

**No. 20-50867**

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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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.

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LAURIE-JO STRATY; TEXAS ALLIANCE FOR RETIRED AMERICANS;  
AND BIGTENT CREATIVE,

*Plaintiffs-Appellees,*

v.

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

*Defendant-Appellant.*

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On Appeal from the United States District Court  
for the Western District of Texas  
(Nos. 1:20-cv-01006-RP, 1:20-cv-01015-RP)

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**PLAINTIFFS-APPELLEES LAURIE-JO STRATY, TEXAS ALLIANCE  
FOR RETIRED AMERICANS, AND BIGTENT CREATIVE'S  
OPPOSITION TO MOTION FOR STAY PENDING APPEAL**

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The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of 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.

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## **INTRODUCTION**

Texas election officials began sending domestic voters mail-in ballots for the November election on September 19. Soon after, Harris County—with over 2.4 million registered voters—announced voters could deliver their mail-in ballots in person at the County Clerk’s new elections headquarters at the NRG Arena, its regular headquarters, or any of its 10 annexes, just as during the July primary. Travis County—with over 774,000 registered voters—announced four locations where voters could deliver ballots, and Fort Bend County also planned multiple drop-off locations.

Voters were broadly educated about these locations, many of which were already accepting ballots when, on October 1, Governor Abbott announced he and Secretary of State Hughs were reversing their position: now, suddenly, counties were prohibited from offering more than one location for delivery of mail-in ballots (the “Ballot Return Restriction”). All but one of the 12 Harris locations had to be shuttered—even though voters were already returning ballots to the locations. Travis and Fort Bend also had to abandon locations that were receiving ballots or that were in the process of opening. Nor could any other Texas county—regardless of population, size, or other features that might make multiple drop-off locations necessary—offer more than one location.

The announcement was both sudden and entirely unexpected. In fact, *just the day before*, the Texas Solicitor General told the Texas Supreme Court that counties could provide more than one ballot return center and “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.’” App.006<sup>1</sup> (quoting Brief of Texas Solicitor General in Resp. to Mandamus Pet., *In re Hotze*, No. 20-0751 (Tex. Sept. 30, 2020) (App.206)).

The reason for the abrupt about-face? The Governor and Secretary claim it was justified by concerns about “ballot security.” But as the District Court found, this ignores the extensive security in place for the sites and the inherently secure nature of drop boxes. Multiple manned drop-off locations were offered during the July elections, and no problems with security were reported. The day before the Governor’s announcement, the Solicitor General did not betray any concerns about security when he assured the Texas Supreme Court that multiple drop-off locations were allowed. And at no point has the Secretary or the Governor identified *any* new security concerns that justify the sudden change.

The result of the abrupt reversal is widespread confusion. The District Court’s preliminary injunction only returned the parties to the status quo that was in place when voting began. In restoring the status quo, the order ensures voters will not be

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<sup>1</sup> “App.” references correspond to pages of the Appendix filed with this Response.

unjustifiably burdened by the sudden change—announced *after voting had already begun*—or dissuaded from voting entirely because of confusion and burdens resulting from the reversal.

This case is in an entirely different posture than other recent voting cases around the country, including those considered by the U.S. Supreme Court and a recent ballot drop-box decision issued by the Sixth Circuit. In those cases, voting had either not yet begun, or the challenged state action was the status quo when voting began. Thus, when stays were issued, they protected against concerns that a federal court judgment *changing* the status quo might cause voter confusion and dissuade people from voting. Here, by contrast, it was the Governor's and Secretary's actions that upended the status quo and caused broad voter confusion. The District Court's order did precisely what preliminary injunctions are meant to do by restoring the status quo and ensuring this mid-election change will not cause irreparable harm. For the same reason, this Court should deny the Secretary's motion. Anything else would propagate the very harms that *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam), is meant to guard against—harms that the State has repeatedly invoked in opposing changes to voting laws.

## STATEMENT OF THE CASE

### **I. Texans are voting by mail in record numbers in an election regime that USPS has warned creates a high risk of disenfranchisement.**

Texas law makes voting by mail available to two groups who are at particularly heightened risk from COVID-19: the more than 3.6 million Texans over the age of 65, and the many Texans with disabilities who cannot readily vote at a polling place. Tex. Elec. Code §§ 82.002, 82.003; App.137. Texas officials anticipate an unprecedented surge in requests for mail-in ballots from these voters, which “will be a challenge” for the “election machinery statewide.” App.144–45, 245, 284.

The surge in mail-in voting creates a serious risk that ballots obtained by voters in the weeks before Election Day will not be counted. Texas allows voters to request mail-in ballots as late as October 23. Tex. Elec. Code § 84.007(c). But completed ballots must be received by 5:00 p.m. the day after Election Day. *Id.* § 86.007. As these deadlines approach and the number of applications continues to increase, officials will face unprecedented demands in processing applications and inevitable delays in mailing ballots to voters. App.284 (Fort Bend County expects 35,000 to 45,000 mail-in voters, more than double existing record); App.296–97 (Travis expects unprecedented mail-in voting and has received more than 72,000 mail-in applications); App.302–03 (Harris has received 231,793 mail-in applications and has already received complaints from voters who requested ballots but have not

received them). Texas does not require counties to mail ballots within a certain time after receiving mail-in applications, so no deadline will help shorten these delays. *See* Tex. Elec. Code §§ 84.001–84.013 (establishing rules for mail-in ballot applications without requiring counties to send ballots within prescribed period).

USPS is warning that election officials and voters should plan for two-week round trips for mail-in ballots: one week for a ballot to reach the voter, and another week for the return trip. App.153–54. Thus, elderly and disabled voters who lawfully request mail-in ballots in the days before the October 23 deadline will not be able to rely on USPS to ensure timely delivery. *Id.* Indeed, USPS recently warned Texas that its mail-in deadlines are “incongruous with [USPS] delivery standards” and create a “risk that ballots requested near the [October 23 deadline] will not be returned by mail in time to be counted.” *Id.*

Moreover, the surge in mail-in applications is coinciding with a breakdown in USPS operations. Since July, USPS delivery performance has dipped to historic lows, resulting in service delays nationwide. App.157–73. Recent USPS operational changes have exacerbated these effects. App.009. These delays will only worsen as Election Day approaches and the demand for mail-in ballots continues to grow, increasing the risk of untimely delivery of ballots and disenfranchisement.

**II. For months, state officials told counties they could operate multiple ballot drop-off locations, and those counties did so.**

The infeasibility of relying on USPS to timely deliver mail-in ballots,

particularly in the final weeks before Election Day, makes it critical voters have other options for submitting ballots. That is why the option of hand-delivering ballots at secure drop boxes located at early voting clerk's offices has never been more important. *See* Tex. Elec. Code § 86.006. Voters who choose this method must satisfy security-related protocols, including signing voting rosters in the presence of election officials and proving their identities to those officials. *Id.*; App.247. These steps, coupled with the impenetrable security of the drop boxes, means a "voter returning mail-in ballots in person is *more secure* than returning by mail." App.252 (emphasis added). Recognizing the importance of this option and the perils of forcing hundreds of thousands of voters to converge on just one location, Harris County offered multiple drop-off locations during the July primary. App.244–45. This effort "was a success": it was "a needed service for voters," and the county experienced "no security or other logistical issues." App.245.

The Governor also recognized the benefits of allowing voters to deliver their own ballots. Consequently, his July 27 proclamation directed that voters could deliver their ballots to the early voting clerk's office prior to Election Day. App.192. State officials were specifically instructed that counties could operate multiple drop-off locations. A representative of the Secretary stated that "this hand-delivery process can occur at the early voting clerk's office," which "may include satellite offices." App.199. *After voting had begun*, the Solicitor General told the Texas

Supreme Court that because the Secretary had “advised local officials” that ballots could be returned to “any early-voting clerk office,” voters could deliver their ballots “to any of [the] eleven annexes” that Harris County was offering. App.206.

Taking these officials at their word, Texas’s largest counties “designed, publicized, and began operating [multiple] ballot return centers.” App.006; *see also* App.244, 292–96. These decisions were driven by the counties’ expansive territories and large populations, which make it “difficult, if not impossible, for some voters to return their ballots” to just a single election administration headquarters. App.006. Harris County established twelve ballot return centers; Travis established four, and Fort Bend took steps to open five. App.196, 249, 283, 293. The availability of multiple return centers was highly publicized by the counties and local media. App.292–96, 286. Voters relied on these announcements and began returning their mail-in ballots on September 28. App.302.

### **III. After voting began, the Governor suddenly reversed course.**

On October 1, while voters were actively using drop-off locations, the Governor reversed course with a new proclamation (the “Proclamation”) directing that counties may not provide more than one location for voters to deliver ballots. App.269–73. Applying little more than a band-aid to the resulting disruption, the Governor directed that ballots delivered to satellite locations “prior to October 2” would still be counted. App.272.

This reversal has caused broad confusion among voters and extraordinary challenges for election officials, who must now—*in the midst of ongoing voting*—inform voters that the return centers they had encouraged voters to use are unavailable. App.248–50, 285–86, 293, 299. The reversal is already causing long lines at counties’ single permitted drop-off locations, and election officials are expecting “massive lines” towards the end of early voting and “especially on Election Day.” App.248, 285–86. And due to the sheer size of some counties, many voters—particularly rural and low-income voters without transportation—will find it “difficult, if not impossible . . . to return their ballots.” App.249, 285–86.

Plaintiffs filed this suit the day after the Governor issued the Restriction, App.049–68, and sought injunctive relief three days later. App.070–92. After a hearing, the District Court issued a preliminary injunction enjoining the Secretary from prohibiting counties from providing multiple drop-off locations. App.002–047.

### **ARGUMENT**

The Secretary’s motion for a stay should be denied. The motion falls short of establishing (1) “a strong showing that [the movant is] likely to succeed on the merits,” (2) that the movant “will be irreparably injured absent a stay,” (3) that “issuance of a stay will substantially injure the other parties interested in the proceeding,” or (4) that “the public interest” favors a stay. *Wood v. Collier*, 836 F.3d 534, 538 (5th Cir. 2016) (quoting *Nken v. Holder*, 556 U.S. 418, 426 (2009)). The

Secretary’s stay is particularly unwarranted here, where it would disrupt the “status quo in [Texas] as it existed before” the Proclamation. *Barber v. Bryant*, 833 F.3d 510, 512 (5th Cir. 2016) (denying motion to stay pending appeal on this ground).

**I. The Secretary is not likely to succeed on the merits.**

**A. The District Court had jurisdiction.**

**1. Plaintiffs have standing.**

The Secretary’s assertion that Plaintiffs lack standing, Mot. 8–9, contradicts this Circuit’s well-settled precedent. When a Texas plaintiff challenges an election policy that “applies to every election held in the state,” the injury caused by that policy “is fairly traceable to and redressable by” the Secretary, who “is the ‘chief election officer of the state’ and is instructed by statute to ‘obtain and maintain uniformity in the application, operation, and interpretation of’ election-related laws. *OCA-Greater Hous. v. Texas*, 867 F.3d 604, 613–14 (5th Cir. 2017) (quoting Tex. Elec. Code §§ 31.001(a), 31.003(a)).

In *OCA-Greater Houston*, this Court squarely rejected the Secretary’s argument that because county officials implemented a statewide election policy on the local level, “those county officials [we]re the only ones who c[ould] redress the injury.” *Id.* at 613. The Court explained that other officials’ roles in implementing a challenged policy are irrelevant to whether the Secretary has the ability to redress a plaintiff’s injury. *Id.* at 613–14. Because of the Secretary’s central role in implementing and enforcing statewide election policies—which includes the power

to instruct local officials on how to implement those policies—the Secretary has the authority to prevent the injuries those policies produce. *Id.* A merits panel of this Court again rejected the same argument last month, *Tex. Democratic Party v. Abbott*, No. 20-50407, 2020 WL 5422917, at \*5 (5th Cir. Sept. 10, 2020) (“*TDP II*”), as did a motions panel a few months prior, *Tex. Democratic Party v. Abbott*, 961 F.3d 389, 399 (5th Cir. 2020) (“*TDP I*”); *see also id.* at 413 (Ho, J., concurring).

The record here demonstrates the Secretary’s power to dictate how local officials enforce Texas Election Code section 86.006(a-1). As the Secretary’s counsel recently explained to the Texas Supreme Court, local officials looked to the Secretary for instructions on whether they may use multiple drop-off locations. App.206. Prior to the Proclamation, the Secretary instructed local officials that they *could* offer multiple drop-off locations, and the officials followed those instructions. *Id.* The District Court’s preliminary injunction simply ordered the Secretary to revert to the instructions given on September 30 instead of those announced the next day. Thus, Plaintiffs’ injuries are both traceable to and redressable by the Secretary. The Secretary is not likely to succeed on her arguments to the contrary.

## **2. Sovereign immunity does not apply.**

The Secretary’s sovereign immunity arguments also are unlikely to succeed. Under the *Ex parte Young* exception, “[s]uits for injunctive or declaratory relief are allowed against a state official acting in violation of federal law if there is a sufficient

connection to enforcing an allegedly unconstitutional law.” *TDP II*, 2020 WL 5422917, at \*5 (quotations omitted). Here, the record establishes that this action against the Secretary falls within that exception.

As noted, the Secretary is Texas’s chief election official, with broad responsibilities for enforcing the State’s election laws and ensuring uniformity in application. Prior to the Proclamation, the Secretary instructed local officials that they could offer multiple drop-off locations. The Proclamation, moreover, was issued after the Governor’s “consultation with the Texas Secretary of State” regarding the specific statutory requirements at issue, and expressly ordered the Secretary to “take notice of this proclamation,” issue “all appropriate writs,” and follow “all proper proceedings . . . to the end that said elections may be held and their results proclaimed in accordance with law.” App.271–72. The Proclamation thus recognizes the Secretary’s governance over the administration of Texas elections *and* her role in enforcing the Proclamation.

Accordingly, there is more than a sufficient connection between the law, its enforcement, and the state official in question. The Secretary’s assertion that she “neither implements nor enforces . . . gubernatorial proclamations,” Mot. 10, is both belied by the record and contrary to this Circuit’s well-established precedent. *See, e.g., TDP II*, 2020 WL 5422917, at \*6 (“The facial invalidity of a Texas election statute is, without question, fairly traceable to and redressable by the State itself and

its Secretary of State, who serves as the ‘chief election officer of the state.’” (citing *OCA-Greater Hous.*, 867 F.3d at 613)). This role is not limited to enforcement of the Code; it extends to all laws affecting the administration of Texas elections. *See* Tex. Elec. Code § 31.003.

Therefore, as this Court has already concluded and the Proclamation and the Secretary’s actions demonstrate, a suit against the Secretary premised on her role in the implementation of Texas election law is permitted under *Ex parte Young*.

**B. The District Court’s decision not to abstain was well within its discretion.**

The Secretary’s suggestion that the District Court should have abstained under *Railroad Commission of Texas v. Pullman*, 312 U.S. 496 (1941), is also without merit. *Pullman* abstention is “a narrow, judicially created exception to the general grant of federal jurisdiction,” and is entirely discretionary. *BT Inv. Managers, Inc. v. Lewis*, 559 F.2d 950, 953 (5th Cir. 1977); *see also Baggett v. Bullitt*, 377 U.S. 360, 375 (1964). Significantly, the Supreme Court has held that abstention is generally inappropriate when “the nature of the constitutional deprivation” at issue is the fundamental right to vote. *Harman v. Forssenius*, 380 U.S. 528, 537 (1965). The Fifth Circuit has repeatedly recognized that “the delay which follows from abstention is not to be countenanced in cases involving such a strong national interest as the right to vote,” *Edwards v. Sammons*, 437 F.2d 1240, 1244 (5th Cir. 1971), and has warned that a federal court should be “reluctant to abstain” where voting rights

are at stake. *Duncan v. Poythress*, 657 F.2d 691, 697 (5th Cir. Unit B Sept. 1981); accord *Word of Faith World Outreach Ctr. Church, Inc. v. Morales*, 986 F.2d 962, 969 n.10 (5th Cir. 1993) (“The threat of ‘irreparable injury’ generally excepts a case from the application of *Pullman* abstention ‘in the most extraordinary circumstances when fundamental rights such as voting rights are involved.’” (quoting *O’Hair v. White*, 675 F.2d 680, 694 (5th Cir. 1982))). Indeed, in *Edwards*, this Court found that the district court *abused its discretion* when it abstained in a voting case, reversing and remanding for a decision on the merits. *See* 437 F.2d at 1244.

*TDP I*, on which the Secretary heavily relies, does not hold to the contrary. First, that was a decision of a motions panel, issued on an emergency briefing schedule. *See* 961 F.3d at 396–97. That matter was later decided by a merits panel, which reversed on the merits without once mentioning *Pullman*. *See TDP II*, 2020 WL 5422917, at \*1. Thus, the precedential decision in that case clearly did *not* find the abstention argument persuasive. *See Northshore Dev., Inc. v. Lee*, 835 F.2d 580, 583 (5th Cir. 1988) (“[A] motions panel decision is not binding precedent.”).

Moreover, the majority of the motions panel did not base its decision on a conclusion that the district court should have abstained; it merely questioned in a footnote whether the district court’s consideration of the abstention argument was sufficiently rigorous. *See TDP I*, 961 F.3d at 397 n.13. Here, by contrast, the District Court carefully considered the abstention arguments before rejecting them,

emphasizing a critical fact that would make abstention particularly inappropriate: that voting had already begun when the Governor issued the Proclamation. App.032. As this Court has recognized, “[t]he delay inherent in abstention is least tolerable where, as here, fundamental constitutional rights enjoyed by a broad class of citizens would be suspended while adjudication begins in state court.” *Duncan*, 657 F.2d at 699.

Even if the nature of the action did not weigh heavily against abstention, it would still be ill-advised here. The state court challenge to the lawfulness of the Proclamation could yield one of only two outcomes: either the court will conclude that the Proclamation exceeds the Governor’s authority under Texas law, or that it does not. If the former, then the District Court’s finding that the Proclamation *also* violates the U.S. Constitution is simply an additional reason for its invalidity that has no disruptive effect on state law. If the latter—in other words, if the Proclamation is upheld under state law—then the state court’s ruling would not obviate the District Court’s adjudication of the federal constitutional claims. Either way, abstention is not needed to avoid “friction with state policies.” *Moore v. Hosemann*, 591 F.3d 741, 745 (5th Cir. 2009) (citation omitted).

Accordingly, the District Court did not abuse its discretion when it declined to abstain.

**C. The District Court did not abuse its discretion in finding that Plaintiffs are likely to succeed on their claims that the Restriction unconstitutionally burdens the right to vote.**

As a result of the Restriction, vulnerable voters across Texas will be forced to travel great lengths and wait in long lines to ensure their ballots are counted. Many of these Texans will simply not be able to do so and will be disenfranchised by the Restriction. Nevertheless, the Secretary argues the Restriction “does not implicate—let alone burden—the right to vote.” Mot. 12. The Secretary is wrong. Because the Restriction significantly burdens Texans’ ability to vote while serving no state interest, Plaintiffs are highly likely to succeed on their claims under the *Anderson-Burdick* framework. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (to determine whether state law imposes undue burden on right to vote, federal courts “weigh ‘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.’” (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788-89 (1983))).

**1. Voter plaintiffs and countless other Texans’ right to vote will be severely burdened by the Restriction.**

As a threshold matter, the Restriction implicates the right to vote. “There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted.” *Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964) (citation and quotations omitted). And once a state extends the franchise to enable voters to

cast their ballots by different means, it may not impose unjustified burdens on that right. *See, e.g., Obama for Am. v. Husted*, 697 F.3d 423, 430–32 (6th Cir. 2012). The Secretary’s citations do not counsel otherwise. The challenge to a restriction on absentee voting in *McDonald v. Board of Election Commissioners*, 394 U.S. 802, 807–08 (1968), was analyzed under less rigorous scrutiny because those plaintiffs—unlike Plaintiffs-Appellees here—failed to show the restriction at issue would prevent some voters from casting ballots. *See Obama for Am.*, 697 F.3d at 430. And in *TDP II*, the plaintiffs sought to define “disability” in a way that would have *expanded* mail-in voting to groups who did not previously qualify. 2020 WL 5422917, at \*1. Here, by contrast, Plaintiffs-Appellees allege the State has unduly burdened their right to vote by eliminating a method for returning mail-in ballots that was *already* permitted.

The Election Code provides eligible voters the ability to vote by mail, which is the only safe way for those at risk of severe complications from COVID-19 to cast their ballots. Those vulnerable voters will find it more difficult, if not impossible, to return their mail-in ballots to county officials and have those ballots counted because of the Restriction. The Secretary’s assertion that the Restriction does not implicate the right to vote ignores this reality and the abundance of caselaw finding burdens on the right to vote even when voters had other methods of voting available to them. *See, e.g., Obama for Am.*, 697 F.3d at 431 (affirming district court’s finding that

directive eliminating after-hours and weekend voting burdened right to vote); *League of Women Voters of Fla., Inc. v. Detzner*, 314 F.Supp.3d 1205, 1216 (N.D. Fla. 2018) (directive prohibiting early voting on college campuses burdened right to vote for younger voters).

Indeed, the Restriction *severely burdens* that right for many Texas voters. Voters like Plaintiff-Appellee Straty, unable to expose themselves to the health risks of voting in person during the pandemic but concerned their ballots will not be timely returned by USPS, had planned to assure the receipt of their mail-in ballots by delivering them to county election administrators at convenient locations. App.111–12, 119–22, 124–25, 127–28, 134–35. Counties had widely planned for and publicized multiple mail-in ballot drop-off locations, and voting in these counties had already started when the Governor issued the Proclamation. App.249, 286, 292–96. But now, voters who know about the Restriction will have to change their voting plans and travel farther to guarantee their mail-in ballots are received and counted. *E.g.*, App.121–22. The Restriction imposes greater burdens on voters in larger and more populated counties, who will have to travel longer distances, wait in longer lines, and risk potential exposure to COVID-19—or choose to mail their ballots to avoid these risks, which itself creates a risk of disenfranchisement. And voters *unaware* of the Restriction will attempt to return their ballots to publicized drop-off locations, only to be turned away by county election officials. At best, then, voters

will be burdened by the need to go to another, more distant location to drop their ballots off—along with tens or even hundreds of thousands of other voters. App.285–86, 297–98, 303.

At worst, these new burdens will discourage voters from returning their ballots at all. App.117, 122, 285–86, 299–300. Waiting in long lines at a county’s single drop-off location is infeasible for many voters who are elderly, disabled, or immunocompromised, and impossible for many voters who lack access to transportation. App.112, 121–22, 125, 128, 132, 135. Many of these voters can only return their ballots by mail, and their ability to do so before the ballot-receipt deadline will be made difficult—if not impossible—by both USPS delays *and* the incongruity between the application deadline and USPS delivery times. App.154, 157–73, 285. Thus, the Restriction imposes a severe burden on the right to vote by depriving vulnerable Texans of the only safe *and* reliable method of returning their mail-in ballots, which will disenfranchise countless voters. For the Restriction to pass constitutional muster, then, it must serve a compelling state interest.

## **2. The Restriction serves no state interest.**

The Secretary’s threadbare recitations of ballot security and uniformity as state interests do not tip the scales relative to the severe burdens on Texas voters.

The Secretary cannot show the Restriction promotes ballot security because it does not. As was conceded during the District Court’s hearing, the verification

process for retuning mail-in ballots at satellite locations is *identical* to the process used at the sole designated early voting clerk's office. App.014; *see also* App.247, 284–85.

Likewise, while the Secretary argues the Restriction is justified by uniformity because it requires each county to utilize the same number of ballot return locations, it actually undermines uniformity. Voters in the largest and most populated counties will now face disproportionate burdens as compared to voters in other counties through longer travel times, longer lines, and increased exposure to COVID-19. *See* App.107. And even if the Restriction did somehow promote uniformity, “‘uniformity, standing alone,’ is not an interest important enough to significantly burden [the] ability to vote.” *Ohio State Conf. of NAACP v. Husted*, 768 F.3d 524, 549 (6th Cir. 2014) (citation omitted); *see also Obama for Am.*, 697 F.3d at 442 (White, J., concurring) (“[U]niformity without some underlying reason for the chosen rule is not a justification in and of itself.”); *One Wis. Inst., Inc. v. Thomsen*, 198 F.Supp.3d 896, 934 (W.D. Wis. 2016) (rejecting “superficial” uniformity justification for law that limited every municipality to just one early voting location), *aff’d in part, rev’d in part on other grounds sub nom. Luft v. Evers*, 963 F.3d 665 (7th Cir. 2020).

Accordingly, because the Restriction does not serve the purported state interests and because uniformity alone is not a compelling state interest, those interests cannot justify the severe burdens on voters.

## **II. The Secretary has not demonstrated the remaining factors favor a stay.**

The District Court's injunction does not harm the Secretary. As explained, the Restriction does not facilitate ballot security or uniformity in election policy. And while the Secretary asserts the injunction implicates the State's interest in determining how to respond to an ongoing health emergency, Mot. 18, she offers no explanation as to how limiting ballot drop-off locations benefits public health. To the contrary, the Restriction puts voters in harm's way. *Supra* Argument Section I.C.2; App.04.

Moreover, staying the injunction will result in violation of Plaintiffs-Appellees' and other Texans' fundamental constitutional rights, which amounts to irreparable harm. *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012). And because "it is always in the public interest to prevent the violation of a party's constitutional rights," a stay would disserve the public interest. *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014).

## **III. The principles underlying *Purcell* favor the District Court's injunction.**

The Secretary argues the District Court erred by enjoining enforcement of the Governor's drastic change to election procedures after the election had already

begun, but this requires both a willful disregard for the facts and a misreading of caselaw.

The Secretary relies entirely on *Texas Alliance for Retired Americans v. Hughs*, where a motions panel of this Court recently stayed an injunction preventing the Secretary from eliminating straight-ticket voting. No. 20-40643, 2020 WL 5816887, at \*4 (5th Cir. Sept. 30, 2020) (“*TARA*”).<sup>2</sup> That case is markedly different than this one. *TARA* involved a court’s change to an election law that was enacted in 2017, and for which there had been years of planning, shortly before voting began. *Id.* at \*1. Here, by contrast, it is the Secretary and the Governor—not the District Court—who seek to upend the status quo and risk confusion for voters. Consequently, the considerations justifying a stay in *TARA*—which include maintaining the election status quo and minimizing confusion for voters, and which flow from the Supreme Court’s warning in *Purcell* and its progeny that courts should be reluctant to change election laws close to elections—counsel in favor of *denying* the stay requested here. *See TARA*, 2020 WL 5816887, at \*3–4.

In addition, *Purcell* is a note of caution to federal courts, not a straitjacket. The general admonition to avoid disruptive injunctions in election cases must have a limiting principle if the Constitution is to have any teeth, and it is hard to imagine

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<sup>2</sup> As noted above, motions panel decisions do not bind this Court. *Supra* Argument Section I.B.

where that line is if not here, where officials have drastically changed election procedures—*after voting has commenced*—in a manner that both unconstitutionally burdens voters and makes it more difficult for poor and minority voters to access the franchise. Put differently, *Purcell* and its progeny do not require the federal judiciary to abdicate its responsibility to enforce the Constitution once an election is imminent. Instead, federal courts should simply be wary of disrupting the status quo and risking voter confusion when issuing late-hour injunctions. Here, the District Court followed this instruction and concluded that these same considerations *supported* an injunction that restores the status quo. *See* App.046 (considering *Purcell* and noting that permitting Restriction “to remain in place causes greater confusion”). That was the correct holding; a contrary ruling would undermine *Purcell*, not vindicate it.

### CONCLUSION

The District Court’s injunction should not be disturbed, and this Court should deny the motion for a stay.

Dated: October 12, 2020

Respectfully Submitted,

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### **CERTIFICATE OF COMPLIANCE**

This document complies with the type-volume limits of Fed. R. App. P. 27(d)(2) because this document contains 5,188 words, excluding parts exempted by Rule 32(f).

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/s/ Skyler M. Howton  
Skyler M. Howton

### **CERTIFICATE OF SERVICE**

I hereby certify that on October 12, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. I certify that counsel for the Defendant-Appellant are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Skyler M. Howton  
Skyler M. Howton

**No. 20-50867**

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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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.

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LAURIE-JO STRATY; TEXAS ALLIANCE FOR RETIRED AMERICANS;  
AND BIGTENT CREATIVE,

*Plaintiffs-Appellees,*

v.

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

*Defendant-Appellant.*

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On Appeal from the United States District Court  
for the Western District of Texas  
(Nos. 1:20-cv-01006-RP, 1:20-cv-01015-RP)

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**APPENDIX TO PLAINTIFFS-APPELLEES LAURIE-JO STRATY, TEXAS  
ALLIANCE FOR RETIRED AMERICANS, AND BIGTENT CREATIVE'S  
OPPOSITION TO MOTION FOR STAY PENDING APPEAL**

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**APPENDIX**

<b>Exhibit</b>	<b>Document</b>	<b>Docket Entry</b>	<b>App #</b>
1	Memorandum and Order	No. 1:20-cv-1015-RP ECF No. 38	App.001 -App.047
2	<i>Straty</i> Plaintiffs' Complaint	No. 1:20-cv-1015-RP ECF No. 1	App.048 -App.068
3	Memorandum in Support of <i>Straty</i> Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction	No. 1:20-cv-1015-RP ECF No. 22	App.069 -App.092
4	Appendix to <i>Straty</i> Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction	No. 1:20-cv-1015-RP ECF No. 11	App.093 -App.278
5	Declaration of John W. Oldham, Fort Bend County Elections Administrator	No. 1:20-cv-1006-RP ECF No. 21	App.279 -App.289
6	Declaration of Dana DeBeauvoir, Travis County Clerk	No. 1:20-cv-1006-RP ECF No. 18	App.290 -App.300
7	Supplemental Declaration of Christopher G. Hollins, Harris County Clerk	No. 1:20-cv-1006-RP ECF No. 51-1	App.301 -App.304

# **Exhibit 1**

## **Memorandum and Order**

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.

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.

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

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

Plaintiffs,

v.

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.

1:20-CV-1015-RP

**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),<sup>1</sup> 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 case<sup>2</sup> for the limited purpose of simultaneously resolving the requests for preliminary injunctive relief in both cases.<sup>3</sup> (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

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<sup>1</sup> The Court incorporates Plaintiffs' contemporaneously filed Amended Motion for a Temporary Restraining Order and Preliminary Injunction, Dkt. 20.

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

<sup>3</sup> 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”).<sup>4</sup> 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.<sup>5</sup> 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).<sup>6</sup> 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.<sup>7</sup>

#### **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

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<sup>4</sup> 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](https://gov.texas.gov/uploads/files/press/PROC_COVID-19_Nov_3_general_election_IMAGE_10-01-2020.pdf).

<sup>5</sup> 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](https://gov.texas.gov/uploads/files/press/PROC_COVID-19_Nov_3_general_election_IMAGE_07-27-2020.pdf).

<sup>6</sup> 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.

<sup>7</sup> 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](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).<sup>8</sup> 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

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<sup>8</sup> 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](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”)<sup>9</sup> 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)).

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<sup>9</sup> 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.<sup>10</sup> (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*

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<sup>10</sup> 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. Forssenius*, 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. Cegavske*, 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.<sup>11</sup> 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

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<sup>11</sup> 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 *Cranford*, 553 U.S. at 191, 128)).<sup>12</sup>

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<sup>12</sup> 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

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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., Crawford*, 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.



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ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

## **Exhibit 2**

### *Straty* Plaintiffs' Complaint

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

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

Plaintiffs,

vs.

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.

Civil Action No. 1:20-cv-1015

Related to:

*Texas League of United Latin American  
Citizens v. Abbott*, No. 1:20-cv-1006

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Laurie-Jo Straty, Texas Alliance for Retired Americans, and BigTent Creative (together, “Plaintiffs”) file this Complaint for Declaratory and Injunctive Relief against Defendant Gregory Abbott, in his official capacity as Governor of the State of Texas, and Ruth Hughs, in her official capacity Texas Secretary of State (together, “Defendants”). This Complaint challenges the constitutionality of Governor Abbott’s October 1, 2020 proclamation that prohibits Texas counties from providing voters with more than one location to return their marked mail-in ballots. In support of their claims and request for relief, Plaintiffs allege as follows:

**NATURE OF THE CASE**

1. In their latest ploy to suppress the vote, which they have thinly veiled as an attempt to “enhance[e] ballot security,” Defendants have ordered that there can only be one location in each county where voters can return their marked mail-in ballots directly to the county election administration. This means that thousands of Texans who *must* vote by mail to avoid the risk of

COVID-19 infection will be prevented from dropping off their mail-in ballots at secure county drop-off locations. For many voters who will vote by mail, the nearest drop-off location will now be dozens or even hundreds of miles away, forcing those voters to travel long distances to deliver their ballots to their county's election administration or to put their ballots in the care of the overburdened, unreliable United States Postal Service ("USPS")—which has explicitly informed Defendants that election mail will be delayed in Texas. This latest effort to take away Texas voters' access to voting during the pandemic imposes a significant, unjustifiable burden and must be immediately enjoined.

2. The first case of COVID-19 in Texas was confirmed on March 4, and Governor Abbott declared a state of disaster nine days later. By the beginning of April, every Texan was under a stay-at-home order and Governor Abbott postponed the scheduled May local elections until November to avoid community spread of infection. However, the governor quickly succumbed to mounting political and economic pressure to open the state back up, which resulted in the dramatic rise in rates of infection over the summer months. As of October 1, less than seven months after the state's first case of COVID-19, Texas has seen 752,501 confirmed cases and 15,823 people have died. Texans age 65 and older constitute approximately 70% of those fatalities, despite that age group making up less than 13% of the state's overall population. While tragic, this figure is not surprising: before the novel coronavirus even touched U.S. soil, epidemiologists warned that individuals above the age of 65 and individuals with certain underlying health conditions are particularly vulnerable to COVID-19's most severe complications.

3. The Texans whose age puts them at the highest risk of severe complications from the virus are, fortunately, eligible to cast their ballots by mail. Still, the right to vote extends beyond just the right to *cast a ballot*. Rather, the right to vote includes "the right to mark a piece of paper

and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot *counted*.” *Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964) (citation and quotation omitted) (emphasis added). Particularly in light of the pandemic and its myriad challenges, the law Plaintiffs challenge here—which derives from Governor Abbott’s October 1 “proclamation enhancing ballot security” (“October Proclamation”)—will unduly burden and, in some cases, entirely prevent the most vulnerable Texans from having their votes counted in November.

4. On July 27, 2020—after skyrocketing rates of COVID-19 infection in Texas and calls for expanded voting by mail to protect Texas voters from the risk of infection inherent with in-person voting—Governor Abbott issued a proclamation extending early voting in Texas to October 13 and suspending the Texas Election Code provision that permitted voters to return their mail-in ballots in person only on election day (“July Proclamation”). The July Proclamation permits eligible voters to return their marked ballots to a county drop-off location on election day *or* during the early voting. With the July Proclamation, Texas joined many other states in offering voters the opportunity to return their mail-in ballots at secure, tamper-proof ballot drop-off sites 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.

5. The July Proclamation made clear that expanded early voting in person and a bigger window for voters to hand-deliver mail-in ballots was the state’s answer (however unsatisfactory) to its citizens’ concerns about participating in the November election. Counties therefore began preparing for a longer in-person early voting period and, at the same time, considered establishing additional mail-in ballot drop-off locations to ensure that voters casting their ballots by mail have ready access to drop-off locations.

6. The availability of drop-off locations has become absolutely critical in the pandemic. While other means of voting may allow voters to cast their ballots outside of regular business hours, or in a manner that minimizes in-person interactions, or at a location that guarantees their ballot is submitted in time to be counted, drop-off locations provide the only means of voting that guarantee voters *all* of these things, ensuring that even those voters who are vulnerable to the worst complications of COVID-19 and rightfully concerned about the mounting delays in mail service by the USPS have safe and available means of returning their ballots to elections officials in time to be counted. In this vein, the nonpartisan U.S. Election Assistance Commission (“EAC”) currently recommends at least one drop-off location for every 15,000 to 20,000 registered voters.

7. Governor Abbott has ignored this EAC guidance, as well as his constituents’ grave concerns and what is plainly required to protect vulnerable Texans’ ability to vote in this election. Yesterday—a mere *twelve days* before voting in Texas begins—he issued the October Proclamation, mandating that voters may only return their mail-in ballots to a single designated location in their county of residence (“Ballot Return Restriction”). In issuing this restriction, Governor Abbott threw a wrench in the counties’ plans to decrease the burden on voters casting their ballots by mail by providing those voters with a convenient, reliable way to timely return their marked mail-in ballots.

8. Not only is the Ballot Return Restriction suppressive, it is also perplexing. It represents a drastic about-face to the position taken by the Texas government only *one day earlier*: On September 30, 2020, Texas Attorney General Ken Paxton represented to the Texas Supreme Court that the July Proclamation permitted multiple ballot drop-off locations in each county. As such, “the Secretary of State has advised local officials that the Legislature has permitted ballots

to be returned to any early-voting clerk office.” *In re Hotze, et al.*, No. 20-0751, Brief in Supp. of Mandamus Petition at 5 (Tex. Sept. 30, 2020).

9. The Ballot Return Restriction is sudden, surprising, and surreptitious. It was mandated just days before the start of early voting in a general election that is expected to see the largest voter turnout in years, with an unprecedented number of voters casting their ballots by mail to avoid the risk of COVID-19 infection and serious complications or even death. Meanwhile, the USPS is overburdened and subject to increasing delays. Thus, many vulnerable voters whose only safe option is voting by mail will have to either (a) hope that USPS delivers their mail-in ballot to the county election office by the deadline or (b) travel great distances and wait in long lines to return their mail-in ballot at the single approved location in their county of residence. The former option poses a significant risk of disenfranchisement based on the unreliability of the postal service, and the latter is simply infeasible for elderly and disabled Texans with no or limited access to reliable transportation or those who have mobility issues. The latter option also exposes voters to the same risks that they were attempting to avoid in voting by mail.

10. In the following ways, the Ballot Return Restriction directly threatens the right to vote for countless lawful Texas voters. Plaintiffs therefore seek emergency relief from this Court to enjoin the unlawful Ballot Return Restriction.

#### **JURISDICTION AND VENUE**

11. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation, under color of state law, of rights secured by the United States Constitution.

12. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States.

13. This Court has personal jurisdiction over the Defendants, who are sued in their official capacities only.

14. Venue is proper in the U.S. District Court in the Western District of Texas pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events that gave rise to Plaintiffs' claims occurred there.

15. This Court has the authority to enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

### **PARTIES**

16. LAURIE-JO STRATY is a 65-year-old citizen and resident of and registered voter in Dallas County. Ms. Straty is unable to vote in person because she is particularly vulnerable to the coronavirus due to her multiple sclerosis, which leaves her immunocompromised. She is also unable to stand in line to wait to vote in person because she has an inflamed Achilles tendon. Ms. Straty helps care for her 90-year-old parents, who live in a senior living home. She fears that if she were to vote in person, she would risk exposing them, and other residents of the care facility, to the coronavirus. Because Ms. Straty is aware of reports of widespread issues with USPS, she does not trust that her ballot will arrive on time and be properly counted if she mails it in. Prior to the Ballot Return Restriction, Ms. Straty planned to drop off her ballot in person at a location near her home, a trip that would have taken approximately 5 minutes each way. Because of the Ballot Return Restriction, however, that location is no longer available. Instead, Ms. Straty must drop off her ballot at a location that will require her to travel 20 minutes each way. Ms. Straty is concerned about long lines to drop off her ballot due to congestion at the single drop off location in the county.

17. The TEXAS ALLIANCE FOR RETIRED AMERICANS ("TARA") is incorporated in Texas as a 501(c)(4) nonprofit, social welfare organization under the Internal Revenue Code. The Alliance has over 145,000 members, composed of retirees from public and

private sector unions, community organizations, and individual activists. It is a chartered state affiliate of the Alliance for Retired Americans. TARA's mission is to ensure social and economic justice and the full civil rights that retirees have earned after a lifetime of work. The Ballot Return Restriction frustrates TARA's mission because it deprives individual members of the right to vote and to have their votes counted, threatens the electoral prospects of progressive candidates whose supporters will face greater obstacles casting a vote and having their votes counted, and makes it more difficult for TARA and its members to associate to effectively further their shared political purposes. TARA and its individual members intend to engage in voter assistance programs. And, for the past several months, TARA has participated in Dallas Votes, a coalition seeking, in part, to guarantee more drop-off locations so its Dallas members are able to guarantee the county's receipt of their marked mail-in ballots without shouldering the burden of traveling long distances and waiting in long lines. TARA would like to educate voters and conduct awareness campaigns about returning mail-in ballots to convenient locations as a superior alternative to returning ballots via USPS because, in increasing the likelihood that these voters' ballots will count, TARA fulfills its organizational mission. TARA is unable to present voters with a feasible alternative to returning mail-in ballots via USPS because the Ballot Return Restriction prevents county election administrators from offering voters convenient locations for personally delivering their mail-in ballots.

18. BIGTENT CREATIVE ("BigTent") is incorporated in California as an LLC. Plaintiff BigTent is a non-profit, non-partisan voting registration and get-out-the-vote (GOTV) technology organization. BigTent's mission is to use technology to simplify political engagement, increase voter turnout, and strengthen American democracy. It carries out this mission by channeling funds from donors to young people of color to organize within their own communities

using social media platforms. BigTent has registered more than 8,000 new voters throughout the United States for the upcoming November election. In Texas, BigTent has helped over 3,000 voters register to vote. Since the onslaught of COVID-19, BigTent has added additional information to its website; for example, during the primary elections, BigTent offered up-to-date, state-by-state information for voters whose primaries have been postponed, including Texas. The Ballot Return Restriction frustrates BigTent's mission because it presents Texans with significant obstacles in registering to vote, casting their votes, and having those votes counted, thus thwarting political engagement. Because of the burdens on returning absentee ballots created by Defendants, BigTent will be required to divert time and resources to educating its employees and influencers, updating the Texas-specific pages on its website to account for the Ballot Return Restriction, and funding influencer social media posts to inform Texas voters about these obstacles and how they can successfully overcome them. These efforts will reduce the time and resources BigTent is able to spend funding influencers to engage in voter registration efforts within Texas and organizing efforts in swing states. Any resources spent ensuring voters in Texas can successfully return their ballots necessarily takes away from the get-out-the-vote efforts which are crucially needed in other states.

19. Defendant Gregory Abbott is the Governor of Texas and is named as a Defendant in his official capacity. Governor Abbott issued the proclamation imposing the Ballot Return Restriction, and in doing so acted under color of state law at all times relevant to this action.

20. Defendant Ruth Hughs is the Secretary of State of Texas and is named as a Defendant in her official capacity. Secretary Hughs is the state's chief elections officer and, as such, is responsible for the administration and implementation of election laws in Texas, including

the Ballot Return Restriction at issue in this complaint. *See* Tex. Elec. Code § 31.001(a). The Secretary acted under color of state law at all times relevant to this action.

## **FACTUAL ALLEGATIONS**

### **I. COVID-19's Impact on Early Voting**

21. Virtually all aspects of life in our country today are affected by the unprecedented COVID-19 pandemic. In Texas alone, more than 752,501 people have been infected with confirmed cases of the virus; more than 1.8 million people have lost their jobs; and more than 15,823 people have lost their lives. Almost 70% of fatalities in the state have been of Texans age 65 or older, who, along with people that have certain underlying health conditions such as asthma, diabetes, and cancer, are at increased risk of suffering severe complications from COVID-19.

22. Though epidemiologists initially expected the rate of infection to decline during the summer months, Governor Abbott declined to extend early stay-at-home orders and, from mid-May to July, the State's positivity rate tripled, from 6.99% to 20.8%. Thousands of new COVID-19 cases continue to be reported daily, and the rate of infection is expected to resurge this fall and winter.

23. Even without a statewide stay-at-home order in November, the continuing threat posed by the pandemic requires that self-isolation and social distancing remain the norm in order to protect the millions of Texans most vulnerable to the virus's worst complications.

24. The threat of infection, and the need to socially distance to prevent community spread of infection, has greatly affected this year's elections in Texas. This is particularly true for vulnerable voters—individuals age 65 and older and individuals with certain underlying health conditions. Casting a ballot at a polling location is not a viable option for these vulnerable voters; their only way to safely vote is by mail, returning their marked ballots either through USPS or at a ballot drop-off location.

## **II. The Need for Ballot Drop-Off Locations**

25. Under the Texas Election Code, a voter's returned mail-in ballot must be postmarked by 7:00 p.m. on election day and received by the voter's county election administration by 5:00 p.m. the day after the election.

26. USPS advises that First-Class mail typically takes between two to five days to arrive at its destination even under normal circumstances. USPS has also recommended (in a pre-COVID-19 world) that jurisdictions ask their citizens to mail their ballots at least a week before ballots are due because of increased mail demands around the time of an election.

27. Now, in light of COVID-19, there has been a substantial increase in postal delays, and USPS has recently advised elections officials around the country that election mail will take seven to ten days to arrive at its intended destination.

28. The general counsel of USPS sent Defendant Hughs a letter "strongly recommend[ing]" a timeframe to ensure that ballots arrive to voters and are returned to the counties on time, but the timeframe is unworkable in Texas.

29. For example, USPS recommends that the Secretary have all voters submit their applications to vote by mail *at least fifteen days before* the election, though the deadline for submitting an application to vote by mail is eleven days before the election under the Texas Election Code.

30. USPS also recommends that the Secretary allow one week for the ballot to arrive to voters and one week for the voter's marked ballot to arrive back to the county.

31. But, as discussed above, the deadline to apply to vote by mail is October 23. Assuming the county immediately processes the many applications it will receive from voters on October 23—which is already after the deadline by which USPS "strongly recommends" that vote-by-mail applications should be received by the county—those voters may very well not receive

their ballots from the county until October 30. Assuming next that the voters receiving their ballots on October 30, mark those ballots, and put them back in the mail the same day, based on USPS's instructions and warning county elections administrators likely will not receive those marked ballots back until November 6, two days after the Texas Election Code's receipt deadline. This exact scenario has been illustrated again and again in past elections: the majority of late ballots in every election arrive within a few days of the ballot receipt deadline.

32. Increased delays at USPS are also attributable to the ongoing budgetary crisis, due to COVID-19, and operational changes that have limited overtime hours for employees and decommissioned mail processing equipment.

33. Currently, USPS is operating with significantly reduced staff as more and more employees fall victim to the virus: as of mid-August, nearly 10% of all postal workers—or approximately 63,000 of the agency's employees across the country—have tested positive for COVID-19.

34. Underfunded and understaffed, the USPS will be tasked with processing a much higher volume of mail than it is accustomed to processing for the November election.

35. The upshot of all this is that as USPS attempts to deliver an unprecedented number of vote-by-mail ballots across the country—both from county elections officials to voters, and then back again—the system will be under heightened pressure, causing increased delays and, ultimately, an increase in the number of ballots that are not received by the county election administrators before the ballot receipt deadline. Those ballots will be left uncounted, and the voters who cast them will be disenfranchised.

36. The enormous problems with USPS service since COVID-19 is no secret. Texans have already experienced delayed mail delivery across the state. As such, voters are increasingly

concerned that their mail-in ballots will not be received by the county election office in time to be counted. Texas mail-in voters understand that, due to delays, they may receive their ballots with insufficient time to mark and mail those ballots back by the deadline. Thus, to ensure that their ballots will be counted, many voters intend to personally return their mail-in ballots.

37. County ballot drop-off locations permit eligible vote-by-mail voters to drop off their ballots at a designated site rather than mail in their ballots via USPS. Drop-off locations are increasingly a staple of effective election administration. This year, drop-off locations are available in at least 34 states and Washington, D.C. These drop-off locations, when available, are heavily utilized. For example, in Colorado's 2016 general election, which was conducted by mail, nearly three-quarters of all ballots were returned to a drop-off location.

38. In Texas, county elections officials have been relying on and planning on continuing to rely upon expanded drop-off locations to decrease traffic and to guarantee that drop-off locations are closer, and thus more accessible, to mail-in voters.

39. For example, Harris County has already been operating 11 ballot drop-off locations to be open during early voting and on election day; Travis County has already been operating four such locations; and Dallas County was considering operating additional ballot drop-off locations before the issuance of the Ballot Return Restriction.

### **III. The Ballot Return Restriction**

40. On July 27, 2020, Governor Abbott issued a proclamation permitting early voting to begin on Tuesday, October 13, and permitting voters to deliver their marked mail in ballots in person to an early voting clerk's office any time between October 13 up to and including election day, November 3, 2020. Counties therefore began preparing for a longer in-person early voting period and, at the same time, considered establishing additional mail-in ballot drop-off locations to ensure that voters casting their ballots by mail have ready access to drop-off locations.

41. Election administrators planned for multiple return locations 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.

42. Despite county elections administrators' efforts, just yesterday Governor Abbott suddenly changed course and announced the Ballot Return Restriction, which is purportedly intended to "enhance[e] ballot security."

43. Neither Governor Abbott nor the Secretary have explained *how* the restriction enhances ballot security, and indeed the Restriction does not.

44. Whether voters can return their mail-in ballots at one county drop-off location or choose from one hundred locations, an election official is legally required to verify the voter's picture ID and the information on the ballot carrier envelope. Accordingly, there is already in place a procedure to protect against improper voting, which is, any event, exceedingly rare.

#### **IV. The Ballot Return Restriction's Impact**

45. By land mass, Texas is the largest state in the contiguous United States. By population, Texas is the second largest state in the Union, and is home to approximately 29 million residents.

46. Harris County alone covers over 1,703 square miles, making it larger geographically than the state of Rhode Island. The distance to drive across Harris County is equivalent to driving all the way through Massachusetts; clear across all of Puerto Rico; or nearly all the way across Taiwan. A boat ride the distance of Houston is equivalent to a boat ride from Cleveland, Ohio, to the Canadian side of Lake Erie.

47. According to the U.S. Census Bureau's population estimates, as of July 2019, Harris County alone is home to over 4.7 million people. If it were a state, it would be the 25th most populous state—larger than Kentucky, Oregon, Iowa, or Nevada (among 20 others). In fact, Harris

County has more people living in it than the states of Rhode Island, both Dakotas, Alaska, Vermont, and Wyoming combined.

48. Harris County's size is a fraction of Texas's largest county, Brewster, which covers over 6,000 square miles. Spread out amongst those 6,000 square miles is a population in which those aged 65 and older make up 25%, almost double the percentage of people aged 65 and older across the state's population.

49. And even at a quarter the size of Harris County, Travis County's population of 1.3 million residents is larger than the populations of Montana, Rhode Island, Delaware, South Dakota, North Dakota, Alaska, Washington, D.C., Vermont, and Wyoming. It is approximately 1,023 square miles.

50. The nonpartisan EAC, which issued a series of documents providing guidance for state elections officials on how to administer and secure election infrastructure in light of the COVID-19 pandemic, recommends at least one drop-off location per 15,000 to 20,000 voters.

51. Assuming that only 10% of Texas voters cast their ballots by mail in November—which vastly underestimates the expected rate in light of the pandemic, as evidenced by the increased rates of voting by mail in the July primary runoff—Harris County, with over 2 million registered voters, should have at least 10 ballot drop-off locations, and Travis County, with over 800,000 registered voters, should have at least 4 drop-off locations.

52. The EAC further suggests that election administrators “[c]onsider adding more drop-off locations to areas where there may be communities with historically low vote by mail usage,” and stresses that drop-off locations should be allocated using demographic data and analysis, recognizing the differences in rural and urban populations, and recommends using U.S. Census Bureau tools “to help visualize where residents of your jurisdiction work or live to help

you see where drop-off locations might be particularly useful.” That guidance applies to all of Texas, in which only about 6% of voters have cast their ballots by mail in any given election.

53. The Ballot Return Restriction does not take any of these recommendations into account. To the contrary, it blatantly disregards differences in population, geography, and demography that exist in Texas’ 254 diverse counties, as well as the sheer number of voters in each county who will be voting by mail in November at unprecedented rates.

54. The Ballot Return Restriction’s arbitrary burden on timely returning mail-in ballots places a significant burden on Texans’ ability to safely vote in November. Voters will be forced to decide between mailing their ballots and risking loss or delay, voting in person and risking COVID-19 infection, or finding transportation to travel tens, hundreds, or even thousands of miles from their homes to wait in line with other voters to drop of their mail-in ballots. Despite their best efforts to navigate the perilous waters of the Texas vote-by-mail process, many voters will be disenfranchised.

55. This does not have to be the case. Permitting counties to operate more than one ballot drop-off location will reduce Texas voters’ burden in returning their ballots and will make it safer for those voters to personally deliver their ballots while ensuring that those ballots are returned before the receipt deadline. On the other hand, Defendants have *no* interest in limiting the number of drop-off locations in every county.

**FIRST CLAIM FOR RELIEF**  
**U.S. Const. amends. 1, XIV**  
**Undue Burden on the Right to Vote**

56. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs below as though fully set forth herein.

57. Under the *Anderson-Burdick* balancing test, a court considering a challenge to a state election law must carefully balance the character and magnitude of injury to the First and

Fourteenth Amendment rights that the plaintiff seeks to vindicate 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 v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

58. The Ballot Return Restriction severely burdens the right to vote. At best, the Restriction requires Texans—millions of whom are vulnerable to severe complications from COVID-19—to travel long distances to avoid the health and safety hazards posed by voting in person and the risk that USPS will not deliver their ballots on time. At worst, they disenfranchise voters who cannot risk exposure to COVID-19 by voting in person but who also cannot travel the long distance to the single ballot drop-off location in their county. This is a particular concern for those Texans who receive their mail-in ballots shortly before election day because such voters may be rightfully concerned that their ballots will not be received in time to be counted.

59. Defendants can offer no justification that outweighs the significance of the burden here: the disenfranchisement of millions of Texans.

60. Defendants’ stated reason for the Ballot Return Restriction—ballot security—is patently pretextual. In the October Proclamation, Governor Abbott pointed to no reason why having multiple drop-off locations, rather than one, will pose any threat whatsoever to the security of the ballots submitted at each location. In fact, the protocols in place at each drop-off locations are the same: an election official is legally required to verify the voter’s picture ID and the information on the ballot carrier envelope.

61. Moreover, other state interests, including maintaining the health and safety of the electorate, which was Defendants’ stated interest in issuing the July Proclamation, militate in favor

of *more* ballot drop-off locations in geographically large and highly populated counties. This interest cannot be advanced by Defendants' decision to open only *one* ballot drop-off location per county, no matter the county's size or population. Larger counties require additional ballot drop-off sites to enable voters to vote efficiently while maintaining recommended social distancing.

62. In short, the Ballot Return Restriction is not supported by *any* state interest, let alone one that is sufficiently compelling to justify the significant burdens on the right to vote. The Ballot Return Restriction therefore violates the First and Fourteenth Amendments.

**SECOND CLAIM FOR RELIEF**  
**U.S. Const. amend. XIV**  
**Violation of Equal Protection**

63. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs below as though fully set forth herein.

64. The Equal Protection Clause protects “the equal weight accorded to each vote and the equal dignity owed to each voter.” *Bush v. Gore*, 531 U.S. 98, 104 (2000). Yet the Ballot Return Restriction, as applied, treats Texans differently depending on where they live: those that live in counties with bigger populations and counties with bigger land masses will be burdened more than those that live in counties with smaller populations and counties covering smaller geographic areas. As discussed above, there is no compelling, let alone rational, interest in treating these similarly situated voters differently.

65. The Ballot Return Restriction severely burdens voters by limiting ballot drop-off locations to one per county. The Ballot Return Restriction will require millions of voters to travel long distances to reach their ballot drop-off locations. While some voters will have the option to drop off their ballots close to home, others will have to travel substantially farther.

66. As discussed above, Defendants can advance no legitimate, let alone compelling, state interest to justify these severe burdens.

**FOURTH CLAIM FOR RELIEF**  
**Ku Klux Klan Act, 42 U.S.C. § 1985(3)**

67. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs below as though fully set forth herein.

68. 42 U.S.C. § 1985(3) prohibits conspiracies that have the purpose of “depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws” (the “Equal Protection Provision”) or conspiracies “to prevent by force, intimidation, or threat,” any lawful voter from supporting or advocating for any candidate in a presidential or congressional election (the “Support and Advocacy Provision”).

69. The Ballot Return Restriction was designed to disenfranchise voters that Defendants, Republican politicians, believe are not likely to support Republican candidates. The Ballot Return Restriction has a disproportionate impact on older and more diverse voters, many of which typically vote for Democratic candidates. The barriers to voting placed by the Ballot Return Restriction will prevent many of these individuals from lawfully casting their ballots.

70. Defendants conspired with individuals in the Republican Party, including members of the Texas Republican Party and the Republican National Committee, to issue the Ballot Return Restriction in order to prevent lawful voting. They did so in order to deprive the impacted voters of the equal protection of the laws and deprive them of their rights.

71. The Ballot Return Restriction thus falls within the scope of Section 1985(3)’s Equal Protection provision, which provides a cause of action against anyone who “conspire[s] ... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws.” 42 U.S.C. § 1985(3).

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that this Court:

A. Declare that the October Proclamation's Ballot Return Restriction is unconstitutional, and that county election administrators may establish, at their discretion, multiple locations where voters may return their marked mail-in ballots to secured ballot drop-off locations;

B. Preliminarily and permanently enjoin Defendants, and their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from taking any action to inhibit election administrators from offering drop-off locations as described;

C. Award statutory damages pursuant to 42 U.S.C. § 1985(3); and

D. Grant such other or further relief as the Court deems just and proper.

Dated: October 2, 2020

Respectfully submitted,

/s/ Skyler Howton

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**Exhibit 3**  
Memorandum in Support of  
*Straty* Plaintiffs' Motion for Temporary  
Restraining Order  
and Preliminary Injunction

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

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

Plaintiffs,

vs.

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.

Civil Action No. 1:20-cv-1015-RP

Related to:

*Texas League of United Latin American  
Citizens v. Abbott*, No. 1:20-cv-1006

**HEARING REQUESTED**

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR  
TEMPORARY RETRAINING ORDER AND PRELIMINARY INJUNCTION**

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## I. INTRODUCTION

Since the first American diagnosis with the novel coronavirus was made in the Spring, COVID-19 has claimed over 200,000 lives in the United States, roughly one out of every thirteen of which have been in Texas. Residents 65 and older account for nearly 70% of the COVID-19 deaths reported in the state. Every single day, thousands of Texans are newly diagnosed, and the CDC has warned that Americans should brace for even more infections this fall.

In the face of this unprecedented crisis, most states have taken affirmative steps to ensure that voters are able to safely and easily exercise their right to vote during the pandemic. Not Texas. At virtually every turn, Governor Greg Abbott and Secretary of State Ruth Hughs (“Defendants”) have blocked attempts to safeguard the right to vote (and the health of voters or elections officials). On Thursday, a mere 12 days before voting was scheduled to begin, Governor Abbott issued a surprise proclamation suddenly forbidding county election administrators from offering more than one ballot drop box in each county (the “Ballot Return Restriction” or “Restriction”), regardless of the county’s size, its population, or any other of its unique features.

The Restriction was directly contrary to a proclamation the Governor issued two months earlier, which expressly permitted Texas voters to personally return their ballots to their county election administrators’ satellite offices. Thus, with his abrupt announcement, the Governor effectively reversed what little relief he had provided to facilitate safe and effective voting during the pandemic. That about-face violates federal law. An injunction is urgently needed.

## II. BACKGROUND

### A. **The COVID-19 pandemic has caused a public health crisis in Texas rendering access to mail-ballot drop-off locations vital.**

Texas reported its first case of COVID-19 on March 4, 2020. *See* Texas Covid Map & Case Count, <https://www.nytimes.com/interactive/2020/us/texas-coronavirus-cases.html> (last visited

Oct. 4, 2020). A mere seven months later, Texas has recorded over 800,000 confirmed cases of the virus, with no end in sight. *Id.* In the past week alone, Texas has averaged between 4,000-5,000 new cases *per day*. *Id.* Nearly 16,500 of the state's residents have died from the virus, with thousands more suffering profound health consequences that may be with them permanently. *Id.* Older and Latinx residents have been hit particularly hard: 69.8% of the reported COVID-19 fatalities have been among Texans 65 or older, and 56.1% have been among Hispanic residents. *See* COVID-19 Demographics, Texas Dep't of Health & Human Servs., <https://dshs.texas.gov/coronavirus/TexasCOVID19Demographics.xlsx.asp> (last visited Oct. 4, 2020); *see also* Ex. 1 ¶¶ 3, 5; Ex. 2 ¶ 3; Ex. 3 ¶ 3; Ex. 4 ¶ 3; Ex. 5 ¶ 3.<sup>1</sup>

Shortly after the crisis began, the CDC began recommending that states take several affirmative steps to ensure that voters and elections officials are not unnecessarily exposed to the virus while participating in elections. *See* Considerations for Election Polling Locations & Voters, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>. This included providing broad access to voting by mail. In response, virtually every other state has made voting by mail accessible to any voter who would seek to use it during the pandemic. Texas stands out as one of the very few exceptions, where voters may only vote by mail if they: (1) are 65 or over, (2) will be absent from their home county during early in-person voting and on election day, (3) have a "disability," which Texas law defines as a sickness or physical condition that prevents them from appearing at the polling place, or (4) are confined in jail but otherwise eligible to vote. *See* Tex. Elec. Code §§ 82.001-82.004. Far from relaxing these requirements (as other states have broadly done), Defendants have fought hard to strictly maintain them, including by arguing that persons with pre-existing conditions that make them particularly susceptible to bad

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<sup>1</sup> Citations to exhibit numbers are to the exhibits appended to the Declaration of Skyler Howton.

outcomes should they contract COVID-19 do not have a “disability” within the meaning of Texas law. *See In re State*, No. 20-0394, 2020 WL 2759629, at \*1 (Tex. May 27, 2020); *see also Tex. Democratic Party v. Abbott*, No. 20-50407, 2020 WL 2982937, at \*1 (5th Cir. June 4, 2020).

Nevertheless, Texas is still anticipated to see an unprecedented surge in mail voting this election. Approximately 17% of voting age Texans—roughly 3.6 million people—are 65 or older, and as such eligible to vote by mail. Ex. 9. Approximately 64% of those 3.6 million people are expected to turn out in each general election. Ex. 10. Accordingly, there are more than 2 million people in just *one* of the four eligible categories who are likely to vote and they represent a group that is particularly vulnerable to COVID-19. *See* Tex. Elec. Code § 82.003. Increased mail voting was evident even in Texas elections held earlier this year. In Fort Bend County, for instance, there was a 59% increase in mail ballot applications from the March primary to the July runoff. *Id.*, Ex. 11. Harris County experienced a 109% increase. *Id.* Counties expect the demand for mail ballots will only continue to climb as November approaches. But because of ripple effects the pandemic has had on USPS, and because of the limitations of Texas’s vote-by-mail scheme, mail voting *alone* does not offer those voters a safe and efficient means of casting their ballots.

Texas requires domestic mail-in ballots to be postmarked by 7:00 p.m. on election day and received by 5:00 p.m. the day after the election. Tex. Elec. Code § 86.007. Some voters may not receive their mail ballots in time to timely return them by mail. In November, mail-in ballots will likely be requested in record numbers. Ex. 1 ¶ 5. There are two primary and interlocking reasons for this: *first*, elections administrators will be delayed in sending mail-in ballots in response to the influx of applications; and, *second*, the overburdened and understaffed postal service will fail to timely deliver ballots to voters and fail to return voted ballots to the counties before the Deadline.

To obtain a mail-in ballot, a voter must apply and state her eligibility. If approved, the county elections administrator sends a ballot to the voter. In light of the increased demand for mail ballots, and the other burdens on elections administrators as a result of the pandemic, their ability to process mail ballot applications will be strained. Ex. 11 (“For election machinery statewide, the expected increase in VBM will be a challenge.”). That, in turn, limits voters’ ability to mark and return their ballots by mail in time to be counted. Even under normal circumstances, USPS recommends that ballots be placed in the mail by voters at least seven days before a receipt deadline. Ex. 12 at 2. However, voters may not receive their ballots in time to do so. *Id.*

The problem is exacerbated by recent postal service delays. A briefing prepared for the Postmaster General on August 12 shows a sharp decrease in the delivery performance for Presort First-Class Mail, beginning in July. Ex. 13. The rate at which USPS is meeting its overall delivery standards fell from the low 90s in June to well below 85% in mid-July. *Id.* Despite promises by USPS that it was going to do better, its service performance scores have not markedly recovered. As records recently produced by USPS and filed in a lawsuit pending against it show, as of September 19, service performance for First-Class mail has continued to regularly dip below 85%, almost 10% below where it was before the pandemic reached the United States. Ex. 14 at 1. In the Houston area, delivery performance plateaued in the low 80s in July. *Id.* at 41. In August, it reached 78%. *Id.* Through September 19, delivery performance had still not reached 90%. *Id.*

The deleterious impacts that the unreliability of mail delivery has on the right to vote in the pandemic are compounded by Texas’s ban on third-party ballot delivery. In Texas, third parties who assist others in delivering their ballots, except in narrow circumstances, risk felony charges. Tex. Elec. Code § 86.006. Accordingly, voters who are unable to obtain postage or unwilling to risk arbitrary disenfranchisement by surrendering the delivery of their ballot to the vagaries of

postal service delivery must personally deliver their marked ballots to a permissible drop off location.

This year drop-off locations are available in at least 34 states and Washington, D.C. When available, ballot drop off is heavily utilized. Ex. 16. For example, in Colorado’s 2016 general election, which was conducted by mail, nearly three-quarters of all ballots were returned to a drop-off location. *Id.* In recommendations issued about best state practices for elections administration during the pandemic, the nonpartisan U.S. Election Assistance Commission (“EAC”) recommends at least one drop-off location for every 15,000 to 20,000 registered voters. Ex. 15.

**B. In the months and days leading up to the Governor’s October 1st announcement of the Ballot Return Restriction, the message to elections officials, voters, and even the Texas Supreme Court was clear that counties could offer multiple ballot drop off locations.**

On July 27, Governor Abbott issued a Proclamation permitting early voting to begin on October 13, and permitting voters to deliver their marked mail-in ballots in person to an early voting clerk’s office from October 13 through November 3 (“July Proclamation”). Ex. 17. This was a revision from ordinary practice in non-pandemic times, during which Texas generally permits in-person return of mail ballots only on Election Day. Tex. Elec. Code § 86.006(a-1). Because of the unprecedented challenges of voting during the pandemic, however, the Governor’s July Proclamation “suspend[ed] Section 86.006(a-1) of the Texas Election Code” for the November election. Ex. 17.

The July Proclamation did not set any limit on the number of drop-off locations counties were permitted to use and shortly after it was issued, other government officials, including the Secretary of State, confirmed that counties were now allowed to have multiple drop-off locations for voters to drop off their mail-in ballots before election day. In late August, for example, the Secretary told the Chair of the Harris County Republican Party that mail ballots could be returned

to *any* early-voting clerk office. Ex. 19. Similarly, when asked specifically “if it is acceptable for voters to drop off their ballots up to election day at [county clerk] annexes,” a staff attorney from the Secretary’s office emphasized that “[b]ecause this hand-delivery process can occur at the early voting clerk’s office, this may include satellite offices of the early voting clerk.” *Id.*

These assurances by Texas officials continued literally up until the day before the Governor issued the Ballot Return Restriction. Thus, on September 30, when the Texas Supreme Court asked Texas Attorney General Ken Paxton whether, “in light of the Governor’s July 27, 2020 proclamation, . . . allowing a voter to deliver a marked mail ballot in person to any of [the] eleven annexes in Harris County violates Texas Election Code section 86.00[6](a-1),” Ex. 20 at 1, the Attorney General responded that, “[t]he Government Code generally provides that the singular includes the plural,” *id.* at 5 (citing Tex. Gov’t Code § 311.012(b)). On that basis, he reported to the Court that “the Secretary . . . has advised local officials that the Legislature has permitted ballots to be returned to *any* early-voting clerk office.” *Id.*

In reliance on the July Proclamation and the assurances from public officials, Texas counties began increasing the number of drop-off locations available to voters. They did so with the objective of reducing lines at early voting locations, providing more alternatives to voting in person during the pandemic, and making access to drop-off locations easier and safer for many mail-in voters who otherwise would have had to travel long distances to drop off their ballots. Many of those voters, because they are voting by mail to avoid exposure to COVID-19, would be dissuaded from voting if they encounter long lines at ballot drop off locations.

The counties announced these plans to voters, who made plans to vote based on them. In Harris County, for example, the clerk’s office conducted a campaign to educate voters about the availability of the 12 drop off locations that it was planning, including through social media,

interviews in the media, and information on its “Harris Votes” website that lists all 12 sites. *See* Ex. 21 ¶ 21. Travis County also announced that it would offer four drop-off locations for early voting, *id.*, Ex. 18, and Fort Bend County very recently finalized plans to accept mail ballots at multiple locations. Ex. 11. Indeed, on October 1, mere hours before the Governor announced the Ballot Return Restriction, Fort Bend publicly announced its plan to accept ballots at multiple locations. *See id.*, Ex. 23.

**C. The Ballot Return Restriction drastically and suddenly limited the availability of ballot drop-off locations for millions of Texas voters less than two weeks before voting begins.**

The day after the Attorney General represented to the Texas Supreme Court that voters could, in fact, return ballots to satellite locations, the Governor surprised the public and local elections administrators alike by suddenly announcing the Ballot Return Restriction, prohibiting counties from having more than one drop-off location. Ex. 22. In issuing this restriction, the Governor stripped millions of voters of a safe way to timely return their marked mail-in ballots, while also injecting widespread confusion into the voting process right before voting was scheduled to begin. Ex. 2 ¶¶ 5-6; Ex. 3 ¶¶ 10-11; Ex. 4 ¶¶ 8-13; Ex. 5 ¶¶ 5-8; Ex. 6 ¶¶ 5-10; Ex. 8 ¶ 7.

The counties that had publicly announced their plans to offer multiple drop off locations to voters must now do a complete turn-about, developing new plans *and* communicating the reversal to voters in less than two weeks, when early voting begins. Voters, too, will have to revise and rethink their plans as to how they will successfully vote. The pandemic is forcing voters to plan far in advance of election day on how to cast their ballots with minimal risk to exposure to COVID-19 and also ensure their votes are counted. Many of Texas’s voters have relied upon these public communications advising them that there will be multiple locations where they can drop off their ballots. For example, Richard and Ellen Shaw, who are both particularly vulnerable to COVID-19

due to their ages and medical conditions, planned to return their mail ballots to a drop-off location in Harris County just minutes away from their home. Ex. 4 ¶ 12. Now, they must travel up to 45 minutes away to drop off their ballots. *Id.* ¶ 10. If the Shaws reach their county's drop-off location and find there is a line, they plan to go home and try again another time out of concerns that having to wait in a long line with many other voters could risk the exact exposure to the virus that they are trying to avoid by voting by mail ballot to begin with. *Id.* ¶ 11; *see also* Ex. 2 ¶ 5; Ex. 5 ¶ 7; Ex. 6 ¶ 6, 8; Ex. 7 ¶ 5; Ex. 8 ¶ 5. Moreover, voters like the Shaws represent the subset of voters who have actually learned of the Governor's about-face. There is a significant risk that many voters who planned to use the locations that the Governor's October 1 order now effectively shuts will not learn that they can no longer drop off their ballots at those locations until they arrive there and attempt to do so. Ex. 1 ¶ 8; Ex. 3 ¶¶ 10-11; Ex. 4 ¶ 13. The widespread confusion that the Governor's order will engender cannot be over-emphasized.

It also imposes severe risks that voters' ballots will not arrive in time to be counted, and that lawful voters will be disenfranchised as a result. Voters who do not have easy access to ballot drop off sites as a result of the Governor's order, or who cannot risk standing in line at a single site—that, as in Harris County will now have to serve hundreds of thousands of voters—because of the risks of contracting the virus will have no choice but to hope that their ballot is not among the 15-20% of first class mail that has been routinely subject to delivery delays by USPS. *See* Ex. 1 ¶ 6; Ex. 2 ¶¶ 5-6; Ex. 5 ¶¶ 4, 8; Ex. 6 ¶¶ 7-8; Ex. 7 ¶¶ 3-5; Ex. 8 ¶ 6. This, in turn, raises fears among voters about the integrity of the process, and the risk that they will be disenfranchised due to no fault of their own. Ex. 2 ¶ 4; Ex. 3 ¶¶ 6-7; Ex. 4 ¶¶ 6, 9, 13 Ex. 5 ¶ 8; Ex. 6 ¶¶ 9-10; Ex. 7 ¶ 4-5; Ex. 8 ¶ 7.

The Ballot Return Restriction does not impose uniform burdens on Texas voters: certain communities are impacted much more severely. Harris County alone covers over 1,703 square miles, making it larger geographically than the state of Rhode Island. The distance to drive across Harris County is equivalent to driving through Massachusetts; clear across all of Puerto Rico; or nearly all the way across Taiwan. A boat ride the distance of Houston is equivalent to a boat ride from Cleveland, Ohio, to the Canadian side of Lake Erie. As of July 2019, Harris County was home to over 4.7 million people. If it were a state, it would be the 25th most populous state—larger than Kentucky, Oregon, Iowa, or Nevada (among 20 others). Harris County has more people living in it than the states of Rhode Island, both Dakotas, Alaska, Vermont, and Wyoming combined.

Thus, limiting ballot drop off locations to one location for a county of this size, particularly in an elections regime such as Texas's where voters who are dropping off their ballots must do so during fixed hours and must hand their ballots to an elections administrator, Ex. 22, largely undoes the safety benefits in the pandemic of providing voters with a drop off location to begin with. Long lines are certain to form, and many of the vulnerable voters who are voting by mail to avoid the virus and standing in long lines at the polls will be unwilling or unable to stand in long lines, risking exposure, as if they had appeared at the polls to vote, to drop off their ballots. This may be particularly true of Texas's older and Latinx voters who have been disproportionately represented in Texas's COVID-19 related deaths. *See* COVID-19 Demographics, Texas Dep't of Health & Human Servs., <https://dshs.texas.gov/coronavirus/TexasCOVID19Demographics.xlsx.asp> (last visited Oct. 4, 2020).

### III. ARGUMENT

The tests for determining whether a party is entitled to a temporary restraining order and whether a party is entitled to a preliminary injunction are the same. *Gonannies, Inc. v. Goupair.Com, Inc.*, 464 F. Supp. 2d 603, 607 (N.D. Tex. 2006). Plaintiffs are entitled to both forms

of relief because: (1) they are likely to succeed on the merits; (2) there is a substantial threat of irreparable injury if a permanent injunction is not issued; (3) the harm outweighs any injury to the Secretary because of an injunction; and (4) an injunction is in the public interest. *See, e.g., Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009).

**A. Plaintiffs are likely to succeed on the merits of their claims.**

**1. The Ballot Return Restriction unduly burdens Plaintiffs’ First and Fourteenth Amendment rights.**

“There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted.” *Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964) (citation and quotation omitted). The Ballot Return Restriction imposes multiple barriers to casting a mail-in ballot that are unjustifiable, particularly during the present unprecedented public health crisis.

To determine whether a state law imposes an undue burden on the right to vote in violation of the Fourteenth Amendment, federal courts apply the *Anderson-Burdick* balancing test, which “weigh[s] ‘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)). When the burden is severe, the State’s asserted interest must be compelling, and the challenged restriction must be narrowly tailored to advance it. *Tex. Indep. Party v. Kirk*, 84 F.3d 178, 182 (5th Cir. 1996). But even if the burden is less than severe, the challenged restriction must be supported by “interest[s] sufficiently weighty to justify the limitation.” *Norman v. Reed*, 502 U.S. 279, 288-89 (1992). Thus, for all burdens, however slight, the Court must take “into consideration ‘the extent to which [the State’s] interests make it necessary to burden the plaintiff’s rights.’” *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 788-89).

The burden imposed by the Ballot Return Restriction is severe. Voters who wish to use the single drop-off location in their county may be forced to wait in long lines to do so, which risks exposing them to COVID-19. *See supra* II.C. Waiting in line at a county's single drop-off location is largely infeasible for voters who are elderly, disabled, or immunocompromised and impossible for voters who lack access to transportation or cannot risk exposure to COVID-19. *See supra* II.C. Those voters must now hope that USPS delivers their mail-in ballot to the county election office by the deadline despite widespread reports of delivery delays. *See supra* II.A. The delays in postal service, coupled with the fact that Texas rejects ballots that arrive more than one day after election day (even if postmarked before election day), have caused many voters to fear, quite reasonably, that their ballots will not arrive in time to be counted if they rely on USPS. Each of these burdens on voting had been largely eliminated or minimized by the expansion of the drop-off locations. *See supra* II.A. What is worse, some voters may not even be aware of the Ballot Return Restriction, may plan to return their ballot at the drop-off locations they have been informed will exist, and will only find out those locations have been shuttered once it is too late for them to return their ballots by mail. *See supra* II.C.

Courts confronted with laws that similarly threaten disenfranchisement have held that such regulations impose a severe burden on the right to vote, even when relatively small numbers of voters are affected. *See, e.g., Ne. Ohio Coal. for the Homeless v. Husted*, 696 F.3d 580, 597 (6th Cir. 2012) (disqualifying provisional ballots that constituted less than 0.3 percent of total votes inflicted "substantial" burden on voters); *Ga. Coal. for People's Agenda, Inc. v. Deal*, 214 F. Supp. 3d 1344, 1346 (S.D. Ga. 2016) (finding severe burden where 3,141 individuals were ineligible to register); *One Wis. Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896, 948-49 (W.D. Wis. 2016) (finding severe burden when fewer than 100 voters were disenfranchised). Even for voters who are not

disenfranchised, the burdens imposed by the Ballot Return Restriction do not pass constitutional muster. The focus of the inquiry is on how affected voters’ “ability to cast a ballot is impeded by [the State’s] statutory scheme.” *Ohio NAACP v. Husted*, 768 F.3d 524, 541 (6th Cir. 2014); *see also Obama for Am.v. Husted*, 697 F. 3d 423, 433 (6th Cir. 2012) (holding burden of challenged voting practice was not “slight” even though it did not “absolutely prohibit early voters from voting”).

At best, the Restriction imposes needless, and in some cases extremely significant, burdens on hundreds of thousands of Texas voters that cannot be justified by the state’s purported interest in the sudden about-face. The only rationale Defendants have provided for imposing the Ballot Return Restriction is patently pretextual. Specifically, the Governor claims to have imposed the Ballot Return Restriction to “enhance[e] ballot security.” Ex. 22. But they have not and cannot identify any evidentiary basis to support this rationale. Harris County, the most populous county in Texas, offered 11 drop-off locations during the July primary run-off election, Ex. 21 ¶ 9, with no perceivable ballot security issues. Whether voters can return their mail-in ballots at one county drop-off location or choose from one hundred locations, an election official is legally required to verify the voter’s picture ID and the information on the ballot carrier envelope. Tex. Elec. Code § 86.006(a), (a-1), (b)-(c). At no point has Texas rescinded the felony penalties associated with third-party ballot delivery, Tex. Elec. Code § 86.006, or any of the other provisions that protect ballot integrity, *see, e.g., id.* § 276.013; *id.* § 64.012. And the counties themselves have implemented detailed protocols for securing the integrity of mail ballots returned to drop off locations. Ex. 11, Ex. 21. Thus, Defendants’ single reason for imposing the Ballot Return Restriction, plainly fails to outweigh the burden imposed.

Moreover, under *Anderson-Burdick* the Court cannot merely take Defendants' assertion at face-value. The existence of a state interest is a matter of proof. *Sherbert v. Verner*, 374 U.S. 398, 407 (1963); *see also Wood v. Meadows*, 117 F.3d 770, 776 (4th Cir. 1997) (discounting Virginia's purported interest because record before the court was "virtually barren of any evidence of the strength or legitimacy of the Commonwealth's interests"); *Duke v. Cleland*, 5 F.3d 1399, 1405 (11th Cir. 1993) (vacating dismissal because record was "devoid of evidence as to the state's interests" in the challenged restriction); *Soltysik v. Padilla*, 910 F.3d 438, 446 (9th Cir. 2018) (vacating dismissal where state's interest was "[w]ithout factual support"). For Defendants' purported interest to justify the burden imposed here, Defendants must demonstrate how counties accepting ballots at a few additional locations, applying exactly the same security measures, undermines ballot security. Not only can Defendants not demonstrate as much, the only evidence available proves exactly the opposite: Harris County offered 11 drop-off locations in the July primary runoff election. *See* Ex. 21 ¶ 9. And no ballots were compromised. Because Defendants cannot demonstrate that offering multiple of exactly the same drop-off locations compromises ballot security, Defendants can advance no legitimate interest in the Ballot Security Restriction.

The impact of the Ballot Return Restriction in Harris County demonstrates that it places an unconstitutional undue burden on mail-in voters. As discussed, before the Restriction, Harris County was planning on offering 12 ballot drop-off locations. *Id.* ¶ 21. Beyond the additional travel and the risk that some voters will not get the message that 10 of the 11 sites that had been publicized are now shuttered, the Restriction's congregation of all voters who wish to drop off their mail ballot in Harris County in one single location itself imposes burdens on voters, many of whom are voting by mail precisely to avoid that type of crowded voting experience, and the concomitant risk of exposure to the virus that it brings.

## 2. The Ballot Return Restriction violates Plaintiffs' right to equal protection.

Texas cannot “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. “Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104-05 (2000); *see also, e.g., Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1346 (11th Cir. 2020); *Hunter v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219, 235 (6th Cir. 2011). But the Ballot Return Restriction does exactly that by imposing a one-size-fits-all restriction on counties that are not remotely equitable in size or population. Under the Governor’s newly announced restriction, counties that serve *millions* of voters are limited to only one drop off location to serve all of those voters, a ratio that the EAC recommendations demonstrate is woefully insufficient to adequately serve those voters. *See* Ex. 15. The voters in a county such as Harris will thus disproportionately face longer waits, and have to contend with more crowded drop off locations, than voters in counties with only a few thousand voters, where a single ballot drop off location may very well be sufficient to serve their needs safely. As such, the Restriction imposes “arbitrary and disparate treatment [on] voters” based on where they live. *Bush*, 531 U.S. at 106-07; *see also League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 478 (6th Cir. 2008) (“If true, these allegations could establish that Ohio’s voting system deprives its citizens of the right to vote or severely burdens the exercise of that right depending on where they live in violation of the Equal Protection Clause.”).

## 3. Defendants have violated the Ku Klux Klan Act, 42 U.S.C. § 1985(3).

42 U.S.C. § 1985(3) “prohibits private conspiracies designed to interfere with persons’ equal enjoyment and exercise of their civil rights. . . .” *United Bhd. of Carpenters & Joiners of Am., Local 610, AFL-CIO v. Scott*, 463 U.S. 825, 849 (1983). To make out a violation, a plaintiff must allege and prove: (1) a conspiracy; (2) for the purpose of depriving, either directly or

indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is injured in his person or property or deprived of any right or privilege of a citizen of the United States. *Id.* at 828-29 (1983). Here, Plaintiffs are likely to be able to succeed in proving all four elements.

First, Plaintiffs are likely to be able to prove that Defendants agreed, tacitly and explicitly, to suppress voting by limiting the number of drop box sites available, and that each Defendant shares in the “general conspiratorial objective.” Defendants have sought to suppress voting at every turn this election, from refusing to permit those under 65 to vote by mail based on reasonable fears of contracting a deadly virus (and, indeed, threatening prosecution of them if they did so) to now suddenly and non-sensically limiting the ability to return vote by mail ballots even for those voters who meet one of the states’ exceedingly limited rationales. There is literally no other logical explanation for this sudden about-face, drastically limiting the availability of ballot drop box locations, months after Defendants repeatedly made clear that multiple locations would be permitted, and even one day after the Attorney General made the very same representation to the Texas Supreme Court.

Second, Plaintiffs will likely prove that the conspiracy is directed at depriving, either directly or indirectly, voters, and in particular Democratic and minority voters, from equal protection of the laws. Defendants have arbitrarily and baselessly limited each county in Texas, no matter how large or small, to a single location to return mail-in ballots. This unnecessary restriction predictably and purposefully burdens voters in the state’s most populous counties, which tend to be more diverse and more Democratic, than in more rural counties. *See Supra* II.C. Third, each co-conspirator has performed an act in furtherance of that conspiracy. Governor Abbott has issued

a proclamation limiting the locations where mail-in ballots can be dropped off to a single location in every county in the state, and the Secretary is enforcing that proclamation. Without immediate relief, Texas voters will suffer the deprivation of their right to vote on account of the co-conspirators' purposeful attempts to deny them equal protection.

**B. Plaintiffs will suffer irreparable injury absent an injunction.**

Plaintiffs will suffer irreparable harm in the absence of the requested injunctive relief. *First*, the Ballot Return Restriction puts Plaintiffs, the voters they serve, and countless other Texas voters at significant risk of severe burden to their fundamental right to vote—up to and including disenfranchisement. If “constitutional rights are threatened or impaired, irreparable injury is presumed.” *Husted*, 697 F.3d at 436; *see also Tex. Democratic Party v. Abbott*, No. CV SA-20-CA-438-FB, 2020 WL 2541971, at \*32 (W.D. Tex. May 19, 2020) (“Voting is a constitutional right for those that are eligible, and the violation of constitutional rights for even a minimal period of time constitutes irreparable injury justifying the grant of a preliminary injunction”); *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *League of Women Voters of Fla., Inc. v. Detzner*, 314 F. Supp. 3d 1205, 1223 (N.D. Fla. 2018). Once the election comes and goes, “there can be no do-over and no redress.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014), cert. denied, 135 S. Ct. 1735 (2015). *Second*, if the Ballot Return Restriction remains in effect, the Organizational Plaintiffs must divert resources from other mission-critical efforts to help their members and constituencies overcome the burdens imposed by the law. Ex. 1 ¶ 11. This, too, constitutes irreparable harm. *See, e.g., Ga. Coal. for People’s Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251, 1268 (N.D. Ga. 2020) (finding irreparable harm where “[p]laintiffs’ organizational missions . . . will continue to be frustrated and organization resources will be diverted to [address the challenged law]” and “[s]uch mobilization opportunities cannot be remedied once lost”).

**C. The balance of the equities and the public interest favor an injunction.**

While Plaintiffs face infringement of core constitutional rights, enjoining the Ballot Return Restriction does not threaten injury to either Defendants or anyone else. And “it is ‘always’ in the public interest to prevent violations of individuals’ constitutional rights.” *TDP*, 2020 WL 2541971, at \*33 (citing *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)); *see also Detzner*, 314 F. Supp. at 1224 (“[A]llowing for easier and more accessible voting for all segments of society serves the public interest.”). The public interest is also served by mitigating the spread of COVID-19. Encouraging voters to cast mail ballots rather than stand in line and press into crowded polling places serves that interest. But the Ballot Return Restriction effectively compels mail-in voters in very populous counties to risk the very exposure they were voting by mail to avoid. That risk of danger to public health is substantial, imminent, and ongoing. Issuing an injunction would give Texas voters confidence that their right to vote is preserved even in these unprecedented times, and that they will be able to safely and successfully exercise the franchise, without undue burden.

**IV. CONCLUSION**

For these reasons, Plaintiffs respectfully request that the Court immediately enter an emergency restraining order preventing Defendants from enforcing the Ballot Return Restriction and, following an expedited briefing schedule and a hearing on the motion at the Court’s convenience, preliminary enjoin Defendants from doing the same.

Dated: October 5, 2020

Respectfully submitted,

*Skyler M. Howton*

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*Attorneys for Plaintiffs*  
*\*Pro hac vice pending*  
*\*\*Pro hac vice forthcoming*

## **Exhibit 4**

### **Appendix to *Straty* Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

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

Plaintiffs,

v.

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

Defendants.

Civil Action No. 1:20-cv-1015

**APPENDIX IN SUPPORT OF  
PLAINTIFFS' APPLICATION FOR PRELIMINARY INJUNCTION**

<b>Exh ibit</b>	<b>Document Description</b>
A.	Declaration of Skyler Howton
1.	Declaration of Judy Bryant
2.	Declaration of Nancy Michon
3.	Declaration of Richard Shaw
4.	Declaration of Dr. Jon A, Krosnick
5.	Declaration of Ellen Stupak Shaw
6.	Declaration of Patrick Golden
7.	Declaration of Andrés Rosas
8.	Declaration of Ken Dearing
9.	United States Census Bureau page titled "Quick Facts – Texas," accessed June 19, 2020 and available at <a href="https://www.census.gov/quickfacts/TX">https://www.census.gov/quickfacts/TX</a>
10.	Texas Politics Project post titled "Percent Voting by Age, Gender, Educational Attainment, Race, and Family Income: November 2000 Presidential Election," accessed

	June 19, 2020 and available at <a href="https://texaspolitics.utexas.edu/archive/html/vce/features/0302_02/demographics.html">https://texaspolitics.utexas.edu/archive/html/vce/features/0302_02/demographics.html</a>
11.	September 14, 2020 memorandum by Fort Bend County Attorney Ray L. Cordes, Jr. titled “In-Person Return of Vote-By-Mail Ballots.”
12.	July 30, 2020 letter from Thomas J. Marshall, General Counsel and Executive Vice President, United States Postal Service to Ruth Hughs, Texas Secretary of State, available at <a href="https://txelects.com/wp-content/uploads/2020/08/PostalService_July2020.pdf">https://txelects.com/wp-content/uploads/2020/08/PostalService_July2020.pdf</a>
13.	August 12, 2020 United States Postal Service presentation titled “Service Performance Measurement,” available at <a href="https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/PMG%20Briefing_Service%20Performance%20Management_08_12_2020.pdf">https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/PMG%20Briefing_Service%20Performance%20Management_08_12_2020.pdf</a>
14.	August 31, 2020 United States Postal Services presentation titled “Congressional Briefing: Transportation & Service Performance Updates,” available at <a href="https://about.usps.com/newsroom/global/pdf/0831-congressional-service-briefing.pdf">https://about.usps.com/newsroom/global/pdf/0831-congressional-service-briefing.pdf</a>
15.	A Document by the Cybersecurity and Infrastructure Security Agency Elections Infrastructure Government Coordinating Council and Sector Coordinating Council’s Joint COVID Working Group titled “Ballot Drop Box,” accessed on October 3, 2020 and available at <a href="https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot_Drop_Box.pdf">https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot_Drop_Box.pdf</a> .
16.	August 27, 2020 Lawfare article by Axel Hufford titled “The Rise of Ballot Drop Boxes Due to the Coronavirus,” available at <a href="https://www.lawfareblog.com/rise-ballot-drop-boxes-due-coronavirus/">https://www.lawfareblog.com/rise-ballot-drop-boxes-due-coronavirus/</a>
17.	the July 27, 2020 Proclamation by Governor Gregory Abbott and letter of transmittal, available at <a href="https://gov.texas.gov/uploads/files/press/PROC_COVID-19_Nov_3_general_election_IMAGE_07-27-2020.pdf">https://gov.texas.gov/uploads/files/press/PROC_COVID-19_Nov_3_general_election_IMAGE_07-27-2020.pdf</a>
18.	October 1, 2020 KTXS12 article by CBS Austin titled, “Texas Gov. Abbott limits drop-off sites for early mail votes,” available at <a href="https://ktxs.com/news/local/texas-gov-abbott-shuts-down-drop-off-sites-for-early-mail-votes">https://ktxs.com/news/local/texas-gov-abbott-shuts-down-drop-off-sites-for-early-mail-votes</a>
19.	August 25, 2020 and August 26, 2020 email exchange between Donna Stanart and Charles Pinney, available at pp. 37-38 of <a href="http://www.search.txcourts.gov/SearchMedia.aspx?MediaVersionID=6813%20ce1c-fec6-43a4-9690-5b8698784d96&amp;coa=cossup&amp;DT=OTHER&amp;MediaID=fb62554f-e101-45b8-bdea-a8d7c70552bb">http://www.search.txcourts.gov/SearchMedia.aspx?MediaVersionID=6813%20ce1c-fec6-43a4-9690-5b8698784d96&amp;coa=cossup&amp;DT=OTHER&amp;MediaID=fb62554f-e101-45b8-bdea-a8d7c70552bb</a>
20.	September 30, 2020 brief filed by the Office of the Attorney General of Texas in In re Hotze (No. 20-0751), available at

	<a href="http://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=56170fe5-de61-4eda-a5b4-6cdf12fa5cd2&amp;coa=cossup&amp;DT=BRIEFS&amp;MediaID=4c2a3881-79c5-45cf-9f02-86b731c31a17">http://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=56170fe5-de61-4eda-a5b4-6cdf12fa5cd2&amp;coa=cossup&amp;DT=BRIEFS&amp;MediaID=4c2a3881-79c5-45cf-9f02-86b731c31a17</a>
21.	Declaration of Harris County Clerk, Chris Hollins, filed in <i>League of United Latin American Citizens v. Abbott</i> , No. 1:20-cv-1006
22.	October 1, 2020 Proclamation by Governor Gregory Abbott and letter of transmittal, available at <a href="https://gov.texas.gov/uploads/files/press/PROC_COVID-19_Nov_3_general_election_IMAGE_10-01-2020.pdf">https://gov.texas.gov/uploads/files/press/PROC_COVID-19_Nov_3_general_election_IMAGE_10-01-2020.pdf</a>
23.	October 1, 2020 Houston Chronicle article by Zach Despart titled “Gov. Abbott forces Harris County to close 11 mail ballot drop-off sites, leaving just one,” available at <a href="https://www.houstonchronicle.com/politics/texas/article/Abbott-mail-ballot-drop-off-harris-county-election-15612991.php">https://www.houstonchronicle.com/politics/texas/article/Abbott-mail-ballot-drop-off-harris-county-election-15612991.php</a>

Dated: October 5, 2020

Respectfully submitted,

/s/ Skyler Howton

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*Attorneys for Plaintiffs*

*\*Pro hac vice applications pending*

*\*\*Pro hac vice applications forthcoming*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 5, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Skyler M. Howton  
Skyler M. Howton

# EXHIBIT A

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

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

Plaintiffs,

vs.

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

Defendants.

Civil Action No. 1:20-cv-1015-RP

Related to:

*Texas League of United Latin American  
Citizens v. Abbott*, No. 1:20-cv-1006

**DECLARATION OF SKYLER HOWTON IN SUPPORT OF PLAINTIFFS' MOTION  
FOR TEMPORARY RESTRAININ ORDER AND PRELIMINARY INJUNCTION**

I, Skyler Howton, am an attorney with the firm of Perkins Coie LLP, and counsel for Plaintiffs in the above-captioned matter. I make this declaration in support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction.

1. Attached hereto as **Exhibit 1** is a true and correct copy of the declaration of Judy Bryant.
2. Attached hereto as **Exhibit 2** is a true and correct copy of the declaration of Nancy Michon.
3. Attached hereto as **Exhibit 3** is a true and correct copy of the declaration of Richard Shaw.
4. Attached hereto as **Exhibit 4** is a true and correct copy of the declaration of Ellen Stupak-Shaw.
5. Attached hereto as **Exhibit 5** is a true and correct copy of the declaration of Laurie-

Jo Straty.

6. Attached hereto as **Exhibit 6** is a true and correct copy of the declaration of Patrick Golden.

7. Attached hereto as **Exhibit** is a true and correct copy of the declaration of Andrés Rosas.

8. Attached hereto as **Exhibit** is a true and correct copy of the declaration of Ken Dearing.

9. Attached hereto as **Exhibit 9** is a true and correct copy of a United States Census Bureau page titled “*quick facts*” accessed June 19, 2020 and available at <https://www.census.gov/quickfacts/TX>.

10. Attached hereto as **Exhibit 10** is a true and correct copy of a Texas Politics Project post titled “*Percent Voting by Age, Gender, Educational Attainment, Race, and Family Income: November 2000 Presidential Election*,” accessed June 19, 2020 and available at [https://texaspolitics.utexas.edu/archive/html/vce/features/0302\\_02/demographics.html](https://texaspolitics.utexas.edu/archive/html/vce/features/0302_02/demographics.html).

11. Attached hereto as **Exhibit 11** is a true and correct copy of a September 14, 2020 memorandum by Fort Bend County Attorney Ray L. Cordes, Jr., titled “*In Person Return of Vote-By-Mail Ballots*.”

12. Attached hereto as **Exhibit 12** is a true and correct copy of a July 30, 2020 letter from Thomas J. Marshall, General Counsel and Executive Vice President, United States Postal Service to Ruth Hughs, Texas Secretary of State, available at [https://txelects.com/wp-content/uploads/2020/08/PostalService\\_July2020.pdf](https://txelects.com/wp-content/uploads/2020/08/PostalService_July2020.pdf).

13. Attached hereto as **Exhibit 13** is a true and correct copy of an August 12, 2020 United States Postal Service presentation titled “*Service Performance Measurement*,” available at

[https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/PMG%20Briefing\\_Service%20Performance%20Management\\_08\\_12\\_2020.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/PMG%20Briefing_Service%20Performance%20Management_08_12_2020.pdf).

14. Attached hereto as **Exhibit 14** is a true and correct copy of an August 31, 2020 United States Postal Services presentation titled “*Congressional Briefing: Transportation Service Performance Updates*,” available at <https://about.usps.com/newsroom/global/pdf/0831-congressional-service-briefing.pdf>.

15. Attached hereto as **Exhibit 15** is a true and correct copy of a document by the Cybersecurity and Infrastructure Security Agency Elections Infrastructure Government Coordinating Council and Sector Coordinating Council’s Joint COVID Working Group titled “*Ballot Drop Box*,” accessed on October 3, 2020 and available at [https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot\\_Drop\\_Box.pdf](https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot_Drop_Box.pdf).

16. Attached hereto as **Exhibit 16** is a true and correct copy of an August 27, 2020 Lawfare article by Axel Hufford titled “*The Rise of Ballot Drop Boxes Due to the Coronavirus*,” available at <https://www.lawfareblog.com/rise-ballot-drop-boxes-due-coronavirus/>.

17. Attached hereto as **Exhibit 17** is a true and correct copy of the July 27, 2020 Proclamation by Governor Gregory Abbott and letter of transmittal, available at [https://gov.texas.gov/uploads/files/press/PROC\\_COVID-19\\_Nov\\_3\\_general\\_election\\_IMAGE\\_07-27-2020.pdf](https://gov.texas.gov/uploads/files/press/PROC_COVID-19_Nov_3_general_election_IMAGE_07-27-2020.pdf).

18. Attached hereto as **Exhibit 18** is a true and correct copy of an October 1, 2020 KTXS12 article by CBS Austin titled, “*Texas Gov. Abbott limits drop offsites for early mail votes*,” available at <https://ktxs.com/news/local/texas-gov-abbott-shuts-down-drop-off-sites-for-early-mail-votes>.

19. Attached hereto as **Exhibit 19** is a true and correct copy of an August 25, 2020 and

August 26, 2020 email exchange between Donna Stanart and Charles Pinney, available at <http://www.search.txcourts.gov/SearchMedia.aspx?MediaVersionID=6813ce1c-fec6-43a4-9690-5b8698784d96&coa=cossup&DT=OTHER&MediaID=fb62554f-e101-45b8-bdea-a8d7c70552bb>.

20. Attached hereto as **Exhibit 20** is a true and correct copy of a September 30, 2020 brief filed by the Office of the Attorney General of Texas in *nre Hotze* (No. 20-0751), available at <http://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=56170fe5-de61-4eda-a5b4-6cdf12fa5cd2&coa=cossup&DT=BRIEFS&MediaID=4c2a3881-79c5-45cf-9f02-86b731c3a17>.

21. Attached hereto as **Exhibit 21** is a true and correct copy of a declaration of Harris County Clerk Chris Hollins, filed in *League of United Latin American Citizens v. Abbott*, No. 1:20-cv-1006.

22. Attached hereto as **Exhibit 22** is a true and correct copy of the October 1, 2020 Proclamation by Governor Gregory Abbott and letter of transmittal, available at [https://gov.texas.gov/uploads/files/press/PROC\\_COVID-19\\_Nov\\_3\\_general\\_election\\_IMAGE\\_10-01-2020.pdf](https://gov.texas.gov/uploads/files/press/PROC_COVID-19_Nov_3_general_election_IMAGE_10-01-2020.pdf).

23. Attached hereto as **Exhibit 23** is a true and correct copy of an October 1, 2020 Houston Chronicle article by Zach Despart titled “*Gov. Abbott forces Harris County to close mail ballot drop off sites, leaving just one,*” available at <https://www.houstonchronicle.com/politics/texas/article/Abbott-mail-ballot-drop-off-harris-county-election-15612991.php>.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 5, 2020

Respectfully submitted,

---

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# EXHIBIT 1

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

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

Plaintiffs,

vs.

GREG 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.

Civil Action No. 1:20-cv-1015

Related to *League of United Latin  
American Citizens v. Abbott*, No. 1:20-  
cv-1006

**DECLARATION OF JUDY BRYANT IN SUPPORT OF PLAINTIFFS' MOTION**

Pursuant to 20 U.S.C. § 1746, I, Judy Bryant, declare as follows:

1. My name is Judy Bryant. 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 am currently the Field Organizer for Texas Alliance of Retired Americans ("TARA"). TARA is incorporated in Texas as a 501(c)(4) nonprofit, social welfare organization. It is a chartered state affiliate of the Alliance for Retired Americans.
3. TARA has more than 145,000 members, comprised of retirees from public and private sector unions, community organizations, and individual activists from every county in Texas. Most of our members are between 65 and 85 years of age. TARA also has many members with disabilities.
4. TARA's mission is to ensure social and economic justice and full civil rights that retirees have earned after a lifetime of work. It accomplishes this mission by actively pursuing and promoting legislation and public policies that are in the best interest of current and future retired

Texans. TARA also accomplishes its mission by ensuring that its members actively participate and vote in Texas's elections. Because a significant percentage of Texas's elections are decided by close margins, it is essential that TARA members are able to effectively exercise their right to vote. To ensure our members can make their voices heard in Texas elections, TARA traditionally engages in get-out-the-vote ("GOTV") efforts. These GOTV efforts traditionally consist of making phone calls to members and knocking on doors to encourage members to vote. When we call our members in advance of an election, we encourage them to vote and try to assist our members in navigating the voting process when they need help.

5. The outbreak of the COVID-19 pandemic has affected how TARA allocates its resources to encourage voting. Because nearly all of TARA's members are of an age that places them at a heightened risk of complications from coronavirus, our members are overwhelmingly likely to vote by mail this year instead of voting in person. I understand from talking to TARA members and other political organizers in the state that many more people are voting by mail this year when compared to other years. Thus, TARA has redirected much of its time and resources to efforts in educating voters on how to apply to vote by mail and how to successfully cast a mail-in ballot. These efforts include the creation of a special vote-by-mail committee that meets weekly to coordinate statewide outreach, phone-banking to make direct contact with Texas voters over the age of 65, and lobbying state officials to ease the restrictions on voting by mail. TARA also holds socially distanced events, such as car caravans to publicize the need for vote by mail in the 2020 general election.

6. For the past several months, TARA has participated in Dallas V.O.T.E.S., a coalition seeking, among other things, to guarantee more drop-off locations so our Dallas members can guarantee the county has received their mail-in ballots without having to travel long distances

and wait in long lines. TARA would like to conduct awareness campaigns and educate voters about returning mail-in ballots to convenient locations as a superior alternative to returning ballots via the United States Postal Service (“USPS”) because, due to widespread reports of USPS delays, TARA believes that voters’ ballots are more likely to be counted if they drop off instead of mail in their ballots. Governor Abbott’s proclamation prevents TARA from presenting voters with a feasible alternative to returning mail-in ballots via USPS because it prevents county election administrators from offering voters convenient locations for personally delivering their mail-in ballots. This frustrates TARA’s mission by making it less likely that TARA’s members will be able to return their ballots in time to be counted.

7. TARA educates voters, not just on how to apply to vote by mail, but also about how to increase the likelihood of having their mail-in ballots counted. The Governor’s October 1, 2020 Proclamation (the “Proclamation”) makes it more difficult for TARA members and other vulnerable people to vote and to have their votes counted. TARA members are, for example, voters who are likely to face difficulty delivering a mail ballot themselves should they be unable to return it through the mail in sufficient time for their ballot to be counted. Many TARA members drive only within short distances of their homes and will have to arrange for transportation to the one designated early voting clerk’s office in each county. Some Texas counties are very large, and the distance to the only designated early voting clerk’s office in a county might be significant for many members, who may not be able to find transportation to return their ballots. In my experience, many of TARA’s members will simply not return their ballots if their only option is to travel significant distances to do so. As a result, TARA will have to divert additional resources to voter assistance efforts in order to ensure that our voters are able to safely and effectively return their mail ballots.

8. As a result of the Proclamation, TARA will also have to divert additional resources to voter education. Our members may be confused about where they can return their ballots during the early voting period. Many TARA members understood that they could return their mail ballots to multiple satellite drop-off locations within their counties. But because of the Proclamation, TARA members may not realize that they can return their ballots only to one location, potentially very far away from their homes, until it is too late to mail in their ballots and be sure it will arrive in time to be counted. These voters may not be able to arrange transportation for or safely drive such a long distance, leaving them disenfranchised with no option for returning their ballots. TARA will need to expend additional time, personnel, and funds to ensure that our members are fully understand how they must return their ballots and are able to do so safely and in a manner that will ensure their votes are counted.

9. The Proclamation frustrates TARA's mission because it deprives individual members of the right to vote and to have their votes counted and threatens the electoral prospects of TARA-endorsed candidates whose supporters will face greater obstacles casting a vote and having their votes counted.

10. The Proclamation also diminishes the electoral prospects of TARA's preferred candidates. TARA has already endorsed several candidates for office. These candidates will be less likely to win if the votes of their supporters go uncounted because of the Proclamation.

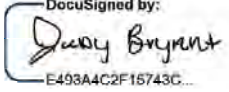
11. Because of the increased burdens on voting created by the Proclamation, TARA will be required to divert time and resources to educating members about the restriction and assisting them in ensuring their ballots are received, accepted, and counted. However, TARA does not have unlimited resources. Efforts to ensure members are not disenfranchised by the Proclamation will reduce TARA's time and resources that would otherwise go to educating

members on critical public policy issues, including the price of prescription drugs and the expansion of Medicare and Medicaid benefits, among many other of our priorities. Our efforts to ensure our members are not disenfranchised by the Proclamation will also reduce the time and resources available to track and monitor legislation that threatens Texas's seniors, work that we view as critical to our organization.

12. In sum, the Proclamation makes it harder for TARA to realize its mission and for TARA's members to vote and have their votes counted.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: October 4, 2020

By:   
Judy Bryant  
Field Organizer  
Texas Alliance for Retired Americans

# EXHIBIT 2

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

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

Plaintiffs,

vs.

GREG 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.

Civil Action No. 1:20-cv-1015

Related to *Texas League of United Latin  
American Citizens v. Abbott*, No. 1:20-  
cv-1006

**DECLARATION OF NANCY MICHON IN SUPPORT OF PLAINTIFFS' MOTION**

Pursuant to 20 U.S.C. 1746, I, Nancy Michon, declare as follows:

1. My name is Nancy Michon. 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 Harris County, Texas. I am 64 years old but will turn 65 years old on October 7, 2020.
3. I cannot vote in person this year because I will be in the high-risk category for the coronavirus due to my age. Additionally, I live with a person who is at high risk for the coronavirus because of an underlying medical condition and together we care for her 89-year-old mother. I fear that I would be exposed to the coronavirus if I were to vote in person and could potentially expose them to the virus as well.
4. I will be eligible to vote by mail in Texas during the early voting period for the upcoming November election. I intend to use a drop-off location because I am worried about my

ballot arriving on time and being properly counted given the widespread reports of significant issues with the United States Postal Service.

5. Before Governor Abbott's proclamation, I was planning on dropping my ballot off at a drop-off location that would have taken me approximately fifteen minutes to drive to from my house. Because of Governor Abbott's proclamation, I can no longer drop off my ballot at that location.

6. Now, there is only one drop off location for all of Harris County. It will take me approximately forty to fifty minutes each way to return my ballot. Further, the complex in which the only drop-off location in the county is located is large and has many buildings within it. I am concerned that I may need to spend significant time looking for the correct place within the complex to drop off my ballot.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: October 3, 2020

By:   
Nancy Michon

# EXHIBIT 3

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

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

Plaintiffs,

vs.

GREG 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.

Civil Action No. 1:20-cv-1015

Related to:

*Texas League of United Latin American  
Citizens v. Abbott*, No. 1:20-cv-1006

**DECLARATION OF RICHARD SHAW IN SUPPORT OF PLAINTIFFS' MOTION**

Pursuant to 20 U.S.C. § 1746, I, Richard Shaw, declare as follows:

1. My name is Richard Shaw. 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 the Spring Branch neighborhood of Houston, Texas, which is located in Harris County.
3. I am 73 years old. I am retired now, but I remain active in my community. I am a lifelong activist and have been heavily involved in labor movements for decades. I am currently a member of the Texas Alliance of Retired Americans. In addition, I volunteer as an election judge and serve as Precinct Chair for Precinct 0165 in Harris County. In fact, I have worked every general election since the mid 80s. I also volunteer with the Hobby Center, a performing arts studio in the Houston area as an usher. I help visitors with disabilities get to their seats. Through my activism and volunteer work, I often engage with residents in the Houston area about voting and elections.

4. Through my work as a precinct chair, I have become more aware of the peculiarities and changes in the voting process than the majority of my friends, family members, and neighbors. For that reason, my friends, family members, and neighbors often ask me questions about the voting process. I received many questions around the time of the July primary runoff and am continuing to receive questions now. I have followed election updates closely, but the Governor's proclamation caught me by surprise. Especially because it is not a change that makes voting more accessible—instead it will make it harder to vote. That is particularly true for voters like me, who are not accustomed to voting by mail.

5. Because of the pandemic, I voted by mail for the first time in the July primary runoff election. Despite the fact that I have been intimately involved with the in-person voting process for decades, because that was my first-time voting by mail, I was unsure about many aspects of the process. For instance, I did not know how much postage my mail ballot required. I heard the same confusion from others. I ended up putting two stamps on my ballot, to be safe, but I was afraid that I did something wrong. By placing my ballot in the mail for return delivery, I could not guarantee that my ballot was going to be received.

6. Through the many conversations I have had with my friends, family members, and neighbors about voting, I know that many are uncomfortable mailing their ballots and strongly prefer to return them in a manner that ensures that they are timely received. I feel the same way.

7. I and many of the voters I have spoken with worry about the United States Postal Service's ("USPS") ability to return my ballot on-time. I have followed the well-reported delivery delays resulting from the closure of a sorting machine in the Houston area, and have heard many stories from others about their mail service being delayed. I follow local happenings on the smartphone application "Nextdoor." On Nextdoor, I've seen residents of the Houston area

complaint about mail delivery delays. I know many voters are worried that their ballots will not be received in time to be counted. I, too, am not confident that my ballot will be timely delivered by mail.

8. On top of that, I know that Harris County is encountering significant administrative problems. Through my position as Precinct Chair, I have received emails regarding the county's troubles locating polling locations and recruiting and securing experienced poll workers. For instance, I know that some schools that traditionally serve as polling locations will not open their doors to voters in November. And although the school district in my own community, Spring Branch ISD, will be hosting in-person voting on Election Day, it will be doing so while also hosting in-person classes for students. Many voters who might prefer to vote in person in order to ensure that their ballot is counted will not be able to enter a school where thousands of students and other voters will be located.

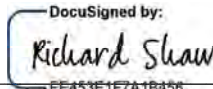
9. Recently, I watched an hour-long news conference from the Harris County Clerk, and by doing so I learned that Harris county will be offering a ballot-tracking option for the first time. Voters will be able to track the status of their mail ballot online. But I know that other voters are not aware of this option. On top of that, I know that the vote tracking data is not always accurate, and the technology is not flawless. In my experience as an election judge, I have encountered mistakes in the data. For instance, when checking voters into a precinct, registered voters sometimes do not appear as registered in the system. In those instances, I will call the voter registrar's office and confirm that the voter is actually registered. Based on that experience, even though I unlike so many others know that vote tracking will be available in Harris County in November, I worry about the reliability of the vote-tracking data and technology.

10. On Nextdoor, I have also seen Houston-area residents echo my own concerns about their voting plans being disrupted. I have heard similar concerns through my volunteer work with the Hobby Center. Just a few days ago, during a Hobby Center room meeting, I heard many Houston-area residents lament about the difficulty of planning to vote in this election. One person on that call reassured the group that there would be multiple locations at which they could drop off their mail ballots. I have similarly informed friends, family members, and neighbors that they can drop off their ballot at many drop-off locations in the county.

11. This November will be the first general election that I have not worked as an election judge or precinct chair in decades. More than ever, I want to contribute to the safe and effective administration of the election. But I cannot risk exposing myself or my wife to COVID-19. Although I am endeavoring to help voters in other ways, by keeping as many of my friends, family members, and neighbors informed about what they must do to return their ballots, I worry that many of my friends and neighbors will not learn that they cannot drop off their ballots at the locations they had been planning on using until it is too late to mail in their ballots and have them be counted.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: October 4, 2020

By:  EE453E1F7A1B456...  
Richard Shaw

# EXHIBIT 4

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

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

Plaintiffs,

vs.

GREG 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.

Civil Action No. 1:20-cv-1015

Related to

*Texas League of United Latin American  
Citizens v. Abbott*, No. 1:20-cv-1006

**DECLARATION OF ELLEN STUPAK-SHAW IN SUPPORT OF PLAINTIFFS'  
MOTION**

Pursuant to 20 U.S.C. § 1746, I, Ellen Stupak-Shaw, declare as follows:

1. My name is Ellen Stupak-Shaw. 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 the Spring Branch neighborhood of Houston, Texas, which is located in Harris County.

3. I am 69 years old. I worked as a school teacher for 39 years. Although I am retired now, I remain active in my community. I am currently a member of the Texas Alliance of Retired Americans. In addition, I volunteer as an election judge.

4. Although I usually vote in person, I do not feel safe doing so during the coronavirus pandemic. I have rheumatoid arthritis and asthma. Those conditions, and the medication I take because of them, make me particularly vulnerable to the virus. On top of that, my age and weight also make me particularly vulnerable to the virus. For that reason, my husband and I have been

strictly quarantining since March. Although we have seen a small number of family members, we have avoided restaurants and other public places.

5. In addition to the sense of pride I and others gain from voting in person, doing so helps me ensure that my vote will be counted. But because of the pandemic, and my vulnerabilities to COVID-19 exposure, voting in-person is not an option for me. Because of my age, I am eligible to vote by mail. And just over two weeks ago, I submitted my mail ballot application for the November general election. But I am worried about voting by mail for several reasons.

6. I worry about the United States Postal Service's ("USPS") ability to return my ballot on-time. I have followed the well-reported delivery delays resulting from the closure of a sorting machine in the Houston area, and have heard many stories from others about their mail service being delayed. I follow local happenings on the smartphone application "Nextdoor." On Nextdoor, I've seen residents of the Houston area complain about mail delivery delays. I am not confident that my ballot will be timely delivered.

7. Although I am aware that curbside voting is an option, I do not think it is a safe option for me. I understand that curbside voting requires several points of contact with an election worker. You must pass your driver's license back and forth, and then pass the registered-voter check-in tablet back and forth, and then you must pass the e-slate used for voting back and forth. I also know that the Secretary of State is encouraging sick voters to vote curbside. I simply cannot risk coming into contact with the virus by voting curbside.

8. Just days ago, I planned to return my own ballot at one of the satellite drop-off locations in Harris County. Prior to Governor Abbott's proclamation, there was a location at which I could drop off my ballot close to my house. That option appealed to me because it did not require me to travel very far, it involved little contact with others, and I would know that my ballot had

been received in time to be counted. On top of that, because there were so many other locations in Harris County where others could return their own ballots, I did not anticipate encountering any lines.

9. However, because of the Governor's October 1 proclamation, I now know that I can only return my ballot at a single location. I am also worried that others, many of whom may rely on the information I gave them about there being multiple return locations, will still believe they can drop off their ballot at satellite drop-off locations in Harris County.

10. Due to Governor Abbott's proclamation, there is only one drop-off location in all of Harris County. The drop-off location is approximately 17 miles from my house, as the crow flies, but it is not easy 17 miles to traverse. The single drop-off location is in a high-traffic area. Even for the vast majority of Houston-area residents, it requires traveling on the freeway. I know many older voters simply do not drive on the freeway. And traffic in the Houston area can be terrible. With traffic, it could take me 45 minutes just to drive to the drop-off location. On top of that, the single drop-off location that will be available to Houston voters is located in the NRG Center, next to the Houston Astrodome. The NRG Center is difficult to enter and exit. You can get stuck in that parking lot for hours, if it is crowded. Those are the troubles voters in the Houston area will face, but Harris County is a large county. Many other voters would have to travel far farther to reach the NRG Center.

11. Given how many voters live in Harris County, Texas, I am concerned that lines to use the drop box may be long and that I may travel all that way only to find myself in a situation where I have to go home and attempt to make the trip again and hopefully find the area less crowded. Ultimately, even if I cannot find a time to drop off my ballot when there is no line or

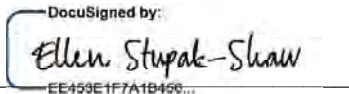
only a short line, I will still wait. Voting is that important to me. But I worry that other voters will be unable or unwilling to wait in a long drop off line and will end up not voting at all.

12. In contrast, the satellite location near my home is incredibly easy to get to. It does not require traveling on the freeway, and I could be in and out in mere minutes. It will take me significantly longer to drop-off my ballot and return home than it would have taken me to drop-off and return my ballot to the location near my house.

13. I am also concerned that many of my friends and neighbors will not learn that they cannot drop off their ballots at the locations they had been planning on using until it is too late to mail in their ballots and have them be counted.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: October 4, 2020

By:   
EE453E1F7A1B456...  
Ellen Stupak-Shaw

# EXHIBIT 5

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

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

Plaintiffs,

vs.

GREG 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.

Civil Action No. 1:20-cv-1015

Related to *Texas League of United Latin  
American Citizens v. Abbott*, No. 1:20-  
cv-1006

**DECLARATION OF LAURIE-JO STRATY IN SUPPORT OF PLAINTIFFS' MOTION**

Pursuant to 20 U.S.C. 1746, I, Laurie-Jo Straty, declare as follows:

1. My name is Laurie-Jo Straty. 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 Dallas County, Texas. I am 65 years old.
3. I cannot vote in person this year because I have multiple sclerosis. I am immunocompromised, and, because of the coronavirus pandemic, voting in person would not be safe for me. Additionally, I currently have an inflamed Achilles tendon, so I could not stand in line to vote without being in significant pain. I am also responsible for helping care for my 90-year-old parents, who live in a senior living facility. I do not want to vote in person and risk exposing them, and potentially others who live in the care facility, to coronavirus.

4. I am eligible to vote by mail in Texas. I intend to use a drop-off location because I am worried about my ballot arriving on time and being properly counted given the widespread reports of significant issues with the United States Postal Service.

5. Before Governor Abbott's proclamation, I was planning on dropping my ballot off at a drop-off location that would have taken me approximately five minutes to drive to from my house. Because of Governor Abbott's proclamation, I can no longer drop off my ballot at that location.

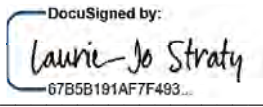
6. Now, there is only one drop off location for all of Dallas County. It will take me approximately twenty minutes each way to return my ballot.

7. With only one remaining drop box in the county, I am worried about congestion around that drop box, and that lines may form and that I may have to risk exposure to the virus or wait in line, despite the fact that I am voting by mail because my personal health issues, age, and concerns about my health and the health of my elderly parents and the other people with whom they live are the reason that I am voting absentee in the first place.

8. I am also worried about other voters in Dallas County who plan to drop off their ballots. The only drop-off location in the county is located in a part of the city that is between two of the most congested highways in the city, and there are few alternative routes available. This will cause significant congestion in the area and long lines to drop off ballots. I am concerned that some voters may simply give up trying to return their ballots.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: October 3, 2020

By:   
Laurie-Jo Straty

# EXHIBIT 6

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

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

Plaintiffs,

vs.

GREG 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.

Civil Action No.

Related to:

*Texas League of United Latin American  
Citizens v. Abbott*, No. 1:20-cv-1006

**DECLARATION OF PATRICK GOLDEN IN SUPPORT OF PLAINTIFFS' MOTION**

I, Patrick Golden according to 28 U.S.C. § 1746, testify that:

1. My name is Patrick Golden. I am a legal adult, competent to testify, and declare the following facts based on my own personal knowledge.
2. I am a resident and registered voter in the city of Cypress, in Harris County, Texas. I am 71 years old.
3. I am registered to vote by mail. I voted by mail in the 2018 General Election and, before Governor Abbott's October 1, 2020 Proclamation, I had planned to vote by mail and utilize a ballot drop-off location to submit my ballot.
4. Before Governor Abbott's Proclamation, my understanding was that there was a location at which I could drop off my mail-in ballot located only a few miles from my home.

5. Due to Governor Abbott's Proclamation, there is now only one location in all of Harris County. That location is three times as far away from my home, making what would have been a short drive to drop off my mail-in ballot now take potentially over one hour.

6. Beyond the increased distance from my home, the change from twelve locations in Harris County to one also concerns me because it will significantly increase the number of people who must use that single location. I am concerned about having to wait in a significantly longer line to have to drop off my ballot as well as the increased risk of catching COVID-19 given that this change will force many more people to congregate in one location.

7. I intended to use a drop-off location because I am worried about my ballot arriving on time and being properly counted given the widespread reports of significant issues with the United States Postal Service.

8. Due to the Governor's Proclamation, my only feasible option for voting—unless the Proclamation is rescinded—is mailing my ballot via the United States Postal Service. I cannot vote in person, as I will not be in Texas on the date of the November General Election. Nor can I feasibly travel the long distance to the single ballot drop-off location in Harris County.

9. I do not have faith that mailing my ballot via the USPS will be safe. I am particularly concerned about the recent incidences of delayed mail delivery that are occurring in Texas and across the country. Despite these concerns, due to the Governor's Proclamation, I have no other choice than to vote by mail, rather than drop off my ballot at a secure location, where I would have faith in it being counted.

10. Beyond the burden on my own right to vote, Governor Abbott's action also raises concerns for me regarding widespread disenfranchisement. I am concerned that the change to a single location for drop-off will cause some people to not return their mail-in ballots given

concerns regarding significantly longer lines. I am also concerned that some people who previously intended to drop off their ballots may mail them incorrectly and not place the proper postage on their ballots or mail them late, resulting in their disenfranchisement. All of these issues could be avoided by permitting Harris County to continue having multiple mail-in ballot drop off locations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 2, 2020.

DocuSigned by:  
*Patrick Golden*  
02F9DBEECA89442...

Patrick Golden

# EXHIBIT 7

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

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

Plaintiffs,

vs.

GREG 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.

Civil Action No.

Related to:

*e as League of United Latin American  
Citizens v. Abbott*, No. 1:20-cv-1006

**DECLARATION OF ANDRÉS ROSAS IN SUPPORT OF PLAINTIFFS' MOTION**

I, Andrés Rosas, according to 28 U.S.C. § 1746, testify that:

1. My name is Andrés Rosas. I am a legal adult, competent to testify, and declare the following facts based on my own personal knowledge.
2. I am a resident and registered voter in Nueces County, Texas. I am 81 years old and a member of the Texas Alliance for Retired Americans.
3. I am very concerned about Governor Abbott's declaration making it significantly harder for me to vote. Corpus Christi is a large city geographically with over 300,000 people and I am worried about their only being one location to drop mail-in ballots for this many people. There is also currently significant ongoing construction throughout the city, and I am worried that it will be very hard for me to get to the sole drop off location.
4. Given Governor Abbott's declaration, I am now unsure whether to drop my ballot off or instead send it in the mail. I am worried about using the mail because I am concerned about

my ballot arriving on time and being properly counted given the widespread reports of significant issues with the United States Postal Service.

5. Beyond the fact that the single drop off location may be far from my home, the limitation to only one location in Nueces County also concerns me because it will significantly increase the number of people who must use that single location. I am concerned about having to wait in a significantly longer line to have to drop off my ballot as well as the increased risk of catching COVID-19 given that this change will force many more people to congregate in one location.

6. Beyond the burden on my own right to vote, Governor Abbott's action also raises concerns for me because it seems entirely unnecessary and will make it harder for many people to vote. These are just places to drop off a ballot. It does not make any sense to me why there should not be many of them.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 5, 2020.

DocuSigned by:  
*Andres Rosas*  
195B8C85EC38435

Andr s Rosas

# EXHIBIT 8

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

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

Plaintiffs,

vs.

GREG 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.

Civil Action No. 1:20-cv-1015

Related to:

*Tex. s. League of United Latin American  
Citizens v. Abbott*, No. 1:20-cv-1006

**DECLARATION OF KEN DEARINGER IN SUPPORT OF PLAINTIFFS' MOTION**

I, Ken Dearing, according to 28 U.S.C. § 1746, testify that:

1. My name is Ken Dearing. I am a legal adult, competent to testify, and declare the following facts based on my own personal knowledge.

2. I am a resident and registered voter in Harris County, Texas. I am over 65 and a member of the Texas Alliance for Retired Americans.

3. Prior to Governor Abbott's declaration, there was a location at which I could drop off my mail-in ballot located 10 minutes from my home. This was one of the twelve locations throughout Harris County, which is home to over four and a half million people.

4. Due to Governor Abbott's declaration, there is now only one location in all of Harris County. That location is three times as far away from my home, making what would have been a twenty-minute drive to drop off my mail-in ballot now an hour's drive.

5. Beyond the increased distance from my home, the change from twelve locations in Harris County to one also concerns me because it will significantly increase the number of people who must use that single location. I am concerned about having to wait in a significantly longer line to have to drop off my ballot as well as the increased risk of catching COVID-19 given that this change will force many more people to congregate in one location.

6. I intend to use a drop-off location because I am worried about my ballot arriving on time and being properly counted given the widespread reports of significant issues with the United States Postal Service

7. Beyond the burden on my own right to vote, Governor Abbott's action also raises concerns for me regarding widespread disenfranchisement. I am concerned that the change to a single location for drop-off will cause some people to not return their mail-in ballots given concerns regarding significantly longer lines. I am also concerned that some people who previously intended to drop off their ballots may mail them incorrectly and not place the proper postage on their ballots or mail them late, resulting in their disenfranchisement. All of these issues could be avoided by permitting Harris County to continue having multiple mail-in ballot drop off locations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 3, 2020.

DocuSigned by:  
  
BE753A11DDA347D

Ken Dearing

# EXHIBIT 9

**QuickFacts****Texas; United States**QuickFacts provides statistics for all states and counties, and for cities and towns with a *population of 5,000 or more*.**Table**

All Topics	Texas	United States
<b>Population estimates, July 1, 2019, (V2019)</b>	<b>28,995,881</b>	<b>328,239,523</b>
<b>PEOPLE</b>		
<b>Population</b>		
<b>Population estimates, July 1, 2019, (V2019)</b>	<b>28,995,881</b>	<b>328,239,523</b>
Population estimates base, April 1, 2010, (V2019)	25,146,091	308,758,105
Population, percent change - April 1, 2010 (estimates base) to July 1, 2019, (V2019)	15.3%	6.3%
Population, Census, April 1, 2010	25,145,561	308,745,538
<b>Age and Sex</b>		
Persons under 5 years, percent	▲ 7.1%	▲ 6.1%
Persons under 18 years, percent	▲ 25.8%	▲ 22.4%
Persons 65 years and over, percent	▲ 12.6%	▲ 16.0%
Female persons, percent	▲ 50.3%	▲ 50.8%
<b>Race and Hispanic Origin</b>		
White alone, percent	▲ 78.8%	▲ 76.5%
Black or African American alone, percent (a)	▲ 12.8%	▲ 13.4%
American Indian and Alaska Native alone, percent (a)	▲ 1.0%	▲ 1.3%
Asian alone, percent (a)	▲ 5.2%	▲ 5.9%
Native Hawaiian and Other Pacific Islander alone, percent (a)	▲ 0.1%	▲ 0.2%
Two or More Races, percent	▲ 2.0%	▲ 2.7%
Hispanic or Latino, percent (b)	▲ 39.6%	▲ 18.3%
White alone, not Hispanic or Latino, percent	▲ 41.5%	▲ 60.4%
<b>Population Characteristics</b>		
Veterans, 2014-2018	1,474,232	18,611,432
Foreign born persons, percent, 2014-2018	17.0%	13.5%
<b>Housing</b>		
Housing units, July 1, 2019, (V2019)	11,283,353	139,684,244
Owner-occupied housing unit rate, 2014-2018	61.9%	63.8%
Median value of owner-occupied housing units, 2014-2018	\$161,700	\$204,900
Median selected monthly owner costs -with a mortgage, 2014-2018	\$1,549	\$1,558
Median selected monthly owner costs -without a mortgage, 2014-2018	\$500	\$490
Median gross rent, 2014-2018	\$998	\$1,023
Building permits, 2019	209,895	1,386,048
<b>Families &amp; Living Arrangements</b>		
Households, 2014-2018	9,553,046	119,730,128
Persons per household, 2014-2018	2.86	2.63
Living in same house 1 year ago, percent of persons age 1 year+, 2014-2018	84.1%	85.5%
Language other than English spoken at home, percent of persons age 5 years+, 2014-2018	35.5%	21.5%
<b>Computer and Internet Use</b>		
Households with a computer, percent, 2014-2018	89.2%	88.8%
Households with a broadband Internet subscription, percent, 2014-2018	79.3%	80.4%
<b>Education</b>		
High school graduate or higher, percent of persons age 25 years+, 2014-2018	83.2%	87.7%
Bachelor's degree or higher, percent of persons age 25 years+, 2014-2018	29.3%	31.5%
<b>Health</b>		
With a disability, under age 65 years, percent, 2014-2018	7.9%	8.6%
Persons without health insurance, under age 65 years, percent	▲ 20.0%	▲ 10.0%
<b>Economy</b>		
In civilian labor force, total, percent of population age 16 years+, 2014-2018	64.2%	62.9%
In civilian labor force, female, percent of population age 16 years+, 2014-2018	57.7%	58.2%
Total accommodation and food services sales, 2012 (\$1,000) (c)	54,480,811	708,138,598
Total health care and social assistance receipts/revenue, 2012 (\$1,000) (c)	145,035,130	2,040,441,203
Total manufacturers shipments, 2012 (\$1,000) (c)	702,603,073	5,696,729,632
Total merchant wholesaler sales, 2012 (\$1,000) (c)	691,242,607	5,208,023,478
Total retail sales, 2012 (\$1,000) (c)	356,116,376	4,219,821,871
Total retail sales per capita, 2012 (c)	\$13,666	\$13,443

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Mean travel time to work (minutes), workers age 16 years+, 2014-2018	26.4	26.6
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**Income & Poverty**

Median household income (in 2018 dollars), 2014-2018	\$59,570	\$60,293
Per capita income in past 12 months (in 2018 dollars), 2014-2018	\$30,143	\$32,621
Persons in poverty, percent	▲ 14.9%	▲ 11.8%

**BUSINESSES****Businesses**

Total employer establishments, 2017	592,677 <sup>1</sup>	7,860,674
Total employment, 2017	10,580,160 <sup>1</sup>	128,591,812
Total annual payroll, 2017 (\$1,000)	544,772,560 <sup>1</sup>	6,725,346,754
Total employment, percent change, 2016-2017	1.4% <sup>1</sup>	1.5%
Total nonemployer establishments, 2018	2,514,301	26,485,532
All firms, 2012	2,356,748	27,626,360
Men-owned firms, 2012	1,251,696	14,844,597
Women-owned firms, 2012	866,678	9,878,397
Minority-owned firms, 2012	1,070,392	7,952,386
Nonminority-owned firms, 2012	1,224,845	18,987,918
Veteran-owned firms, 2012	213,590	2,521,682
Nonveteran-owned firms, 2012	2,057,218	24,070,685

**GEOGRAPHY****Geography**

Population per square mile, 2010	96.3	87.4
Land area in square miles, 2010	261,231.71	3,531,905.43
FIPS Code	48	1

# EXHIBIT 10

6/19/2020

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## THE TEXAS POLITICS PROJECT

The demographics of voting

**Percent Voting by Age, Gender, Educational Attainment, Race, and Family Income:  
November 2000 Presidential Election\***

Category	Percent of Texas Citizens	Percent of U.S. Citizens
<b>All Citizens</b>	<b>54.1%</b>	<b>59.5%</b>
<i>Age</i>		
18-24	32.1	36.1
25-44	52.7	56.1
45-64	62.9	67.8
65-75	67.2	72.2
>75	60.1	66.2
<i>Gender</i>		
Male	53.1	58.1
Female	55.1	60.7
<i>Educational Attainment</i>		
Grade School or Some High School	32.1	38.5
High School Graduate	46.6	52.5
Some College	57.4	63.1
Four Yr. College Graduate	76.4	75.4
Advanced Degree	81.8	81.9
<i>Race</i>		
White (non-Hispanic)	58.8	61.8
Black (non-Hispanic)	58.6	56.9
Hispanic	41.0	45.1
Asian and Pacific Islander	51.0	43.3
<i>Family Income (\$)</i>		
0-24,999	42.5	48.0
25,000-49,999	51.9	59.7
50,000-74,999	59.5	68.0
>75,000	74.6	74.2

Source: Current Population Survey. (full source, footnote)

You are currently viewing a legacy feature of the Texas Politics Project website. Please visit the expanded Texas Politics Project website to learn more about our updated webtext and to find additional educational resources.

# EXHIBIT 11



**COUNTY ATTORNEY**  
Fort Bend County, Texas

ROY L. CORDES, JR.

County Attorney

(281) 341-4555

Fax (281) 341-4557

**IN-PERSON RETURN OF VOTE-BY-MAIL BALLOTS**

The COVID-19 Pandemic has greatly burdened election planning.<sup>1</sup> One mitigation method is increased use of Vote by Mail (“VBM”) in accordance with the Texas Election Code. Harris and Travis Counties are allowing the return of the VBM ballot to any permanent location of the Clerk’s Office—*e.g.*, the main office and the established branch locations. In Fort Bend County, two permanent branch office locations of the county clerk are under consideration: (1) Katy and (2) Missouri City. Fort Bend County may legally accept the return of VBM ballot.

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<sup>1</sup> This County has joined with other Texas counties to urge the expansion of absentee balloting to all registered and eligible voters under the Twenty-Sixth Amendment to the United States Constitution. Brief of *Amici Curiae* Texas Counties, Tex. Democratic Party v. Abbott, — F.3d — (5th Cir. Sept. 10, 2020) (No. 20–50407), 2020 WL 4228511; & Brief of *Amici Curiae* Texas Counties, Tex. Democratic Party v. Abbott, (U.S. 2000) (No. 19–1393), 2020 WL 4227868.

**I. FACTUAL BACKGROUND AND SPECIAL EXCEPTIONS FOR THE GENERAL ELECTION OCCURRING ON NOVEMBER 3, 2020**

**A. Statutory Background.**

Early voting—whether by personal appearance or by mail—is conducted under the aegis of the “early voting clerk.” TEX. ELEC. CODE § 83.001(a). The “early voting clerk” is a county official. *See* TEX. ELEC. CODE §§ 31.091(a); 83.002. The early voting clerk reviews VBM applications, TEX. ELEC. CODE § 86.001, sends the approved applicants their ballots, TEX. ELEC. CODE § 86.004, and processes the ballots’ return, TEX. ELEC. CODE § 86.011.

To provide a ballot the early voting clerk must:

- (1) confirm or correct the applicant’s voter registration number or county election precinct of residence on the application, TEX. ELEC. CODE § 86.001(d);
- (2) note on the list of registered voters that a mail-in ballot was provided, *id.* § 86.001(g);
- (3) send the ballot to a verified address in an official carrier envelope that contains the voter’s name and date of election, *id.* §§ 86.002, 86.003; and
- (4) only accept the ballot’s return from the official carrier envelope (except when the voter returns it in person with identification or it is contained in another official carrier envelope of a person registered to vote at the same address), *id.* § 86.006(a), (a-1), (b) & (c).

The voter may return the ballot either through mail, by common/contract carrier, or in person. TEX. ELEC. CODE § 86.006(a). In normal times, a voter may return it to the early voting clerk on election day.<sup>2</sup>

B. Increased Demand for VBM Due to the Pandemic.

While true that Republican primary voters in 70% of the County had the opportunity to vote in a spirited primary runoff for Congressional District 22 for the runoff election occurring on July 14, 2020, VBM requests increased by 59% from the primary to the primary runoff—an unparalleled increase in requests. Neighboring Harris County experienced a 109% increase. Based on the number of registered voters, the top fifteen counties in Texas—of which Fort Bend County is a part—experienced an average of 28.9 percent of Democratic primary voters and 25.6 percent of Republican primary voters voted by mail.<sup>3</sup> Both the July 14, 2010, runoff election and the significant increase in VBM applications since then counsel towards a considered

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<sup>2</sup> TEX. ELEC. CODE § 86.006(a-1). “The voter may deliver a marked ballot in person to the early voting clerk's office only while the polls are open on election day. A voter who delivers a marked ballot in person must present an acceptable form of identification described by Section 63.0101.” As discussed, *supra* I.C, the Governor has suspended Section 86.006(a-1) for this election cycle.

<sup>3</sup> See Sec. of State, *Primary Run-Off Election, Cumulative Totals, Through Close of Business July 10*, <https://earlyvoting.texaselection.com/Elections/getElectionDetails.do>.

reevaluation of VBM protocols. For election machinery statewide, the expected increase in VBM will be a challenge.

C. Governor’s Proclamation Extends Early Voting and Drop-off Period.

On July 27, 2020, Governor Abbott issued a “Proclamation Extending Early Voting Period for November 3rd Election.” Tex. Gov. Proclamation Jul. 27, 2020, *available at*, [https://gov.texas.gov/uploads/files/press/PROC\\_COVID-19\\_Nov\\_3\\_general\\_election\\_IMAGE\\_07-27-2020.pdf](https://gov.texas.gov/uploads/files/press/PROC_COVID-19_Nov_3_general_election_IMAGE_07-27-2020.pdf).<sup>4</sup> The Governor extended early voting to begin on October 13, 2020. *Id.*

Importantly, the Governor “suspend[ed] Section 86.006(a-1) of the Texas Election Code, for any election ordered or authorized to occur on November 3, 2020, to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk’s office prior to and including on election day.” *Id.* In other words, the early voting clerk may accept VBM ballots prior to election day election day for the upcoming general election only. *See* TEX. GOV’T CODE § 418.014 (the Governor, Secretary of State, and Attorney have all confirmed that this emergency-based statute allows the

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<sup>4</sup> According to Rule 14.7.2, Texas Rules of Form Rule, these are normally numbered and placed into the General Statutes. The Governor’s Office has adopted a date and time regimen of late for orders and proclamations. This particular Proclamation was filed at the Office of the Secretary of State at 2:00 p.m. on July 27, 2020. The Proclamation will likely be codified eventually.

Governor to rewrite code). Specifically, the Governor's Proclamation states that "to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk's office prior to and including on election day." Tex. Gov. Proclamation Jul. 27, 2020.

Early voting by personal appearance normally begins 17 days before election day. TEX. ELEC. CODE § 85.001(a). As mentioned, *infra*, the Governor suspended this provision to any election ordered or authorized to occur on November 3, 2020, to allow early voting by personal appearance to being on October 13, 2020. Tex. Gov. Proclamation Jul. 27, 2020. Reading these provisions together, the Executive Order mandates that in-person drop early voting clerk may accept VBM ballots during this period. Further, because the permissive language allowing a voter "to deliver a marked mail ballot in person to the early voting clerk's office prior to and including on election day," Tex. Gov. Proclamation Jul. 27, 2020, the early voting clerk has the discretion to accept such ballots prior to October 13, 2020.

## **II. PERMISSIBILITY OF USING A PERMANENT BRANCH OFFICE TO ACCEPT VBM BALLOTS UNDER THE CODE**

### **A. Authority to Appoint Deputy Early Voting Clerks.**

The Election Code allows the early voting clerk to appoint deputies to discharge his duties. TEX. ELEC. CODE § 83.031 (governing all elections under subchapter); *see also* TEX. ELEC. CODE § 83.032 (county clerk as early voting

clerk allowed to appoint deputies). “A deputy early voting clerk has the same authority as the early voting clerk in conducting early voting, subject to the early voting clerk’s supervision.” TEX. ELEC. CODE § 83.031(c). Because this county has “a person other than a county clerk” as the early voting clerk, “the authority appointing the [deputy] clerk, by written order, may appoint one or more deputy early voting clerks.” TEX. ELEC. CODE § 83.033(a). Such can include employees of the political subdivision provided that “the political subdivision’s governing body approves the appointment.” TEX. ELEC. CODE § 83.034.<sup>5</sup>

B. Permanent County Facilities Are Appropriate For Use by Properly Appointed Assistant Early Voting Clerks.

Under the Election Code, “an early voting polling place shall be located at each branch office that is regularly maintained for conducting general clerical functions of the county clerk.” TEX. ELEC. CODE § 85.061(a). Although this provision is located in the section governing elections where the county clerk is the early voting clerk, “an action taken by the county clerk

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<sup>5</sup> Undersigned assumes that the appropriate authorities will approve as the contemplated locations provide a bipartisan balance, are in heavily populated areas of the County, and would provide a beneficial service to residents of this County. There may be practical reasons that the contemplated locations may not be functional. If that is the case, undersigned respectfully requests that the authority so determining document the reasons in writing. This step is important to avoid undermining the legal positions that the County has taken.

without objection from the administrator has the same legal effect as if taken by the administrator.” TEX. ELEC. CODE § 31.047. This section of the Election Code presents a failsafe to avoid unintentional disenfranchisement.

Observance of the formalities between counties operating under an election administrator versus those operating under an elected clerk are important. This section, however, means that the approval is only invalid if an express provision of the Election Code prohibits. *See State v. Schunior*, 506 S.W.3d 29, 37 (Tex. Crim. App. 2016) (statutory interpretation requires analyzing “not only at the single, discrete provision at issue but at other provisions within the whole statutory scheme”). Therefore, the provisions relied upon by Harris and Travis Counties, which have elected clerks, are equally applicable to a county with an independent elections administrator.

Further, “the governing body of the political subdivision served by the authority ordering the election, for an election in which a person other than the county clerk is the early voting clerk,” may establish “one or more early voting polling places other than the main early voting polling place.” TEX. ELEC. CODE § 85.062(c). As this code section falls under the rubric of temporary branch polling places, selection of the clerk’s permanent branch offices provides even greater legitimacy.

Last, the Election Code contains a permissive default presumption. “The authority to whom a delivery, submission, or filing is required by this code to be made may accept the document or paper at a place other than the authority’s usual place for conducting official business.” TEX. ELEC. CODE § 1.007(b). While true that “[a]ny other provision of [the Election Code] supersedes this section to the extent of any conflict, TEX. ELEC. CODE § 1.007(d), as demonstrated above no statute is clearly in conflict with this section. The Governor suspended the Election Code’s only express impediment—the provision restricting in-person return of VBM ballot on election day.

C. Protocol for Securing for Voting Integrity.

Concurring with the analysis of undersigned’s colleagues in Harris and Travis County, undersigned advises that the following be observed:

- Specific documentation must be made of the appointment of each assistant to serve as a designee to receive VBM, including the specific permanent branch office where the assistant will serve.
- Arrangements must be made so that the branches will be open from 7am to 7pm on each day that the remote locations receive VBM.


- All personnel at the branch office must be advised to direct all voters who appear to deliver VBM in person to the designated assistant early voting clerk.
- The designated assistant early voting clerk must be trained to recognize the acceptable form of identification described in Texas Election Code Section 63.0101, and the procedures for requiring its production at the time the VBM is delivered.
- Secretary of State Advisory 2015–10 advises that a sign-in sheet be maintained to keep a record of which voters appeared to deliver a VBM. This is sometimes referred to as a combination form so that there is a set of signatures to ensure that the volume of ballots delivered from a particular location to the main office on a particular day match the number of voters who appeared in that permanent branch office on that particular day. TEX. ELEC. CODE §§ 63.002, 63.004.
- The designated assistant must be trained to use the sign-in sheet and to preserve it as a record.
- The designated assistant must be trained as to the proper way to keep secure custody of the VBM from receipt until delivery to the Early Voting Ballot Board.

- The branch locations may be operated during the early voting period with the same hours as an early vote polling site.

### III. CONCLUSION

For the foregoing reasons, there is no legal impediment to accepting in-person return of VBM ballots at the Katy and Missouri City permanent branch offices for the election occurring on November 3, 2020.<sup>6</sup>

DATED: SEPTEMBER 14, 2020



JUSTIN CARL PFEIFFER  
ASSISTANT COUNTY ATTORNEY

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<sup>6</sup> Assuming no changes to the Election Code, this analysis would only be valid for these additional drop-off locations on election day. Should the Governor rescind his Proclamation of July 27, 2020, to unsuspend Section 86.006(a-1) of the Election Code, then this analysis would also only be valid for these additional drop-off locations on election day.

# EXHIBIT 12

THOMAS J. MARSHALL  
GENERAL COUNSEL  
AND EXECUTIVE VICE PRESIDENT



July 30, 2020

Honorable Ruth Hughs  
Texas Secretary of State  
P.O. Box 12887  
Austin, TX 78711-2887

Dear Secretary Hughs:

Re: Deadlines for Mailing Ballots

With the 2020 General Election rapidly approaching, this letter follows up on my letter dated May 29, 2020, which I sent to election officials throughout the country. That letter highlighted some key aspects of the Postal Service's delivery processes. The purpose of this letter is to focus specifically on the deadlines for requesting and casting ballots by mail. In particular, we wanted to note that, under our reading of Texas' election laws, certain deadlines for requesting and casting mail-in ballots are incongruous with the Postal Service's delivery standards. This mismatch creates a risk that ballots requested near the deadline under state law will not be returned by mail in time to be counted under your laws as we understand them.

As I stated in my May 29 letter, the two main classes of mail that are used for ballots are First-Class Mail and USPS Marketing Mail, the latter of which includes the Nonprofit postage rate. Voters must use First-Class Mail (or an expedited level of service) to mail their ballots and ballot requests, while state or local election officials may generally use either First-Class Mail or Marketing Mail to mail blank ballots to voters. While the specific transit times for either class of mail cannot be guaranteed, and depend on factors such as a given mailpiece's place of origin and destination, most domestic First-Class Mail is delivered 2-5 days after it is received by the Postal Service, and most domestic Marketing Mail is delivered 3-10 days after it is received.

To account for these delivery standards and to allow for contingencies (e.g., weather issues or unforeseen events), the Postal Service strongly recommends adhering to the following timeframe when using the mail to transmit ballots to domestic voters:

- **Ballot requests:** Where voters will both receive and send a ballot by mail, voters should submit their ballot request early enough so that it is received by their election officials at least 15 days before Election Day at a minimum, and preferably long before that time.
- **Mailing blank ballots to voters:** In responding to a ballot request, election officials should consider that the ballot needs to be in the hands of the voter so that he or she has adequate time to complete it and put it back in the mail stream so that it can be processed and delivered by the applicable deadline. Accordingly, the Postal Service recommends that election officials use First-Class Mail to transmit blank ballots and allow 1 week for delivery to voters. Using Marketing Mail will result in slower delivery times and will increase the risk that voters will not receive their ballots in time to return them by mail.

475 L'ENFANT PLAZA SW  
WASHINGTON DC 20260-1100

(b)(6) (b)(3) 39

FAX 202-268-6981

(b)(6) (b)(3) 39 USC

www.usps.com

- 2 -

- **Mailing completed ballots to election officials:** To allow enough time for ballots to be returned to election officials, domestic voters should generally mail their completed ballots at least one week before the state's due date. In states that allow mail-in ballots to be counted if they are *both* postmarked by Election Day *and* received by election officials by a specific date that is less than a week after Election Day, voters should mail their ballots at least one week before they must be received by election officials. So, for example, if state law requires a mail-in ballot to be postmarked by Tuesday, November 3, and received by Wednesday, November 4, voters should mail their ballot by Wednesday, October 28, to allow enough time for the ballots to be delivered by November 4. Voters must also be aware of the posted collection times on collection boxes and at the Postal Service's retail facilities and that ballots entered after the last posted collection time on a given day will not be postmarked until the following business day.

Under our reading of your state's election laws, as in effect on July 27, 2020, certain state-law requirements and deadlines appear to be incompatible with the Postal Service's delivery standards and the recommended timeframe noted above. As a result, to the extent that the mail is used to transmit ballots to and from voters, there is a significant risk that, at least in certain circumstances, ballots may be requested in a manner that is consistent with your election rules and returned promptly, and yet not be returned in time to be counted.

Specifically, it appears that a voter may generally request a ballot as late as 11 days before the election, and that a completed ballot must be postmarked by Election Day and received by the day after the election to be counted. It also appears that law does not appear to require election officials to transmit a ballot by mail until seven days after receiving a ballot application. If a voter submits a request at or near the ballot-request deadline, and if the requested ballot is mailed to the voter 7 days after the request is received, there is a risk that the ballot will not reach the voter before Election Day, and accordingly that the voter will not be able to use the ballot to cast his or her vote. Even if the requested ballot reaches the voter by Election Day, there is a significant risk that, given the delivery standards for First-Class Mail, 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. As noted above, voters who choose to mail their ballots should do so no later than Wednesday, October 28.

To be clear, the Postal Service is not purporting to definitively interpret the requirements of your state's election laws, and also is not recommending that such laws be changed to accommodate the Postal Service's delivery standards. By the same token, however, the Postal Service cannot adjust its delivery standards to accommodate the requirements of state election law. For this reason, the Postal Service asks that election officials keep the Postal Service'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. It is particularly important that voters be made aware of the transit times for mail (including mail-in ballots) so that they can make informed decisions about whether and when to (1) request a mail-in ballot, and (2) mail a completed ballot back to election officials.


We remain committed to sustaining the mail as a secure, efficient, and effective means to allow citizens to participate in the electoral process when election officials determine to utilize the mail as a part of their election system. Ensuring that you have an understanding of our operational capabilities and recommended timelines, and can educate voters accordingly, is important to achieving a successful election season. Please reach out to your assigned election mail coordinator to discuss the logistics of your mailings and the services that are available as well as any questions you may have. A list of election mail coordinators may be found on our website at: <https://about.usps.com/election-mail/politicalection-mail-coordinators.pdf>.

- 3 -

We hope the information contained in this letter is helpful, and please let me know if you have any questions or concerns.

Sincerely,

(b)(6); (b)(3); 39 USC 410 (c)(2)



Thomas J. Marshall

# EXHIBIT 13



# SERVICE PERFORMANCE MEASUREMENT

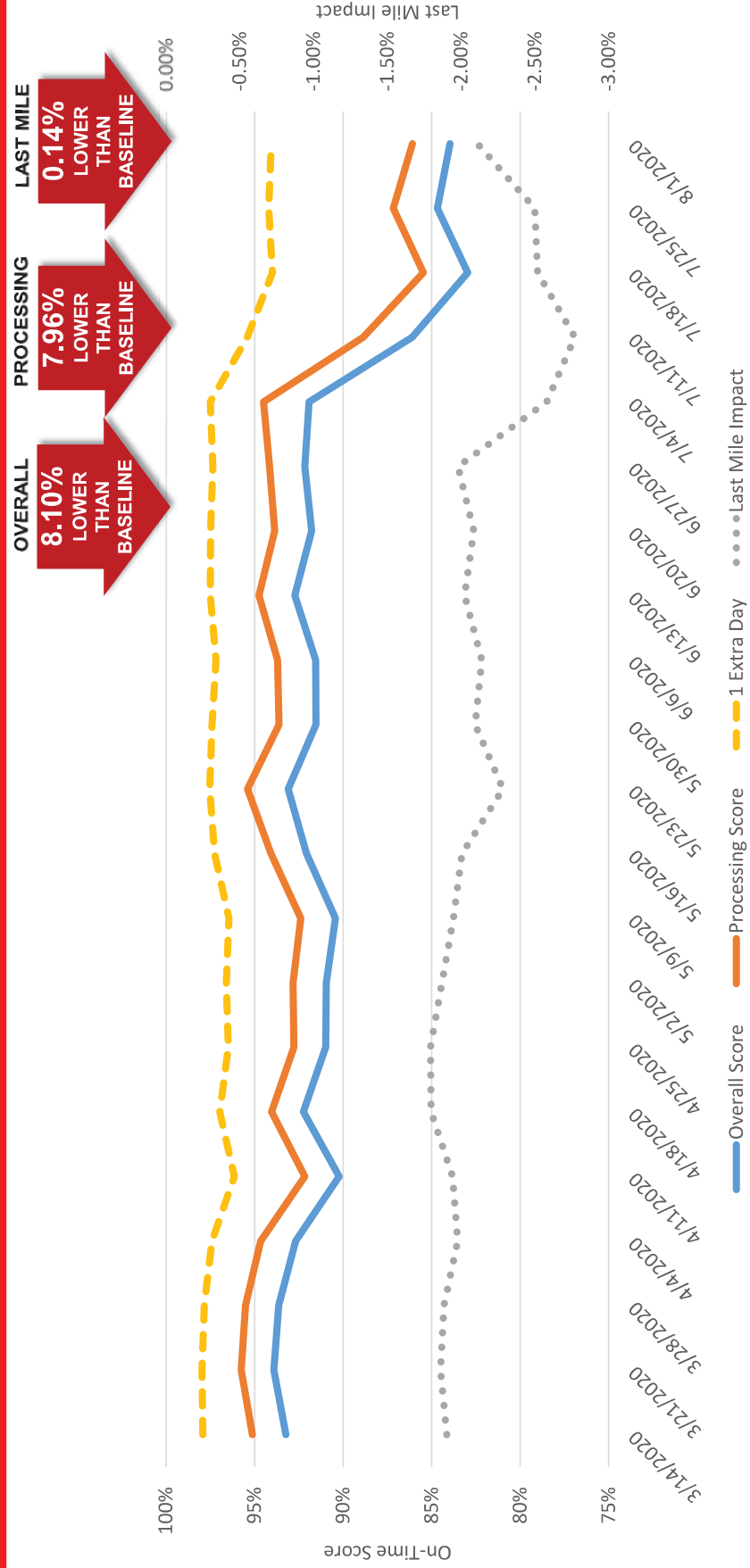
PMG Briefing

August 12, 2020



**UNITED STATES  
POSTAL SERVICE®**

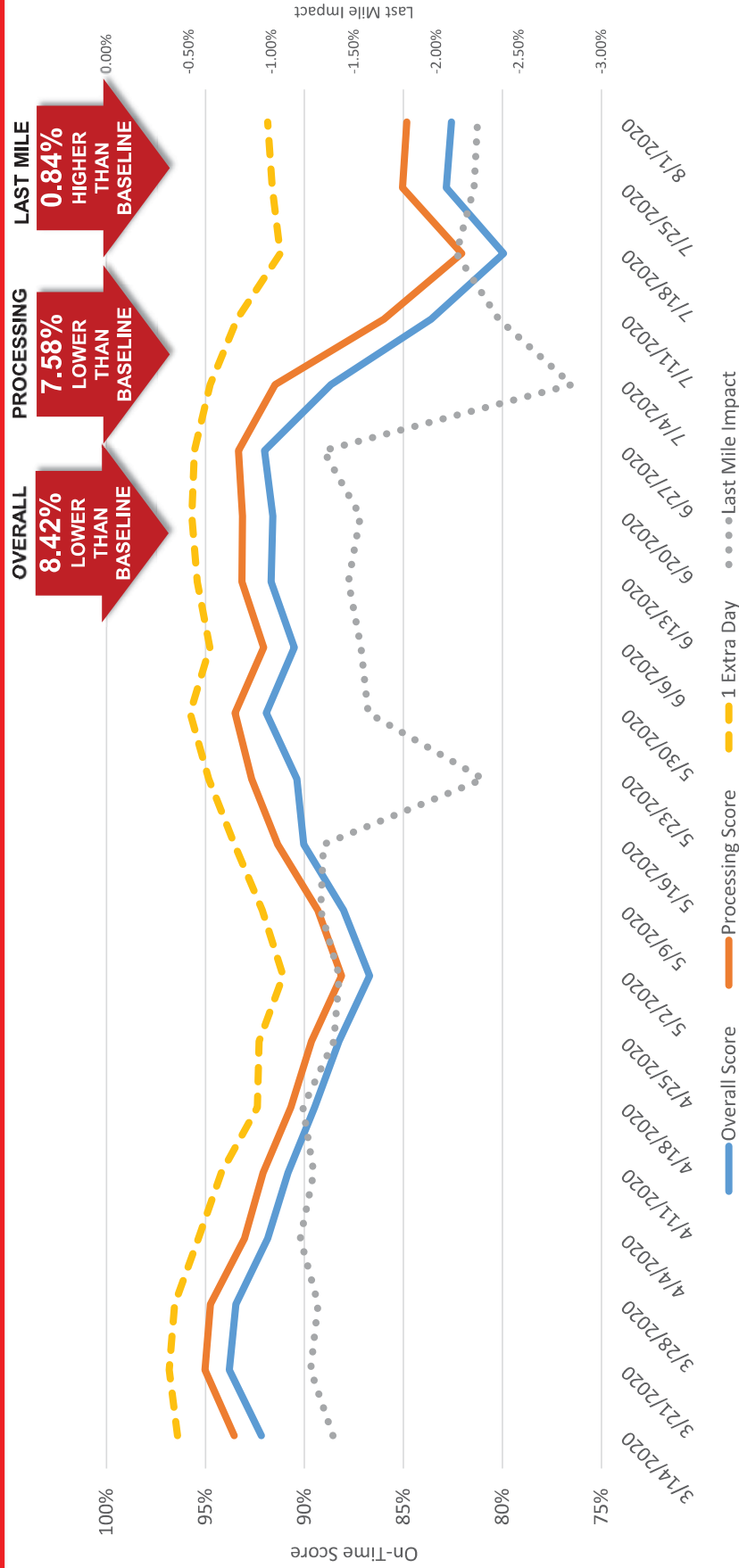
**Presort First-Class Mail  
Score Breakdown – Processing vs Last Mile**



Last Mile Impact represents the score decrease caused by time spent in the last mile (from last processing scan to delivery); Processing score represents service performance from USPS possession to last processing scan at the destination plant measured against the service expectation; Overall score represents service performance from USPS possession to delivery (i.e. it includes the last mile) measured against the service expectation; 1 Extra Day represents the overall score if the mailpiece had 1 extra day to meet service expectations; Scores are NOT weighted and will NOT match the official scores in slide 3 which are weighted.

**USPS Marketing Mail**

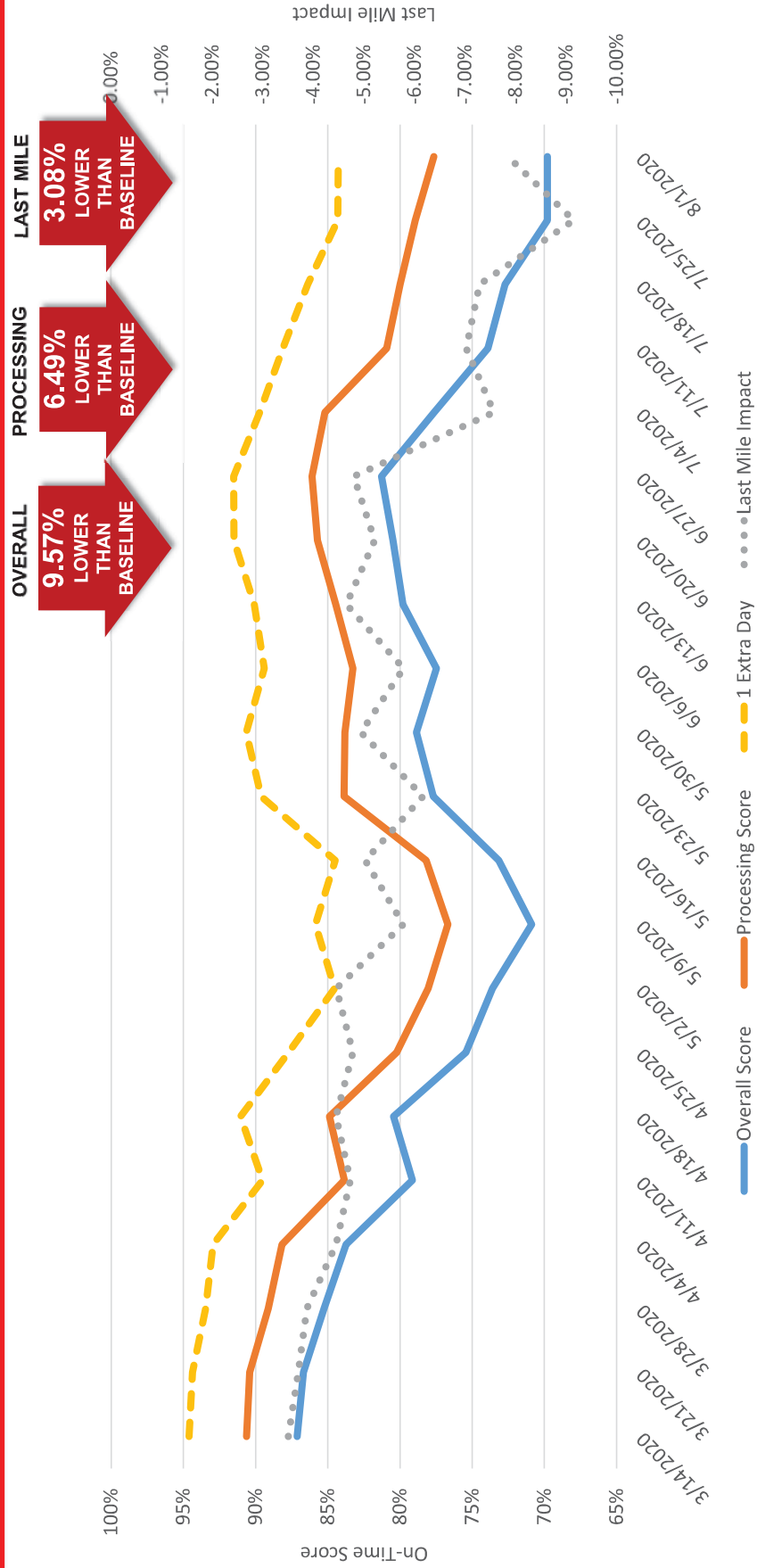
**Score Breakdown – Processing vs Last Mile**



Last Mile Impact represents the score decrease caused by time spent in the last mile (from last processing scan to delivery); Processing score represents service performance from USPS possession to last processing scan at the destination plant measured against the service expectation; Overall score represents service performance from USPS possession to delivery (i.e. it includes the last mile) measured against the service expectation; 1 Extra Day represents the overall score if the mailpiece had 1 extra day to meet service expectations; Scores are NOT weighted and will NOT match the official scores in slide 3 which are weighted. Does not include Saturation and EDDM.

**Periodicals**

**Score Breakdown – Processing vs Last Mile**



Last Mile Impact represents the score decrease caused by time spent in the last mile (from last processing scan to delivery). Processing score represents service performance from USPS possession to last processing scan at the destination plant measured against the service expectation; Overall score represents service performance from USPS possession to delivery (i.e. it includes the last mile) measured against the service expectation; 1 Extra Day represents the overall score if the mailpiece had 1 extra day to meet service expectations; Scores are NOT weighted and will NOT match the official scores in slide 3 which are weighted.

# EXHIBIT 14



# CONGRESSIONAL BRIEFING:

Transportation & Service  
Performance Updates

August 31, 2020





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# Transportation Performance

Data Through 8/29/20



## Transportation Analysis Overview

**Service Impacts:** USPS transportation and logistics professionals manage an average flow of over 390 million mail pieces daily throughout the Postal Service network, which includes 285 processing facilities and about 35,000 retail locations.

Postal Service facilities are linked by a complex transportation network that depends on the nation's highway, air, rail, and maritime infrastructures. The success of each system affects the success of others. If surface transportation departs late or unscheduled trips are added, the connection between processing facilities, post offices, airlines, and others become misaligned, impacting downstream operations and hindering efforts to meet service performance.

**Financial Impacts:** In FY 2019, the Postal Service spent over \$550 million extra in transportation to mitigate delays that occurred in the network:

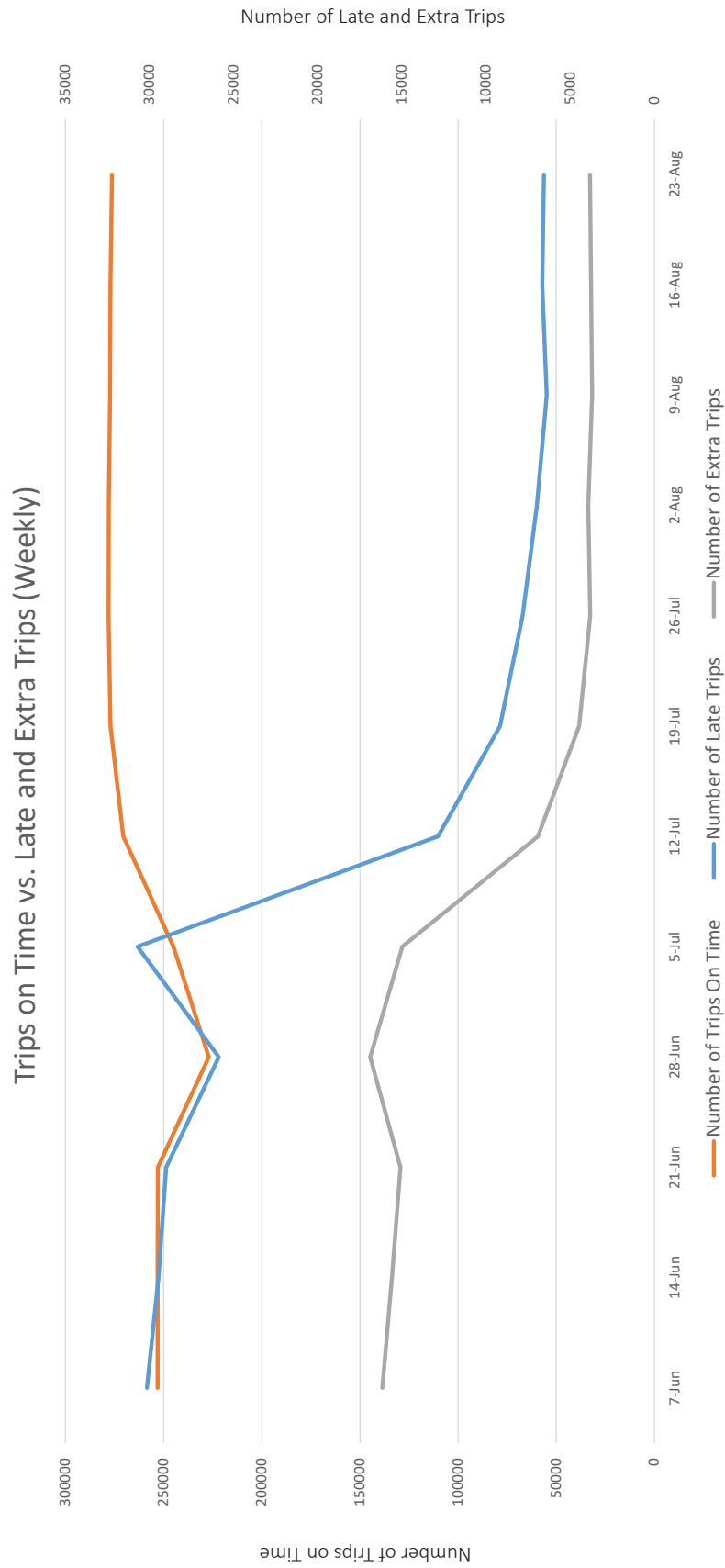
- \$266 million in extra trips;
- \$130 million in overtime;
- \$14 million in late trips; and
- \$140 million in air freight mitigation

**Effectively aligning operational plans and a timely, consistent transportation network will improve service and reduce cost.**



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# Transportation Summary



Source: SV - Surface Visibility

4

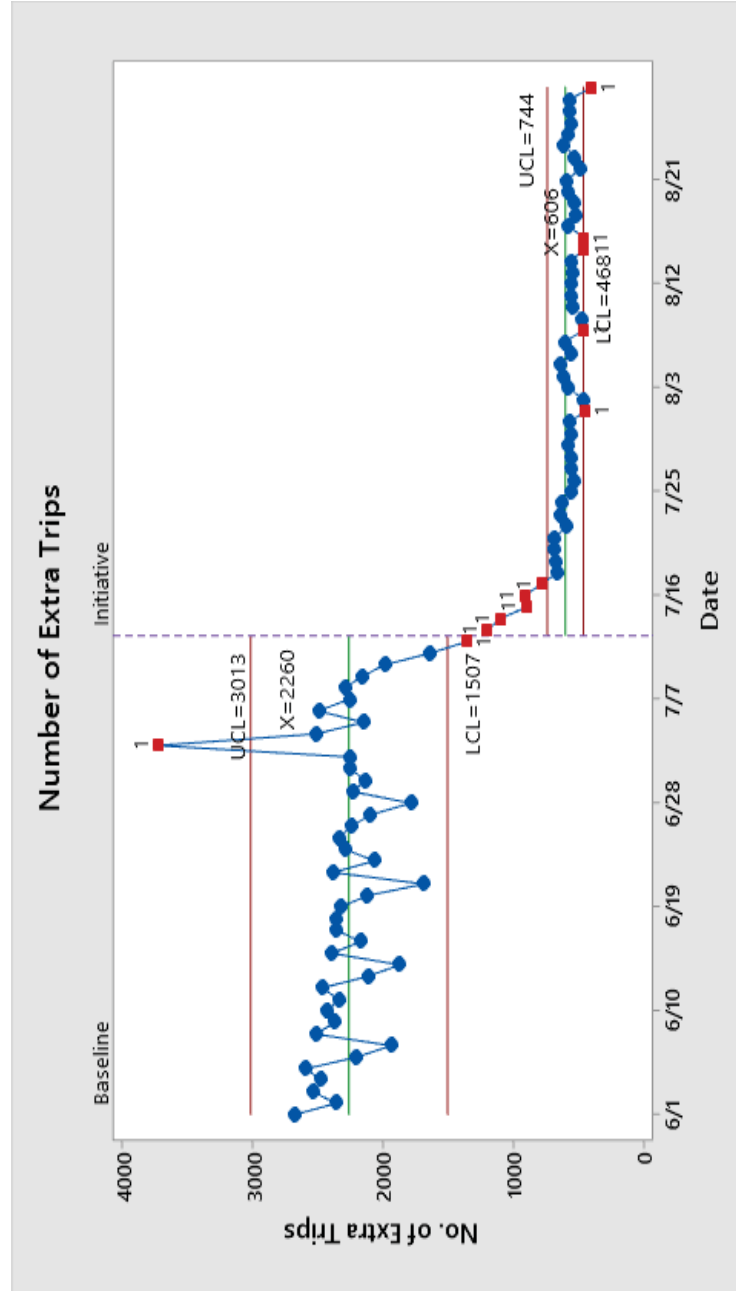
App. 165





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## Extra Trips Analysis



Source: SV - Surface Visibility

6

App.167



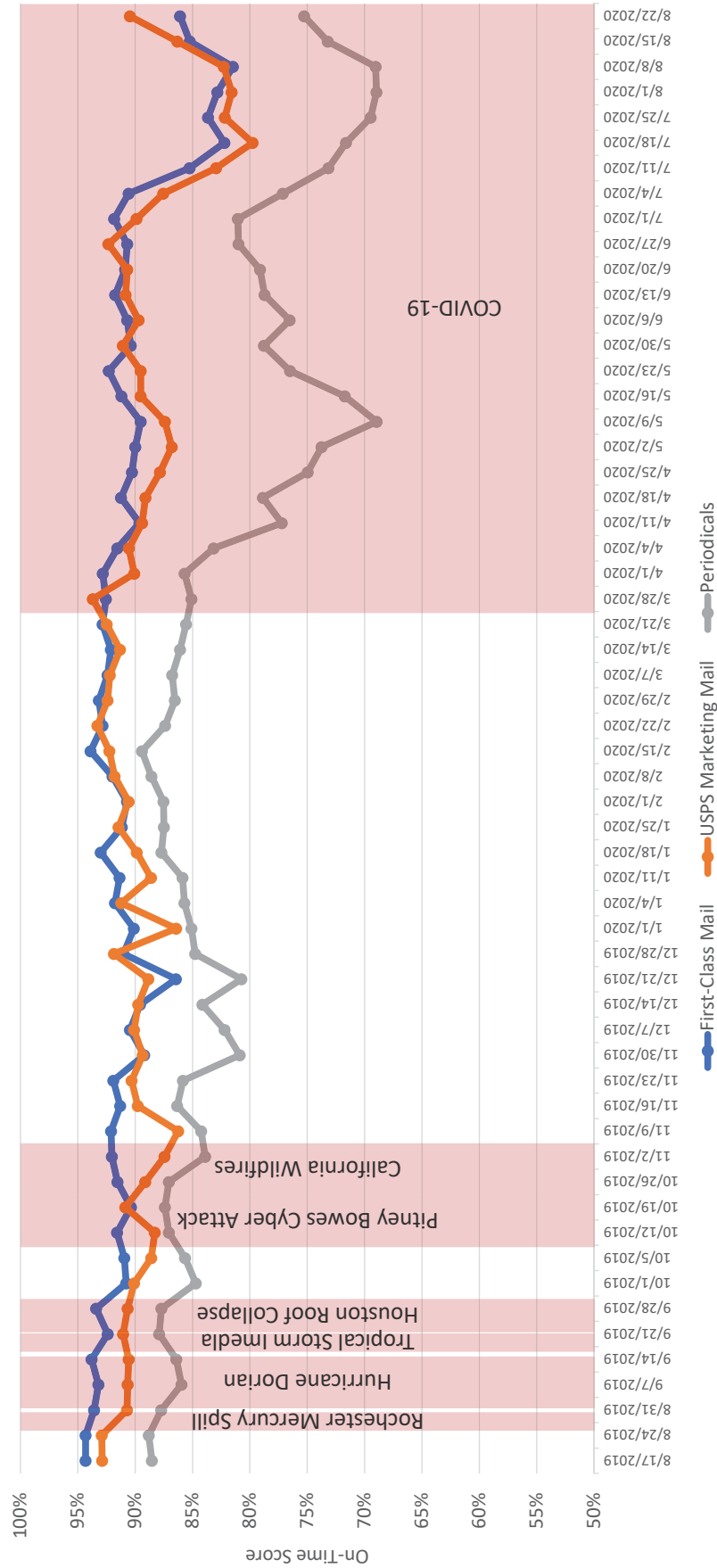
Case 1:20-cv-01015-RP Document 11-15 Filed 10/05/20 Page 8 of 13

# Service Performance

Data Through 8/26/20

# Official Scores 52 Week Trend

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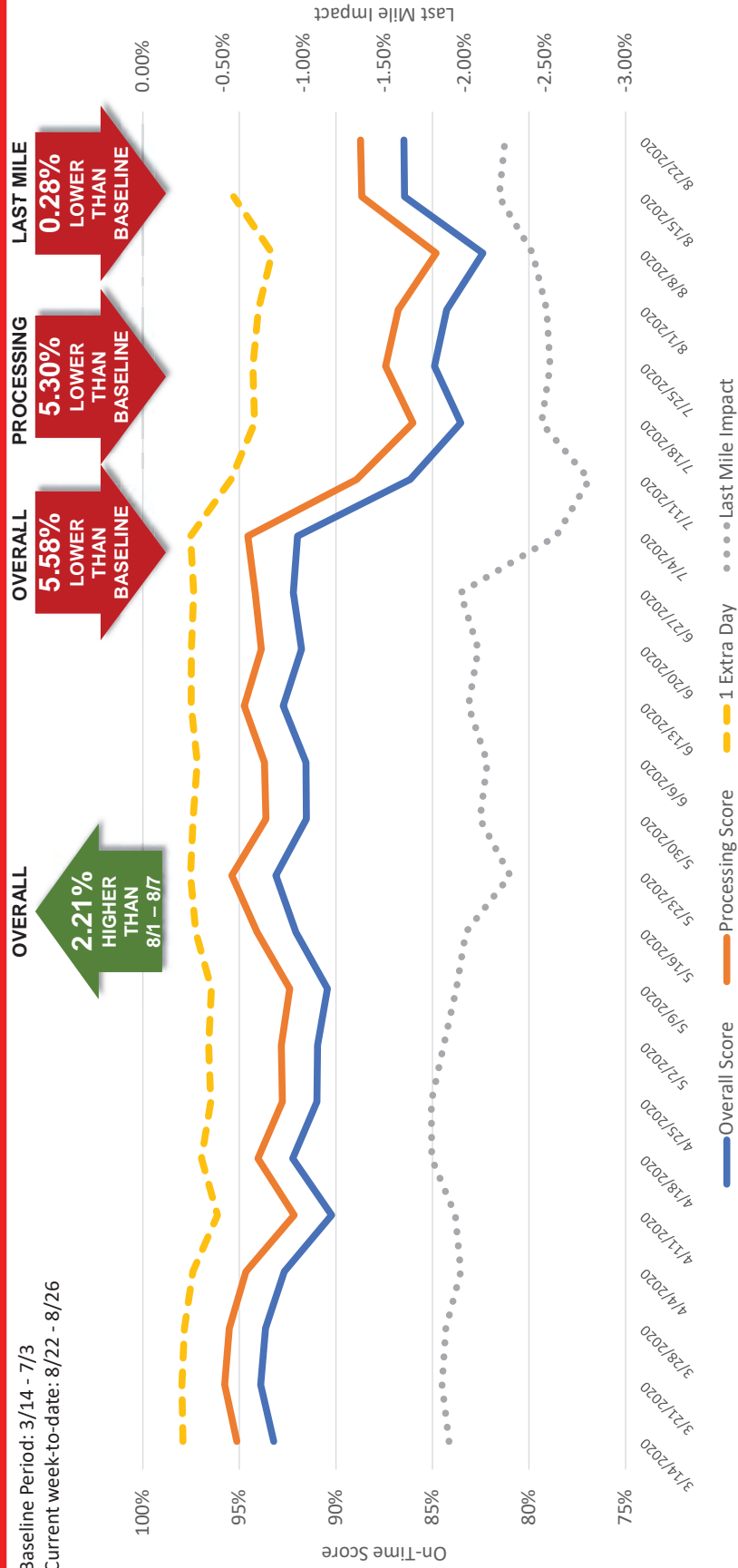
All scores for current week-to-date (week of 8/22) are through 8/26. USPS Marketing Mail score for current week-to-date does not include Saturation Mail as that data is available after the end of the week i.e. on 9/1



# Presort First-Class Mail Score Breakdown – Processing vs Last Mile

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- Baseline Period: 3/14 - 7/3
- Current week-to-date: 8/22 - 8/26

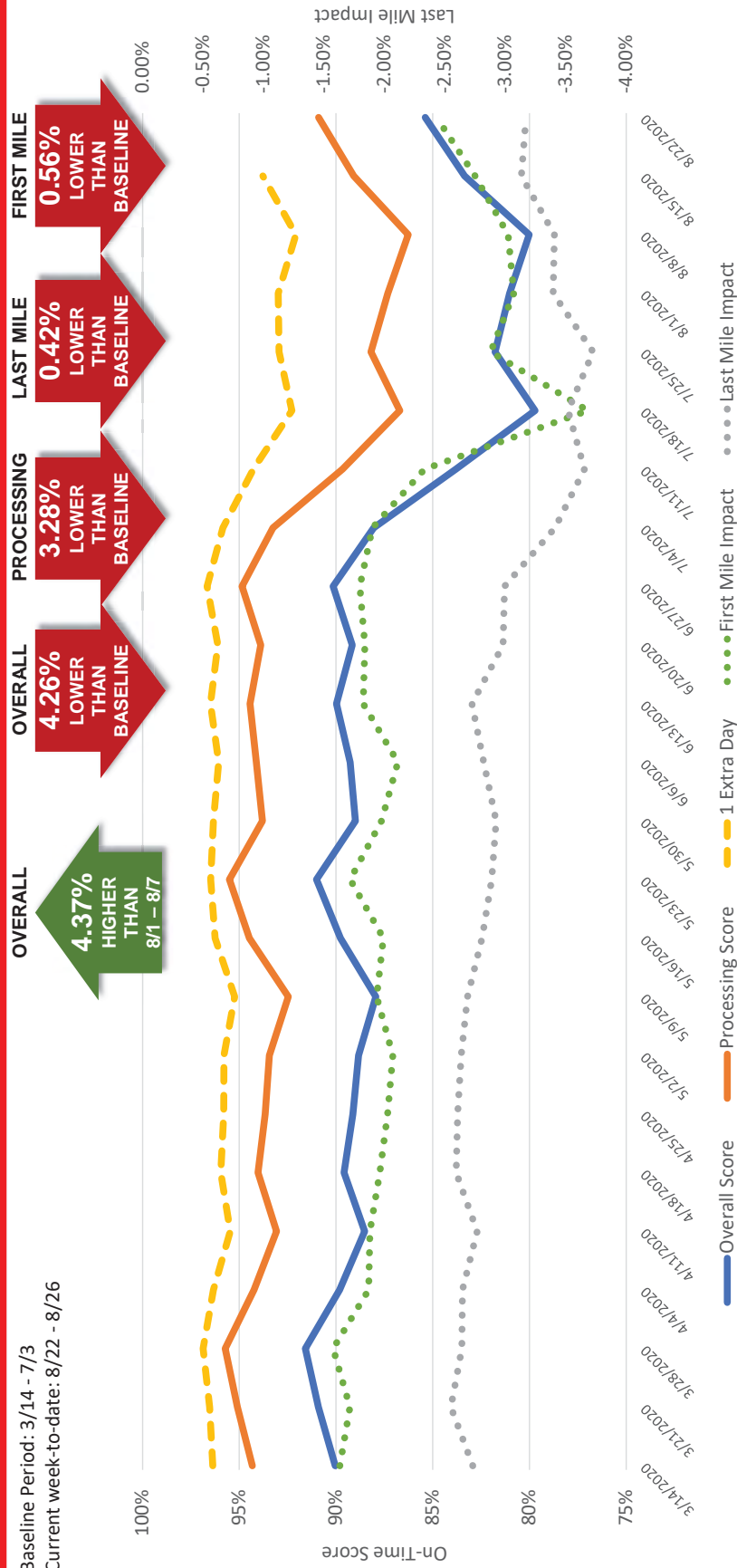


Last Mile Impact represents the score decrease caused by time spent in the last mile (from last processing scan to delivery); Processing score represents service performance from USPS possession to last processing scan measured against the service expectation; Overall score represents service performance from USPS possession to delivery (i.e. includes the last mile) measured against the service expectation; 1 Extra Day represents the overall score if the mailpiece had 1 extra day to meet service expectations; Scores are NOT weighted and may NOT match the official scores in slide 1 which are weighted.

# **Single Piece First-Class Mail** **Score Breakdown – Processing vs First & Last Mile**

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- Baseline Period: 3/14 - 7/3
- Current week-to-date: 8/22 - 8/26



First Mile Impact represents the score decrease caused by time spent in collection; Last Mile Impact represents the score decrease caused by time spent in the last mile (from last processing scan to delivery); Processing score represents service performance from USPS possession to last processing scan measured against the service expectation; Overall score represents service performance from USPS possession to delivery measured against the service expectation; 1 Extra Day represents the overall score if the mailpiece had 1 extra day to meet service expectations; Scores are NOT weighted and may NOT match the scores on slide 1 which are weighted.

App. 171



# USPS Marketing Mail Score Breakdown – Processing vs Last Mile

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- Baseline Period: 3/14 - 7/3
- Current week-to-date: 8/22 - 8/26

**OVERALL**

**8.26%  
HIGHER  
THAN  
8/1 - 8/7**

**OVERALL**

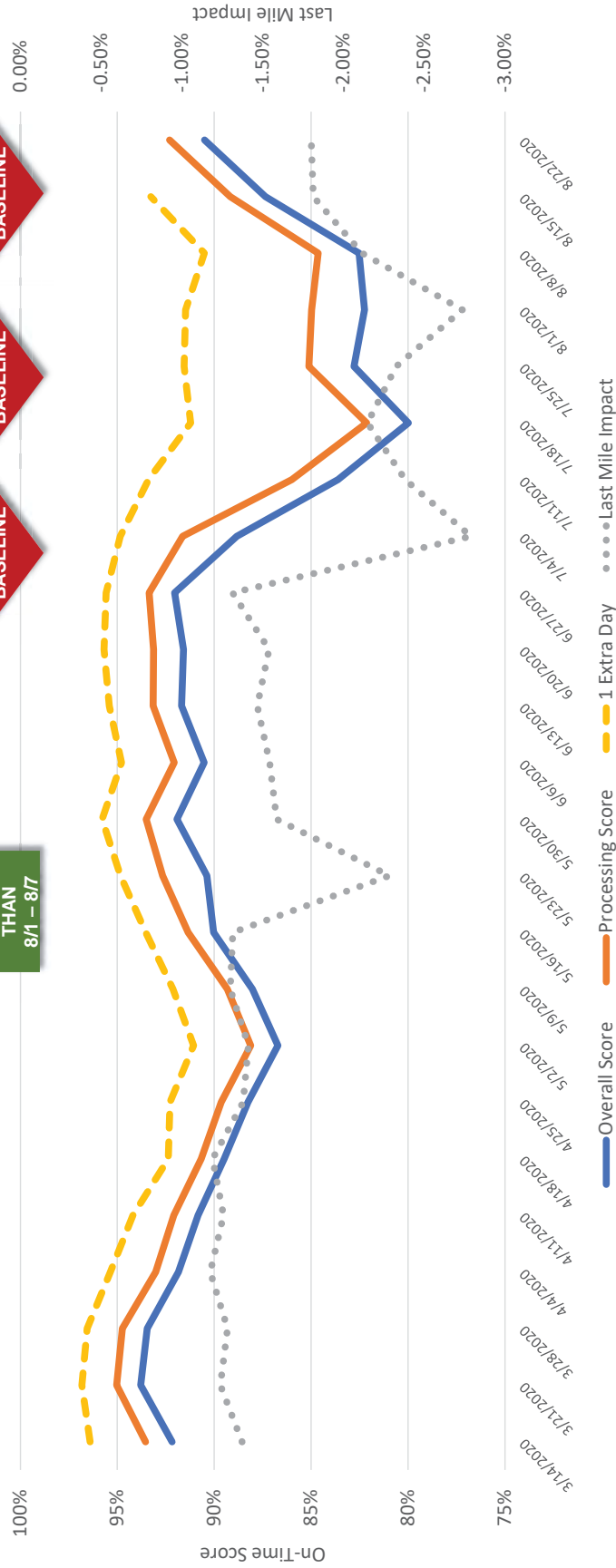
**0.49%  
LOWER  
THAN  
BASELINE**

**PROCESSING**

**0.10%  
LOWER  
THAN  
BASELINE**

**LAST MILE**

**0.40%  
LOWER  
THAN  
BASELINE**



Last Mile Impact represents the score decrease caused by time spent in the last mile (from last processing scan to delivery); Processing score represents service performance from USPS possession to last processing scan at the destination plant measured against the service expectation; Overall score represents service performance from USPS possession to delivery (i.e. it includes the last mile) measured against the service expectation; 1 Extra Day represents the overall score if the mailpiece had 1 extra day to meet service expectations; Scores are NOT weighted and may NOT match the official scores in slide 1, which are weighted.

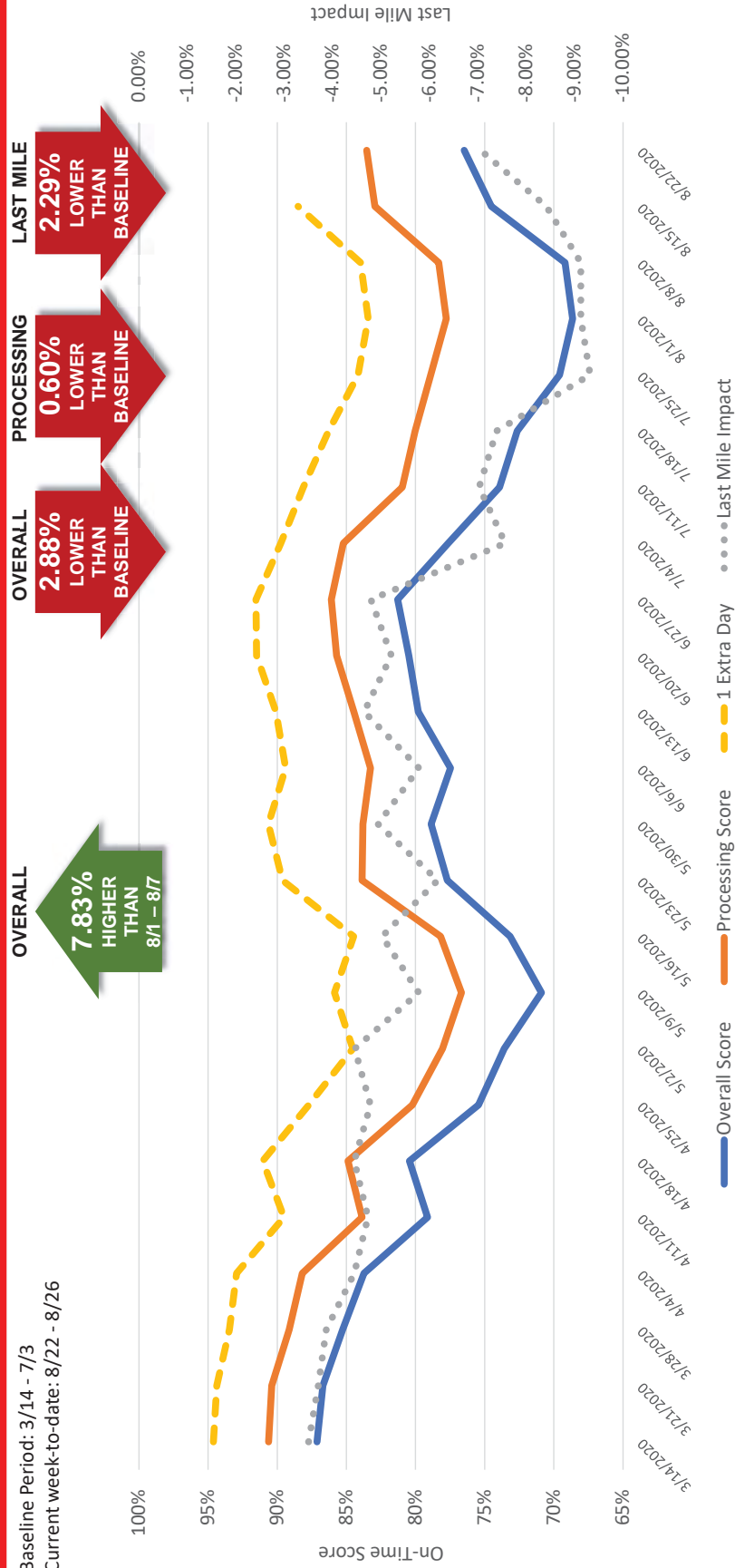
App.172



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# Periodicals Score Breakdown – Processing vs Last Mile

- Baseline Period: 3/14 - 7/3
- Current week-to-date: 8/22 - 8/26



Last Mile Impact represents the score decrease caused by time spent in the last mile (from last processing scan to delivery); Processing score represents service performance from USPS possession to last processing scan at the destination plant measured against the service expectation; Overall score represents service performance from USPS possession to delivery (i.e. it includes the last mile) measured against the service expectation; 1 Extra Day represents the overall score if the mailpiece had 1 extra day to meet service expectations; Scores are NOT weighted and may NOT match the official scores in slide 1 which are weighted.

# EXHIBIT 15

*This document is one in a series created as part of the Cybersecurity and Infrastructure Security Agency (CISA) Elections Infrastructure Government Coordinating Council and Sector Coordinating Council's Joint COVID Working Group. These documents provide guidance for state, local, tribal, and territorial election officials on how to administer and secure election infrastructure in light of the COVID-19 epidemic.*

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## Ballot Drop Box

### Overview

A ballot drop box provides a secure and convenient means for voters to return their mail ballot. A drop box is a secure, locked structure operated by election officials where voters may deliver their ballots from the time they receive them in the mail up to the time polls close on Election Day. Ballot drop boxes can be staffed or unstaffed, temporary or permanent.

Unstaffed drop boxes are typically available 24 hours a day and permanently anchored in place. Staffed drop boxes are typically available during regular business hours and monitored by trained workers during those hours.

Whether you are standing up a temporary vote-by-mail program statewide or locally, or you plan to develop a permanent program of voting primarily by mail, there are a few things to know and consider when planning for the use of ballot drop boxes.

### General Considerations

#### Why do you need ballot drop-off locations when you are paying for return postage?

Some voters prefer to deliver their mail ballots to a drop box rather than sending them back through the mail. These voters may be motivated by lack of trust in the postal process, fear that their ballot could be tampered with, or concern that their signature will be exposed. Voters may also be concerned about meeting the postmark deadline and ensuring that their ballot is returned in time to be counted.

Ballot drop boxes and drop-off locations allow voters to deliver their ballots in person. More importantly, the availability of ballot drop boxes and drop-off locations ensures that even voters who wait until the last minute to vote or who receive their requested ballot in the mail at the last minute will be able to return their ballots in time to be counted.

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Many of these last-minute voters drop their ballot off at a voting location (which may not be allowed by state law). Setting up ballot drop boxes and educating voters to use them mitigates a number of COVID-19-related risks associated with in-person voting. It also minimizes the number of people that will need to access voting locations, thereby providing more space for those who are engaged in in-person voting.

### How many ballot drop boxes will you need?

At a minimum, you should have a drop box at your main county or city office building. Voters generally know the locations of these buildings and are already accustomed to voting or doing business there. Some other best practices include:

- ☐ Have one drop box for every 15,000–20,000 registered voters.
- ☐ Consider adding more drop boxes to areas where there may be communities with historically low vote by mail usage.
- ☐ Use demographic data and analysis to determine whether there should be a different formula for rural and urban locations (i.e., 1 for every 15,000 residents may be every mile in an urban area, but every 50 miles in a rural area).

To get a better idea of how many voters use ballot drop boxes when voting by mail is the primary method of voting, look at the [Ballot Drop Box Usage](#) chart put together by the Washington Secretary of State. It shows ballot drop box use as a percentage of total ballots returned for Washington state, where voting by mail has been the primary method of voting for over a decade.

Timeline: The number of drop boxes and their locations should be finalized in time to be included in the instructions with your mail ballot packet—typically 80 days before the election.

### Where should ballot drop boxes be located?

Ballot drop boxes should be placed in convenient, accessible locations, including places close to public transportation routes, near or on college campuses, and public buildings, such as libraries and community centers familiar to voters and easy to find. If there is time, getting input from citizens and community groups is recommended.

All drop box locations should be evaluated for:

- ☐ Security
- ☐ Lighting (well-lit 24 hours a day)
- ☐ High visibility
- ☐ Security cameras (more on cameras in the *Security Considerations* section below)
- ☐ Accessibility
- ☐ Voter convenience
- ☐ Parking or drive-through options

There are tools that can help you evaluate locations for drop boxes. The [U.S. Census Bureau Interactive Workforce Map](#) is a tool that can help you visualize where residents of your jurisdiction work or live to help you see where drop boxes might be particularly useful. Also, the Federal Emergency Management Agency (FEMA) is offering free enterprise-level access to [ESRI geospatial mapping software](#) for all state, local, territorial, and tribal governments for 6 months.

In a COVID-19 environment, creative solutions may be required. Consider:

- ☐ Collocating a ballot drop box with drop boxes set up for taxes and public utilities.
- ☐ Partnering with businesses or locations that have already implemented social distancing practices, such as grocery stores and banks.

A great example of using existing spaces comes from [Madison, Wisconsin](#). The city's libraries were shut down owing to COVID-19. The City Clerk's office decided to capitalize on locations that were already secure and located in places familiar to city residents. Working in partnership with the library, they used the book drops from three of the city's public libraries and turned them into temporary ballot drop boxes. If you choose to do something similar, be sure to ask questions about the library's security to ensure ballots dropped off at library locations remain secure at all times.

Timeline: The locations of drop boxes should be finalized in time to be included in the instructions with your mail ballot packet—typically 80 days before the election.

## Who can collect and drop off a mailed ballot on behalf of a voter?

Voters who are unable to return a ballot in person or get it to a postal facility in time for it to be counted may, depending on state law, may be able to entrust the voted ballot to someone else to help them deliver it—an agent or designee. Note that, as of March 30, 2020:

- Twenty-seven states permit an absentee ballot to be returned by a designated agent, which can be a family member, attorney, or care provider.
- Nine states permit an absentee ballot to be returned by the voter's family member.
- One state specifies that an absentee ballot can only be returned in person or by mail.
- Thirteen states do not expressly address this issue.

Some states that allow a designated agent to return a voted ballot on behalf of the voter restrict the number of ballots that can be deposited by that person at one time in a drop box.

If you are considering the use of ballot drop boxes, you should review your existing laws and requirements and determine whether emergency changes may be necessary. A full list of state practices can be found at the National Conference of State Legislators (NCSL) website listed in the *Additional Resources* section.

## What equipment and supplies are needed for ballot drop boxes?

Whether you are collecting ballots just from a USPS facility, ballot drop boxes, or both, you will need ballot drop box collection teams. Ideally, these are bipartisan teams (poll workers or temporary workers) hired to drive a collection route and pick up ballots on a regular basis. Each of these teams will need:

- ☐ Vehicle such as a van or SUV where the seats can be laid flat (county owned or rented)
- ☐ Radio or cell phone
- ☐ Secure ballot collection bag/box
- ☐ Security seals
- ☐ Chain of custody procedures/forms
- ☐ Personal protective equipment (e.g. disposable, sterile gloves), as appropriate and in accordance to current CDC guidance

Timeline: Reservations should be made as soon as possible if you plan to rent vehicles, radios, or cell phones—no later than 35 days before the election.

Outlined below is a list of the typical items you will need to rent or buy, depending on the type of drop box or drop-off location you are installing.

### STAFFED – INDOOR TEMPORARY BALLOT DROP BOX

When demand for a ballot drop box is low, a temporary ballot box located inside is a good solution. These boxes should be constructed of durable material and include a key or combination lock as well as a way to securely fasten the box to prevent it from being moved or tampered with. This type of box looks similar to the example pictured here. In addition to purchasing or renting the **ballot box**, you will need:

- ☐ Padlock and keys (if not included)
- ☐ Bike chain or some other way to fasten the box to prevent it from being removed (if not staffed)
- ☐ Security seals

Timeline: Depending on the lead time required by the manufacturer, boxes may need to be ordered 3 months in advance—90 days before the election.



### OUTDOOR, TEMPORARY DRIVE-THROUGH DROP OFF

A drive-through drop-off location is an easy way to keep traffic flowing when demand for a ballot drop box is at its peak, especially on Election Day. This drive-through is typically set up in a parking lot or a street depending on the location.

The team staffing the site accepts ballots from voters as they pull through, depositing them directly into a ballot box. For voters who prefer placing the ballot directly into the box

themselves, the portable ballot box is brought to the car window. In addition to the supplies listed below, you will need a bipartisan team of at least two to three to support the drop-off site.

- ☐ Pop-up tent
- ☐ Table
- ☐ Chairs
- ☐ Ballot box
- ☐ Road signs
- ☐ Orange cones
- ☐ Flashlights
- ☐ High-visibility vests for workers
- ☐ Weather appropriate support—propane heater, rain gear, lanterns
- ☐ Personal protective equipment such as gloves, masks, and hand sanitizer, as appropriate and in accordance with current CDC guidance



Timeline: Most of these items can be purchased or rented locally. You will need some lead time to arrange for traffic signs and cones if they will be borrowed from law enforcement.

#### UNSTAFFED, 24-HOUR BALLOT DROP BOX

In high-demand areas where votes are or will be cast primarily by mail, installing a permanent ballot drop box—one that can be accessed by voters 24/7—is a good solution. These boxes should be constructed of durable material such as steel and be permanently cemented into the ground. This type of **ballot drop box** typically costs about \$6,000 each. In addition to purchasing the 24-hour box you will need:

- ☐ Video surveillance camera
- ☐ Media storage device (for recorded video)
- ☐ Decal (branding and information)
- ☐ Extra keys for opening slot and access door
- ☐ Security seals

A good example of the security considerations associated with this type of box, pictured on the right, can be found in the [California Code of Regulations](#).



Timeline: Depending on the lead time required by the manufacturer, boxes may need to be ordered 4–6 months in advance—about 150 days before the election.

## Election Night and Closing Boxes

You need to give special consideration to returning temporary ballot drop boxes and locking permanent drop boxes on election night. Organizing teams from other county or city departments is one way to accomplish this. Essentially, you need bipartisan teams to be at every ballot drop-off location precisely when polls close. Their responsibilities include:

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- ☐ Identifying the voter or car in line at the time polls close and ensuring they have the opportunity to deposit their ballots.
- ☐ Retrieving the temporary indoor boxes and returning them to the counting facility.
- ☐ Locking the drop slot on the 24-hour boxes and transferring ballots to a ballot transfer bag or box and returning them to the counting facility.
- ☐ Completing chain of custody forms.

## Security Considerations

Ballot drop boxes must be secured and locked at all times. Only an election official or a designated ballot drop box collection team should have access to the keys and/or combination of the lock. In addition to locks, all drop boxes should be sealed with one or more tamper evident seals.

Ideally, unstaffed 24-hour drop boxes should be located in areas with good lighting and be monitored by video surveillance cameras. When this is not feasible, positioning the box close to a nearby camera is a good option. Also consider placing it in a high traffic area and inviting local law enforcement to make regular observations.

Try to place indoor drop boxes in locations where they can be monitored by a live person. When ballot boxes are unstaffed and not being monitored, the box should be securely fastened to a stationary surface or immovable object in a way that prevents moving or tampering.

## Chain of Custody

- ☐ Chain of custody logs must be completed every time ballots are collected.
- ☐ All ballot collection boxes/bags should be numbered to ensure all boxes are returned at the end of the shift, day, and on election night.
- ☐ Team members should sign the log and record the date and time, security seal number at opening, and security seal number when the box is locked and sealed again.

## Safety

- ☐ For drive-through locations, coordinate a traffic plan with public safety officials.
- ☐ Consider colored vests for ballot collection teams.
- ☐ Provide a radio or cell phone so you can stay in contact with collection teams at all times.

## Other Considerations

Start thinking about a ballot collection plan. This should include:

- ☐ Arranging with the USPS to designate a daily collection point for returned ballots and undelivered ballots.
- ☐ Hiring bipartisan teams with clean driving records (review your jurisdiction's requirements for driving as an employee).
- ☐ Determining the frequency of collection prior to Election Day.
- ☐ Determining the frequency of collection on Election Day.
- ☐ Ensuring you have collection teams assigned to be at each location when polls close on Election Day.
- ☐ Establishing best practices for transferring ballots back to the counting facility.
- ☐ Preparing driving routes and accompanying maps or directions.
- ☐ Determining how to keep collection teams and other staff safe in a COVID-19 environment.
- ☐ Reviewing your state laws regarding electioneering, campaigning, petition signature gathering, etc. at or near a ballot drop-off site.
- ☐ Developing a plan for helping voters find ballot drop-off locations. This can include a list of locations in the mail ballot packet as well as an online lookup tool with maps and directions. Two examples are [Lewis County, WA](#) (rural county) and [King County, WA](#) (large urban county).

## Additional Resources

- ☐ [Ballot Drop Box Retrieval Training Presentation](#)—A good overview of the ballot collection process from the Orange County (California) Registrar of Voters
- ☐ [Open Mic Session| Ballot Drop Boxes](#)—video that reviews best practices for ballot drop boxes in Washington State
- ☐ [Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options](#)—NCSL website dedicated to absentee voting and all-mail voting

# EXHIBIT 16

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## The Rise of Ballot Drop Boxes Due to the Coronavirus

[lawfareblog.com/rise-ballot-drop-boxes-due-coronavirus/](https://lawfareblog.com/rise-ballot-drop-boxes-due-coronavirus/)

August 27, 2020



A ballot drop box in Boulder, Colorado (Paul Sableman/<https://flic.kr/p/PRx48V>/CC BY 2.0/<https://creativecommons.org/licenses/by/2.0/>)

Lawfare is partnering with the Stanford-MIT Healthy Elections Project to produce a series on election integrity in the midst of the coronavirus crisis. The Healthy Elections Project aims to assist election officials and the public as the nation confronts the challenges that the coronavirus pandemic poses for election administration. Through student-driven research, tool development, and direct services to jurisdictions, the project focuses on confronting the logistical challenges faced by states as they make rapid transitions to mail balloting and the creation of safe polling places. Read other installments in the series [here](#).

The absentee ballot drop box is an increasingly popular option for voters to submit completed mail ballots to election officials without using the mail. While some states have successfully used ballot drop boxes for years, the coronavirus pandemic has expanded the practice throughout the United States, particularly as election officials have expressed concern about the U.S. Postal Service's (USPS's) capacity to reliably deliver absentee ballots on time. Although some states, such as Tennessee, still prohibit the use of ballot drop boxes, citing risk of voter fraud without clear evidence, at least 34 states have used or plan on using ballot drop boxes this year. In the upcoming election, the use of drop boxes will likely be larger than in any election in American history.

During the 2016 general election, nearly one in six voters nationwide cast their ballot using drop boxes, and this figure will likely rise in 2020. Ballot drop boxes are secure, locked structures that allow voters in many states to cast completed absentee ballots without relying on the USPS for delivery. According to the Election Assistance Commission (EAC), some voters prefer ballot drop boxes to mail delivery due to "concern[s] about meeting the postmark deadline and ensuring that their ballot is returned in time to be counted." Many states, for that reason, offer voters the option to drop off absentee ballots up until Election Day. Drop boxes come in one of two forms: either staffed, indoor drop-off locations or unstaffed, outdoor boxes that are locked, anchored, tamper-proof, and often monitored by 24-hour video surveillance.

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In some states, ballot drop boxes have been implemented successfully for years and serve as a popular option for many voters. In Colorado, for example, nearly 75 percent of all voters in the 2016 general election cast their ballots using a drop box. In Washington state, ballot drop box usage rates have also increased over time, from 37.7 percent overall in the 2012 general election to 56.9 percent in 2016. In other states, however—especially those without a history of robust absentee voting—the use of ballot drop boxes is in its infancy or nonexistent. Yet, due to the coronavirus, an increasing number of states have ramped up their use of ballot drop boxes in order to give voters the option to vote without risking coronavirus transmission in person or potentially overwhelming the USPS with mail-in votes.

Our full report on ballot drop boxes can be found [here](#).

#### Drop Box Usage by State

The National Conference of State Legislatures reports that only eight states—Arizona, California, Colorado, Hawaii, Montana, New Mexico, Oregon and Washington state—explicitly permit or require ballot drop boxes by statute or regulatory guidance. In practice, however, many more states use ballot drop boxes regularly, either through statewide practice (without specific statutory language) or on a county-by-county basis. According to the Brookings Institution, “[d]rop-off boxes, mail, and in-person channels” to vote are available in at least 16 states as of Aug. 15, including Alabama, Alaska, Delaware, Florida, Georgia, Maryland, Michigan, Nebraska, Ohio and Utah, as well as Washington, D.C.

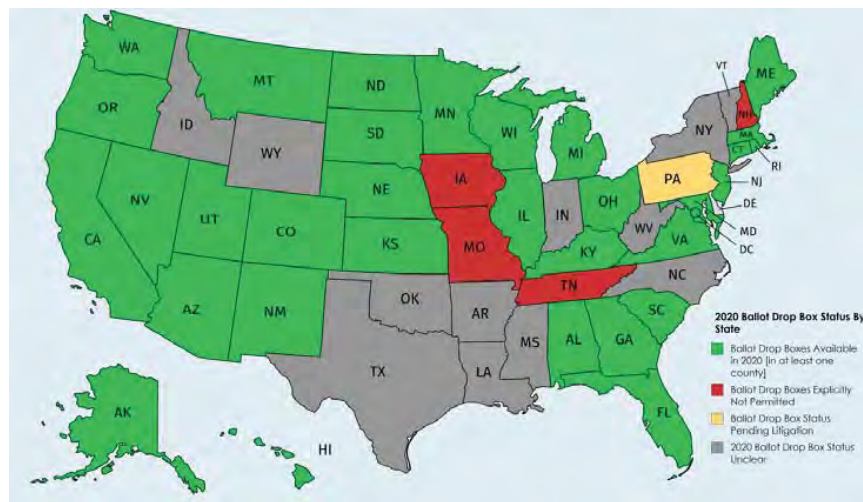
Many more states do not offer ballot drop boxes statewide but have implemented the drop box model in one or more counties or cities, including Illinois (in Chicago), Iowa (in Cedar Rapids and Marion), Kansas (in Sedgwick County), Maine (in Bangor), Minnesota (through a drive-through ballot drop off in Minneapolis), Nevada (in Clark County), Pennsylvania (in Philadelphia and several counties, pending recent litigation), South Carolina (in Charleston County), South Dakota (in Lincoln County), Virginia (in Arlington) and Wisconsin (in Milwaukee County, Sheboygan County and many cities). Many other states have implemented new ballot drop box systems since the start of the pandemic, including Connecticut, Kentucky, New Jersey, New Mexico, North Dakota and Rhode Island.

Altogether, at least 34 states (and Washington, D.C.) have used or plan on using ballot drop boxes in one or more locations in 2020. And a few more states, including New York, have pending legislation that may lead to the implementation of drop boxes before November’s general election.

By contrast, four states have explicitly disallowed the use of ballot drop boxes in the upcoming elections. Tennessee, for example, will not allow drop boxes due to concerns of fraud. Tennessee’s Secretary of State Tre Hargett cited without evidence the risk of individuals illegally dropping off ballots on behalf of other voters. “We believe it’s a great security measure to have someone returning their own ballot by the United States Postal Service,” he said. Similarly, New Hampshire will not allow voters to leave a ballot at town or city hall drop off boxes after hours; ballots must be either mailed in or hand-delivered directly to an election official. Missouri’s secretary of state also chose not to distribute the 80 drop boxes the state had purchased because state law requires ballots to be returned by mail. Finally, although more than one-third of Iowa county auditors provided ballot drop boxes during the state’s June primary and in previous elections, Iowa’s secretary of state will no longer allow counties to set up ballot drop boxes for November’s election. Instead, a spokesperson for the secretary of state said that election officials will only be permitted to set up a “no-contact delivery system for voters in their office to use during regular business hours.”

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*At least 34 states have used or plan on using ballot drop boxes in one or more locations in 2020, while just four states explicitly prohibit the practice. Credit: Created by author using mapchart.net*

#### Ballot Drop Box Types

Three types of ballot drop boxes are typically used during early voting and up until Election Day.

- **Indoor, Temporary Ballot Drop Boxes:** These boxes are staffed and monitored by election officials, available during regular business hours, and located in various buildings known to voters, such as county and city office buildings, other government facilities, early voting locations and Election Day voting sites. Some states, such as California, allow voters to bring their completed absentee ballots to a polling place on Election Day and drop them off at a designated drop box. This often lets voters bypass in-person voting lines and reduces overall wait times.
- **Outdoor, Temporary Ballot Drop Boxes:** These drop-off sites are usually staffed drive-through locations that allow voters to quickly give officials their completed ballots “when demand for a ballot drop box is at its peak, especially on Election Day,” according to the EAC. These sites are also generally accessible to voters on bikes as well as walkers. Minneapolis created two such locations during Minnesota’s August primary in order to help keep voters socially distant and to ease in-person lines on Election Day.
- **Outdoor, Permanent Ballot Drop Boxes:** These boxes are unstaffed, secure structures placed in high-visibility and high-demand areas, such as locations near public transportation, college campuses and public buildings (including community centers and libraries). The EAC recommends that these boxes be placed in well-lit areas that are accessible to voters. In addition, the EAC notes that unstaffed boxes should be durable (constructed from steel or other strong materials), permanently bolted into the ground and built to be tamper-proof. These drop boxes are also sometimes used for multiple purposes, such as collecting tax and public utilities payments at other times of the year. In Madison, Wisconsin, for example, the city successfully converted public library book return boxes into secure absentee ballot drop boxes after the coronavirus shut down the city’s libraries.

#### The Safety and Security of Ballot Drop Boxes

Ballot drop boxes generally weigh more than 600 pounds and are built to be more secure than the typical USPS mail box. For example, an SUV in Washington state crashed into one such box last year, but both the box and its contents survived. They are also typically weather resistant and fire suppressant. The tamper-proof mechanisms vary by manufacturer, but they often include special locks to prevent opening, as well as tamper-evident seals and one-way entrance slots. In addition, the EAC recommends that permanent ballot drop boxes be equipped with video monitoring technology or, if not feasible, be positioned close to a nearby security camera or monitored by local law enforcement. As such, ballot drop boxes are extremely safe against misuse.

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*A ballot drop box in Lane County, Oregon, 2006 (Chris Phan/<https://flic.kr/p/qsq2m/> (CC BY-SA 2.0/<https://creativecommons.org/licenses/by-sa/2.0/>))*

Given their utility and high demand, permanent ballot drop boxes typically cost about \$6,000 each and, if custom made, may need to be ordered four to six months before an election. Even after manufacturing, the deployment process itself can take up to eight weeks due to installation time and the time needed to acquire necessary security equipment. Manufacturers for these boxes include Vote Armor, Ballot Drops and Kingsley.

### **Drop Box Best Practices**

The EAC recommends that election officials install one drop box for every 15,000 to 20,000

registered voters. Additional drop boxes should be added to areas with historically low rates of vote-by-mail usage, and counties should consider using demographic data and altering the placement formula based on the different needs of urban and rural regions. When deciding where to place new ballot drop boxes, officials can use the U.S. Census Bureau Interactive Workforce Map and other governmental data to best position drop boxes where voters live, work and travel on a typical day.

Due to concerns about the integrity of the ballot delivery process from drop boxes to election officials, the EAC also recommends that bipartisan teams be positioned at every ballot drop box when polls close and that every state and county establish a “chain of custody” plan to ensure that the movement of all ballots is logged and can be tracked at all times. In Connecticut, for instance, clerks empty drop boxes for delivery to other election officials several times a day throughout the Early Election period, and in the days before Election Day, officials emptied boxes every hour in Hartford to avoid overflow and ensure timely delivery of absentee ballots.

Several states with a history of vote-by-mail and ballot drop boxes provide additional best practices. Pierce County’s auditor in Washington state, for example, recommended in 2014 that counties open ballot drop boxes at the start of Early Voting, use daily pick-ups to track the frequency of use, and train election officials and political party observers on all relevant ballot drop box procedures. The auditor also advised election officials to use a “website, local voters’ pamphlet, and ballot inserts to inform voters of box locations,” noting that counties can also create an interactive online map with photographs, driving directions and deadline reminders for all votes.

### **The Legality of Third Parties Delivering Ballots**

During the coronavirus pandemic, some voters—especially individuals at risk for severe illness—may wish to designate someone else to deliver their ballot to a drop box on their behalf. The legality of third parties delivering ballots into drop boxes varies widely by state, however.

As of March 2020, 27 states allow absentee ballots to be returned by a designated agent, which can be a family member, care provider or attorney; nine states allow an absentee ballot to be returned by a voter’s family member; 13 states do not explicitly address this issue; and one state, Alabama, specifies that no one other than the absentee voters themselves may return their ballots. A full list of state requirements can be found on the NCSL website.

### **The Rise of Drop Boxes in 2020 Due to the Coronavirus**

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During the pandemic, several state legislatures and governors have expanded the use of ballot drop boxes for November's general election:

- Michigan election officials recommended that voters use drop boxes instead of the USPS during its August primary due to mail delivery backlogs that risked invalidating late deliveries. The state now has more than 750 ballot drop box locations, most of which are 24/7, outdoor fixtures. As part of its expansion, Michigan used \$2 million of its federal CARES Act funding "for cities to buy additional equipment to make obtaining and processing absentee ballots easier, such as ballot drop boxes, high-speed counting machines and automatic letter openers."
- Georgia installed 144 absentee boxes through a statewide grant program, which allows counties to apply for \$3,000 to offset 75 percent of the cost of new ballot drop boxes. Georgia's secretary of state, Brad Raffensperger, "encourage[s] every county to take advantage of the grant program and install a drop box ahead of the November elections."
- New Jersey state officials announced that at least 105 more drop boxes would be added before November.
- Connecticut installed around 200 drop boxes with CARES Act funding in time for the Aug. 11 primary.
- Kentucky's 2020 general election plan includes the use of ballot drop boxes for the first time, with each county's drop box locations to be decided by the respective county clerk.
- New Mexico is launching a pilot program to use ballot drop boxes for the general election.
- North Dakota allowed voters to return ballots via drop box during the June primary, but voters were required to contact their county auditor for drop box locations.
- Maryland's state elections administrator requested \$40,500 in additional funding from the state to purchase additional ballot drop boxes.
- Rhode Island's Board of Elections authorized drop boxes for the June 2 primary in all 47 polling places and at the 39 Board of Canvassers locations, one of which is located in each city or town hall.
- Louisiana's secretary of state has taken steps to limit vote-by-mail options but nonetheless has proposed curbside drop-off options for absentee ballots.

In other states, the use of ballot drop boxes during the 2020 general election has been more

controversial. In Ohio, after a recent directive by Secretary of State Frank LaRose, each county will be permitted to have only one ballot drop box. This limitation has raised ballot access concerns, particularly for voters without cars. For example, Delaware County's sole drop box is behind the county's Board of Elections building, 2.5 miles away from the city of Delaware and "nowhere within walking distance of the city's residents." LaRose claims that he does not have the legal authority to expand drop box locations without legislative action, but Ohio's Democratic chairman, David Pepper, says that the secretary of state has "spent the last month doing everything he could to stop drop boxes, delaying it for almost a month, and then unilaterally only saying one per county without a legal opinion."

*A bicyclist drops off California 2014 primary election ballot in a ballot drop box (George Kelly/ <https://flic.kr/p/nT8Cbx/CC BY-ND 2.0/https://creativecommons.org/licenses/by-nd/2.0/>)*

### Recent Litigation Over Ballot Drop Boxes

During the June 2 primary election in Pennsylvania, the city of Philadelphia installed 11 ballot

drop boxes around the city, and about 20 counties introduced drop boxes to ease the burden of a surge in mail voting. Since then, the Trump reelection campaign has sued Pennsylvania in federal court, arguing that the use of ballot drop boxes during the primary was unconstitutional and asking the court to bar their use in the general election. The complaint alleges that "inadequately noticed and unmonitored ad hoc drop boxes" and "the lack of statewide standards governing the location of drop boxes" violates the equal protection clause of the Fourteenth Amendment. The suit also claims that drop boxes "have increased the potential for ballot fraud or tampering" and that the state's mail-in voting system "provides fraudsters an easy opportunity to engage in ballot harvesting, manipulate or destroy ballots, manufacture duplicitous votes, and sow chaos."

A federal judge ordered the Trump campaign to produce evidence of voting fraud occurring via drop boxes. After the Trump campaign "failed to produce any evidence of vote-by-mail fraud in Pennsylvania," the judge put the case on hold pending resolution in Pennsylvania state court. President Trump has also recently tweeted concerns about ballot drop boxes, alleging that they "make it possible for a person to vote multiple times" and are a "big fraud," but Twitter has since placed a public interest notice on the tweet for violating its civic integrity policy by "making misleading health claims that could potentially dissuade people from participation in voting."

### Conclusion

10/4/2020

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Due to a combination of coronavirus safety concerns, an increase in expected absentee voting generally, and more recent questions about the capability of the USPS to deliver all absentee ballots in a timely manner, the use of ballot drop boxes during the 2020 general election will likely be larger than in any election in American history.

As states and counties prepare for an influx in absentee ballot requests and look for various avenues to reduce potential backlogs of incoming mail-in ballots, ballot drop boxes are a viable option for many states and voters. Still, states must recognize the time it takes for manufacturers to produce and deliver these boxes, the importance of voter outreach and education about new drop box options, and the potential risk of future litigation.

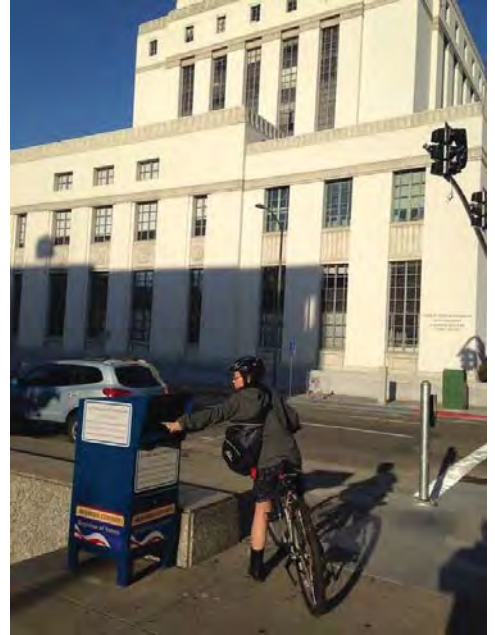
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2020 Election

Axel Hufford is a student at Stanford Law School and a summer legal fellow at the Civil Rights Bureau of the New York State Office of the Attorney General.

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# EXHIBIT 17



GOVERNOR GREG ABBOTT

July 27, 2020

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
2:00pm O'CLOCK

JUL 27 2020

Secretary of State

The Honorable Ruth R. Hughs  
Secretary of State  
State Capitol Room 1E.8  
Austin, Texas 78701

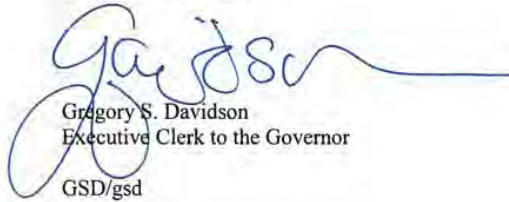
Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation suspending certain statutes concerning elections on November 3, 2020.

The original of this proclamation is attached to this letter of transmittal.

Respectfully submitted,

  
Gregory S. Davidson  
Executive Clerk to the Governor  
GSD/gsd

Attachment

**PROCLAMATION**  
BY THE  
**Governor of the State of Texas**

---

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined that COVID-19 continues to represent a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, pursuant to legislative authorization under Chapter 418 of the Texas Government Code, I have issued executive orders, proclamations, and suspensions of Texas laws in response to the COVID-19 disaster, aimed at using the least restrictive means available to protect the health and safety of Texans and ensure an effective response to this disaster; and

WHEREAS, Section 41.001(a) of the Texas Election Code provides that a general or special election in this state shall be held on a uniform election date, and the next uniform election date is occurring on November 3, 2020; and

WHEREAS, I issued a proclamation on March 18, 2020, suspending Sections 41.0052(a) and (b) of the Texas Election Code and Section 49.103 of the Texas Water Code to the extent necessary to allow political subdivisions that would otherwise have held elections on May 2, 2020, to move their general and special elections for 2020 only to the November 3, 2020 uniform election date; and

WHEREAS, Texas law provides that eligible voters have a right to cast a vote in person; and

WHEREAS, as counties across Texas prepare for the upcoming elections on November 3, 2020, and establish procedures for eligible voters to exercise their right to vote in person, it is necessary that election officials implement health protocols to conduct elections safely and to protect election workers and voters; and

WHEREAS, in order to ensure that elections proceed efficiently and safely when Texans go to the polls to cast a vote in person during early voting or on election day for the November 3, 2020 elections, it is necessary to increase the number of days in which polling locations will be open during the early voting period, such that election officials can implement appropriate social distancing and safe hygiene practices; and

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SECRETARY OF STATE  
2:00 PM O'CLOCK  
JUL 27 2020

Governor Greg Abbott  
July 27, 2020

Proclamation  
Page 2

WHEREAS, Section 85.001(a) of the Texas Election Code provides that the period for early voting by personal appearance begins 17 days before election day; and

WHEREAS, Section 86.006(a-1) of the Texas Election Code provides that a voter may deliver a marked mail ballot in person to the early voting clerk's office while the polls are open on election day; and

WHEREAS, in consultation with the Texas Secretary of State, it has become apparent that for the November 3, 2020 elections, strict compliance with the statutory requirements in Sections 85.001(a) and 86.006(a-1) of the Texas Election Code would prevent, hinder, or delay necessary action in coping with the COVID-19 disaster, and that providing additional time for early voting will provide Texans greater safety while voting in person; and

WHEREAS, pursuant to Section 418.016 of the Texas Government Code, the legislature has expressly authorized the Governor 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;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and laws of the State of Texas, do hereby suspend Section 85.001(a) of the Texas Election Code to the extent necessary to require that, for any election ordered or authorized to occur on November 3, 2020, early voting by personal appearance shall begin on Tuesday, October 13, 2020, and shall continue through the fourth day before election day. I further suspend Section 86.006(a-1) of the Texas Election Code, for any election ordered or authorized to occur on November 3, 2020, to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk's office prior to and including on election day.

The Secretary of State shall take notice of this proclamation and shall transmit a copy of this order immediately to every County Judge of this state and all appropriate writs will be issued and all proper proceedings will be followed to the end that said elections may be held and their results proclaimed in accordance with law.



IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 27th day of July, 2020.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT  
Governor of Texas

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
2:00 PM O'CLOCK  
JUL 27 2020

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*Governor Greg Abbott*  
July 27, 2020

*Proclamation*  
Page 3

ATTESTED BY:

A handwritten signature in black ink, appearing to read 'R. Hughs', is written over a horizontal line.

RUTH R. HUGHS  
Secretary of State

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
2:00 pm O'CLOCK

JUL 27 2020

# EXHIBIT 18

10/4/2020

Case 1:20-cv-01015-BP Document 11-18 Filed 10/05/20 Page 2 of 4

76° 87° 90°

Search Site

## Texas Gov. Abbott limits drop-off sites for early mail votes

by CBS Austin  
Thursday, October 1st 2020

AA



AUSTIN, TX - MAY 18: Texas Governor Greg Abbott announces the reopening of more Texas businesses during the COVID-19 pandemic at a press conference at the Texas State Capitol in Austin on Monday, May 18, 2020. Abbott said that childcare facilities, youth camps, some professional sports, and bars may now begin to fully or partially reopen their facilities as outlined by regulations listed on the Open Texas website. (Photo by Lynda M. Gonzalez-Pool/Getty Images)

Gov. Greg Abbott issued a proclamation on Thursday he says is meant to enhance ballot security for the in-person delivery of marked mail ballots for the November 3rd election.

That mean counties across Texas may only have one in-person site for ballot drop-offs, and poll watchers must be allowed to observe the process.

Critics, though are calling the tactic "blatant voter suppression."

Under this proclamation, beginning on October 2nd, mail ballots that are delivered in person by voters who are eligible to vote by mail must be delivered to a single early voting clerk's office location as publicly designated by a county's early voting clerk.

10/4/2020

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ADVERTISING

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90°

Search Site

The proclamation also requires early voting clerks to allow poll watchers to observe any activity conducted at the early voting clerk's office location related to the in-person delivery of a marked mail ballot.

RELATED: No straight-ticket voting for Texas' 2020 election, federal appeals court says

This new order modifies Abbott's July 27 order that acknowledged the pandemic's danger by adding six days of early voting as well as waiving a state law limiting mail-in ballot drop-off to Election Day only.

Travis County had designated four in-person dropoff locations:

5501 Airport Blvd, Austin, TX 78751- Tax Office drive through payment lanes

Travis County 700 Lavaca Parking Garage, Austin, TX 78701- Lavaca entrance

Travis County 700 Lavaca Parking Garage, Austin, TX 78701- Guadalupe entrance

Travis County 1010 Lavaca Parking Lot, Austin, TX 78701- Enter from W. 11th St. between Guadalupe and Lavaca

"The State of Texas has a duty to voters to maintain the integrity of our elections," said Governor Abbott. "As we work to preserve Texans' ability to vote during the COVID-19 pandemic, we must take extra care to strengthen ballot security protocols throughout the state. These enhanced security protocols will ensure greater transparency and will help stop attempts at illegal voting."

The Texas Democratic Party Chair Gilberto Hinojosa issued the following statement:

"Republicans are on the verge of losing, so Governor Abbott is trying to adjust the rules last minute. Courts all over the country, including the Fifth Circuit yesterday, have held that it is too late to change election rules, but our failed Republican leadership will try anyway. Make no mistake, Democracy itself is on the ballot. Every Texan must get out and vote these cowards out!

"Governor Abbott and Texas Republicans are scared. We are creating a movement that will beat them at the ballot box on November 3, and there's nothing these cheaters can do about it."

#### MORE TO EXPLORE

<https://ktxs.com/news/local/texas-gov-abbott-shuts-down-drop-off-sites-for-early-mail-votes>

2/3

10/4/2020

Case 1:20-cv-01015-BP Document 11-18 Filed 10/05/20 Page 4 of 4

a corpse

76°

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90°

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One person killed after early morning accident

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# EXHIBIT 19

From: [Charles Pinney](#)  
To: [Donna Stanart](#)  
Subject: Re: Questions regarding mail in ballots (EI Response)  
Date: Wednesday, August 26, 2020 9:30:48 AM

---

Hello,

I'll answer your two questions in order:

1. Election Code 86.011(d) is not necessarily a "cure" process, but it does provide a procedure under which the early voting clerk can take certain steps to allow a voter to address certain deficiencies on the carrier envelope after that carrier envelope has been received by the early voting clerk.

The early voting clerk has a number of different options available under this section, including delivering the carrier envelope back to the voter either in-person or by mail, or notifying the voter by telephone so the voter can correct the defect on the carrier envelope or cancelling that ballot by mail in-person at the early voting clerk's office. Whichever procedure is used, the corrected carrier envelope must be received before the deadline for receiving the ballot by mail. This procedure can only be performed by the early voting clerk and must occur before the ballot is sent to the ballot board. Once the ballot is sent to the ballot board, these procedures are no longer available.

The early voting clerk is not required to implement these procedures and has the option of determining which of those procedures they wish to implement. However, whichever procedure they implement must be applied consistently to all voters in the same situation.

2. Election Code 86.006(a-1) provides that the voter may hand-deliver a marked ballot by mail to the early voting clerk's office while the polls are open on election day, but they must present voter ID at the time that they do so. Under the Governor's July 27, 2020 proclamation, for this November election, that 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 at the early voting clerk's office, this may include satellite offices of the early voting clerk. Typically, this will only happen if the early voting clerk is the county clerk because county clerks will occasionally have satellite offices elsewhere in the county, but it is rare for an elections administrator to have a satellite office. A county clerk's satellite office in a county where the elections administrator is the early voting clerk for that election would not be a valid location for hand-delivery of mail ballots because the elections administrator is the early voting clerk in that situation and the county clerk's satellite office is not the "early voting clerk's office" in that situation. Ultimately, the availability of hand-delivery of mail ballots at a county clerk's satellite office depends on the identity of the early voting clerk for that specific election.

Please let us know if you have any other questions about this issue or anything else relating to the election. You can reach us at [Elections@sos.texas.gov](mailto:Elections@sos.texas.gov) or 1-800-252-8683, or you can visit our

website at [sos.state.tx.us/elections/index.shtml](https://sos.state.tx.us/elections/index.shtml).

Thanks,

**Chuck Pinney**

Attorney -- Elections Division

Office of the Texas Secretary of State

1019 Brazos Street | Rudder Building, 2nd Floor | Austin, Texas 78701

1.800.252.VOTE (8683)

[elections@sos.texas.gov](mailto:elections@sos.texas.gov) | [www.sos.texas.gov/elections](https://www.sos.texas.gov/elections)



*The information contained in this email is intended to provide advice and assistance in election matters per §31.004 of the Texas Election Code. It is not intended to serve as a legal opinion for any matter. Please review the law yourself, and consult with an attorney when your legal rights are involved.*

---

**From:** Donna Stanart <donnastanart1@gmail.com>

**Sent:** Tuesday, August 25, 2020 10:26 AM

**To:** Charles Pinney <CPinney@sos.texas.gov>

**Subject:** Questions regarding mail in ballots

**CAUTION:** This email originated from OUTSIDE of the SOS organization. Do not click on links or open attachments unless you are expecting the email and know that the content is safe. If you believe this to be a malicious or phishing email, please send this email as an attachment to [Informationsecurity@sos.texas.gov](mailto:Informationsecurity@sos.texas.gov).

Chuck,

Thanks so much for taking my call.

I had two questions we touched on today.

1. In regards to mail in ballots being "cured" during voting, is it the responsibility of the County Clerk or the Ballot Board to call that voter to fix their ballot before it's counted? Also, you had mentioned consistency in that regard. Can you touch on that again?

2. When dropping off mail in ballots, in a county with a county clerk, we know that if there are annexes it is acceptable for voters to drop off their ballots up to election day at any of these annexes. If a county clerk type county were to transition into an election administration before the election, they would not be able to use the county clerk annexes and only be able to drop off at their main office. Is this correct?

Thank you!

--

Donna Stanart

(713) 703 - 9840 - Cell

[donnastanart1@gmail.com](mailto:donnastanart1@gmail.com)

# EXHIBIT 20



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

KYLE D. HAWKINS  
Solicitor General

(512) 936-1700  
Kyle.Hawkins@oag.texas.gov

September 30, 2020

**Via Electronic Filing**

Blake Hawthorne, Clerk  
Supreme Court of Texas

**Re: No. 20-0751, *In re Hotze, et al.***

Dear Mr. Hawthorne:

On September 28, 2020, the Court invited the Solicitor General to file a brief expressing the views of the State on three questions presented in this mandamus petition.<sup>1</sup>

The view of the State is that the mandamus petition should be denied or dismissed for lack of jurisdiction. Each of Relators' claims fails on the merits. *See infra* I. But the Court should not reach the merits because Relators lack standing and, independently, are not entitled to mandamus relief. *See infra* II. Viewing those matters through the mandamus standard, Relators have not shown an entitlement to the relief they seek.

**I. Respondent's alleged actions are lawful.**

In the State's view, each of the three questions the Court presented to the State should be answered in the negative.

A. The Court first asks whether, "in light of the Governor's July 27, 2020 proclamation, . . . allowing early voting to begin on October 13, 2020, violates Texas Election Code section 85.001(a)." The Governor's Proclamation "suspend[ed] Section 85.001(a) of the Texas Election Code to the extent necessary to require that . . . early voting by personal appearance shall begin on Tuesday, October 13, 2020." The Governor has authority to suspend this statute, and his Proclamation to that

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<sup>1</sup> No fee has been paid or will be paid for the preparation of this brief.

Page 2

effect has “the force and effect of law” under the Texas Disaster Act of 1975. Tex. Gov’t Code § 418.012.

The Legislature expressly granted the Governor the authority to suspend “*any regulatory statute* prescribing the *procedures* for conduct of state business” when necessary to respond to a declared disaster. Tex. Gov’t Code § 418.016(a) (emphases added); *see also* Att’y Gen. Op. KP-191 (2018) (concluding that Section 418.016(a) authorized a suspension of the Texas Election Code that yielded deadlines different than those provided by statute). Section 85.001(a) is a statute regulating the procedures for conducting an election, insofar as it specifies a beginning point for early voting. The Governor’s Proclamation extends the time for early voting by suspending that beginning point effective October 13, 2020.

Relators are wrong to argue that the suspension power in section 418.016(a) is unconstitutional on its face and as employed in the Proclamation. *See* Pet. 20–24. As explained in Relators’ parallel mandamus action against the Secretary of State, section 418.016(a)—and the Disaster Act as a whole—represents a proper delegation because the Governor’s power is cabined by reasonable standards from the Legislature. *See* Attachment A at 14–16 (Resp. to Pet. for Writ of Mandamus, *In re Hotze*, No. 20-0739 (filed Sept. 28, 2020)).

Specifically, legislative powers can be delegated where “because of the nature of the subject of legislation [the Legislature] cannot practically and efficiently exercise such powers.” *Hous. Auth. of City of Dallas v. Higginbotham*, 143 S.W.2d 79, 87 (Tex. 1940). “[A]s long as the Legislature establishes reasonable standards to guide the agency in exercising those powers,” it may delegate legislative powers to another branch. *FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 873 (Tex. 2000). Moreover, the Legislature can delegate “the power to grant exceptions . . . of a fact-finding and administrative nature.” *Williams v. State*, 176 S.W.2d 177, 185 (Tex. Crim. App. 1943) (holding that the Pink Bollworm Act did not violate Texas Constitution article I, section 28 by empowering the Governor and the Agriculture Commissioner to designate zones where growing cotton would not violate state law).

Under these principles, section 418.016(a) is a proper delegation during a state of disaster that requires quick and decisive action. In empowering the Governor to suspend regulatory statutes that would impede disaster-recovery efforts, the Legislature has not given him unlimited authority to suspend laws. Instead, the Legislature has restricted the suspension power to statutes whose “strict interpretation” would, according to the Governor’s factual determination about the

Page 3

effects of a rapidly unfolding disaster, “prevent, hinder, or delay necessary action in coping with a disaster.” Tex. Gov’t Code § 418.016(a). Further, the suspension power is temporally restricted by the 30-day expiration date for declared states of disaster, absent renewal, together with the Legislature’s ability to “terminate a state of disaster at any time.” *Id.* § 418.014(c). And the Disaster Act explicitly sets forth the purposes it serves. *Id.* §§ 418.002, 418.003, 418.004(1). These provisions help ensure that gubernatorial suspension power is not used in a manner inconsistent with legislative design. Operating within the confines of this delegated authority, the Proclamation properly suspends the statutory limit on the days for early voting in order to protect voters and poll workers during the COVID-19 disaster.

This conclusion is bolstered by the Legislature’s awareness of past exercises of section 418.016(a). Indeed, use of this suspension power is nothing new, as Governors have exercised this delegated authority many times in responding to disasters. For example, during the 2017 Hurricane Harvey disaster, the Governor suspended numerous provisions of Texas law in order to alleviate hindrances to response efforts.<sup>2</sup> The suspension power has also been used to suspend provisions of the Texas Election Code in order to promptly call a special election.<sup>3</sup> Yet the Legislature did not repeal or amend the challenged provisions to further limit the Governor’s authority to respond to the next crisis. A ruling in Relators’ favor would contravene this clear authority from the Legislature and, importantly, undermine the State’s ability to respond effectively to any existing or future disaster.

Relators here challenge the Legislature’s grant of suspension authority to the Governor, but the Legislature has similarly delegated suspension power to this Court. *See* Tex. Gov’t Code § 22.0035(b). The Court has repeatedly exercised that

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<sup>2</sup> *See, e.g.*, Proclamation (Oct. 16, 2017), <https://gov.texas.gov/news/post/governor-abbott-extends-suspension-of-rules-relating-to-vehicle-registratio>; Proclamation (Sept. 7, 2017), <https://gov.texas.gov/news/post/governor-abbott-extends-suspension-of-hotel-occupancy-tax-after-hurricane-h>; Proclamation (Aug. 29, 2017), <https://gov.texas.gov/news/post/governor-abbott-issues-a-proclamation-for-port-aransas-independent-school-d>; Proclamation (Aug. 25, 2017), <https://gov.texas.gov/news/post/governor-abbott-suspends-hotel-occupancy-tax>; Proclamation (Aug. 23, 2017), <https://gov.texas.gov/news/post/Disaster-Proclamation-Issued-For-30-Texas-Counties-in-Anticipation-Of-Tropical-Depression-Harvey-Making-Landfall>.

<sup>3</sup> *See* Proclamation (Apr. 24, 2018), <https://gov.texas.gov/news/post/governor-greg-abbott-orders-emergency-special-election-for-the-27th-congressional-district-of-texas>.

Page 4

authority in addressing the pandemic’s severe impact on court operations.<sup>4</sup> There is nothing novel—or unconstitutional—about this or section 418.016(a)’s grant of suspension power.

In any event, regardless of whether Relators’ suspension arguments have merit, the Court should deny relief because the Proclamation can be upheld based on any power properly delegated to the Governor. The Proclamation generally invokes the Disaster Act, which expressly grants the Governor the authority to “control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area.” Tex. Gov’t Code § 418.018(c). Even if the suspension power did not exist, the Proclamation could be upheld based on the independent power to limit the occupancy of early voting sites while allowing all voters the chance to cast their votes. Mandamus and other relief should be denied simply because there are valid, alternative grounds to support the Proclamation.

**B.** The Court next asks whether, “in light of the Governor’s July 27, 2020, proclamation, . . . allowing a voter to deliver a marked mail ballot in person to the early voting clerk’s office beginning on September 28, 2020, violates Texas Election Code section 86.00[6](a-1).”

The answer to that question is no, mostly for the reasons discussed above. Exercising the Governor’s constitutionally delegated authority in section 418.016(a), as well as the authority to control the occupancy of premises under section 418.018(c), the Proclamation “suspend[ed] Section 86.006(a-1) of the Texas Election Code . . . to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk’s office prior to and including on election day.” The Proclamation thus allows voters to personally return their completed mail ballots at any time up to and including election day. The Governor did so by

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<sup>4</sup> See, e.g., Misc. Dkt. Nos. 20-9042, 20-9044, 20-9059, 20-9071, 20-9080, 20-9095, 20-9112 (proclaiming that “all courts in Texas may . . . [m]odify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order”); Misc. Dkt. No. 20-9068 (proclaiming that “[a]ny Texas statute requiring or permitting citation by publication on the website or requiring the Office of Court Administration to generate a return of citation is suspended until July 1, 2020,” thereby suspending the explicit deadline in S.B.891, § 9.04, 86th Leg., R.S. (2019)); Misc. Dkt. No. 20-9045 (proclaiming that “[i]n any action for eviction to recover possession of residential property under Chapter 24 of the Texas Property Code . . . [n]o trial, hearing, or other proceeding may be conducted, and all deadlines are tolled”).

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suspending the requirement that a voter can return the marked mail ballot only on election day.

Importantly, the Proclamation does not change section 86.006's protections for ballot integrity. Only the voter may return his marked ballot in person—no third-party may do so. Tex. Elec. Code § 86.006(a)(3). And when delivering his ballot, the voter “must present an acceptable form of identification described by [Texas Election Code] section 63.0101.” *Id.* § 86.006(a-1).

C. Finally, the Court asks whether, “in light of the Governor’s July 27, 2020 proclamation, . . . allowing a voter to deliver a marked mail ballot in person to any of [the] eleven annexes in Harris County violates Texas Election Code section 86.00[6](a-1).” The Government Code generally provides that the singular includes the plural. *See* Tex. Gov’t Code § 311.012(b). Nothing in section 86.006(a-1) overcomes that presumption or otherwise indicates that “office,” as used in section 86.006(a-1), does not include its plural, “offices.” Accordingly, the Secretary of State has advised local officials that the Legislature has permitted ballots to be returned to any early-voting clerk office. *See* Attachment B (email dated Aug. 26, 2020).<sup>5</sup>

## **II. The Court should not reach these questions, however, because Relators lack standing and because mandamus relief is not available.**

The Court should not reach any of these issues, however, because Relators do not have standing and because Relators, having slumbered on their rights, are not entitled to mandamus relief.

A. Relators lack standing, so the Court does not have jurisdiction. As explained in response to Relators’ parallel petition, Relators do not have constitutional standing because they lack a concrete, justiciable interest in the issues raised. *See* Attachment A at 11–13. Because Relators “seek to correct an alleged violation of the separation of powers, [the Court’s] standing inquiry must be especially rigorous.”

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<sup>5</sup> To the extent county early-voting clerks maintain several early-voting offices capable of receiving completed ballots, the State has a compelling interest in ensuring the integrity of the protocols in place at such offices. This brief does not opine on the circumstances under which a “watcher” may be “appointed” under Chapter 33 of the Election Code in the context of annexes. Nevertheless, the State notes that counsel for Harris County recently agreed in oral argument before this Court that “poll watchers have been there [at annexes] for a couple of days,” and “I don’t understand why they couldn’t be in a public office building.” Oral Argument at 44:05–44:48, *State v. Hollins*, No. 20-0729 (Sept. 30, 2020).

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*In re Abbott*, 601 S.W.3d 802, 809 (Tex. 2020) (per curiam) (internal quotation marks omitted). Their general interest in compliance with the law is the type of generalized grievance that is not cognizable in Texas courts. This petition, like No. 20-0739, should be dismissed for want of jurisdiction.

**B.** Alternatively, the Court should deny the petition because Relators have waited too long to seek relief. Mandamus is “controlled largely by equitable principles,” one of which is that “equity aids the diligent and not those who slumber on their rights.” *In re Int’l Profit Assocs., Inc.*, 274 S.W.3d 672, 676 (Tex. 2009) (per curiam) (quoting, *inter alia*, *Rivercenter Assocs. v. Rivera*, 858 S.W.2d 366, 367 (Tex. 1993)). The Governor extended early voting for the July 14 elections on May 11, 2020. The Governor first announced plans to extend early voting for the general election later in May. The Governor then issued this Proclamation on July 27, 2020—over two months ago. Yet Relators waited until September 28 to ask this Court to “alter the election rules on the eve of an election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020) (per curiam). They offer no excuse or explanation for this lengthy delay. And they offer no reason, much less a compelling one, for failing to first seek relief in the court of appeals. *See* Tex. R. App. P. 52.3(e).

To the extent the issues raised here have any merit—which they do not—those questions, and the consequences they have for the State of Texas, deserve careful study and consideration by the parties, the State, and the Court. Such weighty issues deserve more than a hurried disposition necessitated by Relators’ dilatory litigation conduct. Because Relators cannot justify their lengthy delay, mandamus relief should be denied. *See Chambers-Liberty Counties Navigation Dist. v. State*, 575 S.W.3d 339, 356 (Tex. 2019); *Rivercenter*, 858 S.W.3d at 367–68.

The Court should dismiss the petition for lack of jurisdiction or deny relief.

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Respectfully submitted.

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### **CERTIFICATE OF SERVICE**

On September 30, 2020, this document was served electronically on Jared R. Woodfill, lead counsel for Relators, at woodfillservice@gmail.com; and on Susan Hays, lead counsel for Real Party in Interest Chris Hollins, via hayslaw@me.com.

/s/ Kyle D. Hawkins  
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### **CERTIFICATE OF COMPLIANCE**

Microsoft Word reports that this document contains 2,147 words, excluding the portions of the document exempted by Rule 9.4(i)(1).

/s/ Kyle D. Hawkins  
KYLE D. HAWKINS

**ATTACHMENT A:**  
**RESP. TO PET. FOR WRIT OF MANDAMUS, *IN RE***  
***HOTZE*, No. 20-0739 (FILED SEPT. 28, 2020)**

No. 20-0739

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## In the Supreme Court of Texas

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IN RE STEVEN HOTZE, M.D., HON. ALLEN WEST, REPUBLICAN  
PARTY OF TEXAS, HON. SID MILLER, HON. MARK HENRY, HON.  
CHARLES PERRY, HON. PAT FALLON, HON. BILL ZEDLER, HON.  
CECIL BELL, JR., HON. STEVE TOTH, HON. DAN FLYNN, HON.  
MATT RINALDI, HON. RICK GREEN, HON. MOLLY WHITE, HARRIS  
COUNTY REPUBLICAN PARTY/HON. KEITH NIELSON, HON.  
BRYAN SLATON, HON. ROBIN ARMSTRONG, M.D., JIM GRAHAM,  
HON. CATHIE ADAMS, HON. JOANN FLEMING, JULIE MCCARTY,  
SHARON HEMPHILL, AND AL HARTMAN,

*Relators.*

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On Petition for Writ of Mandamus to the Secretary of State

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### RESPONSE TO PETITION FOR WRIT OF MANDAMUS

---

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## **RECORD REFERENCES**

Respondent's appendix is cited as "App.[x]." As Relators did not submit a mandamus record, "MR" refers to the record submitted herewith, which includes materials relevant to this response.

## **STATEMENT OF THE CASE**

*Nature of the Case:* This is an original proceeding filed by Relators Steven Hotze and others seeking a writ of mandamus directing the Texas Secretary of State to take unspecified actions. Relators argue the Secretary has violated the Texas Constitution and the Election Code because on July 27, 2020, the Governor issued a proclamation that suspends two provisions of the Election Code using his emergency powers under the Disaster Act. The proclamation extends the time for early voting in the upcoming general election and allows voters to return early-vote-by-mail ballots in person any time after they receive their ballots. Relators further contend that the Disaster Act is unconstitutional and that the Governor has acted improperly by failing to call a special session of the Legislature.

## **STATEMENT OF JURISDICTION**

The Court lacks jurisdiction to issue the requested writ. Generally speaking, Texas Government Code section 22.002 and Texas Election Code section 273.061 allow the Court to issue writs of mandamus. The Court lacks statutory or constitutional jurisdiction, however, to issue a writ of mandamus to the Governor. Tex. Const. art. V, § 3(a); Tex. Gov't Code § 22.002(a). And it lacks jurisdiction to issue a writ to the Secretary because the Secretary has no power to rescind or enforce the Governor's Proclamation, so any such writ would not redress Relators' alleged injury.

### **ISSUES PRESENTED**

1. Whether the Secretary of State has any ministerial duties under Election Code sections 85.001(a) or 86.006(a-1), which are implemented by local early-voting clerks.
2. Whether Relators have constitutional standing to sue the Secretary.
3. Whether this petition properly presents Relators' constitutional challenges to the Disaster Act, and if so, whether the Disaster Act delegates legislative power governed by reasonable standards.

**TO THE HONORABLE SUPREME COURT OF TEXAS:**

Relators direct their petition at the Secretary of State, even though they do not allege that she has undertaken or threatened to undertake any unlawful action. Neither the Governor’s July 27 proclamation (“the Proclamation”) nor the Election Code imposes any ministerial duty on the Secretary. And the provisions of the Election Code concerning early voting are administered by county election officials, not the Secretary of State. Although the Election Code designates the Secretary as Texas’s “chief election officer,” this Court has long held that does not give her generalized enforcement power over every provision of the Election Code. Moreover, the Proclamation independently binds each county’s early-voting clerk, so any mandamus issued against the Secretary would not remedy Relators’ grievances. Indeed, granting the relief Relators seek would have no impact at all—which makes this petition nothing more than a request for an advisory opinion.

Relators’ merits arguments are similarly misguided. They raise multiple constitutional challenges to the Disaster Act, but none is properly before this Court because the Disaster Act delegates no power to the Secretary. And in any event, the Governor’s discretion and authority under the Disaster Act are cabined by reasonable standards, so it is a lawful delegation of legislative power, and the July 27 Proclamation is a proper exercise of that delegated power.

Relators waited two months to file this mandamus petition, yet they ask this Court to “alter the election rules on the eve of an election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020). They are not entitled to relief.

## STATEMENT OF FACTS

### **I. In the Disaster Act, the Legislature Delegated Emergency Powers to the Governor to Enable Quick and Decisive Action.**

The Disaster Act empowers the Governor to exercise emergency powers in the event of a disaster in one or more Texas counties. Tex. Gov't Code ch. 418. The Act both defines and limits when the Governor may declare a disaster: It pronounces the Governor's responsibilities to include "meeting" "dangers to the state and people presented by disasters" and "disruptions to the state and people caused by energy emergencies." Tex. Gov't Code § 418.011. When a state of disaster is declared, the Act allows the Governor to issue executive orders and proclamations with the "force and effect of law." *Id.* § 418.012.

A state of disaster may be declared if the Governor "finds a disaster has occurred or that the occurrence or threat of disaster is imminent." Tex. Gov't Code § 418.014(a). It explicitly provides that an "epidemic" can constitute a disaster, *id.* § 418.004(1), and that the Governor decides when "the threat or danger has passed" or "the disaster has been dealt with to the extent that emergency conditions no longer exist," *id.* § 418.014(b)(1). Nevertheless, the Act requires that the Governor reexamine his decision every 30 days and announces that the Legislature may terminate it at any time. *Id.* § 418.014(c).

Under the Disaster Act, a declaration of disaster permits the Governor to suspend the provisions of any regulatory statute[s]" prescribing the procedure for conduct of state business and the orders and rules of state agencies if they would "in any way prevent, hinder, or delay necessary action in coping with [the] disaster."

Tex. Gov’t Code § 418.016. He “may use all available resources of state government and of political subdivisions that are reasonably necessary.” *Id.* § 418.017.

## **II. During the Pandemic, the Governor Has Acted to Ensure the Safety and Integrity of Texas Elections.**

The coronavirus pandemic reached American shores in early 2020 and Texas in March. The Governor first declared a statewide disaster on March 13, 2020. *See* App.3 (Proclamation of March 13, 2020). In the ensuing six months, the declaration of disaster has been renewed multiple times—most recently on September 7, 2020. *See* App.7 (Proclamation of Sept. 7, 2020). As the Fifth Circuit explained early in the pandemic:

[W]hen faced with a society-threatening epidemic, a state may implement emergency measures that curtail constitutional rights so long as the measures have at least some real or substantial relation to the public health crisis and are not beyond all question, a plain, palpable invasion of rights secured by the fundamental law. Courts may ask whether the state’s emergency measures lack basic exceptions for extreme cases, and whether the measures are pretextual—that is, arbitrary or oppressive. At the same time, however, courts may not second-guess the wisdom or efficacy of the measures.

*In re Abbott*, 954 F.3d 772, 784–85 (5th Cir. 2020) (citations and internal quotation marks omitted).

Using the emergency powers granted by the Disaster Act, the Governor has taken numerous actions to protect Texans, including when they go to the polls. The Governor authorized postponement of elections scheduled for May until July 14. *See, e.g.*, App.4 (Proclamation of March 20, 2020). He expanded the early-voting period

for all July 14 elections so “election officials can implement appropriate social distancing and safe hygiene practices.” App.5 (Proclamation of May 11, 2020).

Four months ago, in May, the Governor announced plans to similarly extend the early voting period for the November general election. *See* Patrick Svitek, *Texas will extend early voting period this fall, Gov. Greg Abbott says*, Tex. Tribune (May 28, 2020), <https://www.texastribune.org/2020/05/28/texas-2020-early-voting-greg-abbott-coronavirus/>. On July 27, he did so.

In his Proclamation, which is the subject of this petition, the Governor found that “in order to ensure that elections proceed efficiently and safely . . . it is necessary to increase the number of days in which polling locations will be open during the early voting period, such that election officials can implement appropriate social distancing and safe hygiene practices.” App.6 (Proclamation of July 27, 2020).

To accomplish that aim, the Proclamation suspends two provisions of the Election Code. First, it suspends “[s]ection 85.001(a) of the Texas Election Code to the extent necessary to require that, for any election . . . on November 3, 2020, early voting by personal appearance shall begin on Tuesday, October 13, 2020, and shall continue through the fourth day before election day.” *Id.* Second, it suspends “[s]ection 86.006(a-1) . . . to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk’s office prior to and including on election day.” *Id.*

Like the May 11 proclamation, the Proclamation ordered the Secretary to “take notice of this proclamation” and to “transmit a copy of this order immediately to every County Judge of this state.” App.6; *see also* App.5. And, like the May 11

proclamation, the Proclamation provides in the passive voice that “all appropriate writs *will be issued* and all proper proceedings *will be followed* . . . in accordance with law.” App.6 (emphases added); App. 5.

### **III. The Secretary Performed the Only Act Required of Her Months Ago.**

The Secretary complied with the only provision of the Proclamation addressing her. Specifically, on the afternoon of July 27, 2020, the Secretary sent a copy of the Proclamation to local election officials. *See* MR.01–02. Relators do not allege the Secretary has taken any additional action since that day.

### **SUMMARY OF THE ARGUMENT**

The Secretary of State does not enforce the Proclamation or Election Code sections 85.001(a) and 86.006(a-1), and those who do—local early-voting clerks—are independently bound by the Proclamation. As such, there is no ministerial duty this Court could order the Secretary to perform that would remedy Relators’ supposed injury. For that reason alone, Relators’ petition fails.

Moreover, Relators lack constitutional standing to sue because they have not identified any justiciable interest that could be vindicated here. A mandamus petitioner must identify and support an injury-in-fact, causation, and redressability. Relators’ general interest in ensuring the law is followed does not create standing. Because Relators state no more than generalized grievances common to the public at large, the petition for writ of mandamus should be dismissed for want of jurisdiction.

Finally, Relators’ sundry challenges to the Disaster Act’s constitutionality are not the subject of a live controversy in this petition. The Act does not delegate any

power to the Secretary, so any order against her would not provide relief; and the Governor is not a party, so any opinion about the constitutionality of his delegated powers would be advisory. In any event, Relators' constitutional challenges would fail because the Disaster Act is an appropriate delegation of legislative authority subject to reasonable standards, and the Proclamation is a proper exercise of that authority.

## **ARGUMENT**

### **I. Relators Have Not Identified Any Ministerial Duty Imposed on the Secretary.**

To seek mandamus under Election Code section 273.061, Relators must identify a ministerial "duty imposed by law in connection with the holding of an election." *See* Pet. 3. Relators do not identify any ministerial duty they want "to compel the performance of." Tex. Elec. Code § 273.061.

**A.** Relators argue that the Secretary has "statutory duties to administer early voting in person consistent with Texas Election Code §86.001" and "statutory duties under Texas Election Code § 86.006(a-1)." Pet. 1. Neither of those sections imposes any duty, much less a ministerial one, on the Secretary. Section 86.001 is not about the Secretary or in-person voting. It requires "[t]he early voting clerk" to "review each application for a ballot to be voted by mail." Tex. Elec. Code § 86.001(a). That section cannot support a writ of mandamus against the Secretary.

Nor does any other provision. For example, although Relators did not cite section 85.001, it provides that "[t]he period for early voting by personal appearance begins on the 17th day before election day and continues through the fourth day

before election day.” *Id.* § 85.001(a). That does not impose a ministerial duty on the Secretary either. It sets a general rule telling local officials when to open and operate early voting polling places.

Local officials, not the Secretary, administer early voting. The Election Code provides that “one or more early voting polling places . . . may be established” by “the commissioners court” or “the governing body of the political subdivision.” Tex. Elec. Code § 85.062(a). Local officials then open and operate early-voting polling places “[a]t the official time.” *Id.* § 61.002. Thus, even if section 85.001 imposes a ministerial duty on those who open and operate early-voting polling places, it would not impose such a duty on the Secretary.

Section 86.006(a-1) also does not impose a ministerial duty on the Secretary. It provides that “[t]he voter may deliver a marked ballot in person to the early voting clerk’s office only while the polls are open on election day.” Tex. Elec. Code § 86.006(a-1). On its face, that provision gives an option to those who vote by mail. One might argue it imposes an implicit duty on voters not to return marked ballots to their local early-voting clerks at a different time, but that has nothing to do with the Secretary.

Section 86.006(h) makes clear that local officials, not the Secretary, enforce any limitations imposed by section 86.006(a-1). “If the early voting clerk determines that the ballot was returned in violation of this section, *the clerk* shall make a notation on the carrier envelope and treat it as a ballot not timely returned in accordance with [s]ection 86.011(c).” *Id.* § 86.006(h) (emphasis added). Then, depending on timing, “the early voting clerk” may have to “deliver to the voter a written notice.” *Id.* In

any event, the local officials responsible for counting votes do not count improperly returned ballots. *See id.* That process has nothing to do with the Secretary.

**B.** Elsewhere, Relators point to two duties that the Governor's Proclamation allegedly imposes on the Secretary. But these proclamation-based duties also do not require ministerial acts that could be compelled.

*First*, Relators say that the Secretary "has been ordered to take notice of Governor Abbott's July 27, 2020 proclamation and transmit a copy of Governor Abbott's order to every County Judge of this state." Pet. 4. That cannot support mandamus for three reasons. First, Relators do not seek to compel the exercise of that duty. Ordering the Secretary to transmit the Governor's proclamation would not advance Relators' goal of preventing the Governor's proclamation from going into effect. Second, the Secretary has already carried out this duty, so a writ of mandamus would accomplish nothing. Third, the Proclamation has "the force and effect of law," Tex. Gov't Code § 418.012, but by definition a section 273.061 mandamus action "is limited to a duty imposed by a constitution, statute, city charter, or city ordinance." *In re Republican Party of Tex.*, 605 S.W.3d 47, 48 (Tex. 2020) (citing Tex. Elec. Code § 1.005(10)).

*Second*, Relators claim the Secretary "is further ordered to 'issue all appropriate writs . . . and all proper proceedings will be followed to the end that said elections may be held and their results proclaimed in accordance with law.'" Pet. 4. Relators' reliance on this proclamation-based duty is misplaced for the same reasons explained above. In particular, this portion of the Proclamation does not impose a duty on the Secretary at all. Instead of focusing on the Secretary, the Proclamation uses the

passive voice: “all appropriate writs will be issued and all proper proceedings will be followed to the end that said elections may be held and their results proclaimed in accordance with law.” App.6; *see also* App.5. But the Secretary does not issue writs of election. *See* Tex. Elec. Code §§ 3.003, 3.004, 4.007.\*

C. Finally, Relators point to the Secretary’s title, “chief election officer,” Pet. 4, 9, 23–24, but this Court has explained that the title “chief election officer” is not “a delegation of authority to care for any breakdown in the election process.” *Bullock v. Calvert*, 480 S.W.2d 367, 372 (Tex. 1972) (Reavley, J.). Texas law, then as now, charged the Secretary with “‘obtain[ing] and maintain[ing] uniformity in the application, operation and interpretation of the election laws.’” *Id.* at 371 (quoting former Tex. Elec. Code art. 1.03); *accord* Tex. Elec. Code § 31.003. “Acting as the ‘chief election officer’ of the state,” the Secretary had “determined that uniformity [could not] be obtained . . . without the expenditure of state funds.” *Bullock*, 480 S.W.2d at 369. This Court rejected the idea that the Secretary had an implied power to do whatever was necessary to achieve uniformity. *See id.* at 372. In situations like this, where no one is “imped[ing] the free exercise of a citizen’s voting rights,” Tex. Elec. Code § 31.005, the Secretary does not even have authority to “order” local officials to change their practices. The Secretary’s title does not give her power to

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\* The Secretary of State’s website contains forms used for writs of election, but she does not issue the writs herself. *See* Writ of Election, <https://www.sos.state.tx.us/elections/forms/pol-sub/4-12f.pdf>; Writ of Election for the General Election, <https://www.sos.state.tx.us/elections/forms/pol-sub/4-13f.pdf>; Writ of Election for Early Voting Ballot Board Judge, <https://www.sos.state.tx.us/elections/forms/pol-sub/4-14f.pdf>.

coerce local officials into ignoring the Governor’s proclamation, much less impose a ministerial duty to do so. *See In re Stalder*, 540 S.W.3d 215, 218 n.9 (Tex. App.—Houston [1st Dist.] 2018, orig. proceeding) (noting that a party provided “no legal authority to suggest that, having received the Secretary of State’s assistance and advice in response to an inquiry, the party chair lacked the authority to then form and act upon her own ultimate legal judgment” (citation omitted)).

Relators cite *OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017), but that case is both irrelevant and wrongly decided. It addressed whether the Secretary was a proper defendant under federal principles of Article III standing. *See id.* at 613–14. That has nothing to do with whether the Election Code imposes a ministerial duty on the Secretary in this case. Moreover, *OCA*’s cursory analysis did not even cite—let alone substantively discuss—this Court’s precedent interpreting the Secretary’s powers. *See id.* In any event, *OCA* is neither binding on this Court, *see Pidgeon v. Turner*, 538 S.W.3d 73, 83 & n.17 (Tex. 2017); Bryan A. Garner *et al.*, *The Law of Judicial Precedent* 655 (2016); nor persuasive, *see Bullock*, 480 S.W.2d at 372. A federal court’s *Erie* guess about the meaning of the Texas Election Code cannot control this Court’s authoritative interpretation.

But even if the Secretary had a ministerial duty to obtain uniformity in this situation, uniformity already has been achieved. To the best of the Secretary’s knowledge, all local officials are properly implementing the Election Code in light of the Proclamation, and Relators never argue otherwise. This shows that uniformity is not what Relators seek. Because uniformity can be achieved by either all counties following the Governor’s proclamation (as the State wants) or no counties following

the Governor's proclamation (as Relators want), a writ of mandamus compelling the Secretary to achieve uniformity would not redress Relators' supposed injuries.

## **II. Relators Lack Constitutional Standing.**

The Court need not decide whether Relators have identified a ministerial duty, however, because they have not alleged, let alone established, standing to pursue the writ. “[S]tanding is a constitutional prerequisite to maintaining a suit” in Texas courts. *Tex. Ass’n. of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993). It requires “a concrete injury to the plaintiff and a real controversy between the parties that will be resolved by the court.” *Heckman v. Williamson County*, 369 S.W.3d 137, 154 (Tex. 2012). To meet those requirements, the party invoking the court’s jurisdiction must show (1) an “injury in fact” that is both “concrete and particularized” and “actual or imminent”; (2) that the injury is “fairly traceable” to the defendant’s challenged actions; and (3) that it is “‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’” *Id.* at 154–55 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). And where the suit “seek[s] to correct an alleged violation of the separation of powers, [the Court’s] standing inquiry must be ‘especially rigorous.’” *In re Abbott*, 601 S.W.3d 802, 809 (Tex. 2020) (quoting *Raines v. Byrd*, 521 U.S. 811, 819 (1997)).

A. An “undifferentiated public interest in executive officers’ compliance with the law” does not confer standing. *Lujan*, 504 U.S. at 577; *see also Brown v. Todd*, 53 S.W.3d 297, 302 (Tex. 2001) (“Our decisions have always required a plaintiff to allege some injury distinct from that sustained by the public at large.”). The Petition suggests nothing more than that.

Relators are individual voters, political organizations, candidates for office and officeholders, and the Galveston County Judge. Pet. ii–vi. None of them alleges an injury that could support standing. The individual voters do not claim the Proclamation burdens their right to vote; the organizations do not claim it will harm their preferred candidates’ electoral prospects (or even identify any such candidates); the current legislators do not claim any personal interest in Election Code sections 85.001(a) and 86.001(a-1); and the hopeful candidates do not claim the Proclamation will affect their races, much less cause them to lose.

None of these potential injuries would suffice to confer standing, even if they were alleged and proved. “No Texas court has ever recognized that a plaintiff’s status as a voter, without more, confers standing to challenge the lawfulness of governmental acts.” *Brown*, 53 S.W.3d at 302. Even when a “preferred candidate . . . has less chance of being elected,” the “harm” is not “a restriction on voters’ rights and by itself is not a legally cognizable injury sufficient for standing.” *Becker v. FEC*, 230 F.3d 381, 390 (1st Cir. 2000); *see also Berg v. Obama*, 586 F.3d 234, 240 (3d Cir. 2009); *Gottlieb v. FEC*, 143 F.3d 618, 622 (D.C. Cir. 1998). The same is true for an organization. *See Jacobson v. Fla. Sec’y of State*, No. 19-14552, 2020 WL 5289377, at \*7 (11th Cir. Sept. 3, 2020). And Relators do not so much as suggest “that a particular candidate’s prospects in a future election will be harmed.” *Id.* at \*9. Finally, this Court has rejected the theory that individual officeholders—including legislators—have standing based on voting for or against legislation. *See Brown*, 53 S.W.3d at 304–06.

Galveston County Judge Henry also fails to state a cognizable injury. The Petition states he is being “unlawfully forc[ed] . . . to implement Abbott’s unlawful order.” Pet. 9. An elected official’s belief that a law he is charged with implementing or enforcing is unconstitutional does not support standing to sue because it does not cause a personal injury. *See Finch v. Miss. State Med. Ass’n, Inc.*, 585 F.2d 765, 774 (5th Cir. 1978), *modified*, 594 F.2d 163 (5th Cir. 1979). “[M]atters of public importance” must be resolved “through the adversary system of justice in particular cases involving parties who are genuinely, personally affected.” *In re Abbott*, 601 S.W.3d at 809. Judge Henry is not such a party.

But even if this were an injury-in-fact, it cannot support standing to sue *the Secretary* because it is not traceable to any ministerial duty the secretary has performed or failed to perform. Indeed, a writ against the Secretary would not bind county officials, who are not parties to this litigation. *Cf.* 44 Tex. Jur. 3d, *Injunctions* § 232 (observing that non-parties are not bound by an injunction). That means “the effect of the court’s judgment on the [Secretary]” would not provide relief. *Lewis v. Governor of Ala.*, 944 F.3d 1287, 1301 (11th Cir. 2019) (emphasis omitted). Relators cannot show that ordering the Secretary to refrain from enforcing the Proclamation will “significantly increase the likelihood” that local election officials will ignore it. *Id.* At its core, then, Relators’ petition seeks an advisory opinion.

**B.** The petition fails for another reason still: Relators fail to meet their burden of offering evidence to support their standing. To establish standing in this original proceeding, Relators must submit evidence. *See Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex. 1984); *e.g., In re Roman*, 554 S.W.3d 73, 76 (Tex. App.—El Paso 2018, no pet.);

*Comm’rs Ct. of Cherokee County v. Cooksey*, 718 S.W.2d 26, 28 (Tex. App.—Tyler 1986, writ ref’d n.r.e.); *see also Lujan*, 504 U.S. at 561–62 (“[E]ach element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.”). That evidence must show a “particular personal interest which separates [relator] from the general public.” *Hunt*, 664 S.W.2d at 324. Relators did not do so or explain why such evidence is not required; the petition may be dismissed on that basis.

### **III. Relators’ Constitutional Challenges Are Not Properly Before the Court—and They Would Fail if They Were.**

A. Rather than identifying anything the Court can order the Secretary to do, Relators argue at length that the Disaster Act is unconstitutional, Pet. 13–20, and air their desire for a special session of the Legislature, Pet. 20–23. But as discussed above, the Secretary lacks any power under the Disaster Act. *See supra* Part I. And she has nothing to do with calling a special session. So Relators seek an advisory opinion, which this Court may not issue. This petition is consequently not a viable vehicle for assessing the constitutional questions raised in Relators’ petition.

B. Even if properly presented, Relators’ constitutional challenges would fail. The Disaster Act is presumed constitutional, *Barshop v. Medina County Underground Water Conservation Dist.*, 925 S.W.2d 618, 629 (Tex. 1996), and Relators would bear a heavy burden in their facial attacks on its validity, *id.* at 623. Relators could not carry that burden for multiple reasons.

*First*, Relators' argument runs headlong into longstanding precedent approving such limited and cabined delegation of legislative power. "Although the Constitution vests legislative power in the Legislature, courts have recognized that in a complex society like ours, delegation of legislative power is both necessary and proper in certain circumstances." *FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 873 (Tex. 2000). Thus, the Legislature may delegate legislative powers to another branch "as long as the Legislature establishes reasonable standards to guide the agency in exercising those powers." *Id.*; *Tex. Boll Weevil Eradication Found., Inc. v. Lewellen*, 952 S.W.2d 454, 466 (Tex. 1997), *as supplemented on denial of reh'g* (Oct. 9, 1997); *accord Mistretta v. United States*, 488 U.S. 361, 372 (1989).

*Second*, Relators' proposed distinction separating the delegation of the power to suspend laws from the delegation of other powers finds no support. Relators presume the Legislature's authority to suspend laws, Tex. Const. art. I, § 28, can never be delegated. But they do not say why that power is different from other legislative powers, which can be delegated when guided by reasonable standards. The Legislature properly exercised its delegation power when it enacted the Disaster Act because it contains adequate standards to guide its exercise. It sets parameters for what constitutes a disaster, provides a standard for how the Governor is to declare one, places limits on his emergency powers, and specifies when the disaster ends. *See supra* at 2–3. And the Legislature reserved for itself the authority to call an end to a state of disaster even if the Governor does not. Tex. Gov't Code § 418.014(c). All this confirms that the Disaster Act is an appropriate delegation of legislative power. For its part, the Proclamation is a proper exercise of delegated authority to

“suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business.” *Id.* § 418.016(a).

C. Finally, Relators gesture at, without raising, a due-course challenge, arguing that the Proclamation “deprives Plaintiffs of their constitutional rights without due course of law.” Pet. 16–17. Relators do not, however, identify any liberty or property interest, much less submit evidence and argument showing how the unidentified interest has been harmed. Their due-course claim is thus deficient on its face.

\* \* \*

For these reasons (among others), the Court should not award Relators relief. In explaining its decision, the Court should also dispel any confusion regarding the Secretary’s role by clarifying that she does not have a general duty to ensure that the Governor and local officials comply with the Election Code.

**PRAYER**

The Court should dismiss or deny the petition for writ of mandamus.

Respectfully submitted.

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**CERTIFICATE OF SERVICE**

On September 28, 2020, this document was served electronically on Jared R. Woodfill, lead counsel for Relators, via woodfillservice@gmail.com.

/s/ Kyle D. Hawkins  
KYLE D. HAWKINS

**CERTIFICATE OF COMPLIANCE**

Microsoft Word reports that this document contains 4,334 words, excluding the portions of the document exempted by Rule 9.4(i)(1).

/s/ Kyle D. Hawkins  
KYLE D. HAWKINS

**ATTACHMENT B:**  
**EMAIL DATED AUGUST 26, 2020**

From: [Charles Pinney](#)  
To: [Donna Stanart](#)  
Subject: Re: Questions regarding mail in ballots (EI Response)  
Date: Wednesday, August 26, 2020 9:30:48 AM

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Hello,

I'll answer your two questions in order:

1. Election Code 86.011(d) is not necessarily a "cure" process, but it does provide a procedure under which the early voting clerk can take certain steps to allow a voter to address certain deficiencies on the carrier envelope after that carrier envelope has been received by the early voting clerk.

The early voting clerk has a number of different options available under this section, including delivering the carrier envelope back to the voter either in-person or by mail, or notifying the voter by telephone so the voter can correct the defect on the carrier envelope or cancelling that ballot by mail in-person at the early voting clerk's office. Whichever procedure is used, the corrected carrier envelope must be received before the deadline for receiving the ballot by mail. This procedure can only be performed by the early voting clerk and must occur before the ballot is sent to the ballot board. Once the ballot is sent to the ballot board, these procedures are no longer available.

The early voting clerk is not required to implement these procedures and has the option of determining which of those procedures they wish to implement. However, whichever procedure they implement must be applied consistently to all voters in the same situation.

2. Election Code 86.006(a-1) provides that the voter may hand-deliver a marked ballot by mail to the early voting clerk's office while the polls are open on election day, but they must present voter ID at the time that they do so. Under the Governor's July 27, 2020 proclamation, for this November election, that 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 at the early voting clerk's office, this may include satellite offices of the early voting clerk. Typically, this will only happen if the early voting clerk is the county clerk because county clerks will occasionally have satellite offices elsewhere in the county, but it is rare for an elections administrator to have a satellite office. A county clerk's satellite office in a county where the elections administrator is the early voting clerk for that election would not be a valid location for hand-delivery of mail ballots because the elections administrator is the early voting clerk in that situation and the county clerk's satellite office is not the "early voting clerk's office" in that situation. Ultimately, the availability of hand-delivery of mail ballots at a county clerk's satellite office depends on the identity of the early voting clerk for that specific election.

Please let us know if you have any other questions about this issue or anything else relating to the election. You can reach us at [Elections@sos.texas.gov](mailto:Elections@sos.texas.gov) or 1-800-252-8683, or you can visit our

website at [sos.state.tx.us/elections/index.shtml](https://sos.state.tx.us/elections/index.shtml).

Thanks,

**Chuck Pinney**

Attorney -- Elections Division

Office of the Texas Secretary of State

1019 Brazos Street | Rudder Building, 2nd Floor | Austin, Texas 78701

1.800.252.VOTE (8683)

[elections@sos.texas.gov](mailto:elections@sos.texas.gov) | [www.sos.texas.gov/elections](https://www.sos.texas.gov/elections)



*The information contained in this email is intended to provide advice and assistance in election matters per §31.004 of the Texas Election Code. It is not intended to serve as a legal opinion for any matter. Please review the law yourself, and consult with an attorney when your legal rights are involved.*

---

**From:** Donna Stanart <donnastanart1@gmail.com>

**Sent:** Tuesday, August 25, 2020 10:26 AM

**To:** Charles Pinney <CPinney@sos.texas.gov>

**Subject:** Questions regarding mail in ballots

**CAUTION:** This email originated from OUTSIDE of the SOS organization. Do not click on links or open attachments unless you are expecting the email and know that the content is safe. If you believe this to be a malicious or phishing email, please send this email as an attachment to [Informationsecurity@sos.texas.gov](mailto:Informationsecurity@sos.texas.gov).

Chuck,

Thanks so much for taking my call.

I had two questions we touched on today.

1. In regards to mail in ballots being "cured" during voting, is it the responsibility of the County Clerk or the Ballot Board to call that voter to fix their ballot before it's counted? Also, you had mentioned consistency in that regard. Can you touch on that again?

2. When dropping off mail in ballots, in a county with a county clerk, we know that if there are annexes it is acceptable for voters to drop off their ballots up to election day at any of these annexes. If a county clerk type county were to transition into an election administration before the election, they would not be able to use the county clerk annexes and only be able to drop off at their main office. Is this correct?

Thank you!

--

Donna Stanart

(713) 703 - 9840 - Cell

[donnastanart1@gmail.com](mailto:donnastanart1@gmail.com)

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**Automated Certificate of eService**

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Envelope ID: 46724246  
Status as of 9/30/2020 4:07 PM CST

## Case Contacts

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Associated Case Party: Chris Hollins

Name	BarNumber	Email	TimestampSubmitted	Status
Susan Hays		hayslaw@me.com	9/30/2020 4:00:38 PM	SENT

# EXHIBIT 21

STATE of TEXAS

§  
§  
§  
§  
§

COUNTY OF HARRIS

**DECLARATION OF CHRISTOPHER G. HOLLINS,**  
**HARRIS COUNTY CLERK**

Pursuant to 20 U.S.C. § 1746, I, Christopher G. Hollins, declare as follows:

1. My name is Christopher G. Hollins. 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 am submitting this declaration to explain the impact of the Governor's Proclamation of October 1, 2020 (the "Proclamation"), on the election process in Harris County, and to provide the Court with current information about election planning, conduct, and implementation.

**Early Voting Clerk Role, Harris County, and the Governor's Proclamations**

3. As Harris County Clerk, I am the early voting clerk for Harris County, Texas. *See* TEX. ELEC. CODE § 83.002. As "early voting clerk," I have the authority and duty to "conduct the early voting," which includes early voting both in person and by mail. TEX. ELEC. CODE §§ 83.001, 83.002. Before serving as County Clerk, I spent the majority of my career with one of the world's leading management consulting firms, where I flourished in applying analytics and organizational best practice to revamp public safety, defense, and security agencies. My experience includes vastly improving safety and operational outcomes for one of the largest public safety agencies in the United States and advising the Pentagon on cost savings related to the Joint Strike Fighter (F-35) program, the most expensive military program in human history

4. I have the duty to administer elections in the most populous county in Texas, with 4.7 million people, 2.4 million registered voters (14% of the registered voters in Texas)<sup>1</sup>, and a highly diverse electorate. Harris County is also the fourteenth largest county in Texas geographically, and by far the largest urban county, stretching over nearly 1,800 square miles. Traveling from the County's northwest corner to the current location of the main election office is more than a 100-mile round trip. As an urban county, Harris County often has extreme traffic congestion — even during the pandemic — and traveling across the county to a central location and back can easily take at least half a day by car and all day by public transportation (if any public transportation is available in the voter's home area).

5. Greg Abbott, Governor of Texas, announced plans to expand early voting for the November General Election in May and issued a proclamation doing so on July 27. This was not unexpected, or unprecedented, since Governor Abbott issued a similar proclamation to expand early voting in the July Primary Runoff Election. Patrick Svitek, *Texas will extend early voting period this fall, Gov. Greg Abbott says*, Tex. Trib., May 28, 2020, <https://www.texastribune.org/2020/05/28/texas-2020-early-voting-greg-abbott-coronavirus/>; Gov. Greg Abbott, Proclamation, July 27, 2020 (“July 27 Proclamation”).

6. Governor Abbott's decision to expand the number of early voting days was crucial because it enabled voters to cast their ballots while maintaining social distance and empowered those who plan and conduct elections to help voters avoid long lines and maintain social distance in what is sure to be the highest turnout election in Texas history. Governor Abbott's July 27 Proclamation also allowed voters to return their completed mail-in ballot in person at any time, not just on Election Day. Prior to his Proclamation, Texas law provided that voters may return their ballots by mail, by common carrier, or in person, but if they do so in-person they may only

<sup>1</sup> See data.census.gov.; [https://www.hctx.net/Voter/Voter\\_Demographic/VoterVisualization](https://www.hctx.net/Voter/Voter_Demographic/VoterVisualization).  
**DECLARATION OF CHRISTOPHER G. HOLLINS – Page 2 of 12**

do so on Election Day to the early voting clerk's office while the polls are open and show identification just as they would if voting in person. TEX. ELEC. CODE § 86.006. If a ballot is returned in violation of Section 86.006 it "may not be counted." *Id.*, § 86.006(h). Thus, it is **very important** that the legality of methods of returning mail-in ballots be very clear, or votes may be challenged in an election contest.

### **Logistics of Planning an Election During the Pandemic**

7. Elections are extraordinarily complex to plan and implement in a democracy, even when there is not a global pandemic raging. American democracy requires that **every** eligible voter have effective access to a ballot and be provided reasonable and safe opportunities to cast their votes securely and privately because voting is an individual right, not a collective one. *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018). The larger and more diverse a community, and the higher the expected turnout, the more difficult this becomes. Multiple mechanisms of voting are useful, as they are more likely to accommodate voters. These include voting by mail, voting in-person during the Early Voting period, voting in-person on Election Day, curbside voting for people with disabilities, and other accommodations for voters with special needs.

8. Prompted by the challenges of conducting an election during a pandemic, our office has engaged in several innovative practices for the general election. We moved our elections office from a downtown, crowded location with limited parking and interior space to the NRG Arena—a large convention-hall style space. The early voting ballot board ("EVBB"), which has been dramatically expanded in size, will work at NRG rather than downtown. This enables all election workers to socially distance while working. NRG Arena will also serve as an early voting location and an Election Day location.

9. The day before the July 14 runoff election, I announced that voters had multiple drop-off locations for mail-in ballots available to them. Exhibit A, Harris County Clerk Chris

Hollins Announces Vote by Mail Drop-Off Locations, July 13, 2020, [https://www.harrisvotes.com/PressReleases/Vote%20By%20Mail%20Drop-off\\_en-US.pdf](https://www.harrisvotes.com/PressReleases/Vote%20By%20Mail%20Drop-off_en-US.pdf). These locations included our then-election headquarters, as well as our ten County Clerk annex offices. In-person drop-off was only available on Election Day, as ballots could legally only be returned in-person on that day before the July 27 Proclamation. We had no security or other logistical issues related to in-person ballot drop-off on July 14—the use of multiple drop-off locations was a success and a needed service for Harris County voters. Neither the Governor’s Office nor the SOS complained to me about using our annex offices for this purpose. In fact, our office received no complaints whatsoever until the last several days, when certain partisan elements began to attack the use of multiple drop-off locations. These complaints culminated in the Governor’s October 1 Proclamation.

10. Although voter behavior can be unpredictable, especially when implementing new election or business processes, or when conducting an election in unusual circumstances such as during the ongoing pandemic, deep analysis of past voting data and current voting conditions is extremely helpful toward planning a given election.

11. I anticipate at least 1.6 million Harris County voters will exercise their right to vote during this fall’s general election. For planning purposes, the Clerk’s office has encouraged voters to vote by mail if they are eligible, or otherwise to vote during the Early Voting period (and as early as possible during that voting period). Our goal is to frontload voters as much as possible so that on Election Day itself, lines will be minimized to better enable social distancing for the safety of voters and election workers alike. Because of the ongoing pandemic and the highly anticipated nature of the election, I expect higher than usual rates of voting by mail in the upcoming general election. I estimate there will be 300,000-600,000 voters who vote by mail, one million to 1.3

million voters who vote early in person, and 300,000 to 500,000 voters who vote on Election Day in person.

12. In past general elections, there have typically been around 100,000 mail-in ballots cast. The July runoff saw a sharp increase both in voter turnout and the ratio of voters who vote by mail. As of today, we have received more than 200,000 applications to vote by mail, more than double the total mail-in ballots received in prior elections. Of these 200,000+ applications, 89% are from voters aged 65 or older.

13. As part of our efforts to encourage voting by mail so that fewer voters have to pass through polling location doors, in mid-September we mailed applications to all registered voters over the age of 65 who had not already requested a ballot. We had planned on mailing to all registered voters who had not yet requested a ballot by mail, but we have been slowed by a lawsuit filed by the State of Texas at the request of the Texas Secretary of State (“SOS”), *State v. Hollins*, No. 2020-52383 (127<sup>th</sup> Dist. Court, Harris County). That case is currently awaiting decision at the Supreme Court of Texas after a September 30 oral argument. *See State v. Hollins*, No. 20-0739, Tex. Sup. Ct.), <http://www.search.txcourts.gov/Case.aspx?cn=20-0729&coa=cossup>. Should we succeed in the case, approximately 1.9 million additional applications, accompanied by detailed information on who is eligible to vote by mail, will be sent through the U.S. Postal Service (“USPS”).

14. I have conducted detailed modeling and analysis to determine the likely turnout, methods of voting that voters may choose (mail-in ballots, early voting in person, or Election Day), and the best allocation of resources to meet voter demand without creating long lines or other circumstances where social distancing would not be possible. The quantity and location of early voting locations have been set for over a month, and the ballot drop-off locations have been set since mid-July.

15. Since the Governor’s July 27 Proclamation, Harris County has made plans to again make our annex offices available for mail ballot returns.

16. We arranged to apply the same ballot collection and security protocols at each drop-off location, whether at election administration headquarters or elsewhere. All ballot drop-off locations are equally secure. We trained enough staff at each location in election protocols and rules so that two such trained employees are present at all times while the location is accepting ballots. Attached as Exhibit B is a document we used for training staff. It requires staff to ensure that (1) the voter signs a roster (just as they would when voting in-person), *See* Exhibit C, Hand-Delivery Signature Roster, (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).

17. 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 NRG Arena daily for processing. This process is more secure than the voter using the mail system, in that the ballots are kept in sealed, secure boxes from the moment they leave the voter’s hand. There is no unexpected administrative burden to collect ballots from the eleven annexes and transport them to our headquarters — we have planned and budgeted for this effort in order to provide the best and most secure service to Harris County voters.

#### **Issues with the Mail-In Ballot Drop-Off Locations and Poll Watchers**

18. The training document also describes the presence of poll watchers, which we welcomed to the annex drop-off locations. The first few days of ballot drop-off, poll watchers were present at multiple locations. Unfortunately, there were issues with persons engaging in poll

watching acting inappropriately, such as standing very close to voters (which is very discomforting during the pandemic), photographing voters (which is illegal in polling places, as you may not have recording devices in a polling place, TEX. ELEC. CODE § 61.014), and refusing to sign their poll watcher forms. TEX. ELEC. CODE § 33.051(b). These disruptions prompted our office to seek guidance from the SOS. Attached as Exhibit D is the legal guidance we received from that office declaring that poll watchers were not allowed at such locations at all. This was contrary to our plans and intentions as indicated by the training materials in Exhibit B.

19. Because of these issues, I support the aspects of the Proclamation that make it clear that Chapter 33 of the Election Code applies to drop-off locations. I welcome poll watchers to ensure transparency and confidence in the election process. I also welcome the Governor's support of poll watchers following the law and not illegally recording or harassing voters or election staff.

#### **The Effect of the Governor's Proclamation**

20. This last-minute change to election procedures is causing voter confusion. Reducing our drop-off locations from twelve (the ten annexes, our historical headquarters, and our new headquarters at NRG Arena) to one will increase congestion as the volume of ballot returns increases over the next few weeks. Particularly because of the widely-publicized problems with the U.S. Postal Service, some voters may have trouble receiving their ballot until close to Election Day, and will thus have to return their ballot in person in order to ensure it is returned on time. *See* Exhibit E, USPS Ltr. to SOS, July 30, 2020 (warning that first-class U.S. mail will take one week for delivery). If we are forced to reduce to one location, I anticipate that toward the end of early voting and especially on Election Day, we will see massive lines to return ballots in person. In addition, voters without reliable transportation will be unable to get to NRG Arena from their homes (which could be more than fifty miles away) in time to have their vote counted.

21. Our multiple ballot drop-off locations have been advertised to voters via social media, media interviews, and other methods. The *Harris Votes* website contained instructions on where and how to hand-deliver ballots referencing the twelve distinct locations. Exhibit F, Harris Votes, Frequently Asked Questions, visited Sept. 27, 2020 (referencing Find an Office, <https://www.cclerk.hctx.net/ContactUs.aspx>).

22. Since the Governor's October 1 Proclamation, we have chosen NRG Arena as the single mail-in ballot drop-off location because it is our headquarters for the general election. Reducing the drop-off locations from twelve to one will not enhance security of the ballots in any way, as it will force more voters to use USPS rather than see their ballot securely delivered straight to a sealed, secure ballot box.

23. The Proclamation will make it much more difficult for some voters to return their ballots by limiting counties to only one drop-off location during the early voting period. Harris County is a large county. NRG Arena sits in the southern portion of the County. The size of the County, and the location of our Houston headquarters, would make it difficult, if not impossible, for some voters to return their ballots to only that single drop-off location. This will undoubtedly force some voters to decide if they will risk their health by voting in person or if they instead will not vote at all. No Texas voter should have to make that decision.

24. In my experience, rural voters, voters who live furthest from the county drop-off location, lower-income voters, and voters without access to transportation have the hardest time traveling significant distances to vote or drop off their ballots.

25. This change also burdens the Clerk's Office administratively and was already extremely disruptive especially given the one-day notice for the change. We are having to change our voter education materials, our website, and our staff training. I also expect that the Proclamation will cause substantial confusion among voters as to where they can drop off their

ballots during the early voting period. Our call centers have been inundated with voter inquiries about their rights in light of the Proclamation, and we have had to field calls from other elected officials' offices, who are themselves flooded with calls.

### **Security of Mail-In Ballots**

26. In my experience, and given the careful planning and process vetting by my office, the ballot drop-off locations are secure. We have chain-of-custody documentation for the ballot boxes. We have rosters requiring signatures so that each batch has an audit trail as to the count of ballots and a way of verifying that it was in fact the voter who dropped off the ballot. Further, Clerk's Office personnel check the identification of every voter as they would if the voter was voting in person. In my experience, Texas does not have a wide-scale problem with election fraud. Mail-in ballots are highly regulated and loaded with paper trails so that any irregularity is spotted and addressed.

27. The mail-in ballot process contains many, heavily regulated steps.

28. We send ballots out to voters on a continuous basis. Typically, about forty-five (45) days before an election, we prioritize sending ballots to military and overseas voters, then to others who requested to vote by mail. This was done on September 19. On September 28, we sent the first batch of non-FPCA mail-in ballots, more than 180,000. From here, we send out ballots on a rolling basis as the requests come in and are processed.

29. After voters mark their ballots, they must place the ballot in a ballot envelope, which is then placed in a carrier envelope. The carrier envelope must be sealed, and the outside of the envelope must be signed by the voter. TEX. ELEC. CODE § 86.005. After voters send their ballot to our office, whether by in-person delivery or not, a very labor-intensive process begins.

30. The EVBB processes the mail-in ballots. TEX. ELEC. CODE § 87.001 *et seq.* The ballot board is selected according to TEX. ELEC. CODE § 87.001 to 87.006. The signature

verification committee is selected according to TEX. ELEC. CODE § 87.027. The EVBB must review ballots that have been returned and verify signatures via its Signature Verification Committee. TEX. ELEC. CODE § 87.027. This is a manual ballot-by-ballot process conducted on a continuous basis during the early voting period. The individuals who serve on the EVBB tend to have significant experience and work in pairs, with a representative of each major political party present.

31. Both the EVBB and the Signature Verification Committee are bi-partisan committees of citizens who are compensated with a modest sum. They process the ballots by:


- Determining if the carrier envelope has been properly executed;
- Reviewing the voter's signature on the carrier envelope to ensure it matches that on the mail ballot application, and that both signatures have been executed by the voter; unless the voter chose to use a witness;
- Making sure the voter's application states a legal ground for voting by mail;
- Making sure the voter is in fact registered to vote; and
- Ensuring the ballot was mailed to the proper address, among other tasks.

TEX. ELEC. CODE § 87.041(b). Only when the EVBB has determined the ballot meets these requirements will it accept the ballot for counting. TEX. ELEC. CODE § 87.041(a), (c). Then the ballots are separated from the envelopes and prepared for counting. TEX. ELEC. CODE § 87.042; *see also* Tex. Sec. of State, *Processing and Counting Early Voting by Mail Ballots*, Elec. Adv. No. 2020-20, July 2, 2020. To ensure voters do not vote twice, a "poll book" is kept electronically where election workers note when a ballot has been issued to a voter whether by mail or in person. TEX. ELEC. CODE §§ 63.003, 86.001(g), 87.122(a). If a voter who applied for and received a mail-in ballot then wishes to vote in person, the voter must surrender that ballot, and documentation is kept. TEX. ELEC. CODE § 84.032(c).

32. Ironically, voters returning mail-in ballots in person is more secure than returning by mail because (1) there is no danger of tampering or loss of the ballot in transit and (2) voters who return ballots in person must sign a roster and present voter ID. Thus, any concern about security of in-person drop-off of mail ballots is unfounded.

I declare under penalty of perjury that the foregoing is true and correct.

Date: October 3, 2020

By:   
Christopher G. Hollins  
Harris County Clerk

**Exhibits**

Harris County Clerk Chris Hollins Announces Vote by Mail Drop-Off Locations, July 13, 2020, <a href="https://www.harrisvotes.com/PressReleases/Vote%20By%20Mail%20Drop-off%20en-US.pdf">https://www.harrisvotes.com/PressReleases/Vote%20By%20Mail%20Drop-off en-US.pdf</a> .	A
Harris County Clerk, Process to Hand-Deliver Mail Ballots to the Early Voting Clerk's Office	B
Hand-Delivery Signature Roster, SOS form 5-11A	C
SOS email, Sept. 29, 2020 re poll watchers	D
USPS Ltr. to SOS, July 30, 2020 (highlighted)	E
Harris Votes, Frequently Asked Questions, visited Sept. 27, 2020	F



## Chris Hollins · Harris County Clerk

**FOR IMMEDIATE RELEASE**

July 13, 2020

**CONTACT:** Communications & Voter Outreach

[County.Clerk@cco.hctx.net](mailto:County.Clerk@cco.hctx.net)

(713) 274-9550

### Harris County Clerk Chris Hollins Announces Vote by Mail Drop-Off Locations

*Voters Can Drop Off Their Vote by Mail Ballots at 11 Locations Across the County on Election Day*

**(Houston, TX)** – On Election Day, July 14, voters who received mail ballots but were unable to mail in their ballots on time can go in-person to 11 locations across the County to drop off their ballot. This is the first time in recent history that there has been more than a single drop-off location in Harris County. The voter must go in-person to one of the 11 locations to verify their identity for their vote to be counted. Locations will be open during polling center hours, from 7:00 AM to 7:00 PM on Election Day, Tuesday July, 14.

“We increased mail ballot drop-off locations for Election Day as another method for voters to cast their ballots safely and expand voter access for the people of Harris County,” said **Harris County Clerk Chris Hollins**. “Voters who applied to vote by mail but were unable to mail in their ballots on time can now take their completed ballots to any one of the 11 locations and know their vote will be counted. No Harris County resident should have to make a decision between their health and their Constitutional right to vote.”

#### Vote by Mail Drop-off Locations:

1. Baytown  
701 West Baker Rd., Baytown TX 77521
2. Chimney Rock  
6000 Chimney Rock Road, Houston TX 77081
3. Clay Road  
16715 Clay Road, Houston TX 77084
4. Clear Lake  
16603 Buccaneer Lane, Houston TX 77062
5. Cypresswood  
6831 Cypresswood Drive, Spring TX 77379
6. Humble  
7900 Will Clayton Pkwy, Humble TX 77338
7. North Shepherd  
7300 N. Shepherd Drive, Houston TX 77091
8. Pasadena  
101 S. Richey Street, Pasadena TX 77506
9. South Belt  
10851 Scarsdale Blvd., Houston TX 77089
10. Wallisville  
14350 Wallisville Road., Houston TX 77049
11. Downtown  
1001 Preston Street, Houston TX 77002

For more election information, visit [HarrisVotes.com](http://HarrisVotes.com) and follow @HarrisVotes on Facebook, Twitter, and Instagram.

###

**EXHIBIT A**

App.254



## PROCESS TO HAND-DELIVER MAIL BALLOTS TO THE EARLY VOTING CLERK'S OFFICE

Office of Chris Hollins, Harris County Clerk  
201 Caroline St., Suite 640, Houston, TX 77251-1525

1

## Introduction

On July 27, 2020, Texas Governor Greg Abbott issued a Proclamation expanding the period in which marked mail-in ballots may be hand-delivered in person by the voter to the early voting clerk's office. The Proclamation provides that marked ballots sealed in the fully executed carrier envelope may be hand-delivered to the early voting clerk's office by the voter prior to the start of early voting, during early voting and by 7:00 p.m. on Election Day. Under normal circumstances, the Election Code limits hand-delivery of mail ballot to Election Day.

The following instructions provide guidelines to help designated Deputy County Clerks carry out the Governor's proclamation and safeguard the mail ballot delivery process from September 21 through November 3, 2020.

Please be aware that hours of operation may be extended during the November Election Early Voting Period which runs from October 13-30.

2

EXHIBIT B

1

### Step 1: Staging Mail Ballot Delivery Location

1. Ensure that directional signs related to the Vote by Mail Ballots Delivery process such as entry, hours, and procedures are posted and are clearly visible to voters when driving or walking.
2. Place sealed Ballot Tub behind counter in an area that is only accessible to authorized personnel and where it is never out of the sight of designated Deputy County Clerks.
3. Keep required administrative election forms, Reasonable Impediment Declaration and Daily Mail Voter Roster, with the corresponding Mail Ballot Envelope Tub.



4. Keep instructions binder nearby for quick reference. NOTE: Voters are not required to wear a mask to drop off mail ballots.

3

### Staging continued: Curbside Buzzer for Mail Ballot Delivery

5. Place curbside buzzer outside the facility where it is accessible to all voters, including voters with disabilities.

- Test the Buzzer!
  - During setup
  - Prior to opening
  - Throughout the voting period



6. Keep in mind that this is an election process that is subject to public inspection.

4



**Step 3: Daily Curbside Interaction with Voters hand-delivering mail ballot**

A voter may opt to hand-deliver their mail ballot carrier envelope without exiting their vehicle. If this occurs,

- The designated Deputy County Clerk may process the voter at the curbside just as a voter is processed inside the facility. However, in this instance, two clerks are required, one to conduct the transaction and the other to witness it.
- a voter must present acceptable form of identification,
- designated Deputy County Clerk must verify voter's ID to name on the ballot envelope (NOT the address),
- designated Deputy Clerk must enter voter's name on roster
- Voter must sign the roster. The roster can be taken to vehicle.
- Designated Clerk will bring ballot envelope into office and deposit the ballot envelope in the Mail Ballot Tub.



**Make sure the voter has signed the mail ballot carrier envelope where required.**

7

**Step 4: Mail Ballot Tub, Use, Safeguarding and Delivery**

- Once a Mail Ballot Tub is full of mail ballot envelopes, the filled Mail Ballot Tub must be secured in the office's safe box. Corresponding Roster and Reasonable Impediment Declarations must be deposited in the tub.
- Do Not Open Seals on the Tub/Tubs or Break the Seals on any Tub/Tubs.
- Fill out transmittal form before delivering Mail Ballot Tub to Election headquarters. Two (2) clerks must sign the transmittal form and any chain of custody records.
- Two (2) clerks must deliver Mail Ballot Tubs to Voting By Mail team at election headquarters at the end of the day. Tubs must be secured inside a vehicle. If needed, two separate vehicles may be employed for delivery.
- Designated Deputy Clerk(s) must prepare a new Mail Ballot Envelope Tub for use as required.

8



5-11A  
Prescribed by Secretary of State  
Sections 63.0101, 86.006 Texas Election Code  
08/2020

**NOVEMBER 3, 2020 SPECIAL EXTENDED HAND-DELIVERY PERIOD  
SIGNATURE ROSTER - HAND-DELIVERY OF BALLOT BY MAIL**

Type of Election	Polling Location
Date of Election	Office of the Early Voting Clerk
November 3, 2020	Authority Conducting Election

Signature of Voter (Firma del Votante)	Poll List (Lista de Votantes)	VUID # (if known)	Date and Time of Delivery	Acceptable Form of ID	RID	Printed Name of Election Official Who Received Carrier Envelope
10			/ /2020			
9			/ /2020			
8			/ /2020			
7			/ /2020			
6			/ /2020			
5			/ /2020			
4			/ /2020			
3			/ /2020			
2			/ /2020			
1			/ /2020			

**Instructions:**

**NOTE:** A voter may only deliver his or her own personal ballot.

**NOTA:** Un votante solo puede entregar su propia boleta personal.

1. Ask the voter to present an acceptable form of photo ID when he or she presents the Carrier Envelope for hand-delivery.
    - a. If the voter does not have an acceptable form of photo ID, ask the voter for a supporting form of ID and have the voter execute the Reasonable Impediment Declaration.
  2. Add the voter's name to the Poll List column of the Roster and instruct the voter to sign the signature column on the corresponding numbered line.
  3. Write the VUID number, if known, in the VUID # column.
  4. Write the date and time of delivery in the "Date and Time of Delivery Column." Put the date on top and the time below it.
  5. Check the appropriate column to note whether the voter had an approved form of photo ID or executed a RID.
  6. Write the name of the Election Official who received the ballot from the voter.
  7. Write "Hand-Delivery" and note the time and date the Ballot by Mail was hand-delivered on the Carrier Envelope.
  8. Upon receipt of the Carrier Envelope, secure the Ballot by Mail until its delivery to the Early Voting Ballot Board.
- If the voter does not have an approved form of ID to complete the Ballot by Mail hand-delivery process, he or she can return to an Early Voting or Election Day voting site to vote a provisional ballot in person.
- If the voter insists on leaving the Carrier Envelope without presenting an approved form of ID, the ballot will be treated as a ballot not timely returned and therefore, not counted.**

Case: 20-50867 Document: 00515597796 Page: 80 Date Filed: 10/12/2020

**From:** Christina Adkins  
**Subject:** Poll watchers not permitted at EV clerk's office  
**Date:** September 29, 2020 at 12:52 PM  
**To:** Wynn, Michael (CCO)  
**Cc:** Keith Ingram

CW

Michael,

As we discussed on the phone, the Texas Election Code provides that poll watchers can serve at a precinct polling place (33.052), an early voting polling place (33.053), an early voting ballot board meeting (33.054), and at the central counting station (33.055). The Texas Election Code does not provide that a poll watcher is permitted to serve at the early voting clerk's office. Therefore, poll watchers are not permitted to be present to observe the hand delivery of mail ballots as this action occurs at the early voting clerk's office.

Please let me know if you have any additional questions.

Thank you,

**Christina Worrell Adkins**

Legal Director – Elections Division

Office of the Texas Secretary of State

1019 Brazos Street | Rudder Building, 2nd Floor | Austin, Texas 78701

1.800.252.VOTE (8683)

[elections@sos.texas.gov](mailto:elections@sos.texas.gov) | [www.sos.texas.gov](http://www.sos.texas.gov)

**For Voter Related Information, please visit:**



*The information contained in this email is intended to provide advice and assistance in election matters per §31.004 of the Texas Election Code. It is not intended to serve as a legal opinion for any matter. Please review the law yourself, and consult with an attorney when your legal rights are involved.*

**EXHIBIT D**

App.261

Case: 20-cv-00066-RP Document: 18-22 Filed: 10/05/20 Page: 22 of 27

THOMAS J. MARSHALL  
GENERAL COUNSEL  
AND EXECUTIVE VICE PRESIDENT



July 30, 2020

Honorable Ruth Hughs  
Texas Secretary of State  
P.O. Box 12887  
Austin, TX 78711-2887

Dear Secretary Hughs:

Re: Deadlines for Mailing Ballots

With the 2020 General Election rapidly approaching, this letter follows up on my letter dated May 29, 2020, which I sent to election officials throughout the country. That letter highlighted some key aspects of the Postal Service's delivery processes. The purpose of this letter is to focus specifically on the deadlines for requesting and casting ballots by mail. In particular, we wanted to note that, under our reading of Texas' election laws, certain deadlines for requesting and casting mail-in ballots are incongruous with the Postal Service's delivery standards. This mismatch creates a risk that ballots requested near the deadline under state law will not be returned by mail in time to be counted under your laws as we understand them.

As I stated in my May 29 letter, the two main classes of mail that are used for ballots are First-Class Mail and USPS Marketing Mail, the latter of which includes the Nonprofit postage rate. Voters must use First-Class Mail (or an expedited level of service) to mail their ballots and ballot requests, while state or local election officials may generally use either First-Class Mail or Marketing Mail to mail blank ballots to voters. While the specific transit times for either class of mail cannot be guaranteed, and depend on factors such as a given mailpiece's place of origin and destination, most domestic First-Class Mail is delivered 2-5 days after it is received by the Postal Service, and most domestic Marketing Mail is delivered 3-10 days after it is received.

To account for these delivery standards and to allow for contingencies (e.g., weather issues or unforeseen events), the Postal Service strongly recommends adhering to the following timeframe when using the mail to transmit ballots to domestic voters:

- **Ballot requests:** Where voters will both receive and send a ballot by mail, voters should submit their ballot request early enough so that it is received by their election officials at least 15 days before Election Day at a minimum, and preferably long before that time.
- **Mailing blank ballots to voters:** In responding to a ballot request, election officials should consider that the ballot needs to be in the hands of the voter so that he or she has adequate time to complete it and put it back in the mail stream so that it can be processed and delivered by the applicable deadline. Accordingly, the Postal Service recommends that election officials use First-Class Mail to transmit blank ballots and allow 1 week for delivery to voters. Using Marketing Mail will result in slower delivery times and will increase the risk that voters will not receive their ballots in time to return them by mail.

475 L'ENVOI PLAZA SW  
WASHINGTON DC 20260-1100  
PHONE: 202-268-5555  
FAX: 202-268-0981  
THOMAS.J.MARSHALL@USPS.GOV  
WWW.USPS.COM

**EXHIBIT E**

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- 2 -

- **Mailing completed ballots to election officials:** To allow enough time for ballots to be returned to election officials, domestic voters should generally mail their completed ballots at least one week before the state's due date. In states that allow mail-in ballots to be counted if they are *both* postmarked by Election Day *and* received by election officials by a specific date that is less than a week after Election Day, voters should mail their ballots at least one week before they must be received by election officials. So, for example, if state law requires a mail-in ballot to be postmarked by Tuesday, November 3, and received by Wednesday, November 4, voters should mail their ballot by Wednesday, October 28, to allow enough time for the ballots to be delivered by November 4. Voters must also be aware of the posted collection times on collection boxes and at the Postal Service's retail facilities and that ballots entered after the last posted collection time on a given day will not be postmarked until the following business day.

Under our reading of your state's election laws, as in effect on July 27, 2020, certain state-law requirements and deadlines appear to be incompatible with the Postal Service's delivery standards and the recommended timeframe noted above. As a result, to the extent that the mail is used to transmit ballots to and from voters, there is a significant risk that, at least in certain circumstances, ballots may be requested in a manner that is consistent with your election rules and returned promptly, and yet not be returned in time to be counted.

Specifically, it appears that a voter may generally request a ballot as late as 11 days before the election, and that a completed ballot must be postmarked by Election Day and received by the day after the election to be counted. It also appears that law does not appear to require election officials to transmit a ballot by mail until seven days after receiving a ballot application. If a voter submits a request at or near the ballot-request deadline, and if the requested ballot is mailed to the voter 7 days after the request is received, there is a risk that the ballot will not reach the voter before Election Day, and accordingly that the voter will not be able to use the ballot to cast his or her vote. Even if the requested ballot reaches the voter by Election Day, there is a significant risk that, given the delivery standards for First-Class Mail, 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. As noted above, voters who choose to mail their ballots should do so no later than Wednesday, October 28.

To be clear, the Postal Service is not purporting to definitively interpret the requirements of your state's election laws, and also is not recommending that such laws be changed to accommodate the Postal Service's delivery standards. By the same token, however, the Postal Service cannot adjust its delivery standards to accommodate the requirements of state election law. For this reason, the Postal Service asks that election officials keep the Postal Service'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. It is particularly important that voters be made aware of the transit times for mail (including mail-in ballots) so that they can make informed decisions about whether and when to (1) request a mail-in ballot, and (2) mail a completed ballot back to election officials.

We remain committed to sustaining the mail as a secure, efficient, and effective means to allow citizens to participate in the electoral process when election officials determine to utilize the mail as a part of their election system. Ensuring that you have an understanding of our operational capabilities and recommended timelines, and can educate voters accordingly, is important to achieving a successful election season. Please reach out to your assigned election mail coordinator to discuss the logistics of your mailings and the services that are available as well as any questions you may have. A list of election mail coordinators may be found on our website at: <https://about.usps.com/election-mail/politicalection-mail-coordinators.pdf>.

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We hope the information contained in this letter is helpful, and please let me know if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Marshall". The signature is fluid and cursive, with the first name "Thomas" and last name "Marshall" clearly distinguishable.

Thomas J. Marshall

## ELECTION DIVISION

# KNOWLEDGEBASE

**NEXT ELECTION: NOVEMBER 03, 2020 - GENERAL AND SPECIAL ELECTIONS**

**LAST DAY TO APPLY FOR BALLOT BY MAIL (RECEIVED, NOT POSTMARKED): OCTOBER 23, 2020**

**EARLY VOTING: OCTOBER 13, 2020 - OCTOBER 30, 2020**



### Voting by Mail

(/Voting info? ang=en  
US#VoteByMail)



### Poll locations

(/What times? ang=en US)



### Sample Ballots

(/Sample Ballots? ang=en  
US)



### Election Workers

(/Election Workers?  
ang=en US)



### Candidates & Ethics

(/Candidates Ethics?  
ang=en US)



### Voting FAQ

(/FAQ? ang=en  
US#earlyVotingFAQ)

## Knowledgebase

Voting Process

Early Voting

Election Day

Primary Election

Contact Us

## KNOWLEDGEBASE

# FREQUENTLY ASKED QUESTIONS

Voting Process

Early Voting

Election Day

Primary Election

Voting By Mail

### + WHO CAN VOTE BY MAIL?



- + WHAT QUALIFIES AS HAVING A DISABILITY, AND WHAT DOES THAT MEAN IN THE AGE OF CORONAVIRUS (COVID-19)?
- + WHEN CAN I APPLY TO VOTE BY MAIL? IS THERE A DEADLINE?
- + WHERE CAN I GET AN APPLICATION TO VOTE BY MAIL?
- + WHAT IF I'M NOT REGISTERED TO VOTE?
- + DO I HAVE TO APPLY TO VOTE BY MAIL FOR EACH ELECTION?
- + CAN I RECEIVE ASSISTANCE WITH FILLING OUT THE VOTE BY MAIL APPLICATION?
- + HOW DO I SUBMIT MY APPLICATION TO VOTE BY MAIL?
- + WHEN WILL I GET MY VOTE BY MAIL BALLOT?
- HOW DO I RETURN MY COMPLETED BALLOT TO THE ELECTION OFFICE? IS THERE A DEADLINE?

A completed mail ballot MUST be returned to the Harris County Clerk's Office in the Office a Carrier Envelope provided to you. It may be returned in any of the following manners:

1. Registrar resident mail via United States Postal Service;
  - a. Ballot must be postmarked by 7:00 p.m. on Election Day and must be received by 5:00 p.m. on November 4 (the day after Election Day)
2. In-person drop off at any of the Harris County Clerk's Annex locations ([https://cc.er\\_hctx.net/ContactUs.aspx](https://cc.er_hctx.net/ContactUs.aspx)) during regular business hours through Election Day, November 3, 2020, at 7:00 p.m.;
  - a. You must present an acceptable form of photo identification ([https://www.harrsvotes.com/VotingInfo?lang=en\\_US#Ds](https://www.harrsvotes.com/VotingInfo?lang=en_US#Ds))
  - b. If a voter does not possess and cannot reasonably obtain an acceptable form of photo identification, the voter may show a List B identification ([https://www.sos.state.tx.us/elections/forms/d/poster\\_8.5x14\\_aw\\_voter.pdf](https://www.sos.state.tx.us/elections/forms/d/poster_8.5x14_aw_voter.pdf)) and complete a reasonable impediment declaration (R.D.)
  - c. Only the voter may deliver the ballot in person
3. Common or contract carrier, such as personal courier, or FedEx or UPS, or other contracted mail service
  - a. Ballot must be received by 7:00 p.m. on Election Day
  - b. If the carrier provides receipt marked at a time before 7:00 p.m. on Election Day, it may be received by 5:00 p.m. on November 4 (the day after Election Day)

- + ARE THERE DIFFERENT DEADLINES IF I AM OVERSEAS OR SERVING IN THE MILITARY? ^
- + WILL MY VOTE BY MAIL BALLOT COUNT IF I CHOOSE NOT TO VOTE ON CERTAIN ISSUES OR CANDIDATES?
- + HOW DOES THE HARRIS COUNTY CLERK'S OFFICE PROCESS MY VOTE BY MAIL BALLOT SECURELY?
- + HOW IS MY SIGNATURE VERIFIED?
- + WHEN IS MY VOTE BY MAIL BALLOT COUNTED?
- + CAN I VOTE IN PERSON IF I RECEIVED A VOTE BY MAIL BALLOT? WHAT ABOUT IF I SUBMITTED A VOTE BY MAIL APPLICATION AND NEVER RECEIVED A BALLOT?
- + CAN I CHANGE MY VOTE AFTER I VOTE BY MAIL?
- + DOES MY VOTE BY MAIL BALLOT NEED STAMPS?
- + HOW CAN I CHECK TO SEE IF MY VOTE BY MAIL BALLOT HAS BEEN MAILED OR RECEIVED?

## ELECTION DIVISION

# CONTACT US

Information is vital to accessing the voting process. For this reason, we encourage you to contact us if you have a question, need assistance or have a suggestion.



### Election Department

Harris County Administration Building  
1001 Preston, 4th Floor, Rm. 439  
Houston, TX 77002

(<https://www.google.com/maps/d/r/Current+Location/1001+Preston+St+Houston,+TX+77002/@/>)

Voting By Mail  
1 NRG Parkway  
Houston, TX 77054

([https://www.google.com/maps?](https://www.google.com/maps?daddr=1+NRG+Pwy+Houston,+TX+77054)  
[daddr=1+NRG+Pwy+Houston,+TX+77054](https://www.google.com/maps?daddr=1+NRG+Pwy+Houston,+TX+77054))

(713) 755 6965  
[voters@harrsvotes.com](mailto:voters@harrsvotes.com)  
(mailto:[voters@harrsvotes.com](mailto:voters@harrsvotes.com))

ADA Coordinator: Rache Brown

(713) 755 6965  
[ada@ccoctx.net](mailto:ada@ccoctx.net)  
(mailto:[ada@ccoctx.net](mailto:ada@ccoctx.net))

[Voter Outreach \(/Outreach\)](#)  
[Feedback \(/Outreach/#Feedback\)](#)

[Career Opportunities](#)  
([https://www.governmentjobs.com/careers/harriscountytexas?](https://www.governmentjobs.com/careers/harriscountytexas?department=01_County%20Clerk%27s%20Office&sort=PostonT)  
[department=01\\_County%20Clerk%27s%20Office&sort=PostonT](https://www.governmentjobs.com/careers/harriscountytexas?department=01_County%20Clerk%27s%20Office&sort=PostonT))



### Social Media



[Twitter](#)  
([https://twitter.com/HarrisVotes?](https://twitter.com/HarrisVotes?lang=en)  
[lang=en](https://twitter.com/HarrisVotes?lang=en))



[Facebook](#)  
(<https://facebook.com/harrsvotes>)



[Instagram](#)  
(<https://instagram.com/harrsvotes>)



### Ballot By Mail

1001 Preston, 4th Floor, Rm. 440  
Houston, TX 77002

(<https://www.google.com/maps/d/r/Current+Location/1001+Preston+St+Houston,+TX+77002/@/>)

(713) 755 3150  
[BBM@ccoctx.net](mailto:BBM@ccoctx.net)  
(mailto:[BBM@ccoctx.net](mailto:BBM@ccoctx.net))



### County Clerk's Office

201 Caroline, 4th Floor, Rm. 460  
Houston, TX 77002

(<https://www.google.com/maps/d/r/Current+Location/201+Caroline+St+Houston,+TX+77002/@/>)

(713) 274 8600

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# EXHIBIT 22



GOVERNOR GREG ABBOTT

October 1, 2020

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
11:00 AM O'CLOCK

OCT 01 2020  
  
Secretary of State

The Honorable Ruth R. Hughs  
Secretary of State  
State Capitol Room 1E.8  
Austin, Texas 78701

Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation suspending certain statutes concerning the November 3, 2020 elections.

The original of this proclamation is attached to this letter of transmittal.

Respectfully submitted,

Gregory S. Davidson  
Executive Clerk to the Governor  
GSD/gsd

Attachment

**PROCLAMATION**  
BY THE  
**Governor of the State of Texas**

---

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined that COVID-19 continues to represent a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, pursuant to legislative authorization under Chapter 418 of the Texas Government Code, I have issued executive orders, proclamations, and suspensions of Texas laws in response to the COVID-19 disaster, aimed at using the least restrictive means available to protect the health and safety of Texans and ensure an effective response to this disaster; and

WHEREAS, on July 27, 2020, I issued a proclamation suspending certain provisions of the Texas Election Code to provide additional time for early voting and to provide additional time in which a voter can deliver a marked mail ballot in person to the early voting clerk's office, such that this may be done prior to and including on election day; and

WHEREAS, the suspension of the limitation on the in-person delivery of marked mail ballots, as made in the July 27, 2020 proclamation, merely increased the amount of time for an eligible voter to return a marked mail ballot in person to the early voting clerk's office and did not suspend or otherwise affect the other applicable requirements that a voter must comply with when returning a marked mail ballot, including presenting an acceptable form of identification described by Section 63.0101 of the Election Code; and

WHEREAS, an amendment to the suspension of the limitation on the in-person delivery of marked mail ballots, as made in the July 27, 2020 proclamation, is appropriate to add ballot security protocols for when a voter returns a marked mail ballot to the early voting clerk's office; and

WHEREAS, Section 41.001(a) of the Texas Election Code provides that a general or special election in this state shall be held on a uniform election date, and the next uniform election date is occurring on November 3, 2020; and

WHEREAS, I issued a proclamation on March 18, 2020, suspending Sections 41.0052(a) and (b) of the Texas Election Code and Section 49.103 of the Texas Water Code to the extent necessary to allow political subdivisions that would otherwise have held elections on May 2, 2020, to move their general and special elections for 2020 only to the November 3, 2020 uniform election date; and

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
11:00AM, OCT 01 2020

OCT 01 2020

*Governor Greg Abbott*  
October 1, 2020

*Proclamation*  
Page 2

WHEREAS, Texas law provides that eligible voters have a right to cast a vote in person; and

WHEREAS, as counties across Texas prepare for the upcoming elections on November 3, 2020, and establish procedures for eligible voters to exercise their right to vote in person, it is necessary that election officials implement health protocols to conduct elections safely and to protect election workers and voters; and

WHEREAS, in order to ensure that elections proceed efficiently and safely when Texans go to the polls to cast a vote in person during early voting or on election day for the November 3, 2020 elections, it is necessary to increase the number of days in which polling locations will be open during the early voting period, such that election officials can implement appropriate social distancing and safe hygiene practices; and

WHEREAS, Section 85.001(a) of the Texas Election Code provides that the period for early voting by personal appearance begins 17 days before election day; and

WHEREAS, Section 86.006(a-1) of the Texas Election Code provides that a voter may deliver a marked mail ballot in person to the early voting clerk's office while the polls are open on election day; and

WHEREAS, in consultation with the Texas Secretary of State, it has become apparent that for the November 3, 2020 elections, strict compliance with the statutory requirements in Sections 85.001(a) and 86.006(a-1) of the Texas Election Code would prevent, hinder, or delay necessary action in coping with the COVID-19 disaster, and that providing additional time for early voting will provide Texans greater safety while voting in person; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders hav[ing] the force and effect of law;" and

WHEREAS, pursuant to Section 418.016 of the Texas Government Code, the legislature has expressly authorized the governor 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; and

WHEREAS, under Section 418.018(c), the "governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area;"

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and laws of the State of Texas, do hereby suspend Section 85.001(a) of the Texas Election Code to the extent necessary to require that, for any election ordered or authorized to occur on November 3, 2020, early voting

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
11:00 AM O'CLOCK

OCT 01 2020

Governor Greg Abbott  
October 1, 2020

Proclamation  
Page 3

by personal appearance shall begin on Tuesday, October 13, 2020, and shall continue through the fourth day before election day.

I further suspend Section 86.006(a-1) of the Texas Election Code, for any election ordered or authorized to occur on November 3, 2020, to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk's office prior to and including on election day; provided, however, that beginning on October 2, 2020, this suspension applies only when:

(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; and

(2) the early voting clerk allows poll watchers the opportunity to observe any activity conducted at the early voting clerk's office location related to the in-person delivery of a marked mail ballot pursuant to Section 86.006(a-1) and this suspension, including the presentation of an acceptable form of identification described by Section 63.0101 of the Election Code by the voter.

Any poll watchers operating under this suspension must comply with the requirements of Chapter 33 of the Election Code as if they were serving at an early voting polling place, as applicable to observing the in-person delivery of a marked mail ballot pursuant to Section 86.006(a-1) and this suspension.

Any marked mail ballot delivered in person to the early voting clerk's office prior to October 2, 2020, shall remain subject to the July 27, 2020 proclamation.

The Secretary of State shall take notice of this proclamation and shall transmit a copy of this order immediately to every County Judge of this state and all appropriate writs will be issued and all proper proceedings will be followed to the end that said elections may be held and their results proclaimed in accordance with law.



IN TESTIMONY WHEREOF, I  
have hereto signed my name and  
have officially caused the Seal of  
State to be affixed at my office in  
the City of Austin, Texas, this the  
1st day of October, 2020.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT  
Governor of Texas

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
11:00 AM O'CLOCK

OCT 01 2020

*Governor Greg Abbott*  
October 1, 2020

*Proclamation*  
Page 4

ATTESTED BY:

A handwritten signature in dark ink, appearing to read 'R. Hughs', is written over a horizontal line.

RUTH R. HUGHS  
Secretary of State

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
11:03 AM O'CLOCK

OCT 01 2020

# EXHIBIT 23

## Gov. Abbott forces Harris County to close 11 mail ballot drop-off sites, leaving just one

★ [houstonchronicle.com/politics/texas/article/Abbott-mail-ballot-drop-off-harris-county-election-15612991.php](https://houstonchronicle.com/politics/texas/article/Abbott-mail-ballot-drop-off-harris-county-election-15612991.php)

Zach Despart

October 2, 2020



Texas Gov. Gov. Greg Abbott, shown here at an Austin news conference Sept. 10, issued a proclamation Thursday limiting counties to a single location for collecting absentee ballots from voters who decided to drop them off. ( Jay Janner/Austin American-Statesman via AP)

Photo: Jay Janner, MBR / Associated Press

Gov. Greg Abbott on Thursday declared that counties can designate only one location to collect completed mail ballots from voters, upending some counties' election plans and drawing condemnation and accusations of voter suppression from across the state and country.

The surprise move came in the form of a proclamation that countermanded a legal argument the Texas solicitor general had made in a lawsuit the day before and spurred the threat of legal action by the League of United Latin American Citizens and other civil rights groups.

Most immediately, it forced Harris County to abandon 11 sites set up to allow voters to drop off their absentee ballots. The proclamation takes effect Friday.

Abbott's proclamation also said that counties, to improve ballot security, must allow poll watchers to "observe any activity conducted at the early voting clerk's office" related to the delivery of marked ballots.

“The state of Texas has a duty to voters to maintain the integrity of our election,” Abbott said in a statement. “These enhanced security protocols will ensure greater transparency and will help stop attempts at illegal voting.”

The abrupt announcement drew sharp rebukes from Democrats incensed that Abbott would make absentee voting more difficult for those worried about exposure to the novel coronavirus at the polls.

U.S. Rep. Al Green, D-Houston, said the move, with voting already underway, was “about as good an example as we’ll get” showing why Texas again should be subject to supervision under the Voting Rights Act.

“Republicans are on the verge of losing, so Governor Abbott is trying to adjust the rules last minute,” Texas Democratic Party Chairman Gilberto Hinojosa said in a statement. “Courts all over the country, including the Fifth Circuit yesterday, have held that it is too late to change election rules, but our failed Republican leadership will try anyway.”

Harris County Judge Lina Hidalgo also rejected the idea that Abbott’s proclamation was aimed at protecting election integrity.

“This isn’t security, it’s suppression,” Hidalgo said in a statement. “Mail ballot voters shouldn’t have to drive 30 miles to drop off their ballot or rely on a mail system that’s facing cutbacks.”

Abbott did not cite any examples of voter fraud, which election law experts say is rare.

Just 0.2 percent of 85,922 absentee voters hand-delivered their ballots during the low-turnout July primary runoff; 39 of the 404 ballots for the Nov. 3 election that have been returned through Thursday were dropped off by voters.

Voting by mail has become a national issue as the presidential election approaches while the country remains in the grip of the coronavirus pandemic, with Democrats pushing voters to consider using the method and accusing the Trump administration of trying to sabotage the U.S. Postal Service to disrupt the election. Trump repeatedly has tried to discourage mail balloting, saying it is not secure and is ripe for fraud, even though he uses it frequently.

Texas is one of seven states where all voters are not eligible for mail ballots. Despite that, and a lawsuit from Attorney General Ken Paxton seeking to bar Harris County from sending mail ballot applications to all 2.4 million registered voters, the county has seen an exponential increase in mail ballot requests during the COVID-19 pandemic.

County Clerk Christopher Hollins projects turnout could hit as high as 1.5 million, a record; more than 207,000 mail ballots have been requested already.

To accommodate the surge, Hollins had set up 12 locations — 11 of them county clerk annex offices — throughout the 1,777-square-mile county to collect mail ballots. They offered residents an alternative to placing their ballots in the mail, amid concerns the U.S. Postal Service would struggle to deliver ballots on time.

Now Playing:

Investigation finds election mail delayed, damaged, discarded

Video: Hearst Television National Investigative Unit

Under Abbott's proclamation, the county now will be able to accept ballots only at its election headquarters at NRG Arena.

Hollins accused Abbott of going back on his word in a July 27 proclamation intended to make voting easier during the pandemic. He said Harris County for weeks has advertised its dropoff locations.

"To force hundreds of thousands of seniors and voters with disabilities to use a single dropoff location in a county that stretches nearly 2,000 square miles is prejudicial and dangerous."

Assistant County Attorney Douglas Ray said the governor's claim that limiting mail ballot collection to one site will combat fraud makes no sense. At each location the Harris County set up, voters had to deliver their own ballots, sign in, speak with an assistant clerk and provide identification.

Consolidating that process to one site will make dropping off a ballot more cumbersome, he said.

"It's a bit like saying we had a hurricane and everybody needs water, so we're going to have everybody go to a single location," Ray said. "We're not going to distribute it around town."

The governor's announcement caught election administrators off guard. Fort Bend County announced five dropoff sites on Thursday morning and then had to scuttle those plans.

Travis County Clerk Dana DeBeauvoir said she received no warning she would have to close three locations, and accused Abbott of trying to deliberately manipulate the election. She told the Austin American-Statesman she would consider a legal challenge to Abbott's order.

It appeared to have no affect, however, on the enormous counties in West Texas whose area exceeds that of some New England states. The three largest — Brewster, Pecos and Hudspeth — have just one dropoff location.

State Sen. Paul Bettencourt, R-Houston, praised Abbott for ensuring poll watchers would be able to observe the arrival of mail ballots, writing on Twitter they are “sunshine preventing fraud.” The Secretary of State’s Office had said Tuesday that poll watchers were not permitted at ballot drop-off sites, but Hollins said he had no objection.

Abbott’s proclamation partially achieves what a group of Houston Republicans, including Harris County Republican Party Chairman Keith Nielsen and conservative activist Steve Hotze, had sought in a lawsuit filed with the Texas Supreme Court.

They argued that Harris County was violating the Texas Election Code by setting up multiple locations to collect mail ballots, accepting mail ballots before in-person voting began and extending the early voting period. It was Abbott, however, who added an extra week of early voting in an effort to ensure residents could vote safely during the COVID-19 pandemic.

Kyle Hawkins, the state solicitor general, on Wednesday argued in a brief to the Texas Supreme Court that multiple dropoff locations were permitted under Abbott’s July election order. They became illegal only when Abbott issued his proclamation on Thursday.

The governor’s spokesman did not respond to a request to explain what prompted Abbott to take action now.

The announcement of Abbott’s proclamation came hours after Paxton praised a federal appeals court for reinstating the Legislature’s ban on straight-ticket voting, noting that voting already had begun.

“Last-minute changes to our voting process would do nothing but stir chaos and increase opportunities for voter fraud,” Paxton said.

*Mike Morris, Ben Wermund and Taylor Goldenstein contributed reporting.*

*zach.despart@chron.com*

## **Exhibit 5**

Declaration of John W. Oldham,  
Fort Bend County Elections Administrator

Case 1:20-cv-01006-RP Document 21 Filed 10/05/20 Page 1 of 10

**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	\$
VOTORS OF TEXAS, RALPH	\$
EDELBACH, and BARBARA MASON	\$
Plaintiff,	\$

V.

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

Defendants.

CIVIL ACTION NO.: 1:20-cv-1006

**DECLARATION OF DEFENDANT JOHN W. OLDHAM, IN HIS OFFICIAL CAPACITY AS FORT BEND COUNTY ELECTIONS ADMINISTRATOR**

**DECLARATION OF DEFENDANT JOHN W. OLDHAM**

JUSTIN C. PFEIFFER  
Assistant County Attorney, Fort Bend County  
SBN: 24091473  
401 Jackson Street, Third Floor  
Richmond, Texas 77469  
(281) 341-4555  
(281) 341-4557 - Facsimile  
[Justin.Pfeiffer@FortBendCountytx.gov](mailto:Justin.Pfeiffer@FortBendCountytx.gov)  
ATTORNEY-IN-CHARGE FOR  
DEFENDANT JOHN W. OLDHAM, IN HIS  
OFFICIAL CAPACITY AS FORT BEND COUNTY  
ELECTIONS ADMINISTRATOR

**DECLARATION OF JOHN W. OLDHAM**

I, John W. Oldham, declare:

1. 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 am submit this declaration to explain the impact of the Governor's Proclamation of October 1, 2020 (the "Proclamation"), on the election process in Fort Bend County, and to provide the Court with current information about election planning, conduct, and implementation.

**Early Voting Clerk Role, Fort Bend County, and the Governor's Proclamations**

3. As the Elections Administrator for Fort Bend County, I am the early voting clerk for Fort Bend County, Texas. *See* TEX. ELEC. CODE § 83.001. As "early voting clerk," I have the authority and duty to "conduct the early voting," which includes early voting both in person and by mail. TEX. ELEC. CODE §§ 83.001, 83.002. I have served as the Fort Bend County Elections Administrator since 2008. Prior to that, I have served in elections administration since graduating from the University of Southern Illinois in 1975.

4. I have the duty to administer elections in the ninth-most-populous county in Texas, with approximately 830,000 people, 477,000 registered voters, and a highly diverse electorate. County officials predict that Fort Bend County will have one million residents in two years. Fort Bend County, Texas, is the second-largest County by population in the Houston-metropolitan region and one of the most diverse and fastest-growing counties in the country. The County's population has nearly tripled since 2000 while the ratio of its Anglo population has decreased to 29%, the remainder is almost evenly divided among Latinos, African-Americans, and East and South Asians.

5. Fort Bend County constitutes 885 square miles. Traveling from the County's northeast or southeast corner to the current location of the main election office is a 50-mile round trip. As a suburban county, Fort Bend County's eastern portion often has traffic congestion such that traveling across the county to a central location and back can easily take more than two hours of driving.

6. Greg Abbott, Governor of Texas, announced plans to expand early voting for the November General Election in May and issued a proclamation doing so on July 27. This was not unexpected, or unprecedented, since Governor Abbott issued a similar proclamation to expand early voting in the July Primary Runoff Election. Patrick Svitek, *Texas will extend early voting period this fall, Gov. Greg Abbott says*, Tex. Trib., May 28, 2020, <https://www.texastribune.org/2020/05/28/texas-2020-early-voting-greg-abbott-coronavirus/>; Gov. Greg Abbott, Proclamation, July 27, 2020 ("July 27 Proclamation").

7. Governor Abbott's decision to expand the number of early voting days was crucial because it enabled voters to cast their ballots while maintaining social distance and empowered those such as myself who plan and conduct elections to help voters avoid long lines and maintain social distance in what is sure to be the highest turnout election in Texas history. Governor Abbott's July 27 Proclamation also allowed voters to return their completed mail-in ballot in person at any time, not just on Election Day. Prior to the July 27, 2020 Proclamation, Texas law provided that voters may return their ballots by mail, by common carrier, or in person, but if they do so in-person they may only do so on Election Day to the early voting clerk's office while the polls are open and show identification just as they would if voting in person. TEX. ELEC. CODE § 86.006(a-1). Because a ballot returned in violation of § 86.006 "may not be counted," *id.*

§ 86.006(h), the legality of methods of returning mail-in ballots be very clear, or votes may be challenged in an election contest.

### **Logistics of Planning an Election During the Pandemic**

8. Elections are extraordinarily complex to plan and implement in a democracy, even when there is not a global pandemic raging. American democracy requires that *every* eligible voter have effective access to a ballot and be provided reasonable and safe opportunities to cast their votes securely and privately because voting is an individual right, not a collective one. *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018). The larger and more diverse a community, and the higher the expected turnout, the more difficult this becomes. Multiple mechanisms of voting are useful, as they are more likely to accommodate voters. These include voting by mail, voting in-person during the Early Voting period, voting in-person on Election Day, curbside voting for people with disabilities, and other accommodations for voters with special needs.

9. Prompted by the challenges of conducting an election during a pandemic, our office has engaged in several innovative practices for the general election. For example, we planned on allowing three additional drop-off locations for mail-in ballots. Just before the Proclamation, and in conjunction with the County Judge, we announced the following locations closer the County's population centers: (1) 22333 Grand Corner Drive, Katy, TX 77494; (2) 307 Texas Parkway, Missouri City, TX 77489; and (3) 5855 Sienna Springs Way, Missouri City, TX 77459. We also planned at fourth at 12919 Dairy Ashford Rd, Ste 200, Sugar Land, TX 77478.

10. Although voter behavior can be unpredictable, especially when implementing new election or business processes, or when conducting an election in unusual circumstances such as during the ongoing pandemic, deep analysis of past voting data and current voting conditions is extremely helpful toward planning a given election.

11. I anticipate at least 330,000 Fort Bend County voters will exercise their right to vote during this fall's general election. For planning purposes, our office has encouraged voters to vote by mail if they are eligible, or otherwise to vote during the Early Voting period (and as early as possible during that voting period). Our goal is to frontload voters as much as possible so that on Election Day itself, lines will be minimized to better enable social distancing for the safety of voters and election workers alike. Because of the ongoing pandemic and the highly anticipated nature of the election, I expect higher than usual rates of voting by mail in the upcoming general election. I estimate there will be 35,000 to 40,000 voters who vote by mail, 210,000 to 230,000 voters who vote early in person, and 60,000 to 70,000 voters who vote on Election Day in person.

12. In the last presidential general election, around 15,000 mail-in ballots were cast, which was then a record for Fort Bend County. The July runoff saw a sharp increase both in voter turnout and the ratio of voters who vote by mail with over 10,000 of the 80,000 ballots cast by mail. As of today, we have processed more than 32,000 applications to vote by mail, more than double the total mail-in ballots received in prior elections. Of these 32,000+ applications, 90% are from voters aged 65 or older.

13. I have conducted detailed modeling and analysis to determine the likely turnout, methods of voting that voters may choose (mail-in ballots, early voting in person, or Election Day), and the best allocation of resources to meet voter demand without creating long lines or other circumstances where social distancing would not be possible. Our office selected the quantity and location of early voting locations and ballot drop-off locations with reliance upon the Governor's July 27 Proclamation.

14. We arranged to apply the same ballot collection and security protocols at each drop-off location, whether at election administration headquarters or elsewhere. All ballot drop-off

locations are equally secure. We trained enough staff at each location in election protocols and rules so that two such trained employees are present at all times while the location is accepting ballots. It requires staff to ensure that (1) the voter signs a roster (just as they would when voting in-person), *see* Exhibit C to the October 3, 2020 Declaration of Chris Hollins [Dkt. No. 8–1 at 19], Hand-Delivery Signature Roster, (2) the voter presents valid identification to comply with Texas Election Code § 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).

15. Ballots are then placed in a box sealed by tamper-proof seals. Our office planned to deliver these sealed boxes daily to election headquarters. This process is more secure than the voter using the mail system, in that the ballots are kept in sealed, secure boxes from the moment they leave the voter’s hand. There is no unexpected administrative burden to collect ballots from the various annexes and transport them to our headquarters.

#### **The Effect of the Governor’s Proclamation**

16. This last-minute change to election procedures is causing voter confusion. Reducing our drop-off locations from three to one will increase congestion as the volume of ballot returns increases over the next few weeks. Particularly because of the widely-publicized problems with the U.S. Postal Service (“USPS”), some voters may have trouble receiving their ballot until close to Election Day, and will thus have to return their ballot in person in order to ensure it is returned on time. *See see* Exhibit E to the October 3, 2020 Declaration of Chris Hollins [Dkt. No. 8–1 at 21–23], Exhibit E, USPS Ltr. to Texas Secretary of State, July 30, 2020 (warning that first-class U.S. mail will take one week for delivery). If we are forced to reduce to one location, I anticipate that toward the end of early voting and especially on Election Day, we will see massive

lines to return ballots in person. In addition, voters without reliable transportation will be unable to get to our office, which could be 25 miles away, in time to have their vote counted.

17. Our multiple ballot drop-off locations have been advertised to voters via a press conference and extensive planning by County officials. Since the Governor's October 1 Proclamation, County officials have had to consider significant adjustments to our operating plans. Tomorrow, Fort Bend Commissioners Court will decide the best location for the one drop-off location allowed under the Governor's Proclamation.

18. Reducing the drop-off locations from four to one will not enhance security of the ballots in any way, as it will force more voters to use USPS rather than see their ballot securely delivered straight to a sealed, secure ballot box.

19. The Proclamation will make it much more difficult for some voters to return their ballots by limiting counties to only one drop-off location during the early voting period. Fort Bend County is presently assessing the best permitted location for the one secure drop-off location. The Election Administrator's Office sits in the middle of the County, but the population center is in the eastern portion of the County and across the Brazos River which limits transportation options given the limited crossings. The size of the County, and whichever location is selected, would make it difficult, if not impossible, for some voters to return their ballots to only that single drop-off location. This will undoubtedly force some voters to decide if they will risk their health by voting in person or if they instead will not vote at all. No Texas voter should have to make that decision.

20. In my experience, rural voters, voters who live furthest from the county drop-off location, lower-income voters, and voters without access to transportation have the hardest time traveling significant distances to vote or drop off their ballots. Further, in the July primary runoff our office excluded 299 mail-in ballots. The primary reason for rejection was untimely receipt in

our office. Because Fort Bend County mail is sorted in the North Houston USPS Sorting Center, it is not uncommon for mail-in ballots to arrive several days after mailing, and, in some cases, several weeks after mailing. For at least a third of the 299 rejected ballots, the voter likely mailed it by election day and such could not be counted because it arrived after Wednesday, July 15, or arrived on that date but without a postmark.

21. This change also burdens the Elections Office administratively. We are having to change our voter education materials and our staff training. I also expect that the Proclamation will cause substantial confusion among voters as to where they can drop off their ballots during the early voting period. Our call centers have been inundated with voter inquiries about their rights in light of the Proclamation, and we have had to field calls from other elected officials' offices, who are themselves flooded with calls.

#### **Security of Mail-In Ballots**

22. In my experience, and given the careful planning and process vetting by my office, the ballot drop-off locations are secure. We have chain-of-custody documentation for the ballot boxes. We have rosters requiring signatures so that each batch has an audit trail as to the count of ballots and a way of verifying that it was in fact the voter who dropped off the ballot. In my experience, Texas does not have a wide-scale problem with election fraud. Mail-in ballots are highly regulated and loaded with paper trails so that any irregularity is spotted and addressed.

23. The mail-in ballot process contains many, heavily regulated steps.

24. We send ballots out to voters on a continuous basis. Typically, about forty-five (45) days before an election, we prioritize sending ballots to military and overseas voters, then to others who requested to vote by mail. This was done on September 19. On October 2, we sent the first batch of non-FPCA mail-in ballots, approximately 20,000. From here, we send out ballots

on a rolling basis as the requests come in and are processed as explained in Hollins' Declaration.

Oct. 3, 2020 Hollins Decl. at ¶¶ 29–31.

25. In reality, voters returning mail-in ballots in person is more secure than returning by mail because (1) there is no danger of tampering or loss of the ballot in transit and (2) voters who return ballots in person must sign a roster and present voter ID. Thus, any concern about security of in-person drop-off of mail ballots is unfounded.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 5, 2020, in Rosenberg, Texas.

By:



John W. Oldham  
Fort Bend County  
Elections Administrator

**CERTIFICATE OF SERVICE**

I hereby certify that on October 5, 2020 that the foregoing document was served on all other counsel of record via CM/ECF. Additionally, I served the document on counsel anticipated to participate in this action:

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Solicitor General of Texas  
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DATED: October 5, 2020

/s/ Justin C. Pfeiffer  
JUSTIN C. PFEIFFER

**Exhibit 6**  
Declaration of Dana DeBeauvoir,  
Travis County Clerk

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 EDELBACH, and  
BARBARA MASON;

*Plaintiffs.*

v.

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 W. OLDHAM, in his  
official capacity as Fort Bend County Elections  
Administrator; LISA RENEE WISE, in her  
official capacity as El Paso County Elections  
Administrator;

*Defendants.*

Civil Case No. 1:20-CV-1006-RP

DECLARATION OF DANA DEBEAUVOIR, TRAVIS COUNTY CLERK,  
PURSUANT TO 28 U.S.C. § 1746

My name is Dana DeBeauvoir and I am the duly elected County Clerk for Travis County,  
Texas. I am over eighteen (18) years of age, of sound mind, have never been convicted of a felony.  
I am fully competent and duly authorized to make this declaration.

1. I have personal knowledge of the facts stated in this Declaration. I have reviewed  
the official proclamations from the Texas Governor which are attached to this Declaration, as well  
as other public records and news reports related to the ongoing COVID-19 pandemic.

2. I have a long history of public service particularly in the area of election administration. I hold a Masters Degree from the LBJ School of Public Affairs and was first elected the Travis County Clerk in 1986. In my role as the Travis County Clerk, I prioritize bringing high ethical standards, effective and cost efficient management practices, the benefits of new technology, and high quality customer service to the office of the County Clerk. This commitment to excellence in government has received nationwide recognition. In 2005, I was honored to receive the national Election Center's Best Practices Award for my work in using risk analysis to implement security measures for electronic voting systems. In 2009, I was named Public Official of the Year by the National Association of County Recorders, Election Officials, and Clerks. That same year, the National Association of Election Officials (Election Center) awarded me the Minute Man Award for developing a security practice that is effective, inexpensive, and easy for election officials to adopt. Travis County is also recognized across the country for its groundbreaking early voting program that is centered on customer-friendly polling locations in high-traffic retail locations.

3. General Election Early Voting Period. Under section 418.016 of the Texas Government Code, the Texas Governor issued a proclamation on July 27, 2020, extending the early voting period for the November 3<sup>rd</sup> General Election ("Original Proclamation").<sup>1</sup> The Governor extended the early in-person voting period under section 85.001(a) of the Texas Election Code, authorizing early voting to begin October 13, 2020 and run through the fourth day prior to the General Election. In addition, the Original Proclamation permitted voters to deliver a marked mail-in ballot in-person to the Early Voting Clerk's Office during the extended early voting period

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<sup>1</sup> A true and correct copy of the July 27, 2020 Proclamation is attached to this declaration as **Exhibit A.**

and on election day, rather than only on election day as set forth in section 86.001(a-1) of the Texas Election Code. As stated in the Original Proclamation, these extensions were made in order to establish procedures for eligible voters to exercise their right to vote in-person during the COVID-19 pandemic and allow election officials to implement health protocols to conduct the General Election safely. This extension was critical and allowed more effective implementation of these protocols, including appropriate social distancing and safe hygiene practices, thereby protecting election workers and voters. At the same time, it ensured the election would proceed efficiently and safely when Texans drop off their ballots or vote in-person whether during early voting or on election day. I prepared my office locations to receive marked mail-in ballots and educated voters on this expansion in reliance on this Original Proclamation. Then, *after* Travis County notified the public about its four drop off locations and *after* having received drop off ballots at these locations, the Governor issued another Proclamation limiting the places a voter could return their marked mail-in ballot to only one location per County on October, 1, 2020.<sup>2</sup>

4. Voters' Expectations have been Set for Expanded Early Voting and Expanded Options for Delivery of Mail-In Ballots. Altering voting procedures at this late date would cause voter confusion. Voters previously experienced expanded early voting times and procedures during COVID-19. The Governor expanded the period for in-person early voting for the July, 2020 joint primary runoff elections and special election for Senate District 14. The result of that extended early voting was increased efficiency, safety, and security for voters and poll workers in Travis County. Travis County voters now have an expectation that these same procedures and

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<sup>2</sup> A true and correct copy of the October 1, 2020 Proclamation is attached to this declaration as **Exhibit B.**

protections will be in place for the General Election, based on that previous experience and the Governor's Original Proclamation that was issued less than two weeks after the July election.

5. Additionally, multiple news outlets and other groups reported on the Governor's Original Proclamation and on Travis County's implementation of that Original Proclamation shortly after it was issued. This further set voters' expectations when making their plans to vote in-person or by mail during the early voting period rather than on election day. Examples of these reports include the following:

a. The Travis County Clerk's website provided public notices on its Elections page on August 31, 2020, identifying the locations where voters could drop off their mail-in ballots in-person during the extended early voting period. The website was subsequently updated on September 14, 2020, to provide notice of the hours of operations for these drop off locations. A copy of that website page as it appeared between September 14, 2020, and October 1, 2020, is attached hereto as **Exhibit C**.

b. On or about August 26, 2020, the Austin Monitor published an article by Jessi Devenyns entitled, "Travis County plans for drive-thru voting drop-off for mail-in ballots," which described the Travis County Clerk's plans for permitting voters to drop off their mail-in ballots in-person at any of its business office locations. <https://www.austinmonitor.com/stories/2020/08/travis-county-plans-for-drive-thru-voting-drop-off-for-mail-in-ballots/>.

c. On August 27, 2020, the Austin American-Statesman published an article by Ken Herman entitled, "Herman: You'll be able to submit your mail ballot via drive-through in Travis County," which described the Governor's Original Proclamation and Travis County's plans

to implement it. <https://www.statesman.com/news/20200827/herman-yoursquoll-be-able-to-submit-your-mail-ballot-via-drive-through-in-travis-county>.

d. On September 15, 2020, the Austin Monthly magazine published an article by Hunter Bergfeld entitled, “Your Guide to Voting in Travis County,” which described Travis County’s plans to implement the Governor’s Original Proclamation, including links to a number of resources for voters, such as the Travis County Clerk’s website for specific information allowing each voter to prepare an individualized plan for voting safely during the COVID-19 pandemic. <https://www.austinmonthly.com/your-guide-to-voting-in-travis-county/>.

e. On September 17, 2020, Fox 7 Austin published an article by Jennifer Kendall entitled, “Travis County to add unique polling locations for November election,” which provided information about Travis County’s plans for implementing the Governor’s Original Proclamation. <https://www.fox7austin.com/news/travis-county-to-add-unique-polling-locations-for-november-election>.

f. On September 22, 2020, KXAN published an article by Candy Rodriguez entitled, “LIST: Travis County Election Day, early voting polling locations for 2020 presidential election,” which described Travis County’s plans to implement the Governor’s Original Proclamation. <https://www.kxan.com/news/your-local-election-hq/travis-county-looks-to-get-creative-with-polling-locations-for-november-election/>.

g. On September 29, 2020, Community Impact Newspaper published an article by Olivia Aldridge entitled, “Expecting 100,000 mail-in ballots, Travis County expands voting options,” which described Travis County’s plans to implement the Governor’s Original Proclamation. <https://communityimpact.com/austin/central-austin/vote/2020/09/29/expecting-100000-mail-in-ballots-travis-county-expands-voting-options/>.

h. On September 30, 2020, Fox 7 Austin published another article entitled, "Travis County voters can hand deliver personal mail in ballots starting Oct. 1," which described Travis County's plans to begin accepting voter's personal delivery of their mail-in ballots at numerous locations the very next day in accordance with the Governor's Original Proclamation.

<https://www.fox7austin.com/news/travis-county-voters-can-hand-deliver-personal-mail-in-ballots-starting-oct-1>.

6. Mail-In Ballots Have Already Been Received by In-Person Drop Off as of October 1, 2020. The November Election is already underway. Mail-in ballots are already being received. In accordance with the Governor's Original Proclamation, Travis County accepted mail-in ballots that were dropped off by voters at different locations on October 1, 2020, before his second proclamation was issued. With voting already underway, changing the procedure mid-stream is a disruption of the election process. My office is complying with the Governor's October 1, 2020, Proclamation and has accepted mail-in ballots at only one location beginning October 2, 2020. As of October 2, 2020, my office has received a total of 716 mail-in ballots by in-person drop off, just on the first days of early voting.

7. Travis County and Other Large Urban Counties Require Expanded Early In-Person Voting and Expanded Drop Off for Mail-in Ballots to Conduct a Safe and Fair General Election. Travis County is the 5<sup>th</sup> most populous county in Texas. Like most other counties in Texas, Travis County has experienced an increase in registered voters (over 844,000 in Travis County) and a large increase in the number of voters who are seeking to vote by mail rather than in-person. This is particularly true among eligible voters aged 65 and older who are most at risk for experiencing harmful effects from contracting COVID-19, including a high percentage of reported deaths. Permitting voters who are eligible to vote by mail to drop off their ballots in-person during the

early voting period increases efficiency and reduces the number of persons who would otherwise have to vote in-person. This is particularly true in light of news reports that the United States Postal Service has experienced significant delays in delivering mail such as vote-by-mail applications and ballots. To date, our office has received more than 72,000 applications for mail-in ballots for the November 3, 2020 election. In response to the increased number of requests for mail-in ballots, as well as wide-spread concern over the delays in the United States mail, Travis County began making arrangements to accommodate unprecedented utilization of the mail-in ballot and ballot drop off provisions of the Election Code.

8. Ballot Security is Enhanced under the Governor's Original Proclamation. Once removed from the locked ballot drop-off boxes, a mail-in ballot is processed in the same way as mail-in ballot received through the Postal Service, including signature verification to ensure that the person who dropped off the mail-in ballot is an eligible voter. However, in addition to these security protocols, when a voter drops off their mail-in ballot *in-person* rather than mailing it in, the voter must demonstrate they are eligible to vote, sign a roster, and present valid identification to an election official at the time they drop off their ballot. Increasing the number of places and the number of days during which a voter can drop off their mail-in ballot in-person does not reduce any of the security procedures to prevent voter fraud; it enhances security by requiring the voter to show identification at the time they drop off their ballot—a step not required when mailing in a ballot.

9. Benefits of Retaining Expanded Early In-Person Voting and Expanded Drop Off Locations for Mail-In Ballots. There is a significant and very necessary benefit to expanding the number of days for in-person early voting and expanding the number of days and locations for voters to drop off their mail-in ballots in-person. Both measures enhance the safe and efficient

processing of voters and ballots. Both the expansion of early voting and permitting ballot drop off at multiple locations increase voters' opportunities to safely exercise their right to vote. Specifically, by reducing the number of in-person voters waiting in lines and spending time inside polling places on election day, Travis County will be able to minimize election day wait times and delays resulting from long lines at election day polling places. Therefore, there will be fewer persons congregating at in-person polling places and decreased exposure to COVID-19. The drop-off option increases voter safety, convenience, and confidence. Travis County has fewer polling locations throughout the county than it ordinarily would because many of the locations usually used, such as grocery stores and schools, are not available. Spreading out both the early voting period and the locations at which voters can return a mail-in ballot, reduces the number of voters congested in one area on election day. Furthermore, allowing mail-in ballots to be dropped off "in-person at an early voting clerk's office" in more than one location will reduce the risk of traffic congestion, reduce wait times, reduce the health risk to voters, and ensure ballots are received timely. The use of more than one site for drop-off is consistent with current Election Code provisions, and is also consistent with the Attorney General's interpretation of the statute and the Secretary of State's guidance. Multiple locations ease the burden on those most clearly entitled to and mostly likely to need this accommodation – the disabled and the elderly.

10. Due to the unique and historically unprecedented circumstances presented by the ongoing COVID-19 pandemic, including medical advice and concomitant emergency proclamations issued by federal, State, and local government officials that residents must shelter in place, stay at home, and practice social distancing to prevent the rapid spread of COVID-19, I reasonably anticipate that there will be a shortage of poll workers available for the early voting period and on election day. I anticipate the shortage of poll workers because of my experience with

the March 3, 2020 primary elections and the July 14, 2020 primary runoffs and special election, which were conducted in the earlier phases of COVID-19. During those recent elections, I experienced significant issues with staffing. A significant number of poll workers did not report to their assigned polling places without giving notice that they would not appear, resulting in a slower voting process and lengthy wait times for voters. In light of the historically larger number of voters during a presidential general election, I reasonably anticipate this issue to increase to a level that will be very challenging to manage and that will expose waiting voters and poll workers to even greater risk. The Governor's Original Proclamation expanding the period for early voting in-person and the provisions for dropping off mail ballots instead of returning them via the U.S. Post Office offered relief for these anticipated challenges. Even so, finding appropriate polling places and appropriate levels of staffing was difficult due to the challenges of conducting such a large election in a pandemic. The polling places and staffing levels we have in place were based on the rules that existed when we were required to make those decisions, make the necessary contractual arrangements, seek commissioners court approval, and publish notices. That time has passed. I fear the increased number of interactions at in-person polling places, which require more time and will result in longer wait times for voters, will make both election workers and voters less safe.

11. In my opinion, based on my 33 years of experience in running elections, failing to provide for additional days of early voting and increased days and locations for voters to drop off their mail-in ballots in-person will: (1) confuse the voters as to where they may drop off their mail-in ballot, and cause voters to have difficulty locating the ballot drop off, especially since procedures adopted for mail ballot drop off were well publicized and already underway when the Governor issued the latest Proclamation, (2) increase the number of election workers, employees, and poll workers necessary to conduct the General Election on election day thereby increasing the

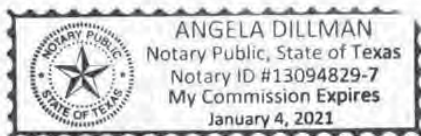
amount of people in one indoor space, (3) increase the exposure of voters to potentially infected individuals due to increased wait times caused by staffing difficulties and requiring all in-person mail-in ballot returns to only one location, and (4) cause significant disruption not only to voters trying to exercise their right to vote, but to the ordinary course of business, traffic, and the other functions of my office not related to elections.

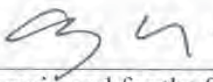
12. In my opinion, changes made after the election has begun as to when and where a person can vote in-person or drop off their mail-in ballots threatens my ability to conduct a safe and fair General Election. This is true especially considering the risks to public health and safety of voters and poll workers, the reduction in the number of poll workers willing to risk their health and the health of others, and the difficulty in finding sufficient polling locations. The voters, the election workers, and the community as a whole greatly benefit from both the extended early voting period and the ability to drop off mail ballots at more than one location. Neither risks ballot security because in both situations, each voter is required to undergo careful and particular verification measures required under the statute.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 5, 2020.

  
Dana DeBeauvoir, Travis County Clerk

SWORN to and SUBSCRIBED before me on October 5, 2020.



  
Notary in and for the State of Texas  
My Commission expires: 1/4/2021

**Exhibit 7**  
Supplemental Declaration of  
Christopher G. Hollins,  
Harris County Clerk

STATE of TEXAS

§  
§  
§  
§  
§

COUNTY OF HARRIS

**SUPPLEMENTAL DECLARATION OF CHRISTOPHER G. HOLLINS,**  
**HARRIS COUNTY CLERK**

Pursuant to 20 U.S.C. § 1746, I, Christopher G. Hollins, declare as follows:

1. My name is Christopher G. Hollins. 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 am submitting this declaration to update the Court with current information about the return of mail-in ballots.
3. Since the Governor's Proclamation Harris County's sole mail-in ballot drop off location has been at the NRG Arena in southern Harris County, a location that also serves as our election headquarters, early voting ballot board ("EVBB") workspace, and both an early voting and Election Day polling location. To date we have received 231,793 applications to vote by mail, 87% of which (202,554) are for voters over the age of 65. We mailed the largest batch of ballots out, more than 180,000, beginning on September 28, and are mailing additional batches out to eligible voters on a rolling basis.
4. We have had no security issues related to in-person ballot drop-off since we began accepting them on September 28 at multiple locations and since we had to reduce the locations to one after the Governor's Proclamation. Because voters who hand deliver their mail-in ballot must do so themselves, sign a roster, and show identification I cannot fathom how making this method of delivery more available to voters poses a security threat. If anything, it is the most secure way to return a ballot.

5. In the last few days the number of voters hand-delivering their ballots has increased. We anticipated this as we mailed more than 180,000 ballots to voters last week and expected voters would start returning them this week in increasing numbers as the ballots reach their homes. As of yesterday, we had a total 6,634 ballots returned of which 1,458 or about 22% were hand-delivered. If hand delivery of mail ballots continues at this rate, then we expect between 40,000 and 50,000 of the approximately 200,000 mail ballots to ultimately be delivered by hand.

#### **U.S Post Office Issues**

6. We have been tracking the movements of mail-in ballots as a service to voters and have analyzed that data. This analysis demonstrates that delivery of mail within Harris County takes just as long as delivery of absentee ballots around the country which is to say more than few days and often more than a week.

7. We are getting complaints from voters who have requested ballots but have not yet received them. Many of these voters have expressed distrust in the U.S. Postal Service and are weighing whether they need to risk their health and vote in person to ensure their vote is counted or find a way to hand delivery their ballot to one likely distant location. With the slowness of ballots being delivered and presumably returned I expect we will have an increasingly higher ratio of ballots returned by in-person hand delivery than by mail or common carrier. This increases the need for multiple drop-off locations both for the convenience of voters and for minimizing lines and crowding.


8. If we remain forced to reduce to one location, I anticipate that toward the end of early voting and especially on Election Day, we will see massive lines to return ballots in person. In addition, voters without reliable transportation will be unable to get to NRG Arena from their homes (which could be more than fifty miles away) in time to have their vote counted.

**Concerns about Serving Voters with Disabilities**

9. We are also concerned about adequate accommodations for people with disabilities. Harris County is under a settlement agreement with the United States Department of Justice (“DOJ”) resulting from actions and failures to act during the 2016 general election. To comply with the agreement, we have a staff of eighteen people headed by an attorney to survey and document every polling place. With the volume of voters likely to vote this election whether in person or by delivering mail-in ballots, we need flexibility to be able to accommodate all voters and not violate the settlement agreement. The Governor’s Proclamation — and any other instance of the State of Texas making voting more difficult by last-minute orders to change our management practices — makes it more difficult to comply with the DOJ settlement agreement. Having the eleven annex locations offers voters with disabilities and transportation problems more options whether because they are closer to the voters’ homes or because the physical lay-out of the location is more navigable than the large campus at the NRG Center.

I declare under penalty of perjury that the foregoing is true and correct.

Date: October 8, 2020

By:   
\_\_\_\_\_  
Christopher G. Hollins  
Harris County Clerk