

TEXAS DEMOCRATIC PARTY, et. al

IN THE DISTRICT COURT

Plaintiffs,

and

ZACHARY PRICE, LEAGUE OF
WOMEN VOTERS OF TEXAS,
LEAGUE OF WOMEN VOTERS
OF AUSTIN-AREA, MOVE TEXAS
ACTION FUND,
WORKERS DEFENSE
ACTION FUND,

TRAVIS COUNTY, TEXAS

Intervenor-Plaintiffs,

v.

DANA DEBEAUVOIR

Defendants,

and

STATE OF TEXAS

Intervenor-Defendant.

201st JUDICIAL DISTRICT

INTERVENOR-PLAINTIFFS’ RESPONSE IN OPPOSITION TO DEFENDANT DANA DEBEAUVOIR’S COUNTER-PETITION TO ALIGN EARLY VOTING PERIODS

On April 10, 2020 Defendant Dana DeBeauvoir (“Defendant”) filed a Counter-Petition seeking to consolidate the early voting dates for the July 14, 2020 special election with those of the July 14, 2020 primary runoff elections by decreasing the number of days for early voting in the special election from twelve days down to five. As set out more fully below, Intervenor-

Plaintiffs oppose Defendant's Counter-Petition and respectfully request this Court to deny the relief requested therein.

BACKGROUND

Intervenor-Plaintiffs and Defendant agree on many of the underlying facts:

There are currently three elections in Travis County set to occur on July 14, 2020: a special election for Texas State Senate District 14, the Texas Democratic Party primary runoff election, and the Republican Party of Texas's primary runoff election. Although these elections all share the same election day, their early voting periods differ. By gubernatorial proclamation, early voting for the special election is set to begin on June 29, 2020. Counter-Petition at 5, Ex. 2. However, under the Texas Election Code, early voting for the primary runoff will not begin until July 6, 2020. Tex. Elec. Code § 85.001(b), (c).

Parties also agree that Texas is in the midst of a "public health crisis" due to the COVID-19 pandemic. Counter-Petition at 6. COVID-19 is a "a highly contagious virus with potentially fatal consequences." *Id.* at 4. And that this public health crisis will have an impact on the elections set to occur in July. *Id.* at 4-5. Defendant also correctly illustrate some of the election administration hurdles that will come with operating in-person voting during a pandemic. Counter-Petition at 4-5 ("DeBeauvoir reasonably anticipates that there will be a shortage of election judges and poll workers available for the early voting periods associated with these July 14, 2020 elections, and that the typical arrangements for polling locations will need to be substantially modified in order to provide reasonable access to voters while complying with public health and safety requirements and recommendations. DeBeauvoir anticipates the shortage of election judges because of her experience with the March 3, 2020 primary elections, which were conducted in the earlier phase of COVID-19. During those recent elections, there

were significant issues with staffing.”). Nevertheless, Defendant’s proposed solution to dealing with the adversity that COVID-19 presents misses the mark.

OPPOSITION TO DEFENDANTS’ COUNTER-PETITION

Rather than alleviating the risk and burden present during in-person voting during the COVID-19 pandemic, consolidating elections into a shorter time frame would increase the danger to voters. Polling places are an inherently risky location during a pandemic. *See* Intervenor-Plaintiffs’ Memorandum In Support Of Application For Temporary Injunction And Response To The State Of Texas’ Plea To The Jurisdiction at 9-10 (“polling places can be a particularly ripe environment for infection for at least three reasons: (1) voters may be forced into close proximity with each other, (2) voters will be in close proximity to poll workers who are interacting with numerous other voters throughout the day, and (3) voters will be coming into contact with machines that have been used by other voters.”). Further, the CDC recommends “[e]ncourag[ing] voters to use voting methods that minimize direct contact with other people and reduce crowd size at polling stations.”¹ The more people that are squeezed together into a polling location, the riskier that location becomes, both for the health of individual voters and poll workers, and for the general public as it increases the general spread of the virus. By shortening the period for early voting, Defendant’s proposed relief would necessarily result in higher concentrations of voters at the polls spread out over fewer days.

For all these reasons, rather than giving voters fewer opportunities to vote and forcing them to concentrate into closer proximity with each other, this Court should take the opportunity to clarify that all registered voters qualify to vote by mail due to “disability” during the COVID-

¹ Recommendations for Election Polling Locations, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last visited April 5, 2020).

19 pandemic. Defendant's Counter-Petition underscores the immediate need for clarity in the rules governing upcoming elections. Counties need ample time to plan and execute these resource-intensive strategies. Though this does not justify curtailing voting periods or forcing voters into more dangerous conditions, it does emphasize the propriety and ripeness of Intervenor-Plaintiffs' request for declaratory and injunctive relief to allow individuals to vote by mail using the disability category of eligibility as defined in Tex. Elec. Code Section 82.002(a).

Respectfully submitted,

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* Pro hac vice application on file
** Pro hac vice application forthcoming

ATTORNEYS FOR INTERVENORS

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2020, a true and correct copy of the foregoing *Petition in Intervention* was served via electronic filing and/or email upon all attorneys of record, including: Sherine Thomas and Leslie Dippel, attorneys for Defendant Dana DeBeauvoir, whose email addresses are sherine.thomas@traviscountytexas.gov and leslie.dippel@traviscountytexas.gov; upon Chad Dunn, attorney for Plaintiffs, whose email address is chad@brazilanddunn.com; and upon Anna Mackin, attorney for Intervenor-Defendant, whose email address is anna.mackin@oag.texas.gov in accordance with TEX. R. CIV. P. 21(a).

/s/ Joaquin Gonzalez