

**No. 14-20-00358-CV**

---

**IN THE FOURTEENTH COURT OF APPEALS  
HOUSTON TEXAS**

---

The State of Texas  
Intervenor-Defendant – Appellant  
v.  
Texas Democratic Party, et al.  
Plaintiffs – Appellees  
&  
Zachary Price, et al.  
Intervenor-Plaintiffs – Appellees

---

On Appeal from the District Court of Travis County, 201st Judicial District  
Cause No. D-1-GN-20-001610, Hon. Tim Sulak, Presiding.

---

**APPELLEES' UNOPPOSED JOINT MOTION TO DISMISS APPEAL  
FOR LACK OF JURISDICTION**

---

To the Honorable Justices of the Fourteenth Court of Appeals:

Appellees, Texas Democratic Party et al. and Zachary Price et al., under the authority of Texas Rules of Appellate Procedure 10.1 and 42.3, move the Court to dismiss the pending appeal for want of jurisdiction due to the absence of a case or controversy.

1. On June 09, 2020, Appellees nonsuited all of their claims against Defendant Dana DeBeauvoir, in her official capacity as Travis County Clerk, and

Intervenor-Defendant/Appellant The State of Texas. A copy of Appellee's Notice of Nonsuit is attached as Exhibit A. Appellees' nonsuit followed the Texas Supreme Court decision in *In re State of Texas*, No. 20-0394, 2020 WL 2759629 (Tex. May 27, 2020).

2. Under the Texas Rules of Civil Procedure, "[a]t any time before the plaintiff has introduced all of his evidence other than rebuttal evidence, the plaintiff may dismiss a case, or take a non-suit, which shall be entered in the minutes." TEX. R. CIV. P. 162. "Under Texas law, parties have an absolute right to nonsuit their own claims for relief at any time during the litigation until they have introduced all evidence other than rebuttal evidence at trial." *Villafani v. Trejo*, 251 S.W.3d 466, 468-69 (Tex. 2008).

3. Rule 162 applies in this case because Appellees have filed their nonsuit while this matter is pending on interlocutory appeal from the trial court's grant of Appellee's motion for a temporary injunction and Defendants' pretrial plea to the jurisdiction. *See Univ. of Tex. Med. Branch at Galveston v. Estate of Blackmon ex rel. Shultz*, 195 S.W.3d 98, 100 (Tex. 2006) (holding that plaintiff's nonsuit of claims against defendant asserting sovereign immunity was effective upon filing and mooted the case or controversy between the parties, even though nonsuit was taken after defendant had filed an interlocutory appeal). As in this case, the appellee in *Shultz* filed a nonsuit while the appellant's interlocutory appeal from the denial of

its plea to the jurisdiction was pending in the court of appeals. *Id.* at 100. Thereafter, the appellee filed a motion to dismiss the appellant’s interlocutory appeal for want of jurisdiction, which the court of appeals denied. *Id.* The Supreme Court “conclude[d] that the nonsuit deprived the court of appeals of jurisdiction. . . .” *Id.* “Accordingly, without hearing oral argument, [the Supreme Court] grant[ed] the petition for review, vacate[d] the court of appeals’ order, and dismiss[ed] the appeal for want of jurisdiction.” *Id.* at 101.

4. Similarly, a nonsuit also moots a temporary injunction, because the temporary injunction ceases to exist upon nonsuit. *Gen. Land Office of State of Tex. v. OXY U.S.A., Inc.*, 789 S.W.2d 569, 571 (Tex. 1990) (“In this case, the trial court had jurisdiction over the underlying case and correctly granted the nonsuit, irrespective of the fact that an appeal had been perfected. As a consequence of the trial court's granting the nonsuit, the temporary injunction ceased to exist and the appeal became moot.”).

5. Supreme Court precedent therefore compels dismissal here. “A nonsuit ‘extinguishes a case or controversy from the moment the motion is filed or an oral motion is made in open court; the only requirement is the mere filing of the motion with the clerk of the court.’” *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 862–63 (Tex. 2010) (quoting *Shultz*, 195 S.W.3d at 100). When, as here, “a claim is timely nonsuited, the controversy as to that claim is extinguished, the merits become

moot, and jurisdiction as to the claim is lost.” *City of Dallas v. Albert*, 354 S.W.3d 368, 375 (Tex. 2011); *see Villafani*, 251 S.W.3d at 469 (“One unique effect of a nonsuit is that it can vitiate certain interlocutory orders, rendering them moot and unappealable.”).

6. “While the date on which the trial court signs an order dismissing the suit is the ‘starting point for determining when a trial court's plenary power expires,’ a nonsuit is effective when it is filed.” *Shultz*, 195 S.W.3d at 100 (quoting *In re Bennett*, 960 S.W.2d 35, 38 (Tex.1997)). Likewise, “[a]lthough [Rule 162] permits motions for costs, attorney's fees, and sanctions to remain viable in the trial court, it does not forestall the nonsuit's effect of rendering the merits of the case moot.” *Id.* “Even the automatic stay of section 51.014(b) of the Texas Civil Practice and Remedies Code that arises from the filing of a notice of appeal from the denial of a plea to the jurisdiction does not defeat the immediate effect of a nonsuit at the moment the notice of nonsuit was filed.” *Bush, Trustee for the Found. Sch. Fund v. Hines*, No. 10-19-00340-CV, 2019 WL 6769624, at \*1 (Tex. App.—Waco Dec. 11, 2019, no pet. h.).

7. Because Appellees have nonsuited all of their claims against all the Defendants/Appellants, there is no live controversy for the Court to decide, and this Court lacks jurisdiction over the pending interlocutory appeal. *Shultz*, 195 S.W.3d at 100-01. “Appellate courts are prohibited from deciding moot controversies

because the separation-of-powers article prohibits advisory opinions on abstract questions of law.” *Klein v. Hernandez*, 315 S.W.3d 1, 3 (Tex. 2010). Accordingly, the Court should grant Appellee’s unopposed motion and dismiss the appeal for want of jurisdiction. *See Shultz*, 195 S.W.3d at 100-01; *see also Heckman v. Williamson County*, 369 S.W.3d 137, 162 (Tex. 2012) (“If a case is or becomes moot, the court must vacate any order or judgment previously issued and dismiss the case for want of jurisdiction.”); *Olley v. Raamco Tx. Properties*, No. 01-11- 00321-CV, 2013 WL 1087729, at \*1 (Tex. App.—Houston [1st Dist.] Mar. 14, 2013, no pet.) (dismissing appeal for lack of jurisdiction following nonsuit).

8. Appellant State of Texas does not oppose the dismissal of this appeal in light of Plaintiffs/Appellees non-suit of their claims.

### **PRAYER**

Appellees ask this Court to dismiss the Appellants’ interlocutory appeal for want of jurisdiction.

Respectfully submitted,

By: /s/ Joaquin Gonzalez  
Joaquin Gonzalez  
Texas Bar No. 24109935  
Joaquin@texascivilrightsproject.org  
Mimi Marziani  
Texas Bar No. 24091906  
mimi@texascivilrightsproject.org  
Rebecca Harrison Stevens  
Texas Bar No. 24065381  
beth@texascivilrightsproject.org

TEXAS CIVIL RIGHTS PROJECT  
1405 Montopolis Drive  
Austin, Texas 78741  
512-474-5073 (Telephone)  
512-474-0726 (Facsimile)

Edgar Saldivar  
TX Bar No. 24038188  
Thomas Buser-Clancy  
TX Bar No. 24078344  
Andre Segura  
TX Bar No. 24107112

ACLU FOUNDATION OF TEXAS,  
INC.  
P.O. Box 8306  
Houston, TX 77288  
Telephone: (713) 325-7011  
Fax: (713) 942-8966  
esaldivar@aclutx.org  
tbuser-clancy@aclutx.org  
asegura@aclutx.org

Sophia Lin Lakin\*\*  
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  
dho@aclu.org

\*\* Pro hac vice application forthcoming

***ATTORNEYS FOR  
INTERVENOR-PLAINTIFFS***

TEXAS DEMOCRATIC PARTY

By:       /s/ Chad W. Dunn

Chad W. Dunn

General Counsel

State Bar No. 24036507

Brazil & Dunn, LLP

4407 Bee Caves Road, Suite 111

Austin, Texas 78746

Telephone: (512) 717-9822

Facsimile: (512) 515-9355

chad@brazilanddunn.com

K. Scott Brazil

State Bar No. 02934050

Brazil & Dunn, LLP

13231 Champion Forest Drive, Suite  
406

Houston, Texas 77069

Telephone: (281) 580-6310

Facsimile: (281) 580-6362

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

Telephone: 512-474-6061

Facsimile: 512-582-8560

dicky@grigg-law.com

Martin Golando

The Law Office of Martin Golando,

PLLC

SBN #: 24059153  
N. Saint Mary's, Ste. 700  
San Antonio, Texas 78205  
(210) 892-8543  
[martin.golando@gmail.com](mailto:martin.golando@gmail.com)

**ATTORNEYS FOR PLAINTIFFS**



**CERTIFICATE OF CONFERENCE**

By email communication with Defendant/Appellant's Counsel Lanora Pettit on June 09, 2020, Appellant has stated that it is unopposed to this Motion.

/s/ Joaquin Gonzalez

**CERTIFICATE OF SERVICE**

I hereby certify that on June 09, 2020, a true and correct copy of the foregoing document was served electronically upon Lanora Pettit, attorney for Appellant.

/s/ Joaquin Gonzalez

# **Exhibit A**

Plaintiffs' Notice of Nonsuit

Velva L. Price  
District Clerk  
Travis County  
D-1-GN-20-001610  
Alexus Rodriguez

No. D-1-GN-20-001610

TEXAS DEMOCRATIC PARTY, et. al	§	IN THE DISTRICT COURT
	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
and	§	
	§	
ZACHARY PRICE, LEAGUE OF	§	
WOMEN VOTERS OF TEXAS,	§	
LEAGUE OF WOMEN VOTERS	§	
AUSTIN AREA, MOVE TEXAS	§	
ACTION FUND, WORKERS DEFENSE	§	
ACTION FUND,	§	TRAVIS COUNTY, TEXAS
	§	
	§	
<i>Intervenor-Plaintiffs,</i>	§	
	§	
v.	§	
	§	
DANA DEBEAUVOIR	§	
	§	
<i>Defendant,</i>	§	
	§	
and	§	
	§	
STATE OF TEXAS	§	
	§	
<i>Intervenor-Defendant.</i>	§	201st JUDICIAL DISTRICT

---

**Plaintiffs’ and Intervenor-Plaintiffs’ Notice of Non-Suit**

---

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiffs, TEXAS DEMOCRATIC PARTY, AND GILBERTO HINOJOSA, IN HIS CAPACITY AS CHAIRMAN OF THE TEXAS DEMOCRATIC PARTY, JOSEPH DANIEL CASCINO AND SHANDA MARIE SANSING, (hereinafter referred to as Plaintiffs) and ZACHARY PRICE, LEAGUE OF WOMEN VOTERS OF TEXAS, LEAGUE OF WOMEN

VOTERS AUSTIN AREA, MOVE TEXAS ACTION FUND, WORKERS DEFENSE ACTION FUND (hereinafter referred to as Intervenor-Plaintiffs), brought suit seeking injunctive and declaratory relief that lack of immunity to COVID-19 alone is sufficient to meet the eligibility criteria to vote by mail as set forth in Section 82.002 of the Texas Election Code. Plaintiffs' and Intervenor-Plaintiffs' hereby non-suit their claims against Defendant DANA DEBEAUVOIR and Intervenor-Defendant STATE OF TEXAS with prejudice to the refiling of same, pursuant to Rule 162 of the Texas Rules of Civil Procedure.

All costs of court are taxed against the party incurring same. The docket clerk is requested to enter this notice into the minutes of the Court.

Dated this 9<sup>th</sup> date of June, 2020.

Respectfully submitted,

TEXAS DEMOCRATIC PARTY

By:       /s/ Chad W. Dunn      

Chad W. Dunn  
General Counsel  
State Bar No. 24036507  
Brazil & Dunn, LLP  
4407 Bee Caves Road, Suite 111  
Austin, Texas 78746  
Telephone: (512) 717-9822  
Facsimile: (512) 515-9355  
chad@brazilanddunn.com

K. Scott Brazil  
State Bar No. 02934050  
Brazil & Dunn, LLP  
13231 Champion Forest Drive, Suite 406  
Houston, Texas 77069  
Telephone: (281) 580-6310  
Facsimile: (281) 580-6362  
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  
Telephone: 512-474-6061  
Facsimile: 512-582-8560  
dicky@grigg-law.com

Martin Golando  
The Law Office of Martin Golando, PLLC  
SBN #: 24059153  
405 N. Saint Mary's, Ste. 700  
San Antonio, Texas 78205  
(210) 892-8543  
martin.golando@gmail.com

### **ATTORNEYS FOR PLAINTIFFS**

/s/ Joaquin Gonzalez \_\_\_\_\_  
Joaquin Gonzalez  
Texas Bar No. 24109935  
Joaquin@texascivilrightsproject.org  
Mimi Marziani  
Texas Bar No. 24091906  
mimi@texascivilrightsproject.org  
Rebecca Harrison Stevens  
Texas Bar No. 24065381  
beth@texascivilrightsproject.org

TEXAS CIVIL RIGHTS PROJECT  
1405 Montopolis Drive  
Austin, Texas 78741  
512-474-5073 (Telephone)  
512-474-0726 (Facsimile)

Edgar Saldivar  
TX Bar No. 24038188  
Thomas Buser-Clancy  
TX Bar No. 24078344  
Andre Segura  
TX Bar No. 24107112

ACLU FOUNDATION OF TEXAS, INC.  
P.O. Box 8306  
Houston, TX 77288  
Telephone: (713) 325-7011  
Fax: (713) 942-8966

esaldivar@aclutx.org  
tbuser-clancy@aclutx.org  
asegura@aclutx.org

Sophia Lin Lakin\*\*  
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  
dho@aclu.org

\*\* Pro hac vice application on file

***ATTORNEYS FOR INTERVENOR-  
PLAINTIFFS***

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing response has been sent via the Court's electronic filing system to all counsel of record on June 9, 2020.

/s/ Chad W. Dunn \_\_\_\_\_  
Chad W. Dunn

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Gwen Kelly on behalf of Chad Dunn  
Bar No. 24036507  
gwen@brazilanddunn.com  
Envelope ID: 43585969  
Status as of 06/09/2020 12:21:27 PM -05:00

Associated Case Party: Texas Democratic Party

Name	BarNumber	Email	TimestampSubmitted	Status
Chad Dunn		chad@brazilanddunn.com	6/9/2020 12:00:42 PM	SENT

Associated Case Party: Zachary Price

Name	BarNumber	Email	TimestampSubmitted	Status
Joaquin Gonzalez		joaquin@texascivilrightsproject.org	6/9/2020 12:00:42 PM	SENT
Rebecca Harrison Stevens		beth@texascivilrightsproject.org	6/9/2020 12:00:42 PM	SENT
Mimi Marziani		mimi@texascivilrightsproject.org	6/9/2020 12:00:42 PM	SENT

Associated Case Party: League of Women Voters of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Joaquin Gonzalez		joaquin@texascivilrightsproject.org	6/9/2020 12:00:42 PM	SENT
Mimi Marziani		mimi@texascivilrightsproject.org	6/9/2020 12:00:42 PM	SENT
Rebecca Harrison Stevens		beth@texascivilrightsproject.org	6/9/2020 12:00:42 PM	SENT

Associated Case Party: League of Women Voters of Austin-Area

Name	BarNumber	Email	TimestampSubmitted	Status
Joaquin Gonzalez		joaquin@texascivilrightsproject.org	6/9/2020 12:00:42 PM	SENT
Rebecca Harrison Stevens		beth@texascivilrightsproject.org	6/9/2020 12:00:42 PM	SENT
Mimi Marziani		mimi@texascivilrightsproject.org	6/9/2020 12:00:42 PM	SENT

Associated Case Party: MOVE Texas Action Fund

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Gwen Kelly on behalf of Chad Dunn  
Bar No. 24036507  
gwen@brazilanddunn.com  
Envelope ID: 43585969  
Status as of 06/09/2020 12:21:27 PM -05:00

Associated Case Party: MOVE Texas Action Fund

Name	BarNumber	Email	TimestampSubmitted	Status
Joaquin Gonzalez		joaquin@texascivilrightsproject.org	6/9/2020 12:00:42 PM	SENT
Rebecca Harrison Stevens		beth@texascivilrightsproject.org	6/9/2020 12:00:42 PM	SENT
Mimi Marziani		mimi@texascivilrightsproject.org	6/9/2020 12:00:42 PM	SENT

Associated Case Party: Workers Defense Action Fund

Name	BarNumber	Email	TimestampSubmitted	Status
Joaquin Gonzalez		joaquin@texascivilrightsproject.org	6/9/2020 12:00:42 PM	SENT
Rebecca Harrison Stevens		beth@texascivilrightsproject.org	6/9/2020 12:00:42 PM	SENT
Mimi Marziani		mimi@texascivilrightsproject.org	6/9/2020 12:00:42 PM	SENT

### Case Contacts

Name
Scott Brazil
Martin Golando
Richard Alan Grigg
Edgar Saldivar
Thomas Buser-Clancy
Andre Segura
Sophia LinLakin
Dale E.Ho
Sherine Thomas
Gwen Kelly
Mel Noyola



### **Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Gwen Kelly on behalf of Chad Dunn  
Bar No. 24036507  
gwen@brazilanddunn.com  
Envelope ID: 43585969  
Status as of 06/09/2020 12:21:27 PM -05:00

#### Case Contacts

Leslie Dippel		leslie.dippel@traviscountytx.gov	6/9/2020 12:00:42 PM	SENT
---------------	--	----------------------------------	----------------------	------

### Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Chris Rainbolt on behalf of Joaquin Gonzalez  
Bar No. 24109935  
chris@texascivilrightsproject.org  
Envelope ID: 43608994  
Status as of 06/10/2020 09:27:33 AM -05:00

Associated Case Party: Zachary Price

Name	BarNumber	Email	TimestampSubmitted	Status
Sophia LinLakin		slakin@aclu.org	6/9/2020 6:21:04 PM	SENT
Mimi Marziani		mimi@texascivilrightsproject.org	6/9/2020 6:21:04 PM	SENT
Rebecca Harrison Stevens		beth@texascivilrightsproject.org	6/9/2020 6:21:04 PM	SENT
Joaquin Gonzalez		joaquin@texascivilrightsproject.org	6/9/2020 6:21:04 PM	SENT
Edgar Saldivar		esaldivar@aclutx.org	6/9/2020 6:21:04 PM	SENT
Thomas Buser-Clancy		tbuser-clancy@aclutx.org	6/9/2020 6:21:04 PM	SENT

### Case Contacts

Name
Kevin Scott Dunn
Sherine Elizabeth Thomas
Leslie Wood Dippel
Martin Golando
Chad Wilson Dunn
Joaquin Gonzalez
Cecilia Hertel
Lanora Pettit
Joaquin Gonzalez
kevin scottdunn
Dicky Grigg
Edgar Saldivar
Sophia LinLakin
Wolfgang P. Hirczy de Mino, PHD

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Chris Rainbolt on behalf of Joaquin Gonzalez  
Bar No. 24109935  
chris@texascivilrightsproject.org  
Envelope ID: 43608994  
Status as of 06/10/2020 09:27:33 AM -05:00

#### Case Contacts

Gwen Kelly		gwen@brazilanddunn.com	6/9/2020 6:21:04 PM	SENT
Kevin Dubose		kdubose@adjtlaw.com	6/9/2020 6:21:04 PM	SENT

Associated Case Party: FOURTEENTH COURT OF APPEALS

Name	BarNumber	Email	TimestampSubmitted	Status
David Van Os	20450700	dvo@vanoslaw.com	6/9/2020 6:21:04 PM	SENT