

No. \_\_\_\_\_

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

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**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,*

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

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**PETITION FOR WRIT OF MANDAMUS**

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**ORAL ARGUMENT REQUESTED**

## IDENTITY OF PARTIES AND COUNSEL

Pursuant to Rule 52.3(a) of the TEXAS RULES OF APPELLATE PROCEDURE, Relator herein provides this Court with the following list of parties and the names and addresses of all trial and appellate counsel:

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<sup>1</sup> Presiding judge of the 353th Judicial District Court of Travis County, Texas.

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## **STATEMENT REGARDING ORAL ARGUMENT**

Relators respectfully request oral argument. In the interest of expediency, however, Relators are willing to forego oral argument in the interest of obtaining a quicker ruling on the important issues raised by this Petition.

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## STATEMENT OF THE CASE

- Trial Court:* The 98th Judicial District Court of Travis County, Texas. The matter was heard by the Honorable Tim Sulak, the presiding judge of the 353th Judicial District Court of Travis County, Texas.
- Nature of the Case:* The Real Parties in Interest brought this suit pursuant to the Uniformed Declaratory Judgment Act (“UDJA”), Chapter 37 of the Civil Practice and Remedies Code. They allege that Relators’ statutorily required production of voter information available to the public, pursuant to Texas Election Code § 18.066, to a request by the Presidential Advisory Commission on Election Integrity will violate Texas Election Code §§ 18.066 and 18.067, and Texas Government Code § 552.101.
- Course of Proceedings:* The Real Parties in Interest filed their Original Petition on July 20, 2017. Rec. at 1-31.<sup>2</sup> On September 21, 2017, Plaintiffs filed an application for a temporary restraining order (“TRO”) and a temporary injunction. Rec. at 80-105. Relators filed a Plea to the Jurisdiction on September 26, 2017. Rec. at 106-169. The trial court held a hearing on the Plea and the application for a TRO on September 29, 2017. Rec.170-171; Appx. A at 2. On October 2, 2017, Relators submitted proposed orders on both motions and requested a ruling on the Plea. Appx O at 41-43. On October 3, 2017, the trial court issued a TRO, and set an October 16, 2017, hearing on the request for a temporary injunction. Rec. at 187-192. On October 4, 2017, Relators wrote to the trial court again requesting a ruling on the Plea. Appx. C at 9.
- Disposition:* On October 4, 2017, the trial court notified the parties that it had declined to rule on the Plea to the Jurisdiction. Appx. C at 9.

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<sup>2</sup> “Rec. refers to the Record and “Appx.” refers to the Appendix.

## **STATEMENT OF JURISDICTION**

This Court has original jurisdiction to issue the requested writ of mandamus.

*See* TEX. GOV'T CODE § 22.221(a); TEX. R. APP. P. 52.1.

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**ROLANDO PABLOS, SECRETARY OF STATE FOR THE STATE OF**  
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Honorable Tim Sulak, Presiding

---

**PETITION FOR WRIT OF MANDAMUS**

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TO THE HONORABLE THIRD COURT OF APPEALS:

Judges have a ministerial duty to decide matters assigned to their court. In this case, the trial court abused its discretion by overtly refusing to rule on Relators' Plea to the Jurisdiction when it had a reasonable time to decide the purely legal jurisdictional issues raised in the motion. The trial court's express refusal violates its ministerial duty and the Supreme Court's instruction that jurisdictional issues must be decided at the "earliest opportunity" and "as soon as practicable." *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226-27 (Tex. 2004). The trial

court's action also effectively deprives Relators of their sovereign immunity from suit by exposing them—and Texas taxpayers—to the burdens and costs associated with litigation. Because there is no adequate remedy by appeal for the trial court's refusal to rule, mandamus should issue to compel the court to act. Further, the Court should stay proceedings<sup>3</sup> at the trial court—including discovery and the October 16, 2017, temporary injunction hearing—while it considers this petition.

### **STATEMENT OF FACTS**

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 (collectively, “Plaintiffs”), brought this suit challenging the Secretary of State's (“SOS”) statutorily required production of publicly available voter information, pursuant to Texas Election Code § 18.066, to the Presidential Advisory Commission on Election Integrity (the “Commission”). Rec. at 1-31. Plaintiffs contend that the production will violate Texas Election Code §§ 18.066 and 18.067, and Texas Government Code § 552.101. Rec. 58-62. At issue is the Commission's September 13, 2017, request for information from the statewide computerized voter registration list made pursuant to Texas Election Code § 18.066. Rec. at 77-79. The statute requires the SOS to produce information from the list—subject only to limited, enumerated exceptions—to “any person on request.” TEX.

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<sup>3</sup> A separate emergency motion for temporary relief requesting a stay is also being filed today.

ELEC. CODE § 18.066. Section 18.067 provides that it is a misdemeanor offense for a person to “use[] information in connection with advertising or promoting commercial products or services that the person knows was obtained under Section 18.066.” In their operative petition, Plaintiffs allege, in wholly conclusory fashion, that the SOS’s production will violate sections 18.066 and 18.067 of the Election Code and section 552.101 of the Government Code (the Public Information Act or “PIA”). Rec. at 32-79. Plaintiffs seek declaratory and injunctive relief prohibiting SOS from producing the challenged information to the Commission. Rec. at 62-63.

Following the Commission’s September 13, 2017, request, the Plaintiffs moved the trial court to enter a TRO and a temporary injunction. Rec. at 80-105. Relators filed a Plea to the Jurisdiction, on September 26, 2017, arguing that Plaintiffs’ suit is barred by sovereign immunity because they have not brought a claim that falls within a waiver or exception to the Relators’ immunity. Rec. at 106-169. The Plea was both pleading and evidentiary based—arguing that Plaintiffs have not pleaded a claim within the court’s jurisdiction and attaching evidence showing that the Commission and SOS complied with all of section 18.066’s provisions. Rec. at 106-169. Plaintiffs responded to the Plea on September 28, 2017. Rec. at 172-183. Notably, while they made passing assertions that the Plea was premature, they did not allege that the jurisdictional issues needed factual development, but instead simply argued that a plea to the jurisdiction cannot address the merits. Rec. at 172-

183; *but see Creedmoor—Maha Water Supply Corp. v. Tex. Comm'n on Env'tl. Quality*, 307 S.W.3d 505, 516 n.8 (Tex. App.—Austin 2010, no pet.) (Holding that the “pure legal” question of whether a plaintiff has established ultra vires conduct must “be resolved to determine the trial court’s jurisdiction...regardless of whether that issue parallels the merits.”).

The trial court held a hearing on the Plea and the TRO on September 29, 2017. Rec. at 170-171; Appx. A at 2. At the hearing, the trial court took argument on both motions, and indicated that it would rule on the TRO within a few days. Appx. A at 2; Appx. C at 10-11. It did not indicate when it would rule on the Plea. Appx. C at 10-11. Per the trial court’s instruction, on October 2, 2017, the parties submitted proposed orders. Appx. C at 9-11; Appx. O at 41-43. Relators submitted proposed orders granting and denying the Plea and requested, through a letter, that the trial court rule on the Plea. Appx. O at 41-43. On October 3, 2017, the trial court issued a TRO. Rec. at 184-189. The TRO did not prohibit Relators from producing the requested information entirely, but instead prohibited them from producing certain categories of information—despite the fact much of the restrained information was not among the classes of information Plaintiffs allege must be withheld. Rec. at 184-189.

The next day, on October 4, 2017, Relators wrote the trial court again requesting a ruling on the Plea before the temporary injunction hearing. Appx. C at

10-11. Relators also inquired about whether the Court intended to rule on the Plea. Appx. C at 10-11. The staff attorney for the trial court responded the same day stating “[t]he Court has declined to rule on the plea to the jurisdiction without prejudice to consideration of the same at the time of the temporary injunction hearing (or at another time).” Appx. C at 9. Notably, since Travis County operates on a central docketing system, the temporary injunction hearing and any future setting will be randomly assigned to a district court judge—making it uncertain that Judge Sulak would hear any future matter. *See* Appx. 34-37, Travis County L. R. 1.3 (“hearings are assigned to available judges without regard to the court in which the case is filed”).

Following the trial court’s declination to rule, Plaintiffs indicated that they would oppose any request to reset the Plea on or before the temporary injunction hearing—as they asserted the “issues” related to the injunction and the Plea were “different.” Appx. D at 12, 15. Plaintiffs also indicated they would be seeking depositions of Relator Ingram during the week of October 9, 2017. Appx. D at 18. Notably, Plaintiffs asserted that the potential deposition(s) would not be related to the pending jurisdictional issues, but would be limited to the issues raised in the temporary injunction. Appx. D at 15, 19.

In addition, on October 10, 2017, the Commission agreed to “toll its pending request for information...pending a District Court ruling on Defendant’s pending plea to the jurisdiction.” Appx. E at 23.

## **ARGUMENT**

### **A. Legal Standard for Mandamus.**

Mandamus is an extraordinary writ that should be issued only “when a trial court clearly abuses its discretion and there is no adequate remedy by appeal.” *In re Norris*, 371 S.W.3d 546, 548 (Tex. App.—Austin 2012, orig. proceeding) (citing *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004)). The adequacy of an appellate remedy must be determined by balancing the benefits of mandamus review against the detriments. *In re State*, 355 S.W.3d 611, 614–15 (Tex.2011) (orig. proceeding). In performing this balancing, an appellate court looks at a number of factors, including whether mandamus review “will spare litigants and the public ‘the time and money utterly wasted enduring eventual reversal of improperly conducted proceedings.’” *In re State*, 355 S.W.3d at 615 (quoting *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004) (orig. proceeding)).

Consideration of a motion that is properly filed and before the trial court is a ministerial act, and mandamus may issue to compel the trial court to act. *See Eli Lilly & Co. v. Marshall* 829 S.W.2d 157, 158 (Tex.1992) (orig. proceeding). There is no adequate remedy at law for a trial court's failure to rule because “[f]undamental

requirements of due process mandate an opportunity to be heard.” *In re Christensen*, 39 S.W.3d 250, 251 (Tex. App.—Amarillo 2000, orig. proceeding). Thus, in proper cases, mandamus may be issued to compel the trial court to act. *See In re Blakeney*, 254 S.W.3d 659, 661 (Tex. App.—Texarkana 2008, orig. proceeding).

**B. Respondent Abused His Discretion in Refusing to Rule on Relators’ Plea to the Jurisdiction**

When a motion is properly filed and pending before a trial court, the act of giving consideration to and ruling upon that motion is a ministerial act. *E.g.*, *O’Donniley v. Golden*, 860 S.W.2d 267, 269 (Tex. App.—Tyler 1993, orig. proceeding). Here, the trial court’s overt refusal to rule on the Plea to the Jurisdiction, by itself, justifies mandamus relief—regardless of the amount of time the motion as pending—because judges have a ministerial duty to decide matters assigned to their court. Moreover, the specific circumstances at issue warrant a finding the Plea has been pending a reasonable time. Specifically, because the Plea raises jurisdictional issues, it must be decided at its “earliest opportunity” and “before allowing the litigation to proceed.” *Miranda*, 133 S.W.3d at 226. Further, due to the expedited nature of the litigation, the trial court’s refusal to rule effectively deprives Relator of the sovereign immunity from suit by refusing to decide the jurisdictional issues and subjecting them to the burdens and costs of litigation. Accordingly, mandamus should issue to compel the trial court to rule on the pending Plea to the Jurisdiction.

**1. The trial court’s express refusal to rule violates its ministerial duty to decide assigned matters.**

A trial court has a ministerial duty to consider and decide motions properly filed and brought to its attention. This ministerial duty is reflected in case law and the Texas Code of Judicial Conduct, which provides “a judge shall 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.) (quoting TEX. CODE JUD. CONDUCT, Canon 3(B)(1)). In this instant matter, the trial court abused its discretion when it considered and held a hearing on the Plea, but then expressly refused to rule on the motion. In these circumstances, the overt refusal is, by itself, a violation of the court’s ministerial duty sufficient to warrant mandamus relief—particularly considering that Travis County operates a central docketing system which randomly assigns matters to available district judges. *In re Deere & Co.*, 299 S.W.3d 819, 820 (Tex. 2009) (orig. proceeding) (mandamus will issue if the relator establishes a clear abuse of discretion for which there is no adequate remedy by appeal).

Notably, this matter is different than the usual fact pattern where a court takes a motion under advisement for ruling by the same judge at a later date. Rather, due to Travis County’s central docketing system, the trial court’s refusal to rule on the Plea means that it is violating its duty to decide assigned matters. Instead, it is improperly passing that duty on to the next district court that is assigned this case,

and there is no evidence that the subsequent court will be in a better position to decide the motion—particularly considering that Respondent has already held an hour-long hearing on the matter.

The trial court’s refusal to rule also prejudices Relators without any adequate remedy at law by forcing the State to expend taxpayer money rehearing and rearguing this same matter to the next district court assigned the case. *See City of Austin v. L.S. Ranch, Ltd.*, 970 S.W.2d 750, 753 (Tex. App.—Austin 1998, no pet.) (noting that because the high cost of defending suits against a governmental entity is ultimately borne by public, a “strong motivation” exists for allowing jurisdictional issues to be resolved before merits of suit are litigated). It also effectively establishes a template for trial courts to circumvent procedures for allowing an interlocutory appeal of denials of pleas to the jurisdiction brought by government units. *See* TEX. CIV. PRAC. & REM. CODE §§ 51.014(a)(8); 51.014(b) (allowing for interlocutory appeal and automatic stay of the trial court proceedings when trial court denies a government unit’s plea to the jurisdiction); *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). A practical effect of the court’s refusal to rule is that State’s sovereign immunity from suit is “effectively lost” while Relators attempt to raise the same issues with another court. *City of Galveston v. Gray*, 93 S.W.3d 587, 591

(Tex. App.—Houston [14th Dist.] 2002, orig. proceeding) (A government unit’s immunity from suit would be “effectively lost if the court erroneously assumes jurisdiction and subjects the government unit to pre-trial discovery and the costs incident to litigation.”).

Accordingly, the trial court’s overt refusal to consider the matters assigned to it violates a ministerial duty and entitles Relators to mandamus relief.

**2. Due to the unique circumstances of the case, Relators are also entitled to mandamus relief because its Plea has been pending for reasonable amount of time.**

In addition, the record shows that the Plea has been pending for a reasonable time. In cases involving a trial court’s refusal to rule, mandamus will issue if “(1) the motion was properly filed and has been pending for a reasonable time; (2) the relator requested a ruling on the motion; and (3) the trial court refused to rule.” *In re Cervantes*, No. 03-17-00427-CV, 2017 WL 3902966, 2017 Tex. App. LEXIS 8296 at \* 1 (Tex. App. Austin Aug. 31, 2017, orig. proceeding) (citing *In re Sarkissian*, 243 S.W.3d 860, 861 (Tex. App.—Waco 2008, orig. proceeding)). Whether a reasonable time for the trial court to act has lapsed is dependent upon the circumstances of each case. *See In re Blakeney*, 254 S.W.3d at 662. The test for determining what time period is reasonable is not subject to exact formulation, and no “bright line” separates a reasonable time period from an unreasonable one. *Id.* at 661. Courts examine “myriad” of criteria including the trial court's actual knowledge

of the motion, its overt refusal to act, the state of the court's docket, and the existence of other judicial and administrative matters which must be addressed first. *Id.*; *Ex parte Bates*, 65 S.W.3d 133, 135 (Tex. App.—Amarillo 2001, orig. proceeding).

Here, it is unquestioned that the Plea was properly filed and the second and third elements are met through Relators' repeated requests for a ruling and the trial court's overt refusal to rule. Further, under the unique circumstances of this expedited action, all the relevant criteria weigh in favor of a finding that the Plea has been pending a reasonable time. Specifically, it is undisputed that the trial court had actual knowledge of the motion—as it held a hearing on the matter—and that it overtly refused to rule. Further, the trial court did not indicate a basis for its refusal to rule and there is no evidence that it was due to the court's docket (particularly considering Travis County's centralized docket) or that other matters in the case that take precedent over threshold jurisdictional issues concerning the trial court's power to act. Moreover, multiple other factors support a finding that, under these specific circumstances, the Plea has been pending a reasonable amount of time.

First, because the Plea raises jurisdictional issue, it must be decided at the "earliest opportunity" and "as soon as practicable." *Miranda*, 133 S.W.3d at 226-27; *City of Austin*, 970 S.W. 2d at 753 ("The high cost of defending a suit against a governmental entity, borne ultimately by the public, is strong motivation for allowing any jurisdictional issue to be resolved before the merits of the suit are

litigated.”); *In re First Mercury Ins. Co.*, No. 13-13-00469-CV, 2013 WL 6056665, 2013 Tex. App. LEXIS 13897 at \*3 (Tex. App.-Corpus Christi Nov. 13, 2013, orig. proceeding) (“[I]n considering the circumstances of the case, we consider the subject matter of the pending motion.”)

Second, the Plea presents purely legal questions and is ripe for adjudication. To fall within the limited waiver of sovereign immunity in section 273.081 of the Election Code or the ultra vires exception to immunity, Plaintiffs must allege and establish that Relators acted outside of their legal authority by violating the relevant statutes. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009); *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 636 (Tex. 2012). While the Plea is partially evidentiary based, the relevant jurisdictional evidence is not in dispute. There is no evidence that the SOS and the Commission have failed to comply with the express provisions of section 18.066 of the Election Code or have somehow violated section 18.067 of the Election Code. And Relators represented to the trial court—and stipulate now—that because the statute requires the SOS to produce the information to “any person on request” they do not have the authority or intention to condition the production on any of the extra, non-statutory based assurances or conditions that Plaintiffs seek through their injunction. TEX. ELEC.

CODE § 18.066(a).<sup>4</sup> Whether this fact pattern constitutes an action outside of the Relator’s legal authority is simply “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). Therefore, the Plea is ripe for adjudication and any subsequent district court assigned this matter will not be in a better position to decide the issues.

Third, in these unique circumstances, it would be unreasonable to delay a ruling past the date of the temporary injunction hearing. Specifically, each district court that will hear a matter in this case must decide whether it has subject matter jurisdiction to act. *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 103 (Tex. 2012) (“Subject matter jurisdiction cannot be waived or conferred by agreement, can be raised at any time, and must be considered by a court sua sponte.”). In the instant matter, future settings in this case, including the upcoming temporary injunction hearing (that Respondent set), will be assigned via the County’s central docket system. Since the Plea was assigned to Respondent, he has a ministerial duty to decide the motion. *PUC of Tex.*, 311 S.W.3d at 632. Should the Respondent delay a ruling past the date of the upcoming temporary injunction hearing, two district courts

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<sup>4</sup> Any potential argument that the jurisdictional issues need factual development is belied by Plaintiffs’ inaction. They have had three months to seek jurisdictional discovery, but they cannot show that they have sent a single discovery request. Further, while Plaintiffs now seek a deposition, they contend that the proposed deposition will be limited to issues related to the temporary injunction and contend those “issues” are “different” than the jurisdictional issues raised in the Plea. Appx. 12, 15, 19.

will likely then be tasked with determining whether jurisdiction exists—thus, necessarily raising the possibility of conflicting rulings on the same issue in the same case. *In re Southwestern Bell Tel. Co., L.P.*, 226 S.W.3d 400, 404 (Tex. 2007) (recognizing a “great benefit” of a mandamus that avoids conflicting rulings). Thus, in this specific circumstance, the Court should find that Respondent’s refusal to rule by the date of the temporary injunction is unreasonable.

Fourth, and finally, in this situation there would no material change in merits or the ripeness of the Plea whether it is decided now, a month from now, or a year from now. But, in the meantime, if the litigation is permitted proceed without a ruling on the jurisdictional issues, Texas taxpayers will have to bear the costs of defending the action in the trial court and Relators’ sovereign immunity from suit will effectively be lost.

For these reasons, mandamus should issue to compel the trial court to act on the pending Plea to the Jurisdiction prior to the temporary injunction hearing.

**C. The Court should stay proceeding in the trial court while it determines this matter.**

In addition, as argued in the separate motion for emergency temporary relief, Relators respectfully request that this Court stay proceedings in the trial court while it considers this matter. As noted above, Relators’ sovereign immunity from suit would be “effectively lost if the court erroneously assumes jurisdiction and subjects

the government unit to pre-trial discovery and the costs incident to litigation.” *City of Galveston*, 93 S.W.3d at 593. Currently the parties are set for temporary injunction hearing on October 16, 2017. In addition, in advance of that hearing, Plaintiffs have indicated that they will notice Relator Ingram for deposition this week—or attempt to get an order from the trial order permitting discovery prior to the injunction hearing. Appx. D at 18-19. Notably, Plaintiffs have indicated that this proposed discovery will be centered on issues related to the temporary injunction and would not involve any jurisdictional issues. Appx. D at 19 (stating that deposition would be concerning issues related to the injunction hearing and that those issues are “different” than the jurisdictional issues raised in the Plea).

Plaintiffs will not be prejudiced by a stay in the trial court (or risk irreparable harm by a change in the status quo) because the Commission has agreed to “toll its pending request for information...pending a District Court ruling on Defendant’s pending plea to the jurisdiction.” Appx. E at 23.

Accordingly, for these reasons, the Court should stay the proceedings in the trial court while it considers this Petition.

### **PRAYER**

For these reasons, Relators 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 prior to the upcoming temporary injunction hearing.

KEN PAXTON  
Attorney General of Texas

JEFFREY MATEER  
First Assistant Attorney General

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 petition and that every factual statement in the petition 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 ECF* on **October 10, 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](mailto: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](mailto:myrna.perez@nyu.edu)  
[wendy.weiser@nyu.edu](mailto:wendy.weiser@nyu.edu)  
[douglas.keith@nyu.edu](mailto:douglas.keith@nyu.edu)

Daniel T. Donovan, Esq.

Susan M. Davies, Esq.  
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655 Fifteenth Street, N.W.  
Washington, DC 20005  
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[daniel.donovan@kirkland.com](mailto:daniel.donovan@kirkland.com)  
[susan.davies@kirkland.com](mailto:susan.davies@kirkland.com)  
[michael.glick@kirkland.com](mailto: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 10, 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 3,619 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

/s/ Esteban Soto

**ESTEBAN S.M. OTO**

Assistant Attorney General

No. \_\_\_\_\_

IN THE COURT OF APPEALS  
FOR THE \_\_\_\_\_ JUDICIAL DISTRICT  
AUSTIN, TEXAS

---

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

---

**PETITION FOR WRIT OF MANDAMUS**  
(Oral Argument Requested)

---

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

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**APPENDIX INDEX<sup>1</sup>**

A)	Affidavit of Esteban S.M. Soto .....	Appx. 1-2
B)	October 3, 2017 Order Granting Plaintiffs’ Application for Temporary Restraining Order.....	Appx. 3-8
C)	October 4, 2017 email from the Court.....	Appx. 9-11
D)	October 4-5 emails between the Parties .....	Appx. 12-22
E)	October 10, 2017 emails between Commission and SOS .....	Appx. 23
F)	TEX. ELEC. CODE § 18.066.....	Appx. 24
G)	TEX. ELEC. CODE § 18.005.....	Appx. 25
H)	TEX. ELEC. CODE § 13.004.....	Appx. 26-27

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<sup>1</sup> The appendix is paginated on the bottom right corner with the Appx. prefix for clarity of viewing.

I)	TEXAS ELEC. CODE § 273.081 .....	Appx. 28
J)	Texas Public Information Act § 552.321 .....	Appx. 29
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M)	Travis County Local Rule 1.3.....	Appx. 34-37
N)	TEX. CODE JUD. CONDUCT, Canon 3(B)(1)) .....	Appx. 38-40
O)	October 2, 2017 Letter to the Court.....	Appx. 41-43

No. \_\_\_\_\_

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

---

**PETITION FOR WRIT OF MANDAMUS**

---

**AFFIDAVIT OF ESTEBAN S.M. SOTO**

THE STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS                   §

BEFORE ME, the undersigned authority, personally appeared **ESTEBAN S.M. SOTO**, who being by me duly sworn, deposed the following:

1.     “My name is **ESTEBAN S.M. SOTO**. I am over the age of 21 years and am competent to make this Affidavit. All matters stated herein are true and correct and within my personal knowledge.”

2. "I am the Assistant Attorney General representing the Relators Rolando Pablos, Secretary of State for the State of Texas, and Keith Ingram, Director, Texas Elections Division of the Secretary of State, in this Petition for Writ of Mandamus proceeding. I am licensed to practice in the State of Texas, and prepared the Petition for Writ of Mandamus and Appendix and the Mandamus Record, filed with the Petition. All of the documents, statutes, and rules in the attached Appendix and the Mandamus Record are true and correct copies of the documents, statutes, and rules identified or true and correct copies of the documents filed in this action, as those documents exist in our files."

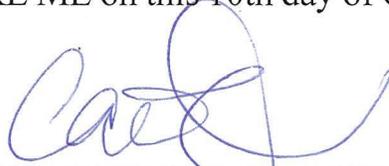
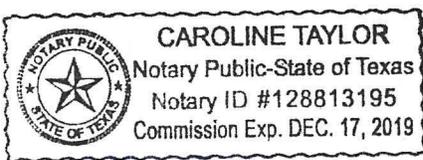
3. "The trial court held a hearing held on September 29, 2017. The hearing lasted approximately one hour. It did not contain testimony adduced in connection with this matter. Nevertheless, Relators requested an expedited transcript of the hearing and I will supplement the Record as soon as I have received the transcript."

"Further, affiant sayeth not."



ESTEBAN S.M. SOTO

SUBSCRIBED AND SWORN TO BEFORE ME on this 10th day of October, 2017.



Notary Public - State of Texas

My commission expires: 12/17/19

OCT 03 2017 JC  
At 3:38 P.M.  
Velva L. Price, District Clerk

LEAGUE OF WOMEN VOTERS OF TEXAS,  
TEXAS STATE CONFERENCE OF THE  
NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE  
(NAACP) and RUTHANN GEER,

*Plaintiffs,*

vs.

ROLANDO PABLOS, Secretary of State For the  
State of Texas, and KEITH INGRAM, Director,  
Texas Elections Division of the Secretary of State,

*Defendants.*

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

98<sup>th</sup> JUDICIAL DISTRICT

**TEMPORARY RESTRAINING ORDER**

Plaintiffs, the League of Women Voters of Texas, the Texas State Conference of the National Association for the Advancement of Colored People, and Ruthann Geer, have filed an Application for an Temporary Restraining Order and Temporary Injunction in the above-captioned action.

On September 29, 2017, the Court took under consideration Plaintiff's request for a temporary restraining order. After considering the pleadings, briefing, and arguments of counsel, the Court **FINDS** that Defendants Rolando Pablos and Keith Ingram, in their official capacities as Secretary of State for the State of Texas and Director of the Texas Elections Division of the Secretary of State, respectively, may imminently violate Texas Elections Code Section 18.066 and 18.067 and Texas Government Code Section § 552 by transmitting information contained in the Texas Computerized Voter Registration List to the Presidential Advisory Commission on Election Integrity, without taking appropriate precautions to

safeguard the privacy and security of that information. It appears from the facts set forth in Plaintiffs' Second Amended Petition and in the exhibits and sworn affidavits attached to their Application for a Temporary Restraining Order and Temporary Injunction that unless Defendants are immediately restrained from the acts prohibited below, Defendants will commit such acts before a hearing can be held on Plaintiffs' application for a Temporary Injunction. The injury resulting from such acts will be irreparable. If the private information contained in the Texas Computerized Voter Registration List is transmitted without appropriate safeguards, it is likely to become public. The public disclosure of this information without appropriate checks on its use may cause a variety of harms not readily susceptible to monetary measurement, including but not limited to the violation of Plaintiffs' privacy rights, their interests in avoiding commercial solicitation, chilling of their First Amendment rights, and the diminution of their efforts to encourage voting. Having found that Plaintiffs have adequately established, for purposes of obtaining a temporary restraining order, that they have a cause of action and a probable right to relief, and given the potential for immediate and irreparable injury to Plaintiffs, their Application for Temporary Restraining Order is **GRANTED**.

1. **IT IS THEREFORE ORDERED** that Defendants Rolando Pablos and Keith Ingram, their officers, agents, servants, employees, attorneys, and any other persons in active concert or participation with them, shall be restrained from transmitting any data drawn from the below-listed fields of the Texas Computerized Voter Registration List to the Presidential Advisory Commission on Election Integrity, or its members, officers, agents, servants, employees, or attorneys. This order applies to data drawn from the following fields:

- a. COUNTY CODE
- b. PRECINCT
- c. VUID
- d. DOB
- e. PERM HOUSE NUMBER
- f. PERM DESIGNATOR
- g. PERM DIRECTIONAL PREFIX
- h. PERM STREET NAME
- i. PERM STREET TYPE
- j. PERM DIRECTIONAL SUFFIX
- k. PERM UNIT NUMBER
- l. PERM UNIT TYPE
- m. PERM CITY
- n. PERM ZIPCODE
- o. MAILING ADDRESS 1
- p. MAILING ADDRESS 2
- q. MAILING CITY
- r. MAILING STATE
- s. MAILING ZIPCODE

2. **IT IS FURTHER ORDERED** that Defendants Rolando Pablos and Keith Ingram be and hereby are commanded forthwith to comply with this Order from the date of entry until and to the fourteenth (14th) day after entry or until further order of this Court, whichever is less.

3. Plaintiffs shall execute and file with the Clerk of the above-entitled Court a bond to Defendants in the sum of \$ 100<sup>00</sup>. Following the filing of the bond, the Clerk shall issue an Temporary Restraining Order in conformity with the law and the terms of this Order.
4. The Hearing on Plaintiffs' Application for Temporary Injunction is hereby set for hearing on the central docket the 16<sup>th</sup> day of October, 2017 at 9:00 o'clock a.m in the courtroom assigned by the Travis County Court Administrator in the Herman Marion Sweatt Travis County Courthouse in Austin, Texas.

SIGNED this 3<sup>rd</sup> day of October, 2017 at 11:15 o'clock a.m.



---

TIM SULAK  
JUDGE PRESIDING



DISTRICT CLERK, TRAVIS COUNTY TEXAS - GENERAL/GOVT DIVISION  
VELVA L. PRICE

RECEIPT #: G 000081833  
RECEIVED OF: MCGARRY CHARLES W  
PART. ID: 1029150  
BY CLERK: RODRIGUEZ NANCY  
CHECKS:

DATE: 10-03-2017

TIME: 15:52:05  
MEMO:

CASH	CREDIT	CHANGE	OTHER
\$20.00	\$0.00	\$0.00	\$0.00

CASE NUMBER	EVENT	COURT/JUDGE	TAX NO.	AMOUNT
D-1-GN-17-003451 LEAGUE OF WOMEN V PABLOS ET AL PARTY: LEAGUE OF WOMEN VOTERS OF TEXAS	526	PMT:APPROVAL OF BOND		\$4.00
D-1-GN-17-003451 LEAGUE OF WOMEN V PABLOS ET AL PARTY: LEAGUE OF WOMEN VOTERS OF TEXAS	310	PMT:TRO ISSUANCE		\$16.00
TOTAL RECEIPT...				\$20.00

PLEASE KEEP THIS RECIEPT FOR YOUR RECORDS  
STREET ADDRESS: 1000 GUADALUPE, SUITE 302 AUSTIN, TX 78701  
MAILING ADDRESS: P.O. BOX 679003 AUSTIN, TX 78767-9003



DISTRICT CLERK, TRAVIS COUNTY, TEXAS - CASH BONDS  
VELVA L. PRICE

RECEIPT #: B 000013293      DATE: 10-03-2017  
RECEIVED OF: LEAGUE OF WOMEN VOTERS OF TEXA  
PART. ID: 3582313  
BY CLERK: CLINT  
CHECKS:

TIME: 15:43:02  
MEMO:

BOND ID: 000108133

CASH	CREDIT	CHANGE	OTHER
\$100.00	\$0.00	\$0.00	\$0.00

CASE NUMBER	EVENT	COURT/JUDGE	TAX NO.	AMOUNT
D-1-GN-17-003451 LEAGUE OF WOMEN V PABLOS ET AL PARTY: LEAGUE OF WOMEN VOTERS OF TEXAS	547	PMT:TRO CASH BOND		\$100.00
TOTAL RECEIPT...				\$100.00

PLEASE KEEP THIS RECEIPT FOR YOUR RECORDS  
STREET ADDRESS:      MAILING ADDRESS:  
1000 GUADALUPE, SUITE 302      P.O. BOX 679003  
AUSTIN, TX 78701      AUSTIN, TX 78767-9003

**From:** [Megan Johnson](#)  
**To:** [Soto, Esteban](#); [Myrna Perez](#)  
**Cc:** [Green, La Shanda](#); [Taylor, Caroline](#); [michael.glick@kirkland.com](mailto:michael.glick@kirkland.com); [Max Feldman](#); [Pamela Seger](#); [Megan Johnson](#)  
**Subject:** LWV v. Pablos – Proposed TRO Order  
**Date:** Wednesday, October 04, 2017 4:42:51 PM

---

Counsel,

The Court has declined to rule on the plea to the jurisdiction without prejudice to consideration of the same at the time of the temporary injunction hearing (or at another time).

Regards,  
Megan

---

**From:** Soto, Esteban [<mailto:Esteban.Soto@oag.texas.gov>]  
**Sent:** Wednesday, October 04, 2017 12:17 PM  
**To:** Myrna Perez; Megan Johnson; Pamela Seger  
**Cc:** Green, La Shanda; Taylor, Caroline; [michael.glick@kirkland.com](mailto:michael.glick@kirkland.com); Max Feldman  
**Subject:** RE: {EXTERNAL} RE: LWV v. Pablos – Proposed TRO Order

Regardless, to rule on the TI the next court will first have to determine whether it has jurisdiction over the matter. To avoid a situation were two courts issue conflicting rulings regarding jurisdiction, we respectfully ask that this Court issue a ruling prior to the TI hearing. Or, let the parties know if it is declining to rule on the Plea.

Thank you,  
Esteban

---

**From:** Myrna Perez [<mailto:perezm@brennan.law.nyu.edu>]  
**Sent:** Wednesday, October 04, 2017 12:09 PM  
**To:** Soto, Esteban <[Esteban.Soto@oag.texas.gov](mailto:Esteban.Soto@oag.texas.gov)>; Megan Johnson <[Megan.Johnson@traviscountytexas.gov](mailto:Megan.Johnson@traviscountytexas.gov)>; Pamela Seger <[Pam.Seger@traviscountytexas.gov](mailto:Pam.Seger@traviscountytexas.gov)>  
**Cc:** Green, La Shanda <[Lashanda.Alexander@oag.texas.gov](mailto:Lashanda.Alexander@oag.texas.gov)>; Taylor, Caroline <[Caroline.Taylor@oag.texas.gov](mailto:Caroline.Taylor@oag.texas.gov)>; [michael.glick@kirkland.com](mailto:michael.glick@kirkland.com); Max Feldman <[feldmanm@brennan.law.nyu.edu](mailto:feldmanm@brennan.law.nyu.edu)>  
**Subject:** RE: {EXTERNAL} RE: LWV v. Pablos – Proposed TRO Order

Plaintiffs' view is that the entirety of the time scheduled for the TI hearing on the 16<sup>th</sup> will be taken up by witnesses, etc, on the TI hearing.

---

**From:** Soto, Esteban [<mailto:Esteban.Soto@oag.texas.gov>]  
**Sent:** Wednesday, October 04, 2017 12:59 PM  
**To:** Megan Johnson <[Megan.Johnson@traviscountytexas.gov](mailto:Megan.Johnson@traviscountytexas.gov)>; Myrna Perez <[perezm@brennan.law.nyu.edu](mailto:perezm@brennan.law.nyu.edu)>; Pamela Seger <[Pam.Seger@traviscountytexas.gov](mailto:Pam.Seger@traviscountytexas.gov)>  
**Cc:** Green, La Shanda <[Lashanda.Alexander@oag.texas.gov](mailto:Lashanda.Alexander@oag.texas.gov)>; Taylor, Caroline <[Caroline.Taylor@oag.texas.gov](mailto:Caroline.Taylor@oag.texas.gov)>; [michael.glick@kirkland.com](mailto:michael.glick@kirkland.com); Max Feldman <[feldmanm@brennan.law.nyu.edu](mailto:feldmanm@brennan.law.nyu.edu)>  
**Subject:** RE: {EXTERNAL} RE: LWV v. Pablos – Proposed TRO Order

Ms. Johnson,

Thank you. My recollection is that the Court stated that it intended to issue an order on the TRO early this week, but I do not remember if the Court gave any indication regarding its order on the Plea to the Jurisdiction. Can you please let us know if the Court intends to rule on the Defendants' pending Plea to the Jurisdiction? Or, alternatively, whether it is declining to rule? I apologize for asking, but, given the short timeframe before the temporary injunction hearing, Defendants need act quickly in order to protect its interest. For instance, my understanding of Local Rules is that the parties need to notice any new motion setting by this Friday, September 6, 2017, to order to have it heard at the date of the TI hearing. Accordingly, if it can, please let us know if the Court intends to rule on the Plea or if it needs additional information.

Thank you,

Esteban S.M. Soto  
Assistant Attorney General  
General Litigation Division  
Office of the Attorney General  
300 West 15<sup>th</sup> Street  
Austin, TX 78701  
Phone: 512-475-4054  
Fax: 512-320-0667  
[Esteban.Soto@oag.texas.gov](mailto:Esteban.Soto@oag.texas.gov)

---

**From:** Megan Johnson [<mailto:Megan.Johnson@traviscountytexas.gov>]  
**Sent:** Tuesday, October 03, 2017 12:04 PM  
**To:** Soto, Esteban <[Esteban.Soto@oag.texas.gov](mailto:Esteban.Soto@oag.texas.gov)>; Myrna Perez <[perezm@brennan.law.nyu.edu](mailto:perezm@brennan.law.nyu.edu)>; Pamela Seger <[Pam.Seger@traviscountytexas.gov](mailto:Pam.Seger@traviscountytexas.gov)>  
**Cc:** Green, La Shanda <[Lashanda.Alexander@oag.texas.gov](mailto:Lashanda.Alexander@oag.texas.gov)>; Taylor, Caroline <[Caroline.Taylor@oag.texas.gov](mailto:Caroline.Taylor@oag.texas.gov)>; [michael.glick@kirkland.com](mailto:michael.glick@kirkland.com); Max Feldman <[feldmanm@brennan.law.nyu.edu](mailto:feldmanm@brennan.law.nyu.edu)>  
**Subject:** RE: {EXTERNAL} RE: LWV v. Pablos – Proposed TRO Order

Counsel,  
The Court has signed a Temporary Restraining Order. It is available in our chambers for pickup. The Plaintiffs will need to take care of setting, filing, serving, posting bond, etc.

Regards,  
Megan

---

**From:** Soto, Esteban [<mailto:Esteban.Soto@oag.texas.gov>]  
**Sent:** Monday, October 02, 2017 4:06 PM  
**To:** Myrna Perez; Pamela Seger; Megan Johnson  
**Cc:** Green, La Shanda; Taylor, Caroline; [michael.glick@kirkland.com](mailto:michael.glick@kirkland.com); Max Feldman

**Subject:** {EXTERNAL} RE: LWV v. Pablos – Proposed TRO Order

Ms. Seger and Ms. Johnson,

Pursuant to the Court’s instructions, Defendants submit the attached letter and proposed order regarding the pending Plea to the Jurisdiction and application for a TRO. My understanding is that the parties are agreed to the form of the proposed order denying the TRO, but not to the form of the three additional orders.

Also, if the Court is scheduling a hearing on the temporary injunction, please be advised that I am scheduled to be out of the office on October 23-24 due to a federal hearing in the Eastern District of Texas, Tyler Division.

Thank you,  
Esteban

---

**From:** Myrna Perez [<mailto:perezm@brennan.law.nyu.edu>]  
**Sent:** Monday, October 02, 2017 3:20 PM  
**To:** [pam.seger@traviscountytexas.gov](mailto:pam.seger@traviscountytexas.gov); [Megan.Johnson@traviscountytexas.gov](mailto:Megan.Johnson@traviscountytexas.gov)  
**Cc:** Soto, Esteban <[Esteban.Soto@oag.texas.gov](mailto:Esteban.Soto@oag.texas.gov)>; Green, La Shanda <[Lashanda.Alexander@oag.texas.gov](mailto:Lashanda.Alexander@oag.texas.gov)>; Taylor, Caroline <[Caroline.Taylor@oag.texas.gov](mailto:Caroline.Taylor@oag.texas.gov)>; [michael.glick@kirkland.com](mailto:michael.glick@kirkland.com); Max Feldman <[feldmanm@brennan.law.nyu.edu](mailto:feldmanm@brennan.law.nyu.edu)>  
**Subject:** LWV v. Pablos – Proposed TRO Order

Ms. Seger and Ms. Johnson,

Per Judge Sulak’s direction at the September 29 hearing in the above-captioned matter, please find attached a cover letter to the Court and Plaintiffs’ proposed temporary restraining order.

As detailed in the cover letter, the parties met and conferred and narrowed the issues in dispute, but were unable to come to agreement on the text of the proposed order. Please let me know if you have any questions.

Thanks much and I am sorry we are sending this over so late in the day.

Myrna Pérez  
Director, Voting Rights and Elections Project  
Deputy Director, Democracy Program  
Brennan Center for Justice at NYU School of Law  
120 Broadway  
Suite 1750  
New York, NY 10271  
(w) 646 292-8329 (c) 267 879-1543  
[myrna.perez@nyu.edu](mailto:myrna.perez@nyu.edu)

**From:** [Myrna Perez](mailto:Myrna.Perez)  
**To:** [Soto, Esteban](mailto:Soto.Esteban)  
**Subject:** RE: {EXTERNAL} RE: LWV v. Pablos – Proposed TRO Order  
**Date:** Thursday, October 05, 2017 12:06:27 PM

---

Opposed. Thanks!

---

**From:** Soto, Esteban [<mailto:Esteban.Soto@oag.texas.gov>]  
**Sent:** Thursday, October 05, 2017 1:02 PM  
**To:** Myrna Perez <[perezm@brennan.law.nyu.edu](mailto:perezm@brennan.law.nyu.edu)>  
**Subject:** RE: {EXTERNAL} RE: LWV v. Pablos – Proposed TRO Order

Myrna,

Are you unopposed or opposed to us setting the PTJ for hearing the 16<sup>th</sup>?

Thanks,  
Esteban

---

**From:** Myrna Perez [<mailto:perezm@brennan.law.nyu.edu>]  
**Sent:** Wednesday, October 04, 2017 12:09 PM  
**To:** Soto, Esteban <[Esteban.Soto@oag.texas.gov](mailto:Esteban.Soto@oag.texas.gov)>; Megan Johnson <[Megan.Johnson@traviscountytexas.gov](mailto:Megan.Johnson@traviscountytexas.gov)>; Pamela Seger <[Pam.Seger@traviscountytexas.gov](mailto:Pam.Seger@traviscountytexas.gov)>  
**Cc:** Green, La Shanda <[Lashanda.Alexander@oag.texas.gov](mailto:Lashanda.Alexander@oag.texas.gov)>; Taylor, Caroline <[Caroline.Taylor@oag.texas.gov](mailto:Caroline.Taylor@oag.texas.gov)>; [michael.glick@kirkland.com](mailto:michael.glick@kirkland.com); Max Feldman <[feldmanm@brennan.law.nyu.edu](mailto:feldmanm@brennan.law.nyu.edu)>  
**Subject:** RE: {EXTERNAL} RE: LWV v. Pablos – Proposed TRO Order

Plaintiffs' view is that the entirety of the time scheduled for the TI hearing on the 16<sup>th</sup> will be taken up by witnesses, etc, on the TI hearing.

---

**From:** Soto, Esteban [<mailto:Esteban.Soto@oag.texas.gov>]  
**Sent:** Wednesday, October 04, 2017 12:59 PM  
**To:** Megan Johnson <[Megan.Johnson@traviscountytexas.gov](mailto:Megan.Johnson@traviscountytexas.gov)>; Myrna Perez <[perezm@brennan.law.nyu.edu](mailto:perezm@brennan.law.nyu.edu)>; Pamela Seger <[Pam.Seger@traviscountytexas.gov](mailto:Pam.Seger@traviscountytexas.gov)>  
**Cc:** Green, La Shanda <[Lashanda.Alexander@oag.texas.gov](mailto:Lashanda.Alexander@oag.texas.gov)>; Taylor, Caroline <[Caroline.Taylor@oag.texas.gov](mailto:Caroline.Taylor@oag.texas.gov)>; [michael.glick@kirkland.com](mailto:michael.glick@kirkland.com); Max Feldman <[feldmanm@brennan.law.nyu.edu](mailto:feldmanm@brennan.law.nyu.edu)>  
**Subject:** RE: {EXTERNAL} RE: LWV v. Pablos – Proposed TRO Order

Ms. Johnson,

Thank you. My recollection is that the Court stated that it intended to issue an order on the TRO early this week, but I do not remember if the Court gave any indication regarding its order on the Plea to the Jurisdiction. Can you please let us know if the Court intends to rule on the Defendants'

pending Plea to the Jurisdiction? Or, alternatively, whether it is declining to rule? I apologize for asking, but, given the short timeframe before the temporary injunction hearing, Defendants need act quickly in order to protect its interest. For instance, my understanding of Local Rules is that the parties need to notice any new motion setting by this Friday, September 6, 2017, to order to have it heard at the date of the TI hearing. Accordingly, if it can, please let us know if the Court intends to rule on the Plea or if it needs additional information.

Thank you,

Esteban S.M. Soto  
Assistant Attorney General  
General Litigation Division  
Office of the Attorney General  
300 West 15<sup>th</sup> Street  
Austin, TX 78701  
Phone: 512-475-4054  
Fax: 512-320-0667  
[Esteban.Soto@oag.texas.gov](mailto:Esteban.Soto@oag.texas.gov)

---

**From:** Megan Johnson [<mailto:Megan.Johnson@traviscountytexas.gov>]  
**Sent:** Tuesday, October 03, 2017 12:04 PM  
**To:** Soto, Esteban <[Esteban.Soto@oag.texas.gov](mailto:Esteban.Soto@oag.texas.gov)>; Myrna Perez <[perezm@brennan.law.nyu.edu](mailto:perezm@brennan.law.nyu.edu)>; Pamela Seger <[Pam.Seger@traviscountytexas.gov](mailto:Pam.Seger@traviscountytexas.gov)>  
**Cc:** Green, La Shanda <[Lashanda.Alexander@oag.texas.gov](mailto:Lashanda.Alexander@oag.texas.gov)>; Taylor, Caroline <[Caroline.Taylor@oag.texas.gov](mailto:Caroline.Taylor@oag.texas.gov)>; [michael.glick@kirkland.com](mailto:michael.glick@kirkland.com); Max Feldman <[feldmanm@brennan.law.nyu.edu](mailto:feldmanm@brennan.law.nyu.edu)>  
**Subject:** RE: {EXTERNAL} RE: LWV v. Pablos – Proposed TRO Order

Counsel,  
The Court has signed a Temporary Restraining Order. It is available in our chambers for pickup. The Plaintiffs will need to take care of setting, filing, serving, posting bond, etc.

Regards,  
Megan

---

**From:** Soto, Esteban [<mailto:Esteban.Soto@oag.texas.gov>]  
**Sent:** Monday, October 02, 2017 4:06 PM  
**To:** Myrna Perez; Pamela Seger; Megan Johnson  
**Cc:** Green, La Shanda; Taylor, Caroline; [michael.glick@kirkland.com](mailto:michael.glick@kirkland.com); Max Feldman  
**Subject:** {EXTERNAL} RE: LWV v. Pablos – Proposed TRO Order

Ms. Seger and Ms. Johnson,

Pursuant to the Court's instructions, Defendants submit the attached letter and proposed order regarding the pending Plea to the Jurisdiction and application for a TRO. My understanding is that

the parties are agreed to the form of the proposed order denying the TRO, but not to the form of the three additional orders.

Also, if the Court is scheduling a hearing on the temporary injunction, please be advised that I am scheduled to be out of the office on October 23-24 due to a federal hearing in the Eastern District of Texas, Tyler Division.

Thank you,  
Esteban

---

**From:** Myrna Perez [<mailto:perezm@brennan.law.nyu.edu>]  
**Sent:** Monday, October 02, 2017 3:20 PM  
**To:** [pam.seger@traviscountytexas.gov](mailto:pam.seger@traviscountytexas.gov); [Megan.Johnson@traviscountytexas.gov](mailto:Megan.Johnson@traviscountytexas.gov)  
**Cc:** Soto, Esteban <[Esteban.Soto@oag.texas.gov](mailto:Esteban.Soto@oag.texas.gov)>; Green, La Shanda <[Lashanda.Alexander@oag.texas.gov](mailto:Lashanda.Alexander@oag.texas.gov)>; Taylor, Caroline <[Caroline.Taylor@oag.texas.gov](mailto:Caroline.Taylor@oag.texas.gov)>; [michael.glick@kirkland.com](mailto:michael.glick@kirkland.com); Max Feldman <[feldmanm@brennan.law.nyu.edu](mailto:feldmanm@brennan.law.nyu.edu)>  
**Subject:** LWV v. Pablos – Proposed TRO Order

Ms. Seger and Ms. Johnson,

Per Judge Sulak's direction at the September 29 hearing in the above-captioned matter, please find attached a cover letter to the Court and Plaintiffs' proposed temporary restraining order.

As detailed in the cover letter, the parties met and conferred and narrowed the issues in dispute, but were unable to come to agreement on the text of the proposed order. Please let me know if you have any questions.

Thanks much and I am sorry we are sending this over so late in the day.

Myrna Pérez  
Director, Voting Rights and Elections Project  
Deputy Director, Democracy Program  
Brennan Center for Justice at NYU School of Law  
120 Broadway  
Suite 1750  
New York, NY 10271  
(w) 646 292-8329 (c) 267 879-1543  
[myrna.perez@nyu.edu](mailto:myrna.perez@nyu.edu)

**From:** [Myrna Perez](#)  
**To:** [Soto, Esteban](#)  
**Subject:** PTJ  
**Date:** Thursday, October 05, 2017 2:09:07 PM

---

FWIW, we would agree to the Tuesday or Thurs (or Fri) of the week of the 30<sup>th</sup>.

The issues are different, and we're going to need all our time for the TI hearing on the 16<sup>th</sup>.

---

**From:** Soto, Esteban [mailto:Esteban.Soto@oag.texas.gov]  
**Sent:** Thursday, October 05, 2017 1:02 PM  
**To:** Myrna Perez <perezm@brennan.law.nyu.edu>  
**Subject:** RE: {EXTERNAL} RE: LWV v. Pablos – Proposed TRO Order

Myrna,

Are you unopposed or opposed to us setting the PTJ for hearing the 16<sup>th</sup>?

Thanks,  
Esteban

---

**From:** Myrna Perez [mailto:perezm@brennan.law.nyu.edu]  
**Sent:** Wednesday, October 04, 2017 12:09 PM  
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Plaintiffs' view is that the entirety of the time scheduled for the TI hearing on the 16<sup>th</sup> will be taken up by witnesses, etc, on the TI hearing.

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**Cc:** Green, La Shanda <Lashanda.Alexander@oag.texas.gov>; Taylor, Caroline <Caroline.Taylor@oag.texas.gov>; michael.glick@kirkland.com; Max Feldman <feldmanm@brennan.law.nyu.edu>  
**Subject:** RE: {EXTERNAL} RE: LWV v. Pablos – Proposed TRO Order

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Thank you,

Esteban S.M. Soto  
Assistant Attorney General  
General Litigation Division  
Office of the Attorney General  
300 West 15<sup>th</sup> Street  
Austin, TX 78701  
Phone: 512-475-4054  
Fax: 512-320-0667  
[Esteban.Soto@oag.texas.gov](mailto:Esteban.Soto@oag.texas.gov)

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**Subject:** {EXTERNAL} RE: LWV v. Pablos – Proposed TRO Order

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**Sent:** Monday, October 02, 2017 3:20 PM  
**To:** [pam.seger@traviscountytexas.gov](mailto:pam.seger@traviscountytexas.gov); [Megan.Johnson@traviscountytexas.gov](mailto:Megan.Johnson@traviscountytexas.gov)  
**Cc:** Soto, Esteban <[Esteban.Soto@oag.texas.gov](mailto:Esteban.Soto@oag.texas.gov)>; Green, La Shanda <[Lashanda.Alexander@oag.texas.gov](mailto:Lashanda.Alexander@oag.texas.gov)>; Taylor, Caroline <[Caroline.Taylor@oag.texas.gov](mailto:Caroline.Taylor@oag.texas.gov)>; [michael.glick@kirkland.com](mailto:michael.glick@kirkland.com); Max Feldman <[feldmanm@brennan.law.nyu.edu](mailto:feldmanm@brennan.law.nyu.edu)>  
**Subject:** LWV v. Pablos – Proposed TRO Order

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Thanks much and I am sorry we are sending this over so late in the day.

Myrna Pérez  
Director, Voting Rights and Elections Project  
Deputy Director, Democracy Program  
Brennan Center for Justice at NYU School of Law  
120 Broadway  
Suite 1750  
New York, NY 10271  
(w) 646 292-8329 (c) 267 879-1543  
[myrna.perez@nyu.edu](mailto:myrna.perez@nyu.edu)

**From:** [Myrna Perez](#)  
**To:** [Soto, Esteban](#)  
**Cc:** [Glick, Michael A.](#)  
**Subject:** Depo for Ingram  
**Date:** Thursday, October 05, 2017 4:18:28 PM

---

Hey, just to give you the heads up, we'd like to informally give you notice that we'd like to depose Ingram on Tuesday.

**From:** [Myrna Perez](#)  
**To:** [Soto, Esteban](#); [Glick, Michael A.](#)  
**Subject:** RE: Depo for Ingram  
**Date:** Friday, October 06, 2017 4:37:40 PM

---

Hey Esteban, any word from your client?

Yes, we would be limiting our examination to the issues that we understand need to be proven at the TI hearing on the 16th.

We would like to get this issue resolved as soon as possible, so we do need to know your client's position. If you cannot commit to permitting discovery, we will need to ask the Court for relief, which may include a request to extend the TRO and postpone the TI hearing so that the parties can be adequately prepared.

---

**From:** Soto, Esteban [<mailto:Esteban.Soto@oag.texas.gov>]  
**Sent:** Friday, October 06, 2017 11:16 AM  
**To:** Glick, Michael A. <[michael.glick@kirkland.com](mailto:michael.glick@kirkland.com)>  
**Cc:** Myrna Perez <[perezm@brennan.law.nyu.edu](mailto:perezm@brennan.law.nyu.edu)>  
**Subject:** RE: Depo for Ingram

Hi Mike,

I'll discuss it with my client, and get back to you. As I mentioned, my hesitancy is producing a named defendant for a potential wide-ranging deposition when we have these jurisdictional challenges pending before the Court. Are telling me that you need this deposition to prepare for the scheduled hearing on the 16th, and any areas of examination will be tailored to the TI issues?

Thanks,  
Esteban

---

**From:** Glick, Michael A. [<mailto:michael.glick@kirkland.com>]  
**Sent:** Thursday, October 05, 2017 4:56 PM  
**To:** Soto, Esteban <[Esteban.Soto@oag.texas.gov](mailto:Esteban.Soto@oag.texas.gov)>  
**Cc:** Myrna Perez <[perezm@brennan.law.nyu.edu](mailto:perezm@brennan.law.nyu.edu)>  
**Subject:** RE: Depo for Ingram

Thanks, Esteban. All we're looking for at this point are prospective (and conditional) dates and time, which I think can help everyone for planning purposes. We can resolve the issue of the propriety of discovery at a different time; all we were asking for now is the courtesy of telling us when it can be done so that the parties can cooperatively plan in this condensed timeframe.

In the same vein, so that everyone can plan, are you intending on taking discovery of potential

witnesses for the plaintiffs prior to the Court's resolution of the PTJ, or are you taking the position that no discovery should take place at all until the PTJ is resolved? If discovery is to move forward, are their times when you would propose to depose our witnesses?

We appreciate your consideration.

Regards,  
Mike

**Michael A. Glick**

---

**KIRKLAND & ELLIS LLP**

655 Fifteenth Street, N.W., Washington, D.C. 20005

**T** +1 202 879 5218 **M** +1 845 705 0845

**F** +1 202 879 5200

---

[michael.glick@kirkland.com](mailto:michael.glick@kirkland.com)

---

**From:** Soto, Esteban [<mailto:Esteban.Soto@oag.texas.gov>]

**Sent:** Thursday, October 5, 2017 5:43 PM

**To:** Myrna Perez <[perezm@brennan.law.nyu.edu](mailto:perezm@brennan.law.nyu.edu)>

**Cc:** Glick, Michael A. <[michael.glick@kirkland.com](mailto:michael.glick@kirkland.com)>

**Subject:** RE: Depo for Ingram

I'll consider your request, talk to my client, and get back to you. While I do so, can you please send me any authority you have that you contend "entitles" you to obtain discovery while our PTJ is pending?

---

**From:** Myrna Perez [<mailto:perezm@brennan.law.nyu.edu>]

**Sent:** Thursday, October 05, 2017 4:40 PM

**To:** Soto, Esteban <[Esteban.Soto@oag.texas.gov](mailto:Esteban.Soto@oag.texas.gov)>

**Cc:** Glick, Michael A. <[michael.glick@kirkland.com](mailto:michael.glick@kirkland.com)>

**Subject:** RE: Depo for Ingram

I will ask again clearly: What dates and times next week would your client be available next week for the evidentiary hearing the judge has scheduled for the 16<sup>th</sup>?

As you know, you are not getting a ruling before the 16<sup>th</sup>, and we are entitled to procure discovery for our hearing.

---

**From:** Soto, Esteban [<mailto:Esteban.Soto@oag.texas.gov>]

**Sent:** Thursday, October 05, 2017 5:34 PM

**To:** Myrna Perez <[perezm@brennan.law.nyu.edu](mailto:perezm@brennan.law.nyu.edu)>

**Cc:** Glick, Michael A. <[michael.glick@kirkland.com](mailto:michael.glick@kirkland.com)>

**Subject:** RE: Depo for Ingram

I'm not refusing. We will provide available dates for witnesses in the event the Court denies our jurisdictional challenges. But, until that point, our sovereign immunity from suit protects us from the burdens and costs of litigation, including pre-trial discovery.

Thanks,  
Esteban

---

**From:** Myrna Perez [<mailto:perezm@brennan.law.nyu.edu>]

**Sent:** Thursday, October 05, 2017 4:30 PM

**To:** Soto, Esteban <[Esteban.Soto@oag.texas.gov](mailto:Esteban.Soto@oag.texas.gov)>

**Cc:** Glick, Michael A. <[michael.glick@kirkland.com](mailto:michael.glick@kirkland.com)>

**Subject:** RE: Depo for Ingram

I want to be very clear for the record: Are you REFUSING to provide dates and times in which your client will be available for depositions next week when the Court has scheduled an evidentiary hearing on the 16<sup>th</sup>?

---

**From:** Soto, Esteban [<mailto:Esteban.Soto@oag.texas.gov>]

**Sent:** Thursday, October 05, 2017 5:24 PM

**To:** Myrna Perez <[perezm@brennan.law.nyu.edu](mailto:perezm@brennan.law.nyu.edu)>

**Cc:** Glick, Michael A. <[michael.glick@kirkland.com](mailto:michael.glick@kirkland.com)>

**Subject:** RE: Depo for Ingram

It would have to be after the Court rules on our PTJ. But, should that happen, we can get you available dates at that time.

---

**From:** Myrna Perez [<mailto:perezm@brennan.law.nyu.edu>]

**Sent:** Thursday, October 05, 2017 4:22 PM

**To:** Soto, Esteban <[Esteban.Soto@oag.texas.gov](mailto:Esteban.Soto@oag.texas.gov)>

**Cc:** Glick, Michael A. <[michael.glick@kirkland.com](mailto:michael.glick@kirkland.com)>

**Subject:** RE: Depo for Ingram

What days do work for you Esteban?

---

**From:** Soto, Esteban [<mailto:Esteban.Soto@oag.texas.gov>]

**Sent:** Thursday, October 05, 2017 5:20 PM

**To:** Myrna Perez <[perezm@brennan.law.nyu.edu](mailto:perezm@brennan.law.nyu.edu)>

**Cc:** Glick, Michael A. <[michael.glick@kirkland.com](mailto:michael.glick@kirkland.com)>

**Subject:** RE: Depo for Ingram

Sorry, that date does not work for us. And, in any event, I don't believe we can be subjected to discovery until the court finds it has jurisdiction.

Thanks,  
Esteban

---

**From:** Myrna Perez [<mailto:perezm@brennan.law.nyu.edu>]

**Sent:** Thursday, October 05, 2017 4:18 PM

**To:** Soto, Esteban <[Esteban.Soto@oag.texas.gov](mailto:Esteban.Soto@oag.texas.gov)>

**Cc:** Glick, Michael A. <[michael.glick@kirkland.com](mailto:michael.glick@kirkland.com)>

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Hey, just to give you the heads up, we'd like to informally give you notice that we'd like to depose Ingram on Tuesday.

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of Kirkland & Ellis LLP or Kirkland & Ellis International LLP. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return email or by email to [postmaster@kirkland.com](mailto:postmaster@kirkland.com), and destroy this communication and all copies thereof, including all attachments.

**From:** [Williams, Ronald E. EOP/OVP](#)  
**To:** [Lindsey Aston](#)  
**Subject:** RE: September 13 Request  
**Date:** Tuesday, October 10, 2017 10:14:20 AM

---

Yes, we agree.

Thank you,

Ronald E. Williams II  
Policy Advisor, Presidential Advisory Commission on Election Integrity  
Office of the Vice President  
Phone: 202.881.7807  
Email: [Ronald.E.Williams@ovp.eop.gov](mailto:Ronald.E.Williams@ovp.eop.gov)

---

**From:** Lindsey Aston [<mailto:LAston@sos.texas.gov>]  
**Sent:** Tuesday, October 10, 2017 11:03 AM  
**To:** Williams, Ronald E. EOP/OVP <[Ronald.E.Williams@ovp.eop.gov](mailto:Ronald.E.Williams@ovp.eop.gov)>  
**Subject:** September 13 Request

Hello,

As discussed, please confirm, by responding to this e-mail, that the Presidential Advisory Commission on Election Integrity will agree to toll its pending request for information, which was submitted by Mr. Ron Williams under Section 18.066 of the Texas Election Code, on September 13, 2017. The request will be tolled pending a District Court ruling on Defendants' pending plea to the jurisdiction in *League of Women Voters of Texas, et al v. Pablos, et al*, Cause No. D-1-GN-17-003451, in Travis County District Court. At the time of the ruling on the plea to the jurisdiction by the District Court, the Commission's request will be renewed, thereby restarting the 15 business days for production contemplated by Section 18.066 of the Texas Election Code.

Regards,

**Lindsey (Wolf) Aston**  
General Counsel  
Texas Secretary of State  
512-475-2813

## Texas Election Code

**Sec. 18.066. AVAILABILITY OF STATEWIDE COMPUTERIZED VOTER REGISTRATION LIST INFORMATION.** (a) The secretary of state shall furnish information in the statewide computerized voter registration list to any person on request not later than the 15th day after the date the request is received.

(b) Information furnished under this section may not include:

- (1) a voter's social security number; or
- (2) the residence address of a voter who is a federal judge or state judge, as defined by Section [13.0021](#), or the spouse of a federal judge or state judge, if the voter included an affidavit with the voter's registration application under Section [13.0021](#) or the applicable registrar has received an affidavit submitted under Section [15.0215](#).

(c) The secretary shall furnish the information in the form and order in which it is stored or if practicable in any other form or order requested.

(d) To receive information under this section, a person must submit an affidavit to the secretary stating that the person will not use the information obtained in connection with advertising or promoting commercial products or services.

(e) The secretary may prescribe a schedule of fees for furnishing information under this section. A fee may not exceed the actual expense incurred in reproducing the information requested.

(f) The secretary shall use fees collected under this section to defray expenses incurred in the furnishing of the information.

**Sec. 18.005. FORM AND CONTENTS OF LIST.**

(a) Each original and supplemental list of registered voters must:

(1) contain the voter's name, **date of birth**, and registration number as provided by the statewide computerized voter registration list;

(2) contain the voter's residence address, except as provided by Subsections (b) and (c) or Section [18.0051](#);

(3) be arranged alphabetically by voter name; and

(4) contain the notation required by Section [15.111](#).

(b) If the voter's residence has no address, the list must contain a concise description of the location of the voter's residence.

(c) The original or supplemental list of registered voters may not contain the residence address of a voter who is a federal judge, a state judge, or the spouse of a federal judge or state judge, if the voter included an affidavit with the voter's registration application under Section [13.0021](#) or the registrar received an affidavit submitted under Section [15.0215](#) before the list was prepared. In this subsection, "federal judge" and "state judge" have the meanings assigned by Section [13.0021](#).

**Sec. 13.004. RECORDING AND DISCLOSURE OF CERTAIN INFORMATION BY REGISTRAR.**

(a) The registrar may not transcribe, copy, or otherwise record a telephone number furnished on a registration application.

(b) The registrar may transcribe, copy, or otherwise record a social security number furnished on a registration application only in maintaining the accuracy of the registration records.

(c) The following information furnished on a registration application is confidential and does not constitute public information for purposes of Chapter [552](#), Government Code:

(1) a social security number;

(2) a Texas driver's license number;

(3) a number of a personal identification card issued by the Department of Public Safety;

(4) an indication that an applicant is interested in working as an election judge; or

(5) the residence address of the applicant, if the applicant is a federal judge or state judge, as defined by Section [13.0021](#), the spouse of a federal judge or state judge, or an individual to whom Section [552.1175](#), Government Code, applies and the applicant:

(A) included an affidavit with the registration application describing the applicant's status under this subdivision, including an affidavit under Section [13.0021](#) if the applicant is a federal judge or state judge or the spouse of a federal judge or state judge;

(B) provided the registrar with an affidavit describing the applicant's status under this subdivision, including an affidavit under Section 15.0215 if the applicant is a federal judge or state judge or the spouse of a federal judge or state judge; or

(C) provided the registrar with a completed form approved by the secretary of state for the purpose of notifying the registrar of the applicant's status under this subdivision.

(c-1) The registrar shall ensure that the information listed in Subsection (c) is excluded from disclosure.

(d) The voter registrar or other county official who has access to the information furnished on a registration application may not post the following information on a website:

- (1) a telephone number;
- (2) a social security number;
- (3) a driver's license number or a number of a personal identification card;
- (4) a date of birth;** or
- (5) the residence address of a voter who is a federal judge or state judge, as defined by Section [13.0021](#), or the spouse of a federal judge or state judge, if the voter included an affidavit with the application under Section [13.0021](#) or the registrar has received an affidavit submitted under Section 15.0215.

**Sec. 273.081. INJUNCTION.** A person who is being harmed or is in danger of being harmed by a violation or threatened violation of this code is entitled to appropriate injunctive relief to prevent the violation from continuing or occurring.

## Texas Public Information Act

**Sec. 552.321. SUIT FOR WRIT OF MANDAMUS.** (a) **A requestor or the attorney general** may file suit for a writ of mandamus compelling a governmental body to make information available for public inspection if the governmental body refuses to request an attorney general's decision as provided by Subchapter G or refuses to supply public information or information that the attorney general has determined is public information that is not excepted from disclosure under Subchapter C.

(b) A suit filed by a requestor under this section must be filed in a district court for the county in which the main offices of the governmental body are located. A suit filed by the attorney general under this section must be filed in a district court of Travis County, except that a suit against a municipality with a population of 100,000 or less must be filed in a district court for the county in which the main offices of the municipality are located.

**552.3215. DECLARATORY JUDGMENT OR INJUNCTIVE RELIEF.**

(a) In this section:

(1) "Complainant" means a person who claims to be the victim of a violation of this chapter.

(2) "State agency" means a board, commission, department, office, or other agency that:

(A) is in the executive branch of state government;

(B) was created by the constitution or a statute of this state; and

(C) has statewide jurisdiction.

(b) An action for a declaratory judgment or injunctive relief may be brought in accordance with this section against a governmental body that violates this chapter.

(c) The district or county attorney for the county in which a governmental body other than a state agency is located or the attorney general may bring the action in the name of the state only in a district court for that county. If the governmental body extends into more than one county, the action may be brought only in the county in which the administrative offices of the governmental body are located.

(d) If the governmental body is a state agency, the Travis County district attorney or the attorney general may bring the action in the name of the state only in a district court of Travis County.

(e) A complainant may file a complaint alleging a violation of this chapter. The complaint must be filed with the district or county attorney of the county in which the governmental body is located unless the governmental body is the district or county attorney. If the governmental body extends into more than one county, the complaint must be filed with the district or county attorney of the county in which the administrative offices of the governmental body are located. If the governmental body is a state agency, the complaint may be filed with the Travis County district attorney. If the governmental body is the district or county attorney, the

complaint must be filed with the attorney general. To be valid, a complaint must:

- (1) be in writing and signed by the complainant;
- (2) state the name of the governmental body that allegedly committed the violation, as accurately as can be done by the complainant;
- (3) state the time and place of the alleged commission of the violation, as definitely as can be done by the complainant; and
- (4) in general terms, describe the violation.

(f) A district or county attorney with whom the complaint is filed shall indicate on the face of the written complaint the date the complaint is filed.

(g) Before the 31st day after the date a complaint is filed under Subsection (e), the district or county attorney shall:

- (1) determine whether:
  - (A) the violation alleged in the complaint was committed; and
  - (B) an action will be brought against the governmental body under this section; and
- (2) notify the complainant in writing of those determinations.

(h) Notwithstanding Subsection (g)(1), if the district or county attorney believes that that official has a conflict of interest that would preclude that official from bringing an action under this section against the governmental body complained of, before the 31st day after the date the complaint was filed the county or district attorney shall inform the complainant of that official's belief and of the complainant's right to file the complaint with the attorney general. If the district or county attorney determines not to bring an action under this section, the district or county attorney shall:

- (1) include a statement of the basis for that determination; and
- (2) return the complaint to the complainant.

(i) If the district or county attorney determines not to bring an action under this section, the complainant is entitled to file the complaint with the attorney general before the 31st day after the date the complaint is returned to the complainant. On receipt of the written complaint, the attorney general shall comply with each requirement in Subsections (g) and (h) in the time required by those subsections. If the attorney general decides to bring an action under this section against a governmental body located only in one county in response to the complaint, the attorney general must comply with Subsection (c).

(j) An action may be brought under this section only if the official proposing to bring the action notifies the governmental body in writing of the official's determination that the alleged violation was committed and the governmental body does not cure the violation before the fourth day after the date the governmental body receives the notice.

(k) An action authorized by this section is in addition to any other civil, administrative, or criminal action provided by this chapter or another law.

**Sec. 552.323. ASSESSMENT OF COSTS OF LITIGATION AND REASONABLE ATTORNEY FEES.** (a) In an action brought under Section [552.321](#) or [552.3215](#), the court shall assess costs of litigation and reasonable attorney fees incurred by a plaintiff who substantially prevails, except that the court may not assess those costs and fees against a governmental body if the court finds that the governmental body acted in reasonable reliance on:

- (1) a judgment or an order of a court applicable to the governmental body;
- (2) the published opinion of an appellate court; or
- (3) a written decision of the attorney general, including a decision issued under Subchapter G or an opinion issued under Section [402.042](#).

(b) In an action brought under Section [552.324](#), the court may assess costs of litigation and reasonable attorney's fees incurred by a plaintiff or defendant who substantially prevails. In exercising its discretion under this subsection, the court shall consider whether the conduct of the governmental body had a reasonable basis in law and whether the litigation was brought in good faith.

LOCAL RULES  
OF  
CIVIL PROCEDURE  
AND  
RULES OF DECORUM

The District Courts of Travis County, Texas

*Effective June 2, 2014*

FILE NUMBER D-1-GN-61-121012

**IN THE SUPREME COURT OF TEXAS**

Filed In The District Court  
of Travis County, Texas

**Misc. Docket No. 14-9081**

APR 22 2014

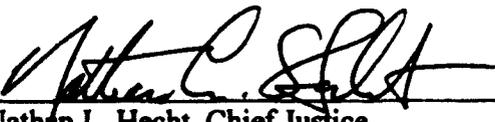
At 2:57 P.M.  
Amalia Rodriguez-Mendoza, Clerk

**APPROVAL OF AMENDED LOCAL RULES FOR  
DISTRICT COURTS OF TRAVIS COUNTY**

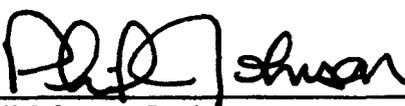
**ORDERED** that:

Pursuant to Texas Rule of Civil Procedure 3a, the Supreme Court approves the following amendments to the local rules for the District Courts of Travis County.

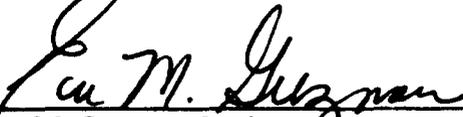
Dated: April 14<sup>th</sup> 2014.

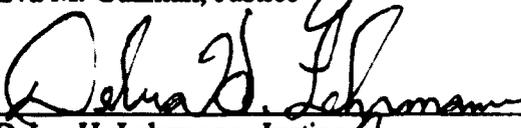
  
Nathan L. Hecht, Chief Justice

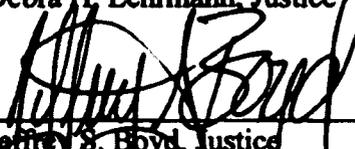
  
Paul W. Green, Justice

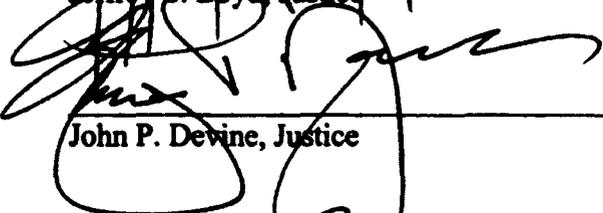
  
Phil Johnson, Justice

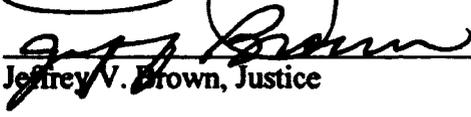
  
Don R. Willett, Justice

  
Eva M. Guzman, Justice

  
Debra H. Lehrmann, Justice

  
Jeffrey S. Boyd, Justice

  
John P. Devine, Justice

  
Jeffrey V. Brown, Justice

**CHAPTER 1**  
**GENERAL ORGANIZATION**

**1.1 District Courts & Cases Governed by These Local Rules**

These rules govern procedures in the District Courts hearing civil cases, family cases, and child abuse & neglect cases.

**1.2 Central Docket, Family Docket, and CPS Docket and specialized dockets**

The primary dockets are the Civil Docket, the Family Docket, and the CPS (DFPS) Docket. All civil cases, other than those on specialized dockets, and all jury trials are set on the Central Docket. See Chapter 21 regarding the setting of family cases and child abuse and neglect cases. The Court Administrator will instruct regarding specialized dockets.

**1.3 Any Judge May Conduct Hearing**

The District Clerk will file cases by distributing them equally, on a rotating basis, among the District Courts. However, hearings are assigned to available judges without regard to the court in which the case is filed. For all matters, therefore, the District Court identified in the style of the case does *not* mean the judge of that court will conduct the hearing. Unless a case is specially assigned to a particular judge, pursuant to these rules, each hearing in a case may be heard by any judge. For non-jury cases on the Short Central Docket, the Court Administrator assigns the hearings to available judges. For all other matters, the judge calling the docket assigns the hearings.

**1.4 Motions Challenging a Prior Ruling**

A request to be heard on a motion for new trial or any other motion challenging a prior ruling, except one by default, must be presented to the judge who made the ruling, including a visiting judge.

## Canon 3

### Performing the duties of Judicial Office Impartially and Diligently

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**A. Judicial Duties in General.** The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

#### **B. Adjudicative Responsibilities.**

- (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.
- (2) A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.
- (3) A judge shall require order and decorum in proceedings before the judge.
- (4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.
- (5) A judge shall perform judicial duties without bias or prejudice.
- (6) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.
- (7) A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others. This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding.
- (8) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding. A judge shall require compliance with this subsection by court personnel subject to the judge's direction and control. This subsection does not prohibit:
  - (a) communications concerning uncontested administrative or uncontested procedural matters;
  - (b) conferring separately with the parties and/or their lawyers in an effort to mediate or settle matters, provided, however, that the judge shall first give notice to all

parties and not thereafter hear any contested matters between the parties except with the consent of all parties;

(c) obtaining the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond;

(d) consulting with other judges or with court personnel;

(e) considering an *ex parte* communication expressly authorized by law.

(9) A judge should dispose of all judicial matters promptly, efficiently and fairly.

(10) A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This sections does not apply to proceedings in which the judge is a litigant in a personal capacity.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. The discussions, votes, positions taken, and writings of appellate judges and court personnel about causes are confidences of the court and shall be revealed only through a court's judgment, a written opinion or in accordance with Supreme Court guidelines for a court approved history project.

### **C. Administrative Responsibilities.**

(1) A judge should diligently and promptly discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

### **D. Disciplinary Responsibilities.**

(1) A judge who receives information clearly establishing that another judge has committed a

violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the State Commission on Judicial Conduct or take other appropriate action.

(2) A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

**ESTEBAN S.M. SOTO**  
Assistant Attorney General  
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October 2, 2017

Via Email:

The Honorable Tim Sulak  
353<sup>rd</sup> Civil District Court  
1000 Guadalupe St  
**AUSTIN, TEXAS 78701**  
[Megan.Johnson@traviscountytexas.gov](mailto:Megan.Johnson@traviscountytexas.gov)  
[Pam.Seger@traviscountytexas.gov](mailto:Pam.Seger@traviscountytexas.gov)

RE: *League of Women Voters of Texas et al. v Rolando Pablos, as Secretary of State, et al.*; Cause No. D-1-GN-17-003451; 98<sup>th</sup> Judicial District of Travis County, Texas

Dear Judge Sulak:

Pursuant to this Court's instructions, Defendants attempted to confer in good faith with Plaintiffs regarding the form of proposed orders to the pending Plea to the Jurisdiction ("PTJ") and application for a temporary restraining order ("TRO"). Defendants emailed Plaintiffs four draft proposed orders granting and denying the two motions. Unfortunately, Plaintiffs indicate that they could not agree to the form of *any potential order* regarding the PTJ. The parties also could not reach an agreement as to the form of the TRO. Thus, Defendants submit the following four proposed orders for the Court's consideration.

### **TRO Orders**

Defendants submit two proposed TRO orders. In doing so, Defendants reiterate that they do not agree with the substance of any order granting a TRO. Defendants submit a proposed TRO to the Court solely to clarify the fields of information related to date of birth information and addresses.<sup>1</sup>

The parties' proposed TRO orders differ in two important respects. First, Plaintiffs' form order does not follow this Court's instruction to limit the TRO to enjoining the production of birthdate information, social security numbers, and addresses. In addition to those classes of information, Plaintiffs' order restrains Defendants from producing County Code, Precinct and VUID (Voter Unique Identifier) field information. This information is outside the classes of

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<sup>1</sup> Defendants again note is no allegation that the release of addresses would violate the Election Code or the Public Information Act. Therefore, Defendants respectfully request that the Court deny plaintiff's request for a temporary restraining order, or, at the very least, narrowly tailor the form of the order to the specific violations alleged in Plaintiffs' Petition and application.

information identified by the Court. Furthermore, there is not an allegation—much less evidence—that these classes of information, by themselves (particularly in a scenario where social security numbers, dates of birth, and addresses are withheld), would risk identity fraud or the parades of horrors envisioned by Plaintiffs. Numerous forms with are subject to continual public information act request contain this exact information.<sup>2</sup> Accordingly, if the Court is inclined to grant the TRO, it should narrowly tailor the order to the allegations and relief requested in the Petition and application.

Second, Plaintiffs proposed TRO contains numerous improper and unmerited findings of fact and conclusions of law. The purpose of a TRO is merely to preserve the status quo pending a ruling on the motion for temporary injunction. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004). Plaintiffs’ proposed findings would thus be inappropriate as “the only question before the trial court in a temporary injunction hearing is whether the applicant is entitled to the preservation of the status quo of the subject matter of the suit pending trial on the merits.” *See Iranian Muslim Org. v. City of San Antonio*, 615 S.W.2d 202, 208 (Tex. 1981). And, “[t]he ruling on the temporary injunction may not be used to obtain an advance ruling on the merits.” *Id.*

Furthermore, Plaintiffs’ proposed findings belie any argument that the PTJ is premature or not ripe for adjudication. In accordance with Texas law, Defendants argued that Plaintiffs’ claims fell outside any waiver or exception to immunity because they have not alleged or shown a specific violation of a statutory provision. Plaintiffs’ TRO contains findings regarding whether Defendants will violate State law and subject Plaintiffs to injury—thus, determining the jurisdictional issues raised in the PTJ. *See Thomas v. Long*, 207 S.W.3d 334, 338 (Tex. 2006) (defendant’s jurisdictional issue can be denied explicitly or implicitly by orders that decide the underlying matter). Therefore, should the Court adopt Plaintiffs’ proposed order, it should also explicitly rule on the PTJ consistent with Plaintiffs’ proposed findings.

## **PTJ Orders**

Defendants also submit proposed orders denying and granting the PTJ, and respectfully request that the Court rule on the motion. A “trial court must determine at its earliest opportunity whether it has the constitutional or statutory authority to decide the case before allowing the litigation to proceed.” *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226-27 (Tex. 2004) (internal citations omitted). Here, Defendants’ PTJ is ripe for adjudication as Plaintiffs’ claims that Defendants violated the Election Code and the Public Information Act present “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.

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<sup>2</sup> See <http://www.sos.state.tx.us/elections/forms/pol-sub/5-7f.pdf>;  
<http://www.sos.state.tx.us/elections/forms/pol-sub/7-16f.pdf>;  
<http://www.sos.state.tx.us/elections/forms/pol-sub/7-20f.pdf>

denied). Further, since sovereign immunity from suit protects Defendants from the burdens associated with litigation, it would be “effectively lost if the court erroneously assumes jurisdiction and subjects the government unit to pre-trial discovery and the costs incident to litigation.” *City of Galveston v. Gray*, 93 S.W.3d 587 (Tex. App.—Houston [14th Dist.] 2002, orig. proceeding). Accordingly, the Court should determine whether it has jurisdiction before allowing the litigation to proceed.

I have enclosed four proposed orders: 1) one denying the TRO; 2) one granting the TRO; 3) one denying the PTJ; and 4) one granting the PTJ. If you have any questions, I am available at the Court’s convenience at the above listed numbers and addresses.

Sincerely,

/s/ Esteban Soto  
Esteban S.M. Soto  
Assistant Attorney General

cc: Client  
All counsel of record

Enclosures