

March 17, 2020

The Honorable Ruth Hughs
Secretary of State
P.O. Box 12887
Austin, TX 78711

Via email: secretary@sos.texas.gov

Dear Secretary Hughs,

As you know, COVID-19 is wreaking havoc on public and private life across Texas and threatens to upend the upcoming Texas elections in May 2020. The Centers for Disease Control and Prevention (“CDC”) has issued national guidance telling the public to avoid gatherings of more than fifty people for at least the next eight weeks (through May 15, 2020).¹ Governor Abbott has declared a state of emergency,² and state agencies are taking extraordinary steps to contend with this new reality.³ School districts statewide have canceled classes for the foreseeable future.⁴ Some Texas counties have banned large public gatherings,⁵ and restaurants and bars in other states have been ordered closed.⁶ The latest guidance from the Trump Administration advises against gatherings of over 10 people.⁷

The May 26, 2020 runoff elections are quickly approaching, with some local elections occurring even earlier than that. The deadline to request a mail ballot for the May 02 Uniform Election date is April 20, and the last day to do so for the Runoff is May 15. You have authority under existing law to issue advisory guidance instructing counties to allow all eligible voters to vote by mail in the upcoming May elections -- you must do that without delay. You should also make clear that, depending upon how this public health crisis progresses, widespread eligibility to vote-by-mail may extend to the November 2020 Election.

Pursuant to state law, a voter qualifies to vote by mail “if the voter has a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a

¹Centers for Disease Control and Prevention, *Interim Guidance for Coronavirus Disease 2019 (COVID-19)*, CDC.gov (March 15, 2020)

<https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html>.

²Edgar Walters, *Texas Governor Declares Statewide Emergency, Says State Will Soon Be Able To Test Thousands*, TexasTribune.gov (Mar. 13, 2020)

<https://www.texastribune.org/2020/03/13/texas-coronavirus-cases-state-emergency-greg-abbott>.

³Mintie Betts, *Texas DPS Extends Renewal Time for Drivers License*, East Texas Matters (Mar. 15, 2020)

<https://www.easttexasmatters.com/health/coronavirus/texas-dps-extends-renewal-time-for-drivers-license>.

⁴Aliyya Swaby, *Many Texas Schools Could Be Closed Through Academic Year*, TexasTribune.org (Mar. 15, 2020)

<https://www.texastribune.org/2020/03/15/texas-public-schools-closure-coronavirus>.

⁵Associated Press, *Austin Latest Texas City to Ban Large Gatherings Amid Virus*, USNews (Mar. 15, 2020)

<https://www.usnews.com/news/best-states/texas/articles/2020-03-15/austin-latest-texas-city-to-ban-large-gatherings-a-mid-virus>.

⁶Anders Melin, *N.Y.C. Joins Illinois, Ohio, Washington and Massachusetts to Close Bars and Restaurants*, Time.com (Mar. 15, 2020) <https://time.com/5803692/bars-restaurants-closed-coronavirus>.

⁷Nolan D. McCaskill, Joanne Kenen and Adam Cancryn, *'This is a very bad one': Trump issues new guidelines to stem coronavirus spread*, Politico (Mar. 16, 2020)

<https://www.politico.com/news/2020/03/16/trump-recommends-avoiding-gatherings-of-more-than-10-people-13232>.

likelihood . . . of injuring the voter's health.” As detailed in part above, elected officials and government agencies from local school boards to the CDC have recognized the extraordinary nature of this pandemic and taken extreme measures to try to mitigate the spread of COVID-19. Under these unprecedented circumstances, it is clear that merely going to a crowded venue, such as any polling location, in person constitutes a likelihood of injuring a voter’s health. And the more people who risk their own health by gathering in groups also exponentially increases the risk of spreading the disease to others and causing greater societal damage. As has already been demonstrated by elections in other parts of the world, individual Texans are likely to mitigate their own risks by simply not showing up at the polls to vote.⁸

Texans should not be asked to choose between their physical well-being and their fundamental right to vote. Fortunately, the Texas Legislature has seen fit to provide voters who face threats to their physical well-being the option to vote by mail. Given that this is not the typical scenario under which voting by mail is conducted, it is incumbent on your office to issue guidance to counties to make clear that, at least as it pertains to the current, unprecedented circumstances, this widespread COVID-19 pandemic constitutes a sufficient circumstance for any eligible voter to vote by mail in the upcoming primary runoff election or any local elections taking place before that date. This is a statewide -- indeed worldwide -- crisis, and it is important that counties provide uniformity to voters. Counties also need time to prepare for the increased logistical needs of receiving more mail-ballot applications, so time is of the essence in issuing guidance to county officials. As Texas’s Chief Election Officer and as a leader of our state, it is your duty to provide this uniformity and guidance during this tumultuous time.⁹

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⁸ Rym Momtaz,, Elisa Braun & Laura Kayali, *Coronavirus Pushes French Local Election Turnout to Historic Low*, Politico.com (Mar. 15, 2020) <https://www.politico.eu/article/coronavirus-pushes-french-local-election-turnout-to-historic-low>.

⁹ See Tex. Elec. Code Sec. 31.003.

The undersigned organizations urge you to address this situation immediately.¹⁰ If you fail to act, we will pursue any legal steps necessary to vindicate the voting rights of all eligible Texas voters in this precarious time.

Sincerely,

Thomas Buser-Clancy, Senior Staff Attorney
ACLU Foundation of Texas, Inc.

Margaret Fung
Asian American Legal Defense and Education Fund (AALDEF)

Sarah Ortiz Shields
Austin Tech Alliance

Dave Jones, President
Clean Elections Texas

Dennis Borel
Coalition of Texans with Disabilities

Mark York
Dallas AFL CIO

Emgage Action

TeQuila Chatmon
Home and Healing

Antonio Arellano
Jolt

Grace Chimene, President
League of Women Voters Texas

¹⁰ While conducting substantially expanded vote-by-mail operations is an important first step, it is nowhere near sufficient by itself to respond to the pandemic's potential effect on our elections. For example, many Native American communities and other Texans lack home delivery of mail, and people like them will not be able to take advantage of vote by mail under any reasonably foreseeable circumstances. Over the coming weeks and months, additional steps will likely need to be taken to ensure that disruptions to the electoral process are kept to a minimum. The Leadership Conference on Civil and Human Rights and other civil rights organizations have compiled a list of proposed next steps in preparing for upcoming elections in the midst of the pandemic, which you can view here: <https://www.naacpldf.org/wp-content/uploads/COVID-19-Coalition-Letter-3.16.20.pdf>.

State Representative Rafael Anchía, Chair
Mexican American Legislative Caucus

H. Drew Galloway
MOVE Texas Action Fund

Leah C. Aden
NAACP Legal Defense and Educational Fund, Inc.

Arturo Vargas
National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund

Jamila Benkato
Protect Democracy

Adrian Shelley
Public Citizen

Bob Kafka
REV UP Texas

Tom Cummins
San Antonio AFL-CIO Central Labor Council

Rick Levy, President
Texas AFL-CIO

Beth Stevens
Texas Civil Rights Project

Carisa Lopez
Texas Freedom Network

Hany Khalil
Texas Gulf Coast Area Labor Federation

Michelle Tremillo
Texas Organizing Project

Bay Scoggin
Texas Public Interest Research Group

Rabbi David Segal
Texas Religious Action Center of Reform Judaism

Rae Martinez
Texas Rising

Emily Timm
Workers Defense Action Fund

cc: Texas County Election Officials

Via email

Keith Ingram
Director of Elections

Via email: kingram@sos.texas.gov

Adam Bitter
General Counsel

Via email: abitter@sos.texas.gov