

TEXAS DEMOCRATIC PARTY AND  
GILBERTO HINOJOSA, IN HIS  
CAPACITY AS CHAIRMAN OF THE  
TEXAS DEMOCRATIC PARTY,  
JOSEPH DANIEL CASCINO and  
SHANDA MARIE SANSING,  
*Plaintiffs,*

and

ZACHARY PRICE, LEAGUE OF  
WOMEN VOTERS OF TEXAS,  
LEAGUE OF WOMEN VOTERS OF  
AUSTIN-AREA, MOVE TEXAS  
ACTION FUND, WORKERS  
DEFENSE ACTION FUND,  
*Plaintiff-Intervenors,*

v.

DANA DEBEAUVOIR, IN HER  
CAPACITY AS TRAVIS COUNTY  
CLERK,  
*Defendant,*

and

STATE OF TEXAS  
*Defendant-Intervenor.*

§ IN THE DISTRICT COURT

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TRAVIS COUNTY, TEXAS

201st JUDICIAL DISTRICT

**AMICUS BRIEF OF HARRIS COUNTY, TEXAS**

Amicus, Harris County, respectfully submits this brief in support of Plaintiff’s Petition and Application for Temporary Injunction, Permanent Injunction, and Declaratory Judgment and would show this Court as follows.

**INTEREST OF HARRIS COUNTY AND SUMMARY**

As the largest and most diverse county in the state, and currently stricken by the greatest number of COVID-19 cases and deaths, Harris County has an intense interest in this case and in a

resolution to the legal issues surrounding holding an election during a dangerous pandemic so that it may conduct a safe and fair election during both the July primary run-off and the November general election. To advise the Court, Harris County submits a declaration from Michael Winn, the Harris County Administrator of Elections as Exhibit A (“Winn Decl.”).

Harris County, Texas, is the largest county in the state with 14% of the state’s registered voters, 4.7 million people, and almost 2.4 million registered voters. Winn Decl. at ¶ 10. With a population larger than 27 states, it is home to the most diverse population and electorate in Texas. More than 145 languages are spoken in Harris County. *See* Lomi Kriel, *Just how diverse is Houston, 145 languages spoken here*, HOUS. CHRON., Nov. 5, 2015, *available at* <https://www.houstonchronicle.com/news/houston-texas/article/Houstonians-speak-at-least-145-languages-at-home-6613182.php>. The size and scope of the County make the smooth operations of elections challenging in the most ideal of circumstances. Winn Decl. at ¶¶ 8, 23, 26. The ongoing threat of COVID-19 presents unique challenges that affect voting access throughout the country, but present particular challenges for the people of Texas and Harris County given their size and diversity. In addition to representing the interests of its voter registrar, County Clerk, and elections administration department, Harris County represents the People of Harris County in ensuring that their constitutional rights to ballot access and fundamental fairness in the electoral process is preserved. This includes not having their government make endangering one’s health a condition to exercising the right to vote.

The United States Supreme Court has long held that the right to vote is “a fundamental political right, because [it is] preservative of all rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). As such, this right must be safeguarded from actions that would threaten to chill citizens’ participation in the franchise. *Thomas v. Groebl*, 147 Tex. 70, 78 (1948). The importance of the

right to vote hinges on access to the ballot. The profound and continuing threats of the COVID-19 pandemic place the question of access at issue today. Plaintiffs seek enforcement of the definition of “disability” under the Texas Elections Code as allowing anyone for whom voting in person presents a likelihood of injury to the voter’s health in order to provide a consistent statewide standard for voting by mail. *See* TEX. ELEC. CODE § 82.002(a).

Harris County writes to support the Plaintiffs’ position and to highlight three additional implications raised by this case, as well as provide the broader context of considerations for holding a safe and fair election. First, the ongoing fear of contracting COVID-19 — not only on voters but also on election workers — has a profound and practical impact on the ability to hold in-person early and Election Day voting. Harris County requires more than 6,000 workers to conduct early and Election Day voting. Winn Decl. at ¶ 21. Persistent concerns about COVID-19 dramatically limit the number of people willing to serve as poll workers. Second, without clarification on what constitutes a “disability,” far fewer voters will exercise the vote by mail (“VBM”) option, fearing the possibility of prosecution for violating the law given that the State of Texas has shown a willingness to aggressively pursue claims of alleged voter fraud. Finally, the lack of clarification regarding what is a “disability,” and the subsequent lack of participation in VBM will have a disparate impact on minority and younger voters given the demographics of Harris County and that all voters over 65 will have unquestioned access to VBM.

In addition, Harris County seeks to support its elections administration to work toward viable solutions for the County and the State to hold a safe and fair election during the COVID-19 pandemic. Much like “flattening the curve” of the pandemic, a safe and fair election will require flattening the curve of voters congregating in locations where they physically cannot socially distance. This can be accomplished in large part by expanding VBM from its current ratio of 8 to

12% of voters to a much higher percentage so that the in-person voters whether during early voting or election day are decreased to a safely manageable number. Winn Decl. at ¶¶ 1, 20.

**I. The Secretary of State’s un-useful advisory on the COVID-19 pandemic creates an urgent need for legal clarity.**

Harris County Judge Lina Hidalgo declared an emergency over the COVID-19 virus on March 11, 2020. Governor Abbott declared an emergency for the State of Texas on March 13, 2020. *See* TEX. GOV’T CODE §§ 401.062, 418.011 *et seq.* Also on March 13, President Trump declared a national emergency. Under these and subsequent orders, and through consultation with health professionals, the governments have advised the People to use a specific set of practices to reduce the risk of infection. Among those are requirements to keep a distance from other people (social distancing), numerical limitations for any and all gatherings, and taking sanitary measures such as regular hand washing. These practices have been widely adopted and are currently in use; nevertheless, the spread of the virus grows albeit not at as rapid a pace as it would have otherwise. Because of the unpredictability of the COVID-19 virus, it is unclear how long these restrictions will be in place, and even if the pandemic subsides, when it may re-occur. According to medical studies verified by the World Health Organization (“WHO”) and the Center for Disease Control (“CDC”), the premature relaxing of these restrictions increases the risk of a COVID-19 recurrence. *See* Tim Colburn, *Covid19: extending or relaxing distance control measures*, THE LANCET, Mar. 25, 2020, available at [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(20\)30072-4/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(20)30072-4/fulltext).

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

election. Winn Decl. at ¶¶ 8, 11, 12, 22, 29, 33. Nonetheless, sixteen states have postponed their primary elections and many are exploring the expansion of VBM as an option in response to the COVID-19 crisis. Five states, Colorado, Hawaii, Oregon, Utah, and Washington, previously implemented voting by mail for all elections, and others like Arizona and California allow all voters to add themselves to a permanent list of mail voters. *See* Epstein and Saul, *Does Vote-by-Mail Favor Democrats? No. It's a False Argument by Trump*, NEW YORK TIMES, April 10, 2020 at <https://www.nytimes.com/2020/04/10/us/politics/vote-by-mail.html?smid=nytcore-ios-share>.

Upcoming July run-off deadlines and the complexity of planning the November election leave no room for “wait and see” what the pandemic or the State of Texas will do. Waiting to give elections administrators clarity will cause another Wisconsin where last minute changes and legal wrangling left voters and election workers exposed to COVID-19 health risks and other voters turned away or discouraged into not voting. *See* Winn Decl. at ¶¶ 29, 33.

Texas and Harris County are currently scheduled to have primary runoff elections on July 14, 2020, with early voting beginning July 6th. *See* Texas Secretary of State, *Current Election Information*, available at <https://www.sos.state.tx.us/elections/laws/current-elections-information.shtml>. The last day to apply for a vote by mail ballot is July 2, 2020. *Id.* Holding an election in Harris County is a challenge for every election requiring months of preparation. Winn Decl. at ¶ 11. Counties require adequate preparation and time to accommodate the real concerns COVID-19 presents in the voting process. *See generally* Winn Decl. Harris County needs clear legal answers as soon as humanly possible to enable its elections department to prepare for the July 14 run-off. Winn Decl. at ¶¶ 9, 33. Further, Harris County needs as much preparation as possible for the November presidential year general election to accommodate COVID-19’s effects on public health and safety particularly considering the added voting times anticipated with the

repeal of straight-ticket voting. Winn Decl. at ¶¶ 23, 33.

**A. The Texas Secretary of State’s Advisory failed to grant legal clarity through its power of interpretation and only injected legal ambiguity.**

The Secretary of State is charged with interpreting the Election Code and maintaining uniformity of election administration across the state. TEX. GOV’T CODE §§ 31003 (“The secretary of state shall obtain and maintain uniformity in the application, operation, and interpretation of this code and of the election laws outside this code.”), 31.004 (the secretary of state shall provide assistance and advice, including statutory interpretation to elections administrators). On April 2, 2020, the Texas Secretary of State issued Advisory 2020-14-COVID-19 (Coronavirus) Voting and Election Procedures. Ex. A (“SOS COVID-19 Advisory”). This Advisory covers various election procedures in light of the pandemic including the availability of ballots by mail for persons with disabilities:

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

SOS COVID-19 Advisory at 2.

Although elections administrators had raised the question, the SOS COVID-19 Advisory does not go on to answer the legal question presented here: whether a healthy person who fears infection if he or she were to appear in person to vote fits this description, although it would have been very easy to say so. Thus, this Court can presume the State of Texas is refusing to provide clarity without court intervention.

**II. Voting by mail is a legal option under the plain language of the statute and offers no partisan advantage.**

**A. Voting by mail is an option under the plain language of existing law.**

Texas law allows certain voters to request an application to vote by mail. TEX. ELEC. CODE § 84.001. To cast an early voting ballot by mail, a voter must submit an application. *Id.* at § 84.001(a). To be eligible to receive a ballot by mail, a voter must be: (1) absent from the county of residence during early voting and election day, (2) disabled or ill, (3) age 65 or over, or (4) confined to jail but not yet finally convicted of a felony. TEX. ELEC. CODE §§ 84.001-.004. At issue in this case is the definition of a person who is eligible due to a “disability” which the statute broadly defines as a “disabled” voter who has a:

. . . sickness or physical condition that prevents the voter from appearing at the polling place on election day without a *likelihood* of needing personal assistance or of *injuring the voter’s health*.

TEX. ELEC. CODE § 82.002 (emphasis added). Plaintiffs argue, and Harris County strongly concurs, that COVID-19 places all voters in the position of contracting a disease that may be fatal or cause severe suffering with long-term health consequences — that is, “injuring the voter’s health” — should they be forced to vote in person. This statutory definition does not require a current medical condition but rather includes those whose health may be injured by appearing in person to vote. Consequently, all voters should be free to vote by mail in the July 14 run-off and the November election. The Secretary of State’s failure to make a definitive ruling lends legal ambiguity to the matter exposing voters to potential prosecutions and opening the election results up to election contest challenges.

In 2015, the Texas Attorney General opined on whether the term “disability” under Section 82.002 refers only to “sickness or physical condition” or if the definition of disability includes the concept of “disability” as used by the Social Security Administration and the United States

Department of Veteran Affairs. The Attorney General asked the Secretary of State for its opinion and in a brief submitted by its Director of Elections the Secretary of State replied that “the appropriate standard for mail-in voting based on a disability is contained in the words of 82.002.”

The Opinion concluded that

In accordance with the plain language of section 82.002, to be eligible for early voting by mail, a qualified voter need only satisfy the disability standard under section 82.002. Consistent with the SOS’s construction of the statute, a determination of disability under a different standard or definition of “disability,” standing alone, is not determinative of a person’s qualification for early mail-in voting under Section 82.002.

*See* Tex. Att’y Gen Op. No. KP-0009 (2015) at 2. Thus, the plain language of the statute controls what constitutes a “disability” for the purposes of eligibility for early voting by mail.

The AG Opinion goes on to note that “while proof of disability may not be necessary to apply for a mail-in ballot, its production may be compelled if a voter’s qualifications for voting by mail is challenged in court.” *Id.* at 1-2, n.2. Moreover, if a voter’s qualification as “disabled” is successfully challenged, that voter’s vote is void. *Id.* (citing *Tiller v. Martinez*, 974 S.W.2d 769, 775 (Tex. App. – San Antonio 1998, pet. dismissed w.o.j.)). This observation raises another problem with the ambiguity created by the SOS COVID-19 Advisory: widespread election contests. Unless this Court immediately grants legal clarity the Secretary of State has, in effect, infected the election with a poison pill. Without legal clarity any election results will be subject to an election contest and voters who tried to preserve their health and life by voting by mail will be subject to subpoena, having their vote voided, and possible prosecution.

**B. VBM lends no partisan advantage.**

While the lead Plaintiff in this action is a political party, the Court should recognize that there is no actual partisan advantage to greater participation in vote by mail programs. While the conventional wisdom and latest social media commentary believe VBM favors Democratic



candidates, this is simply not true. Texas and Harris County have a long history of bipartisan participation in VBM programs. Because partisan campaigns distribute VBM applications, the elections department can easily ascertain the likely partisan inclination of the voters and has tracked the source of these ballot requests. Winn Decl. at 13. Also, the number of mail ballots that cast straight-party tickets in Harris County were disproportionately Republican even in the last general election when Democrats won countywide. In 2018, when 55% of the straight-ticket ballots overall voted Democratic and only 44% voted Republican, 51% of the VBM straight-ticket ballots were Republicans to 49% for the Democrats. Winn Decl. at ¶ 13; *See Harris County 2018 results.*

Analyses have been done on the effect of VBM and found no notable evidence of any partisan advantage. In a detailed review of mail ballot participation in two states, Colorado and Utah, a leans Democratic and a heavily Republican state respectively, the evidence shows no partisan advantage. *See* Amelia Showalter, *Colorado 2014: Comparisons of Predicted and Actual Turnout*, Aug. 8, 2017, available at <https://www.voteathome.org/wp-content/uploads/2018/12/Colorado-2014-voter-turnout-study.pdf>; Amelia Showalter, *Utah 2016: Evidence for the positive turnout effects of “Vote at Home” (also known as Vote By Mail) in particular counties*, May 3, 2018, available at [https://docs.wixstatic.com/ugd/ef45f5\\_fcc651c4d4f1456b8-340bb4c2cc0ca12.pdf](https://docs.wixstatic.com/ugd/ef45f5_fcc651c4d4f1456b8-340bb4c2cc0ca12.pdf). In those studies of all-mail elections in Colorado and Utah there was only a minor partisan advantage in each state. *Id.* The Colorado study found that Republicans outperformed their predicted turnout in 2014 by a slightly higher margin than did Democrats, with Republicans winning four of the five statewide races on the ballot. *See Colorado Election Results*, N.Y. TIMES, Dec. 17, 2014, available at <https://www.nytimes.com/elections/2014/colorado-elections>. Two years later, in Utah, Democrats gained an equally slight advantage in counties that

had switched to all-mail voting. Showalter, *Utah 2016*.

Notably, both states saw overall turnout increases — especially among those voters considered least likely to participate in the elections — but neither indicated any clear partisan advantage. See Epstein and Saul, *Does Vote-by-Mail Favor Democrats? No. It's a False Argument by Trump*, N.Y. TIMES, Apr. 10, 2020, available at <https://www.nytimes.com/2020/04/10/us/politics/vote-by-mail.html?smid=nytcore-ios-share>.

Thus, VBM created a greater opportunity to vote, without any partisan advantage.

### **III. Voters, Harris County, and its Election Administrator Need Immediate Clarity.**

Voters need to know there will be safe ways to vote in the July and November elections. Election administrators need to know clear rules for conducting elections during the pandemic as soon as possible so they may plan accordingly. This ambiguity created by the SOS COVID-19 Advisory threatens to result in a patchwork of decisions by each county's elections officer, potentially risking the lives of tens of thousands of Texans, and threatening the integrity of the electoral process. This Court must give local officials clarity to conduct the election.

#### **A. Fear of contracting COVID-19 has dramatic impact on holding early and Election Day voting because of a shortage of workers.**

While the potential dangers to voters forced to line up and participate in person at election sites is clear, the potential risks to poll workers are equally significant but may not be as apparent. Thus, understanding the gravity of the effects on workers bears some explanation. Threats to the health of election workers will likely result in a steep decline in participation, in turn resulting in an inadequate number of polling locations due to staffing shortages, which will in turn have a disastrous effect on the conduct of the election. Under the current election process, election judges and workers are required to install, activate, and operate voting booths and equipment and dismantle them at the end of the day after mass voter usage. Winn Decl. at ¶ 30. Election workers

must handle identification cards handed to them by voters and pass paperwork back and forth with voters. *Id.* These workers will be subject to direct contact with potentially thousands of individuals, many of whom may be infected or carrying COVID-19. The result of the exposure could see the possibility of many workers contracting COVID-19 and workers unaware they have the virus infecting voters in turn inflaming the pandemic. Indeed, this scenario has already played out in Florida, where the state went ahead with its March 17 primary only to see election workers test positive for COVID-19 after the election not knowing how many voters were infected or whether voters transmitted the virus to the workers. *See* David Smiley and Bianca Padró Ocasio, *Florida held its primary despite coronavirus. Two Broward poll workers tested positive*, MIAMI HERALD, Mar. 27, 2020, available at <https://www.miamiherald.com/news/politics-government/article241539451.html>.

The possibility of this occurring may seem remote to many, but the fear and impact on the recruitment and retention of election workers is very real. The recent election in Wisconsin demonstrated the difficulties surrounding conducting an election in the midst of a global pandemic. Wisconsin's largest city, Milwaukee has traditionally had 180 locations, but because of fear and apprehension of contracting COVID-19, election officials had staff and capacity to operate *only five* locations because of resignations and refusals to work under what they believed were dangerous conditions. *See* Spicuzza and Derr, *Why did Milwaukee have only 5 voting locations* MILWAUKEE JOURNAL SENTINEL, April 10, 2020 available at <https://www.jsonline.com/story/news/politics/elections/2020/04/10/coronavirus-milwaukee-aldermen-want-answers-polling-places-primary-election/5127577002/>; *see also* Winn Decl. at ¶ 29.

In Texas, large counties would be particularly hampered by massive reductions in workforce given the large volume of voters they must accommodate. Simply put, Harris County

would be unable to conduct large-scale early vote and Election Day polling based upon concerns about poll worker and voter safety.

The risk of holding elections in Harris County would be significantly more acute because of the age of many of the election workers. The average of election workers in Harris County is currently 68 years old. Winn Decl. at ¶ 30. Approximately two-thirds of the election workers are over the age of 65. *Id.* The CDC has indicated that older persons are at particular risk of suffering greater illness and death rates from the COVID-19, and thus should take greater precautions to avoid contracting the disease. *See CDC, Older Adults, Apr. 7, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>.* People over 65 years old are at a greater risk of hospitalization and requiring intensive care placing a greater strain on the health care system when outbreaks occur among this demographic. *See id.*

Harris County currently has over 750 voting center locations. Winn Decl. at ¶ 21. It requires more than 6000 workers at those locations to effectively administer an election. *Id.* Workers would be forced to decide between the possible risk to their lives through exposure or refusing to work resulting in the closure of many voting locations. The inability to have adequate staff to work at polling locations would result in significant closures of locations and a need to consolidate hundreds of locations. The resulting disruption would result in an even more crowded and chaotic voting process that would likely endanger the workers and voters alike, through even more exposure to a greater number of people at fewer locations, and as voters are forced to wait in longer lines risking greater exposure. Such conditions amount to voter suppression as voters leave polling locations because they do not want exposure to a potentially deadly virus or simply cannot wait any longer to vote, or they decide not to attempt to vote at all.

**B. Fear of the potential prosecution for fraud results in reluctance of voters opting to exercise VBM option despite the likelihood of injuring voter’s health.**

Despite strong evidence to the contrary, the Texas Attorney General’s Office has aggressively pursued allegations of voter fraud even where the accused’s intent was not to violate the law. For example, the Attorney General’s Office charged Crystal Mason, who was previously convicted of tax fraud and on probation with illegal voting in the 2016 General Election.<sup>1</sup> At the time she cast her ballot, Mason was still on probation and ineligible to vote, but was unaware of that status.<sup>2</sup> Despite this information, a judge found Mason guilty and sentenced her to *five years* incarceration.<sup>3</sup>

The AG’s Office also prosecuted Rosa Maria Ortega in 2017 for two counts of illegal voting.<sup>4</sup> Between 2002 and 2014, Ortega voted in several elections even though she was not a U.S. citizen.<sup>5</sup> Ortega moved to the United States as a child and was a legal permanent resident.<sup>6</sup> At her trial, Ortega testified that she did not know she was unable to vote, and that she was unaware of the difference a U.S. citizen and legal permanent resident.<sup>7</sup> Also, Ortega’s younger brother, a U.S. citizen, testified that he believed Ortega was a citizen.<sup>8</sup> A jury found Ortega guilty and sentenced her to *eight years* incarceration.<sup>9</sup>

Because of heavy-handed prosecutions like these focused on female minorities, Texans can reasonably expect to be prosecuted for voter fraud even where they believe they are not engaging

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<sup>1</sup> *State of Texas v. Crystal Mason*, Cause No. D432-1485710-00, 432<sup>nd</sup> District Court, Tarrant County, Texas.

<sup>2</sup> Amrit Cheng, *Crystal Mason Thought She Had the Right to Vote. Texas Sentenced Her to Five Years in Prison for Trying*, ACLU, <https://www.aclu.org/issues/voting-rights/fighting-voter-suppression/crystal-mason-thought-she-had-right-vote-texas>.

<sup>3</sup> *Id.*

<sup>4</sup> *State of Texas v. Rosa Maria Ortega*, Cause No. 1434155D, Criminal District Court No. 3, Tarrant County, Texas.

<sup>5</sup> Sam Levine, *This Woman Got 8 Years In Prison For Illegal Voting. Texas Is Showing No Mercy*, HUFFPOST (November 30, 2018), [https://www.huffpost.com/entry/texas-voter-fraud-prison\\_n\\_5c01a9afe4b0a173c02305c1](https://www.huffpost.com/entry/texas-voter-fraud-prison_n_5c01a9afe4b0a173c02305c1)

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

in unlawful activity. Because the Secretary of State has muddled the definition of “disability” with respect to being eligible to vote by mail, voters are more likely to believe that choosing to vote by mail due to COVID-19 will result in their criminal prosecution. Ultimately, such SOS-created ambiguity is likely to result in the suppression of votes by voters who would vote if this clarification was made.

**C. The SOS-created legal ambiguity and lack of access to VBM will have a disparate impact on minority voters.**

An analysis of national infection and mortality rates from COVID-19 has revealed a disturbing pattern that indicates that minorities may be more greatly impacted by the disease than the general population. Stacy Weiner, *The new coronavirus affects us all. But some groups may suffer more*, ASSOC. OF AM. MEDICAL COLLEGES, Mar. 16, 2020, available at, <https://www.aamc.org/news-insights/new-coronavirus-affects-us-all-some-groups-may-suffer-more>. According to preliminary data, African-Americans in particular are significantly more likely to contract and die from COVID-19. In Harris County, this trend seems to be continuing with higher than average contraction and fatality rates. Zach Despart, *Harris County releases first racial, ethnic breakdown of coronavirus deaths*, HOUS. CHRON., Apr. 9, 2020, available at [https://www.houstonchronicle.com/news/houston-texas/houston/article/harris-county-racial-ethnic-coronavirus-deaths-data-15189690.php?utm\\_campaign=CMS%20Sharing%20Tools%20\(Premium\)&utm\\_source=t.co&utm\\_medium=referral](https://www.houstonchronicle.com/news/houston-texas/houston/article/harris-county-racial-ethnic-coronavirus-deaths-data-15189690.php?utm_campaign=CMS%20Sharing%20Tools%20(Premium)&utm_source=t.co&utm_medium=referral). As a consequence, minority voters may be at a higher risk of contracting COVID-19 if they are unable to avail themselves of a vote by mail option.

The risk to minority voters in Harris County is particularly concerning when viewed in the context that they are less likely to be able to obtain a VBM ballot if a narrow application of the disability definition is applied. As stated above, Texas law allows any voter 65 years old or older

to receive a ballot by mail. *See* TEX. ELEC. CODE § 82.003. Harris County currently has 2,357,199 registered voters. *See* Tex. Sec. of State, *Harris County Voter Profile*, available at <https://www.sos.state.tx.us/elections/historical/harris.shtml>. More than 83% of those voters are under the age of 65. *See* *Harris County Registrar*, *Voter Demographics*, available at [https://www.hctax.net/Voter/Voter\\_Demographic/VoterVisualization](https://www.hctax.net/Voter/Voter_Demographic/VoterVisualization). Among those voters, a majority are African American or Hispanic voters, with over 70% of voters under the age of 40 are African-American or Hispanic. Winn Decl. at ¶ 10. Harris County is younger and more diverse than Texas as a whole. While 12.5% of Texans are over 65 years old, only 9.8% of Harris County residents are. *See* data.census.gov. Moreover, while approximately one-third of Texans are Anglo, only about 20% of Harris County residents are. *See id.* Because younger voters are more likely to be minorities in Harris County the lack of access to VBM will have a disparate impact on their access to a safe and fair election.

### **CONCLUSION**

The ongoing threat of COVID-19 presents unique challenges that affect voting access throughout the country, but present particular challenges for the people of Texas and Harris County given their size and diversity. Clarity in determining the eligibility of VBM is critically needed as a potential remedy to the current problem of holding elections during a pandemic. Unfortunately, the SOS COVID-19 Advisory injected ambiguity into the otherwise plain language of the statute. Harris County and its Administrator of Elections need clarity as soon as possible in order to plan and implement safe and fair elections for the July run-off and the November general election. Moreover, Harris County voters need increased access to VBM, free of prosecution threats, in order to flatten the curve of voter congregation and of this pandemic.

Respectfully submitted,

Vince Ryan  
State Bar No. 17489500  
HARRIS COUNTY ATTORNEY  
Robert Soard  
First Assistant County Attorney  
State Bar No. 18819100  
Terence O'Rourke  
Special Assistant County Attorney  
State Bar No. 15311000  
Douglas Ray  
Special Assistant County Attorney  
State Bar No. 16599300  
Jay Aiyer  
Assistant County Attorney  
State Bar No. 00795058  
1019 Congress  
Houston, TX 77002  
Telephone: (713) 274-5167  
Telecopier: (713) 755-8848

\_\_\_\_\_/s/ Susan Hays\_\_\_\_\_  
SUSAN HAYS  
State Bar No. 24002249  
LAW OFFICE OF SUSAN HAYS, P.C.  
P.O. Box 41647  
Austin, Texas 78704  
(214) 557-4819 (telephone)  
(214) 432-8273 (facsimile)  
[hayslaw@me.com](mailto:hayslaw@me.com)



## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above Amicus Brief was served upon all counsel of record, via e-service and a courtesy e-mail on April 13, 2020 pursuant to TEXAS RULE OF CIVIL PROCEDURE 21a and the e-filing rules of this Court:

\_\_\_\_\_  
/s/ Susan Hays

Chad W. Dunn  
State Bar No 24036507  
Brazil & Dunn, LLP  
4407 Bee Caves Road, Suite 111  
Austin, Texas  
(512)717-9822 Tel.  
(512) 515-9355 Fax  
[chad@brazilanddunn.com](mailto:chad@brazilanddunn.com)

K. Scott Brazil  
State Bar No. 02934050  
Brazil & Dunn, LLP  
13231 Champions Forest Drive, Suite 406  
Houston, Texas 77069  
(281) 580-6310 Tel.  
(281) 580-6362 Fax  
[scott@brazilanddunn.com](mailto:scott@brazilanddunn.com)

Dicky Grigg  
State Bar No. 08487500  
Law Office of Dicky Grigg, P.C.  
4407 Bee Caves Road, Suite 111  
Austin, Texas 78746  
(512) 474-6061 Tel.  
(512) 582-8560 Fax  
[dicky@grigg-law.com](mailto:dicky@grigg-law.com)

Martin Golando  
The Law Office of Martin Golando, PLLC  
State Bar No 24059153  
N. Saint Mary's, Suite 700  
San Antonio, Texas 78205  
(210) 892-8543  
[Martin.golando@gmail.com](mailto:Martin.golando@gmail.com)

*Attorneys for Plaintiff*

Anne Marie Mackin  
Assistant Attorney General  
Michael R Abrams  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
(512) 463-2798 TEL  
(512) 320-0667 Fax  
[Anna.mackin@oag.texas.gov](mailto:Anna.mackin@oag.texas.gov)  
[Michael.abrams@oag.texas.gov](mailto:Michael.abrams@oag.texas.gov)  
*Attorneys for Intervenor-Defendant  
State of Texas*

Joaquin Gonzalez  
[Joaquin@texascivilrightsproject.org](mailto:Joaquin@texascivilrightsproject.org)  
Mimi Marziani  
[mimi@texascivilrightsproject.org](mailto:mimi@texascivilrightsproject.org)  
Rebecca Harrison Stevens  
[beth@texascivilrightsproject.org](mailto:beth@texascivilrightsproject.org)  
TEXAS CIVIL RIGHTS PROJECT  
1405 Montopolis Drive  
Austin, Texas 78741  
512-474-5073 (Telephone)  
512-474-0726 (Facsimile)

Edgar Saldivar  
Thomas Buser-Clancy  
Andre Segura  
ACLU FOUNDATION OF TEXAS, INC.  
P.O. Box 8306  
Houston, TX 77288  
Telephone: (713) 325-7011  
Fax: (713) 942-8966  
[esaldivar@aclutx.org](mailto:esaldivar@aclutx.org)  
[tbuser-clancy@aclutx.org](mailto:tbuser-clancy@aclutx.org)  
[asegura@aclutx.org](mailto:asegura@aclutx.org)

Sophia Lin Lakin\*

Sherine Thomas  
[Sherine.thomas@traviscountytexas.gov](mailto:Sherine.thomas@traviscountytexas.gov)  
Leslie Dippel  
[Leslie.dippel@traviscountytexas.gov](mailto:Leslie.dippel@traviscountytexas.gov)  
Travis County Attorney's Office  
314 W 11th St., Austin, TX 78701  
(512) 854-9415 Tel  
(512) 854-9316 Fax  
*Attorneys for Defendant Dana DeBeauvoir,  
in her capacity as Travis County Clerk*

New York Bar No. 5182076  
Dale E. Ho\*\*  
New York Bar No. 4445326  
AMERICAN CIVIL LIBERTIES UNION  
125 Broad Street, 18th Floor  
New York, NY 10004  
Telephone: (212) 519-7836  
Fax: (212) 549-2654  
[slakin@aclu.org](mailto:slakin@aclu.org)  
[dho@aclu.org](mailto:dho@aclu.org)  
*\* Pro hac vice application forthcoming  
Attorneys for Intervenor Plaintiffs*