

No. 20-0394

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**In the Supreme Court of Texas**

IN RE STATE OF TEXAS,  
*Relator.*

On Petition for Writ of Mandamus  
to the Harris County Clerk, the Travis County Clerk,  
the Dallas County Elections Administrator, the Cameron County Elections  
Administrator, and the El Paso County Elections Administrator

**RELATOR'S RESPONSE TO MOTIONS TO INTERVENE**

TO THE HONORABLE SUPREME COURT OF TEXAS:

Last Friday, before the Court calendared this original proceeding for oral argument, nine parties (the “Proposed Intervenors”) moved to intervene in support of Respondents. The first intervention motion (the “Price Mot.”) was filed by Zachary Price, League of Women Voters of Texas, League of Women Voters of Austin Area, MOVE Texas Action Fund, and Workers Defense Action Fund. A second motion (the “TDP Mot.”) was filed by Texas Democratic Party (“TDP”); its Chair, Gilberto Hinojosa; Shanda Marie Sansing, and Joseph Daniel Cascino.

Neither of the rules that Proposed Intervenors cite supports their intervention. And Proposed Intervenors’ expansive view of “real part[ies] in interest,” Tex. R. App. P. 52.2, would sweep in millions of registered Texas voters. Moreover, their intervention would raise practical concerns in a matter just two days away from oral argument. If Proposed Intervenors wish to be heard, they should not delay their

submission of amicus briefing in compliance with Texas Rule of Appellate Procedure 11. The motions to intervene should be denied.

**I. No Rule Authorizes Intervention in This Original Proceeding, and Intervention Would Raise Practical Concerns.**

A. Proposed Intervenors assert that two rules—Texas Rule of Civil Procedure 60 and Texas Rule of Appellate Procedure 52.2—support their request to intervene. Neither does.

1. The Texas Rules of Civil Procedure, including Rule 60, “govern the procedure in the justice, county, and district courts of the State of Texas.” Tex. R. Civ. P. 2. They do not apply in this Court.

Proposed Intervenors cite no authority suggesting otherwise. Indeed, they acknowledge that *Guaranty Federal Savings Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652 (Tex. 1990), the only decision of this Court that they cite, involved “a trial court’s decision to strike a plea for intervention, *id.* at 653, not, as in this case, a motion to intervene in an original proceeding before this Court.” TDP Mot. 8 n.1. The State is likewise aware of no authority supporting application of Rule 60 in a proceeding in this Court.

2. Texas Rule of Appellate Procedure 52 governs this original proceeding. But it does not provide for intervention. *Cf.* Tex. R. App. P. 58.8, 74.7 (authorizing intervention by the State in a proceeding in this Court or the Court of Criminal Appeals on a certified question involving the constitutionality of a Texas statute); Fed. R. App. P. 15(d) (authorizing intervention in certain cases in the federal courts of appeals).

Again, Proposed Intervenors do not contend otherwise. They instead assert that they meet Rule 52.2's description of real parties in interest. TDP Mot. 11; Price Mot. 5. The relevant language of that rule provides: "A person whose interest would be directly affected by the relief sought is a real party in interest and a party to the case." Tex. R. App. P. 52.2.

Typically, a real party in interest is a party to the case underlying the original proceeding. *See, e.g., In re Abbott*, No. 20-0291, 2020 WL 1943226, at \*2 (Tex. Apr. 23, 2020). But here, there is no underlying case; the State challenges Respondents' out-of-court refusals to apply the Election Code in a manner consistent with its plain language. *See* Petition for Writ of Mandamus 3-11, No. 20-0394, *In re State of Texas* (Tex. May 13, 2020) ("Mand. Pet."). Respondents have defended their conduct based on a superseded injunction in a proceeding to which the Proposed Intervenors are parties. *See id.*; TDP Mot. 3-5; Price Mot. 1-3; Order, No. 20-0401, *In re State of Texas* (Tex. May 15, 2020). The Court's decision in this separate proceeding will be binding precedent in every Texas court, but that does not make Proposed Intervenors real parties in interest to this proceeding. Accepting their reading of Rule 52.2 would enable any of Texas's 16 million registered voters to claim party status.

That is not a proper reading of Rule 52.2. And although the TDP Proposed Intervenors cite (at 11) a court of appeals' request in another case that "real parties in interest . . . or any others whose interest would be directly affected by the relief sought, file a response to the petition for writ of mandamus," *In re Port of Corpus Christi, L.P.*, 579 S.W.3d 129, 130 (Tex. App.—Corpus Christi 2019, no pet.), the Court made no such request here. It instead requested that "*respondents* file a

response to the petition for writ of mandamus.” Clerk’s Letter 1, No. 20-0394, *In re State of Texas* (Tex. May 14, 2020) (emphasis added).

**B.** The Court was wise not to broaden its request for a response. Even if some authority beyond what the motions cite and the State has found supports Proposed Intervenors’ request to intervene, practical considerations in this highly expedited proceeding counsel against granting that request.

The State filed its petition for writ of mandamus on Wednesday of last week, requesting a ruling no later than May 27, 2020. Mand. Pet. ix. The next day, the Court asked Respondents to file a response to the State’s petition by 4:00 p.m. today. Clerk’s Letter 1. And after business hours the day after that, the Court calendared the case for argument two days from now. Order, No. 20-0394, *In re State of Texas* (Tex. May 15, 2020).

In these circumstances, intervention could significantly complicate the proceeding. If Proposed Intervenors were granted party status, they would be entitled to file a response—which, unless it is filed today, would disrupt the expedited briefing that the Court has already ordered. Proposed Intervenors could also claim a right to share oral argument time with the five separately represented Respondents, resulting in a fractured presentation of points in opposition to the State’s position.

## **II. If Proposed Intervenors Wish to Be Heard, the Proper Course Is to Submit an Amicus Brief.**

The fact that no authority grants Proposed Intervenors party status does not preclude their involvement in this case as amici. The State does not object to

Proposed Intervenors presenting their views to this Court in an amicus brief submitted expeditiously and in compliance with Texas Rule of Appellate Procedure 11.

**P R A Y E R**

The Court should deny the motions to intervene.

Respectfully submitted.

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## **CERTIFICATE OF SERVICE**

On May 18, 2020, this document was served electronically on Leslie Dippel, counsel for Respondent Dana DeBeauvoir, via Leslie.Dippel@traviscountytexas.gov; Luis V. Saenz, counsel for Respondent Remi Garza, via district.attorney@co.cameron.tx.us; Russel H. Roden, counsel for Respondent Toni Pippins-Poole, via russell.roden@dallascounty.org; Douglas P. Ray and Susan Hays, counsel for Respondent Diane Trautman, via Douglas.Ray@cao.hctx.net and hayslaw@me.com; Jed Untereker and Kevin McCary, counsel for Respondent Lisa Wise, via JUntereker@epcounty.com and KMcCary@epcounty.com; Thomas Buser-Clancy, lead counsel for the Price Proposed Intervenors, via tbuser-clancy@aclutx.org; and Chad W. Dunn, lead counsel for the TDP Proposed Intervenors, via chad@brazilanddunn.com.

/s/ Kyle D. Hawkins \_\_\_\_\_  
KYLE D. HAWKINS

## **CERTIFICATE OF COMPLIANCE**

Microsoft Word reports that this document contains 1,020 words, excluding the portions of the document exempted by Rule 9.4(i)(1).

/s/ Kyle D. Hawkins \_\_\_\_\_  
KYLE D. HAWKINS

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