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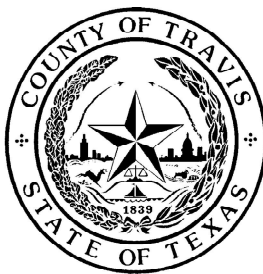
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October 23, 2020

Via Electronic Filing

Jeffrey D. Kyle, Clerk of the Court
Court of Appeals, Third District of Texas
P.O. Box 12547
Austin, Texas 78711

RE: *Amicus Curiae* Travis County Clerk's Letter Brief in Support of Plaintiffs-Appellees in Case No. 03-20-00498-CV, *Greg Abbott, in His Official Capacity as the Governor of Texas, et al. v. The Anti-Defamation League, Austin, Southwest, and Texoma Regions, et al.*; in the Third Judicial District Court of Appeals, Austin

To the Honorable Justices of the Third Court of Appeals:

The Travis County Clerk, Dana DeBeauvoir, respectfully submits this Letter Brief as *amicus curiae* in the above styled case.¹ Ms. DeBeauvoir sends you her best wishes and thanks you for your service to the State of Texas during these extraordinary times.

Throughout the pandemic, this Honorable Court, Governor Greg Abbott, and many other elected officials throughout the State have been called upon repeatedly to navigate the unique and tumultuous waters of the seemingly endless impacts of the public health crisis caused by COVID-19. We must honor both the letter and

¹ Pursuant to Texas Rule of Appellate Procedure 11(c), the undersigned counsel of record certify that they authored this brief in whole (consulting with Travis County Clerk Dana DeBeauvoir), that they have endeavored to add novel arguments rather than merely recite those already advanced, that no party or any party's counsel authored any part of this brief, and that no other person or entity made a monetary contribution to the preparation of any portion of this brief aside from the undersigned governmental entities.

the spirit of the law, while also finding practical solutions to immediate concerns such as the fair and just administration of elections. I write to offer insight from the trenches as to the implications of the matter pending before this Court. I hope it will be of some assistance in understanding the practicalities involved in conducting a General Election and the difficulties created by making changes, and more changes, once voting has already begun.

Voter Confusion Caused by Last-Minute Changes in Texas' Widely Reported Expanded Voting Procedures. The Governor's Order concerning the number of mail-in ballot hand delivery locations issued *after* early voting was already underway confused voters, limited access, and undermined the public information campaigns that began weeks ago to ensure voters know when and how they can cast their votes.

Specifically, 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 3rd General Election ("Original Proclamation"). This Proclamation also permitted voters to hand deliver a marked mail-in ballot to the Early Voting Clerk's Office prior to and including 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 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. These protocols, including appropriate social distancing and safe hygiene practices, protect election workers and voters, and at the same time, ensure the election proceeds efficiently and safely when Texans go to the polls to cast a vote in person during whether during early voting or on Election Day.

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 hand delivery 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 hand delivery locations. A copy of that website page as it appeared between September 14, 2020, and October 1, 2020, is attached hereto as Appendix A.

- 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 hand delivery 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>.

In accordance with the Governor's Original Proclamation, Travis County accepted mail-in ballots voters by hand delivery at multiple locations beginning October 1, 2020. Later that day, the Governor issued a second Proclamation that *inter alia* limited the hand delivery locations to one per county. This Proclamation was effective the following morning. With voting already underway, changing the procedure literally overnight disrupted the election process. My office is complying with the Governor's October 1, 2020, proclamation and has accepted mail-in ballots by hand delivery at only one location beginning October 2, 2020. Since October 2, 2020, and as of the date of this Letter Brief, my office has received a total of 15,999 mail-in ballots by hand delivery, just at this one location. This is an unprecedented amount.

Need to Reinstate Multiple Hand-Delivery Locations for Populous Counties. Early voting will continue until October 30, 2020. The closer we get to the end of the early voting period, the more likely it is that a person choosing to vote by mail-in ballot will have insufficient time for their ballot to be delivered to the Early Voting Clerk through the United States Postal Service in order to ensure it will be counted. Mail-in ballots postmarked on or before election day must be received no

later than 5:00 p.m. on the day after election day to be counted. *See* Tex. Elec. Code Ann. § 86.007.

Travis County and Other Populous Counties Require Hand delivery Locations for Mail-in Ballots to Conduct a Safe and Fair General Election. Travis County is the 5th most populous county in Texas and has, like most of the other counties, experienced a large increase in the number of registered voters (over 844,000, which is approximately 97% of all potential eligible voters in the County), and 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 choose between more than one location to hand deliver their mail-in ballots 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 74,000 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 has made arrangements to accommodate an unprecedented utilization of the mail-in ballot and ballot hand delivery provisions of the Election Code and the Governor's Original Proclamation. If this Court reinstates the lower court's temporary injunction, Travis County could quickly implement those procedures and provide multiple hand delivery locations.

Ballot Security Was *Enhanced* under the Governor's Original Proclamation. The Appellants urge the Governor's October 1, 2020, proclamation to remove multiple hand delivery locations was necessary to enhance ballot security. However, as described below, having multiple hand delivery locations *increases* ballot security.

Once removed from the locked ballot boxes, a mail-in ballot is processed in the same way a mail-in ballot received through the Postal Service is processed, including signature verification to ensure that the person who hand delivered the mail-in ballot is an eligible voter. However, in addition to these security protocols, when a voter *hand delivers* their mail-in ballot 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 delivery their ballot. Increasing the number of places and the number of days during which a voter can hand deliver their mail-in ballot 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 hand deliver their ballot—a step not taken when simply mailing their ballot in.

Benefits of Retaining Expanded Early In-Person Voting and Expanded Hand Delivery Locations for Mail-In Ballots. There is a significant and very necessary benefit to expanding the number of days and locations for voters to hand deliver their mail-in ballots. Both measures enhance the safe and efficient processing of voters and ballots. Both the expansion of early voting and permitting ballot hand delivery at multiple locations during early voting increase voters' opportunities to safely exercise their right to vote. Specifically, by spreading out the risks, 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 as a result of long lines at election day polling places, resulting in fewer persons congregating at in-person polling places, and decreased exposure to COVID-19.

The multiple locations for hand delivering a mail-in ballot increases voter safety and convenience. Travis County has fewer polling locations throughout the county than it ordinarily would because many of the locations usually used, such as grocery stores 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 on area on Election Day. Furthermore, allowing a voter to hand deliver their mail-in ballot “in person at an early voting clerk’s office” in more than one location will reduce the risk of traffic congestion, reduce wait times, and reduce the risk to voters. The use of more than one site for hand delivery is consistent with current Election Code provisions and is also consistent with the Attorney General’s previous interpretation of the statute and the Secretary of State’s previous guidance. Multiple locations ease the burden on those most clearly entitled to and mostly likely to need this accommodation – the disabled and the elderly.

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, Travis County has experienced a shortage of poll workers available for the early voting periods associated with the November 3rd General Election 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 runoff and special elections. In light of reports of unprecedented, high voter turnout in both Travis County and nationwide during this 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 hand delivering mail-in 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 is past. I do not believe it is possible to change all that has been done at this late date to safely accommodate more voters at in-person early voting and Election Day polling places. I fear the increased number of interactions at in-person polling places, which require more time and will also result in longer wait times for voters, will make both election workers and voters less safe.

In my opinion, based on my 33 years of experience in running elections, failing to provide for increased days and locations for voters to hand deliver their mail-in ballots will: (1) confuse the voters as to where they may hand deliver their mail-in ballot, (2) cause voters to have difficulty locating the ballot hand delivery locations, especially since procedures adopted for mail-in ballot hand delivery were well publicized and already underway when the Governor issued the October 1, 2020 proclamation, (3) 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, (4) increase the exposure of voters to potentially infected individuals due to increased wait times caused by staffing difficulties and limiting all hand delivered mail-in ballots to only one location, and (5) 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.

In my opinion, the Governor's changes made after the election had already begun 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 an adequate number of polling

locations that provided sufficient space to comply with social distancing protocols. The voters, the election workers, and the community as a whole would greatly benefit from reinstatement of the ability to hand deliver mail-in ballots at more than one location. This can be readily accomplished without risking ballot security because each voter is required to undergo careful and specific verification measures required under Texas' existing statutes when hand delivering a marked mail-in ballot.

In conclusion, we all share the goal of putting measures in place that permit the maximum number of voters to exercise their most profound right as a citizen without risking their health and safety and those of the public servants who will be working the polls. Allowing multiple locations to hand deliver a mail-in ballot accomplishes that goal.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

By my signature below, pursuant to Tex. R. App. P. 9.4(i)(3), I hereby certify that the foregoing Letter Brief of Amicus Curiae Travis County Clerk Dana DeBeauvoir, contains 2,656 words and is compliant as to form pursuant to Tex. R. App. P. 9.4.

/s/Leslie W. Dippel

LESLIE W. DIPPEL

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October 2020, a true and correct copy of the above and foregoing was forwarded to all counsel and/or parties of record by electronic filing and/or electronic service to:

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