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IN THE COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

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8th COURT OF APPEALS
EL PASO, TEXAS
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ELIZABETH G. FLORES
Clerk

No. 08-21-00229-CV

In re:

PETER ARTHUR FIERRO a/k/a ART FIERRO,

Relator.

Original Proceeding
In the Court of Appeals for the Eighth District of Texas

RESPONDENT DORA OAXACA, in her capacity as EL PASO COUNTY DEMOCRATIC PARTY CHAIRPERSON's RESPONSE TO PETITION FOR WRIT OF MANDAMUS

John P. Mobbs
Attorney at Law
Texas Bar No. 00784618
6350 Escondido Drive, Suite A-14
El Paso, Texas 79912
Tel. 915-541-8810
Fax 915-541-8830
Email johnmobbs@gmail.com

ATTORNEY FOR RESPONDENT

If the Court determines to submit this original proceeding with oral argument, Respondent respectfully requests the opportunity to participate.

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STATEMENT REGARDING ORAL ARGUMENT

An original proceeding concerning a political candidate's eligibility for the office of Texas State Representative is the sort of proceeding with potential importance to the public in which oral argument would generally be indicated. However, delaying the submission of this case to hear oral argument may interfere with the Court's stated intention to dispose of this action by January 12, 2022 (as stated by the Court in its order of December 31, 2021), the date which Relator's prayer claims is the deadline to act. Furthermore, under controlling legal standards, it is clear that Relator is not entitled to issuance of the writ of mandamus, and so oral argument is not likely to materially aid the disposition of this case. Respondent believes that the balance of these factors weighs in favor of deciding the case without oral argument. Of course, if the Court determines to hear oral argument, Respondent respectfully requests the opportunity to participate.

RECORD AND PARTY REFERENCES

Consistently with Relator's petition for writ of mandamus, Relator's appendix is cited herein as "Rel. Appx." with a reference to the "Tab" number of the cited document.

Relator Peter Arthur Fierro, also known as Art Fierro, is referred to herein by his surname, "Fierro."

Real Party in Interest Claudia Ordaz Perez is likewise referred to herein as "Ordaz Perez."

Respondent Dora Oaxaca is joined only in her official capacity as the Chairperson of the El Paso County Democratic Party, accordingly, the Respondent is referred to herein as "the Party."

STATEMENT OF FACTS

Relator Fierro alleges that Real Party in Interest Ordaz Perez, his opponent in the El Paso County Democratic Party primary election for the position of Texas State Representative, District 79, is ineligible to be elected to that position. He requested Respondent, the Party, to reject her application for a place on the ballot. (Rel. Appx. Tab 2). Based on information obtained from the Texas Secretary of State indicating that Ordaz Perez meets all candidate qualifications, the Party denied his request. (Rel. Appx. Tab 5). Fierro's mandamus petition followed.

This Court requested the Party to respond to Fierro's petition for writ of mandamus. The interest of the Party is not in supporting any individual candidate in the primary election, but in assuring that the law is applied fairly, equally, and correctly to all candidates. The Party does not take any position before this Court on any factual disputes that may exist between Fierro and Ordaz Perez. Based on the facts alleged in Fierro's petition for writ of mandamus, the Party is not authorized to declare Ordaz Perez ineligible. Therefore, Fierro has not shown that he is entitled to the issuance of a writ of mandamus.

SUMMARY OF THE ARGUMENT

Fierro seeks a writ of mandamus compelling the Party to declare Ordaz Perez ineligible for the position of State Representative, based on his assertion that she does not meet Constitutional or statutory residence requirements. The Party may not declare Ordaz Perez ineligible unless her ineligibility is shown by her application for a place on the ballot, or conclusively established by a public record. It is not.

The Constitution requires Representatives to reside in their districts for one year before the general election. Ordaz Perez's application for a place on the ballot indicates that she will meet this qualification. To contradict the application, Fierro presents an email from an elections administrator indicating that Ordaz Perez updated her voter registration record with her new address more than a year—but less than 13 months—before the general election. Fierro asserts that this proves non-residence, because an amendment to a voter registration record is not effective for thirty days. However, it is legally established that voter registration and voting records do not conclusively prove a candidate's residence for purposes of evaluating eligibility for office. Moreover, the fact that a change to a voting registration record is not immediately effective does not establish that the voter is not a resident at their new address until the effective date of that change. The Party is not authorized to declare Ordaz Perez ineligible based on the email or its statement about her voter registration.

The statutory qualification requires candidates for all elective offices to reside in the territory from which they are elected for six months before the primary election filing deadline. However, this statute does not apply to candidates for State Representative. The statute includes an exception when qualifications are established by a Constitutional provision. The residence qualification for the position of State Representative is established by the Texas Constitution. In a virtually identical case involving a candidate for Texas Senator, the Texas Supreme Court ruled that only the Constitutional residence requirement applies. The Party is not authorized to declare Ordaz Perez ineligible based on a statutory qualification that does not apply to her.

Because the Party is not authorized to declare Ordaz Perez ineligible in these circumstances, the Party did not violate a statutory duty. The requested writ of mandamus should be denied.

ARGUMENT AND AUTHORITIES

I. The Party is not authorized to declare Real Party in Interest ineligible because Relator has not established that she is Constitutionally ineligible.

In his first issue, Fierro asserts that Ordaz Perez does not meet the Constitutional eligibility requirements for the position of Representative. However, the Party may declare her ineligible only if that fact is demonstrated by her application for a place on the ballot, or is conclusively established by a public record. Neither is shown in this case. Fierro's claim of non-residence relies on the effective date of a change to Ordaz Perez's voter registration record. The effective date of a correction to a person's voter registration record does not establish his or her residence.

A. Constitutional eligibility requirements.

The Texas Constitution sets forth the eligibility requirements for the position of State Representative. TEX.CONST. art. III, § 7. To be a Representative, a person must be: (1) a citizen of the United States, (2) at the time of the election, a qualified voter of this State, (3) a resident of this State for two years preceding the election, (4) for the last year preceding the election, a resident of the district, and (5) at least 21 years old. *Id.* Fierro asserts that Ordaz Perez does not meet the requirement of residency in District 79 for the year preceding the election.

Respondent does not interpret Fierro's petition for writ of mandamus to claim that the Constitution requires candidates to have resided in the district for one year before the date of the primary election, as opposed to the date of the general election. *See* Pet. for w.o.m. p. 11 (Fierro's assertion that Ordaz Perez was "required to have been a resident of District 79 by no later than November 8, 2021"). The Texas Supreme Court has repeatedly written that Constitutional provisions which restrict the right to hold public office should be strictly construed against ineligibility. *In re Carlisle*, 209 S.W.3d 93, 96 (Tex. 2006) (orig. proceeding); *Wentworth v. Meyer*, 839 S.W.2d 766, 767 (Tex. 1992) (orig. proceeding); *Sears v. Bayoud*, 786 S.W.2d 248, 251 (Tex. 1990) (orig. proceeding). The Constitutional criteria to "be a Representative" logically apply to the date of a person's election to be a Representative, which is the date of the general election, not the date of a primary contest to be included on the general election ballot. TEX.CONST. art. III, § 7. This is consistent with the guidance provided to the Party by the Texas Secretary of State, which indicates that a candidate for State Representative must be a district resident for 12 months "[b]efore date of general election." (Rel. Appx. Tab 5 pp. 4-5).

In *McClelland v. Sharp*, the Fourteenth Court of Civil Appeals applied the residency requirement of Article III, section 7 by considering the residence of a candidate during the year preceding the date of the general election. *McClelland v.*

Sharp, 430 S.W.2d 518, 520 (Tex. Civ. App.—Houston [14th Dist.] 1968, orig. proceeding). In *Chapa v. Whittle*, the Corpus Christi Court of Civil Appeals held that a candidate for State Representative was entitled to have his name on the ballot even if he was not eligible at the time of the primary, so long as he would become eligible by the time of the general election. *Chapa v. Whittle*, 536 S.W.2d 681, 684-85 (Tex. Civ. App.—Corpus Christi 1976, orig. proceeding). In *Sears v. Bayoud*, the Supreme Court interpreted the phrase "time of his election" in Article V, section 2, referring to eligibility of candidates for the Supreme Court, to refer to the date of the general election. *Sears*, 786 S.W.2d at 250-54; *see also Purcell v. Lindsey*, 314 S.W.2d 283, 284 (Tex. 1958) (orig. proceeding) (candidate for Court of Criminal Appeals ineligible when he would not satisfy Constitutional qualifications at time of general election); *State by Reyna v. Goldberg*, 604 S.W.2d 549, 550 (Tex. Civ. App.—Waco 1980, orig. proceeding) (candidate for Court of Criminal Appeals eligible when he would meet Constitutional qualifications by date of general election). Fierro has cited no authority applying the Constitutional eligibility requirements as of the date of the primary. Ordaz Perez's eligibility to be a Representative turns on whether she will have been a resident of the district for one year before the general election.[1]

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[1] To be clear, the Party does not contend that a candidate who will be ineligible in the general election may be listed on the primary ballot. But Constitutional eligibility is evaluated as of the date of the general election, not the primary.

B. Relator's claim of Constitutional ineligibility is not shown by Real Party in Interest's application for a place on the ballot or conclusively established by any public record; voter registration records do not meet this standard.

Fierro asserts that the Party is obligated to declare Ordaz Perez ineligible, because he contends that she will not have resided in District 79 for one year by the date of the general election. The Party has no authority to declare Ordaz Perez ineligible unless the information in her application indicates that she is ineligible, or facts indicating her ineligibility are conclusively established by another public record. TEX.ELEC.CODE § 145.003(f); *see In re Dominguez*, 621 S.W.3d 899, 905 (Tex. App.—El Paso 2021, orig. proceeding); *In re Perez*, 508 S.W.3d 500, 504 (Tex. App.—El Paso 2016, orig. proceeding).

According to Ordaz Perez's verified application for a place on the ballot, she had continuously resided in District 79 for two months as of the date of her application, December 13, 2021. (Rel. Appx. Tab 1). It is undisputed that the general election will occur on November 8, 2022. (*See* pet. for w.o.m. p. 2). If Ordaz Perez resided in the district for two months before December 13, *i.e.*, beginning in October, 2021, she will have resided in the district for more than a year before the date of the general election. Her verified application therefore indicates that she meets the one-year district residency requirement.

Fierro nonetheless asserts that Ordaz Perez will not meet the requirement of residency in District 79 for a year before the election. But "election officials do not have the authority to independently determine disputed questions of fact regarding a candidate's eligibility." *In re Barnett*, 207 S.W.3d 326, 328 (Tex. 2006) (orig. proceeding). "Election officials, charged with the duty of certifying names to properly appear on the ballot, have no authority to inquire into facts dehors the record." *Garcia v. Carpenter*, 525 S.W.2d 160, 161 (Tex. 1975) (orig. proceeding). If the facts are controverted, the Party is not authorized to investigate and make findings as to qualifications of proposed candidates. *McClelland*, 430 S.W.2d at 522.

An election official must declare a candidate ineligible if facts indicating that the candidate is ineligible are conclusively established by a public record. *In re Palomo*, 366 S.W.3d 193, 194 (Tex. 2012) (orig. proceeding). But election officials have no authority to attach credence to asserted facts which are not conclusively established by public documents or recitations. *Garcia*, 525 S.W.2d at 161. "Unless the facts relied upon for disqualification are conclusively established by another public record, the election official is without authority to rely on them." *In re Cullar*, 320 S.W.3d 560, 568 (Tex. App.—Dallas 2010, orig. proceeding) (citations omitted).

Fierro relies on an email from Melissa Soto, El Paso County Elections Administration Coordinator. (Rel. Appx. Tab 9). The email states that, according to

their records, "... Ordaz Perez's address was changed on 10/12/2021 via a Texas online change." (*Id.*). It depicts what appears to be a screenshot, described in the email as "her online application." (*Id.*). The document is not certified, and it is entirely unclear whether it is a public record which the Party could consider in determining Ordaz Perez's eligibility. *See generally In re Cullar*, 320 S.W.3d at 567 (miscellaneous unverified records were not public records that would require party chairperson to remove candidate from the ballot).

Assuming the email is considered a public record of Ordaz Perez's voter registration, it is not sufficient to conclusively establish that Ordaz Perez was not a resident of District 79 before November 8, 2021. Voting records "may not conclusively establish residency[.]" *In re Barnett*, 207 S.W.3d at 328. Even "records showing a candidate voted out-of-district during a residency period are insufficient to conclusively establish that the candidate was not an in-district resident." *In re Dominguez*, 621 S.W.3d at 907. In *In re Dominguez*, this Court held that county records showing a late update to the candidate's voter registration, and the possibility that the candidate may have voted while being listed at her previous address, did not conclusively establish the candidate's residence outside of the district. *Id.* at 907. *See also Culberson v. Palm*, 451 S.W.2d 927, 929 (Tex. Civ. App.—Houston [14th Dist.] 1970, orig. proceeding) (voter registration records were not conclusive

evidence of a candidate's residence address even though candidate did not change his voter registration until after the residency deadline); *In re Jackson*, 14 S.W.3d 843, 848 (Tex. App.—Waco 2000, orig. proceeding) (voting record showing that candidate voted in a different district during the residency period did not conclusively establish residency in that different district, for purposes of eligibility to run for office).

Ordaz Perez's ineligibility is not indicated by her application or conclusively established by any public record. As such, the Party has no authority to declare her Constitutionally ineligible for the office.

C. A candidate's residence is not determined by the effective date of a change in voter registration records.

Furthermore, Fierro's assertion regarding the voter registration record, even if accepted as true, does not show that Ordaz Perez is constitutionally ineligible. Specifically, even it is true that Ordaz Perez first amended her voter registration record to reflect residence in District 79 on October 11 or 12, 2021, and that amendment was not effective for 30 days, this does not establish her Constitutional ineligibility, because the effective date of a change to a candidate's voter registration record does not establish his or her residence.

At issue is the meaning of the term "resident" in Article III, section 7. As noted above, Constitutional provisions which restrict the right to hold public office are

strictly construed against ineligibility. *In re Carlisle*, 209 S.W.3d at 96; *Wentworth*, 839 S.W.2d at 767; *Sears*, 786 S.W.2d at 251. The Election Code defines "residence" as "domicile, that is, one's home and fixed place of habitation to which one intends to return after any temporary absence." TEX.ELEC.CODE § 1.015; *see In re Peacock*, 421 S.W.3d 913, 917 (Tex. App.—Tyler 2014, orig. proceeding) (citing Election Code definition of residence in mandamus proceeding challenging eligibility of candidate for county judge); *In re Cullar*, 320 S.W.3d at 564 (also citing Election Code definition of residence in mandamus proceeding challenging eligibility of candidate for Texas Senate). Fierro offers no reason to believe that Ordaz Perez is not a resident of District 79 under this definition.

As explained by the Supreme Court in a case challenging the eligibility of a candidate for county and district attorney:

> The term 'residence' is an elastic one and is extremely difficult to define. The meaning that must be given to it depends upon the circumstances surrounding the person involved and largely depends upon the present intention of the individual. Volition, intention and action are all elements to be considered in determining where a person resides and such elements are equally pertinent in denoting the permanent residence or domicile.

Mills v. Bartlett, 377 S.W.2d 636, 637 (Tex. 1964) (orig. proceeding). Fierro offers no reason to believe that Ordaz Perez is not a resident of District 79 based on these elements.

Instead of applying these standards, Fierro questions whether Ordaz Perez was eligible to vote in District 79 for a 12-month period before the election date.[2] He quotes Election Code section 11.003 for the proposition that "a person may vote only in the election precinct in which the person resides." Pet. for w.o.m. p. 11, *quoting* TEX.ELEC.CODE § 11.003. He points out that changes to a person's voter registration record do not become effective until 30 days after they are submitted.[3] He reasons that a person therefore must not "reside" in an election precinct until 30 days after their voter registration record has been corrected with their new address.

But Fierro's quotation of section 11.003 omits the opening clause. That section states, "***Except as otherwise provided by this code***, a person may vote only in the election precinct in which the person resides." TEX.ELEC.CODE § 11.003 (emphasis added). The following section of the Code, entitled "Voting in Precinct of Former Residence," provides that in certain circumstances, a voter may continue to vote in

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[2] Notably, the Constitution by its terms requires a Representative to be a qualified voter in the State of Texas at the time of the election. It does not expressly require a Representative to be a registered voter in the district at any date before the election. TEX.CONST. art. III, § 7.

[3] Fierro cites section 13.143 of the Election Code. However, this section is within Chapter 13 of the Code, which controls a voter's "Initial Registration." TEX.ELEC.CODE § 13.143. The undersigned counsel believes that the correct citation is section 15.025, which provides that a change in a voter's registration record becomes effective after 30 days. TEX.ELEC.CODE § 15.025.

the "precinct of former residence" before a voter registration becomes effective in a new precinct. TEX.ELEC.CODE § 11.004. Together, these sections establish that the precinct where a person's voter registration record is effective sometimes may be different from the precinct of their present "residence."

Fierro simply has it backwards. A person's qualification to vote follows their residency, it does not establish their residence. A person is not even eligible to register as a voter until they are a resident of the county in which they register. TEX.ELEC.CODE § 13.001. The application must be submitted to the registrar of the county in which the voter resides. TEX.ELEC.CODE § 13.002. If the voter's registration information becomes incorrect because of a change in circumstances, the voter notifies the registrar; and if the voter no longer resides in the county in which the voter is registered, the registrar forwards the information to the registrar of the county in which the voter resides. TEX.ELEC.CODE § 15.021. Nothing in the Election Code suggests that a person does not legally reside in a county, district, or precinct until after the amendment to their voter registration record reflecting residence in that territory becomes effective.

Courts have thus recognized that a political candidate's voter registration and voting activity do not establish that the candidate resides outside of the relevant territory, when evaluating qualifications to run for office. In *Culberson v. Palm*, a

candidate for precinct chair was required to reside in the precinct by February 2 to be qualified for that position. He began moving to the precinct in January, but did not transfer his voting registration to the precinct until February 20. The Houston (Fourteenth) Court of Civil Appeals nonetheless granted a writ of mandamus to command the election authority to place his name on the ballot. The Court held that the fact that the candidate had previously been registered to vote in a different precinct, and transferred the registration only after the required residency date, did not establish that he was not a resident of the precinct to which he had moved. *Culberson*, 451 S.W.2d at 929.

Culberson was followed in *In re Jackson*, 14 S.W.3d at 847-48. In that case, the candidate sought election to a city council. To be eligible, she was required to be a resident of the city for 12 months before the election date. She cast a ballot in an election precinct outside of the city less than 12 months before the election date. Based on this record, the election authority declared her ineligible for office as a nonresident. However, the Waco Court of Appeals granted a writ of mandamus to require the authority to withdraw this declaration. The Court recognized that the Election Code permits a voter who has moved to another election precinct to cast a ballot in his former precinct. The Court concluded that the candidate's out-of-

precinct voting record therefore did not conclusively establish her ineligibility for the position. *In re Jackson*, 14 S.W.3d at 847-49.

The Constitutional text requires that a Representative be a "resident of the district" from which he or she is chosen only for the "last year" of the two years "preceding his [or her] election." TEX.CONST. art. III, § 7. Fierro's interpretation would effectively amend the Constitution to require a Representative to reside in the district for 13 months preceding the election, in order for the change in his or her voter registration record to become effective 12 months before the election. Fierro's allegations regarding the changes to Ordaz Perez's voter registration record, even if accepted as true, do not establish that Ordaz Perez is Constitutionally ineligible.

For all of these reasons, Fierro's first issue fails to provide a basis for issuance of the writ of mandamus.

II. The Party is not authorized to declare Real Party in Interest ineligible because Relator has not established that she is statutorily ineligible.

In his second issue, Fierro asserts that Ordaz Perez is ineligible to be a candidate for State Representative, District 79 based on the residency requirement of section 141.001 of the Election Code. That statute requires every candidate whose name appears on a primary election ballot to reside in the territory from which the office is elected for six months preceding the deadline to file for a place on the ballot.

TEX.ELEC.CODE § 141.001(a)(5)(A). The Party agrees that Ordaz Perez's application reflects on its face that she has only resided in District 79 for two months, which does not satisfy this requirement. Rel. Appx. Tab 1; *see generally In re Perez*, 508 S.W.3d at 506 (explaining that the "territory from which the office is elected" refers to the precinct whose voters cast ballots for the position). However, candidates for the office of State Representative are not subject to the residency requirement of section 141.001(a).

Subsection 141.001(c) provides an exception to subsection (a), stating that "Subsection (a) does not apply to an office for which the federal or state constitution or a statute outside this code prescribes exclusive eligibility requirements." TEX.ELEC.CODE § 141.001(c). As discussed in detail *supra*, the Constitution establishes the residency requirements to be a State Representative. TEX.CONST. art. III, § 7. Fierro cites no authority holding the requirements of section 141.001 applicable to candidates for the position of State Representative.

The Texas Supreme Court's opinion in *Luna v. Blanton* is closely on point. *Luna v. Blanton*, 478 S.W.2d 76 (Tex. 1972). The issue in that case was whether a candidate for Texas Senator was subject to the residency requirements of former

Article 1.05 of the Election Code, the statutory predecessor to section 141.001.[4] The Constitutional qualifications for the office of Senator are found in Article III, § 6, and mirror the Constitutional qualifications for State Representative, except that a Senator must have resided in the State for five years (as opposed to two years for a Representative) and must have attained the age of 26 years (as opposed to 21 for a Representative). *Compare* TEX.CONST. art. III, §§ 6, 7. Article 1.05, like section 141.001, required a candidate for any political office to have resided in the territory for six months before the deadline to apply for a place on the primary ballot. *See Luna*, 478 S.W.2d at 78. Like section 141.001, it also had an exception when the statutory qualifications conflicted with Constitutional qualifications. *Id.* The candidate at issue in *Luna*, like Ordaz Perez, met the Constitutional requirement of residence in the district for one year before the general election, but not the statutory requirement of residence for six months before the filing deadline. *Id.* at 76-77.

The Supreme Court held that the statutory qualifications did not apply to the candidate. *Id.* at 79. The Court ruled that the different residence qualifications in the Constitution and the statute were in conflict. *Id.* The Court noted the settled rule that "where the Constitution prescribes the qualifications for holding a particular office,

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[4] Former Article 1.05 was repealed and recodified as current Election Code § 141.001 by Act of May 13, 1985, 69th Leg., R.S., ch. 211, §§ 1, 9, 1985 TEX. GEN. LAWS 802, *eff*. Jan. 1, 1986.

it is beyond the power of the Legislature to change or add to these qualifications unless the Constitution gives that power." *Id.* at 78, *citing Burroughs v. Lyles*, 181 S.W.2d 570 (Tex. 1944) (orig. proceeding); *and Dickson v. Strickland*, 265 S.W. 1012 (Tex. 1924) (additional citation omitted). A statute which "seeks to impose an additional test of eligibility, other than what is prescribed by the Constitution" is void. *Burroughs*, 181 S.W.2d at 574. However, the *Luna* Court found that no Constitutional issue was actually presented by the case, because the exception applicable when statutory qualifications conflicted with Constitutional qualifications prevented the statute from applying to the candidate. *Luna*, 478 S.W.2d at 79.

Luna is analytically indistinguishable from this case. Although *Luna* involved a different Constitutional provision, the relevant Constitutional qualifications for Senator and Representative mirror each other; and although *Luna* involved a predecessor version of the statute at issue, the current version contains the same exception when the statute conflicts with the Constitution. Based on the Supreme Court's holding in *Luna*, when applied to a State Representative, the statutory residence qualification conflicts with the Constitutional residence qualification. Therefore, the exception of subsection 141.001(c) prevents the application of the residence qualification of subsection 141.001(a)(5) to a candidate for Representative.

The Party is not authorized declare Ordaz Perez ineligible for the position of Representative based on section 141.001, because the statutory exception precludes the application of the statutory residence qualification to the office she seeks. Accordingly, Fierro's second issue fails to provide a basis for issuance of the writ of mandamus. The petition for writ of mandamus should be denied.

PRAYER

For these reasons, Relator is not entitled to the writ of mandamus. Respondent prays that the requested writ be denied, that costs be taxed against Relator, and for such other and further relief to which Respondent may be justly entitled.

Respectfully submitted,

/s/ John P. Mobbs

John P. Mobbs
Attorney at Law
Texas Bar No. 00784618
6350 Escondido Drive, Suite A-14
El Paso, Texas 79912
Tel. (915) 541-8810
Fax (915) 541-8830
Email johnmobbs@gmail.com

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served by electronic service to **Rene Ordoñez** (rordonez@bomwlaw.com), lead counsel for Relator, Blanco Ordoñez Mata & Wechsler, P.C., 5715 Cromo Dr., El Paso, Texas 79912, and **Claudia Ordaz Perez** (claudia@ordazperez.com.), Real Party in Interest *pro se*, 11372 David Carrasco, El Paso, Texas 79936, on the date of filing.

/s/ John P. Mobbs
John P. Mobbs

CERTIFICATION

Pursuant to Texas Rule of Appellate Procedure 52.3(j), I certify that I have reviewed this response, and concluded that every factual statement of this response is supported by competent evidence in the appendix or record.

/s/ John P. Mobbs
John P. Mobbs

CERTIFICATE OF COMPLIANCE

This pleading complies with the type volume limitations of Tex.R.App.P. 9.4(i)(2) because it contains 4,285 words, excluding the parts exempted by Tex.R.App.P. 9.4(i)(1).

/s/ John P. Mobbs
John P. Mobbs

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Rene Ordoñez		rordonez@bomwlaw.com	1/4/2022 4:23:51 PM	SENT
Daniel Ordonez		dordonez@bomwlaw.com	1/4/2022 4:23:51 PM	SENT
Jenee Duran		jduran@bomwlaw.com	1/4/2022 4:23:51 PM	SENT
Sofia Hardin		shardin@bomwlaw.com	1/4/2022 4:23:51 PM	SENT
Dora Oaxaca		dyorivera@icloud.com	1/4/2022 4:23:51 PM	SENT
Andrea Sierra		asierra@bomwlaw.com	1/4/2022 4:23:51 PM	SENT
Dora Oaxaca		epdemoparty@yahoo.com	1/4/2022 4:23:51 PM	SENT
Claudia Ordaz-Perez		claudia@ordazperez.com	1/4/2022 4:23:51 PM	SENT