

No. 03-20-00498-CV

**IN THE COURT OF APPEALS
THIRD JUDICIAL DISTRICT OF TEXAS – AUSTIN**

**GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS THE GOVERNOR OF TEXAS, AND
RUTH HUGHS, IN HER OFFICIAL CAPACITY AS THE SECRETARY OF STATE OF
TEXAS,**

Appellant,

v.

**THE ANTI-DEFAMATION LEAGUE AUSTIN, SOUTHWEST, AND TEXOMA REGIONS;
COMMON CAUSE TEXAS; AND ROBERT KNETSCH,**

Appellees.

*On Appeal from the 353rd Judicial District Court, Travis County
Cause No. D-1-GN-20-005550*

**APPELLEES' EMERGENCY MOTION FOR TEMPORARY ORDER
REINSTATING TEMPORARY INJUNCTION AND EXPEDITED
CONSIDERATION**

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To the Honorable Justices of the Third Court of Appeals:

Plaintiffs-Appellees The Anti-Defamation League Austin, Southwest, and Texoma Regions (“ADL”), Common Cause Texas, and Robert Knetsch (collectively, “Plaintiffs-Appellees” or “Appellees”)¹ file this emergency motion pursuant to Rule 29.3 for a temporary order reinstating the temporary injunction entered against Defendants-Appellants, and respectfully request this Court’s expedited consideration of Appellees’ motion under Rule 55.

The district court’s order enjoined Governor Abbott and Secretary of State Hughs from implementing or enforcing a limit on in-person ballot return locations for eligible absentee ballots. *See Ex. A*, Order dated October 15, 2020. On October 1, 2020, Governor Abbott issued a Proclamation (the “Proclamation”) limiting each county to a single in-person ballot return location prior to Election Day. The late-breaking Proclamation, issued 33 days before Election Day, dramatically changed the rules applicable to eligible absentee voters seeking to return their ballots in-person. Prior to the Proclamation, local election officials had the authority to receive ballots at any early voting clerk’s office in each county, and several counties, including Texas’ largest and most populated counties, instituted plans to do so. This was so uncontroversial that the Texas Attorney

¹ “Plaintiffs-Appellees” or “Appellees” include the members, supporters, and constituents of ADL and Common Cause Texas.

General conceded in a judicial admission *on September 30* that the Texas Election Code allows local election officials to designate more than one early voting ballot drop-off site in each county. *See Ex. B*, Pls.’ Pet. Ex. B at 5 (Attorney General’s Submission, *In re Hotze*, No. 20-0739, dated Sept. 30, 2020).

A day later, however, the Governor issued the Proclamation, purporting to exercise his authority under the Texas Disaster Act to “suspend” the applicable Texas Election Code provision and limit counties to just one in-person ballot return location, regardless of the size of the county or the number of registered voters. Despite Appellants’ claimed interest in ballot security and statewide uniformity, the evidentiary hearing that took place on October 13 demonstrated that these claimed interests have nothing to do with either the reigning health crisis or even the limit itself. Defendant-Appellants’ only witness, state election official Keith Ingram, conceded that counties operating multiple ballot return locations for the receipt of absentee ballots were in compliance with the statewide guidance on ballot collection and security procedures, and such guidance afforded adequate ballot security.

Accordingly, on October 15, 2020, the district court granted a temporary injunction. Specifically, the district court found that “the limitation to a single drop-off location for mail ballots would likely needlessly and unreasonably increase risks of exposure to COVID-19 infections, and needlessly and

unreasonably substantially burden potential voters’ constitutionally protected rights to vote, as a consequence of increased travel and delays, among other things.” In so doing, the district court determined that Plaintiffs-Appellees, who had asserted an *ultra vires* claim against Defendants as well as equal protection and disparate impact claims under the Texas Constitution, had stated a cause of action, established a probable right to relief, and would suffer irreparable harm in the absence of an injunction.

Defendants-Appellants immediately appealed the trial court’s temporary injunction order. Ex. C, Notice of Appeal. Because Appellants are the Governor of Texas and the Secretary of State, their appeal acts to supersede the temporary injunction during the appeal.

Without this Court’s reinstatement of the district court’s injunction, Appellants can continue to burden Appellees’ right to vote simply by *doing nothing*. Voters will continue to suffer irreparable harm from Appellants’ *ultra vires* conduct: they will have to travel longer distances and face longer wait times to return their ballots to the single ballot return location in their county; face greater risks to their health due to a global pandemic from voting in-person in a high turnout election; or prioritize their health but risk that their mail-in ballots are not returned in time to be counted.

With Election Day soon approaching, this Court should intervene to prevent

this irreparable harm to voters. At a minimum, this Court should order expedited briefing and consider the merits on an expedited schedule. In the absence of reinstatement of the injunction, Plaintiffs-Appellees respectfully request the following schedule:²

- Tuesday, October 20 by 12 noon CT: Reporter's record to be filed
- Tuesday, October 20 by 5 pm CT: Defendants-Appellants' opening brief to be filed
- Wednesday, October 21 by 12 noon CT: Plaintiffs-Appellee's opposition brief to be filed
- Wednesday, October 21 by 5 pm CT: Defendants-Appellants' reply brief to be filed

BACKGROUND

I. Facts

A. Relevant Provisions of the Texas Election Code

Eligibility to Vote By Mail. Under Texas law, a voter is eligible to vote by mail if he or she meets any of the following requirements: (1) the voter is 65 or older; (2) the voter has a sickness or physical condition that prevents the voter from appearing at the polls; (3) the voter will be outside his or her county of

² The following schedule is modeled off of that ordered by the 14th Court of Appeals in *Texas v. Hollins*, Case No. 14-20-00627-CV (Order filed Sept. 14, 2020).

residence for all of the Early Voting period and on Election Day; or (4) the voter is in jail, but otherwise eligible to vote. TEX. ELEC. CODE § 82.001-004. Earlier this year, the Texas Supreme Court ruled that “a voter can take into consideration aspects of his health and his health history that are physical conditions in deciding whether, under the circumstances, to apply to vote by mail because of disability.” *In re State*, 602 S.W.3d 549, 560 (Tex. 2020). Thus, while a lack of immunity to COVID-19 “is not itself a ‘physical condition’ that renders a voter eligible to vote by mail,” a voter with a physical condition that puts himself or herself at greater risk of contracting COVID-19 may vote by mail. *Id.*

Voter’s In Person Delivery Of Marked Ballots. The Election Code provides that voters eligible to vote by mail may deliver their marked ballots in person. Section 86.006(a-1) provides that eligible voters “may deliver a marked ballot in person to the early voting clerk’s office only while the polls are open on election day. A voter who delivers a marked ballot in person must present an acceptable form of identification described by Section 63.0101.” TEX. ELEC. CODE § 86.006(a-1).

Local Election Officials’ Authority. The Texas Election Code designates local election officials, as the officials “in charge of and responsible for the management and conduct of the election at the polling place of the election precinct that the judge serves.” *Id.* § 32.071. That authority extends to early

voting. *Id.* §§ 83.001(c), 83.002.

B. Texas Disaster Act and Governor’s Declaration of Disaster

Texas’ Disaster Act is derived from the Model Emergency Health Powers Act (“MEHPA”). Ex. E, Expert Report of Stephen Vladeck, ¶ 14 (“Vladeck Report”). While the MEHPA allows an executive to suspend statutes in the face of disaster, it also requires a relationship between an underlying emergency and the suspension. *Id.* The Texas Disaster Act’s suspension provision derives from the MEHPA and so any suspensions under that provision are also required to be related to the underlying emergency. *Id.*; *see also* TEX. GOV’T CODE § 418.016(a).

On March 13, 2020, Governor Abbott issued a disaster proclamation certifying that the COVID-19 pandemic posed an imminent threat of disaster under TEX. GOV’T CODE § 418.014.

C. Governor’s July 27, 2020 Proclamation

On July 27, 2020, Appellant Abbott issued an executive order extending the early voting period in light of the COVID-19 pandemic. Ex. D, Def. Appx 10-11. Specifically, to “ensure that elections proceed efficiently and safely when Texans go to the polls” this election cycle, Appellant Abbott suspended Section 85.001(a) of the Texas Election Code and extended in-person early voting to begin on October 13, 2020 instead of October 19, 2020.

In the same order, Appellant Abbott suspended the restriction in Texas

Election Code 86.006 that only allows in-person delivery of ballots on Election Day: “I further suspend Section 86.006(a-1) of the Texas Election Code, for any election ordered or authorized to occur on November 3, 2020, to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk’s office prior to and including on election day.”

In so doing, Appellant Abbott specifically found that this suspension was necessary because “strict compliance” with these provisions “would prevent, hinder, or delay necessary action in coping with the COVID-19 disaster[.]”

D. Early Voting Clerks Make Preparations To Receive Ballots At Satellite Offices, Consistent With State Guidance

On August 14, 2020, the Harris County Clerk announced that “[v]oters concerned with mail delays will be able to drop off their marked ballot in-person at any of the County’s eleven offices and annexes.”³ Consistent with the Governor’s July 27, 2020 Proclamation, eligible absentee voters could return their ballots to any of these drop-off locations “beginning whenever [voters] receive their ballots and continuing through Election Day, November 3, at 7:00 PM.”⁴ Harris County, in fact, had accepted mail-in ballots at its 11 annex locations on the day of the July

³ Statement: Harris County Clerk Chris Hollins on Expected USPS Delivery Delays in November (Aug. 14, 2020), available at: <https://bit.ly/2GqFAPD>.

⁴ Statement: Harris County Clerk Chris Hollins on Expected USPS Delivery Delays in November (Aug. 14, 2020), available at: <https://bit.ly/2GqFAPD>.

primary runoff election.

On August 26, 2020, an attorney in Defendant Hughs' Elections Division responded to a question regarding voters' return of their ballots to county clerk annex offices. Mr. Pinney's response stated:

Election Code 86.006(a-1) provides that the voter may hand-deliver a marked ballot by mail to the early voting clerk's office while the polls are open on election day, but they must present voter ID at the time that they do so. Under the Governor's July 27, 2020 proclamation, for this November election, that hand-delivery process is not limited to election day and may occur at any point after the voter receives and marks their ballot by mail.

Because this hand-delivery process can occur at the early voting clerk's office, this may include satellite offices of the early voting clerk.

Ex. B, Petition Ex. B at Attachment B, Email dated Aug. 26, 2020.

On September 30, 2020, the Attorney General advised the Texas Supreme Court in an official filing responding to a question from the Supreme Court as follows:

The Court asks whether, 'in light of the Governor's July 27, 2020 proclamation, . . . allowing a voter to deliver a marked mail ballot in person to any of [the] eleven annexes in Harris County violates Texas Election Code section 86.00[6](a-1).' The Government Code generally provides that the singular includes the plural. See Tex. Gov't Code § 311.012(b). Nothing in section 86.006(a-1) overcomes that presumption or otherwise indicates that 'office,' as used in section 86.006(a-1), does not include its plural, 'offices.' ***Accordingly, the Secretary of State has advised local officials that the Legislature***

has permitted ballots to be returned to any early-voting clerk office.”

Ex. B, Petition Ex. B at 5, Texas AG Submission dated Sept. 30, 2020 (emphasis added).

E. Governor’s October 1, 2020 Proclamation

On October 1, 2020, after counties had already started accepting absentee ballots from voters at ballot return locations, Defendant-Appellant Abbott issued another Proclamation, which prohibited county election officials from operating more than one early voting drop-off location in each county prior to the Election Day. Ex. D, Def. App’x 017-019. The Proclamation provided:

I further suspend Section 86.006(a-1) of the Texas Election Code, for any election ordered or authorized to occur on November 3, 2020, to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk’s office prior to and including on election day; provided, however, that beginning on October 2, 2020, this suspension applies only when:

(1) the voter delivers the marked mail ballot at a single early voting clerk’s office location that is publicly designated by the early voting clerk for the return of marked mail ballots under Section 86.006(a-1) and this suspension; and

(2) the early voting clerk allows poll watchers the opportunity to observe any activity conducted at the early voting clerk’s office location related to the in-person delivery of a marked mail ballot pursuant to Section 86.006(a-1) and this suspension, including the presentation of an acceptable form of identification described by Section 63.0101 of the Election Code by the voter.

According to Appellant Abbott, this measure was necessary to “add ballot security protocols.” Appellant also claimed to have authority to issue the Proclamation to “control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area” under Texas Government Code § 418.018(c).

II. Trial Court’s Evidentiary Hearing and Ruling

Plaintiffs-Appellees filed their original petition and application for temporary injunctive relief on October 5, 2020. Appellant Abbot filed a plea to the jurisdiction and opposition on October 6, 2020.

On October 12, 2020, Plaintiffs-Appellees amended their original petition and application to name Appellant Hughs as an additional defendant. At the October 13, 2020 temporary injunction hearing, Appellant Hughs agreed to waive service of the amended petition and to appear at the hearing through the Attorney General’s Office. Appellant Hughs reserved her right to file a plea to jurisdiction, and filed said plea on October 14, 2020, following the temporary injunction hearing.

At the October 13, 2020 evidentiary hearing, the district court heard testimony from ten live witnesses, nine of which were presented by Appellees.

Representatives from Appellees ADL and Common Cause Texas testified as to the significant impairment to voter education and voter mobilization efforts—

both of which are core to their organizational mission—caused by the October 1 Proclamation. Appellee Knetsch, Common Cause member Joanne Richards, and individual voter Randy Smith each testified as to the burden placed on their individual right to vote as a result of the limit on drop-off locations to one per county. More specifically, these witnesses discussed their well-founded fear of COVID-19 transmission at in-person polling locations given their age and (with respect to witnesses Knetsch and Smith) underlying health conditions, both of which make them more susceptible to the risk of severe infection, and both of which make them eligible to vote by mail. They also testified as to their inability to travel long distances or wait in long lines as a result of their age and health.

The Court also heard and considered evidence from four different experts at the hearing. Dr. Daniel Chatman, an expert in travel behavior, conducted a travel burden and queuing analysis to assess the effects of limiting drop-off locations for mail-in ballots to one per county. *See* Ex. F, Plaintiffs' Exh. 2, Declaration of Dr. Daniel G. Chatman. As Dr. Chatman explained, as a result of limiting drop-off locations to one per county, 13.5 percent of eligible mail-in voters would experience a travel burden of more than 70 minutes roundtrip to deliver their ballot. *Id.* at ¶ 50. These burdened voters are concentrated in more populated counties, and in particular, Harris County, where 38% of eligible vote by mail voters would suffer a travel burden of 70 minutes or more. *Id.* at ¶ 51.

Dr. Chatman further explained that 89 percent of eligible absentee voters without access to a vehicle will have to travel more than 90 minutes roundtrip to deliver their ballot. *Id.* at ¶ 7. This is significant because individuals 65 or older and individuals with a disability—both of which qualify to vote by mail in Texas—are respectively 2.8 and 3.75 times more likely to lack vehicle access than those that are younger than 65 and without a disability. *Id.* at ¶ 49. Thus, the eligible mail-in voting population is particularly burdened by the one-drop-off-location limit because of their disproportionate lack of access to a vehicle.

Finally, Dr. Chatman testified that tens of thousands of eligible vote by mail voters may forgo casting their ballots at all due to the long vehicle lines and wait times on Election Day, when demand for drop-off locations is at its highest.⁵

Mr. Edgardo Cortés, the former chief election official for the state of Virginia, testified that mail-in voting using drop-off locations is safe and secure, particularly in Texas—the only state to require mail-in voters to show photo ID if

⁵ In Dr. Chatman’s declaration, he opined on his analysis of queues and wait times resulting from a limit of one drop box per county on Election Day. Following the completion of his analysis, the State in parallel federal litigation and then at the October 13 temporary injunction hearing represented that it did not interpret the Proclamation to limit drop-off locations on Election Day and that counties could provide multiple drop-off locations on Election Day. Dr. Chatman testified that he reanalyzed the data based on this representation and that, while queues and wait times would be reduced as the result of additional locations being open, there would nevertheless remain wait times of 30 to 40 hours at drop-off locations in many counties, including Harris County. As Dr. Chatman explained, the availability of additional locations on Election Day would drive up demand for Election Day use of drop-off locations because voters would seek to limit their travel burden by dropping off their ballot at a closer location on Election Day.

they choose to drop-off their ballot at one of the designated drop-off locations. *See* Ex. G, Plaintiffs' Exh. 4 at ¶¶ 7, 13. Having reviewed the plans for additional ballot drop-off locations developed by Travis and Harris Counties prior to Appellant Abbott's Proclamation prohibiting the availability of those additional locations, Mr. Cortés found that those plans provided more than adequate ballot security measures and that there was no election security related basis for limiting counties to one drop-off location. *Id.* at ¶¶ 11-12, 16. Mr. Cortés concluded that because demand for mail-in ballot drop-off locations is particularly high this year because of the pandemic and concerns regarding the reliability of the U.S. Postal Service, the limit on drop-off locations would unreasonably burden both voters and election administrators. *Id.* at ¶¶ 8-10, 14-15.

Dr. Krutika Kuppalli, an infectious disease expert, testified to the current state of the COVID-19 crisis in Texas: as of the date of Dr. Kuppalli's report, nearly 800,000 confirmed cases and more than 500 deaths. Ex. H, Plaintiffs' Exh. 7 at ¶ 15. As Dr. Kuppalli testified, limiting each county to one drop-off location for mail-in ballots will result in longer lines and greater congestion at polling locations, both of which will exacerbate the COVID-19 crisis, and likely lead to suppressed voter turnout because of transmission fears. *Id.* at ¶¶ 22-23, 25.

Prof. Stephen Vladeck, an emergency powers expert, testified that Appellant Abbott's October 1 Proclamation would be an unprecedented interpretation of

similarly worded state health emergency powers statutes that is out of sync with how experts interpret MEHPA or how states interpret their own similarly worded health emergency statutes because “ballot security” is not a basis that has been used by others to justify invocation of state emergency health powers statutes, and in any event, restrictions on the number of drop-off ballot locations has no connection with addressing any current health concern. Ex. E, Plaintiffs’ Exh. 10 at ¶¶ 15-22.

Defendants-Appellants’ sole witness, Texas Secretary of State Elections Division Director Keith Ingram, testified that the Secretary of State had previously certified each of the contemplated additional drop-off locations prior to the October 1 Proclamation’s prohibition on these locations, and that counties operating multiple ballot return locations were in compliance with the statewide guidance on ballot collection and security procedures. As Mr. Ingram testified, even under the October 1 Proclamation, the counties are permitted to use these same additional drop-off locations on Election Day and therefore will already be receiving ballots in connection with the November 3 Election.

On October 15, 2020, the district court issued its order. The Order denied Defendants’ pleas to the jurisdiction and granted Plaintiffs-Appellees’ Application for Temporary Injunction. The district court enjoined Defendants from implementing or enforcing the following paragraph on page 3 of the October 1,

2020 Proclamation:

“(1) the voter delivers the marked mail ballot at a single early voting clerk’s office location that is publicly designated by the early voting clerk for the return of marked mail ballots under Section 88.006(a-1) and this suspension,”

The district court found that the Proclamation’s limit to a single drop-off location “would likely needlessly and unreasonably increase risks of exposure to COVID-19 infections, and needlessly and unreasonably substantially burden potential voters’ constitutionally protected rights to vote, as a consequence of increased travel and delays, among other things. Order at 2.

Appellants immediately appealed. Appellants’ notice of appeal superseded the temporary injunction under Texas Civil Practice and Remedies Code Section 6.001(b) and Texas Rules of Appellate Procedure 24.2(a)(3), 29.1(b).

ARGUMENT

I. This Court Has Authority To Reinstate A Temporary Injunction

This Court has inherent authority to reinstate the temporary injunction ordered by the district court to preserve the parties’ rights until disposition of the appeal under Texas Rule of Appellate Procedure 29.3. *See Texas Gen. Land Office v. City of Houston*, No. 03-20-00376-CV, 2020 WL 4726695, at *2 (Tex. App. July 31, 2020) (exercising inherent authority under Rule 29.3 to reinstate the temporary injunction to preserve the parties’ rights until disposition of the appeal); *State v. Texas Democratic Party*, No. 14-20-00358-CV, 2020 WL 3022949, at *1

(Tex. App. May 14, 2020) (reinstating temporary injunction ordered by the district court under Rule 29.3 due to the irreparable harm that plaintiffs would face).

It is irrelevant that Appellants' Notice of Appeal superseded the temporary injunction. Indeed, in *Texas Education Agency v. Houston Independent School District*, this Court concluded that when, as here, a trial court has already found that the party seeking relief under TRAP 29.3 has made a showing to a probable right of recovery and that absent relief it would suffer irreparable harm, the use of the Court's inherent powers to order that the trial court's temporary injunction remained in effect is warranted. No. 03-20-00025-CV, 2020 WL 1966314, at *5. Otherwise, "[a]bsent an appellate court's inherent power to make temporary orders to preserve the parties' rights until disposition of the appeal, the application of Rule 24.2(a)(3) would prevent a party from ever meaningfully challenging acts by the executive branch that the party alleges to be both unlawful and reviewable by courts and that it further alleges will cause it irreparable harm." *Id.*

As further discussed below, reinstatement of the temporary injunction is necessary to prevent irreparable harm to Plaintiffs-Appellees. Without reinstatement of the injunction, Plaintiffs-Appellees will not be able to take advantage of the relief ordered by the district court: access to multiple in-person ballot return locations prior to Election Day.

II. Plaintiffs-Appellees Will Suffer Irreparable Harm If This Court Declines To Reinstate The Injunction

Appellees request that the Court reinstate the temporary injunction against the limit on ballot return locations. This will prevent further harm to voters, who have already been deprived of a vital and necessary option for voting since Governor Abbott issued the Proclamation on October 1. With the general election quickly approaching on November 3, voters cannot wait for this Court's resolution of the appeal for relief.

A. The District Court Found That Plaintiffs-Appellees Have a Cause of Action and A Probable Right to Relief

The trial court found that Appellees have a cause of action against Appellants and a probable right to relief. Appellee's amended petition stated three claims against Appellants: an *ultra vires* claim alleging that the Proclamation exceeded the Governor's authority under the Disaster Act; an equal protection claim under the Texas Constitution; and an arbitrary disenfranchisement claim under the Texas Constitution. Here, the district court's order stated that "the limit to a single drop-off location for mail ballots would likely needlessly and unreasonably increase risks of exposure to COVID-19 infections, and needlessly and unreasonably substantially burden potential voters' constitutionally protected rights to vote, as a consequence of increased travel and delays, among other things." Accordingly, in granting the injunction, the district court found that

Appellees had a probable right to relief in all of their claims.

1. The District Court Properly Rejected Appellants' Pleas to the Jurisdiction

In finding that Appellees have a cause of action, the district court rejected Defendants' pleas to the jurisdiction. Appellants argued that Appellees did not suffer any injury-in-fact from the Proclamation because they had other means of voting. But Appellees need not demonstrate that it is impossible for them to vote as a result of the Proclamation. *See Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981) ("the existence of alternative means of exercising one's fundamental rights 'does not eliminate or render harmless the potential continuing constitutional violation of a fundamental right.'"). Appellees needed only to demonstrate that they were personally aggrieved by the Proclamation, and they did so: their testimony at the evidentiary hearing established that they faced greater burdens on their right to vote as a result of the Proclamation.

Appellee Knetsch and Common Cause Texas member Joanne Richards each testified that their age made them eligible to vote by mail and that they faced a greater risk of adverse health outcomes from COVID-19, which made them fear voting in-person. Witness Randy Smith testified that, as a cancer patient, he particularly feared the health risk from voting in-person, particularly because polling places are exempt from statewide mask mandates. The witnesses also

noted that their age and health conditions made it difficult for them to stand in long lines, whether at the single ballot return locations in their counties or for in-person voting.⁶

The district court also rejected Appellants' claim that they were immune from suit. Appellants were properly named as defendants because Appellees adequately alleged an *ultra vires* claim. "[A]n action to determine or protect a private party's rights against a state official who has acted without legal or statutory authority is not a suit against the State that sovereign immunity bars." *City of El Paso v. Heinrich*, 284 S.W.3d 366, 368 (Tex. 2009) (finding sovereign immunity "does not preclude prospective injunctive remedies in official-capacity suits against government actors who violate statutory or constitutional provisions."). Furthermore, as the chief election officer of Texas, Appellee Hughs is a proper party to enjoin with respect to enforcement of the Proclamation. *See Texas LULAC*, Order at Order at 29-30; *see also OCA-Greater Houston v. Texas*, 867 F.3d at 613 ("[A] challenge to Texas voting law is, without question, fairly traceable to and redressable by the State itself and its Secretary of State").

⁶ Appellants also attacked the standing of the organizational plaintiffs. Appellees established, however, that they properly represented their members, supporters, and constituents. It is not necessary to discuss the standing of the organizational plaintiffs here because in Texas, "only one plaintiff with standing is required." *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 6 (Tex. 2011).

2. Appellees are Likely To Succeed On Their Ultra Vires Claim

In granting a temporary injunction, the district court found that Appellees are likely to succeed on their *ultra vires* claim. Under the *ultra vires* doctrine, “a suit must not complain of a government officer’s exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.” *Turner v. Robinson*, 534 S.W.3d 115, 126 (Tex. App. 2017). Appellees’ Petition clearly alleged, and evidence at the hearing established, that Defendants exceeded their authority under the Disaster Act when limiting ballot return locations.

Appellant Abbott does not have limitless authority to suspend statutes in the midst of a declared disaster. As testified to by Appellees’ expert, Professor Stephen Vladeck, the suspension provision of the Texas Disaster Act is modeled off the suspension provision from the Model Emergency Health Powers Act, and that provision “requires a relationship between the underlying emergency and the suspension.” Ex. E, Vladeck Report ¶ 14.

None of Appellants’ claimed interests in the ballot return location limit bear a rational relationship to the COVID-19 pandemic. The Proclamation itself cites “ballot security” as the justification for the suspension of Texas Election Code Section 86.006(a-1), but this interest plainly has nothing to do with an airborne pathogen. Appellants’ own witness, Keith Ingram, conceded that counties

operating multiple ballot return locations for the receipt of absentee ballots were in compliance with the statewide guidance on ballot collection and security procedures, and such guidance afforded adequate ballot security. Defendants have also admitted that counties may operate multiple ballot locations on Election Day, *Texas LULAC v. Abbott*, 20-CV-1015, Dkt. 38, Order at ECF 42 (Oct. 9, 2020), and failed to come forth with any evidence showing that their concerns about ballot security in the period “prior to” Election Day are any different than Election Day itself.

The Proclamation also claims authority to limit the number of ballot return locations because Defendant Abbott “may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area.” TEX. GOV’T CODE § 418.018(c).⁷ But Defendants cannot invoke such powers under the Disaster Act in a way that leads to *more* congestion and *greater* crowds during a public health crisis where social distancing is of utmost importance.

Because the Proclamation has no “real or substantial relation to the public health crisis,” the district court properly found that Appellees are likely to succeed on their *ultra vires* claim. *See In re Abbott*, 954 F.3d 772, 784 (5th Cir. 2020).

⁷ Professor Vladeck also notes this provision is also derived from the MEHPA, and so governed by the same rational relationship requirement as the suspension provision. Vladeck Report ¶ 19.

3. Appellees are Likely To Succeed On Their Constitutional Claims

When resolving a challenge to a provision of Texas election laws under the state constitution, the Texas Supreme Court has adopted the balancing test set forth by the United States Supreme Court in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). *State v. Hodges*, 92 S.W.3d 489, 496 (Tex. 2002) (“The parties agree that the proper test for determining the constitutionality of section 162.015(a)(2) is the balancing test articulated in *Anderson*”). Under the *Anderson-Burdick* balancing test, the court considers “the character and magnitude of the asserted injury to Plaintiffs’ right to vote against ‘the precise interests put forward by the State as justification for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *State v. Hodges*, 92 S.W.3d 489, 496 (Tex. 2002).

Here, the district court’s order stated that “the limitation to a single drop-off location for mail ballots would likely . . . needlessly and unreasonably substantially burden potential voters’ constitutionally protected rights to vote, as a consequence of increased travel and delays, among other things.” Appellees demonstrated that they would suffer a number of harms due to the Proclamation – increased health risk due to exposure to COVID-19 from waiting in longer lines or voting in more congested polling places due to the limitation on ballot return locations; longer travel times and wait times to vote; or even a lack of access to vote at all.

Appellants, however, failed to put forth evidence showing “the extent to which [its claimed interests] make it necessary to burden the plaintiffs’ rights.” *State v. Hodges*, 92 S.W.3d 489, 496 (Tex. 2002).

Accordingly, the district court found that Appellees are likely to succeed on their constitutional claims.

B. Plaintiffs-Appellees Will Suffer Irreparable Harm If The Court Does Not Order Temporary Relief

Absent this Court’s reinstatement of the injunction, plaintiffs will suffer irreparable harm as a result of the Governor’s *ultra vires* act. “An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard.” *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002); *see also Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981) (“An injury is ‘irreparable’ only if it cannot be undone through monetary remedies.”). Because an injury to voting rights cannot be measured or remediated by money damages, “[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury.” *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014); *see also Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (“When constitutional rights are threatened or impaired, irreparable injury is presumed. A restriction on the fundamental right to vote therefore constitutes irreparable injury.”) (citations omitted).

Here, the evidence demonstrates that the Governor’s *ultra vires* act will work substantial harm on voters’ rights, without emergency relief. For example, Plaintiffs’ expert Dr. Daniel Chatman opined that, as a result of the Governor’s limitation on drop-off sites, 13.5 percent of eligible mail-in voters would have to travel more than 70 minutes round-trip to deliver their ballot, and that 89 percent of eligible absentee voters without access to a vehicle will have to travel more than 90 minutes round-trip to deliver their ballot. *See* Ex. F, Plaintiffs’ Exh. 2, Declaration of Dr. Daniel G. Chatman ¶¶ 7, 50. Dr. Chatman also explained that tens of thousands of eligible vote by mail voters may forgo casting their ballots at all due to the long vehicle lines and wait times on Election Day, when demand for drop-off locations is at its highest – and that the Governor’s *ultra vires* act will increase demand and concomitant congestion on Election Day, by reducing the proportion of voters who would otherwise cast drop off their mail ballots prior to Election Day.

Several individual voters also testified to the injury personally caused them by the Governor’s *ultra vires* act. These voters – all of whom are over the age of 65 – requested mail ballots in order to avoid risking their health by voting in person and planned to cast their ballots at a satellite ballot drop-off location, rather than by mail, due to concerns with the reliability of the U.S. Postal Service. *See* Ex. I, Plaintiffs’ Exh. 14 (USPS letter noting that “certain [Texas] deadlines for

requesting and casting mail-in ballots are incongruous with the Postal Service’s delivery standards”). The Governor’s *ultra vires* act upended their voting plans, by eliminating satellite voting locations they had intended to use. If the Proclamation remains in place, these voters will have to return their mail-in ballots to more distant or more congested ballot return locations or hazard the risks to their health (by voting in person) or to the effectiveness of their vote (by voting by mail) that they had previously sought to and been able to avoid.⁸

Based on the evidence in the record, the district court found that the Governor’s “limitation to a single drop-off location for mail ballots would likely...and needlessly and unreasonably substantially burden potential voters’ constitutionally protected rights to vote, as a consequence of increased travel and delays, among other things.” Order at 2. This injury to the right to vote cannot be remediated after the election has passed. This Court should therefore issue emergency relief to avoid irreparable harm to Plaintiffs and Texas voters.

C. The Balance Of The Equities Favors Reinstatement of the Temporary Injunction

In granting a temporary injunction, the district court found that the balance of the equities tipped in Appellees’ favor. The balance of the equities also favors this Court’s reinstatement of the injunction during the appeal.

⁸ Representatives of the Organizational Plaintiffs likewise testified that their members and constituents had been adversely affected by the Proclamation.

The Proclamation’s limitation on ballot return locations is incompatible with the COVID-19 pandemic. By forcing more people to visit a single location – during a time when COVID-19 infection rates are plateauing, not improving⁹ – the Proclamation significantly hinders the ability of voters and poll workers to protect themselves from COVID-19. Voters who previously were able to drop off their ballots at one of multiple return locations will now be forced to travel to just one return location. Texas is already seeing unprecedented levels of voter turnout during the early voting period; by limiting a safe and efficient option for voters to return their mail-in ballots, Defendants’ action has impaired its own ability to keep voters safe.

The Proclamation’s limit also imposes discriminatory burdens on voters based on where voters live and has a disparate impact on minority communities. Texas has 254 counties, most with substantially fewer voters and precincts than Texas’s top 10 most populous counties, which include Harris, Travis, and Fort Bend.¹⁰ Harris County has over 2.38 million registered voters—more than the number of registered voters in the 200 least-populated counties *combined*—and 1,012 precincts. Travis County had nearly 823,000 registered voters and 247

⁹ Ex. H, Expert Report of Dr. Krutika Kuppalli, ¶¶ 13, 15 (“Kuppalli Report”); New Coronavirus Cases, Hospitalizations Plateau after Falling from Record Highs in July, TEXAS TRIBUNE (Apr. 14, 2020, last updated Oct. 7, 2020), available at: <https://bit.ly/2IakXbn>

¹⁰ Tex. Sec’y of State, March 2020 Voter Registration Figures, <https://www.sos.texas.gov/elections/historical/mar2020.shtml> (last accessed Oct. 10, 2020).

precincts. Yet Harris and Travis counties may only operate the same number of ballot return locations prior to Election Day as counties with less than 5,000 voters: one. And Harris is both the most populous Texas county and one of the state's geographically largest, but only 29.54% of its residents are white – which means that the burdens of the Proclamation will be disproportionately felt by Black and Hispanic Texans.

Finally, in the absence of an injunction, Appellees fear that state officials will conclude that they may take almost any action to limit voters' access to the ballot under the Disaster Act as long as they do so close Election Day – because any action will escape judicial review under even an expedited timeline. The Court should firmly reject this notion by reinstating the injunction ordered by the district court and providing voters with relief.

To be clear, any interest the Governor or SOS has in “ballot security”—the stated interest in the Oct 1 Proclamation—is not furthered by the Proclamation, nor is it a legitimate interest justifying the invocation of the state's Emergency Disaster Act. And the Proclamation would exacerbate health concerns due to COVID, not alleviate them.

CONCLUSION

This Court grant expedited consideration of Appellees' motion and enter a temporary order under Texas Rule of Appellate Procedure 29.3 reinstating the

temporary injunction during the appeal.

Dated: October 19, 2020

Respectfully submitted,

/s/ Lindsey B. Cohan

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CERTIFICATE OF CONFERENCE

Counsel for Appellees conferred with counsel for Defendants-Appellants on October 19, 2020. Counsel for Defendants-Appellants stated that they opposed Plaintiffs-Appellees' motion for emergency relief, but do not oppose expedited consideration of the motion.

/s/ Lindsey B. Cohan

CERTIFICATE OF SERVICE

I hereby certify that, on October 19, 2020, a true and correct copy of the foregoing document was served on all counsel of record using the Court's electronic case filing system.

/s/ Lindsey B. Cohan

Exhibit A

CAUSE NO. D-1-GN-20-005550

THE ANTI-DEFAMATION LEAGUE	§	
AUSTIN, SOUTHWEST, AND	§	IN THE DISTRICT COURT
TEXOMA REGIONS; COMMON	§	
CAUSE TEXAS; and ROBERT	§	
KNETSCH;	§	TRAVIS COUNTY TEXAS
<i>Plaintiffs,</i>	§	
	§	
v.	§	353RD JUDICIAL DISTRICT
	§	
GREG ABBOTT, in his official	§	
capacity as the Governor of Texas;	§	
RUTH HUGHS, in her official capacity	§	
as Texas Secretary of State,	§	
<i>Defendants.</i>	§	

ORDER GRANTING PLAINTIFFS' APPLICATION
FOR TEMPORARY INJUNCTIVE RELIEF

The above cause came before this Court for hearing on October 13, 2020. Plaintiffs, The Anti-Defamation League Austin, Southwest, and Texoma Regions; Common Cause Texas; and Robert Knetsch, appeared by its attorneys from Dechert LLP and the Brennan Center for Justice. Defendants, Governor Greg Abbott and Secretary of State Ruth Hughs, appeared, in their official capacities, by their attorneys from the Office of the Attorney General of Texas.

The Court has considered Plaintiffs' Application for Temporary Injunctive Relief and Plaintiffs' First Amended Application for Temporary Injunctive Relief, Defendants' Pleas to the Jurisdiction, the briefs submitted in support of and in opposition to said motions, and the evidence and arguments of counsel. After consideration of the foregoing, it is hereby ORDERED that

1. Defendant Abbott's Plea to the Jurisdiction is DENIED.
2. Defendant Hughs's Plea to the Jurisdiction is DENIED.

3. Plaintiffs' Application for Temporary Injunction is GRANTED, enjoining Defendants, their officers, agents, servants, employees, attorneys, and those inactive concert or participation with them from implementing or enforcing the following paragraph on page 3 of Defendant Abbott's October 1, 2020

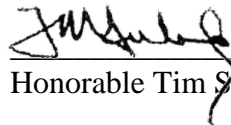
Proclamation:

“(1) the voter delivers the marked mail ballot at a single early voting clerk's office location that is publicly designated by the early voting clerk for the return of marked mail ballots under Section 88.006(a-1) and this suspension,”

The limitation to a single drop-off location for mail ballots would likely needlessly and unreasonably increase risks of exposure to COVID-19 infections, and needlessly and unreasonably substantially burden potential voters' constitutionally protected rights to vote, as a consequence of increased travel and delays, among other things.

4. No bond is required.
5. Plaintiffs' Application for a Permanent Injunction is set for hearing on November 9, 2020, unless the parties and the Court find a mutually agreeable alternate date.

Signed this 15th day of October, 2020.



Honorable Tim Sulak

Automated Certificate of eService

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Associated Case Party: Anti-Defamation League Austin, Southwest, and Texoma Regions

Name	BarNumber	Email	TimestampSubmitted	Status
Lindsey Cohan	24083903	lindsey.cohan@dechert.com	10/15/2020 5:20:43 PM	SENT

Associated Case Party: Greg Abbott

Name	BarNumber	Email	TimestampSubmitted	Status
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Associated Case Party: Disability Rights Texas

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Exhibit B

CAUSE NO. D-1-GN-20-005550

THE ANTI-DEFAMATION LEAGUE	§	
AUSTIN, SOUTHWEST, AND	§	IN THE DISTRICT COURT
TEXOMA REGIONS; COMMON	§	
CAUSE TEXAS; and ROBERT	§	
KNETSCH;	§	TRAVIS COUNTY TEXAS
<i>Plaintiffs,</i>	§	
	§	
v.	§	353RD JUDICIAL DISTRICT
	§	
GREG ABBOTT, in his official	§	
capacity as the Governor of Texas,	§	
<i>Defendant.</i>	§	

**PLAINTIFFS' VERIFIED ORIGINAL PETITION AND APPLICATION FOR
TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION,
AND PERMANENT INJUNCTION**

Plaintiffs, the Anti-Defamation League Austin, Southwest, and Texoma Regions ("ADL"); Common Cause Texas; and Robert Knetsch (collectively, "Plaintiffs"),¹ by and through their counsel of record, file this Verified Original Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction against Defendant Greg Abbott, in his official capacity as Governor of Texas.²

1. For several months, Texas voters and election officials have prepared to cast and receive ballots based on rules laid out in the Texas Election Code and Governor Abbott's July 27 Proclamation regarding early and absentee voting. Now, at the eleventh hour, Governor Abbott issued a new Proclamation that, if allowed to stand, dramatically changes the applicable rules,

¹ "Plaintiffs" include the supporters, constituents, and/or members of ADL and Common Cause Texas.

² Notice of this Petition and Application was provided to the Texas Attorney General in advance of filing pursuant to Local Rule 10.4.

namely where ballots-by-mail can be dropped off. This bait-and-switch exceeds the Governor's authority and violates the Texas Constitution – in addition to being inconsistent with principles of efficient election administration and fundamental fairness to all Texas voters.

2. Defendant Governor Greg Abbott's October 1, 2020 Proclamation ("the Proclamation") impermissibly intrudes on local election officials' authority to manage elections and imposes an unconstitutional burden on voters' right to vote. The Proclamation bars local election officials from providing more than one drop-off site for mail-in ballots during the early voting period, regardless of the size or population density of the county. *See Ex. A, Proclamation (Oct. 1, 2020).*

3. It is consistent, however, with a broader effort by the State to make it more difficult for elderly, sick, and disabled Texans to cast ballots by mail. Earlier this year, the State asked the Texas Supreme Court to narrow the circumstances in which sick and disabled voters would be eligible to vote by mail. Several weeks ago, Texas sued the Harris County Clerk for sending ballot applications to voters under the age of 65 in his jurisdiction. The Secretary of State still does not allow Texans to apply for ballot-by-mail online, forcing voters to download the application, print it out, and mail it in. And now the Governor has issued an order decimating a well-ordered system for returning marked ballots in person. Governor Abbott's distaste for an accessible ballot-by-mail system puts him at odds with the Texas Constitution, Texas statutes, and county election authorities. This court should enjoin his Proclamation.

4. At a time when COVID-19 is ravaging the country and the U.S. Postal Service ("USPS") acknowledges the "significant risk" that ballots will not be delivered in time to be counted, ballot drop-off locations provide eligible Texas voters with a means of voting that reduces contacts with others but still ensures the voter's ballot will be received and counted.

5. The Election Code designates local election officials as the officials with the authority to manage and conduct the early voting process, not Defendant. Tex. Elec. Code §§ 32.071, 83.001(c), 83.002. Indeed, *just one day prior to the issuance of the Proclamation*, Defendant conceded in a judicial admission to the Supreme Court of the State of Texas that the Texas Election Code allows local election officials to designate more than one early voting ballot drop-off site in each county. **See Ex. B at 5, Texas SG Submission dated Sept. 30, 2020.**

6. Given the COVID crisis and the recent upheaval at the USPS, many counties had already proceeded with multiple drop-off locations in the primary runoff election based on this authority, and intended to do so in the upcoming general election. For example, Harris County operated 11 drop-off sites receiving ballots-by-mail in advance of the July 2020 primary runoff, and was already operating 12 drop-off sites receiving ballots-by-mail for the November 2020 general election at the time Defendant issued the Proclamation.³ Travis County had also opened four locations to receive ballots on October 1.⁴ Fort Bend County had announced plans to open five drop-off locations.⁵ And after Defendant's Proclamation was released, Dallas County announced that they had had plans to open multiple drop-off locations as well.⁶

7. Plaintiffs and their supporters, constituents, and/or members include Texas residents who are eligible to vote by mail, either because they are over 65 or because they have a

³ <https://www.texastribune.org/2020/10/02/texas-greg-abbott-ballot-drop-lawsuit/>

⁴ *Id.*

⁵ https://www.fbherald.com/news/county-announces-more-ballot-drop-off-locations-but-abbott-later-bans-them/article_32bb3fc3-fd7c-5888-b059-2ab1bfd18b89.html

⁶ Dallas County Judge On Changes To Mail Ballot Drop-Off Locations In Texas: 'This Has President Trump Written All Over It', CBSDFW.com (Oct. 1, 2020), available at: <https://cbsloc.al/3l0ZpMu>.

physical condition that puts them at greater risk for contracting COVID-19. In light of the continuing pandemic, many of these voters planned to vote by mail.

8. Because of recent, unprecedented delays in mail delivery by USPS, Plaintiffs prefer to return their ballots to a local drop-off location to ensure that their vote is counted rather than risk that a mailed-in ballot will not reach the clerk prior to the deadline to be counted. Until Defendant issued the Proclamation, many of these voters could choose the early voting drop-off location most convenient to them – whether because it is closest to their place of residence, easily accessible by public transportation, or some other factor.

9. By limiting each county to just one early voting drop-off location, Defendant's Proclamation substantially and unconstitutionally burdens Plaintiffs' right to vote. The Proclamation forces voters eligible to vote by mail to choose between risking their health by voting in-person so that they have more assurance that their ballots will count, or protecting their health by attempting to vote by mail and risking the real possibility that their ballots will not count because of USPS delays. Defendant's action further burdens Plaintiffs who would be precluded from returning their ballots to the early voting drop-off location because they would have to travel a significant distance and spend a substantial amount of time getting to their county's only location. Finally, the Proclamation burdens Plaintiffs who would be precluded altogether from early voting because they do not have access to a car and live too far from the early voting drop-off location; they do not have access to public transportation; or they have access to public transportation but that mode of transportation is not a practical and/or a safe means during a pandemic.

10. The Proclamation unlawfully favors voters in counties smaller in population over those counties larger in population, in violation of equal protection of the law. While the

Proclamation substantially burdens all Texans, that burden is greater for those who live in more populated counties because only one early voting drop-off location is available for hundreds of thousands of registered voters in the county eligible to vote by mail. And because the Texas Election Code requires a voter returning a marked ballot in person to present identification, voters who reside in more populous counties will encounter long lines and wait times at the single drop-off location. The Proclamation thereby eliminates one of the primary advantages of returning a ballot in person during the early voting period during the ongoing pandemic. For these reasons, Defendant's Proclamation substantially and unconstitutionally burdens and threatens the right of Plaintiffs to vote.

11. Plaintiffs seek immediate injunctive and declaratory relief before the November 3, 2020 general election and ask this Court to enjoin enforcement of the Proclamation to the extent that it prohibits local election officials from operating multiple early voting drop-off locations in their counties.

DISCOVERY CONTROL PLAN

12. Discovery is intended to be conducted under Level 3 of Rule 190.4 of the Texas Rules of Civil Procedure.

JURISDICTION / VENUE

13. The Court has jurisdiction over this matter of election law under Texas Election Code § 273.081 and other laws. Plaintiffs do not seek damages and therefore make no statement under Texas Rule of Civil Procedure 47. Plaintiffs seek injunctive relief which, in this context, is within the jurisdiction of this Court.

14. Venue is proper in Travis County under sections 15.002(a)(1) of the Texas Civil Practices and Remedies Code.

PARTIES

15. **Plaintiffs Anti-Defamation League Austin, Southwest, and Texoma Region** are the regional offices of the Anti-Defamation League in Texas. ADL's mission, consistent with national Anti-Defamation League's overall mandate, is to protect the civil rights of all persons, eliminate vestiges of discrimination, racism, and antisemitism within communities in Texas, and to fight hatred in all its forms.

16. Accordingly, a critical part of ADL's mission includes voter mobilization and education activities. Among other things, ADL is encouraging college-age students to be pollworkers and poll monitors, providing approximately 700 schools with information about the voting process, holding webinars on the voting process, and engaging in outreach to and education of its constituents about Texas's vote-by-mail process and ensuring voters have a plan about how to cast their ballots. If the Governor's Proclamation is permitted to stand, it will distract from ADL's voter mobilization and education activities and force ADL to move resources from those planned activities to assist and educate voters in casting ballots at the single drop-off location in their county.

17. ADL has approximately 23,000 constituents or supporters who are Texas residents, a substantial number of whom are registered to vote in Texas and eligible to vote by mail, either because of their age or because of a physical condition that puts them at greater risk for contracting COVID-19. ADL also has approximately 250 regional board members throughout Texas, a substantial number of whom are registered to vote in Texas and eligible to vote by mail, either because of their age or because of a physical condition that puts them at greater risk for contracting COVID-19.

18. **Plaintiff Common Cause Texas** is a chapter of Common Cause, a non-partisan citizen lobby organized as a not-for-profit corporation under the laws of the District of

Columbia, and devoted to electoral reform, ethics in government and to the protection and preservation of the rights of all citizens to vote in national, state and local elections, including the education of voters about voting rights and procedures.

19. Since its founding, Common Cause Texas has been dedicated to the promotion and protection of the democratic process, including the right of all citizens to vote in fair, open, and honest elections. Common Cause Texas conducts significant non-partisan voter-protection, advocacy, education, and outreach activities to ensure that voters are registered and have their ballots counted as cast. At this point in the election cycle, Common Cause Texas's three full-time staff and five paid fellows are primarily focused on the organization's election protection program, including recruiting and training poll monitors and assisting voters. In addition, Common Cause Texas is engaging in a digital advertising campaign to educate voters. If Defendant's Proclamation is permitted to stand, it will thwart Common Cause Texas's voter advocacy, education, and outreach activities and force Common Cause Texas to move resources from those planned activities to assist voters in casting ballots at the single drop-off location in their county.

20. Common Cause Texas is one of the nation's leading grassroots, democracy-focused organizations and has over 1.2 million members nationwide and chapters in 30 states. Common Cause Texas has approximately 36,000 members and supporters across the state of Texas, a substantial number of whom are registered to vote in Texas and eligible to vote by mail, either because of their age or because of a physical condition that puts them at greater risk for contracting COVID-19.

21. **Plaintiff Robert Knetsch** is a registered voter who resides in Harris County. He is 70 years old. His age renders him particularly vulnerable if he contracts COVID-19.

22. **Defendant Greg Abbott** is the Governor of Texas and, pursuant to Article IV, Section I of the Texas Constitution, is the chief executive officer of the State of Texas. He is sued in his official capacity.

FACTUAL ALLEGATIONS

Voting By Mail in Texas & County Clerks' Authority to Establish Drop-Off Locations

23. Under Texas law, a voter is eligible to vote by mail if he or she meets any of the following requirements: (1) the voter is 65 or older; (2) the voter has a sickness or physical condition that prevents the voter from appearing at the polls; (3) the voter will be outside his or her county of residence for all of the Early Voting period and on Election Day; or (4) the voter is in jail, but otherwise eligible to vote. Tex. Elec. Code § 82.001-004.

24. Earlier this year, the Texas Supreme Court ruled that “a voter can take into consideration aspects of his health and his health history that are physical conditions in deciding whether, under the circumstances, to apply to vote by mail because of disability.” *In re State*, 602 S.W.3d 549, 560 (Tex. 2020). Thus, while a lack of immunity to COVID-19 “is not itself a ‘physical condition’ that renders a voter eligible to vote by mail,” a voter with a physical condition that puts himself or herself at greater risk of contracting COVID-19 may vote by mail. *Id.*

25. The Texas Election Code provides that eligible voters may deliver their marked ballots “in person to the early voting clerk’s office . . . on election day.” Tex. Elec. Code § 86.006(a-1).

26. The Texas Election Code designates local election officials, as the officials “in charge of and responsible for the management of the election.” *Id.* § 32.071. That authority extends to early voting. *Id.* §§ 83.001(c), 83.002.

27. As Defendant Abbott previously conceded, the Texas Election Code allows the local election official to set up more than one “early voting clerk’s office.” On September 30,

2020, the Attorney General advised the Texas Supreme Court in an official filing responding to a question from the Supreme Court as follows: “The Court asks whether, ‘in light of the Governor’s July 27, 2020 proclamation, . . . allowing a voter to deliver a marked mail ballot in person to any of [the] eleven annexes in Harris County violates Texas Election Code section 86.00[6](a-1).’ The Government Code generally provides that the singular includes the plural. See Tex. Gov’t Code § 311.012(b). Nothing in section 86.006(a-1) overcomes that presumption or otherwise indicates that ‘office,’ as used in section 86.006(a-1), does not include its plural, ‘offices.’ *Accordingly, the Secretary of State has advised local officials that the Legislature has permitted ballots to be returned to any early-voting clerk office.*” **Ex. B at 5**, Texas SG Submission dated Sept. 30, 2020 (emphasis added).

Harris County Operated Multiple Drop-Off Sites For July Primary Runoff

28. The authority of local election officials to establish multiple ballot drop-off locations is confirmed by the fact that the Harris County Clerk did, in fact, provide multiple drop-off locations in the July primary runoff.

29. In advance of the July primary runoff, Harris County operated 11 locations at which voters could drop off their mail-in ballots.

30. The state did not make any objection to Harris County’s provision of these additional drop-off sites.

Defendant’s July 27, 2020 Proclamation

31. Shortly after the July primary runoff election, on July 27, 2020, Defendant Abbott issued an executive order extending the early voting period in light of the COVID-19 pandemic. Specifically, to “ensure that elections proceed efficiently and safely when Texans go to the polls”

this election cycle, Defendant Abbott extended in-person early voting to begin on October 13, 2020 instead of October 19, 2020.⁷

32. In the same order, Defendant Abbott suspended the restriction in Texas Election Code 86.006 that only allows in-person delivery of ballots on Election Day: “I further suspend Section 86.006(a-1) of the Texas Election Code, for any election ordered or authorized to occur on November 3, 2020, to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk’s office prior to and including on election day.”⁸

33. In so doing, Defendant Abbott specifically found that “Sections 85.001(a) and 86.006(a-1) of the Texas Election Code [the in-person delivery restriction] would prevent, hinder, or delay necessary action in coping with the COVID-19 disaster[.]”⁹

County Clerks’ Establishment of Multiple Drop-Off Locations
for the Return of Ballots

34. In accordance with Defendant Abbott’s order and to ensure safe and accessible voting for all Texans, counties began preparations to run multiple early voting drop-off locations, particularly in counties that are both geographically large and populous. County election officials were designing plans to ensure that voters will have reasonable access to those locations and that drop-off locations will not be overcrowded, which would pose a serious health risk for voters. By definition, voters dropping off their ballots-by-mail are older, sick, or have disabilities that prevent them from voting in person, and thus at particularly high risk of COVID-19.

⁷ July 27, 2020 Proclamation, https://gov.texas.gov/uploads/files/press/PROC_COVID-19_Nov_3_general_election_IMAGE_07-27-2020.pdf

⁸ *Id.*

⁹ *Id.*

35. Harris County covers a large area of approximately 1700 square miles.¹⁰ As of January 2020, approximately 2.3 million people were registered to vote in Harris County.¹¹

36. In August 2020, the Harris County Clerk announced that there would be multiple locations in operation for ballot drop-offs “beginning whenever [voters] receive their ballots and continuing through Election Day, November 3, at 7:00 PM.”¹² Eleven of these locations were the same drop-off sites that Harris County successfully administered during the July 2020 primary runoff elections, with no objection by the State, with an additional ballot drop-off location at the NRG Arena in Houston.¹³

37. Travis County covers an area of approximately 1,000 square miles¹⁴ and has more than 813,000 registered voters.¹⁵ Prior to the Proclamation, Travis County had opened four locations to receive ballots on October 1.¹⁶

¹⁰ U.S. Census Bureau, QuickFacts – Harris County, Texas, <https://www.census.gov/quickfacts/fact/table/harriscountytexas/PST045219>

¹¹ <https://www.sos.state.tx.us/elections/historical/jan2020.shtml>

¹² Statement: Harris County Clerk Chris Hollins on Expected USPS Delivery Delays in November (Aug. 14, 2020), available at: <https://bit.ly/2GqFAPD>. (“Voters concerned with mail delays will be able to drop off their marked ballot in-person at any of the County’s eleven offices and annexes”).

¹³ Despart, Zach, Gov. Abbott Forces Harris County To Close 11 Mail Ballot Drop-Off Sites, Leaving Just One, Houston Chronicle (Oct. 1, 2020), available at: <https://bit.ly/2St1PqZ>

¹⁴ U.S. Census Bureau, QuickFacts – Travis County, Texas, <https://www.census.gov/quickfacts/fact/table/traviscountytexas/PST045219>

¹⁵ <https://www.sos.state.tx.us/elections/historical/jan2020.shtml>

¹⁶ Despart, Zach, Gov. Abbott Forces Harris County To Close 11 Mail Ballot Drop-Off Sites, Leaving Just One, Houston Chronicle (Oct. 1, 2020), available at: <https://bit.ly/2St1PqZ>

38. Just minutes before Defendant issued his executive order, Fort Bend County Judge KP George announced plans to open five ballot drop-off locations across the county.¹⁷ Fort Bend covers an area of approximately 861 square miles.¹⁸ Approximately 445,757 people are registered to vote in Fort Bend, and of those, 86,055 are over the age of 65.¹⁹

39. And after Defendant's Proclamation was released, Dallas County Judge Clay Davis stated that Dallas County had planned to announce multiple ballot drop-off locations.²⁰ Dallas County covers approximately 871 square miles.²¹ Approximately 1,271,254 people are registered to vote in Dallas, and of those, 250,858 are over the age of 65.²²

Projected Increased Use of Voting By Mail

40. Due to the ongoing COVID-19 pandemic, elections officials in Texas are projecting a marked increase in the use of voting by mail compared to prior elections.

41. The Harris County Clerk's Office, for instance, has reportedly received approximately 208,000 ballot-by-mail requests for the November 3, 2020 General Election as of

¹⁷ Modrich, Stefan. Smart Financial Centre to be Used as Polling Place, Fort Bend Star (Oct. 1, 2020), available at: <https://bit.ly/33q1onG>

¹⁸ U.S. Census Bureau, QuickFacts – Fort Bend County, Texas, <https://www.census.gov/quickfacts/fact/table/fortbendcountytexas/PST045219>

¹⁹ Figures include inactive voters and are pulled from L2 Political's VoterMapping Tool, a proprietary database.

²⁰ Dallas County Judge On Changes To Mail Ballot Drop-Off Locations In Texas: 'This Has President Trump Written All Over It', CBSDFW.com (Oct. 1, 2020), available at: <https://cbsloc.al/3l0ZpMu>.

²¹ U.S. Census Bureau, QuickFacts – Dallas County, Texas, <https://www.census.gov/quickfacts/fact/table/dallascountytexas/PST045219>

²² Figures include inactive voters and are pulled from L2 Political's VoterMapping Tool, a proprietary database.

August 23, 2020—an increase from the approximately 111,000 requests received in 2018 and 115,000 requests received in 2016.²³

42. In Travis County—where just 27,000 absentee ballots were cast in the 2016 presidential election—71,000 voters had requested mail-in ballots as of October 2, 2020.²⁴ Elections officials expect up to 200,000 mail-in ballots to be cast.²⁵

43. And as of September 3, McLennan County had seen a 162% increase in mail-in ballot requests since the 2016 presidential election.²⁶

44. The increase in ballot-by-mail requests is also being seen in Texas’s less populous counties.

45. Taylor County, for example, has already received a record-breaking number of vote-by-mail applications, processing almost 4,900 applications by September 25 and continuing to process 50-70 requests per day.²⁷ In 2016, by contrast, the county received only 3,579 requests, and just 2,977 requests in 2012.²⁸

²³ Despart, Zach, *Harris County Launches Mail Ballot Tracking System to Ensure Residents Their Vote Has Counted*, Houston Chronicle (Sept. 30, 2020), available at: <https://bit.ly/3nh7q1U>.

²⁴ Lindell, Chuck, and Nicole Cobler. *Abbott Orders Counties to Close Multiple Ballot Drop-Off Sites*, Austin American-Statesman (Oct. 2, 2020), available at: <https://bit.ly/3jlFIyt>.

²⁵ Devenyns, Jessi. *Travis County Plans for Drive-Thru Voting Drop-Off for Mail-In Ballots*, Austin Monitor (Aug. 26, 2020), available at: <https://bit.ly/3nfLDrl>.

²⁶ Ellenberger, Paige. *Central Texas Counties are Seeing a Surge in Mail-In Ballot Requests*. KXXV.com (Sept. 3, 2020), available at: <https://bit.ly/2Sm7fnA>.

²⁷ Bethel, Brian, *Taylor County Elections Office Seeing Record Mail Ballot Requests*, Abilene Reporter-News (Sept. 25, 2020), available at: <https://bit.ly/30uAfxN>.

²⁸ *Id.*

46. The virus that causes COVID-19 is highly contagious and spreads through a variety of ways, including the respiratory droplets that an infected person produces when they cough, sneeze, or talk; or through contact between individuals. The virus enters the body through the nose, mouth, or eyes, and then attaches to a protein, which then enters the cell and replicates. Each infected cell can release millions of copies of the virus before the cell breaks down and dies. An infected person who coughs and sneezes can leave respiratory droplets on surfaces where it can remain in an infectious state for several hours to days without a human host.

47. The risks of severe illness, complications, and death due to COVID-19 increase with age. In addition to age, several other underlying health factors increase the risks associated with COVID-19. People who have underlying health conditions (such as heart disease, diabetes, and lung disease) have weakened immune systems, have cancer, and who are pregnant are considered populations at an increased risk for severe illness from COVID-19.²⁹

48. For these reasons, the Centers for Disease Control and Prevention (“CDC”) urges Americans to adhere to social distancing measures (for example, staying home as often as possible, maintaining at least six feet of physical distance from other people when outside the home, and wearing face masks) to minimize person-to-person contact and reduce the spread of COVID-19. The CDC emphasizes that these measures are crucial for reducing an individual’s risk of becoming infected with the disease and for preventing the transmission of the disease throughout the population. Moreover, it is especially critical for elderly individuals and

²⁹ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

members of other high-risk populations to continue to adhere to these social distancing measures for the sake of their own health.

49. In June, Texas election officials issued guidance to the County Clerks directing them to permit in-person voters to vote at polling places without a face covering. The guidance, in pertinent part, states that “[t]here is no authority under Texas law to require voters to wear face coverings when presenting to vote,” and that “voters cannot be required to wear a face mask.” Texas Election Advisory 2020-19 (June 18, 2020).

Delays in USPS Mail Delivery

50. At the same time as elections officials are projecting—and seeing—a massive increase in the number of voters choosing to vote by mail, the COVID-19 pandemic and internal policy changes within the USPS have led to delays in mail delivery that risks ballot-by-mail applications and completed ballots not being delivered to boards of elections on time.

51. Due to projected delays, the USPS recommends that voters submitting their absentee ballot applications by mail should do so at least 15 days before Election Day.³⁰ Texas law allows voters to request applications to vote by mail as late as 11 days before Election Day—four days after the recommended USPS cutoff. Tex. Elec. Code Ann. § 84.007.

52. During Texas’s 2020 primary election, the general counsel for USPS wrote to Texas Secretary of State Ruth Hughs that, “[u]nder our reading of Texas’ election laws, certain deadlines for requesting and casting mail-in ballots are incongruous with the Postal Service’s delivery standards,” and “[a]s a result, to the extent that the mail is used to transmit ballots to and from voters, there is a *significant risk* that, at least in certain circumstances, ballots may be

³⁰ See Lee, Michelle Ye Hee, and Jacob Bogage, *Postal Service Backlog Sparks Worries That Ballot Delivery Could Be Delayed In November*, Washington Post (July 30, 2020), available at: <https://wapo.st/34IV0lu>.

requested in a manner that is consistent with your election rules and returned promptly, and yet not be returned in time to be counted.”³¹

53. It was reported that during Texas’s 2020 primary election, 2,482 absentee ballots were rejected because they arrived too late to be counted.³² More than 2,000 of these rejected ballots were in Harris County.³³

54. Compounding this is the fact that mail sorting machines have been decommissioned and removed from USPS facilities across Texas. In August, the President of the National Association of Letter Carriers Branch 181 in Austin reported that four sorting machines and one Automated Flat Sorting Machine were taken out of service in Branch 181 territory, which covers Austin, Burnet, Fredericksburg, Bastrop, Lockhart, Georgetown and Round Rock.³⁴ The same month, representatives of the American Postal Workers Union Local 195 in San Antonio reported that four of the 32 large sorting machines had been removed from the city’s Perrin Beitel Road distribution center.³⁵ In Houston, postal workers reported that about 15 sorting machines were removed from the Aldine Bender postal sorting center. And while

³¹ Letter from Thomas J. Marshall, General Counsel, USPS, to Ruth Hughs, Texas Secretary of State (July 30, 2020), available at: <https://cbsloc.al/3laiYIC> (emphasis added).

³² Ura, Alexa. In Texas, USPS Woes and State Deadlines Could Leave Voters Without Enough Time to Return Mail-In Ballots, Texas Tribune (Aug. 20, 2020), available at: <https://bit.ly/30tZTmB>.

³³ *Id.*

³⁴ Marut, Mike. *While Postmaster General Testifies, Austin Union Leader Confirms Sorting Machines Removed From Local USPS Locations*, KVUE.com (Aug. 24, 2020), available at: <https://bit.ly/2SqKGhA>.

³⁵ Flahive, Paul. *Four Mail Sorting Machines Removed From San Antonio Postal Distribution Center*, Texas Public Radio (Aug. 17, 2020), available at: <https://bit.ly/3lpsMIH>.

these sorting machines require two people to operate, because staffing has been reduced, only one employee remained to work the remaining machines at the processing plant.³⁶

The October 1 Proclamation

55. Despite his awareness of the significant risks posed to voters by COVID-19 and the current delays in USPS delivery times, Defendant Abbott issued the Proclamation on October 1, 2020, which purported to limit election officials' authority by prohibiting them from operating more than one early voting drop-off location in each county. Ex. A.

56. The Proclamation provided:

I further suspend Section 86.006(a-1) of the Texas Election Code, for any election ordered or authorized to occur on November 3, 2020, to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk's office prior to and including on election day; provided, however, that beginning on October 2, 2020, this suspension applies only when:

(1) the voter delivers the marked mail ballot at a single early voting clerk's office location that is publicly designated by the early voting clerk for the return of marked mail ballots under Section 86.006(a-1) and this suspension; and

(2) the early voting clerk allows poll watchers the opportunity to observe any activity conducted at the early voting clerk's office location related to the in-person delivery of a marked mail ballot pursuant to Section 86.006(a-1) and this suspension, including the presentation of an acceptable form of identification described by Section 63.0101 of the Election Code by the voter.

57. According to Defendant Abbott, this measure was necessary to "add ballot security protocols." Defendant claims to have authority to issue the Proclamation to "control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area" under Texas Government Code § 418.018(c).

³⁶ Dellinger, Hannah, and Currie Engel. *'Not Acceptable': Lawmakers Not Satisfied As Changes At U.S. Postal Service Halted*, Houston Chronicle (Aug. 18, 2020), available at: <https://bit.ly/36wE8q0>

58. The Proclamation, however, impermissibly interferes with each county clerk's statutory authority to conduct and manage early voting, including through the operation of more than one "early voting clerk's office" to accept ballots from voters. Tex. Elec. Code §§ 32.071, 83.001(c), 83.002; Tex. Gov't Code § 311.012(b).

59. The Proclamation is thus contrary to each early voting clerk's authority under the Texas Election Code, as established by the Legislature. Indeed, the Secretary of State advised local officials that the Election Code permitted the operation of more than one early voting clerk's office to accept ballots, *see* **Ex. B at Attachment B, Email dated Aug. 26, 2020**, and the Texas Solicitor General made the same representation to the Texas Supreme Court on September 30, 2020, *see* **Ex. B at 5, Texas SG Submission dated Sept. 30, 2020**.

60. The Proclamation is an illegal *ultra vires* act that would compound, rather than alleviate, the COVID-19 disaster and interfere with the statutory authority of local election officials. The Proclamation exceeds gubernatorial authority, even in an emergency setting. Defendant is not the election official with authority to manage and conduct the early voting process. Moreover, Defendant's authority to control "ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area" is authority granted to alleviate a disaster. It is not a boundless grant of power that allows Defendant to conduct activity that would exacerbate the crisis, as the Proclamation does.

Harms to Plaintiffs

61. Defendant's Proclamation, which scrambles the rules applicable to early voting at the last minute before the election, harms Plaintiffs and the voters they represent.

62. ADL's supporters and constituents include registered Texas voters who are eligible to vote by mail. But because of USPS delays, a significant number of those voters no

longer feel comfortable sending their ballot back by mail and wish to drop off their ballot at an early voting drop-off location.

63. ADL will also be injured in its own right, because Defendant's Proclamation will cause ADL to expend additional resources to inform voters of the newly changed rules and assist them in making alternative plans to vote or return their mail-in ballots.

64. Common Cause Texas's members include registered Texas voters who are eligible to vote by mail. But because of USPS delays, a significant number of those voters no longer feel comfortable sending their ballot back by mail and wish to drop off their ballot at an early voting drop-off location.

65. Common Cause Texas will also be injured in its own right, because Defendant's Proclamation will cause Common Cause Texas to expend additional resources to inform voters of the newly changed rules and assist them in making alternative plans to vote or return their mail-in ballots.

66. Mr. Knetsch is a registered voter in Harris County who is eligible to vote by mail. Because of his age, he is particularly vulnerable to COVID-19 and so elected to vote by mail. He had planned to return his mail-in ballot to an early voting drop-off location approximately 3.1 miles from his residence, to ensure his ballot would be received in time to be counted. But because the Proclamation now limits Harris County to just one early voting drop-off location, Mr. Knetsch now plans to risk voting in-person at his local polling place, despite the risk to his health, because he is worried about even longer lines and crowd congestion at the single drop-off site that now must serve the entire county. The single drop-off site, NRG Arena, is 12.7 miles from his home.

67. The Proclamation significantly burdens Plaintiffs in urban counties. For example, Harris County – where 20% of the population is Black and 43.7% is Latino – has more than 2.3 million registered voters. By contrast, Rains County – where more than 84% of the population is White³⁷ – has less than 8,000 registered voters.³⁸ And Somervell County – where more than 77% of the population is White³⁹ – has less than 6,500 registered voters.⁴⁰ Yet under the Proclamation these counties would have the exact same number of ballot return locations as Harris County: one.

68. The Proclamation particularly burdens Plaintiffs who reside in large urban counties such as Harris County, the largest county by population in the state, because travel distances are longer in the county due to its large spatial area and relatively high levels of road congestion. More than a third of all voters eligible to vote by mail in Harris County would expect to have a substantial travel burden to access a ballot drop-off location if only one location per county is allowed.

69. The Proclamation also burdens Plaintiffs who do not have access to a vehicle in their household. This is because public transit and walk times are much longer on average than drive times. While approximately 5% of Texas citizens under the age of 65 without a disability do not have access to a vehicle, the share is substantially higher for citizens aged 65 or more (at

³⁷ U.S. Census Bureau, QuickFacts – Rains County, Texas,
<https://www.census.gov/quickfacts/fact/table/rainscountytexas/PST045219>

³⁸ Texas Sec’y of State Jan. 2020 Voter Registration Figures,
<https://www.sos.state.tx.us/elections/historical/jan2020.shtml>

³⁹ U.S. Census Bureau, QuickFacts – Somervell County, Texas,
<https://www.census.gov/quickfacts/fact/table/lovingcountytexas/PST045219>

⁴⁰ Texas Sec’y of State Jan. 2020 Voter Registration Figures,
<https://www.sos.state.tx.us/elections/historical/jan2020.shtml>

about 9 percent) and particularly for those with a reported disability aged 18 to 64 (at about 14 percent). This means a travel burden is particularly likely for people with disabilities under the age of 65, and for people over the age of 65, i.e., voters eligible to vote by mail and utilize the drop-off locations.

70. The Proclamation also burdens Plaintiffs who reside in less urban parts of the State, who will face lengthy travel times and wait times to return their ballots to the single drop-off location in their county, if they are able to travel there at all due to lack of access to a vehicle or public transportation.

71. Moreover, for voters with a disability that places them at greater risk of contracting COVID-19 and qualifies them to vote by mail, the long lines caused by the wait to show identification with the return of ballots as required by Texas Election Law creates additional unreasonable health risks that defeat the primary benefit of voting by mail and delivering the marked ballot in person.

72. Finally, for voters eligible to vote by mail, estimated queue lengths for ballot drop off on Election Day show that queues will become intolerably long for the largest counties, and effectively drive away voters who cannot afford the cost of wait time to cast their ballot.

COUNT ONE
(Ultra Vires)

73. The preceding and subsequent allegations are incorporated into Count One, as though fully set forth herein.

74. A state officer may not act without legal authority. *See, e.g., City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

75. The Texas Election Code grants authority to the early voting clerk to manage and conduct early voting, including the operation and designation of early voting drop-off locations.

76. By limiting early voting drop-off locations to one site per county, Defendant has acted without authority and has impermissibly interfered with the authority of the early voting clerks across the state of Texas.

77. Defendant's Proclamation also purports to rely on emergency powers that do not save this *ultra vires* act.

78. Section 418.018(c) of the Texas Government Code provides that "the governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area."

79. Defendant invoked this provision to bar counties from offering more than one ballot drop-off location. Counties offering multiple drop-off locations have thus had to reduce their drop-off sites and can only operate one location.

80. However, because social distancing and crowd reduction is of critical importance during the COVID-19 pandemic, Defendant's action makes the remaining ballot drop-off location more dangerous for voters.

81. Voters returning their ballots to a drop-off location must present identification. By being forced into one ballot drop-off location per county, voters therefore will not be able to avoid the long lines and crowd congestion that will necessarily result from Defendant's action.

82. Defendant's purported modification of state law therefore exceeded his legal authority, even under emergency powers, and is *ultra vires*. The Proclamation impermissibly prejudices the right to vote of Plaintiffs.

COUNT TWO
(The Proclamation violates Article 1, Section 3 of the Texas Constitution)

83. The preceding and subsequent allegations are incorporated into Count Two, as though fully set forth herein.

84. The Texas Constitution provides for the equal protection of all laws. Article I, Section 3 of the Texas Constitution provides: “All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.” Tex. Const. art. I, § 3. An individual’s right to vote falls within the ambit of Article I, Section 3 and is coextensive with the U.S. Constitution’s Fourteenth Amendment equal protection clause. Texas courts apply federal standards to determine a violation of Article I, Section 3. *Rose v. Doctors Hosp.*, 801 S.W.2d 841, 846 (Tex. 1990).

85. When resolving a challenge to a provision of Texas election laws under the state constitution, the Texas Supreme Court has adopted the balancing test set forth by the United States Supreme Court in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). *State v. Hodges*, 92 S.W.3d 489, 496 (Tex. 2002) (“The parties agree that the proper test for determining the constitutionality of section 162.015(a)(2) is the balancing test articulated in *Anderson*”).

86. Under *Anderson*, a court must evaluate “‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’” and “‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’” while considering “the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Id.* (quoting the *Anderson* standard as described in *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)).

87. A state’s important regulatory interests are generally sufficient to justify “reasonable, nondiscriminatory restrictions.” *Anderson*, 460 U.S. at 788. But when a burden on the right to vote is severe or discriminatory, the regulation must be “narrowly drawn to advance a state interest of compelling importance.” *Burdick*, 504 U.S. at 434 (quoting *Norman v. Reed*,

502 U.S. 279, 289 (1992)). This approach also applies to equal protection challenges under the Texas Constitution.

88. Plaintiff's constituents in Texas have a fundamental right to vote under the Texas Constitution. Where the operation of an election law is alleged to cause a deprivation of such a fundamental right, the court "must weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendment that the plaintiff seeks to vindicate against the precise interest put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights." See *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

89. Texas's limit on early voting drop-off locations ensures that many disabled and elderly voters – who cannot safely vote in person because of the pandemic – will have to travel long distances and suffer crowded drop-off locations in order to drop off their ballots. And for those who receive their ballots close to Election Day, they will not be able to return those ballots by mail with any confidence they will be counted.

90. Defendant has provided no meaningful justification for the one-per-county limit on drop-off locations. The limit advances no security goals, despite Defendant's unexplained invocation of security in the October 1 order. And though the Proclamation invokes Defendant's power to control the ingress and egress into disaster areas, far from controlling and reducing crowding, the Proclamation actually will result in more crowded conditions in a pandemic where social distancing is critical. The Governor cannot invoke his emergency powers to violate voters' equal protection rights under the Texas Constitution.

91. The limitation on early voting drop-off locations unconstitutionally burdens the fundamental right to vote of Texas voters.

COUNT THREE
**(Arbitrary Disenfranchisement in Violation of Article 1, Section 3
of the Texas Constitution)**

92. The preceding and subsequent allegations are incorporated into Count Two, as though fully set forth herein.

93. “The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104-05; *see also id.* at 106 (finding that voting procedures that “vary not only from county to county but indeed within a single county” are not “sufficient [to] guarantee[] equal treatment”); *see, e.g., Harper v. Va. Bd. of Elections*, 383 U.S. 663, 665 (1966) (“[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.”); *see Andrade v. NAACP of Austin*, 345 S.W.3d 1, 12 (Tex. 2011) (citing *Bush v. Gore*).

94. Defendant’s insistence that every county in Texas provide only a single ballot-by-mail drop-off location—regardless of geographical size or population—requires that counties provide voters with disparate access to the franchise. Texas’s 254 counties vary dramatically in both physical size and population. The use of county lines as the delineation for the number of voting resources that may be provided is therefore arbitrary. As a result of the October 1 Proclamation, eligible voters, including constituents of Common Cause Texas and ADL, will face disparate burdens on their right to vote based entirely on which county the voter lives in, or on where they live in a particular county in relationship to the single ballot-by-mail drop-off

location allowed under Defendant's Proclamation. The Governor cannot invoke his emergency powers to violate voters' equal protection rights under the Texas Constitution.

95. The Proclamation's elimination of additional ballot drop-off locations and limit of such drop-off locations to one per county cannot withstand even rational basis review

APPLICATION FOR EMERGENCY TEMPORARY RESTRAINING ORDER

96. A temporary restraining order's purpose is to maintain the status quo pending trial. "The status quo is the last actual, peaceable, non-contested status that preceded the controversy." *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

97. Plaintiffs are entitled to a temporary restraining order because absent one, the status quo will be destroyed. The Proclamation itself has garnered significant media attention, and unless the Court acts, Plaintiffs and their members, supporters, and constituents who are eligible to vote by mail may decline to timely apply for an application to do so because they will not trust that their ballot will be returned in time to be counted by the USPS and cannot travel to the distant single location within their county to return their ballot in person. These voters will either risk their personal safety to vote in person despite being particularly vulnerable to serious and potentially lethal complications from COVID-19 due to age or disability, or will choose not to vote at all for fear that in person voting creates too great a risk.

APPLICATION FOR TEMPORARY INJUNCTION

98. Plaintiffs are also entitled to temporary injunctive relief for these same reasons. Section 273.081 of the Texas Election Code provides that "[a] person who is being harmed or is in danger of being harmed by a violation or threatened violation of this code is entitled to appropriate injunctive relief to prevent the violation from continuing or occurring."

99. A temporary injunction's purpose is to preserve the status quo of the litigation's subject matter pending a trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

100. Plaintiff must prove three elements to obtain a temporary injunction: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) probable imminent and irreparable injury. *Id.*

101. Plaintiffs state a valid cause of action against Defendant and have a probable right to the relief sought. For the reasons detailed above, there is a substantial likelihood that Plaintiffs will prevail after a trial on the merits because the Proclamation is an unconstitutional ultra vires act exceeding Defendant's authority and an unconstitutional infringement of equal protection and voting rights as protected by Article 1, Section 3 of the Texas Constitution.

102. An injury is irreparable if the injured party cannot be adequately compensated in damages, or if damages cannot be measured by any certain pecuniary standard. *Butnaru*, 84 S.W.3d at 204.

103. If the Proclamation is not enjoined, the resulting burden on voting and loss of opportunity to vote cannot be redressed by damages.

APPLICATION FOR PERMANENT INJUNCTION

104. After full trial on the merits, Plaintiffs asks the Court to enter a permanent injunction granting the relief requested herein.

PRAYER FOR RELIEF

105. Therefore, Plaintiffs respectfully request that this Court:

106. Declare that Texas law, including Texas Election Code § 86.006(a-1), does not limit the number or locations of early voting drop-off sites that the statutory Early Voting Clerks may provide to the voters of their respective counties;

107. Declare the Proclamation an unconstitutional infringement of equal protection and voting rights as protected by Article 1, Section 3 of the Texas Constitution; and

108. Enter a temporary restraining order and temporary injunction, as well as a permanent injunction, enjoining the enforcement of Defendant's Proclamation forcing the statutory Early Voting Clerks to operate only one drop-off location for vote-by-mail ballots.

Dated: October 5, 2020

Respectfully submitted,

/s/ Lindsey B. Cohan

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Exhibit C

THE ANTI-DEFAMATION LEAGUE	§	IN THE DISTRICT COURT
AUSTIN, SOUTHWEST, AND TEXOMA	§	
REGIONS; COMMON CAUSE TEXAS;	§	
and ROBERT KNETSCH;	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	TRAVIS COUNTY
	§	
GREG ABBOTT, in his official capacity as	§	
the Governor of Texas; RUTH HUGHS, in	§	
her official capacity as Texas Secretary of	§	
State,	§	
<i>Defendants.</i>	§	353 rd JUDICIAL DISTRICT

DEFENDANTS' NOTICE OF ACCELERATED INTERLOCUTORY APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant Governor Greg Abbott in his official capacity as the Governor of Texas and Defendant Ruth Hughs in her official capacity as Texas Secretary of State (hereafter "Defendants") who respectfully appeal the Court's interlocutory orders: denying Defendant[] [Abbott's] Plea to the Jurisdiction, denying Defendant Secretary Hughs's Plea to the Jurisdiction, and granting Plaintiffs' Application for Temporary Injunction against both Defendants, entered on October 15, 2020. Defendants exercise their right to seek an accelerated appeal to the Third Court of Appeals in Austin, Texas. *See* TEX. R. APP. P. 28.1(a) ("Appeals from interlocutory orders (when allowed by statute) . . . are accelerated appeals."); TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4), (a)(8).

NOTICE OF AUTOMATIC STAY

Please note this "interlocutory appeal . . . stays all other proceedings in the trial court pending resolution of that appeal." *See* TEX. CIV. PRAC. & REM. Code § 51.014(b). This

interlocutory appeal meets all the prerequisites for the automatic stay to apply. Section 51.014 of the Texas Civil Practice & Remedies Code governs interlocutory appeals on a plea to the jurisdiction:

(a) **A person may appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that:**

...

(4) **grants or refuses a temporary injunction** or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;

...

(8) **grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001;**

...

(b) An interlocutory appeal under Subsection (a) . . . stays the commencement of a trial in the trial court pending resolution of the appeal. **An interlocutory appeal under Subsection (a)(3), (5), (8), or (12) also stays all other proceedings in the trial court pending resolution of that appeal.**

TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4), (a)(8), (b) (emphasis added).

Defendants are authorized to file an interlocutory appeal under this provision, including its automatic stay of all other proceedings pending resolution of the appeal. *See* TEX. CIV. PRAC. & REM. Code §§ 51.014(a)(8), (b), 101.001(3); *Tex. A&M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 845 (Tex. 2007) (holding that “[a] person sued in an official capacity should be able to appeal the denial of a jurisdictional plea in the same way as his employing governmental unit because both defendants’ interests in pleading sovereign immunity are identical”); *In re Griffith*, 485 S.W.3d 529, 532–33 (Tex. App.—Houston [14th Dist.] 2015, org. proceeding) (holding that the appellate court had jurisdiction to consider an order denying a plea to the jurisdiction against an official capacity defendant, even though the plaintiffs argued that the official acted *ultra vires*).

The filing of a notice of appeal immediately stays all other proceedings, including discovery and hearings. *In re Geomet Recycling LLC*, 578 S.W.3d 82 (Tex. 2019) (orig. proceeding) (issuing

mandamus where court of appeals lifted stay to allow temporary injunction hearing to proceed); *id.* at 91–91 (“The court of appeals committed an error of law and thereby clearly abused its discretion when it authorized the trial court to conduct further trial-court proceedings in violation of the legislatively mandated stay of ‘all other proceedings in the trial court.’”).¹

NOTICE THAT DEFENDANTS NEED NOT FILE A COST BOND

Defendants further respectfully notify the Court that, as governmental officers, they are not required to file a bond for court costs. *See* TEX. CIV. PRAC. & REM. CODE § 6.001. Defendants’ appeal is therefore perfected upon the filing of the notice of appeal.

NOTICE REGARDING SUPERSEDEAS

Defendants further respectfully notify the Court that, upon the filing of this instrument, the temporary injunction is superseded pursuant to Texas Civil Practice and Remedies Code Section 6.001(b) and Texas Rules of Appellate Procedure 24.2(a)(3), 29.1(b).

¹ *See also In re Tex. Educ. Agency*, 441 S.W.3d 747, 750 (Tex. App.—Austin 2014, org. proceeding) (“[T]he stay set forth in section 51.014 is statutory and allows no room for discretion.”) (collecting cases applying stay to orders granting, among other things, severance and leave to file an amended petition); *City of Galveston v. Gray*, 93 S.W.3d 587, 592 (Tex. App.—Houston [14th Dist.] 2002, org. proceeding) (granting conditional mandamus where trial court ordered discovery ahead of ruling on a plea to the jurisdiction because it would defeat purpose of interlocutory appeal); *In re Univ. of the Incarnate Word*, 469 S.W.3d 255, 259 (Tex. App.—San Antonio 2015, org. proceeding) (“We conclude the trial court’s order compelling discovery responses was an abuse of the district court’s discretion because it violated the automatic stay of ‘all other proceedings in the trial court’ under section 51.014(b).”); *In re I-10 Colony, Inc.*, No. 01-14-00775-CV, 2014 WL 7914874, at *2 (Tex. App.—Houston [1st Dist.] Feb. 24, 2014, orig. proceeding) (mem. op.) (holding that discovery order violated stay even though the trial court made an oral ruling on a motion for discovery prior to the imposition of the automatic stay); *In re Kinder Morgan Prod. Co., LLC*, No. 11-20-00027-CV, 2020 WL 1467281, at *4 (Tex. App.—Eastland Mar. 26, 2020, org. proceeding) (holding that an order consolidating three cases for purposes of discovery violated the stay because “[a]ll proceedings, including discovery, are stayed pending the resolution of the interlocutory appeal”).

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

RYAN L. BANGERT
Deputy First Assistant Attorney General

DARREN L. MCCARTY
Deputy Attorney General for Civil Litigation

THOMAS A. ALBRIGHT
Chief for General Litigation Division

/s/ BENJAMIN L. DOWER
BENJAMIN L. DOWER
Assistant Attorney General
Texas Bar No. 24082931
benjamin.dower@oag.texas.gov

MICHAEL R. ABRAMS
Texas Bar No. 24087072
Assistant Attorneys General
michael.abrams@oag.texas.gov

Office of the Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2798 | FAX: (512) 320-0667

COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served electronically through the electronic-filing manager in compliance with Texas Rule of Civil Procedure 21a on this the October 15, 2020, to:

Lindsey B. Cohan
State Bar No. 24083903
Dechert LLP
515 Congress Avenue, Suite 1400
Austin, TX 78701-3902
(512) 394-3000
lindsey.cohan@dechert.com

Myrna Pérez
Maximillian L. Feldman
THE BRENNAN CENTER FOR JUSTICE
AT NYU LAW SCHOOL
120 Broadway, Suite 1750
New York, New York 10271

Erik Snapp
DECHERT LLP
35 West Wacker Drive, Suite 3400
Chicago, IL 60601
(312) 646-5828
Erik.Snapp@dechert.com

Neil Steiner
May Chiang
Julia Markham-Cameron
DECHERT LLP
1095 Avenue of the Americas
New York, New York 10036-6797

COUNSEL FOR PLAINTIFFS

/s/ Benjamin L. Dower
BENJAMIN L. DOWER
Assistant Attorney General

Exhibit D

THE ANTI-DEFAMATION LEAGUE § IN THE DISTRICT COURT
AUSTIN, SOUTHWEST, AND TEXOMA §
REGIONS; COMMON CAUSE TEXAS; §
and ROBERT KNETSCH; §
Plaintiffs, §
v. § TRAVIS COUNTY
GREG ABBOTT, in his official capacity as §
the Governor of Texas, §
Defendant. § 353rd JUDICIAL DISTRICT

**APPENDIX TO DEFENDANT’S PLEA TO THE JURISDICTION AND
RESPONSE TO PLAINTIFF’S APPLICATION FOR TEMPORARY INJUNCTIVE RELIEF**

DOCUMENT	APPX.
Governor’s Disaster Declaration (March 13, 2020).....	002–004
Governor’s Proclamation (May 11, 2020).....	005–008
Governor’s Proclamation (July 27, 2020).....	009–012
Governor’s Disaster Declaration (September 7, 2020)	0013–15
Governor’s Proclamation (October 1, 2020)	016–020
C.S.H.B. 1927 Bill Analysis ¹	021–024
Transcript of Texas Senate Committee on State Affairs, S.B. 9 (March 18, 2019)	025–044

¹ Publicly available at <https://capitol.texas.gov/tlodocs/84R/analysis/pdf/HB01927S.pdf#navpanes=0> (last accessed October 5, 2020); *see also* Bill History, available at Texas Legislature Online, HB 1927 (84th Regular Session), publicly available here: <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=84R&Bill=HB1927> (last accessed October 5, 2020).



GOVERNOR GREG ABBOTT

March 13, 2020

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:20 AM O'CLOCK

The Honorable Ruth R. Hughs
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

MAR 13 2020

Secretary of State

Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation certifying that COVID-19 poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,

Gregory S. Davidson
Executive Clerk to the Governor
GSD/gsd

Attachment

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the novel coronavirus (COVID-19) has been recognized globally as a contagious respiratory virus; and

WHEREAS, as of March 13, 2020, there are more than 30 confirmed cases of COVID-19 located in multiple Texas counties; and

WHEREAS, there are more than 50 Texans with pending tests for COVID-19 in Texas; and

WHEREAS, some schools, universities, and other governmental entities are beginning to alter their schedules, and some venues are beginning to temporarily close, as precautionary responses to the increasing presence of COVID-19 in Texas; and

WHEREAS, costs incurred to prepare for and respond to COVID-19 are beginning to mount at the state and local levels; and

WHEREAS, the State of Texas has already taken numerous steps to prepare for COVID-19, such as increasing laboratory testing capacity, coordinating preparedness efforts across state agencies, and working with local partners to promote appropriate mitigation efforts; and

WHEREAS, it is critical to take additional steps to prepare for, respond to, and mitigate the spread of COVID-19 to protect the health and welfare of Texans; and

WHEREAS, declaring a state of disaster will facilitate and expedite the use and deployment of resources to enhance preparedness and response.

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that COVID-19 poses an imminent threat of disaster. In accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I hereby declare a state of disaster for all counties in Texas.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

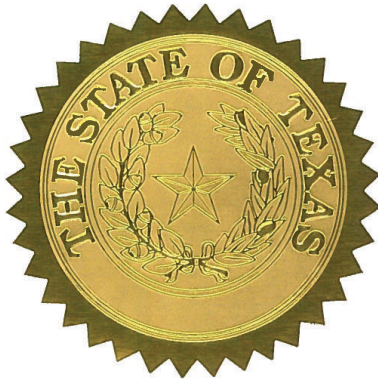
In accordance with the statutory requirements, copies of this proclamation shall be filed

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:26AM O'CLOCK

MAR 13 2020

Appx.003

with the applicable authorities.



IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 13th day of March, 2020.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

ATTESTED BY:

A handwritten signature in black ink that reads "R. Hughes".

RUTH R. HUGHES
Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:20 AM O'CLOCK

MAR 13 2020



GOVERNOR GREG ABBOTT

May 11, 2020

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
5:30pm O'CLOCK

MAY 11 2020

Secretary of State

The Honorable Ruth R. Hughs
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation concerning early voting for special elections to occur on July 14, 2020.

The original of this proclamation is attached to this letter of transmittal.

Respectfully submitted,

Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, on April 12, 2020, I issued a proclamation renewing the disaster declaration for all counties in Texas; and

WHEREAS, the Commissioner of the Texas Department of State Health Services (DSHS), Dr. John Hellerstedt, has determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code, and renewed that determination on April 17, 2020; and

WHEREAS, I have issued executive orders, proclamations, and suspensions of Texas laws in response to the COVID-19 disaster, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, I issued a proclamation on March 16, 2020, ordering a special election on July 14, 2020, to fill the vacancy in Texas State Senate District No. 14; and

WHEREAS, on March 20, 2020, I issued a proclamation postponing the runoff primary election date from May 26, 2020, to July 14, 2020; and

WHEREAS, I also issued a proclamation suspending Sections 41.0052(a) and (b) of the Texas Election Code and Section 49.103 of the Texas Water Code to the extent necessary to allow political subdivisions that would otherwise hold elections on May 2, 2020, to move their general and special elections for 2020 only to the next uniform election date, occurring on November 3, 2020; and

WHEREAS, I subsequently issued proclamations on April 2, April 6, April 8, and May 8, 2020, authorizing certain political subdivisions to call emergency special elections on July 14, 2020; and

WHEREAS, Texas law provides that eligible voters have a right to cast a vote in person; and

WHEREAS, as counties across Texas prepare for the upcoming elections on July 14, 2020, and establish procedures for eligible voters to exercise their right to vote in person, it is necessary that election officials implement health protocols to conduct elections safely and to protect election workers and voters; and

WHEREAS, in order to ensure that elections proceed efficiently and safely when Texans go to the polls to cast a vote in person during early voting or on election day, it is necessary to increase the number of days in which polling locations will be open during the early voting period, such that election officials can implement appropriate social distancing and safe hygiene practices; and

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
5:30 PM O'CLOCK

MAY 11 2020

WHEREAS, Section 85.001(a) of the Texas Election Code provides that the period for early voting by personal appearance begins 17 days before election day; and

WHEREAS, Section 85.001(b) of the Texas Election Code provides that the period for early voting for a runoff primary election begins 10 days before election day; and

WHEREAS, in consultation with the Texas Secretary of State, it has become apparent that strict compliance with the statutory requirements relating to the duration of early voting contained in Sections 85.001(a) and 85.001(b) of the Texas Election Code would prevent, hinder, or delay necessary action in coping with the COVID-19 disaster; and

WHEREAS, pursuant to Section 418.016 of the Texas Government Code, the Governor has the express authority to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and laws of the State of Texas, do hereby suspend Sections 85.001(a) and 85.001(b) of the Texas Election Code to the extent necessary to require that, for any election ordered or authorized to occur on July 14, 2020, early voting by personal appearance shall begin on Monday, June 29, 2020, and shall continue through the fourth day before election day, excluding any legal state or federal holidays. I further amend the proclamations issued on April 2, April 6, April 8, and May 8, 2020, authorizing emergency special elections, and the proclamation issued on March 16, 2020, ordering a special election to fill the vacancy in Texas State Senate District No. 14, so as to require that for each of these elections to be held on July 14, 2020, early voting by personal appearance shall begin on Monday, June 29, 2020, in accordance with the above suspension.

The Secretary of State shall take notice of this proclamation and shall transmit a copy of this order immediately to every County Judge of this state and all appropriate writs will be issued and all proper proceedings will be followed to the end that said elections may be held and their results proclaimed in accordance with law.



IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 11th day of May, 2020.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor of Texas

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
5:30 PM O'CLOCK
MAY 11 2020

ATTESTED BY:



RUTH R. HUGHS
Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
5:30 PM O'CLOCK

MAY 11 2020



GOVERNOR GREG ABBOTT

July 27, 2020

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

2:00pm O'CLOCK

JUL 27 2020


Secretary of State

The Honorable Ruth R. Hughs
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation suspending certain statutes concerning elections on November 3, 2020.

The original of this proclamation is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor
GSD/gsd

Attachment

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined that COVID-19 continues to represent a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, pursuant to legislative authorization under Chapter 418 of the Texas Government Code, I have issued executive orders, proclamations, and suspensions of Texas laws in response to the COVID-19 disaster, aimed at using the least restrictive means available to protect the health and safety of Texans and ensure an effective response to this disaster; and

WHEREAS, Section 41.001(a) of the Texas Election Code provides that a general or special election in this state shall be held on a uniform election date, and the next uniform election date is occurring on November 3, 2020; and

WHEREAS, I issued a proclamation on March 18, 2020, suspending Sections 41.0052(a) and (b) of the Texas Election Code and Section 49.103 of the Texas Water Code to the extent necessary to allow political subdivisions that would otherwise have held elections on May 2, 2020, to move their general and special elections for 2020 only to the November 3, 2020 uniform election date; and

WHEREAS, Texas law provides that eligible voters have a right to cast a vote in person; and

WHEREAS, as counties across Texas prepare for the upcoming elections on November 3, 2020, and establish procedures for eligible voters to exercise their right to vote in person, it is necessary that election officials implement health protocols to conduct elections safely and to protect election workers and voters; and

WHEREAS, in order to ensure that elections proceed efficiently and safely when Texans go to the polls to cast a vote in person during early voting or on election day for the November 3, 2020 elections, it is necessary to increase the number of days in which polling locations will be open during the early voting period, such that election officials can implement appropriate social distancing and safe hygiene practices; and

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2:00 PM O'CLOCK

JUL 27 2020

Appx.010

WHEREAS, Section 85.001(a) of the Texas Election Code provides that the period for early voting by personal appearance begins 17 days before election day; and

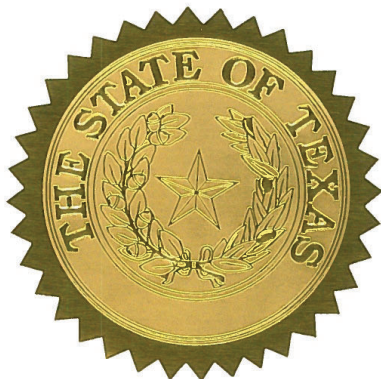
WHEREAS, Section 86.006(a-1) of the Texas Election Code provides that a voter may deliver a marked mail ballot in person to the early voting clerk's office while the polls are open on election day; and

WHEREAS, in consultation with the Texas Secretary of State, it has become apparent that for the November 3, 2020 elections, strict compliance with the statutory requirements in Sections 85.001(a) and 86.006(a-1) of the Texas Election Code would prevent, hinder, or delay necessary action in coping with the COVID-19 disaster, and that providing additional time for early voting will provide Texans greater safety while voting in person; and


WHEREAS, pursuant to Section 418.016 of the Texas Government Code, the legislature has expressly authorized the Governor to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and laws of the State of Texas, do hereby suspend Section 85.001(a) of the Texas Election Code to the extent necessary to require that, for any election ordered or authorized to occur on November 3, 2020, early voting by personal appearance shall begin on Tuesday, October 13, 2020, and shall continue through the fourth day before election day. I further suspend Section 86.006(a-1) of the Texas Election Code, for any election ordered or authorized to occur on November 3, 2020, to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk's office prior to and including on election day.

The Secretary of State shall take notice of this proclamation and shall transmit a copy of this order immediately to every County Judge of this state and all appropriate writs will be issued and all proper proceedings will be followed to the end that said elections may be held and their results proclaimed in accordance with law.



IN TESTIMONY WHEREOF, I
have hereto signed my name and
have officially caused the Seal of
State to be affixed at my office in
the City of Austin, Texas, this the
27th day of July, 2020.



GREG ABBOTT
Governor of Texas

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2:00 PM O'CLOCK
JUL 27 2020

ATTESTED BY:

A handwritten signature in black ink, appearing to read 'R. Hughs', written over a horizontal line.

RUTH R. HUGHS
Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2:00 pm O'CLOCK

JUL 27 2020

Appx.012



GOVERNOR GREG ABBOTT

September 7, 2020

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
5:00 PM O'CLOCK

SEP 7 2020
[Signature]
Secretary of State

The Honorable Ruth R. Hughs
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation renewing the declaration stating that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in Texas.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,

[Signature]
Gregory S. Davidson
Executive Clerk to the Governor
GSD/gsd

Attachment

POST OFFICE BOX 12428 AUSTIN, TEXAS 78711 512-463-2000 (VOICE) DIAL 7-1-1 FOR RELAY SERVICES

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have issued proclamations renewing the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

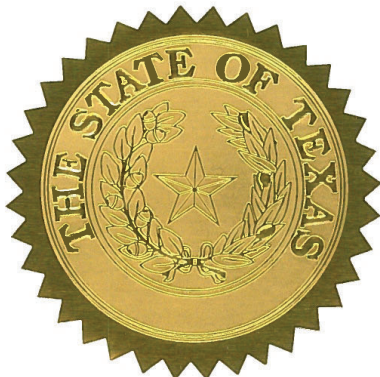
WHEREAS, a state of disaster continues to exist in all counties due to COVID-19;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for all counties in Texas.

Pursuant to Section 418.017, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.



IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 7th day of September, 2020.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
5:00 PM O'CLOCK

SEP 07 2020

Appx.014

ATTESTED BY:



RUTH R. HUGHS
Secretary of State

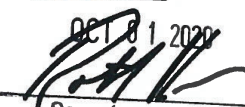
FILED IN THE OFFICE OF THE
SECRETARY OF STATE
5:00pm O'CLOCK

SEP 07 2020



GOVERNOR GREG ABBOTT

October 1, 2020

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:00 AM O'CLOCK
OCT 01 2020

Secretary of State

The Honorable Ruth R. Hughs
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

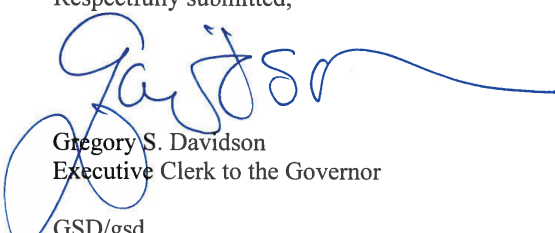
Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation suspending certain statutes concerning the November 3, 2020 elections.

The original of this proclamation is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor
GSD/gsd

Attachment

POST OFFICE BOX 12428 AUSTIN, TEXAS 78711 512-463-2000 (VOICE) DIAL 7-1-1 FOR RELAY SERVICES

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined that COVID-19 continues to represent a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, pursuant to legislative authorization under Chapter 418 of the Texas Government Code, I have issued executive orders, proclamations, and suspensions of Texas laws in response to the COVID-19 disaster, aimed at using the least restrictive means available to protect the health and safety of Texans and ensure an effective response to this disaster; and

WHEREAS, on July 27, 2020, I issued a proclamation suspending certain provisions of the Texas Election Code to provide additional time for early voting and to provide additional time in which a voter can deliver a marked mail ballot in person to the early voting clerk's office, such that this may be done prior to and including on election day; and

WHEREAS, the suspension of the limitation on the in-person delivery of marked mail ballots, as made in the July 27, 2020 proclamation, merely increased the amount of time for an eligible voter to return a marked mail ballot in person to the early voting clerk's office and did not suspend or otherwise affect the other applicable requirements that a voter must comply with when returning a marked mail ballot, including presenting an acceptable form of identification described by Section 63.0101 of the Election Code; and

WHEREAS, an amendment to the suspension of the limitation on the in-person delivery of marked mail ballots, as made in the July 27, 2020 proclamation, is appropriate to add ballot security protocols for when a voter returns a marked mail ballot to the early voting clerk's office; and

WHEREAS, Section 41.001(a) of the Texas Election Code provides that a general or special election in this state shall be held on a uniform election date, and the next uniform election date is occurring on November 3, 2020; and

WHEREAS, I issued a proclamation on March 18, 2020, suspending Sections 41.0052(a) and (b) of the Texas Election Code and Section 49.103 of the Texas Water Code to the extent necessary to allow political subdivisions that would otherwise have held elections on May 2, 2020, to move their general and special elections for 2020 only to the November 3, 2020 uniform election date; and

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:00AM O'CLOCK

OCT 01 2020

WHEREAS, Texas law provides that eligible voters have a right to cast a vote in person; and

WHEREAS, as counties across Texas prepare for the upcoming elections on November 3, 2020, and establish procedures for eligible voters to exercise their right to vote in person, it is necessary that election officials implement health protocols to conduct elections safely and to protect election workers and voters; and

WHEREAS, in order to ensure that elections proceed efficiently and safely when Texans go to the polls to cast a vote in person during early voting or on election day for the November 3, 2020 elections, it is necessary to increase the number of days in which polling locations will be open during the early voting period, such that election officials can implement appropriate social distancing and safe hygiene practices; and

WHEREAS, Section 85.001(a) of the Texas Election Code provides that the period for early voting by personal appearance begins 17 days before election day; and

WHEREAS, Section 86.006(a-1) of the Texas Election Code provides that a voter may deliver a marked mail ballot in person to the early voting clerk's office while the polls are open on election day; and

WHEREAS, in consultation with the Texas Secretary of State, it has become apparent that for the November 3, 2020 elections, strict compliance with the statutory requirements in Sections 85.001(a) and 86.006(a-1) of the Texas Election Code would prevent, hinder, or delay necessary action in coping with the COVID-19 disaster, and that providing additional time for early voting will provide Texans greater safety while voting in person; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders hav[ing] the force and effect of law;" and

WHEREAS, pursuant to Section 418.016 of the Texas Government Code, the legislature has expressly authorized the governor to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster; and

WHEREAS, under Section 418.018(c), the "governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area;"

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and laws of the State of Texas, do hereby suspend Section 85.001(a) of the Texas Election Code to the extent necessary to require that, for any election ordered or authorized to occur on November 3, 2020, early voting

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SECRETARY OF STATE
11:00 AM O'CLOCK

OCT 01 2020

Appx.018

by personal appearance shall begin on Tuesday, October 13, 2020, and shall continue through the fourth day before election day.

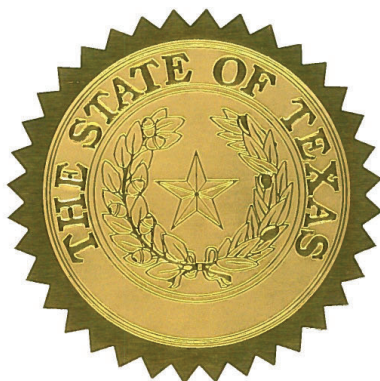
I further suspend Section 86.006(a-1) of the Texas Election Code, for any election ordered or authorized to occur on November 3, 2020, to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk's office prior to and including on election day; provided, however, that beginning on October 2, 2020, this suspension applies only when:

- (1) the voter delivers the marked mail ballot at a single early voting clerk's office location that is publicly designated by the early voting clerk for the return of marked mail ballots under Section 86.006(a-1) and this suspension; and
- (2) the early voting clerk allows poll watchers the opportunity to observe any activity conducted at the early voting clerk's office location related to the in-person delivery of a marked mail ballot pursuant to Section 86.006(a-1) and this suspension, including the presentation of an acceptable form of identification described by Section 63.0101 of the Election Code by the voter.

Any poll watchers operating under this suspension must comply with the requirements of Chapter 33 of the Election Code as if they were serving at an early voting polling place, as applicable to observing the in-person delivery of a marked mail ballot pursuant to Section 86.006(a-1) and this suspension.

Any marked mail ballot delivered in person to the early voting clerk's office prior to October 2, 2020, shall remain subject to the July 27, 2020 proclamation.

The Secretary of State shall take notice of this proclamation and shall transmit a copy of this order immediately to every County Judge of this state and all appropriate writs will be issued and all proper proceedings will be followed to the end that said elections may be held and their results proclaimed in accordance with law.



IN TESTIMONY WHEREOF, I
have hereto signed my name and
have officially caused the Seal of
State to be affixed at my office in
the City of Austin, Texas, this the
1st day of October, 2020.

A handwritten signature in black ink that reads "Greg Abbott". The signature is written in a cursive, flowing style.

GREG ABBOTT
Governor of Texas

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:00 AM O'CLOCK

OCT 01 2020

Appx.019

ATTESTED BY:

A handwritten signature in black ink, appearing to read 'R. Hughs', is written over a horizontal line.

RUTH R. HUGHS
Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:00 AM O'CLOCK

OCT 01 2020

Appx.020

BILL ANALYSIS

Senate Research Center
84R30750 ATP-D

C.S.H.B. 1927
By: Bonnen, Greg et al. (Huffman)
State Affairs
5/18/2015
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

After each election cycle, new situations arise that need to be addressed in state election laws to allow local jurisdictions more flexibility and direction in the election process. Recently, there have been issues relating to the implementation and application of providing eligible voters with a ballot by mail. Currently, political subdivisions that do not contract with a county to administer elections are not required to produce a ballot by mail. Some persons eligible to vote by mail expect to receive a ballot by mail for each election in which they qualify to participate. However, in some cases, these ballots are not delivered by mail. C.S.H.B. 1927 seeks to remedy these issues by providing clarification in the code for the annual application for a ballot by mail, or ABBM process—it defines annual ABBMs as a separate, but consistent, process, including consistent deadlines and submission requirements for single election ABBMs. These changes will ensure that voters who submit applications for a mail-in ballot are able to vote in every election for which they are eligible.

C.S.H.B. 1927 amends current law relating to the procedures for applying for a ballot to be voted by mail and creates a criminal offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 84.001(e), Election Code, as follows:

(e) Authorizes an applicant for a ballot to be voted by mail to apply for ballots for the main election and any resulting runoff election on the same application. Provides that, if an application for the main election and any resulting runoff is not timely for the main election, it will be considered timely for any resulting runoff if received not later than the deadline, determined using the date of the runoff election, for submitting a regular application for a ballot to be voted by mail. Deletes existing text providing that the timeliness of the application for both elections is determined in relation to the main election. Deletes existing text providing that if, however, the application is not timely for the main election, the timeliness of the application for the runoff election is determined in relation to that election.

SECTION 2. Amends Section 84.004(a), Election Code, as follows:

(a) Provides that a person commits an offense if:

- (1) the person signs an application for a ballot to be voted by mail as a witness for more than one applicant in the same election; or
- (2) the person signs an application for annual ballots by mail as a witness for more than one applicant in the same calendar year.

Deletes existing text providing that a person commits an offense if, in the same election, the person signs early voting ballot application as a witness for more than one applicant.

SECTION 3. Amends Section 84.007, Election Code, by amending Subsections (b) and (c) and adding Subsection (e), as follows:

(b) Requires that an application be submitted to the early voting clerk by:

- (1) mail;
- (2) common or contract carrier;
- (3) telephonic facsimile machine, if a machine is available in the clerk's office; or
- (4) electronic transmission of a scanned application containing an original signature.

(c) Authorizes an application, except as provided by Section 86.0015(b) (providing that an application for a ballot to be voted by mail is considered to be for each election that fulfills certain criteria), to be submitted at any time in the year of the election for which a ballot is requested, but not later than the close of regular business in the early voting clerk's office or 12 noon, whichever is later, on the 11th day before election day unless that day is a Saturday, Sunday, or legal state or national holiday, in which case the last day is the first preceding regular business day. Deletes existing text requiring that an application be submitted on or after the 60th day before election day and before the close of regular business in the early voting clerk's office or 12 noon, whichever is later, on the ninth day before election day unless that day is a Saturday, Sunday, or legal state or national holiday, in which case the last day is the first preceding regular business day.

(e) Requires the early voting clerk to designate an e-mail address for receipt of an application under Subsection (b)(4). Requires the secretary of state (SOS) to include the e-mail addresses on SOS's website.

SECTION 4. Amends Section 84.011(a), Election Code, as follows:

(a) Requires that the officially prescribed application form for an early voting ballot include certain information, including a space for an applicant applying on the ground of age or disability to indicate of the application is an application under Section 86.0015 (New heading: Annual Ballots by Mail). Makes nonsubstantive changes.

SECTION 5. Amends Subchapter B, Chapter 84, Election Code, by adding Section 84.038, as follows:

Sec. 84.038. CANCELLATION EFFECTIVE FOR SINGLE ELECTION. Provides that the cancellation of an application for a ballot to be voted by mail under Section 84.032(c) (relating to submitting a request by appearing in person after the close of early voting), (d) (relating to submitting a request by appearing to certain persons), or (e) (relating to submitting a request and executing an affidavit that the applicant did not mark the ballot) is effective for a single ballot only and does not cancel the application with respect to a subsequent election, including a subsequent election to which the same application applies under Section 84.001(e) (relating to timeliness in relation to a runoff election date for an early ballot) or 86.0015(b).

SECTION 6. Amends Section 86.0015, Election Code, as follows:

Sec. 86.0015. New heading: ANNUAL BALLOTS BY MAIL. (a) Provides that this section applies only to an application for a ballot to be voted by mail that indicates, rather than is submitted to the county clerk indicating, the ground of eligibility is age or disability and does not specify the election for which a ballot is requested or has been marked by the applicant as an application for more than one election.

(b) Provides that an application described by Subsection (a) is considered to be an application for a ballot for each election, including any ensuing runoff:

(1) in which the applicant is eligible to vote; and

(2) that occurs before the earlier of:

(A) except as provided by Subsection (b-2), the end of the calendar year in which the application was submitted;

(B) the date the county clerk receives notice from the voter registrar under Subsection (f) that the voter has changed residence to another county; or

(C) the date the voter's registration is canceled.

Deletes existing text providing that an application described by Subsection (a) is considered to be an application for a ballot for each election in which the county clerk serves as early voting clerk and in which the applicant is eligible to vote and that occurs before the earlier of the end of the calendar year in which the application was submitted, or the date the county clerk receives notice from the voter registrar under Subsection (d) that the voter has submitted a change in registration information.

(b-1) Requires that an application submitted under this section be submitted before the close of regular business in the early voting clerk's office or 12 noon, whichever is later, on the 11th day before election day unless that day is a Saturday, Sunday, or legal state or national holiday, in which case the last day is the first preceding regular business day.

(b-2) Provides that an application is considered to be submitted in the following calendar year for purposes of this section if:

(1) the applicant is eligible to vote in an election occurring in January or February of the next calendar year; and

(2) the application is submitted in the last 60 days of a calendar year but not earlier than the 60th day before the date of the January or February election.

(c) Requires the county clerk, in an election of a political subdivision located in a county in which the county clerk is not the early voting clerk, to provide the early voting clerk of the political subdivision that is holding the election a list of voters in the portion of the political subdivision located in the county who have ballot applications on file under this section. Requires the early voting clerk to provide a ballot to be voted by mail to each voter on the list.

(d) Requires the SOS to provide a method by which counties and political subdivisions located in the county can exchange and update information on applications received under this section.

(e) Creates this subsection from existing text and makes no further change.

(f) Redesignates existing Subsection (d) as Subsection (f). Requires the voter registrar to notify the county clerk when a voter's voter registration has been canceled or a voter's address or name has changed. Requires the county clerk to update any list of voters who have ballot applications on file under this section based on the information received from the voter registrar. Prohibits a voter's ballot application on file under this section from being canceled if a correction in

registration information for the voter is a change of address within the county in which the voter is registered or a change of the voter's name. Deletes existing text requiring the voter registrar to notify the county clerk following the receipt of a notice of a change in registration information under Section 15.021 (Notice of Change in Registration Information by Voter).

SECTION 7. Amends Section 86.006, Election Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires that a marked ballot voted under this chapter be returned to the early voting clerk in the official carrier envelope. Authorizes the carrier envelope to be delivered in another envelope and be transported and delivered only by:

(1) mail;

(2) common or contract carrier; or

(3) subject to Subsection (a-1), in-person delivery by the voter who voted the ballot.

(a-1) Authorizes the voter to deliver a marked ballot in person to the early voting clerk's office only while the polls are open on election day. Requires a person who delivers a marked ballot in person to present an acceptable form of identification described by Section 63.0101 (Documentation of Proof of Identification).

SECTION 8. Repealer: Section 84.009(b) (prohibiting an application submitted under this section from being submitted before the 20th day before election day), Election Code.

SECTION 9. Requires SOS, not later than January 1, 2016, to make the modifications to the official application form for a ballot to be voted by mail, as required by Section 84.011(a), Election Code, as amended by this Act.

SECTION 10. Provides that this Act applies only to an application for a ballot to be voted by mail submitted on or after January 1, 2016.

SECTION 11. Effective date: September 1, 2015.

TRANSCRIPTION OF
TEXAS SENATE COMMITTEE ON STATE AFFAIRS
SENATE BILL 9
MARCH 18, 2019

TRANSCRIBED BY: GRACE FAY

TRANSCRIPTION DATE: October 2, 2020

1 easier on the -- on the county to have a finite period of --
2 start voting on one day and you end on Election Day with
3 voting available all the way through. And so that will be a
4 amendment also.

5 MS. HUFFMAN: All right. We're gonna call up your
6 invited witnesses, Senator Hughes. Is that good? Omar
7 Escobar, Anthony Shaffer, and Dylan Lynch.

8 MR. ESCOBAR: Good morning.

9 MS. HUFFMAN: Mr. Escobar?

10 MR. ESCOBAR: Yes.

11 MS. HUFFMAN: You may proceed, sir. Thank you.

12 MR. ESCOBAR: Thank you. Good morning. My name is
13 Omar Escobar. I'm the district attorney for the 229th
14 Judicial District. Those counties include Starr County, Jim
15 Hogg Counties, and Duval counties.

16 I'm gonna just talk about some of our experience
17 as far as with the election code violations and sort of what
18 our experience with election fraud in the most recent
19 elections and then I'll field any questions you might have.
20 We began our efforts sometime in January of 2018 to begin to
21 enforce the laws that were passed in 2017 regarding election
22 fraud. And some of the -- some of the things that we began
23 to see was that, for example, we have 30,000 registered
24 voters in Starr County. And out of 30,000 registered voters,
25 we might see -- well, in the 2018 Democratic primary, we

1 would have seen approximately 14,000 people vote. But for
2 that election, we had 2000 applications for ballot by mail.
3 2000 applications for ballot by mail.

4 When we began our enforcement efforts as far as
5 that the changes to mail-in voting laws, what we saw was
6 sort of a decrease in the number of people that actually
7 voted by application -- by mail. So what happened in the
8 actual election was that only approximately 800 -- somewhere
9 about 800 of the persons who applied for ballot by mail
10 actually voted by mail. The rest began to cancel their
11 ballots. And the reason for -- the reason they did that is
12 because many people had been told by political workers that
13 they could vote from the convenience of their own home if
14 they just signed a form that they didn't understand. For
15 many voters, they believed that the political workers were
16 actually official election workers. So they were being
17 shoved a application in their face and told, "Do you want to
18 vote in the convenience of your own home?" And, well, who's
19 going to say "no" to that? So you had people signing off on
20 forms. What they didn't know was that the applications had
21 "disabled" marked for them. And many of these people were
22 not 65 years of age or older. They didn't know any better.

23 And so the practice had been that these
24 political workers who are being paid to harvest the votes
25 would tell them, "Hey, by the way, these particular -- the

1 mail-in is gonna come in at a particular time. As soon as
2 you get that mail-in, you call me and I'm gonna take care of
3 it for you." By the way, this is all borne out through our
4 investigation. And one of our investigators is here also
5 that will be available to testify. And so this had been the
6 practice. As soon as people found out that we were sort of
7 investigating these matters, people started canceling their
8 applications for ballot by mail and started instead going to
9 vote in person. So that decreased the people -- the mail-in
10 voting significantly, at least in the -- in the March 2018
11 Democratic primary.

12 What we did see was that most of these people --
13 I'm going to say, 9 out of 10 voters that claimed the
14 disability on a mail-in -- application for ballot by mail
15 were not disabled under Texas law. There is no way. Some of
16 them -- you had a firefighter, you even had a jailer, some
17 work for the school district -- they were all claiming
18 disability, and they didn't know any better. Some of these
19 are professionals, because of the practices that were --
20 that were common at that particular time. Also on the mail-
21 in side, you had elderly people, many of whom receive food
22 bank distributions, sort of approached by workers and being
23 told, you know, "Hey, here's a application for ballot by
24 mail. You need to sign this thing. And as soon as you get
25 the ballot, we're gonna come in and we're gonna -- we're

1 gonna prepare it for you." So the practice as we have seen
2 it was that they'd go in and, of course, as soon as that
3 ballot came in, they'd swoop in and help them sort of "vote
4 the right way."

5 And so that was really the practice -- that has
6 been the practice for years. But like I said, it began to
7 decrease the moment we began to investigate some of this.
8 And what I will tell you is that some -- what has led to
9 some of this -- these practices is that the reason they were
10 -- the political workers were so confident in allowing sort
11 of -- just putting "disabled" when they were not disabled,
12 is because the Secretary of State has sort of given this
13 opinion over the years that elections administrators could
14 not ask whether somebody was disabled or not. So the law was
15 on the books, in other words, you have to qualify to get an
16 application -- or ballot by mail, but there was really no
17 enforcement of it. So it's akin to saying that possession of
18 cocaine is illegal in Texas, but telling law enforcement
19 officers, "You can't ask what the white powdery substance in
20 the pocket is." That's the -- exactly what's going on with
21 the -- with the election code provision. So people were not
22 allowed to -- the elections administrators were not allowed
23 to ask -- inquire anything about disability. It's when we
24 started asking ourselves that people started noticing --
25 that election workers started sort of coming back to that.

1 So that was really our experience there and part
2 of the other experience that we saw was that we drafted
3 policies that were basically property use policies in Starr
4 County that kind of designated the parking areas around the
5 courthouse as "parking areas," because before what would
6 happen is that these parking areas would be commandeered by
7 people who were sort of campaign workers, and they'd have
8 tents and all kinds of things, and so it would effectively
9 cut off most of the parking. And as soon as a voter would
10 get down, you know, they'd be sort of congregated around,
11 harassed to vote in a particular way. And so our experience,
12 at least, is that most workers -- I mean, most voters just
13 want to be left alone. They want to get down, go vote in
14 peace, and leave in peace. And that wasn't happening. So
15 that was also our experience there.

16 One of the things that I will note is that in
17 the November election for 2018, we had -- we started
18 noticing a different practice of now it -- our enforcement
19 efforts decreased mail-in voting, even though -- I will tell
20 you that even though it decreased mail-in voting, it didn't
21 seem to have any impact in overall numbers. There was still
22 14,000 people who voted, probably more than non-presidential
23 primary elections, so it didn't affect -- in my mind, it
24 didn't affect voter turnout at all. In fact, it seemed to
25 increase it in one way or another. But it didn't affect it.

1 So as we go to November 2018, some of the local races as far
2 as the school district races and some of the general
3 election, at least in one polling location what we saw was -
4 - I'll preface it by saying there was much less mail-in than
5 had been in previous years. So now we have a whole bunch of
6 people that are cognizant that if they're not disabled, they
7 can't vote. So that really, you know, kind of weeded out a
8 lot of the false applications. And there's a lot of election
9 fraud there.

10 But what we started noticing in the first day of
11 early vote was at one polling location all of a sudden you
12 had people that -- campaign workers and even candidates
13 approaching the voters and asking them -- evidently asking
14 them if they needed assistance. Now -- so you can imagine a
15 situation where a person is going to vote, wants to get off
16 his car and go vote, being approached and asked, "Hey, do
17 you need assistance?" "Well, maybe, maybe not." "No, no. You
18 need assistance." You know, "You need assistance." "Well,"
19 and so, "Okay, well, yeah, let me get -- " So we saw
20 approximately one out of every five voters all of a sudden
21 needed assistance. They couldn't read, write, or otherwise
22 understand a ballot. I found that -- we found that
23 completely suspicious immediately. So it's my opinion, I
24 think, that the strategy then changed from mail-in -- from
25 concentrating on mail-in voting to then concentrating on

1 "assisted voting."

2 So what happens with assisted voting? Same thing
3 that happens with disabled -- disability. I'll reach into
4 the sort of curbside voting also -- is that when somebody
5 asked for assistance, most elections administrators are told
6 you cannot ask. So once again, the exception is swallowing
7 the rule. And so -- or this practice is now making it
8 largely unenforceable. So political workers know this, and
9 so they can go to a particular voter, say, "You need to
10 vote?" You know, "You need -- you need to -- you need
11 assistance." So somebody's gonna go in and say, "I -- this
12 person needs assistance," and they can't ask. So it was hard
13 to believe that a lot of these people that could otherwise
14 read and write were getting assistance.

15 And so it seems to me like the fraud seemed to
16 now shift over into assisted voting, which -- that has been
17 the Starr County experience. I won't talk for Hidalgo
18 County, but certainly Starr County that has been our
19 experience. So we've seen a reduction in mail-in, but now we
20 have an expansion in the practice of assisted voting. So
21 definitely I think the provisions in SB9 are something that
22 will help address these situations as far as election
23 integrity is concerned.

24 I will just briefly comment on something that I
25 think bears mention, that nowhere in any bill that I've seen

1 or any bills that I've seen are there enforcement
2 provisions. When we think about election fraud, we think of
3 it as after it happens. So we've got before fraud happens,
4 which is what -- why we have election laws and provisions.
5 And then we have what happens after election fraud, you
6 know, occurs. So we're usually coming in -- along with the
7 AG's office, or coming in after it happens and sometimes a
8 year or years after the election fraud happens, to
9 investigate, you know, interview witnesses, and come in and
10 sort of prosecute. But we've already had several election
11 cycles that have already gone past by the time there's
12 action taken.

13 So my concern is that I think some of our
14 conversation with the AG's office is that there is no
15 enforcement provision that I can see in the election code
16 that would give an -- and let's say, the county attorney,
17 district attorney, or the AG's office enforcement provisions
18 that would say, "Okay, Elections Administrator, you know
19 what the laws are, but you're not enforcing them." And so
20 the question would be, is there a way that, you know --
21 where we can have some kind of emergency enforcement
22 authority from the local officials before fraud happens? By
23 that I mean, either an injunction, mandamus, TROs, anything
24 that might -- and maybe, you know, some sort of punishment
25 for somebody who knowingly engages or knowingly fails to

1 enforce the election code. And that would apply basically to
2 presiding judges and elections administrators.

3 But right now, there -- it is unclear who
4 enforces election code violations and who can -- who can
5 sort of mandate that election code officials or election
6 officials enforce the laws. So I would recommend that at
7 some time in the -- some point in the future, there'll be
8 some provision in the laws that would give enforcement
9 authority to the AG's office and the county attorney, the
10 district attorney, or even the private -- even a private
11 remedy that would allow somebody to go into district court
12 and say, "Election official, you need to enforce this
13 provision." Or even if you know and you can show that --
14 let's say a politicara, that is a political worker, is is
15 knowingly engaging in election fraud to go in and get a TRA,
16 a temporary restraining order, against this person if they
17 can show it in court and have an order restraining them from
18 engaging in election code violations under some sort of
19 order that a court can adopt. But right now, it's just
20 unclear, you know, who can -- who can sort of in -- we did
21 have one situation of an election official who refused to
22 comply with part of the code. And it was like, "Well,
23 there's no enforcement. There's no remedy."

24 So in either case, I think that a lot of the
25 provisions that we have in SB9 are -- address a lot of the

1 concerns that we have, and I think they go a long way
2 towards -- towards addressing election fraud. Thank you.

3 MR. CREIGHTON: Thank you, very much. Members?
4 Senator Hughes.

5 MR. HUGHES: Thank you, Mr. Chairman. Mr.
6 Escobar, thanks for your testimony. The -- what you offered
7 during the hearing of the select committee some months ago
8 was really something. Much of what you shared, we had heard
9 -- maybe stories from back home, you know, nothing that we
10 could -- nothing that anyone would swear to, just rumors,
11 "This happens. That happens." And the investigation you
12 conducted, at great risk, we realize, did a lot to shine a
13 light not just for your county, but for the whole state. And
14 so thank you again for that and for being here today and
15 helping us -- helping us do something about it.

16 Let me ask you just a little bit --

17 MR. ESCOBAR: Sure. Sure.

18 MR. HUGHES: -- to make sure we get the picture
19 of what's happening about these folks who are offering --
20 "offering," I'm putting that in quotes -- assistance to
21 folks, either with curbside voting or meeting folks at the
22 polling place. So when these folks -- when these folks are
23 there to assist a voter, under current law, under the
24 practice, these political workers actually go in and see how
25 the person voted. Is that correct?

1 MR. ESCOBAR: That's right. So the assistant, by
2 the way -- so we're talking about -- there is assisting in
3 mail-in, and then there's assistant in in-person voting.

4 MR. HUGHES: Yes.

5 MR. ESCOBAR: So I will just get this in here. So
6 on the assisted voting on the applications for ballot by
7 mail, I just want to reference this quickly. Our
8 investigation has showed that we had one person, just one
9 person, assist 230 voters in an application for ballot by
10 mail. Just one. You had another one that assisted 100
11 people. Another one that assisted 70 people. Another one
12 that assisted 50 people.

13 Now, this is just the -- this is the application
14 for ballot by mail. On this other side, on the in-person
15 voting, you have people who are gonna assist, and of course,
16 the assistant is watching this voter vote and sometimes
17 marking the ballot for them. What's interesting about that
18 is that under current law, as I understand it, poll watchers
19 cannot watch when somebody is being assisted privately to
20 vote a ballot. But if the elections worker, somebody who's
21 working under elections administration, if they assist the
22 voter, the poll watchers can watch that ballot being
23 prepared and being voted, okay? To make sure that they are
24 not being told how to vote or forced. But when it's somebody
25 asking for an assistant, their own personal somebody -- I'm

1 gonna call it a "personal assistant" -- that cannot be
2 viewed.

3 And so it creates a situation where -- see,
4 assisted voting, just like mail-in voting, has become
5 commercialized. It's a business. So a lot of this, what
6 you're gonna find on this side, on in-person voting, is that
7 they know that poll watchers can't watch this. So it's just
8 -- now you're just left with the voter and the assistant
9 that they choose, which a lot of times is an election worker
10 and -- not like an official election worker, but a
11 politicara, or a political worker of some kind, campaign
12 worker. It's just them two in the car, and you're praying --
13 you're hoping that this person, this assistant, is not
14 telling them how to vote. You're sort of the honor system.
15 And so that's the situation that currently exists.

16 So I can I can find no reason for why poll
17 watchers should not be allowed to see that. I can understand
18 the privacy concerns, but in the end, I think the -- sort of
19 the election integrity concerns are something that we're
20 gonna have to balance out and address. And right now it's
21 sort of swinging the other way that allows an exception that
22 is -- I think is swallowing the rule also.

23 MR. HUGHES: That makes sense. And that's why I'm
24 -- to your point you just made, in Senate Bill 9, the --
25 what we propose is if a voter's being assisted by a family

1 member, then they wouldn't -- be wouldn't be observed.

2 MR. ESCOBAR: Right.

3 MR. HUGHES: But otherwise, the watchers ought to
4 be able to observe that process, again, to make sure the
5 voter is being protected. Right?

6 MR. ESCOBAR: Right. I think -- I think you can
7 have a situation where, you know, a family member, which is
8 -- in the ordinary cases, somebody who's gonna vote that
9 needs help is probably gonna take a family member and -- to
10 go -- to help them out. When you've got somebody who's being
11 paid, or even though they might say that they are
12 "volunteers," so to speak, there's an incentive there for
13 them to vote the "right way." And I think that's where it
14 makes sense to have poll watchers seeing this. And you've
15 got a family member who's taking their family member in to
16 vote, I -- we can see that they need some kind of privacy.
17 But when you've got somebody, a non-family member doing
18 this, I mean, obviously there's a risk that they're being
19 told -- they're getting paid to bring these people in.
20 They're being told or suggested, you know, who to vote and
21 nobody's watching it.

22 So I think, you know, I think these provisions
23 address that, and I think it does satisfy certain concerns
24 as to family members, sort of a family member exception that
25 is defined here. I think that it strikes the right balance.

1 We don't have to worry about just Russians. We
2 need to worry about people in our own counties. It's worth
3 millions and billions of dollars. How much is a city or a
4 county or a state election worth in dollars? Think about all
5 the contracts and all the contractors have a huge stake in
6 the outcomes of these. Surely, there are bad actors who are
7 -- who would love to have somebody in place or even next
8 door operating through the power cord to change the
9 elections. Thank you.

10 MS. HUFFMAN: All right. Thank you. Next we have
11 Robert Caples.

12 MR. CAPLES: Good afternoon. My name is Robert
13 Caples. I'm the commander for the Starr County Special
14 Crimes Unit. The district attorney covered most of the
15 things that we've experienced since January of 2018. But my
16 team and I are the ones that were actually on the ground
17 investigating a lot of these cases.

18 A lot of the things that we found were that --
19 and this goes back to the assistance issue -- we found that
20 people were being told misinformation, they were being
21 manipulated by campaign workers. Every single person that I
22 spoke to had no idea that their mail-in -- their mail-in
23 ballot application had been marked with the disability. One
24 of them was a rodeo cowboy, and he had zero disabilities.
25 Another one was a firefighter, a jailer, a nurse, providers.

1 And we also found that they were being told to
2 let the campaign workers know to come back when the mail-in
3 ballots were in, the actual ballots. And they were coming
4 back and picking them up, and they were taking off with
5 them. And when I asked these people, "Do you know what they
6 did with them?" They said, "Well, they were supposed to go
7 put it in the mail, I guess." Which is another violation of
8 the law, because they have not actually marked anywhere that
9 they had done so.

10 So all we've seen in our investigations are
11 manipulations, misinformation, and I know people have said
12 that it's up to the voters at the end of the day, but I
13 think that, you know, that's a really bad idea, because the
14 people that are doing the manipulation are the campaign
15 workers.

16 MS. HUFFMAN: Senator Hughes?

17 MR. HUGHES: Commander, thanks for your
18 testimony. Thank you for doing this. We know that in law
19 enforcement from your standpoint, also with prosecutors,
20 have so many crimes to be concerned about, violent crimes,
21 property crimes. Often election law violations, as important
22 as they are, there's just not the resources, there's not the
23 decision to commit the resources. So thank you for doing it.
24 And what you've done has really opened the eyes of a lot of
25 us to what's going on in all of our communities.

1 Let me ask you this. These election workers, and
2 we're talking about -- by that I mean campaign workers,
3 right? Paid campaign workers who come to these folks' homes,
4 especially the elderly. Did you ever find cases where the --
5 where the voters who are being visited by these political
6 workers -- where voters thought these folks were official
7 election workers from the county or from the government, had
8 some official role?

9 MR. CAPLES: We had some cases where they
10 believed that they were official workers, but even the ones
11 that didn't, because they were working with the elections,
12 they expect these folks to be knowledgeable about the laws.
13 So if they were coming to their house and say, "Hey, how
14 would you like to vote by mail? That way you don't have to
15 take the time off work or do anything else. You don't even
16 have to drive over there." The answer is always, "Yeah. What
17 do I need to do?" "Just sign the form and I'll take care of
18 the rest." So in every single case that I saw, none of the
19 voters actually filled out the mail-in applications. The
20 only thing they were required to do is to sign their name to
21 it.

22 And, you know, I ended up with a -- there's a
23 stack about that big on my desk. And I could randomly pick
24 any application out of there, which is how how we worked it
25 -- and we did that to avoid the implication that there's,

1 you know, targeting, you know, a particular side or
2 whatever. So we randomly selected applications, and every
3 single one of them was illegitimate that I've encountered.
4 100%.

5 MR. HUGHES: Man. Thank you for -- thank you for
6 the investigation and thank you for testifying. Thank you,
7 Madam Chair.

8 MS. HUFFMAN: Thank you. Okay. Dr. Laura
9 Pressley?

10 DR. PRESSLEY: Yes. Hello, Senator Huffman. Thank
11 you for this meeting and bringing this bill forward to the
12 committee. And thank you, Senator Hughes and Senator Hall
13 and other senators on this and moving this forward. I'm the
14 founder of True Texas Elections, I have a PhD in chemistry
15 and physics and spent 17 years in the semiconductor
16 industry, where I was a manager and an engineer and have
17 four patents on computer technology. I'm also a member of
18 the Grassroots America Coalition that supports Senate Bill
19 9.

20 This senate bill -- and, you know, Mr. Tom Glass
21 said it very well -- this senate bill really addresses all
22 of the issues in our Texas Supreme Court case that was --
23 that was pending for about four years across the state. And
24 I've given about 275 presentations around the state of Texas
25 on these issues. And I really support, you know, the

1 CERTIFICATION PAGE FOR TAPE RECORDING

2 I, Grace Fay, certify that the foregoing is a
3 correct transcription from the tape recording of the
4 proceedings in the above-entitled matter.

5 Please take note that I was not personally present for
6 said recording and, therefore, due to the quality of the
7 audiotape provided, inaudibles may have created inaccuracies
8 in the transcription of said recording.

9 I further certify that I am neither counsel for,
10 related to, not employed by any of the parties to the action
11 in which this hearing was taken, and further that I am not
12 financially or otherwise interested in the outcome of the
13 action.

14
15 
16

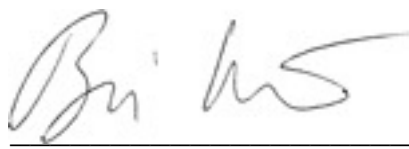
17 Grace Fay
18 Integrity Legal Support Solutions
19 Firm Registration No. 528
20 P. O. Box 245
21 Austin, Texas 78652
22 512.320.8690
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1 STATE OF TEXAS)
2 COUNTY OF TRAVIS)

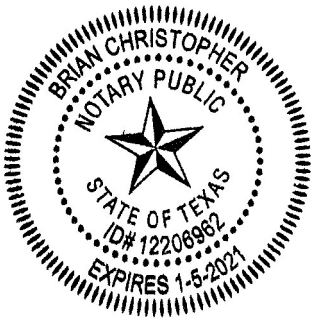
3 NOTARY PAGE

4 Before me, Brian Christopher, on this day personally
5 appeared Grace Fay, known to me to be the person whose name
6 is subscribed to the foregoing instrument and acknowledged
7 to me that they executed the same for the purpose and
8 consideration therein expressed.

9 Given under my hand and seal of office this 2nd day of
10 October, 2020.

11
12 

13 NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
14 COMMISSION EXPIRES: _____



EXPERT REPORT OF PROFESSOR STEPHEN I. VLADECK

I, Stephen I. Vladeck, declare as follows:

EXPERIENCE AND QUALIFICATIONS

1. I currently hold the Charles Alan Wright Chair in Federal Courts at the University of Texas School of Law. I have been teaching for 16 years. I began my career at the University of Miami School of Law in 2005; moved to American University Washington College of Law from 2007–16; and have been teaching at the University of Texas School of Law since 2016. From 2011–14, I also served as Associate Dean for Scholarship at American University Washington College of Law.

2. I am a nationally recognized expert on the role of the U.S. state and federal courts in general, but especially in cases arising during national security and other emergencies. With regard to national security, specifically, I am co-author of Aspen Publishers' leading *National Security Law* and *Counterterrorism Law* casebooks, the most recent editions of which (the seventh and fourth, respectively) were published earlier this year. I have published dozens of academic and popular articles and hundreds of blog posts in the field, many of which are reflected in my c.v. — a copy of which is appended to this report. My scholarship, which has appeared in an array of legal publications — including the *Harvard Law Review* and the *Yale Law Journal* — has been repeatedly cited by U.S. courts and academic commentators. I have been formally called to testify before Congress over a dozen times (including at a public hearing held by the House Permanent Select Committee

on Intelligence in the aftermath of the Snowden disclosures in 2013), and have frequently provided informal consultation to numerous congressional committees and Members of Congress. I have also worked as a legal analyst and consultant for CNN since 2013.

3. I have been actively involved in litigation relating to U.S. national security and emergency policies, including as counsel both to parties and to *amici curiae* in judicial proceedings before federal courts at every level of the U.S. judicial system — from Guantánamo military commissions to the U.S. Supreme Court. I am currently a member in good standing of the bars of the State of New York, the District of Columbia, and the State of Texas, and am also admitted to practice before five federal courts — including the U.S. Supreme Court (where I will argue my third case on October 13, 2020), and the U.S. Courts of Appeals for the Second Circuit, the D.C. Circuit, and the Armed Forces.

4. With my colleague, Professor Bobby Chesney, I co-host the award-winning “National Security Law Podcast,” which has a catalog of 181 episodes dating back to January 2017. I’m also a senior editor of the peer-reviewed *Journal of National Security Law and Policy* (the preeminent academic journal in the field), and I am a Distinguished Scholar at the Robert S. Strauss Center for International Security and the Law.

5. As especially relevant here, I have written extensively on the laws governing emergency powers — dating all the way back to my student note, *Emergency Power and the Militia Acts*, 114 YALE L.J. 149 (2004), and in blog posts for both the

Lawfare blog (of which I am a senior editor) and *Just Security* (which I co-founded in 2013, and for which I serve today as an executive editor).

6. And with regard to the COVID pandemic, I am co-author (with Professor Lindsay F. Wiley) of *Coronavirus, Civil Liberties, and the Courts: The Case Against “Suspending” Judicial Review*, 133 HARV. L. REV. F. 179 (2020), which state and federal judges have both cited to and relied upon since its publication in July. *See, e.g., County of Butler v. Wolf*, No. 2:20-cv-677, 2020 WL 5510690, at *8 (W.D. Pa. Sept. 14, 2020) (“The Court has reviewed the professors’ paper and finds it both instructive and persuasive.”).

7. In that paper, Professor Wiley and I argued that it is incumbent upon courts to apply “ordinary” modes of judicial review even — if not especially — during crises. Otherwise, “the more that courts coalesce around a standard in which governments are held to exceedingly modest burdens of justification for incursions into our civil liberties during emergencies, the more those same governments might be incentivized not only to use emergencies as pretexts for scaling back our rights, but also to find pretexts for triggering such emergencies in the first place.” 133 HARV. L. REV. F. at 198; *see also* Lindsay F. Wiley & Steve Vladeck, *COVID-19 Reinforces the Argument for “Regular” Judicial Review—Not Suspension of Civil Liberties—In Times of Crisis*, HARV. L. REV. BLOG (Apr. 9, 2020), <https://blog.harvardlawreview.org/covid-19-reinforces-the-argument-for-regular-judicial-review-not-suspension-of-civil-liberties-in-times-of-crisis/>.

8. I received my B.A. *summa cum laude* with highest distinction in History and Mathematics from Amherst College in 2001, and I received my J.D. from Yale Law School in 2004 — where, among other things, I was Executive Editor of the *Yale Law Journal* and Student Director of the Balancing Civil Liberties and National Security Post-9/11 Litigation Project, and where I won the Potter Stewart Prize for Best Team Performance in Moot Court and the Harlan Fiske Stone Prize for Outstanding Moot Court Oralist. After graduating from law school, I clerked for the Honorable Marsha S. Berzon on the U.S. Court of Appeals for the Ninth Circuit and the Honorable Rosemary Barkett on the U.S. Court of Appeals for the Eleventh Circuit.

MY PARTICIPATION IN THIS CASE

9. This report is based upon my review of the following case materials in light of my background expertise in the field:

- a. The Plaintiffs’ Petition and Application for Temporary Injunctive Relief;
- b. The three declarations attached thereto;
- c. The Governor’s October 1 Proclamation;
- d. The Solicitor General’s September 30 submission;
- e. The State’s Plea to the Jurisdiction and Response; and
- f. The Appendix to the State’s Plea to the Jurisdiction and Response.

BACKGROUND

10. This case arises from Governor Abbott’s October 1 Proclamation, in which, among other things, he provided that each of Texas’s 254 counties were limited to providing a *single* ballot return location for “mail-in” ballots that voters wished to return in person, regardless of how many satellite offices the county clerk operated

or how much of a burden such a limit would impose in the state’s more populous — and physically larger — counties.

11. Under the Governor’s July 27 Proclamation, counties had been allowed to provide ballot return locations at *any* place that qualified as an “early voting clerk’s office.” And as recently as September 30, in response to a question from the Texas Supreme Court asking if allowing multiple early drop-off locations violated TEX. ELEC. CODE § 86.006(a-1), the State represented that “the Legislature has permitted ballots to be returned to *any* early-voting clerk office.” Plaintiffs’ Exhibit B (emphasis added).

12. In his October 1 Proclamation, Governor Abbott justified the restriction on ballot return locations entirely on the ground that it was “appropriate to add ballot security protocols for when a voter returns a marked mail ballot to the early voting clerk’s office.” Plaintiffs’ Exhibit A. His proclamation did not explain why proper implementation of those protocols required limiting counties to a single drop-off location, nor, more significantly, did it suggest that such a measure bore any relation to the coronavirus pandemic more generally.

13. Instead, the Governor’s October 1 Proclamation invoked the authority delegated to him by the legislature in the Disaster Act, TEX. GOV’T CODE § 418.016(a), which authorizes him to “suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a

disaster.” But the Proclamation nowhere identified or otherwise articulated any relationship between the reduction in ballot return locations and the underlying disaster.

14. I am generally familiar with the emergency and disaster laws of a majority of the states and the federal government. Texas is one of more than 40 states to have adopted some form of the Model Emergency Health Powers Act (MEHPA), from which the Disaster Act is largely derived. And like Section 418.016, the “suspension” provision of the MEHPA (section 403(a)) requires a relationship between the underlying emergency and the suspension. (The text of the MEHPA is available at <https://www.aapsonline.org/legis/msehpa2.pdf>.)

15. In my expert opinion, the central problem with that aspect of the October 1 Proclamation is that it lacks such a connection to the underlying disaster. The State may well be correct, as it is arguing before this Court, that “The Governor’s authority to add limitations to a previously-issued suspension is supported by Section[] 418.016(a) of the Texas Government Code.” Defendants’ Plea to the Jurisdiction and Response at 24. Nothing in the text of Section 418.016(a) specifically confers such authority, but just as the Governor could revoke a prior suspension in its entirety and replace it with a new, more limited one, my own opinion is that it should follow that the Governor may thereby *reduce* the scope of a prior suspension when doing so is consistent with that provision and justified by the changing circumstances of the disaster.

16. But as with any other exercise of authority delegated by the legislature, the Governor is bound to the terms of the delegation. Here, the condition imposed by the Disaster Act is that the Governor may act to suspend certain state laws (such as TEX. ELEC. CODE 86-006(a-1)) “if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.” TEX. GOV’T CODE § 418.016(a). Whatever that provision might authorize the Governor to do with regard to imposing limitations on prior suspensions, my opinion is that, in line with section 403(a) of the MEHPA, that provision does not authorize *any* measures without any connection to the underlying disaster.

17. Here, not only is there no rational relationship between the disaster and the restriction of mail-in ballot drop-off locations, but if anything, the October 1 Proclamation appears to risk exacerbating the impact of the disaster on Texans living in larger (by area or population) counties, for whom, between their travel time and time spent waiting to satisfy the ballot security procedures, dropping off a mail-in ballot will now be far more time-consuming than under the July 27 Proclamation. Such an impact is, in my opinion, the exact opposite of what the MEHPA (and state laws derived from it) exists to enable.

18. I am also concerned about the implications of the State’s legal analysis. On its view, all that matters is that the Governor could have imposed this restriction as an initial condition of the suspension. By that logic, the Governor could use the cover of any disaster (1) to suspend laws for which there is a rational argument that the disaster justifies the suspension; only to (2) subsequently impose *any* set of

restrictions on those suspensions *regardless* of their relationship to the disaster. In the process, the proclamation of a disaster would thereby empower the Governor to subsequently *re-write* the laws that he was suspending for the duration of the emergency, and not just to set them aside in whole or in part. Again, however, that kind of delegation would be entirely antithetical to the MEHPA. And, depending upon the separation of powers doctrines of each state, it might also raise serious non-delegation questions under the state Constitution.

19. In its Plea to the Jurisdiction and Response, the State also claims that the Governor had the power to restrict the number of ballot return locations under a different provision of the Disaster Act, TEX. GOV'T CODE § 418.018(c), which provides that “The governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area.” This provision, too, is derived from the MEHPA, section 502(d)(2) of which authorizes the relevant authority “To control or limit ingress and egress to and from any stricken or threatened public area, the movement of persons within the area, and the occupancy of premises therein, if such action is reasonable and necessary to respond to the public health emergency.”

20. But insofar as the October 1 Proclamation limits counties to providing a single drop-off location for mail-in ballots rather than multiple locations, it does nothing in my view to “control . . . the movement of persons and the occupancy of premises in the area.” Voters can still choose if, when, and how to travel to the

remaining drop-off location, and nothing in the Proclamation purports to “control” the occupancy of any premises.

21. Again, I am troubled by the implications of the State’s contrary position. If a provision authorizing the Governor to “control . . . the movement of persons and the occupancy of premises in the area” authorized the Governor to reduce the number of drop-off locations for mail-in ballots, it is hard to imagine what it wouldn’t authorize under the guise of a “disaster.” To be sure, the Texas Constitution (and the U.S. Constitution) would still constrain the Governor’s actions *in extremis*. But a reading of the Disaster Act in which the Governor may act against persons and property during a disaster to whatever extent his actions are not forbidden by the state or federal constitutions would be, in my view, an unprecedented and implausible reading of the parallel language in the MEHPA that no other state has adopted — and a potentially limitless one, at that.

CONCLUSION

22. In short, my expert opinion is that, at least with respect to the reduction of ballot return locations for mail-in ballots in relation to the July 27 Proclamation, the October 1 Proclamation is an unprecedented and implausible exercise of the authority the legislature has delegated to the Governor under the Disaster Act, and of the authority contemplated by the MEHPA (on which the Disaster Act is based).

I declare under penalty of perjury that the foregoing is true and correct, and if called as a witness would testify competently thereto.

Dated: October 10, 2020

A handwritten signature in black ink, appearing to read 'Stephen I. Vladeck', written over a horizontal line.

Stephen I. Vladeck

**THE ANTI-DEFAMATION
LEAGUE AUSTIN, SOUTHWEST,
AND TEXOMA REGIONS;
COMMON CAUSE TEXAS; and
ROBERT KNETSCH;
*Plaintiffs,***

TRAVIS COUNTY TEXAS

353rd JUDICIAL DISTRICT

GREG ABBOTT, in his official
capacity as the Governor of Texas,
Defendant.

I, Dr. Daniel G. Chatman, respectfully declare as follows:

- Page 1

3. I conduct research on travel behavior and the built environment, immigrants and travel in the United States, the relationships between public transportation services and the economy, and other topics related to transportation and land use planning. I have published more than 50 peer-reviewed journal articles, book chapters, research reports, and lay articles, and have given more than 100 invited or refereed talks on these topics. I have been principal investigator on transportation and land use research grants and contracts totaling more than \$3.3 million in funding.
4. In 2014, I provided a report and testified as an expert in a voting case in Texas. My analysis and testimony concerned the racial/ethnic and income distribution of transportation burdens associated with newly imposed photo identification requirements for voter eligibility in Texas (United States District Court, Southern District of Texas, Corpus Christi Division, MARC VEASEY, et al., Plaintiffs, v. RICK PERRY, et al., Defendants. Civil Action No. 2:13-cv-193 (NGR)). In September 2020, I provided a report and testified in a voting case in Ohio concerning travel burdens and queuing delays associated with a State of Ohio rule that ballot drop boxes may only be provided at the county board of elections in each county (United States District Court, Northern District of Ohio (Cleveland), A. PHILIP RANDOLPH INSTITUTE OF OHIO et al, Plaintiffs, v. FRANK LAROSE, Secretary of State of Ohio, Defendant. CASE NO. 1:20-cv-01908-DAP).

Questions Addressed

5. I was retained to analyze both the travel burdens and the queuing delays associated with the recent decision by the Governor of the State of Texas that ballot drop boxes may be provided in only one location in each county in the state; and to assess the impact across the major racial/ethnic groups in the state.

Summary of Results: Travel Burdens for Voters to Access a Ballot Drop Box

6. In the first analysis, I investigated the travel burden that would be incurred by citizens of voting age who are eligible to vote via absentee ballot because they are over the age of 65 or disabled, and who wish to drop off their absentee ballots rather than mailing them. I focus on the time required to access a ballot drop box by car, via public transportation, or on foot, and to return home, as time is the most salient and readily quantifiable of the various costs involved in travel. The main output of this first analysis is an estimate of travel time burdens across the population of all citizens of voting age who are eligible to vote via absentee ballot due to age or disability, with a focus on the impact on the largest counties in the state.
7. I find that the Texas prohibition on providing more than one ballot box location per county, rather than permitting multiple drop boxes or allowing absentee ballots to be dropped off at in-person polling locations, will place a substantial travel burden on absentee-eligible citizens of voting age without access to a vehicle who find it necessary to drop off their absentee ballots rather than mail them, particularly when looking at those who lack access to a personal vehicle in their household. I define a “travel burden” in two ways in the declaration, focusing in this introduction on the more restrictive of my two definitions: namely, having to travel more than an hour and a half round trip, which would more than double the average amount of daily household travel for a Texas resident. The share who would have to travel for more than 90 minutes is very low for absentee-eligible citizens of voting age (AECVAs) who live in a household with access to a personal vehicle, but very high for those without access to a car, who make up about 7.5 percent of AECVAs in the state. About 89 percent of absentee-eligible citizens of voting age without access to a car would have to spend more than 90 minutes to deliver their ballot to a county drop box and return home. The *average*

round trip duration for these burdened individuals is more than 6 hours, due to a significant number of those who would be required to travel for long distances on foot; such distances are impossible for most if not all of the elderly and disabled people eligible for an absentee ballot in Texas.

8. The burden is not evenly distributed across the state. The 10 most populous counties in the state account for more than half of all burdened individuals. Several counties have a 90-minute travel burden share that is 30 to 60 percent more than the rest of the counties in the state, while in Harris County, the largest county by population, the share of households with a travel burden exceeding 90 minutes is twice as high as the state average across counties, at about 13 percent of all absentee-eligible citizens of voting age. The share of those with a travel burden of more than 70 minutes is 38 percent in Harris County, about four times as high as the average across counties in the state.
9. This burden is disproportionately borne by African Americans in comparison to Whites, and to a lesser extent by Hispanics, particularly using the more onerous 90-minute travel burden measure. This is largely because of the lower auto ownership and access of eligible African American voters, in addition to their concentration in the more populous counties in the state.
10. The presence of households with a travel burden is also highly correlated with poverty status. Having a round trip of more than 90 minutes to access a ballot drop box is almost entirely associated with individuals not having access to a car. One of the best predictors of whether a person owns a car is their income, and the median income of households without cars in Texas is about half that of households who have a car.
11. My detailed travel burden analysis is set forth below at pp. 7-27 after a summary of the results of the queuing burden analysis. Results of the analysis are presented at pp. 21-27.

Summary of Results: Queueing Burdens to Access a Ballot Drop Box on Election Day

12. In the second analysis, I estimated how the restriction permitting only one location for drop boxes per county is likely to lead, in counties with larger populations, to long queues of vehicles and pedestrians waiting to drop off their ballots. In the general election in November there would appear to be the potential for several million absentee-eligible registered voters desiring to access a drop box, given widespread concerns about unreliability and delays associated with mail delivery of absentee ballots.
13. I carried out a queuing analysis to determine the length and waiting times likely to be associated with ballot drop box locations. Under conservative assumptions detailed below, it is likely that, varying by county, between 1.5 and 6 percent of registered voters could attempt to deliver their absentee ballots to a county drop box location on the day of the election. Based on experiences elsewhere, demand for ballot drop box use will be highest on Election Day.
14. Under one set of baseline assumptions that are relatively conservative, I calculate that with only one drop box location per county, queues would be intolerably long in dozens of the most populous counties, and many voters there would be forced to forgo depositing their ballots. The lines would be particularly burdensome in the top ten counties by population in the state (including Harris, Dallas, Travis, and Fort Bend Counties), with between 10,000 and 64,000 voters in each of those counties waiting for 15 hours or more to drop off their ballots, unless (more likely) they are dissuaded from voting altogether. When using less conservative but still reasonable assumptions based on experiences elsewhere, the projected queues are even longer, affecting more than 625,000 voters in the most populous counties in the state, with many of those likely to be dissuaded from casting their ballots, and with queues so long that they imply huge traffic snarls in the counties affected.

15. My detailed queueing analysis is set forth below, after the detailed description of the travel burden analysis, at pp. 28-39. The detailed statement of my queuing results at pp. 33-39 is preceded by a discussion of my methodology.

Overview of Work

16. I defined and carried out the first analysis of travel burden in four parts. First, I identified a simplified set of home starting points for trips that would be undertaken by those who seek to drop off their absentee ballots at a ballot drop box, consisting of the “centroids,” or central geographical coordinates, of the 15,811 Census-defined block groups in the state of Texas. I also identified and mapped the individual locations within each county where ballot drop boxes are located. Second, using both geographical information system software and Google Maps, I estimated the time it would take to travel from home to the designated county ballot drop box, and back, by each of three travel modes: personal automobile, public transportation, and on foot. Third, I compiled and estimated information about the absentee-eligible citizens of voting age (AECVAs) by race/ethnicity located in the 15,811 block groups throughout the state, with a focus on those living in households without access to an auto. Fourth, I estimated the round-trip travel times to drop off a ballot for AECVAs depending on their race/ethnicity and access to a personal vehicle in their household.

17. I carried out the second analysis of queue lengths and delays as follows. First, I estimated the share of registered voters in each county who are likely to attempt to deliver absentee ballots to a county drop box on the day of the election. Second, I applied queueing analysis methods along with a set of parameters regarding the capacity of each box, the share of drop-offs occurring during daily peak travel periods and off-peak, and the operating hours over which voters are likely to drop off ballots on Election Day, to estimate hour-by-hour queue lengths

and time delays waiting in the queue. Third, I estimated the number of voters likely to be dissuaded from voting by using queue length at the end of the day as an approximation.

18. I was assisted in geocoding, mapping, data procurement, data management, and data analysis by five doctoral candidates and four undergraduate research assistants who were paid respectively at the rates of \$100 per hour and \$50 per hour. I also paid Google for the use of their cloud services to procure one set of travel time estimates, in addition to calculating my own set of travel time estimates using Open Trip Planner, an open-source geographical information system software program. I am being compensated at the rate of \$400 per hour.

Travel Burden Analysis: Methodology and Results

A. Background

19. As noted above, for purposes of this investigation, I define “travel burden” in terms of time.

This is based on a comparison with both national travel survey data and survey data from the State of Texas.

20. The cumulative time that individuals spend traveling every day varies a great deal by household (National Household Travel Survey, 2017). In the State of Texas, among those of income greater than \$25,000, the average daily time spent traveling for all trips made for personal and household purposes is 66.4 minutes; for those making less than \$25,000, the average is 72.5 minutes per day. These figures are slightly lower than the US averages for the same groups (see Table 1 below). A starting point for any definition of “travel burden” is the current amount of time that an individual already spends traveling each day, because this pattern typically reflects constraints that make it difficult to travel more without having financial impacts or causing time scarcity (Farber and Páez, 2011).

Table 1: Average minutes spent traveling per day, by income

	All persons	
	<\$25,000	>\$25,000
Texas	72.5	66.4
U.S. Total	75.2	69.1

Source: National Household Transportation Survey, 2017

21. The average duration for a home-based trip for a non-work purpose (excluding trips taken by air or intercity bus)—that is, the time needed for the average trip from home to reach an activity such as grocery shopping, seeing the doctor, or dropping one’s child off at school—was 20.3 minutes in the US and 20.6 minutes in Texas in 2017. The duration of an average round trip is higher on both public transportation and walking than in a car, reflecting slower travel speeds than for auto. Across all trip purposes, the average duration of a trip taken via public transportation or on foot was 52.8 and 22.4 minutes respectively in the US, and 63.9 and 22.8 minutes in the State of Texas (Nationwide Household Transportation Survey, 2017). Regardless of trip purpose, almost all trips in both the US and in the State of Texas are taken by personal vehicle, due to the relatively slow speeds and incomplete spatial coverage afforded by public transportation in most parts of the US and of Texas, as well as the long distances between activity locations, and often hazardous or strenuous walking conditions, that often make walking impractical. Just 1.2 percent of all trips in Texas are taken on public transportation, while 6.5 percent of all trips are taken on foot.
22. While some individuals may have time to spare for any of a number of activities, most individuals must make tradeoffs when there is any new demand on time. An increase in the amount of time required to travel can cut into discretionary time for activities like

entertainment, socializing, and shopping, and then into non-discretionary time for activities like work, meals, child care, and buying groceries (Farber and Páez, 2011).

23. There are a number of burdens associated with traveling to a ballot drop box, the largest and most quantifiable of which may be time. The primary burden arises for those who do not have access to a vehicle, as those who do can either drive to the location or get a ride from someone in their household, and the physical effort involved is minimal. For those who do not have access to a vehicle, however, in order to drop off a ballot, they must rely on either a ride from someone else not living in the household, or an alternative travel mode such as public transportation or walking. Since there are only 254 ballot drop box locations in Texas, a state of about 29 million people, and since public transit services are slower and not ubiquitously available throughout the state, travel distances and durations can be quite large. The burden is highest for those without familiarity with public transportation routes, with physical difficulties in walking, and so on.
24. While acknowledging the existence of a subjective aspect of travel burden that goes beyond travel *time*, the primary focus of this analysis is to investigate the number and share of absentee-eligible citizens of voting age (“AECVAs”) who would need to undertake trips of long duration in order to drop off their absentee ballots. Calculating the travel burden based on the amount of time required to access a ballot drop box does not account for the relative inconvenience and physical discomfort associated with the walking, waiting, and in-vehicle times associated with long public transportation rides; or the physical effort involved with walking all or some of the distance to the location, along routes that may be largely inhospitable to pedestrians. This method also does not reflect how such trips can be

particularly difficult or nearly impossible for elderly people and people with physical limitations, who are the primary users of absentee ballots and ballot drop boxes in Texas.

25. There is some scientific literature that has translated these qualitative facts about accessing and egressing public transportation on foot into estimates of the valuation of time associated with waiting, walking, and riding on vehicles in transit, by analyzing survey data for the purpose of predicting choices between travel modes. Based on a set of 192 studies of walk time values and 77 of waiting time values, the time that people spend waiting for public transportation or walking to and from public transportation stops is about 1.6 times as burdensome as time spent traveling in a personal vehicle (Abrantes and Wardman, 2011, Table 21). In turn, time spent riding the bus or rail is somewhat more burdensome than time spent in a personal vehicle. One quantitative figure averaging a smaller set of studies puts the value at 1.2 for the disutility of time spent on a bus compared to time spent in a car (Abrantes and Wardman, 2011, Table 19).
26. In addition, people of lower income can be expected to have more difficulty than people of higher income in managing to find additional time to drop off their ballots. Those of lower income usually do not have the option of purchasing services to reduce time requirements in other areas, such as paying for child care, laundry service, home cleaning services, meals out, or prepared food. Travel becomes particularly burdensome when it requires difficult choices such as whether to work fewer hours in the week (and thus to pay in dollar terms, not just in time terms); to require children to stay up later than normal in order to accommodate the lengthened schedule for that day; or to forgo a trip to the doctor that week. Because these kinds of burdens are more likely to be borne by those of lower income, but cannot be

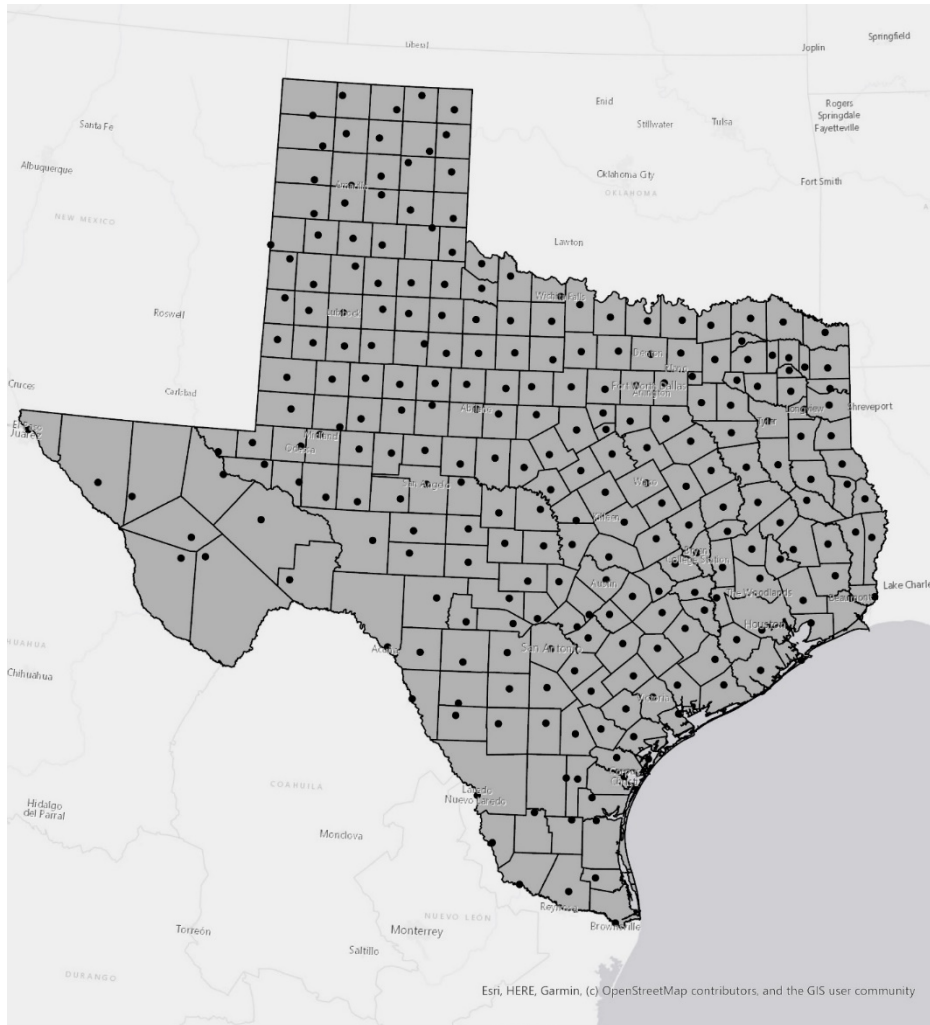
otherwise measured directly with available data, I also investigated whether the travel time burden is associated with poverty status in the State of Texas, as discussed later in the report.

27. For the purpose of this analysis I define a travel burden in two ways: as a round trip that exceeds 90 minutes, or as a round trip that exceeds 70 minutes. The first definition essentially focuses on trips on foot or via public transit, which are more onerous than trips undertaken in a private vehicle, because very few trips to access a ballot drop box in Texas would require a driving trip exceeding 90 minutes. Just 1.0 percent of trips in Texas exceeded 45 minutes one way (90 minutes round trip) on public transportation or on foot, according to the most recent data for Texas from the National Household Travel Survey (2017). The fact that such long trips on foot or via public transportation are so rare suggests that people avoid them whenever possible.

B. Methodology: Travel Starting and Ending Points; Calculation of Travel Times

28. I obtained online listings of the 254 county locations where ballot drop boxes are or will be located, and geocoded these using Google Maps. Figure 1 (below) displays the geocoded ballot drop box locations on a county map of Texas.

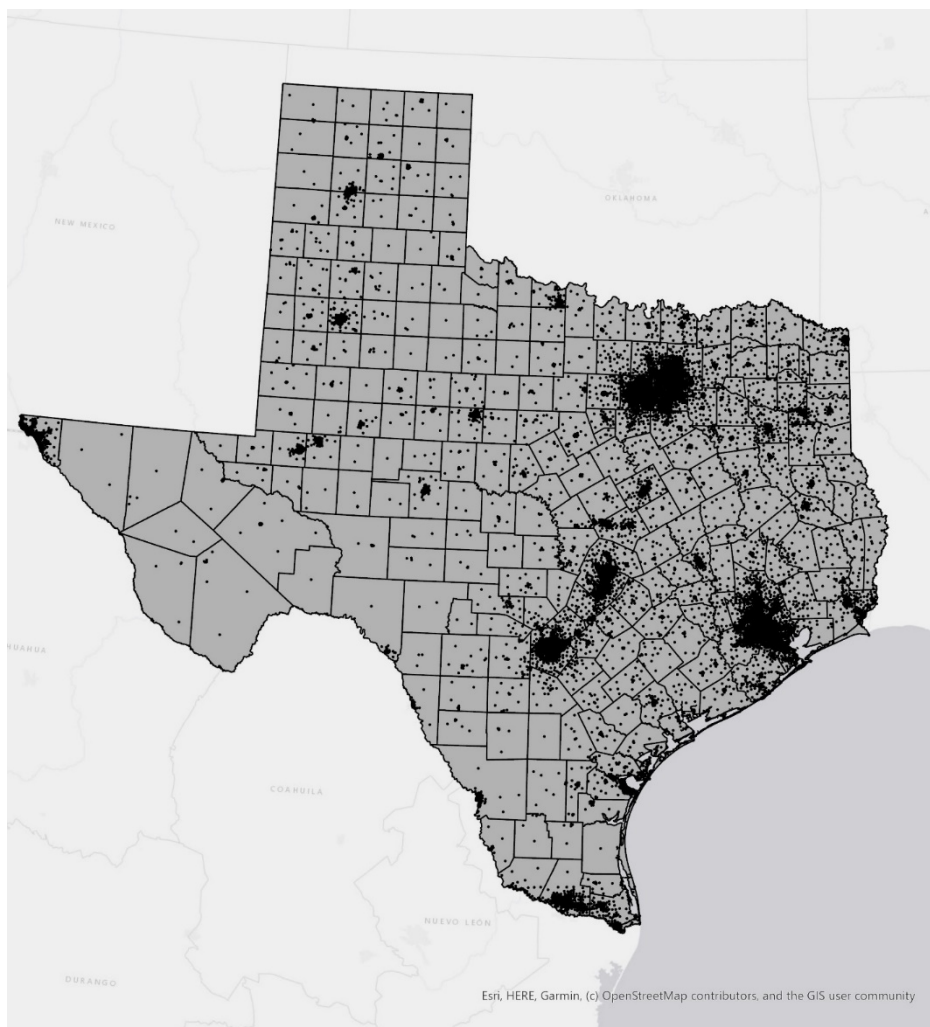
Figure 1: Geocoded ballot drop box locations in the state of Texas



29. There were about 11.3 million occupied housing units in the State of Texas as of 2018 (U.S. Census Bureau, 2020), and therefore I used a set of simplified home locations to estimate the travel times for those eligible voters who may seek to deliver their ballots to a county drop box, consisting of Census block groups, which typically include between 200 and 1,000 housing units. I defined the location for all households in the block group as consisting of the centroid of the block group (the spatial center of gravity of the block group polygon). Figure 2 (below) displays the centroids, and county boundaries are also shown. (Block group boundaries are not shown.)

30. Figure 2 also illustrates the fact that any meaningful spatial error in identifying the locations of specific housing units is likely of most concern in locations in the outlying and less dense parts of the state. In these locations it is more likely that travel time estimates are inaccurate because the block group centroid may be located farther from the average household than in block groups in the most densely populated parts of the state. However, by the same token, this error exists only with regard to a small fraction of the Texas population.

Figure 2: Block group centroids (estimated home locations) for Texas



31. For each block group centroid I estimated the travel time to the ballot drop box location within that county. There are many possibilities to obtain data to estimate travel times, but the best estimates are based on distances along the road network, travel times on public transportation, and distances along the pedestrian network. I used network and schedule-based estimates rather than more commonly calculated “zone to zone” estimates of travel time, which rely on aggregated information about trip destinations and are therefore less accurate.

Public Transportation Times

32. There are eight large public transportation agencies (with at least 2 million one-way trips per year as of 2020) in the state of Texas, serving the metropolitan areas of Austin, Corpus Christi, Dallas-Fort Worth, El Paso, Houston, Laredo, Lubbock, and San Antonio. Of these, three metropolitan regions offer rail systems. Commuter rail systems include the Capital MetroRail (Austin metropolitan area) and Trinity Railway Express (Fort Worth & Dallas commuter rail). Light rail systems in Texas include the Dallas Area Rapid Transit (DART), and Houston’s METRORail, other rail includes El Paso’s Streetcar line. Outside of the state’s major metropolitan areas, there are 31 urbanized transportation agencies, 36 rural transportation agencies, and 58 disabled accessible / enhanced mobility of seniors agencies, according to the Texas Department of Transportation Texas 2019 Transit Statistics Report. Roughly 90 percent of all unlinked passenger trips on public transit in Texas are handled by the metropolitan agencies, which generate 76 percent of all vehicle revenue miles and 91 percent of all transit operating expenses in Texas.

33. Even in counties with some form of public transportation not every individual can use public transportation to access a county ballot drop box location. To provide more granular public

transportation information I have calculated public transportation travel times across the state from the household location to the county designated ballot drop box location.

34. I used both Google Maps and Open Trip Planner (OTP) along with Open Street Map software and General Transit Feed Specification (GTFS) data to estimate public transportation times from block group centroids to ballot drop box locations. Having two independent sources for travel times acts as a check to ensure the accuracy of the results, and in some cases a public transportation estimate was available using one method but not the other. The estimates rely on spatially specific information about the routes of public transportation vehicles, location of stops, and schedules in GTFS data. These make it possible to estimate public transportation travel times that take into account actual service frequency, scheduled public transportation times, and waiting times between transit vehicles. The OTP software includes estimation of walking routes to and from public transportation stops and between public transportation lines when transfers are necessary. In the end I relied primarily on OTP estimates for the large urban centers, supplemented by Google Maps estimates for the remainder of the state for which I could not quickly procure GTFS data and Open Street Map data and for which Google Maps had access to GTFS data that it had collected.

35. For every trip on public transportation, travel time includes walking to the nearest bus or rail stop from home, waiting for a bus or train, and walking from the closest available stop to the ballot drop box. These public transportation travel time estimates assume the best-case scenario of highest schedule availability and no travel delay. Specifically, it is assumed that everyone can make their trip to the ballot drop box on Tuesday morning (a weekday morning, typically the highest frequency public transportation schedule) despite the fact that

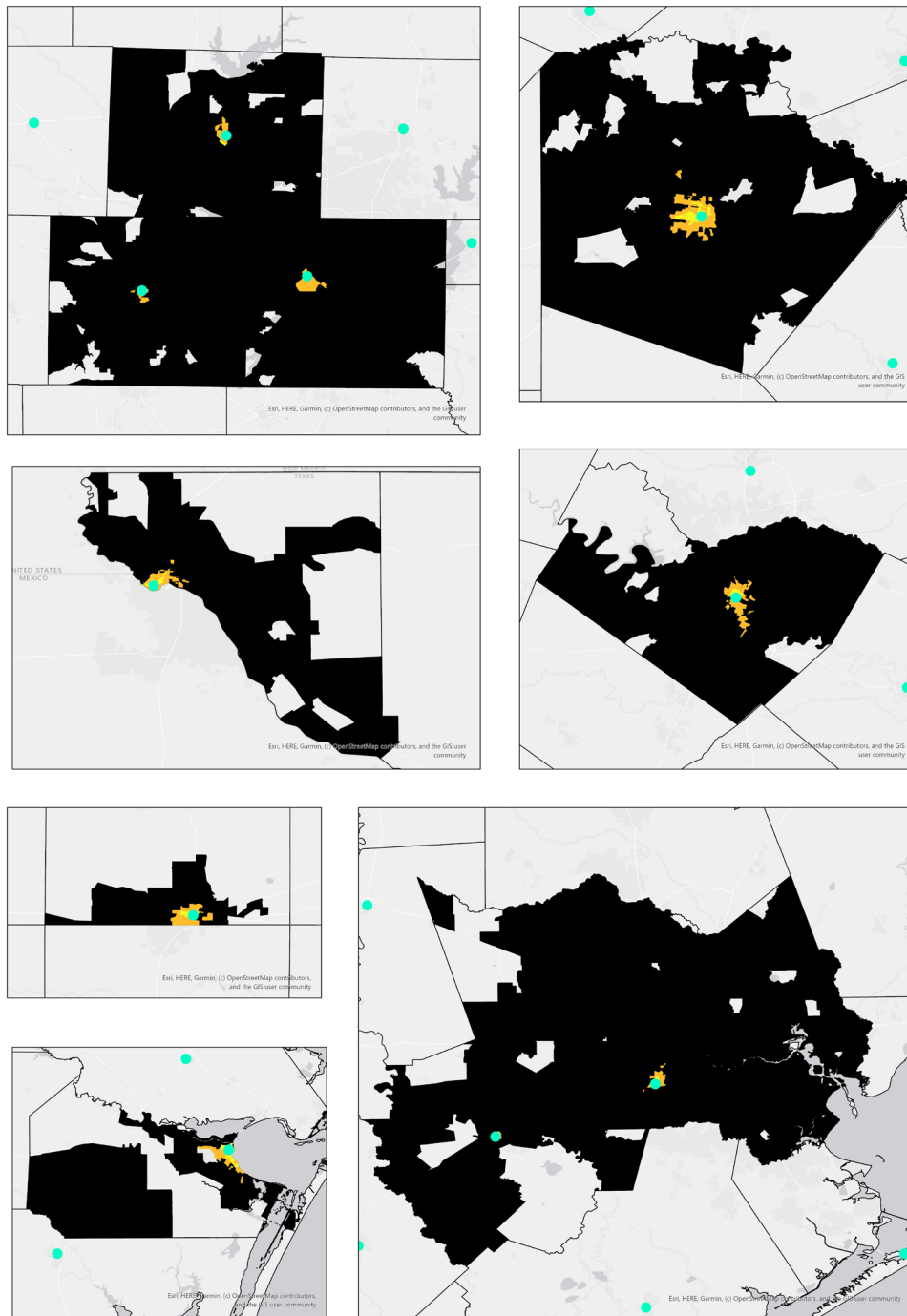
many people will find it difficult to travel at that time of day due to obligations like work.

Those who travel on public transportation to a drop box during the middle of the day, at the end of the work day, or on a weekend, could encounter a much less frequent schedule than what is assumed here, and would almost never encounter a more frequent schedule.

36. For the 10,571 block groups for which public transportation travel was possible, the median total time to travel from home to the nearest ballot drop box, including walking time, was 200 minutes (3 hours and 20 minutes), round trip. There was substantial variance. For example, ten percent of block groups had a one-way trip of almost four hours to arrive at a ballot drop box, or about eight hours round trip.

37. Figure 3 (below) shows the spatial extent of transit access in some of the largest cities in Texas. The black areas are farther than 45 minutes one-way on public transit. It is notable that a relatively small fraction of the urban areas can reach the single drop box location in these locations.

Figure 3: Transit access maps for selected counties in Texas



Travel Times by Auto

38. To estimate the driving time between Census block group centroids and ballot drop boxes, I used an automated batch interface for Google Maps using a cloud services account, which provided a time estimate for a standard, time-efficient route that accounted for any habitual travel delays caused by road congestion and traffic signals. I calculated the driving time from the geographic center of each Census block group to the county ballot drop box location and the return trip as well, under the assumption that the beginning of the trip was at 9 am on a Tuesday. The average road distances from block group centroids to ballot drop boxes ranged from less than a tenth of a mile to 80 miles, with a median one-way distance of 12.4 miles. The round-trip times ranged from less than a minute to as long as four hours, with a median round trip value of 36 minutes when averaged over block groups. More than 95 percent of block group centroids had round trip travel times via auto of less than 70 minutes.

Travel Times on Foot

39. I calculated walking distances and durations using both Google Maps and Open Trip Planner GIS software to identify the shortest route within each county to each county ballot drop box from the geographic center of each Census block group using the road network. Walking distances to the county ballot drop box location were very similar to the road distances (above). Walk times were estimated based on the assumption that travelers walk at 1.9 miles per hour based on a study of walk speeds for older and disabled adults (FHWA, 2006). The walk time figures were estimated using both Google Maps and Open Trip Planner. This resulted in estimated walk times as long as 25 hours and as short as 12 minutes.

C. Methodology: Spatial Distribution of AECVAs by Race/Ethnicity & Auto Ownership

40. The location of ballot drop boxes is relevant to people of voting age who are eligible for absentee ballots due to citizenship status, along with their age and/or disability, and who are registered to vote. There currently are no secondary data available to me to determine the locations of individuals—and therefore the travel times of those individuals—who are also registered to vote and eligible for absentee ballots. Therefore, for the analysis presented here, I focus on estimating the locations and characteristics of citizens of voting age over the age of 65 and/or with disabilities, by race/ethnicity and access to a personal vehicle in their household.
41. Calculating the travel burden associated with dropping off a ballot requires, first, knowing how many citizens of voting age there are in each Census block group. I obtained block group counts of the number of residents in each Census block group who were 18 to 64 years old and 65 years of age or older from the 2014-2018 American Community Survey (ACS). There are 15,811 block groups in the state. These are the most accurate data currently available for a base count of the population by age, even though changes to the population may have occurred in the last two years. Race/ethnicity data are also available at the block group level, and this analysis also relies on disaggregate data in the ACS Public Use Microdata Sample (PUMS) of 2014-2018.
42. The block group level data from the ACS tells us how many people of different ages by race/ethnicity there in each block group, but not whether they are citizens, have a disability, or have access to a personal vehicle in their household. To estimate citizenship and disability down to the Census block group level, I used the 2014-2018 ACS five-year estimates at the Census tract level to obtain the share of voting-age residents who were citizens and the share

of 18-to-64 year-olds with disabilities in each Census tract. There are 5,265 Census tracts in Texas, containing between one and eight block groups, with a median of three block groups. To estimate citizens of voting age in each block group by race/ethnicity, I first calculated the share of adults of voting age by race/ethnicity that are citizens in the five-year sample for each Census tract. I then multiplied this ratio by the number of people in each age category in each block group to estimate the CVAs in each age category in each block group (Chapa et al., 2011). I performed an additional calculation to estimate the share of CVAs who were aged 18 to 64 who also have a disability. I first calculated the share of 18-64 year-olds in the Census tract that reported one or more disabilities on the ACS survey, and then multiplied this ratio by the estimated number of citizens by race/ethnicity aged 18 to 64 in each Census block group to distinguish those AECVAs aged 18-64 with disabilities from those without a disability.

43. To estimate auto availability down to the block group level for citizens over the age of 65, and for citizens aged 18 to 64 with at least one disability, I used data from the American Community Survey Public Use Microdata Sample for Texas, which allows a precise estimate of auto ownership for detailed subgroup definitions, though for a larger spatial area in which those block groups fall. I calculated the share of vehicle access among these two population subsets living in the Public Use Microdata Areas in which the block groups are included. I used these percentage shares to multiply the block group level figures for citizens over the age of 65 and citizens aged 18 to 64 with disabilities to determine the share of each that do and do not have access to a personal vehicle in their household. I followed a similar procedure to estimate auto access for citizens by race/ethnicity in the 65-plus age group and for citizens by race/ethnicity who have a disability and are age 18 to 64.

44. The American Community Survey five-year block group, Census tract, and PUMA estimates are based on a one percent sample conducted every year. Because the ACS is conducted upon a sample of the population, rather than a complete count, its estimates are subject to sampling variability, but the five-year ACS data are the most precise and spatially specific available given that the Decennial Census data are a full decade old.
45. Because there is no generally accepted methodology for aggregating confidence intervals from the Census tract level to higher levels of geography (e.g., to the county or state levels), I report these estimates without confidence intervals. Statewide figures presented in this report are statistically significant at the 0.001 level or better.

D. Results: Travel Times by Race/Ethnicity & Auto Ownership for Counties and the State

46. To assign a round-trip travel time to any given citizen of voting age in any given Census block, I followed the following deterministic algorithm. First, individuals living in a household with an auto available will either drive or be driven by another household member to the county ballot drop box, unless taking public transportation or walking is faster, in which case the faster of those alternative modes will be assigned. Second, individuals living in a household without an automobile will take public transportation if it is faster than walking, and will otherwise walk to the county ballot drop box.
47. As it turns out, the fastest travel time between the home location (block group centroid) and the nearest county ballot drop box was always via driving. Of the 15,811 simplified home locations (block group centroids), in no case was public transportation or walking faster. In turn, walking was the best option in less than half of the block groups in which a vehicle was not available, most obviously in those counties where public transportation is not offered.

48. In order to evaluate the extent to which all Texas citizens seeking to drop off their absentee ballot will encounter a travel burden, I identified all of the absentee-eligible citizens of voting age in the state who I estimate would have to carry out a round trip of more than 90 minutes, or a round trip of more than 70 minutes. As noted above, having to carry out a round trip exceeding 70 minutes more than doubles the average amount of travel carried out per day by an individual in the state of Texas; and having to carry out a round trip of more than 90 minutes means not only a longer trip, but also that it is almost always done via public transportation or on foot, which are more onerous.
49. Of the estimated 4.4 million absentee-eligible citizens of voting age, I calculated that about 4.1 million have access to a vehicle owned by the household (a “car”), and about 321,000 do not (7.3 percent). Of the estimated 4.1 million AECVAs with a car available, only about two percent have a round trip to access a ballot drop box location of more than 90 minutes. But about 89 percent of the 321,000 AECVAs who do not have access to a vehicle in their household would be expected to experience a travel burden in accessing a ballot drop-off location if only one location is made available in each county. This is because transit and walk times are much longer on average than drive times. Approximately 2.4 percent of Texas voting-age citizens younger than 65 and without a disability lack access to a personal vehicle. AECVAs are much more likely to lack vehicle access. About 6.7 percent of citizens aged 65 or more lack a vehicle in the household (2.8 times as high as non-disabled citizens aged 18 to 64) while about 9 percent of those with a reported disability aged 18 to 64 lack vehicle access (3.75 times as high). Furthermore, a travel burden of 90 minutes or more to access a ballot drop box is even more likely to be the case for African American AECVAs, who lack vehicle access at more than twice the rate of White AECVAs.

50. In total this analysis finds that 7.7 percent of the state's population of AECVAs would experience a travel burden exceeding 90 minutes if they wish to deliver their ballots to a drop box, almost all of them lacking auto access and having to use public transportation or walk. The share of the population experiencing a travel burden is higher when using the 70-minute threshold definition. Under this definition, about 13.5 percent of AECVAs in the state would experience a travel burden to access a ballot drop box; more than half via public transportation or walking, and less than half via auto.
51. The majority of AECVAs with a travel burden to reach a ballot drop box lives in ten of the 254 counties in the state. Harris County has a particularly large share of AECVAs, and they have travel burdens at a much higher rate than other counties. Its share of those with an expected travel time exceeding 90 minutes is about 13 percent, or about twice as high as the Texas county average of 6.4 percent. And in Harris County, using the less restrictive travel burden definition, 38 percent of absentee-eligible households are expected to have travel time exceeding 70 minutes, a share almost four times as high as the Texas county average of 9.7 percent. Dallas and Travis Counties are also substantially higher than the average across state counties, as shown in Table 2.
52. Table 2 (below) shows, for the ten largest counties in the state, the estimated share of households with round-trip travel exceeding 90 minutes to access a county ballot drop box, as well as the same figure for travel exceeding 70 minutes.

Table 2: Travel burden in the top 10 counties by population

County	Total population	Share of AECVAs with travel time > 90 min.	As multiple of TX county average	Share of AECVAs with travel time > 70 min.	As multiple of TX county average
HARRIS	4,602,523	12.7%	2.0	37.7%	3.9
DALLAS	2,586,552	10.4%	1.6	11.4%	1.2
TARRANT	2,019,977	6.5%	1.0	6.9%	0.7
BEXAR	1,925,865	8.1%	1.3	9.2%	0.9
TRAVIS	1,203,166	8.7%	1.4	15.1%	1.6
COLLIN	944,350	4.1%	0.6	5.2%	0.5
HIDALGO	849,389	8.3%	1.3	10.6%	1.1
EL PASO	837,654	8.3%	1.3	9.7%	1.0
DENTON	807,047	3.7%	0.6	6.3%	0.6
FORT BEND	739,342	5.5%	0.9	11.1%	1.1

Source: Chatman analysis (using block group centroid travel time estimates and American Community Survey 2013-2018 PUMA, Census tract and block group population estimates)

53. I also conducted an analysis of the relative travel burden by race/ethnicity, focusing on Whites, African Americans, and Hispanics who are citizens and are also eligible for absentee ballots due to age or disability. As noted above, Hispanics and particularly African Americans are much less likely to have auto access in the household which makes it substantially more likely that they will experience a travel burden accessing a ballot drop box.
54. The block group level analysis across the state confirmed this likelihood. I found that among citizens eligible for absentee ballots, African Americans statewide are twice as likely as Whites to have a round trip to access a ballot drop box location exceeding 90 minutes, at 14.6 percent in comparison to 6.7 percent for whites, largely because eligible African American

voters are far more likely to live in a household without a car available. Absentee-eligible Hispanic citizens were somewhat more likely to experience a travel burden exceeding 90 minutes, with a rate of 8.3 percent across the state (24 percent higher than Whites). When looking at the 70-minute burden definition, the difference between African Americans and Whites was not as large, but still quite significant. About 20 percent of African Americans eligible for absentee ballots would have to travel more than 70 minutes to access a ballot drop box, which is 58 percent higher than the rate of 12.6 percent for Whites. The share of absentee-eligible Hispanic and White citizens who would have to travel more than 70 minutes round trip to access a county ballot drop box was about the same statewide.

55. The pattern of disparity in burden by race/ethnicity holds within counties in addition to across the state. Here I focus on the 90-minute definition of travel burden, since it is both longer, and more onerous as it largely excludes more comfortable and less physically taxing trips conducted via auto. While the pattern varies, in the top counties by population the African American rate of 90-minute travel burden is consistently far higher than the rate for Whites (Table 3, below). It is also higher on average for Hispanics.

Table 3: Travel burden in the most populous Texas counties, for Whites, African Americans and Hispanics

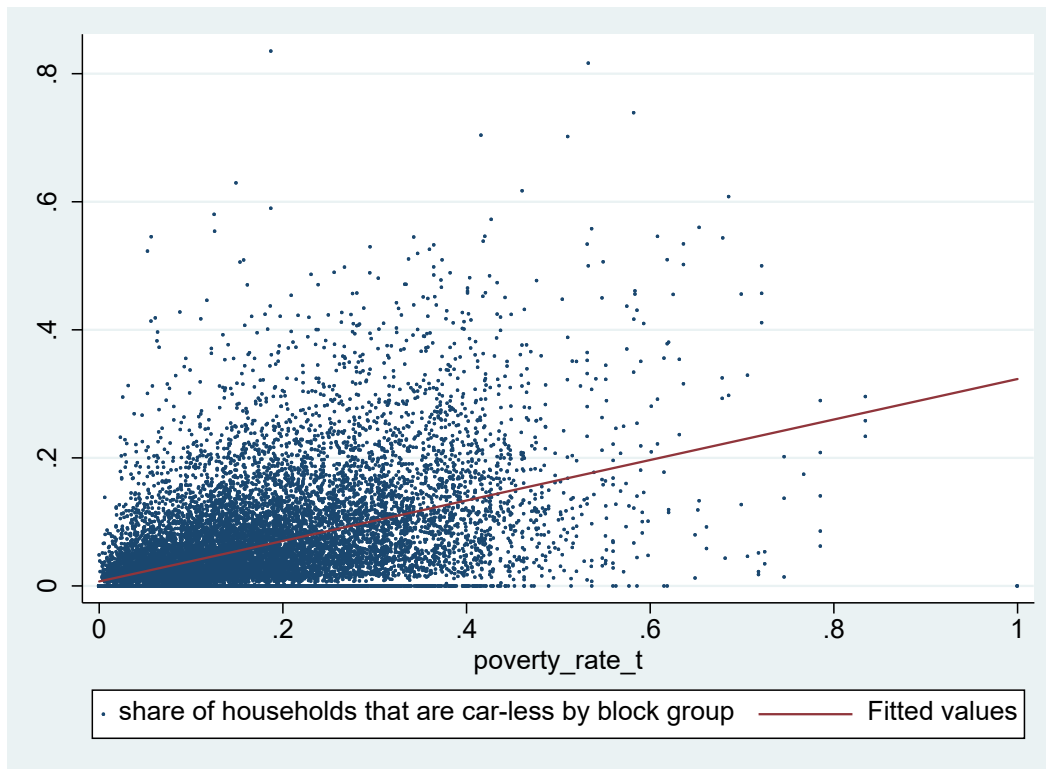
County	Total population	Share AECVAs with travel time > 90 min, by race/ethnicity				
		Whites	African Americans	As multiple of White rate	Hispanics	As multiple of White rate
HARRIS	4,602,523	11.4%	17.1%	1.5	10.4%	0.9
DALLAS	2,586,552	7.3%	18.8%	2.6	7.6%	1.0
TARRANT	2,019,977	5.5%	13.3%	2.4	6.8%	1.2
BEXAR	1,925,865	7.6%	14.0%	1.9	9.2%	1.2
TRAVIS	1,203,166	7.7%	13.9%	1.8	8.8%	1.1
COLLIN	944,350	3.9%	4.3%	1.1	4.3%	1.1
EL PASO	837,654	7.9%	14.2%	1.8	9.2%	1.2
DENTON	807,047	3.5%	7.3%	2.1	4.5%	1.3
FORT BEND	739,342	6.2%	7.9%	1.3	5.5%	0.9

Source: Chatman analysis (using block group centroid travel time estimates and American Community Survey 2013-2018 PUMA, Census tract and block group population estimates)

Note: Hidalgo County not available due to a reporting problem in ACS data.

56. Finally, I conducted some analysis of the relationship between the poverty rate at the block group level and the share of household lacking access to a personal vehicle, which is the single greatest predictor to determine whether AECVAs would have to travel more than 90 minutes round trip to access a ballot drop box. I found that the level of poverty predicts the auto ownership share at a high level of statistical significance. Each 10 percent increase in the poverty rate within a block group in Texas is associated with a 3 percent increase in the share of households who do not have a car available (Figure 4). Poverty is also highly associated with race/ethnicity. In Texas, 8.2 percent of non-Hispanic Whites are under the poverty line, half the poverty rate of non-Hispanic African Americans at 16.6 percent. The Hispanic poverty rate in Texas in the 2013-2018 PUMS data is also quite high, at 15 percent.

Figure 4: Travel burden as a function of the poverty rate, for Texas block groups



57. To corroborate the relationship between income and the travel burden I looked at data from the Nationwide Household Travel Survey of 2017 (see Table 3).

Table 3: Household Income by Vehicle Ownership

Household Vehicle Ownership	Mean Income Bracket
No vehicle available	\$15,000 to \$24,999
One or more vehicles	\$50,000 to \$74,999

Source: National Household Transportation Survey, 2017

58. The table shows that household income among households with access to at least one auto is about twice as high as households without a car. This relationship is also highly statistically significant. As noted previously, auto ownership is the mediating relationship that associates poverty status with a travel burden to access a ballot drop box location.

Queuing Analysis: Methodology and Results

59. In this analysis I estimated the length of queues and average waiting times hour by hour on Election Day by county across the state. This was carried out in three steps. First, I estimated Election Day demand, i.e. the estimated number of individuals attempting to drop off ballots on Election Day, for each county. Second, I conducted a simple deterministic input-output analysis to estimate queue length and delays on an hour by hour basis. Third, I estimated the number of voters likely to be dissuaded from voting due to extraordinarily long queue lengths and delays, by county.

A. Methodology: Estimating Election Day Demand for Drop Boxes

60. To conduct the queueing analysis, I first estimated overall demand for ballot drop boxes by county. This required obtaining data and making inferences about the following parameters: (a) the number of registered voters in each county; (b) the share of registered voters who will request and receive absentee ballots; (c) the share of those holding absentee ballots choosing to deliver those ballots to a county drop box location; and (d) the share of those drop box ballots which will be delivered on Election Day. As described below, in estimating the latter parameters (b), (c) and (d), I tested several inputs in order to help provide a probable range of outcomes for all the counties in the state.

61. For parameter (a), the number of registered voters in each county, I used the official list made available by the Texas Secretary of State from January 2020

(<https://www.sos.state.tx.us/elections/historical/jan2020.shtml>). The number of registered

voters no doubt has changed since that time, but I was not able to obtain more recent figures.

62. In estimating (b), the share of registered voters voting absentee, I used the 2013-2018 Census data described in the previous section to calculate the share of CVAs who were eligible for absentee voting because of age or disability and used these shares for the baseline parameter.

These shares ranged between 17 and 55 percent of January registered voters across the 254 counties in the state; the share for the top ten counties by population ranged from 18 to 26 percent of registered voters. An announcement about expected numbers of absentee ballot requests by the county clerk for Travis County stated that she expected 200,000 absentee ballot requests in the general election, which would be 24 percent of registered voters (6 percent higher than the 18 percent EACVA share for Travis County that I calculated using the 2013-2018 ACS data) (see <https://www.austinmonitor.com/stories/2020/08/travis-county-plans-for-drive-thru-voting-drop-off-for-mail-in-ballots/>). Based on this discrepancy, which likely reflects population growth since the 2013-18 estimates, along with some other news reports about the high number of absentee ballot requests to date, I used an upper bound of 125 percent of this figure for the total number of absentee ballots, and I used 90 percent as a lower bound.

63. In estimating parameter (c), the share of absentee voters choosing to deliver their ballots to a drop box, I searched for data on ballot deliveries from other states. Washington is one of only two states I am aware of that maintains data about the use of drop boxes in delivery of absentee ballots. Data for King County show that the share of absentee ballots that were delivered to drop boxes ranged from 45 to 57 percent in the last four general elections in the State of Washington. There are fewer drop boxes in Texas, and a shorter tradition of using them. But it appears likely that absentee voters may have a strong tendency to distrust returning absentee ballots by mail due to widespread publicity about the possible inability of the U.S. postal service to return ballots on time. Furthermore, absentee ballots tend to be returned at the last minute, based on inspecting detailed returns data from several locales in the United States including Washington and Colorado, which is likely to mean voters will

strongly prefer drop boxes to mail boxes because of the increased possibility their ballots will not delivered on time. I reduced this figure substantially downward from the Washington case, using figures that are 50 percent lower. To reflect uncertainty about this estimate, I used three different figures– 30 percent, 35 percent, and 40 percent – to represent three possible scenarios for the use of drop boxes by those who choose to vote absentee.

64. In estimating parameter (d), the share of drop box users delivering their ballots on Election Day, I relied again on data from Denver, Colorado and Kings County, Washington. In King County, Washington in the August 2020 primary election, 63 percent of drop box ballots were deposited on Election Day; in the previous 2018 general election, the figure was 72 percent. Figures for Denver are similar. In this analysis for Texas I used 40 percent as a midpoint (more than 50 percent lower than King County), also testing 35 percent as a low-end estimate and 45 percent as a high-end estimate.
65. The combination of the parameters above yielded a number of different possible outcomes in terms of the share of registered voters who I estimate will attempt to deliver absentee ballots via drop box on the day of the election. The lowest share obtained by the variance in assumptions ranges from 1.7 to 2.5 percent of registered voters, depending on the county's share of AECVAs; the middle and "baseline" share ranges from 2.5 to 3.7 percent of registered voters; and the high estimate yields a range from 4.1 to 5.9 percent of registered voters attempting to drop off their ballots at a county drop box location on Election Day.

B. Methodology: Estimating Queue Lengths and Wait Times on Election Day

66. The second step of the analysis, estimating drop box queue lengths and wait times on Election Day, consisted of an input-output analysis requiring a set of parameters about (e) how demand would be distributed over the course of the day on Election Day; (f) the

configuration of receiving stations at each of the county boards of elections offices across the state; and (g) the service capacity of those reception lines—i.e., how many ballots per hour they could receive depending on how quickly individuals can have their photo identification cards checked, sign the roster, and deposit their ballots.

67. Regarding parameter (e), the ballot drop boxes are said to be available from 7 am to 7 pm at most locations. I further inferred, based on common travel patterns in the United States, that 30 percent of this travel would occur during the morning peak (8 am to 10 am) and 35 percent during the evening peak (4 pm to 7 pm), with the remainder distributed throughout the other hours of the day from 7 to 8 am and from 10 am to 4 pm. This parameter turns out to have very little effect overall on queue formation in the populous counties, because in those counties voter demand estimates exceed drop box service capacity by a very wide margin.

68. For parameter (e), I assumed that every county board of elections office has one drive up queue managed in the following way: one staffed station checks ID, a second staffed station takes signature and receives the ballot. Separating the stages in this way has the potential to increase capacity by allowing the queue to keep moving after the first step is conducted. I assume there are two such staffed queues available for Harris County because it is held at NRG Arena, which has the potential to manage two queues because of its size.

69. Parameter (g), the service capacity of each drop box, depends on the speed of elderly and disabled individuals completing the three steps required to drop off a ballot: having their photo ID checked, signing the register, and depositing their ballots or handing their ballots to an attendant. (I assume that physical capacity of the boxes is not an issue, i.e., staff are available to empty the boxes when needed.) At some locations there may be drive up boxes

and in others voters may have to park and join a pedestrian queue. Drive-up queues move particularly slowly because of the awkwardness of reaching for the box from a car window, undoing one's seatbelt, etc. and because of the necessity to keep some distance between cars (for an illustration, see news footage of a drive up box in Minneapolis at <https://www.youtube.com/watch?v=Kg61Jr9Dm7k>).

70. Regardless of whether the queues are pedestrian or drive-up, given the fact that several steps must be completed in the Texas situation due to the need to check identification and collect a signature, I used three ballots per minute (one every 20 seconds) as an estimate of service time that I consider to be highly conservative. Even if two queues were possible to maintain (which is highly unlikely in the queue lengths I calculate later in the analysis), I estimate that sites would not be able to achieve a rate of ballot deposition exceeding three ballots per minute, with one exception. For the case of Harris County, with the assumption of two staffed drop-off sites and queues being possible at the NRG Arena, I assumed six ballots per minute, twice the rate of the other counties.

71. I modeled the ballot drop box locations at each county board of elections office as a simple D/D/s queueing system with a constant hourly capacity as explained above, and deterministic arrival times that varied by the hour as explained in the paragraph prior. In this model, queues form whenever the demand exceeds the capacity, and the queue length at a given hour is simply the excess demand in that hour plus the queue length at the end of the previous hour, as given in the following equation:

$$Q(t) = Q(t - 1) + D(t) - C(t)$$

where $Q(t)$ is the queue length at hour t , $Q(t - 1)$ is the queue length at hour $t-1$, $D(t)$ is the demand at hour t , and $C(t)$ is the capacity at hour t .

72. Given the queues at a given hour, the average delay in that hour is given by the following equation

$$W_{average}(t) = \frac{Q_{average}(t)}{C(t)}$$

where $W_{average}(t)$ is the average expected wait time for a voter arriving at hour t ,

$Q_{average}(t)$ is the average queue length at hour t , and $C(t)$ is the capacity at hour t .

73. For a concise overview of the input-output method for analyzing queueing, see Daganzo (1983). A more thorough explanation is set forth in a textbook by the same author (Daganzo, 1997).

C. Results: Estimates of Election Day Queue Lengths and Wait Times, By County

74. I generated outputs by county for three different scenarios: low demand, “baseline” demand (my best estimate of actual demand for drop boxes on Election Day), and high demand.

75. The baseline scenario is shown in Tables 4 and 5, found after the references at the end of this Declaration. Table 4 shows projected Election Day queue lengths for the most populous counties throughout the course of the day, and Table 5 shows projected wait times for people who arrive during those hours of the day. Only the 25 largest counties by voter registration are shown in the tables, because with 254 counties it is not possible to fit all on a page.

76. In the baseline scenario, 25 counties have queues at the end of Election Day exceeding 1,700 and ranging up to 64,000 vehicles (Table 4); with wait times exceeding nine hours and ranging up to 340 hours (Table 5). The impacts in more populous counties are much more severe than in less populous counties. The wait at the end of a day to drop off a ballot over the course of a day in the ten most populous counties in the state is estimated at baseline to average 135 hours, with a range from 54 to 340 hours – estimates that are so astronomical they clearly communicate gridlock that will simply keep people from being able to drop off

their ballots. A total of about 337,000 voters across the state are potentially affected by an inability to drop their ballots off in the baseline scenario. Meanwhile the 209 least populous counties in the state are not projected to have any wait time in the baseline scenario.

77. I also calculated the “low demand” and “high demand” results, creating output tables similar to Tables 4 and 5. I describe the results here, without displaying the detailed results in tables.
78. For the low demand scenario (in which from 1.7 to 2.5 percent of registered voters attempt to drop off their ballots on Election Day), the 22 most populous counties in the state have significant queues (of more than 1,000 vehicles at the end of Election Day) and waiting times (of more than six hours). The ten most populous counties have end-of-day queue lengths averaging more than 16,000 vehicles and wait times averaging 87 hours. A total of about 200,000 voters are potentially affected by an inability to drop off their ballot in this minimum demand scenario.
79. In the high demand scenario, in which the share of registered voters who plan to deliver their absentee ballots to a drop box on Election Day ranges from 4.1 to 5.9 percent, the 25 most populous counties have average queue lengths of 22,000 vehicles, and wait times for the ten most populous counties range from 94 to 606 hours. The total number of Texas voters driven away by the inability to reach a ballot drop box in this scenario is more than 600,000.
80. The range of potential outcomes based on variance in the input inferences can be shown as I do here for three counties: Harris, Travis and Fort Bend. Figures 5 to 10 (below) visualize the variance in possible incomes for queue lengths and wait times for those three counties.

Figure 5: Range of Possible Election Day Queue Lengths in Harris County

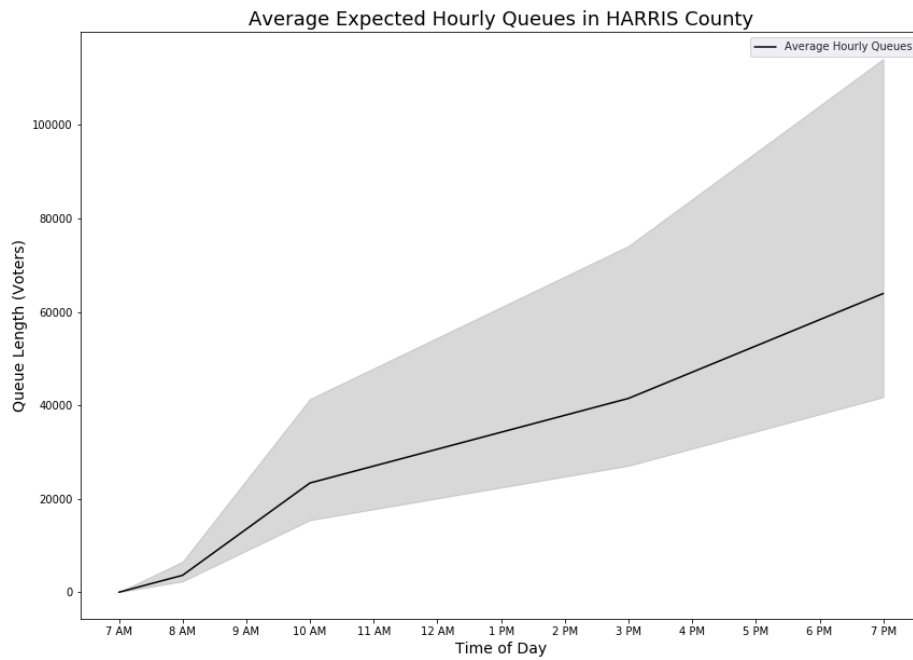


Figure 6: Range of Possible Hourly Delay Per Capita in Harris County

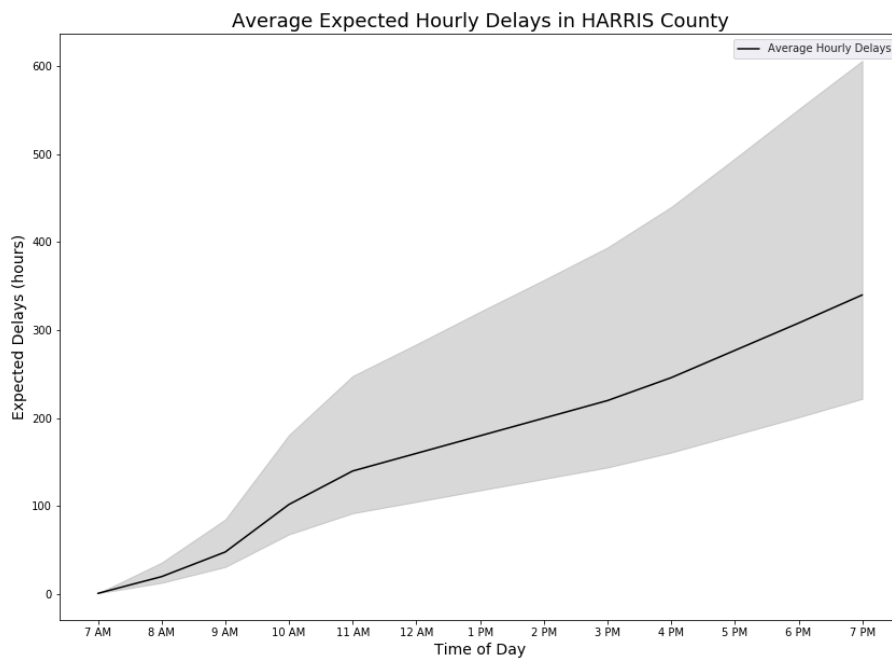


Figure 7: Range of Possible Election Day Queue Lengths in Travis County

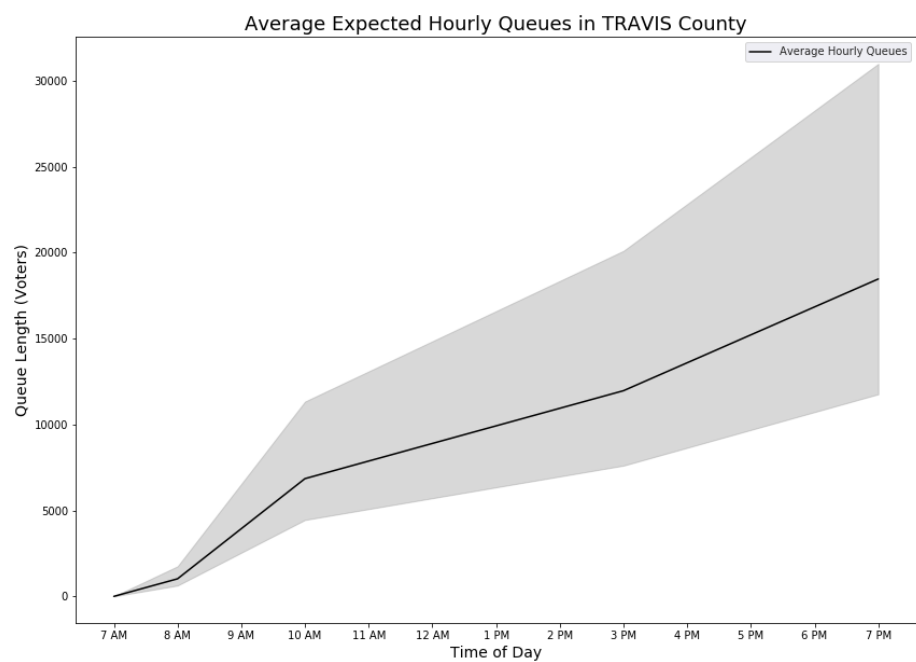


Figure 8: Range of Possible Hourly Delay Per Capita in Travis County

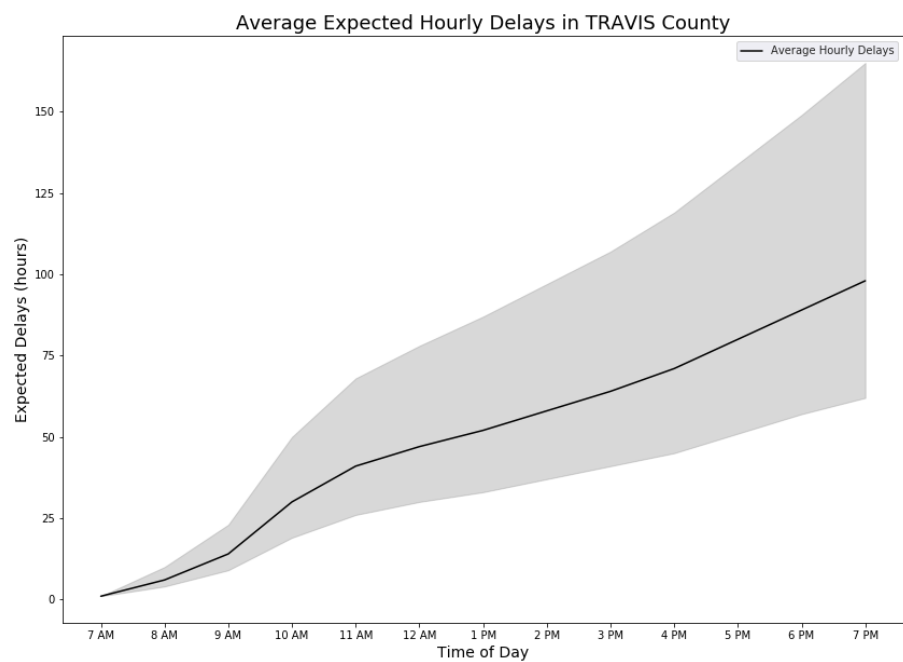


Figure 9: Range of Possible Election Day Queue Lengths in Fort Bend County

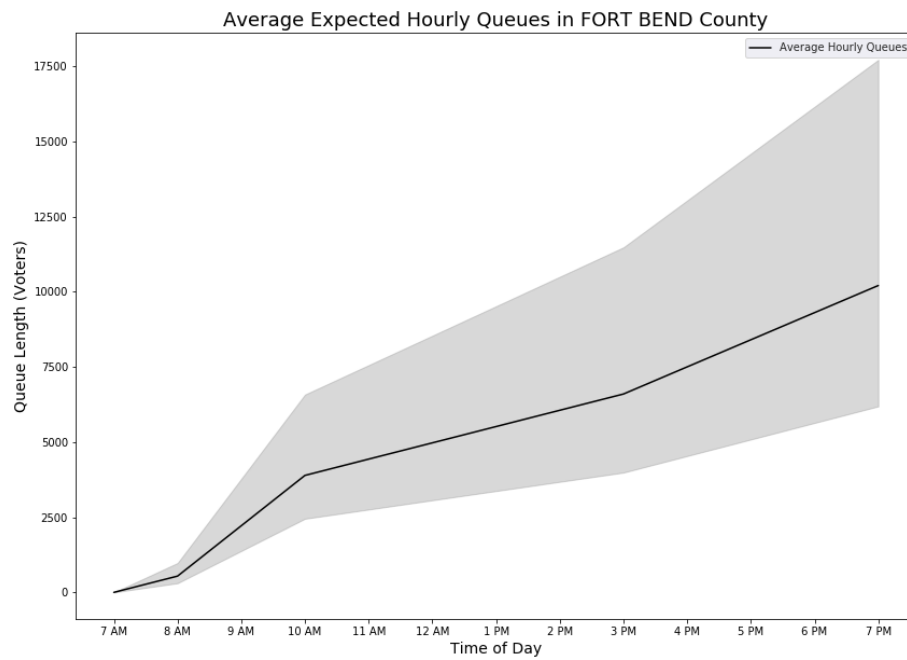
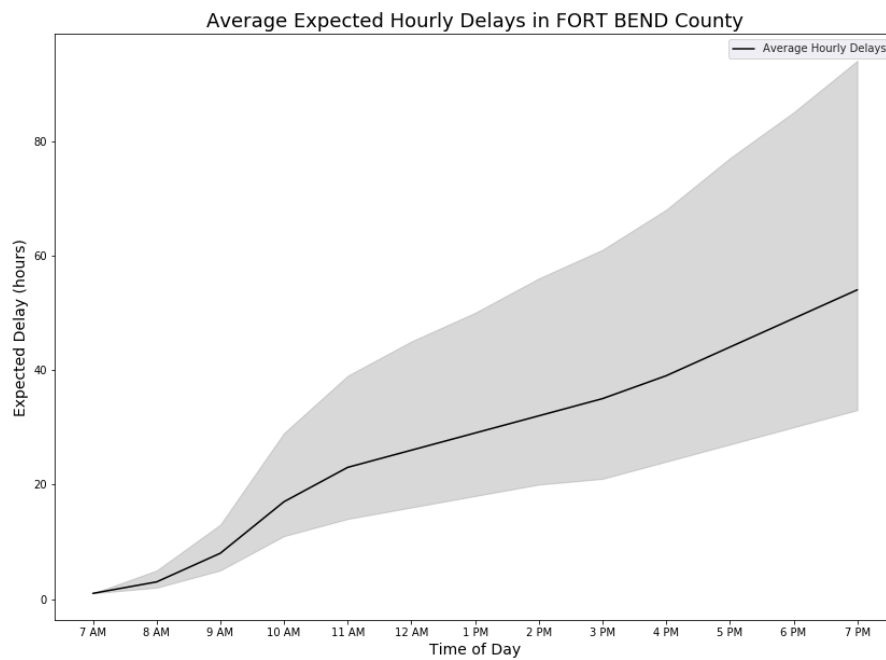


Figure 10: Range of Possible Hourly Delay Per Capita in Fort Bend County



D. Results: Impacts on Voters

81. The figures discussed above, shown in Tables 4 and 5, and displayed for three counties in Figures 5 to 10, show projected scenarios that help estimate the magnitude of the impact of not allowing more than one location for ballot drop boxes in each county. Plainly, it is unlikely that the massive queues and wait times shown by these analyses would occur, because once the queues and wait times become long, voters are likely to either abandon the queue; arrive at their county drop box site and be deterred from joining the queue; or hear about the long wait times on the news or from friends and not even begin a trip to the county elections office. In other words, queues of much shorter than the projected lengths would likely dissuade voters from attempting to deliver their ballots long before the queues achieve the length demonstrated by demand. For example, a queue of 30,000 vehicles would stretch for about 150 miles; and one has difficulty imagining a voter willing to tolerate a wait of more than 8 hours.
82. The estimated queue lengths at the end of Election Day are a good estimate of the number of voters who could be dissuaded from dropping off their ballots by the intense traffic that would be associated with county drop box locations once only a few hundred vehicles are lined up, in addition to the prospect of intolerably long vehicle queues and wait times. Thus, one estimate of the number of voters who might forgo casting their ballots due to the small numbers of drop box locations in populous counties would be the surplus demand in the remaining queues at the end of Election Day. Statewide, this would be about 330,000 ballots in the baseline scenario, with a range as low as 200,000 ballots in the low-demand scenario and as high as 600,000 ballots in the high-demand scenario.
83. The impacts of queues can be expected to have a disparate impact on African Americans and Hispanics. The most populous counties with the longest expected queues and wait times have

a higher fraction of the population that is African American or Hispanic. About 71 percent of African Americans and 65 percent of Hispanics in Texas live in the top 10 counties by population, as compared to 55 percent of Whites. Harris County, which is expected to have the longest queues and wait times in the state, contains 26 percent of all African Americans and 18 percent of Hispanics in the state, compared to 14 percent of Whites.

CONCLUSION

84. I have analyzed two potential impacts of the Texas Governor's decision not to allow counties to provide multiple satellite ballot drop off locations for voters in the November general election. The first is the travel burden for those elderly and disabled individuals who will have time-consuming and uncomfortable trips, disproportionately on public transportation or on foot due to their not having access to a personal vehicle in their household, to access a ballot drop box under the current rule. The second is the queue lengths associated with large potential demand for access to ballot drop boxes due to the circumstances of this election and based on comparisons with other locations that have implemented drop boxes as a ballot delivery option.

85. I find that more than 89 percent of the 321,000 absentee-eligible citizens of voting age in the state who lack access to a car would have a round trip to access a county ballot drop box location exceeding 90 minutes, which is substantially longer than the average amount of travel undertaken in an entire day in the State of Texas, under conditions that are typically much more difficult than driving in a personal vehicle. Overall, from 7.7 to 13.5 percent of the population of the state is affected by a significant travel burden, with the ten most populous counties accounting for the majority of those individuals. The share of the population with a travel burden is particularly high in Harris County, where 38 percent of the

population is estimated to have a round trip of more than 70 minutes to access the county ballot drop box, and which contains a disproportionate share of affected voters in the state. Senior citizens and disabled individuals under the poverty line are much more likely to be affected by this burden across the state, because they are less likely to have access to a personal vehicle in their household. Such long travel durations under uncomfortable or impossible conditions, given age and disability, are likely to dissuade affected voters from delivering their absentee ballots to drop boxes, and may consequently discourage voting altogether, given reasonable fears of COVID-19 infection at in-person polling places, and skepticism that the postal service will deliver ballots on time if they are put in a mailbox.

86. I estimate that the demand for drop boxes would generate extraordinarily lengthy queues in the most populous counties in the state, with intolerably long wait times to drop off a ballot. It appears likely that in those counties more than 300,000 people could be turned away from drop box locations, or could be dissuaded from attempting to drop off their ballots on Election Day by reports of long lines or by encountering intense traffic on the way to or upon arriving at the drop box, if the state does not permit affected counties to provide additional drop box locations in order to mitigate queuing delays.

87. Both of these types of impact would be disproportionately borne by African Americans and to a lesser extent Hispanics. African Americans are twice as likely to experience a significant travel burden in comparison to Whites. African Americans and Hispanics are also substantially more likely to live in larger counties where longer queues and higher wait times are expected in order to deposit a ballot at a drop box.

I declare under penalty of perjury that the information set forth in this declaration is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "Daniel G. Chatman". The signature is fluid and cursive, with the first name "Daniel" and last name "Chatman" clearly legible. The middle initial "G." is smaller and less distinct. The signature is written over a horizontal line.

Dr. Daniel G. Chatman

Dated: October 8, 2020

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**Table 4: Hourly Election Day Queues, Baseline Scenario, for Top 25 Counties
by Number of Registered Voters**

County Name	7 AM	8 AM	9 AM	10 AM	11 AM	12 PM	1 PM	2 PM	3 PM	4 PM	5 PM	6 PM
HAYS	49	458	868	917	966	1015	1064	1113	1277	1441	1605	1768
GRAYSON	50	462	874	925	975	1025	1075	1125	1291	1456	1622	1787
WEBB	59	494	929	988	1047	1106	1165	1224	1403	1582	1760	1939
COMAL	98	633	1167	1265	1363	1461	1559	1657	1893	2130	2367	2604
MCLENNAN	144	797	1449	1593	1737	1881	2025	2169	2474	2780	3086	3392
JEFFERSON	146	806	1465	1612	1758	1905	2051	2198	2507	2817	3127	3436
SMITH	164	867	1571	1734	1898	2062	2225	2389	2724	3060	3395	3730
LUBBOCK	191	963	1736	1927	2118	2308	2499	2689	3065	3441	3817	4193
BRAZORIA	206	1019	1832	2039	2245	2451	2657	2863	3263	3662	4061	4460
BELL	249	1173	2097	2346	2595	2844	3094	3343	3807	4271	4734	5198
NUECES	275	1266	2256	2531	2806	3081	3357	3632	4135	4637	5140	5643
CAMERON	286	1304	2322	2608	2894	3180	3466	3752	4271	4790	5309	5828
GALVESTON	303	1366	2429	2732	3035	3338	3641	3945	4490	5034	5579	6124
WILLIAMSON	475	1981	3486	3962	4437	4913	5388	5864	6667	7470	8273	9077
MONTGOMERY	497	2058	3619	4116	4613	5110	5607	6104	6939	7774	8610	9445
FORT BEND	542	2217	3893	4435	4976	5518	6060	6601	7504	8406	9309	10211
HIDALGO	595	2410	4224	4819	5415	6010	6606	7201	8185	9168	10151	11134
DENTON	601	2431	4260	4862	5463	6064	6666	7267	8259	9251	10244	11236
COLLIN	740	2927	5113	5854	6594	7334	8074	8815	10015	11216	12416	13616
EL PASO	801	3144	5487	6288	7089	7890	8691	9492	10784	12076	13368	14659
TRAVIS	1023	3937	6851	7874	8898	9921	10944	11967	13592	15217	16842	18467
TARRANT	1921	7145	12369	14291	16212	18134	20055	21976	24949	27921	30893	33865
DALLAS	2163	8006	13850	16013	18175	20338	22500	24663	27997	31331	34665	37999
BEXAR	2236	8267	14298	16534	18769	21005	23240	25476	28919	32362	35805	39249
HARRIS	3621	13500	23378	26999	30620	34242	37863	41485	47097	52709	58321	63934

**Table 5: Hourly Delays (in hours), Baseline Scenario, for Top 25 Counties
by Number of Registered Voters**

County Name	7 AM	8 AM	9 AM	10 AM	11 AM	12 PM	1 PM	2 PM	3 PM	4 PM	5 PM	6 PM
HAYS	0	1	4	5	5	6	6	6	7	8	8	9
GRAYSON	0	1	4	5	5	6	6	6	7	8	9	9
WEBB	0	2	4	5	6	6	6	7	7	8	9	10
COMAL	1	2	5	7	7	8	8	9	10	11	12	14
MCLENNAN	1	3	6	8	9	10	11	12	13	15	16	18
JEFFERSON	1	3	6	9	9	10	11	12	13	15	17	18
SMITH	1	3	7	9	10	11	12	13	14	16	18	20
LUBBOCK	1	3	7	10	11	12	13	14	16	18	20	22
BRAZORIA	1	3	8	11	12	13	14	15	17	19	21	24
BELL	1	4	9	12	14	15	16	18	20	22	25	28
NUECES	2	4	10	13	15	16	18	19	22	24	27	30
CAMERON	2	4	10	14	15	17	18	20	22	25	28	31
GALVESTON	2	5	11	14	16	18	19	21	23	26	29	33
WILLIAMSON	3	7	15	21	23	26	29	31	35	39	44	48
MONTGOMERY	3	7	16	21	24	27	30	33	36	41	46	50
FORT BEND	3	8	17	23	26	29	32	35	39	44	49	54
HIDALGO	3	8	18	25	28	32	35	38	43	48	54	59
DENTON	3	8	19	25	29	32	35	39	43	49	54	60
COLLIN	4	10	22	30	35	39	43	47	52	59	66	72
EL PASO	4	11	24	33	37	42	46	51	56	63	71	78
TRAVIS	6	14	30	41	47	52	58	64	71	80	89	98
TARRANT	11	25	54	74	85	95	106	117	130	147	163	180
DALLAS	12	28	61	83	95	107	119	131	146	165	183	202
BEXAR	12	29	63	86	98	110	123	135	151	170	189	208
HARRIS	20	48	102	140	160	180	200	220	246	277	308	340

Exhibit G

THE ANTI-DEFAMATION LEAGUE AUSTIN,	§	
SOUTHWEST, AND TEXOMA REGIONS;	§	IN THE DISTRICT COURT
COMMON CAUSE TEXAS; and ROBERT	§	
KNETSCH;	§	
<i>Plaintiffs,</i>	§	TRAVIS COUNTY TEXAS
	§	
v.	§	
	§	353rd JUDICIAL DISTRICT
GREG ABBOTT, in his official capacity as	§	
the Governor of Texas,	§	
<i>Defendant.</i>	§	
	§	

Purpose

1. Counsel for the Plaintiffs have engaged me to provide an expert opinion related to Governor Abbott's October 1, 2020 order prohibiting county election officials from providing more than one ballot return location in their county at which voters may return their absentee ballot. Specifically, I have been asked to assess the potential security concerns related to having more than one drop off location per county.

Qualifications

2. I am the founder and owner of Cortés Consulting Group, LLC, a consulting firm providing strategic and political advising services to non-profit, government, and political organizations focused on election administration and security issues. I received my Bachelor of Science from Cornell University and my Master of Arts from The George Washington University Graduate School of Political Management.
3. Since 2002, I have worked in all facets of the electoral process including campaigns, nonpartisan voter registration, federal and state election policy, and local and state election administration. I previously served as the first Commissioner of Elections in Virginia, the chief state election official for the Commonwealth of Virginia. I also served as General Registrar and Director of the Office of Elections of Fairfax County, Virginia, a geographically large county with approximately 650,000 registered voters during my tenure, and was responsible for administering voter registration, absentee voting, and election day operations. As Deputy Director for Policy at the U.S. Election Assistance Commission, I developed guidance and recommendations for state and local election offices regarding best practices for administering elections and the requirements of the Help America Vote Act and the National Voter Registration Act.
4. I have testified before several committees of the U.S. House of Representatives, various state legislatures, the National Academies of Science, and other bodies on election

administration and election security issues. I have served as Chair, Vice Chair, and Secretary of both the U.S. Election Assistance Commission Standards Board and the Electronic Registration Information Center. I was a founding member of the U.S. Department of Homeland Security Election Infrastructure Government Coordinating Council and was a co-chair of the Washington Metropolitan Area Council of Governments Election Officials Technical Committee.

5. Through my work at the national, state, and local level, I have become familiar with rules and processes related to election administration around the country. I regularly attend and participate in conferences and trainings related to election administration, cyber security, and related topics. I routinely communicate and work with state and local election officials regarding implementation of election laws and election security issues.
6. I am being paid at a rate of \$400/hour for my work in this litigation. My compensation is not contingent on my analysis or the contents of my report.

Analysis

7. The process of voting absentee by mail is generally a safe and secure method of voting that is utilized in some way in all fifty states and the District of Columbia. The rules of how absentee voting by mail is implemented varies by state but all implementation approaches have security measures in place to ensure the integrity of the election process. Texas is one of 41 states that require a voter to submit a request before being mailed a ballot.¹ Texas is one of five states that has not adopted changes to absentee voting criteria in response to the COVID-19 pandemic that would allow any voter to vote absentee by mail.² The absentee ballot application itself serves as a security feature because it allows election officials to validate the voter's information using existing voter registration records to ensure the voter made the request. Upon return of a voted ballot, Texas is one of 31 states that implements signature verification as a security measure to compare the signature on the absentee ballot envelope to the signature in the voter registration records.³ Texas, along with 12 other states and the District of Columbia, permit voted absentee ballots to be returned at voting locations. Of these, Texas appears to be the only state that requires the provision of a photo identification from an individual returning a marked ballot in-person.

¹¹ Only five states (Oregon, Washington, Utah, Hawaii, and Colorado) automatically sent ballots to voters without a request prior to the pandemic. Four additional states (New Jersey, California, Vermont, and Nevada) and the District of Columbia decided to automatically send ballots to voters for the November 2020 election in response to the pandemic.

² The other four states are Indiana, Louisiana, Mississippi, and Tennessee.

³ The other 30 states are Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Washington and West Virginia.

8. States have seen significant increases in absentee voting by mail during the 2020 election cycle compared to prior presidential elections, regardless of whether or not changes have been made to facilitate additional voting by mail. Texas election officials, in their declarations, reflect the increased use of voting by mail. In Virginia, the total number of early absentee votes cast (in-person and by mail) and requested are already almost three times the total amount of absentee votes cast in the 2016 election.⁴ Florida's total requests for ballots by mail for the November election have already surpassed the total number of requests for ballots by mail for the entire 2016 presidential election.⁵
9. The importance of alternative means for in-person return of voted absentee ballots has increased in 2020, particularly for voters that request a ballot by mail closer to election day and in states that require the return of voted absentee ballots by the time the polls close on election day. The Cybersecurity and Infrastructure Security Agency (CISA) Elections Infrastructure Government Coordinating Council and Sector Coordinating Council's Joint COVID Working Group issued recommendations regarding ballot drop boxes. That federal guidance identifies that:

[V]oters may be motivated by lack of trust in the postal process, fear that their ballot could be tampered with, or concern that their signature will be exposed. Voters may also be concerned about meeting the postmark deadline and ensuring that their ballot is returned in time to be counted.⁶
10. Many of these concerns stem from mail delivery slowdowns prompted by changes at the United States Postal Service (USPS) earlier in the year that impacted delivery of ballots for primary elections in several states. While the USPS has since halted proposed service changes and continued to prioritize delivery of absentee ballots, the public concerns remain. In Kentucky, the Democratic Governor and Republican Secretary of State reached a bipartisan agreement that includes an increased early voting period and drop boxes for voters to return voted ballots.⁷ The Virginia General Assembly passed legislation during a special legislative session allowing the return of voted absentee ballots to early voting locations.⁸ The State of Georgia adopted emergency regulations to permit the use of secure drop boxes for the return of voted absentee ballots.⁹

⁴ <https://www.vpap.org/elections/early-voting/> (last accessed 10/09/2020)

⁵ 2016 totals: <https://dos.myflorida.com/media/697363/early-voting-and-vote-by-mail-report-2016-gen.pdf>
2020 totals (last accessed 10/09/2020):

<https://countyballotfiles.elections.myflorida.com/FVRSCountyBallotReports/AbsenteeEarlyVotingReports/PublicStats>

⁶ https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot_Drop_Box.pdf, pg. 1

⁷ <https://www.sos.ky.gov/elections/Documents/2020GeneralElection/EO-GeneralElection.pdf>

⁸ <https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+CHAP0001>

⁹ <https://sos.ga.gov/admin/files/Table%20of%20Contents%20for%20SEB%20Rule%20183-1-14-0.8-.14.pdf>

11. I have reviewed the declarations of Harris County Clerk Hollins and Travis County Clerk Debeauvoir¹⁰. Clerk Hollins initially planned for and operated 12 in-person ballot return locations and Clerk Debeauvoir planned for and operated four in-person ballot return locations for the November election. The security measures they implemented at these ballot drop off locations include most of the security recommendations covered in federal guidance and also include additional security measures unique to Texas. Generally, the implementation of a combination of security recommendations is sufficient to make the entire absentee voting by mail process secure and it is not necessary to implement all recommendations to ensure the integrity of the election process.
12. For example, Clerk Hollins and Clerk Debeauvoir outlined several security measures taken to protect the integrity of the electoral process at ballot drop off locations. This includes the use of bipartisan teams that provide constant supervision of the ballots returned to early vote locations and transportation of such ballots to the election office. The ability to drop off voted absentee ballots is only available at these fully staffed locations while early voting is ongoing. The ballots are securely stored in ballot containers that use logged security seals to identify potential tampering. The office maintains chain of custody documentation identifying the members of the bipartisan teams supervising returned ballots as well as additional information pertaining to when ballots are received and when they are transported to the central election office for processing.
13. In addition to the industry standard security protocols put in place at early voting ballot drop off locations, Texas is unique in requiring individuals that are returning ballots to show photo identification. As described by Clerk Hollins and Clerk Debeauvoir, this closely mirrors procedures used for Texas in-person voting. In contrast, while North Carolina also requires a log of absentee ballot drop offs and a form providing information about the individual returning ballots, it does not require those individuals to show identification. From a security standpoint, this is not necessary to maintain the integrity of the election process given the multitude of other security processes and procedures in place. However, because Texas does utilize this security protocol, it does provide additional public perception that the return of voted absentee ballots to early voting locations is more secure than returning voted absentee ballots by mail. From both a security and public perception standpoint, it therefore does not provide any benefit to limit in-person early voting drop off locations to just one per county.
14. Limiting voted ballot drop off locations is likely to add burdens for election administrators and create barriers to participation by eligible absentee voters, who by definition in Texas, are unable to vote in person on election day. The need to log and verify identification of persons dropping off ballots requires additional time to process ballots that are being dropped off, similar to the requirements for checking in voters for in-person voting. By limiting this process to just one location per county, the state

¹⁰ Texas League of United Latin American Citizens, et al. v. Abbott, et al., Case 1:20-CV-01006-RP, Declaration of Harris County Clerk Hollins and Declaration of Travis County Clerk Debeauvoir.

increases the risk for the formation of long lines at a single location. This also creates challenges for election officials attempting to maintain appropriate social distancing for voters and providing sufficient voter parking.

15. In addition to these challenges for election officials, long wait times, lack of sufficient parking, lack of access to public transportation, and difficulty maintaining social distancing can dissuade voters from using a method of return that is more likely to ensure their absentee ballot is counted. If there is a surge in late absentee ballot requests, which is a likely scenario given the experience in presidential primary elections this year, this could also lead voters that request an absentee ballot but will not have sufficient time to mail it back to opt to vote in-person on election day instead. This scenario will require additional processing time for voters and the need to recruit additional poll workers, which has already proven difficult in the current environment. The result may be long lines on election day and an inability for some qualified voters to participate.

Findings

16. Based on my experience administering elections at the state and local level, as well as my broad knowledge and understanding of election practices around the country, I cannot identify any election security related reason for limiting Texas counties to a single drop off location for absentee ballots. The security measures described by Harris County and Travis County for receiving absentee ballots in-person mirror the security measures in place for both early voting and election day voting in person and are more stringent than for voters choosing to mail their ballot via the United States Postal Service. Texas counties appear to have training and procedures that are consistent with federal guidance on the use of drop boxes as well as best practices from states that have a long history of allowing in-person drop off of absentee ballots.

17. The Texas Attorney General confirmed that:

“Importantly, the Proclamation does not change section 86.006’s protections for ballot integrity. Only the voter may return his marked ballot in person—no third party may do so. Tex. Elec. Code § 86.006(a)(3). And when delivering his ballot, the voter “must present an acceptable form of identification described by [Texas Election Code] section 63.0101.” Id. § 86.006(a-1). (pg 5, exhibit B)

18. Limiting drop off locations in the manner described in the Governor’s declaration serves no valid election administration or election security purpose. Furthermore, based on my knowledge and expertise in administering elections, there is sufficient time for Texas local election offices to implement additional ballot return locations that meet accepted security standards. The declarations of Clerk Hollins and Clerk Debeauvoir illustrate the amount of voter education, election official training, and procedural preparations that have already been put in place to run additional ballot drop off locations. Not only is it logistically possible, but continuing to utilize additional ballot drop off locations will be easier to administer than making the changes mandated in the Governor’s executive order. Reducing the number and locations of ballot drop off sites will require significant

expense to conduct proper voter education regarding the changes. It will also require retraining staff to not accept ballots or risk inadvertent acceptance of ballots which then could not be counted under Texas state law.

I declare under penalty of perjury that the information set forth in this declaration is true and correct to the best of my knowledge.



Edgardo Cortés

October 10, 2020

Date

Exhibit H

EXPERT REPORT OF ASSISTANT PROFESSOR KRUTIKA KUPPALLI, M.D.

I, Dr. Krutika Kuppalli, respectfully declare as follows:

EXPERIENCE AND QUALIFICATIONS

1. I am an Assistant Professor of Medicine in the Division of Infectious Diseases at the Medical University of South Carolina (MUSC) in Charleston, South Carolina. I have been in clinical practice for 9 years and have expertise in global health, the research and clinical care of emerging infections, outbreak preparedness and response, health systems strengthening, healthcare policy, and biosecurity. I have significant experience in the development, operationalization of programs, and treatment of patients on the frontlines of numerous infectious diseases outbreaks across the world-particularly in resource limited settings.

2. I am the Vice Chair of the Global Health Committee for the Infectious Diseases Society of America (IDSA), which is a national professional organization that represents over 12,000 Infectious Diseases physicians, researchers, and public health experts. The purpose of the Global Health Committee is to promote evidence based, robust U. S. led policy responses to global infectious disease threats. This includes HIV, tuberculosis, malaria, antimicrobial resistance, and emerging and re-emerging infectious diseases like COVID-19, Ebola, Zika, Dengue, and Chikungunya. We are also focused on strengthening global health security and public health preparedness by advising elected officials about policy and funding needs related to research and development and responses for global infectious diseases including outbreak responses.

3. I am an Emerging Leader in Biosecurity (ELBI) Fellow at the Johns Hopkins Center for Health Security. The ELBI Fellowship is a competitive fellowship that accepts 28 individuals each year enabling them to deepen their expertise, expand their network, and connect the next generation of leaders and innovators in the biosecurity community. The fellowship boasts more than 100 alumni who represent government, defense, private industry, science, law, public health, medicine, global health, journalism, the social sciences, and academia.

4. I received a B.S. in Biochemistry and Cell Biology and a B.A. in International Relations and Political Science from the University of California, San Diego (UCSD) in La Jolla, California in 2001 and my M.D. in 2005 from Virginia Commonwealth University School of Medicine (VCU SOM) in Richmond, Virginia. I completed my Internal Medicine residency in 2008 and a research oriented Infectious Diseases fellowship at Emory University in Atlanta, Georgia in 2011. During my fellowship my research was focused on the care of disenfranchised patient populations, emerging infections, and global health. I was awarded the prestigious Fogarty International Clinical Research Fellowship in 2010 and spent the year living in India conducting research related to HIV and emerging infectious diseases. Upon returning to the United

States in July 2011, I returned to the University of California, San Diego and completed a Post-Doctoral Fellowship in Global Public Health.

5. My career in infectious diseases has focused on the clinical care of vulnerable patient populations, global health, research and clinical care of emerging infections, outbreak preparedness and response, and biosecurity. I was on the frontlines of the 2014 West Africa Ebola outbreak in Sierra Leone where I was the medical director of a 70 bed Ebola Treatment Unit. I was subsequently recruited to help lead the development and implementation of a United States Department of Defense sponsored pandemic response and preparedness project in Africa and have consulted on the development of therapeutics for emerging pathogens. I have worked in Ethiopia, India, Sierra Leone, Uganda, and Haiti.

6. Attached and incorporated by reference to this declaration is a copy of my curriculum vitae.

7. During COVID-19 I have served as a subject matter expert for the San Francisco Department of Health and was the medical lead in setting up an inpatient Alternate Care Site (ACS) to help the city prepare for a surge. I have been involved with various educational and policy initiatives, published numerous peer-reviewed journal articles, policy briefs, lay articles, and been a frequent media source. I served as an expert witness to the U.S. House of Representatives Financial Services Committee Task Force on Artificial Intelligence about how [Artificial Intelligence helps localities reopen safely and researchers find a cure during COVID-19](#).

8. I have testified in front of the House Select Subcommittee on the COVID-19 Crisis on how to [“Ensure a Free, Fair, and Safe Election during the Coronavirus Pandemic.”](#)

9. My background and experience as a front line healthcare provider, expert in biosecurity and outbreak response, and healthcare policy combined with the months spent developing the guidelines published between the Brennan Center for Justice and IDSA make me uniquely qualified to discuss the policies and procedures that should be considered in ensuring a free, fair and safe election during the Coronavirus pandemic for residents in the state of Texas.

MY PARTICIPATION IN THIS CASE

10. I was retained to discuss public health implications posed to the citizens of Texas by Governor Abbott’s recent proclamation on October 1, 2020 that will limit ballot return locations to one location in each county.

11. This report is based upon my review of the following case materials in light of my background and expertise in the field:

- a. The Governor’s October 1, 2020 Proclamation
- b. The Plaintiff’s Petition and Application for Temporary restraining order, temporary injunction, and permanent injunction

- c. The three declarations attached thereto
- d. The Solicitor General's September 30, 2020 submission
- e. The State's Plea to the Jurisdiction and Response
- f. The Appendix to the State's Plea to the Jurisdiction and Response.

SUMMARY OF RESULTS

12. On December 31, 2019 cases of atypical pneumonia of unidentified etiology were reported in Wuhan, China. Since then, Severe Acute Respiratory Syndrome Coronavirus-2 (SARS-CoV-2), the virus that causes COVID-19 has been declared a Public Health Emergency of International Concern (PHEIC) by the World Health Organization (WHO). It has infected more than 36.9 million individuals globally and caused over 1 million reported fatalities.^{1,2}

13. The first case of COVID-19 was detected in the United States in January 2020, and in the months since, cases and fatalities in this country have risen disproportionately compared to the rest of the world.³ The United States comprises 4% of the global population, but as of September 10, 2020 accounts for 20.7% (7.66 million) of COVID-19 cases and 19.99% (213,837) of fatalities worldwide.¹

More concerning is that over the past few weeks as we head into the fall and Election Day the United States is averaging over 45,000 cases of COVID-19 per day. These which are some of the highest numbers since lockdowns were lifted in the early summer months and is an increase of 4.5% since last week.²

Figure 1: Confirmed Daily COVID-19 Cases and Tests in the United States through 10/9/2020²

Cases Historical data		Tests Historical data	
Total cases	7,623,648	Total tests	113,347,658
Definition		Definition	
New cases today	57,542	New tests today	1,098,217
(Calculated)		(Calculated)	
Change over 7 days	4.5%+	Change over 7 days	6.3%+
(Calculated)		(Calculated)	

14. Regarding the epidemiology of COVID-19 in the state of Texas. The Texas Department of State Health Services (DSHS) and Fort Bend County Health and Human Services reported the first positive case of COVID-19 in Texas outside of passengers returned under federal quarantine from Wuhan City, China or the Diamond Princess cruise ship on March 4, 2020.⁴ The patient had recently returned from travel abroad. On March 9, 2020 the first case of a COVID-19 without international travel was identified in a Collin County resident who had recent travel to California.⁵ Two days later on March

11, 2020 the first case of community transmission attributed to COVID-19 was detected in a Montgomery County resident.⁶

15. As of 10/10/2020, 3:20 pm there were 790,060 confirmed cases of COVID-19 reported in the state of Texas and 16, 526 deaths (overall mortality rate of 2.1% among confirmed cases).⁷ The peak of reported confirmed cases was on 7/15/20 with 10,791 new cases. Since then the average daily reported cases has slowly decreased with 3,000-4,000 new cases daily since mid-September. In the past 24 hours there have been 4,046 new cases (the highest it has been since 9/15/20) and 94 fatalities.⁷ Currently 252 of the 254 counties in the state of Texas are reporting active cases of COVID-19, those with the greatest numbers include:

- a. Harris County (20,316)
- b. Dallas County (6,120)
- c. El Paso County (5,654)
- d. Montgomery County (3, 515)
- e. Bexar County (3,392)

Figure 2: COVID-19 Cases in Texas⁷

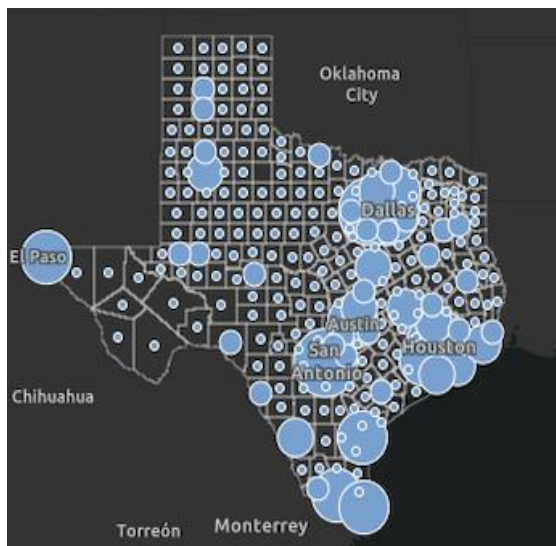


Figure 3: Current COVID-19 Cases in Texas⁷

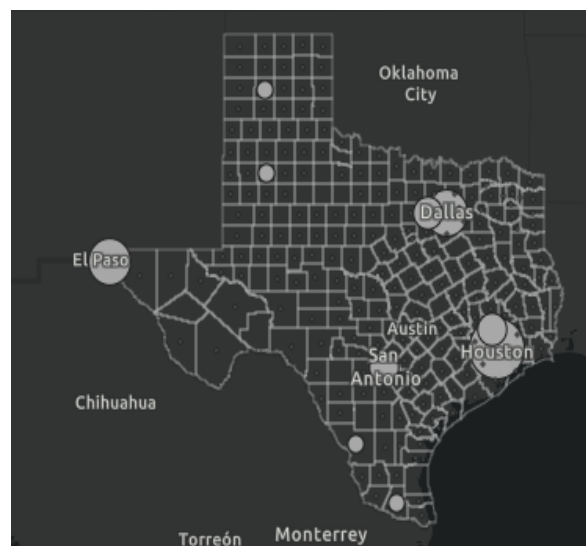
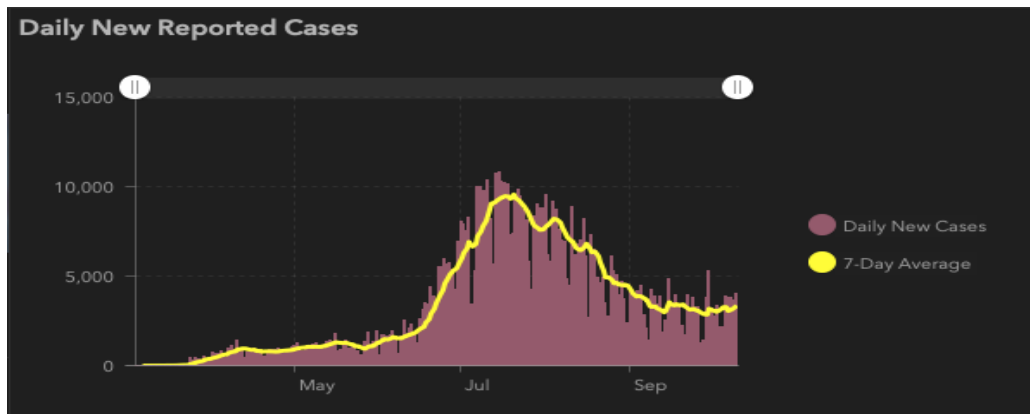


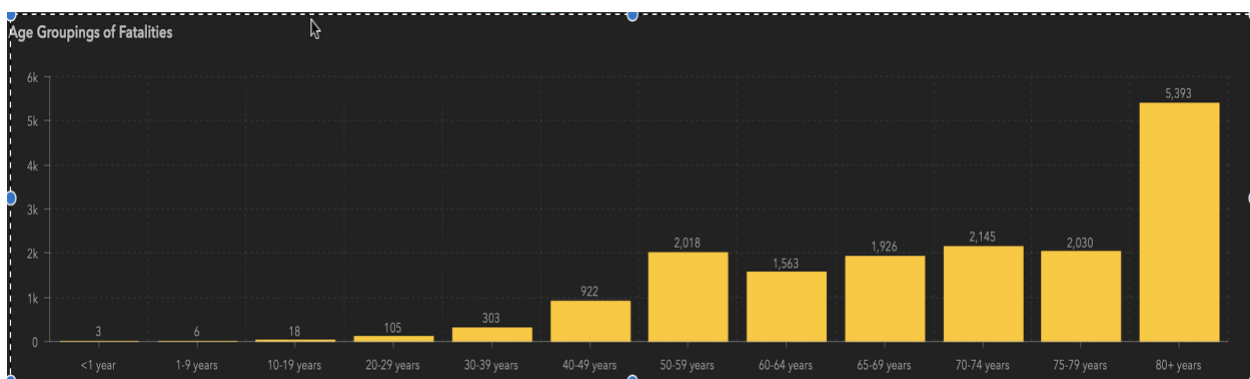
Figure 4: Daily New Report COVID-19 Cases in Texas⁷



16. The Texas Department of State and Health Services has completed case investigations of 55,332 individuals who have been infected with COVID-19. Of those infected with the virus, 63.9% were male, 34.5% were female, and 1.6% were of unknown gender. As described in the national data, racial and ethnic minorities have been disproportionately impacted with Hispanics accounting for 39.6%, Whites 30.1%, and Blacks 16.6% of COVID-19 cases.⁷

17. The Texas Department of State and Health Services has provided demographic data regarding individuals who have died from COVID-19. Men account for a greater percentage of fatalities (58.1%) than women (41.9%). Hispanics comprise a disproportionate amount of fatalities with 56.1%, followed by Whites (30.3%), and then Blacks (11.1%). Despite the CDC saying that those over the age of 60 years of age are at increased risk of mortality from COVID-19, looking at the Texas data, there appears to be increased risk of death in those over the age of 40, with the greatest risk in those over the age of 80.⁷

Figure 5: COVID-19 Fatalities by Age in Texas⁷



18. In this era of COVID-19, public concerns about the risk of getting coronavirus could lower voter participation unless viable alternatives are provided to a single day of in-person voting. Decreasing the numbers of individuals who have to stand in line and the

density of crowds on election day will reduce risks of transmission. To that end, efforts should be made to expand mail-in voting and to allow early/longer voting (more days and/or longer hours), more polling locations, ballot return locations, and curbside voting approaches.⁸

19. Coronavirus is primarily spread through respiratory droplets and to a lesser extent, contaminated surfaces. Implementing policies and procedures that limit sustained contact with others will decrease the spread of COVID-19 on Election Day. The Centers for Disease Control and Prevention (CDC) has stated “that the more an individual interacts with others, and the longer that interaction, the higher the risk of COVID-19 spread. Elections with only in-person voting on a single day are higher risk for COVID-19 spread because there will be larger crowds and longer wait times. Lower risk election polling settings include those with a wide variety of voting options, longer voting periods (more days and/or more hours), and any other feasible options for reducing the number of voters who congregate indoors in polling locations at the same time.” Eliminating known or potential sources of infection is a cornerstone of prevention.

20. Since July, heeding advice from public health officials all over the country Texas voters and elections officials have been preparing to cast votes via early and absentee voting. These plans are due to abruptly change due to Governor Abbott’s proclamation issued on October 1, 2020 which bars “local election officials from providing more than one drop-off site for mail-in ballots during the early voting period regardless of the size or population density of the county.”

21. Public Health officials have been telling voters for months to make a plan for how they are going to vote in the general election. Changing the rules for voting one month prior to election day serves to not only disenfranchise voters but will cause individuals to unnecessarily place themselves at risk for COVID-19.

22. Having one ballot return location in each county will lead to congestion as individuals will have to wait in long lines to ballots in advance of election day. Given the societal changes that have resulted due to the COVID-19 pandemic we know voters do not have time to wait in long lines and that the longer they have to wait the less likely they are to vote. The pandemic has led to more people working from home and taking on extra activities like childcare and home schooling. These activities take a disproportionate amount of time and make it difficult for individuals to be absent from their daily routines for long periods of time, let alone hours to wait in lines to vote. This is why it is important to have convenient ballot drop off locations throughout the counties in advance of election day.

23. If people are unable to access a ballot return location in a convenient manner in advance of the election because a line takes hours they are likely to be inclined to show up on election day to vote. We are also concerned that given the continued high rates of community transmission and cases of COVID-19 going up all over the country (Texas recorded its highest daily new cases today 10/10/20 of 4,046 since 9/15/20) there remains risk of COVID-19 transmission at polling locations. The CDC and joint guidelines from the Brennan Center for Justice and Infectious Diseases Society of

America have recommended increasing the number of polling locations in advance of election day. The reasoning for increasing the number of polling locations is that by doing so you decrease the concentration of individuals, and by proxy the risk of COVID-19 transmission at a polling location. This recommendation was made in conjunction with other recommendations for expanding mail-in voting, increasing the number of days of early voting, allowing for increased ballot return locations, and allowing for curbside voting when appropriate. If people are unable to return ballots in an efficient manner they will be inclined to show up on election day to vote thinking this may be more efficient. This will inundate polling locations and increase the risk to voters and poll workers for transmission of COVID-19. We need to make voting as easy as possible for individuals and increase options rather than restrict them.

CONCLUSION

24. Based on the epidemiology, transmission dynamics, and societal implications of COVID-19 it is my expert opinion that by limiting each county to one ballot return location in advance of Election Day will exacerbate the COVID-19 crises in the state of Texas.

25. We should keep in mind that as COVID-19 cases are starting to increase around the country and in the state of Texas there is concern this could affect voter and poll worker turnout. During the 1918 Influenza pandemic cases increased in advance of the midterm election and presented numerous challenges including poll workers refusing to participate due to illness or fear of getting sick, and the inability to open some polling locations due to a lack of healthy citizens to staff them. Overall the pandemic impacted voter turnout in 1918 with only 40% of eligible voters casting a ballot; a 10% decrease from the prior midterm election. We should learn from our past and do everything we can to make sure history does not repeat itself and make casting a ballot easy and safe for voters in advance of Election Day.

26. Having fewer ballot return locations will lead to longer wait times for the public and would expect lead to voter disenfranchisement. This will also cause voters to try and vote in person on November 3rd which will lead to longer wait lines in a situation where little has been done in the state of Texas to expand in person voting locations. Having voters wait longer in line on election day will increase the risk of COVID-19 transmission to voters and poll workers. It will also serve to be a deterrent to individuals who would otherwise vote if they are concerned about catching Coronavirus.

I declare under penalty of perjury that the information set forth in this declaration is true and correct to the best of my knowledge.



Krutika Kuppalli, M.D.

Dated: October 10, 2020

1. Johns Hopkins University Testing Tracker.
2. COVID Tracking Project. Accessed August 10, 2020. <https://covidtracking.com/>
3. Holshue ML, DeBolt C, Lindquist S, et al. First case of 2019 novel coronavirus in the United States. *N Engl J Med*. 2020;382(10):929-936.
doi:10.1056/NEJMoa2001191
4. DSHS Announces First Case of COVID-19 in Texas. Accessed October 10, 2020. <https://www.dshs.texas.gov/news/releases/2020/20200304.aspx>
5. Texas case of COVID-19 without international travel. Accessed October 10, 2020. <https://www.dshs.texas.gov/news/releases/2020/statement-20200309.aspx>
6. Texas Investigates Case of COVID-19 Without Travel of Known Exposure. Accessed October 10, 2020.
<https://www.dshs.texas.gov/news/releases/2020/20200311.aspx>
7. Texas Department of State Health Services COVID-19 Dashboard. Accessed October 10, 2020.
<https://txdshs.maps.arcgis.com/apps/opsdashboard/index.html#/ed483ecd702b4298ab01e8b9cafc8b83>
8. America TBC for J and TIDS of. Guidelines for Healthy In-Person Voting.

Exhibit I



July 30, 2020

Honorable Ruth Hughs
Texas Secretary of State
P.O. Box 12887
Austin, TX 78711-2887

Dear Secretary Hughs:

Re: Deadlines for Mailing Ballots

With the 2020 General Election rapidly approaching, this letter follows up on my letter dated May 29, 2020, which I sent to election officials throughout the country. That letter highlighted some key aspects of the Postal Service's delivery processes. The purpose of this letter is to focus specifically on the deadlines for requesting and casting ballots by mail. In particular, we wanted to note that, under our reading of Texas' election laws, certain deadlines for requesting and casting mail-in ballots are incongruous with the Postal Service's delivery standards. This mismatch creates a risk that ballots requested near the deadline under state law will not be returned by mail in time to be counted under your laws as we understand them.

As I stated in my May 29 letter, the two main classes of mail that are used for ballots are First-Class Mail and USPS Marketing Mail, the latter of which includes the Nonprofit postage rate. Voters must use First-Class Mail (or an expedited level of service) to mail their ballots and ballot requests, while state or local election officials may generally use either First-Class Mail or Marketing Mail to mail blank ballots to voters. While the specific transit times for either class of mail cannot be guaranteed, and depend on factors such as a given mailpiece's place of origin and destination, most domestic First-Class Mail is delivered 2-5 days after it is received by the Postal Service, and most domestic Marketing Mail is delivered 3-10 days after it is received.

To account for these delivery standards and to allow for contingencies (e.g., weather issues or unforeseen events), the Postal Service strongly recommends adhering to the following timeframe when using the mail to transmit ballots to domestic voters:

- **Ballot requests:** Where voters will both receive and send a ballot by mail, voters should submit their ballot request early enough so that it is received by their election officials at least 15 days before Election Day at a minimum, and preferably long before that time.
- **Mailing blank ballots to voters:** In responding to a ballot request, election officials should consider that the ballot needs to be in the hands of the voter so that he or she has adequate time to complete it and put it back in the mail stream so that it can be processed and delivered by the applicable deadline. Accordingly, the Postal Service recommends that election officials use First-Class Mail to transmit blank ballots and allow 1 week for delivery to voters. Using Marketing Mail will result in slower delivery times and will increase the risk that voters will not receive their ballots in time to return them by mail.

- **Mailing completed ballots to election officials:** To allow enough time for ballots to be returned to election officials, domestic voters should generally mail their completed ballots at least one week before the state's due date. In states that allow mail-in ballots to be counted if they are *both* postmarked by Election Day *and* received by election officials by a specific date that is less than a week after Election Day, voters should mail their ballots at least one week before they must be received by election officials. So, for example, if state law requires a mail-in ballot to be postmarked by Tuesday, November 3, and received by Wednesday, November 4, voters should mail their ballot by Wednesday, October 28, to allow enough time for the ballots to be delivered by November 4. Voters must also be aware of the posted collection times on collection boxes and at the Postal Service's retail facilities and that ballots entered after the last posted collection time on a given day will not be postmarked until the following business day.

Under our reading of your state's election laws, as in effect on July 27, 2020, certain state-law requirements and deadlines appear to be incompatible with the Postal Service's delivery standards and the recommended timeframe noted above. As a result, to the extent that the mail is used to transmit ballots to and from voters, there is a significant risk that, at least in certain circumstances, ballots may be requested in a manner that is consistent with your election rules and returned promptly, and yet not be returned in time to be counted.

Specifically, it appears that a voter may generally request a ballot as late as 11 days before the election, and that a completed ballot must be postmarked by Election Day and received by the day after the election to be counted. It also appears that law does not appear to require election officials to transmit a ballot by mail until seven days after receiving a ballot application. If a voter submits a request at or near the ballot-request deadline, and if the requested ballot is mailed to the voter 7 days after the request is received, there is a risk that the ballot will not reach the voter before Election Day, and accordingly that the voter will not be able to use the ballot to cast his or her vote. Even if the requested ballot reaches the voter by Election Day, there is a significant risk that, given the delivery standards for First-Class Mail, a completed ballot postmarked on or near Election Day will not be delivered in time to meet the state's receipt deadline of November 4. As noted above, voters who choose to mail their ballots should do so no later than Wednesday, October 28.

To be clear, the Postal Service is not purporting to definitively interpret the requirements of your state's election laws, and also is not recommending that such laws be changed to accommodate the Postal Service's delivery standards. By the same token, however, the Postal Service cannot adjust its delivery standards to accommodate the requirements of state election law. For this reason, the Postal Service asks that election officials keep the Postal Service's delivery standards and recommendations in mind when making decisions as to the appropriate means used to send a piece of Election Mail to voters, and when informing voters how to successfully participate in an election where they choose to use the mail. It is particularly important that voters be made aware of the transit times for mail (including mail-in ballots) so that they can make informed decisions about whether and when to (1) request a mail-in ballot, and (2) mail a completed ballot back to election officials.

We remain committed to sustaining the mail as a secure, efficient, and effective means to allow citizens to participate in the electoral process when election officials determine to utilize the mail as a part of their election system. Ensuring that you have an understanding of our operational capabilities and recommended timelines, and can educate voters accordingly, is important to achieving a successful election season. Please reach out to your assigned election mail coordinator to discuss the logistics of your mailings and the services that are available as well as any questions you may have. A list of election mail coordinators may be found on our website at: <https://about.usps.com/election-mail/politicelection-mail-coordinators.pdf>.

We hope the information contained in this letter is helpful, and please let me know if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Marshall". The signature is fluid and cursive, with the first name "Thomas" and last name "Marshall" clearly distinguishable. The signature is positioned above the printed name.

Thomas J. Marshall