

**In the United States Court of Appeals
for the Fifth Circuit**

TEXAS LEAGUE OF UNITED LATIN AMERICAN CITIZENS;
NATIONAL LEAGUE OF UNITED LATIN AMERICAN CITIZENS;
LEAGUE OF WOMEN VOTERS OF TEXAS; RALPH EDELBACH;
BARBARA MASON; MEXICAN AMERICAN LEGISLATIVE
CAUCUS, TEXAS HOUSE OF REPRESENTATIVES;
TEXAS LEGISLATIVE BLACK CAUCUS,
Plaintiffs-Appellees,

v.

RUTH HUGHS, IN HER OFFICIAL CAPACITY
AS TEXAS SECRETARY OF STATE
Defendant-Appellant.

LAURIE-JO STRATY; TEXAS ALLIANCE FOR RETIRED
AMERICANS; BIG TENT CREATIVE,
Plaintiffs-Appellees,

v.

RUTH HUGHS, IN HER OFFICIAL CAPACITY
AS TEXAS SECRETARY OF STATE
Defendant-Appellant.

On Appeal from the United States District Court
for the Western District of Texas, Austin Division

**BRIEF OF AMICUS CURIAE TEXAS STATE CONFERENCE OF NAACP
BRANCHES IN OPPOSITION TO DEFENDANT-APPELLANT'S
EMERGENCY MOTION FOR A STAY PENDING APPEAL**

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fifth Circuit Rules 26.1, 28.2.1, and 29.2, the undersigned counsel of record for *amicus curiae* Texas State Conference of NAACP Branches state that Texas State Conference of NAACP Branches is a nonprofit corporation with no parent, subsidiary, or stock held by any person or entity, including any publicly held company; and certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

- League of United Latin American Citizens, *Plaintiff-Appellee*
- Texas League of United Latin American Citizens, *Plaintiff-Appellee*
- League of Women Voters of Texas, *Plaintiff-Appellee*
- Mexican American Legislative Caucus, Texas House of Representatives, *Plaintiff-Appellee*
- Texas Legislative Black Caucus, *Plaintiff-Appellee*
- Ralph Edelbach, *Plaintiff-Appellee*
- Barbara Mason, *Plaintiff-Appellee*
- Laurie-Jo Straty, *Plaintiff-Appellee*
- Texas Alliance for Retired Americans, *Plaintiff-Appellee*
- BigTent Creative, *Plaintiff-Appellee*
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- Danielle Lang, Mark P. Gaber, Ravi Doshi, Molly Danahy, Caleb Jackson, Campaign Legal Center Action, *Counsel to Plaintiffs-Appellees*

- Luis Roberto Vera, Jr., LULAC National General Counsel, The Law Offices of Luis Vera Jr., and Associates, *Counsel to Plaintiffs-Appellees*
- Skyler M. Howton, Marc E. Elias, John M. Geise, Stephanie Command, Danielle Sivalingam (Serbin), Gillian Kuhlmann, Jessica Frenkel, Perkins Coie LLP, *Counsel to Plaintiffs-Appellees*
- Ruth Hughs, Texas Secretary of State, *Defendant-Appellant*
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Dated: October 12, 2020

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TABLE OF CONTENTS

	Page
INTEREST OF AMICUS CURIAE	1
ARGUMENT	2
I. INTRODUCTION	2
II. THE OCTOBER 1 ORDER IMPOSES A SIGNIFICANT IMPACT ON VOTERS AND UNDULY BURDENS THE RIGHT TO VOTE	5
A. Evidence of Burden	6
B. The October 1 Order’s Lack of Justification and Likely Impact	9
CONCLUSION	11
CERTIFICATE OF SERVICE	13
CERTIFICATE OF COMPLIANCE	14
EXHIBITS	

TABLE OF AUTHORITIES

Page(s)

Cases

Purcell v. Gonzalez,
549 U.S. 1 (2006).....5

Other Authorities

U.S. Const. amend. I4, 11
U.S. Const. amend. XIV4, 11
Fed. R. App. P. 2714
Fed. R. App. P. 291
Fed. R. App. P. 32.....14

INTEREST OF AMICUS CURIAE¹

The Texas State Conference of NAACP Branches (“Texas NAACP”) is a subsidiary organization of the National Association for the Advancement of Colored People, Inc., a national non-profit, non-partisan organization whose mission is to secure the political, educational, social, and economic equality of rights in order to eliminate race-based discrimination and ensure the health and well-being of all persons. Texas NAACP has substantial expertise and experience in issues related to promoting and protecting the civil rights of persons of color in Texas. Specifically, Texas NAACP engages in voter education and registration and other civic engagement activities.

The Texas NAACP is headquartered in Austin and has over sixty branches across the State, as well as members in almost every Texas county. A large portion of the organization’s more than 10,000 members are Texas residents who are registered to vote in Texas. The Texas NAACP’s membership consists largely of African-Americans, and it considers its constituents and supporters to be people of color and/or members of other

¹ All parties have consented to the filing of this brief and accompanying motion. Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amicus* certifies that no party’s counsel authored this brief in whole or in part; no party or party’s counsel contributed money intended to fund the brief’s preparation or submission; and no person other than *amicus*, its counsel, and its members contributed money intended to fund the brief’s preparation or submission.

underrepresented and vulnerable populations, such as those with disabilities. The Texas NAACP’s members and constituents are more likely than other populations to live in poverty, work in essential jobs that require more frequent exposure to the public, and suffer from underlying conditions that put them at risk of becoming more seriously ill from COVID-19.

Consistent with its overall mission to support and protect voting by persons of color in Texas, and in reaction to the significant burden imposed on the right to vote by the October 1 Order, Texas NAACP filed an action against Governor Abbott and Secretary Hughs seeking essentially the same relief as the Plaintiffs-Appellees in the case now before the Court. *See Texas State Conference of NAACP Branches v. Abbott*, No. 1:20-cv-1024-RP (W.D. Tex. Oct. 6, 2020).

ARGUMENT

I. INTRODUCTION

With little justification and at the last minute, Governor Abbott has precipitously upended the voting plans of tens of thousands of Texans in the midst of a pandemic. Under the vague banner of “enhancing ballot security”—a justification which the District Court found wholly pretextual, Ex. A at 14, 39—the Governor has ordered that county election officials may only maintain one location per county where absentee ballots can be returned in person (“October 1

Order”). This restriction imposes an undue and unjustified burden on the fundamental right to vote. *See* Ex. A at 40. Crucially, it disproportionately affects voters in large counties, like Harris County, with significant minority populations who are expected to vote absentee in large numbers, including many of Texas NAACP’s members and constituents. Harris County alone has over 2 million registered voters, and the Harris County Clerk has stated that he expects that seven to eight times more mail ballots will be requested for this November’s election than in a typical general election.

The October 1 Order disproportionately disadvantages African-American voters in Texas, because African-American voters are more likely to live in poverty and less likely to own a vehicle than other populations. The existence of only a single ballot return location in each Texas county necessarily means that a significant proportion of each county’s African-American voters who do not live near the single permitted location will face greater burdens to exercising their voting rights. Contrary to the arguments by Defendant-Appellant Secretary Hughs that any burden placed on the right to vote by the October 1 Order is *de minimis*, a mere “inconvenience,” and that the Order’s restrictions are “reasonable [and] nondiscriminatory,” Mot. at 13-14, the Texas NAACP offers the Court critical evidence, including expert testimony from Professor Daniel Chatman, Associate Professor of City and Regional Planning at the University of California,

Berkeley, of the immediate, substantial, and disparate burdens that the October 1 Order imposes on the fundamental right to vote, particularly on persons of color, under the First and Fourteenth Amendments.

This election is far from typical. Indeed, the COVID-19 pandemic has caused Texas officials to explore alternatives to in-person voting on election day, including by expanding voting by mail, adding polling and ballot return center locations, and extending early voting. In July, Governor Abbott extended early voting and suspended a statute that only allowed absentee ballots to be returned on election day. The Governor's October 1 Order alters the status quo *he created* even though voters had already started returning absentee ballots to ballot return centers. Harris County had already designated eleven ballot return center locations, as well as NRG Stadium, and Travis County had designated four such locations. In these same counties, multiple ballot return centers had operated without difficulty during the July runoff election under the Governor's July order.

For many voters who will vote absentee, the nearest ballot return location will now be dozens of miles further away. This last minute change will force those voters to travel long distances or to put their ballots in the care of the overburdened United States Postal Service ("USPS"), which has explicitly informed Defendant-Appellant that there is a significant risk that Texas election mail will be delayed. *See* Ex. A at 8-9. This effort to restrict Texas voters' access

to voting during the pandemic changes the status quo and imposes new, significant burdens on voters who relied on a different set of election rules to make their voting plan. *See* Ex. A at 6-7 (the district court found that “Governor Abbott’s about-face not only impacted the County Clerks and their offices but also disrupted the plans of absentee voters who had begun making their voting plans in response to the July 27 Order that had been in effect for months.”); *id.* at 33 (further describing the “*executive*-caused voter confusion on the eve of an election”). This is unreasonable, unfair, and unconstitutional. Despite Defendant-Appellant’s arguments to the contrary, the District Court’s injunction in this case—remedying the confusion that was created by the October 1 Order—is entirely consistent with the principle of *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006), that “courts should avoid issuing orders that cause voters to become confused and stay away from the polls.” Ex. A at 33 (citing *Purcell*, 549 U.S. at 1, 4-5).

II. THE OCTOBER 1 ORDER IMPOSES A SIGNIFICANT IMPACT ON VOTERS AND UNDULY BURDENS THE RIGHT TO VOTE

To assist the Court in evaluating the impact of the October 1 Order and the significant burden it places on the fundamental right to vote of Texans, Texas NAACP offers the expert report of Professor Daniel Chatman of the University of California, Berkeley. Dr. Chatman analyzed the travel burden and queuing times in some of the larger Texas counties expected to result from the limitation

of only one ballot return location per county, which also includes the disparate racial impact of the travel burden placed on these populations, especially for African-American citizens in Harris County and Travis County. *See* Ex. B, Amended Chatman Decl.² Texas NAACP also offers declarations of Ryan Robinson, who served as the City Demographer for the City of Austin from 1990 until retiring this summer (Ex. C., Robinson Decl.); Dr. Howard Henderson, the Founding Director of the Center for Justice Research and a professor of justice administration in the Barbara Jordan-Mickey Leland School of Public Affairs (Ex. D, Henderson Decl.); and Linda Jann Lewis, former McLennan County Election Administrator (Ex. E, Lewis Decl.). These declarations show that—contrary to Defendant-Appellant’s assertions—the burden placed on voters is real, serious, and discriminatory. All of this evidence has been submitted by Texas NAACP in its related suit that is pending before the District Court.

A. Evidence of Burden

Professor Chatman is an Associate Professor of City and Regional Planning at the University of California, Berkeley, and has taught undergraduate and graduate courses, and conducted research, in urban and regional transportation planning,

² The Texas NAACP offers the Amended Declaration of Dr. Daniel D. Chatman, which was filed with the District Court on the same day as this brief. *See* 1:20-cv-1024-RP [ECF #15-1]. Dr. Chatman’s original declaration, filed on October 7, 2020, can be found at 1:20-cv-1024-RP [ECF #7-1].

transportation and land use planning, and research methods. Amended Chatman Decl. ¶¶ 1, 2. He has published numerous peer-reviewed articles and has been qualified as an expert and rendered opinions regarding travel burden and queuing in at least two other voting rights cases, including one involving voter ID in Texas and one involving ballot drop-off location restrictions in Wisconsin. *Id.* ¶¶ 3-4.

Professor Chatman analyzed demographic and geographical data in several large Texas counties and concluded that the October 1 Order “will place a substantial travel burden on absentee-eligible citizens of voting age without access to a vehicle who find it necessary to drop off their absentee ballots rather than mail them, particularly when looking at those who lack access to a personal vehicle in their household.” *Id.* ¶ 7. This increased travel burden is particularly acute on the poor, who are more likely not to own a vehicle, and the disabled. *Id.* ¶¶ 7, 9. The burden is also not evenly distributed across the state, with a greater number of voters in the ten most populous counties suffering significantly higher travel burdens than counties in the rest of the state. *Id.* ¶ 8.

In Harris County, in particular, “the largest county by population, which contains 30 to 45 percent of all travel-burdened voters in the state, the share of households with a travel burden exceeding 90 minutes is 7 times as high as the state average across counties, at about 13 percent of all absentee-eligible citizens of voting age.” *Id.* ¶ 8. This is intuitive, as areas with denser population levels have more

traffic. Dr. Howard Henderson observes that the densest zip code in Texas is “77046” in Houston, which has approximately 32,343 residents per square mile, while many Texas counties have fewer than 1,000 residents. Henderson Decl. ¶¶ 10-11.

The absentee ballot drop-off location reduction in Travis County is similarly harmful. Ryan Robinson, who served as the Austin City Demographer from 1990 until his retirement earlier this year, observes that the sole absentee ballot drop-off location in Travis County is located within the urban core of Austin. Robinson Decl. ¶ 10. Non-Hispanic Whites are heavily concentrated in the central portion of Travis County, in or near the center of Austin, while African-Americans and Latinos are concentrated in more distant areas of the county. *Id.* ¶¶ 11-12. Black communities in Colony Park, Springdale, Pflugerville, Heatherwilde, and Wells Branch, and Latino communities in Dove Springs, Montopolis, Riverside, Rundberg, and North Lamar will have a more difficult time traveling to the county’s sole absentee ballot drop-off location. *Id.* ¶ 9.

Professor Chatman conducted a racial analysis of the relative burden by race/ethnicity, focusing on Whites, African Americans, and Hispanics who are citizens and also eligible for absentee ballots due to age or disability. Amended Chatman Decl. ¶ 54. He found a disparate racial impact; among Texas citizens eligible for absentee ballots, African Americans are twice as likely as Whites to have

a round trip to access a ballot drop-off location exceeding 90 minutes, at 14.6 percent in comparison to 6.7 percent for whites, largely because African Americans are far more likely to live in a household without a car available. *Id.* Hispanic citizens were somewhat more likely to experience a travel burden exceeding 90 minutes, with a rate of 8.3 percent across the state (24 percent higher than Whites). *Id.* These substantial racial disparities are particularly acute for African American citizens in Harris County (17.1% must travel over 90 minutes, versus 11.4% of Whites) and in Travis County (13.9% must travel over 90 minutes, versus 7.7% of Whites).

With regard to his queuing analysis, Professor Chatman, using a conservative set of assumptions, concludes that, as a result of the October 1 Order, “queues would be intolerably long in dozens of the most populous counties, and many voters there would be forced to forgo depositing their ballots. The lines would be particularly burdensome in the top ten counties by population in the state (including Harris, Dallas, Travis, and Fort Bend Counties), with between 10,000 and 64,000 voters in each of those counties waiting for 15 hours or more to drop off their ballots, unless (more likely) being dissuaded from voting altogether.” Amended Chatman Decl. ¶ 14.

B. The October 1 Order’s Lack of Justification and Likely Impact

Linda Jann Lewis was the County Elections Administrator of McLennan County from 1992 to 1996. Lewis Decl., ¶¶ 2, 7. Ms. Lewis has also held numerous

other positions in public service, including serving as a senior-level staff member for Governors Bill Clements and Mark White. *Id.* ¶ 6. Ms. Lewis states that absentee voting procedures and mechanics have not changed substantially since she served as a County Election Administrator and that she had absolutely no concerns about fraud or threats to election integrity when she oversaw the use of her office as McLennan County's site for the in-person return of absentee ballots on election day. *Id.* ¶¶ 8-11. Ms. Lewis never witnessed any evidence of voter fraud connected to returning mail-in ballots in person. *Id.* ¶ 11.

In Ms. Lewis's experience, while ballot security and election integrity are important goals, they are not a substantial impediment to operating drop-off locations for mail-in ballots. *Id.* ¶ 12. In her opinion, if County Election Administrators have decided to operate multiple locations, they have determined that doing so is the way to most efficiently distribute the burdens of administering a high-interest presidential election in their county during the pandemic. *Id.* ¶¶ 12-13. A ban on multiple drop-off locations thus places enormous stress on election administration staff, producing long lines and likely causing staff members to make mistakes because they are rushed and under time pressure. *Id.* ¶ 14. These kinds of mistakes are much more likely to hurt the integrity of the election than non-existent ballot security issues. *Id.* Ms. Lewis expects that the October 1 Order will place election administration officials in large metropolitan counties under great stress and

strain and engender chaos and confusion. *Id.* ¶¶ 15-16. She expects that voter fatigue and frustration will be widespread as a result and that many voters will be deterred from voting. *Id.* ¶ 17. Ms. Lewis notes that because most voters who apply for and complete mail ballots are 65 or older or have disabilities, the voters most likely to be impacted by the October 1 Order are also those most vulnerable to COVID-19 and least likely to vote in person on election day, and thus the most likely to be disenfranchised by the Order's disruption of the status quo. *Id.* ¶ 18.

CONCLUSION

Because the October 1 Order imposes immediate, substantial, and discriminatory burdens on the fundamental right to vote, particularly on persons of color, under the First and Fourteenth Amendments, the Texas NAACP respectfully submits that this Court should deny the Defendant's Emergency Motion for a Stay Pending Appeal.

Dated: October 12, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system.

Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: October 12, 2020

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), I hereby certify that this brief complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 2,547 words, excluding the parts of the motion exempted by Rule 32(f); and (2) the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface with 14-point type using Microsoft Word, which is the same program used to calculate the word count.

Dated: October 12, 2020

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EXHIBIT LIST

- A. Order, *Texas League of United Latin American Citizens v. Abbott*, No. 1:20-cv-1006-RP (W.D. Tex. Oct. 9, 2020)
- B. Amended Declaration of Dr. Daniel G. Chatman
- C. Declaration of Ryan Robinson
- D. Declaration of Howard Henderson
- E. Declaration of Linda Jann Lewis

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TEXAS LEAGUE OF UNITED LATIN §
AMERICAN CITIZENS, NATIONAL §
LEAGUE OF UNITED LATIN AMERICAN §
CITIZENS, LEAGUE OF WOMEN VOTERS §
OF TEXAS, RALPH EDELBACK, and §
BARBARA MASON, §

Plaintiffs, §

v. §

1:20-CV-1006-RP
(lead case)

GREG ABBOTT, in his official capacity as §
Governor of Texas, RUTH HUGHS, in her §
official capacity as Texas Secretary of State, §
DANA DEBEAUVOIR, in her official capacity §
as Travis County Clerk, CHRIS HOLLINS, in §
his official capacity as Harris County Clerk, §
JOHN M. OLDHAM, in his official capacity as §
Fort Bend County Elections Administrator, and §
LISA RENEE WISE, in her official capacity as §
El Paso County Elections Administrator, §

Defendants. §

LAURIE-JO STRATY, TEXAS ALLIANCE §
FOR RETIRED AMERICANS, and BIGTENT §
CREATIVE, §

Plaintiffs, §

v. §

1:20-CV-1015-RP

GREGORY ABBOTT, in his official capacity §
as Governor of the State of Texas, and RUTH §
HUGHS, in her official capacity as Texas §
Secretary of State, §

Defendants. §

ORDER

Before the Court are Plaintiffs Texas League of United Latin American Citizens, National League of United Latin American Citizens, League of Women Voters of Texas, Ralph Edelbach, and Barbara Mason’s Motion for Temporary Restraining Order (“TRO”) and Preliminary Injunction, (Mot. TRO, Dkt. 15),¹ and Governor Greg Abbott (“Governor Abbott”) and Secretary Ruth Hughs’ (“Secretary Hughs”) Motion to Dismiss, (Mot. Dismiss, Dkt. 31). On October 6, 2020, this Court consolidated the TRO with the motion for temporary restraining order and preliminary injunction filed in a related case² for the limited purpose of simultaneously resolving the requests for preliminary injunctive relief in both cases.³ (Case No. 1:20-cv-1015, Order, Dkt. 21). Having considered the briefing, the arguments made at the hearing, the evidence, and the relevant law, the Court will issue a preliminary injunction and grant in part and deny in part the Motion to Dismiss.

I. BACKGROUND

The pending motions for temporary restraining order and preliminary injunction arise from Governor Abbott’s October 1, 2020 proclamation prohibiting Texas counties from providing absentee voters with more than one location where they can return completed absentee ballots in

¹ The Court incorporates Plaintiffs’ contemporaneously filed Amended Motion for a Temporary Restraining Order and Preliminary Injunction, Dkt. 20.

² *Laurie-Jo Straty, et al. v. Gregory Abbott, et al.*, 1:20-CV-1015-RP (W.D. Tex. filed Oct. 2, 2020).

³ In this Order, the Court will refer to the parties as follows:

(1) Plaintiffs Texas League of United Latin American Citizens, National League of United Latin American Citizens, League of Women Voters of Texas, Ralph Edelbach, Barbara Mason, (together, “LULAC Plaintiffs”);

(2) Laurie-Jo Straty, Texas Alliance for Retired Americans, BigTent Creative (together, “Straty Plaintiffs”);

(3) LULAC Plaintiffs and Straty Plaintiffs (together, “Plaintiffs”); and

(4) Greg Abbott, in his official capacity as Governor of the State of Texas (“Governor Abbott”), Ruth Hughs, in her official capacity as Texas Secretary of State (“Secretary Hughs”) (together, the “State”), Dana DeBeauvoir (“DeBeauvoir”), in her official capacity as Travis County Clerk, Chris Hollins (“Hollins”), in his official capacity as Harris County Clerk, John M. Oldham (“Oldham”), in his official capacity as Fort Bend County Elections Administrator, and Lisa Renee Wise (“Wise”), in her official capacity as El Paso County Elections Administrator (together, the “County Clerks”).

Although named as defendants, the County Clerks have filed documents and taken positions in the case that support Plaintiffs’ arguments.

person (the “October 1 Order”).⁴ Governor Abbott’s October 1 Order came on the heels of his July 27, 2020 proclamation (the “July 27 Order”), which allowed voters “to deliver a marked mail ballot in person . . . prior to and including on election day,” at one or more locations.⁵ Plaintiffs move for a preliminary injunction based on their claims that the October 1 Order places an undue burden on the right to vote under the First and Fourteenth Amendments and violates the Equal Protection Clause of the Fourteenth Amendment. The LULAC Plaintiffs also argue that the October 1 Order violates the Voting Rights Act. (Am. Compl, Dkt. 16, at 19).⁶ The Straty Plaintiffs separately bring a cause of action under the Ku Klux Klan Act. (1-20-cv-1015, Compl., Dkt. 1, at 18).

A. Before the July 27, 2020 Proclamation

Before Governor Abbott issued his July 27 Order, the rules governing absentee ballots emanated from the Texas Election Code. Under Section 86.006(a-1), an absentee voter could “deliver a marked ballot in person to the early voting clerk’s office only while the polls are open on election day” if they presented “an acceptable form of identification.” Tex. Elec. Code § 86.006 (2017). Due to the Covid-19 pandemic, the Governor also declared a state of disaster for the State of Texas on March 13, 2020.⁷

B. The July 27, 2020 Proclamation

On July 27, 2020, Governor Abbott issued an executive order allowing (1) in-person early voting to begin on October 13 and (2) absentee ballots to be delivered “in person to the early voting

⁴ Proclamation by the Governor of the State of Texas, Oct. 1, 2020, *available at* https://gov.texas.gov/uploads/files/press/PROC_COVID-19_Nov_3_general_election_IMAGE_10-01-2020.pdf.

⁵ Proclamation by the Governor of the State of Texas, July 27, 2020, *available at* https://gov.texas.gov/uploads/files/press/PROC_COVID-19_Nov_3_general_election_IMAGE_07-27-2020.pdf.

⁶ All docket cites refer to the record in the lead case *LULAC, et al. v. Gregory Abbott, et al.*, 1:20-CV-1006-RP (W.D. Tex. filed Oct. 1, 2020), unless otherwise noted.

⁷ Proclamation by the Governor of the State of Texas, Ma. 13, 2020, *available at* https://gov.texas.gov/uploads/files/press/DISASTER_covid19_disaster_proclamation_IMAGE_03-13-2020.pdf.

clerk's office prior to" election day. (Am Compl., Dkt. 16, at 9; 1-20-cv-1015, July 27 Order, Dkt. 11-18). In issuing the July 27 Order to allow absentee voters expanded opportunities to return their ballots in person, Governor Abbott recognized the need to allow greater options to return absentee ballots in person to "ensure that elections proceed efficiently and safely." (*Id.*). Allowing greater options for in-person delivery of absentee ballots aligns with the U.S. Election Assistance Commission's recommendation that there be at least one ballot return center for every 15,000 to 2,000 registered voters, with added return centers in "communities with [historically] low vote by mail usage" such as Texas. (1-20-cv-1015, Compl., Dkt. 1, at 14–15).

The July 27 Order allowed voters to return their completed ballots on Election Day and during the early voting period beginning October 13, 2020 to the ballot return centers that are available "before, during, and after business hours in the weeks leading up to the election so that voters may quickly and efficiently submit their completed ballots as their schedules allow." (1-20-cv-1015, Compl., Dkt. 1, at 3). The July 27 Order did not place limits on the number of ballot return centers counties were permitted to operate, allowing elected county officials in each Texas county to determine whether to have additional ballot return centers during the early voting period and how many ballot return centers to open. (1-20-cv-1015, Mot. TRO, Dkt. 10-1, at 5; 1-20-cv-1015, July 27 Order, Dkt. 11-18; 1-20-cv-1015, Resp. Mandamus Brief, Dkt. 15-1, at 6, 38). If a county opened one or more ballot return centers, the county's ballot return centers and the employees who worked in those offices would be subject to the same election laws and rules. (Hollins Supp. Decl., Dkt. 51-1, at 1; Oldham Decl., Dkt. 21, at 8; DeBeauvoir Decl., Dkt. 18, at 7). Governor Abbott's July 27 Order did not loosen the statutory restrictions on how an absentee ballot is completed, transported, submitted, processed, secured, or stored. *See, e.g.*, Tex. Elec. Code § 86.011 (describing actions the voting clerk takes upon receipt of an absentee ballot).

After Governor Abbott issued his July 27 Order, State of Texas officials confirmed on several occasions that absentee ballots could be returned to any ballot return center in one's county. For example, on August 26, 2020, an attorney in the Elections Division of the Secretary of State's office stated that in-person delivery of an absentee ballot "may include satellite offices of the early voting clerk." (1-20-cv-1015, Email Dkt. 11-20, at 38). On September 30, 2020, Texas Attorney General Ken Paxton ("Attorney General Paxton") and Kyle Hawkins, the Solicitor General of Texas ("Solicitor General Hawkins") submitted that statement from the Elections Division attorney as an exhibit in support of their brief filed with the Supreme Court of Texas in another case involving the July 27 Order. (Resp. Mandamus Brief, Dkt. 11-21, at 38). In that brief, Attorney General Paxton and Solicitor General Hawkins explained to the Texas Supreme Court that nothing in the Election Code or the July 27 Order precluded county officials from having more than one ballot return center. (*Id.*) They also specifically confirmed that "the Secretary of State has advised local officials that the [Texas] Legislature has permitted ballots to be returned to any early-voting clerk office." (*Id.*).

In response to Governor Abbott's July 27 Order and with assurances from Secretary Hughs, Attorney General Abbott, and Solicitor General Hawkins, counties designed, publicized, and began operating ballot return centers to ensure the safety of absentee voters who are "older, sick, or have disabilities that prevent them from voting in person, and are thus at particularly high risk of COVID-19." (Am Compl., Dkt. 16, at 10). Several counties decided to offer multiple ballot return centers because "the size of some counties would make it difficult, if not impossible, for some voters to return their ballots to election administration headquarters in each county." (1-20-cv-1015, Compl., Dkt. 1, at 13). For example, on August 14, 2020, the Harris County Clerk announced his intention to open eleven ballot return centers to accept absentee ballots during early voting. (Mot.

TRO, Dkt. 15, at 2). On October 1, 2020, the Fort Bend County Clerk announced his plan to accept absentee ballots at five locations. (1-20-cv-1015, Houston Chron., Dkt. 11-24, at 4).

C. The October 1, 2020 Proclamation

On October 1, 2020, after voting had already begun, Governor Abbott changed the rules and—in contradiction to his July 27 Order and the assurances by other state officials including Secretary Hughs, Attorney General Paxton, and Solicitor General Hawkins—ordered county election officials to offer their absentee voters no more than one ballot return center per county. (Am. Compl., Dkt. 16, at 1; 1-20-cv-1015, Mot. TRO, Dkt. 15, at 3; Oct. Proc. Dkt. 11-23).⁸

Governor Abbott cited a need to “add ballot security protocols for when a voter returns a marked mail ballot to the early voting clerk’s office” as his reasoning for issuing the October 1 Order. (Mot. TRO, Dkt. 15, at 3; 1-20-cv-1015, Compl., Dkt. 1, at 13).

The October 1 Order only impacts absentee voters who, as defined by Texas law, either (1) will be away from their county on Election Day and during early voting; (2) are sick or have a disability; (3) are 65 years of age or older on Election Day; or (4) are confined in jail, but eligible to vote. Tex. Elec. Code §§ 82.001, 82.002, 82.003, 82.004. Texas is expected to witness an “unprecedented surge in mail voting” in the November election. (1-20-cv-1015, Mot. TRO, Dkt. 10-1, at 3).

Governor Abbott gave county officials less than 24 hours to close their ballot return centers. (Am. Compl., Dkt. 16, at 11; Mot. TRO, Dkt. 15, at 3). Because voting had already begun when Governor Abbott issued his October 1 Order, he had to specify that absentee ballots cast at previously available ballot return centers would remain valid and be counted. (Mot. TRO, Dkt. 15, at 3). As will be discussed more fully below, Governor Abbott’s about-face not only impacted the

⁸ Proclamation by the Governor of the State of Texas, Oct. 1, 2020, *available at* https://gov.texas.gov/uploads/files/press/PROC_COVID-19_Nov_3_general_election_IMAGE_10-01-2020.pdf.

County Clerks and their offices but also disrupted the plans of absentee voters who had begun making their voting plans in response to the July 27 Order that had been in effect for months. (*Id.* at 13; *see e.g.*, Mason Decl., Dkt. 15-11, at 2; 1-20-cv-1015, Rosas Decl., Dkt. 11-8 at 3). Many of these absentee voters planned to cast their ballots at a ballot return center to avoid unnecessary exposure to Covid-19 by voting in person, avoid driving long distances to return their ballots, and avoid the delays involved with mailing their ballots through the U.S. Postal Service (“USPS”).

D. The Covid-19 Pandemic

On March 13, 2020, President Trump declared a national state of emergency in the face of the outbreak of Covid-19 in the United States. (Am. Compl., Dkt. 16, at 8). That same day, Governor Abbott declared a state of disaster in Texas. (*Id.*). In April 2020, Governor Abbott issued a stay-at-home order and postponed local elections scheduled for May until November to avoid further spread of the disease. (1-20-cv-1015, Compl., Dkt. 1, at 2). As of October 2020, Texas has also recorded over 750,000 Covid-19 cases and almost 16,000 deaths due to the virus. (Am Compl., Dkt. 16, at 8). Texas’s infection rate tripled during the summer months and is expected to resurge this fall and winter. (*Id.* at 9).

Covid-19 has had disproportionate effects on certain communities. Texans over the age of 65, who are allowed by statute to vote absentee, are particularly vulnerable to the virus. (*Id.*). Texans over the age of 65 represent approximately 70% of coronavirus deaths, or 10,800 of the 16,000 total deaths in Texas, despite making up only 13% of the total Texas population. (*Id.*; 1-20-cv-1015, Compl., Dkt. 1, at 2). The Latino population in Texas also has suffered a disproportionate share of Covid-19 fatalities. While the Latino community constitutes 39.7% of the Texas population, they represent 56% of Covid-19 deaths. (Am Compl., Dkt. 16, at 8).

Because voting in person risks exposing voters to Covid-19, many more voters who qualify to vote absentee have chosen, or will choose, to cast an absentee ballot in the November election.

(1-20-cv-1015, Mot. TRO, Dkt. 10-1, at 3). However, widespread delays in the USPS have left voters “increasingly concerned” that their mailed ballots will not reach election officials in time to be counted. (1-20-cv-1015, Compl., Dkt. 1, at 11-12).

E. USPS Delays

The spread of coronavirus among USPS workers and an ongoing budgetary crisis has led to “substantial and high-profile delays” for mail delivered through USPS in Texas and around the country in recent months. (Am. Compl., Dkt. 16, at 15; 1-20-cv-1015, Compl., Dkt. 1, at 11). As of mid-August, 10% of all postal workers had tested positive for Covid-19, significantly reducing USPS staff. (1-20-cv-1015, Compl., Dkt. 1, at 11). In addition, operational changes have limited overtime hours available to employees who are able to work and decommissioned mail processing equipment. (*Id.* at 11). These problems have led to a “sharp decrease” in the USPS’s delivery performance. (1-20-cv-1015, Mot. TRO, Dkt. 10-1, at 4). Because large numbers of Americans have chosen to vote by mail to reduce their exposure to Covid-19, the USPS will be handling a much higher volume of mail than usual in the run-up to the November election. (1-20-cv-1015, Compl., Dkt. 1, at 11.). Data collected by Harris County indicates that delivery of absentee ballots by mail will take “more than [a] few days and often more than a week.” (Hollins Supp. Decl., Dkt. 51-1, at 2).

Specifically, the USPS has publicly warned state officials that election mail will be delayed in Texas. (1-20-cv-1015, Compl., Dkt. 1, at 2; USPS Letter, Dkt. 15-9, at 2). The USPS recommends voters to submit their request for an absentee ballot at least fifteen days before Election Day “and preferably long before that time” to ensure timely delivery of ballots. (USPS Letter, Dkt. 15-9, at 2). Under Texas law, however, voters can request absentee ballots up to eleven days before Election Day. (1-20-cv-1015, Compl., Dkt. 1, at 11; USPS Letter, Dkt. 15-9, at 3). Election officials will count all ballots received by Election Day, or those postmarked by 7:00 p.m. on Election Day that are delivered the next day. (1-20-cv-1015, Compl., Dkt. 1, at 10). On July 20, 2020, Thomas Marshall,

the General Counsel and Executive Vice President of USPS, notified Secretary Hughs that Texas's absentee ballot deadlines "are incongruous with the Postal Service's delivery standards," and "certain state-law requirements and deadlines appear to be incompatible with [USPS's] delivery standards and the recommended [15-day] timeframe noted above." (USPS Letter, Dkt. 15-9, at 3).

USPS also warned that "there is a significant risk that . . . a completed ballot postmarked on or near Election Day will not be delivered in time to meet the state's receipt deadline of November 4." (*Id.*). USPS requested that "election officials keep [USPS's] delivery standards and recommendations in mind when making decisions as to the appropriate means used to send a piece of Election Mail to voters, and when informing voters how to successfully participate in an election where they choose to use the mail." (*Id.*).

F. Impact of the October 1 Order

The Court finds that the October 1 Order has already impacted voters or will impact voters by (1) creating voter confusion; (2) causing absentee voters to travel further distances, (3) causing absentee voters to wait in longer lines, (4) causing absentee voters to risk exposure to the coronavirus when they hand deliver their absentee ballots on Election Day, and (5) causing absentee voters, if they choose not to return their ballots in person to avoid exposure to Covid-19, to face the risk that their ballots will not be counted if the USPS is unable to timely deliver their ballot after its been requested or unable to timely return their completed ballot. These burdens fall disproportionately on voters who are elderly, disabled, or live in larger counties. (Mot. TRO, Dkt. 15, at 4–6; 1-20-cv-1015, Mot. TRO, Dkt. 10-1, at 9; Lincoln Amicus Brief, Dkt. 53, at 8; Disability Rights Amicus Brief, Dkt. 52, at 6–7).

Voters are now unsure if they can safely return their absentee ballots and have concerns that their ballots may not be counted. (Hollins Decl., Dkt. 8-1, at 7; Oldham Decl., Dkt. 21, at 5 ("[T]he last-minute change to election procedures is causing voter confusion."); Mason Decl., Dkt. 15-11, at

2; Golub Decl., Dkt. 15-12, at 2 (“[T]he uncertainty this last-minute change to the elections process presents puts my ability to have my vote counted into jeopardy.”). The publication of news reports alerting the public to the effects of the July 27 Order further set expectations among voters and caused them to rely on the July 27 Order in making their voting plan. (DeBeauvoir Decl., Dkt. 18, at 3–6). The State contends that the October 1 Order serves to “clarify[] any confusion caused by the July 27 order,” yet presents no evidence that anyone, let alone voters, were confused by the July 27 Order. (See Mot. Dismiss, Dkt. 31, at 3).

Because of the October 1 Order, voters who choose to return their absentee ballot in person are forced to consider “whether they need to risk their health and vote in person to ensure their vote is counted or find a way to hand deliver their ballot to one distant location.” (Hollins Supp. Decl., Dkt. 51-1, at 2). Voters who choose the latter option will have to travel significantly farther to return their ballots. (Golub Decl., Dkt. 15-12, at 2 (“[T]his restriction has unduly burdened me because of the increased distance I will now have to travel to submit my completed mail-in ballot in person.”)). This poses a greater challenge to those living in larger, more populous counties, such as Harris County, where the lone ballot return center “could be more than fifty miles away.” (Hollins Decl., Dkt. 8-1, at 7; Berg Decl., Dkt. 15-18, at 3 (“[I]t can take up to an hour roundtrip to get to the [Harris County early voting clerk’s office] and back from my home.”)).

An hour-long trip is particularly burdensome for older or disabled voters, who may not have access to transportation or be able to spend long periods of time traveling. (Chimene Decl., Dkt. 15-17, at 3 (“[D]ifficulties [to members attempting to access early voting clerk’s office] include accessing transportation and traveling long distances from their homes.”); Golub Decl., Dkt. 15-12, at 3 (“[I]t is very possible that the time and effort this process will take may exceed my limitation on stamina, and afterwards, I will be far too exhausted to drive home.”)).

Even if voters manage to make the longer trip to their county's lone ballot return center, they will likely face "massive lines to return ballots in person." (Hollins Decl., Dkt. 8-1, at 7; Oldham Decl., Dkt. 14, at 5 (anticipating "massive lines" as a result of the October 1 Order"); Chimene Decl., Dkt. 15-17, at 3 ("[L]imiting the number of drop-off locations to a single location in each county will result in crowding and long lines."); Mason Decl., Dkt. 15-11, at 2 (expressing concern about an "hours long effort to return my ballot in person"); Berg Decl., Dkt. 15-18, at 3 ("I am concerned that with only one drop-off location there will be crowding and congestion at the drop-off site.")). Disabled voters who choose to return their ballot to their single county location risk experiencing "significant fatigue and pain" due to travel distance and wait time. (Disability Rights Amicus Brief, Dkt. 36-1, at 5; 1-20-cv-1015; Straty Decl., Dkt. 11-6, at 1; Golub Decl., Dkt. 15-12, at 3).

Traveling longer distances and waiting in lines at the ballot return offices "may pose a unique challenge" to absentee voters who are elderly or disabled. (Chimene Decl., Dkt. 15-17, at 3). Because poll workers are exempt from the statewide mask mandate, the elderly or disabled face an increased risk of contracting Covid-19 if they are forced to return their ballots to a single, likely crowded ballot return center. (*Id.* ("Poll watchers [who are exempt from statewide requirements to wear masks] will create an addition risk of exposure for our elderly members and members with disabilities."); Mason Decl., Dkt. 15-11, at 2 (voting at the single county return ballot office may "increase my risk of exposure to COVID-19"))).

The Court finds that the October 1 Order also directly burdens election officials. County officials have allocated resources and selected ballot return centers in reliance on the July 27 Order. (Oldham Decl., Dkt. 21, at 4; Travis County Amicus Brief, Dkt. 44-1, at 6). For example, in Fort Bend County, which encompasses portions of the Houston suburbs and vast rural areas, John Oldham ("Oldham"), the Fort Bend County Elections Administrator, advised the Court about his

office’s “efforts to mitigate” the confusion and logistical complications created by the October 1 Order. (Oldham Advisory, Dkt. 46, at 3; Oldham Decl., Dkt. 21, at 6, at 7 (stating that election officials are administratively burdened by “having to change our voter education materials and our staff training”); Hollins Decl., Dkt. 8-1, at 8–9 (explaining that the October 1 Order “burdens the Clerk’s Office administratively and was [] extremely disruptive.”)). The October 1 Order also jeopardizes county efforts to accommodate disabled voters as required by the United States Department of Justice. (Hollins Supp. Decl., Dkt. 51-1, at 3 (stating that “last minute orders to change our management practices [make] it more difficult to comply with the DOJ settlement agreement” and adequately accommodate disabled voters)).

The October 1 Order also puts the health of election workers at risk, by increasing their likelihood of exposure to the coronavirus. (DeBeauvoir Decl., Dkt. 18, at 9 (expressing fear that October 1 Order “will make both election workers and voters less safe”); Oldham Advisory, Dkt. 1, at 3–4 (citing County Commissioner finding that multiple return ballot locations provide a “safe environment for all of our workers at the election polls”)).

G. The State’s Interests

The State argues that the October 1 Order, issued under Governor Abbott’s powers pursuant to the Texas Disaster Act, serves to prevent voter confusion and fraud, and promotes purported uniformity of election laws. The state alleges that, despite its clear pronouncements that counties could decide whether to open additional ballot return centers during the early voting period under the Election Code and, (Resp. Mandamus Brief, Dkt. 15-2, at 6, 38), the July 27 Order caused confusion among counties and a lack of uniformity among the application of the Election Code among counties. (Resp. TRO, Dkt. 43, at 28–29). As discussed above, the County Clerks did not have any discretion on how an absentee ballot is completed, transported, submitted, processed, secured, or stored. The State has presented no evidence of confusion over the July 27 Order, though

the record reflects substantial confusion has been caused by the October 1 Order. (Hollins Decl., Dkt. 8-1, at 7; Oldham Decl., Dkt. 21, at 5; DeBeauvoir Decl. 18, Dkt. 18, at 3–6; Mason Decl., Dkt. 15-11, at 2; Golub Decl., Dkt. 15-12, at 2).

The record also reflects that the implementation of ballot return centers was uniform across counties. (Hollins Decl., Dkt. 8-1, at 9–12; Oldham Decl., Dkt. 21, at 7–8; DeBeauvoir Decl., Dkt. 18, at 10). At the hearing on Plaintiffs’ preliminary injunction motions, counsel representing the County Clerks confirmed that all ballot return centers in their counties comply with all training and procedures required by state law to protect ballot integrity. (Hearing Trans., October 8, 2020, at 39:15–41:7). Rather, under the July 27 Order, the County Clerks exercised discretion only in deciding whether to have additional ballot return centers, which, as explained at the hearing, made sense given that one Texas county only has about 150 registered voters whereas Harris County has millions of registered voters making it difficult, if not impossible, for Harris County to safely collect absentee ballots from a single location during early voting. (Hearing Trans., October 8, 2020, at 82:23–83:6).

The State asserts, with no factual support, that limiting ballot return centers is necessary to “ensur[e] ballot security.” (Resp. TRO, Dkt. 43, at 4). At the hearing, counsel for the County Clerks confirmed that the security protocols at return ballot centers were no different than those at the central ballot return centers, except to the extent the central centers served additional purposes. (Hearing Trans., October 8, 2020, at 39:15–41:7). Not only are the security procedures consistent between satellite and central ballot return locations, they are consistent across counties who chose to utilize satellite ballot return centers. The State did not rebut the County Clerks’ evidence or attorney argument regarding their compliance with state-mandated election protocols that already ensure ballot integrity.

In fact, the State's proffered reason of ballot security is a pretext. On the one hand, the State argues that satellite ballot return centers cannot be used during the early voting period because of ballot security concerns. Yet, the State authorizes counties to use satellite ballot return centers on Election Day without regard to those ballot security concerns. It is perplexing to the Court that the State would simultaneously assert that satellite ballot return centers do not present a risk to election integrity on Election Day but somehow do present such a risk in the weeks leading up to November 3, 2020. The State's own approval of counties using satellite ballot return centers on Election Day belies their assertion that those same ballot return centers present ballot security concerns.

Moreover, the undisputed testimony from the County Clerks reflects that the existence of additional ballot return centers that are subject to existing, uniform protocols do not pose a threat to ballot security. (Oldham Decl., Dkt. 21, at 6 ("Reducing the drop-off locations from four to one will not enhance security of the ballots in any way"); Hollins Decl., Dkt. 8-1, at 8 (the October 1 Order "will not enhance voter security in any way.")). The procedures for ballots returned to a satellite ballot return center is as follows: (1) the voter signs a roster (just as they would when voting in-person), (2) the voter presents valid identification to comply with Section 63.0101 (just as they would when voting in-person), and (3) the voter signs the carrier envelope (just as they would when sending their ballot by mail). (Hollins Decl., Dkt. 8-1, at 6). As explained by Christopher Hollins, the Harris County Clerk: "Ballots are then placed in a 'mail ballot tub.' This is a locked ballot box designed by our long-time vote-by-mail director, which has a slit large enough for a ballot carrier envelope but small enough that fingers or tools cannot be forced inside the box to tamper with ballots. The box is sealed by tamper-proof seals. Working in pairs, staff delivers these sealed, tamper-proof boxes to the ballot return headquarters daily for processing. (*Id.*).

The County Clerks stated that "voters returning mail-in ballots in person is more secure than returning by mail" and "any concern about security of in-person drop-off of mail ballots is

unfounded.” (Oldham Decl., Dkt. 21, at 8; Hollins Decl., Dkt. 8-1, at 11). In fact, the County Clerks explained that returning ballots through satellite return ballots center is “more secure than returning by mail” because (1) there is no risk of tampering or loss in the mail and (2) voters are required to present identification when returning their ballot. (Hollins Supp. Decl., Dkt. 51-1, at 1; Oldham Decl., Dkt. 21, at 8; DeBeauvoir Decl., Dkt. 18, at 7). Accordingly, the Court finds that the October 1 Order does not promote ballot security.

H. The Parties

1. The LULAC Plaintiffs

Plaintiff League of United Latin American Citizens (“LULAC”) is a national membership organization dedicated to protecting the civil rights of Latinos, including voting rights. (Am Compl., Dkt. 16, at 3). Plaintiff Texas LULAC has over 20,000 members, including registered voters planning to vote absentee in the upcoming election. (*Id.*). Texas LULAC regularly engages in voter registration, voter education, and other endeavors aimed at increasing civic engagement amongst its members. (*Id.*). Texas LULAC asserts that the October 1 Order will force it to “divert resources away from its ongoing efforts to mobilize its members and their communities to vote and towards educating voters about the impact” of the October 1 Order. (*Id.* at 4).

Plaintiff League of Women Voters of Texas (“LWVTX”) is a non-profit membership organization dedicated to nonpartisan, grassroots civic engagement to “encourage its members and all Texans to be informed and active participants in government,” including by participating in elections. (*Id.*). LWVTX has approximately 3,000 members, many of whom plan to vote absentee and drop off their absentee ballot at a drop box. (*Id.*). Due to the Covid-19 pandemic and delays in mail delivery by the USPS, many LULAC, Texas LULAC, and LWVTX members plan to vote absentee and return their ballots to an in-person ballot return center to ensure that their votes are counted. (*Id.*).

Plaintiff Mexican American Legislative Caucus, Texas House of Representatives (“MALC”) is a non-profit and non-partisan organization serving members of the Texas House of Representatives and their staff on matters of interest to the Mexican-American community. (*Id.* at 5). Plaintiff Texas Legislative Black Caucus (“TLBC”) is a non-profit and non-partisan organization serving members of the Texas House of Representatives and their staff on matters of interest to the African-American community. (*Id.* at 5–6). MALC and TLBC each have at least one member who planned to return their absentee ballot to one of the satellite drop-off locations. (*Id.*) MALC and TLBC are in the process of devoting resources to voter education. (*Id.*)

Plaintiff Ralph Edelbach is an 82-year-old Texas voter who plans to vote by mail in the upcoming November election and had previously planned return his ballot to one of the eleven Harris County ballot return centers. (*Id.* at 6). As a result of the October 1 Order, Mr. Edelbach will have to travel to the lone ballot return location that is 36 miles from his home and 72 miles roundtrip. (*Id.*) Prior to the October 1 Order, the nearest ballot return center was less than half the distance—16 miles—from his home. (*Id.*)

Plaintiff Barbara Mason is a 71-year old Texas voter who planned to use one of Travis County’s four ballot return centers to submit her absentee ballot for the November 3, 2020 election. (*Id.*) As a result of the October 1 order, Ms. Mason will have to drive 30 minutes each way to the nearest ballot return center. (*Id.* at 7). Ms. Mason is also concerned that she “may be forced to unnecessarily expose herself to COVID-19” to return her ballot to the lone ballot return location. (*Id.*) Other voters in similar circumstances have already returned their ballots at the previously authorized ballot return centers. (*Id.*)

2. The Straty Plaintiffs (1-20-cv-1015)

Laurie-Jo Straty is a 65-year-old resident of Dallas County. (1-20-cv-1015, Compl., Dkt. 1, at 6). Ms. Straty’s multiple sclerosis, which renders her immunocompromised and thus at higher risk of

contracting the coronavirus, prevents her from voting in person. (*Id.*) As a caretaker for her 90-year-old parents, Ms. Straty fears that voting in person might risk exposing her parents and others at their assisted living center to the coronavirus. (*Id.*) Ms. Straty is also unable to stand in line because of an inflamed Achilles tendon that would cause her significant pain. (*Id.*) Prior to the October 1 Order, Ms. Straty planned to cast her ballot at a ballot return center 5 minutes from her home. (*Id.*)

Because of the October 1 Order, Ms. Straty will now have to travel 20 minutes and risk having to stand in line due to “congestion at the single drop off location in the county.” (*Id.*) Ms. Straty does not want to vote by mail given the widespread delays facing the USPS. (*Id.*)

Texas Alliance for Retired Americans (“TARA”) is a non-profit organization with over 145,000 members, who are retirees from the public sector, private sector unions, community organizations, and individual activists. (*Id.* at 6–7). TARA’s mission is to “ensure social and economic justice and the full civil rights that retirees have earned after a lifetime of work.” (*Id.*) TARA asserts that the October 1 Order frustrates its mission because it “deprives individual members of the right to vote and have their votes counted.” (*Id.* at 7). In addition, TARA believes the October 1 Order further frustrates TARA’s mission because it will need to divert resources to “present voters with a feasible alternative to returning mail-in ballots” since there are no longer convenient locations for returning absentee ballots. (*Id.*)

BigTent Creative (“BigTent”) is a non-profit, non-partisan voting registration and get-out-the vote technology organization. BigTent’s efforts include registering new voters and publishing up-to-date information for voters whose primaries have been postponed, as happened in Texas in the spring. (*Id.*) Because of the October 1 Order, BigTent has had to divert resources away from its routine activities to “educating its employees and influencers, updating the Texas-specific pages on its website to account for the [October 1 Order], and funding influencer social media posts to inform Texas voters” about the impacts of the October 1 Order. (*Id.*) BigTent states that any

resources spent educating voters on how to comply with the October 1 Order “necessarily” takes away from its “get-out-the-vote efforts.” (*Id.*).

II. LEGAL STANDARD

A. Rule 12(b)(1)

Federal Rule of Civil Procedure 12(b)(1) allows a party to assert lack of subject matter jurisdiction as a defense to suit. Fed. R. Civ. P. 12(b)(1). Federal district courts are courts of limited jurisdiction and may only exercise such jurisdiction as is expressly conferred by the Constitution and federal statutes. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A federal court properly dismisses a case for lack of subject matter jurisdiction when it lacks the statutory or constitutional power to adjudicate the case. *Home Builders Ass’n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). “The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction.” *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). “Accordingly, the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist.” *Id.* In ruling on a Rule 12(b)(1) motion, the court may consider any one of the following: (1) the complaint alone; (2) the complaint plus undisputed facts evidenced in the record; or (3) the complaint, undisputed facts, and the court’s resolution of disputed facts. *Lane v. Halliburton*, 529 F.3d 548, 557 (5th Cir. 2008).

B. Motion for Preliminary Injunction

A preliminary injunction is an extraordinary remedy, and the decision to grant such relief is to be treated as the exception rather than the rule. *Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1050 (5th Cir. 1997). This remedy is granted only if a plaintiff demonstrates (1) likelihood of success on the merits; (2) irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the plaintiff’s favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The party seeking injunctive relief carries the burden of

persuasion on all four requirements. *PCI Transp. Inc. v. W. R.R. Co.*, 418 F.3d 535, 545 (5th Cir. 2005). However, even when a movant establishes each of the four requirements, “the decision whether to grant or deny a preliminary injunction remains within the Court’s discretion[.]” *Sirius Comput. Sols. v. Sparks*, 138 F. Supp. 3d 821, 836 (W.D. Tex. 2015).

III. DISCUSSION

A. Plaintiffs’ Standing

The State argues that Texas LULAC, LULAC, LWVTX, MALC, TLBC, TARA, and BigTent (“organizational Plaintiffs”)⁹ The State argues that the organizational Plaintiffs do not have standing to challenge the October 1 Order because they have failed to show an injury-in-fact and their purported injuries are speculative. (Resp. TRO, Dkt. 43, at 11–21). Under Article III of the Constitution, federal court jurisdiction is limited to cases and controversies. U.S. Const. art. III, 2, cl. 1; *Raines v. Byrd*, 521 U.S. 811, 818 (1997). A key element of the case-or-controversy requirement is that a plaintiff must establish standing to sue. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

To establish Article III standing, a plaintiff must demonstrate that she has “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Id.* at 560–61. “For a threatened future injury to satisfy the imminence requirement, there must be at least a ‘substantial risk’ that the injury will occur.” *Stringer v. Whitley*, 942 F.3d 715, 721 (5th Cir. 2019) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)).

⁹ Recognizing that the reader may not recall the full names of these organizations, the Court restates them here: Texas League of United Latin American Citizens (“Texas LULAC”), National League of United Latin American Citizens (“LULAC”), League of Women Voters of Texas (“LWVTX”), Mexican American Legislative Caucus, Texas House of Representatives (“MALC”), Texas Legislative Black Caucus (“TLBC”), Texas Alliance for Retired Americans (“TARA”), and BigTent Creative (“BigTent”).

The purpose of these requirements is to ensure that plaintiffs have “such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination.” *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007) (quoting *Baker v. Carr*, 369 U.S. 186 (1962) (internal quotation marks removed)). The standing requirements are heightened somewhat in the context of a motion for a preliminary injunction, in which case a plaintiff must make a “clear showing” that she has standing to maintain the preliminary injunction. *Barber v. Bryant*, 860 F.3d 345, 352 (5th Cir. 2017) (citing *Winter*, 555 U.S. at 22). However, “in the context of injunctive relief, one plaintiff’s successful demonstration of standing ‘is sufficient to satisfy Article III’s case-or-controversy requirement.’” *Tex. Democratic Party v. Abbott*, No. 20-50407, 2020 WL 5422917, at *4 (5th Cir. Sept. 10, 2020) (quoting *Texas v. United States*, 945 F.3d 355, 377–78 (5th Cir. 2019). Further, “[t]he injury alleged as an Article III injury-in-fact need not be substantial; it need not measure more than an identifiable trifle. This is because the injury in fact requirement under Article III is qualitative, not quantitative, in nature.” *OCA-Greater Hous. v. Texas*, 867 F.3d 604, 612 (5th Cir. 2017) (quotations omitted).

Organizations can establish the first standing element, injury-in-fact, under two theories: “associational standing” or “organizational standing.” *Id.* at 610; *Tenth St. Residential Ass’n v. City of Dallas, Texas*, 968 F.3d 492, 500 (5th Cir. 2020). Associational standing requires that the individual members of the group each have standing and that “the interest the association seeks to protect be germane to its purpose.” *Tenth St. Residential Ass’n v. City of Dallas, Tex.*, 968 F.3d 492, 500 (5th Cir. 2020).

By contrast, “organizational standing” does not depend on the standing of the organization’s members. The organization can establish standing in its own name if it “meets the same standing test that applies to individuals.” *OCA-Greater Houston*, 867 F.3d at 610. The Supreme Court has recognized that when an organization’s ability to pursue its mission is “perceptibly impaired”

because it has “diverted significant resources to counteract the defendant’s conduct,” it has suffered an injury under Article III. *N.A.A.C.P. v. City of Kyle, Tex.*, 626 F.3d 233, 238 (5th Cir. 2010) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982)). An organization can demonstrate injury “by [alleging] that it had diverted significant resources to counteract the defendant’s conduct; hence, the defendant’s conduct significantly and ‘perceptibly impaired’ the organization’s ability to provide its ‘activities—with the consequent drain on the organization’s resources.’” *Id.* “The fact that the added cost has not been estimated and may be slight does not affect standing, which requires only a minimal showing of injury.” *Cranford v. Marion Cty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), *aff’d*, 553 U.S. 181, 128 (2008).

The organizational Plaintiffs in this case have sufficiently demonstrated organizational standing. LULAC and Texas LULAC regularly engage in “voter registration, voter education, and other activities and programs designed to increase voter turnout among its members and their communities.” (Am. Compl., Dkt. 16, at 3). As a result of the October 1 Order, Texas LULAC asserts it will have to divert resources away from ongoing voting efforts to educating its members and the community about the changes resulting from the October 1 Order. (*Id.* at 4). Similarly, LWVTX asserts that will be required to “divert resources away from LWVTX’s existing get-out-the-vote efforts” as a result of educating its members and the public about the change. (Chimene Decl., Dkt. 15-7, at 6). The Mexican American Legislative Caucus, Texas House of Representatives (“MALC”) and Texas Legislative Black Caucus (“TLBC”) asserts that they, along with some of their members, were in the process of devoting resources to educate voters about mail-in voting, including drop off locations. (Am. Compl., Dkt. 16, at 5).

TARA and its individual members intend to engage in voter assistance and has been participating in “Dallas Votes, a coalition seeking, in part, to guarantee more drop-off locations.” (Case No. 1:20-cv-1015, Compl., Dkt. 1, at 6–7). BigTent Creative is a get-out-the-vote technology

organization whose mission is to use technology for political engagement and voter turnout. (*Id.*). BigTent alleges it will be required to divert time and resources to educating its employees and updating its materials and funding social media education campaigns. (*Id.* at 8). Each organization has demonstrated that the sudden change resulting from the October 1 Ordinance requires them to adjust their voter education efforts for their members and the public.

The State contends that “spending resources to teach third parties about the law, on its own, is not an injury in-fact.” (Resp. TRO, Dkt. 43, at 15 (citing *Nat’l Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1434 (D.C. Cir. 1995))). However, the Fifth Circuit has found organizational standing when an organization spends “additional time and effort [] explaining the Texas [voting] provisions at issue” because “addressing the challenged provisions frustrates and complicates its routine community outreach activities.” *OCA-Greater Houston*, 867 F.3d at 610 (finding organizational standing where the organization had “calibrated its outreach efforts to spend extra time and money educating its members about these Texas [voting] provisions” and the “Texas statutes at issue ‘perceptibly impaired’ [the organization’s] ability to ‘get out the vote’ among its members”).

Alternatively, Plaintiff organization have sufficiently demonstrated associational standing. LULAC and Texas LULAC allege that “many eligible Texas LULAC members intend to vote absentee” as a result of the Covid-19 pandemic and reported USPS delays. (Am. Compl., Dkt. 16, at 3–4). Similarly, the LWVTX asserts that many of its members plan to vote absentee, including by using a ballot return box. (*Id.*). Plaintiffs attest that many LULAC and LWVTX members who are eligible to vote absentee will be unable to do so at the central ballot return center, leaving them with only two options: to vote by mail with “well reported delays in mail” or “risk deadly exposure to COVID-19” by voting in person. (*Id.* at 4–5). Additionally, MALC and TLBC assert that at least one of their members intended to submit their ballot at a ballot return center. (*Id.*). Similarly, TARA attests that TARA’s mission is frustrated because the October 1 Order deprives its members of the

right to vote and makes it more difficult for them to effectively associate. (Case No. 1:20-cv-1015, Compl., Dkt. 1, at 6–7).

The State argues that for associational standing an organization must show its members “participate in and guide the organization’s efforts.” (Resp. TRO, Dkt. 43, at 15). However, this is not a requirement for traditional membership organizations. For instance, the State relies on *Ass’n for Retarded Citizens of Dallas v. Dallas Cty. Mental Health & Mental Retardation Ctr. Bd. of Trustees*, 19 F.3d 241 (5th Cir. 1994), which found that the plaintiff organization bore “no relationship to traditional membership groups because most its ‘clients’—handicapped and disabled people—are unable to participate in and guide the organization’s efforts.” *Id.* at 244. The State also cites *Tex. Indigenous Council v. Simpkins*, No. SA-11-CV-315-XR, 2014 WL 252024 (W.D. Tex. Jan. 22, 2014), where an organization that did “not have traditional members,” because the plaintiff “testified that he alone makes all membership decisions and keeps the membership roster in his own head,” there are heightened requirements for demonstrating membership. *Id.* at *3. In contrast, the organizational Plaintiffs in this case have testified that they have numerous participating members. (See e.g. Chimene Decl., Dkt. 15-17, 1-20-cv-1015, Bryant Decl., Dkt. 11-2).

Further, it is sufficient at this stage that the organizational Plaintiffs have alleged that some of their members have suffered an injury, even without naming specific members. See *Hancock Cnty. Bd. of Supervisors v. Rubr*, 487 F. App’x 189, 198 (5th Cir. 2012) (“We are aware of no precedent holding that an association must set forth the name of a particular member in its complaint in order to survive a Rule 12(b)(1) motion to dismiss based on lack of associational standing.”). Plaintiffs also need not assert that all of their members were injured, it is sufficient that some of them intended to vote using the ballot return boxes and were injured. See *Tex. All. for Retired Ams. v. Hughs*, No. 5:20-CV-128, 2020 WL 5747088, at *8 (S.D. Tex. Sept. 25, 2020) (finding standing where “TARA’s

membership is composed of 145,000 Texans, a portion of whom are too young to qualify to vote by mail”).

Here, however, each organization has alleged that some of its members have been injured by the October 1 Order. This injury is concrete because they have asserted that they intended to vote using a ballot return box which has since been removed. For instance, one 73-year-old LWVTX member who lives with multiple sclerosis explained that traveling to the only drop off location in Harris County will take as much as an hour each way, nearly double the distance it would have taken to access the ballot return box location she previously intended to use. (Golub Decl., Dkt. 15-12).

The State further argues that the organizational Plaintiffs lack standing to bring their suit under Section 1983 because they are enforcing the rights of third parties. (Resp. TRO, Dkt. 43, at 16–17). However, “[organizational] plaintiffs have standing to sue for voting rights violations using Section 1983 as a vehicle for *remedial*, not monetary, relief.” *Texas All. for Retired Americans*, 2020 WL 5747088, at *9 (citing *Ass’n of Am. Physicians & Surgeons, Inc. v. Texas Med. Bd.*, 627 F.3d 547, 551 (5th Cir. 2010) (association had standing to assert Section 1983 claims on behalf of members in seeking prospective declaratory and injunctive relief)). As the Court has found that the organizational Plaintiffs sufficiently demonstrate organizational and associational standing, standing on behalf of a third party is not an issue.

The individual Plaintiffs in these cases, Ralph Edelbach, Barbara Mason, and Laurie-Jo Straty, have also individually demonstrated standing. Each plaintiff contends that they suffered an injury-in-fact because they intended to vote using a ballot return center in their county, which has subsequently become more difficult since locations were reduced, requiring them to travel farther or risk USPS delays or risk their health by voting in person. (Mason Decl., Dkt. 15-11; Edelbach Decl., Dkt. 17; Case No. 1:20-cv-1015, Straty Decl., Dkt. 11-6). This is sufficient to demonstrate they have been injured and is more than an “identifiable trifle.” *OCA-Greater Hous.*, 867 F.3d at 612 (finding an

injury in fact where voter plaintiffs were “forced to vote in person and risk contracting or spreading COVID-19”). The individual Plaintiffs range from 65 to 82 years old, and each cites concerns about exposure to the coronavirus. (*See, e.g.*, Mason Decl., Dkt. 15-11 (“I don’t want to be outside of my house so long in order to deliver my ballot that I would need to use public restroom facilities, which I am not doing to protect myself from exposure to COVID-19.”)).

The State argues that this harm from USPS delays is merely speculative and based on a “subjective fear.” (Resp. TRO, Dkt. 43, at 21). Plaintiffs have provided sufficient evidence to legitimize their concerns about absentee ballots arriving too late to be counted. (*See* USPS Letter, Dkt. 15-9, at 2–3). The State asserts that 1.76% of mail-in ballots were rejected in Texas in 2018. (*Id.*). This rejection rate, not insignificant, may result in even more ballots being rejected in this election where substantially more voters are casting absentee ballots. (Hollins Decl., Dkt. 8-1, at 4–5 (explaining Harris County has received “more than 200,000 applications to vote by mail, more than double the total mail-in ballots received in prior elections”)). Additionally, there “is no requirement that a plaintiff demonstrate that he or she is certain to have her ballot rejected.” *Richardson v. Texas Sec’y of State*, No. SA-19-CV-00963-OLG, 2020 WL 5367216, at *8 (W.D. Tex. Sept. 8, 2020). Plaintiffs demonstrated harm by showing that they intended to vote using ballot centers that have since been removed, and this is further bolstered by their showing that alternative voting methods risk their ballot arriving late or exposure to the coronavirus.

Turning next to whether Plaintiffs’ harms are traceable and redressable, the State contests that Governor Abbott and Secretary Hugh’s actions did not cause Plaintiffs’ injuries and they cannot enforce the October 1 Order.¹⁰ (Resp. TRO, Dkt. 43, at 23). With regards to Governor Abbott, the Fifth Circuit has found that “[t]he power to promulgate law is not the power to enforce it.” *In Re*

¹⁰ The State does not contest that the alleged traceability and redressability requirements are met as to the County Clerks.

Abbott, 956 3d. 696, 709 (5th Cir. 2020). Following *Abbott*, as the Court is bound to do, the Court agrees that Plaintiffs' claims against Governor Abbott are barred because Plaintiffs cannot establish that Governor Abbott caused their enforcement-based injury or that enjoining certain activities by Abbott would redress their injury. Accordingly, Plaintiffs have not met their burden to establish Article III standing to litigate their claims against Abbott in federal court. However, the Court declines to extend *In Re Abbott* to Secretary Hughs, as discussed below with respect to the Eleventh Amendment. Because the Secretary of State is tasked with enforcing election laws in Texas, the traceability and redressability requirements for Article III standing are satisfied with respect to claims against Secretary Hughs. *OCA-Greater Houston v. Texas*, 867 F.3d 604, 613 (5th Cir. 2017) (“[A] challenge to Texas voting law is, without question, fairly traceable to and redressable by the State itself and its Secretary of State”).

Therefore, the Court finds that Plaintiffs have made a clear showing that *Lujan's* requirements for standing are met at this stage in the litigation. Plaintiffs have plausibly alleged an injury in fact (undue burden on member voters and diversion of resources), which is fairly traceable to the conduct of the Defendants, except for Governor Abbott(those responsible for issuing and implementing the October 1 Order), and a favorable order from this Court (enjoining the implementation of the October 1 Order) would redress Plaintiffs' injuries. Nothing more is required.

B. Eleventh Amendment

The State argues that Plaintiffs' claims against Governor Abbott and Secretary Hughs are barred by sovereign immunity under the Eleventh Amendment. (Mot. Dismiss, Dkt. 31, at 4). The Eleventh Amendment typically deprives federal courts of jurisdiction over “suits against a state, a state agency, or a state official in his official capacity unless that state has waived its sovereign immunity or Congress has clearly abrogated it.” *Moore v. La. Bd. of Elementary & Secondary Educ.*, 743 F.3d 959, 963 (5th Cir. 2014). However, under the *Ex parte Young* exception to sovereign immunity,

lawsuits may proceed in federal court when a plaintiff requests prospective relief against state officials in their official capacities for ongoing federal violations. 209 U.S. 123, 159–60 (1908). Thus, “[t]here are three basic elements of an *Ex parte Young* lawsuit. The suit must: (1) be brought against state officers who are acting in their official capacities; (2) seek prospective relief to redress ongoing conduct; and (3) allege a violation of federal, not state, law.” *Williams ex rel. J.E. v. Reeves*, 954 F.3d 729, 736 (5th Cir. 2020).

“For the [*Ex parte Young*] exception to apply, the state official, ‘by virtue of his office,’ must have ‘some connection with the enforcement of the [challenged] act, or else [the suit] is merely making him a party as a representative of the state, and thereby attempting to make the state a party.’” *City of Austin*, 943 F.3d at 997 (quoting *Young*, 209 U.S. at 157); *see also Abbott*, 956 F.3d at 708 (“*Ex parte Young* allows suits for injunctive or declaratory relief against state officials, provided they have sufficient ‘connection’ to enforcing an allegedly unconstitutional law.”). Absent such a connection, “the suit is effectively against the state itself and thus barred by the Eleventh Amendment and sovereign immunity.” *Abbott*, 956 F.3d at 709.

While “[t]he precise scope of the ‘some connection’ requirement is still unsettled,” the Fifth Circuit has stated that “it is not enough that the official have a ‘*general*’ duty to see that the laws of the state are implemented.” *Texas Democratic Party*, 961 F.3d at 400–01 (quoting *Morris v. Livingston*, 739 F.3d 740, 746 (5th Cir. 2014)). And “[i]f the official sued is not ‘statutorily tasked with enforcing the challenged law,’ then the requisite connection is absent and ‘[the] *Young* analysis ends.’” *Abbott*, 956 F.3d at 709 (quoting *City of Austin*, 943 F.3d at 998). Where, as here, “no state official or agency is named in the statute in question, [the court] consider[s] whether the state official actually has the authority to enforce the challenged law.” *City of Austin*, 943 F.3d at 998.

The State argues that the *Ex parte Young* exception does not apply to Governor Abbott and Secretary Hughs because they do not have the power to enforce the October 1 Order, and thus lack

a sufficient “connection” to the order. (Mot. Dismiss, Dkt. 31, at 5). In *In Re Abbott*, the Fifth Circuit found that the *Ex Parte Young* exemption did not apply to a challenge to a pandemic-related executive order because “[t]he power to promulgate law is not the power to enforce it.” Under current Fifth Circuit law, the Court agrees that Abbott cannot be sued in this case for injunctive relief under the *Ex parte Young* exception.

As previously noted, the Fifth Circuit reached this very issue in *Abbott* on a petition for a writ of mandamus directed to this very Court. After the District Court entered a second TRO against Abbott, exempting various categories of abortion from GA-09, Abbott filed a petition for a writ of mandamus, contending, among other things, that “the district court violated the Eleventh Amendment by purporting to enjoin [Abbott].” *Abbott*, 956 F.3d at 708. The Fifth Circuit agreed that the Eleventh Amendment required Abbott’s dismissal and admonished the District Court for failing “to consider whether the Eleventh Amendment requires dismissal of the Governor or Attorney General because they lack any ‘connection’ to enforcing GA-09 under *Ex parte Young*.” *Id.* at 709.

While the District Court concluded that Abbott had “some connection to GA-09 because of his statutory authority [under] Texas Government Code § 418.012,” the Fifth Circuit read this provision narrowly, concluding that while § 418.012 empowers the Governor to “issue,” “amend,” or “rescind” executive orders, it does not empower him to “enforce” them. *Id.*; see also Tex. Gov’t Code § 418.012. Because “[t]he power to promulgate law is not the power to enforce it,” the Fifth Circuit held that Abbott “lack[ed] the required enforcement connection to GA-09” and thus could not be enjoined under the *Ex parte Young* exception to sovereign immunity. *Abbott*, 956 F.3d at 709. By this reasoning, Plaintiffs may not rely on the *Ex parte Young* exception to obtain injunctive relief against Abbott in this case either.

The Court reaches a different conclusion with respect to Secretary Hughs. The Court is unwilling to extend *In Re Abbott* to Secretary Hughs in the absence of such direction from the Fifth Circuit. Secretary Hughs serves as the Chief Election Office for Texas and is tasked with “ensuring the uniform application and interpretation of election laws throughout Texas.” Tex. Elec. Code § 31.001(a); *OCA-Greater Houston*, 867 F.3d at 613 (Texas Secretary of State serves as the ‘chief election officer of the state.’”). The State argues that Secretary Hughs lacks enforcement authority because she does not specifically implement the Election Code provision at issue and is “unlikely to make [] an effort” to enforce the October 1 Order. (Mot. Dismiss, Dkt. 31, at 6).

However, the Texas Election Code clearly tasks the Secretary with enforcing election laws in Texas by preparing directives for local and state authorities, and empowers her to order those who impede on voting rights to “correct the offending conduct” and “seek enforcement of [that] order” through the attorney general. Tex. Elec. Code §§ 31.003, 31,005. In addition, the Fifth Circuit has held that suits challenging Texas voting laws are properly brought against the Secretary of State. *OCA-Greater Houston v. Texas*, 867 F.3d at 613 (“[A] challenge to Texas voting law is, without question, fairly traceable to and redressable by the State itself and its Secretary of State”); *Lewis v. Hughs*, No. 5:20-CV-00577-OLG, 2020 WL 4344432, at *8 (W.D. Tex. July 28, 2020), *aff’d and remanded*, No. 20-50654, 2020 WL 5511881 (5th Cir. Sept. 4, 2020) (stating that the Secretary had “the requisite connection to the challenged [voting] restrictions for *Ex parte Young* to apply.”).

The State also contends that enforcement of the October 1 Order stems from Governor Abbott’s emergency powers under the Texas Disaster Act of 1975, and as such, enforcement “constitutes a criminal offense” that can only be enforced by local prosecutors. (Mot. Dismiss, Dkt. 31, at 6). Even if the Court accepts this assertion, Governor Abbott’s September 17, 2020 Executive Order explicitly states that “failure to comply with any executive order issue during the COVID-19 disaster”...“may be subject to regulatory enforcement.” Executive Order No. GA-30, Sept. 17,

2020; Tex. Elec. Code § 418.016. Given the regulatory powers entrusted to the Secretary of State under the Texas Election Code, the Court finds that Secretary Hughs bears a sufficient enforcement connection to the October 1 Order under either the Election Code or the Texas Disaster Act, or a combination of the two.

Secretary Hughs also has demonstrated her willingness to enforce Governor Abbott's recent executive orders. The State admits that Secretary Hughs recently advised county officials on how to comply with the July 27 Order, evincing her willingness to "make an effort" to ensure local election officials comply with the Governor Abbott's proclamations. (Mot. Dismiss, Dkt. 31, at 6; 1-20-cv-1015, Email, Dkt. 11-20, at 2). For all these reasons, the Court rejects the State's argument that *Ex parte Young* does not apply to Secretary Hughs.

C. Pullman Abstention

The State contends that the Court should exercise its discretion to abstain from ruling on the merits of Plaintiffs' claims until resolution of the pending state court case challenging Governor Abbott's authority to suspend the Texas Election Code. (Mot. Dismiss, Dkt. 43, at 32). The Supreme Court's landmark Pullman decision established that "a federal court may, and ordinarily should, refrain from deciding a case in which state action is challenged in federal court as contrary to the federal constitution if there are unsettled questions of state law that may be dispositive of the case and avoid the need for deciding the constitutional question." *United Home Rentals, Inc. v. Tex. Real Estate Com.*, 716 F.2d 324, 331 (5th Cir. 1983) (citation omitted).

Two elements must be met for *Pullman* abstention to apply: (1) the case must present an unsettled question of state law, and (2) the question of state law must be dispositive of the case or would materially alter the constitutional question presented. *Harman v. Forsenius*, 380 U.S. 528, 534 (1965). The purpose of *Pullman* abstention is to "avoid unnecessary friction in federal-state functions, interference with important state functions, tentative decisions on questions of state law,

and premature constitutional adjudication.” *Id.* However, *Pullman* abstention is not “an automatic rule applied whenever a federal court is faced with a doubtful issue of state law” but rather considered on “a case-by-case basis.” *Baggett v. Bullitt*, 1964, 377 U.S. 360, at 376 (1964).

In assessing whether to exercise its discretion, the Court must “take into consideration the nature of the controversy and the particular right sought to be enforced.” *Edwards v. Sammons*, 437 F.2d 1240, 1243 (5th Cir. 1971). In *Harman*, the Supreme Court upheld the district court’s decision not to abstain from ruling on the constitutionality of a voting law pending decision of state law questions in the state courts given “the nature of the constitutional deprivation alleged and the probable consequences of abstaining.” 380 U.S. at 537. The Supreme Court similarly declined to exercise its discretion to abstain in *Baggett* where abstention would “delay[] ultimate adjudication on the merits” in such a way as to “inhibit the exercise of First Amendment freedoms.” 377 U.S. at 379–380.

Here, the Court is similarly concerned that given the alleged violations and irreparable harm that may result from a delay in resolution militates against exercising its discretion under the *Pullman* doctrine. Because there is “[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live” the Court finds that the alleged violation of Plaintiffs’ right to vote is of sufficient importance for the Court to issue its ruling. *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964)).

In addition, the parties in this case represented to the Court that the pending state court temporary restraining order will be heard next week. This Court cannot predict whether the state court will rule immediately or take days or weeks. The need for adjudication of Plaintiffs’ claims is immediate; any delay risks irreparable violation of the a right that the Supreme Court has called “the essence of a democratic society.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). The Court concludes that abstention under this doctrine would not be appropriate here.

D. Motion for Preliminary Injunction

As a general matter, the Court is cognizant that under *Purcell v. Gonzalez*, 549 U.S. 1, 6 (2006), district courts should not ordinarily alter election rules on the eve of an election. *See also Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207, 206 L. Ed. 2d 452 (2020). In *Purcell*, the Supreme Court reversed a lower court's order enjoining the implementation of a proposition, passed by ballot initiative two years earlier, that required voters to present identification when they voted on election day. In reversing the lower court, the Court emphasized that the injunction was likely to cause judicially-created voter confusion in the face of an imminent election. *Purcell*, 549 U.S. at 2, 6. Relying in part on *Purcell*, in *Republican National Committee*, the Court similarly stayed a lower court's injunction that extended "the date by which ballots may be cast by voters." 140 S. Ct. 1205, 1207 (2020). Here, however, the concern that troubled the Supreme Court in *Purcell* and *Republican National Committee*—judicially-created confusion—is not present. *See Self Advocacy Sols. N.D. v. Jaeger*, No. 3:20-CV-00071, 2020 WL 2951012, at *11 (D.N.D. June 3, 2020) (finding the same).

Plaintiffs' requested injunction does not require the Court to overturn a voter-approved ballot initiative or change election deadlines. Nor does the Court's injunction lead to the problems identified by other courts that ruled on voting procedures shortly before an election. *See, e.g., Veasey v. Perry*, 769 F.3d 890, 893–95 (5th Cir. 2014) (staying trial court's decision to grant injunction enjoining implementation of existing voter identification requirement when state introduced evidence that adopting new procedure nine days before voting begins would require it to "train 25,000 polling officials at 8,000 polling stations about the new requirements" imposed by the trial court); *Democratic Nat'l Comm. v. Bostelmann*, 451 F. Supp. 3d 952, 974 (W.D. Wis. 2020) (invoking *Purcell* in deciding not to "delay the date of an impending, state-wide election"); *Fair Maps Nevada v. Ceganske*, No. 320CV00271MMDWGC, 2020 WL 2798018, at *16 (D. Nev. May 29, 2020) ("[The

Purcell] principle is particularly pertinent where plaintiffs ask courts to ‘impose large-scale changes to the election process.’”).

Here, the Court has been asked, by Plaintiffs and Defendant County Clerks, to reduce or eliminate what would amount to *executive*-caused voter confusion on the eve of an election. Governor Abbott’s unilateral decision to reverse his July 27 Order after officials already began sending out absentee ballots and just days before the start of early voting in Texas has caused voter confusion. (*See e.g.* Hollins Decl., Dkt. 8-1, at 7). Even without declaratory evidence, it is apparent that closing ballot return centers at the last minute would cause confusion, especially when those centers were deemed safe, authorized, and, in fact, advertised as a convenient option just months ago. As such, the Court’s injunction supports the *Purcell* principle that courts should avoid issuing orders that cause voters to become confused and stay away from the polls. 549 U.S. 1, 4–5.

To the extent that this Court’s injunction to reinstate the ballot return centers does potentially cause confusion, the Court is satisfied that it would be minimal and outweighed by the increase in voting access. Since Governor Abbott closed previously-sanctioned centers, there is confusion: (1) confusion resulting from a voter trying to cast a ballot at a center she thought was open—because it used to be—but which is now closed or (2) confusion resulting from a voter trying to cast a ballot at a center that she thought was recently closed but is now open again.¹¹ Between these two choices, the Court is of the opinion that the second scenario is the more favorable and just choice: it is the only choice that restores the status quo and likely reduces confusion on the eve of an election, and it results in a greater chance that a ballot can be cast at a ballot return center that was previously available to voters—after being vetted as safe and secure and publicly touted as a

¹¹ Because ballot return centers were ordered closed just one week ago, it is more likely that people would face scenario (1) since voters are less likely to have heard about such a recent change.

viable option to exercise voting rights. *See Ely v. Klabr*, 403 U.S. 108, 113 (1971) (affirming district court decision where “the court chose what it considered the lesser of two evils”).

1. Likelihood of Success on Merits

Plaintiffs seek a preliminary injunction on their claims that the October 1 Order infringes on Plaintiffs’ fundamental right to vote and their right to equal protection. To show a substantial likelihood of success on the merits of their claims, Plaintiffs must present a prima facie case that the burden imposed by the October 1 Order violates Plaintiffs’ constitutional rights under the First and Fourteenth Amendments. *See Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 582 (5th Cir. 2013) (“To show a likelihood of success, the plaintiff must present a prima facie case, but need not prove that he is entitled to summary judgment.”). Here, Plaintiffs have established a substantial likelihood of success on their claims under the First and Fourteenth Amendments.

a. Plaintiffs’ Undue Burden Claims

Plaintiffs contend that the October 1 Order places an undue burden on their right to vote under the First and Fourteenth Amendments. The Court applies the *Anderson–Burdick* standard to Plaintiffs’ claims, weighing ‘the character and magnitude of the asserted injury’ . . . against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule.’” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788-89 (1983)). Under this standard, the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. *Id.* at 434.

Regulations imposing severe burdens on plaintiffs’ rights are subject to strict scrutiny and must be narrowly tailored and advance a compelling state interest. *Burdick*, 504 U.S. at 434. When a state law imposes a “slight” burden on the right to vote, relevant and legitimate interests of sufficient weight may justify that burden. *Burdick*, 504 U.S. at 434; *Norman v. Reed*, 502 U.S. 279, 288–289

(1992) (requiring “corresponding interest sufficiently weighty to justify the limitation”). In challenges that fall between either end of these extremes, the Court applies the *Anderson-Burdick* standard. *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 788-89). There is no “litmus test” to separate valid from invalid voting regulations; courts must weigh the burden on voters against the state’s asserted justifications and “make the ‘hard judgment’ that our adversary system demands.” *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 190, (2008) (Stevens, J., announcing the judgment of the Court).

The Court first considers “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendment.” *Anderson*, 460 U.S. at 789. Here, while the burdens imposed on Plaintiffs’ right to vote are not severe, they are more than “slight.” Because of the October 1 Order, absentee voters must choose between risking exposure to coronavirus to deliver their ballots in-person or disenfranchisement if the USPS is unable to deliver their ballots on time—which USPS has publicly stated it cannot guarantee under Texas’s current vote-by-mail deadlines. (*See* USPS Letter, Dkt. 15-9).

Absentee voters in Texas are particularly vulnerable to the coronavirus because they are largely elderly or disabled, and thus face a greater risk of serious complications or death if they are exposed to the virus. (Am. Compl., Dkt. 16, at 8; 1-20-cv-1015, Compl., Dkt. 1, at 2). By limiting ballot return centers to one per county, older and disabled voters living in Texas’s largest and most populous counties must travel further distances to more crowded ballot return centers where they would be at an increased risk of being infected by the coronavirus in order to exercise their right to vote and have it counted. (Mot. TRO, Dkt, at 15–16). Indeed, Governor Abbott’s July 27 Order addressed those very concerns by allowing counties to accept absentee ballots delivered in person during the early voting period and on Election Day to multiple ballot return centers. (DeBeauvoir Decl., Dkt, 18, at 8 (the “multiple locations [authorized by the July 27 Order] ease the burden on

those most clearly entitled to and most likely to need this accommodation—the disabled and the elderly.”).

If absentee voters choose not to deliver their ballot in person to avoid the risk of contracting coronavirus and becoming ill from, or potentially dying from, Covid-19, they must then risk disenfranchisement if the USPS is unable to deliver their ballots in time. Since Texas state voting deadlines are currently “incongruous” with USPS guidelines on how much time is needed to timely deliver ballots, absentee voters who request mail-in ballots within the Texas timeframe cannot be assured that their votes will be counted. (*See* USPS Letter, Dkt. 15-9, at 2–3). By forcing absentee voters to risk infection with a deadly disease to return their ballots in person or disenfranchisement if the USPS is unable to deliver their ballots in time, the October 1 Order imposes a burden on an already vulnerable voting population that is somewhere between “slight” and “severe.”

As such, the Court must apply the *Anderson-Burdick* standard to weigh that burden against “the precise interests put forward by the State as justifications for the burden imposed by its rule,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Burdick*, 504 U.S. at 434, (quoting *Anderson*, 460 U.S. at 789). While the Court here has found the burden on Plaintiffs to be between severe and slight, it notes that irrespective of whether the burden is classified as “severe,” “moderate,” or even “slight,” the burdensome law “must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.” *Richardson v. Texas Sec’y of State*, No. SA-19-CV-00963-OLG, 2020 WL 5367216, at *35 (W.D. Tex. Sept. 8, 2020) (quoting *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1352 (11th Cir. 2009) (quoting *Crawford*, 553 U.S. at 191, 128).¹²

¹² The State cites to *McDonald v. Bd. of Election Comm’rs*, 394 U.S. 802, 89 (1969), for the proposition that rational basis is the appropriate standard when a state denies absentee ballots to some citizens and not others. (Resp. TRO, Dkt. 43, at 24). Plaintiffs contend *McDonald* is no longer good law. (Mot. TRO, Dkt. 15, at 10). The Court does not find *McDonald* instructive. There, incarcerated individuals challenged a state’s denial of the right to vote absentee, and the Court found no evidence on record of a violation to the “claimed right to

In conducting this analysis, the Court “cannot speculate about possible justifications” for the challenged statute, but instead “must identify and evaluate the precise interests put forward by the [State] as justifications for the burden imposed by its rule.” *Reform Party of Allegheny Cty. v. Allegheny Cty. Dep't of Elections*, 174 F.3d 305, 315 (3d Cir. 1999) (quoting *Anderson*, 460 U.S. at 789). In addition, the Fifth Circuit has recently noted the importance of preventing last-minute changes to the election rules on the “on the eve of an election,” or as here, during an election. See *Texas All. for Retired Americans*, 2020 WL 5816887, at *2; *Texas Democratic Party v. Abbott*, 961 F.3d 389, 412 (5th Cir. 2020).

The State advances only vague interests in promoting ballot security and uniformity, and alleviating voter confusion. (Resp. TRO, Dkt. 43, at 28–29). The state suggests that the October 1 Order serves to clarify the July 27 Order and promote uniformity because “not every county has interpreted Section 86.000(a-1) in the same way.” (Resp. TRO, Dkt. 43, at 28–29). While certain counties have chosen to implement the July 27 suspension of Section 86.000(a-1) differently, there is simply no credible evidence on the record of confusion among counties or voters as to the effect or proper implementation of the July 27 Order. As set out above, the State and counties interpreted the July 27 Order to mean that counties could accept absentee ballots during the early voting period at one or multiple ballot return centers.

To reiterate, on August 26, 2020, an attorney in the Elections Division of the Secretary of State’s office explicitly wrote that “[u]nder the Governor’s July 27, 2020 proclamation, for this November election, hand-delivery process is not limited to election day and may occur at any point after the voter receives and marks their ballot by mail. Because this hand-delivery process can occur

receive absentee ballots.” *McDonald*, 394 U.S. at 807. Plaintiffs here do not suggest that they have a right to an absentee ballot but rather that they have been inhibited from exercising rights already granted by the State, which the October 1 Order removes in such a way that burdens their ability to vote and ensure that vote is counted. See *Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964).

at the early voting clerk's office, *this may include satellite offices of the early voting clerk.*" (Brief, Dkt. 15-2, at 38, italics added). The State even submitted that statement from the Secretary of State's office as an exhibit to its brief to the Texas Supreme Court on September 30, 2020, (*id.* at 10), in support of its contention that "the Secretary of State has advised local officials that the Legislature has permitted ballots to be returned to any early-voting clerk office," (*id.* at 38). These statements belie any contention that there was confusion or lack of uniformity in the interpretation of Section 86.000(a-1). In fact, the October 1 Order is the true source of confusion and disparate treatment among voters.

Weighing the State's proffered ballot security concerns against the burdens imposed on absentee voters, the Court finds that Defendants have not presented any credible evidence that their interests outweigh these burdens. The State says the October 1 Order serves to "enhance voter security." (1-20-cv-1015, Oct. Proc., Dkt. 11-23, at 3). To be sure, "[t]here is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters While the most effective method of preventing election fraud may well be debatable, the propriety of doing so is perfectly clear." *Crawford*, 553 U.S. at 196. This does not mean, however, that the State can, by merely asserting an interest in promoting ballot security, establish that that interest outweighs a significant burden on voters.

At the hearing, the State did not provide any actual examples of voter fraud or refute Plaintiffs' recitation of the security measures implemented pursuant to law at ballot return centers. Rather, the State implied that its mere invocation of "ballot security" was sufficient to establish a "weighty state interest" in burdening its most vulnerable voters. As Plaintiffs point out, existing procedures already serve to prevent voter fraud, which the Court notes is uncommon in Texas in the context of hand-delivery of absentee ballots. (1-20-cv-1015, Compl., Dkt. 1, at 13; Hollins Decl., Dkt. 8-1, at 11; DeBeauvoir Decl., Dkt. 18, at 7; Lincoln Project Amici, Dkt. 34-1, at 10 (citing

Heritage Foundation Election Fraud Database demonstrating “how exceedingly infrequent fraudulent use of absentee ballot occurs” in Texas)).

In fact, Harris County used multiple ballot return centers for mail-in ballots in its July runoff election earlier this year, which resulted in “no security or other logistical issues.” (1-20-cv-1015, Hollins Decl., Dkt. 11-22, at 3-4). The State likewise does not allege that Harris County encountered security issues at its ballot return centers during the July election. In the face of testimony that ballot integrity procedures are uniform among ballot return centers within and across counties, the State also fails to explain why procedures at ballot return centers would be different or insufficient compared to those implemented at the one location mandated by the October 1 Order. At the hearing, the State argued that multiple ballot return offices were only authorized on Election Day but failed to explain how ballot security at the satellite ballot return centers would be any different, much less inferior, before Election Day versus on Election Day. Allowing the State to rely on the pretextual talisman of promoting ballot security in imposing burdensome restrictions on vulnerable voters would render enforcement of voting rights through the Courts illusory.

Lastly, the Court notes that the State admits that Governor Abbott’s authority to issue the July 27 Order and October 1 Order stems from his powers under the Texas Disaster Act, which grants the Governor the power to “suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.” Tex. Gov’t Code § 418.016. While the Texas Legislature has given the Governor “emergency powers to temporarily change the law to protect public health and safety” in the face of the Covid-19 pandemic, it “has most definitely not given the Governor authority to act in a legislative capacity to revise and modify the operation of state law—even disaster declaration-based state law—on grounds divorced from public safety and health issues.” (Travis Cty. Amicus Brief,

Dkt. 44-1, at 2–3). The State’s justifications for the October 1 Order’s limitation on ballot return centers bear no relationship to protecting public health and safety.

The State’s justifications for the October 1 Order do not present a sufficiently relevant and legitimate interest in light of the burden it imposes on Plaintiffs. Plaintiffs have thus met their burden in showing that the October 1 Order likely violates their fundamental right to vote under the First and Fourteenth Amendments.

b. Plaintiffs’ Equal Protection Claims

Plaintiffs argue that the October 1 Order violates the Equal Protection Clause of the Fourteenth Amendment because it imposes arbitrary and disparate burdens it places on voters based on where they live. While the State argued at the hearing that limiting ballot return centers to one per county, regardless of county size, serves uniformity, this ignores the disparate impact such a measure has upon voters. (Mot. TRO, Dkt. 15, at 24–25). The State mischaracterizes Plaintiffs’ claims as accusing the State of not going “far enough in removing incidental barriers to voting,” (Resp. TRO, Dkt. 31, at 29), to avoid the reality that because the State already granted absentee voters “the franchise” to vote at a satellite ballot return center, it may not now draw lines that “are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.” *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 665 (1966). Having considered the evidence presented by both parties, the Court finds that Plaintiffs have satisfied their burden in showing they are likely to succeed in their claim that the October 1 Order treats absentee voters disparately based on their county of residence without proper justification.

It is well-settled law that the disparate treatment of voters based on county of residence violates the Equal Protection Clause of the Fourteenth Amendment. *Moore v. Ogilvie*, 394 U.S. 814, 818–19, (1969) (striking down law that applied “rigid, arbitrary formula to sparsely settled counties and populous counties alike, contrary to the constitutional theme of equality among citizens in the

exercise of their political rights”); *Gray v. Sanders*, 372 U.S. 368, 379 (1963) (holding that voting system that weighted “the rural vote more heavily than the urban vote and weights some small rural counties heavier than other larger rural counties” violated Equal Protection Clause). Here, uncontested testimony from the organizational Plaintiffs and their members shows that absentee voters living in larger, more populous counties are necessarily treated differently than other similarly situated voters in smaller, less populated counties under the October 1 Order.

This disparate treatment is evident in the increased distance, increased wait time, and increased potential for exposure to the coronavirus experienced by absentee voters living in larger, more populous counties. (Mot. TRO, Dkt. 15, at 28; *see, e.g.*, 1-20-cv-1015, Bryant Decl., Dkt. 11-2, at 4 (“[D]istance to only designated early voting clerk’s office in a county might be significant for many members who may not be able to find transportation.”); Mason Decl., Dkt. 15-11, at 2; Golub Decl., Dkt. 15-12, at 3; Chimene Decl., Dkt. 15-17, at 3 (explaining that the October 1 Order has “guaranteed certain voters ‘two, five, or 10 times’ or more absentee voting resources than others”).

While the State contends that one month is sufficient time to cast a ballot by mail, this unjustifiably requires absentee voters who do not wish to risk experiencing fatigue or pain or contracting the coronavirus to vote earlier than those similarly situated but residing in smaller, less populous counties in order to ensure their vote is counted. *Reynolds*, 377 U.S. at 562 (“It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote, and to have their votes counted.”).

When, as here, “a state regulation is found to treat voters differently in a way that burdens the fundamental right to vote, the *Anderson–Burdick* standard applies.” *See Hunter*, 635 F.3d at 238; *see also Clements v. Fashing*, 457 U.S. 957, 965 (1982). “We have long been mindful that where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined.” *Harper*, 383 U.S.

at 670. Only where the State's interests outweigh the burden on the plaintiff's right to vote do voting restrictions not offend the Equal Protection Clause. *Obama for Am. v. Husted*, 697 F.3d 423, 433 (6th Cir. 2012).

The State's proffered interest in preventing voter fraud must thus be "sufficiently weighty" to justify the elimination of ballot return centers. *Burdick*, 504 U.S. at 434; *Norman*, 502 U.S. at 288–89. If the State had enacted a generally applicable, nondiscriminatory voting regulation that limited voting locations for all Texas voters, its "important regulatory interests" would likely be sufficient to justify the restriction. *See Burdick*, 504 U.S. at 434. The Equal Protection Clause permits states to enact neutrally applicable laws, even if the impact of those laws falls disproportionately on a subset of the population. *See, e.g., Cranford*, 553 U.S. at 207 (Scalia, J., concurring) (citing *Washington v. Davis*, 426 U.S. 229, 248 (1976)). However, the October 1 Order is self-evidently not neutrally applicable; it restricts the rights of some voters, those who qualify to vote absentee in larger, more populous counties and not others. Nor is the State's justification sufficiently "important" to excuse the discriminatory burden it has placed on some Texans, including the most vulnerable.

With no evidence that ballot return centers have jeopardized election integrity in the past, no evidence that they may threaten election integrity in the November Election, the State's admission that multiple ballot return centers can be open on Election Day, and faced with assertions by the County Clerks that their ballot return centers operate in the same manner as central ballot return centers, the State has not shown that its regulatory interest in smooth election administration is "important," much less "sufficiently weighty" to justify the burden it has placed on absentee voters in Texas. As such, Plaintiffs have met their burden of showing a substantial likelihood that they will succeed in showing that the October 1 Order violates the Equal Protection Clause of the Fourteenth Amendment.

2. Irreparable Harm

To satisfy this prong of the preliminary injunction test, Plaintiffs must show that in the absence of an injunction they are “likely to suffer irreparable harm,” that is, harm for which there is no adequate remedy at law. *Daniels Health Scis., L.L.C.*, 710 F.3d at 585. The party seeking a preliminary injunction must prove that irreparable harm is likely, not merely possible. *Winter*, 555 U.S. at 20. Here, Plaintiffs allege they will experience irreparable harm in the absence of an injunction because the fundamental right to vote is threatened by the October 1 Order.

Plaintiffs have already established a likelihood of success on their constitutional challenges to the October 1 Order. The right to vote and have one’s vote counted is undeniably a fundamental constitutional right, *Reynolds*, 377 U.S. at 554, whose violation cannot be adequately remedied at law or after the violation has occurred. *See, e.g., Obama for Am.*, 697 F.3d at 436; *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986); *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014); *De Leon v. Perry*, 975 F. Supp. 2d 632, 663 (W.D. Tex. 2014), *aff’d sub nom. De Leon v. Abbott*, 791 F.3d 619 (5th Cir. 2015). Even the violation of fundamental constitutional rights for minimal periods of time “unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

The State contends that Plaintiffs’ only injury is “one due to personal preference and geographical distance,” and this does not rise to the level of irreparable harm. (Resp. TRO, Dkt, 43, at 30). Not so. State Defendants ignore that Plaintiffs have not alleged that the October 1 Order makes voting inconvenient, but rather that it disproportionately impacts the elderly and disabled, who are less likely to be able to travel long distances, stand in line, or risk exposure to the coronavirus. (*See, e.g.* 1-20-cv-1015, Bryant Decl., Dkt. 11-2, at 4 (“distance to only designated early voting clerk’s office in a county might be significant for many members who may not be able to find transportation.”); Mason Decl., Dkt. 15-11, at 2; Golub Decl., Dkt. 15-12, at 3; Chimene Decl., Dkt.

15-17, at 3). Even accepting the State's assertion that absentee voters can still mail in their ballots or return them at the designated ballot return office in their County, (Resp. TRO, Dkt. 43, at 28–29), the existence of alternative means of exercising one's fundamental rights "does not eliminate or render harmless the potential continuing constitutional violation of a fundamental right." *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981). That is especially true when each alternative under the current scheme is also likely to unconstitutionally burdens Texans' right to vote. We have already determined that the fundamental right to vote is likely "either threatened or in fact being impaired," on the eve of an election, and this conclusion mandates a finding of irreparable injury. *Id.* (citing *Elrod*, 427 U.S. at 373).

3. Balance of Equities

Next the Court must determine whether Plaintiffs' threatened injuries outweigh any damage that the injunction may cause to the State. *See Winter*, 555 U.S. at 20; *Valley*, 118 F.3d at 1050. Plaintiffs argue that the equities greatly favor an injunction, as there is no harm from issuing a preliminary injunction that prevents the enforcement of a likely unconstitutional state law. *See Giovanni Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002).

The State counters that the balance of equities weighs against an injunction because it considers the alleged violations to Plaintiffs' constitutional rights to be "one[s] due to personal preference and geographical distance." (Resp. TRO, Dkt. 43, at 30). The Court disagrees. The harm to the State in returning to its previously planned voting procedures is minimal compared to the potential for loss of constitutional rights to Plaintiffs. An individual's constitutional rights are not submitted to state vote and may not depend on the outcome of state legislation or a state constitution, much less an executive proclamation issued on the eve of a national election. *See Barnette*, 319 U.S. at 638. Accordingly, the Court finds that the balance of equities favors an injunction.

4. Public Interest

Injunctions preventing the violation of constitutional rights are “always in the public interest.” See *Ingebretsen on behalf of Ingebretsen v. Jackson Public Sch. Dist.*, 88 F.3d 274, 280 (5th Cir. 1996) (holding that where an enactment is unconstitutional, “the public interest [is] not disserved by an injunction preventing its implementation”); see also, e.g., *G & V Lounge, Inc. v. Mich. Liquor Control Comm’n*, 23 F.3d 1071 (6th Cir. 1994) (“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.”); *Charles H. Wesley Educ. Fdn., Inc. v. Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005) (“[The . . . cautious protection of the Plaintiffs’ franchise-related rights is without question in the public interest.”).

Courts generally consider the *Purcell* principle in the context of determining whether an injunction that changes a state election law serves the public interest. See, e.g., *Benisek v. Lamone*, 138 S. Ct. 1942, 1945 (2018); *League of Women Voters of United States v. Newby*, 838 F.3d 1, 13 (D.C. Cir. 2016); *Ne. Ohio Coal. for Homeless & Serv. Employees Int’l Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1012 (6th Cir. 2006). Here, for the reasons discussed above, the *Purcell* principle does not apply. While the Court has considered the public interest in preventing confusion, it maintains that allowing the challenged provisions of the October 1 Order to remain in place causes greater confusion and impedes on the public’s “strong interest in exercising the fundamental political right to vote.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). That interest is best served by upholding enfranchisement and ensuring that qualified absentee voters, who comprise some of the most vulnerable citizens in Texas, can exercise their right to vote and have that vote counted.

Here, the public interest is not served by Texas’s continued enforcement of a proclamation Plaintiffs have shown likely violates their fundamental right to vote. This factor therefore weighs in favor of a preliminary injunction.

IV. CONCLUSION

For the reasons given above, **IT IS ORDERED** that Governor Abbott's Motion to Dismiss, (Dkt. 43), is **GRANTED IN PART and DENIED IN PART**. Plaintiffs' claims against Governor Abbott are **DISMISSED**.

IT IS FURTHER ORDERED that Governor Abbott's Motion to Dismiss, (1-20-cv-1015, Dkt. 27), is **GRANTED**.

IT IS FURTHER ORDERED that Secretary Hughs's Motion to Dismiss, (1-20-cv-1015, Dkt. 28), is **DENIED**.

IT IS FURTHER ORDERED that Plaintiffs' motions for a preliminary injunction, (Dkt. 15; Case No. 1:20-cv-1015, Dkt. 10-1), are **GRANTED**. Secretary Hughs, in her official capacity as Texas Secretary of State, Dana DeBeauvoir, in her official capacity as Travis County Clerk, Chris Hollins, in his official capacity as Harris County Clerk, John Oldham, in his official capacity as Fort Bend County Elections Administrator, and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order, are preliminarily **ENJOINED** from implementing or enforcing the following paragraph on page 3 of the October 1 Order:

“(1) the voter delivers the marked mail ballot at a single early voting clerk's office location that is publicly designated by the early voting clerk for the return of marked mail ballots under Section 86.006(a-1) and this suspension;”

(1-20-cv-1015, Oct. 1 Proc., Dkt. 11-23).

SIGNED on October 9, 2020.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

TEXAS STATE CONFERENCE OF
NAACP BRANCHES,

Plaintiff,

v.

GREG ABBOTT, in his official capacity as
Governor of Texas; RUTH HUGHS, in her
official capacity as Texas Secretary of
State;

Defendants.

Case No. 1:20-cv-01024-RP

AMENDED DECLARATION OF DR. DANIEL G. CHATMAN

I, Dr. Daniel G. Chatman, respectfully declare as follows:

1. I am an Associate Professor of City and Regional Planning at the University of California, Berkeley. I have taught undergraduate and graduate courses in urban and regional transportation planning, transportation and land use planning, and research methods.
2. I received a B.A. degree from the University of California, Berkeley in 1991, a Master's degree in Public Policy from the Kennedy School of Government at Harvard University in 1997, and a Ph.D. in Urban Planning from the University of California, Los Angeles in 2005. From 2005 to 2009 I was Assistant Professor in the Bloustein School of Planning and Public Policy at Rutgers University, where I also served as Director and Research Director of the Alan M. Voorhees Transportation Center. I was appointed as Assistant Professor at U.C. Berkeley in 2008, and was promoted to Associate Professor with tenure in 2014.

3. I conduct research on travel behavior and the built environment, immigrants and travel in the United States, the relationships between public transportation services and the economy, and other topics related to transportation and land use planning. I have published more than 50 peer-reviewed journal articles, book chapters, research reports, and lay articles, and have given more than 100 invited or refereed talks on these topics. I have been principal investigator on transportation and land use research grants and contracts totaling more than \$3.3 million in funding.
4. In 2014, I provided a report and testified as an expert in a voting case in Texas. My analysis and testimony concerned the racial/ethnic and income distribution of transportation burdens associated with newly imposed photo identification requirements for voter eligibility in Texas (United States District Court, Southern District of Texas, Corpus Christi Division, MARC VEASEY, et al., Plaintiffs, v. RICK PERRY, et al., Defendants. Civil Action No. 2:13-cv-193 (NGR)). In September 2020, I provided a report and testified in a voting case in Ohio concerning travel burdens and queuing delays associated with a State of Ohio rule that ballot drop boxes may only be provided at the county board of elections in each county (United States District Court, Northern District of Ohio (Cleveland), A. PHILIP RANDOLPH INSTITUTE OF OHIO et al, Plaintiffs, v. FRANK LAROSE, Secretary of State of Ohio, Defendant. CASE NO. 1:20-cv-01908-DAP).

Questions Addressed

5. I was retained to analyze both the travel burdens and the queuing delays associated with the recent decision by the Governor of the State of Texas that ballot drop boxes may be provided in only one location in each county in the state; and to assess the impact across the major racial/ethnic groups in the state.

Summary of Results: Travel Burdens for Voters to Access a Ballot Drop Box

6. In the first analysis, I investigated the travel burden that would be incurred by citizens of voting age who are eligible to vote via absentee ballot because they are over the age of 65 or disabled, and who wish to drop off their absentee ballots rather than mailing them. I focus on the time required to access a ballot drop box by car, via public transportation, or on foot, and to return home, as time is the most salient and readily quantifiable of the various costs involved in travel. The main output of this first analysis is an estimate of travel time burdens across the population of all citizens of voting age who are eligible to vote via absentee ballot due to age or disability, with a focus on the impact on the largest counties in the state.
7. I find that the Texas prohibition on providing more than one ballot box location per county, rather than permitting multiple drop boxes or allowing absentee ballots to be dropped off at in-person polling locations, will place a substantial travel burden on absentee-eligible citizens of voting age without access to a vehicle who find it necessary to drop off their absentee ballots rather than mail them, particularly when looking at those who lack access to a personal vehicle in their household. I define a “travel burden” in two ways in the declaration, focusing in this introduction on the more restrictive of my two definitions: namely, having to travel more than an hour and a half round trip, which would more than double the average amount of daily household travel for a Texas resident. The share who would have to travel for more than 90 minutes is very low for absentee-eligible citizens of voting age (AECVAs) who live in a household with access to a personal vehicle, but very high for those without access to a car, who make up about 7.5 percent of AECVAs in the state. About 89 percent of absentee-eligible citizens of voting age without access to a car would have to spend more than 90 minutes to deliver their ballot to a county drop box and return home. The *average*

round trip duration for these burdened individuals is more than 6 hours, due to a significant number of those who would be required to travel for long distances on foot; such distances are impossible for most if not all of the elderly and disabled people eligible for an absentee ballot in Texas.

8. The burden is not evenly distributed across the state. The 10 most populous counties in the state account for more than half of all burdened individuals. Several counties have a 90-minute travel burden share that is 30 to 60 percent more than the rest of the counties in the state, while in Harris County, the largest county by population, the share of households with a travel burden exceeding 90 minutes is twice as high as the state average across counties, at about 13 percent of all absentee-eligible citizens of voting age. The share of those with a travel burden of more than 70 minutes is 38 percent in Harris County, about four times as high as the average across counties in the state.
9. This burden is disproportionately borne by African Americans in comparison to Whites, and to a lesser extent by Hispanics, particularly using the more onerous 90-minute travel burden measure. This is largely because of the lower auto ownership and access of eligible African American voters, in addition to their concentration in the more populous counties in the state.
10. The presence of households with a travel burden is also highly correlated with poverty status. Having a round trip of more than 90 minutes to access a ballot drop box is almost entirely associated with individuals not having access to a car. One of the best predictors of whether a person owns a car is their income, and the median income of households without cars in Texas is about half that of households who have a car.
11. My detailed travel burden analysis is set forth below at pp. 7-27 after a summary of the results of the queuing burden analysis. Results of the analysis are presented at pp. 21-27.

Summary of Results: Queuing Burdens to Access a Ballot Drop Box on Election Day

12. In the second analysis, I estimated how the restriction permitting only one location for drop boxes per county is likely to lead, in counties with larger populations, to long queues of vehicles and pedestrians waiting to drop off their ballots. In the general election in November there would appear to be the potential for several million absentee-eligible registered voters desiring to access a drop box, given widespread concerns about unreliability and delays associated with mail delivery of absentee ballots.
13. I carried out a queuing analysis to determine the length and waiting times likely to be associated with ballot drop box locations. Under conservative assumptions detailed below, it is likely that, varying by county, between 1.5 and 6 percent of registered voters could attempt to deliver their absentee ballots to a county drop box location on the day of the election. Based on experiences elsewhere, demand for ballot drop box use will be highest on Election Day.
14. Under one set of baseline assumptions that are relatively conservative, I calculate that with only one drop box location per county, queues would be intolerably long in dozens of the most populous counties, and many voters there would be forced to forgo depositing their ballots. The lines would be particularly burdensome in the top ten counties by population in the state (including Harris, Dallas, Travis, and Fort Bend Counties), with between 10,000 and 64,000 voters in each of those counties waiting for 15 hours or more to drop off their ballots, unless (more likely) they are dissuaded from voting altogether. When using less conservative but still reasonable assumptions based on experiences elsewhere, the projected queues are even longer, affecting more than 625,000 voters in the most populous counties in the state, with many of those likely to be dissuaded from casting their ballots, and with queues so long that they imply huge traffic snarls in the counties affected.

15. My detailed queueing analysis is set forth below, after the detailed description of the travel burden analysis, at pp. 28-39. The detailed statement of my queueing results at pp. 33-39 is preceded by a discussion of my methodology.

Overview of Work

16. I defined and carried out the first analysis of travel burden in four parts. First, I identified a simplified set of home starting points for trips that would be undertaken by those who seek to drop off their absentee ballots at a ballot drop box, consisting of the “centroids,” or central geographical coordinates, of the 15,811 Census-defined block groups in the state of Texas. I also identified and mapped the individual locations within each county where ballot drop boxes are located. Second, using both geographical information system software and Google Maps, I estimated the time it would take to travel from home to the designated county ballot drop box, and back, by each of three travel modes: personal automobile, public transportation, and on foot. Third, I compiled and estimated information about the absentee-eligible citizens of voting age (AECVAs) by race/ethnicity located in the 15,811 block groups throughout the state, with a focus on those living in households without access to an auto. Fourth, I estimated the round-trip travel times to drop off a ballot for AECVAs depending on their race/ethnicity and access to a personal vehicle in their household.

17. I carried out the second analysis of queue lengths and delays as follows. First, I estimated the share of registered voters in each county who are likely to attempt to deliver absentee ballots to a county drop box on the day of the election. Second, I applied queueing analysis methods along with a set of parameters regarding the capacity of each box, the share of drop-offs occurring during daily peak travel periods and off-peak, and the operating hours over which voters are likely to drop off ballots on Election Day, to estimate hour-by-hour queue lengths

and time delays waiting in the queue. Third, I estimated the number of voters likely to be dissuaded from voting by using queue length at the end of the day as an approximation.

18. I was assisted in geocoding, mapping, data procurement, data management, and data analysis by five doctoral candidates and four undergraduate research assistants who were paid respectively at the rates of \$100 per hour and \$50 per hour. I also paid Google for the use of their cloud services to procure one set of travel time estimates, in addition to calculating my own set of travel time estimates using Open Trip Planner, an open-source geographical information system software program. I am being compensated at the rate of \$400 per hour.

Travel Burden Analysis: Methodology and Results

A. Background

19. As noted above, for purposes of this investigation, I define “travel burden” in terms of time.

This is based on a comparison with both national travel survey data and survey data from the State of Texas.

20. The cumulative time that individuals spend traveling every day varies a great deal by household (National Household Travel Survey, 2017). In the State of Texas, among those of income greater than \$25,000, the average daily time spent traveling for all trips made for personal and household purposes is 66.4 minutes; for those making less than \$25,000, the average is 72.5 minutes per day. These figures are slightly lower than the US averages for the same groups (see Table 1 below). A starting point for any definition of “travel burden” is the current amount of time that an individual already spends traveling each day, because this pattern typically reflects constraints that make it difficult to travel more without having financial impacts or causing time scarcity (Farber and Páez, 2011).

Table 1: Average minutes spent traveling per day, by income

	All persons	
	<\$25,000	>\$25,000
Texas	72.5	66.4
U.S. Total	75.2	69.1

Source: National Household Transportation Survey, 2017

21. The average duration for a home-based trip for a non-work purpose (excluding trips taken by air or intercity bus)—that is, the time needed for the average trip from home to reach an activity such as grocery shopping, seeing the doctor, or dropping one’s child off at school—was 20.3 minutes in the US and 20.6 minutes in Texas in 2017. The duration of an average round trip is higher on both public transportation and walking than in a car, reflecting slower travel speeds than for auto. Across all trip purposes, the average duration of a trip taken via public transportation or on foot was 52.8 and 22.4 minutes respectively in the US, and 63.9 and 22.8 minutes in the State of Texas (Nationwide Household Transportation Survey, 2017). Regardless of trip purpose, almost all trips in both the US and in the State of Texas are taken by personal vehicle, due to the relatively slow speeds and incomplete spatial coverage afforded by public transportation in most parts of the US and of Texas, as well as the long distances between activity locations, and often hazardous or strenuous walking conditions, that often make walking impractical. Just 1.2 percent of all trips in Texas are taken on public transportation, while 6.5 percent of all trips are taken on foot.
22. While some individuals may have time to spare for any of a number of activities, most individuals must make tradeoffs when there is any new demand on time. An increase in the amount of time required to travel can cut into discretionary time for activities like

entertainment, socializing, and shopping, and then into non-discretionary time for activities like work, meals, child care, and buying groceries (Farber and Páez, 2011).

23. There are a number of burdens associated with traveling to a ballot drop box, the largest and most quantifiable of which may be time. The primary burden arises for those who do not have access to a vehicle, as those who do can either drive to the location or get a ride from someone in their household, and the physical effort involved is minimal. For those who do not have access to a vehicle, however, in order to drop off a ballot, they must rely on either a ride from someone else not living in the household, or an alternative travel mode such as public transportation or walking. Since there are only 254 ballot drop box locations in Texas, a state of about 29 million people, and since public transit services are slower and not ubiquitously available throughout the state, travel distances and durations can be quite large. The burden is highest for those without familiarity with public transportation routes, with physical difficulties in walking, and so on.
24. While acknowledging the existence of a subjective aspect of travel burden that goes beyond travel *time*, the primary focus of this analysis is to investigate the number and share of absentee-eligible citizens of voting age (“AECVAs”) who would need to undertake trips of long duration in order to drop off their absentee ballots. Calculating the travel burden based on the amount of time required to access a ballot drop box does not account for the relative inconvenience and physical discomfort associated with the walking, waiting, and in-vehicle times associated with long public transportation rides; or the physical effort involved with walking all or some of the distance to the location, along routes that may be largely inhospitable to pedestrians. This method also does not reflect how such trips can be

particularly difficult or nearly impossible for elderly people and people with physical limitations, who are the primary users of absentee ballots and ballot drop boxes in Texas.

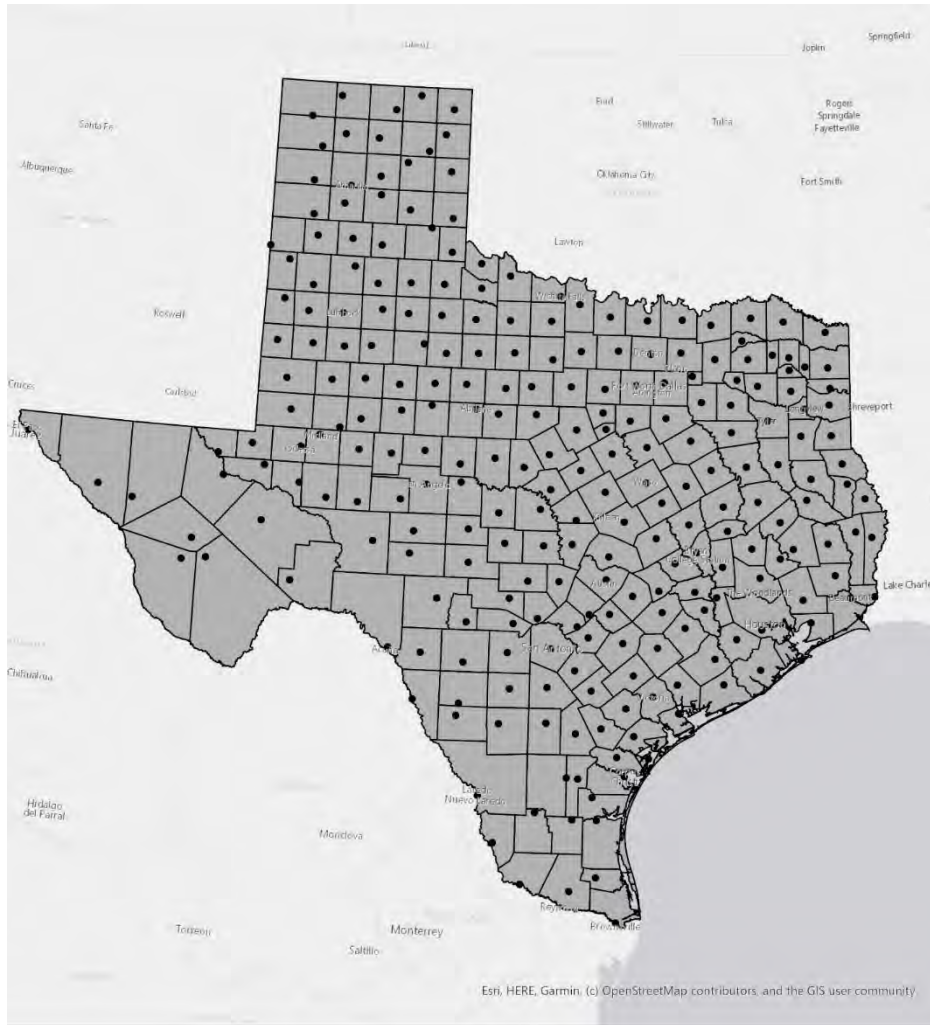
25. There is some scientific literature that has translated these qualitative facts about accessing and egressing public transportation on foot into estimates of the valuation of time associated with waiting, walking, and riding on vehicles in transit, by analyzing survey data for the purpose of predicting choices between travel modes. Based on a set of 192 studies of walk time values and 77 of waiting time values, the time that people spend waiting for public transportation or walking to and from public transportation stops is about 1.6 times as burdensome as time spent traveling in a personal vehicle (Abrantes and Wardman, 2011, Table 21). In turn, time spent riding the bus or rail is somewhat more burdensome than time spent in a personal vehicle. One quantitative figure averaging a smaller set of studies puts the value at 1.2 for the disutility of time spent on a bus compared to time spent in a car (Abrantes and Wardman, 2011, Table 19).
26. In addition, people of lower income can be expected to have more difficulty than people of higher income in managing to find additional time to drop off their ballots. Those of lower income usually do not have the option of purchasing services to reduce time requirements in other areas, such as paying for child care, laundry service, home cleaning services, meals out, or prepared food. Travel becomes particularly burdensome when it requires difficult choices such as whether to work fewer hours in the week (and thus to pay in dollar terms, not just in time terms); to require children to stay up later than normal in order to accommodate the lengthened schedule for that day; or to forgo a trip to the doctor that week. Because these kinds of burdens are more likely to be borne by those of lower income, but cannot be

otherwise measured directly with available data, I also investigated whether the travel time burden is associated with poverty status in the State of Texas, as discussed later in the report.

27. For the purpose of this analysis I define a travel burden in two ways: as a round trip that exceeds 90 minutes, or as a round trip that exceeds 70 minutes. The first definition essentially focuses on trips on foot or via public transit, which are more onerous than trips undertaken in a private vehicle, because very few trips to access a ballot drop box in Texas would require a driving trip exceeding 90 minutes. Just 1.0 percent of trips in Texas exceeded 45 minutes one way (90 minutes round trip) on public transportation or on foot, according to the most recent data for Texas from the National Household Travel Survey (2017). The fact that such long trips on foot or via public transportation are so rare suggests that people avoid them whenever possible.

B. Methodology: Travel Starting and Ending Points; Calculation of Travel Times

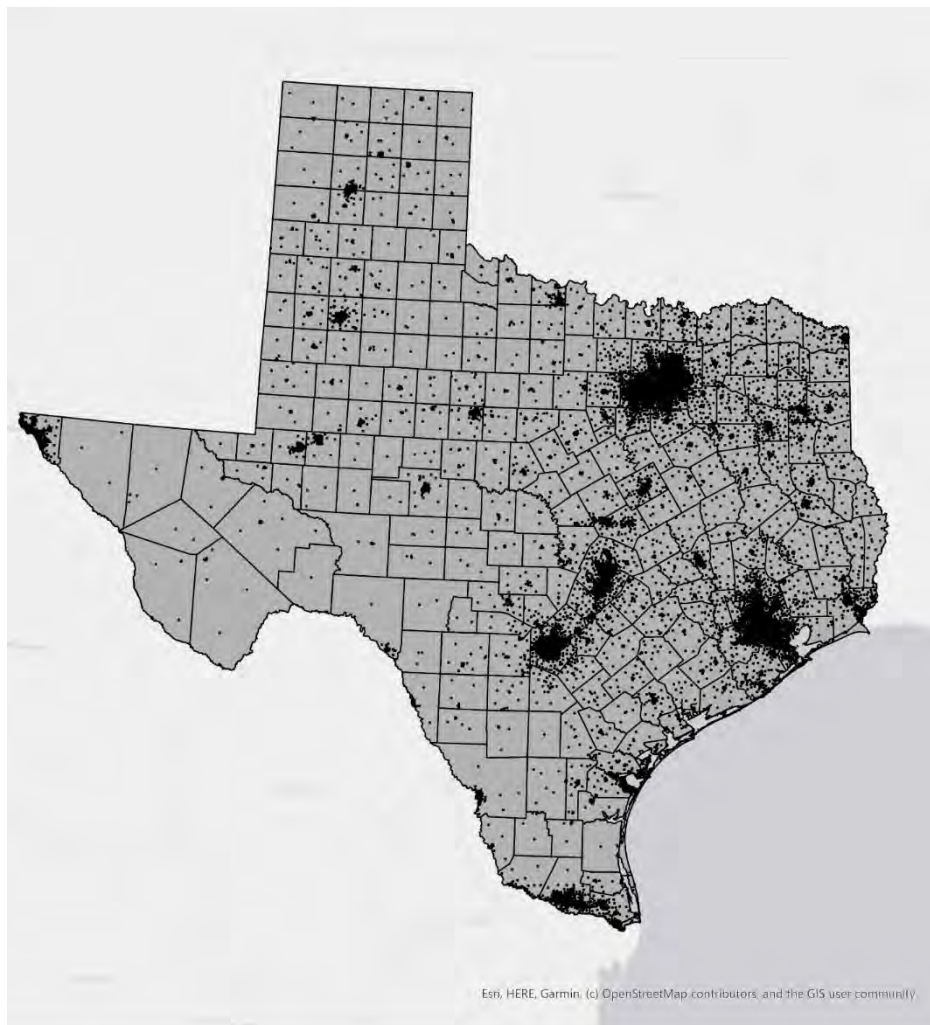
28. I obtained online listings of the 254 county locations where ballot drop boxes are or will be located, and geocoded these using Google Maps. Figure 1 (below) displays the geocoded ballot drop box locations on a county map of Texas.

Figure 1: Geocoded ballot drop box locations in the state of Texas

29. There were about 11.3 million occupied housing units in the State of Texas as of 2018 (U.S. Census Bureau, 2020), and therefore I used a set of simplified home locations to estimate the travel times for those eligible voters who may seek to deliver their ballots to a county drop box, consisting of Census block groups, which typically include between 200 and 1,000 housing units. I defined the location for all households in the block group as consisting of the centroid of the block group (the spatial center of gravity of the block group polygon). Figure 2 (below) displays the centroids, and county boundaries are also shown. (Block group boundaries are not shown.)

30. Figure 2 also illustrates the fact that any meaningful spatial error in identifying the locations of specific housing units is likely of most concern in locations in the outlying and less dense parts of the state. In these locations it is more likely that travel time estimates are inaccurate because the block group centroid may be located farther from the average household than in block groups in the most densely populated parts of the state. However, by the same token, this error exists only with regard to a small fraction of the Texas population.

Figure 2: Block group centroids (estimated home locations) for Texas



31. For each block group centroid I estimated the travel time to the ballot drop box location within that county. There are many possibilities to obtain data to estimate travel times, but the best estimates are based on distances along the road network, travel times on public transportation, and distances along the pedestrian network. I used network and schedule-based estimates rather than more commonly calculated “zone to zone” estimates of travel time, which rely on aggregated information about trip destinations and are therefore less accurate.

Public Transportation Times

32. There are eight large public transportation agencies (with at least 2 million one-way trips per year as of 2020) in the state of Texas, serving the metropolitan areas of Austin, Corpus Christi, Dallas-Fort Worth, El Paso, Houston, Laredo, Lubbock, and San Antonio. Of these, three metropolitan regions offer rail systems. Commuter rail systems include the Capital MetroRail (Austin metropolitan area) and Trinity Railway Express (Fort Worth & Dallas commuter rail). Light rail systems in Texas include the Dallas Area Rapid Transit (DART), and Houston’s METRORail, other rail includes El Paso's Streetcar line. Outside of the state's major metropolitan areas, there are 31 urbanized transportation agencies, 36 rural transportation agencies, and 58 disabled accessible / enhanced mobility of seniors agencies, according to the Texas Department of Transportation Texas 2019 Transit Statistics Report. Roughly 90 percent of all unlinked passenger trips on public transit in Texas are handled by the metropolitan agencies, which generate 76 percent of all vehicle revenue miles and 91 percent of all transit operating expenses in Texas.

33. Even in counties with some form of public transportation not every individual can use public transportation to access a county ballot drop box location. To provide more granular public

transportation information I have calculated public transportation travel times across the state from the household location to the county designated ballot drop box location.

34. I used both Google Maps and Open Trip Planner (OTP) along with Open Street Map software and General Transit Feed Specification (GTFS) data to estimate public transportation times from block group centroids to ballot drop box locations. Having two independent sources for travel times acts as a check to ensure the accuracy of the results, and in some cases a public transportation estimate was available using one method but not the other. The estimates rely on spatially specific information about the routes of public transportation vehicles, location of stops, and schedules in GTFS data. These make it possible to estimate public transportation travel times that take into account actual service frequency, scheduled public transportation times, and waiting times between transit vehicles. The OTP software includes estimation of walking routes to and from public transportation stops and between public transportation lines when transfers are necessary. In the end I relied primarily on OTP estimates for the large urban centers, supplemented by Google Maps estimates for the remainder of the state for which I could not quickly procure GTFS data and Open Street Map data and for which Google Maps had access to GTFS data that it had collected.

35. For every trip on public transportation, travel time includes walking to the nearest bus or rail stop from home, waiting for a bus or train, and walking from the closest available stop to the ballot drop box. These public transportation travel time estimates assume the best-case scenario of highest schedule availability and no travel delay. Specifically, it is assumed that everyone can make their trip to the ballot drop box on Tuesday morning (a weekday morning, typically the highest frequency public transportation schedule) despite the fact that

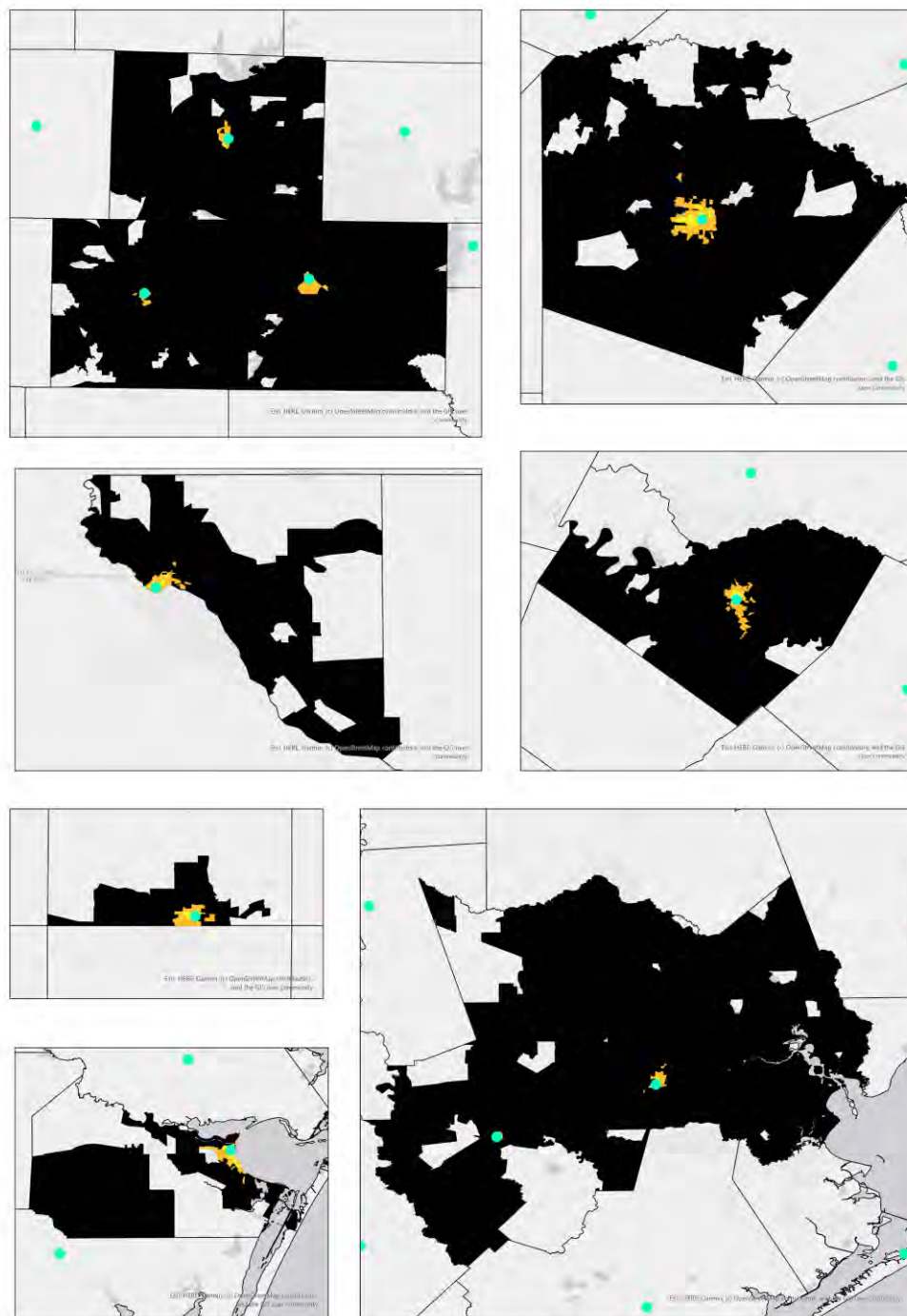
many people will find it difficult to travel at that time of day due to obligations like work.

Those who travel on public transportation to a drop box during the middle of the day, at the end of the work day, or on a weekend, could encounter a much less frequent schedule than what is assumed here, and would almost never encounter a more frequent schedule.

36. For the 10,571 block groups for which public transportation travel was possible, the median total time to travel from home to the nearest ballot drop box, including walking time, was 200 minutes (3 hours and 20 minutes), round trip. There was substantial variance. For example, ten percent of block groups had a one-way trip of almost four hours to arrive at a ballot drop box, or about eight hours round trip.

37. Figure 3 (below) shows the spatial extent of transit access in some of the largest cities in Texas. The black areas are farther than 45 minutes one-way on public transit. It is notable that a relatively small fraction of the urban areas can reach the single drop box location in these locations.

Figure 3: Transit access maps for selected counties in Texas



Travel Times by Auto

38. To estimate the driving time between Census block group centroids and ballot drop boxes, I used an automated batch interface for Google Maps using a cloud services account, which provided a time estimate for a standard, time-efficient route that accounted for any habitual travel delays caused by road congestion and traffic signals. I calculated the driving time from the geographic center of each Census block group to the county ballot drop box location and the return trip as well, under the assumption that the beginning of the trip was at 9 am on a Tuesday. The average road distances from block group centroids to ballot drop boxes ranged from less than a tenth of a mile to 80 miles, with a median one-way distance of 12.4 miles. The round-trip times ranged from less than a minute to as long as four hours, with a median round trip value of 36 minutes when averaged over block groups. More than 95 percent of block group centroids had round trip travel times via auto of less than 70 minutes.

Travel Times on Foot

39. I calculated walking distances and durations using both Google Maps and Open Trip Planner GIS software to identify the shortest route within each county to each county ballot drop box from the geographic center of each Census block group using the road network. Walking distances to the county ballot drop box location were very similar to the road distances (above). Walk times were estimated based on the assumption that travelers walk at 1.9 miles per hour based on a study of walk speeds for older and disabled adults (FHWA, 2006). The walk time figures were estimated using both Google Maps and Open Trip Planner. This resulted in estimated walk times as long as 25 hours and as short as 12 minutes.

C. Methodology: Spatial Distribution of AECVAs by Race/Ethnicity & Auto Ownership

40. The location of ballot drop boxes is relevant to people of voting age who are eligible for absentee ballots due to citizenship status, along with their age and/or disability, and who are registered to vote. There currently are no secondary data available to me to determine the locations of individuals—and therefore the travel times of those individuals—who are also registered to vote and eligible for absentee ballots. Therefore, for the analysis presented here, I focus on estimating the locations and characteristics of citizens of voting age over the age of 65 and/or with disabilities, by race/ethnicity and access to a personal vehicle in their household.
41. Calculating the travel burden associated with dropping off a ballot requires, first, knowing how many citizens of voting age there are in each Census block group. I obtained block group counts of the number of residents in each Census block group who were 18 to 64 years old and 65 years of age or older from the 2014-2018 American Community Survey (ACS). There are 15,811 block groups in the state. These are the most accurate data currently available for a base count of the population by age, even though changes to the population may have occurred in the last two years. Race/ethnicity data are also available at the block group level, and this analysis also relies on disaggregate data in the ACS Public Use Microdata Sample (PUMS) of 2014-2018.
42. The block group level data from the ACS tells us how many people of different ages by race/ethnicity there in each block group, but not whether they are citizens, have a disability, or have access to a personal vehicle in their household. To estimate citizenship and disability down to the Census block group level, I used the 2014-2018 ACS five-year estimates at the Census tract level to obtain the share of voting-age residents who were citizens and the share

of 18-to-64 year-olds with disabilities in each Census tract. There are 5,265 Census tracts in Texas, containing between one and eight block groups, with a median of three block groups. To estimate citizens of voting age in each block group by race/ethnicity, I first calculated the share of adults of voting age by race/ethnicity that are citizens in the five-year sample for each Census tract. I then multiplied this ratio by the number of people in each age category in each block group to estimate the CVAs in each age category in each block group (Chapa et al., 2011). I performed an additional calculation to estimate the share of CVAs who were aged 18 to 64 who also have a disability. I first calculated the share of 18-64 year-olds in the Census tract that reported one or more disabilities on the ACS survey, and then multiplied this ratio by the estimated number of citizens by race/ethnicity aged 18 to 64 in each Census block group to distinguish those AECVAs aged 18-64 with disabilities from those without a disability.

43. To estimate auto availability down to the block group level for citizens over the age of 65, and for citizens aged 18 to 64 with at least one disability, I used data from the American Community Survey Public Use Microdata Sample for Texas, which allows a precise estimate of auto ownership for detailed subgroup definitions, though for a larger spatial area in which those block groups fall. I calculated the share of vehicle access among these two population subsets living in the Public Use Microdata Areas in which the block groups are included. I used these percentage shares to multiply the block group level figures for citizens over the age of 65 and citizens aged 18 to 64 with disabilities to determine the share of each that do and do not have access to a personal vehicle in their household. I followed a similar procedure to estimate auto access for citizens by race/ethnicity in the 65-plus age group and for citizens by race/ethnicity who have a disability and are age 18 to 64.

44. The American Community Survey five-year block group, Census tract, and PUMA estimates are based on a one percent sample conducted every year. Because the ACS is conducted upon a sample of the population, rather than a complete count, its estimates are subject to sampling variability, but the five-year ACS data are the most precise and spatially specific available given that the Decennial Census data are a full decade old.
45. Because there is no generally accepted methodology for aggregating confidence intervals from the Census tract level to higher levels of geography (e.g., to the county or state levels), I report these estimates without confidence intervals. Statewide figures presented in this report are statistically significant at the 0.001 level or better.

D. Results: Travel Times by Race/Ethnicity & Auto Ownership for Counties and the State

46. To assign a round-trip travel time to any given citizen of voting age in any given Census block, I followed the following deterministic algorithm. First, individuals living in a household with an auto available will either drive or be driven by another household member to the county ballot drop box, unless taking public transportation or walking is faster, in which case the faster of those alternative modes will be assigned. Second, individuals living in a household without an automobile will take public transportation if it is faster than walking, and will otherwise walk to the county ballot drop box.
47. As it turns out, the fastest travel time between the home location (block group centroid) and the nearest county ballot drop box was always via driving. Of the 15,811 simplified home locations (block group centroids), in no case was public transportation or walking faster. In turn, walking was the best option in less than half of the block groups in which a vehicle was not available, most obviously in those counties where public transportation is not offered.

48. In order to evaluate the extent to which all Texas citizens seeking to drop off their absentee ballot will encounter a travel burden, I identified all of the absentee-eligible citizens of voting age in the state who I estimate would have to carry out a round trip of more than 90 minutes, or a round trip of more than 70 minutes. As noted above, having to carry out a round trip exceeding 70 minutes more than doubles the average amount of travel carried out per day by an individual in the state of Texas; and having to carry out a round trip of more than 90 minutes means not only a longer trip, but also that it is almost always done via public transportation or on foot, which are more onerous.
49. Of the estimated 4.4 million absentee-eligible citizens of voting age, I calculated that about 4.1 million have access to a vehicle owned by the household (a “car”), and about 321,000 do not (7.3 percent). Of the estimated 4.1 million AECVAs with a car available, only about two percent have a round trip to access a ballot drop box location of more than 90 minutes. But about 89 percent of the 321,000 AECVAs who do not have access to a vehicle in their household would be expected to experience a travel burden in accessing a ballot drop-off location if only one location is made available in each county. This is because transit and walk times are much longer on average than drive times. Approximately 2.4 percent of Texas voting-age citizens younger than 65 and without a disability lack access to a personal vehicle. AECVAs are much more likely to lack vehicle access. About 6.7 percent of citizens aged 65 or more lack a vehicle in the household (2.8 times as high as non-disabled citizens aged 18 to 64) while about 9 percent of those with a reported disability aged 18 to 64 lack vehicle access (3.75 times as high). Furthermore, a travel burden of 90 minutes or more to access a ballot drop box is even more likely to be the case for African American AECVAs, who lack vehicle access at more than twice the rate of White AECVAs.

50. In total this analysis finds that 7.7 percent of the state's population of AECVAs would experience a travel burden exceeding 90 minutes if they wish to deliver their ballots to a drop box, almost all of them lacking auto access and having to use public transportation or walk. The share of the population experiencing a travel burden is higher when using the 70-minute threshold definition. Under this definition, about 13.5 percent of AECVAs in the state would experience a travel burden to access a ballot drop box; more than half via public transportation or walking, and less than half via auto.
51. The majority of AECVAs with a travel burden to reach a ballot drop box lives in ten of the 254 counties in the state. Harris County has a particularly large share of AECVAs, and they have travel burdens at a much higher rate than other counties. Its share of those with an expected travel time exceeding 90 minutes is about 13 percent, or about twice as high as the Texas county average of 6.4 percent. And in Harris County, using the less restrictive travel burden definition, 38 percent of absentee-eligible households are expected to have travel time exceeding 70 minutes, a share almost four times as high as the Texas county average of 9.7 percent. Dallas and Travis Counties are also substantially higher than the average across state counties, as shown in Table 2.
52. Table 2 (below) shows, for the ten largest counties in the state, the estimated share of households with round-trip travel exceeding 90 minutes to access a county ballot drop box, as well as the same figure for travel exceeding 70 minutes.

Table 2: Travel burden in the top 10 counties by population

County	Total population	Share of	As	Share of	As
		AECVAs with travel time > 90 min.	multiple of TX county average	AECVAs with travel time > 70 min.	multiple of TX county average
HARRIS	4,602,523	12.7%	2.0	37.7%	3.9
DALLAS	2,586,552	10.4%	1.6	11.4%	1.2
TARRANT	2,019,977	6.5%	1.0	6.9%	0.7
BEXAR	1,925,865	8.1%	1.3	9.2%	0.9
TRAVIS	1,203,166	8.7%	1.4	15.1%	1.6
COLLIN	944,350	4.1%	0.6	5.2%	0.5
HIDALGO	849,389	8.3%	1.3	10.6%	1.1
EL PASO	837,654	8.3%	1.3	9.7%	1.0
DENTON	807,047	3.7%	0.6	6.3%	0.6
FORT BEND	739,342	5.5%	0.9	11.1%	1.1

Source: Chatman analysis (using block group centroid travel time estimates and American Community Survey 2013-2018 PUMA, Census tract and block group population estimates)

53. I also conducted an analysis of the relative travel burden by race/ethnicity, focusing on Whites, African Americans, and Hispanics who are citizens and are also eligible for absentee ballots due to age or disability. As noted above, Hispanics and particularly African Americans are much less likely to have auto access in the household which makes it substantially more likely that they will experience a travel burden accessing a ballot drop box.
54. The block group level analysis across the state confirmed this likelihood. I found that among citizens eligible for absentee ballots, African Americans statewide are twice as likely as Whites to have a round trip to access a ballot drop box location exceeding 90 minutes, at 14.6 percent in comparison to 6.7 percent for whites, largely because eligible African American

voters are far more likely to live in a household without a car available. Absentee-eligible Hispanic citizens were somewhat more likely to experience a travel burden exceeding 90 minutes, with a rate of 8.3 percent across the state (24 percent higher than Whites). When looking at the 70-minute burden definition, the difference between African Americans and Whites was not as large, but still quite significant. About 20 percent of African Americans eligible for absentee ballots would have to travel more than 70 minutes to access a ballot drop box, which is 58 percent higher than the rate of 12.6 percent for Whites. The share of absentee-eligible Hispanic and White citizens who would have to travel more than 70 minutes round trip to access a county ballot drop box was about the same statewide.

55. The pattern of disparity in burden by race/ethnicity holds within counties in addition to across the state. Here I focus on the 90-minute definition of travel burden, since it is both longer, and more onerous as it largely excludes more comfortable and less physically taxing trips conducted via auto. While the pattern varies, in the top counties by population the African American rate of 90-minute travel burden is consistently far higher than the rate for Whites (Table 3, below). It is also higher on average for Hispanics.

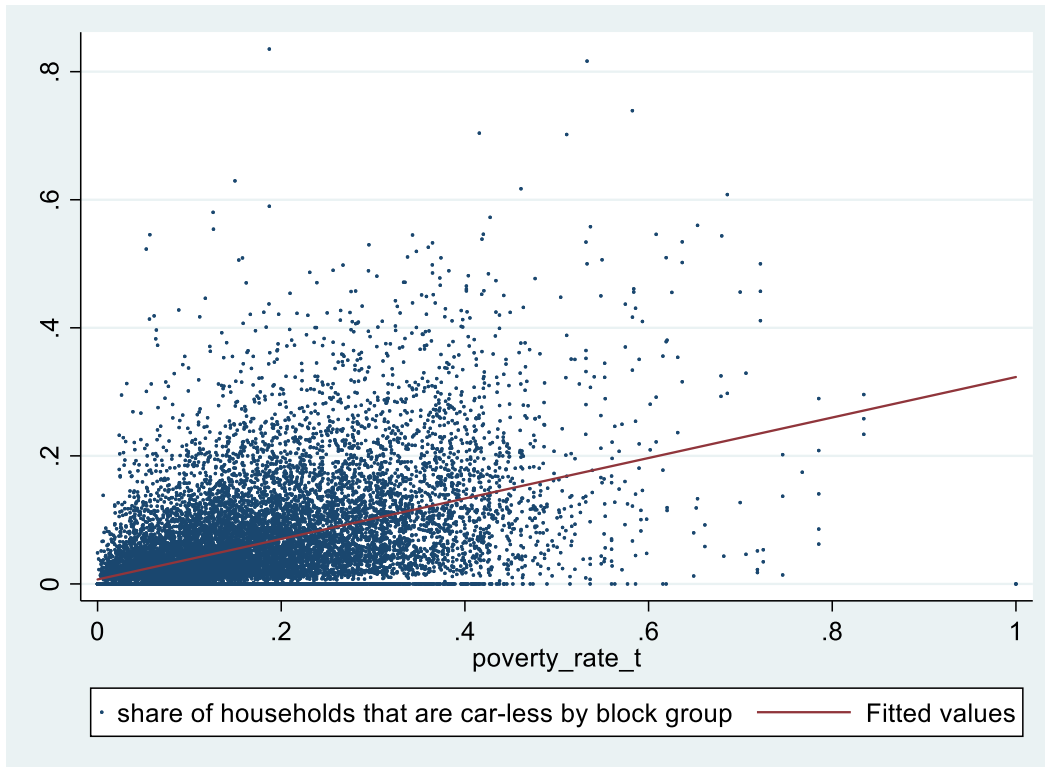
Table 3: Travel burden in the most populous Texas counties, for Whites, African Americans and Hispanics

County	Total population	Share AECVAs with travel time > 90 min, by race/ethnicity				
		Whites	African Americans	As multiple of White rate	Hispanics	As multiple of White rate
HARRIS	4,602,523	11.4%	17.1%	1.5	10.4%	0.9
DALLAS	2,586,552	7.3%	18.8%	2.6	7.6%	1.0
TARRANT	2,019,977	5.5%	13.3%	2.4	6.8%	1.2
BEXAR	1,925,865	7.6%	14.0%	1.9	9.2%	1.2
TRAVIS	1,203,166	7.7%	13.9%	1.8	8.8%	1.1
COLLIN	944,350	3.9%	4.3%	1.1	4.3%	1.1
EL PASO	837,654	7.9%	14.2%	1.8	9.2%	1.2
DENTON	807,047	3.5%	7.3%	2.1	4.5%	1.3
FORT BEND	739,342	6.2%	7.9%	1.3	5.5%	0.9

Source: Chatman analysis (using block group centroid travel time estimates and American Community Survey 2013-2018 PUMA, Census tract and block group population estimates)

Note: Hidalgo County not available due to a reporting problem in ACS data.

56. Finally, I conducted some analysis of the relationship between the poverty rate at the block group level and the share of household lacking access to a personal vehicle, which is the single greatest predictor to determine whether AECVAs would have to travel more than 90 minutes round trip to access a ballot drop box. I found that the level of poverty predicts the auto ownership share at a high level of statistical significance. Each 10 percent increase in the poverty rate within a block group in Texas is associated with a 3 percent increase in the share of households who do not have a car available (Figure 4). Poverty is also highly associated with race/ethnicity. In Texas, 8.2 percent of non-Hispanic Whites are under the poverty line, half the poverty rate of non-Hispanic African Americans at 16.6 percent. The Hispanic poverty rate in Texas in the 2013-2018 PUMS data is also quite high, at 15 percent.

Figure 4: Travel burden as a function of the poverty rate, for Texas block groups

57. To corroborate the relationship between income and the travel burden I looked at data from the Nationwide Household Travel Survey of 2017 (see Table 3).

Table 3: Household Income by Vehicle Ownership

Household Vehicle Ownership	Mean Income Bracket
No vehicle available	\$15,000 to \$24,999
One or more vehicles	\$50,000 to \$74,999

Source: National Household Transportation Survey, 2017

58. The table shows that household income among households with access to at least one auto is about twice as high as households without a car. This relationship is also highly statistically significant. As noted previously, auto ownership is the mediating relationship that associates poverty status with a travel burden to access a ballot drop box location.

Queuing Analysis: Methodology and Results

59. In this analysis I estimated the length of queues and average waiting times hour by hour on Election Day by county across the state. This was carried out in three steps. First, I estimated Election Day demand, i.e. the estimated number of individuals attempting to drop off ballots on Election Day, for each county. Second, I conducted a simple deterministic input-output analysis to estimate queue length and delays on an hour by hour basis. Third, I estimated the number of voters likely to be dissuaded from voting due to extraordinarily long queue lengths and delays, by county.

A. Methodology: Estimating Election Day Demand for Drop Boxes

60. To conduct the queuing analysis, I first estimated overall demand for ballot drop boxes by county. This required obtaining data and making inferences about the following parameters: (a) the number of registered voters in each county; (b) the share of registered voters who will request and receive absentee ballots; (c) the share of those holding absentee ballots choosing to deliver those ballots to a county drop box location; and (d) the share of those drop box ballots which will be delivered on Election Day. As described below, in estimating the latter parameters (b), (c) and (d), I tested several inputs in order to help provide a probable range of outcomes for all the counties in the state.

61. For parameter (a), the number of registered voters in each county, I used the official list made available by the Texas Secretary of State from January 2020

(<https://www.sos.state.tx.us/elections/historical/jan2020.shtml>). The number of registered

voters no doubt has changed since that time, but I was not able to obtain more recent figures.

62. In estimating (b), the share of registered voters voting absentee, I used the 2013-2018 Census data described in the previous section to calculate the share of CVAs who were eligible for absentee voting because of age or disability and used these shares for the baseline parameter.

These shares ranged between 17 and 55 percent of January registered voters across the 254 counties in the state; the share for the top ten counties by population ranged from 18 to 26 percent of registered voters. An announcement about expected numbers of absentee ballot requests by the county clerk for Travis County stated that she expected 200,000 absentee ballot requests in the general election, which would be 24 percent of registered voters (6 percent higher than the 18 percent EACVA share for Travis County that I calculated using the 2013-2018 ACS data) (see <https://www.austinmonitor.com/stories/2020/08/travis-county-plans-for-drive-thru-voting-drop-off-for-mail-in-ballots/>). Based on this discrepancy, which likely reflects population growth since the 2013-18 estimates, along with some other news reports about the high number of absentee ballot requests to date, I used an upper bound of 125 percent of this figure for the total number of absentee ballots, and I used 90 percent as a lower bound.

63. In estimating parameter (c), the share of absentee voters choosing to deliver their ballots to a drop box, I searched for data on ballot deliveries from other states. Washington is one of only two states I am aware of that maintains data about the use of drop boxes in delivery of absentee ballots. Data for King County show that the share of absentee ballots that were delivered to drop boxes ranged from 45 to 57 percent in the last four general elections in the State of Washington. There are fewer drop boxes in Texas, and a shorter tradition of using them. But it appears likely that absentee voters may have a strong tendency to distrust returning absentee ballots by mail due to widespread publicity about the possible inability of the U.S. postal service to return ballots on time. Furthermore, absentee ballots tend to be returned at the last minute, based on inspecting detailed returns data from several locales in the United States including Washington and Colorado, which is likely to mean voters will

strongly prefer drop boxes to mail boxes because of the increased possibility their ballots will not delivered on time. I reduced this figure substantially downward from the Washington case, using figures that are 50 percent lower. To reflect uncertainty about this estimate, I used three different figures– 30 percent, 35 percent, and 40 percent – to represent three possible scenarios for the use of drop boxes by those who choose to vote absentee.

64. In estimating parameter (d), the share of drop box users delivering their ballots on Election Day, I relied again on data from Denver, Colorado and Kings County, Washington. In King County, Washington in the August 2020 primary election, 63 percent of drop box ballots were deposited on Election Day; in the previous 2018 general election, the figure was 72 percent. Figures for Denver are similar. In this analysis for Texas I used 40 percent as a midpoint (more than 50 percent lower than King County), also testing 35 percent as a low-end estimate and 45 percent as a high-end estimate.
65. The combination of the parameters above yielded a number of different possible outcomes in terms of the share of registered voters who I estimate will attempt to deliver absentee ballots via drop box on the day of the election. The lowest share obtained by the variance in assumptions ranges from 1.7 to 2.5 percent of registered voters, depending on the county's share of AECVAs; the middle and "baseline" share ranges from 2.5 to 3.7 percent of registered voters; and the high estimate yields a range from 4.1 to 5.9 percent of registered voters attempting to drop off their ballots at a county drop box location on Election Day.

B. Methodology: Estimating Queue Lengths and Wait Times on Election Day

66. The second step of the analysis, estimating drop box queue lengths and wait times on Election Day, consisted of an input-output analysis requiring a set of parameters about (e) how demand would be distributed over the course of the day on Election Day; (f) the

configuration of receiving stations at each of the county boards of elections offices across the state; and (g) the service capacity of those reception lines—i.e., how many ballots per hour they could receive depending on how quickly individuals can have their photo identification cards checked, sign the roster, and deposit their ballots.

67. Regarding parameter (e), the ballot drop boxes are said to be available from 7 am to 7 pm at most locations. I further inferred, based on common travel patterns in the United States, that 30 percent of this travel would occur during the morning peak (8 am to 10 am) and 35 percent during the evening peak (4 pm to 7 pm), with the remainder distributed throughout the other hours of the day from 7 to 8 am and from 10 am to 4 pm. This parameter turns out to have very little effect overall on queue formation in the populous counties, because in those counties voter demand estimates exceed drop box service capacity by a very wide margin.

68. For parameter (e), I assumed that every county board of elections office has one drive up queue managed in the following way: one staffed station checks ID, a second staffed station takes signature and receives the ballot. Separating the stages in this way has the potential to increase capacity by allowing the queue to keep moving after the first step is conducted. I assume there are two such staffed queues available for Harris County because it is held at NRG Arena, which has the potential to manage two queues because of its size.

69. Parameter (g), the service capacity of each drop box, depends on the speed of elderly and disabled individuals completing the three steps required to drop off a ballot: having their photo ID checked, signing the register, and depositing their ballots or handing their ballots to an attendant. (I assume that physical capacity of the boxes is not an issue, i.e., staff are available to empty the boxes when needed.) At some locations there may be drive up boxes

and in others voters may have to park and join a pedestrian queue. Drive-up queues move particularly slowly because of the awkwardness of reaching for the box from a car window, undoing one's seatbelt, etc. and because of the necessity to keep some distance between cars (for an illustration, see news footage of a drive up box in Minneapolis at <https://www.youtube.com/watch?v=Kg61Jr9Dm7k>).

70. Regardless of whether the queues are pedestrian or drive-up, given the fact that several steps must be completed in the Texas situation due to the need to check identification and collect a signature, I used three ballots per minute (one every 20 seconds) as an estimate of service time that I consider to be highly conservative. Even if two queues were possible to maintain (which is highly unlikely in the queue lengths I calculate later in the analysis), I estimate that sites would not be able to achieve a rate of ballot deposition exceeding three ballots per minute, with one exception. For the case of Harris County, with the assumption of two staffed drop-off sites and queues being possible at the NRG Arena, I assumed six ballots per minute, twice the rate of the other counties.

71. I modeled the ballot drop box locations at each county board of elections office as a simple D/D/s queueing system with a constant hourly capacity as explained above, and deterministic arrival times that varied by the hour as explained in the paragraph prior. In this model, queues form whenever the demand exceeds the capacity, and the queue length at a given hour is simply the excess demand in that hour plus the queue length at the end of the previous hour, as given in the following equation:

$$Q(t) = Q(t - 1) + D(t) - C(t)$$

where $Q(t)$ is the queue length at hour t , $Q(t - 1)$ is the queue length at hour $t-1$, $D(t)$ is the demand at hour t , and $C(t)$ is the capacity at hour t .

72. Given the queues at a given hour, the average delay in that hour is given by the following equation

$$W_{average}(t) = \frac{Q_{average}(t)}{C(t)}$$

where $W_{average}(t)$ is the average expected wait time for a voter arriving at hour t ,

$Q_{average}(t)$ is the average queue length at hour t , and $C(t)$ is the capacity at hour t .

73. For a concise overview of the input-output method for analyzing queueing, see Daganzo (1983). A more thorough explanation is set forth in a textbook by the same author (Daganzo, 1997).

C. Results: Estimates of Election Day Queue Lengths and Wait Times, By County

74. I generated outputs by county for three different scenarios: low demand, “baseline” demand (my best estimate of actual demand for drop boxes on Election Day), and high demand.

75. The baseline scenario is shown in Tables 4 and 5, found after the references at the end of this Declaration. Table 4 shows projected Election Day queue lengths for the most populous counties throughout the course of the day, and Table 5 shows projected wait times for people who arrive during those hours of the day. Only the 25 largest counties by voter registration are shown in the tables, because with 254 counties it is not possible to fit all on a page.

76. In the baseline scenario, 25 counties have queues at the end of Election Day exceeding 1,700 and ranging up to 64,000 vehicles (Table 4); with wait times exceeding nine hours and ranging up to 340 hours (Table 5). The impacts in more populous counties are much more severe than in less populous counties. The wait at the end of a day to drop off a ballot over the course of a day in the ten most populous counties in the state is estimated at baseline to average 135 hours, with a range from 54 to 340 hours – estimates that are so astronomical they clearly communicate gridlock that will simply keep people from being able to drop off

their ballots. A total of about 337,000 voters across the state are potentially affected by an inability to drop their ballots off in the baseline scenario. Meanwhile the 209 least populous counties in the state are not projected to have any wait time in the baseline scenario.

77. I also calculated the “low demand” and “high demand” results, creating output tables similar to Tables 4 and 5. I describe the results here, without displaying the detailed results in tables.

78. For the low demand scenario (in which from 1.7 to 2.5 percent of registered voters attempt to drop off their ballots on Election Day), the 22 most populous counties in the state have significant queues (of more than 1,000 vehicles at the end of Election Day) and waiting times (of more than six hours). The ten most populous counties have end-of-day queue lengths averaging more than 16,000 vehicles and wait times averaging 87 hours. A total of about 200,000 voters are potentially affected by an inability to drop off their ballot in this minimum demand scenario.

79. In the high demand scenario, in which the share of registered voters who plan to deliver their absentee ballots to a drop box on Election Day ranges from 4.1 to 5.9 percent, the 25 most populous counties have average queue lengths of 22,000 vehicles, and wait times for the ten most populous counties range from 94 to 606 hours. The total number of Texas voters driven away by the inability to reach a ballot drop box in this scenario is more than 600,000.

80. The range of potential outcomes based on variance in the input inferences can be shown as I do here for three counties: Harris, Travis and Fort Bend. Figures 5 to 10 (below) visualize the variance in possible incomes for queue lengths and wait times for those three counties.

Figure 5: Range of Possible Election Day Queue Lengths in Harris County

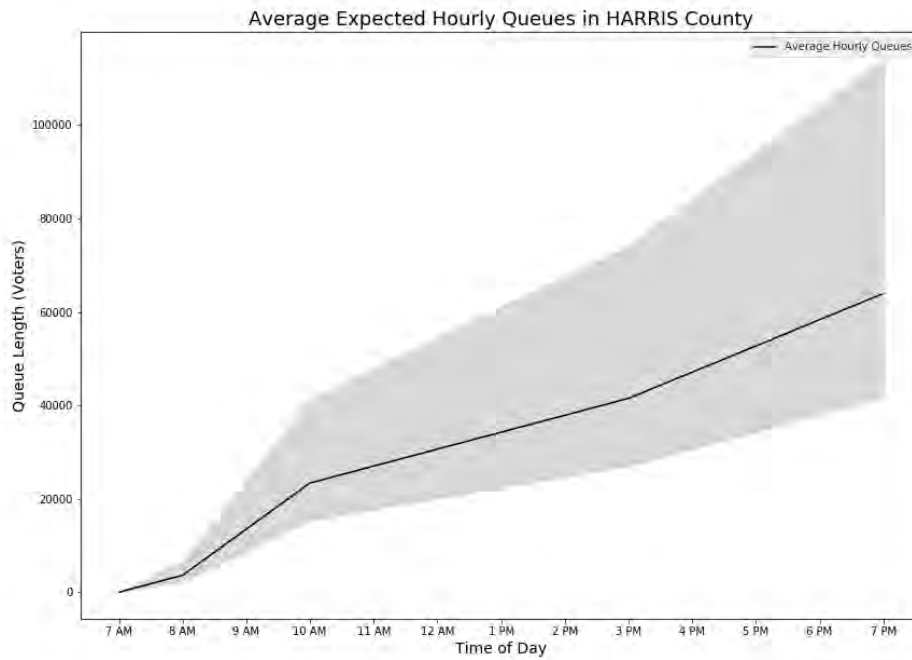


Figure 6: Range of Possible Hourly Delay Per Capita in Harris County

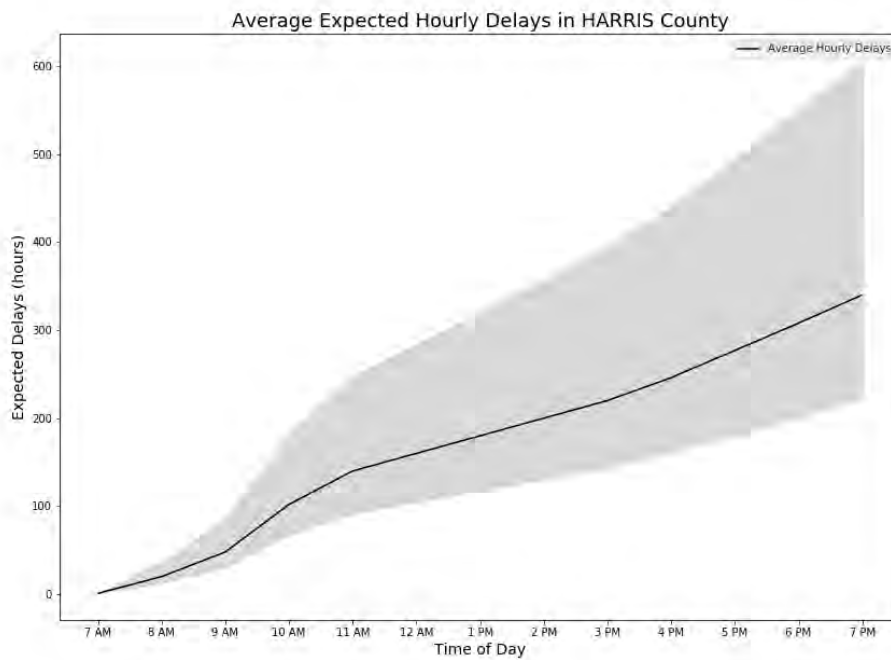


Figure 7: Range of Possible Election Day Queue Lengths in Travis County

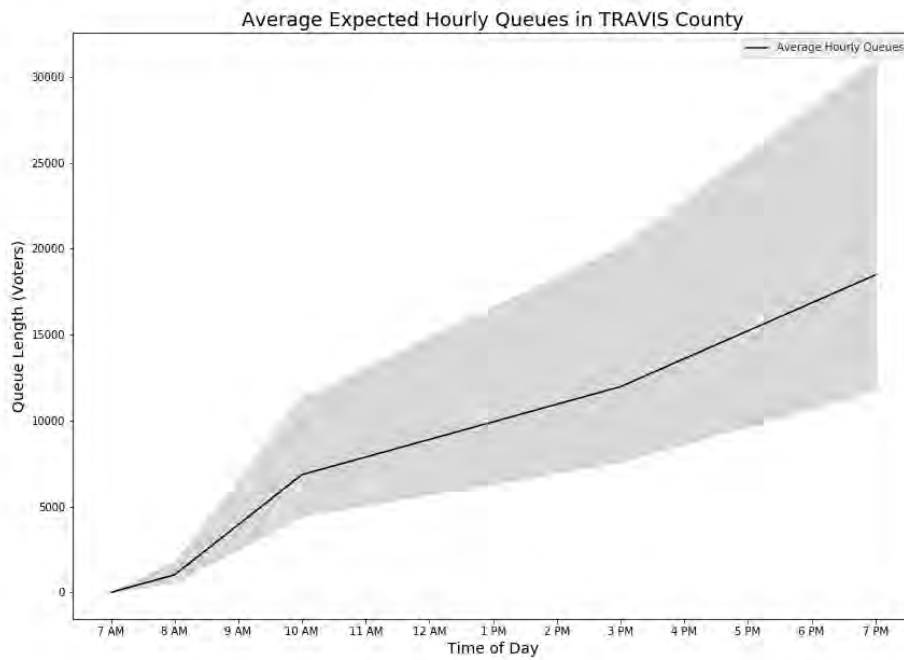


Figure 8: Range of Possible Hourly Delay Per Capita in Travis County

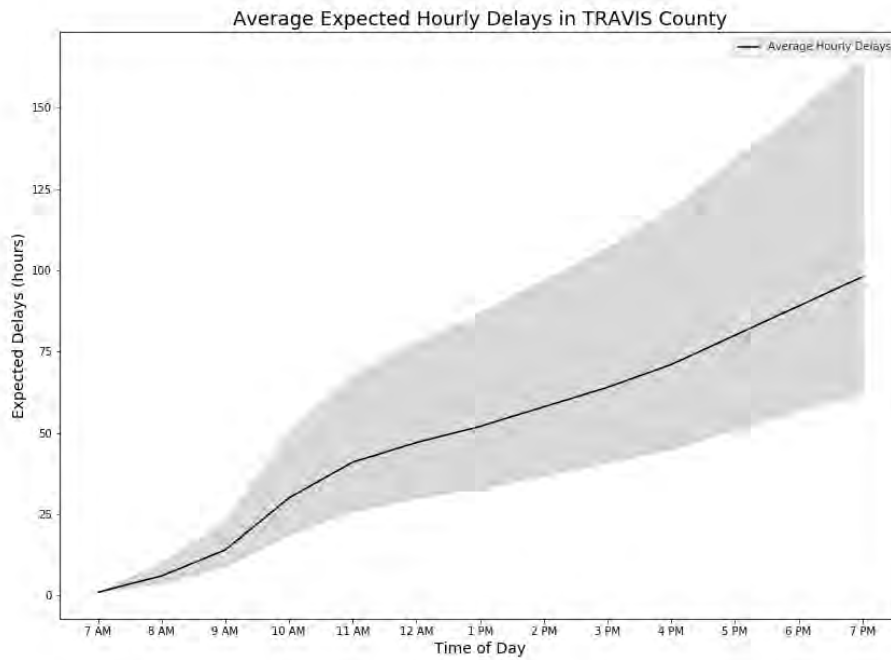


Figure 9: Range of Possible Election Day Queue Lengths in Fort Bend County

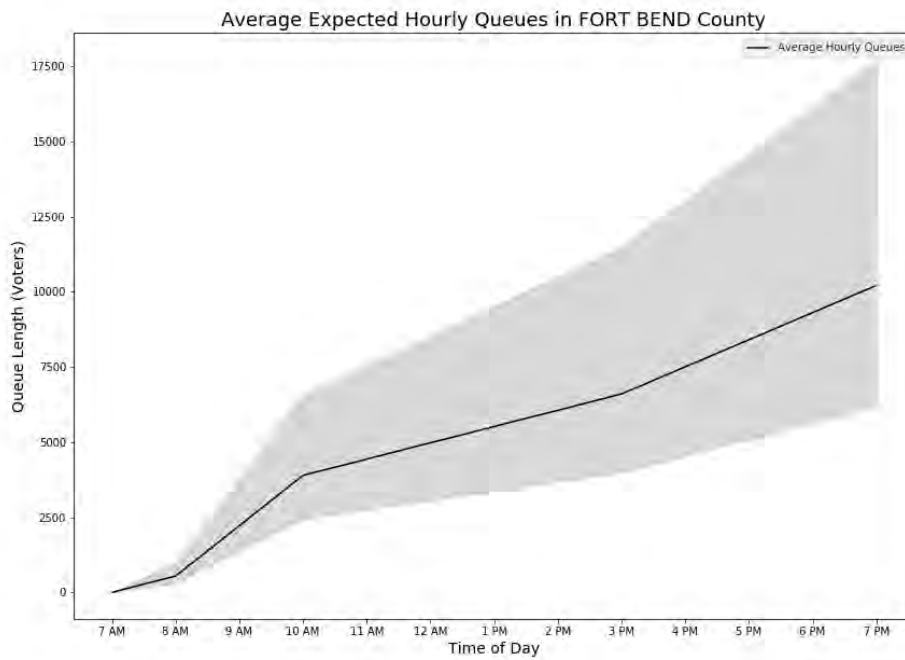
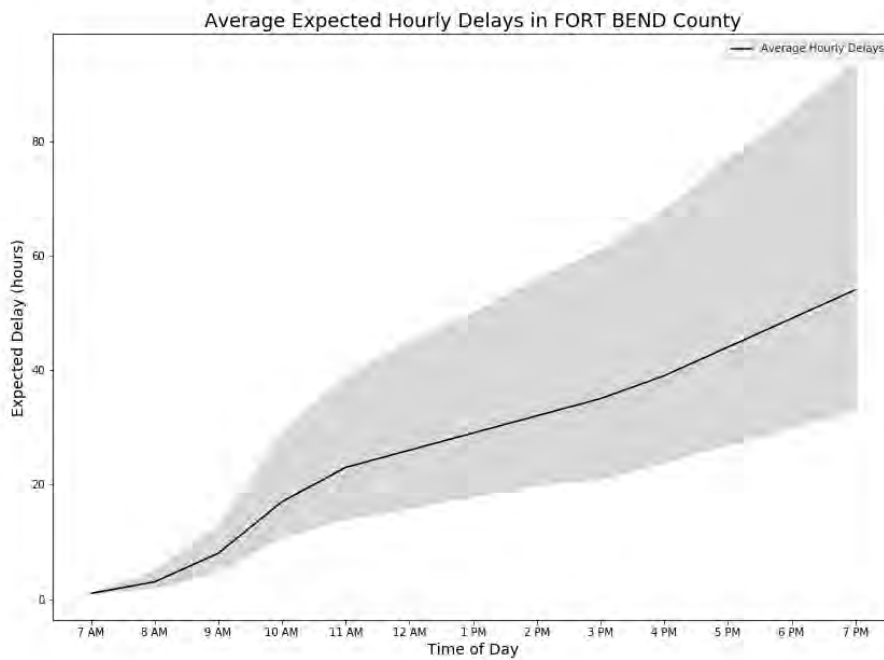


Figure 10: Range of Possible Hourly Delay Per Capita in Fort Bend County



D. Results: Impacts on Voters

81. The figures discussed above, shown in Tables 4 and 5, and displayed for three counties in Figures 5 to 10, show projected scenarios that help estimate the magnitude of the impact of not allowing more than one location for ballot drop boxes in each county. Plainly, it is unlikely that the massive queues and wait times shown by these analyses would occur, because once the queues and wait times become long, voters are likely to either abandon the queue; arrive at their county drop box site and be deterred from joining the queue; or hear about the long wait times on the news or from friends and not even begin a trip to the county elections office. In other words, queues of much shorter than the projected lengths would likely dissuade voters from attempting to deliver their ballots long before the queues achieve the length demonstrated by demand. For example, a queue of 30,000 vehicles would stretch for about 150 miles; and one has difficulty imagining a voter willing to tolerate a wait of more than 8 hours.
82. The estimated queue lengths at the end of Election Day are a good estimate of the number of voters who could be dissuaded from dropping off their ballots by the intense traffic that would be associated with county drop box locations once only a few hundred vehicles are lined up, in addition to the prospect of intolerably long vehicle queues and wait times. Thus, one estimate of the number of voters who might forgo casting their ballots due to the small numbers of drop box locations in populous counties would be the surplus demand in the remaining queues at the end of Election Day. Statewide, this would be about 330,000 ballots in the baseline scenario, with a range as low as 200,000 ballots in the low-demand scenario and as high as 600,000 ballots in the high-demand scenario.
83. The impacts of queues can be expected to have a disparate impact on African Americans and Hispanics. The most populous counties with the longest expected queues and wait times have

a higher fraction of the population that is African American or Hispanic. About 71 percent of African Americans and 65 percent of Hispanics in Texas live in the top 10 counties by population, as compared to 55 percent of Whites. Harris County, which is expected to have the longest queues and wait times in the state, contains 26 percent of all African Americans and 18 percent of Hispanics in the state, compared to 14 percent of Whites.

CONCLUSION

84. I have analyzed two potential impacts of the Texas Governor's decision not to allow counties to provide multiple satellite ballot drop off locations for voters in the November general election. The first is the travel burden for those elderly and disabled individuals who will have time-consuming and uncomfortable trips, disproportionately on public transportation or on foot due to their not having access to a personal vehicle in their household, to access a ballot drop box under the current rule. The second is the queue lengths associated with large potential demand for access to ballot drop boxes due to the circumstances of this election and based on comparisons with other locations that have implemented drop boxes as a ballot delivery option.

85. I find that more than 89 percent of the 321,000 absentee-eligible citizens of voting age in the state who lack access to a car would have a round trip to access a county ballot drop box location exceeding 90 minutes, which is substantially longer than the average amount of travel undertaken in an entire day in the State of Texas, under conditions that are typically much more difficult than driving in a personal vehicle. Overall, from 7.7 to 13.5 percent of the population of the state is affected by a significant travel burden, with the ten most populous counties accounting for the majority of those individuals. The share of the population with a travel burden is particularly high in Harris County, where 38 percent of the

population is estimated to have a round trip of more than 70 minutes to access the county ballot drop box, and which contains a disproportionate share of affected voters in the state. Senior citizens and disabled individuals under the poverty line are much more likely to be affected by this burden across the state, because they are less likely to have access to a personal vehicle in their household. Such long travel durations under uncomfortable or impossible conditions, given age and disability, are likely to dissuade affected voters from delivering their absentee ballots to drop boxes, and may consequently discourage voting altogether, given reasonable fears of COVID-19 infection at in-person polling places, and skepticism that the postal service will deliver ballots on time if they are put in a mailbox.

86. I estimate that the demand for drop boxes would generate extraordinarily lengthy queues in the most populous counties in the state, with intolerably long wait times to drop off a ballot. It appears likely that in those counties more than 300,000 people could be turned away from drop box locations, or could be dissuaded from attempting to drop off their ballots on Election Day by reports of long lines or by encountering intense traffic on the way to or upon arriving at the drop box, if the state does not permit affected counties to provide additional drop box locations in order to mitigate queuing delays.

87. Both of these types of impact would be disproportionately borne by African Americans and to a lesser extent Hispanics. African Americans are twice as likely to experience a significant travel burden in comparison to Whites. African Americans and Hispanics are also substantially more likely to live in larger counties where longer queues and higher wait times are expected in order to deposit a ballot at a drop box.

I declare under penalty of perjury that the information set forth in this declaration is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Daniel G. Chatman". The signature is written in a cursive style with a large initial "D".

Dated: October 8, 2020

Dr. Daniel G. Chatman

References

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Table 4: Hourly Election Day Queues, Baseline Scenario, for Top 25 Counties by Number of Registered Voters

County Name	7 AM	8 AM	9 AM	10 AM	11 AM	12 PM	1 PM	2 PM	3 PM	4 PM	5 PM	6 PM
HAYS	49	458	868	917	966	1015	1064	1113	1277	1441	1605	1768
GRAYSON	50	462	874	925	975	1025	1075	1125	1291	1456	1622	1787
WEBB	59	494	929	988	1047	1106	1165	1224	1403	1582	1760	1939
COMAL	98	633	1167	1265	1363	1461	1559	1657	1893	2130	2367	2604
MCLENNAN	144	797	1449	1593	1737	1881	2025	2169	2474	2780	3086	3392
JEFFERSON	146	806	1465	1612	1758	1905	2051	2198	2507	2817	3127	3436
SMITH	164	867	1571	1734	1898	2062	2225	2389	2724	3060	3395	3730
LUBBOCK	191	963	1736	1927	2118	2308	2499	2689	3065	3441	3817	4193
BRAZORIA	206	1019	1832	2039	2245	2451	2657	2863	3263	3662	4061	4460
BELL	249	1173	2097	2346	2595	2844	3094	3343	3807	4271	4734	5198
NUECES	275	1266	2256	2531	2806	3081	3357	3632	4135	4637	5140	5643
CAMERON	286	1304	2322	2608	2894	3180	3466	3752	4271	4790	5309	5828
GALVESTON	303	1366	2429	2732	3035	3338	3641	3945	4490	5034	5579	6124
WILLIAMSON	475	1981	3486	3962	4437	4913	5388	5864	6667	7470	8273	9077
MONTGOMERY	497	2058	3619	4116	4613	5110	5607	6104	6939	7774	8610	9445
FORT BEND	542	2217	3893	4435	4976	5518	6060	6601	7504	8406	9309	10211
HIDALGO	595	2410	4224	4819	5415	6010	6606	7201	8185	9168	10151	11134
DENTON	601	2431	4260	4862	5463	6064	6666	7267	8259	9251	10244	11236
COLLIN	740	2927	5113	5854	6594	7334	8074	8815	10015	11216	12416	13616
EL PASO	801	3144	5487	6288	7089	7890	8691	9492	10784	12076	13368	14659
TRAVIS	1023	3937	6851	7874	8898	9921	10944	11967	13592	15217	16842	18467
TARRANT	1921	7145	12369	14291	16212	18134	20055	21976	24949	27921	30893	33865
DALLAS	2163	8006	13850	16013	18175	20338	22500	24663	27997	31331	34665	37999
BEKAR	2236	8267	14298	16534	18769	21005	23240	25476	28919	32362	35805	39249
HARRIS	3621	13500	23378	26999	30620	34242	37863	41485	47097	52709	58321	63934

Table 5: Hourly Delays (in hours), Baseline Scenario, for Top 25 Counties by Number of Registered Voters

County Name	7 AM	8 AM	9 AM	10 AM	11 AM	12 PM	1 PM	2 PM	3 PM	4 PM	5 PM	6 PM
HAYS	0	1	4	5	5	6	6	6	7	8	8	9
GRAYSON	0	1	4	5	5	6	6	6	7	8	9	9
WEBB	0	2	4	5	6	6	6	7	7	8	9	10
COMAL	1	2	5	7	7	8	8	9	10	11	12	14
MCLENNAN	1	3	6	8	9	10	11	12	13	15	16	18
JEFFERSON	1	3	6	9	9	10	11	12	13	15	17	18
SMITH	1	3	7	9	10	11	12	13	14	16	18	20
LUBBOCK	1	3	7	10	11	12	13	14	16	18	20	22
BRAZORIA	1	3	8	11	12	13	14	15	17	19	21	24
BELL	1	4	9	12	14	15	16	18	20	22	25	28
NUECES	2	4	10	13	15	16	18	19	22	24	27	30
CAMERON	2	4	10	14	15	17	18	20	22	25	28	31
GALVESTON	2	5	11	14	16	18	19	21	23	26	29	33
WILLIAMSON	3	7	15	21	23	26	29	31	35	39	44	48
MONTGOMERY	3	7	16	21	24	27	30	33	36	41	46	50
FORT BEND	3	8	17	23	26	29	32	35	39	44	49	54
HIDALGO	3	8	18	25	28	32	35	38	43	48	54	59
DENTON	3	8	19	25	29	32	35	39	43	49	54	60
COLLIN	4	10	22	30	35	39	43	47	52	59	66	72
EL PASO	4	11	24	33	37	42	46	51	56	63	71	78
TRAVIS	6	14	30	41	47	52	58	64	71	80	89	98
TARRANT	11	25	54	74	85	95	106	117	130	147	163	180
DALLAS	12	28	61	83	95	107	119	131	146	165	183	202
BEXAR	12	29	63	86	98	110	123	135	151	170	189	208
HARRIS	20	48	102	140	160	180	200	220	246	277	308	340

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

TEXAS STATE CONFERENCE OF
NAACP BRANCHES,

Plaintiff,

v.

GREG ABBOTT, in his official capacity as
Governor of Texas; RUTH HUGHS, in her
official capacity as Texas Secretary of State;

Defendants.

Case No. 1:20-CV-1024-RP

DECLARATION OF RYAN ROBINSON

1. My name is Ryan Robinson. I served as the City Demographer for the City of Austin, Texas from 1990 until my retirement earlier this year in June of 2020.

2. I received a Masters degree in Urban Geography from the University of Georgia in 1986 after completing undergraduate work in 1983 at the University of Texas at Austin, majoring in Geography and Anthropology.

3. As the City Demographer for the City of Austin, my responsibilities included the following: produced annual estimates of the total population of the City along with detailed breakouts by race and ethnicity; generated long-range population forecasts; performed annual analysis of demographic data from the American Community Survey as provided by the US Census Bureau; generated demographic analysis used in presentations to the US Department of Justice; created maps of demographic change and maps of household dynamics; gave dozens of public presentations covering demographic trends happening

across central Texas.

4. I am not being compensated for my work on this declaration.

5. In my experience as a demographer, population is never evenly distributed throughout a particular county. This is true no matter the size of the county but it is particularly the case in larger and more diverse counties. Population distribution by race, ethnicity, and income has a much higher degree of spatial and structural stratification.

6. Travis County is heavily segregated by race and ethnicity, as well as income.

7. Because Travis County and other urban counties in Texas are heavily segregated by race and ethnicity, as well as income, access to polling locations and associated voting activity centers like ballot drop off locations will affect particular groups differently, based on where they are located within the county.

8. Governor Abbott's October 1 Order, by significantly increasing the distances people must travel to drop off their absentee ballot, makes it more difficult for people to vote. Racial and ethnic segregation in particular exacerbates the challenges faced by many voters, as does income level. For example, people with lower incomes have lower vehicle ownership rates and may not be able to take time off work to vote.

9. In Travis County neighborhoods such as Colony Park, Springdale, Pflugerville, Heatherwilde, and Wells Branch with large African-American communities, for example, voters there will have a much more difficult time travelling to the county's sole absentee ballot drop off location than people who live in the wealthier communities near the location. See Exhibit 1 for maps detailing the distribution and concentration of African-Americans in Travis County. Hispanic neighborhoods in Travis County such as Dove Springs, Montoplis, Riverside, Rundberg and North Lamar, and St. John will also face these same challenges.

See Exhibit 2 for a map detailing the concentration of Latinos in Travis County.

10. The absentee ballot drop off location in Travis County is located at the Travis County Clerk's office. That office is located at 5501 Airport Boulevard, Austin, TX 78751, within the urban core of the City of Austin.

11. As Exhibits 1 and 2 demonstrate, African-Americans and Latinos are not concentrated in the center of Austin.

12. By contrast, non-Hispanic Whites are much more heavily concentrated in the western and central portion of Travis County. See Exhibit 3 for a map detailing the concentration of Whites in Travis County.

13. Limiting the availability of ballot drop offs to a single location within Travis County results in a strongly negative impact on voting access that will be felt differentially by race and ethnicity. African American and Hispanic households are often more dependent on public transit for their basic transportation needs than are non-minority households and are thusly further punished by a single location for ballot drop offs. Not having a nearby, convenient ballot drop off location for minority voters to use will reduce their overall ability to vote.

I declare that the foregoing is true and correct under penalty of perjury. Executed this 7th day of October, 2020, in Austin, Texas.

A handwritten signature in black ink, appearing to read "Ryan Robinson", written over a horizontal line.

Ryan Robinson

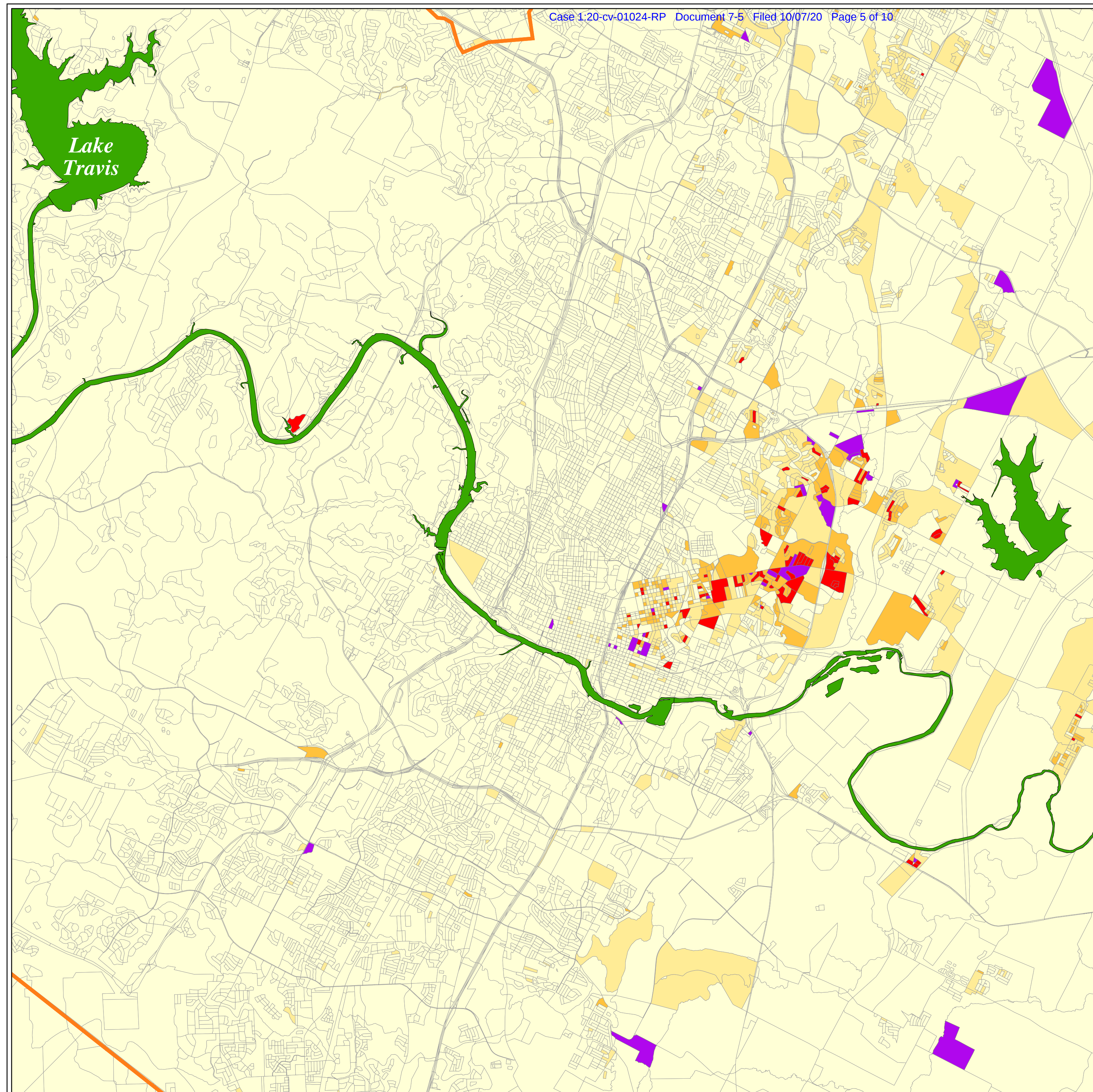
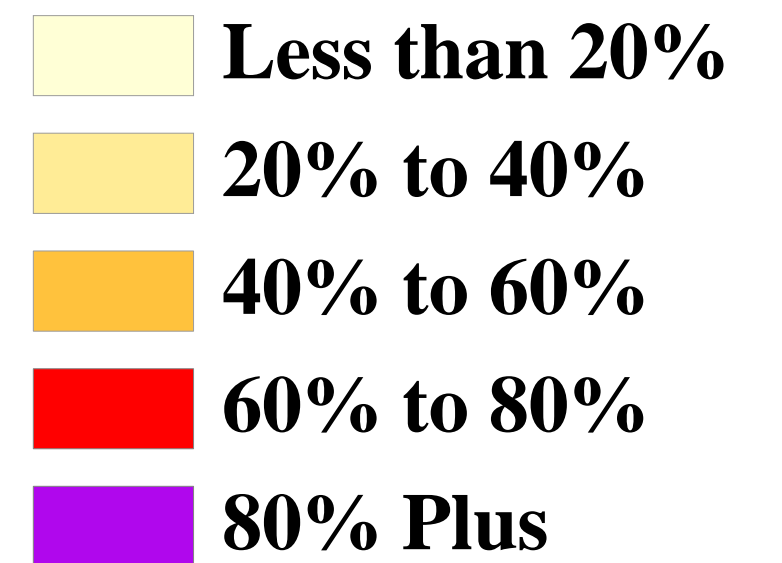
EXHIBIT 1

African American Population Concentrations

Austin, Texas

Census 2010 Data






Percentage of the total
Population that is
African American



African American Absolute Number of Individuals

Austin, Texas
Census 2010 Data

**Total
Population that is
African American**

-  Fewer than 10
-  10 to 25
-  25 to 50
-  50 to 100
-  100 Plus

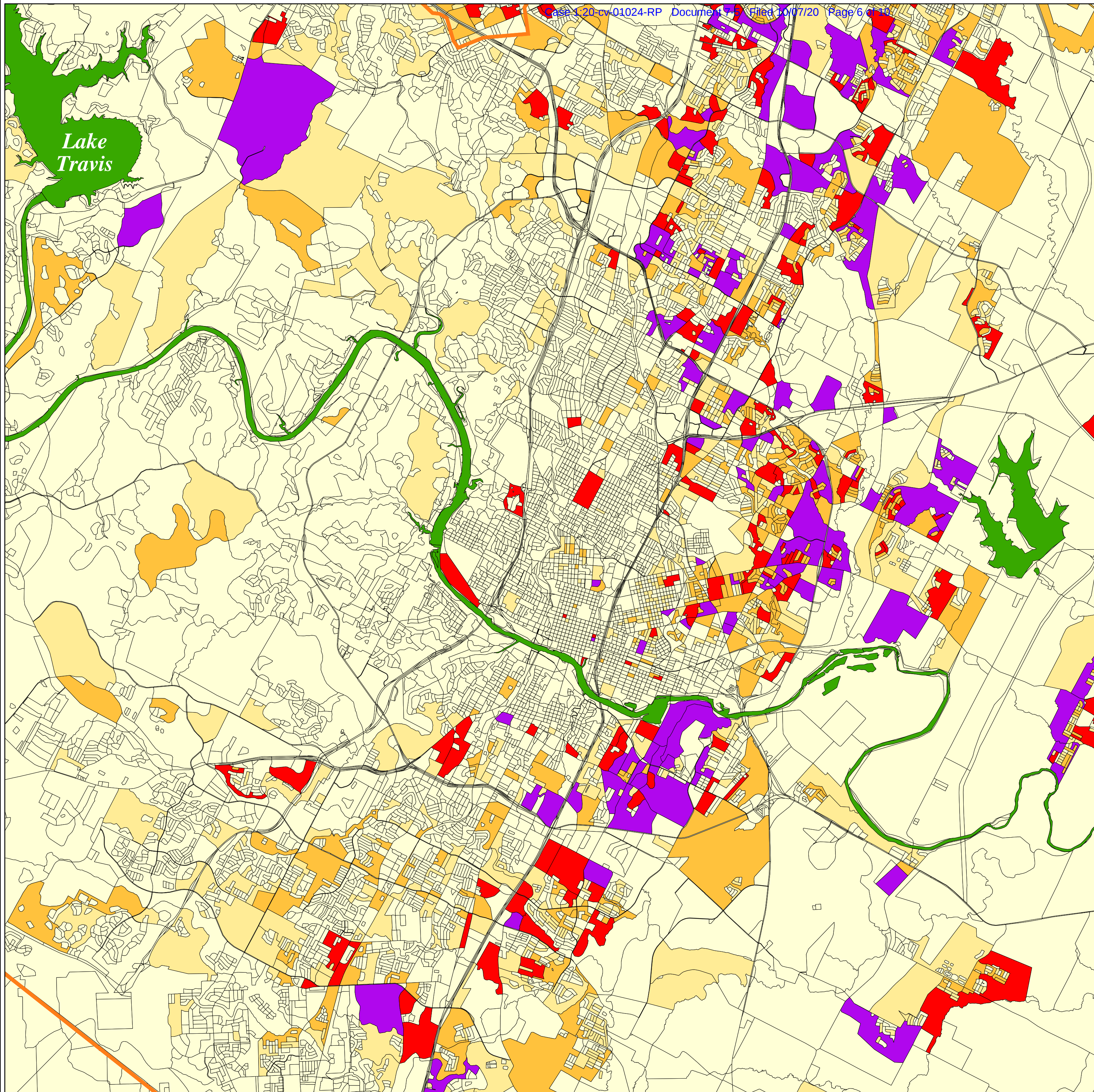







EXHIBIT 2

Latino--Hispanic Population Concentrations

Austin, Texas

Census 2010 Data

Percentage of the total
Population that is
Latino--Hispanic

-  Less than 20%
-  20% to 40%
-  40% to 60%
-  60% to 80%
-  80% Plus

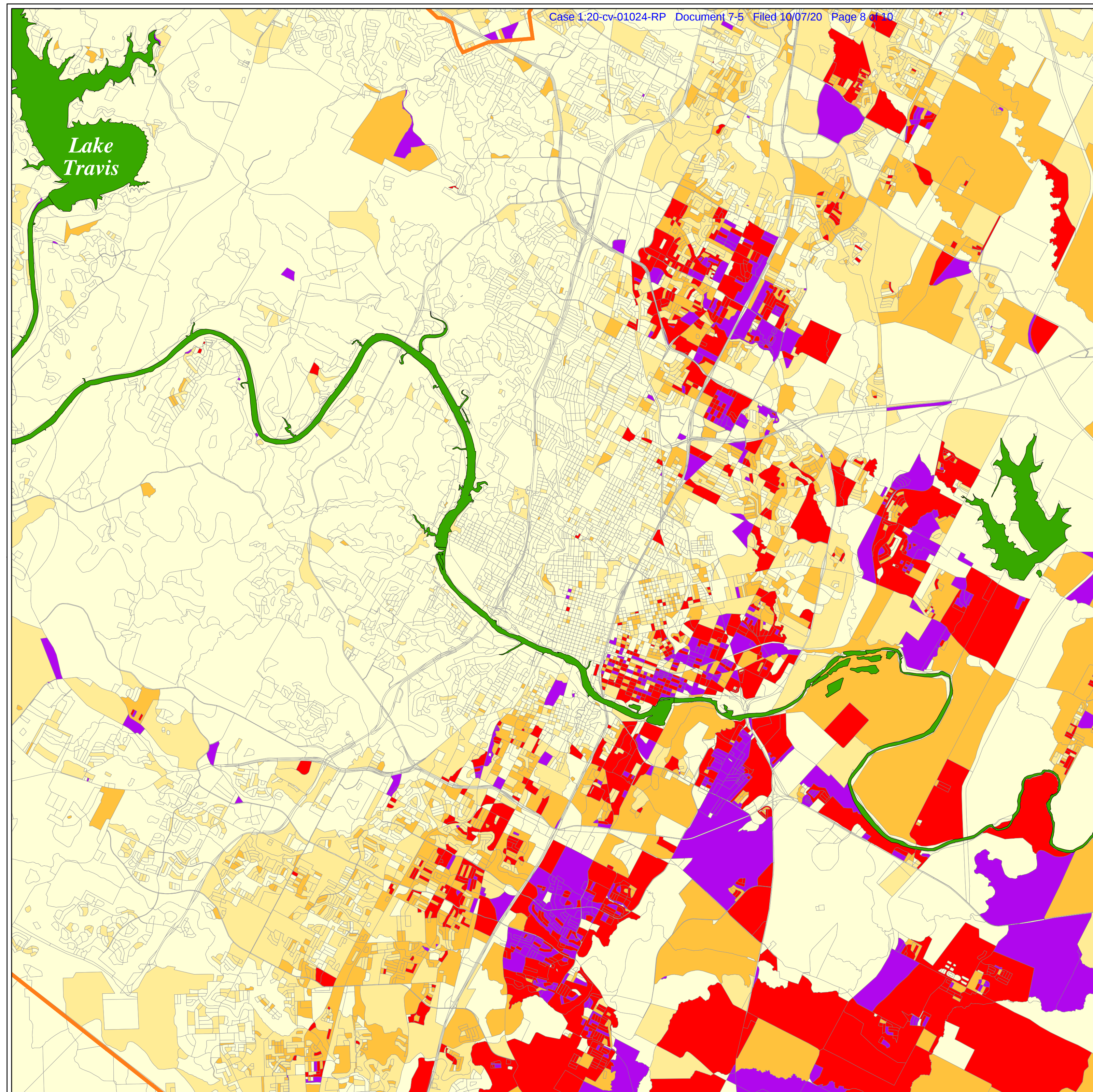
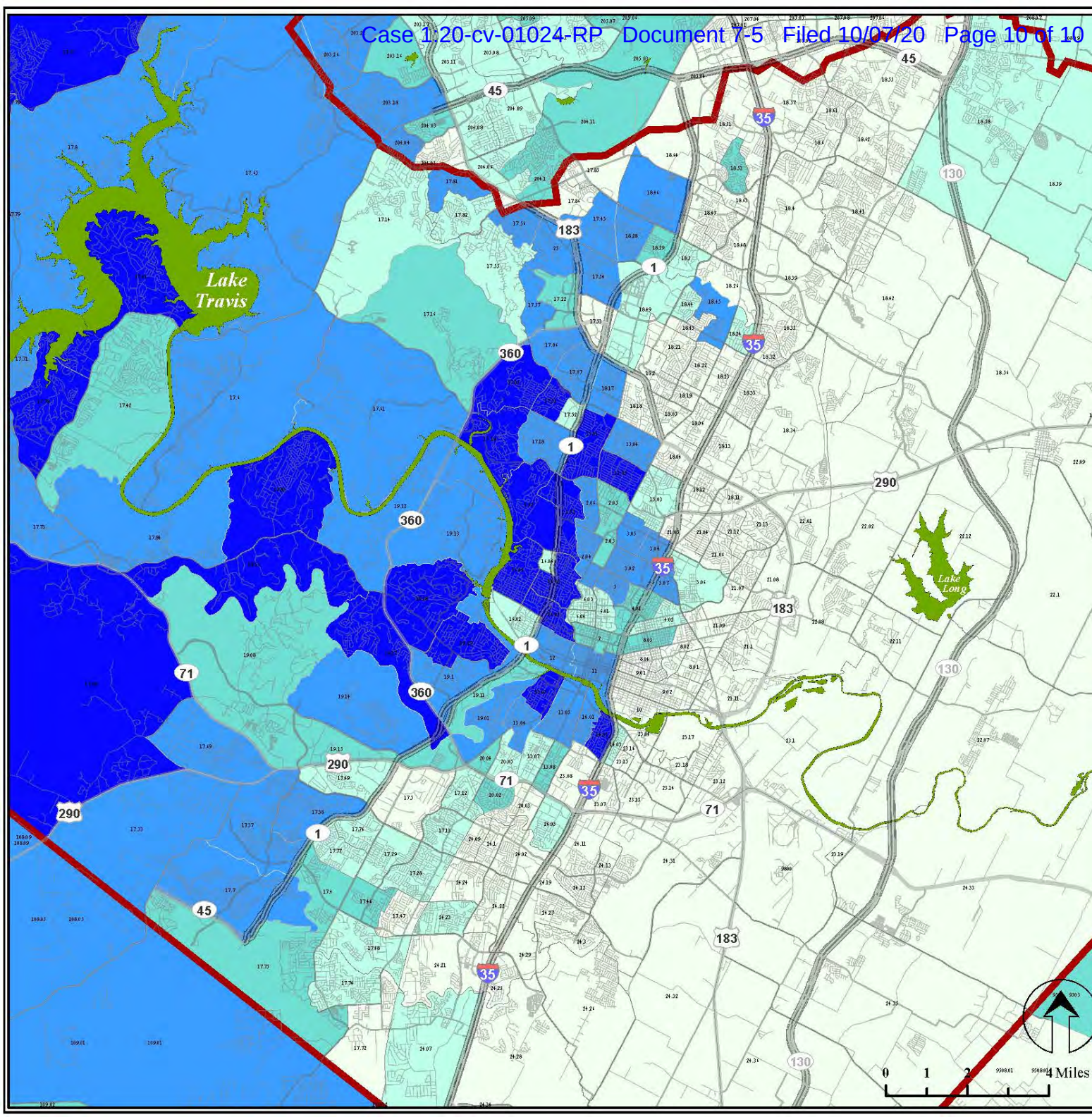
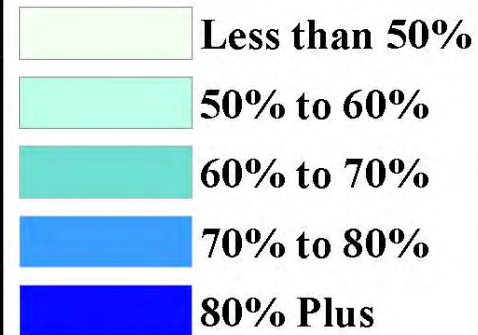


EXHIBIT 3

non-Hispanic White share of Total Population

Austin, 2017 data

Share of Total



City of Austin



Data source: American Community Survey, 2013–2017 5-year composite dataset, Table B11005, census tracts. US Census Bureau.

Map produced by Ryan Robinson, City Demographer, Department of Planning, City of Austin, April 2019.



EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

TEXAS STATE CONFERENCE OF
NAACP BRANCHES,

Plaintiff,

v.

GREG ABBOTT, in his official capacity as
Governor of Texas; RUTH HUGHS, in her
official capacity as Texas Secretary of
State;

Defendants.

Case No. 1:20-CV-1024

DECLARATION OF HOWARD HENDERSON

1. My name is Dr. Howard Henderson. I am the Founding Director of the Center for Justice Research and a professor of justice administration in the Barbara Jordan-Mickey Leland School of Public Affairs. Currently I serve as a Nonresident Senior Fellow in Governance Studies at The Brookings Institution. I am also a member of the advisory board for the Vera Institute's Rural Jail Research Policy Network, a member of the National Scientific Advisory Committee at the Institute of Justice Research and Development at Florida State University, and a member of the National Science Foundation's STEM Opportunities in Prison Settings workgroup.

2. My research on predictive bias and program evaluation has been supported by the National Science Foundation, Department of Justice, and most recently the collaborative efforts of the Center for Advancing Opportunity, Thurgood Marshall College

Fund and the Charles Koch Foundation. I have served as an advisor for local, state, and federal legislators and a host of criminal justice agencies along with reform-oriented organizations.

3. I received my B.S. in Criminal Justice Administration from Middle Tennessee State University, my M.A. of Criminal Justice from Tennessee State University, and my Ph.D. in Criminal Justice from Sam Houston State University in 2006.

4. My most recent research has appeared in *Race & Justice*, *Journal of Criminal Justice*, *Criminal Justice & Behavior*, *Sociology of Race & Ethnicity*, and the *American Medical Association's Journal of Ethics*. My public scholarship has been published in the *Huffington Post*, *Houston Chronicle*, and the *Texas Tribune*. I was awarded the Academy of Criminal Justice Sciences Minority Mentor of the Year in 2019, and I have appeared on CNN, FOX, NBC, CNBC, ABC, Black News Channel, and the Laura Coates Show. My research has been cited by Politico, Vice, Aljazeera, Yahoo News, and The Crime Report.

5. I have attached my *Curriculum Vitae* as Exhibit 1 to this declaration. All information therein is true and correct.

6. My expertise is in predictive analytics, in which I forecast behavioral responses to institutional barriers. Using this analysis, I can identify consequences of a policy and predict who will be impacted, the extent of that impact, and what the ramifications of that impact will be. Although my expertise is generally examining policies from a criminal justice standpoint, the analysis is applicable to any government policy, including the October 1 Order, which will limit counties to only one absentee ballot drop off location including in the largest, densest counties in the state, which are also home to large minority communities.

7. Plaintiffs' counsel asked me to offer opinions related to whether Governor Abbott's October 1 Order will place an unreasonable burden on voters, and in particular whether it will have a disparate impact on minority voters. Plaintiffs' counsel is not compensating me for my work on this case and I have reached these conclusions independently.

8. For my analysis of the October 1 Order, I examined the July 1, 2019 U.S. Census Population estimates and data showing the area in square miles of Texas counties, zip codes with the highest population density in Texas, and cities with the highest population density in Texas.

9. Harris County is home to 2.4 million registered voters and constitutes an area of 1,703.48 square miles—approximately the same size of Rhode Island—and the City of Houston has a population density of 3,071.73 people per square mile.

10. The densest zip code in Texas is "77046," which is located in Houston and has 32,343.09 people per square miles. The second densest zip code in Texas is "76798," which has 23,606.98 people per square mile.

11. Because some Texas counties have fewer than 1,000 people—for example Loving County, Texas has a population of 169—while others have millions, the October 1 Order creates a barrier to voting in the upcoming November election for people in the largest, densest counties that also have substantial numbers of minority voters. For example, Ralph Edelbach of Cypress, an 82-year-old voter among those suing Abbott, had planned to drop his ballot off at a Harris County location that was 16 miles from his home — but now will have to travel 36 miles, nearly 90 minutes round trip, to reach the only location Abbott has allowed to stay open, according to court documents. This makes it very difficult to vote

in areas with large communities of color. In Houston, the Third and Fifth Wards in particular will be disproportionately impacted.

12. Moreover, public health leaders agree that voting by mail is the safest way to minimize the risk of COVID-19 infection, making in-person voting an unrealistic option for voters of color and the elderly.

13. The disenfranchisement that will occur as a result of the October 1 Order is not race-neutral and it will disproportionately impact voters of color. For example, Black and Hispanic people are only half as likely as white people to be able to take time off work,¹ which is critical given the geographic size of some Texas counties with large communities of color and the anticipated need to wait in long lines because counties with millions of residents will only have one absentee ballot drop off location to service everyone wishing to drop off their absentee ballots. Long lines, especially in Houston, have been a consistent plague on the orderly operation of elections there and creates a substantial barrier to vote in these larger counties.²

14. However, this can also be a barrier to voting in rural counties where people are sprawled out and will not have access to the drop off location, especially for voters who lack a vehicle.

15. Furthermore, the October 1 Order is not a reasonable policy decision because polling locations could also be used as an absentee ballot drop off location.

¹ Alex Vandermaas-Peeler et al., *American Democracy in Crisis: The Challenges of Voter Knowledge, Participation, and Polarization*, Pub. Religion Res. Inst. (July 17, 2018), <https://www.prii.org/research/American-democracy-in-crisis-voters-midterms-trump-election-2018/>.

² Hannah Dellinger & St. John Barned-Smith, *Long Lines, Lack of Machines Frustrate County Voters*, Houston Chronicle (Mar. 3, 2020), <https://www.houstonchronicle.com/politics/houston/article/Sunrise-voters-set-the-pace-for-Super-Tuesday-in-15101191.php>; Anagha Srikanth, *Long Voting Lines in Texas Renew Accusations of Voter Suppression*, The Hill (Mar. 4, 2020), <https://thehill.com/changing-america/respect/diversity-inclusion/485906-long-voting-lines-in-texas-renew-accusations-of>.

I declare that the foregoing is true and correct under penalty of perjury. Executed this 7th day of October 7, 2020, in Houston, Texas.

A handwritten signature in black ink, appearing to read "Howard M. Henderson", with a stylized flourish at the end. The signature is written above a horizontal line.

Howard Henderson

Exhibit 1

Curriculum Vitae
Howard Henderson, Ph.D.

EDUCATION

Ph.D. Criminal Justice. Sam Houston State University

M.C.J. Criminal Justice. Tennessee State University

B.S. Criminal Justice Administration. Middle Tennessee State University

EXPERIENCE

Administrative

2018 – Present **Founding Director**
TSU Center for Justice Research

2014 – 2016 **Graduate Program Director**
Texas Southern University

Academic

Fall 2016 – Present **Professor**
Texas Southern University

2014 – 2016 **Associate Professor**
Texas Southern University

2012 – 2014 **Associate Professor**
Sam Houston State University

2006 - 2012 **Assistant Professor**
Sam Houston State University

2006 - 2010 **Instructor**
International Law Enforcement Academy (ILEA)

Field Experience

2002 - 2006 **Community Supervision Officer**
12th Judicial District-Huntsville, TX

1999 - 2001 **Case Manager**
Children’s Comprehensive Services - Nashville, TN

PROFESIONAL AND RESEARCH SPECIALIZATIONS

Criminal Justice Program Evaluation
Validating Risk-Need Assessment Instruments
Evidence-Based Approaches to Justice
Punishment and Social Control

PUBLICATIONS

In Press or Published Peer Reviewed

** indicates graduate student.*

- Wilson, F., Schaefer, B., Blackburn, A. & **Henderson, H.** (2019). Cultivating police use of force perceptions through cinema: Maintaining the racial divide. *Criminology, Criminal Justice, Law & Society*, 20(3), 1-22.
- Jackson, R. & **Henderson, H.** (2019). Criminal justice students' perceptions and awareness of racism and discrimination. *Race & Justice, online first*, 1-24
- Wilson, F., Schaefer, B., Blackburn, A. & **Henderson, H.** (2019). Symbolically annihilating female police officer capabilities: cultivating gendered police use of force expectations. *Women & Criminal Justice*, 0,1-19. DOI: 10.1080/08974454.2019.1588837
- Rembert, D., Threadcraft-Walker, W., **Henderson, H.**, & Jackson, R. (2018). Predicting youth assault and institutional danger in juvenile correctional facilities. *Journal of Criminal Justice*, 3, 170 – 185.
- Threadcraft-Walker, W. & **Henderson, H.** (2018). Reflections on Race, Personality, and Crime. *Journal of Criminal Justice*, 59, 38-41.
- Threadcraft, W., Threadcraft, M., **Henderson, H.**, & Rembert, D. (2018). Gender, race/ethnicity and prediction: Risk in behavioral assessment. *Journal of Criminal Justice*, 54, 12-19.
- Rembert, D., **Henderson, H.**, Threadcraft-Walker, W., & Simmon-Horton, S. (2017). Predicting youth on Staff Assault in juvenile Correctional facilities. *Corrections: Policy, Practice & Research*, 1-16.
- Steinmetz, K. & **Henderson, H.** (2016). Hip-hop's criminological thought. *Journal of Criminal Justice and Popular Culture*, 18(1), 114-131.
- Henderson, H.** & Steinmetz, K. (2016). American Policing and Colonialism. *Sociology of Race & Ethnicity*, Online First.

- Ormachea, P., Davenport, S., Haarsma, G., Jarman, A., **Henderson, H.**, & Eagleman, D. (2016). Enabling individualized Criminal Sentencing While Reducing Subjectivity: a tablet-based assessment of recidivism risk. *The American Medical Association Journal of Ethics*, 18(3), 243-251.
- Steinmetz, K. & **Henderson, H.** (2016). Inequality on Probation: An Examination of Differential Probation Outcomes. *Journal of Ethnicity in Criminal Justice*, 14(1), 1-20.
- Steinmetz, K. & **Henderson, H.** (2015). On the Precipice of Intersectionality: the Influence of Race, Gender, and Offense Severity Interactions on Probation Outcomes. *Criminal Justice Review*, 40(3), 361-377.
- Henderson, H.**, Tanana, M., Bourgeois, J.*, Adams, A.T. (2015). Psychometric Racial/Ethnic Predictive Inequities within Risk Needs Assessment Instruments. *Journal of Black Studies*, 46(5), 462-481.
- Wilson, F.T. & **Henderson, H.** (2014). The criminological cultivation of African American municipal police officers: sambo or sellout. *Race and Justice*, 4(1), 45-67.
- Rembert*, D.A. & **Henderson, H.** (2014). Correctional officer excessive use of force: civil liability under section 1983. *The Prison Journal*, 94(2), 198-219.
- Reprinted in Stohr, M., Walsh, A. & Hemmens, C. (2018). *Corrections: A text reader*. Sage Publishing.
- Rembert*, D., **Henderson, H.**, & Pirtle, D. (2014). Differential Racial/Ethnic Predictive Validity. *Youth Violence and Juvenile Justice*, 12, 152-166.
- Henderson, H.** & Miller, H. (2013). The (twice) failure of the wisconsin risk needs assessment instrument. *Criminal Justice Policy Review*, 24(2), 198 – 220.
- Steinmetz*, K. & **Henderson, H.** (2012). Hip-hop and procedural justice: hip-hop artists' perceptions of criminal justice. *Race and Justice*, 2, 155 – 178.
- Reprinted in F. T. Wilson (ed). (2015). *Crime and media studies: Diversity of method, medium, and communication*. San Diego, CA: Cognella.
- Henderson, H., Wells, W., Maguire, E., & Gray, J. (2010). Evaluating the measurement properties of procedural justice in a correctional setting. *Criminal Justice and Behavior*, 37(4), 384-399.
- Henderson, H.**, Tapia*, N., & White, E. (2010). Religious freedom and controlled substances: a legal analysis. *Criminal Law Bulletin*, 46(2), 304-322. (Peer-Edited)

- Hanser, P., Hanser, R., Mire, S., & **Henderson, H.** (2008). Victim and offender correlates in the commission of elder domestic abuse and mistreatment: research for future prevention. *Journal of Criminal Justice and Law Review*, 1, 49-57.
- Rodriguez, J., Pirtle, D., & **Henderson, H.** (2008). Crime and delinquency: latinos in the united states. *International Journal of Crime, Criminal Justice, and Law*, 3(2), 19-29.
- Henderson, H.** & Wilson, F. (2008). Judicial interpretation of reasonableness in use of force cases: An exploratory analysis. *Contemporary Issues in Criminology and the Social Sciences*, 2(3), 91-110.
- Hanser, P., Hanser, R., Mire, S., & **Henderson, H.** (2008). The comorbidity of depressed affective states, medical factors, and mental health considerations in elderly suicide. *Contemporary Issues in Criminology and the Social Sciences*, 2(2), 109-131.
- Henderson, H.**, Daniel*, A., Adams, T., & Rembert*, D. (2007). The predictive utility of the wisconsin risk needs assessment instrument in post-probation success. *International Journal of Crime, Criminal Justice, and Law*, 2, 95-103.
- Adams, T, Ajrouch, K., **Henderson, H.** & Heard, I. (2006). Service –learning outcomes research: replications, a forgotten species. *Journal of Applied Sociology/Sociological Practice*, 22, 55-72.

Edited Book

Henderson, H. (2012). More Than Race: Minority Issues in Criminal Justice. Cognella Publishing.

Book Chapter

Bourgeois, J., Drake, J. & **Henderson, H.** (Forthcoming). The forgotten: The impact of parental and familial incarceration on fragile communities in J. Krysik & N. Rodriguez(Eds)., *Children of Incarcerated Parents - Integrating Research into Best Practices and Policy*. Springerlink Press

Research Reports

Bourgeois, J.W., Henry, T., Kwende, M. & **Henderson, H.** (2019). An examination of prosecutorial staff, budgets, caseloads and the need for change. [Center for Justice Research](#).

Henderson, H., Bourgeois, J. (2019). Racial disparity in Houston's pretrial population. [Center for Justice Research](#).

Public Scholarships

Henderson, H. (2020). Prosecutor caseload's don't exist in a vacuum: Research must look at big picture of ending mass incarceration. The [Houston Chronicle](#).

Baker, D. & Henderson, H. (2019). It will take partnerships to dismantle criminal criminal injustices. [The Houston Forward Times](#).

Johnson-Register, L., Joseph, J., **Henderson, H.** & Johnson-Register, M. (2018). Inequalities in rural Texas school district. [Texas Tribune](#).

Bourgeois, J.W. & **Henderson, H.** (2018). Policies without benchmarks: The politics of school shootings. [Texas Tribune](#).

Wilson, F. & Henderson, H. (2017). Hollywood, the police and ourselves: a shared responsibility for a better future. [Huffington Post](#).

Henderson, H. (2016). Murfreesboro City School's Malign Neglect? Killing them before they grow. [Huffington Post](#).

Henderson, H. (2016). Rice university ranks first for crime rate. [Houston KHOU News](#).

Robinson, C., Adams, M., & Henderson, H. (2015). Foreign affairs are domestic affairs. [Huffington Post](#).

Parks, S. & **Henderson, H.** (2012). Correction's policy and program evaluation of inmate education programs. *Texas Corrections*, 4, 2-15.

Rembert, D., & **Henderson, H.** (2008). Teaching tips: Pedagogies for alliterate College students. *The Criminologist*, 33(4), 13.

Henderson, H., Daniel, A., & Rembert, D. (2007). The effectiveness of community supervision. *Texas Probation*, 22, 9-10.

Henderson, H. (2003). The role of faith in deviant behavior. *Texas Probation*, 3, 18-20.

Encyclopedia Entries

Henderson, H. (2014). Civil rights and criminal justice. In *The Encyclopedia of Criminology and Criminal Justice*. Wiley-Blackwell Publications.

Henderson, H. & Rembert, D. (2009). Race and Recidivism. In *Encyclopedia of Race and Crime*. Sage Publications.

Rembert, D. & **Henderson, H.** (2009). Race and Child Maltreatment. In *Encyclopedia of Race and Crime*. Sage Publications.

Book Reviews

Henderson, H. (2013). The philadelphia negro: a social study [Review of the book *The Philadelphia Negro: A Social Study*]. *Journal of Qualitative Criminal Justice and Criminology*, 1(1), 194-196.

Henderson, H. (2007). Criminological perspectives of race and crime [Review of the book *Criminological Perspectives of Race and Crime*]. *Canadian Journal of Criminal Justice and Criminology*.

Reports

Bourgeois, J., Henry, T., Kwende, M., & **Henderson, H.** (2019). Prosecutorial Staff, Budgets, Caseloads, and the Need for Change.

Henderson, H., Threadcraft-Walker, W., Bourgeois, J. (2018). Pretrial Disparity in Houston's Pretrial Population.

Henderson, H., Threadcraft-Walker, W., White, D. (2017). *Evaluation of the Dallas County Juvenile Justice Department Diversion Male Court*. Dallas, Texas.

Henderson, H., Guidry, S., Jackson, R. (2016). Transforming Texas Police Reform. Policy Report submitted to Texas Representative Senfronia Thompson

King, D., Nance, E., & **Henderson, H.** (2015). *My Brother's Keeper Houston: High School Feeder Pattern Recommendations*. City of Houston.

Henderson, H. (2006). *ProbationComm: An Evaluation of Online Offender Reporting*. Research report submitted to Liberty County, TX Community Supervision and Corrections Department, August 2006.

GRANTS AND CONTRACTS

- 2017 – 2022 **Principal Investigator/Director.** Center for Justice Research. Charles Koch Foundation Thurgood Marshall College Fund. \$2,700,000.00
- 2017 – 2018 **Evaluator.** Justice Adult Information System (JAIS). *Bureau of Justice Assistance. Justice and Mental Health Collaboration Program.* \$300,000
- 2015 – 2016 **Sub-PI.** IBSS-EX: Exploring Recidivism Through a Tablet-Based Battery to Assess Individual Decision Making. *National Science Foundation.* Baylor College of Medicine. \$243,000.00
- 2015 – 2016 **Principal Investigator.** Evaluation of the Dallas County Diversion Male Court Program, Texas Southern University. \$10,000.00
- 2015 **Principal Investigator.** Examination of the Houston Community College TRIO Program. \$10,000.00
- 2006 – 2010 **Advisory Board.** Texas Department of Criminal Justice Multidisciplinary Advisory Board of the U.S. Department of Justice Prison Reentry Initiative (PRI) Grant. \$5,000,000.00

HOSTED CONFERENCE

Big Data Community Policing Conference (2019)

EDITORIAL ACTIVITY

- Editor *Journal of Criminal Justice and Law Review (2007 – 2018)*
- Editorial Board *Journal of Criminal Justice (2020 – Present)*
- Reviewer *Applied Psychology in Criminal Justice*
Corrections: Policy, Practice & Research
Criminal Justice and Behavior
Evaluation and Program Planning
Journal of Research in Crime and Delinquency
Journal of Crime and Justice
Journal of Criminal Justice
Journal of Qualitative Criminal Justice & Criminology

Justice Quarterly
Police Practice and Research
Southwest Journal of Criminal Justice
Women & Criminal Justice
Youth Violence and Juvenile Justice

PRESENTATIONS

Reducing Social Justice to 140 Characters or Less: Critical Pedagogy in an Age of Digital Politics. Presented at the American Society of Criminology. Philadelphia, PA. Fall 2017.

The Need for Transparency When Police-Citizen Encounters Turn Deadly (Cosponsored by the ACJS Minorities and Women Section and ACJS Police Section). Kansas City, MO, Spring 2017

Mentoring in the Applied Social Sciences. Association of Applied and Clinical Sociology. (Pittsburgh, PA, Fall 2015)

The Need for Criminal Justice Education. Mid-South Sociological Association. (Lafayette, LA, Fall 2015). Presenter

Re-Emergence of the Slave Patroller? Community Relations. Paper Presentation for the School of Public Affairs Brown Bag. (Texas Southern University, Spring 2015). Presenter.

Race, Gender, Offense Level, and Risk Score Interactional Predictors of Probation Success. Paper Presented at the Academy of Criminal Justice Sciences Annual Meeting (Philadelphia, PA, February 18-22, 2014). Presenter.

Race, Gender, and Perceptions of Crime and Justice: Diverse Perspectives. Paper Presented at the Academy of Criminal Justice Sciences Annual Meeting (Philadelphia, PA, February 18-22, 2014). Presenter.

Criminal Justice Students' Racial Attitudes and Sensitivity to Racism. Paper Presented at the Academy of Criminal Justice Sciences Annual Meeting (Philadelphia, PA, February 18-22, 2014). Presenter.

Mentoring in Social Science. Paper Presented at the Association for Applied and Clinical Sociology Annual Meeting (Portland, OR, October 3 – 5, 2013). Panelist.

Hip-Hop Explanations of Crime. Paper Presented at the Academy of Criminal Justice Sciences Annual Meeting (Dallas, TX, March 20 – 23, 2013). Presenter.

The Need for Crime, Media and Popular Culture Research in a Mediated Global Society. Presented at the Academy of Criminal Justice Sciences Annual Meeting (Dallas, TX, March 20 – 23, 2013). Panelist.

Academic Mentoring. Presentation at the Association for Applied and Clinical Sociology 2012 Annual Conference (Milwaukee, WI, October 4 – 6, 2012). Presenter.

Criminal justice, social justice, and hip-hop: A content analysis of hip-hop lyrics. Paper Presented at the International Crime, Media, and Popular Culture Conference (Terre Haute, IN, September 26 – 28, 2011). Presenter.

Online teaching vs. traditional classroom setting in criminal justice higher education. Paper Presented at the Academy of Criminal Justice Sciences Annual Meeting (San Francisco, CA, February 23 – 27, 2010). Presenter.

Religious Freedom and Controlled Substances: The Religious Use of Drugs vs. The Government. Paper Presented at The American Society of Criminology Annual Meeting (Philadelphia, PA, November 4-7, 2009). Co-Presenter.

First Annual International Crime, Media & Popular Culture Studies Conference. Indiana State University (October 5-7, 2009). Panel Chair.

Assessing the Impact of Online Education on Criminal Justice Higher Education. Paper Presented at the Academy of Criminal Justice Sciences Annual Meeting (Boston, MA, March 10 – 14, 2009). Presenter.

The Portrayal of Black Police Officers in the Core Cop Film Genre. Paper Presented at the Academy of Criminal Justice Sciences Annual Meeting (Boston, MA, March 10 – 14, 2009). Presenter.

The Potential Impact of Online Public Safety Education on the Field of Criminal Justice. Paper presented at the Academy of Criminal Justice Sciences Annual Meeting (Cincinnati, OH, March 11-15, 2008). Presenter.

The Academic Melting Pot: Teaching Criminal Justice and Criminology from a Multicultural Perspective. Roundtable participated in at The Academy of Criminal Justice Sciences Annual Meeting (Atlanta, GA, November 14-17, 2007). Panelist.

The State of Young Black America. Invited Panelist at 98th National NAACP Convention (Detroit, MI, July 8-13, 2007).

Understanding Post-Probation Recidivism. Paper presented at the North Central Sociological Association and Midwest Sociological Society Joint Meeting (Chicago, IL, April 4-7, 2007). Presenter.

2007 Southwest Regional NAACP Civil Rights Advocacy Training Institute, *Youth and College Advisors Institute* (Little Rock, AR, March 17, 2007). Presenter.

The Miseducation of the African American. Paper presented at the Man in Demand 2007 Annual Conference at Sam Houston State University (Huntsville, TX, March 20, 2007). Presenter.

An Examination of the Wisconsin Risk Needs Assessment. Paper presented at the Academy of Criminal Justice Sciences Annual Meeting (Seattle, WA, March 13-17, 2007). Presenter.

From Peril to Possibility: The State of Black Maleness and Tips for Improvement. Paper presented at the Annual NAACP Brotherhood/Sisterhood Conference at Sam Houston State University (Huntsville, TX, February 17, 2007). Presenter.

Multiple Custody Episodes. Paper presented at the 21st Annual Conference on the Prevention of Child Abuse (San Antonio, TX, February 5-6, 2007). Presenter.

The Miseducation of the African American Intellectual Elite. Paper presented to the Talented Tenth Educational Leadership Training Course at Sam Houston State University (Huntsville, TX, October 10, 2006). Presenter.

Constitutional Constraints of the Use of Force. Paper presented at the Minority Lecture Series at the University of Texas at Permian-Basin (Midland-Odessa, TX, April 11-13, 2005). Presenter.

Mental Illness Among Texas Prisoners. Paper presented at the Minority Lecture Series at the University of Texas at Permian-Basin (Midland-Odessa, TX, April 11-13, 2005). Presenter.

The Negro Problem: An Analysis of Race Relations in the New Millennium. Paper presented to the Talented Tenth Educational Leadership Training Course at Sam Houston State University (Huntsville, TX, October 12, 2004). Presenter.

The Role of Marijuana in Deviant Behavior. Paper presented to the Volunteers of America, Inc. Offender Education Program (Huntsville, TX, September 17, 2002). Presenter.

Cultural Diversity in Criminal Justice Institutions. Paper presented to the Employee Training Program for Children's Comprehensive Services (Nashville, TN, April 20, 2000). Presenter.

SERVICE

Department

Dissertations Chaired

- August 2017** Kashley Brown – Black Male Perceptions of Discrimination and Disenfranchisement
- August 2017** Melody Threadcraft – Examining the Relationship Between Gender, Income and Perceptions of Police Behavior
- May 2017** Whitney Threadcraft-Walker – Assessing the Predictive Equity of a Commonly Utilized Risk Instrument Among Minority Female Probationers
- Dec. 2016** Lashunda Mason-Horton – A Longitudinal Study of Home Foreclosure Rates and Crime in Houston, Texas
- Dec. 2016** LaShondra Jones – The Impact of War on America’s Heroes: An Analysis of Resiliency Amongst Combat Veterans
- Dec. 2016** Holland Jones – A Prevalence Study of Racial Disparities in the Issuance of Traffic Citations by Sheriff’s Offices in Texas

Dissertation Committee Member

Dissertation Committee. Shaun Wilson. An Urban Ethnographic Study of Race and Justice in Baltimore, MD. August 2017

Dissertation Committee. Michael Kane. An Analysis of the Case Study of the Waco, TX John School. August 2016

Department Chair Search Committee. Spring 2016 and Summer 2016

Faculty Hiring Committee. Spring 2016 and Summer 2016

Faculty Performance Evaluation Committee. Fall 2014 – Spring 2015

School/College

SOPA Research Week Committee. Spring 2017

Dissertation Committee. Joy Simien. UPEP. Spring 2017

SOPA Dean's Search Committee. Fall 2016 & Spring 2017

Doctoral Dissertation Committee Member. Christine Nix. Fall 2013

Doctoral Dissertation Committee Member. Wolfie Mahfood. Fall 2013

Thesis Committee Member. Bridget Nurdling. Fall 2013

Doctoral Dissertation Committee Member. David Rembert. Spring 2013

Chair. Undergraduate Student Committee. Fall 2013 – Spring 2013

Presenter. Senior Level Leadership Program. CMIT. March 2012

Committee Member. Awards & Beto Chair Committee. 2012 – 2013 Academic Year

Doctoral Portfolio Committee Member. Kevin Steinmetz. College of Criminal Justice. February 2012

Psychology Doctoral Dissertation Committee. Kim Schnurbush. Spring 2012

Presenter. College of Criminal Justice Summer Writing Workshop. July 2012

Member. Student Development Committee. 2011 – 2012 Academic Year

Doctoral Dissertation Committee. Mark Pulin. Fall 2011

Doctoral Dissertation Committee. Kim Schnurbush. Fall 2011

Committee Member. Gustavo Gallegos. Master's Thesis. Spring 2011

Chair. Student Development Committee. 2010 - 2011 Academic Year

Doctoral Portfolio Committee Member. Mark Pullin. College of Criminal Justice. August 2010

Doctoral Portfolio Committee Member. Natalia Tapia. College of Criminal Justice, October 2009

Non-Portfolio Faculty Member. Napoleon Reyes. College of Criminal Justice, November 2009

Non-Portfolio Faculty Member. Amanda Johnson. College of Criminal Justice, April 2009

Instructor. High School Criminal Justice Instructor Training. CCJ, October 2009

Faculty Search Committee. College of Criminal Justice. 2008-2009

Committee Member. Krystal Beverly. The Effects of Alcohol Availability Status on Crime Rates in Texas

Annual Criminal Justice Picnic. College of Criminal Justice. Spring 2007

Ad Hoc Committee on Teaching Excellence. College of Criminal Justice, Sam Houston State University, Spring 2007

Student Development and Recruitment Committee. College of Criminal Justice. Sam Houston State University. March 8, 2007. Lovelady High School College Day

Student Development and Recruitment Committee. College of Criminal Justice, Sam Houston State University.

Criminal Justice Administration Comprehensive Exam Committee. College of Criminal Justice.

Faculty Adviser. National Association of Blacks in Criminal Justice, Fall 2006-Present

University

Graduate Council Stipend Subcommittee Report. Fall 2016

Graduate Student Travel Fund Scholarship Subcommittee. Fall 2016.

Moderator. ECI Police-Community Roundtables – Fall 2016 & Spring 2017

Tenure Reviewer. Tarleton State University. Summer 2015.

University Curriculum Committee. Fall 2014 – Spring 2015

Across-the-University Writing Program Committee. Spring 2013 – August 31, 2015

Psychology Doctoral Dissertation Committee. Theresa Fraser. Fall 2013.

Psychology Doctoral Dissertation Committee. Vivian Lotts. Spring 2013

McNair Scholar Research Mentor. Spring 2012 - Present

Speaker. Bearkat Camp. August 2012

Faculty Representative. Conroe ISD College Night Out. Fall 2012

Psychology Doctoral Dissertation Committee. Jason Duncan. Fall 2012

Psychology Doctoral Dissertation Committee. Amy Wevodau. Fall 2012

Sam Houston Elite Advisory Board. Fall 2010 - Present

Underrepresented Minority Faculty Populations Committee. Fall 2009 - Present

Invited Speaker. The Grassroots Series. SHSU, Spring 2009

Invited Lecture, Blacks in Criminal Justice. SHSU History Department, Spring 2009

Invited Participant. Engaged Scholars Committee. SHSU, Fall 2009

Invited Speaker. The Miseducation of the Black Male, SHSU, Spring 2008

Faculty Diversity Committee. 2007 - 2010

Faculty Adviser. Omega Psi Phi Fraternity, Inc., Fall 2005-Present

Community

External Reviewer. Department of Criminal Justice & Criminology. Indiana State University. April 2017.

Lecturer. Diversity, Equity, & Inclusion Learning Program. Leadership Houston. Spring 2017.

Panelist. MLK Empowerment Summit. Spring 2017

Texas Legislative Criminal Justice Report. Fall 2016

Advisory Board. Black Greek's Speak. Fall 2016 & Spring 2017.

Reviewer. Legacy Project. University of Southern Mississippi. Fall 2015.

Tenure Reviewer. Tarleton State University. Summer 2015.

Policy Consultant. 84th Texas Legislature. ELITE Change, Inc. 2012 – Present.

Member. Initiative on Neuroscience and Law. Baylor College of Medicine. 2014 – Present.

Panelist. What Happened to Sandra Bland. Earl Carl Institute. Summer 2015

Panelist. Houston Museum of African American Culture. Summer 2015

Panelist. Unique Behaviors of the Police and Community. Spring 2015.

Invited Guest. KCOH Radio Station. Spring 2015 & Summer 2015

Subcommittee Chair. Black Greek's Speak. Fall 2015 – Present.

Member. Sage Jr. Faculty Award Committee. ACJS. Fall 2013

ACJS Program Committee. Spring 2013 National Conference

Program Committee. Probation and Community Corrections (ACJS), Spring 2013.

Member. Sustainable Communities Workgroup, Summer 2011 – Present

Advisor. Montgomery County Second Chance Program, Fall 2010 – Present

Program Committee. Probation and Community Corrections (ACJS), Fall 2009

Committee Member. Black on Black Crime Homicide Task Force Working Group, 2009

Researcher. Jefferson County IEA Program Evaluation, CMIT Funded, Summer 2009

Invited Speaker. Garcia Elementary School, Houston, TX, Spring 2008

Consultant. Family Justice, Spring 2007

2007 Southwest Regional NAACP Civil Rights Advocacy Training Institute. Youth and College Advisors Institute (Little Rock, AR, March 17, 2007)

NAACP Youth & College Division 2007 CRATI Training Retreat. Southwestern Region VI, Houston, TX, February 20-21, 2007

Oversight Committee. Texas Department of Criminal Justice Multidisciplinary Advisory Board of the U.S. Department of Justice Prison Reentry Initiative (PRI) Grant, Fall 2006-Spring 2010

Invited Speaker. New Life Church, Huntsville, TX, December 6, 2006

Invited Speaker. The NAACP Voter Awareness Symposium, Sam Houston State University, October 5, 2006

ACHIEVEMENTS AND AWARDS

Minority Mentor of the Year. Academy of Criminal Justice Sciences. 2019.

Cornell West Award, 1st Annual Black Legend's Ball, February 26, 2007.

Cited by graduating senior as significantly contributing to their individual success and development, Sam Houston State University, Spring 2006.

Minority Scholar Lecture Series, University of Texas at Permian-Basin, Spring 2005.

Victor E. Strecher Academic Scholarship, Sam Houston State University, 2002-2003.

Minority Graduate Scholarship, Middle Tennessee State University, 2000- 2002.

Service Award, Murfreesboro Lodge #12, Murfreesboro, TN, November 21, 2000.

Employee of the Quarter, Children's Comprehensive Services, -June 2000.

MEMBERSHIP IN PROFESSIONAL ASSOCIATIONS AND AFFILIATIONS

Academy of Criminal Justice Sciences

American Society of Criminology

Association of Applied and Clinical Sociology

National Association of Blacks in Criminal Justice

Vera Institute. 2019. Rural Jail Research Network.

Scientific Advisory Board. 2019. Institute for Justice Research and Development. Florida State University

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

TEXAS STATE CONFERENCE OF
NAACP BRANCHES,

Plaintiff,

v.

GREG ABBOTT, in his official capacity as
Governor of Texas; RUTH HUGHS, in her
official capacity as Texas Secretary of
State;

Defendants.

Case No. 1:20-CV-1024-RP

DECLARATION OF LINDA JANN LEWIS

Pursuant to 20 U.S.C. § 1746, I, Linda Jann Lewis, declare as follows:

1. My name is Linda Jann Lewis. I am over the age of 18, have personal knowledge of the facts stated in this declaration, and can competently testify to their truth.
2. I live in Waco, Texas. I am a lifelong Texas resident and a fifth-generation Texan.
3. I am a member of the Texas Conference of the National Association for the Advancement of Colored People and the Chair of the Waco NAACP Political Action Committee.
4. Participating in elections is extremely important to me. When I was growing up in Waco, I lived next door to my grandparents, and I would accompany my grandfather when he would go to pay Texas's poll tax so that he could vote.

5. President Lyndon Johnson signed the Voting Rights Act while I was at freshman orientation at the University of Texas in 1965, and I immediately registered to vote on campus and joined the University of Texas chapter of the NAACP.

6. Throughout my career, I have held numerous positions in public service. I served as a senior-level staff member and liaison to state agencies and the Texas legislature during the administrations of Governors Bill Clements and Mark White.

7. From 1992 to 1996, I served as the County Elections Administrator for McLennan County, for which Waco is the county seat. As a result of this experience and my prior and subsequent roles, I am extremely well versed in Texas election law and the responsibilities of election administration at the county level.

8. Absentee voting procedures, and the mechanics and logistics related to absentee voting, are not substantially different now than they were when I served as County Elections Administrator.

9. When I was County Elections Administrator, I oversaw the operation of our office as the site in McClennan County for voters who had received mail-in ballots to drop them off at the McLennan County Clerk's office.

10. The process for verifying the identity of voters submitting mail-in ballots in person on election day was (and remains today) the same as the process used for in-person election day voters and is relatively simple. A voter seeking to return the mail-in ballot would present identification; my staff would search registration records to verify the voter was registered; and the voter would then sign the same form they would sign if they were voting in person.

11. When I served as McLennan County Elections Administrator, I had absolutely no concerns about fraud and perceived no threats to election integrity or ballot security related to voters returning mail-in ballots in person on election day. I never witnessed any behavior or incidents that I suspected were related to efforts to commit voter fraud connected to returning mail-in ballots in person.

12. Ballot security and maintaining the integrity of the electoral process are important goals. In my experience, however, ballot security and election integrity are not a substantial impediment to operating one or more drop-off locations for voters to return completed mail-in ballots. Maintaining an absentee ballot drop-off location does not require a substantial number of employees or the use of any particularly elaborate or sophisticated technology that strains county election officials. Moreover, if a County Elections Administrator has assembled the staff and resources that they believe are necessary to receive mail-in ballots at multiple locations, as was the case in Harris and Travis Counties for the November 2020 election, there is no basis for concern about election integrity or security at those locations.

13. Election administration for in person voting, especially for high-interest presidential elections, is a difficult and resource-intensive process that puts tremendous strain on election administration officials and poll workers. In my considered opinion, if County Election Administrators have decided to operate multiple mail-in ballot drop-off locations to ease the strain imposed by in-person voting, they have determined that doing so is the way to most efficiently distribute these burdens in their county during the COVID-19 pandemic. Interfering with those decisions impedes the smooth administration of elections.

14. If County Election Administrators are forced to operate only a single location, that will place enormous stress on election administration staff, which can lead to long lines and

is likely to lead staff members to make mistakes because they are rushed and under time pressure. These kinds of mistakes are much more likely to hurt the integrity of the election than non-existent ballot security issues.

15. Based on my experience, and in my considered opinion, election administration officials in large metropolitan counties will be under even more stress and strain as a result of Governor Abbott's order preventing them from operating multiple mail-in ballot drop-off locations.

16. Based on my experience, Governor Abbott's order prohibiting counties from operating more than one location for receiving mail-in ballots will create, and is creating, confusion and chaos for election administration officials.

17. Based on my experience, I expect that voters who attempt to drop off their mail-in ballots at sites that have now been closed, and are forced to wait in long lines at the single remaining location, will experience voter fatigue and frustration and will be deterred from voting.

18. Because most voters who apply for and complete mail ballots are 65 or older or have disabilities, the voters most likely to be impacted by Governor Abbott's order are also those most vulnerable to COVID-19 and least likely to vote in person on election day.

19. In my role as Chair of the Waco NAACP Political Action Committee, I sent letters with Waco NAACP President Dr. Peaches Henry to thousands of McLennan County voters who are 65 years old or older or have a disability and therefore qualify to receive mail-in ballots. Copies of those letters are attached as Exhibits 1 and 2 of this Declaration. The letters provide my home phone number for voters to call if they have questions regarding the election.

20. I am considered the NAACP's election protection expert in McLennan County and am expected to help voters resolve their problems and vote. I am currently receiving at least 10 calls per day from McLennan County voters. Callers have told me that they have called the office of the McLennan County Elections Administrator to ask about the status of their mail ballots and have received rude and unhelpful responses from stressed election officials.

I declare under penalty of perjury that the foregoing statements are true and correct. Executed on:

October 7, 2020, in Waco, Texas, by

Linda Jann Lewis
Linda Jann Lewis

Exhibit 1

National Association for the Advancement of Colored People



NAACP Waco Unit #6234
PO Box 20511; Waco, TX 76702
WacoNAACP@gmail.com

August, 2020

Dear Beloved Voters:

This is Dr. Peaches Henry, president of the Waco NAACP! I am writing to you personally, because a lot of incorrect information about the November election has been going out in the mail and on social media. I want to give you information about the election that you can trust. That's why Linda Lewis and I are sending you this letter. I want you to call me or Linda if you have questions regarding the election. **Call me at 254- [REDACTED] or Linda at 254- [REDACTED]**

Voters who are over 65 years of age or disabled are automatically eligible to receive a ballot by mail. You should have already received a vote-by-mail/absentee ballot application. Be sure to complete and return your application immediately. On the reverse side of this letter you will find a completed sample vote-by-mail/absentee ballot application. If you did not receive a vote-by-mail/absentee ballot application, call the Elections Office to request one: **254-757-5043**.

You should also **return your ballot as soon as possible after you receive it** because of similar mail delay concerns as those that occurred in Wisconsin in April and a Texas Election Code rule that requires that the local election office must receive absentee ballots at their office by 5 o'clock the day after the election.

You should begin the process of obtaining a vote-by-mail/absentee ballot **NOW**, because election offices are getting swamped by requests for vote-by-mail/absentee applications for November's election. Getting the application and returning it to the Elections Office will be a lengthy process. Getting ballots mailed to you will take longer than in past years, so you want to get in line to receive your ballot as soon as possible. Requesting your vote-by-mail application early will also help voters troubleshoot issues with your registrations. It would be a travesty to learn of problems with your registrations on Election Day.

Linda and I strongly recommend you put your completed ballot in the mail no later than Monday, October 19, 2020 to ensure that it will arrive at the Elections Office on time and be counted. **Put this letter on your refrigerator as a reminder and expect a reminder call too.**

Sincerely,

Dr. Peaches & Linda

President & Political Action Chairwoman

Exhibit 2

National Association for the Advancement of Colored People

NAACP Waco Unit #6234
PO Box 20511; Waco, TX 76702
WacoNAACP@gmail.com
254- [REDACTED]



September 20, 2020

Dear Beloved Voters:

This is Dr. Peaches Henry, president of the Waco NAACP! Linda Lewis and I are following up with you about your mail-in/absentee ballot. On September 18, the McLennan County Elections Office will start sending ballots. Some of you may have already received your ballot. I am writing to tell you to complete and return your ballot as soon as you receive it. I want you to call me or Linda if you have questions regarding the election. Call Linda at 254- [REDACTED] or Dr. Peaches at 254- [REDACTED]

Sincerely,

Dr. Peaches and Linda
President and Political Action Chairwoman

ONCE YOU RECEIVE YOUR BALLOT, HERE'S WHAT YOU SHOULD DO:

- Complete & Return your mail-in ballot as soon as you receive it.
- Your ballot must be turned in to the Elections Office by Election Day, November 3 by 7PM. It must be in the office by Election Day NOT postmarked.
- If you return your ballot via the United States Postal Service, be sure to put enough postage on it (we are suggesting 4 stamps).
- If you mail your ballot, you do not need identification.
- If you prefer to deliver your ballot, you must deliver your own ballot. Another person may not deliver your ballot for you.
- Curbside ballot delivery is available.
 - If you need a ride to deliver your ballot, call Linda at 254- [REDACTED]
 - Go to the Elections Office at 214 N. 4th St.
 - Once you arrive, call 254-757-5043.
 - An Elections Office worker will come out to take your ballot.
 - You must have identification to deliver your ballot to the Elections Office.
- If you change your mind and want to vote in person, you are free to vote in person during Early Voting or on Election Day.
 - You do not have to have your mail ballot with you to vote in person.
 - As long as you have not returned that ballot, you may vote in person.

IF YOU CHANGE YOUR MIND AND WANT TO VOTE BY MAIL/ABSENTEE BALLOT, CALL THE ELECTIONS OFFICE AT 254-757-5043 AND REQUEST ONE.

YOUR APPLICATION TO VOTE BY MAIL/ABSENTEE BALLOT MUST BE RECEIVED IN THE ELECTIONS OFFICE BY OCTOBER 23, 2020.