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SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

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May 19, 2020

Via E-File

Mr. Blake A. Hawthorne
Clerk, Supreme Court of Texas
P.O. Box 12248
Austin, TX 78711

Re: No. 20-0394; *In re State of Texas*

Mr. Hawthorne:

Please circulate to the Justices the attached Bench Exhibits submitted by Respondent Harris County, Texas for oral argument on May 20, 2020. Thank you.

Sincerely,

/s/ Scott Brister

Scott Brister

SB:fb

cc: Kyle D. Hawkins – *kyle.hawkins@oag.texas.gov*
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TEXAS ELECTION CODE
TITLE 7. EARLY VOTING

SUBTITLE A. EARLY VOTING

CHAPTER 82. ELIGIBILITY FOR EARLY VOTING

Sec. 82.002. DISABILITY. (a) A qualified voter is **eligible** for early voting by mail if the voter has a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter's health.

(b) Expected or likely confinement for childbirth on election day is sufficient cause to entitle a voter to vote under Subsection (a).

CHAPTER 84. APPLICATION FOR BALLOT

SUBCHAPTER A. APPLICATION FOR BALLOT

Sec. 84.001. APPLICATION REQUIRED. (a) To be **entitled** to vote an early voting ballot by mail, a person who is **eligible** for early voting must make an application for an early voting ballot to be voted by mail as provided by this title.

(b) An application must be in writing and signed by the applicant. An electronic signature is not permitted.

(c) An applicant is not required to use an official application form.

(d) An application must be submitted by mail to the early voting clerk for the election who serves the election precinct of the applicant's residence.

CHAPTER 86. CONDUCT OF VOTING BY MAIL

Sec. 86.001. REVIEWING APPLICATION AND PROVIDING BALLOT.

(a) The early voting clerk shall review each application for a ballot to be voted by mail.

(b) If the applicant is **entitled** to vote an early voting ballot by mail, the clerk shall provide an official ballot to the applicant as provided by this chapter.

Act of May 17, 1935, 44th Leg., R.S., ch. 300, 1935 TEX. GEN. LAWS 700-01

Subdivision 1. Any qualified elector of this State who through the nature of his business is absent from the County of his residence, or who because of sickness or physical disability cannot appear at the poll place in the election precinct of his residence, on the day of holding any general or special or primary election, may, nevertheless, cause his vote to be cast at such election in the precinct of his residence by compliance with one or other of the methods hereinafter provided for absent voting.

Subdivision 2. Such elector shall make application for an official ballot to the county clerk in substantially the following form:

APPLICATION FOR BALLOT TO BE VOTED

AT THE ELECTION
ON THE DAY OF A. D. 19....
THE STATE OF
COUNTY OF

I,, hereby make application for an official ballot to be voted by me at the..... election to be
(general or special)

held in Election Precinct No. of..... County, Texas, on....., and I do solemnly swear that
(Date of election)

I am a resident of said precinct, and have resided in the State of Texas for one year and in said County for six months next preceding such election; that I am a duly qualified elector entitled to vote at said election; and that I am.....
(Here state business)

and because of the nature of my business expect to be absent from said County (or, because of my sickness or physical disability cannot appear at the polling place in said precinct) on the said day of election.

Date: Signed:
Residence: Post Office Address:

Sworn to and subscribed before me this day of
....., 19.....

Act of Nov. 12, 1935, 44th Leg., 2d C.S., ch. 437, 1935 TEX. GEN. LAWS 1701-02

“Subdivision 3. At any time not more than twenty (20) days, nor less than three (3) days, prior to the date of such an election, such elector making his personal appearance before the county clerk of the county of his residence at his office and delivering to such clerk his application aforesaid, shall be entitled to receive from said clerk one official ballot which has been prepared in accordance with law for use in such election, which ballot is then and there, in the office of said clerk of said county, and in the presence of said clerk and of no other person, except the witness who is authorized to assist elector in certain cases as hereafter provided, to be marked by the elector, or by said witness in case of physical disability of elector, so as to conceal the marking, and same shall, in the presence of the clerk, be deposited in a ballot envelope furnished by said clerk, which envelope shall bear upon the face thereof the name, official title and post office address of such county clerk, and upon the other side a printed affidavit in substantially the following form, to be filled out and signed by the elector; provided, however, that in case of the physical disability of elector preventing him from filling out and signing such affidavit, then the witness who assisted the elector in marking his ballot shall fill out and sign affidavit for and in behalf of elector and shall also sign his, witness' name as prescribed in the following form:

“STATE OF
COUNTY OF

“I,, do solemnly swear that I am a Resident of Precinct No., in County, and am lawfully entitled to vote at the election to be held in said precinct on the day of, 19...; that I am prevented from appearing at the polling place in said Pre-

inct on the date of such election because of (illness), (physical disability), (or because of absence from County),, (elector to signify one of foregoing reasons) that the enclosed ballot expresses my wishes, independent of any dictation or undue persuasion of any person; that I did not use any memorandum or device to aid me in the marking of said ballot.

.....
Signature of elector

By:.....
Name of witness who assisted elector in event of physical disability.
.....

Act of June 28, 1951, 52d Leg., R.S., ch. 492, 1951 TEX. GEN. LAWS 1110

Subdivision 4. At any time not more than twenty (20) days, nor less than three (3) days prior to the date of such an election, such elector who makes written application for a ballot as provided for in Subdivision 2 hereof, shall be entitled to have his ballot cast at such an election on compliance with the following provisions:

The application shall be mailed to the county clerk of the elector's residence whose duty it shall be forthwith to mail to such elector a blank official ballot and ballot envelope, which envelope shall bear upon the face thereof the name, official title and post office address of such county clerk, and upon the other side a printed affidavit in substantially the following form, to be filled out and signed by the elector; provided, however, that in case of the physical disability of elector preventing him from filling out and signing such affidavit, then the witness who assisted the elector in marking his ballot shall fill out and sign affidavit for and in behalf of elector and shall also sign his, witness' name as prescribed in the following form:

State of _____

County of _____

I, _____, do solemnly swear that I am a Resident of Precinct No. _____, in _____ County and am lawfully entitled to vote at the election to be held in said precinct on the _____ day of _____, 19____; that I am prevented from appearing at the polling place in said precinct on the date of such election because of (illness), (physical disability), (or because of absence from County), _____, (elector to signify one of foregoing reasons) that the enclosed ballot expresses my wishes, independent of any dictation or undue persuasion of any person; that I did not use any memorandum or device to aid me in the marking of said ballot.

By: _____
Signature of elector

Name of witness who assisted elector in event of physical disability.

Such elector shall mark the ballot as it shall be provided by a witness at

Act of June 10, 1963, 58th Leg., R.S., ch. 424, 1963 TEX. GEN. LAWS 1034-35

"Subdivision 2. Application for ballot. A voter desiring to vote absentee shall make written application for an official ballot to the county clerk of the county of his residence, which application shall be signed by the voter, or by a witness at the direction of the voter in case of the latter's inability to make such application because of physical disability. The application shall state the ground on which the applicant is entitled to vote absentee, and in case of an application to be voted by mail, it shall also state the additional information required by Subdivision 1 of this section. In case of an application to vote absentee by personal appearance, except where the voted ballot is to be placed in a carrier envelope, the application shall contain or have attached thereto an affidavit signed by the applicant, in substantially the following form:

"I, _____, do solemnly swear that I am a resident of Precinct No. ____, in _____ County, and am lawfully entitled to vote at the _____ election to be held in said precinct on the ___ day of _____, 19____, and that I am prevented from appearing at the polling place in said precinct on the date of the election because of _____ (voter to signify sickness, physical disability, or expected absence from county).

(Signature of voter)
By: _____
(Signature of witness who assisted voter in event of physical disability)

Act of June 18, 1965, 59th Leg., R.S., ch. 678, 1965 TEX. GEN. LAWS 1558-59

"Subdivision 3c. Voting on election day by disabled voter in voting machine counties. The provisions of this subdivision shall apply only to county-wide elections and to elections less than county-wide where the authority holding the election has provided that absentee ballots shall be counted by a special canvassing board, and shall apply only to voters residing in election precincts in which voting at the regular polling place on election day is being conducted by use of a voting machine or machines. Under these stated conditions, a voter may vote as herein provided if he is ill or disabled and thus cannot, without injury to his health or without personal assistance, cast his vote in the regular manner. A voter complying with these requirements may be voted in an ambulance or other conveyance at the entrance to the place in which absentee voting by mail was conducted for the election, between the hours of 8:00 a. m. and 2:00 p. m. on the day of the election, by the clerk who conducted the absentee voting for the election, using an absentee-by-mail ballot. Poll watchers appointed to observe absentee voting for the election shall be entitled to be present at the voting. Except as otherwise provided in this subdivision, the voting procedure shall be the same as for absentee voting by personal appearance in the clerk's office under the provisions of Subdivision 3b of this Section.

"The application to vote under the provisions of this subdivision shall be in the form of an affidavit substantially as follows:

'AFFIDAVIT FOR VOTING AT ABSENTEE VOTING PLACE ON ELECTION DAY

'I, the undersigned, do solemnly swear that:

- (a) My name is _____
- (b) My home address is _____
- (c) I am a voter in Precinct _____
- (d) My current poll tax receipt or exemption certificate number is _____

(e) I am ill or disabled and thus cannot, without injury to my health or without personal assistance, cast my vote in the regular manner, and I have not previously voted in the election being held today.

Date _____

(Signature of voter)

(Jurat of officer administering the oath.)'

Texas Election Code § 84.011. OFFICIAL APPLICATION FORM.
<https://webservices.sos.state.tx.us/forms/5-15f.pdf>

Application for Ballot by Mail		Prescribed by the Office of the Secretary of State of Texas AS-15 12/17	For Official Use Only VUID #, County Election Precinct #, Statement of Residence, etc.
1	Last Name (Please print information)	Suffix (Jr., Sr., III, etc)	First Name Middle Initial
2	Residence Address: See back of this application for instructions.		City, TX ZIP Code
3	Mail my ballot to: If mailing address differs from residence address, please complete Box # 7.		City State ZIP Code
4	Date of Birth (mm/dd/yyyy) (Optional)	Contact Information (Optional)* Please list phone number and/or email address: * Used in case our office has questions.	
5	Reason for Voting by Mail: <input type="checkbox"/> 65 years of age or older. (Complete Box #6a) <input type="checkbox"/> Disability. (Complete Box #6a) <input type="checkbox"/> Expected absence from the county. (Complete Box #6b and Box #8) You will receive a ballot for the upcoming election only. <input type="checkbox"/> Confinement in jail. (Complete Box #6b) You will receive a ballot for the upcoming election only.		7 If you are requesting this ballot be mailed to a different address (other than residence), indicate where the ballot will be mailed. See reverse for instructions. <input type="checkbox"/> Mailing Address as listed on my voter registration certificate <input type="checkbox"/> Nursing home, assisted living facility, or long term care facility <input type="checkbox"/> Hospital <input type="checkbox"/> Retirement Center <input type="checkbox"/> Address of the jail <input type="checkbox"/> Relative; relationship _____ <input type="checkbox"/> Address outside the county (see Box #8)
6a	ONLY Voters 65 Years of Age or Older or Voters with a Disability: If applying for one election, select appropriate box. If applying once for elections in the calendar year, select "Annual Application." <input type="checkbox"/> Annual Application Uniform and Other Elections: <input type="checkbox"/> May Election <input type="checkbox"/> November Election <input type="checkbox"/> Other _____ <input type="checkbox"/> Any Resulting Runoff Primary Elections: You must declare one political party to vote in a primary. <input type="checkbox"/> Democratic Primary <input type="checkbox"/> Republican Primary		8 If you selected "expected absence from the county," see reverse for instructions Date you can begin to receive mail at this address Date of return to residence address
6b	ONLY Voters Absent from County or Voters Confined in Jail: You may only apply for a ballot by mail for one election, and any resulting runoff. Please select the appropriate box. Uniform and Other Elections: <input type="checkbox"/> May Election <input type="checkbox"/> November Election <input type="checkbox"/> Other _____ <input type="checkbox"/> Any Resulting Runoff Primary Elections: You must declare one political party to vote in a primary. <input type="checkbox"/> Democratic Primary <input type="checkbox"/> Republican Primary		9 Voters may submit a completed, signed, and scanned application to the Early Voting Clerk at: (early voting clerk's e-mail address) (early voting clerk's fax) NOTE: If you fax or e-mail this form, please be aware that you must also mail the form to the early voting clerk within four business days. See "Submitting Application" on the back of this form for additional information. 10 "I certify that the information given in this application is true, and I understand that giving false information in this application is a crime." SIGN HERE If applicant is unable to sign or make a mark in the presence of a witness, the witness shall complete Box #11.



5	Reason for Voting by Mail: <input type="checkbox"/> 65 years of age or older. (Complete Box #6a) <input type="checkbox"/> Disability. (Complete Box #6a) <input type="checkbox"/> Expected absence from the county. (Complete Box #6b and Box #8) You will receive a ballot for the upcoming election only. <input type="checkbox"/> Confinement in jail. (Complete Box #6b) You will receive a ballot for the upcoming election only.
6a	ONLY Voters 65 Years of Age or Older or Voters with a Disability: If applying for one election, select appropriate box. If applying once for elections in the calendar year, select "Annual Application." <input type="checkbox"/> Annual Application Uniform and Other Elections: <input type="checkbox"/> May Election <input type="checkbox"/> November Election <input type="checkbox"/> Other _____ <input type="checkbox"/> Any Resulting Runoff Primary Elections: You must declare one political party to vote in a primary. <input type="checkbox"/> Democratic Primary <input type="checkbox"/> Republican Primary

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below:

Francesca Bernier on behalf of Scott Brister
Bar No. 24
fbernier@huntonak.com
Envelope ID: 43085544
Status as of 05/19/2020 13:47:39 PM -05:00

Case Contacts

Name
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P Schenckan
Scott Brazil
Scott A. Brister
Cynthia Wilson Veidt
Bill Davis
Sherine Elizabeth Thomas
Leslie Wood Dippel
Sharon Kay Talley
Luis V. Saenz
Susan Lea Hays
Jo Anne Bernal
David A. Escamilla
Barbara Sally Ann Nicholas
Russell H. Roden
Douglas P. Ray
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Dicky Grigg
Mel Noyola
Gwen Kelly
Jed Untereker

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Bar No. 24
fbernier@huntonak.com
Envelope ID: 43085544
Status as of 05/19/2020 13:47:39 PM -05:00

Case Contacts

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Associated Case Party: Healthcare Professionals and Institutions

Name
Laci Lindsey

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Bar No. 24
fbernier@huntonak.com
Envelope ID: 43085544
Status as of 05/19/2020 13:47:39 PM -05:00

Associated Case Party: Healthcare Professionals and Institutions

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Associated Case Party: The State of Texas

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