

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION**

Texas Alliance for Retired Americans, Sylvia  
Bruni, DSCC, and DCCC,

Plaintiffs,

v.

RUTH HUGHS, in her official capacity as the  
Texas Secretary of State,

Defendant.

Civil Action No. 5:20-cv-128

**PLAINTIFFS' MOTION FOR CLARIFICATION**

Pursuant to Federal Rule of Civil Procedure 7(b)(1), Texas Alliance for Retired Americans, Sylvia Bruni, DSCC, and DCCC ("Plaintiffs") respectfully request that the Court clarify the scope of its order granting Plaintiffs' request for preliminary injunctive relief. Specifically, Plaintiffs ask the Court to clarify that its preliminary injunction applies only to the November 2020 general election.

On September 25, 2020, this Court properly recognized that eliminating the straight-ticket voting ("STV") option from Texas's ballots under the pandemic-related exigencies of the ongoing election would force upon voters the unacceptable choice between their fundamental right to vote and their wellbeing. *Tex. All. for Retired Ams. v. Hughs*, --- F. Supp. 3d ---, 2020 WL 5747088 (S.D. Tex. Sept. 25, 2020) (*TARA*). In issuing a preliminary injunction, the Court found that STV's elimination will expand lines at the polls, which, under the current circumstances of the November 2020 election, will "increas[e] exposure to a deadly virus." *Id.* at \*17. This is particularly the case given the State's failure to "address the[] logistical challenges" that elections administrators face during the November 2020 election. *Id.* at \*6. And because HB 25's justifications are

“underwhelming, especially when weighed against the risk of disenfranchisement and the risk to voters’ health,” *id.* at \*18, the Court found eliminating STV would violate Texans’ fundamental right to vote this Fall. The Secretary has since appealed the Court’s order.

The briefing submitted in the Fifth Circuit so far has suggested that the parties have potentially differing views on the scope of the preliminary injunction. One aspect of that potential disagreement is the injunction’s temporal scope. While the conclusion to the Court’s order states that the preliminary injunction applies through final judgment, Plaintiffs read the order’s focus on the details of the November 2020 election to suggest that the Court may have intended its injunction to apply only to that election.

While the Secretary’s appeal of the preliminary injunction remains pending, this Court retains jurisdiction to issue orders that clarify its injunction in a manner that would “aid [] the appeal.” *Farmhand, Inc. v. Anel Eng’g Indus., Inc.*, 693 F.2d 1140, 1145 (5th Cir. 1982); *see FUNimation Entm’t v. SC Films Int’l, Inc.*, No. 4:13-CV-329, 2013 WL 12404935, at \*1 (E.D. Tex. Nov. 8, 2013) (granting motion to clarify a preliminary injunction during appeal). Here, a clarification that this Court’s preliminary injunction applies only to the November 2020 election would aid the Fifth Circuit’s understanding that this Court’s analysis was responding to the exigencies of the ongoing election as they occurred in real time. *See TARA*, 2020 WL 5747088, at \*16 (rejecting the Secretary’s *Purcell* argument because the Court “must react to burdens imposed on Constitutional rights, especially during this public health crisis”). Because the pandemic-related circumstances impacting any future election may be different, the order’s balancing of the equities was focused on the specific circumstances of the November 2020 election. *Id.* (noting that while “we are nearing the election,” a strong countervailing interest in protecting Texans’ “fundamental

political right to vote” justified enjoining HB 25 (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006)).

For these reasons, Plaintiffs respectfully request that this Court clarify that its preliminary injunction applies only to the November 2020 general election.

October 23, 2020

Respectfully submitted,

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**CERTIFICATE OF CONFERENCE**

Pursuant to the Local Rules and Standing Orders and Procedures of this Court, I hereby certify that counsel for movant Plaintiffs and respondent Defendant have electronically conducted a conference at which there was a discussion regarding Defendant's position on Plaintiffs' Motion. Defendant opposes Plaintiffs' Motion.

Certified to on October 23, 2020

/s/ *Skyler M. Howton*

Skyler M. Howton

**CERTIFICATE OF SERVICE**

I hereby certify that on October 23, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which automatically serves notification of the filing on counsel for all parties.

/s/ *Skyler M. Howton*

Skyler M. Howton