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SUPREME COURT OF TEXAS
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No. 23-0111

IN THE
SUPREME COURT OF TEXAS

In re Maria Teresa Ramirez Morris, and Texas Alliance for Life, Inc.,

Relators.

RESPONSE TO PETITION FOR WRIT OF MANDAMUS

Donna K. McElroy
State Bar No. 13582050
dmcelroy@dykema.com
Brooke M. Bohlen
State Bar No. 24121915
bbohlen@dykema.com
DYKEMA GOSSETT PLLC
112 E. Pecan Street, Suite 1800
San Antonio, Texas 78205
Telephone: (210) 554-5500
Facsimile: (210) 226-8395

Christopher D. Kratovil
State Bar No. 24027427
ckratovil@dykema.com
DYKEMA GOSSETT PLLC
1717 Main Street, Suite 4000
Dallas, Texas 75201
Telephone: (214) 462-6400
Facsimile: (214) 462-6401

ATTORNEYS FOR RESPONDENTS

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

ISSUES PRESENTED

1. Whether this Court should exercise jurisdiction over this mandamus proceeding if the Relators failed to comply with Tex. R. App. P. 52.3(e) by first seeking review in the intermediate court of appeals and without offering a compelling reason for bypassing the court of appeals.

2. Whether Relators are entitled to mandamus relief where: (1) the City officials exercised their discretion and plausibly read the proposed charter amendment language to encompass only "one subject" as required by statute; and (2) the proposed charter amendment has not been approved by the voters of the City. Relators can then challenge the validity of the charter amendment via an orderly and standard judicial process after the election.

INTRODUCTION AND SUMMARY

Flouting the requirements of Texas Rule of Appellate Procedure 52.3(e), Relators seek extraordinary relief directly from this Court without first raising the issue in the intermediate court of appeal and without offering a "compelling reason" for skipping directly to this Court. To the extent that Relators acknowledge Rule 52.3(e) at all, their "compelling reason" for skipping over the Fourth Court of Appeals is a manufactured "emergency" premised on proposed ballot language that had not even been released for public review at the time Relators filed their petition. Because Relators skipped presenting their petition to the Fourth Court of Appeals without offering any compelling reason for doing so, Rule 52.3(e) applies, and this Court should require the relators to first present their Petition to the Fourth Court of Appeals.

Substantively, Relators are not entitled to the extraordinary writ of mandamus because the City Clerk and City Council have not committed any abuse of discretion because they plausibly read the proposed "Justice Policy" charter amendment language as relating to "one subject." Moreover, Relators will have an adequate legal remedy to challenge the charter amendment on a post-election basis through the regular course

of the judicial system if and when the amendment is approved by the voters. The Relators' present challenge is premature, and improperly invites this Court to substitute its discretion in reading the proposed charter amendment for that of the of the local officials in San Antonio tasked with doing so.

ARGUMENT

I. Standard of Review

Courts "deploy mandamus as an extraordinary and discretionary remedy, not as a matter of right." *In re Dorn*, 471 S.W.3d 823, 823 (Tex. 2015) (citing *Rivercenter Assocs. v. Rivera*, 858 S.W.2d 366, 367 (Tex. 1993)). Mandamus relief is only proper to correct a clear abuse of discretion when there is no adequate remedy by appeal. *In re Frank Motor Co.*, 361 S.W.3d 628, 630 (Tex. 2012) (orig. proceeding).

II. This Petition should have first been filed in the intermediate court of appeals; this Court should dismiss it for failure to comply with Tex. R. App. P. 52.3(e).

Rule 52.3(e) provides that "[i]f the Supreme Court and the court of appeals have concurrent jurisdiction, the petition must be presented first to the court of appeals unless there is a compelling reason not to do so." Further, "if the petition is filed in the Supreme Court without first being presented to the court of appeals, the petition must state the compelling

reason why the petition was not first presented to the court of appeals." *Id.* Relators flout Rule 52.3(e), and this Court should therefore dismiss their Petition and require that it first be presented to the Fourth Court of Appeals.

Relators seek relief directly from this Court without first filing their Petition for Writ of Mandamus in the intermediate court of appeals, and without a meaningful explanation, much less the required "compelling reason" for skipping the Fourth Court of Appeals. The "emergency" that Relators rely upon to justify this extraordinary request is entirely manufactured—there is no "rewording" of the ballot caption that could accomplish Relators' requested relief pre-election, and this substantive challenge is not appropriate until after the election (if the measure passes).

A. Relators have failed to comply with Tex. R. App. P. 52.3(e).

"The Supreme Court of Texas shares mandamus jurisdiction with the courts of appeals." *State v. Naylor*, 466 S.W.3d 783, 793-94 (Tex. 2015) (citing TEX. GOV'T CODE §§ 22.002(b), 22.221).

But there is a constraint on this concurrent jurisdiction as Texas Rule of Appellate Procedure 52.3(e) provides that:

> The petition must state, without argument, the basis of the court's jurisdiction. If the Supreme Court and the court of appeals have concurrent jurisdiction, ***the petition must be presented first to the court of appeals unless there is a compelling reason not to do so.*** If the petition is filed in the Supreme Court without first being presented to the court of appeals, ***the petition must state the compelling reason why the petition was not first presented to the court of appeals***.

Tex. R. App. P. 52.3(e) (emphasis added).

Here, the Relators have elected to completely bypass the Fourth Court of Appeals without offering any "compelling reason" for their decision. This alone is reason enough to deny mandamus relief. *See, e.g.*, Chambers—*Liberty Ctys. Navigation Dist. v. State*, 575 S.W.3d 339, 356 (Tex. 2019) (denying mandamus relief where the relator did not "offer a compelling reason for its failure to seek mandamus review in the court of appeals"). Here, Relators are engaged in naked forum shopping in violation of Rule 52.3(e); they simply prefer to be in this Court rather than in the Fourth Court of Appeals. Perhaps Relators fear an adverse outcome from the Fourth Court, but "a party may not circumvent the

court of appeals simply by arguing futility." *State v. Naylor,* 466 S.W.3d 783, 794 (Tex. 2015).

This Court has recognized the importance of the intermediate appellate courts in mandamus proceedings; "the fourteen courts of appeals have mandamus jurisdiction for a reason. This Court cannot be the sole arbiter of expedited extraordinary relief in a state of nearly 30 million people spread out across 254 counties." *In re Dorn*, 471 S.W.3d 823, 824 (Tex. 2015). Because Relators have not offered a compelling reason for going directly and exclusively to the Supreme Court, the petition for writ of mandamus should be dismissed for want of jurisdiction under Rule 52.3(e). To do otherwise would be to invite every relator party to simply bypass the courts of appeals to seek mandamus relief in the Texas Supreme Court.

B. Relators have not demonstrated an emergency that can be remedied pre-election.

Relators have attempted to manufacture a time emergency to justify skipping the court of appeals, when, in reality, their request for relief is premature. There is not an actual "exigencies of time" emergency here to justify immediate Supreme Court review to the exclusion of the

Fourth Court of Appeals, or even justify pre-election relief at all. Relators' challenge to this proposed charter amendment goes well beyond caption wording within the City's discretion, and instead seeks to have the City submit something substantively different than that proposed by the voters by dividing the amendment into multiple separate ballot propositions. This sort of challenge is not appropriate until *after* the election—should the voters approve the amendment at all. *See* TEX. ELEC. CODE § 233.001, .006 (voter can initiate challenge to the validity charter amendment beginning the day after the election—not sooner).

This Court has only granted emergency pre-election relief in situations where it was within the governing body's discretion to make minor changes to ballot caption language to comport with the law, or to add or remove a candidate from the ballot last-minute. *See In re Williams*, 470 S.W.3d 819, 823 (Tex. 2015) ("[S]igners of a petition may seek injunctive relief to *correct deficiencies in the ballot language* 'if the matter is one that can be judicially resolved . . . without delaying the election.") (citation omitted) (emphasis added); *LaRouche v. Sec'y of State*, 822 S.W.2d 632, 633 (Tex. 1992) (ordering eligible candidate to be added to ballot); *Sears v. Bayoud*, 786 S.W.2d 248, 254 (Tex. 1990)

(granting mandamus relief to order rejection of ineligible candidate prior to ballot printing).

This situation is very different. Relators have not asked for a minor amendment to the ballot caption to clarify misleading or confusing language; Relators have asked Respondents—and now this Court—to broadly re-write the proposed charter amendment by dividing up the amendment proposed by the voters into discrete substantive components subject to independent votes. Relators have offered no authority supporting that the City has discretion to usurp the will of the voters in this extreme way, nor have Relators offered any precedent for this Court ever taking similar drastic action less than a week before the deadline to order an election on a proposed charter amendment.

In fact, Relators' argument that this issue must be resolved by the February 17 deadline to *order* an election on a *measure* underscores that Relators improperly seek to have Respondents divide the petitioned amendment into distinct and independent elements, and deviate from the amendment proposed by the 20,000+ petition signatories. Respondents do not have this discretion.

As discussed in more depth below, Relators have a well-established statutory post-election avenue to challenge the validity of the charter amendment should it be passed by the voters of San Antonio. Relators failed to make a compelling showing that their requested remedy can be awarded via mandamus—this is simply not a pre-election mandamus-level emergency. The pre-election deadlines are irrelevant when this is not relief that can appropriately be granted via mandamus in the first place. *See Naylor*, 466 S.W.3d at 793-794 ("A litigant's mistaken understanding of law is not a compelling reason for this Court to consider an unreviewed mandamus argument.").

In those rare instances where this Court has sat as the first court to review an election-related mandamus under Rule 52.3(e), it has done so in an effort to make sure the voters' choices at the ballot box are *preserved*, such as to insure that a candidate is not improperly excluded from the ballot. *LaRouche*, 822 S.W.2d at 633. But that is not what Relators' Petition seeks, as it instead seeks to *remove* or heavily modify the proposed charter amendment placed on the ballot through the signatures of more than 20,000+ San Antonio voters. This Court should

not intervene in this matter at all, much less to deprive the voters of a choice that tens of thousands of them requested be included on the ballot.

III. Mandamus relief is improper because there is no abuse of discretion and Relators have an adequate remedy at law.

Beyond its failure to comply with Rule 52.3(e) and jurisdictional shortcomings, Relators' Petition also fails on substantive grounds. "Mandamus is an extraordinary remedy available only in limited circumstances to correct a clear abuse of discretion or the violation of a duty imposed by law when the relator has no adequate remedy by appeal." *In re Crow-Billingsley Air Park*, 98 S.W.3d 178, 179 (Tex. 2003). In order to show entitlement to mandamus relief, a relator must demonstrate that (1) there was a clear abuse of discretion and (2) there is no adequate remedy at law. *In re Frank Motor Co.*, 361 S.W.3d 628, 630 (Tex. 2012) (orig. proceeding). Here, Relators fail to meet either condition for mandamus.

A. Neither the City Clerk nor City Council abused their discretion.

Relators take issue with the language of the proposed charter amendment that 20,000+ San Antonio voters asked to be included on the ballot, arguing that the proposed ballot measure improperly encompasses

more than "one subject" as required by Texas Local Government Code § 9.004(a). But contrary to Relators' reading of the proposed charter amendment's language, the amendment does indeed relate to a single subject: a Justice Policy encompassing law enforcement issues, and no city officials have abused their discretion by accepting the Justice Policy petition as written.

Texas Local Government Code § 9.004(a) "outlines the right of the qualified voters of a municipality to petition their governing body to amend its charter, a power sometimes referred to as 'initiative and referendum.'" *City of Galena Park v. Ponder*, 503 S.W.3d 625, 631 (Tex. App.—Houston [14th Dist.] 2016, no pet.). After a successful petition, the Texas Election Code grants discretion to 'the authority ordering the election [to] prescribe the wording of a proposition' unless otherwise provided by law." *Dacus v. Parker*, 466 S.W.3d 820, 823 (Tex. 2015) (quoting TEX. ELEC. CODE § 52.072(a)). "The 'proposition' is 'the wording appearing on a ballot to identify a measure,' and the 'measure' is 'a question or proposal submitted in an election for an expression of the voters' will'—in this case, the proposed Charter amendment." *Id.* (quoting TEX. ELEC. CODE § 1.005(12), (15)). As part of the statutory

scheme for charter amendment, Texas Local Government Code § 9.004(d) states simply that "[a]n amendment may not contain more than one subject." TEX. LOC. GOV'T CODE § 9.004.

The City Clerk and City Council have a plausible reading and understanding of the statutory term "one subject" as used in TEX. LOC. GOV'T CODE § 9.004(d). The Justice Policy Charter Amendment can plausibly be read to "contain" just "one subject" as the proposed amendment deals with the "subject" of the "adopt[ion] of a justice policy that will reduce unnecessary arrests and save scarce public resources." As this Court has repeatedly recognized, "[c]ities generally have broad discretion in wording propositions on the ballot." *In re Williams*, 470 S.W.3d 819, 821 (Tex. 2015) (cleaned up). Although this is not the only possible reading of "one subject" as used in § 9.004(d), it is a plausible reading of that phrase and the Supreme Court should decline the Relator's brazen invitation to substitute its discretion and reading of that phrase for that of the San Antonio City Council and City Clerk. The very fact that there is room to debate what constitutes "one subject" highlights that there was no failure of ministerial duty here, and therefore no abuse of discretion. *See Anderson v. City of Seven Points*,

806 S.W.2d 791, 793 (Tex. 1991) ("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.") (emphasis added). Respondents' reading of the statute is reasonable, and certainly does not run afoul of any "clear" legal mandate.

Relators fail to cite a single case in which this Court or one of the courts of appeals has stopped an election because of non-compliance of a proposed charter amendment with the "one subject" requirement of § 9.004(d). Instead, as demonstrated by the cases invoked by Relators, Texas courts have read the "one subject" requirement of § 9.004(d) relatively loosely, allowing amendments to address multiple aspects or facets of a single subject. *See* Petition at 7 (citing and describing *Gibson v. City of Orange*, 272 S.W.2d 789, 790 (Tex. App.—Beaumont 1954, writ ref'd) (construing predecessor statute broadly and approving ballot proposition that proposed numerous interconnected changes to city charter); *Edwards v. Murphy*, 256 S.W.2d 470, (Tex. App. —Fort Worth 1953, writ dism'd) (holding proposed charter amendment concerned only one subject where all suggested changes were already contained within single state statute); *Garitty v. Halbert*, 235 S.W. 231, 236 (Tex. Civ.

App.—Dallas 1921, writ dism'd w.o.j.) (concluding proposed amendment of two sections of city charter dealt with the single subject of taxation, even though the funds were to be spent on both schools and libraries)).

As conceded by Relators, "[t]his reading acknowledges that proposed changes to a city charter may seek broader schematic changes to city government that may make sense only as an all-or-nothing proposition."[1] *Ponder*, 503 S.W.3d at 635 (holding that a single amendment "governing the appointment and qualifications for police chief *and* fire chief are part of the subject of how the city's emergency services departments are to be organized," and thus the proposed amendment did not impermissibly address more than one subject) (emphasis added). Indeed, all of these cases arguably involve charter amendments that encompass "more than one subject" in violation of § 9.004(d), but in each case the courts deferred to municipal authorities' discretion in interpreting the proposed charter amendment language. The Court should do the same here.

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[1] Although Relators use this sentence from *Ponder* word-for-word in their petition, they failed to indicate the sentence is a direct quote from the case, or even attribute it to *Ponder*—likely because *Ponder* demonstrates a broad reading of TEX. LOC. GOV'T CODE § 9.004(d) that is inconsistent with Relators' position, and instead supports Respondents' reading of the statute.

Despite Relators' best efforts to distinguish the facts in this case from the above-cited cases, the subject amendment here also relates only to one subject: law enforcement reform ostensibly designed to make policing San Antonio more just and equitable. Each aspect of the amendment is collectively aimed at changing how law enforcement interacts with the people of San Antonio. Just because there are several ways in which the amendment aims to accomplish this unified reform, and just because the reform will have a multi-faceted effect on policing, prosecution, and incarceration, does not mean that the amendment deals with more than "one subject." The amendment properly proposes a "schematic change[ ] to city government" that, as an "all-or-nothing proposition," properly encompasses one broader subject. *Ponder*, 503 S.W.3d at 635. Every component of the proposed justice policy is related and shares a defined common purpose as currently presented. This concept is reinforced by the petition calling for the City Council to appoint a Justice Director whose job would be to see that the Justice Policy is implemented.

Because the City Council and City Clerk have offered a plausible reading of the proposed charter amendment, this Court should not

substitute its own discretion for that of the City of San Antonio's officials tasked with administering the May 6, 2023 election. Even if the City were to attempt to divide the petition the numerous possibilities would lead to a result that cannot be logically tied to what the signatories envisioned. Control of ballot language should remain local and consistent with what was presented to the signers of the petition.

B. Relators have an adequate remedy at law.

If a legally invalid or moot charter amendment is passed by the voters, Relators still have an adequate remedy at law; they can seek review of the charter provision from a court of competent jurisdiction, to declare on a post-election basis that the charter amendment is invalid. The Texas Election Code specifically provides a method for challenging the validity of a charter amendment post-election. *Dacus v. Parker*, 466 S.W.3d 820, 829 (Tex. 2015) (citing TEX. ELEC. CODE § 233.001). Indeed, the statute specifies that an election challenge to a ballot measure is *not allowed* until after an election. TEX. ELEC. CODE § 233.006 ("The contestant may not file the petition in the contest earlier than the *day after election day*." (emphasis added)). This issue is simply not yet ripe because Relators' "injuries" are contingent upon the voters of

San Antonio passing the charter amendment. *See Robinson v. Parker*, 353 S.W.3d 753, 755 (Tex. 2011) (issue not ripe where injury is "contingent or remote").

While a post-election challenge is not an adequate remedy "[i]f a ballot can be corrected prior to the election," here Relators ask for much more than just correction to confusing or misleading ballot wording. *See In re Durnin*, 619 S.W.3d 250, 252 (Tex. 2021). Instead, Relators seek to have the City officials substantively break apart the petitioned charter amendment, posing multiple discrete questions to the voters that were not vetted independently by petition.

This is wholly different than simply correcting ballot wording in a judicial rush one week before the deadline to order an election on a particular charter amendment. Relators do not ask the Court to bless a change in grammar or variation in description; instead, they ask the Court to order the City officials to pose *different questions* to the voters than the one brought to the City Council by petition. A pre-election mandamus petition is not the mechanism for election relief of that magnitude. Instead, a post-election challenge to the charter amendment (if it passes) is the proper avenue for Relators' requested relief. This is

not the sort of "abuse" for which appellate relief is inadequate, *see In re Durnin*, 619 S.W.3d at 252, but instead something that should be addressed—if at all—with time and patience post-election to afford due process to all potentially affected constituents.

Because Relators truly seek to challenge the *substance* of the putative charter amendment, they are once again trying to "jump the gun" with a stealth challenge to the validity of an amendment that has not yet been sent to the voters by the City Council, much less approved by those voters. The legal validity or invalidity of the Justice Policy Charter Amendment should be adjudicated in an orderly fashion if and when it has been adopted by the voters, not in a chaotic and abbreviated direct mandamus in the Texas Supreme Court on an anticipatory pre-election basis. The passage and implementation of an invalid charter amendment, not the holding of an election on an allegedly invalid charter amendment, is the injury that Relator is ultimately concerned with, and an emergency mandamus directly in the Texas Supreme Court is not necessary to address that potential future injury. Instead, if the proposed Charter Amendment passes, Relators have an adequate remedy at law via a post-election lawsuit (rather than an extraordinary writ

brought initially in the state's highest court) to challenge the validity of the Charter Amendment.

IV. The Supreme Court should not interfere with the ballot language.

Notwithstanding the fact that the ballot language for the proposed Justice Policy Charter Amendment had not even been publicly released when Relators filed their Petition, Relators nonetheless argue in the alternative that, if the election is not cancelled altogether, this Court will mandate that the six sub-parts of the proposed Charter Amendment be divided into separate proposed amendments with each of the six voted on separately. But there is no precedent for this, as Texas courts traditionally defer to the will of the voters who sign charter amendment petitions. *See, e.g.*, *In re Durnin*, 619 S.W.3d 250, 253 (Tex. 2021) ("[I]t is not the courts' job to micromanage the sentence structure of ballot propositions. Our job is to ensure voters are not misled by inaccuracies or material omissions in the proposition while preserving the governing body's discretion to select ballot language."); *Blum v. Lanier*, 997 S.W.2d 259, 263 (Tex. 1999) ("[M]andamus is not available to control discretionary acts such as the City's choice of [ballot] language . . . ."). And there is good reason for this, because there's no way for the Court to

know if the required number of San Antonio voters would have signed separate petitions to get six different charter amendments onto the ballot.

Indeed, it is unclear if the City officials would even themselves have the discretion to split the proposed amendment into sub-parts for separate placement on the ballot. *See In re Petricek*, 629 S.W.3d 913, 918 (Tex. 2021) (explaining that, while the City of Austin had "limited discretion" to revise a proposed ballot caption in order to bring it into compliance with the law, "the City did not have carte blanche to rewrite the petitioned caption wholesale, and it abused its discretion by doing so"). In fact, splitting up the amendment into separate amendments would arguably run afoul of Respondents' ministerial duty to submit a proposed amendment signed by an adequate number of signatories to an affirmative vote by the people of San Antonio. *See In re Williams*, 470 S.W.3d at 823. This only underscores that the City officials could not have "clearly" abused their discretion in leaving the caption language as it was proposed.

What we *do* know is that the 20,000+ San Antonio voters signed petitions to get the Justice Policy Charter Amendment on the ballot, and

they are therefore entitled to have an election on it. This Court has recognized time and again that the judiciary should minimize its involvement in the elective process. *See Blum*, 997 S.W.2d at 263 ("It is well settled that separation of powers and the judiciary's deference to the legislative branch require that judicial power not be invoked to interfere with the elective process."). Relators' requested relief would improperly thwart the will of thousands of San Antonio voters; these voters should not be denied their voice.

In that same spirit, even if the Court should agree with Relators, the proper avenue would be to strike the amendment as a whole from this election's ballot rather than order City officials to split the amendment up by component; the voters did not ask for the separately posed charter amendments, and their broader scheme for the appointment of a Justice Director is inconsistent with the potential of implementing only some, but not all, of the potential Director's putative responsibilities as currently outlined in the amendment. If the Court determines that the petition does not meet the requirements of the Local Government Code then it fails as a legitimate petition and the City Council cannot salvage it by conjuring up separate proposals from a multitude of possibilities.

The Supreme Court of Texas should not be in the business of micromanaging the language of municipal elections, and any issues with the Justice Policy Charter Amendment can be litigated in a coherent and orderly fashion with a record made in the courts below if and when it passes. To do otherwise would thwart the will of the voters and minimize the contributions of the volunteers who collected tens of thousands of signatures to place a Justice Policy amendment to the City Charter before the voters.

CONCLUSION AND PRAYER

Based upon all the foregoing, the Relators' Petition for Writ of Mandamus should be denied. Consequently, Respondents Debbie Racca-Sittre, in her official capacity as San Antonio City Clerk, and the City of San Antonio City Council in its official capacity, respectfully requests that the Court deny Relators' Petition.

Respectfully submitted,

Donna K. McElroy
State Bar No. 13582050
dmcelroy@dykema.com
Brooke M. Bohlen
State Bar No. 24121915
bbohlen@dykema.com

DYKEMA GOSSETT PLLC
112 E. Pecan Street, Suite 1800
San Antonio, Texas 78205
Telephone: (210) 554-5500
Facsimile: (210) 226-8395

Christopher D. Kratovil
State Bar No. 24027427
ckratovil@dykema.com
DYKEMA GOSSETT PLLC
1717 Main Street, Suite 4000
Dallas, Texas 75201
Telephone: (214) 462-6400
Facsimile: (214) 462-6401

CERTIFICATE OF COMPLIANCE

I certify that this Response complies with the typeface requirements of Tex. R. App. P. 9.4(e) because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of Tex. R. App. P. 9.4(i), if applicable, because it contains 4,312 words, excluding any parts exempted by Tex. R. App. P. 9.4(i)(1).

DATED: February 14, 2023

CERTIFIED BY: */s/ Christopher D. Kratovil*
Christopher D. Kratovil

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on the following counsel of record this the 14th day of February 2023, in accordance with the Texas Rules of Civil Procedure.

/s/ Christopher D. Kratovil
Christopher D. Kratovil

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Jennifer Schmitt on behalf of Donna McElroy
Bar No. 13582050
jschmitt@dykema.com
Envelope ID: 72742696
Status as of 2/14/2023 11:56 AM CST

Associated Case Party: City of San Antonio City Council

Name	BarNumber	Email	TimestampSubmitted	Status
Christopher Kratovil		ckratovil@dykema.com	2/14/2023 11:44:44 AM	SENT
Jennifer Schmitt		jschmitt@dykema.com	2/14/2023 11:44:44 AM	SENT
Sandra LeeYoung		syoung@dykema.com	2/14/2023 11:44:44 AM	SENT
Donna KayMcElroy		dmcelroy@dykema.com	2/14/2023 11:44:44 AM	SENT
Diane Roth		droth@dykema.com	2/14/2023 11:44:44 AM	SENT
Brooke Bohlen		bbohlen@dykema.com	2/14/2023 11:44:44 AM	SENT

Associated Case Party: Ground Game Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Siegel		mike@groundgametexas.org	2/14/2023 11:44:44 AM	SENT

Associated Case Party: Act 4 SA

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Siegel		mike@groundgametexas.org	2/14/2023 11:44:44 AM	SENT

Associated Case Party: MariaTeresaRamirez Morris

Name	BarNumber	Email	TimestampSubmitted	Status
Eric Opiela		eopiela@ericopiela.com	2/14/2023 11:44:44 AM	SENT

Associated Case Party: Texas Alliance for Life, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Eric Opiela		eopiela@ericopiela.com	2/14/2023 11:44:44 AM	SENT