

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

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

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*In re*  
**THE TRAVIS COUNTY REPUBLICAN PARTY AND MATT  
MACKOWIAK, CHAIR OF THE TRAVIS COUNTY REPUBLICAN  
PARTY**  
*Relators*

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Dyana Limon-Mercado,  
in her official capacity as the County Clerk/Election Administrator for Travis  
County, Texas,  
Respondent

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**EMERGENCY PETITION FOR WRIT OF MANDAMUS**

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## **STATEMENT OF THE CASE**

### **Nature of the Case**

Section 85.009 of the Texas Election Code sets forth certain clear and unambiguous mandatory and ministerial duties for Travis County Clerk/Election Administrator Dyana Limon-Mercado (“Mercado”) in connection with the selection, placement and allocation of Republican presiding and alternate presiding judges and other election officials (e.g., clerks, deputies, alternate deputies) at each early voting polling locations throughout Tavis County for the early voting period commencing Monday, October 21, 2024, and ending Friday, November 1, 2024.

Section 32.002 of the Texas Election Code sets forth Respondent’s unambiguous mandatory and ministerial duties in connection with the appointment of Republican presiding and alternative presiding judges on Election Day. Despite Relators’ full compliance with these statutes, as well as their demand for compliance with the law, Respondent Mercado has refused to do so. Accordingly, Relators seek mandamus relief to compel Respondent Mercado to perform her nondiscretionary, ministerial duties to select, place and allocate Republicans to each of the early voting and election day polling site locations in the manner provided by law.

### **Respondent**

Dyana Limon-Mercado, in her official capacity as the Travis County Clerk/Elections Administrator, who, under Section 85.009 of the Texas Election

Code, is required to select, place, and allocate Republican volunteers which were timely listed and submitted by Relator Travis County Republican Party (“TCRP”) for service at each of the early voting polling locations. Moreover, this Respondent is also required under Section 32.002 of the Texas Election Code to appoint Republican presiding and alternate presiding judges on Election Day.

### **Relief Requested**

Respondent should be required to replace each and every Democrat who has been selected, placed, and allocated to each of the early voting and election day polling locations with a Republican volunteer who meets all applicable eligibility requirements and whose name appears on the list which was timely submitted by Relator TCRP to both Respondent and the Travis County Commissioner’s Court.

### **STATEMENT OF JURISDICTION**

This Court has jurisdiction over this emergency petition for a writ of mandamus. *See* Tex. Election Code § 273.061 (“The supreme court or a court of appeals may issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election or a political party convention, regardless of whether the person responsible for performing the duty is a public officer.”).



## **STATEMENT REGARDING ORAL ARGUMENT AND REQUEST FOR EXPEDITED BRIEFING AND DECISION**

This Emergency Petition concerns the Respondent Travis County Clerk's/Election Administrator's failure to comply with her ministerial duty to select, place and allocate volunteer Travis County Republican registered voters whose names have been timely submitted by the Relator Travis County Republican Party to both Respondent and to the Travis County Commissioner's Court for appointment to the positions of presiding judges, alternative presiding judges, and other election officials (e.g., election clerks) for each of the early voting and election day polling locations designated for voting. In derogation of her clear and unambiguous mandatory and ministerial duty, Respondent Mercado has appointed only 23 Republicans out of a total of 83 alternate deputies (which constitutes a mere 28%). Three (3) of those appointed to hold spots as Republicans were not actually taken from the submitted list by the local party; and one (1) of the appointees is actually a Democrat. Respondent appointed a total of 306 clerks, but only 72 of those were Republicans (a mere 24%), and 32 of those appointed to hold Republican positions were not actually from the submitted list by the local party; and six (6) are Democrats. Respondent made these appointments, even though Respondent failed to contact every single one of the over 900 listed volunteers submitted by Relator TCRP, which is a statutorily mandated prerequisite before Respondent may properly depart from that list. Seventy-four (74) election day polling sites have only

Democrats who were selected to serve in both the Presiding Judge and the Alternate Presiding Judge positions.

Travis County early in-person voting began on Monday, October 21, 2024, and ends on November 1, 2024. Because time is of the extreme essence, Relators respectfully request that the Court expedite this Emergency Petition and issue a decision immediately. *See Davis v. Taylor*, 930 S.W.2d 581, 582 (Tex. 1996) (expediting briefing and oral argument in election-related proceeding). Because the duties described herein are clear and mandatory, this Emergency Petition should be granted without oral argument, an opinion and judgment should be issued forthwith, and no right to file a rehearing should be permitted, given the exigent circumstances which exist.

### **STATEMENT OF THE ISSUES PRESENTED**

1. Is Respondent Mercado failing to perform her nondiscretionary, ministerial duty under Section 85.009(a) of the Texas Election Code to select, place, and allocate qualified Travis County Republican registered voters who meet all applicable eligibility requirements as alternative presiding judges and/or election officers (e.g., clerks) for early voting polling places whose names have been timely submitted on a list submitted by the Relator Travis County Republican Party?

2. Is Respondent Mercado failing to perform her nondiscretionary, ministerial duties under Section 85.009(b) of the Texas Election Code by not

selecting, placing, and allocating the first republican volunteer who meets all applicable eligibility requirements to serve as alternate presiding judges and/or election officers (e.g., election clerks) for early voting polling places whose names have been timely submitted on a list submitted by the Relator Travis County Republican Party?

3. Is Respondent Mercado failing to perform her nondiscretionary, ministerial duties under Section 32.002 of the Texas Election Code by not selecting, placing, and allocating proportional representation of Republicans as presiding and alternate presiding judges at polling locations on Election Day?

## **INTRODUCTION**

### Early Voting Locations.

Under Section 85.009 of the Texas Election Code, Respondent Mercado, in her official capacity as the Travis County Election Administrator, is required to appoint Travis County registered voters who meet all applicable eligibility requirements and who are timely submitted by the Travis County Republican Party on a list as alternate presiding judges and/or election officials for each of the early voting polling locations during the entire period of early voting, which began on Monday, October 21, 2024, and concludes on Friday, November 1, 2024. As the Elections Administrator for Travis County, Respondent Mercado has the responsibility of enforcing the election laws to ensure a fair and honest election in

Travis County. There are 42 polling locations during early voting. Despite the fact that Respondent has received over 900 names of eligible Republican Travis County registered voters for selection for service during early voting, and despite the fact that Respondent has not exhausted that list, she has deliberately refused to select, place and allocate qualified Republican volunteers on the list and has instead filled those positions with individuals who are not on that list, namely, at least one (1) alternate presiding judges and nine (9) clerks, each of whom are Democrats. More specifically, 2 of the 42 Early Voting locations have zero Republican representation. Ten (10) have no deputy or alternate deputy (24%), and an additional eight (8) have no Republican representation for the morning shift (19%) and thirteen (13) have no Republican representation for the afternoon/evening shift (31%), even though the law requires that there must be some Republican representation at all times.

#### Election Day Polling Locations.

Section 32.002 of the Texas Election Code applies to the fair allocation of Presiding and Alternate Judges who serve at election day polling sites. Although a sufficient number of Republicans were submitted and accepted by the Travis County Commissioner's Court, Respondent has not made a fair allocation. To the contrary, 72 of 176 (41%) of Election Day polling locations have zero Republican poll workers; and while there are 104 polling location with some Republican workers, 21 only have Republican clerks. Thus, absent intervention by this Court, seventy-four

(74) polling sites on Election Day will have only Democrats serving in both the Presiding Judge and the Alternate Presiding Judge positions.

Despite the fact that Relator Travis County Republican Party has demanded that Respondent comply with his ministerial duties, Respondent Mercado has refused to do so. Thus, Relators have no choice but to seek Emergency Mandamus Relief.

## **STATEMENT OF FACTS**

### ***Relator The Travis County Republican Party's Purpose and Mission***

Relator TCRP is committed to advancing limited government, lower taxes, less spending and individual liberty. Relator's specific goals are to grow the Republican Party by reaching new voters, advance the Platform, which is grounded in conservative principle, and to keep Texas prosperous and free. TCRP serves:

To promote a conservative philosophy of government:

By promoting conservative principles; and

By providing the infrastructure through which those who share our conservative principles can get involved in the political process, run for and be elected to public office, and govern according to our principles when elected.

See App. at Tab 1.

### ***Relator Matt Mackowiak***

Relator Mackowiak is the Chair of Relator TCRP. Because the statute in question (Section 85.009 of the Texas Election Code) refers to the Chair of the

appropriate political party, this Relator has standing to assert the claims herein. Relator Mackowiak also is a registered voter in Travis County, Texas. He caused a list of over 900 registered Republican voters who were each qualified to serve as presiding or alternate presiding judges and clerks and deputies for early and election day service to be timely submitted to both the Respondent and the Commissioner's Court by June 30, 2024, by Relator TCRP. See App. at Tab 1.

***Respondent Mercado's Ministerial Duties Under the Texas Election Code***

Under Section 85.009 of the Texas Election Code, Respondent Mercado is responsible for selecting the first name on the list of Republican volunteers submitted by TCRP which he finds to satisfy all applicable eligibility requirements. Should Respondent find that a particular name on that list does not meet all applicable eligibility requirements, she is not allowed to use names of other citizens who are not on that list. To the contrary, Respondent must exhaust the list before doing so. Respondent failed to exhaust Relator TCRP's list. Similarly, under Section 32.001 of the Texas Election Code, Respondent is required to achieve bipartisan representation at polling locations. Respondent has not done so.

***Immediately Upon Relator's Discovery that Respondent is not Complying with the Texas Election Code, Demand is Made to Require Compliance.***

Despite numerous requests for timely information, Respondent ignored those requests and withheld information on polling official assignments until a mere four (4) days before the start of early voting. On October 16, 2024, Relator TCRP

discovered that Respondent was not selecting, placing, and allocating qualified Republican Travis County registered voters whose name appeared on the list submitted by TCRP. Without first exhausting every single name on the Relator's list of volunteers, Respondent simply selected, placed, and allocated Democrats who are not on Relator's list. See App. at Tab 1. Relator TCRP demanded that Respondent comply with her mandatory ministerial duties, but she refused to do so. See App. at Tab 1. There is no material disputed fact which would or could deprive this Court of invoking its original mandamus jurisdiction, as it is undisputed that Respondent has not exhausted every single name on Relator TCRP's submitted list, and therefore had no discretion to depart from that list.

Because Respondent Mercado is clearly refusing to comply with her ministerial duties set forth in Section 85.009 and 32.001 of the Texas Election Code, Relators bring this Emergency Mandamus Petition to mandate compliance by the Respondent with her clear and non-discretionary ministerial duties. As will be shown below, Respondent's selection, placement, and allocation of Democrats instead of Republicans for service at the early polling locations is in direct conflict with the Texas Election Code, and should not be countenanced by this Court.

## **ARGUMENT**

### **I. Mandamus is Appropriate to Compel Compliance with a Non-Discretionary, Ministerial Duty.**

“A writ of mandamus will issue to compel a public official to perform a ministerial act.” *Anderson v. Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991) (citing *Womack v. Berry*, 156 Tex. 44, 291 S.W.2d 677, 682 (1956); *Turner v. Pruitt*, 161 Tex. 532, 342 S.W.2d 422, 423 (1961)). “An act is ministerial when the law clearly spells out the duty to be performed by the official with sufficient certainty that nothing is left to the exercise of discretion.” *Anderson*, 291 S.W.2d at 793. That is the case here.

## **II. Respondent Mercado Has a Ministerial Duty to Comply with and Enforce the Requirements of the Texas Election Code.**

### **A. Respondent Mercado Has a Ministerial Duty to Select, Place and Allocate Alternate Presiding Judges and/or Other Election Officials (e.g., Clerks) to Serve at Each Early Voting Polling Location from the List Supplied by Relator TCRP.**

For Early Voting, the county clerk is required to select election officers for the main early voting polling place and any branch polling place from a list provided by the party chairs in a manner that provides equal representation to the extent possible for each political party holding a primary election in the county. Tex. Elec. Code § 85.009(a). The county clerk is required to appoint the first person meeting the applicable eligibility requirements from the list submitted in compliance with this subsection by the party with the highest number of votes in the county as the presiding judge of that polling place and the first person meeting the applicable eligibility requirements from the list submitted in compliance with this section by



the party with the second highest number of votes in the county as the alternate presiding judge of that polling place. The county clerk shall appoint additional election officers for each polling place in the manner described above. Tex. Elec. Code § 85.009 (b). Again, failure to communicate assignments is potentially impacting the parity in the polls, unlawfully altering election procedures and violating the Election Code.

Pursuant to Section 85.009 of the Texas Election Code, Respondent Mercado must comply with the following statutory and ministerial duties:

**Sec. 85.009. ELECTION OFFICERS FOR GENERAL ELECTION FOR STATE AND COUNTY OFFICERS.**

(a) The county clerk shall select election officers for the main early voting polling place and any branch polling place from a list provided under Subsection (b), in a manner that provides equal representation to the extent possible for each political party holding a primary election in the county.

(b) Before July of each year, the county chair of each political party holding a primary election in the county shall submit in writing to the county clerk a list of names of persons in order of preference for each early voting polling place who are eligible for selection as an election officer. The county chair may supplement the list of names of persons until the 30th day before early voting begins in case an appointed election officer becomes unable to serve. The county clerk shall appoint the first person meeting the applicable eligibility requirements from the list submitted in compliance with this subsection by the party with the highest number of votes in the county as the presiding judge of that polling place and the first person meeting the applicable eligibility requirements from the list submitted in compliance with this subsection by the party with the second highest number of votes in the county as the alternate presiding judge of that polling place. The county clerk shall appoint additional election officers for each polling place in the

manner described by Subsection (a). The county clerk may reject the list if the persons whose names are submitted on the list are determined not to meet the applicable eligibility requirements.

(c) The county clerk, after making a reasonable effort to consult with the party chair of the appropriate political party or parties, may select election officers for each early voting polling place in which a list is not submitted in a manner that attempts to ensure equal representation to the extent possible for the parties holding a primary election in the county.

See Section 85.009 of the Texas Election Code.

The duty to review Relator's list of Republican volunteers and to select, place, and allocate those names—in the order listed—of those persons satisfying all applicable eligibility requirements for service as either alternate presiding judges and/or other election officials (e.g., clerks) is not discretionary; it is mandatory. *In re Robinson*, 175 S.W.3d 824, 830 (Tex. App. 2005) (“The use of the word *shall* in a statute is generally construed as creating a nondiscretionary duty.”). This duty includes the specific obligation to ensure that each person selected off Relator's list satisfies the criteria set forth in the Texas Election Code to permit that specific registered voter to serve at an early voting polling location.

**B. Respondent Mercado Has a Ministerial Duty to Reject the Selection, Placement, and Allocation of Any Person not Appearing on Relator TCRP's List Unless and Until it Has First Been Determined that None of the Remaining Names on the List are Persons Meet all Applicable Eligibility Requirements.**

Under Section 85.009 (b) of the Texas Election Code, Respondent Mercado does not have the discretion to select, place, and allocate names of any persons that

do not appear on the list of Republican volunteers submitted by Relator TCRP. To the contrary, he is required to first exhaust all of the names on the list before choosing persons not listed.

**C. Respondent Mercado Has a Ministerial Duty to Appoint Election Day Judges in Order to Achieve Bipartisan Representation at Polling Locations.**

As clearly outlined in the Texas Election Code, parity is required for judges at polling locations. For Election Day, the Commissioner's Court is required to apportion the number of judges in direct proportion to the percentage of precincts located in each County Commissioner's precinct, as won by each party in the last gubernatorial election. See Section 32.002(c-1). The presiding judge and alternative presiding judge must be affiliated or aligned with different political parties. See Section 32.002(c).

Section 32.002 of the Texas Election Code provides as follows:

Sec. 32.002. JUDGES FOR COUNTY ELECTION. (a) The commissioners court shall appoint the election judges for each regular county election precinct:

- (1) at its July term in a county with a population of over 500,000; or
- (2) at its August term in a county with a population of 500,000 or less.

(b) Judges appointed under Subsection (a) serve for a term of one year, except that the commissioners court by order recorded in its minutes may provide for a term of two years. A judge's term begins:

- (1) August 1 following appointment in a county to which Subsection (a)(1) applies; or

(2) September 1 following appointment in a county to which Subsection (a)(2) applies.

(c) The presiding judge and alternate presiding judge must be affiliated or aligned with different political parties, subject to this subsection. Before July of each year in a county to which Subsection (a)(1) applies or before August of each year in a county to which Subsection (a)(2) applies, the county chair of a political party whose candidate for governor received the highest or second highest number of votes in the county in the most recent gubernatorial general election shall submit in writing to the commissioners court a list of names of persons in order of preference for each precinct who are eligible for appointment as an election judge. The county chair may supplement the list of names of persons until the 20th day before a general election or the 15th day before a special election in case an appointed election judge becomes unable to serve. The commissioners court shall appoint the first person meeting the applicable eligibility requirements from the list submitted in compliance with this subsection by the party with the highest number of votes in the precinct as the presiding judge and the first person meeting the applicable eligibility requirements from the list submitted in compliance with this subsection by the party with the second highest number of votes in the precinct as the alternate presiding judge. If the candidates for governor of two political parties received the same number of votes in the precinct, the first person meeting the applicable eligibility requirements from the list submitted by the party whose candidate for governor received the highest number of votes in the county shall be appointed as the presiding judge and the first person meeting the applicable eligibility requirements from the list submitted by the party whose candidate for governor received the second highest number of votes in the county shall be appointed as the alternate presiding judge. The commissioners court may reject the list if the persons whose names are submitted on the list are determined not to meet the applicable eligibility requirements.

(c-1) For purposes of this subsection, the county chair shall provide a list of names of persons eligible for appointment as election judges. Judges of countywide polling places established under Section [43.007](#) must be appointed from the list of names of persons submitted by the county chair in compliance with Subsection (c) except that in appointing a person from the list the commissioners court shall apportion the number of judges in direct proportion to the percentage of precincts located in each county commissioners precinct won by each party in the last gubernatorial election, the commissioners court is not required to make the

appointments based on specific polling locations or precincts, a presiding judge or alternate presiding judge is not required to serve in a polling place located in the precinct in which the judge resides, and more than one presiding judge or alternate presiding judge may be selected from the same precinct to serve in polling places not located in the precinct in which the judges reside. The county chairs may submit, and the commissioners court may preapprove, the appointment of more presiding judges or alternate presiding judges than necessary to fill available positions. The county clerk may select an individual whose appointment was preapproved by the commissioners' court to fill a vacancy in a position that was held by an individual from the same political party. Other than a judge's party affiliation, nothing in this subsection precludes a county clerk from placing an election officer at a countywide polling place based on the need for services at that location.

(d) The county clerk, after making a reasonable effort to consult with the party chair of the appropriate political party or parties, shall submit to the commissioners court a list of names of persons eligible for appointment as presiding judge and alternate presiding judge for each precinct in which an appointment is not made under Subsection (c). The commissioners court shall appoint an eligible person from the list who is affiliated or aligned with the appropriate party, if available.

(e) The commissioners court shall fill a vacancy in the position of presiding judge or alternate presiding judge for the remainder of the unexpired term. An appointment to fill a vacancy may be made at any regular or special term of court. Not later than 48 hours after the county clerk becomes aware of a vacancy, the county clerk shall notify the county chair of the same political party with which the original judge was affiliated or aligned of the vacancy. Not later than the fifth day after the date of notification of the vacancy, the county chair of the same political party with which the original judge was affiliated or aligned shall submit to the commissioners' court in writing the name of a person who is eligible for the appointment. If a name is submitted in compliance with this subsection, the commissioners court shall appoint that person to the unexpired term. If a name is not submitted in compliance with this subsection, the county clerk shall submit to the commissioners court a list of names of persons eligible as an appointee for the unexpired term. The commissioners court shall appoint an eligible person from the list who is affiliated or aligned with the same party, if available.

(f) Subject to Section 32.003, the judges appointed under this section shall serve in each election ordered by the governor or a county authority in which the regular county election precincts are required to be used.

(g) Following an oral warning to the election judge and with the concurrence of the county chair of the same political party with which the judge is affiliated or aligned, the county clerk may remove, replace, or reassign an election judge who causes a disruption in a polling location or willfully disobeys the provisions of this code. A vacancy created under this subsection shall be filled in the same manner as an emergency appointment under Section 32.007.

Despite these provisions, Respondent has not created parity for judges at polling locations. In fact, seventy-four (74) polling locations on Election Day have a Democrat in both the Presiding and the Alternate Presiding positions.

### **III. The Record Demonstrates that Respondent Mercado Is Not Complying With His Ministerial Duties as Outlined Above.**

The Appendix attached to this Petition demonstrates Respondent Mercado's failure to comply with the demand by Relator TCRP to following his ministerial duties set forth in Section 85.009 and 32.002 of the Texas Election Code. Because the evidence is undisputed that Respondent has not contacted each and every person on Relator TCRP's list of Republican volunteers and/or the County Commissioner's approved list, there is no genuine issue of material disputed fact which would divest this Court of invoking its own original mandamus jurisdiction. "Failure to perform his duty subjects [Respondent Mercado] to mandamus." *Bejarano v. Hunter*, 899 S.W.2d 346, 350 (Tex. App. 1995). Absent an order compelling Respondent Mercado to comply with his ministerial duties under the Texas Election Code,

persons not appearing on Relator TCRP's list will wrongfully and illegally serve as alternate presiding judges and election clerks.

**IV. Relators Are Being Harmed, Have Standing, and Will Continue to be Harmed, Absent Relief.**

Respondent Mercado's non-compliance with the law is harming the interests of both Relators. With respect to Travis County Republican Party, Respondent's policy of permitting individuals to serve positions that are statutorily required to be filled from Relator's TCRP's list, will continue to harm this Relator's mission and purpose, absent relief. Accordingly, Relator TCRP promotes election integrity and compliance with state statutes that ensure the integrity of elections. Respondent Mercado's non-compliance with Texas law has impaired and will continue to impair this Relator from carrying out its mission.

With respect to Relator Mackowiak, he has standing because he is a registered voter and the Chairman of the Travis County Republican Party. His job as Chairman includes ensuring that qualified Republicans are recruited and then submitted to the Respondent and to the Commissioner's Court in a timely fashion. Chairman Mackowiak did just that, and he caused to be submitted a list of potential Republican volunteers on Relator TCRP's list, each of whom met all applicable eligibility requirements, and yet was never contacted by Respondent in order to serve during early voting at one of the 42 early voting polling locations and at least 72 election day locations. Without any oversight by qualified persons on Relator TCRP's list,

Relator Mackowiak is harmed with a potential dilution of his right to vote. “Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections.” *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). This right “can neither be denied outright . . . nor destroyed by alteration of ballots . . . nor diluted by ballot-box stuffing.” *Id.* “The right to vote is ‘individual and personal in nature,’ and ‘voters who allege facts showing disadvantage to themselves as individuals have standing to sue’ to remedy that disadvantage.” *Gill v. Whitford*, 138 S. Ct. 1916, 1920 (2018) (quoting *Reynolds*, 377 U. S. at 561 and *Baker v. Carr*, 369 U.S. 186, 206 (1962)). Relator Mackowiak is a registered voter in Travis County, Texas. He intends to vote in the 2024 General Election and in other future elections in Travis County, Texas. Although he respects and supports every Travis County registered voter’s right to vote, he is very concerned that the Travis County Elections Administer is refusing to permit fully qualified persons to serve during the early voting and election day voting periods at the various polling locations. Accordingly, Relator Mackowiak objects to Respondent’s breach of ministerial duties, as the consequence of permitting such activity hurts not only the integrity and the reported outcomes of the election for all of the candidates and all of the voters who voted, but it could also dilute or otherwise diminish and cancel Relator Mackowiak’s casting of a legal vote for the candidates of his choice in the General Election.



The undisputed evidence demonstrates that both Section 85.009 and Section 32.002 of the Texas Election Code have been violated. The only way to remedy this violation is to immediately order Respondent to replace all early voting and election day voting presiding and alternate presiding judges and clerks who have been selected, placed and allocated by persons who are not on Relator's list with persons who are on Relator's list, as set forth in the statute.

**V. Relators Have No Other Adequate Remedy.**

“Mandamus will not issue where there is ‘a clear and adequate remedy at law[.]’” *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (quoting *State v. Walker*, 679 S.W.2d 484, 485 (Tex. 1984)). Neither Relator has an adequate remedy, as neither is entitled to file an election contest or any other type of legal proceeding to rectify this transgression of the Texas Election Code.

Remedies found in Texas law are also not “clear and adequate” to achieve the remedy sought in this petition. Texas Election Code Section 273.081 is limited to “injunctive relief” to “prevent” violations from occurring. Relators do not seek injunctive relief; they seek affirmative compliance with ministerial duties. It is therefore not “clear” that Section 273.081 is “adequate” under these circumstances.

Even where “a remedy at law may technically exist . . . it may nevertheless be so uncertain, tedious, burdensome, slow, inconvenient, inappropriate or ineffective as to be deemed inadequate.” *Smith v. Flack*, 728 S.W.2d 784, 792 (Tex.

Crim. App. 1987). Whether mandamus is appropriate “depends heavily on the circumstances and is better guided by general principles than by simple rules.” *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 137 (Tex. 2004) (orig. proceeding). Given the proximity to election day and the importance of the issues presented, “the benefits of mandamus review outweigh the detriments.” *Id.* at 136. To proceed in any other manner would be too uncertain, slow, inconvenient, and ineffective under these circumstances. *Flack*, 728 S.W.2d at 792.

#### **VI. This Matter is not Moot.**

Although Early Voting began on Monday, October 21, 2024, it does not end until Friday, November 1, 2024. Thus, each and every day that goes forward without compliance with Section 85.009 of the Texas Election Code is another day of harm. Accordingly, this Court should not deny this Emergency Petition simply on the basis that early voting will have started by the time relief is granted, as partial relief is better than no relief at all. With respect to Election Day, there is still time to rectify Respondent’s breaches of her ministerial duties.

#### **VII. Conclusion and Prayer for Relief**

"No one who has imbibed anything of the spirit and genius of our free government will ever question the peerless value and sacred inviolability of the elective franchise. It will be guarded with sleepless vigilance by all who appreciate the blessings of free institutions." *Arberry v. Beavers*, 6 Tex. 457, 470 (1851). For

these reasons, Relators respectfully request that the Court grant this Petition for Writ of Mandamus and enter an order compelling Respondent Mercado to do the following:

1. Review all persons on Relator TCRP's June 30, 2024, list and replace all currently selected, placed and allocated Democratic (or party not specified) officials not appearing on the TCRP list with those persons who do appear on the list for the positions of presiding judges and alternate presiding judges for all early voting and election day polling locations; and
2. Achieve bipartisan representation at all Election Day polling locations.

Dated: October 29, 2024.

Respectfully submitted,

/s/ Andy Taylor

Andy Taylor  
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Office: (713) 412-4025  
Counsel for Relators

### **RULE 52.3(J) CERTIFICATION**

I have reviewed this Emergency Petition and concluded that every factual statement herein is supported by competent evidence in the appendix or record.

/s/ Andy Taylor  
Andy Taylor

### **CERTIFICATE OF SERVICE**

I certify that, because of the imminent nature of this proceeding, courtesy copies of the foregoing were provided in electronic form at the same time the foregoing document was accepted by the Court.

/s/ Andy Taylor  
Andy Taylor

### **CERTIFICATE OF COMPLIANCE**

This Petition complies with the type-volume limitation of Tex. R. App. P. 9(i)(2)(B) because it contains \_\_\_\_\_ words, excluding the parts of the petition exempted by Tex. R. App. P. 9.4(i)(1).

This Petition also complies with the typeface requirements of Tex. R. App. P. 9.4(e) because it has been prepared in a proportionally spaced typeface in 14-point font.

/s/ Andy Taylor  
Andy Taylor

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

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

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*In re*  
**THE TRAVIS COUNTY REPUBLICAN PARTY AND MATT MACKOWIAK,  
CHAIR OF THE TRAVIS COUNTY REPUBLICAN PARTY**  
*Relators*

---

Dyana Limon-Mercado,  
in her official capacity as the County Clerk/Election Administrator for Travis County,  
Texas,  
Respondent

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**APPENDIX IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF MANDAMUS**

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**TAB 1**

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

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

---

*In re*  
**THE TRAVIS COUNTY REPUBLICAN PARTY AND MATT MACKOWIAK,  
CHAIR OF THE TRAVIS COUNTY REPUBLICAN PARTY**  
*Relators*

---

Dyana Limon-Mercado,  
in her official capacity as the County Clerk/Election Administrator for Travis County,  
Texas,  
Respondent

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**VERIFICATION OF EMERGENCY PETITION FOR WRIT OF MANDAMUS**

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STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

I, Matt Mackowiak, do hereby declare under the penalty of perjury that the following is true and correct:

My name is Matt Mackowiak, my date of birth is 09/13/1979, and my business address is 807 Brazos, Suite 304, Austin, Texas 78701. I am the Chairman of the Travis County Republican Party.

I am over the age of 18 years of age, of sound mind, and capable of making this declaration. All of the facts stated herein are within my personal knowledge and are true and correct.

I have read Relators' Emergency Petition for Writ of Mandamus and can state that the facts stated therein are within my personal knowledge and are true and correct.

Executed in Travis County, State of Texas, on the 28th day of October 2024.

  
\_\_\_\_\_  
Matt Mackowiak

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