

TEXAS DEMOCRATIC PARTY, et. al	§	IN THE DISTRICT COURT
	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
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
	§	
	§	
<i>Intervenor-Plaintiffs,</i>	§	
	§	
v.	§	
	§	
DANA DEBEAUVOIR	§	
	§	
<i>Defendants,</i>	§	
	§	
and	§	
	§	
STATE OF TEXAS	§	
	§	
<i>Intervenor-Defendant.</i>	§	201st JUDICIAL DISTRICT

PETITION IN INTERVENTION

Intervenors, Zachary Price, League of Women Voters of Texas (“LWVTX”), League of Women Voters of Austin Area (“LWV-AA”), MOVE Texas Action Fund (“MOVE”), and Workers Defense Action Fund (“WDAF”) respectfully file this petition in intervention as party-plaintiffs and allege as follows:

INTRODUCTION

The COVID-19 global pandemic poses an existential threat to Texans' ability to safely participate in their electoral democracy. The United States is now leading the world in COVID-19 cases, and the White House task force projects 100,000 to 240,000 deaths in the country from the virus, even with strict mitigation efforts. In Texas, the number of confirmed cases has risen 450% in just one week alone: from only 715 cases a week ago to 3,266 cases as of the date of filing. Because the highly contagious COVID-19 spreads through close contact between individuals, public health experts and government officials have urged Texans to stay home and to avoid getting within 6-feet of others. Not following those directions risks everyone's health and safety. Therefore, requiring the vast majority of eligible voters to all be physically present at their traditional polling places where they will be congregating with other individuals and waiting in line together in order to vote is contrary to the advice of public health experts and threatens public safety and the health of the individual voter. Fortunately, the Texas Legislature has seen fit to allow voters to avoid physically going to a polling place when doing so would create a likelihood of injuring their health. Under such circumstances, individuals may apply to vote by mail under the category of disability. However, despite the clear applicability of this category to the current crisis, Texas and local leaders have remained silent and failed to clarify that during the COVID-19 outbreak all registered voters have a likelihood of injuring their health if they vote in person and, thus, due to the pandemic, are eligible to vote by mail under the state's existing disability category. This silence leaves eligible voters at risk of disenfranchisement and even criminal liability under a cramped interpretation of the disability category. Without declaratory and injunctive relief from this Court, Texas voters thus face a Hobson's choice between their health and their right to vote. With multiple elections on the horizon, a ruling from this Court providing

clarity that all eligible voters may invoke the disability category in order to vote by mail during the COVID-19 outbreak is urgently needed to prevent large-scale disenfranchisement and to secure public health.

PARTIES

1. Intervenor Zachary Price is a resident of Austin, Texas and is a student at the University of Texas at Austin. The last three digits of his driver's license number are 027. The last three digits of his Social Security number are 286. Mr. Price is a registered voter in Travis County.
2. Intervenor LWVTX is a non-profit, volunteer-based organization with its main offices in Austin, Texas. LWVTX is a non-partisan organization whose mission includes empowering voters, defending democracy and envisioning a democracy where every person has the desire, the right, the knowledge and the confidence to participate. LWVTX has 33 chapters covering 39 Texas counties, including Travis County, with approximately 3000 individual members across the state.
3. Intervenor LWV-AA is a non-profit, all-volunteer organization with approximately 530 members, serving the greater Austin community. It is a separate organization but shares a mission with LWVTX of educating and empowering voters.
4. Intervenor MOVE is a Texas nonprofit corporation, organized under section 501(c)(4) of the Internal Revenue Code, with its principal place of business in San Antonio, Texas. MOVE empowers underrepresented youth communities to build a better democracy through civic engagement, leadership development, and issue advocacy. Founded in 2013, MOVE now employs 51 people, and conducts significant mission-driven activities in Travis County.
5. Intervenor WDAF is a Texas non-profit corporation, organized under section 501(c)(4) of the Internal Revenue Code, with its principal place of business in Austin, Texas. WDAF seeks to

build civic engagement infrastructure that will engage low-wage workers, people of color and immigrant families in the legislative and electoral processes that impact their lives. WDAF advocates for local, state and federal policies that protect workers, educates voters about their rights, and engages historically under-represented voters in efforts to elect representatives that prioritize the needs of working families. Since its founding in 2013, WDAF has engaged thousands of low-wage workers and voters in Texas in electoral and legislative campaigns.

6. Plaintiff Texas Democratic Party sued Defendant as a political party whose address is 314 East Highland Mall Blvd., Suite 508, Austin, Travis County, TX 78752. A copy of this petition will be forwarded to Chad Dunn, attorney of record for Plaintiff Texas Democratic Party, at 4407 Bee Caves Road, Suite 111 Austin, Texas 78746.
7. Plaintiff Gilberto Hinojosa sued Defendant as Chairman of the Texas Democratic Party and a registered voter in Texas. A copy of this petition will be forwarded to Chad Dunn, attorney of record for Plaintiff Gilberto Hinojosa, at 4407 Bee Caves Road, Suite 111, Austin, Texas 78746.
8. Plaintiff Joseph Daniel Cascino sued Defendant as an individual. A copy of this petition will be forwarded to Chad Dunn, attorney of record for Plaintiff Joseph Daniel Cascino, at 4407 Bee Caves Road, Suite 111, Austin, Texas 78746.
9. Plaintiff Shanda Marie Sansing sued Defendant as an individual. A copy of this petition will be forwarded to Chad Dunn, attorney of record for Plaintiff Shanda Marie Sansing, at 4407 Bee Caves Road, Suite 111, Austin, Texas 78746.
10. Defendant Dana DeBeauvoir was 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.

11. Intervenor-Defendant State of Texas filed a petition in intervention in this case on March 27, 2020. A copy of this petition shall be forwarded to Anna Mackin, attorney of record for the State of Texas, at anna.mackin@oag.texas.gov.

JURISDICTION/VENUE

12. The Court has jurisdiction over this matter of election law pursuant to TEX. ELEC. CODE § 273.081, TEX. CIV. PRAC. & REM. CODE § 37.003 and other laws. Intervenorors do not seek money damages and therefore make no statement under Rule 47(b) of (c) of the Texas Rules of Civil Procedure. Plaintiffs seek injunctive and declaratory relief which, in this context, is within the jurisdiction of this Court.
13. 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

14. Intervenorors intend to conduct Level 3 discovery under Rule 190.4 of the Texas Rules of Civil Procedure.

THE ORIGINAL LAWSUIT

15. On March 20, 2020, plaintiff sued current Defendant Dana DeBeauvoir, in her official capacity as the Travis County Clerk and Election Administrator, and the Texas Secretary of State, seeking a declaratory judgment, a temporary injunction, and a permanent injunction.
16. On or about March 23, 2020 plaintiff non-suited without prejudice Defendant Secretary of State because the Secretary of State alleged she was an improper party.

STANDARD FOR INTERVENTION

17. “Any party may intervene [in a case] by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party.” TEX. R. CIV. P. 60. “A party has a justiciable interest in a lawsuit, and thus a right to intervene, when his interests will be affected by the litigation.” *Jabri v. Alsayyed*, 145 S.W.3d 660, 672 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (citing *Law Offices of Windle Turley v. Ghiasinejad*, 109 S.W.3d 68, 71 (Tex. App.—Fort Worth 2003, no pet.)). “[U]nder Rule 60, a person or entity has the right to intervene if the Intervenor could have brought the same action, or any part thereof, in his own name, or, if the action has been brought against him, he would be able to defeat recovery, or some part thereof”). *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990). An intervenor is not required to secure a court’s permission to intervene in a cause of action. *Id.*

INTERVENORS’ INTEREST IN LAWSUIT

18. The citizens of this state are in the midst of the worst pandemic in modern history. COVID-19 is wreaking havoc on public and private life across Texas and will upend the upcoming Texas elections in May and July 2020 without action from this Court.
19. COVID-19 is a highly contagious virus that spreads mainly from person-to-person through close contact with one another and through respiratory droplets when an infected person coughs or sneezes. Studies on the pattern of illness indicate that people infected with the virus may be contagious even if they do not have any symptoms. COVID-19 can result in severe disease, including hospitalization, admission to an intensive care unit, and death. Top scientists in the Trump Administration recently estimated that the coronavirus could kill between

100,000 and 240,000 Americans and that this number would be much higher if Americans do not follow the strict social distancing guidelines.

20. All major Texas cities and counties are on lockdown. School districts statewide have canceled classes for the foreseeable future. The Centers for Disease Control and Prevention (“CDC”) has issued national guidance telling the public to avoid public gatherings until at least May 15, 2020. Guidance from the Trump Administration, which was recently extended until April 30, 2020, advises against unnecessary travel and gatherings of over 10 people. Governor Abbott has declared a state of emergency and suspended numerous state statutes. On March 31, the Governor issued an executive order stating in relevant part, “every person in Texas shall, except where necessary to provide or obtain essential services, minimize social gatherings and minimize in-person contact with people who are not in the same household.”¹ This order continues in operation until April 30, 2020, and keeps schools closed until May 4, 2020. At least 18 Texas counties, including Travis County, which are home to roughly 60 percent of the state's population, have instituted some form of mandatory lockdown requiring individuals to stay at home.

21. Public health experts and government agencies and officials at all levels are imposing social distancing measures in order to “flatten the curve” of the coronavirus outbreak. The intended effect of this is to spread the infection rate of the virus out over time so that our medical system is not overwhelmed by severely sick individuals. Although this strategy is necessary to vastly improve health outcomes and reduce deaths and serious illnesses, it necessarily means that individuals must adhere to strict social distancing measures for an extended length of time.

¹ Gov. Greg Abbott, Executive Order GA-14 (Mar. 31, 2020).

These measures are expected to be in place for the foreseeable future, with many schools having cancelled their remaining semesters.

22. Social distancing measures include, at a minimum, not being in groups of ten or more and remaining at least six feet away from all other individuals.
23. New York State, which began experiencing infections weeks sooner than other states, is experiencing a large-scale outbreak the likes of which have not been seen in generations and which make any sort of public activity not feasible. Experts believe that the peak of the outbreak has not yet hit New York, and that, even with strict social distancing measures in place, other states will be in similar circumstances in the weeks and months to come.
24. Texas has been lagging behind other states when it comes to coronavirus testing and the full scope of the outbreak in Texas is not known. What is known is that the COVID-19 outbreak in Texas is not slowing down. The number of confirmed COVID-19 cases in Texas, and in Austin specifically, is growing rapidly. As of the date of filing there are 3,266 confirmed cases of COVID-19 in Texas; just a week ago Governor Abbott reported that there were only 715 cases. Public health officials expect these numbers to continue to grow. Numerous reports suggest that Texas COVID-19 cases will not begin to peak until May and will continue into the summer.
25. The vast majority of Texans traditionally vote in person at a polling place. As long as the COVID-19 pandemic persists in Texas, elections cannot safely proceed as normal. Thousands of individuals cannot line up at polling places (sometimes for hours), touch the same equipment, have face-to-face interactions with poll workers, and more without threatening their own health and the health of others. During the recent Primary Election, many polling

places, including the University of Texas Campus polling places in Travis County, saw hours-long lines with hundreds of voters in close proximity to one another.

26. In Florida, which recently conducted in-person voting, multiple poll workers have been found to have contracted coronavirus.

27. Mail-in-ballots provides a vastly safer solution to participating in the election because individuals do not need to leave their homes and physically congregate with others inside polling locations or wait with others for potentially hours in long lines. Texas voters should not be forced to choose between their own personal health and safety and the health and safety of others and exercising their fundamental right to vote. Clarity that all individuals may vote-by-mail under existing Texas law during this ongoing public health crisis is thus needed to ensure that eligible voters do not simply refrain from voting at all.

28. Further, relief from this Court is needed immediately. To be able to cope with an influx of mail ballots, counties need to begin processing applications now. Counties, including Travis, have the capacity to scale up to accommodate a significant increase in mail ballot applications, but only if they begin preparing now. As Defendant DeBeauvoir has publicly stated regarding the County's capacity to handle an influx of mail ballots, "[w]e don't have enough high-capacity scanners to do the processing, and we estimate we would have to roughly triple the counting crew. . . . [Nevertheless], anything's possible with sufficient resources."² As a preliminary matter, the County needs to know how many mail ballots to order its vendor to print and prepare. This process is often begun months in advance. Additionally, the County needs to plan the staff allocations for processing applications as they come in and ensuring that

² Michael King, *Increased Pressure for Vote-By-Mail*, Austin Chronicle (Mar. 20, 2020) <https://www.austinchronicle.com/news/2020-03-20/increased-pressure-for-vote-by-mail>.

mail ballots are sent out in a timely fashion. The County must also ensure that there are enough workers to accept and count the ballots, which may require substantial advanced planning particularly given the heightened risks presented by the current health crisis. The County will only be able to adequately meet voters' needs if it knows with enough time how many mail ballots are likely to be requested. If the vast majority of Texas voters are not sure that they may properly apply for mail ballots during this pandemic until the last minute, the County is likely to get slammed with last minute requests that will overwhelm its administrative capacity. However, if voters know in advance that they can apply for a ballot, they can begin applying now, which will allow the county to properly prepare for tracking, sorting, and counting all of the ballots, as well as notifying voters of their ability to vote by mail.

29. Existing law allows voters to choose to cast their ballots by mail under the circumstances of this pandemic. TEX. ELEC. CODE § 82.002 provides in full:

- (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).

Under this law, the Texas Legislature saw fit to provide voters who face threats to their physical well-being if they appear at the polling place with the option to vote by mail.

30. The Texas Attorney General has previously opined that the term disability in the statute is not to be constrained by other more limiting definitions of disability. Per a prior Texas Attorney General Opinion, "[t]he 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. The statute does, however, provide a clarifying but non-limiting example of a condition that satisfies the expressed standard . . . (providing that '[e]xpected or

likely confinement for childbirth on election day would qualify one to vote under subsection 82.002(a)).” Ken Paxton, Attorney General Opinion No. KP-0009 (Mar. 9, 2015) (internal citations omitted). Thus, the plain language of section 82.002 makes room for confinements arising from medical necessity that prevent access to the polls in person.

31. As set forth 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. These policy choices and recommendations underscore the obvious conclusion that in a time of a virulent, widespread pandemic, everyone has a physical condition that “prevents the voter from appearing at the polling place on election day without a likelihood of . . . injuring the voter's health.”

32. Despite the urgent need for clarity on this subject, Texas officials refuse to provide guidance. On March 17, 2020, Plaintiffs MOVE, WDAF, and LWVTX sent a letter to the Texas Secretary of State urging her to issue guidance to Texas counties to clarify that all registered voters are eligible to cast mail ballots using the “disability” category in upcoming elections during the ongoing pandemic based on the legal theory outlined above. The Secretary of State has not responded to this letter or other similar calls by elected officials, and has not offered any guidance to counties on how to conduct elections during the coronavirus pandemic and under the necessary social distancing practices that accompany it.

33. A mail ballot application must legally contain “an indication of the ground of eligibility for early voting.” Tex. Elec. Code § 84.002. A person commits an offense if they “knowingly provide[] false information on an application for ballot by mail.” Tex. Elec. Code § 84.0041. In addition, mail ballots that are not submitted according to statutory standards are subject to being invalidated and not counted. *Tiller v. Martinez*, 974 S.W.2d 769, 775 (Tex. App.-San

Antonio 1998, pet. dismiss'd w.o.j.). Therefore, plaintiffs urgently and immediately need official clarification that they may vote by mail so they can proceed to do so, and they need an injunction ensuring proper application of the law so that they do not risk violating the law and having their ballots invalidated.

34. Intervenor Price is currently practicing social distancing measures as recommended – and mandated – by local, state, and federal authorities. Mr. Price wishes to vote in the 2020 primary election runoff and the July 14 special election. Mr. Price will not vote in person because he does not want to risk catching coronavirus or inadvertently infecting others if, unbeknownst to himself, he is an asymptomatic carrier. Mr. Price reasonably believes that during this ongoing COVID-19 outbreak he, along with everyone else, has a physical condition that prevents him from appearing at the polling place on election day without a likelihood of injuring his health.
35. Mr. Price wishes to vote by mail and to send in his application as soon as possible but cannot find any official guidance to clarify that he qualifies to vote by mail under present circumstances. Mr. Price is not sure whether his ballot will be accepted and counted if he attempts to vote by mail. Mr. Price faces potential disenfranchisement and/or criminal liability if it were found that he applied for a mail ballot despite knowingly not meeting the statutory guidelines for eligibility.
36. If he has reliable authority indicating that he is able to legally apply for a mail ballot at the present time, Mr. Price will apply for a mail ballot as soon as possible. Mr. Price wants to apply for a ballot soon to ensure that he receives his ballot in a timely fashion, that he has enough time to track his mail application and ballot, has enough time to contact and follow up with the County if his ballot does not arrive or is not received by the County, and has enough time to take whatever additional steps might be necessary to ensure his ballot is counted.

37. Since its inception, MOVE has worked to expand voter registration and equal access to voting.

MOVE actively works to register eligible young people to vote and ensure that they cast a ballot that actually counts. MOVE informs voters statewide about their ability to cast a mail ballot, explains the rules and deadlines related to mail ballots, and encourages eligible voters to utilize mail ballots if they cannot vote in-person. MOVE encourages and advises young voters in applying for mail ballots when appropriate and follows up with them to ensure they have mailed their ballots in a timely manner. Because MOVE frequently works with college students, encouraging voting by mail is one of MOVE's core activities. Many of the young voters who MOVE would have encouraged to vote by mail because they were outside of their home county while attending school are now residing in their home counties due to COVID-19 school closures; however, they will still be unable to safely vote in person due to the widespread pandemic conditions. MOVE would engage these potential voters through direct outreach and social media and encourage them to apply for mail ballots if there were legal clarity indicating that it would be permissible for them to vote by mail due to the widespread pandemic conditions and that their votes will be counted if they vote by mail. Further, MOVE faces potential criminal liability if it encourages these voters to vote by mail and later these voters are found to not qualify for vote by mail. A declaratory judgment properly interpreting the Texas Election Code to allow vote by mail for all registered voters during the coronavirus pandemic is necessary for MOVE so that it can plan, prepare, and execute its get-out-the-vote efforts that form part of its core mission.

38. WDAF engages in get-out-the-vote efforts. WDAF's normal get-out-the-vote efforts are not feasible under present conditions where person-to-person contact is not possible. Further, WDAF faces potential criminal liability if it encourages these voters to vote by mail and later

these voters are found to not qualify for vote by mail. Declaratory judgment properly interpreting the Texas Election Code to allow vote by mail for all registered voters during the coronavirus pandemic is necessary for WDAF so that it can plan, prepare, and execute a get-out-the-vote strategy.

39. A core part of WDAF's mission is civic engagement. This includes encouraging its members to vote in every election and endorsing candidates based on mission-driven criteria. WDAF wants all of its members who are registered voters to be able to vote in all upcoming elections, including any local elections, the primary runoff election, and the special election for Texas State Senate. WDAF has members who would not be eligible to vote outside the circumstance of the coronavirus pandemic. To ensure its members' health and safety during the ongoing public health emergency caused by the coronavirus, WDAF plans to advise and encourage its members to apply for mail ballots for upcoming elections and to do so early to ensure they arrive on time or can be re-sent if they do not. WDAF cannot currently advise all of its members (many of whom would not be eligible to vote by mail outside of the coronavirus pandemic circumstances) to apply for mail ballots due to the lack of legal clarity indicating that it would be permissible for them to vote by mail due to the widespread pandemic conditions. WDAF does not want to encourage its members to vote by mail if their ballots will not be accepted and tabulated. WDAF cannot risk exposing itself, its staff or its members to potential criminal liability by encouraging members to apply for mail ballots if they are in fact not eligible to do so. Therefore, WDAF needs declaratory and injunctive relief to establish that the Texas Election Code allows vote by mail for all registered voters during the coronavirus pandemic and injunctive relief to ensure its members' mail ballots will be counted.

40. LWVTX informs voters statewide about their ability to cast a mail ballot and explains the rules and deadlines related to mail ballots. LWVTX is unable to fully engage in this activity because there has thus far been no official clarification explaining that all registered voters are eligible to vote by mail during COVID-19. LWVTX faces potential criminal liability if it encourages these voters to vote by mail and later these voters are found to not qualify for vote by mail. Declaratory judgment properly interpreting the Texas Election Code to allow vote by mail for all registered voters during the coronavirus pandemic is necessary for LWVTX so that it can plan, prepare, and execute a voter education strategy that includes advising registered voters that they can vote by mail during a widespread pandemic.
41. LWVTX has 33 chapters covering 39 Texas counties, including Travis County, with approximately 3000 individual members all across the state. LWVTX members statewide are observing social distancing guidelines. Many LWVTX members who are registered voters will not be able to vote in person in upcoming elections due to the present coronavirus circumstances without risking their health and safety. This includes not being able to vote in the May 2 local elections as well as the primary runoff election and special election for Texas Senate. LWVTX membership includes individuals in Travis County and throughout the state who would not be eligible to vote by mail outside of current pandemic circumstances. LWVTX cannot currently advise all of its members to apply for mail ballots without legal clarity indicating that it would be permissible for them to vote by mail due to the widespread pandemic conditions. LWVTX does not want to encourage its members to vote by mail if their ballots will not be accepted and tabulated. LWVTX cannot risk exposing itself or its members to potential criminal liability by encouraging members to apply for mail ballots if it is later determined they are in fact not eligible to do so. LWVTX seeks to be able to advise its members

that they can apply to vote by mail so that they are able to safely vote in all upcoming elections during this public health crisis. Therefore, LWVTX needs declaratory and injunctive relief to establish that the Texas Election Code allows vote by mail for all registered voters during the coronavirus pandemic and injunctive relief to ensure its members' mail ballots will be counted.

42. LWV-AA engages in numerous voter engagement and education activities, which include educating Austin-area voters about their ability to cast a mail ballot and explaining the rules and deadlines related to mail ballots. LWV-AA is unable to fully engage in this activity because it is unclear who is currently eligible to vote by mail. LWV-AA faces potential criminal liability if it encourages these voters to vote by mail and later these voters are found to not qualify for vote by mail. Declaratory judgment properly interpreting the Texas Election Code to allow vote by mail for all registered voters during the coronavirus pandemic is necessary for LWV-AA so that it can plan, prepare, and execute a voter education strategy that includes advising registered voters that they can vote by mail during a widespread pandemic.

43. Intervenor LWV-AA is a membership organization whose members reside in the greater Austin area. Many LWV-AA members who are registered voters will not be able to vote in person in upcoming elections due to the present coronavirus circumstances without risking their health and safety. LWV-AA has members who are not otherwise eligible to vote by mail outside of unique circumstances such as a statewide pandemic. LWV-AA cannot currently advise all of its members to apply for mail ballots due to the lack of legal clarity indicating that it would be permissible for them to vote by mail due to the widespread pandemic conditions. LWV-AA does not want to encourage its members to vote by mail if their ballots will not be accepted and tabulated. LWV-AA cannot risk exposing itself or its members to potential criminal liability by encouraging members to apply for mail ballots if they are in fact not

eligible to do so. LWV-AA seeks to be able to advise its members that they can apply to vote by mail so that they are able to safely vote in all upcoming elections during this public health crisis. Therefore, LWV-AA needs declaratory and injunctive relief to establish that the Texas Election Code allows vote by mail for all registered voters during the coronavirus pandemic and injunctive relief to ensure its members' mail ballots will be counted.

44. Intervenor urgently need the court to provide legal clarity indicating that it is permissible for registered voters to vote by mail due to the widespread pandemic conditions so that they may determine how to proceed during the primary runoff and special election period. An immediate decision interpreting state law is required so that election preparations can continue in compliance therewith.

45. To prevent wide-scale disenfranchisement of Texans, this Court must declare that the statute means what it says and that all individuals may cast a mail ballot during the COVID-19 outbreak. Otherwise, the lack of legal clarity will lead individuals, like Intervenor Mr. Price, to refrain from voting in person, for fear of their health and well-being, and to refrain from seeking a mail ballot for fear of being disenfranchised and/or criminally prosecuted.

46. Voters, including Intervenor Price, seek to avail themselves of the option to vote by mail ballot. Similarly, MOVE, WDAF, LWVTX, and LWV-AA seek to encourage their members and the individuals whom they educate about their ability to still participate in the up-coming elections through mail ballots without fear of prosecution or that their ballots will be discarded. Further, MOVE, WDAF, LWVTX, and LWV-AA need this legal clarity to protect themselves against potential criminal liability.

47. Civil Practices and Remedies Code Chapter 37 lists suits that are appropriate for declaratory relief: "A person whose rights, status, or other legal relationships are affected by a statute . . .

can seek a declaratory judgment to determine any question of construction or validity arising under the statute . . . and obtain a declaration of rights, status, or other legal relationships.” Tex. Civ. Prac. & Rem. Code Section 37.004(a); *see generally, City of Ingleside v. Corpus Christi*, 469 S.W.3d 589, 590 (Tex. 2015).

INTERVENORS’ CLAIMS FOR RELIEF
Declaratory Judgment

48. Intervenor prays that the Court enter a declaratory judgment holding that the definition of “disability” laid out in TEX. ELEC. CODE 82.002(a) currently encompasses all registered voters because, as a result of the current COVID-19 public health crisis, all individuals have a physical condition that prevents them from appearing at a polling place on election day without a likelihood of injuring the voters’ health.

Permanent Injunction

49. Intervenor prays that, after a full trial on the merits, the Court enter a permanent injunction enjoining Defendants from refusing to accept and tabulate any mail ballots received from voters in an upcoming election who apply to vote by mail based on the disability category of eligibility as a result of the coronavirus pandemic and enjoining Defendants from interpreting or applying section 82.002 of the Election Code in a way that prevents registered voters from voting by mail in light of the pandemic.

PRAYER

50. WHEREFORE, PREMISES CONSIDERED, for the foregoing reasons, Intervenor respectfully request that the Court enter judgment against Defendant: (a) declaring that the definition of “disability” laid out in TEX. ELEC. CODE 82.002(a) currently encompasses all registered voters because, as a result of the current COVID-19 public health crisis, all individuals have a physical condition that prevents them from appearing at a polling place on

election day without a likelihood of injuring the voters' health; (b) permanently enjoining Defendants from refusing to accept and tabulate any mail ballots received from voters in an upcoming election who apply to vote by mail based on the disability category of eligibility as a result of the coronavirus pandemic; (c) permanently enjoining Defendants from interpreting or applying pertinent provisions of the Election Code in a way that prevents registered voters from voting by mail in light of the coronavirus pandemic; and, (d) awarding Intervenor such other and further relief to which it may be justly entitled at law or in equity.

Respectfully submitted,

By: /s/ Joaquin Gonzalez
Joaquin Gonzalez
Texas Bar No. 24109935
Joaquin@texascivilrightsproject.org
Mimi Marziani
Texas Bar No. 24091906
mimi@texascivilrightsproject.org
Rebecca Harrison Stevens
Texas Bar No. 24065381
beth@texascivilrightsproject.org

TEXAS CIVIL RIGHTS PROJECT
1405 Montopolis Drive
Austin, Texas 78741
512-474-5073 (Telephone)
512-474-0726 (Facsimile)

Edgar Saldivar
TX Bar No. 24038188
Thomas Buser-Clancy
TX Bar No. 24078344
Andre Segura
TX Bar No. 24107112

ACLU FOUNDATION OF TEXAS, INC.
P.O. Box 8306
Houston, TX 77288

Telephone: (713) 325-7011
Fax: (713) 942-8966
esaldivar@aclutx.org
tbuser-clancy@aclutx.org
asegura@aclutx.org
Sophia Lin Lakin**
New York Bar No. 5182076
Dale E. Ho**
New York Bar No. 4445326

AMERICAN CIVIL LIBERTIES UNION
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: (212) 519-7836
Fax: (212) 549-2654
slakin@aclu.org
dho@aclu.org

** Pro hac vice application forthcoming

ATTORNEYS FOR INTERVENORS

CERTIFICATE OF SERVICE

I hereby certify that on the April 1, 2020, a true and correct copy of the foregoing *Petition in Intervention* was served upon Sherine Thomas and Leslie Dippel, attorneys for Defendant Dana DeBeauvoir via email at sherine.thomas@traviscountytx.gov and leslie.dippel@traviscountytx.gov; upon Chad Dunn, attorney for Plaintiffs, via email at chad@brazilanddunn.com; and upon Anna Mackin, attorney for Intervenor-Defendant, via email at anna.mackin@oag.texas.gov in accordance with TEX. R. CIV. P. 21(a).

/s/ Joaquin Gonzalez