

NO. _____

TEXAS DEMOCRATIC PARTY AND
GILBERTO HINOJOSA, IN HIS
CAPACITY AS CHAIRMAN OF THE
TEXAS DEMOCRATIC PARTY,
JOSEPH DANIEL CASCINO AND
SHANDA MARIE SANSING

Plaintiffs,

VS.

RUTH HUGHS, IN HER OFFICIAL
CAPACITY AS TEXAS SECRETARY
OF STATE AND DANA DEBEAUVOIR,
IN HER CAPACITY AS TRAVIS
COUNTY CLERK

Defendant.

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION AND APPLICATION FOR TEMPORARY
INJUNCTION, PERMANENT INJUNCTION AND DECLARATORY JUDGMENT

Plaintiffs, Texas Democratic Party and Gilberto Hinojosa, in his capacity as Chairman of the Texas Democratic Party, Joseph Daniel Cascino and Shanda Marie Sansing, individual qualified and registered voters in Travis County, who file this Original Petition complaining of Defendant Ruth Hughs, in her capacity as Texas Secretary of State and Dana DeBeauvoir, in her capacity as Travis County Clerk, and in support thereof would show the Court as follows:

Parties

1. Plaintiff Texas Democratic Party is a political party formed under the Texas Election Code, whose address is 314 East Highland Mall Blvd. Suite 508, Austin, Travis County, TX 78752.

2. Plaintiff Gilberto Hinojosa is Chairman of the Texas Democratic Party and a registered voter in Texas.

3. Joseph Daniel Cascino is a registered voter in Travis County, Texas who is eligible to vote, is a resident of Travis County, Texas, a citizen of the United States and who voted in-person in the March 3, 2020 Texas Democratic Primary Election, desires to vote in the Texas Democratic Party Runoff Election and under the pandemic circumstances would seek to do so by mail-in ballot.

4. Shanda Marie Sansing is a registered voter in Travis County, Texas who is eligible to vote, is a resident of Travis County, Texas, a citizen of the United States and who voted in-person in the March 3, 2020 Texas Democratic Primary Election, desires to vote in the Texas Democratic Party Runoff Election and under the pandemic circumstances would seek to do so by mail-in ballot.

5. Defendant Ruth Hughs is sued in her official capacity as the Texas Secretary of State and may be served with process at 900 Congress, Suite 300 Austin, Travis County, Texas 78701.

6. Defendant Dana DeBeauvoir is sued in her official capacity as the Travis County Clerk and Election Administrator and may be served with process at 5501 Airport Blvd, Austin, Travis County, TX 78751.

Jurisdiction/Venue

7. The Court has jurisdiction over this matter of election law under TEX. ELEC. CODE § 273.081, TEX. CIV. PRAC. & REM. CODE § 37.003 and other laws. Plaintiffs do not seek damages

and therefore make no statement under Texas Rule of Civil Procedure 47. Plaintiffs seek injunctive and declaratory relief which, in this context, is within the jurisdiction of this Court.

8. Venue is proper in Travis County because all or a substantial part of the actions sought to be enjoined will occur in Travis County. See TEX. CIV. PRAC. & REM. CODE §§ 15.002(a)(1); 15.014.

Discovery Control Plan

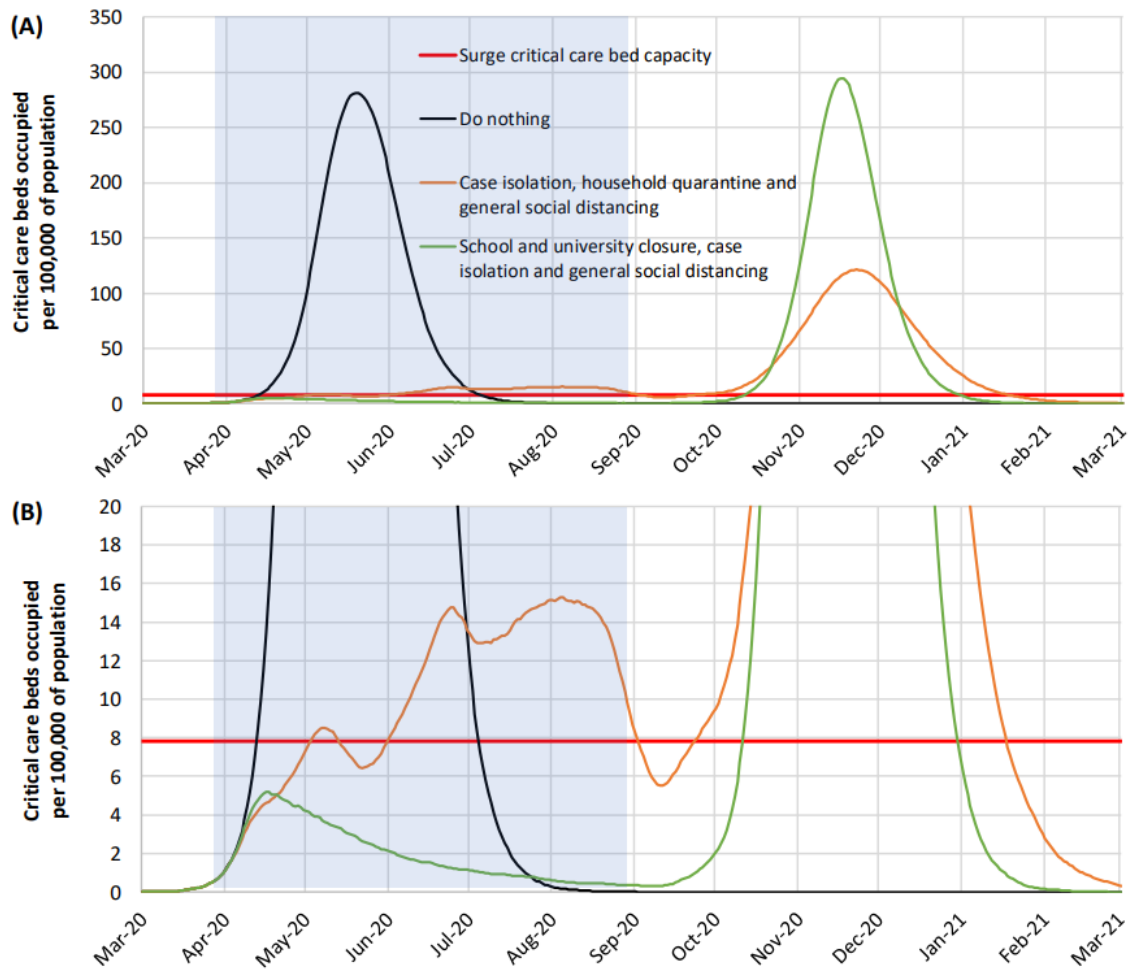
9. Plaintiffs intend to conduct Level 3 discovery under Rule 190.3 of the Texas Rules of Civil Procedure.

Facts/Law

10. The citizens of this state are in the midst of the worst pandemic in modern history. Because of a novel coronavirus, and the disease it causes termed COVID-19, federal, state, county and city officials have ordered various limitations state wide, the central feature of which is to limit contact between persons. Public Health Officials warn that government ordered “social distancing” will probably be in effect for a number of weeks and even after it is lifted, may need to be re-imposed at additional intervals.

11. An influential report from the Imperial College in the United Kingdom¹ that reportedly convinced the President of the United States to view the coronavirus as a public health emergency rather than a “hoax,” sets out some startling facts about the severity and longevity of the crisis facing the public.

¹ <https://www.imperial.ac.uk/media/imperial-college/medicine/sph/ide/gida-fellowships/Imperial-College-COVID19-NPI-modelling-16-03-2020.pdf>



12. According to experts, the expected outcome of the various measures ordered by levels of government, if effective, will be to “flatten the curve,” as these diagrams demonstrate. These circumstances, public health experts agree, should extend the coronavirus infection rate over a longer time period allowing the medical community to prepare and handle the onslaught of severe cases.

13. Given these conditions, upcoming elections for federal, state, county, city and other local offices will be vastly impacted. Importantly, voter behavior will change. Historically, most voters in Texas elections vote in person where they have contact with electronic equipment, election personnel, other voters and observers. These very activities are now heavily discouraged

by various government orders and are being discouraged in an enormous public education campaign. Even were this pandemic to cease, certain populations will feel the need and/or be required to continue social distancing. The upcoming party primary runoff elections and the November General Election are certain to be influenced by these conditions.

14. Although the Governor's recent declarations of emergency give him certain powers to manage public health circumstances, Section 28 of Article I of our State Constitution prescribes that: "No power of suspending laws in this State shall be exercised except by the Legislature." Also, the Right of Association granted by the First Amendment to the U.S. Constitution provides that political parties are free to select their party nominees without undue government influence. The Texas Democratic Party, as well as voters and officials in this state, desperately need the courts to declare what the existing law provides so that they can determine their conduct during the primary runoff period and the General Election. An immediate decision interpreting state law is required so that election preparations can continue in compliance therewith.

15. Plaintiffs contend that existing law allows voters to elect to cast their ballots by mail under the circumstances of this pandemic. Tex. Elec. Code § 82.002 provides in full:

Sec. 82.002. DISABILITY. (a) A qualified voter is eligible for early voting 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 likelihood of needing personal assistance or of injuring the voter's health.
(b) Expected or likely confinement for childbirth on election day is sufficient cause to entitle a voter to vote under Subsection (a).

Participating in social distancing, to prevent known or unknown spread of what Governor Abbott has described as an "invisible disease"² is a "a sickness or physical condition that prevents the voter

² <https://www.kxan.com/news/coronavirus/live-gov-abbott-to-hold-press-conference-on-states-current-efforts-against-covid-19/>

from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter's health.”

16. Texas authorities support the conclusion that the mail-in ballots are permitted under these circumstances. According to Texas Attorney General Opinion KP-0009, “The plain language of section 82.002 does not require that a person satisfy any specific definition or standard of "disability" outside of the Election Code in order to qualify to vote by mail.” In that opinion, the Attorney General found that a person who claimed a disability but had not been adjudicated by the Social Security Administration nevertheless qualified for a mail ballot under Section 82.002. In a more recent opinion, the Attorney General opined, “a court would likely conclude that an individual civilly committed pursuant to chapter 841 and residing at the Center is eligible to vote by mail ...” A person who considers herself to be confined at home in order to avoid the spread of disease plainly falls into the persons entitled to vote by mail under this statute and the Court should so declare to prevent uneven application of this provision and in order to give election officials and voters clarity on the matter.

17. The manner and procedure of casting absentee ballots, which includes mail-in ballots, "is mandatory and directed by statutory requirements." *Tiller v. Martinez*, 974 S.W.2d 769, 775 (Tex. App.-San Antonio 1998, pet. dism'd w.o.j.). The Secretary of State has argued that persons who submit mail ballots without authorization to do so are subject to having their ballots voided.

18. Whatever happens from this moment forward with respect to the pandemic, numerous voters, including the two individual Plaintiffs herein, seek to avail themselves of the option of mail-in ballots. Similarly, the Texas Democratic Party needs to know how state law

permits local election officials to handle such ballots cast in the Texas Democratic Party Runoff Primary Election so the TDP can determine how it desires to proceed in selecting nominees who were facing a runoff.

Claims for Relief

1. Declaratory Judgment

19. Plaintiffs pray that the Court enter a declaratory order holding that TEX. ELEC. CODE 82.002 allows any eligible voter, regardless of age and physical condition, to request, receive and have counted, a mail-in ballot, if they believe they should practice social distancing in order to hinder the known or unknown spread of a virus or disease.

2. Application for Temporary Injunction

20. TEX. ELEC. CODE § 273.081 provides, “A person who is being harmed or is in danger of being harmed by a violation or threatened violation of this code is entitled to appropriate injunctive relief to prevent the violation from continuing or occurring.” Plaintiffs have standing under this statute and they request that the Defendants named herein be enjoined to accept and tabulate any mail-in ballots received from voters in an upcoming election who believe that they should practice social distancing in order to hinder the known or unknown spread of a virus or disease. Plaintiffs will experience immediate and irreparable injury unless the Defendants are enjoined. Plaintiffs have no other adequate remedy at law.

3. Request for Permanent Injunction

21. After full trial on the merits, Plaintiffs asks the Court to enter a permanent injunction granting the relief requested herein.

Prayer

22. For the foregoing reasons, Plaintiffs respectfully request that the Court enter judgment against Defendants:

- (a) declaring that TEX. ELEC. CODE 82.002 allows any eligible voter, regardless of age and physical condition, to request, receive and have counted, a mail-in ballot, if they believe they should practice social distancing in order to hinder the known or unknown spread of a virus or disease;
- (b) permanently enjoining Defendants to accept and tabulate any mail-in ballots received from voters in an upcoming election who believe that they should practice social distancing in order to hinder the known or unknown spread of a virus or disease; and,
- (c) awarding the Texas Democratic Party such other and further relief to which it may be justly entitled at law or in equity.

Respectfully submitted,

TEXAS DEMOCRATIC PARTY

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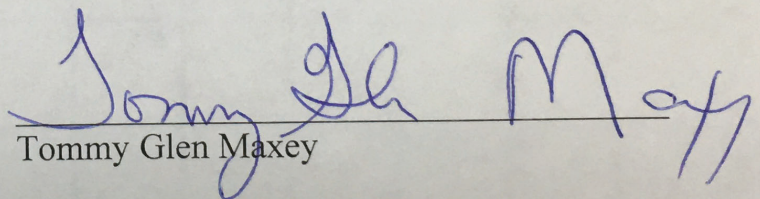
DECLARATION OF TOMMY GLEN MAXEY

I, Tommy Glen Maxey, declare that:

1. My name is Tommy Glen Maxey. I am over the age of eighteen and am competent to make this declaration.
2. I have reviewed the Original Petition filed by TDP and others in this case pertaining to the pandemic and state law vote by mail provisions. The facts stated in the Original Petition, Application for Temporary and Permanent Injunctions and for Declaratory Judgment are true and correct to the best of my personal knowledge.

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

Signed this the 20th day of March, 2020.


Tommy Glen Maxey