

align the early voting periods will: (1) increase the number of days and hours that poll workers will be exposed to potentially infected individuals; (2) increase the number of election workers, employees, and poll workers necessary to conduct the elections; (3) increase the danger to voters because they will have longer wait times due to difficulty in filling poll worker positions; and (4) increase the exposure of voters to potentially infected individuals because voters who appear at an early voting location to vote during the first week of voting for the special election would be required to vote in person twice, able to obtain only a ballot for the special election on their first visit, and having to return a second time during the following week if they wished to vote in a primary runoff election.

II. PARTIES

Counter-Plaintiff is Dana DeB940389

eauvoir, is the duly elected County Clerk of Travis County, Texas.

Counter-Defendant, Texas Democratic Party, is a Plaintiff herein, has made a general appearance in this matter, and may be served through their attorneys of record.

Counter-Defendant, Gilberto Hinojosa, in his capacity as Chairman of the Texas Democratic Party, is a Plaintiff herein, has made a general appearance in this matter, and may be served through his attorneys of record.

Counter-Defendant, Joseph Daniel Cascino, is a Plaintiff herein, has made a general appearance in this matter, and may be served through his attorneys of record.

Counter-Defendant, Shanda Marie Sansing, is a Plaintiff herein, has made a general appearance in this matter, and may be served through her attorneys of record.

Counter-Defendant, State of Texas, is an Intervenor-Defendant herein, has made a general appearance in this matter, and may be served through its attorneys of record.

Counter-Defendant, Zachary Price, is an Intervenor-Plaintiff herein, has made a general appearance in this matter, and may be served through his attorneys of record.

Counter-Defendant, League of Women Voters of Texas, is an Intervenor-Plaintiff herein, has made a general appearance in this matter, and may be served through its attorneys of record.

Counter, Defendant, League of Women Voters of Austin-Area, is an Intervenor-Plaintiff herein, has made a general appearance in this matter, and may be served through its attorneys of record.

Counter-Defendant, Move Texas Action Fund, is an Intervenor-Plaintiff herein, has made a general appearance in this matter, and may be served through its attorneys of record.

Counter-Defendant, Workers Defense Action Fund, is an Intervenor-Plaintiff herein, has made a general appearance in this matter, and may be served through its attorneys of record.

III. JURISDICTION AND VENUE

This Court has jurisdiction over this matter under the Texas Election Code and venue is proper in this county because this matter concerns an election scheduled to occur in Travis County, Texas. Furthermore, the relief sought in this Counter-Petition concerns an election that is made the basis of declaratory relief requested by the Plaintiffs, Intervenor-Plaintiffs, and Intervenor-Defendants herein.

IV. STANDING

Counter-Plaintiff DeBeauvoir is the duly elected County Clerk of Travis County, Texas. She is the official tasked with numerous statutory duties as an Early Voting Clerk under the Texas Election Code concerning three elections currently scheduled to occur on Tuesday, July 14, 2020, specifically: (1) the primary runoff election for the Texas Democratic Party's candidates; (2) the primary runoff election for the Republican Party of Texas' candidates; and (3) the special election called by Governor Abbott for Texas Senate District 14. *See, e.g.*, Tex. Elect. Code §§ 83.001

(early voting clerk shall conduct early voting in each election) & 83.002 (County Clerk is the early voting clerk for the county in primary elections and special elections called by the governor).

Pursuant to the Texas Election Code, DeBeauvoir in her official capacity as the Early Voting Clerk for the foregoing elections has the authority to determine the earliest practicable date on which early voting by personal appearance shall begin if it is not possible to begin on the prescribed date as set by the authority ordering the election. *Id.*, § 85.001(d). The parties to this litigation do not agree to align the early voting periods, and the Secretary of State advisories instructs clerks to obtain a Trial Court order. **Exhibit 1**, Secretary of State Election Advisory 2020-14.

For the reasons set forth herein, DeBeauvoir believes it is neither possible nor practicable to hold divergent early voting periods for the SD 14 Election and the parties' primary runoff elections. Accordingly, she seeks relief to align the early voting periods for these elections so that they will occur simultaneously.

V. NECESSITY FOR RELIEF

Due to the unique and historically unprecedented circumstances presented by the ongoing COVID-19 pandemic, including evolving medical advice, and concomitant emergency proclamations issued by federal, state, and local government officials that residents must “shelter in place”, “stay at home”, or practice “social distancing” to prevent the rapid spread of COVID-19, a highly contagious virus with potentially fatal consequences, DeBeauvoir reasonably anticipates that there will be a shortage of election judges and poll workers available for the early voting periods associated with these July 14, 2020 elections, and that the typical arrangements for polling locations will need to be substantially modified in order to provide reasonable access to voters while complying with public health and safety requirements and recommendations.

DeBeauvoir anticipates the shortage of election judges because of her experience with the March 3, 2020 primary elections, which were conducted in the earlier phase of COVID-19. During those recent elections, there were significant issues with staffing.

Additionally, if the early voting periods are not changed, many voters who seek to vote in both the SD 14 Election and one of the parties' primary runoff elections could be required to appear at an early voting polling place on two separate occasions. Specifically, if these voters vote by personal appearance during the first week of early voting for the SD 14 Election, they would be required to return to an early voting polling place to vote in person during the following week in order to cast a ballot for candidates in either the Texas Democratic Party or Republican Party of Texas' primary runoff elections or come to a polling place on election day to cast a ballot in a primary runoff election. Although it is a concern that these divergent early voting periods are likely to cause confusion among voters, and they could be discouraged from returning to vote a second time, the biggest concern is the contradiction to current orders and CDC recommendations by having voters appearing twice to vote in the elections.

VI. BACKGROUND FACTS

Governor Abbott has called a special election for SD 14 to occur on Tuesday, July 14, 2020, with early voting by personal appearance to begin on Monday, June 29, 2020. *See* Proclamation by the Governor of the State of Texas dated March 16, 2020 ("SD 14 Proclamation"), attached hereto as **Exhibit 2**. Under the Texas Election Code, in-person early voting for the SD 14 election will end on Friday, July 10, 2020.

Pursuant to the Texas Election Code, in-person early voting for the Texas Democratic Party primary runoff election and the Republican Party of Texas' primary runoff election will begin on

Monday, July 6, 2020, and will end on Friday, July 10, 2020. See **Exhibit 3** Secretary of State Election Advisory 2020-13.

The right to vote is “the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). It is also expressly protected by the Constitution. U.S. Const. am. XIV § 2, XV, XVII, XIX, XXIV. During this public health crisis, “maximum safety” for all people, including election poll workers and voters, is to minimize contact with others, especially in view of shortages in personal protective equipment. See <http://www.austintexas.gov/department/health>; and <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

Under these extraordinary circumstances, DeBeauvoir must conduct these three elections on July 14, 2020, including conducting early voting for all three elections, while taking steps to ensure the safety of poll workers and voters by complying with “social distancing” and other precautions. Pursuant to the CDC, people infected with COVID-19 may infect others prior to the onset of symptoms, and a single asymptomatic voter, election clerk, or poll worker could infect hundreds of others. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

DeBeauvoir must also comply with emergency orders currently in place for Travis County and the City of Austin, which restrict public gatherings except for specific and limited activities. It appears increasingly likely that these orders will extend beyond their current period for weeks, if not months.¹

Both Travis County’s and Governor Abbott’s efforts to stop the spread of COVID-19 are far-reaching because the virus presents a grave threat to public health, as reflected by events

¹ Ryan O’Hare, *Coronavirus Pandemic Could Have Caused 40 Million Deaths If Left Unchecked*, <https://www.imperial.ac.uk/news/196496/coronavirus-pandemic-couldhavecaused-40/>.

unfolding in New York City, New Orleans, and around the world.² These measures include closing all but the most essential businesses and ordering residents to shelter-in-place. The Governor's Order has closed schools and universities throughout Texas until May 4, 2020, and many school districts have decided to close campuses and facilities for the remainder of their school years and throughout summer to help prevent the spread of COVID-19. These measures are necessary because this virus poses a high risk of death to a large number of people and creates a substantial risk of public exposure because of the disease's method of transmission and evidence that there is community spread in Texas. Currently, authorities expect a surge of COVID-19 cases in the coming weeks and months. Texas officials all across the state are trying to ensure that there will be adequate medical supplies, hospital capacity, and healthcare workers to prevent the system from collapsing, which would further endanger public health and safety. Avoiding collapse requires that everyone take actions to conserve PPE resources for use by healthcare workers.

Daily news reports contain dire warnings about the national shortage of PPE along with an increased need for it to deal with highly infectious patients. Many hospitals in Texas report that they are critically short on supplies. These types of warnings and various governmental limitations on the number of persons who may gather at any one location, combined with "shelter at home" orders to prevent the transmission of COVID -19 and "flatten the curve" and preserve medical resources, including conservation of medical-quality PPE to ensure healthcare workers' ability to effectively treat COVID -19 patients,³ have substantially reduced the number of persons available and willing to act as poll workers. Almost universally, such persons – many of whom fall within

² Mattia Ferraresi, *A Coronavirus Cautionary Tale From Italy: Don't Do What We Did*, (Boston Globe, Mar. 13, 2020), <https://www.bostonglobe.com/2020/03/13/opinion/coronavirus-cautionary-tale-italy-dont-do-what-we-did/>; Mirco Nacoti, et al, *At the Epicenter of the COVID-19 Pandemic and Humanitarian Crises in Italy: Changing Perspectives on Preparation and Mitigation*, NEJM Catalyst: Innovations in Care Delivery, Mar. 22, 2020), <https://catalyst.nejm.org/doi/full/10.1056/CAT.20.0080>.

³ See Governor Abbott's Executive Order GA-09, dated March 22, 2020, attached hereto as **Exhibit 4**.

populations that are particularly vulnerable to more serious complications from a COVID-19 infection – have expressed concern about the lack of PPE available for their own use to prevent the unknowing transmission of COVID-19 by an asymptomatic person.

Additionally, the number of available polling locations has been significantly reduced as a result of changes in the way that many businesses are operating to comply with the various emergency orders and medical guidance. For example, many grocery stores that traditionally serve as early polling locations in Travis County have reduced their operating hours and have instituted procedures to limit the number of persons in their stores at any given time.

VII. REQUESTED ALIGNMENT OF EARLY VOTING PERIODS

There is no question that stopping the spread of COVID -19, ensuring healthcare workers have sufficient PPE, and avoiding contact that would contribute to a spike in new cases is in the public’s best interest at this time. Therefore, DeBeauvoir, in accordance with Section 85.001(d) and guidance contained in the most recent Election Advisories issued by the Texas Secretary of State concerning COVID-19, requests that this Court grant her immediate relief by ordering the alignment of the in-person early voting periods for the SD 14 Election and the parties’ respective primary runoff elections, so that all early voting in person for these elections will occur between Monday, July 6, 2020 and Friday, July 10, 2020.

VIII. ARGUMENTS AND AUTHORITIES

The foregoing relief, which is limited to the in person early voting period for the SD 14 Special Election, would facilitate, rather than interfere with, the elective process. *See Blum v. Lanier*, 997 S.W.2d 259, 263 (Tex. 1999) (holding injunction that delays the election would be improper, but injunction that facilitates the elective process may be appropriate); *Ellis v. Vanderslice*, 486 S.W.2d 155, 159–60 (Tex. Civ. App.—Dallas 1972, no writ) (courts may act to

facilitate election process). Furthermore, DeBeauvoir, in her official capacity as the statutory early voting clerk, has determined that – due to the unprecedented circumstances facing election officials and the electorate in preparing for these three elections scheduled for July 14, 2020 – it would be both impossible and impracticable to conduct safe and fair elections unless the “in person” early voting periods for the SD 14 Election and the parties’ respective primary runoff elections are aligned so that they may occur simultaneously. DeBeauvoir believes that the earliest practicable date on which “in person” early voting for the SD 14 Election can occur is Monday, July 6, 2020. *See*, Tex. Elect. Code § 85.001(d).

WHEREFORE, PREMISES CONSIDERED, Defendant Travis County Clerk, Dana DeBeauvoir asks that this Court enter an order granting the relief requested, as well as other and further relief to which she may show herself justly entitled.

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Respectfully submitted,

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