivery of mail ballot to Election Day.

The following instructions provide guidelines to help designated Deputy County Clerks carry out the Governor's proclamation and safeguard the mail ballot delivery process from September 21 through November 3, 2020.

Please be aware that hours of operation may be extended during the November Election Early Voting Period which runs from October 13-30.

2

## Step 1: Staging Mail Ballot Delivery Location

1. Ensure that directional signs related to the Vote by Mail Ballots Delivery process such as entry, hours, and procedures are posted and are clearly visible to voters when driving or walking.
2. Place sealed Ballot Tub behind counter in an area that is only accessible to authorized personnel and where it is never out of the sight of designated Deputy County Clerks.
3. Keep required administrative election forms, Reasonable Impediment Declaration and Daily Mail Voter Roster, with the corresponding Mail Ballot Envelope Tub.



4. Keep instructions binder nearby for quick reference. NOTE: Voters are not required to wear a mask to drop off mail ballots.

3

## Staging continued: Curbside Buzzer for for Mail Ballot Delivery

5. Place curbside buzzer outside the facility where it is accessible to all voters, including voters with disabilities.

- **Test the Buzzer!**
  - During setup
  - Prior to opening
  - Throughout the voting period



6. Keep in mind that this is an election process that is subject to public inspection.

4

## Step 2: Daily In-Office Interaction with Voters hand-delivering mail ballot

When a voter walks in to hand-deliver their mail ballot carrier envelope, the designated Deputy County Clerk should,

- Ask for an acceptable form of identification. Pursuant to Sec. 63.001(b)—A voter must present one form of photo identification listed in Section 63.0101(a); or one form of identification listed in Section 63.0101(b) accompanied by a Reasonable Impediment Declaration (RID).
- Designated Deputy County Clerk must match the identification a voter presents with the voter's name on the envelope (NOT the address).
- Designated Deputy County Clerk must enter voter's name and voter ID on the Roster.
- Voter must sign or mark the roster beside name.

**NOTE:** Individuals that request to monitor the process must adhere to the ELECTION OFFICERS AND OBSERVERS requirements provided in Title 3, Chapter 33., Subchapter A., of the Texas Election Code.

### Sec. 63.0101. DOCUMENTATION OF PROOF OF IDENTIFICATION.

(a) The following documentation is an acceptable form of photo identification under this chapter:

- (1) a driver's license, election identification certificate, or personal identification card issued to the person by the Department of Public Safety that has not expired or that expired no earlier than four years before the date of presentation;
- (2) a United States military identification card that contains the person's photograph that has not expired or that expired no earlier than four years before the date of presentation;
- (3) a United States citizenship certificate issued to the person that contains the person's photograph;
- (4) a United States passport book or card issued to the person that has not expired or that expired no earlier than four years before the date of presentation; or
- (5) a license to carry a handgun issued to the person by the Department of Public Safety that has not expired or that expired no earlier than four years before the date of presentation.

(b) The following documentation is acceptable as proof of identification under this chapter:

- (1) a government document that shows the name and address of the voter, including the voter's voter registration certificate;
  - (2) one of the following documents that shows the name and address of the voter:
    - (A) a copy of a current utility bill;
    - (B) a bank statement;
    - (C) a government check; or
    - (D) a paycheck; or
  - (3) a certified copy of a domestic birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity.
- (c) A person 70 years of age or older may use a form of identification listed in Subsection (a) that has expired for the purposes of voting if the identification is otherwise valid.

5

## Make sure voter has signed the mail ballot carrier envelope where required

person's ballot or carrier envelope may be a crime. No one should sign the ballot or carrier envelope for another person. A voter must sign the ballot or carrier envelope before it leaves the voter's hand. Seal envelope before signing. Do not sign this envelope unless the ballot has been marked by the voter.

El votante mismo tiene que haberlo sellado. No se permite que alguien más firme el sobre por otro votante. El votante debe sellar el sobre antes de que se lo lleve el portador. Sellar el sobre antes de firmar. No firme este sobre a menos que el boleta ya haya sido marcada por el votante.

**SEAL OVER SEALED FLAP / A SOBRE LA TAPA SELLADA** →

**SIGNATURE OF VOTER (FIRMA DEL VOTANTE)**

X \_\_\_\_\_

I certify that the enclosed ballot expresses my wishes independent of any dictation or undue persuasion by any person. (Certifico que la boleta aquí adjunta es a conocer mis deseos y no obedece las indicaciones ni influencias indebidas de otras personas.)

**OATH OF PERSON ASSISTING VOTER:** I swear (or affirm) that I will not suggest by word, sign or gesture how the voter shall vote; I will confine my assistance to answering the voter's questions, to stating the propositions on the ballot, and to naming candidate and, if listed, their political parties; I will prepare the voter's ballot as the voter directs; and I am not the voter's employer, an agent of the voter's employer, or an officer or agent of a labor union to which the voter belongs. **JURAMENTO DE PERSONA AYUDANDO EL VOTANTE:** Juro (o afirmo) que no voy a sugerir por palabra, signo o gesto cómo deberá votar el elector; solamente ayudare a responder preguntas del elector, indicando las proposiciones en la boleta electoral y nombre candidato y si aparece, sus partidos políticos; voy a preparar la boleta del votante como dirige el votante; y no soy empleador del votante, un agente del empleador del votante, o un oficial o agente de un sindicato al que pertenece el elector.

**Assistant/Witness**  
If voter cannot sign, voter's mark must be witnessed. If voter cannot make mark, witness must check here \_\_\_\_\_. If the voter is unable to read and / or mark the ballot, the assistant must fill out the information below. Failure of Witness and/or Assistant to complete this information is a crime. (Si el votante no puede firmar, deberá hacer su marca ante un testigo. Si el votante no puede poner su marca, el testigo deberá marcar aquí \_\_\_\_\_. Si el votante no puede leer y/o marcar la boleta, el asistente deberá llenar la información que se pide abajo. Tenga en cuenta que el haber servido de testigo o ayudante y no llenar esta información es un delito.)

**ANTE:** Proporcione toda la información solicitada para firmar el sobre en el regíon apropiado. Si no sabe su marca y la información en cuanto al testigo deberá estar más de una boleta dentro de cada sobre. Aunque se use un sobre, nunca se debe colocar más de un sobre dentro de otro sobre.

6

### Step 3: Daily Curbside Interaction with Voters hand-delivering mail ballot

A voter may opt to hand-deliver their mail ballot carrier envelope without exiting their vehicle. If this occurs,

- The designated Deputy County Clerk may process the voter at the curbside just as a voter is processed inside the facility. However, in this instance, two clerks are required, one to conduct the transaction and the other to witness it.
- a voter must present acceptable form of identification,
- designated Deputy County Clerk must verify voter's ID to name on the ballot envelope (NOT the address),
- designated Deputy Clerk must enter voter's name on roster
- Voter must sign the roster. The roster can be taken to vehicle.
- Designated Clerk will bring ballot envelope into office and deposit the ballot envelope in the Mail Ballot Tub.



**Make sure the voter has signed the mail ballot carrier envelope where required.**

7

### Step 4: Mail Ballot Tub, Use, Safeguarding and Delivery

- Once a Mail Ballot Tub is full of mail ballot envelopes, the filled Mail Ballot Tub must be secured in the office's safe box. Corresponding Roster and Reasonable Impediment Declarations must be deposited in the tub.
- Do Not Open Seals on the Tub/Tubs or Break the Seals on any Tub/Tubs.
- Fill out transmittal form before delivering Mail Ballot Tub to Election headquarters. Two (2) clerks must sign the transmittal form and any chain of custody records.
- Two (2) clerks must deliver Mail Ballot Tubs to Voting By Mail team at election headquarters at the end of the day. Tubs must be secured inside a vehicle. If needed, two separate vehicles may be employed for delivery.
- Designated Deputy Clerk(s) must prepare a new Mail Ballot Envelope Tub for use as required.

8



*Voting By Mail Department:*  
**Jennifer Colvin**  
713-755-3150  
[vbm@harrisvotes.com](mailto:vbm@harrisvotes.com)

**For  
More  
Information**

**NOVEMBER 3, 2020 SPECIAL EXTENDED HAND-DELIVERY PERIOD  
 SIGNATURE ROSTER - HAND-DELIVERY OF BALLOT BY MAIL**

Type of Election	November 3, 2020	Polling Location	Office of the Early Voting Clerk
Date of Election	November 3, 2020	Authorizing Election	

	Signature of Voter (Firma del Votante)	Poll List (Lista de Votantes)	VUID # (if known)	Date and Time of Delivery		Acceptable Form of ID	RID	Printed Name of Election Official Who Received Carrier Envelope
				/	/			
10				/	/2020			
9				/	/2020			
8				/	/2020			
7				/	/2020			
6				/	/2020			
5				/	/2020			
4				/	/2020			
3				/	/2020			
2				/	/2020			
1				/	/2020			

**NOTE:** A voter may only deliver his or her own personal ballot. **NOTA:** Un votante solo puede entregar su propia boleta personal.

**Instructions:**

1. Ask the voter to present an acceptable form of photo ID when he or she presents the Carrier Envelope for hand-delivery.
    - a. If the voter does not have an acceptable form of photo ID, ask the voter for a supporting form of ID and have the voter execute the Reasonable Impediment Declaration.
  2. Add the voter's name to the Poll List column of the Roster and instruct the voter to sign the signature column on the corresponding numbered line.
  3. Write the VUID number, if known, in the VUID # column.
  4. Write the date and time of delivery in the "Date and Time of Delivery Column." Put the date on top and the time below it.
  5. Check the appropriate column to note whether the voter had an approved form of photo ID or executed a RID.
  6. Write the name of the Election Official who received the ballot from the voter.
  7. Write "Hand-Delivery" and note the time and date the Ballot by Mail was hand-delivered on the Carrier Envelope.
  8. Upon receipt of the Carrier Envelope, secure the Ballot by Mail until its delivery to the Early Voting Ballot Board.
- If the voter does not have an approved form of ID to complete the Ballot by Mail hand-delivery process, he or she can return to an Early Voting or Election Day voting site to vote a provisional ballot in person.
- If the voter insists on leaving the Carrier Envelope without presenting an approved form of ID, the ballot will be treated as a ballot not timely returned and therefore, not counted.**

**From:** Christina Adkins  
**Subject:** Poll watchers not permitted at EV clerk's office  
**Date:** September 29, 2020 at 12:52 PM  
**To:** Wynn, Michael (CCO)  
**Cc:** Keith Ingram

CW

Michael,

As we discussed on the phone, the Texas Election Code provides that poll watchers can serve at a precinct polling place (33.052), an early voting polling place (33.053), an early voting ballot board meeting (33.054), and at the central counting station (33.055). The Texas Election Code does not provide that a poll watcher is permitted to serve at the early voting clerk's office. Therefore, poll watchers are not permitted to be present to observe the hand delivery of mail ballots as this action occurs at the early voting clerk's office.

Please let me know if you have any additional questions.

Thank you,

**Christina Worrell Adkins**

Legal Director – Elections Division

Office of the Texas Secretary of State

1019 Brazos Street | Rudder Building, 2nd Floor | Austin, Texas 78701

1.800.252.VOTE (8683)

[elections@sos.texas.gov](mailto:elections@sos.texas.gov) | [www.sos.texas.gov](http://www.sos.texas.gov)

**For Voter Related Information, please visit:**



*The information contained in this email is intended to provide advice and assistance in election matters per §31.004 of the Texas Election Code. It is not intended to serve as a legal opinion for any matter. Please review the law yourself, and consult with an attorney when your legal rights are involved.*

THOMAS J. MARSHALL  
GENERAL COUNSEL  
AND EXECUTIVE VICE PRESIDENT



July 30, 2020

Honorable Ruth Hughs  
Texas Secretary of State  
P.O. Box 12887  
Austin, TX 78711-2887

Dear Secretary Hughs:

Re: Deadlines for Mailing Ballots

With the 2020 General Election rapidly approaching, this letter follows up on my letter dated May 29, 2020, which I sent to election officials throughout the country. That letter highlighted some key aspects of the Postal Service's delivery processes. The purpose of this letter is to focus specifically on the deadlines for requesting and casting ballots by mail. In particular, we wanted to note that, under our reading of Texas' election laws, certain deadlines for requesting and casting mail-in ballots are incongruous with the Postal Service's delivery standards. This mismatch creates a risk that ballots requested near the deadline under state law will not be returned by mail in time to be counted under your laws as we understand them.

As I stated in my May 29 letter, the two main classes of mail that are used for ballots are First-Class Mail and USPS Marketing Mail, the latter of which includes the Nonprofit postage rate. Voters must use First-Class Mail (or an expedited level of service) to mail their ballots and ballot requests, while state or local election officials may generally use either First-Class Mail or Marketing Mail to mail blank ballots to voters. While the specific transit times for either class of mail cannot be guaranteed, and depend on factors such as a given mailpiece's place of origin and destination, most domestic First-Class Mail is delivered 2-5 days after it is received by the Postal Service, and most domestic Marketing Mail is delivered 3-10 days after it is received.

To account for these delivery standards and to allow for contingencies (e.g., weather issues or unforeseen events), the Postal Service strongly recommends adhering to the following timeframe when using the mail to transmit ballots to domestic voters:

- **Ballot requests:** Where voters will both receive and send a ballot by mail, voters should submit their ballot request early enough so that it is received by their election officials at least 15 days before Election Day at a minimum, and preferably long before that time.
- **Mailing blank ballots to voters:** In responding to a ballot request, election officials should consider that the ballot needs to be in the hands of the voter so that he or she has adequate time to complete it and put it back in the mail stream so that it can be processed and delivered by the applicable deadline. Accordingly, the Postal Service recommends that election officials use First-Class Mail to transmit blank ballots and allow 1 week for delivery to voters. Using Marketing Mail will result in slower delivery times and will increase the risk that voters will not receive their ballots in time to return them by mail.

475 L'ENFANT PLAZA SW  
WASHINGTON DC 20260-1100  
PHONE: 202-268-5555  
FAX: 202-268-6981  
THOMAS.J.MARSHALL@USPS.GOV  
www.usps.com

**EXHIBIT E**

- **Mailing completed ballots to election officials:** To allow enough time for ballots to be returned to election officials, domestic voters should generally mail their completed ballots at least one week before the state's due date. In states that allow mail-in ballots to be counted if they are *both* postmarked by Election Day *and* received by election officials by a specific date that is less than a week after Election Day, voters should mail their ballots at least one week before they must be received by election officials. So, for example, if state law requires a mail-in ballot to be postmarked by Tuesday, November 3, and received by Wednesday, November 4, voters should mail their ballot by Wednesday, October 28, to allow enough time for the ballots to be delivered by November 4. Voters must also be aware of the posted collection times on collection boxes and at the Postal Service's retail facilities and that ballots entered after the last posted collection time on a given day will not be postmarked until the following business day.

Under our reading of your state's election laws, as in effect on July 27, 2020, certain state-law requirements and deadlines appear to be incompatible with the Postal Service's delivery standards and the recommended timeframe noted above. As a result, to the extent that the mail is used to transmit ballots to and from voters, there is a significant risk that, at least in certain circumstances, ballots may be requested in a manner that is consistent with your election rules and returned promptly, and yet not be returned in time to be counted.

Specifically, it appears that a voter may generally request a ballot as late as 11 days before the election, and that a completed ballot must be postmarked by Election Day and received by the day after the election to be counted. It also appears that law does not appear to require election officials to transmit a ballot by mail until seven days after receiving a ballot application. If a voter submits a request at or near the ballot-request deadline, and if the requested ballot is mailed to the voter 7 days after the request is received, there is a risk that the ballot will not reach the voter before Election Day, and accordingly that the voter will not be able to use the ballot to cast his or her vote. Even if the requested ballot reaches the voter by Election Day, there is a significant risk that, given the delivery standards for First-Class Mail, a completed ballot postmarked on or near Election Day will not be delivered in time to meet the state's receipt deadline of November 4. As noted above, voters who choose to mail their ballots should do so no later than Wednesday, October 28.

To be clear, the Postal Service is not purporting to definitively interpret the requirements of your state's election laws, and also is not recommending that such laws be changed to accommodate the Postal Service's delivery standards. By the same token, however, the Postal Service cannot adjust its delivery standards to accommodate the requirements of state election law. For this reason, the Postal Service asks that election officials keep the Postal Service's delivery standards and recommendations in mind when making decisions as to the appropriate means used to send a piece of Election Mail to voters, and when informing voters how to successfully participate in an election where they choose to use the mail. It is particularly important that voters be made aware of the transit times for mail (including mail-in ballots) so that they can make informed decisions about whether and when to (1) request a mail-in ballot, and (2) mail a completed ballot back to election officials.

We remain committed to sustaining the mail as a secure, efficient, and effective means to allow citizens to participate in the electoral process when election officials determine to utilize the mail as a part of their election system. Ensuring that you have an understanding of our operational capabilities and recommended timelines, and can educate voters accordingly, is important to achieving a successful election season. Please reach out to your assigned election mail coordinator to discuss the logistics of your mailings and the services that are available as well as any questions you may have. A list of election mail coordinators may be found on our website at: <https://about.usps.com/election-mail/politicelection-mail-coordinators.pdf>.

We hope the information contained in this letter is helpful, and please let me know if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Marshall". The signature is written in a cursive style with a large, prominent initial "T".

Thomas J. Marshall

ELECTION DIVISION

# KNOWLEDGEBASE

**NEXT ELECTION: NOVEMBER 03, 2020 - GENERAL AND SPECIAL ELECTIONS**  
 LAST DAY TO APPLY FOR BALLOT BY MAIL (RECEIVED, NOT POSTMARKED): OCTOBER 23, 2020  
 EARLY VOTING: OCTOBER 13, 2020 - OCTOBER 30, 2020



**Voting by Mail**

(/Voting info? ang en US#VoteByMail)



**Poll locations**

(/What times? ang en US)



**Sample Ballots**

(/Sample Ballots? ang en US)



**Election Workers**

(/Election Workers? ang en US)



**Candidates & Ethics**

(/Candidates & Ethics? ang en US)



**Voting FAQ**

(/FAQ? ang en US#earlyVotingFAQ)

Knowledgebase

[Voting Process](#)

[Early Voting](#)

[Election Day](#)

[Primary Election](#)

[Contact Us](#)

KNOWLEDGEBASE

## FREQUENTLY ASKED QUESTIONS

[Voting Process](#)   [Early Voting](#)   [Election Day](#)   [Primary Election](#)   [Voting By Mail](#)

**+ WHO CAN VOTE BY MAIL?**





- + WHAT QUALIFIES AS HAVING A DISABILITY, AND WHAT DOES THAT MEAN IN THE AGE OF CORONAVIRUS (COVID-19)?
  - + WHEN CAN I APPLY TO VOTE BY MAIL? IS THERE A DEADLINE?
  - + WHERE CAN I GET AN APPLICATION TO VOTE BY MAIL?
  - + WHAT IF I'M NOT REGISTERED TO VOTE?
  - + DO I HAVE TO APPLY TO VOTE BY MAIL FOR EACH ELECTION?
  - + CAN I RECEIVE ASSISTANCE WITH FILLING OUT THE VOTE BY MAIL APPLICATION?
  - + HOW DO I SUBMIT MY APPLICATION TO VOTE BY MAIL?
  - + WHEN WILL I GET MY VOTE BY MAIL BALLOT?
  - HOW DO I RETURN MY COMPLETED BALLOT TO THE ELECTION OFFICE? IS THERE A DEADLINE?
- A completed mail ballot MUST be returned to the Harris County Clerk's Office in the Office a Carrier Envelope provided to you. It may be returned in any of the following manners:
1. Regular resident mail via United States Postal Service;
    - a. Ballot must be postmarked by 7:00 p.m. on Election Day and must be received by 5:00 p.m. on November 4 (the day after Election Day)
  2. In person drop off at any of the [Harris County Clerk Annex Locations](https://www.harriscountytx.gov/AnnexLocations) (<https://www.harriscountytx.gov/AnnexLocations>) during regular business hours through Election Day, November 3, 2020, at 7:00 p.m.;
    - a. You must present an acceptable form of [photo identification](https://www.harrisvotes.com/VotingInfo?lang=en_US#IDs) ([https://www.harrisvotes.com/VotingInfo?lang=en\\_US#IDs](https://www.harrisvotes.com/VotingInfo?lang=en_US#IDs))
    - b. If a voter does not possess and cannot reasonably obtain an acceptable form of photo identification, the voter [may show a List B identification](https://www.sos.state.tx.us/elections/forms/d/poster_8.5x14_aw_voter.pdf) ([https://www.sos.state.tx.us/elections/forms/d/poster\\_8.5x14\\_aw\\_voter.pdf](https://www.sos.state.tx.us/elections/forms/d/poster_8.5x14_aw_voter.pdf)) and complete a reasonable impediment declaration (RID)
    - c. Only the voter may deliver the ballot in person
  3. Common or contract carrier, such as personal courier, or FedEx or UPS, or other contracted mail service
    - a. Ballot must be received by 7:00 p.m. on Election Day
    - b. If the carrier provides receipt marking a time before 7:00 p.m. on Election Day, it may be received by 5:00 p.m. on November 4 (the day after Election Day)
- + ARE THERE DIFFERENT DEADLINES IF I AM OVERSEAS OR SERVING IN THE MILITARY? ^
  - + WILL MY VOTE BY MAIL BALLOT COUNT IF I CHOOSE NOT TO VOTE ON CERTAIN ISSUES OR CANDIDATES?
  - + HOW DOES THE HARRIS COUNTY CLERK'S OFFICE PROCESS MY VOTE BY MAIL BALLOT SECURELY?
  - + HOW IS MY SIGNATURE VERIFIED?
  - + WHEN IS MY VOTE BY MAIL BALLOT COUNTED?
  - + CAN I VOTE IN PERSON IF I RECEIVED A VOTE BY MAIL BALLOT? WHAT ABOUT IF I SUBMITTED A VOTE BY MAIL APPLICATION AND NEVER RECEIVED A BALLOT?
  - + CAN I CHANGE MY VOTE AFTER I VOTE BY MAIL?
  - + DOES MY VOTE BY MAIL BALLOT NEED STAMPS?
  - + HOW CAN I CHECK TO SEE IF MY VOTE BY MAIL BALLOT HAS BEEN MAILED OR RECEIVED?



## ELECTION DIVISION CONTACT US

Information is vital to accessing the voting process. For this reason, we encourage you to contact us if you have a question, need assistance or have a suggestion.



### Elections Department

Harris County Administration Building  
 1001 Preston, 4th Floor, Rm. 439  
 Houston, TX 77002  
[\(https://www.google.com/maps/d/r/Current+Location/1001+Preston+St+Houston,+TX+77002/@/\)](https://www.google.com/maps/d/r/Current+Location/1001+Preston+St+Houston,+TX+77002/@/)

Voting By Mail  
 1 NRG Parkway  
 Houston, TX 77054  
 [\(https://www.google.com/maps?daddr=1+NRG+P+wy+Houston+TX+77054\)](https://www.google.com/maps?daddr=1+NRG+P+wy+Houston+TX+77054)

(713) 755 6965  
[voters@harrsvotes.com](mailto:voters@harrsvotes.com)  
[\(ma\\_to\\_voters@harrsvotes.com\)](mailto:ma_to_voters@harrsvotes.com)

ADA Coordinator: Rache Brown  
 (713) 755 6965  
[ada@cco.hctx.net](mailto:ada@cco.hctx.net)  
[\(ma\\_to\\_ada@cco.hctx.net\)](mailto:ma_to_ada@cco.hctx.net)

[Voter Outreach \(/Outreach\)](#)  
[Feedback \(/Outreach/#Feedback\)](#)  
[Career Opportunities](#)  
 [\(https://www.governmentjobs.com/careers/harriscounty?department=0%20County%20Clerk%27s%20Office&sort=Postion\)](https://www.governmentjobs.com/careers/harriscounty?department=0%20County%20Clerk%27s%20Office&sort=Postion)



### Social Media

[Twitter](#)  
 [\(https://twitter.com/HarrisVotesEng\)](https://twitter.com/HarrisVotesEng)

[Facebook](#)  
 [\(https://facebook.com/harrsvotes\)](https://facebook.com/harrsvotes)

[Instagram](#)  
 [\(https://instagram.com/harrsvotes\)](https://instagram.com/harrsvotes)



### Ballot By Mail

1001 Preston, 4th Floor, Rm. 440  
 Houston, TX 77002  
 [\(https://www.google.com/maps/d/r/Current+Location/1001+Preston+St+Houston,+TX+77002/@/\)](https://www.google.com/maps/d/r/Current+Location/1001+Preston+St+Houston,+TX+77002/@/)  
 (713) 755 3150  
[BBM@cco.hctx.net](mailto:BBM@cco.hctx.net)  
[\(ma\\_to\\_BBM@cco.hctx.net\)](mailto:ma_to_BBM@cco.hctx.net)



### County Clerk Main Office

201 Caroline, 4th Floor, Rm. 460  
 Houston, TX 77002  
 [\(https://www.google.com/maps/d/r/Current+Location/201+Caroline+St+Houston,+TX+77002/@/\)](https://www.google.com/maps/d/r/Current+Location/201+Caroline+St+Houston,+TX+77002/@/)  
 (713) 274 8600

The Harris County Clerk's Office makes a diligent effort to post accurate information on this website, but assumes no liability for damages incurred directly or indirectly as a result of errors, omissions, or discrepancies. For additional information please review our [Privacy Policy \(/Home/PrivacyPolicy?lang=en-US\)](#) and our [Accessibility Statement \(/Home/Accessibility?lang=en-US\)](#).

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

TEXAS LEAGUE OF UNITED LATIN §  
AMERICAN CITIZENS, NATIONAL §  
LEAGUE OF UNITED LATIN AMERICAN §  
CITIZENS, LEAGUE OF WOMEN §  
VOTORS OF TEXAS, RALPH §  
EDELBACH, and BARBARA MASON §  
Plaintiff, §

v. §

CIVIL ACTION NO.: 1:20-cv-1006

GREG ABBOTT, in his official capacity as §  
Governor of Texas, RUTH HUGHS, in her §  
Official capacity as Texas Secretary of State, §  
DANA DEBEAUVOIR, in his official §  
capacity as Travis County Clerk, CHRIS §  
HOLLINS, in his official capacity as Harris §  
County Clerk; JOHN W. OLDHAM, in his §  
official capacity as Fort Bend County §  
Elections Administrator; LISA RENEE §  
WISE, in her official capacity as El Paso §  
County Elections Administrator; §  
Defendants. §

**DECLARATION OF DEFENDANT JOHN W.  
OLDHAM, IN HIS OFFICIAL CAPACITY AS  
FORT BEND COUNTY ELECTIONS  
ADMINISTRATOR**

**DECLARATION OF DEFENDANT JOHN W. OLDHAM**

JUSTIN C. PFEIFFER  
Assistant County Attorney, Fort Bend County  
SBN: 24091473  
401 Jackson Street, Third Floor  
Richmond, Texas 77469  
(281) 341-4555  
(281) 341-4557 - Facsimile  
[Justin.Pfeiffer@FortBendCountytx.gov](mailto:Justin.Pfeiffer@FortBendCountytx.gov)  
ATTORNEY-IN-CHARGE FOR  
DEFENDANT JOHN W. OLDHAM, IN HIS  
OFFICIAL CAPACITY AS FORT BEND COUNTY  
ELECTIONS ADMINISTRATOR

**DECLARATION OF JOHN W. OLDHAM**

I, John W. Oldham, declare:

1. I am over the age of 18, have personal knowledge of the facts stated in this declaration, and can competently testify to their truth.

2. I am submit this declaration to explain the impact of the Governor's Proclamation of October 1, 2020 (the "Proclamation"), on the election process in Fort Bend County, and to provide the Court with current information about election planning, conduct, and implementation.

**Early Voting Clerk Role, Fort Bend County, and the Governor's Proclamations**

3. As the Elections Administrator for Fort Bend County, I am the early voting clerk for Fort Bend County, Texas. *See* TEX. ELEC. CODE § 83.001. As "early voting clerk," I have the authority and duty to "conduct the early voting," which includes early voting both in person and by mail. TEX. ELEC. CODE §§ 83.001, 83.002. I have served as the Fort Bend County Elections Administrator since 2008. Prior to that, I have served in elections administration since graduating from the University of Southern Illinois in 1975.

4. I have the duty to administer elections in the ninth-most-populous county in Texas, with approximately 830,000 people, 477,000 registered voters, and a highly diverse electorate. County officials predict that Fort Bend County will have one million residents in two years. Fort Bend County, Texas, is the second-largest County by population in the Houston-metropolitan region and one of the most diverse and fastest-growing counties in the country. The County's population has nearly tripled since 2000 while the ratio of its Anglo population has decreased to 29%, the remainder is almost evenly divided among Latinos, African-Americans, and East and South Asians.

5. Fort Bend County constitutes 885 square miles. Traveling from the County's northeast or southeast corner to the current location of the main election office is a 50-mile round trip. As a suburban county, Fort Bend County's eastern portion often has traffic congestion such that traveling across the county to a central location and back can easily take more than two hours of driving.

6. Greg Abbott, Governor of Texas, announced plans to expand early voting for the November General Election in May and issued a proclamation doing so on July 27. This was not unexpected, or unprecedented, since Governor Abbott issued a similar proclamation to expand early voting in the July Primary Runoff Election. Patrick Svitek, *Texas will extend early voting period this fall, Gov. Greg Abbott says*, Tex. Trib., May 28, 2020, <https://www.texastribune.org/2020/05/28/texas-2020-early-voting-greg-abbott-coronavirus/>; Gov. Greg Abbott, Proclamation, July 27, 2020 ("July 27 Proclamation").

7. Governor Abbott's decision to expand the number of early voting days was crucial because it enabled voters to cast their ballots while maintaining social distance and empowered those such as myself who plan and conduct elections to help voters avoid long lines and maintain social distance in what is sure to be the highest turnout election in Texas history. Governor Abbott's July 27 Proclamation also allowed voters to return their completed mail-in ballot in person at any time, not just on Election Day. Prior to the July 27, 2020 Proclamation, Texas law provided that voters may return their ballots by mail, by common carrier, or in person, but if they do so in-person they may only do so on Election Day to the early voting clerk's office while the polls are open and show identification just as they would if voting in person. TEX. ELEC. CODE § 86.006(a-1). Because a ballot returned in violation of § 86.006 "may not be counted," *id.*

§ 86.006(h), the legality of methods of returning mail-in ballots be very clear, or votes may be challenged in an election contest.

### **Logistics of Planning an Election During the Pandemic**

8. Elections are extraordinarily complex to plan and implement in a democracy, even when there is not a global pandemic raging. American democracy requires that *every* eligible voter have effective access to a ballot and be provided reasonable and safe opportunities to cast their votes securely and privately because voting is an individual right, not a collective one. *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018). The larger and more diverse a community, and the higher the expected turnout, the more difficult this becomes. Multiple mechanisms of voting are useful, as they are more likely to accommodate voters. These include voting by mail, voting in-person during the Early Voting period, voting in-person on Election Day, curbside voting for people with disabilities, and other accommodations for voters with special needs.

9. Prompted by the challenges of conducting an election during a pandemic, our office has engaged in several innovative practices for the general election. For example, we planned on allowing three additional drop-off locations for mail-in ballots. Just before the Proclamation, and in conjunction with the County Judge, we announced the following locations closer the County's population centers: (1) 22333 Grand Corner Drive, Katy, TX 77494; (2) 307 Texas Parkway, Missouri City, TX 77489; and (3) 5855 Sienna Springs Way, Missouri City, TX 77459. We also planned at fourth at 12919 Dairy Ashford Rd, Ste 200, Sugar Land, TX 77478.

10. Although voter behavior can be unpredictable, especially when implementing new election or business processes, or when conducting an election in unusual circumstances such as during the ongoing pandemic, deep analysis of past voting data and current voting conditions is extremely helpful toward planning a given election.

11. I anticipate at least 330,000 Fort Bend County voters will exercise their right to vote during this fall's general election. For planning purposes, our office has encouraged voters to vote by mail if they are eligible, or otherwise to vote during the Early Voting period (and as early as possible during that voting period). Our goal is to frontload voters as much as possible so that on Election Day itself, lines will be minimized to better enable social distancing for the safety of voters and election workers alike. Because of the ongoing pandemic and the highly anticipated nature of the election, I expect higher than usual rates of voting by mail in the upcoming general election. I estimate there will be 35,000 to 40,000 voters who vote by mail, 210,000 to 230,000 voters who vote early in person, and 60,000 to 70,000 voters who vote on Election Day in person.

12. In the last presidential general election, around 15,000 mail-in ballots were cast, which was then a record for Fort Bend County. The July runoff saw a sharp increase both in voter turnout and the ratio of voters who vote by mail with over 10,000 of the 80,000 ballots cast by mail. As of today, we have processed more than 32,000 applications to vote by mail, more than double the total mail-in ballots received in prior elections. Of these 32,000+ applications, 90% are from voters aged 65 or older.

13. I have conducted detailed modeling and analysis to determine the likely turnout, methods of voting that voters may choose (mail-in ballots, early voting in person, or Election Day), and the best allocation of resources to meet voter demand without creating long lines or other circumstances where social distancing would not be possible. Our office selected the quantity and location of early voting locations and ballot drop-off locations with reliance upon the Governor's July 27 Proclamation.

14. We arranged to apply the same ballot collection and security protocols at each drop-off location, whether at election administration headquarters or elsewhere. All ballot drop-off

locations are equally secure. We trained enough staff at each location in election protocols and rules so that two such trained employees are present at all times while the location is accepting ballots. It requires staff to ensure that (1) the voter signs a roster (just as they would when voting in-person), *see* Exhibit C to the October 3, 2020 Declaration of Chris Hollins [Dkt. No. 8–1 at 19], Hand-Delivery Signature Roster, (2) the voter presents valid identification to comply with Texas Election Code § 63.0101 (just as they would when voting in-person), and (3) the voter signs the carrier envelope (just as they would when sending their ballot by mail).

15. Ballots are then placed in a box sealed by tamper-proof seals. Our office planned to deliver these sealed boxes daily to election headquarters. This process is more secure than the voter using the mail system, in that the ballots are kept in sealed, secure boxes from the moment they leave the voter’s hand. There is no unexpected administrative burden to collect ballots from the various annexes and transport them to our headquarters.

### **The Effect of the Governor’s Proclamation**

16. This last-minute change to election procedures is causing voter confusion. Reducing our drop-off locations from three to one will increase congestion as the volume of ballot returns increases over the next few weeks. Particularly because of the widely-publicized problems with the U.S. Postal Service (“USPS”), some voters may have trouble receiving their ballot until close to Election Day, and will thus have to return their ballot in person in order to ensure it is returned on time. *See see* Exhibit E to the October 3, 2020 Declaration of Chris Hollins [Dkt. No. 8–1 at 21–23], Exhibit E, USPS Ltr. to Texas Secretary of State, July 30, 2020 (warning that first-class U.S. mail will take one week for delivery). If we are forced to reduce to one location, I anticipate that toward the end of early voting and especially on Election Day, we will see massive

lines to return ballots in person. In addition, voters without reliable transportation will be unable to get to our office, which could be 25 miles away, in time to have their vote counted.

17. Our multiple ballot drop-off locations have been advertised to voters via a press conference and extensive planning by County officials. Since the Governor's October 1 Proclamation, County officials have had to consider significant adjustments to our operating plans. Tomorrow, Fort Bend Commissioners Court will decide the best location for the one drop-off location allowed under the Governor's Proclamation.

18. Reducing the drop-off locations from four to one will not enhance security of the ballots in any way, as it will force more voters to use USPS rather than see their ballot securely delivered straight to a sealed, secure ballot box.

19. The Proclamation will make it much more difficult for some voters to return their ballots by limiting counties to only one drop-off location during the early voting period. Fort Bend County is presently assessing the best permitted location for the one secure drop-off location. The Election Administrator's Office sits in the middle of the County, but the population center is in the eastern portion of the County and across the Brazos River which limits transportation options given the limited crossings. The size of the County, and whichever location is selected, would make it difficult, if not impossible, for some voters to return their ballots to only that single drop-off location. This will undoubtedly force some voters to decide if they will risk their health by voting in person or if they instead will not vote at all. No Texas voter should have to make that decision.

20. In my experience, rural voters, voters who live furthest from the county drop-off location, lower-income voters, and voters without access to transportation have the hardest time traveling significant distances to vote or drop off their ballots. Further, in the July primary runoff our office excluded 299 mail-in ballots. The primary reason for rejection was untimely receipt in



our office. Because Fort Bend County mail is sorted in the North Houston USPS Sorting Center, it is not uncommon for mail-in ballots to arrive several days after mailing, and, in some cases, several weeks after mailing. For at least a third of the 299 rejected ballots, the voter likely mailed it by election day and such could not be counted because it arrived after Wednesday, July 15, or arrived on that date but without a postmark.

21. This change also burdens the Elections Office administratively. We are having to change our voter education materials and our staff training. I also expect that the Proclamation will cause substantial confusion among voters as to where they can drop off their ballots during the early voting period. Our call centers have been inundated with voter inquiries about their rights in light of the Proclamation, and we have had to field calls from other elected officials' offices, who are themselves flooded with calls.

### **Security of Mail-In Ballots**

22. In my experience, and given the careful planning and process vetting by my office, the ballot drop-off locations are secure. We have chain-of-custody documentation for the ballot boxes. We have rosters requiring signatures so that each batch has an audit trail as to the count of ballots and a way of verifying that it was in fact the voter who dropped off the ballot. In my experience, Texas does not have a wide-scale problem with election fraud. Mail-in ballots are highly regulated and loaded with paper trails so that any irregularity is spotted and addressed.

23. The mail-in ballot process contains many, heavily regulated steps.

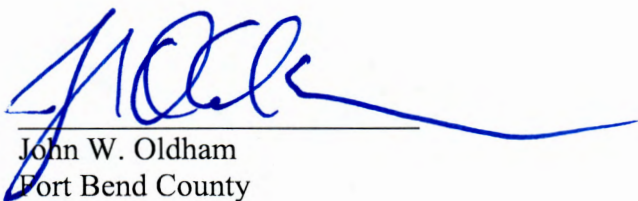
24. We send ballots out to voters on a continuous basis. Typically, about forty-five (45) days before an election, we prioritize sending ballots to military and overseas voters, then to others who requested to vote by mail. This was done on September 19. On October 2, we sent the first batch of non-FPCA mail-in ballots, approximately 20,000. From here, we send out ballots

on a rolling basis as the requests come in and are processed as explained in Hollins' Declaration. Oct. 3, 2020 Hollins Decl. at ¶¶ 29–31.

25. In reality, voters returning mail-in ballots in person is more secure than returning by mail because (1) there is no danger of tampering or loss of the ballot in transit and (2) voters who return ballots in person must sign a roster and present voter ID. Thus, any concern about security of in-person drop-off of mail ballots is unfounded.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 5, 2020, in Rosenberg, Texas.

By:   
John W. Oldham  
Fort Bend County  
Elections Administrator

**CERTIFICATE OF SERVICE**

I hereby certify that on October 5, 2020 that the foregoing document was served on all other counsel of record via CM/ECF. Additionally, I served the document on counsel anticipated to participate in this action:

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DATED: October 5, 2020

*/s/ Justin C. Pfeiffer*  
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JUSTIN C. PFEIFFER

STATE of TEXAS

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COUNTY OF HARRIS

**SUPPLEMENTAL DECLARATION OF CHRISTOPHER G. HOLLINS,  
HARRIS COUNTY CLERK**

Pursuant to 20 U.S.C. § 1746, I, Christopher G. Hollins, declare as follows:

1. My name is Christopher G. Hollins. I am over the age of 18, have personal knowledge of the facts stated in this declaration, and can competently testify to their truth.
2. I am submitting this declaration to update the Court with current information about the return of mail-in ballots.
3. Since the Governor’s Proclamation Harris County’s sole mail-in ballot drop off location has been at the NRG Arena in southern Harris County, a location that also serves as our election headquarters, early voting ballot board (“EVBB”) workspace, and both an early voting and Election Day polling location. To date we have received 231,793 applications to vote by mail, 87% of which (202,554) are for voters over the age of 65. We mailed the largest batch of ballots out, more than 180,000, beginning on September 28, and are mailing additional batches out to eligible voters on a rolling basis.
4. We have had no security issues related to in-person ballot drop-off since we began accepting them on September 28 at multiple locations and since we had to reduce the locations to one after the Governor’s Proclamation. Because voters who hand deliver their mail-in ballot must do so themselves, sign a roster, and show identification I cannot fathom how making this method of delivery more available to voters poses a security threat. If anything, it is the most secure way to return a ballot.

5. In the last few days the number of voters hand-delivering their ballots has increased. We anticipated this as we mailed more than 180,000 ballots to voters last week and expected voters would start returning them this week in increasing numbers as the ballots reach their homes. As of yesterday, we had a total 6,634 ballots returned of which 1,458 or about 22% were hand-delivered. If hand delivery of mail ballots continues at this rate, then we expect between 40,000 and 50,000 of the approximately 200,000 mail ballots to ultimately be delivered by hand.

### **U.S Post Office Issues**

6. We have been tracking the movements of mail-in ballots as a service to voters and have analyzed that data. This analysis demonstrates that delivery of mail within Harris County takes just as long as delivery of absentee ballots around the country which is to say more than few days and often more than a week.

7. We are getting complaints from voters who have requested ballots but have not yet received them. Many of these voters have expressed distrust in the U.S. Postal Service and are weighing whether they need to risk their health and vote in person to ensure their vote is counted or find a way to hand delivery their ballot to one likely distant location. With the slowness of ballots being delivered and presumably returned I expect we will have an increasingly higher ratio of ballots returned by in-person hand delivery than by mail or common carrier. This increases the need for multiple drop-off locations both for the convenience of voters and for minimizing lines and crowding.


8. If we remain forced to reduce to one location, I anticipate that toward the end of early voting and especially on Election Day, we will see massive lines to return ballots in person. In addition, voters without reliable transportation will be unable to get to NRG Arena from their homes (which could be more than fifty miles away) in time to have their vote counted.

### **Concerns about Serving Voters with Disabilities**

9. We are also concerned about adequate accommodations for people with disabilities. Harris County is under a settlement agreement with the United States Department of Justice (“DOJ”) resulting from actions and failures to act during the 2016 general election. To comply with the agreement, we have a staff of eighteen people headed by an attorney to survey and document every polling place. With the volume of voters likely to vote this election whether in person or by delivering mail-in ballots, we need flexibility to be able to accommodate all voters and not violate the settlement agreement. The Governor’s Proclamation — and any other instance of the State of Texas making voting more difficult by last-minute orders to change our management practices — makes it more difficult to comply with the DOJ settlement agreement. Having the eleven annex locations offers voters with disabilities and transportation problems more options whether because they are closer to the voters’ homes or because the physical lay-out of the location is more navigable than the large campus at the NRG Center.

I declare under penalty of perjury that the foregoing is true and correct.

Date: October 8, 2020

By:   
\_\_\_\_\_  
Christopher G. Hollins  
Harris County Clerk