

## No Standing to Challenge Drive-Through Voting

*Hotze v. Hollins (Andrew S. Hanen, S.D. Tex. 4:20-cv-3709)*

A district judge held that challengers to drive-through voting in a Texas county during the 2020 election did not have standing to challenge the policy in federal court.

*Subject:* Voting procedures. *Topics:* Poll locations; early voting; intervention; Covid-19.

According to an October 28, 2020, federal complaint filed in the Southern District of Texas against Harris County’s clerk by a member of the Texas legislature, two candidates, and an additional voter, “[b]y indiscriminately encouraging and allowing any and all Harris County registered voters to cast their ballots via curbside drive-thru voting, Defendant is violating both federal and state law, and Plaintiffs will suffer irreparable injury if such ultra vires action is not stopped.”<sup>1</sup> Two days later, the plaintiffs filed a motion for a preliminary injunction.<sup>2</sup> On that day, Judge Andrew S. Hanen set the case for hearing on November 2,<sup>3</sup> including an intervention motion.<sup>4</sup>

By November 2, several intervention motions had been filed, and Judge Hanen granted some of them:

Before the Court are multiple motions to intervene filed on behalf of individual early drive through voters and political entities. The Court grants the motions to intervene on behalf of voters who have already voted in a drive through polling location and defers ruling on those made by political entities.<sup>5</sup>

Also on November 2, Judge Hanen dismissed the action for lack of standing.<sup>6</sup>

. . . [I]f the Court had found standing existed, it would have denied an injunction as to the drive-thru early voting.

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1. Complaint at 1, *Hotze v. Hollins*, No. 4:20-cv-3709 (S.D. Tex. Oct. 28, 2020), D.E. 1.

2. Preliminary-Injunction Motion, *id.* (Oct. 30, 2020), D.E. 3.

3. Order, *id.* (Oct. 30, 2020), D.E. 6; *see Transcripts, id.* (Nov. 2, 2020, filed Nov. 2, 2020), D.E. 61, 62; *see also* Jasper Scherer, *State Judges Allow Drive-Thru Votes; Federal Court Yet to Hear Bid by Republicans to Disqualify 127,000 Harris County Ballots*, *Houston Chron.*, Nov. 2, 2020, at A3.

4. Intervention Motion, *Hotze*, No. 4:20-cv-3709 (S.D. Tex. Oct. 30, 2020), D.E. 5 [hereinafter First Intervention Motion].

5. Opinion, *id.* (Nov. 2, 2020), D.E. 59; *see* Intervention Motions, *id.* (Nov. 1 and 2, 2020), D.E. 16, 26, 28, 40, 44, 51 (granted); First Intervention Motion, *supra* note 4 (granted); Intervention Motions, *Hotze*, No. 4:20-cv-3709 (S.D. Tex. Nov. 2, 2020), D.E. 36, 45 (not granted).

6. Opinion, *Hotze*, No. 4:20-cv-3709 (S.D. Tex. Nov. 2, 2020), D.E. 63 [hereinafter Dismissal Opinion], 2020 WL 6437668; *see* Zach Despart & Samantha Ketterer, *Drive-Thru Votes Allowed*, *Houston Chron.*, Nov. 3, 2020, at A1; Brent Kendall & Sara Randazzo, *Judges Deny GOP Vote-Rule Challenges*, *Wall St. J.*, Nov. 3, 2020, at A3; Neena Satija, Brittney Martin & Aaron Schaffer, *Judge Allows Drive-Through Votes in Texas County*, *Wash. Post*, Nov. 3, 2020, at A2.

. . . [But for] Election Day, as opposed to early voting there is no legislative authorization for movable structures as polling places. The Election Code makes clear that, on Election Day, each polling place shall be located inside a building.<sup>7</sup>

The court of appeals also denied the plaintiffs an injunction on November 2.<sup>8</sup> On October 25, 2021, the court of appeals agreed that the plaintiffs lacked standing, and the case had become moot anyway.<sup>9</sup>

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7. Dismissal Opinion, *supra* note 6, at 7 (quotation marks omitted).

8. Order, *Hotze v. Hollins*, No. 20-20574 (5th Cir. Nov. 2, 2020), D.E. 13, 2020 WL 6440440.

9. *Hotze v. Hudspeth*, 16 F.4th 1121 (5th Cir. 2021); *see* Order, *Hotze*, No. 4:20-cv-3709 (S.D. Tex. Dec. 23, 2021), D.E. 77 (again dismissing the case).