No. 03-17-00662-CV

IN THE COURT OF APPEALS
FOR THE THIRD JUDICIAL DISTRICT
AUSTIN, TEXAS

IN RE
ROLANDO PABLOS, SECRETARY OF STATE FOR THE STATE OF TEXAS, AND KEITH INGRAM, DIRECTOR, TEXAS ELECTIONS DIVISION OF THE SECRETARY OF STATE,
RELATORS,

Original Proceeding to Cause No. D-1-GN-17-003451
Pending in the 98th Judicial District Court,
Travis County, Texas,
Honorable Tim Sulak, Presiding

RELATORS' REPLY TO REAL PARTIES IN INTEREST'S RESPONSE TO PETITION FOR WRIT OF MANDAMUS

(Oral Argument Requested)

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Defense Litigation

ANGELA V. COLMENERO
Division Chief -General Litigation

ESTEBAN S.M. SOTO
Texas Bar No. 24052284
Assistant Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Phone (512) 475-4054
Fax (512) 320-0667
esteban.soto@oag.texas.gov
ATTORNEYS FOR RELATORS

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Relators:	Rolando Pablos, Secretary of State for the State of Texas, and Keith Ingram, Director, Texas Elections Division of the Secretary of State
Plaintiffs:	Refers the Real Parties in Interest, the League of Women Voters of Texas, Texas State Conference of the National Association for the Advancement of Colored People (NAACP), and Ruthann Geer.
Respondent:	Refers to the Honorable Tim Sulak, the presiding judge of the 353th Judicial District Court of Travis County, Texas.
Rec.:	Refers to the Original Record.
Sup. Rec.:	Refers to Relators' Supplemental Record,
Plfs' Sup. Rec.:	Refers to Relators' Supplemental Record.
Appx.:	Refers to the Appendix.

TO THE HONORABLE THIRD COURT OF APPEALS:

Relators' opening brief established that the trial court abused its discretion by overtly refusing to rule on Relators' Plea to the Jurisdiction—notwithstanding the possibility that Relators could raise the same motion with another court at a later date. Unable to refute that point, Plaintiffs' response misstates the record, Texas law, and Relators' arguments in an effort to obfuscate the issue. Relators' argument is *not* that a two-week delay[1] in ruling, by itself, is an abuse of discretion as Plaintiffs' strawman suggests. Rather, Relators' argument is that judges have a ministerial duty to decide matters assigned to them. And, in a unique situation where: 1) a central docketing system randomly assigns future settings; 2) the motion at issue is jurisdictional; and 3) a different court in a future setting must entertain the same jurisdictional issues, a judge commits an abuse of discretion by overtly refusing to rule on an assigned motion.

Plaintiffs' arguments, if accepted, would create a template for circumventing government entities' right to an interlocutory appeal of pleas to the jurisdiction by allowing trial courts in a central docket system to shirk their ministerial duty by simply declining to rule and passing the motion on to the next judge assigned the

[1] In any event, as is discussed further below, Plaintiffs' argument that no court has ever granted a mandamus relief when a motion has been pending for only a matter of weeks is erroneous. *See, e.g.*, *Stoner v. Massey*, 586 S.W.2d 843, 846 (Tex. 1979) (granting mandamus relief directing court to rule when motion was rejected approximately three weeks before writ was filed).

case. In this scenario, under Plaintiffs' logic, a relator could *never* show an entitlement to mandamus relief because each successive judge would only be assigned the motion for a few days or weeks at most. Plaintiffs' arguments stand in direct contrast to the Code of Judicial Conduct and this Court's precedence that "the *most basic obligation* of a judge… is to 'hear and *decide* matters assigned to the judge except those in which disqualification is required or recusal is appropriate.'" *PUC of Tex. v. City of Harlingen*, 311 S.W.3d 610, 632 (Tex. App.—Austin 2010, no pet.) (emphasis added) (quoting TEX. CODE JUD. CONDUCT, Canon 3(B)(1), *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app. B (West 2005). That obligation was violated here and the Court should grant mandamus relief.

Argument

A. Respondent violated his ministerial duty to decide assigned matters.

Under the Code of Judicial Conduct, the "most basic obligation" a judge has is to hear and decide matters assigned to the judge. *PUC of Tex.*, 311 S.W.3d at 632. It is undisputed[2] that this matter was assigned to Respondent and that he held a hearing on the Plea to the Jurisdiction. *See* Sup. Rec. at 192-260. It is also equally

[2] The undisputed record shows this to be true. *See, e.g.*, Appx. at 2; Rec. 170-71; Supp. Rec. 192-260. Nevertheless, Plaintiffs have argued that Respondent held a hearing on the application for a temporary restraining order, but refused to "hear" the Plea to the Jurisdiction during the hearing held on September 29, 2017. *See* Opp. To Relators' Emer. Mot. for Temp. Relief at pp. 3-4. This contention is plainly contradicted by the record. *See, e.g.*, Sup. Rec. 192 ("The matter that we are taking up involves the plaintiffs' application for temporary restraining order and the defendants' plea to the jurisdiction.").

undisputed that following the hearing, when asked by Relators whether the court "intended to rule on the Defendants' pending Plea to the Jurisdiction…[o]r…is declining to rule," the Court answered that it "has declined to rule on the plea to the jurisdiction…" Appx. at 9-10.

Unable to refute these undisputed facts, Plaintiffs offer shifting explanations to try to get around the court's overt refusal to rule. First, they argue that Relators' request for a ruling was allegedly a request to "*hear* their hastily filed PTJ"[3] and that the court's emailed response was not a refusal to *rule*, but rather that it had just "declined to *hear* the Plea to the [J]urisdiction." *See* Opp. To Relators' Emer. Mot. for Temp. Relief at p. 4 (emphasis added). The record clearly contradicts this explanation. *See, e.g.*, Appx. 2; Rec. 170-71; Supp. Rec. 192-260. Then, in their response, Plaintiffs bizarrely argue that, when the court was asked whether it "intended to rule" or was "declining to rule," the court's response that it had "declined to rule" really meant that it "intended to rule." Resp. to Pet. for Writ of Mand. at p. 2.

[3] Throughout the motion, Plaintiffs erroneously state that Relators did not assert a sovereign immunity defense in their Original Answer and that the Plea to the Jurisdiction was the "first time" Relators raised sovereign immunity in this case. *See, e.g.*, Resp. to Pet. for Writ of Mand. at pp. 3 ("On August 18, 2017, Relators filed an answer…[t]hey did not, at the time…assert any sovereign immunity defense."), 4, 13 n.3. Again, this blatantly misstates the record, as on August 18, 2017, in their first appearance in this case, Relators "assert[ed] the defense of sovereign immunity as to all of Plaintiffs' claims." Plfs' Sup. Rec. 1.

Under Plaintiffs' strained logic, the court's explicit statement that it was declining to rule did not constitute a refusal because Relators could raise the issue with future courts in future settings. *Id.* But, that is precisely the point. In Travis County, every setting[4] in a case is assigned to an available judge—irrespective of the court in which the case is filed—via the County's central docketing system. Appx. at 37 (Local Rules 1.2-1.3 ("Any Judge May Conduct Hearing")). Once assigned the motion for a case on the central docket, the assigned judge must hear and decide the matter. A judge cannot avoid his or her "most basic obligation" simply because the parties can reurge the motion before a different court at a later date. *PUC of Tex.*, 311 S.W.3d at 632. Rather, once assigned a properly filed motion, a judge is "obligated to decide" the matter, and "refusing to participate in the decision, is not a permissible course of action." *Id.*

For these undisputed reasons, alone, the Court should issue mandamus relief. *See In re Hernandez*, No. 03-13-00002-CV, 2013 Tex. App. LEXIS 569, at *2 (Tex. App.—Austin Jan. 17, 2013, orig. proceeding) (Holding that the in a failure to rule case, the third element can be established by making a showing that the trial court "*either* refused to rule on the motion *or* failed to rule within a reasonable time.") (emphasis added).

[4] There are limited circumstances where a case is not assigned to the central docket, such as for cases on the specialized docket or cases where all parties consent to a particular judge. None of those circumstances occurred here.

B. Regardless of the amount of time the motion has pending, in this factual scenario, Respondent's refusal to rule constitutes an abuse of discretion.

Plaintiffs spend much of their response arguing that Relators' Petition is foreclosed because no court has granted mandamus relief when a motion has only been pending for two weeks. This argument is without merit. It first misstates Relators' position, as Relators' do not argue that there should be a bright-line rule that a two-week delay is unreasonable. And, in any event, Plaintiffs' cited cases are inapposite of the issues in this case.

Regardless of the amount of time the assigned motion has been pending, Respondent's overt refusal to rule constitutes an abuse of discretion. Indeed, this Court has repeatedly held that when a mandamus petition is based on an allegation that a trial court has failed to rule on a properly filed motion, the relator can establish the third element with a showing that the court "*either* refused to rule on the motion *or* failed to rule within a reasonable time." *In re Hernandez*, 2013 Tex. App. LEXIS 569, at *2 (emphasis added); *In re Brown*, NO. 03-17-00426-CV, 2017 Tex. App. LEXIS 7769, at *2 (Tex. App.—Austin Aug. 16, 2017, orig. proceeding); *In re Green*, NO. 03-16-00092-CV, NO. 03-16-00150-CV, 2016 Tex. App. LEXIS 4033 (Tex. App.—Austin Apr. 19, 2016, orig. proceeding); *In re Urtado*, No. 03-15-00710-CV, 2015 Tex. App. LEXIS 11993, at *3 (Tex. App.—Austin Nov. 24, 2015, orig. proceeding); *In re Aleman*, No. 03-15-00390-CV, 2015 Tex. App. LEXIS 8924, at *2 (Tex. App.—Austin Aug. 26, 2015, orig. proceeding); *In re Halley*, No. 03-15-

00310-CV, 2015 Tex. App. LEXIS 7188, at *4 (Tex. App.—Austin July 14, 2015, orig. proceeding).

This makes sense because the ministerial duty in question involves deciding a matter assigned to the court. *See* TEX. CODE JUD. CONDUCT, Canon 3(B)(1). Thus, when a court overtly refuses to rule on a properly filed motion, the abuse of discretion is already established. This is consistent with broader mandamus jurisprudence that holds the "three requisites to a mandamus" are simply "a legal duty to perform a nondiscretionary act; a demand for performance and a refusal." *Stoner v. Massey*, 586 S.W.2d 843, 846 (Tex. 1979).

In *Stoner,* the action in question was an order from the Court of Civil Appeals that prohibited the relator from filing a motion for rehearing. *Id*. Seven days after the order, the relator submitted a motion for rehearing that was rejected by the clerk. *Id.* Three and a half weeks after the refusal, the relator filed a writ of error with the Texas Supreme Court or alternative leave to file a petition for mandamus. *Id.* Despite that the fact that the refusal to rule had only occurred a few weeks before the writ, the Supreme Court granted mandamus relief and directed the Court of Civil Appeals to consider and rule on the motion for rehearing. *Id.* at 847. The same analysis compels issuing mandamus relief in this instance.

Plaintiffs' cited cases do not involve overt refusals to rule. Plaintiffs also do not even attempt to explain why the amount of time a motion is pending would be

relevant to a judge's violation of his ministerial duty to decide a motion in a situation where the judge has already announced that he would not rule. Moreover, the fact that Travis County's central docket system would allow Relators to reurge the Plea to the Jurisdiction with another court at a different time does not obviate Respondent's ministerial duty to hear and decide an assigned motion. Accordingly, the Court need not reach the issue of whether the Plea to the Jurisdiction has been pending a reasonable amount of time in order to grant mandamus relief.

C. In this specific scenario, it would be unreasonable to delay a ruling past the date of the temporary injunction hearing.

In any event, under the specific factual scenario in this case, it would be unreasonable to delay a ruling past the date of the temporary injunction hearing. In response, Plaintiffs argue that the case law, their supposed need for discovery, and the alleged complexity of the Plea to the Jurisdiction support a finding that it would reasonable for Respondent hold off ruling until after the upcoming temporary injunction hearing. Each of their arguments is without merit.

First, the case law that they cite is inapposite of the situation in this case. Notably, Plaintiffs do not contest that in cases involving a refusal to rule, whether a reasonable time for the trial court to act is dependent upon the circumstances of each case and no "bright line" separates a reasonable time period from an unreasonable one. *See In re Blakeney*, 254 S.W.3d 659, 661 (Tex. App.—Texarkana 2008, orig. proceeding). In this case, the key undisputed facts are that: 1) the case was pending

in a central docket system, 2) a jurisdictional motion was assigned to and heard by a judge, 3) the judge overtly refused to rule, and 4) an upcoming hearing involves the same jurisdictional issues. None of Plaintiffs' cited case law contain or address this fact pattern. Moreover, to the extent established case law directly addresses any of these four issues, it does so in a manner that supports Relators' position. *See In re See In re First Mercury Ins. Co.*, No. 13-13-00469-CV, 2013 WL 6056665, 2013 Tex. App. LEXIS 13897 at *17 (Tex. App.-Corpus Christi Nov. 13, 2013, orig. proceeding) (Finding a three-month delay in ruling on a plea to the jurisdiction was unreasonable because "[t]he Texas Supreme Court has instructed us that jurisdictional determinations should be made as soon as practicable." Internal citations omitted); *Stoner,* 586 S.W.2d at 846 (granting mandamus relief for overt refusal to rule when motion was only submitted approximately three weeks before writ was filed).

Indeed, the case Plaintiffs most heavily relies on, *Univ. Interscholastic League v. Southwest Officials Ass'n, Inc.*, 319 S.W.3d 952 (Tex. App.—Austin 2010, no pet.), supports Relators' position. Like the situation here, *Univ. Interscholastic League,* involved a Travis County district court case in which the court was presented with a motion for temporary relief and a plea to the jurisdiction. There, the trial court issued a TRO and ruled on the plea to the jurisdiction *before* the scheduled temporary injunction hearing. *Id.* at 955. This timely ruling avoided depriving

defendant of its immunity from suit and a situation where multiple courts within the central docket system are tasked with deciding the same jurisdictional issues.

Second, the trial court did not allow for jurisdictional discovery and no discovery would be relevant to the purely legal questions raised by the Plea to the Jurisdiction. As an initial matter, Relators' Plea to the Jurisdiction was partially pleadings-based, and thus the case can and should be decided solely on the pleadings. Here, despite having the opportunity to amend their pleadings two times, Plaintiffs still could not make a single factual allegation that, if true, would constitute a violation of the Election Code or an ultra vires act.[5] That fact alone is sufficient to grant the pending Plea to the Jurisdiction. *See Reagan Nat'l Adver. of Austin, Inc. v.*

[5] At the hearing, Plaintiffs' counsel was asked what specific factual allegations in the pleadings she contended constitute a violation of the statutes. Sup. Rec at 221-222. The best she could point to were allegations (paragraphs 89-90, 94, and 96 of their Second Amended Petition, *see* Rec. 58-60) that either simply recite the statute (and do not allege a violation, *see* paragraph 94, Rec. 59) or allege that some non-state actor may violate the statute (*see* paragraph 96, Rec. 60). *Id.* The closest Plaintiffs come to alleging an actual violation is asserting that releasing birthdate information constitutes a violation of Texas law. Rec. 59 (paragraph 90). But, only the Public Information Act in section 552.101 potentially prohibits the release of birthdate information if a certain common law exception applies. TEX. GOV'T CODE § 552.101. Conversely, the Election Code, which applies to these types of requests, with its own deadline, cost structure, and production requirements, not only does not prohibit its release, but it also compels Relators to release it. *See* TEX. ELEC. CODE §§ 18.066; 18.005; 18.061. Thus, an alleged violation of the Public Information Act, by itself, does not constitute a violation of the Election Code needed to fall within the limited waiver of immunity in Texas Election Code § 273.018. And—notwithstanding Relators' argument that the Public Information Act does not apply to this request—any ultra vires claim premised on a Public Information Act violation is plainly barred by sovereign immunity (as there is no waiver of immunity for Complainants to file suit, *see* Texas Government Code § 552.3215) and the redundant remedies doctrine (*see Patel v. Tex. Dep't of Licensing & Regulation*, 469 S.W.3d 69, 79 (Tex. 2015)). Therefore, these allegations do not state a claim that falls within any waiver or exception to the Relators' immunity.

Bass, NO. 03-16-00320-CV, 2017 Tex. App. LEXIS 9049, at *7 (Tex. App.—Austin Sept. 27, 2017) ("It is not enough that a plaintiff merely asserts legal conclusions or labels a defendant's actions as ultra vires—what matters is whether the facts alleged constitute actions beyond the governmental actor's statutory authority, properly construed.").

Moreover, the jurisdictional issues raised in the Plea to the Jurisdiction present purely legal questions that will not benefit from factual development.[6] Indeed, there is no real dispute that Relators have complied with all of the express provisions in Texas Election Code § 18.066, as Plaintiffs effectively concede in their pleadings. *See, e.g.*, Rec. 37-38 (Paragraph 22 stating "the Commission has submitted an affidavit providing that it 'will not use the information obtained in connection with advertising or promoting commercial products or services'…"). Rather, Plaintiffs premise their claims on the contention that Relators must condition the release of publicly available information on additional, non-statutory based actions.[7]

[6] Jurisdictional discovery is not appropriate in this scenario and in any event the trial court did not order it. While Plaintiffs assert the need for jurisdictional discovery in their response, they do not identify any specific factual matter that needs development or explain how any discovery would be relevant to the jurisdictional issues in this case. Notably, at the hearing, the sole factual issue Plaintiffs stated needed development in discovery was regarding how the Secretary of State would respond to similar requests from other people. Sup. Rec. 236-37 ("I also would note that some of the factual development that we would develop…is what does the state do when Mickey Mouse from Orlando, Florida with a money order makes a request for the data?"). But, the trial court correctly stated that type of information concerning how the State responds to other requestors is irrelevant to the jurisdictional question before the court. Rec. 201-03; 213-14.

[7] Plaintiffs have not specified what additional actions they contend would comport with the statute. They only hint at Relators conditioning the release of information on some vague additional

Regardless of the merits—or lack thereof—of this contention, Relators stipulated to the trial court that they would not take the additional actions sought to be imposed by Plaintiffs. Sup. Rec. 231 (lines 40:17-24). Whether this undisputed fact pattern constitutes a violation of the Election Code or an ultra vires act presents "a purely legal inquiry" that "will not benefit from the development of additional facts." *City of Waco v. Tex. Natural Res. Conservation Comm'n*, 83 S.W.3d 169, 175-77 (Tex. App.—Austin 2002, pet. denied).

Third, despite Plaintiffs' protestations, the issues raised in the Plea to the Jurisdiction are neither particularly complex nor novel. Plaintiffs premise their claims on the allegation that Relators must condition the release of the information on non-statutory based actions. Relators dispute that they have the legal authority to take those actions, but, even if Relators are wrong about that—they are not—and Relators have the discretion to perform the actions Plaintiffs seek to impose, Plaintiffs' claims are *still* barred by immunity because when a plaintiff "alleges or ultimately can prove only acts within the officer's legal authority and discretion, the claim seeks 'to control state action,' and is barred by sovereign immunity." *See*

"assurances or agreement" that the third parties will not use the information for commercial purposes. Rec. 54-55 (paragraph 75). Of course, nothing in the Election Code—or the Public Information Act for matter—authorizes Relators to condition the release on such assurances or agreements, whatever they may be. *See* TEX. ELEC. CODE § 18.066. The Election Code only requires the Secretary of State's Office to obtain an affidavit from the requestor that he or she will not use the information for commercial purposes—and, as Plaintiffs' pleadings concede, that requirement was fulfilled in this instance.

Machete's Chop Shop, Inc. v. Texas Film Comm'n, 483 S.W.3d 272, 280 (Tex. App.—Austin 2016, no pet.) (quoting *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009)). This holding has been black-letter law in Texas for years and this matter does not raise any novel, complex, or hotly-contested legal issues.

D. Delaying the ruling past the date of the temporary injunction hearing would risk conflicting rulings and invalid advisory opinions.

In addition, since the Plea to the Jurisdiction has been heard by Respondent and is ripe for adjudication, delaying a ruling past the temporary injunction setting is unreasonable. Because the future setting will be assigned pursuant to the central docket system, delaying a decision past that date presents two major problems.

First, since each successive court assigned a setting in this matter will be tasked the inherent responsibility of determining whether it has jurisdiction, delaying a decision runs the risk of conflicting rulings—notwithstanding Plaintiffs' contention that the "law of the case" doctrine alleviates this risk. *See In re U.S. Silica Co.*, 157 S.W.3d 434, 439 (Tex. 2005) (The Texas Supreme Court has "long held that mandamus relief is appropriate to resolve conflicting orders from two or more courts asserting jurisdiction over the same case.") (citing *Bigham v. Dempster*, 901 S.W.2d 424, 428 (Tex. 1995) (granting mandamus relief from "conflicting orders issued from different district courts"); *Abor v. Black*, 695 S.W.2d 564, 567 (Tex. 1985); *Curtis v. Gibbs*, 511 S.W.2d 263, 267 (Tex. 1974)).

Second, if Respondent does not determine the Plea to the Jurisdiction before the forthcoming settings, then the subsequent court's rulings regarding Plaintiffs' claims—to the extent it does not address jurisdiction—would be invalid advisory opinions. This is because "if a government entity validly asserts that it is immune from a pending claim, any court decision regarding that claim is advisory to the extent it addresses issues other than immunity, and the Texas Constitution does not afford courts jurisdiction to make advisory decision or issue advisory opinions." *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 103 (Tex. 2012) (citing *Valley Baptist Med. Ctr. v. Gonzalez*, 33 S.W.3d 821, 822 (Tex. 2000); TEX. CONST. ART. IV, §§ 1, 22).

For all of these reasons, the Court should grant mandamus relief compelling the trial court to rule before the temporary injunction hearing.

E. Accepting Plaintiffs' arguments would create a template for circumventing government entities' right to an interlocutory appeal.

Immunity from suit is designed to protect the immunity-holder from the costs and burdens of litigation. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). Since sovereign immunity is an *immunity from suit* "it is effectively lost if a case is erroneously permitted to go to trial." *Id*.; *see also City of Galveston v. Gray,* 93 S.W.3d 587, 591 (Tex. App.—Houston [14th Dist.] 2002, orig. proceeding). This reasoning "underlies the immediate appealability of an order denying absolute immunity" *Mitchell*, 472 U.S. at 526. In Texas, a government entity is entitled to an

immediate interlocutory appeal of an order denying a plea to the jurisdiction and, under certain scenarios, an automatic stay of the trial court proceedings pursuant to Texas Civil Practice and Remedies Code § 51.014. *City of Galveston,* 93 S.W.3d at 592 ("The policy reasons for providing an interlocutory appeal from an order granting or denying a plea to the jurisdiction is the State should not have to expend resources in trying a case on the merits if it is immune from suit."). This right to an interlocutory appeal protects government entities' immunity from suit, and ultimately the public, who bear the costs of funding the entities' litigation. *See City of Austin v. L.S. Ranch, Ltd*., 970 S.W.2d 750, 753 (Tex. App.—Austin 1998, no pet.).

This right is of course conditioned on the trial court timely hearing and ruling on the government entity' plea to the jurisdiction. Under established case law, when a motion is pending before another judge, it does not count in the analysis for the delay in ruling. *In re First Mercury Ins. Co*., 2013 Tex. App. LEXIS 13897, at *15 (Concluding that the amount of time a motion is pending before another judge "cannot be held against the respondent in this case with regard to our analysis of the delay in ruling."). Therefore, under Plaintiffs' logic, in a central docket system, a government entity's right to an interlocutory appeal can effectively be circumvented[8]

[8] To be clear, Relators are *not* alleging or suggesting that Respondent intended to circumvent the State's right to an interlocutory appeal. Only that it is the effective result of the Court's actions. *See In re Union Carbide Corp*., 273 S.W.3d 152, 156 (Tex. 2008) ("We need not consider whether

if a trial court is allowed to simply decline to rule on a plea to the jurisdiction without prejudice to allowing the government entity to reurge that motion before the next court. In that scenario, even under repeated overt refusals to rule, the government entity would never able to succeed on mandamus because each successive court would have only had the motion pending before it for a few days or weeks at most. Allowing this would circumvent the government entity's right to an interlocutory appeal and effectively deprive it of its immunity from suit. *See In re Union Carbide Corp*., 273 S.W.3d 152, 156 (Tex. 2008) (issuing mandamus to compel court to act where judge's refusal to rule on motion resulted in a circumvention of the county's random-case-assignment rule). Instead, the Court should issue mandamus compelling the trial court to rule prior to the temporary injunction hearing.

Prayer

For these reasons, Relators Pablos and Ingram respectfully request that the Court grant its Petition for Writ of Mandamus directing the Hon. Tim Sulak to rule on Relators' Plea to the Jurisdiction before the temporary injunction hearing.

Dated: October 30, 2017

KEN PAXTON
Attorney General of Texas

JEFFREY MATEER
First Assistant Attorney General

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the intervention was intended to circumvent Galveston County's local rule requiring random assignment of cases because regardless of the Halls' intent, the intervention and the trial court's abuse of discretion in failing to rule on and grant the motion to strike resulted in circumvention of the random assignment rule.")

BRANTLEY STARR
Deputy First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

ANGELA V. COLMENERO
Division Chief – General Litigation

/s/ *Esteban S.M. Soto*
ESTEBAN S.M. SOTO
State Bar No. 24052284
Assistant Attorney General
General Litigation Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
(512) 475-4054/FAX (512) 320-0667
esteban.soto@oag.texas.gov
ATTORNEYS FOR RELATORS

MANDAMUS CERTIFICATION

Pursuant to Texas Rule of Appellate Procedure 52.3(j), I certify that I have reviewed this reply and that every factual statement in the reply is supported by competent evidence included in the appendix or record.

/s/ *Esteban S.M. Soto*
ESTEBAN S.M. SOTO
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent ***via electronic filing*** **on October 30, 2017**, to:

Counsel for Real Parties of Interest:

Charles W. McGarry
Texas Bar No. 13610650
701 Commerce Street, Suite 400
Dallas, Texas 75202
(214) 748-0800
(214) 748-9449 fax
cmcgarry@ix.netcom.com

Myrna Pérez, Esq.
Douglas Keith, Esq.
Brennan Center for Justice
120 Broadway, Suite 1750
New York, NY 10271
(646) 292-8310 phone
(212) 463-7308 fax
myrna.perez@nyu.edu
wendy.weiser@nyu.edu
douglas.keith@nyu.edu

Daniel T. Donovan, Esq.
Susan M. Davies, Esq.
Michael A. Glick, Esq.
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, DC 20005
(202) 879-5000 phone
(202) 879-5200 fax
daniel.donovan@kirkland.com
susan.davies@kirkland.com
michael.glick@kirkland.com

In addition, I certify that a true and correct copy has been send to Respondent ***via facsimile (512)854-9332 and regular mail*** on **October 30, 2017**.

/s/ *Esteban S.M. Soto*
ESTEBAN S.M. SOTO
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

In compliance with Texas Rule of Appellate Procedure 9.4(i)(2), this brief contains 4181 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

/s/ *Esteban S.M. Soto*
ESTEBAN S.M. SOTO
Assistant Attorney General