

**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

Plaintiffs,

v.

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

Defendants.

CIVIL ACTION NO.
5:20-CV-00438-FB

AMICUS BRIEF OF HARRIS COUNTY, TEXAS
IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

TO THE HONORABLE JUDGE FRED BIERY:

Harris County, Texas, respectfully submits this amicus curiae brief in support of Plaintiff's Motion for Preliminary Injunction, set for hearing on May 15, 2020, and would show this Court as follows.

Exhibit A

INTEREST OF HARRIS COUNTY AND SUMMARY

As the largest and most diverse county in the state, and currently stricken by the greatest number of COVID-19 cases and deaths, Harris County has an intense interest in this case and in a resolution to the legal issues surrounding holding an election during a dangerous pandemic so that it may conduct a safe and fair election during both the July primary run-off and the November general election. To advise the Court on facts relevant to election administration and underlying claims in this case, Harris County submits an Appendix which includes a declaration of its Administrator of Elections Department, Michael Winn (“Winn Decl.”).

Nothing about this case is contingent or speculative — other than the exact number of deaths and cases of serious illness Texas and Harris County will see due to COVID-19. A deadly pandemic continues with daily new case counts in Texas not dropping¹ even as the State plans to “open up.” Voters are concerned for their health and safety as are election workers. With a population larger than 27 states, it is home to the most diverse population and electorate in Texas with its citizens speaking more than 145 languages.² The size and scope of the County make the smooth operations of elections challenging in the most ideal of circumstances. Winn Decl. at ¶¶ 10, 13. The ongoing threat of COVID-19 presents unique challenges that affect safe voting access throughout the country, and poses no time for partisan rancor to tie the hands of election administrators by limiting the application of existing law. Rather, governments must cooperate to safeguard the health and safety of their citizens. In addition to representing the interests of its

¹ See Dept. of State Health Services, COVID-19 Dashboard, Daily New Cases, <https://tabexternal.dshs.texas.gov/-t/THD/views/COVIDExternalQC/COVIDTrends?isGuestRedirectFromVizportal=y&embed=y>

² See Lomi Kriel, *Just how diverse is Houston, 145 languages spoken here*, HOUSTON CHRON., Nov. 5, 2015, <https://www.houstonchronicle.com/news/houston-texas/article/Houstonians-speak-at-least-145-languages-at-home-6613182.php>.

County Clerk and elections administration department, Harris County represents the People of Harris County in ensuring that their constitutional rights to vote and fundamental fairness in the electoral process is preserved. This includes not having their government make endangering one's health a condition to exercising the right to vote.

Harris County writes to support the Plaintiffs' position, to advise on the status of preparations to hold a safe and fair election, to describe the problems arising from the Texas Secretary of State ("SOS") ineffective guidance, and to warn of the threats to voting rights and liberty levied by Texas Attorney General Ken Paxton ("AG Paxton"). First, the ongoing COVID-19 pandemic has a profound and practical impact on the ability to hold in-person early and Election Day voting. Application of the existing and broad "disability" definition thankfully will enable increased vote by mail ("VBM") which will serve both to flatten the curve of voter congregation during in-person voting and enable individual at-risk voters to protect themselves. However, the State of Texas refuses to apply the plain language of the law or fully cooperate in efforts to ensure a safe election. Second, AG Paxton's penchant for threatening criminal prosecution to voters, public officials, and presumably even the undersigned counsel for advising their client of the law and court rulings amounts to prohibited voter intimidation and violations of free speech rights and should be enjoined. Finally, VBM age restrictions along with the State's injection of confusion regarding what is a "disability" will have a disparate impact on younger and minority voters given Harris County's demographics.

In addition, Harris County seeks to support its elections administration to work toward viable solutions for the County and the State to hold a safe and fair election during the COVID-19 pandemic — regardless of political party affiliation. Much like "flattening the curve" of the pandemic, a safe and fair election will require flattening the curve of voters congregating in

locations where they physically cannot socially distance. This can be accomplished in large part by expanding VBM from its current typical ratio in a general election of under 10% or the widely varying ratio in primary run-offs of 15% to 40% to a stable, higher percentage so that the in-person voters whether during early voting or election day are decreased to a safely manageable number. Winn Decl. at ¶¶ 31, 36.

Plaintiffs argue, and Harris County strongly concurs, that COVID-19 places all voters in the position of contracting a disease that may be fatal or cause severe suffering with long-term health consequences — that is, “injuring the voter’s health” — should they be forced to vote in person. Consequently, because no one is known to be immune to COVID-19, all voters should be free to vote by mail in the July 14 run-off and the November election. Despite the State’s rhetoric, neither the Plaintiffs nor Harris County are asking for an all-VBM election. *See* State Def’s Resp. to Motion for Preliminary Injunction, Doc. 39 at 31 (“Doc. 39”). Rather, Harris County and its elections administrator need a variety of tools to spread out voter congregation and respond to the pandemic’s ebb and flow, including lessening the number of in-person voters through full application the existing broad definition of “disability.” *See* Winn Decl. at ¶¶ 30, 49.

I. Young and diverse, Harris County has been hit hard by COVID-19 and its population will be disproportionately affected if VBM is not widely available.

Harris County, Texas, is the largest county in the state with 4.7 million people and at almost 2.4 million or 14% of the state’s registered voters. Winn Decl. at ¶ 10. Harris County is also Texas’s largest “majority-minority” county, with sizable populations of African-Americans, Latinos, and Asian Americans. Currently, ballots are printed and administered in four languages, English, Spanish, Vietnamese, and Chinese — the most in Texas. Winn Decl. at ¶ 33. Harris County’s diversity makes holding a safe and fair election more challenging. Ensuring that all eligible voters have safe and effective access to voting during a pandemic requires sensitivity to

that diversity and the particular impact of COVID-19 on the County.

A. Harris County's youth and diversity makes VBM disproportionately less available to its citizens.

Harris County's tremendous diversity is not uniformly represented across every age demographic. Harris County is younger and more diverse than Texas as a whole. While 12.5% of Texans are over 65 years old, only 9.9% of Harris County residents are.³ Moreover, while approximately 40% Texans are Anglo, only about 30% of Harris County residents are. These demographics are shown in the following tables compiling census data:⁴

Table 1 – Harris County Racial Demographic Totals & Percentages (2019)

<u>Demographic</u>	<u>Percentage</u>	<u>Number</u>
Anglo	29.1%	1,371,578
Latino	43.3%	2,040,870
African American	19.9%	937,952
Asian American	7.4%	348,786

Table 2 – Number of Harris County residents by Age & Race (2018)

<u>Age</u>	<u>Total</u>	<u>Anglo</u>	<u>Latino</u>	<u>African American</u>	<u>Asian American</u>
Children (under 18)	1,253,744	188,061	714,634	200,599	104,060
Voting Age (18-65)	2,964,682	1,156,225	1,185,872	397,267	186,744
Elderly (65 or older)	464,899	315,666	83,682	42,771	16,736
Totals	4,683,325	1,659,952	1,984,188	640,637	307,571

As Table 2 indicates, 67.9% of all Harris County residents who are 65 years of age or older are Anglos, but Anglos are less than 40% of Harris County residents 18 to 65 years of age. Elderly Anglos outnumber elderly Latinos nearly 4-to-1, elderly African Americans more than 7-to-1, and

³ Census Quick Facts, Harris County, TX, <https://www.census.gov/quickfacts/fact/table/harriscounty-texas/PST045218>.

⁴ Census Quick Facts, Harris County, TX <https://www.census.gov/quickfacts/fact/table/harriscountytexas/-PST045218>; cf. Mot. For Preliminary Injunction Doc. 10, at Tables 1 and 2.

elderly Asian Americans nearly 19-to-1.

Texas VBM laws applied to this distribution results in a structurally inequitable voting system that significantly favors over 65 voters, to the detriment of the vast majority of voting age residents. Anglos make up only 29.1% of Harris County,⁵ but have the ability to exercise a greater electoral impact during the pandemic because their significantly older population are all free to VBM. As a consequence, any and all election regulations that limit access based upon age, place a clear and obvious burden that effectively limits access to voting based upon race.

The Twenty-Sixth Amendment to the U.S. Constitution provides: “the right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by . . . any State on account of age.” U.S. CONST., amend. XXVI, § 1. The VBM program — as AG Paxton would apply the law The Twenty-Sixth Amendment to the U.S. Constitution provides: “the right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by . . . any State on account of age.” U.S. CONST., amend XXVI, § 1. The VBM program — as AG Paxton would apply the law — violates the 26th Amendment by abridging the rights of voters under 65 years of age.

In Harris County, there are an approximately 2,368,761 registered voters and 1,929,801 voters are under 65 years of age — 81% of all registered voters. Winn Dec. at Ex. 1. Voters of color make up a significant number of voters under 65 years old in Harris County. The March 2020 Harris County Voter roll shows that 55% of registered voters under 65 are minorities. *Id.* While Latino voters make up 23% of all registered voters in Harris County, 88% of Latino voters are under 65 years of age. *Id.* In essence, the current election process in Texas as applied to Harris County violates Equal Protection and voting rights by treating citizens differently based upon race

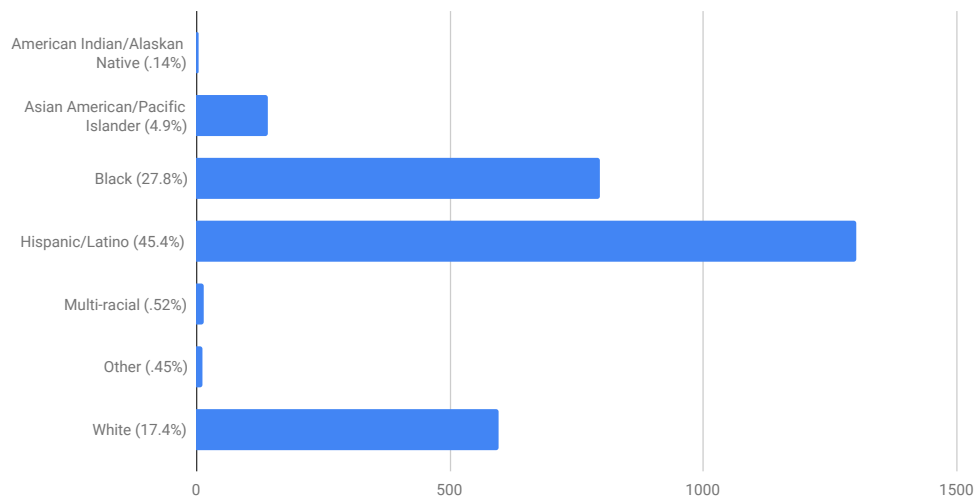
⁵ *Id.*

and age.

B. Minorities are disproportionately affected by COVID-19 in Harris County.

With the added impact of the threat of COVID-19, the implications of the use of a voting method that favors Anglo voters over historically discriminated communities is magnified. An analysis of national infection and mortality rates from COVID-19 reveals that minorities may be more greatly impacted by the disease than the general population.⁶ According to preliminary data, African-Americans in particular are significantly more likely to contract and die from COVID-19. In Harris County minorities have higher than average contraction and fatality rates making up the vast majority of COVID-19 cases as the following chart illustrates:⁷

Harris County COVID19 Confirmed Cases



*Data Provided by Harris County Public Health Through 5/9/2020

⁶ Stacy Weiner, *The new coronavirus affects us all. But some groups may suffer more*, ASSOC. OF AM. MEDICAL COLLEGES, Mar. 16, 2020, <https://www.aamc.org/news-insights/new-coronavirus-affects-us-all-some-groups-may-suffer-more>.

⁷ This data, provided by Harris County Public Health through May 9, 2020, excludes cases in the City of Houston itself as the City is not tracking cases by ethnicity. See also Zach Despart, *Harris County releases first racial, ethnic breakdown of coronavirus deaths*, HOUSTON CHRON., Apr. 9, 2020, [https://www.houstonchronicle.com/news/-houston-texas/houston/article/harris-county-racial-ethnic-coronavirus-deaths-data-15189690.php?utm_campaign=CMS%20Sharing%20Tools%20\(Premium\)&utm_source=t.co&utm_medium=referral](https://www.houstonchronicle.com/news/-houston-texas/houston/article/harris-county-racial-ethnic-coronavirus-deaths-data-15189690.php?utm_campaign=CMS%20Sharing%20Tools%20(Premium)&utm_source=t.co&utm_medium=referral)

Because younger voters are more likely to be minorities in Harris County their opportunity to access voting by mail is significantly less than Anglos yet they are at higher risk of serious illness and death from COVID-19. Under these circumstances, the lack of access to VBM creates a disparate impact on the access to a safe and fair election for minority voters.

II. The failure of the Secretary of State to fully advise on the COVID-19 pandemic and the Attorney General's repeated threats create an urgent need for this Court to protect the constitutional rights of Harris County voters.

Harris County Judge Lina Hidalgo declared an emergency over the COVID-19 virus on March 11, 2020. Governor Abbott declared an emergency for the State of Texas two days later. *See* TEX. GOV'T CODE §§ 401.062, 418.011 *et seq.* Because of the unpredictability of the COVID-19 virus, even if the pandemic subsides, it is unclear when it may re-occur. The premature relaxing of restrictions increases the risk of a COVID-19 recurrence.⁸

While models and predictions can be made, it is impossible to know for certain when normal social interaction will be safe, and even if it becomes safe, when the pandemic could re-occur with little warning. Conducting elections does not lend itself to short-noticed changes in election procedures given the planning and mustering of resources necessary to conduct an election. Winn Decl. at ¶¶ 8, 9, 11-13, 24, 29, 33.

Upcoming July run-off deadlines and the complexity of planning the November election leave no room for “wait and see” what the pandemic or the State of Texas will do.

Texas and Harris County are currently scheduled to have primary runoff elections on July 14, 2020, with early voting beginning June 29.⁹ The last day to apply for a vote by mail ballot is

⁸ *See* Tim Colburn, *Covid19: extending or relaxing distance control measures*, THE LANCET, Mar. 25, 2020, available at [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(20\)30072-4/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(20)30072-4/fulltext).

⁹ *See* Governor Abbott Issues Proclamation Regarding July 14 Early Voting for Special, Runoff Elections, May 11, 2020, available at <https://gov.texas.gov/news/post/governor-abbott-issues-proclamation-regarding-july-4th-early-voting-for-special-runoff-elections>; Gov. Greg Abbott, Proclamation, Mar. 20, 2020, available at https://gov.texas.gov/uploads/files/press/PROCLAMATION_COVID-19_May_26_Primary_Runoff_Election_03-

July 2, 2020. *Id.* Holding an election in Harris County is a challenge for every election requiring months of preparation. Winn Decl. at ¶ 11. Adjusting to changes for the July 14 run-off will be easier because it is a low turnout election; moreover, it will provide valuable data for planning the November election. Winn Decl. at ¶ 52. Harris County needs as much preparation as possible for the high turnout November presidential year general election to accommodate COVID-19's effects on public health and safety particularly considering the anticipated added time individuals will take to vote with the repeal of straight-ticket voting and the enormous length of the Harris County ballot. Winn Decl. at ¶¶ 33, 52.

A. Despite the plain language of the “disability” definition, the SOS failed to fulfill her duty to interpret Texas election laws and only injected legal uncertainty and ultimately a poison pill into the election.

As the threat of coronavirus and the resulting COVID-19 pandemic spread this spring, Harris County began to prepare for the primary run-off election which was scheduled for May 26. Just a few weeks after the primary, the Governor of Texas issued a Proclamation ordering that the run-off be moved to July 14.¹⁰ The Harris County Clerk and its Administrator of Elections Department, Michael Winn, began preparations to conduct an election during the growing pandemic, monitoring closely elections in other states and researching both the science of the pandemic and the options for protecting election workers and voters alike. Winn Decl. at ¶¶ 6, 11, 12, 41. The Harris County Clerk and other election administrators made requests for guidance from the Secretary of State which is tasked with interpreting the Election Code and maintaining uniformity of election administration across the state. Winn Decl. at ¶ 13; TEX. GOV'T CODE

20-2020.pdf; Texas Secretary of State, *Current Election Information*, available at <https://www.sos.state.tx.us/elections/laws/current-elections-information.shtml>.

¹⁰ Gov. Greg Abbott, Proclamation, Mar. 20, 2020, available at https://gov.texas.gov/uploads/files/-press/PROCLAMATION_COVID-19_May_26_Primary_Runoff_Election_03-20-2020.pdf.

§§ 31.003 (“The secretary of state shall obtain and maintain uniformity in the application, operation, and interpretation of this code and of the election laws outside this code.”), 31.004 (the secretary of state shall provide assistance and advice, including statutory interpretation to elections administrators).

Texas law allows certain voters to request an application to vote by mail. TEX. ELEC. CODE § 84.001. To cast an early voting ballot by mail, a voter must submit an application. *Id.* at § 84.001(a). To be eligible to receive a ballot by mail, a voter must be: (1) absent from the county of residence during early voting and election day, (2) disabled or ill, (3) age 65 or over, or (4) confined to jail but not yet finally convicted of a felony. TEX. ELEC. CODE §§ 84.001-.004.

Texas law also presciently provides broad definition of “disability” for the purpose of qualifying to VBM defining as a “disabled” voter one who 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***.

TEX. ELEC. CODE § 82.002 (emphasis added). Thus “disability” is something of a misnomer as the definition is much broader than that term is commonly understood. Election administrators naturally thought this broad definition would include those who could contract COVID-19 by voting in-person as polling places tend to be crowded with no room to socially distance. But clear guidance was not forthcoming.

On April 2, 2020, the Texas Secretary of State issued Advisory 2020-14-COVID-19 (Coronavirus) Voting and Election Procedures which covered various election procedures in light of the pandemic including the availability of ballots by mail for persons with disabilities:

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 need personal assistance or 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.

SOS COVID-19 Advisory at 2. But the SOS failed to clearly answer the as-applied legal question of who meets the definition in a pandemic when everyone is at risk of contracting the virus.

The Texas Democratic Party then posed the question to a state district court which answered in the affirmative: persons who lack immunity to COVID-19 qualify for VBM under the plain language of the “disability” definition. Order on Application for Temporary Injunction, *TDP v. DeBeauvoir*, No. D-1-GN-20-001610, 201st Dist. Court, Travis County, Texas, Apr. 17, 2020. The Order did not make any ruling about “fear” of the virus, yet the State of Texas appealed the declaratory judgment and preliminary injunction and has consistently mis-represented the ruling as about mere “fear” of the virus with AG Paxton aggressively threatening anyone who exercises their right to vote safely because of “fear” of the pandemic may be subject to felony charges as would anyone who advises them of that course of action. *See Winn Decl.* at Ex. 5.

AG Paxton previously opined that the definition of “disability” is exactly what the statute says, although his onslaught of threats now backtracks on that analysis. *See Tex. Att’y Gen Op.* No. KP-0009 (2015) at 2. This Opinion’s analysis notes that “while proof of disability may not be necessary to apply for a mail-in ballot, its production may be compelled if a voter’s qualifications for voting by mail is challenged in court.” *Id.* at 1-2, n.2. Moreover, if a voter’s qualification as “disabled” is successfully challenged, that voter’s vote is **void**. *Id.* (citing *Tiller v. Martinez*, 974 S.W.2d 769, 775 (Tex. App. – San Antonio 1998, pet. dismiss’d w.o.j.)). This raises another problem with the State-created ambiguity: widespread election contests. Without legal clarity any election results will be subject to an election contest and voters who tried to preserve their health and life by voting by mail will be subject to subpoena, having their vote voided, and possible prosecution. Unless this Court grants the preliminary injunction the SOS will have, in effect, successfully infected the election with a poison pill.

B. AG Paxton focuses his threats of prosecution on Harris County officials.

To prepare the elections, the Harris County Clerk sought resources to successfully implement a safe and fair election. On April 28, the Harris County Commissioner's Court voted to make up to \$12 million available to cover personal protective equipment ("PPE") for election workers, sanitation supplies, and the added costs the anticipated higher ratio of VBM as processing mail-in ballots is more expensive per vote than in-person voter. Order of Commissioners Court, Winn Decl. Ex. 2. This act of preparation inexplicably drew the ire of the Attorney General.

The Attorney General's press statements and abject refusal to accept the trial court's preliminary injunction have not only injected uncertainty into the process but directed threats of criminal prosecution to voters and those who advise voters including the Harris County Judge, the County Clerk, and presumably even the undersigned counsel. These missives have not been limited to simply answering a state representative's question, as the State's brief would have this Court believe. *See* Doc. 39 at 15-16, 21. On May 1, Attorney General Ken Paxton issued a second "advisory," this one directed at county election administrators (normally the province of the Secretary of State) and again threatening voters and those who advise them with felony charges should they VBM under the "disability" category because of the pandemic. The memo was accompanied by a press release that singled out the Harris County Judge and County Clerk:

Several county officials throughout the State, including the Harris County judge and clerk, are misleading the public about their ability to vote by mail, telling citizens that in light of COVID-19, anyone can claim a "disability" that makes them eligible for ballot by mail.

AG Paxton Advises County Officials to Avoid Misleading the Public on Vote by Mail Laws, May 1, 2020, *see also* Paxton Memo to County Judges and County Election Officials, Winn Decl. Ex. 5. This threatening focus on the Harris County Judge bears mentioning because other counties were making similar preparations and other county officials have voted for, discussed, or made

public statements about the issue. But Paxton chose to focus on County Judge Lina Hidalgo, the only Latina and only immigrant county judge of the largest Texas counties.

The State argues that the Plaintiffs have made no allegations that Paxton has “threatened to bring criminal proceedings against them.” Doc 39 at 21. But he has directly singled out and threatened the Harris County Judge and Clerk merely for discussing a court order and preparing for a safe and fair election, again pointedly citing to statutes that carry felony charges. Thus, that threat of enforcement is more than “chimerical,” as the State claims. *See* Doc 39 at 21.

III. The July 14 primary run-off and the need for VBM to flatten the curve of voter congregation.

While Governor Abbott has just issued a proclamation increasing the time for in-person early voting by a week for the July 14 run-off,¹¹ this increase does not help those voters who may be particularly susceptible to the pandemic’s horrors and wish to VBM as a result and does nothing to decrease the number of in-person voters who must be accommodated in a manner to allow social distancing. Winn Decl. at ¶ 49.

A. While in-person voting creates a range of risks for election workers and voters, increased VBM offers an opportunity to effectively provide socially distanced voting.

Under the current election process, election judges and workers are required to install, activate, and operate voting booths and equipment and dismantle them at the end of the day after mass voter usage. Winn Decl. at ¶¶ 41, 43. Election workers must handle identification cards handed to them by voters and pass paperwork back and forth with voters. Winn Decl. at ¶ 43. These workers will be subject to direct contact with potentially hundreds of individuals a day, many of whom may be infected or carrying COVID-19. The result of the exposure could see the

¹¹ *See* Governor Abbott Issues Proclamation Regarding July 14 Early Voting for Special, Runoff Elections, May 11, 2020, available at <https://gov.texas.gov/news/post/governor-abbott-issues-proclamation-regarding-july-4th-early-voting-for-special-runoff-elections>

possibility of many workers contracting COVID-19 and workers unaware they have the virus infecting voters in turn inflaming the pandemic. Indeed, this scenario has already played out in Florida and Wisconsin, where the states went ahead their primaries only to see election workers test positive for COVID-19.¹² The State and the Republican Party of Texas downplay the incidence of coronavirus transmission during other state's elections. *See* Doc. 39 at 34; Doc. 41-1. But any incidence is meaningful to that election worker or voter and their families whether the virus is spread without symptoms to yet others, only causes a mild illness, requires hospitalization, or a results slow painful death on a ventilator without the comfort of family or friends. The State fails to explain how many cases of COVID-19 or resulting deaths are necessary to trigger a constitutional problem. Harris County submits that the number is one and it is the government's duty to strive for zero.

When it comes to individual voting rights, any battle of epidemiological experts is beside the point. There is no question a deadly pandemic is ongoing and will continue for months. Moreover, even as the state argues here that the pandemic is not such a problem or a threat to voter's health and lives that the federal courts should act, the Governor has again extended his declaration of emergency,¹³ and the U.S. Senate this week held a virtual hearing because the nation's head immunologist had been exposed to COVID-19 and is self-quarantining. All voters should have the right to decide from themselves whether their risk for COVID-19 warrants avoiding in-person contact, sanitation measures or not, and vote by mail.

¹² *See* Winn Decl. at ¶¶ 7, 45; David Smiley and Bianca Padró Ocasio, *Florida held its primary despite coronavirus. Two Broward poll workers tested positive*, MIAMI HERALD, Mar. 27, 2020, <https://www.miamiherald.com/news/politics-government/article241539451.html>.

¹³ Proclamation Renewing the Declaration Stating that the Novel Coronavirus (COVID-19) Poses and Imminent Threat of Disaster for All Counties in Texas, May 12, 2020, *available at* https://gov.texas.gov/uploads/files/press/DISASTER_renewing_covid19_disaster_proclamation_No_2.pdf.

The risk of holding full volume in-person elections in Harris County would be significantly more acute because of the age of many of the election workers. The average of election workers in Harris County is approximately 68 years old. Winn Decl. at ¶ 30. Approximately 41% of election workers are over the age of 65. *Id.*; Stein Decl. at App. 49. The CDC has indicated that older persons are at particular risk of suffering greater illness and death rates from the COVID-19, and thus should take greater precautions to avoid contracting the disease; moreover, people over 65 years old are at a greater risk of hospitalization and requiring intensive care placing a greater strain on the health care system when outbreaks occur among this demographic.¹⁴

Harris County currently has over 750 election-day voting center locations and 57 early vote locations. Winn Decl. at ¶ 27. Election day requires more than 6000 workers to effectively administer an election. *Id.* Workers would be forced to decide between the possible risk to their health through exposure or refusing to work which could result in the closure of voting locations. The resulting disruption would result in an even more crowded and chaotic voting process that would likely endanger the workers and voters alike, through even more exposure to a greater number of people at fewer locations, and as voters are forced to wait in longer lines risking greater exposure. Such conditions amount to voter suppression as voters leave polling locations because they do not want exposure to a potentially deadly virus, simply cannot wait any longer to vote, or decide not to attempt to vote at all to protect their health.

B. Voters are already choosing VBM for the July 14 run-off including under the “disability” category.

The vote-by-mail (“VBM”) process is a lengthy and technical one. *See* Winn Decl. at ¶¶ 15-26. Voters are already requesting VBM and have been submitting applications since the

¹⁴ *See* CDC, *Older Adults*, Apr. 7, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>.

March 2 primary. There were 70,953 applications for VBM in the primary in Harris County.¹⁵ As of May 9, there were already **78,616** VBM applications for the run-off. Winn Decl. at ¶ 33. This number includes the significant number of voters, about 85% of total VBM requests to date, who request VBM on an annual basis, leaving 11,172 as new VBM requests. Winn Decl. at ¶ 33.

During the primary in Harris County 96.2% of the VBM applications were submitted under the 65+ category and only 0.8% were from the “disability” category. Winn Decl. at 34¶. The bulk of the requests came four-to-six weeks before the primary. *Id.* Although that time period for the postponed run-off has not yet arrived Harris County has already exceeded the total number of requests from the primary. In addition, an uptick in requests in early June is likely as campaigns begin encouraging voters to submit applications through their mail campaign programs. Winn Decl. at ¶ 34.

Of the 11,172 requests post-primary through May 9, 95.8% were in the 65+ age category while 2.9% were from the “disability” category. *Id.* Harris County was already seeing an uptick in “disability” VBM applications before the state trial court’s April 17 ruling with ratio doubling from the primary. Winn Decl. at ¶ 35. Since the trial court’s ruling and the resulting publicity, the ratio of “disability” VBM applications has increased to 8.6% of those additional applications submitted since the ruling. Winn Decl. at ¶ 35. In sum, the VBM requests are already well underway for the July 14 run-off, and voters are already trending toward requesting VBM under the “disability” category presumably because of the ongoing pandemic.

IV. Voters, Harris County, and its Election Administrator Need this Court’s Protection.

Voters need to know there will be safe ways to vote in the July and November elections.

¹⁵ Note that this number includes duplicates, bad addresses, etc. and is thus higher than the total ballots sent to voters, total returned, and ultimate total number of VBM ballots counted of 53,910.

Election administrators need to know clear rules for conducting elections during the pandemic as soon as possible so they may plan accordingly. This ambiguity created by the SOS COVID-19 Advisory and AG Paxton's mis-representations of the state court order and threats of criminal prosecution threaten to result in a patchwork of decisions by each county's elections officer, potentially risking the lives of tens of thousands of Texans, and threatening the integrity of the electoral process. This Court must grant the preliminary injunction so that local officials can conduct a safe election free from threats of criminal prosecution from AG Paxton.

A. Voters and election workers want options and safe voting conditions.

Voters want the option to VBM, and election workers want adequate social distancing which is only possible with a higher ratio of VBM. Prof. Robert M. Stein of Rice University as part of his ongoing work studying voter behavior has conducted polls of both Harris County likely voters and its election workers to ascertain their concerns about voting during the coronavirus pandemic. Stein Decl. at ¶ 2. His results demonstrate that every demographic of voters, whether by party, race, age, or gender, prefers having the option to VBM given the pandemic. Stein Decl. at ¶¶ 4, 6, 8-10, Ex. A. Overall, 69.3% of likely voters stated they were very or somewhat likely to VBM if available. Stein Decl. at App. 57-58. Of voters under 65 (i.e., those who must have a reason under Texas law), 66.6% are very or somewhat likely to VBM if available. Stein Decl. at ¶¶ 57-58. Stein concludes that between one-third and one-half of previous in-person voters are likely to choose VBM over in-person voting. Stein Decl. at ¶ 10.

Voting in-person with social distancing is also popular with voters, and many voters would prefer that over VBM. Stein Decl. at App. 57-58. But, effectively having social distancing at in-person locations depends on having more voters VBM so that the curve of voter congregation can

be spread out. Otherwise, especially in a county as large as Harris County, there will be simply too many bodies to move through too few spaces in too little time.

Prof. Stein also polled 1,800 of the approximate 6,000 Harris County poll workers. Barely half stated they would be likely to work under normal polling conditions, but more than 80% said they would be somewhat or very likely to work if conditions were modified to incorporate social distancing, personal protective equipment, sanitized gloves, or Plexiglas screens. Stein Decl. at ¶ 4, App. 51. The most popular option was social distancing, which again, will not be possible without shifting more voters to VBM. Winn Decl. at ¶¶ 41, 53; Stein Decl. at App. 51

B. Texas Attorney General Ken Paxton heavy-handed prosecutions and threats is a continuation of a long history of Texas voting rights violation.

There is in Texas an unfortunate history — “an avalanche of case studies of voting rights violations” that include “outright intimidation and violence against minority voters.”¹⁶ Indeed, when it comes to civic participation, Texas has rarely respected the words and spirit of the Constitution, from the “white primary” cases which finally ended in 1953 only after a twenty-five year series of Supreme Court decisions,¹⁷ the poll tax system which endured for nearly 100 years until 1966,¹⁸ to illiteracy tests and secret ballots.¹⁹ Even after the Voting Rights Act of 1965, Texas persisted with an “ingenuity and prevalence of discriminatory practices” against language minorities, namely Mexican-Americans, prompting the 1975 amendments to the Voting Rights Act. *See Briscoe v. Bell*, 432 U.S. 404, 405-06, 97 S. Ct. 2428, 2429 (1977). But Texans are a

¹⁶ Nathaniel Persily, *The Promise and Pitfalls of the New Voting Rights Act*, 117 YALE L.J. 174, 182-83 (2007).

¹⁷ *Terry v. Adams*, 345 U.S. 461 (1953) (striking down Fort Bend County’s Jaybird Association primary); *Smith v. Allwright*, 321 U.S. 649 (1944); *Grovey v. Townsend*, 295 U.S. 45 (1935); *Nixon v. Condon*, 286 U.S. 73 (1932); *Nixon v. Herndon*, 273 U.S. 536 (1927).

¹⁸ *U.S. v. Texas*, 252 F. Supp. 234, 238 (W.D. Tex. 1966) (striking down Texas’ poll tax because it abridged the right of all Texans to vote).

¹⁹ *See Veasey v. Abbott*, 830 F.3d 216, 231 (5th Cir. 2106) (en banc), *cert. denied*, ___ U.S. ___, 137 S. Ct. 612 (2017) (discussing Texas’s storied history of voter suppression).

tenacious bunch, not easily moved by the mere actions of the Courts and words of the Constitution. More decades of discrimination against, and intimidation of, minority voters followed.²⁰ Recently, these invidious efforts have re-surged.

Just last year this Court presided over a case concerning discriminatory acts by the State of Texas. On January 25, 2019, Texas' Secretary of State issued an Elections Advisory falsely claiming that 95,000 non-U.S. citizens registered to vote and that 58,000 voted in one or more elections.²¹ AG Paxton and Governor Abbott were so enthusiastic to promote threats of prosecution of immigrants, they beat the Whitley to the tweet, with Paxton tweeting "VOTER FRAUD ALERT" repeating the false claim, and promising to "prosecute crimes against the democratic process"²² Barely an hour later, the Governor Abbott amplified the message, retweeting it and thanking the Attorney General and Secretary of State "for uncovering and investigating this illegal vote registration. I support prosecution where appropriate."²³ Secretary

²⁰ See, e.g., *Houston Lawyers Ass'n v. Attorney General of Tex.*, 501 U.S. 419 111 S. Ct. 2376 (1991) (Texas' method of electing judges dilutes votes of Black and Latino citizens); *Bush v. Vera*, 517 U.S. 952, 116 S.Ct. 1941 (1996), (Texas continues to engage in discriminatory racial gerrymandering in violation of the Voting Rights Act); *League of Latin Am. Citizens v. Perry*, 548 U.S. 399, 126 S. Ct. 2594 (2006) (Texas dilutes votes of Hispanics in congressional redistricting); *Veasey II*, 830 F.3d at 231 (voter identification law has disparate impact upon African American and Hispanic voters).

²¹ *Secretary Whitley Issues Advisory of Voter Registration List Maintenance Activity*: "Integrity and efficiency of elections in Texas require accuracy of our state's voter rolls," Jan. 25, 2019, <https://www.sos.texas.gov/about/newsreleases/2019/012519.shtml>; Tex. Sec. of State, *Use of Non-U.S. Citizen Data obtained from the Department of Public Safety*, Elec. Advisory No. 2019-02, Jan. 25, 2019, <https://www.sos.texas.gov/elections/laws/advisory2019-02.shtml>.

²² Ken Paxton (@KenPaxtonTX), TWITTER (Jan. 25, 2019, 12:37 PM), <https://twitter.com/KenPaxtonTX/status/1088898595653386240>; Carlos Sanchez, *Former Texas Secretary of State Believes Inaccurate Voting List Should be Rescinded*, TEX. MONTHLY Jan. 31, 2019, <https://www.texasmonthly.com/politics/former-texas-secretary-of-state-believes-inaccurate-voting-list-should-be-rescinded/>; AG Paxton: *Texas Secretary of State's Office Discovers Nearly 95,000 People Identified by DPS as Non-U.S. Citizens are Registered to Vote in Texas*, Jan. 25, 2019, <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-texas-secretary-states-office-discovers-nearly-95000-people-identified-dps-non-us-citizens>.

²³ Greg Abbott (@GregAbbott_TX), TWITTER (Jan. 25, 2019, 1:57 P.M.), https://twitter.com/GregAbbott_TX/status/1088918898643271680.

of State Whitley did not get his tweet out to announce the upcoming voter roll purge until nearly an hour later — in a tweet that has since been deleted.²⁴

Under scrutiny, the Secretary’s claims quickly fell apart. Officials in Harris County immediately determined that the vast majority of those on the list²⁵ were, in fact, United States citizens.²⁶ At least one county could not find a single non-citizen on its state-issued list of alleged non-citizen criminal voters.²⁷ Indeed, this very Court²⁸ concluded “that there is no widespread voter fraud” and the State sent “ham-handed and threatening correspondence” to “perfectly legal naturalized Americans” that “exemplifies the power of government to strike fear and anxiety to intimidate the least powerful among us.”²⁹

Texas Attorney General Ken Paxton has a penchant for crying “voter fraud” and a habit of aggressively, and disproportionately, pursuing heavy-handed prosecutions against women and Hispanics, resulting in lengthy sentences for unknowing violations of the law. For example, the Attorney General’s Office charged Crystal Mason, who was on probation but thought she could vote; nevertheless, caught a five year sentence.³⁰ Paxton also prosecuted Rosa Maria Ortega in

²⁴ David Whitley (@TXsecofstate), TWITTER (Jan. 25, 2019, 2:49 P.M.), *previously at* <https://twitter.com/TXsecofstate/status/1088931929540431872>.

²⁵ The Secretary claimed Harris County accounted for more than 30,000 of the so-called non-citizen registrants. *See* n.22 *supra*.

²⁶ Liam Stack, *So Far, List Suspect Voters in Texas Turns Out to Be Mostly a List of U.S. Citizens*, NEW YORK TIMES, at A11, Jan. 29, 2019.

²⁷ Wallace, *supra*.

²⁸ *See Julieta Garibay et al. v. David Whitley, et al.*, No. SA-19-CA-159-FB (S.D. Tex.), and *MOVE Texas Civic Fund, Jolt Initiative, League of Women Voters of Texas, and Nivien Saleh v. David Whitley et al.*, No. SA-19-CA-171-FB (formerly No. 3:19-cv-00041) (S.D. Tex), consolidated with *Tex. League of United Latin Am. Citizens et al. v. David Whitley, et al.*, No. 5:19-cv-00074-FB, Doc. 39 (W.D. Tex.).

²⁹ *Tex. League of United Latin Am. Citizens v. Whitley*, No. 5:19-cv-00074-FB, 2019 WL 7938511 (W.D. Tex. 2019).

³⁰ *State of Texas v. Crystal Mason*, Cause No. D432-1485710-00, 432nd District Court, Tarrant County, Texas; Amrit Cheng, *Crystal Mason Thought She Had the Right to Vote. Texas Sentenced Her to Five Years in Prison for Trying*, ACLU, <https://www.aclu.org/issues/voting-rights/fighting-voter-suppression/crystal-mason-thought-she-had-right-vote-texas>.

2017 for two counts of illegal voting.³¹ Ortega, who had moved to the United States as a child, was a legal permanent resident, and thought she was able to vote, caught an eight year sentence.³² Over a thirteen-year period from 2005 to 2018 at least seventy-three cases were brought, 74% of which were against persons with Spanish surnames and 66% were against women.³³

Paxton's injection of partisan political rhetoric and illogical arguments deepens voter confusion and heightens the as-applied vagueness of the statute. The State argues that "... the voters most at risk of becoming seriously ill from COVID-19 — those who are over 65 or who have underlying health conditions — are already eligible to vote by mail." Doc. 39 at 34. Yet Paxton argues in his Memo that "physical condition" means an "illness or medical problem" and thus voters may not VBM under disability. Winn Decl. at ¶ 51, Ex. 5 at 2. Which is it? Can a voter under 65 with the underlying health condition of a lack of immunity to coronavirus VBM? If not, Texas law as applied by AG Paxton and his threats of prosecution violate voting and Equal Protection rights.

CONCLUSION

Recent events in both Texas and the nation have given minority voters a reason to fear exercising their franchise, which in turn makes it more likely they will be intimidated into not voting because of fear of prosecution or susceptibility to COVID-19.³⁴ Given the public

³¹ *State of Texas v. Rosa Maria Ortega*, Cause No. 1434155D, Criminal District Court No. 3, Tarrant County, Texas.

³² Sam Levine, *This Woman Got 8 Years In Prison For Illegal Voting. Texas Is Showing No Mercy*, HUFFPOST (Nov. 30, 2018), https://www.huffpost.com/entry/texas-voter-fraud-prison_n_5c01a9afe4b0a173c02305c1

³³ Robert Brischetto, *Texas' desperate search for fraudulent voters*, SAN ANTONIO EXPRESS NEWS, Mar. 9, 2019, <https://www.mysanantonio.com/opinion/commentary/article/Texas-desperate-search-for-fraudulent-voters-13674630.php>.

³⁴ Van R. Newkirk, II, *Voter Suppression is Warping Democracy*, THE ATLANTIC July 17, 2018 ("black and Hispanic voters are . . . more anxious and desperate, and that's at least in part because democratic norms . . . are crumbling in their hands. Blows to the hard-won victory of the [voting] franchise [impacted the 2016 Presidential election]. But black and Hispanic voters are worried just as much about the elections to come."). <https://www.theatlantic.com/politics/archive/2018/07/poll-prri-voter-suppression/565355/>; see also Alex Vandermaas-Peeler et al., *American Democracy in Crisis: the Challenges of Voter Knowledge, Participation, and*

statements by the Attorney General and his track record, voters reasonably fear that they shall face criminal sanction if they check the “disability” box on a VBM hoping to avoid a likelihood of harm to their health. “[T]he power of the government to strike fear and anxiety to intimidate the least powerful among us” has escalated to attacking elected officials. It is time for the Court to step in again.

Respectfully submitted,

Vince Ryan
State Bar No. 17489500
HARRIS COUNTY ATTORNEY
Scott Lemond
Assistant County Attorney
State Bar No. 00791097
Scott.Lemond@cao.hctx.net
1019 Congress, 15th Floor
Houston, TX 77002
Telephone: (713) 274-5167
Telecopier: (713) 755-8848

_____/s/ Susan Hays

SUSAN HAYS
State Bar No. 24002249
LAW OFFICE OF SUSAN HAYS, P.C.
P.O. Box 41647
Austin, Texas 78704
(214) 557-4819 (telephone)
(214) 432-8273 (facsimile)
hayslaw@me.com

Polarization, PRRI, July 17, 2018, <https://www.prri.org/research/American-democracy-in-crisis-voters-midterms-trump-election-2018/>.

APPENDIX

Exhibit A – Declaration of Michael Winn, Harris County Elections Administrator

Exhibit 1: Electoral Profile of Harris County, Texas - Estimated Harris County, Texas, Registered Voter (RV) Racial Demographic Totals & Percentages

Exhibit 2: Harris County Commissioner's Court, Order, Apr. 28, 2020; Harris County Clerk, COVID-19 Agenda Item, Apr. 20, 2020

Exhibit 3: Key Dates Calendar July Run-Off

Exhibit 4: Texas Secretary of State, Advisory 2020-14-COVID-19 (Coronavirus) Voting and Election Procedures, April 2, 2020 (SOS COVID-19 Advisory)

Exhibit 5: *AG Paxton Advises County Officials to Avoid Misleading the Public on Vote by Mail Laws*, May 1, 2020, available at <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-advises-county-officials-avoid-misleading-public-vote-mail-laws>; Ken Paxton, Memo to County Judges and County Election Officials, May 1, 2020.

Exhibit B – Declaration of Robert Stein, Professor of Political Science, Rice University

Exhibit 1: 2020 Harris County Voter and Poll Worker Survey

DECLARATION OF MICHAEL WINN,
HARRIS COUNTY ELECTIONS ADMINISTRATOR

“I declare under penalty of perjury that the foregoing is true and correct:

1. My name is Michael Winn and I am submitting this declaration to explain election processes, current thinking on best practices for holding a safe and fair election during the COVID-19 pandemic, and toward that end, ways to spread out the volume of voters so that social distancing will be possible. Attached to my declaration are the following Exhibits, which are true and correct copies:

Exhibit 1: Electoral Profile of Harris County-Estimated Harris County, TX, Racial Demographic Totals & Percentages

Exhibit 2: Harris County Commissioner’s Court, Order, Apr. 28, 2020; Harris County Clerk, COVID-19 Agenda Item, Apr. 20, 2020

Exhibit 3: Key Dates Calendar July Run-Off

Exhibit 4: Texas Secretary of State, Advisory 2020-14-COVID-19 (Coronavirus) Voting and Election Procedures, April 2, 2020 (SOS COVID-19 Advisory)

Exhibit 5: *AG Paxton Advises County Officials to Avoid Misleading the Public on Vote by Mail Laws*, May 1, 2020, available at <https://www.texasattorneygeneral.gov/news/-releases/ag-paxton-advises-county-officials-avoid-misleading-public-vote-mail-laws>; Ken Paxton, Memo to County Judges and County Election Officials, May 1, 2020.

Credentials

2. My undergraduate degree is in biology, and before I began working in election administration, I was a registered sanitarian. I have worked in elections administration for more than twenty years. I began my elections career in Bexar County in 1997. Then I moved to Travis County where I started as an election specialist and became the Assistant Elections Administrator in 2008. In 2010, I was promoted to Elections Administrator where I served until 2018. In 2018, I moved to Harris County to take to job as the Administrator of Elections. As a result, I have served in various levels of elections administration in the three of the largest counties in Texas assisting more than 27% of the Texas population to vote.

3. I hold a certificate as a Certified Election Administrator from the International Association of Government Officials and am very active in my profession serving in multiple elections administration organizations. I served as the President of the International Association of Clerks, Recorders, Election Officials and Treasurers (“IACREOT”) in 2015. I currently serve on the Board of Advisors to the Federal Elections Assistance Commission and have served in the following positions since my initial appointment in 2015: Secretary, Vice-President, and Board Chair.

4. I am also a member of the National Association of Elections Administrators (a.k.a. the Elections Center, <https://www.electioncenter.org>) where I also achieved certified election administrator status.

5. I serve on the bipartisan coalition committee of national elections administrators. We meet regularly to discuss challenges facing elections administration. I have been appointed on the International Association of Government Officials (“IAGO”) on the Government Coordinating Council of governments of federal, state, and local task force on election matters. I also serve as a representative on the Council of State Governments where we look at initiatives of overseas voting by mail.

6. On April 10, 2020, the Texas Secretary of State (“SOS”) formed a County Election Official Advisory Group including me and several county elections administrators throughout Texas to discuss the COVID-19 pandemic impact on elections administration, with bi-weekly meetings which began on Wednesday, April 15, 2020 and continue to this day.

7. When I am not actively working to plan and execute local elections, I study tactics and experiences from other jurisdictions to learn best practices and new innovations to conduct free and fair democratic elections. I am in regular, informal communications with my colleagues in other jurisdictions, including those that have already implemented population-wide VBM like Oregon,

Washington State, and Colorado. I have talked with those that just experienced widescale voting problems during the pandemic like the State of Wisconsin.

Logistics of Planning an Election in the Best of Times

8. Elections are very complex to plan and implement in a democracy. The system must allow for *every* qualified voter to have effective access to a ballot and to cast their votes securely and privately. The larger and more diverse a community the more difficult this becomes. The greater the expected voter turnout, such as for a presidential general election, the greater the challenge. Multiple mechanisms of voting are useful as they are more likely to accommodate voters whether VBM, in-person voting during early vote or on Election Day, curbside voting for the disabled, and other accommodations for voters with special needs.

9. Deep analysis of past voting data is extremely helpful toward planning a given election, although voter behavior can be unpredictable especially when implementing new election or business processes. The July run-off as a low turn-out election offers an lower-risk opportunity to gain data on how voters behave given the pandemic for planning the higher-stakes November election.

10. Harris County is the largest county in Texas and one of the largest in the United States with more than 4.7 million people and almost 2.4 million registered voters comprising approximately 14% of the registered voters in Texas.¹

11. I typically spend six to eight months to plan every general election, which includes (1) ascertaining the resources needed to conduct an election from equipment levels to staff funding, (2) itemizing the tasks to be completed before the election, (3) planning a timeline for deadlines and tasks, (4) reviewing past election data from similar and like elections to determine the amount and geographic distribution of likely turnout, and (5) a myriad of other issues that may arise.

¹ See data.census.gov; https://www.hctax.net/Voter/Voter_Demographic/VoterVisualization.

12. Budgeting is of course a crucial issue which is done through the county on an annual basis. While we have a special fund for unanticipated issues, using those funds requires commissioners court approval which takes some time. On April 28, 2020, the Harris County Commissioners Court request authorized the County Clerk's Office to spend up to twelve million dollars to prepare for the July 2020 and November 2020 elections in anticipation of expanded request from voters for mail in ballots and implementation of public health safety protocols for in-person voting in response to COVID-19. See Ex. 2. Elections costs may also be partially funded by grants and other gifts, which also require commissioners' court approval.

13. In sum, the mechanism of an election in any county but particularly in one as large and diverse as Harris County is a slow-moving one. Since March 18, our office has been in communication with the Secretary of State raising concerns about the pandemic and requesting guidance. Other than the April 2 COVID-19 advisory, the SOS has offered no guidance on the application of the definition of "disability" in the context of a pandemic. Much like a large ocean liner, we cannot turn on a dime and must look far ahead to steer the ship.

The Non-Partisan Nature of VBM

14. In the experience of the Harris County Clerk's office VBM campaigns were almost exclusively a Republican strategy in Harris County until fairly recently. Our office tracks the source of the ballot requests; it has always been fairly easy to tell who was sponsoring these campaigns because of the design of the application requests. In addition, until recently, the number of mail ballots that cast straight tickets were disproportionately Republican until just these last few elections. Even in 2018, when 55% of the straight-ticket ballots overall voted Democratic and only 44% voted Republican; 51% of the mail ballots were Republicans to 49% for the Democrats.

The Vote-by-Mail Process

15. The typical VBM process contains many, heavily regulated steps. *See* Ex. 3. Texas law limits those who may obtain a ballot to VBM to those who are 65 years old or older, outside the county during the election, “disabled” or ill, or in confinement and not yet convicted of a felony. TEX. ELEC. CODE § 82.001-.004. About sixty (60) days prior to an election, our office conducts logic and accuracy tests to confirm that the correct races are on the ballot, candidate names are spelled correctly, precinct assignment and many other matters to ensure accuracy in the ballots themselves. Voters can be on an “annual list” or can request a ballot by mail for individual elections. TEX. ELEC. CODE § 86.0015. Also, about sixty (60) days before each election, we start reviewing VBM request lists, checking them to ensure they are up to date.

16. Typically, annual requests are from military and overseas personnel, as well as some voters who are 65 or older. Others begin requesting ballots to VBM about 60 days prior to election. Often different campaigns send applications to their likely voters. Voters fill out the application, affix their own postage and rely on the U.S. Post Office (“USPO”) to deliver them.

17. In the March 2020 Primary election, approximately 35% of all voters were 65 years of age or older. In the March 2020 Republican Primary election, approximately 45.8% of all the Republican voters were 65 years of age or older. In the March 2020 Democratic Primary election, approximately 29.1% of all the Democratic voters were 65 years of age or older. In Harris County, the voter roll as of February 1, 2020 shows that 20% of the registered voters are 65 years of age or older.

18. Voting precincts with different district races have different “ballot styles,” and large counties like Harris can have dozens of ballot styles in a given election. We print different ballot styles on demand as requests come in. I have had the luxury of working in counties where VBM ballots are printed on demand but I still must order sufficient ballot printing paper ahead of time.

Some counties must determine the number of each ballot style needed ahead of time and order sufficient ballots printed for each style to accommodate their voting jurisdiction.

19. We then send ballots out to voters on a continuous basis. Typically, about forty-five (45) days before an election, we first prioritize sending ballots to military and overseas voters, then to others who requested VBM.

20. After voters mark their ballot they must place the ballot in a carrier envelope, seal it, and sign the outside. TEX. ELEC. CODE § 86.005. Voters may return their ballots by mail, common carrier, or in person. TEX. ELEC. CODE § 86.006(a). After voters send their ballot back into our office, a very labor-intensive process begins.

21. An early voting ballot board (“the Ballot Board”) processes the VBM ballots. TEX. ELEC. CODE § 87.001 *et seq.* The Ballot Board must review ballots that have been returned and verify signatures via its Signature Verification Committee. TEX. ELEC. CODE § 87.027. This is a manual ballot-by-ballot process is conducted on a continuous basis during the early voting period. The individuals who serve on the Ballot Board tend to have significant experience and, like most election workers, tend to be older.

22. The Ballot Board members are selected according to TEX. ELEC. CODE § 87.001 to 87.006. The signature verification committee is selected according to TEX. ELEC. CODE § 87.027.

23. The envelopes containing the ballots “may be delivered to the board between the end of the ninth day before the last day of the period for early voting by personal appearance and the closing of the polls on election day, or as soon after closing as practicable, at the time or times specified by the presiding judge of the board.” TEX. ELEC. CODE § 87.0222. The ballots cannot be tabulated and counted until Election Day. TEX. ELEC. CODE §87.023. The election results cannot be released until 7 p.m. the evening of the election. TEX. ELEC. CODE §61.015. Ballots that are postmarked by Election Day are still counted if they are actually received by the elections office by 5

p.m. the next business day. TEX. ELEC. CODE § 86.007. This law puts voters at the mercy of the efficiency of the postal service particularly since the USPO has stopped universally postmarking mail. TEX. ELEC. CODE §86.006 provides that voters may personally deliver their ballots “while the polls are open on Election Day,” but may only do so at the early vote clerk’s office (which for Harris County is downtown with no free parking) and must present identification compliant with the “Voter ID” law. TEX. ELEC. CODE §§ 63.0101, 86.006(a-1

24. Typically, the Ballot Board is not done with its work verifying signatures and opening ballots until after election night not only because of late-arriving ballots but also and more so because of the volume of ballots for a high-turnout election like a presidential year general election.

25. Unlike in person, a voter does not know in real time or in a timely enough basis to make corrections before their vote is lost if there is a problem with accepting them as a voter and processing of their vote or even if ballot has been received by the elections administration. VBM presents ballot tracking issues not present with in-person voting.

26. Processing VBMs may require more staff than in-person voting depending on the turn out and ratio of VBM to in-person voting. In a large turnout election, the sheer size of the volume of VBM requires more resources and staffing. For example, in 2018, there were 115,000 VBM processed in Harris County. In our 2020 election planning, we will shift staff resources accordingly in anticipation of a higher ratio of VBM.

Early Voting & In-Person Planning

27. Election planning also encompasses in-person early vote and Election Day voting. Approximately 120 to 90 days before the election, our office begins reviewing processes, securing polling locations, forecast staffing and other resources needs, signing up election workers, arranging to train those workers, and engaging in other planning. Our costs estimates are based on type of election from the general, to the primary, down to smaller political jurisdiction elections. For in-

person voting on Election Day, Harris County requires approximately 6,000 election workers for 750 locations.

28. If there were a change in our election business process within six months of an election, the process is disrupted. The size of the effect of the change and the size of the election proportionately increases that disruption. The closer to an election that a change occurs, the more difficult — if not impossible — it is to adjust our planning, training, staffing, and allocation of resources in order to conduct a well-run election that does not disenfranchise voters.

29. The 2020 election was already subject to great challenges because of the repeal of straight-ticket voting. In Harris County where the ballot is extremely lengthy due to the number of races, straight ticket voting has the effect of speeding up the in-person voting process. Without it, we were anticipating voters needing significantly more time to vote resulting in longer lines and a need for more voting equipment to spread the voters out. This legal change adds to the challenge of conducting a safe and fair election during the COVID-19 pandemic and increases the pressure to encourage voters to use VBM as that gives them ample time to fill out their ballot.

Pros and Cons of Different Solutions

VBM in a pandemic

30. The COVID-19 pandemic presents an extremely difficult problem to election administrations and many of the best solutions are hamstrung by Texas election law. We have no track record of data to analyze to plan and implement a fair election. Thus, we should not look at any one solution, VBM or others, as a magic solution to the problem of holding a safe and fair election in a pandemic. There is no single magic bullet. Rather, we should allow election administrators to draw from a variety of tools to accommodate the volume of voters. The more time we have for planning and voter education, the better. Any changes must accommodate all voters and

all counties. The pandemic will move faster than administrators can plan and implement; thus, we need flexibility and a full toolbox to address the challenge.

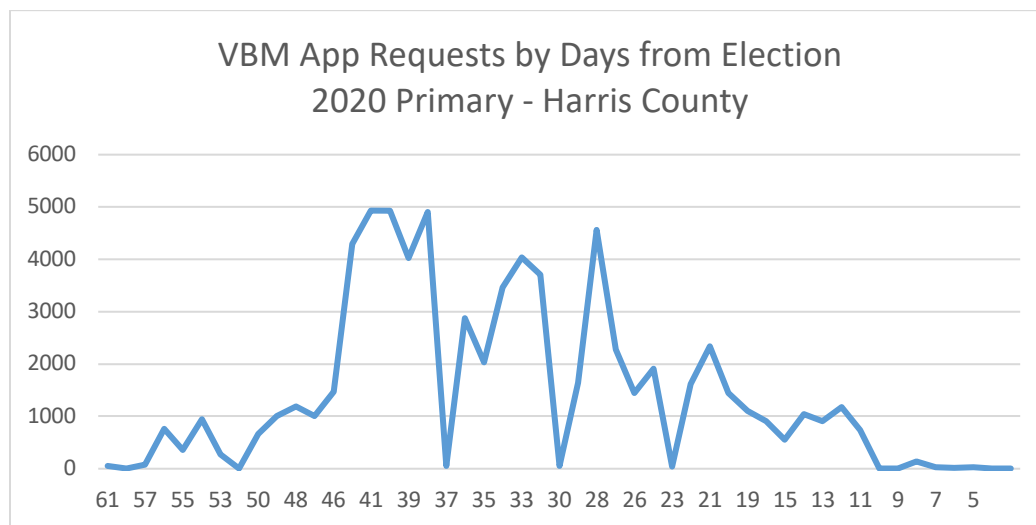
31. By increasing the ratio of VBM to in-person voting we can decrease the volume of early voting and Election Day voters. This will enable more social distancing in the polling places and thus a safer election for everyone.

32. With each proposed solution, such as all-VBM, you buy different problems. With an all-VBM election, the sheer size of the number of ballots and the labor- and time-consuming system of processing them to be counted may overwhelm. Nevertheless, we need to make sure make VBM is available to every registered voter because we do not and cannot know their individual circumstances during this pandemic. Perhaps VBM is the most accessible and safest way for an individual voter. Perhaps receiving mail or accessing postage is a challenge and voting in person would be a better way for that voter to vote. Having a variety of options is the best solution to accommodate the number and diversity of voters in Harris County.

33. I doubt if any jurisdiction as large as Harris County can accurately predict what 2.6 million voters will do. One of the primary barriers to expanding the ballot by mail program is the cost and administration of such a change. Currently, ballots are printed and administered in four languages, English, Spanish, Vietnamese, and Chinese — the most in Texas. Major elections in 2016 and 2018 experienced a heavy use of ballot by mail, with about 101,000 votes out of about 1,332,000 voters using this method in 2016 and about 98,000 out of 1,220,000 voters using this method in 2018. These are the two national elections which would give us the best indication of what to expect in 2020. If ballot by mail were permitted generally and promoted as a safe alternative, then it can be expected that this volume would increase more than tenfold in 2020 to approximately one million ballots. Voters are already requesting VBM and have been submitting applications since the March 3 primary. There were 70,953 applications for VBM in the primary in

Harris County.² As of May 9, there were already 78,616 VBM applications for the run-off. This number includes the significant number of voters, about 85% of total VBM requests to date, who request VBM on an annual basis, which began before the pandemic hit Texas, leaving 11,172 as new VBM requests.

34. During the primary 96.2% of the VBM applications were submitted under the 65+ category and only 0.8% were from the “disability” category. The bulk of the requests came four-to-six weeks before the primary, as illustrated in the following chart:



Although we have not yet hit that time period for the run-off election given the Governor’s March 20 order moving the run-off from May 26 to July 14 with in-person early voting set to begin on Monday, June 29, we have exceeded the total number of requests from the primary. Moreover, we can expect an uptick in requests in early to mid-June as campaigns begin encouraging voters to submit applications through their mail campaign programs.

35. Of the 11,172 requests post-primary through May 9, 95.8% were in the 65+ age category while 2.9% were from the “disability” category. We were already seeing an uptick in “disability” VBM applications before the state district court’s April 17 ruling with ratio doubling

² Note that this number includes duplicates, bad addresses, etc. and is thus higher than the total ballots sent, total returned, and ultimate total number of VBM ballots counted of 53,910.

from the primary. Since the state court's ruling and the resulting publicity, the ratio of "disability" VBM applications has increased to 8.6% of those additional applications submitted since that ruling. This ratio was calculated excluding the annual VBM requests that had been submitted during the primary season. In sum, the VBM requests are already well underway for the July 14 run-off, and voters are already trending toward requesting VBM under the "disability" category.

36. Expanding VBM participation from its current typical ratio in a general election of under 10% or the widely varying ratio in primary run-offs of 15% to 40% to a stable, higher percentage so that the in-person voters whether during early voting or election day are decreased to a safely manageable number is a necessary tool for providing a safe election. Typically, the higher the turn-out election the lower the ratio of VBM. This November, with a presidential election during turbulent times I expect a very high turnout, and thus, without changes to voter education and the full application of the broad definition of "disability" I would expect that typically low ratio and thus an unmanageable number of voters to process safely in person.

37. Sending every registered voter a VBM ballot without requiring a request for a VBM ballot offers an attractive solution. While this method may present some issues like returned mail ballots due to lack of updated voter addresses, it would be a highly effective way to minimize in-person contact. Moreover, doing so would help front-load the voting process and give elections administrators some indication before Election Day what volume of turnout has been shifted to VBM.

38. If we mail each voter a ballot, we likely run into issues with the USPO as ballots may be lost both going to and returning from voters. Reasonable options for returning a mail-in ballot by delivery should be utilized. Voters who do not receive a ballot or find voting in person easier than VBM for their individual reasons, should have an option of socially-distanced in-person voting.

39. Other Texas laws could be waived to soften the effects of the sudden shift in election procedures and the dangers of COVID-19, for example, the statutes that limit when the Ballot Board may begin processing ballots. *See e.g.*, TEX. ELEC. CODE § 87.0241. Coordination on when you can start scanning the ballots (not tabulating) would be helpful. Scanning means taking an image of the ballot to prepare for tabulation; tabulation means actually counting the ballots. Voters being able to effectively track their ballots, delaying certification deadline requirements because of increased mail, expanding voter registration deadlines, providing multiple formats for applications just to name a few issues that if addressed would improve Texas elections.

40. VBM does not eliminate public health concerns. I have been researching and consulting with epidemiologists and other public health experts. Workers processing ballots will still need personal protective equipment (“PPE”) and sanitation resources. With the April 28 commissioners court authorization, the County Clerk’s office in the process of procuring face shields, sanitizer stations, sneeze guards, stylus pens, and other PPE for July election. These items cost approximately \$185,000. That funding has also enabled my office to purchase additional equipment to speed the processing of ballots. In addition, our office is engaging in a robust voter outreach campaign, collaborate with Harris County Public Health officials and other stakeholders, spreading out voters in the voting room and in lines, limiting people in the voting room, sanitizing everything a voter touches, and holding virtual meetings and trainings.

In-person voting in a pandemic

41. I have begun collaborating with other elections administrators to develop methods of making in-person voting safer. For example, identifying polling locations where there is space to socially distance to ensure safety of poll workers and voters alike, not to mention poll watchers. Many of our current locations are cramped spaces in churches or nursing homes. Also, we must avoid vulnerable polling places such nursing homes, and Harris County historically uses many. For

the upcoming elections we need to shift to large spaces such as gymnasiums. The days of going to small community-based polling locations are off the table because of COVID-19 as they do not have the space required to spread out. By consolidating to larger locations we will enable appropriate social distancing. The location sourcing may have to forego the traditional politically-driven allocation of polling locations.

42. Curbside voting offers little assistance to the pandemic problem, although it is a necessary element to any election to accommodate those voters who cannot walk inside the polling place and did not vote by mail. With Harris County's voting system, each curbside voter takes at least 15 minutes because we must disconnect a unit from main system, take it to the voter, wait for the voter to vote, and then reconnect it. Because of the design of the Hart Intercivic e-Slate system Harris County currently uses, only certain, limited units can be used for curbside voting. Those same machines may be used for other voters, but the converse is not true. Our current machines would not enable full-time curbside voting; thus, wide-scale curbside voting is not an option for Harris County or perhaps any county given the extra time it takes. Because curbside voting is necessary for certain voters with disabilities, we may have to limit access to those specialized units to those voters.

43. Even then, necessary election processes will put voters and election workers at risk. For example, the handling and touching of equipment or of IDs or other paperwork handed by the voter to the poll worker pose a risk of transmission. When problems arise, there should be space for workers to discuss issues with voters at an appropriate distance.

44. More space, PPE, and sanitation resources are needed for disabled voters and for the devices that such voters use because these devices touch the body to enable them to vote.

45. Last minute changes to the process contributed to the mass confusion of the recent Wisconsin primary and public health dangers of voters congregating in long lines. In Wisconsin, at

least 67 residents contracted COVID-19 after working at polls or voting in person although it is possible that some of those residents had previous exposure.³ That example should urge the Court to make a quick decision so that I and other elections administrators can properly plan for the July primary run-off and the November general election.

46. I have deep concerns for the safety of election workers. Harris County's election workers' average age is approximately 68 years old—the very age bracket at highest risk of serious illness or fatalities with COVID-19. Of all Harris County election workers about two-thirds are over the age of 65. For in-person voting, workers must set up equipment before voters touch it, then again and after mass numbers of voters have touched the machines. Workers must pass identification cards and paperwork back and forth with voters.

47. The workers must be trained in election processes and now safety given COVID-19. While we are already working on virtual training not all our traditional workers will be able to participate. While a majority may have a computer, they may not be technically savvy enough to complete online training.

48. While recruiting younger, healthier poll workers may seem an attractive solution to the likelihood of traditional poll workers declining to participate due to fears for their health and safety, young people die of COVID-19 too. Moreover, recruiting new workers increases the need for more intensive training and leaves in-person voting locations with less experienced staff. Without increased VBM, we will not have the staff necessary to accommodate the volume of in-person voters.

³ David Wahlberg, *67 got COVID-19 after visiting polls in state's April 7 election but tie to voting unclear*, Wisc. State J., May 8, 2020, https://madison.com/wsj/news/local/health-med-fit/67-got-covid-19-after-visiting-polls-in-states-april-7-election-but-tie-to/article_49a42a7e-45d8-50cc-bd76-3a583842de39.html.

49. Early Voting has same issues as in-person but gives us more days to space out the voters. While Governor Abbott has just issued a proclamation⁴ increasing the time for in-person early voting by a week for the July 14 run-off, this increase does not help those voters who may be particularly susceptible to the pandemic and wish to VBM. Moreover, because July 3rd and 4th are federal holidays, early voting cannot be open those days. So the extended early voting will only add Monday, June 29 through, Thursday July 2, as well as Sunday July 5 which will be limited hours. In addition, staffing will have to be arranged for the extra days, and it remains to be seen whether enough workers will be willing and able. To conduct a successful and safe election and ensure that every eligible voter can vote, my office needs a variety of tools. Extended early voting helps, but it does not help those voters who have underlying health conditions or other reasons to avoid exposing themselves to the virus. Our polling places will still need to process at least 90,000 voters.

50. We also must prepare for contingencies such as an outbreak at a polling location or among election workers. Such contingency planning may raise issues with other legal constraints.

Timing of Legal Answers and Lack of Cooperation

51. Planning an election in a pandemic is stressful enough and threats from the Texas Attorney General make it unduly stressful. On May 1, the Attorney General sent a memo to County Judges and County Election Officials accompanied by a press release that singled out the Harris County Judge and County Clerk. See Ex. 5:

52. As noted, we must test processes before going into battle. While 90 to 120 days' notice of legal or process changes is survivable, I very much prefer 180 days given my experience in planning and implementing elections for the past 20 years. For the July 14, 2020, runoff election,

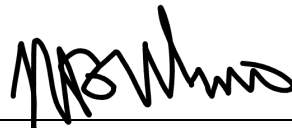
⁴ See Governor Abbott Issues Proclamation Regarding July 14 Early Voting for Special, Runoff Elections, May 11, 2020, <https://gov.texas.gov/news/post/governor-abbott-issues-proclamation-regarding-july-4th-early-voting-for-special-runoff-elections>.

because it is a lower turn out election it will be easier for my office to adjust. But for voters who have already submitted their VBM application there will be no way for the voters to effectively know if the rules have changed. If election administrators are given legal flexibility such as offering VBM to all voters for the July 14, 2020 runoff election, then we will have invaluable data for planning for the November 2020 General Election should the pandemic continue or resurge. Given the size of the November election and uncertainties of the ebb and flow of the COVID-19 pandemic in Texas, I also need to know soon what tactics will be legally available so that we can plan and muster resources for a safe and fair election.

53. Since the Election Code considers as a “disability” qualifying a voter to vote by mail (“VBM”) whether there is a “likelihood” that appearing in person to vote will “injur[e] the voter’s health.” *See* TEX. ELEC. CODE § 82.002. I believe all voters who qualify under this provision should be able to early vote by mail. This is a relief because much like flattening the curve of the pandemic’s spread, by increasing the ratio of VBM voters to in-person voters we can flatten curve of mass numbers of voters congregating to enable adequate social distancing or avoid contact all together. Consequently, as we increase the ratio of voters who VBM, we will be closer to providing a safe and fair election.

54. As a county and a state we cannot conduct safe and fair elections without working together. It’s time for everyone to cooperate and chip in to safeguard our election workers and our voters, and not force voters to choose between their health and their vote.

Executed in Harris County, State of Texas, on the 14th day of May, 2020.



Michael Winn

Exhibit 1: Electoral Profile of Harris County
Estimated Harris County, Texas, Racial Demographic Totals & Percentages

ELECTORAL PROFILE OF HARRIS COUNTY, TEXAS

**Table 1 – Estimated Harris County, Texas,
Registered Voter (RV) Racial Demographic
Totals & Percentages**

Demographic	RV	% of RV	RV <i>over</i> 65	% of RV <i>over</i> 65	RV <i>under</i> 65	% of RV <i>under</i> 65	% of RV <i>under</i> 65 for each group
Countywide	2,368,761	100%	438,960	100%	1,929,801	100%	81%
Anglo	1,108,021	47%	226,484	52%	881,537	46%	80%
Latino	545,117	23%	65,029	15%	480,088	25%	88%
African American	596,627	25%	121,953	28%	474,674	25%	80%
Asian American	118,996	5%	25,494	6%	93,502	5%	79%

*Estimated registered voter population for Latinos and Asians is based on surnamed queries conducted on the 2020 March Harris County Voter Roll using Census Spanish and Asian surname lists.

*Estimated registered voter population for Anglos and African Americans was calculated by multiplying the total non-surnamed registered voter population on the 2020 March Harris County Voter Roll by the Anglos Alone and African American percent of Harris County's Citizen Voting Age Population according to 2013-2017 American Community Survey.

*Estimated population over 65 years of age for Latinos and Asians is based on surnamed queries of the 2020 March Harris County Voter Roll

*Estimated registered voter population for Anglos and African Americans was calculated by multiplying the total non-surnamed 65 years and older registered voter population on the 2020 March Harris County Voter Roll by the Anglos Alone and African American percent of Harris County's Citizen Voting Age Population according to 2013-2017 American Community Survey.

Exhibit 2: Harris County Commissioner's Court, Order, Apr. 28, 2020; Harris County Clerk, COVID-19 Agenda Item, Apr. 20, 2020

ORDER OF COMMISSIONERS COURT

Authorizing the County Clerk to Spend Up to Twelve Million Dollars to Prepare for Elections

The Commissioners Court of Harris County, Texas, convened at a meeting of the Court, virtually, on April 28, 2020 with all members present.

A quorum was present. Among other business, the following was transacted:

AUTHORIZING THE COUNTY CLERK TO SPEND UP TO TWELVE MILLION DOLLARS TO PREPARE FOR THE JULY 2020 AND NOVEMBER 2020 ELECTIONS IN ANTICIPATION OF EXPANDED REQUESTS FROM VOTERS FOR MAIL IN BALLOTS AND IMPLEMENTATION OF PUBLIC HEALTH SAFETY PROTOCOLS FOR IN PERSON VOTING IN RESPONSE TO COVID-19 AND TO RETURN TO COMMISSIONERS COURT WITH A PLAN

Commissioner Ellis introduced an order and made a motion that the same be adopted. Commissioner Garcia seconded the motion. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Judge Lina Hidalgo	X	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	X	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	X	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Steve Radack	<input type="checkbox"/>	X	<input type="checkbox"/>
Comm. R. Jack Cagle	<input type="checkbox"/>	X	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

IT IS ORDERED that:

1. The County Clerk is authorized to spend up to Twelve Million Dollars to prepare for the July 2020 and November 2020 elections in anticipation of expanded requests from voters for mail in ballots and implementation of public health safety protocols for in person voting in response to COVID-19 and to return to Commissioners Court with a plan.
2. All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this Order.

Presented to Commissioners Court

April 28, 2020

Approve: E/G

April 20, 2020

*See Attached Order

COVID-19 AGENDA ITEM

Honorable Judge and Commissioners Court
1001 Preston, 9th Floor
Houston, Texas 77002

	YES	NO	ABSTAIN
Judge Lina Hidalgo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Steve Radack	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

RE: Cost Estimate for an Expanded Mail Ballot Program

Dear Court Members:

This letter is a request to report under COVID-19 agenda items on Tuesday, April 28, 2020 Commissioners Court on potential expansion for voting by mail due to COVID-19 including a review of budget requirements for such a program.

Respectfully submitted for your approval,



Diane Trautman
County Clerk, Harris County, Texas

DT/nt/ec

Attachment

Presented to Commissioners Court

April 28, 2020

Approve: E/G

*See Attached Order

Cost Estimate for an Expanded Mail Ballot Program

This is to report on pending litigation matters and potential expansion for voting by mail due to COVID-19 including a review of budget requirements for such a program. In preparation for the upcoming July and November elections, my team and I have held virtual meetings collaborating with community groups, the U.S. Elections Assistance Commission, the Bipartisan Policy Center, the Brennan Center for Justice, various Harris County stakeholders, Harris County Attorney's Office, Rice University, both political parties, and have joined a 20 county coalition that meets virtually with the Secretary of State every other week. We are looking at a variety of best election practices to ensure that we are prepared to run a safe, secure, and compliant election in July and November.

I. Legal Update

On March 20, 2020, the Texas Democratic Party filed a lawsuit in the District Court of Travis County asking for declaratory judgment that any eligible voter in the State of Texas should be able to request a mail ballot due the threat to the health of the voter if voting in person. On April 17, 2020, the Judge issued a temporary injunction allowing voters to request a mail ballot based on COVID-19 fears. Further, the [order](#) enjoins Travis County and the State of Texas from refusing any application for a ballot by mail from anyone due to the COVID-19 crisis and would likely also enjoin our office from refusing to process any mail ballot submitted by anyone based on the COVID crisis. On April 20, the State filed its appeal in the Austin Court of Appeals. On April 14, 2020, the Attorney General's Office issued an informal letter of legal advice concluding that "fear of contracting COVID-19 unaccompanied by a qualifying sickness or physical condition does not constitute a disability under the Election Code." See [Informal Letter of Legal Advice](#).

On April 6, 2020 the Texas Democratic Party filed a lawsuit in the United States District Court in San Antonio asking for declaratory judgement under the state claim. The federal pleading alleged potential counts of violation under the United States Constitution and the Voting Rights Act (VRA).

II. Cost Estimate for an Expanded Mail Ballot Program

The County Clerk's Office is preparing to scale up the mail program and now are providing the Court a cost estimate list of items in order to expand the vote by mail program for the July 14, 2020 primary runoff election with the early voting period from July 6-10.

Our perspective will be to look at conducting the election with regards to expanding the mail program based on processing approximately 2 million, 1.2 million, and 600,000 mail voters. We realize we will still continue to conduct in person voting, but an expanded mail program will increase our ballot cost from \$4.60 - \$7.73 per ballot cost. The expansion will require an additional 12 million dollars for 2 million voters, 8 million dollars for 1.2 million voters, and 3 million dollars for 700,000 voters. We will continue to work with the Office of Budget Management to confirm cost estimates.

In addition our office is engaged in and continues to:

- Engage in a robust Voter Outreach campaign
- Collaborate with Harris County Public Health officials and other stakeholders
- Encourage eligible voters to vote by mail
- Expand vote by mail infrastructure
- Request policy changes
- Provide multiple formats to request vote by mail
- Use larger polling locations
- Avoid using vulnerable polling places such as senior community centers
- Spread out voters in the voting room and in the lines
- Limit people in the voting room
- Sanitize everything a voter touches
- Hold virtual meetings and training
- Recruit poll workers who are not at risk

Our goal is to ensure a safe, secure, and accessible election and to do everything in the County Clerk's authority to accomplish this.

A handwritten signature in cursive script, reading "Diane Trautman". The signature is written in black ink and is positioned above the printed name and title.

Diane Trautman
County Clerk, Harris County, Texas

Exhibit 3: Key Dates Calendar July Run-Off

Exhibit 3: Key Dates Calendar July Run-Off

Dates	KEY DATES - JULY 14, 2020 PRIMARY RUNOFF ELECTIONS	
4/30/20	Deadline for parties to approve polling places	HC
5/15/20	Last day for the County Chair of each political party to appoint PJ/AJ for each PCT - <i>60th day prior to Runoff ED</i>	SOS
5/18/20	Deadline to Post & Publish L&A Notices for Primary Runoff Elections (<i>Notice of the public tests must be published at least 48 hours before the test begins. The notice must be posted on the county's website if the county maintains a website. For the Primary Elections, the CCO must notify the county chair of the test 48 hours prior to the test. The county chair must confirm receipt of the notice. [Secs. 127.093, 127.096, 129.022, 129.023].</i>)	HC
5/19/20	Mandatory ballot proofing process for Candidates and Parties ETC.	HC
5/20/19	Logic and Accuracy (L&A) Test for Primary Elections begins at 9:00 a.m., at ETC, . Harris County will post and publish notice for L&A (Secs. 127.093; 127.096; 129.022; 129.023)	HC
5/30/20	BBM Mailing begin - Deadline to mail ballots to military and overseas voters (<i>If the clerk cannot meet this 45th Day deadline, the clerk must notify Secretary of State within 24 hours</i>) (Sec. 86.004)- <i>45th day prior to Runoff ED</i>	SOS
6/5/20	Last day to finish the EV posters with locations	HC
6/12/20	If the SVC will start meeting on Wed, 6/24/20, recommended date EV clerks should post copy of the order calling for appointment of SVC. <i>32nd day prior to Runoff ED</i>	SOS
6/15/20	Last day to register to vote on the Primary Runoff Elections (Secs. 13.143, 15.025) - <i>30th day prior to Runoff ED</i>	SOS
6/16/20	EV deadline for PJ submissions - <i>29th day prior to Runoff ED</i>	HC
6/23/20	Last day for posting Notice of Primary Runoff Election on website & bulletin board (Secs. 4.003 & 172.1112). - <i>21st day prior to Runoff ED</i>	SOS
6/24/20	EV & ED training to begin	HC
6/24/20	Deadline for PJ emergency period <i>20th day prior to Runoff ED</i>	HC
6/29/20	Deadline to notify PJs of duty to hold election (Writ of Election) <i>15th day prior to Runoff ED</i>	SOS
6/29/20-7/10/20	Early Voting: 6/29-7/02: 7:00am-7:00pm, closed Friday, July 3rd - Saturday, July 4th, Sunday, July 5th: 10am-7pm; 7/06-7/10: 7:00am-7:00pm	SOS
7/2/20	Last day to accept hand-delivered applications by voter - <i>13th day prior to Runoff ED; due to July 4th Holiday</i>	SOS
7/2/20	Last day to apply for BBM (received, not postmarked) - <i>13th day prior to Runoff ED; due to July 4th Holiday</i>	SOS
7/2/20	First day EVBB may convene - <i>13th day prior to Runoff ED</i>	SOS
7/2/20	Deadline to post Central Count Station Plan - <i>at least 10 days before Runoff ED</i>	HC

Exhibit 3: Key Dates Calendar July Run-Off

7/10/20	Posting L&A Notice for ED. <i>The public notice of the test of automatic tabulating equipment must be published at least 48 hours before the test begins. Additionally, for a primary election, the CCO must notify the county chair of the test 48 hours prior to the test. The county chair is required to confirm receipt of the notice. (Sec. 127.096). - 4th day prior to Runoff ED.</i>	HC
7/14/20	PRIMARY RUNOFF ELECTION DAY	SOS
7/20/20	Last day to receive ballots from military and non-military voters casting ballots from outside of US - <i>6th day after ED</i>	SOS
7/20/20	Deadline to cure provisional ballots - <i>6th day after ED</i>	SOS
7/23/20	Deadline for county chair to canvass	

**Exhibit 4: Texas Secretary of State, Advisory 2020-14-COVID-19 (Coronavirus) Voting
and Election Procedures, April 2, 2020 (SOS COVID-19 Advisory)**

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.](#)

- [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

Exhibit 5: *AG Paxton Advises County Officials to Avoid Misleading the Public on Vote by Mail Laws*, May 1, 2020, available at <https://www.texasattorneygeneral.gov/news/-releases/ag-paxton-advises-county-officials-avoid-misleading-public-vote-mail-laws>; Ken Paxton, Memo to County Judges and County Election Officials, May 1, 2020



KEN PAXTON
ATTORNEY GENERAL of TEXAS

[\(/\)](#)

[Español \(/es/news/releases/procurador-paxton-proporciona-orientacion-funcionarios-de-condados-para-que-eviten-enganar-al\)](#)

[About \(/about-office\)](#)

[News \(/news\)](#)

[Opinions \(/attorney-general-opinions\)](#)

[Jobs \(/careers/job-listings\)](#)

[Contact Us \(/contact-us\)](#)



[HOME \(/\)](#) > [NEWS \(/NEWS\)](#) > [NEWS RELEASES \(/NEWS/RELEASES\)](#) >

AG PAXTON ADVISES COUNTY OFFICIALS TO AVOID MISLEADING THE PUBLIC ON VOTE BY MAIL LAWS

May 01, 2020 | Press Release

AG Paxton Advises County Officials to Avoid Misleading the Public on Vote by Mail Laws

SHARE THIS:

32

Attorney General Ken Paxton today issued a letter to Texas county judges and election officials, providing guidance that, under the Texas Election Code, Texans may not claim disability based on fears of contracting

COVID-19 and receive a ballot to vote by mail in upcoming elections. Several county officials throughout the State, including the Harris County judge and clerk, are misleading the public about their ability to vote by mail, telling citizens that in light of COVID-19, anyone can claim a “disability” that makes them eligible for ballot by mail.

Disability, as that term is used in the Texas Election Code’s provisions allowing voting by mail, must involve a “sickness or physical condition” that prevents a voter from voting in person on election day without a likelihood of needing personal assistance or of injuring the voter’s health. A voter ill with COVID-19 and who meets those requirements may apply for a ballot by mail. Fear of contracting COVID-19, however, is a normal emotional reaction to the current pandemic and does not amount to an actual disability that qualifies a voter to receive a ballot by mail.

“Mail ballots based on disability are specifically reserved for those who are legitimately ill and cannot vote in-person without assistance or jeopardizing their health. The integrity of our democratic election process must be maintained, and law established by our Legislature must be followed consistently,” said Attorney General Paxton. “My office will continue to defend the integrity of Texas’s election laws.”

The lawsuit recently filed in Travis County District Court does not change or suspend the disability requirements required by the Texas Legislature. Pursuant to Texas law, the District Court’s order is stayed and has no effect during the ongoing appeal.

Read a [copy of the letter here](https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Mail%20Ballot%20Guidance%20Letter_05012020.pdf)

(https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Mail%20Ballot%20Guidance%20Letter_05012020.pdf).

*Receive email updates from the
OAG Press Office:*

Your E

Submit

May 1, 2020

To: County Judges and County Election Officials

Re: Ballot by Mail Based on Disability

Due to misreporting and public confusion, the Texas Attorney General provides this guidance addressing whether a qualified voter, who wishes to avoid voting in-person because the voter fears contracting COVID-19, may claim a disability entitling the voter to receive a ballot by mail regardless of whether the voter would need personal assistance to vote in-person or risk injuring their health because of a sickness or physical condition. Based on the plain language of the relevant statutory text, fear of contracting COVID-19 unaccompanied by a qualifying sickness or physical condition does not constitute a disability under the Texas Election Code for purposes of receiving a ballot by mail. Accordingly, public officials shall not advise voters who lack a qualifying sickness or physical condition to vote by mail in response to COVID-19.

The Election Code establishes specific eligibility requirements to obtain a ballot by mail for early voting. TEX. ELEC. CODE §§ 82.001–.004. While any qualified voter is eligible to early vote by personal appearance, the Legislature has limited access to early voting by mail for individuals who meet specific qualifications. Section 82.002 of the Election Code, titled “Disability,” allows a qualified voter to early vote 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.” *See id.* § 82.002(a). Thus, a voter has a disability under this section and, therefore, is eligible to receive a ballot by mail if:

- (1) the voter has a sickness or physical condition; *and*
- (2) the sickness or physical condition prevents the voter from appearing in-person without:
 - (a) needing personal assistance; *or*
 - (b) injuring the voter’s health.

Only a qualifying sickness or physical condition satisfies the requirements of section 82.002. The Election Code does not define “sickness” or “physical condition.”¹ The

¹ Our objective in construing a statute is to give effect to the Legislature’s intent, which requires us to examine the statute’s plain language. *Leland v. Brandal*, 257 S.W.3d 204, 206 (Tex. 2008). We presume the Legislature included each word in the statute for a purpose and that words not included were purposefully omitted. *In re M.N.*, 262 S.W.3d 799, 802 (Tex. 2008). In determining the plain meaning of undefined words in a statute, we consult dictionary definitions. *Fort Worth Transp. Auth. v. Rodriguez*, 547 S.W.3d 830, 838 (Tex. 2018); *see* Tex. Att’y Gen. Op. KP-

common understanding of the term “sickness” is “the state of being ill” or “having a particular type of illness or disease.” NEW OXFORD AM. DICTIONARY 1623 (3d ed. 2010).² A person ill with COVID-19 would certainly qualify as having a sickness. However, a reasonable fear of contracting the virus is a normal emotional reaction to the current pandemic and does not, by itself, amount to a “sickness,” much less the type of sickness that qualifies a voter to receive a ballot by mail under Election Code section 82.002.

In addition to “sickness,” the Election Code allows voters to vote by mail if they have a “physical condition” that prevents them from appearing at the polling place without assistance or without injury to their health. TEX. ELEC. CODE § 82.002(a). “Physical” is defined as “of or relating to the body as opposed to the mind.” NEW OXFORD AM. DICTIONARY 1341 (3d ed. 2010). “Condition” is defined as “an illness or other medical problem.” *Id.* at 362. Combining the two words, a physical condition is an illness or medical problem relating to the body as opposed to the mind. To the extent that a fear of contracting COVID-19, without more, could be described as a condition, it would at most amount to an emotional condition and not a physical condition as required by the Election Code to vote by mail. Thus, under the specifications established by the Legislature in section 82.002 of the Election Code, an individual’s fear of contracting COVID-19 is not, by itself, sufficient to meet the definition of disability for purposes of eligibility to receive a ballot by mail.

To the extent third parties advise voters to apply for a ballot by mail for reasons not authorized by the Election Code, including fear of contracting COVID-19 without an accompanying qualifying disability, such activity could subject those third parties to criminal sanctions imposed by Election Code section 84.0041. TEX. ELEC. CODE § 84.0041 (providing that a person commits an offense if the person “intentionally causes false information to be provided on an application for ballot by mail”); *see also id.* § 276.013 (a person commits election fraud if the person knowingly or intentionally causes a ballot to be obtained under false pretenses, or a misleading statement to be provided on an application for ballot by mail). However, whether specific activity constitutes an offense under these provisions will depend upon the facts and circumstances of each individual case.

A lawsuit recently filed in Travis County District Court does not change or suspend these requirements. In that case, the District Court ordered the Travis County Clerk to accept mail ballot applications from voters who claim disability based on the COVID-19 pandemic, and to tabulate mail ballots received from those voters. The Texas Attorney General immediately appealed that order. Accordingly, pursuant to Texas law, the District Court’s order is stayed and has no effect during the appeal. Moreover, even if the order were effective, it would not apply to any county

0009 (2015) (concluding that to be able to vote by mail, a voter must satisfy the standard of disability established under section 82.002, and that standards of disability set in other unrelated statutes are not determinative).

² *See also* Tex. Att’y Gen. Op. KP-0149 (2017) (noting that a behavioral abnormality of a sexually violent predator sufficient to result in civil commitment qualifies as a sickness, understood as an “unsound condition” or disease of the mind, under section 82.002(a)).

clerk or election official outside of Travis County. Those officials must continue to follow Texas law, as described in this letter, concerning eligibility for voting by mail ballot.

Sincerely,

A handwritten signature in black ink that reads "Ken Paxton". The signature is fluid and cursive, with the first name "Ken" and last name "Paxton" clearly distinguishable.

KEN PAXTON
Attorney General of Texas

DECLARATION OF ROBERT STEIN,
PROFESSOR OF POLITICAL SCIENCE, RICE UNIVERSITY

“I declare under penalty of perjury that the foregoing is true and correct:

1. My name is Robert Stein. I am the Lena Gohman Fox Professor of Political Science, a fellow in urban politics at its Baker Institute for Public Policy, and the Faculty Director of its Center for Civil Leadership. The National Science Foundation, Pew Charitable Trusts and the Arnold Foundation have supported my research on voting and election administration. I was on the research staff of the Carter-Baker Commission on Federal Election Reform (2005) with specific responsibility for evaluating early voting and Election Day vote center practices. In 2012 I conducted research for the Presidential Commission on Election Administration on election administration during natural disasters and emergencies. The Harris County Clerk’s office has cooperated with this research by providing me and my colleagues with data for our research.

2. As part of continuing study of voting behavior, researchers at Rice University, including myself and Professors Claudia Acemyan, Philip Kortum, Elizabeth Vann and Dan Wallach surveyed Harris County voters and poll workers about polling place practices for the 2020 Presidential election during the current Coronavirus pandemic. On-line Interviews were completed by 1,800 poll workers between March 27 and May 4, 2020. During the same period, 1,000 live telephone interviews with registered voters in Harris County were completed. A true and correct copy of our report is attached to this declaration, titled “2020 Harris County Voter and Poll Worker Survey.”

3. Poll workers and voters were asked about their preferences respectively for eight and five actions that that might be taken at polling locations during the November 2020 Presidential election. Major findings from the study are as follows.

4. Poll workers in Harris County show little reticence to work the polls in November. This is true in spite of a continued threat from the Coronavirus. *However*, poll workers' willingness to work the polls comes with some conditions:

- a. More than three-fourths of all poll workers surveyed are somewhat or very likely to work at the polls in November when they are provided personal protective equipment, sanitized gloves, Plexiglas screens, distancing requirements and one person voting at a time.
- b. Nearly a third (29%) of poll workers were very unlikely to work at the polls if only normal polling operations were in place i.e., no social distancing and/or other protective measures taken.

5. Voters in Harris County are reluctant to vote in the November's election without steps taken to protect themselves and other voters from contracting COVID-19.

6. When asked, "If the Presidential election were being held this week, how likely would you be to vote in the election if you could cast your ballot by mail," 69% of Harris County voters responded very or somewhat more likely to vote in the November election by mail.

7. 80% of Harris County voters are very or somewhat more likely to vote at a polling place with social distancing.

8. To estimate how voters might or might not vote in the 2020 election I examined how these voters cast their ballot in the 2016 and 2018 elections against their preferences for voting in 2020. Among voters who said, they would be very likely to vote by mail in the 2020 Presidential Election, 52% voted in-person on or before Election Day in the 2018 election. In 2016, 51% had voted in-person on Election Day.

9. Among voters who voted in-person on or before Election Day in 2018, only two-thirds said they would be very likely to vote in-person at a polling location with social distancing in the 2020 Presidential election. This figure remains unchanged for persons who vote in-person in the 2016 election.

10. The take away from these findings is that between one-third and half of the voters who previously voted in-person in 2016 and 2018 are very likely to vote by mail in the 2020 election over in-person voting, either before or on Election Day with social distancing.

11. Voters' willingness to vote in the November 2020 election under the threat of the coronavirus is neither uniform across the electorate nor balanced among specific social, demographic and political groupings of the electorate.

12. More than 30% of Democrats compared to only 9% of Republicans are either somewhat or very unlikely to vote at a polling location with only social distancing.

13. A quarter of women compared to only 14% of men are unlikely to vote at a polling location with only social distancing to protect them from the spread of the coronavirus.

14. Among the most vulnerable to the coronavirus, persons over 65, 27% said they were somewhat or very unlikely to vote at a polling location with only social distancing required of voters and poll workers. Only 18% of voters under 65 years of age expressed a reluctance to vote at polling location with the same conditions.

15. The challenge confronting Harris County election officials is how to make voting in-person, either on or before Election Day, safe for voters and poll workers. Some ways to achieve this goal are suggested by the responses of voters and poll workers to our surveys. The option to vote by mail is one readily available to voters over the age of 65 and one the County Clerk can enhance by public outreach. For most voters under 65 in-person voting is the only option for

option for voting in 2020 under the State's interpretation of the vote-by-mail laws. Enhancing in-person early voting opportunities at locations where voters and poll workers have access to open spaces for maximum social distance, personal protective equipment for poll workers and gloves and Q-tips for voters to operate the e-slate voting machines are ways to secure voter confidence.

16. To accommodate all eligible voters, voters under 65 need the option to vote in a manner that makes them safe or some voters will not participate.

EXECUTED on 5/14, 2020.


Robert Stein

2020 Harris County Voter and Poll Worker Survey

1. Introduction

In collaboration with the Harris County Clerk and with funding from Rice University's COVID-19 Initiative, Professors Claudia Acemyan, Philip Kortum, Robert Stein, Elizabeth Vann and Dan Wallach from Rice University surveyed Harris County voters and poll workers about polling place practices for the 2020 Presidential election during the current Coronavirus pandemic.

On-line Interviews were completed by 1,800 poll workers between March 27 and May 4, 2020. During the same period, 1,000 live telephone interviews with registered voters in Harris County were completed. Details about the methodology used with each survey are included in appendices to this report.

This report details three sets of findings for each of these populations:

- Which polling place accommodations are most popular among all respondents?
- Which polling place accommodations most divide respondents along demographic and/or partisan lines?
- Which polling place accommodations are least preferred by the highest percentage of respondents?

2. Poll worker survey

There are approximately 6,000 active poll workers in Harris County. Two-thirds of these persons are women, 49% Democrats, 37% Republicans, and 14% are unaffiliated. Voters over 65 represent 41% of active poll workers in Harris County. Our sample (N=1,800) of poll workers closely matches the population of active poll workers on these three traits.

Poll workers were asked about their preferences for eight different actions that might be taken at polling locations during the November 2020 Presidential election. Specifically respondents were asked:

Given that Texas is practicing social distancing due to the coronavirus, assuming the presidential election were being held this week, how likely would you be to serve as a poll worker:

- at a polling station that had distancing requirements?
- at a drive-thru polling location where voters could vote from their cars?

- at a polling location where only one person can vote at a time?
- at a polling location where voters are given Q-tips or sanitized gloves for use on voting machines?
- at a polling location where voters are separated from poll workers by plexiglass screens?
- at a polling location which is outdoors?

Poll workers were also asked:

If the corona virus is still active at the time of the presidential election which polling location that I described to you would you MOST be willing to serve at?

- An outdoor polling location
- A polling location where voters are separated from poll workers by plexiglass screens
- A polling location where voters are given Q-tips or sanitized gloves for use on voting machines
- A polling location where only one person can vote at a time
- A drive-thru polling location where voters could vote from their car
- A polling station that had distancing requirements
- Where poll workers are provided personal protective equipment
- With standard or normal polling conditions

In this section, we examine which polling place conditions were rated most highly by all poll workers in the survey, which polling place conditions most divide poll workers across demographics and/or political party affiliation, and which polling place conditions are least favorable across all poll workers surveyed.

Which polling place accommodations are most popular among all poll workers?

Of the eight choices given, a majority of poll workers have preferences for the following polling conditions:

- Distance requirements
- Sanitized gloves
- Plexiglas screens
- Personal protective equipment

A majority of all poll workers as well as a majority within each demographic measure (partisanship, gender, and age) reported that they would be *very likely* to work under any of these four conditions. When it came to these accommodations, we found only

small differences among Democrats and Republicans, males and females and poll workers over and under the age of 65. In most instances, more than 60% of poll workers by party, gender and age responded they would be “very likely” to work at polling locations that employed any of these four safety accommodations.

Percent of poll workers who said they were **very likely**
to work with these accommodations in place:

	All poll workers	Dems	Reps	Female	Male	< 65	Over 65
Distancing requirements	66%	61%	70%	65%	66%	67%	63%
Sanitized gloves	61%	58%	63%	62%	60%	64%	57%
Plexiglas screens	61%	61%	60%	63%	57%	63%	58%
PPE	62%	58%	65%	63%	61%	66%	57%

When we expand our analysis to consider those poll workers who reported that they would be “very likely” or “somewhat likely” to work with one of these four accommodations in place, we find even greater support across all poll workers, and no significant differences within demographic categories. More than 80% of all poll workers surveyed responded that they would be “very likely” or “somewhat likely” to work under any of these four conditions. No category of political party, gender, or age fell below 80% on these responses.

Percent of poll workers who reported they were **very or somewhat likely**
to work with these accommodations in place:

	All poll workers	Dems	Reps	Female	Male	< 65	Over 65
Distancing requirements	86%	83%	90%	86%	87%	88%	85%
Sanitized gloves	84%	81%	86%	84%	84%	86%	81%
Plexiglas screens	86%	88%	83%	87%	83%	86%	85%
PPE	85%	84%	86%	86%	86%	88%	82%

In sum, the majority of poll workers agree that they would be most likely to work at polls that implemented distancing requirements, supplied voters with Q-tips or sanitized

gloves for use on voting machines, separated poll workers from voters using plexiglass screens, and/or provided PPE for poll workers.

Which polling place accommodations most divide poll workers along demographic and/or partisan lines?

Poll workers disagreed most strongly about drive-thru polling locations and working under normal polling circumstances, with no additional safety precautions in place. Democrats and poll workers under 65 were most comfortable with drive-thru voting services, while Republicans and men were more comfortable working under normal polling conditions with no safety precautions in place and less likely to prefer working at polling locations with drive-thru voting.

Percent of poll workers who said they were **very likely** to work under the following conditions:

	All poll workers	Dems	Reps	Female	Male	< 65	Over 65
Drive-thus	44%	47%	37%	26%	23%	50%	36%
Normal polling conditions	33%	21%	30%	29%	41%	36%	30%

When we combine “very likely” and “somewhat likely” responses, the demographic and partisan differences grow wider. Democrats preferred drive-thru polling at a rate nearly 20 points higher than that of Republicans. Conversely, Republicans were willing to work under normal polling circumstances with no safety precautions at a rate 30 points higher than that of Democrats. Women were also more likely (+8 pts) to feel comfortable working at drive-thru locations than men, and men were more likely than women (+13) to feel comfortable working under normal polling conditions. Finally, poll workers under 65 were more likely (+8) to feel comfortable working at a drive-thru location as well as under normal polling conditions (+16) than those over 65.

Percent of poll workers who reported that they were **very or somewhat likely** to work under the following conditions:

	All poll workers	Dems	Reps	Female	Male	< 65	Over 65
Drive-thus	69%	75%	57%	72%	64%	72%	64%
Normal polling conditions	52%	40%	70%	48%	35%	54%	38%

Which polling place accommodations were least desirable among all poll workers?

A minority of poll workers across demographics reported that they were “very likely” to work under the following polling place conditions: a drive-thru polling location where voters could vote from their car; an outdoor polling location; a polling place where voters could vote one at a time; or a polling location that operated under normal conditions, with no added safety precautions. Among these options, the highest rating within demographics was for drive-thru voting by poll workers under 65; 50% of them reported that they were “very likely” to work under those conditions. Fewer than 50% of all other demographics reported that they were “very likely” to work under each of these circumstances.

Although Republican poll workers did express significantly less reticence about working at the polls under ‘normal conditions’ than their Democratic counterparts, only 30% of Republicans said they would be willing to work at a poll location under ‘normal conditions.’

Percent of poll workers who said they were *very likely*
to work under the following conditions:

	All poll workers	Dems	Reps	Female	Male	< 65	Over 65
Drive-thru	44%	47%	37%	26%	23%	50%	36%
Normal polling conditions	33%	21%	30%	29%	41%	36%	30%
Outdoor polling location	41%	35%	49%	39%	45%	41%	40%
One person at a time	46%	27%	22%	27%	22%	26%	25%

When we expand our analysis to include “very likely” and “somewhat likely” responses, we find that a strong majority expressed a potential willingness to work under drive thru, outdoor, and one person at a time polling place arrangements. The exception here is working under normal polling conditions, which reaches only 52% even after we include “somewhat likely” responses.

Percent of poll workers who reported that they were **very or somewhat likely**
to work under the following conditions

	All poll workers	Dems	Reps	Female	Male	< 65	Over 65
Drive-thus	69%	75%	57%	72%	64%	72%	64%
Normal polling conditions	52%	40%	70%	48%	35%	54%	38%
Outdoor polling location	68%	64%	72%	67%	69%	69%	56%
One person at a time	72%	73%	80%	73%	67%	74%	69%

In sum, of all the options posited to poll workers in the survey, the possibility of working under normal polling conditions, with no additional safety precautions in place, was the least favorable option among all poll workers, receiving the lowest overall rating as well as consistently low ratings across all demographics and political party affiliations.

In addition to asking poll workers to rate possible polling place conditions along a scale of “very likely” to “very unlikely,” we also asked them to identify whether there were any polling conditions under which they were simply unwilling to serve. There was no majority opinion among poll workers on this question, but the modal response, given by 29% respondents, was “I would be willing to work at any of these types of polling locations.” More than a quarter of poll workers said they would not work at an outdoor polling location. No other polling location was identified as unacceptable by more than 16% of all poll workers or any subgroup of poll workers.

With few exceptions, poll workers’ unwillingness to work under any of the polling conditions described to them was uniform across gender, partisanship, and age i.e., persons over and under 65.

Percent of poll workers who reported that would not work at a polling location under the following conditions

	All	Dems	Reps	Female	Male	< 65	65+
Drive-thru	8.7%	7.1%	10.6%	9.0%	8.0%	7.0%	11.1%
Gloves/Q-Tips	10.4%	12.7%	8.5%	11.4%	8.5%	9.2%	12.2%
At any location	29.1%	27.4%	29.9%	29.8%	27.9%	31.5%	25.7%
One voter at a time	7.7%	6.6%	9.6%	6.5%	9.8%	7.7%	7.7%
Outdoor location	26.8%	27.9%	25.2%	27.4%	25.9%	28.4%	24.3%
Plexiglas screens	13.4%	14.1%	12.4%	11.9%	16.1%	12.2%	15.1%
PPE	1.8%	1.4%	2.1%	1.7%	2.0%	1.5%	2.2%
Social distancing	2.2%	2.9%	1.7%	2.3%	2.0%	2.6%	1.6%

Financial Need as a Factor in Poll Workers' Willingness to Work

Poll workers are paid between \$200 and \$250 per day to work at early and Election Day poll locations. With a total of 14 days of voting, a typical poll worker can earn as much as \$3,000 in each election¹. This amount of money is consequential to poll workers. Forty-two percent of respondents said that the money they are paid is very important to them and their family. Among Democrats, nearly 45% report the money they are paid is very important to them and their families. Only 35% of Republicans said the money they are paid is very important to them.

How important is the money you are paid as a poll worker to you and your family?

	All poll workers	Democratic	Republican
Very important	42.6%%	44.7%	35.2%
Somewhat important	29.8%	27.5%	32.8%
Somewhat unimportant	14.7%	14.5%	15.8%
Very unimportant	13.9%	13.3%	16.2%

¹ This assumes a 12 hour day of operation at a rate of \$20/hr for poll judges and \$17/hr for poll workers.

The money paid to work at the polls is consequential to most poll workers, regardless of partisan affiliation. More than two-thirds of all Democratic and Republican poll workers said the money they are paid is either “somewhat important” or “very important” to themselves and their families.

3. Voter Survey

As of January 2020, there are 2.3 million registered voters in Harris County. The table below details the proportion of registered voters by party affiliation, race/ethnicity, gender, and persons over the age of 65 for the population of registered voters and our survey sample of registered voters. In most instances, the survey sample closely matches the population of all registered voters. The survey sample slightly over-represents voters above the age of 65.

Harris County voters were asked, *If the presidential election were being held this week, how likely would you be to vote in the election if you could cast your vote:*

- At a regular polling station that had distancing requirements
- At a drive-thru polling location where you can vote from your car
- Using a mail-in ballot
- By dropping off your completed ballot at a secured location
- Cast your ballot on the internet

In this section, we examine which polling place conditions were rated most highly by all voters in the survey, which polling place conditions most divide voters across demographics and/or political party affiliation, and which polling place conditions are least favorable across all voters surveyed.

Which polling place accommodations were most popular among all surveyed voters?

A majority of all voters surveyed reported that they were “very likely” to vote at polling locations with social distancing, drive-thru voting from their car, as well as with mail-in ballots, and locations where they could drop off their ballot at a secured location.

Percent of Harris County voters who would be “very likely”
to vote using the following methods:

	All voters	Dems	Reps	unaffiliated	Male	Female	< 65	Over 65
Distancing requirements	61.8%	49.4%	80.5%	55%	66.7%	58.0%	64.1%	57.5%
Drive-thru	56.9%	58.6%	51.5%	64%	53.8%	59.4%	63.9%	43.9%
Mail-in	55.0%	67.5%	41.7%	50%	49.0%	59.7%	50.5%	63.3%
Dropping ballot at secure location	53.1%	57.2%	49.4%	50%	51.3%	54.3%	56.4%	47.0%
Internet	46.4%	52.0%	34.8%	56%	44.7%	47.7%	56.9%	27.1%

When we expand our analysis to include “very likely” and “somewhat likely” responses, we find that a majority of all voters surveyed would likely vote under any of these circumstances.

Looking at responses across demographics and party affiliation, we find that voters were most in agreement about possibilities of voting from their car in a drive-thru polling location and dropping off their ballot at a secure location in their neighborhood, although both of these options were less popular among voters over 65. A majority of all respondents said they would be “very likely” to vote under either of these conditions, and the differences in responses across demographics and political affiliations on these questions was not great.

Percent of Harris County voters who would be “very likely” or “somewhat likely”
to vote using the following methods:

	All voters	Dems	Reps	unaffiliated	Male	Female	< 65	Over 65
--	------------	------	------	--------------	------	--------	------	---------

Distancing requirements	79%	69%	90%	79%	85%	74%	82%	73%
Drive-thru	77%	77%	74%	80%	73%	79%	84%	63%
Mail-in	69%	82%	54%	67%	63%	74%	67%	74%
Dropping ballot at secure location	73%	78%	68%	72%	71%	75%	77%	67%
Internet	58%	66%	45%	65%	56%	60%	70%	37%

In their combined “very likely” and “somewhat likely responses,” voters were most in agreement across demographic and political party lines about possibilities of voting from their car in a drive-thru polling location, dropping off their ballot at a secure location in their neighborhood, and voting with social distancing requirements in place, although Republicans are far more willing to vote in person with distancing rules in place than any other group of voters.

Which polling place accommodations most divided voters along demographic and/or partisan lines?

Preferences for how to vote vary significantly among voters by partisanship, gender, and age. Social distancing, internet voting and vote by mail produce the widest differences in the preferences of Democratic and Republican voters. Less than half of Democratic voters said they would be “very likely” to vote at a polling location with social distancing, compared to 80% of Republicans who said they were “very likely” to vote at a polling location with social distancing. More than two-thirds of Democrats reported they were “very likely” to vote by mail compared to only 40% of Republican voters. Fifty-three percent of Democratic voters said they would be “very likely” to vote in 2020 if they could cast their ballot on the internet; only 35% of Republicans expressed the same preference.

Males are more willing to vote at locations with social distancing than females. Females are significantly more likely to prefer voting by mail. Both genders are evenly divided on whether they would be “very likely” to vote if they could cast their ballot on the internet or drop their ballot off at a secure location.

Voters over 65 are significantly more likely than voters under 65 to report they would be “very likely” to vote in 2020 if they could cast their ballot by mail. By a margin of 2:1, voters under 65 would prefer to cast their ballot on the internet over their older counterparts. Voters under 65 similarly prefer drive-thru voting, social distancing at

polling places, and dropping their ballot off at a secure location. We suspect that the apparent effect of age on voters' preferences for how to vote in 2020 is due to a slightly higher proportion of Republican than Democratic voters who are over 65.

The variation in voter preferences for how to cast their ballots in the 2020 election closely align with voters' partisanship. Republicans strongly prefer voting in-person at a polling location with social distancing protocols to voting by mail, on the internet at drive-thru locations, or dropping off their ballots at secure locations. Democrats strongly prefer voting by mail to all other modes of voting. These findings closely mirror national trends among partisan voters. The only non-traditional mode of voting preferred by seniors i.e., over 65 is voting by mail, although many of them may already have experience doing so. Other modes of voting, including voting at regular polling locations with social distancing, garner negligible to modest interest from voters over 65.

Which polling place accommodations were least desirable among all voters?

Voters are least interested in the possibility of internet voting. Less than half of all voters surveyed said that they would be "very likely" to vote online if they were asked to do so, and only 58% of all voters said they would be "very likely" or "somewhat likely" to vote online.

When we expand our analysis to include "very likely" and "somewhat likely" responses, a majority of voters surveyed reported that they would vote using any of the five options presented, although online voting remained the least popular option, with 58% saying they would be "very likely" or "somewhat likely" to vote online.

4. Conclusion

It was thought that elections can be held without many voters, but not without many poll workers. This seemed to be the lesson learned from the 2020 Wisconsin Presidential primary election when poll workers refused to work for fear of contracting the coronavirus. In Milwaukee County, election officials were able to open only five of 150 polling locations, forcing voters to choose to vote by mail or risk their health voting with others at congested polling places. To date 40 poll workers are reported to have contracted the coronavirus on Election Day 2020.

In spite of the Wisconsin experience, poll workers in Harris County show little reticence to work the polls in November. This is true in spite of a continued threat from the Coronavirus. Poll workers' willingness to work the polls, however, comes with some conditions. More than three-fourths of all poll workers surveyed are somewhat or very likely to work at the polls in November when they are provided personal protective

equipment, sanitized gloves, plexiglas screens, distancing requirements and one person voting at a time. Curiously, poll workers are not enthusiastic about other ways to protect themselves and voters from the coronavirus, including outdoor polling locations and drive-thru polling places. However, we might note here that the choices they did not like would involve major restructuring of voting process and systems with which they may be familiar and comfortable. Of course, this calculus might change drastically if the new CDC/FEMA models are correct and daily US deaths double to 3000/day in the coming months.

Also motivating poll workers to work the November 2020 election is the importance of the money they are paid for their services. A single poll worker can make up to \$3,000 during an election, a consequential amount of money for nearly two weeks of work under any circumstances.

Voters' willingness to vote in the November 2020 election under the threat of the coronavirus is neither uniform across the electorate nor balanced among specific social, demographic and political groupings of the electorate. This is most visible in the likelihood that voters will vote in the November election at locations with normal polling operations and social distancing. More than 30% of Democrats compared to only 9% of Republicans are either somewhat or very unlikely to vote at a polling location with only social distancing. Similarly, a quarter of women compared to only 14% of men are unlikely to vote at a polling location with only social distancing to protect them from the spread of the coronavirus. Finally, among the most vulnerable to the coronavirus, persons over 65, 27% said they were somewhat or very unlikely to vote at a polling location with only social distancing required of voters and poll workers. Only 18% of voters under 65 years of age expressed a reluctance to vote at the same polling location.

By significant majorities Democrats, women and voters over 65 strongly prefer mail-in voting, drive-thru voting, voting on the internet and secured drop off locations for completed ballots over regular voting at polling locations practicing social distance. Republicans, men and voters under 65, do not share these preferences. Moreover, implementation of these polling place practices are unlikely for the November election.

The challenge confronting Harris County election officials is how to make voting in-person, either on or before Election Day, safe for voters and poll workers. Some ways to achieve this goal are suggested by the responses of voters and poll workers to our surveys.

The option to vote by mail is one readily available to voters over the age of 65 and one the County Clerk can enhance by public outreach. For voters under 65 in-person voting

is the only option for voting in 2020. Enhancing in-person early voting opportunities at locations where voters and poll workers have access to open spaces for maximum social distance, personal protective equipment for poll workers and gloves and Q-tips for voters to operate the e-slate voting machines are ways to secure voter confidence.