

NO. 17-0052

IN THE
SUPREME COURT OF TEXAS

LAURA PRESSLEY,

Petitioner

v.

GREGORIO (GREG) CASAR,

Respondent

**AMICUS CURIAE BRIEF OF THE TEXAS ASSOCIATION OF
COUNTIES,
IN SUPPORT OF RESPONDENT, GREGORIO (GREG) CASAR**

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TO THE SUPREME COURT OF TEXAS;

The Texas Association of Counties, the County and District Clerks' Association of Texas (CDCAT), and the Texas Association of Elections Administrators (TAEA), appear as *amici curiae* under TEX. R. APP. P. 11 in opposition to Laura Pressley's Petition for Review.

I. IDENTITY AND INTERESTS OF AMICUS CURIAE

The Texas Association of Counties ("TAC") is a Texas non-profit corporation with all 254 Texas counties as members. The following associations are represented on TAC's Board of Directors: the County Judges and

Commissioners Association of Texas (“CJCAT”), the North and East Texas Judges and Commissioners Association (“NECJCA”), the South Texas Judges and Commissioners Association (“SCJCA”), the West Texas Judges and Commissioners Association (“WCJCA), the Texas District and County Attorneys Association, the Sheriffs Association of Texas, the County and District Clerks’ Association of Texas, the Texas Association of Tax Assessors-Collectors, the County Treasurers Association, the Justice of the Peace and Constables Association of Texas, and the County Auditors Association of Texas. TAC is the representative voice for all Texas counties and county officials and, through TAC, counties communicate the county perspective to state officials and the general public.

CDCAT is a Texas non-profit association of the county and district clerks of all 254 Texas counties. County Clerks or the combined District and County Clerk serve as the county’s chief election officer in 132 of 254 counties. CDCAT’s purpose is to “promote professional standards, provide a means for the education of its members regarding the statutory and constitutional duties of the offices of the county clerks and district clerks, and participate in the legislative, judicial, and executive processes of state government that are beneficial to our organization.”

TAEA is a Texas non-profit corporation whose members are elections administrators and other persons interested in Texas elections. TAEA’s purpose is

to promote the efficient integration of voter registration functions with the actual conduct of elections and to ensure that voter registration, voting, and vote tabulation are all carried out in accordance with the highest legal and ethical standards. Of Texas' 254 counties, 115 have an elections administrator serving as the county's chief election officer.

TAC, CDCAT, and TAEA (collectively referred to as the "County Associations") and their members have a strong interest in Texas jurisprudence concerning the administration of elections. Because the issues before this Court are of great significance to Texas counties, as well as the county clerks and elections administrators in all 254 counties of this State, the County Associations respectfully submit this joint brief of *amicus curiae* in the above-referenced cause.¹

II. SUMMARY OF ARGUMENT

The city council term of office at issue in this contest has ended, rendering the election contest moot. Allowing this moot contest to continue as a veiled attack on Texas election procedures will make it impossible for county election officials to properly carry out their duties in conducting elections. Likewise, as demonstrated in this case, allowing election contests to be used as general challenges to election procedures will cost individual Texas counties time and money in needless litigation. Under Pressley's approach, every election could be turned into a lawsuit

¹ In accordance with TEX. R. APP. P. 11, the *amicus curiae* and the author of this brief have not been paid a fee, and will not be paid a fee, for preparing this brief.

challenging basic election procedures. Pressley's lawsuit threatens to upend established Texas election practices. What happened in this election is what routinely happens, by design, in elections all across Texas.

The Texas Legislature statutorily authorized certification of direct recording electronic (DRE)² voting machines, including the Hart eSlate, under guidelines set out in the Election Code. The Secretary of State certified systems based on those guidelines in his capacity as chief elections officer of the state of Texas.³ Counties have adopted and used DRE systems in reliance on state certifications. A decision by this court that impacts county use of state certified voting systems would have a catastrophic effect on their ability to conduct elections in compliance with state and federal law.

The facts of this case do not support that anything nefarious happened in this election. DRE voting systems comply with the numbering requirement set out in TEX. CONST. ART. VI, § 4 through the use of public counters. Pressley's argument otherwise fundamentally misconstrues the voting process and election law as applied in Texas and as understood across the nation at both the federal and state level. Adopting Pressley's approach would illegitimatize standard voting practices in Texas.

² DRE voting machines, which include the Hart eSlate, are defined in TEX. ELEC. CODE ANN. § 121.003(12) as "a voting machine that is designed to allow a direct vote on the machine by the manual touch of a screen, monitor, or other device and that records the individual votes and vote totals electronically."

³ TEX. ELEC. CODE ANN. §31.001(a).

III. ARGUMENT

A. With the city council term of office at issue in this contest expired, the election contest should be moot, as election administrators cannot take any action as to the expired term.

An election contest should only be allowed to continue when election officials could take actions in the election. Moot election contests should not be used as a means to challenge standard election procedures.

The County Associations agree with Respondent Casar that this election contest is moot and the Court should not grant review. The runoff election between Ms. Pressley and Mr. Casar was held on December 16, 2014. The two-year term to which Mr. Casar was declared elected ended in 2016. The TEX. ELEC. CODE ANN. § 221.015 grants the winner of an election contest the right to occupy the office involved in the contest after the beginning of the term for which the office was held.⁴ There are no provisions in Chapter 221 or elsewhere in Title 14 of the Election Code for the prevailing party in a contest to take relief other than possession of the office for the term at issue. In *Polk v. Davidson*, this Court held that an election contest became moot ““when any right which might be determined by the judicial tribunal could not be effectuated in the manner provided by law””⁵

Election officials have no authority to take any action involving an expired term. Allowing an election contest to continue after the term at issue expires will

⁴ TEX. ELEC. CODE ANN. §221.015.

⁵ *Polk v. Davidson*, 196 S.W. 2d 632, 634 (Tex. 1946).

cause confusion among election officials as to their duties and responsibilities. Moreover, a continuing moot election contest casts doubt over all pending and upcoming elections. Whether it is the already held primary or municipal elections or upcoming midterm elections, allowing Pressley's election contest to linger creates unnecessary confusion and uncertainty on elections across Texas.

This is particularly true because what was once an election contest has effectively been transformed into a challenge to the certification of a voting system. Mr. Casar isn't the appropriate party to address whether or not the eSlate is in compliance with the Texas constitution and the Election Code--that would be the Secretary of State in his capacity as chief elections officer and as the authority responsible for certifying the eSlate. If Ms. Pressley wishes to challenge whether the Secretary of State's actions in certifying the system are in compliance with the Texas Constitution and state law, the proper avenue would have been an suit similar to the one filed in *Andrade v. Naacp of Austin*, which also concerned whether or not the eSlate voting system complies with state law.⁶

A candidate should not be able to substitute an election contest to avoid having to challenge election procedures in litigation with election officials. This moot election contest is not the proper method for deciding the issues Pressley seeks to raise. The court should be wary, as are the County Associations, against the

⁶ *Andrade v. NAACP of Austin*, 345 S.W. 3d 1 (Tex. 2011).

potential expansion of election contests from trials concerning the result of a particular election to a vehicle for generalized challenges to election laws and procedures.

B. Counties across Texas have adopted and used DRE systems in reliance on state certifications. A decision by this court that impacts county use of certified voting systems would have a catastrophic effect on their ability to conduct elections in compliance with state and federal law.

Invalidating the use of DREs would adversely affect Texas counties and create chaos in Texas election procedures. The State of Texas places the main burden of conducting elections on its counties. Local political subdivisions and political parties also rely on counties to make their voting systems available for their elections at contracted costs that do not nearly reflect the county's cost of acquisition and maintenance. Counties are charged with purchasing voting systems for use in their own elections, which include state and federal elections. While the federal government provided initial funding for the current generation of voting system equipment through the Help America Vote Act of 2002, counties pay ongoing costs such as programming, maintenance, storage, and replacements.

Counties acquire their voting systems by purchase, lease, or other means.⁷ At present, 166 of Texas' 254 counties use DRE machines in their elections.⁸ The

⁷ TEX. ELEC. CODE ANN. §123.031(a).

⁸ "Voting Systems by County," <http://www.sos.state.tx.us/elections/forms/syseexam/voting-sys-bycounty.pdf>

eSlate specifically is in use in 102 counties and in six of the state's ten most populous counties.⁹

1. Any required changes to DRE voting systems would necessitate re-certifications at the state and federal level which could not happen before numerous upcoming elections.

If the court were to require any sort of change in the currently certified voting systems count or number ballots, the programming changes would have to be certified first at the federal and then at the state level.¹⁰

A voting system presented for certification in Texas must first must have been qualified by the federal Election Assistance Commission (EAC).¹¹ The EAC certifies systems to its 2005 voluntary voting system guidelines.

Certification is a lengthy process at both levels. The Secretary of State certifies voting systems through a process set out in Chapter 122 of the Code. The Legislature also adopted Chapter 129, which is specific to DRE voting systems. Section 129.002(c) gives the Secretary of State authority to prescribe procedures necessary to implement Chapter 129 and “ensure the orderly and proper administration of elections using direct recording electronic voting machines.”¹² The eSlate voting machine was certified under these procedures and this court upheld the validity of its certification in *Andrade v. NAACP of Austin*.¹³

⁹ Id. (Harris, Tarrant, Travis, Hidalgo, Denton, and Fort Bend counties, respectively).

¹⁰ TEX. ELEC. CODE ANN. §122.061. EAC Voting System Testing and Certification Program Manual, Version 2.0, Section 3.3, pg. 23. <https://www.eac.gov/assets/1/28/Cert%20Manual%207%208%2015%20FINAL.pdf>

¹¹ 1 TEX. ADMIN. CODE §81.61(2001)(Tex. Sec’y of State, Condition for Approval of Electronic Voting Systems).

¹² TEX. ELEC. CODE ANN. §129.002(b).

By way of example, the state holds three certification examination periods a year. A lengthy period is built in before and after the examination for examiners to review the submitted system documentation before an in-person examination and afterwards to review the result of the examination. A hearing is scheduled after the examination for public input. A review period for examiners to complete reports is built in. The next certification examinations are scheduled to take place in June 2018. The deadline to submit a notice of submission was the first day of April. The required public hearing is scheduled for August. Assuming a change to a system was submitted at this examination period, it would be unlikely for the change to be certified at the state level and deployed by the vendors to county users in time for the November general election for state and county officers.

If presented with a decision that their systems as currently certified violated state law, the vendors of currently certified DRE voting systems would have a decision to make: whether or not to devote resources to reprogramming and whether to undergo the expense of submitting the modifications to a federal Voting System Test Laboratory (VSTL) to determine if the modifications meet the federal voting system standards. After the modified system completed its testing, it would be presented to the EAC for certification. After completing the federal process, the vendor would have to present the modified system to the Secretary of State to

¹³ *Andrade v. NAACP of Austin*, 345 S.W. 3d 1 (Tex. 2011).

undergo state certification under Chapter 122 of the Texas Election Code. Each portion of this process can take a significant amount of time, especially if the modification is more than a de minimis change.

In a worst case scenario, if the vendor of a county's voting system decided not to reprogram its system¹⁴, and the county could no longer use it in its elections, the county would find itself in a position in which it could no longer comply with state and federal directives on voting by disabled voters and ballot language without the expense of acquiring a new system, assuming there is one, that would comply with the Court's decision.

2. A restriction in counties' ability to use their DRE voting systems may affect their compliance with state and federal law concerning disabled voters.

Accepting Pressley's novel arguments would likely put Texas out of compliance with federal and state voting laws. Any change that impacts the ability of counties to use their DRE systems may affect their compliance with federal and state requirements on unassisted voting by disabled citizens. The 2002 Help America Vote Act requires disabled voters to be allowed to cast an unassisted and private ballot in an election with a federal office on the ballot.¹⁵ To achieve this, the Act

¹⁴ Reasons a vendor might choose not to modify their voting system based on the court's ruling could include the expense of programming and the certification process, whether or not the machine or system is considered a legacy system that the vendor considers to be near the end of its life cycle. It is worth noting that voting system software is proprietary and the counties have no legal authority to modify the software themselves.

¹⁵ HAVA SEC. 301(a)(3)(A).

requires the use of at least one DRE or other voting system equipped for individuals with disabilities at each polling place.¹⁶

In its codification of the federal law, the Texas Legislature amended the Election Code to require counties to provide at least one voting station at each polling place that provides a “practical and effective means for voters with physical disabilities to cast a secret ballot.”¹⁷ Even if a county at the time it was purchasing a new system would have preferred to retain a hand-counted paper or optical scan (either with a precinct-based machine or with central count scanners) method of voting, state and federal law required them to purchase at least one DRE machine for each precinct polling place so that disabled citizens would have a means to vote a secret ballot without assistance.

Eventually, the Legislature amended the Code so that certain lower population counties and political subdivisions in those counties could dispense with the requirement to provide a DRE at each polling place if they asserted that providing the machines represented an undue burden.¹⁸ This change impacts only elections with no federal offices on the ballot. The requirements remain in place

¹⁶ HAVA SEC. 301(a)(3)(B). “Other voting systems” include ballot marking devices, such as Hart Intercivic’s Verity Touch Writer or Election System and Software’s Automark. In these devices, an optical scan ballot is put into the device and the voter votes on a touchscreen. After the voter makes his or her final selections, the device prints the voter’s choices onto the ballot. The ballot is then output from the device and the voter or an assistant deposits the ballot into the ballot box. Some disability groups have expressed a concern that if a voter has to have help transferring the printed ballot from the device to the ballot box, the voter is no longer casting an unassisted and secret ballot.

¹⁷ TEX. ELEC. CODE ANN. §61.012(a)(2).

¹⁸ TEX. ELEC. CODE ANN. §61.013. An undue burden is defined as the expense reflecting an increase for the county or political subdivision of at least 25% in election cost versus the cost of the entity’s last general election before January 1, 2006, the date the accessible voting system requirement was originally implemented.

for all the counties in primary elections and the November general elections for state and county officers. It is unclear how a Texas county could comply with the requirements to provide a means for disabled voters to cast unassisted ballots in time for the upcoming November 2018 general election for state and county officers and beyond if a ruling by this court required the county to curtail use of its state and federally certified voting system.

3. Any restriction on counties' ability to use their certified DRE voting systems may affect their compliance with state and federal law concerning the availability of multiple ballot languages

In addition to the disability issue, state and federal laws also require the ballot to appear in a number of languages, based on language minority population within the county.¹⁹ In Harris County, for example, the county is required to provide the ballot in English, Spanish, Vietnamese, and Chinese.²⁰ Tarrant County must provide ballots in English, Spanish, and Vietnamese.²¹ And all Texas counties are required to provide the ballot in English and Spanish.²²

The county must be prepared to provide ballots in each required language on Election Day and during early voting. On Election Day at the polling place, ballots available in each language are needed only for the style of the individual election precinct. During early voting, however, the county must be prepared to provide a

¹⁹ TEX. ELEC. CODE ANN. § 272.005, 52 U.S.C. § 10303(f)(4) and 52 U.S.C. § 10503.

²⁰ FEDERAL REGISTER, Vol 81, No. 233 (December 5, 2016) 87537.

²¹ Id.

²² Id.

ballot in each language for each precinct ballot style at each permanent and temporary branch early voting polling place because voters from each precinct across the county are eligible to cast a ballot at every early voting polling place.²³

Similarly, a county utilizing countywide election precincts under Section 43.007 of the Code must provide ballot styles in each required language for each county election precinct at all of its countywide polling places.

Use of their certified DRE systems allows the counties, especially larger counties with a greater numbers of county election precincts, to comply with these requirements. In a hand-counted paper or an optical scan ballot system, a county must have ballots for each precinct in each language available at each early voting polling place. This creates a significant burden to the county in terms of printing and distribution cost. One of the reasons counties acquired state-certified DREs is efficiency: the appropriate ballot styles and languages for the election may all be programmed into the machine and activated for voters as necessary with the only limitation being the amount of storage.

4. Any restriction in counties' ability to use their certified DRE systems would impact their ability to conduct elections in the countywide election precinct program.

Since 2009, the Secretary of State has operated a program that allows counties to reduce the number of county election precinct based polling places and

²³ TEX. ELEC. CODE ANN. §85.003,

replace them with countywide election precinct polling places.²⁴ At the countywide election precinct polling place, a voter may vote in the same elections the voter would be entitled to vote in at their county election precinct.²⁵ The legislature recognized this efficiency when it made exclusive use of DRE voting systems an eligibility requirement for county participation in the countywide election precinct program.²⁶

Currently, 52 Texas counties use countywide election precincts.²⁷ Voters benefit because they may vote on election day at a location that may be closer to work or school. The county benefits because it may reduce the number of polling places by up to 50%.

Functionally, a countywide election precinct operates like an early voting polling place in that they must be prepared to allow a voter to cast a ballot for any precinct across the county in which the voter may be eligible—not just for the county election but also for any local political subdivision elections in which the voter is eligible to vote.

The same administrative and ballot cost problems that could result from lack or curtailed use of DREs in early voting would arise for counties if they were unable to use their DRE systems in countywide precinct elections, which might

²⁴ House Bill 719, ch. 606, 81st Legislature, Regular Session, 2009.

²⁵ TEX. ELEC. CODE ANN. §43.007(e).

²⁶ TEX. ELEC. CODE ANN. §43.007(d)(4).

²⁷ <http://www.sos.state.tx.us/elections/laws/countywide-polling-place-program.shtml>

lead to counties deciding to return to their default county election precinct voting method, a change which would disappoint those voters who have grown used to being able to vote at any election day location.

C. DRE voting systems comply with the numbering requirement set out in Article 6, Section 4 of the Texas Constitution through the use of protective and public counters.

In her brief, Appellant suggests the Hart eSlate voting machine used in the 2014 Austin City Council District 4 runoff election violates Article VI, Section 4 of the Texas Constitution because the cast vote records of ballots used in the recount are unnumbered.²⁸ The County Associations disagree. The validity of the method through which voting machines such as DREs register that a ballot has been cast, the public counter, has been found to comply with the Constitution's requirements through almost 70 years of judicial challenges.

Article VI, Section 4 of the Texas Constitution provides: "In all elections by the people, the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box. . . ."^{29 30}

When this section was added to the Texas Constitution, voting machines were not yet in use in Texas. Voters used paper ballots which were provided either at the

²⁸ Pressley brief pg 6, et sec.

²⁹ TEX. CONST. ART. VI, §4.

³⁰ In *Wood v. State ex rel. Lee*, 126 S.W. 2d 4, at 9 (Tex. 1939), the Supreme Court stated that the word "ticket" in Section 4 means the same as the word "ballot."

polling place or by candidates and political parties for voters to carry with them into the polling place to vote.³¹ The law in place at the time required the election clerk to “keep a poll list upon which he shall write and number the name of each person who votes at the time of his voting, and one of the judges of election, in every case, shall receive the ballot, and at the time of receiving it shall write upon it the voter’s number, corresponding with the number on the clerk’s poll list.”³²

Prior to the implementation of the “Australian” ballot method³³ in use today, a voter’s ballot was linked to their name, and in an election contest, the ballots and poll lists could be viewed together.³⁴

In 1930, the Legislature authorized the use of voting (then lever) machines and provided procedures for their use.³⁵ In 1939, the constitutionality of lever machines was challenged on the same ground on which Appellant challenges the use of the eSlate, namely that they failed to number ballots in compliance with the requirements of Article 6, Section 4. In *Wood v. State ex rel. Lee*, the Texas Supreme Court reviewed the machine’s operation.³⁶

The court noted that lever machines were required to have a public counter, a requirement still in place today for DRE voting machines.³⁷ Each time a vote was

³¹ TEX. CONST. ART. VI, §4 INTERP. COMMENTARY (West 2007).

³² TEX. REV. CIV. STATS. ART. 1694, ART. (1879)

³³ An innovation of the Progressive Era, the Australian ballot is provided to the voter by election officials at the polling place and lists all the candidates and propositions so the voter may cast his or her votes anonymously. Jill Lapore, “Rock, Papers, Scissors-How We Used to Vote”, *The New Yorker*, October 13, 2008.

³⁴ TEX. REV. CIV. STATS. ART. 1734 (1879)

³⁵ Act of February 18, 1930, 41st Leg., 4th C.S., Ch. 33, § 3

³⁶ *Wood v. State ex rel. Lee*, 126 S.W. 2d 4

cast, the counter ticked up a number for the vote. The court concluded: “When the voter registered his vote on the machine, it (the machine) recorded the number of the ballot. To our minds, this meets the requirement of the Constitution.”³⁸

The court also addressed the concerns raised about an election contest from an election which used a voting machine: “As we understand this machine, it is not possible from the record made by it to determine, in an election contest, how each voter voted. Be that as it may, the Constitution contains no such requirement. The Constitution simply requires that the ticket shall be numbered. The machine does that.”³⁹

The *Wood* court wrote:

“As we understand this record, the voting machines used in this election recorded the total number of votes for each candidate for Mayor, but did not make a record showing which candidate each voter voted for. It is therefore evident that the testimony in this regard must come from some other source. We think that one of the ways to ascertain how a voter voted, where a machine like this has been used, is to put such voter on the witness stand, and ask him the question. He can answer disclosing how he voted, if he so chooses. That is a matter the voter himself can control. On the other hand, the Constitution guarantees each voter a secret ballot; consequently he can decline to reveal how he voted, if he so chooses. At any rate, if the voter answers purporting to tell how he voted, his credibility is for the jury to pass on,

³⁷ TEX. ELEC. CODE ANN. §122.033(3). “Public Counter” is defined in Section 121.003(6) of the Code as a “registering device that cumulatively records the number of voters casting votes on a voting machine and that is constructed and installed on the machine in a way that provides an unobstructed view of the recorded number.”

³⁸ *Wood v. State ex rel. Lee*, 126 S.W. 2d 4

³⁹ *Id.*

if the case is being tried before a jury. If the voter who has been placed on the witness stand refuses to divulge how he voted, such refusal is no evidence in the case one way or the other."⁴⁰

There is a minimum requirement that the cast ballot be numbered. There is no requirement that the number of the ballot be able to be tied back to the voter who cast the vote. The Legislature has the responsibility to create the statutory procedures, the "some other source" whereby a voter's vote may be ascertained. TEX. ELEC. CODE § 221.010 provides a means for a voter who cast an illegal vote to be compelled to reveal his or her vote in a contest.⁴¹

In *Reynolds v. Dallas County*, a citizen challenged the use of the county's lever machines again on the ground that they did not comply with the numbering requirement of Article VI, Section 4 of the Constitution.⁴²

The Amarillo Court of Civil Appeals expressed ambivalence about the lever machines but determined the machines themselves were not unconstitutional and the Legislature was charged with providing an administrative procedure to comply with the constitutional requirement: "The duty of making provision for numbering the ballots and making such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box is placed upon the legislature

⁴⁰ Id.

⁴¹ TEX. ELEC. CODE § 221.010

⁴² *Reynolds v. Dallas County*, 203 S.W. 2d 320 (Ct. Civ. App. Amarillo 1947).

and, if the present Article does not meet the requirement of the constitution, it is properly a matter for the consideration of the legislature and not the courts.”

In *Andrade v. NAACP of Austin*, in response to an equal protection challenge to the certification of the Hart eSlate without a voter verified paper audit trail, the court detailed regulations the Legislature has put in place to secure the use of DRE voting machines by a county that adopts the machine for their elections, including a hardware diagnostic test, and the public logic and accuracy tests in which votes are cast for each candidate and proposition on the ballot to insure all votes are all properly recorded.⁴³

Although the court ultimately denied plaintiff’s standing to bring their Article VI, Section 4 claim, it did state the eSlate counts ballots: “the voters allege that the eSlate’s lack of a paper ballot violates the constitutional requirement that ballots be numbered. Although the eSlate numbers ballots, the voters contend that failing to require a paper ballot undermines the framers’ intent in drafting the numbering requirement—a requirement they claim was intended to secure the integrity of the election process.”⁴⁴

Appellant’s assertion that the eSlate fails to number ballots in violation of the Texas Constitution is nothing new. Texas courts have reviewed this question since the dawn of mechanical voting machines and into the era of direct recording

⁴³ *Andrade v. NAACP of Austin*, 345 S.W. 3d 1,4 (Tex. 2011).

⁴⁴ *Id.* at 15.

electronic voting machines and systems. They have consistently determined that the public counter, which records the number of each ballot cast in the election, complies with the constitutional requirement. The prior holdings were correct, and the Court should not accept Pressley's invitation to upset decades of well-established Texas election law.

IV. PRAYER

Amici Curiae, The Texas Association of Counties, County and District Clerks Association of Texas, and Texas Association of Elections Administrators respectfully request that this Court deny Appellant's petition for review. If the review is granted, the Amici Curiae request the Court to affirm the judgment of the court of appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed and served electronically on this 22nd day of May, 2018, to all parties, including the following:

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CERTIFICATE OF COMPLIANCE

I certify that this computer-generated brief contains 5642 words and complies with

TEX. R. APP. P. 9.4

/s/ Garry A. Merritt
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