



OFFICE OF THE  
HARRIS COUNTY ATTORNEY  
**CHRISTIAN D. MENEFE**

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**Filed on Docket in Case No. 22-1044**

April 7, 2023

Supreme Court of Texas  
P.O. Box 12248  
Austin, Texas 78711

Re: Status Report in *In re the State of Texas*, case No. 22-1044.

To the Justices of the Texas Supreme Court:

On March 8, 2023, the Court requested a status report in the above-captioned matter. This matter is a petition for a writ of mandamus filed by the State of Texas on November 21, 2022 pursuant to Texas Election Code Section 273.061. Petitioner sought to “compel[] respondents [Harris County Commissioners Court, Judge Lina Hidalgo, in her official capacity as Harris County Judge, and Clifford Tatum, in his official capacity as Harris County Elections Administrator] to include in the Harris County canvass only those ballots cast in accordance with section 41.032 of the Election Code.” Pet. at 7. Petitioner argued that ballots cast pursuant to a trial court’s temporary restraining order extending voting hours on election day by one hour (the “Later Cast Provisional Ballots”) should not be canvassed. Respondents filed a brief in opposition on November 22, 2022, arguing that the petition should be denied for several reasons, including that Petitioner had waited until the eleventh hour to file its petition despite knowing for over a week that the Harris County Commissioners Court (the canvassing authority) planned to include the Later Cast Provisional Ballots in the canvass; the petition sought mandamus relief against respondents who were not violating or preparing to violate a ministerial duty; and state law required the Later Cast Provisional Ballots to be included in the canvass.

On the same day, after considering the parties’ submissions, the Court entered an order requiring Respondents to:

- “conduct the canvass of the November 2022 election as required by the Election Code”;
- separately identify in the vote tabulations the number of “later cast votes” for each candidate in each race and for or against each proposition, so that candidates, the parties, and this Court may ascertain whether the “later cast votes” would be outcome-determinative and so that the parties can assess the extent to which further litigation is warranted; and
- “provide the Court with a copy of the canvass results, including the separately tabulated ‘later cast votes,’ as soon as they are available.”

Respondents canvassed the election as instructed and filed the results with the Court that same day.

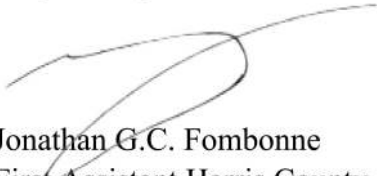
Respondents now provide the following status report:

There has been no further activity in this matter since November 22, 2022.

The general election for state and county officers at issue was held on November 8, 2022. Harris County’s last possible canvass date—November 22, 2022—has long passed. *See* Tex. Elec. Code § 67.003(c) (last possible canvass date for a general election for state and county officers is 14 days after election day). Harris County canvassed its votes in compliance with the Election Code and this Court’s November 22, 2022 order. Respondents are not aware of any provision of the Election Code or any other law allowing for the canvassing process to be reopened after that date. Accordingly, there are no further duties imposed by law on any Respondent in connection with the canvass of the November 8, 2022 general election, and this Court cannot issue mandamus relief against them. *See* Tex. Elec. Code § 273.061 (granting the Supreme Court original jurisdiction to issue a writ of mandamus “to **compel the performance of any duty imposed by law** in connection with the holding of an election” (emphasis added)). Because the relief Petitioner seeks is limited to an order affecting the conduct of the canvass, this matter is also moot and must be dismissed. *Elec. Reliability Council of Tex., Inc. v. Panda Power Gen. Infr. Fund, LLC*, 619 S.W.3d 628, 640 (Tex. 2021) (“Our mandamus power does not authorize us to decide moot cases or issues any more than our power of appellate review.”).

In addition, the Later Cast Provisional Ballots were not outcome-determinative in any Harris County race. Several election contests are currently being litigated in Harris County and at least one contestant has made the Later Cast Provisional Ballots’ eligibility an issue in the case. *See, e.g., Lunceford v. Craft*, Cause No. 2022-79328 (164th Dist. Ct., Harris Cnty.). The election contests are the proper venue for deciding whether those ballots should be counted and provide another path to the remedy sought by Petitioner. *See In re Murrin Bros. 1885 Ltd.*, 603 S.W.3d 53, 57 (Tex. 2019) (explaining that mandamus relief is meant for circumstances “involving manifest and urgent necessity and not for grievances that may be addressed by other remedies”).

Respectfully submitted,



Jonathan G.C. Fombonne  
First Assistant Harris County Attorney

cc: Christopher Hilton, Office of the Texas Attorney General (Counsel for Petitioner)  
Hani Mirza, Texas Civil Rights Project (Counsel for Intervenor-Respondent)  
Edgar Saldivar, Texas Civil Rights Project (Counsel for Intervenor-Respondent)

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Filing Code Description: Letter/Notice  
Filing Description: Status Report  
Status as of 4/7/2023 4:01 PM CST

Associated Case Party: State of Texas

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Tamera Martinez		tamera.martinez@oag.texas.gov	4/7/2023 3:52:26 PM	SENT
Lanora Pettit		lanora.pettit@oag.texas.gov	4/7/2023 3:52:26 PM	SENT
Christopher Hilton		christopher.hilton@oag.texas.gov	4/7/2023 3:52:26 PM	SENT
Judd Stone		Judd.Stone@oag.texas.gov	4/7/2023 3:52:26 PM	SENT

Associated Case Party: Harris County Commissioners Court

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Christian Menefee	24088049	christian.menefee@harriscountytexas.gov	4/7/2023 3:52:26 PM	SENT
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Jacqueline Bauerband		jacqueline.bauerband@harriscountytexas.gov	4/7/2023 3:52:26 PM	SENT

Associated Case Party: Clifford Tatum, in his official capacity as Harris County Elections Administrator

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Andrea Mintzer		andrea.mintzer@harriscountytexas.gov	4/7/2023 3:52:26 PM	SENT

Associated Case Party: Judge Lina Hidalgo, in her official capacity as Harris County Judge

Name	BarNumber	Email	TimestampSubmitted	Status
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Associated Case Party: Texas Organizing Project

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