

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

TEXAS DEMOCRATIC PARTY, GILBERTO	§	
HINOJOSA, Chair of the Texas Democratic	§	
Party, JOSEPH DANIEL CASCINO,	§	
SHANDA MARIE SANSING, and	§	
BRENDA LI GARCIA	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	Case No. <u>5:20-cv-00438</u>
	§	
GREG ABBOTT, Governor of Texas; RUTH	§	
HUGHS, Texas Secretary of State, DANA	§	
DEBEAUVOIR, Travis County Clerk, and	§	
JACQUELYN F. CALLANEN, Bexar County	§	
Elections Administrator	§	
	§	
<i>Defendants.</i>	§	

PLAINTIFFS' COMPLAINT

FACTS

1. Texas has an extensive history of disenfranchising voters and in this moment of national crisis, it appears poised to do so again without this Court's intervention
2. The citizens of this state are in the midst of the worst pandemic in modern history. Because of a novel coronavirus, and the disease it causes termed COVID-19, federal, state, county and city officials have ordered various limitations statewide, the central feature of which is to limit contact between persons.

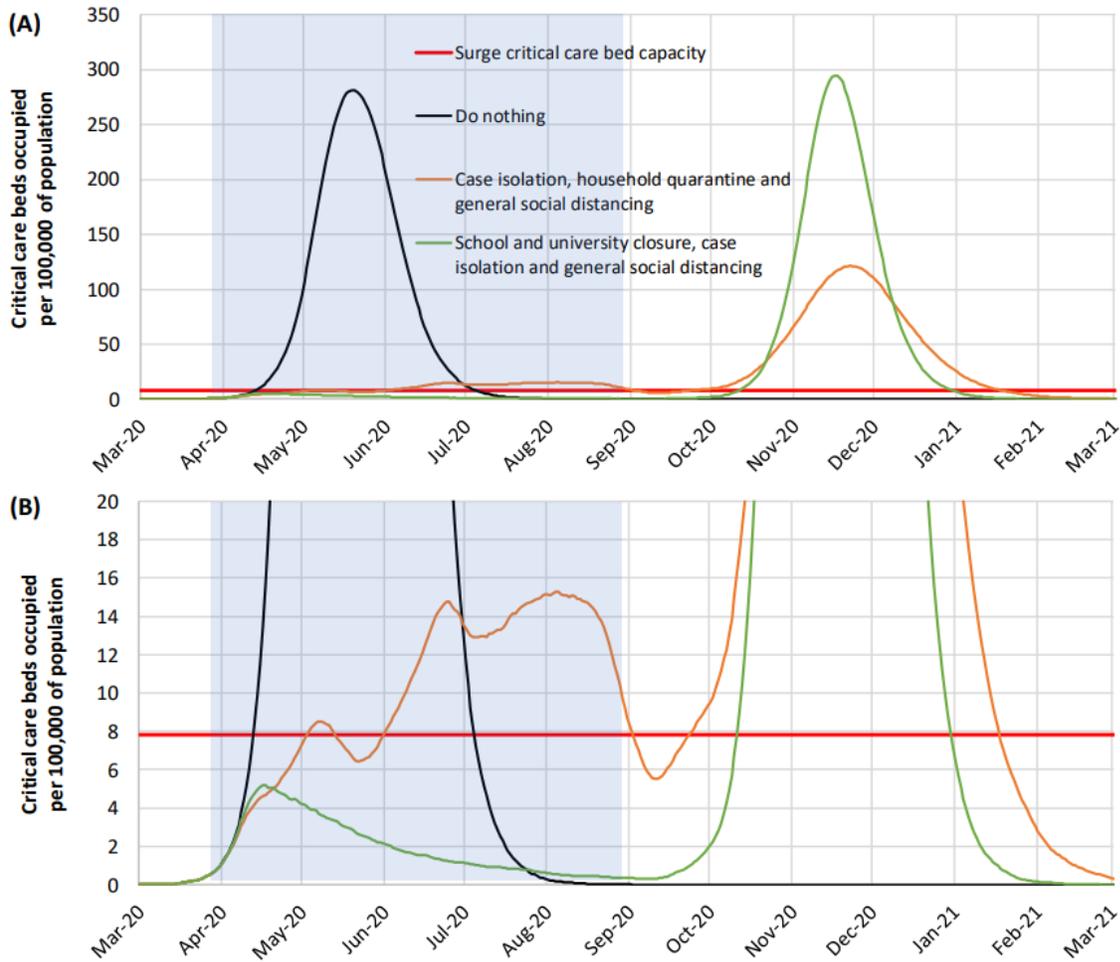
3. Public Health Officials warn that government ordered “social distancing” will probably be in effect for a number of weeks and, even after it is lifted, will in all likelihood be re-imposed at additional intervals.

4. Researchers at Harvard University describe three potential scenarios of upcoming events and all of them would include a significant barrier to wide-scale in-person voting over the next year.¹

5. An influential report from the Imperial College in the United Kingdom² that seemingly convinced the President of the United States to view the coronavirus as a public health emergency rather than a “hoax,” sets out some startling facts about the severity and longevity of the crisis facing the public.

¹ <https://ethics.harvard.edu/when-can-we-go-out>

² <https://www.imperial.ac.uk/media/imperial-college/medicine/sph/ide/gida-fellowships/Imperial-College-COVID19-NPI-modelling-16-03-2020.pdf>



6. According to experts, the expected outcome of the various measures ordered by levels of government, if effective, will be to “flatten the curve,” as these diagrams demonstrate.

7. These measures will not, of course, eliminate the risk of addition waves or localized infection hotspots.

8. These circumstances, public health experts agree, should however extend the coronavirus infection rate over a longer time period allowing the medical community to prepare and handle the onslaught of severe cases.

9. The University of Washington posts real-time data projections of peak death rates and hospitalizations.³

10. These projections show that the peak infection rate of the first wave is later in Texas than other states.

11. Although as a nation, we have not yet flattened our first curve of infections, some other countries have.

12. For example, South Korea widely hailed as having a model response to the pandemic, upon releasing its citizens from social distancing orders, have experienced new emerging cases that have required re-imposition of those measures.⁴

13. Indeed, it is very likely true that the globe, and Texas, is in for wave after wave of new infections until there is an effective treatment, a vaccine and/or greater than approximately 60% of the population survive the epidemic, creating some measure of “herd immunity”.⁵

14. Given these conditions, upcoming elections for federal, state, county, city and other local offices will be vastly impacted.

15. Importantly, voter behavior will change.

16. Historically, most voters in Texas elections vote “in person” where they have contact with electronic equipment, election personnel, other voters and observers.

17. These very activities are now heavily discouraged by various government orders and are being discouraged in an enormous public education campaign.

³ <https://covid19.healthdata.org/projections>

⁴ <https://www.nbcnews.com/news/world/south-korea-s-return-normal-interrupted-uptick-coronavirus-cases-n1176021>

⁵ <http://www.euro.who.int/en/health-topics/communicable-diseases/influenza/data-and-statistics/pandemic-influenza/about-pandemic-phases>

18. Even were this pandemic to ease, certain populations will feel the need and/or be required to continue social distancing.

19. The upcoming party primary runoff elections and the November General Election are certain to be influenced by these conditions.

20. Recent events pertaining to elections scheduled this week in Wisconsin demonstrate the disarray and voter confusion that results from inadequately planned elections held during a pandemic.

21. Importantly, the U.S. Supreme Court decision from yesterday served notice that cases such as this one that seek to remedy these conditions must proceed early and before an unknown deadline after which the federal courts will not decide the issues.

22. The Supreme Court held, “[t]his Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.” Citing *Purcell v. Gonzalez*, 549 U. S. 1 (2006) (per curiam).⁶

23. In holding that it was too late for the Supreme Court to remedy constitutional harms in Wisconsin, the Supreme Court held, “The Court’s decision on the narrow question before the Court should not be viewed as expressing an opinion on the broader question of whether to hold the election, or whether other reforms or modifications in election procedures in light of COVID-19 are appropriate. That point cannot be stressed enough.”⁷

24. These Plaintiffs file this suit at the earliest possible moment after receiving this Supreme Court guidance so as to ensure timely merits review.

⁶ https://www.supremecourt.gov/opinions/19pdf/19a1016_o759.pdf

⁷ *Id.*

25. It is critically important that election officials and voters begin to prepare for an election where fewer ballots are cast in-person.

STATE COURT CASE

26. Given the pandemic conditions and their effects on election procedures, on March 27, 2020, some of these Plaintiffs filed a state court lawsuit seeking to determine application of state law.

27. In that case, Plaintiffs contend that existing state law allows voters to elect to cast their ballots by mail under the circumstances of this pandemic.

28. TEX. ELEC. CODE § 82.002 provides in full:

Sec. 82.002. DISABILITY. (a) A qualified voter is eligible for early voting by mail if the voter has a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter's health.

(b) Expected or likely confinement for childbirth on election day is sufficient cause to entitle a voter to vote under Subsection (a).

29. Plaintiffs further contend that participating in social distancing, to prevent known or unknown spread of what Governor Abbott has described as an “invisible disease”⁸ is a “a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter's health.”

30. Texas authorities support the conclusion that the mail-in ballots are permitted under these circumstances.

⁸ <https://www.kxan.com/news/coronavirus/live-gov-abbott-to-hold-press-conference-on-states-current-efforts-against-covid-19/>

31. According to Texas Attorney General Opinion KP-0009, “[t]he plain language of section 82.002 does not require that a person satisfy any specific definition or standard of ‘disability’ outside of the Election Code in order to qualify to vote by mail.” In that opinion, the Attorney General found that a person who claimed a disability but had not been adjudicated by the Social Security Administration nevertheless qualified for a mail ballot under Section 82.002. Op. Tex. Att’y Gen. No. KP-009 (2015).

32. In a more recent opinion, the Attorney General opined, “a court would likely conclude that an individual civilly committed pursuant to chapter 841 and residing at the Center is eligible to vote by mail ...” Op. Tex. Att’y Gen. No. KP-0149 (2017). A person who considers herself to be confined at home in order to avoid the spread of disease plainly falls into the persons entitled to vote by mail under this statute and the Court should so declare to prevent uneven application of this provision and in order to give election officials and voters clarity on the matter.

33. The manner and procedure of casting absentee ballots, which includes mail-in ballots, “is mandatory and directed by statutory requirements.” *Tiller v. Martinez*, 974 S.W.2d 769, 775 (Tex. App.-San Antonio 1998, pet. dismissed w.o.j.). The Secretary of State has argued that persons who submit mail ballots without authorization to do so are subject to having their ballots voided.

34. A hearing will be held on April 15, 2020 in the state court case.

35. The state case presents only state law claims seeking to interpret this one provision of state law; no federal constitutional claims are urged.

36. The state has filed an intervention in the state court case but notably takes no position on the merits of whether people between the age of 18 and 65 can avail themselves of vote by mail procedures.⁹

37. In the event the state courts do not clarify that vote by mail is permitted for all voters over the age of 18 who are social distancing, the harms described in this case will be even more severe.

ELECTION ADVISORY

38. On April 2, 2020, the Texas Secretary of State issued an election advisory concerning “voting for individuals that may be affected by COVID-19, and in preparing for the conduct of elections in the context of this public health issue.”¹⁰

39. Unhelpfully, the advisory gives local election administrators no material guidance on who can avail themselves of the vote by mail procedures because of the pandemic.

40. On the one hand, the Advisory envisions more voters using vote by mail: “Additional Ballot by Mail Supplies: Because there may be a higher volume of ballot by mail requests in 2020, we strongly recommend that you review your current supply of applications, balloting materials, and ballot stock for future elections. It is important you have the necessary supply on hand to meet increased requests you may receive.”¹¹

⁹ Exhibit A – Intervention of State of Texas

¹⁰ Exhibit B - ELECTION ADVISORY N0. 2020-14

¹¹ *Id.* at p. 7.

41. On the other hand, the Advisory says only this as to who can vote by mail:

Voting Procedures Authorized under the Texas Election Code.

Below we have described some of the procedures that are authorized under Texas law that may be of assistance to voters that are affected by a recent sickness or a physical disability.

Voting by Mail

In Texas, in order to vote by mail, a voter must have a qualifying reason. A voter may vote early by mail if they:

will be away from their county on Election Day and during early voting;
are sick or disabled;
are 65 years of age or older on Election Day; or
are confined in jail, but eligible to vote.

One of the grounds for voting by mail is disability. The Election Code defines “disability” to include “a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter's health.” (Sec. 82.002). Voters who meet this definition and wish to vote a ballot by mail must submit an application for ballot by mail.

42. The Advisory gives no guidance as to what a disability may be under the statute.
43. Worse still, the Advisory imagines that a situation where each county could enforce

their own voting methods based upon yet to be sought local court orders:

Other Modifications to Voting Procedures: A court order could provide for modifications to other voting procedures as necessary to address the impact of COVID-19 within the jurisdiction. For example, in 2014, Dallas County obtained a court order authorizing modified voting procedures for individuals affected by the Ebola quarantine, modeled on the procedures outlined in Section 105.004 of the Texas Election Code for certain military voters in hostile fire pay zones. If your county obtains a court order allowing modifications to voting procedures to address COVID-19, please send a copy of the court order to the Secretary of State's Office.

44. Left without Court intervention, the state will march toward upcoming elections with no plan in place.

45. Importantly, Article I, Section 28 of the Texas Constitution prescribes that: “No power of suspending laws in this State shall be exercised except by the Legislature.” Tex. Const. Art. I, § 28.

46. Thus, if Texas Courts or the Texas Secretary of State do not find that “disability” under this statute includes people who are social distancing, then effectively every voter under the age of 65 faces a legally significant increased burden on the voting rights in the current pandemic circumstances.

47. Worse still, Texas has a history of threatening criminal prosecution of people who exercise their right to vote.

48. Georgia recently announced a criminal investigation squad¹² of people who attempt to vote by mail and there is every reason to be concerned that Texas will follow suit.

49. Events unfolding in Wisconsin demonstrate that lack of organized election procedures under the pandemic circumstances will result in harm to rights guaranteed by the federal constitution.

50. Absent lawful, timely, effective state action, this court should ensure compliance with federal law by providing a remedy.

51. This case should proceed so that the Court can timely determine, before the unknown *Purcell* deadline, the constitutional rights of these Plaintiffs and be in a position to do so

¹² <https://www.ajc.com/news/state--regional-govt--politics/georgia-elections-chief-launches-effort-against-mail-voting-fraud/uKcFoPbbLnFC0A4nXihALI/>

in the event the state court rulings serve to harm these federal rights and/or the state court proceedings are delayed thus preventing timely state resolution of the state law issue.

JURISDICTION AND VENUE

52. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1357, and 2284; and pursuant to 52 U.S.C. § 10301. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201, 2202, and 2284, as well as by Rules 57 and 65 of the Federal Rules of Civil Procedure. Venue is proper pursuant to 28 U.S.C. §§ 1391(b).

PARTIES

Plaintiffs

53. Plaintiff Texas Democratic Party is a political party formed under the Texas Election Code, whose address is 314 East Highland Mall Blvd. Suite 508, Austin, Travis County, TX 78752.

54. Plaintiff Gilberto Hinojosa is Chairman of the Texas Democratic Party and a registered voter in Texas.

55. Joseph Daniel Cascino is a registered voter in Travis County, Texas who is eligible to vote, is a resident of Travis County, Texas, a citizen of the United States and who voted in-person in the March 3, 2020 Texas Democratic Primary Election, desires to vote in the Texas Democratic Party Runoff Election and under the pandemic circumstances would seek to do so by mail-in ballot.

56. Shanda Marie Sansing is a registered voter in Travis County, Texas who is eligible to vote, is a resident of Travis County, Texas, a citizen of the United States and who voted in-

person in the March 3, 2020 Texas Democratic Primary Election, desires to vote in the Texas Democratic Party Runoff Election and under the pandemic circumstances would seek to do so by mail-in ballot.

57. Brenda Li Garcia is a registered voter in Bexar County, Texas who is eligible to vote, is a resident of Bexar County, Texas, a citizen of the United States and who voted in-person in the March 3, 2020 Texas Democratic Primary Election, desires to vote in the Texas Democratic Party Runoff Election and under the pandemic circumstances would seek to do so by mail-in ballot.

Defendants

58. Defendant Greg Abbot is the Governor of Texas and pursuant Article IV, Section I to the Texas Constitution is the chief executive officer of the State of Texas.

59. Defendant Ruth Hughs is sued in her official capacity as the Texas Secretary of State and may be served with process at 900 Congress, Suite 300 Austin, Travis County, Texas 78701.

60. Defendant Dana DeBeauvoir is sued in her official capacity as the Travis County Clerk and Election Administrator and may be served with process at 5501 Airport Blvd, Austin, Travis County, TX 78751.

61. Defendant Jacquelyn F. Callanen, is sued in her official capacity as the Bexar County Elections Administrator and may be served with process at 1103 S. Frio, Suite 100, San Antonio, TX 78207

CLAIMS

Count 1

Race and Language Minority Discrimination, Section 2, Voting Rights Act

62. Plaintiffs reallege the facts set forth above.

63. These Election Conditions¹³ violate Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, because they results in a denial of the right to vote on account of race and language minority, in that, under the totality of the circumstances, Plaintiffs and minority voters are denied an equal opportunity to participate effectively in the political process.

64. These Election Conditions also violate Section 2 because they deny and abridges the right to vote on account of race and language minority.

Count 2

Race Discrimination, 14th Amendment

65. Plaintiffs reallege the facts set forth above.

66. These Election Conditions violate the Fourteenth Amendment to the Constitution of the United States because they purposely deny equal protection in voting to Plaintiffs and other minority voters on account of race and ethnic origin.

¹³ As described in the Facts section above.

Count 3

Race Discrimination, 15th Amendment

67. Plaintiffs reallege the facts set forth above.

68. These Election Conditions violate the Fifteenth Amendment to the Constitution of the United States because they purposely deny and abridge the right to register and vote to Plaintiffs and other minority voters on account of race and ethnic origin.

Count 4

Non-racial discrimination in Voting, 14th Amendment

69. Plaintiffs reallege the facts set forth above.

70. These Election Conditions violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because they mandate arbitrary and disparate treatment of voters and deny equal access to the right to vote to eligible citizens.

71. These Election Conditions impose severe burdens on voters, in time, inconvenience and expense. The burden is severe whether measured by how it affects a single voter or by how many voters it affects.

72. These Election Conditions facially discriminate between classes of voters (such as between those having and those over the age of 65 or those with a disability that do not fit under the ultimate definition the state or various counties impose).

73. Either the severe burden described above, standing alone as applied, or the facial discrimination, standing alone, are sufficient to require that These Election Conditions be judged by strict scrutiny, and can survive only if their specific terms meet a compelling state interest

(actual, not hypothetical) and if each of its provisions is narrowly tailored to meet that compelling interest in the least restrictive way. In this inquiry, the burden of proof is on Texas. These Election Conditions cannot meet this exacting test.

74. Indeed, these Election Conditions cannot even meet the less exacting test (applicable where a voting regulation is not burdensome and does not classify on its face) of balancing Texas' interest claimed here (modest at best) against the critically important interests of Plaintiffs and other Texas registered voters who are disfranchised by these Election Conditions, especially as that balancing test is applied against the background of Texas' longstanding and recent history of purposeful racial and ethnic discrimination, and in light of the number of poor, disabled and under age 65 voters targeted by these Election Conditions.

Count 5

Denial of Free Speech, First Amendment applied through the 14th Amendment

75. Plaintiffs reallege the facts set forth above.

76. Voting and participating in the election process is a form of expression which is the ultimate in free speech and association entitled to First Amendment protection. In light of the Supreme Court's cases giving strong First Amendment protection to campaign funds spent to influence voters, the voters themselves can hardly be entitled to less protection.

77. As a restriction on free speech and association, these Election Conditions must be judged by the same strict scrutiny outlined above, a scrutiny that these Election Conditions cannot survive.

Count 6

Abridgment of the Right to Vote based on Age, 26th Amendment

78. Plaintiffs reallege the facts set forth above.

79. These Election Conditions amount to abridgment of the right to vote based on the age of the voter.

80. All voters under the age of 65 face an unconstitutional burden, because of their age, to their fundamental right to vote.

Count 7

Bush v. Gore

81. Plaintiffs reallege the facts set forth above.

82. These Election Conditions amount to disparate election rules applied to the voters within this state.

83. For the reasons stated in the U.S. Supreme Court decision in *Bush v. Gore*, these conditions must be enjoined for being violative of constitutional guarantees.

EQUITY

84. Plaintiffs have no adequate remedy at law. Unless restrained, Defendants will injure and continue to injure Plaintiffs and other Texas voters in the manner set forth above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

85. Issue a declaratory judgment, pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure Rule 57, declaring that these Election Conditions are illegal and

unconstitutional as described above, in violation of Section 2 of the Voting Rights Act, 52 U.S.C. 10301 and the First, Fourteenth, Fifteenth and Twenty-Sixth Amendments to the United States Constitution.

86. Enjoin the Defendants, their agents, employees, and those persons acting in concert with them, from enforcing or giving any effect to the requirements of these Election Conditions, including enjoining Defendants from conducting any elections utilizing these Election Conditions.

87. Make all further orders as are just, necessary, and proper to ensure complete fulfillment of this Court's declaratory and injunctive orders in this case.

88. Issue an order requiring Defendants to pay Plaintiffs' costs, expenses and reasonable attorneys' fees incurred in the prosecution of this action, as authorized by the Voting Rights Act and the Civil Rights Attorneys Fees Awards Act of 1976, 52 U.S.C. §§ 10310(e) & 42 U.S.C. § 1988.

89. Retain jurisdiction and require Texas to obtain preclearance pursuant to Section 3(c) of the Voting Rights Act, 52 U.S.C. § 10302(c) with respect to its voting practices and procedures.

90. Grant such other and further relief as it deems proper and just.

This the 6th day of April, 2020.

Respectfully submitted,

TEXAS DEMOCRATIC PARTY

By: /s/ Chad W. Dunn

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ATTORNEYS FOR PLAINTIFFS

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

TEXAS DEMOCRATIC PARTY, GILBERTO HINOJOSA, Chair of the Texas Democratic Party, JOSEPH DANIEL CASCINO, SHANDA MARIE SANSING, and BRENDA LI GARCIA

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Chad W. Dunn, Brazil & Dunn, LLP, 4407 Bee Caves Road, Suite 111, Austin, Texas 78746 Telephone: (512) 717-9822

DEFENDANTS

GREG ABBOTT, Governor of Texas; RUTH HUGHS, Texas Secretary of State, DANA DEBEAUVOIR, Travis County Clerk, and JACQUELYN F. CALLANEN, Bexar County Elections Administrator

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC 1983 and 52 USC 10301

Brief description of cause:

Constitutional and Voting Rights Act challenge to state election procedures

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

04/07/2020

/s/ Chad W. Dunn

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

EXHIBIT A

Velva L. Price
 District Clerk
 Travis County
 D-1-GN-20-001610
 Nancy Rodriguez

No. D-1-GN-20-001610

TEXAS DEMOCRATIC PARTY AND	§	IN THE DISTRICT COURT
GILBERTO HINOJOSA, IN HIS	§	
CAPACITY AS CHAIRMAN OF THE	§	
TEXAS DEMOCRATIC PARTY,	§	
JOSEPH DANIEL CASCINO AND	§	
SHANDA MARIE SANSING,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
DANA DEBEAUVOIR,	§	
IN HER CAPACITY AS TRAVIS	§	
COUNTY CLERK,	§	
<i>Defendant.</i>	§	
	§	
STATE OF TEXAS,	§	
<i>Intervenor.</i>	§	201st JUDICIAL DISTRICT

STATE OF TEXAS’S PLEA IN INTERVENTION

The State of Texas, by and through the Attorney General of Texas, respectfully intervenes in this case under Rule 60 of the Texas Rules of Civil Procedure to protect its interest in the uniform, consistent application of its laws in the State’s upcoming elections. The State has a strong and unique interest in ensuring that its elections are conducted in a fair and consistent manner. Plaintiffs here seek an advisory opinion that they hope would result in different and potentially unfair applications of the Texas Election Code across multiple elections for various State-level positions. Texas intervenes in this case to avoid that outcome.

BACKGROUND

The State of Texas allows early voting by mail, provided the person seeking to vote by mail meets the qualifications stated in the Election Code. *See* TEX. ELEC. CODE Ch. 82. Qualifications to vote early by mail are:

- Declaring an anticipated absence from the county of residence on election day;
- Declaring a disability;
- Demonstrating that the person seeking to vote by mail is over the age of 65; or,
- The person seeking to vote by mail anticipates being jailed during the voting period.

TEX. ELEC. CODE §§ 82.001-.004.

With respect to “disability,” the Texas Election Code provides that a “qualified voter is eligible for early voting by mail if the voter has a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter’s health.” *Id.* § 82.002(a).

The early voting clerk in each county is responsible for conducting early voting and thus is the official who would review an application from a voter to vote by mail. *See id.* § 86.001(a) (“The early voting clerk shall review each application for a ballot to be voted by mail.”). For most state- and county-wide elections, the county clerk or

elections administrator serves as the early voting clerk,¹ whereas “[t]he city secretary is the early voting clerk for an election ordered by an authority of a city.” *Id.* § 83.005. Each locality’s early voting clerk is responsible for determining whether an application to vote by mail complies with all statutory requirements, providing notice and instructions to cure to a voter who submits a noncompliant application, and “provid[ing] an official ballot envelope and carrier envelope with each ballot provided to a voter” who properly completes an application. *Id.* §§ 86.001(a), .008, .009, .002(a). After a voter marks their mail-in ballot, they must return it to the early voting clerk in the official carrier envelope. *Id.* § 86.006(a). These requirements, though handled by local election officials, apply uniformly throughout Texas.

On March 20, 2020, Plaintiffs filed their Original Petition and Application for Temporary Injunction, Permanent Injunction, and Declaratory Judgment (“Pet.”), asserting jurisdiction under the UDJA (Texas Civil Practice and Remedies Code § 37.003) and Texas Election Code § 271.081. Plaintiffs request a declaration that Texas Election Code § 82.002 “allows any eligible voter, regardless of age and physical condition, to request, receive and have counted, a mail-in ballot, if they believe they should practice social distancing in order to hinder the known or unknown spread of a virus or disease.” Pet. ¶ 22(a). Plaintiffs further seek to permanently enjoin the Travis County Clerk, in her official capacity,² “to accept and tabulate any mail-in

¹ TEX. ELEC. CODE § 83.002; *but see id.* §§ 83.003 (clerk in less-than-countywide elections held at county expense); 83.004 (clerk in elections ordered by county not held at county expense); 31.043 (county elections administrator performs, among other things, duties of county clerk. *See also Election Duties*, TEXAS SECRETARY OF STATE, available at <https://www.sos.state.tx.us/elections/voter/county.shtml> (listing early voting clerks).

² Plaintiffs initially named Ruth R. Hughs, in her official capacity as Texas Secretary of State, as a defendant in this lawsuit, but nonsuited their claims against her two days after filing suit.

ballots received from voters in an upcoming election who believe that they should practice social distancing in order to hinder the known or unknown spread of a virus or disease.” Pet. ¶ 22(b).

The State now files this timely plea in intervention. *See* TEX. R. CIV. P. 60; TEX. CIV. PRAC. & REM. CODE § 37.006(b).

STANDARD FOR INTERVENTION

“Any party may intervene [in a case] by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party.” TEX. R. CIV. P. 60. An intervenor is not required to secure a court’s permission to intervene in a cause of action. *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990). Rather, an intervenor need only show a “justiciable interest in a pending suit to intervene in the suit as a matter of right.” *In re Union Carbide Corp.*, 273 S.W.3d 152, 154 (Tex. 2008). “A party has a justiciable interest in a lawsuit, and thus a right to intervene, when his interests will be affected by the litigation.” *Jabri v. Alsayed*, 145 S.W.3d 660, 672 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (citing *Law Offices of Windle Turley v. Ghiasinejad*, 109 S.W.3d 68, 71 (Tex. App.—Fort Worth 2003, no pet.)). “The interest asserted by the intervenor may be legal or equitable.” *Guar. Fed. Sav. Bank*, 793 S.W.2d at 657 (citation omitted).

With respect to the timing of an intervention, there is no pre-judgment deadline for intervention. *Tex. Mut. Ins. Co. v. Ledbetter*, 251 S.W.3d 31, 36 (Tex. 2008) (citing TEX. R. CIV. P. 60; *Citizens State Bank of Sealy v. Caney Invs.*, 746 S.W.2d 477, 478 (Tex. 1988)). Texas courts recognize an “expansive” intervention

doctrine in which a plea in intervention may be untimely only if it is “filed after judgment,” *Texas v. Naylor*, 466 S.W.3d 783, 788 (Tex. 2015) (quoting *First Alief Bank v. White*, 682 S.W.2d 251, 252 (Tex. 1984)), though even post-judgment interventions are permissible under certain circumstances. *Ledbetter*, 251 S.W.3d at 36 (citing *In re Lumbermens Mut. Cas. Co.*, 184 S.W.3d 718, 725–26 (Tex. 2006)).

There is no final judgment in this case, and this intervention was brought within a week of the lawsuit being filed. Texas’s intervention is timely.

THE STATE’S INTERESTS

Plaintiffs seek a preemptive advisory opinion interpreting the Election Code’s definition of “disability” for purposes of early voting. Texas has a justiciable interest in this lawsuit because that advisory opinion would at minimum cause tremendous confusion and could lead to unequal and inequitable application of the Election Code across the State. Moreover, providing that advisory opinion may require the Court to opine on the constitutionality of Texas’s rules for mail-in ballots—a question on which the Attorney General has a statutory right to opine.

Texas has a strong interest in the efficient administration of its elections and in consistent application of its election laws across its 254 counties. *Cf. Maryland v. King*, 567 U.S. 1301, 1303 (2012) (“[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345 (1977) (citations omitted)); *True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 742 (S.D. Miss. 2014) (“The State . . . has a significant interest in enforcing its enacted

laws.”). And the UDJA provides that, “[w]hen declaratory relief is sought, all persons who have or claim any interest that would be affected by the declaration must be made parties.” TEX. CIV. PRAC. & REM. CODE § 37.006(b). Plaintiffs seek declaratory relief that would alter the Election Code’s standard for voting a ballot by mail—and would do so in Travis County only. Because this undermines Texas’s interest in uniform election administration, the State must be made a party to this case under § 37.006(b). *Id.*

This interest is particularly acute because Plaintiffs’ requested relief is not limited to county officials, but instead extends to state-level legislative officials—for example, members of the Senate. Counties have been delegated certain authority to administer local- and state-level elections. *E.g.*, TEX. ELEC. CODE § 83.002. Nevertheless, the State retains a strong interest in maintaining control over the qualifications and method of selection for members of its Legislature lest “render[] too dependent on the [local] governments that branch . . . which ought to be dependent on the people alone.” *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 808 (1995) (quoting *The Federalist* No. 52, p. 326 (C. Rossiter ed. 1961) (Madison)). To put it more concretely, Texas State Senate District 21 represents not Travis County but the people of Travis and multiple other counties. The State has a strong interest in the consistent application of its election laws across counties so that all of those Texans have the opportunity to elect their representative in the State Senate on equal terms. *Cf. id.*

Moreover, the Attorney General has a statutory interest sufficient to intervene because, though Plaintiff purports to seek an advisory opinion regarding the meaning of State law, their allegations implicate the constitutionality of that law. The Attorney General has intervened in numerous instances to defend the constitutionality of State laws. *See, e.g., Wilson v. Andrews*, 10 S.W.3d 663, 666 (Tex. 1999) (“The Attorney General intervened to defend [Texas Local Government Code § 143.057(d)]’s constitutionality.”); *Corpus Christi People’s Baptist Church, Inc. v. Nueces County Appraisal Dist.*, 904 S.W.2d 621, 624 (Tex. 1995) (“The Attorney General intervened for the limited purpose of defending the constitutionality of section 11.433 [of the Texas Tax Code].”). And Texas Civil Practice and Remedies Code § 37.006(b) requires that the Attorney General be notified about, and is “entitled to be heard” in, “any proceeding” in which a “statute, ordinance, or franchise is alleged to be unconstitutional.” TEX. CIV. PRAC. & REM. CODE § 37.006(b). The Texas Supreme Court and courts of appeal have recognized that the Attorney General can intervene to defend State statutes against constitutional attack. *See, e.g., Motor Vehicle Bd. of the Tex. Dep’t of Transp. v. El Paso Indep. Auto Dealers Ass’n, Inc.*, 1 S.W.3d 108, 110 (Tex. 1999); *Mercer v. Phillips Natural Gas Co.*, 746 S.W.2d 933, 940 (Tex. App.—Austin 1988, writ denied) (under § 37.006(b), “[t]he Attorney General is specifically authorized to be made a party to any litigation involving the constitutionality of a statute.”).

Though Plaintiffs appear to disclaim, at least for the moment, a constitutional challenge, the Election Code is “*alleged to be unconstitutional.*” TEX. CIV. PRAC. &

REM. CODE § 37.006(b) (emphasis added). As a result, if the Court were to resolve their Petition on the merits, it may have to address the validity or constitutionality of § 82.002(a) as written and enforced in Travis County. *See, e.g.*, Pet. ¶ 14 (Arguing that “the Right of Association granted by the First Amendment to the U.S. Constitution provides that political parties are free to select their party nominees without undue government influence” and that “[a]n immediate decision interpreting state law is required so that election preparations can continue in compliance therewith.”). Accordingly, the Attorney General is permitted to intervene and be heard in this case pursuant to Civil Practice and Remedies Code § 7.006(b). *See Clint Indep. Sch. Dist. v. Marquez*, 487 S.W.3d 538, 547 (Tex. 2016).

CONCLUSION

For these reasons, the State of Texas intervenes in this action for the limited purpose of opposing Plaintiffs’ request for declaratory and injunctive relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 27, 2020, the foregoing instrument was served electronically through the electronic-filing manager in compliance with TRCP 21a to:

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I further certify that on March 27, 2020, the foregoing instrument was served
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ATTORNEYS FOR DANA DEBAEUVOIR
IN HER CAPACITY AS TRAVIS COUNTY CLERK

/s/Anne Marie Mackin
ANNE MARIE MACKIN
Assistant Attorney General

EXHIBIT B

The State of Texas

Elections Division
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Ruth R. Hughs
Secretary of State

ELECTION ADVISORY

N0. 2020-14

TO: Election Officials

FROM: Keith Ingram, Director of Elections 

DATE: April 2, 2020

RE: COVID-19 (Coronavirus) Voting and Election Procedures

The purpose of this advisory is to assist election officials in facilitating voting for individuals that may be affected by COVID-19, and in preparing for the conduct of elections in the context of this public health issue.

Voter Registration Procedures

Stay-at-home orders and office closures in your jurisdiction may impact voters seeking to obtain voter registration applications. There are several existing options that you should encourage voters to utilize:

- **In-County Updates via [Texas Online](#):** If a voter has moved within the same county, the voter may update their address online at www.Texas.gov. Voters that are active or in suspense can update their name and/or residence address through this secure website.
- **Printed Voter Registration Applications:** If a voter has access to a printer, the voter can use the [SOS Informal Online Application](#) to complete a voter registration application. This application can be printed and mailed to the applicable county voter registrar. When the voter selects their county of residence, it will preprint the county voter registrar's address on the form so that when the voter mails it, they send it directly to their county voter registrar.
- **Postage-Paid Voter Registration Applications:** If a voter does not have access to a printer, the voter can request that a blank postage-paid voter registration application be mailed directly to the voter. The voter can fill out the [request form](#) on the SOS website. Counties can also mail blank applications to voters upon request.
- **Revisions to Voter Registration Certificate:** If a voter has their current voter registration certificate, they may make any necessary corrections or updates to the certificate, sign it and return it to the voter registrar.

- **Register2Vote.org:** This is a third-party website that provides a remote printing option for voters. Voters can complete a form online and have a pre-filled application sent to them for completion. The voter must complete the form, sign it, and mail it in the included postage-paid envelope. This form is sent directly to the county voter registrar.

Voting Procedures Authorized under the Texas Election Code

Below we have described some of the procedures that are authorized under Texas law that may be of assistance to voters that are affected by a recent sickness or a physical disability.

Voting by Mail

In Texas, in order to vote by mail, a voter must have a qualifying reason. A voter may vote early by mail if they:

- will be away from their county on Election Day and during early voting;
- are sick or disabled;
- are 65 years of age or older on Election Day; or
- are confined in jail, but eligible to vote.

One of the grounds for voting by mail is disability. The Election Code defines “disability” to include “a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter's health.” (Sec. 82.002). Voters who meet this definition and wish to vote a ballot by mail must submit an application for ballot by mail.

- [Application for a Ballot by Mail.](#)

Chapter 102, Late Voting Due to Recent Sickness or Physical Disability

The Election Code authorizes late voting if a voter becomes sick or disabled on or after the day before the last day for submitting an application for a ballot to be voted by mail, and is unable to go to the polling place on Election Day. The voter must designate a representative to submit an application on the voter's behalf in person to the early voting clerk. To be eligible to serve as a voter's representative, a person: 1) must be at least 18 years of age; 2) must not be employed by or related within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a candidate whose name appears on the ballot; and 3) must not have served in the election as the representative for another applicant. The application must be received before 5:00 p.m. on Election Day. The application is reviewed and the early voting clerk verifies the applicant's registration status in the same manner as early voting by mail. The early voting clerk must provide the same balloting materials that are used for early voting by mail to the representative who will deliver them to the voter. The voter should mark and seal the ballot in the same manner as voting by mail **including signing** the back flap of the carrier envelope. The ballot must be returned in its carrier envelope to the early voting clerk before 7:00 p.m. on Election Day **by the same representative** who delivered the ballot to the voter.

- [Application for Emergency Early Voting Ballot Due to Sickness or Physical Disability](#)
- [Instructions for Voter to include with Balloting Materials](#)

Chapter 104, Voting at Main Early Voting Location

The Election Code authorizes voters who are sick or disabled to vote on Election Day at the main early voting place, so long as voting machines of some type are used in the voter's precinct and the voter's sickness or disability prevents the voter from voting in the regular manner without personal assistance or likelihood of injury. For this procedure, the voter must complete and submit the applicable affidavit to be provided with the balloting materials used for early voting by mail. The voter must mark and seal the ballot in the same manner as in early voting by mail, except that the certificate on the carrier envelope need not be completed. After sealing the carrier envelope, the voter must give it to the clerk at the main early voting polling place between the hours of 7:00 a.m. and 7:00 p.m. The Early Voting Clerk must note on the envelope that the ballot was voted under Chapter 104.

- [Affidavit for Voting at Early Voting Place on Election Day](#)

Curbside Voting

If a voter is physically unable to enter the polling place without assistance or likelihood of injury to his or her health, the voter is eligible for entrance or curbside voting. (Sec. 64.009). This option **must** be made available at all polling locations. To provide for voting curbside, the voter must be qualified by the election officer before the voter can receive the ballot. An election officer may deliver a ballot or a DRE voting machine to the voter at the entrance or curb of the polling place. Poll watchers and inspectors must be allowed to accompany the election officer. Once the voter has marked his or her ballot, the election officer deposits the ballot for the voter. On the voter's request, a person accompanying the voter to the polling place must be permitted to select the voter's ballot and to deposit the ballot in the ballot box after the voter has voted. If the voter is not only physically unable to enter the polling place, but is also eligible for voter assistance in marking his or her ballot, they may receive assistance in marking and completing their ballot in accordance with Chapter 64, Subchapter B of the Election Code. Either two election officers may assist the voter or the voter may be given assistance by a person of the voter's choice, other than the voter's employer, an agent of that employer or an officer or agent of the voter's labor union. For voters that are voting at the curbside, **instruct polling place workers to allow the curbside voter the same privacy as a voter in the voting booth.** We anticipate providing further guidance regarding curbside voting in the coming weeks.

Potential Court Order to Address Quarantined Voters

Voting in-person during early voting or on Election Day may not be an available option for all voters, including those affected by quarantines. Political subdivisions may need to act quickly to address the rapidly changing public health situation. In monitoring your situations locally, it is important to note that you may have a need to modify certain voting procedures. In these circumstances, you may want to consider seeking a court order to authorize exceptions to the voting procedures outlined in certain chapters of the Texas Election Code for these voters. The following are possible considerations:

1. **Expanding Eligibility Requirements Under Chapter 102 (Late Voting for Sickness or Physical Disability):** A court order could provide for a temporary expansion of the eligibility requirements for Chapter 102 voting to allow voters in quarantine to vote in this fashion. This option would also require the court, in some instances, to temporarily waive or modify the

requirement for a physician's signature on the application for this type of late ballot for purposes of any election(s) impacted by COVID-19.

2. **Other Modifications to Voting Procedures:** A court order could provide for modifications to other voting procedures as necessary to address the impact of COVID-19 within the jurisdiction. For example, in 2014, Dallas County obtained a court order authorizing modified voting procedures for individuals affected by the Ebola quarantine, modeled on the procedures outlined in Section 105.004 of the Texas Election Code for certain military voters in hostile fire pay zones.

If your county obtains a court order allowing modifications to voting procedures to address COVID-19, please send a copy of the court order to the Secretary of State's Office.

Other Considerations Related to COVID-19 or Other Illnesses

If your political subdivision is affected by a stay-at-home order, quarantine or outbreak of COVID-19 or any other type of illness, the conduct of your elections could be impacted. In order to protect the health and safety of election workers, below are some considerations:

- **Cleaning and Sanitizing Voting System Equipment:**
 - **Voting System and e-Pollbook Equipment:** Please check with your vendor about the specific procedures you should follow to clean and sanitize any equipment that is handled by voters or polling place workers. We received specific information from the following vendors about proper techniques for cleaning equipment:
 - **Hart Intercivic Voting System Equipment:** Users may wipe Hart equipment with 50% or higher clear, fragrance-free, isopropyl alcohol solution and a lint-free wipe. Do not use ammonia or detergent-based solutions as these may be harmful to the screen or the plastics surrounding the display. To avoid spotting, make certain that equipment screens are wiped dry (do not leave puddles).
 - **ES&S Voting System Equipment:** You can use a soft, lint free cloth and isopropyl alcohol to clean the touchscreen of the voting machine. Do not spray directly on the touch screen. Only lightly dampen the cloth, do not soak it. Do not use any harsh cleaning products on the screen as this may damage the touch screen. Do not allow any liquid cleaner to come in contact with ballot stock.
- **Cleaning and Sanitizing Polling Places:** The Centers for Disease Control and Prevention (CDC) has issued [recommendations](#) for preventing the spread of coronavirus specifically in election polling locations. Here are a few of their specific suggestions:
 - **Encourage workers to wash hands frequently:** wash hands often with soap and water for at least 20 seconds. If soap and water are not readily available, use an alcohol-based hand sanitizer that contains at least 60% alcohol.
 - **Practice routine cleaning of frequently touched surfaces with household cleaning spray or wipe:** including tables, doorknobs, light switches, handles, desks, toilets, faucets, sinks, etc.

- **Disinfect surfaces that may be contaminated with germs after cleaning:** A list of products with EPA-approved emerging viral pathogens claims is available on the EPA's [website](#). Products with EPA-approved emerging viral pathogens claims are expected to be effective against the virus that causes COVID-19 based on data for harder to kill viruses. Follow the manufacturer's instructions for all cleaning and disinfection products (e.g., concentration, application method and contact time, use of personal protective equipment).
- **Arrangement of Polling Places:** It is imperative that you review your procedures related to setting up your polling place. Voting stations should be set up in a way that adheres to the suggested social and physical distance guidelines and allow for at least 6 feet between voters. Additionally, you should review your check-in stations to ensure you are providing adequate space between voters. This may include providing your workers with tape to mark off spacing guidelines on the floor of the polling place.
- **Election Judges and Clerks:**
 - **Training and Recruiting of Election Workers:**
 - **Recruitment of Election Workers:** We recommend that you make efforts to recruit and train additional workers beyond what you project to need for a given election. This will ensure that you have adequate back up workers to assist in the event that you have election workers that are unavailable at the last minute.
 - **Recruiting from Current Workers:** With regard to recruiting workers, you may want to ask your current appointed judges to provide recommendations of other individuals that can serve. Additionally, you may have different judges and clerks depending on the type of election you hold. We suggest you reach out to your entire pool of potential workers to determine availability for 2020 election dates.
 - **Student Election Clerks:** You may also want to consider enlisting [student election clerks](#) in your pool of available workers. For elections occurring outside of the school year, the student clerks would not need to obtain permission from their high school principal provided they obtained permission from their parent or legal guardian.
 - **Training of Election Workers:** In order to train a larger pool of workers, you may want to consider allowing your election workers to utilize the Secretary of State's [online Poll Worker Training](#). This training is focused on the legal procedures related to acceptance of voters and the voting process. Any procedures that are specific to your county would need to be provided through additional training or supplemental materials.
 - **Unavailability of Judges:** If both the presiding judge and alternate judge are unavailable to serve and this is discovered after the 20th day before election day, the presiding officer of the appointing authority, or if the presiding officer is unavailable, the authority responsible for distributing supplies for the election, shall appoint a replacement judge. (Sec. 32.007). Additionally, if the authority is

unable to find an election judge who is a qualified voter of the specific precinct needing a judge, the authority may appoint individuals that meet the eligibility requirements of an election clerk which encompasses a broader territory. (Sec 32.051(b)).

Type of Election	Presiding Officer of Appointing Authority	Authority responsible for Delivering Supplies
Primary Election	County Chair of Political Party	County Chair of Political Party
Joint Primary	County Election Officer	County Election Officer
General Election for State and County Officers or County Ordered Election	County Judge	County Election Officer
Cities	Mayor	City Secretary
Other Political Subdivision Elections	Presiding Officer of Governing Body of Political Subdivision	Secretary of Governing Body; if no secretary, the presiding officer of governing body

- **Polling Locations:**

- **Review List of Locations:** We recommend reviewing your list of current polling locations to determine if you should consider proactively relocating them. For example, if you are currently using assisted living facilities or residential care facilities that have residents that would be in one of the higher-risk categories, relocating the polling place may be in the best interest of the individuals at that location. Please be advised that if you choose to relocate a polling place in a facility like this, we **strongly recommend** that you provide information to the residents about voting by mail to ensure that they are still able to vote in upcoming elections without the difficulty of leaving the facility to travel to a different polling place. Additionally, you should be monitoring your current polling places to determine if any of those locations have been closed as a result of business or government building closures.
- **Unavailable Locations:** If polling locations become unavailable, you may need to relocate your polling location or combine and consolidate that location with another polling place in close proximity to it. To the extent possible, any changes to polling locations must be made in accordance with Chapters 42 and 43 of the Texas Election Code. If you are in a situation where you will have difficulty complying with these chapters, please contact the Secretary of State's office to discuss other available options.

- **Notice of Changes to Polling Locations:** Please be advised that if you have a polling location change, you must post [notice](#) of that change at the location that is no longer being used. Any websites that contain polling locations should be updated. For certain county-run elections, polling place information must also be updated with the Secretary of State's office, if applicable.
- **Website Notices:** At this time, you may want to consider posting a notice on your website instructing voters to check your website for updates and changes to polling locations prior to early voting and election day. This will help ensure that voters are always getting updated and accurate information.
- **Voting by Mail Considerations:** At this time, the CDC has not provided any special recommendations or precautions for the storage of ballots. However, it is recommended that workers handling mail ballots practice [hand hygiene](#) frequently. Please continue to stay updated on the CDC's website as they provide additional recommendations regarding the handling of mail and other topics.
 - **Additional Ballot by Mail Supplies:** Because there may be a higher volume of ballot by mail requests in 2020, we strongly recommend that you review your current supply of applications, balloting materials, and ballot stock for future elections. It is important you have the necessary supply on hand to meet increased requests you may receive.
- **Election Office Hours:** Election officials are required to maintain certain office hours related to their election duties for a prescribed number of days before and after an election. If your office is closed for public health reasons or you are unable to be at your office during the mandatory office hour time frame, we advise that entities post information on how to get in contact with the applicable officials for election related information. This may include posting phone numbers, an email address that can receive public inquiries, or even a mailing address that can receive written requests for information. We recommend that you assign someone to periodically check for voicemails, emails, or mail related to your election.
- **Voter Registration Office Hours:** Section 12.004(c) requires the voter registrar's office to be open while the polls are open on the date of any election held in the county on a uniform election date. If you have entities that will be holding an election on May 2, 2020, you must satisfy this requirement. However, we believe that as long as you can provide answers to voter registration questions remotely and you notify your entities about how to reach you, you do not need to be physically in the office. You must also be able to provide all of the same voter registration services you would otherwise provide to your local political subdivisions if you were in the office.
- **Volunteer Deputy Registrars (VDR):** You still have a legal obligation to process volunteer deputy registrar applications. If you must suspend volunteer deputy registrar classes, we strongly advise that you adopt the SOS online Volunteer Deputy Registrar training and in-person examination option. This would allow you to schedule the examinations based on need or desire by VDRs and would allow you to temporarily reduce or cancel in-person training as dictated by your county's circumstances. For more information about adopting the online training and examination, please see [Advisory 2019-04](#). Additionally, you still have an obligation to receive voter registration

applications from VDRs. To eliminate person-to-person contact, you could provide drop boxes for voter registration applications. These drop boxes should be located in close proximity to your main office or connected to it. They should be secured and checked regularly.

- **Cybersecurity Impacts:** If your political subdivision is affected by a widespread quarantine or outbreak of COVID-19 or any other type of illness, your office staff might be mandated to work remotely. In addition, the volume of voters that will start to utilize your internet-based resources will increase. During a crisis situation, bad actors may try to capitalize on the circumstances to take actions that could compromise the security of your elections office. Please remain vigilant about following best practices related to cybersecurity and election security.
 - **Service Interruption:** Networks are normally built to sustain high volume traffic, but the magnitude of the COVID-19 crisis presents an increased risk that systems may become compromised. An abnormal increase in network traffic could be misinterpreted as a DOS (Denial of Service) attack which could shut down networks depending on the type of security implementation.
 - **Ransomware:** Cybercriminals can infect the computers of government agencies before demanding that they pay a ransom for an encryption key that will free their locked files and records. Ransomware can lock up databases preventing polling places from verifying eligibility and confirming that voters are in the right districts/precincts.
 - **Election Systems and e-Pollbook Equipment:** As mentioned above, databases are susceptible because they must have a constant network connectivity. When relocating polling places, it is very important to ensure that the systems are connected to a secure and reliable network.
 - **Voter Registration Scams:** Voter registration procedures are not conducted over the phone or the internet other than the previously mentioned authorized channels. Be aware of scams that are targeted to steal personally identifiable information from voters and/or election workers. It is especially important not to provide personal information of voters or election workers over the phone if your office is solicited in this manner.
- **Communications Plan:** You should develop a plan for communicating to voters and election workers when any changes occur that may impact them. The communications plan should involve updating your official website with specific details. Any use of social media should direct people back to your official website to ensure that only official, accurate, and authorized information is being disseminated to the public. We suggest you develop a plan for working with local media to keep the public informed. Finally, any major changes that affect the election process in your county should be communicated to the Secretary of State's office.

Additional Resources

Here are a list of additional resources that may be helpful to you.

- [Election Assistance Commission - Coronavirus \(COVID-19\) Resources.](#)

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- [Centers for Disease Control and Prevention \(CDC\) – Recommendations for Election Polling Locations](#)
- [Texas Department of State Health Services – Coronavirus Disease 2019 \(COVID-19\)](#)

If you have any questions regarding this advisory, please contact the Elections Division at 1-800-252-2216.

KI:CA