

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

## In the Supreme Court of Texas

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THE STATE OF TEXAS EX REL  
GEORGE DARRELL BEST,

Petitioner

v.

PAUL REED HARPER,

Respondent  
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From the Tenth Court of Appeals  
at Waco, Texas  
No.10-15-00105-CV

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### First Amended Motion for Extension of Time to File Petition for Review

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## **Motion for Extension**

TO THE SUPREME COURT OF TEXAS:

The Petitioner, State of Texas on the Relation of George Darrell Best, respectfully asks this Court to extend the time for filing a petition for review in this case.

This case was commenced when George Best, a private citizen, filed in the district court a petition to remove Paul Reed Harper from his elected position as a member of the Somervell County Hospital Board under Chapter 87 of the Texas Local Government Code. Significantly, section 87.018 of the removal statute expressly provides that “[t]he county attorney *shall* represent the state in a proceeding for the removal of an officer except [in a proceeding to remove the county or district attorney].” *See* TEX. LOC. GOV’T CODE § 87.018(d) (emphasis added).

In response to the removal petition, Harper filed an Anti-SLAPP motion to dismiss under Chapter 27 of the Texas Civil Practice and Remedies Code. The district court denied the motion to dismiss, and Harper appealed to the Tenth Court of Appeals in Waco.

On April 21, 2016, the Waco Court of Appeals issued its opinion and judgment, remanding the proceeding to the trial court for rendition of an order granting Harper’s motion to dismiss and for a determination of Harper’s request for court costs, reasonable attorney’s fees, and sanctions. The court of appeals’ judgment taxed appellate costs “against the State of

Texas.”

The State timely filed a motion for rehearing on May 4, 2016, which the court of appeals denied on July 13, 2016. In its order denying rehearing, the court of appeals corrected the style of the case in that court to: *Paul Reed Harper, Appellant v. The State of Texas Ex Rel George Darrell Best, Appellee*.

A Petition for Review would be due 45 days after the ruling on the Motion for Rehearing. In this case because the 45th day is a Saturday, the deadline is Monday, August 29, 2016.

No prior extension of time has been sought or granted to the Petitioner.

The State seeks an extension of thirty days—until September 28, 2016.

Good cause exists for this extension of time. On May 7, 2016, Harper lost his bid for re-election to the Somervell County Hospital Board, and his successor took office on May 13, 2016. Thus, the removal action initiated by Best is now moot. The only issues remaining before the court are the propriety of Harper’s filing of—and the trial court’s consideration of—an anti-SLAPP Motion in response to the removal petition; together with the jurisdictional question of whether appellate cost, trial court costs, attorney’s fees and/or sanctions may be awarded against the State.

Although the county attorney was obligated to represent the interest of the State in the removal action, there is no similar provision in the Texas

Citizens Participation Act requiring the county attorney to represent the interest of the State in defending Harper's claim for attorney's fees and sanctions. And certainly, there is no statutory provision for Somervell County to indemnify the State for any potential liability to Harper that might survive a sovereign immunity challenge by the State. Thus, the County Attorney of Somervell County has requested the Texas Attorney General and the Office of Solicitor General to review this matter.

The additional time is requested to allow adequate time for the Texas Attorney General and the Office of Solicitor General to review this matter and determine whether a petition for review should be filed to protect the interests of the State in this matter before it is remanded to the trial court.

Accordingly, the State respectfully requests that the Court extend the time for filing a petition for review until September 28, 2016.

Respectfully submitted,

*/s/ Andrew Lucas*

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**Attorney for the State of Texas**

## Certificate of Conference

The undersigned counsel has conferred or attempted to confer with counsel for the Respondent about this request. **Subsequent to the State's initial filing of this motion, counsel for the Respondent has indicated that the Respondent has now objected to this requested extension. All other information in the State's initial filing remains the same.**

*/s/ Andrew Lucas*

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Andrew Lucas

## Certificate of Service

On August 26, 2016, in compliance with Texas Rule of Appellate Procedure 9.5, I am serving a copy of this motion upon all parties to this proceeding by email or electronic filing service:

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*/s/ Andrew Lucas*

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