
No. 20-50867

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TEXAS LEAGUE OF UNITED LATIN AMERICAN CITIZENS, *et al.*,
PLAINTIFFS-APPELLEES,

v.

RUTH HUGHS, in her official capacity as Texas Secretary of State,
DEFENDANT-APPELLANT.

LAURIE-JO STRATY, *et al.*,
PLAINTIFFS-APPELLEES,

v.

RUTH HUGHS, in her official capacity as Texas Secretary of State,
DEFENDANT-APPELLANT.

ON APPEAL FROM AN ORDER OF THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

**BRIEF OF AMICI CURIAE THE DISTRICT OF COLUMBIA
AND THE STATES OF CALIFORNIA, CONNECTICUT, DELAWARE,
HAWAII, ILLINOIS, MARYLAND, MASSACHUSETTS,
MICHIGAN, MINNESOTA, NEVADA, NEW MEXICO,
NEW YORK, OREGON, PENNSYLVANIA RHODE ISLAND,
VERMONT, VIRGINIA, AND WASHINGTON IN SUPPORT OF
APPELLEES' OPPOSITION TO APPELLANT'S EMERGENCY
MOTION FOR A STAY PENDING APPEAL**

(Counsel listed on inside cover)

KARL A. RACINE
Attorney General for the
District of Columbia

LOREN L. ALIKHAN
Solicitor General

CAROLINE S. VAN ZILE
Principal Deputy Solicitor General

CARL J. SCHIFFERLE
Deputy Solicitor General

ANDREW J. DELAPLANE
SAMSON J. SCHATZ
HARRISON M. STARK
Assistant Attorneys General
Office of the Solicitor General

Office of the Attorney General
400 6th Street, NW, Suite 8100
Washington, D.C. 20001
(202) 724-6609
caroline.vanzile@dc.gov

CERTIFICATE OF INTERESTED PERSONS

No. 20-50867

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TEXAS LEAGUE OF UNITED LATIN AMERICAN CITIZENS, *et al.*,
PLAINTIFFS-APPELLEES,

v.

RUTH HUGHS, in her official capacity as Texas Secretary of State,
DEFENDANT-APPELLANT.

LAURIE-JO STRATY, *et al.*,
PLAINTIFFS-APPELLEES,

v.

RUTH HUGHS, in her official capacity as Texas Secretary of State,
DEFENDANT-APPELLANT.

Under the fourth sentence of Fifth Circuit Rule 28.2.1, amici curiae, as governmental parties, need not furnish a certificate of interested persons.

/s/ Caroline S. Van Zile
CAROLINE S. VAN ZILE
Counsel for amici curiae

TABLE OF CONTENTS

INTEREST OF AMICI CURIAE.....	1
DISCUSSION	2
I. The Proclamation Contravenes Texas’s Obligation To Protect Voters During The COVID-19 Pandemic.....	2
II. States Have Broadly Increased Access To Absentee Voting And Made Drop Boxes Available To Voters.....	5
III. There Is No Evidence Of Widespread Fraud Associated With Mail-In Voting Or Drop Boxes	7
A. States that provided mail-in ballots to every voter pre- pandemic have not experienced widespread voter fraud	9
B. States have myriad ways to protect the integrity of their elections without stripping voters of reliable and safe voting accommodations	11
CONCLUSION	14

TABLE OF AUTHORITIES

Cases

<i>Cook Cnty. Republican Party v. Pritzker</i> , No. 20-CV-4676, 2020 WL 5573059 (N.D. Ill. Sept. 17, 2020)	8
<i>Crawford v. Marion Cnty. Election Bd.</i> , 553 U.S. 181 (2008)	11
<i>Eu v. San Francisco Cnty. Democratic Cent. Comm.</i> , 489 U.S. 214 (1989)	1
<i>United Haulers Ass’n v. Oneida-Herkimer Solid Waste Mgmt. Auth.</i> , 550 U.S. 330 (2007)	1

Statutes

Colo. Rev. Stat. § 1-7.5-107	7
Haw. Rev. Stat. § 11-109	7
Tex. Elec. Code § 64.012	13
Tex. Elec. Code §§ 82.002-82.003	3
52 U.S.C. § 20511	13

Other Authorities

<i>Absentee Ballot Drop Box Locations</i> , Georgia Voter Guide	6
Alan Berube & Nicole Bateman, <i>Who Are the Workers Already Impacted by the COVID-19 Recession?</i> , Brookings (Apr. 3, 2020)	4
Edgardo Cortés et al., <i>Preparing for Election Day: Deadlines for Running a Safe Election</i> , Brennan Ctr. (May 11, 2020)	10
Ctr. for Disease Control & Prevention, <i>COVID-19: How to Protect Yourself & Others</i> (Sept. 11, 2020)	2

Ctr. for Disease Control & Prevention, <i>Health Equity Considerations and Racial and Ethnic Minority Groups</i> (July 24, 2020)	4
Pam Fessler, <i>Ballot Drop Boxes Become Latest Front in Voting Legal Fights</i> , NPR (Aug. 11, 2020)	8
William A. Galston, <i>Election 2020: A Once-in-a-Century, Massive Turnout?</i> , Brookings (Aug. 14, 2020)	2
Cindy George, <i>Texas Studying COVID-19's Uneven Impact on Communities of Color</i> , Tex. Med. Ctr. (Sept. 2, 2020)	4
Heritage Found., <i>A Sampling of Recent Election Fraud Cases from Across the United States</i>	10
Elaine Kamarck & Christine Stenglein, <i>Low Rates of Fraud in Vote-by-Mail States Show the Benefits Outweigh the Risks</i> , Brookings (June 2, 2020)	10
Ky. Sec'y of State Michael Adams, <i>2020 General Updates</i>	6
Dion Lefler, <i>Dismissing Trump Allegations, Gov. Kelly Promises More Ballot Drops for November Vote</i> , Wichita Eagle (Aug. 31, 2020)	6
Letter from Off. of Minn. Sec'y of State to Cnty. Auditors and Local Elections Offs. 1 (Sept. 11, 2020)	5
Adam Levy et al., <i>Surge of Ballot Requests Already Setting Records in the US</i> , CNN (Sept. 25, 2020)	2
Alfred Ng, <i>Election Security Officials Find No Evidence of Coordinated Fraud With Mail-In Ballots</i> , CNET (Aug. 26, 2020)	11
<i>North Texans Requesting Mail-in Ballots for Upcoming Election at Record-breaking Numbers</i> , Fox4News (Sept. 21, 2020)	3
Pew Rsch. Ctr., <i>Election 2020: Voters Are Highly Engaged, but Nearly Half Expect to Have Difficulties Voting</i> (Aug. 13, 2020)	2
Press Release, Conn. Off. of Sec'y of State, <i>Secretary Merrill Outlines Process and Timelines for November General Election</i> (Aug. 25, 2020)	6, 7

Aaron Sanderford, <i>Keep an Eye on Your Mailbox. First Wave of Early Ballots Go Out in Nebraska</i> , Omaha World-Herald (Sept. 29, 2020).....	6
Will Sansom, <i>Research: U.S. Latinos Face Unaffordable Housing, Unreliable Public Transportation and A Lack Of Green Space</i> , UT San Antonio Health (May 14, 2019)	4
Elise Viebeck, <i>Miniscule Number of Potentially Fraudulent Ballots in States with Universal Mail Voting Undercuts Trump Claims About Election Risks</i> , Wash. Post (June 8, 2020)	9
Marina Villeneuve, <i>Report: Trump Commission Did Not Find Widespread Voter Fraud</i> , AP (Aug. 3, 2018).....	11
Wash. Sec’y of State, <i>Ballot Drop Box Usage by Year</i>	10
Wendy R. Weiser & Harold Ekeh, <i>The False Narrative of Vote-by-Mail Fraud</i> , Brennan Ctr. (Apr. 10, 2020)	7-8, 9, 13
Wendy R. Weiser et al., <i>Mail Voting: What Has Changed in 2020</i> , Brennan Ctr. (Sept. 17, 2020)	8-9
U.S. Election Assistance Comm’n, <i>Ballot Drop Box 1</i> (2020)	12
<i>US Election: Do Postal Ballots Lead to Voting Fraud?</i> , BBC News (Sept. 25, 2020)	10-11

INTEREST OF AMICI CURIAE

The District of Columbia and the States of California, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Virginia, Vermont, and Washington (collectively, “Amici States”) submit this brief in support of appellees. States “indisputably ha[ve] a compelling interest in preserving the integrity of [their] election process.” *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). But they also have an ongoing obligation to “protect[] the health, safety, and welfare of [their] citizens.” *United Haulers Ass’n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 342 (2007). In light of the COVID-19 pandemic, 24 states and the District have offered ballot drop-off sites to preserve election integrity while protecting public health.

Until very recently, Texas allowed county election officials to determine the number of ballot return locations based on local needs. Governor Abbott’s eleventh-hour reversal of that status quo both disrupts local election administration and forces vulnerable Texans to choose between their health and their franchise. Indeed, Texas is the *only* state that has ordered counties to shutter operational ballot drop-off sites after voting has begun. In Amici States’ experience, this is not necessary to ensure election integrity.

DISCUSSION

I. The Proclamation Contravenes Texas's Obligation To Protect Voters During The COVID-19 Pandemic.

Despite the ongoing public health emergency, election experts predict that voter turnout in the general election will be “exceptional.” Galston, *Election 2020: A Once-in-a-Century, Massive Turnout?*, Brookings (Aug. 14, 2020).¹ Officials thus face the unique challenge of overseeing the election while preventing transmission of the novel coronavirus. Given the disruption caused by the pandemic, 49 percent of voters expect to face difficulties casting their ballots. Pew Rsch. Ctr., *Election 2020: Voters Are Highly Engaged, But Nearly Half Expect to Have Difficulties Voting* (Aug. 13, 2020).² That is because the traditional practice of in-person voting is hard to reconcile with public-health directives to practice social distancing to minimize the transmission of COVID-19. See CDC, *COVID-19: How to Protect Yourself & Others* (Sept. 11, 2020).³

In light of the risks associated with in-person contact, the number of voters interested in absentee voting has “skyrocket[ed] around the country.” Levy et al., *Surge of Ballot Requests Already Setting Records in the US*, CNN (Sept. 25, 2020).⁴

¹ <https://brook.gs/3jAGF6a>.

² <https://pewrsr.ch/3jzTptz>.

³ <https://bit.ly/34NCJJa>.

⁴ <https://cnn.it/3iMhDQf>.

Texas is no exception. *See, e.g., North Texans Requesting Mail-in Ballots for Upcoming Election at Record-breaking Numbers*, Fox4News (Sept. 21, 2020).⁵ Given the increased number of absentee ballots—and the recent crises engulfing the United States Postal Service (“USPS”)—ballot drop boxes provide a safe and reliable way for Texans to vote this fall.

The issues facing USPS are well documented. Stay Mot., Ex. A at 8-9. In July, USPS publicly warned Texas officials that the state’s absentee-voting system was not compatible with USPS’s processing capabilities, meaning that voters’ ballots might not be received on time, even if they were properly submitted. *Id.* The Proclamation thus forces absentee voters into a crippling dilemma: they can send their ballots through the mail, risking non-receipt; or they can bring their ballots to a lone, likely overcrowded ballot return location, thereby risking exposure to COVID-19. The district court correctly concluded that nothing compels voters to make such an untenable choice.

That conclusion is especially warranted given the composition of Texas’s absentee electorate, which is largely restricted to voters who are 65 or older or have a “disability” that prevents them from voting in-person. Tex. Elec. Code §§ 82.002-82.003. Limiting in-person ballot return locations, as the Proclamation requires,

⁵ <https://www.fox4news.com/video/853033>.

forces these individuals to potentially travel long distances or wait in long lines, posing unnecessary health and safety risks for themselves and others.

The Proclamation, moreover, imposes outsized harm on minority voters. COVID-19 has already ravaged communities of color disproportionately both nationally, *see* CDC, *Health Equity Considerations and Racial and Ethnic Minority Groups* (July 24, 2020),⁶ and specifically in Texas, *see* George, *Texas Studying COVID-19's Uneven Impact on Communities of Color*, Tex. Med. Ctr. (Sept. 2, 2020).⁷ Limiting ballot return locations poses distinct challenges for these communities, compounding COVID-19's disparate racialized harm. Latino voters are more likely than others to lack access to transportation, making trips to a single location difficult. *See* Sansom, *Research: U.S. Latinos Face Unaffordable Housing, Unreliable Public Transportation and A Lack Of Green Space*, UT San Antonio Health (May 14, 2019).⁸ They are also disproportionately likely to be essential workers, meaning that they may be denied the time and flexibility to seek out—and wait in line at—distant ballot return locations. *See* Berube & Bateman, *Who Are the Workers Already Impacted by the COVID-19 Recession?*, Brookings (Apr. 3, 2020).⁹

⁶ <https://bit.ly/3dms2B1>.

⁷ <https://bit.ly/34KZOfr>.

⁸ <https://bit.ly/3nHx3cn>.

⁹ <https://brook.gs/33PVqfU>.

Accordingly, the district court’s conclusion that the Proclamation “impos[ed] burdensome restrictions on vulnerable voters” was plainly correct. *See* Stay Mot., Ex. A at 39.

II. States Have Broadly Increased Access To Absentee Voting And Made Drop Boxes Available To Voters.

States have adopted procedures that minimize in-person voting interactions to prevent the spread of COVID-19. Many have adjusted their requirements to permit all voters who fear contracting COVID-19 to vote absentee. *See* Appendix, *infra*. Some have sent absentee ballot applications, or even ballots, to all qualified registered voters. *See id.*

In the same vein, most states have worked to make the collection of absentee ballots safe and reliable, including by expanding the availability of ballot drop-off sites. While roughly a dozen states offered drop-off sites before this election cycle, a full 24 states and the District have introduced drop-off sites during the pandemic. *See id.*

In establishing new drop-off sites, states overtly acknowledge the dual burdens of “the COVID-19 pandemic” and “concerns about delivery times of the USPS.” Letter from Off. of Minn. Sec’y of State to Cnty. Auditors and Local Elections Offs. (Sept. 11, 2020).¹⁰ For example, the Governor of Kansas justified a

¹⁰ <https://bit.ly/34H5RBK>.

statewide initiative to increase the number of drop-off sites, declaring that “[a]dding more drop boxes will not only lessen the public health risks that would come from gathering in long lines at polling places” but “will also lessen the burden on [USPS].” Lefler, *Dismissing Trump Allegations, Gov. Kelly Promises More Ballot Drops for November Vote*, Wichita Eagle (Aug. 31, 2020).¹¹ The Kentucky Secretary of State conveyed a similar sentiment. Ky. Sec’y of State Michael Adams, *2020 General Updates* (2020).¹² Other states, like Georgia, have “encourage[d]” voters to use “drop boxes” “[b]ecause of recent USPS mail delays.” *Absentee Ballot Drop Box Locations*, Georgia Voter Guide.¹³ Similarly, because “USPS has made clear that they are not a reliable method for delivering election mail,” the Connecticut Secretary of State “is encouraging voters to use the secure ballot drop boxes to return their absentee ballot[s].” Press Release, Conn. Off. of Sec’y of State, *Secretary Merrill Outlines Process and Timelines for November General Election* (Aug. 25, 2020);¹⁴ see, e.g., Sanderford, *Keep an Eye on Your Mailbox. First Wave of Early Ballots Go Out in Nebraska*, Omaha World-Herald (Sept. 29, 2020).¹⁵

¹¹ <https://bit.ly/3lDzwIY>.

¹² <https://bit.ly/33MhTKK>.

¹³ <https://bit.ly/33Mvzp2>.

¹⁴ <https://bit.ly/30WR70y>.

¹⁵ <https://bit.ly/3iQfi6W>.

To be sure, some states offer more drop boxes than others, and the methods for allocating drop boxes vary. *See, e.g.*, Colo. Rev. Stat. § 1-7.5-107(4.3)(a)(I); Conn. Off. of Sec’y of State, *supra*; Haw. Rev. Stat. § 11-109(d). But of the 38 jurisdictions that now offer absentee ballot drop-off sites, only two—Iowa and Ohio—forbid counties from having more than one site, as Texas seeks to do. *See* Appendix (Iowa, Ohio). And yet, even those states did not shut down drop-off sites that were *already* in operation—making Texas a true outlier.

The overwhelming majority of states have concluded that the risks to public health during this pandemic require accommodations to make distanced voting more accessible. And while nearly 75 percent of states have made drop-off sites available or increased their availability, Texas is the *only* state that has retreated from its once-accommodating position. Texas’s outlier status calls into question whether there is any legitimate state interest in *rescinding* voting options intended to protect the public health and make the franchise accessible.

III. There Is No Evidence Of Widespread Fraud Associated With Mail-In Voting Or Drop Boxes.

In her stay request, the Texas Secretary of State contends that “[v]ote-by-mail election fraud[] has proven to be a frequent and enduring problem.” Stay Mot. 14. Nothing could be further from the truth. To begin, absentee voting “is not a newfangled idea; it was already deeply embedded in the American electoral system before the coronavirus hit.” Weiser & Ekeh, *The False Narrative of Vote-by-Mail*

Fraud, Brennan Ctr. (Apr. 10, 2020).¹⁶ Since 2000, over 250 million people in all 50 states have voted using mail-in ballots. *Id.* In the 2018 midterms alone, over 31 million Americans—or about 25.8 percent of voters—cast their ballots by mail. *Id.* Nor are absentee ballot drop-off sites a novel phenomenon. In the 2016 presidential election, when only a dozen states offered drop-off sites, roughly 16 percent of U.S. voters submitted their ballots via drop boxes. Fessler, *Ballot Drop Boxes Become Latest Front in Voting Legal Fights*, NPR (Aug. 11, 2020).¹⁷

Despite years of experience, there is no evidence that using drop boxes threatens the integrity of elections. Even as states have expanded access to absentee voting, *see* Weiser & Ekeh, *supra*, “voter fraud rates have remained infinitesimally small,” *Cook Cnty. Republican Party v. Pritzker*, No. 20-CV-4676, 2020 WL 5573059, at *3 (N.D. Ill. Sept. 17, 2020) (internal quotation marks omitted). And there is not a shred of evidence that drop-off sites promote fraud. *See* Stay Mot., Ex. A at 38 (“[T]he State did not provide any actual examples of voter fraud to refute Plaintiff’s recitation of the security measures implemented pursuant to law at ballot return centers.”); Weiser, *Mail Voting: What Has Changed in 2020*, Brennan Ctr. (Sept. 17, 2020) (It is an “unsubstantiated (and false) claim that drop boxes are

¹⁶ <https://bit.ly/3iUkbvz>.

¹⁷ <https://n.pr/2GM9E8V>.

particularly susceptible to voter fraud.”).¹⁸ Accordingly, the unsubstantiated specter of fraud cannot justify Texas’s last-minute rollback of drop-off sites.

A. States that provided mail-in ballots to every voter pre-pandemic have not experienced widespread voter fraud.

Prior to the pandemic, five states—Colorado, Hawaii, Oregon, Utah, and Washington—used all-mail voting systems in which every registered voter receives a ballot by mail. *See* Appendix. Each of those states also offered drop-off sites. *See id.* None has encountered widespread voter fraud. Weiser & Ekeh, *supra*.

Indeed, a Washington Post analysis of data collected by Colorado, Oregon, and Washington “identified just 372 possible cases of double voting or voting on behalf of deceased people out of about 14.6 million votes cast by mail in the 2016 and 2018 general elections.” Viebeck, *Miniscule Number of Potentially Fraudulent Ballots in States with Universal Mail Voting Undercuts Trump Claims About Election Risks*, Wash. Post (June 8, 2020).¹⁹ That amounts to a rate of just 0.0025 percent. *Id.* Data collected by the Heritage Foundation from the five states with universal mail-in voting also found very few cases of fraud: only 29 cases of fraudulent votes attempted by mail and 24 cases of duplicative voting or absentee ballot fraud out of nearly 50 million general election votes cast between 1982 and

¹⁸ <https://bit.ly/36Y6c5I>.

¹⁹ Available at <https://wapo.st/3ixefbJ>.

2019. Kamarck & Stenglein, *Low Rates of Fraud in Vote-by-Mail States Show the Benefits Outweigh the Risks*, Brookings (June 2, 2020) (reproducing data from the Heritage Foundation’s database).²⁰ This evidence illustrates that, contrary to the Secretary’s fears, fraud in drop-box voting is essentially nonexistent.

Moreover, while fraud has been virtually nonexistent in those states, a very sizable portion of their electorate has historically voted through drop boxes. For instance, during the last presidential election, nearly three-quarters of all ballots in Colorado were returned by drop box. Cortés, *Preparing for Election Day: Deadlines for Running a Safe Election*, Brennan Ctr. (May 11, 2020).²¹ That same year, about 57 percent of Washingtonians voted by drop box. Wash. Sec’y of State, *Ballot Drop Box Usage by Year*.²² Given the lack of any evidence of fraud tied to drop boxes, there is no basis for suggesting that the district court’s injunction will open the door to election tampering.

Indeed, election and security experts have time and again voiced confidence in alternatives to in-person voting. *US Election: Do Postal Ballots Lead to Voting*

²⁰ <https://brook.gs/2F4NM7X>; see Heritage Found., *A Sampling of Recent Election Fraud Cases from Across the United States*, <https://herit.ag/2H0yBwX> (caveating that its database is not “exhaustive or comprehensive”).

²¹ <https://bit.ly/2If5AOJ>.

²² <https://bit.ly/2FkYQxT>.

Fraud?, BBC News (Sept. 25, 2020) (internal quotation marks omitted).²³ Senior intelligence officials “who have been consulting with election workers across all 50 states” similarly stated that they found no “evidence of a coordinated effort to commit mail-in voting fraud”—let alone any evidence of drop-box-related plots. Ng, *Election Security Officials Find No Evidence of Coordinated Fraud With Mail-In Ballots*, CNET (Aug. 26, 2020).²⁴ Moreover, the Presidential Advisory Commission on Election Integrity, established by President Trump following the 2016 election, “uncovered no evidence to support claims of widespread voter fraud.” Villeneuve, *Report: Trump Commission Did Not Find Widespread Voter Fraud*, AP (Aug. 3, 2018).²⁵

B. States have myriad ways to protect the integrity of their elections without stripping voters of reliable and safe voting accommodations.

To be sure, “[t]here is no denying the abstract importance, the compelling nature, of combating voter fraud.” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 225 (2008). Amici States are deeply committed to protecting the integrity of their elections and have thus deployed an array of safeguards to ensure the security of their voting systems. There are numerous, common-sense practices to secure

²³ <https://bbc.in/2GJvUQA>.

²⁴ <https://cnet.co/3nnmYRu>.

²⁵ <https://bit.ly/2GMTpZf>.

drop-off sites, none of which requires unduly limiting their availability. On top of drop-box-specific practices, states can and do layer additional safety measures to protect the integrity of absentee ballots.

The United States Election Assistance Commission has promulgated guidance on how states can “provide a secure and convenient means for voters to return their mail ballot.” U.S. Election Assistance Comm’n, *Ballot Drop Box* 1 (2020).²⁶ The Commission has noted that even 24-hour *unstaffed* drop boxes can be sufficiently secure, *id.* at 5-6, and states and localities have successfully used unstaffed sites in the past, *see, e.g., id.* at 3 (citing as an example Wisconsin’s repurposing of book-drop boxes at closed libraries across Madison during the primaries). For *staffed* drop boxes, like those in Texas, the recommended precautions are, naturally, less rigorous; the Commission simply specifies that at all times, the ballot box should be locked, and tamper-evident seals should be used. *Id.* at 6; Stay Mot., Ex. A at 14. And Texas goes even further by requiring that voters sign a roster and present valid identification when they submit their mail-in ballots. Stay Mot., Ex. A at 14. Texas’s policies thus already surpass the security measures recommended by experts, regardless of the number of locations allowed. And these measures are in

²⁶ <https://bit.ly/3dgz0HV>.

addition to the protections that states—including Texas—already take with regard to absentee ballots, however they are returned. *See* Weiser & Ekeh, *supra*.

Moreover, criminal and civil penalties “provide a strong deterrent to voter fraud.” *Id.* An individual convicted of voter fraud in a federal election is subject to a \$10,000 fine and/or a five-year term of imprisonment. 52 U.S.C. § 10307. Many states—including Texas—also punish voter fraud with hefty fines and potential jail time. *See, e.g.*, Tex. Elec. Code § 64.012. Accordingly, it hardly advances a legitimate state interest to abolish already-operational ballot return sites.

CONCLUSION

This Court should deny the emergency motion for a stay pending appeal.

Respectfully submitted,

KARL A. RACINE

Attorney General for the District of Columbia

LOREN L. ALIKHAN

Solicitor General

/s/ Caroline S. Van Zile

CAROLINE S. VAN ZILE

Principal Deputy Solicitor General

CARL J. SCHIFFERLE

Deputy Solicitor General

ANDREW J. DELAPLANE

SAMSON J. SCHATZ

HARRISON M. STARK

Assistant Attorneys General

Office of the Solicitor General

Office of the Attorney General

400 6th Street, NW, Suite 8100

Washington, D.C. 20001

(202) 724-6609

(202) 741-0649 (fax)

caroline.vanzile@dc.gov

October 2020

On behalf of:

XAVIER BECERRA

Attorney General
State of California
1300 I Street
Sacramento, CA 95814

KATHLEEN JENNINGS

Attorney General
State of Delaware
820 North French Street
Wilmington, DE 19801

KWAME RAOUL

Attorney General
State of Illinois
100 West Randolph Street, 12th Floor
Chicago, IL 60601

MAURA HEALEY

Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

KEITH ELLISON

Attorney General
State of Minnesota
75 Rev. Dr. Martin Luther King Jr. Blvd
St. Paul, MN 55155

HECTOR BALDERAS

Attorney General
State of New Mexico
P.O. Drawer 1508
Santa Fe, NM 87504

WILLIAM TONG

Attorney General
State of Connecticut
165 Capitol Avenue
Hartford, CT 06106

CLARE E. CONNORS

Attorney General
State of Hawaii
425 Queen Street
Honolulu, HI 96813

BRIAN E. FROSH

Attorney General
State of Maryland
200 Saint Paul Place
Baltimore, MD 21202

DANA NESSEL

Attorney General
State of Michigan
P.O. Box 30212
Lansing, MI 48909

AARON D. FORD

Attorney General
State of Nevada
100 North Carson Street
Carson City, NV 89701

LETITIA JAMES

Attorney General
State of New York
28 Liberty Street
New York, NY 10005

ELLEN F. ROSENBLUM
Attorney General
State of Oregon
1162 Court Street NE
Salem, OR 97301

PETER F. NERONHA
Attorney General
State of Rhode Island
150 South Main Street
Providence, RI 02903

MARK R. HERRING
Attorney General
Commonwealth of Virginia
202 North 9th Street
Richmond, VA 23219

JOSH SHAPIRO
Attorney General
Commonwealth of Pennsylvania
1600 Arch Street Suite 300
Philadelphia, PA 19103

THOMAS J. DONOVAN, JR.
Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609

ROBERT W. FERGUSON
Attorney General
State of Washington
1125 Washington Street SE
P.O. Box 40100
Olympia, WA 98504

CERTIFICATE OF SERVICE

I certify that on October 12, 2020, this brief was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. Counsel further certifies that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned with the most recent version of McAfee Endpoint Security and is free of viruses.

/s/ Caroline S. Van Zile
CAROLINE S. VAN ZILE

CERTIFICATE OF COMPLIANCE

I further certify that this brief complies with the type-volume limitation in Federal Rule of Appellate Procedure 29(a)(5) and Fifth Circuit Rule 29.3 because the brief contains 2,575 words, excluding exempted parts. This motion complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14 point.

/s/ Caroline S. Van Zile
CAROLINE S. VAN ZILE

Appendix

Appendix: Survey of States' and the District of Columbia's Absentee and Drop-Off Site Practices

	Absentee Voting Practices						Drop-Off Site Practices			
	All-Mail Pre-COVID	Can Any Voter Vote Absentee? (Pre-COVID)	Adjust / Reinterpret Excuse Requirements For COVID	Ballot Applications Sent To All Qualified Voters	Ballots Sent To All Qualified Active Voters	Absentee Voting Practices Source	Have Them?	Adopted In Response To COVID	1 Per Cnty?	Drop-Off Practices Source
<i>Total "Yes":</i>	5	35	10	10	5	-	38	25	3	-
Alabama	No	No	Yes	No	No	Ala. Admin. Code. r. 820-2-3-.06-.04ER(1)	No	-	-	
Alaska	No	Yes	No	No	No	Nat'l Conf. of State Legis., Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting (May 1, 2020), https://bit.ly/30YQfIH	Yes	Yes	No	Alaska Div. of Elections, By-Mail Ballot Delivery, https://bit.ly/34NcG4B
Arizona	No	Yes	No	No	No	Nat'l Conf. of State Legis., Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting (May 1, 2020), https://bit.ly/30YQfIH	Yes	No	No	Ariz. Sec'y of State, Voting by Mail: How to Get a Ballot-by-Mail, https://azsos.gov/votebymail
Arkansas	No	No	Yes	No	No	Ark. State Bd. of Election Comm'rs, Res. No. 4, at 2 (July 22, 2020)	No	-	-	
California	No	Yes	No	No	Yes	Cal. Elec. Code § 3000.5 (2020)	Yes	No	No	Cal. Elec. Code § 3025
Colorado	Yes	Yes	No	No	No	Colo. Rev. Stat. § 1-5-401	Yes	No	No	Colo. Rev. Stat. § 1-7.5-107(4)(b)(I)(A)
Connecticut	No	No	Yes	Yes	No	Conn. Gen. Stat. § 9-135(a)(7) (2020); Conn. Off. of the Sec'y of the State, Connecticut's Absentee Ballot Process (2020), https://bit.ly/3jSb2VL	Yes	Yes	No	Press Release, Off. of Sec'y of State Denise W. Merrill, Sec'y Merrill Outlines Process and Timelines for Nov. General Election (Aug. 25, 2020), https://bit.ly/30WR70y
Delaware	No	No	Yes	Yes	No	Del. Code tit. 15, §§ 5602(a), 5603(a) (2020)	Yes	Yes	No	Del. Dep't of Elections, Off. of the State Election Comm'r, Voting By Mail in Delaware, https://bit.ly/3nDy7On
District of Columbia	No	Yes	No	No	Yes	D.C. Bd. of Elections, Vote Safe DC, https://www.dcbos.org	Yes	Yes	No	D.C. Bd. of Elections, Mail-in-Ballot Drop Box Locations, https://bit.ly/36PrOKO

	Absentee Voting Practices						Drop-Off Site Practices			
	All-Mail Pre-COVID	Can Any Voter Vote Absentee? (Pre-COVID)	Adjust / Reinterpret Excuse Requirements For COVID	Ballot Applications Sent To All Qualified Voters	Ballots Sent To All Qualified Active Voters	Absentee Voting Practices Source	Have Them?	Adopted In Response To COVID	1 Per Cnty?	Drop-Off Practices Source
Florida	No	Yes	No	No	No	Nat'l Conf. of State Legis., Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting (May 1, 2020), https://bit.ly/30YQfIH	Yes	No	No	Fla. Div. of Elections, Vote-by-Mail, https://bit.ly/30YxIMD
Georgia	No	Yes	No	No	No	Nat'l Conf. of State Legis., Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting (May 1, 2020), https://bit.ly/30YQfIH	Yes	Yes	No	Absentee Ballot Drop Box Locations, Georgia Voter Guide, https://bit.ly/33Mvzp2
Hawaii	Yes	Yes	No	No	No	Haw. Rev. Stat. § 11-101	Yes	No	No	Haw. Rev. Stat. § 11-109(a)
Idaho	No	Yes	No	No	No	Nat'l Conf. of State Legis., Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting (May 1, 2020), https://bit.ly/30YQfIH	Yes	Yes	No	Idaho: Drop Boxes, Vote411, https://bit.ly/3divigH
Illinois	No	Yes	No	Yes	No	10 Ill. Comp. Stat. 5/2B-15(b) (2020)	Yes	Yes	No	Ill. State Bd. of Elections, Vote By Mail Ballot Drop Box Locations, https://bit.ly/2FKF31z
Indiana	No	No	No	No	No		No	-	-	
Iowa	No	Yes	No	Yes	No	Stephen Gruber-Miller, Iowa Secretary of State Will Mail Ballot Request Forms to All Voters Before Fall Election, Des Moines Reg. (July 17, 2020), https://bit.ly/3INiGBB	Yes	No	Yes	Stephen Gruber-Miller, Auditors May Use Ballot Drop Boxes at County Buildings Only, Secretary of State Says, Des Moines Reg. (Sept. 3, 2020), https://bit.ly/3IFFhjp
Kansas	No	Yes	No	No	No	Nat'l Conf. of State Legis., Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting (May 1, 2020), https://bit.ly/30YQfIH	Yes	Yes	No	Dion Lefler, Dismissing Trump Allegations, Gov. Kelly Promises More Ballot Drops for November Vote, The Wichita Eagle (Aug. 31, 2020), https://bit.ly/3IDzwIY
Kentucky	No	No	Yes	No	No	Ky. Sec'y of State Michael Adams, 2020 General Updates (2020), https://bit.ly/33NC4I9	Yes	Yes	No	Ky. Sec'y of State Michael Adams, 2020 General Updates (2020), https://bit.ly/33NC4I9
Louisiana	No	No	No	No	No		No	-	-	

	Absentee Voting Practices						Drop-Off Site Practices			
	All-Mail Pre-COVID	Can Any Voter Vote Absentee? (Pre-COVID)	Adjust / Reinterpret Excuse Requirements For COVID	Ballot Applications Sent To All Qualified Voters	Ballots Sent To All Qualified Active Voters	Absentee Voting Practices Source	Have Them?	Adopted In Response To COVID	1 Per Cnty?	Drop-Off Practices Source
Maine	No	Yes	No	No	No	Nat'l Conf. of State Legis., Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting (May 1, 2020), https://bit.ly/30YQfIH	Yes	Yes	No	Dep't of Sec'y of State, Guidance for the Procurement and Use of Absentee Ballot Drop Boxes Pursuant to E.O. 56 FY 19/20, at 1 (June 8, 2020), https://bit.ly/3lBGQik
Maryland	No	Yes	No	Yes	No	Letter from Larry Hogan, Governor of Md., to Michael R. Cogan, Chairman, State Bd. of Elections (July 8, 2020), https://bit.ly/2Fkwxyz	Yes	No	No	State Bd. Of Elections, 2020 General Election: Ballot Drop Box Locations (Oct. 3, 2020), https://bit.ly/3jQ8l1r
Massachusetts	No	No	Yes	No	No	2020 Mass. Acts ch. 115, § 15	Yes	Yes	No	Mass. Gen. Laws ch. 54, § 92(a) (2020)
Michigan	No	Yes	No	No	No	Nat'l Conf. of State Legis., Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting (May 1, 2020), https://bit.ly/30YQfIH	Yes	Yes	No	Michigan Has More Than 700 Absentee Ballot Drop-Off Locations – Find the One You Should Use, WXYZ Detroit (Sept. 24, 2020), https://bit.ly/2GVahwy
Minnesota	No	Yes	No	Yes	No	Press Release, Off. of the Minn. Sec'y of State, Secretary Simon Announces Statewide Mailing to Encourage Vote from Home (Sept. 16, 2020), https://bit.ly/3lBYqT4	Yes	Yes	No	Letter from the Off. of the Minn. Sec'y of State, to Cnty. Auditors and Local Elections Officials 1 (Sept. 11, 2020), https://bit.ly/34H5RBK
Mississippi	No	No	No	No	No		No	-	-	
Missouri	No	No	No	No	No		No	-	-	
Montana	No	Yes	No	No	No	Nat'l Conf. of State Legis., Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting (May 1, 2020), https://bit.ly/30YQfIH	Yes	No	No	Mont. Code 13-19-307(1)(a)
Nebraska	No	Yes	No	Yes	No	Martha Stoddard, Nebraska Sending Mail-In Ballot Applications to All Registered Voters, Omaha World-Herald (Aug. 19, 2020), https://bit.ly/2GPXdJh	Yes	No	No	Aaron Sanderford, Keep an Eye on Your Mailbox. First Wave of Early Ballots Go Out in Nebraska, Omaha World-Herald (Sept. 29, 2020), https://bit.ly/3iQf6W
Nevada	No	Yes	No	No	Yes	Nev. Rev. Stat. AB 4, § 15(1) (2020)	Yes	Yes	No	Sec'y of State, 2020 General Election Polling Locations, https://bit.ly/3iRj8Nc

	Absentee Voting Practices						Drop-Off Site Practices			
	All-Mail Pre-COVID	Can Any Voter Vote Absentee? (Pre-COVID)	Adjust / Reinterpret Excuse Requirements For COVID	Ballot Applications Sent To All Qualified Voters	Ballots Sent To All Qualified Active Voters	Absentee Voting Practices Source	Have Them?	Adopted In Response To COVID	1 Per Cnty?	Drop-Off Practices Source
New Hampshire	No	No	Yes	No	No	H.B. 1266, 2020 Leg., Reg. Sess. § 14:1 (N.H. 2020)	No	-	-	
New Jersey	No	Yes	No	No	Yes	N.J. Stat. § 19:63-31(a) (2020)	Yes	Yes	No	N.J. Stat. § 19:63-16.1(b)(2)(a) (2020)
New Mexico	No	Yes	No	Yes	No	Morgan Lee, New Mexico Pushes Forward with Emergency Voting Reforms, Associated Press (Aug. 18, 2020), https://bit.ly/3IBGk3H	Yes	No	No	N.M. Stat. § 1-6-9
New York	No	No	Yes	No	No	S.B. 8015D, 2019-2020 Leg. Sess. § 1.1(b) (N.Y. 2020)	Yes	Yes	No	N.Y. State, Early Voting and Absentee Voting by Mail or Dropbox (Oct. 11, 2020), https://on.ny.gov/3nBGtGI
North Carolina	No	Yes	No	No	No	Nat'l Conf. of State Legis., Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting (May 1, 2020), https://bit.ly/30YQfIH	No	-	-	
North Dakota	No	Yes	No	No	No	Nat'l Conf. of State Legis., Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting (May 1, 2020), https://bit.ly/30YQfIH	Yes	Yes	No	Sec'y of State, County Drop Boxes, https://bit.ly/2GQ7tkB
Ohio	No	Yes	No	No	No	Nat'l Conf. of State Legis., Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting (May 1, 2020), https://bit.ly/30YQfIH	Yes	Yes	Yes	A. Philip Randolph Inst. of Ohio v. LaRose, No. 1:20-CV-1908, slip op. at 2-3 (N.D. Ohio Oct. 8, 2020), stayed by No. 20-4063 (6th Cir. Oct. 9, 2020)
Oklahoma	No	Yes	No	No	No	Nat'l Conf. of State Legis., Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting (May 1, 2020), https://bit.ly/30YQfIH	No	-	-	
Oregon	Yes	Yes	No	No	No	Or. Rev. Stat. § 254.465	Yes	No	No	Or. Rev. Stat. § 254.470(1)
Pennsylvania	No	Yes	No	No	No	Nat'l Conf. of State Legis., Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting (May 1, 2020), https://bit.ly/30YQfIH	Yes	Yes	No	Pa. Democratic Party v. Boockvar, No. 133 MM 2020, 2020 WL 5554644, at *9 (Pa. Sept. 17, 2020)

	Absentee Voting Practices						Drop-Off Site Practices			
	All-Mail Pre-COVID	Can Any Voter Vote Absentee? (Pre-COVID)	Adjust / Reinterpret Excuse Requirements For COVID	Ballot Applications Sent To All Qualified Voters	Ballots Sent To All Qualified Active Voters	Absentee Voting Practices Source	Have Them?	Adopted In Response To COVID	1 Per Cnty?	Drop-Off Practices Source
Rhode Island	No	Yes	No	Yes	No	Edward Fitzpatrick, Rhode Island Will Send Mail Ballot Applications to All Voters for the Nov. 3 Election, Boston Globe (Sept. 11, 2020), https://bit.ly/3lzWFpx	Yes	Yes	No	R.I. Bd. of Elections, Election Drop Boxes, https://bit.ly/3nIQp00
South Carolina	No	No	Yes	No	No	H. 5305, 123d Gen. Assemb. §§ 1-2 (S.C. 2020)	No	-	-	
South Dakota	No	Yes	No	No	No	Nat'l Conf. of State Legis., Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting (May 1, 2020), https://bit.ly/30YQfIH	Yes	Yes	No	Nathaniel Rakich et al., How to Vote in the 2020 Election, FiveThirtyEight (Oct. 9, 2020), https://53eig.ht/2SK7jh8
Tennessee	No	No	No	No	No		No	-	-	
Texas	No	No	No	No	No		Yes	Yes	Yes	Gov. Greg Abbott, Proclamation (Oct. 1, 2020), https://bit.ly/36WsmVT
Utah	Yes	Yes	No	No	No	Utah Code Ann. § 20A-3a-202	Yes	No	No	Learn About Voting by Mail, Vote.Utah.gov (2020), https://bit.ly/3nD2N29
Vermont	No	Yes	No	No	Yes	Vt. Off. of the Sec'y of State, First Statewide Elections Directive 4 (July 20, 2020), https://bit.ly/2lcqQEO	Yes	Yes	No	Sec'y of State, Elections Div., 2020 General Election FAQs, https://bit.ly/2H0B36A
Virginia	No	Yes	No	No	No	Nat'l Conf. of State Legis., Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting (May 1, 2020), https://bit.ly/30YQfIH	Yes	Yes	No	2020 Va. Acts 1st Sp. Sess. Ch. 1 (S.B. 5120)
Washington	Yes	Yes	No	No	No	Wash. Rev. Code § 29A.40.010	Yes	No	No	Wash. Rev. Code § 29A.40.170
West Virginia	No	No	Yes	No	No	Press Release, Off. of Sec'y of State, Secretary Mac Warner Announces Voting Options for Voters to Continue Making Safe Decisions in 2020 General Election (July 27, 2020), https://bit.ly/3iU0HHr	No	-	-	

	Absentee Voting Practices						Drop-Off Site Practices			
	All-Mail Pre-COVID	Can Any Voter Vote Absentee? (Pre-COVID)	Adjust / Reinterpret Excuse Requirements For COVID	Ballot Applications Sent To All Qualified Voters	Ballots Sent To All Qualified Active Voters	Absentee Voting Practices Source	Have Them?	Adopted In Response To COVID	1 Per Cnty?	Drop-Off Practices Source
Wisconsin	No	Yes	No	Yes	No	Press Release, Wis. Elections Comm'n, Wisconsin Voting Deadlines and Facts for November 2020, at 2 (Aug. 20, 2020), https://bit.ly/36SgGne	Yes	Yes	No	Letter from Meagan Wolfe, Admin., and Richard Rydecki, Assistant Admin., to All Wis. Election Officials 4 (Aug. 19, 2020), https://bit.ly/3nDyZCD
Wyoming	No	Yes	No	No	No	Nat'l Conf. of State Legis., Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting (May 1, 2020), https://bit.ly/30YQfIH	No	-	-	

Note: All non-dated websites were last visited October 11, 2020