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Via Electronic Filing

Mr. Lyle W. Cayce, Clerk
United States Court of Appeals for The Fifth Circuit
600 S. Maestri Place, Room 200
New Orleans, LA 70130

Re: Response to Rule 28(j) Letter in Case No. 20-50407; *Texas Democratic Party, et al. v. Greg Abbott, Governor of Texas, et al*

Dear Mr. Cayce:

The Texas Supreme Court opinions, attached to the State's Rule 28(j) letter, support denying a stay.

First, the opinions resolve the abstention issue.

Second, the Texas Supreme Court ruling only heightens the 26th and 14th Amendment constitutional injuries found below. In order to qualify for absentee voting due to Covid-19, a voter now must establish that they will "probably" be injured if they vote in person. How does any voter under the age of 65 meet this standard? Even if some do, they can have no confidence of avoiding a grand jury inquiry should they guess wrong. Requiring only some voters to seriously risk their or other's health to vote—so long as the risk is less than a probability—is unconstitutional.

Without the injunction, TDP is unable to meaningfully communicate with its members under age 65 about their voting rights in TDP's primary election while election administrators are unable to answer voters' questions on eligibility without exposing themselves and their voters to potential criminal prosecution. The individual Plaintiffs in this case—including those who suffer from asthma or live with family members that suffer from asthma—still do not know if they are eligible and must risk either their health and/or the health of their family, or prosecution, in order to vote. It is unconstitutional to put voters under age 65 to this burden while voters over age 65 are favored.

Finally, the in-person voting guidelines¹ issued this week by the Texas Secretary of State only reinforce the unconstitutional conditions. The SOS does not require the use of face masks, which are critical to protecting voters and election staff. The guidelines encourage voters to bring their own election supplies and sanitizers. Worse still, the SOS suggests voters showing symptoms of COVID-19 vote in-person if they are able, while alluding to the use of curbside voting, “to the extent they meet the eligibility requirements.” None of the self-screening check list items would qualify for curbside voting. Under TEX. ELEC. CODE § 64.009(a), a voter must be “unable to enter the polling place” to qualify for curbside voting.

Respectfully submitted,

TEXAS DEMOCRATIC PARTY

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¹ <https://www.sos.texas.gov/elections/forms/health-protocols-for-voters.pdf>