

No. 03-20-00251-CV

**IN THE THIRD COURT OF APPEALS
AUSTIN TEXAS**

The State of Texas
Intervenor-Defendant – Appellant
v.
Texas Democratic Party, et al.
Plaintiffs – Appellees
&
Zachary Price, et al.
Intervenor-Plaintiffs – Appellees

On Appeal from the District Court of Travis County, 201st Judicial District
Cause No. D-1-GN-20-001610, Hon. Tim Sulak, Presiding.

**APPELLEES PLAINTIFFS’ AND INTERVENOR-PLAINTIFFS’
VERIFIED MOTION FOR EMERGENCY RELIEF**

To the Honorable Justices of the Third Court of Appeals:

Appellant State of Texas (“the State”), through Attorney General Ken Paxton, is acting in open defiance of a temporary injunction issued by the Travis County District Court. On April 17, 2020, after a full evidentiary hearing and arguments on the merits, the district court held that during the COVID-19 pandemic voters without established immunity to COVID-19 qualify under the plain language of the disability category to vote by mail and enjoined the State from issuing

guidance to the contrary. On May 1, 2020, in a striking assertion of unbridled executive power, Paxton issued a letter claiming that his contrary interpretation of the disability category, which the district court already rejected, is law of the land, and threatening prosecution of parties who encourage individuals to vote by mail due to COVID-19. *See* Ex. A.

In light of the Attorney General's extreme actions, Appellees, Plaintiffs and Intervenor-Plaintiffs, seek Emergency Relief pursuant to Texas Rule of Appellate Procedure ("TRAP") 29.3 and TRAP 29.4 to enforce the district court's temporary injunction or, in the alternative, for an order that the lower court's injunction remains in effect to preserve the parties' rights until the disposition of the appeal.

Emergency relief is needed to prevent irreparable harm to Appellees, as well as to similarly situated members of the public, including, at a minimum, tens of thousands of Texas voters, during this interlocutory appeal. After a full evidentiary hearing, the trial court found that Appellees and their members faced "immediate, irreparable injury" without an injunction prohibiting the denial of their mail ballot applications, and that such voters would be forced to "vote in person and risk transmission of a deadly illness or lose their right to vote entirely." Clerk's Record ("CR") 959. The trial court further found that "time is of the essence" because election administrators must begin preparation for the influx of mail ballots "without delay." *Id.* Accordingly, the trial court issued an injunction against Defendant

Travis County and Appellant, the State. The trial court specifically enjoined the State from issuing guidance or taking any other action that would prohibit individuals from submitting mail ballots due to COVID-19 or would prevent counties from accepting those ballots.

While the State claims in the Paxton Letter that the trial court's order is not in effect, the State is wrong on the law. Ms. DeBeauvoir, the Travis County Clerk, has not appealed the injunction and therefore the injunction remains in effect with respect to Travis County; further, because the State failed to request the trial court's order be superseded, the injunction also remains in effect with respect to the State, and the State is acting in blatant defiance thereof. Enforcement of the injunction now falls to this Court pursuant to TRAP 29.4.

Even if the temporary injunction were superseded, this Court should exercise its equitable powers and authority under TRAP 29.3 to order that the injunction remains in effect. The State has taken the extraordinary action of publicly disregarding an order from a coequal branch of the government, asserting that its view of the Texas Election Code, which was rejected by the trial court, is law of the land and threatening those who follow the trial court's interpretation with prosecution. This includes calling into question the validity of the injunction within Travis County and intimidating Travis County voters, including Appellees, despite the fact the injunction is undeniably in effect in Travis County, as Ms. DeBeauvoir

has neither appealed the injunction nor claimed it is superseded. Without emergency relief, Appellees and their members, along with thousands of similarly situated voters, remain in legal limbo, on the one hand seeking to avail themselves of rights clarified by the state's judicial branch while on the other hand being subjected to possible investigation and criminal prosecution by part of the executive branch for the same activity.

BACKGROUND

On April 15, 2020, the trial court heard Plaintiffs' and Intervenor-Plaintiffs' Applications for Temporary Injunction, CR 4-13, 48-79, 308-617, 217-279, as well as the State of Texas' Plea to the Jurisdiction, CR 80-115. On April 17, 2020, the court issued its Order on Application for Temporary Injunctions and Plea to the Jurisdiction (the "Order"), which is the subject of the State's current appeal. CR 957-962.

*Evidence Before the Trial Court*¹

Through the declarations, documentary evidence, and live testimony, including from expert witnesses, the trial court heard evidence that the COVID-19 pandemic is wreaking havoc on life in Texas and across the globe. Individuals are contracting the devastating illness at alarming rates and the death toll continues to

¹ This Court need not reach the merits of the trial court's decision in determining the emergency motion. This information is set forth for background purposes.

increase.

The trial court heard expert testimony that COVID-19 poses a threat to everyone, not just particularly vulnerable groups. Reporters' Record ("RR") 3 87-88; RR2 78:1-20. COVID-19 spreads through droplets that then enter the infected through mucous membranes in the eyes, mouth, and nose. RR2 77:8-25. Once there, COVID-19 begins attacking lungs, respiratory pathways, and the throat which are all susceptible to the virus, even in young healthy people. RR2: 78:21-79:9; RR3 87-88.

The trial court further heard expert testimony that polling places pose a particularly significant threat for the spread of the virus, because hundreds if not thousands of people gather in close proximity and interact with poll workers, who are in turn interacting with all of the other voters. RR2 84:8-85:6; RR3 88. Voters also touch the same voting equipment, providing another potential opportunity for the spread of COVID-19. *Id.*

The trial court also heard testimony that it was reasonable for people to believe that entering polling places in the upcoming elections will pose a threat to their health. There will not be a COVID-19 vaccine for at least another 12 months. RR2 79:7-23; RR3: 89-90. There will not be herd immunity to COVID-19 for another year at least. RR2 80:5-11; RR3 90. COVID-19 is unlikely to be seasonal, RR2 79:24-80:23; RR3 91, and COVID-19 will remain in transmission during the

summer and likely fall, RR2 80:24-81:5; 83:17-84:7; 113:14-114:7; 123:16-124:17.

The trial court further heard testimony that counties need to begin preparing now to accommodate an increase in mail ballots. Glen Maxey, the Primary Director of the Texas Democratic Party, testified that it normally takes 74 days to begin preparing mail ballots for an election. RR3 28. He further testified that waiting to resolve this issue until July was like waiting until a hurricane was on the shore before beginning emergency preparations. RR2 65:6-66:10. Defendant Debeauvoir testified through declaration that Travis County is already preparing for the July elections and that COVID-19 will pose a significant hindrance to running the elections and running them safely. RR3 402, 405-406. She further testified that she would not wait until closer to July to plan the election, and that if there is going to be a significant increase in mail ballots, she would need to know now. *Id.*

Trial Court Findings

Based on the evidence presented as part of Plaintiffs' and Intervenor-Plaintiffs' Applications for Temporary Injunctions, the trial court entered a temporary injunction and denied the State's plea to the jurisdiction. The trial court found that Plaintiffs and Intervenor-Plaintiffs had met their burden of showing a probable right of relief. It specifically found that "COVID-19 is a global respiratory virus that poses an imminent threat of disaster, to which anyone is susceptible and which has a high risk of death to a large number of people and creates substantial

risk of public exposure because of the disease’s method of transmission.” CR 959. Further, “the evidence shows that voters and these Plaintiffs and Intervenor-Plaintiffs are reasonable to conclude that voting in person while the virus that causes COVID-19 is still in general circulation presents a likelihood of injuring their health, and any voters without established immunity meet the plain language definition of disability thereby entitling them to a mailed ballot under Tex. Elec. Code § 82.002.” CR 959-60.

The trial court also held that, absent injunctive relief, Plaintiffs and Intervenor-Plaintiffs would be irreparably harmed because “they will be forced to either vote in-person and risk transmission of a deadly illness or lose their ability to vote entirely.” CR 959. It found that “[t]he risk of transmission of COVID-19 during in-person voting is high for the July 14, 2020 Run-Off election and all subsequent elections for this year. The harm caused by transmission of COVID-19 during in-person voting on the one hand and not being able to cast a ballot that is counted on the other is imminent, irreparable, and seriously damaging.” *Id.* Further, “[t]he Run-Off Elections are scheduled to be held on July 14, 2020. Ordinarily, without adjusting other laws, Election Clerks and Election Administrators require at least 74 days to prepare for an election. 74 days from July 14, 2020 is May 1, 2020.” CR 959. “Time is of the essence and election administrators as well as the TDP must have clarity without delay so that election preparations can be made.” CR 960.

The trial court issued a temporary injunction that, amongst other things, enjoined Defendant and Intervenor-Defendant and their agents from issuing guidance or otherwise taking actions that would prevent counties from accepting and tabulating any mail ballots received from voters who apply to vote by mail based on the disability category of eligibility as a result of the COVID-19 pandemic for all elections affected by the pandemic for the reason that the ballots were submitted based on the disability category; and from issuing guidance or otherwise taking actions during all elections affected by the COVID-19 pandemic, that would prohibit individuals from submitting mail ballots based on the disability category of eligibility or that would suggest that individuals may be subject to penalty solely for doing so. CR 961.

Events Following the Trial Court's Order

Immediately following the entry of the Order, the State filed a notice of appeal, wherein it asserted that by perfecting the appeal the Order had been superseded. CR 964. Plaintiffs immediately disputed that interpretation. The State did not seek to have the Order superseded in the trial court.

Ms. DeBeauvoir has not appealed the Order, given notice of appeal, or sought to have the trial court supersede any part of the Order. Additionally, Travis County recognizes the order as being in effect.² Consistent with the Order and the

² Travis County Clerk's Office, COVID-19 Updates (last accessed May 5, 2020) (attached hereto)

State’s prior position that enforcement of the election laws during COVID-19 falls to the counties, Harris County and other counties have issued guidance that they will not reject applications for mail ballots under the disability category due to COVID-19.³

More than a week after Harris County issued its guidance, the Attorney General issued a menacing letter to counties in an apparent attempt to effectively overrule the trial court and deter them from adopting the trial court’s legal reasoning through an explicit threat not to allow voters to vote by mail due to COVID-19, in direct contradiction to the legal conclusions set forth in the Order.⁴ Ex A (the “Letter”). The Letter was not issued as an official Advisory Opinion of the Attorney General, and, accordingly its interpretation of the law has no binding force. *Greater Houston P’ship v. Paxton*, 468 S.W.3d 51, 65 (Tex. 2015) (noting that even informal Attorney General Opinions—which the letter at issue does not even rise to—“lack any precedential value”). The Letter pushes the same flawed interpretation of the disability exception that the trial court considered and rejected, asserting that “to the extent that a fear of contracting COVID-19, without more, could be described as a

as Ex. C).

³ See, e.g., Zach Despart, *Harris County OKs up to \$12M for Mail Ballots Amid Coronavirus Concerns*, HoustonChronicle.com (Apr. 28, 2020) (Attached hereto as Ex. D); see also RR3 321-27.

⁴ The Attorney General had previously tried to publicly assert his erroneous interpretation through a similar threatening letter tweeted out in the midst of the trial court’s hearing, only to be overruled minutes later by the trial court’s ruling. See Ex. B.

condition, it would at most amount to an emotional condition.” *Compare* Ex. A, *with* RR2 156:7-18 (the State’s same rejected argument to the trial court). The Letter also misstates the very statute it purports to interpret: Paxton states that individuals are qualified to vote by mail if they have a sickness or physical condition that prevents them from appearing at the polling place without injuring their health. Ex. A. This omits critical language from the statute; pursuant to Section 82.002 of the Texas Election Code, “[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.”

Further, the Letter explicitly threatens prosecution of third parties that encourage individuals to vote by mail during COVID-19, essentially threatening to prosecute anyone who disputes the State’s unsuccessful litigation position in this case. It additionally incorrectly asserts that the Order applied only to Travis County even though on its explicit terms the Order enjoins the State as well, and then calls into question whether the Order remains in effect even as to Travis County. Finally, the Letter asserts that due to the State’s appeal, the Order “has no effect” during the appeal, and purports to instruct counties and voters that they must apply the law “as set forth” by the Attorney General in the Letter, even though the trial court already rejected that interpretation.

ARGUMENT AND AUTHORITIES

I. The Trial Court's Temporary Injunction Has Not Been Superseded

To start, it is clear that the trial court's injunction with respect to Travis County has not been superseded. Ms. Debeauvoir did not appeal the Order, and thus there can be no dispute that it is not superseded as to her. *Cf. City of Rio Grande City, Tex. v. BFI Waste Services of Tex., LP*, 511 S.W.3d 300, 305 (Tex. App.—San Antonio 2016, no pet.) (holding that appeal by City appellants superseded order only with respect to City appellants and not other parties).

The Order is also not superseded with respect to the State because the State made no attempt to have that order superseded before the trial court. “Rule 24.2(a)(3) [of the Texas Rules of Appellate Procedure] governs the supersedeas issue in this interlocutory appeal because the temporary injunction is an order ‘for something other than money or an interest in property.’” *Tex. Educ. Agency v. Houston Indep. Sch. Dist.*, 03-20-00025-CV, 2020 WL 1966314, at *2 (Tex. App.—Austin Apr. 24, 2020, no pet. h.).

Pursuant to TRAP 24.2(a)(3)'s plain language, the State must request that the judgment be superseded *before the trial court*. Tex. R. App. P. 24.2(a)(3) (“When the judgment is for something other than money or an interest in property, **the trial court** must set the amount and type of security that the judgment debtor must post.”) (emphasis added). Although a trial court may lack statutory discretion to deny a

State request for supersedeas, the rule clearly requires the State make such a request before the trial court. *Id.* (“When the judgment debtor is the state, a department of this state, or the head of a department of this state, **the trial court** must permit a judgment to be superseded”) (emphasis added).⁵ Any other reading would render Rule 24.2(a)(3)’s reference to the trial court superfluous. *Heritage on San Gabriel Homeowners Ass’n v. Tex. Comm’n on Env’tl. Quality*, 393 S.W.3d 417, 427 (Tex. App.—Austin 2012, pet. denied) (“[I]t is an elementary rule of construction that we give effect to every word of a statute so that no part is rendered superfluous.”). Because the State failed to seek supersedeas relief in the trial court here, the Order is not superseded.

Both the Texas Supreme Court and this Court have confirmed that filing a Notice of Appeal alone does not automatically supersede the trial court’s judgment. In *In re State Bd. for Educator Certification*, 452 S.W.3d 802 (Tex. 2014), the Texas Supreme Court specifically analyzed the question “Does a trial court have discretion to deny suspension of a non-money judgment when the State files a notice of appeal?” *Id.* The Court held “that a trial court has discretion to deny any party—even the State—the right to supersede a non-money, non-property judgment.” *Id.* at 803.

⁵ As noted below, Appellees maintain that this language in TRAP 24.2(a)(3) violates the separation of powers and is thus unconstitutional.

There, the Supreme Court analyzed the intersection of TRAP 24.2(a)(3) with TRAP 25.1(h), which is the final judgment rule equivalent of TRAP 29.1. *Compare* TRAP 29.1 (“Perfecting an appeal from an order granting interlocutory relief does not suspend the order appealed from unless . . . (b) the appellant is entitled to supersede the order without security by filing a notice of appeal.”), *with* TRAP 25.1(h) (“The filing of a notice of appeal does not suspend enforcement of the judgment. Enforcement of the judgment may proceed unless . . . (2) the appellant is entitled to supersede the judgment without security by filing a notice of appeal.”). The Court held that the plain language of TRAP 24.2(a)(3) gave the trial court discretion to deny supersedeas despite the language of TRAP 25.1(h): “The Board may appeal without security—this is undisputed—but it has no unqualified right to supersedeas in light of the trial court’s discretion under TRAP 24.” *In re State Bd. for Educator Certification*, 452 S.W.3d at 808.

Following *In re State Bd. for Educator Certification*, this Court has squarely rejected the notion that the filing of a Notice of Appeal alone automatically supersedes the trial court’s judgment, the position asserted by the State here. In *McNeely v. Watertight Endeavors, Inc.*, 03-18-00166-CV, 2018 WL 1576866, (Tex. App.—Austin Mar. 23, 2018, no pet.), this Court analyzed whether perfecting a notice of appeal pursuant to Rule 29.1(b) automatically superseded a temporary injunction and held that, at least where a trial court has ordered a bond to effectuate

the order, it did not. In *McNeely*, appellee moved for emergency relief pursuant to Rule 29.3 “seeking to prevent the trial court’s injunction order from being suspended pending the appellants’ interlocutory appeal.” *Id.* at *1. Appellants argued that pursuant to Rule 29.1(b), the trial court’s order had been automatically superseded. Relying on the plain language of TRAP 24.2(a)(3), TRAP 29.2, and *In re State Bd. for Educator Certification*, this Court concluded that filing a notice of appeal did not automatically supersede a trial court’s order. *Id.* at *2 (“The Texas Supreme Court has definitively determined that ‘a trial court has discretion to deny any party—even the State—the right to supersede a non-money, non-property judgment.’”) (citation omitted); *see also* TRAP 29.2 (“The trial court *may* permit an order granting interlocutory relief to be superseded pending an appeal from the order, in which event the appellant may supersede the order in accordance with Rule 24.”) (emphasis added). The Court reasoned that by requiring a bond be paid, the trial court had exercised its discretion to deny supersedeas. *Id.* Accordingly, this Court “grant[ed] the motion for emergency relief to the extent of confirming that the trial court’s order remains in place and is not suspended during this appeal.” *Id.*; *see also City of Rio Grande City, Tex. v. BFI Waste Services of Tex., LP*, 511 S.W.3d 300, 306 (Tex. App.—San Antonio 2016, no pet.).

Pursuant to *McNeely*, it is clear that the State’s perfection of a notice of appeal has not automatically superseded the temporary injunction. Just as in *McNeely*, the

trial court here denied a plea to the jurisdiction, entered a temporary injunction and ordered a bond amount be paid, in this case zero dollars.⁶ CR 962. In setting bond, the trial court exercised its discretion to deny supersedeas. *See McNeely*, 2018 WL 1576866, at *2. The State failed to object or otherwise request that the Order be superseded. Accordingly, the temporary injunction remains in effect.

The 2017 amendment to Rule 24.2(a)(3) does not disturb *McNeely*'s applicability here. In 2017 the language of Rule 24(a)(3) was amended to add the following language: "When the judgment debtor is the state, a department of this state, or the head of a department of this state, the trial court must permit a judgment to be superseded except in a matter arising from a contested case in an administrative enforcement action." *See Tex. Educ. Agency v. Houston Indep. Sch. Dist.*, 03-20-00025-CV, 2020 WL 1966314, at *3 (Tex. App.—Austin Apr. 24, 2020, no pet. h.) (citing TRAP 24(a)(3)). As this Court noted in *Tex. Educ. Agency*, while this amended language purports to make the decision concerning supersedeas non-discretionary as to certain judgment debtors, it nevertheless continues to situate that decision with the trial court: "Accordingly, we grant the Commissioner's Rule 24.4 motion because we conclude that the **trial court** has no discretion under Rule 24.2(a)(3) and must allow the State to supersede a judgment except in a matter arising from a contested case in an administrative enforcement action." *Id.* at *6

⁶ The State did not object to the amount of the bond set and has waived any objection thereto.

(emphasis added). Thus, even if the trial court does not have the discretion to deny the State’s request to supersede a judgment, that does not relieve the State of the burden of so requesting. *Cf. Irving v. State*, 14-18-00056-CR, 2019 WL 470263, at *2 (Tex. App.—Houston [14th Dist.] Feb. 7, 2019, pet. ref’d) (analyzing Tex. Rule. App. P. 21.4(a), which sets forth statutory deadlines for moving for a new trial in a criminal matter and noting that where the state objects to an untimely amendment, the trial court has no discretion and cannot consider new grounds raised in the amendment; however if the state fails to object, the trial court may consider the new grounds). The State’s contrary position, that perfecting appeal automatically supersedes a temporary injunction, even where bond has been set, CRR 964, would render the amended language in Rule 24.2(a)(3) that refers to the trial court “permit[ting]” superseas superfluous.

Here, the trial court entered a temporary injunction and exercised its discretion to set a bond such that its Order would not be superseded. To the extent the State desired to invoke its supposed non-discretionary right to supersede the Order despite the setting of bond, it had to make such a motion before the trial court. Because it did not make such a motion, the Order is not superseded.

II. Alternatively, this Court should use its equitable authority under Rule 29.3 to order that the trial court’s injunction remains in effect.

A. TRAP 29.3 permits relief to order that the injunction remains in effect.

If the Court were nevertheless to conclude that the Order is superseded, emergency relief pursuant to the Court’s equitable powers under TRAP 29.3 ensuring the injunction remains in effect during this appeal is necessary and warranted. Absent such relief, Appellees—and potentially tens of thousands, if not more, similarly situated voters—will be imminently and irreparably harmed by being forced to either vote in-person and risk transmission of a deadly illness, risk prosecution—a very tangible risk in light of the Letter—or lose their ability to vote entirely. *See* TRAP 29.3 (Court has authority to grant emergency relief to “make any temporary orders necessary to preserve the parties’ rights until disposition of the appeal and may require appropriate security.”); *see also Tex. Educ. Agency*, 2020 WL 1966314, at *6 (affirming the propriety of issuing relief under TRAP 29.3 to ensure that a trial court’s temporary injunction remains in place); *McNeely*, No. 03-18-00166-CV, 2018 WL 1576866, at *1 (granting relief under TRAP 29.3 to clarify that trial court’s temporary injunction remained in effect).

Indeed, in *Texas Education Agency v. Houston Independent School District*, this Court concluded that where, as here, a trial court has already found that the party seeking relief under TRAP 29.3 has made a showing to a probable right of recovery and that absent relief it would suffer irreparable harm, the use of the Court’s inherent powers to order that the trial court’s temporary injunction remained in effect is warranted. 2020 WL 1966314, at *5. Otherwise, “[a]bsent an appellate court’s

inherent power to make temporary orders to preserve the parties' rights until disposition of the appeal, the application of Rule 24.2(a)(3) would prevent a party from ever meaningfully challenging acts by the executive branch that the party alleges to be both unlawful and reviewable by courts and that it further alleges will cause it irreparable harm." *Id.* Accordingly, the Court granted the request of the party requesting TRAP 29.3 relief, the School District, to keep the trial court's temporary injunction in place pending the appeal. *Id.*

The circumstances that caused the Court to issue relief under Rule 29.3 in *Texas Education Agency*, are present here. After considering all of the arguments and evidence of the parties, the trial court in its sound discretion found that Appellees have a probable right to the relief they seek—namely that they and all voters without established COVID-19 immunity meet the plain language definition of disability. *See, supra*, Background. As in *Texas Education Agency*, the trial court also found that, absent injunctive relief, Appellees and scores of other voters face imminent and irreparable harm here because they will be forced to either vote in-person and risk transmission of a deadly illness, endure the dramatic threat of prosecution from the State Attorney General, or lose their ability to vote entirely. CR 959; *see also Sanchez v. Bravo*, 251 S.W.2d 935, 938 (Tex. Civ. App.—San Antonio 1952, no writ) (“The right of the citizen to cast his ballot and thus participate in the selection of those who control his government is one of the fundamental prerogatives of

citizenship and should not be impaired or destroyed by strained statutory constructions.”). And the Attorney General’s threats, absent relief from this Court, may impact not just those voters that he believes fall outside the scope of his rejected interpretation of the law—given their menacing nature, they may very well deter even those voters that he considers eligible to vote by mail from doing so.

Absent immediate relief from this Court, that same imminent and irreparable harm that led the trial court to issue its injunction in the first instance will persist while this appeal is pending, particularly in light of the current briefing schedule. Under that schedule, the State’s final brief will be due on or about Monday, June 29, 2020, while the last day to apply to vote by mail for the July 14, 2020 primary runoff election, and State Senate special election, is Thursday, July 2, 2020.

B. Paxton’s threatening Letter heightens the need for TRAP 29.3 relief.

While the above considerations alone are sufficient to justify TRAP 29.3 relief, other factors and inappropriate actions by state actors render such relief imperative here. As an initial matter, Appellees’ requested TRAP 29.3 emergency relief is needed to ensure that counties have enough time to prepare for an expected influx of mail ballot requests and ensure that Appellees and the other tens of thousands—if not more—affected voters have sufficient time to apply for, receive, and return mail ballots in time to be counted in the event that Appellees prevail on appeal. The trial court heard testimony from election officials that they were

planning for July elections now, that it takes counties a significant period of time to prepare for mail ballots, and that preparing for a substantial increase in the volume of mail ballots requires that counties undertake such actions as soon as possible in order to timely process and respond to all of the applications. RR3 28; RR2 65:6-66:10; RR3 402, 405-406. The alternative—of leaving counties uncertain about what resources they need while this appeal winds its course and creating the likely scenario that either Appellees never have an opportunity to fully vindicate their rights prior to the July elections or, in an unlikely best case, Appellees and other affected voters who are deterred by Paxton’s extra-judicial actions are forced to wait until the last minute to submit their mail ballot applications—risks widespread disenfranchisement as happened recently during the April 7 primary in Wisconsin. RR2 46:2-8; CR 284; CR 322-323.

But the need for relief pursuant to TRAP 29.3 is perhaps put in starkest relief by the State Attorney General’s recent threats in his May 1, 2020 Letter. *See* Ex. A. The Letter trumpets that the State intends to threaten and prosecute those who do not follow its rejected interpretation of the law while this appeal is ongoing. This Letter has drastically altered the status quo by purporting to instruct—in violation of a court order—all counties and third-party organizations, including those who are parties to this lawsuit, that they must adopt, at risk of prosecution, a particular interpretation of the law that was rejected by the trial court. Appellees’ requested TRAP 29.3 relief

is necessary to re-establish the status quo. *See Tex. Educ. Agency*, 2020 WL 1966314, at *5 (stating that Rule 29.3 gives the Court “great flexibility in preserving the status quo based on the unique facts and circumstances presented”) (quotation marks and citation omitted).

Prior to this lawsuit, the State had refrained from issuing any substantive guidance regarding whether all voters without established immunity to COVID-19 were eligible to vote by mail during the current pandemic. Indeed, in a written Secretary of State Advisory and in pleadings filed in the trial court, the State took the position that enforcement of the election laws during COVID-19 fell to the counties. The State explicitly relied on this county-level authority in their Plea to the Jurisdiction and Petition in Intervention, arguing that “each early-voting clerk [throughout the State] is responsible for determining whether an application to vote by mail complies with all requirements.” CR 82; *see also* CR 18. And, the evidence reveals that the Secretary of State has advised those election officials that they “may have a need to modify certain voting procedures . . . [and] may want to consider seeking a court order to authorize exceptions to the voting procedures outlined in certain chapters of the Texas Election Code.” CR 958. Consistent with the State’s previously expressed position and the trial court order, some counties made statements that they would not reject mail ballots under the disability category due to COVID-19, and other counties began preparations for an influx of mail ballots,

and some voters may well have started applying for mail ballots due to COVID-19 in accordance with these instructions. *See supra* Background. The State has now turned around and issued bare threats to those who do not follow Paxton's post-hoc, non-binding interpretation of the law that was rejected by the trial court. Despite the Attorney General's seeming recalcitrance with respect to judicial orders, voters deserve clarification of their rights that an order of this Court can provide. Relief is necessary here to counter the Attorney General's brazen attempt to hijack and disrupt the status quo after the trial court issued an authoritative opinion that he did not like. *See Tex. Educ. Agency*, 2020 WL 1966314, at *5.

Beyond the harm to voters and disruption of the status quo, Paxton's threats also force Appellee organizations, the press, local election authorities, other advocacy groups, and even individual members of the public to consider whether speech about the Order or Section 82.002 of the Texas Election Code will expose them to criminal prosecution. While disregarding the plain terms of the Order, the Letter threatens prosecution against anyone who seeks to correctly interpret Texas mail-ballot laws in accordance with the trial court's interpretation. Under the plain terms of the Letter, Appellees or local election officials could expose themselves to criminal investigation and/or prosecution simply by stating that the trial court's Order authorizes voters to apply for an absentee ballot. In other words, Paxton has threatened to prosecute anyone who disputes his unsuccessful litigation position in

this case. Such a threat is not only a collateral attack on the trial court's Order, and an affront to the judiciary's inherent authority to say what the law is, it is also a blatant violation of Texas's Constitutional guarantee that "[e]very person shall be at liberty to speak, write or publish his opinions on any subject." Tex. Const. art. I, § 8. As the Texas Supreme Court has held "[t]here can be no liberty in the individual to speak, without the unhindered right to speak. It cannot co-exist with a power to compel his silence or fashion the form of his speech." *Ex parte Tucker*, 110 Tex. 335, 337 (1920). This means that "under the law of this state every person may speak the truth with good motives with reference to the officers, agencies, and policies of the government." *Ex parte Meckel*, 87 Tex. Crim. 120, 123 (1919). Paxton's threats to prosecute speech accurately informing voters about their rights under Section 82.002 of the Texas Election Code and the trial court's Order raises significant concerns regarding the intrusion on Texas' constitutional free speech guarantee.

For all these reasons, Appellees ask that, in the alternative to enforcing the existing interlocutory order under TRAP 29.4, this Court enter a temporary order that the lower court's injunction remains in effect to preserve the parties' rights until the disposition of the appeal. Appellees are ready, willing, and able to pay any security this Court sees fit as per TRAP 29.3, though would note that Appellant does not stand to incur any monetary damages regardless of the outcome of this appeal or

the underlying case. Indeed, if the Attorney General’s position takes hold while this appeal is ongoing, it is the voters and our democracy who suffer the loss.

III. The 2017 amendment to TRAP 24.2(a)(3) is unconstitutional.

Finally, the Court may also enforce the district court’s temporary injunction by reconsidering its analysis in *Tex. Educ. Agency*, 2020 WL 1966314, and finding that the 2017 amendment to TRAP 24.2(a)(3) is an unconstitutional infringement on the Texas Constitution’s separation of powers provision. However, the Court need not reach this argument if it holds that the temporary injunction is in effect for either of the two arguments discussed above.

TRAP 24.2(a)(3)’s amended text, which provides that “[w]hen the judgment debtor is the state, a department of this state, or the head of a department of this state, the trial court must permit a judgment to be superseded” violates the Texas Constitution based on both the text of the Separation of Powers provision in section 1 of article 2, and the binding precedent from the Texas Supreme Court in *In re State Bd. for Educator Certification*, 452 S.W.3d 802 (Tex. 2014). As discussed above, in that case, a unanimous Court held that a State agency does not have an unqualified right to supersede a final judgment on appeal. *Id.* at 808-09. The Court reasoned that any other arrangement would violate the separation of powers established by the Texas Constitution:

One final point: The State’s position—boundless entitlement to supersede adverse non-money judgments—would vest unchecked

power in the executive branch, at considerable expense to the judicial branch, not to mention the wider public we both serve. The Texas Constitution divides governing power among three branches, and power seized by one branch necessarily means power ceded by another. Our State Constitution, like Madison’s Federal handiwork, is infused with Newtonian genius: three rival branches locked in synchronous orbit by competing interests—ambition checking ambition. These are abstract principles, but they have real-world ripple effects on the lives of everyday Texans.

Id. at 808 (internal citations omitted). The legislative amendment to TRAP 24.2(a)(3) purports to enshrine this unconstitutional practice, but of course the legislature cannot by statute override a constitutional guarantee.

This case vividly illustrates the violation of separation powers wrought by the State’s interpretation of TRAP 24.2(a)(3). The State intervened in this lawsuit, became a party thereto⁷, and subjected itself to the jurisdiction of a co-equal branch of the government. It then advanced several arguments, including an interpretation of the Texas Election Code’s definition of disability. The trial court rejected the State’s arguments and issued an injunction that, amongst other things, enjoined the State from issuing guidance that individuals could not vote by mail under the

⁷ By intervening, the State became a party to the lawsuit, and is bound by the judgment herein. *In re E.C.*, 431 S.W.3d 812, 815 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (“Upon filing of the petition, an intervenor becomes a party to the suit for all purposes.”) (citing *In the Interest of D.D.M.*, 116 S.W.3d 224, 231 (Tex.App.-Tyler 2003, no pet.); *Schwartz v. Taheny*, 846 S.W.2d 621, 622 (Tex. App.—Houston [14th Dist.] 1993, writ denied) (“An intervenor is bound by a final judgment unless he has been dismissed, severed, or he has withdrawn. Therefore, appellant is bound by this final judgment if he is an intervenor, and if he has not been severed or dismissed or has not withdrawn from the case.”) (citing *Ray v. Chisum*, 260 S.W.2d 118, 124 (Tex.Civ.App.—Texarkana 1953, writ ref’d, n.r.e.)).

disability category during COVID-19 and from issuing guidance that would prevent counties from accepting such ballots.

The State, “as yet unsupported by a victory on the merits in any court,” *id.* at 809, has brazenly ignored this injunction, and through the Attorney General, issued the exact sort of guidance that it was enjoined from issuing, and added to that a threat to prosecute individuals who fail to follow its interpretation of the statute—despite that interpretation having been rejected by the district court. This is precisely the “striking assertion of unbridled executive power” that the Texas Supreme Court warned against, and to the extent this Court finds that the amendment to TRAP 24.2(a)(3) permits such unchecked executive authority, it should find the amendment unconstitutional and conclude that the Order remains in effect. *Id.*

PRAYER

For these reasons, Appellees ask this Court to grant this Verified Motion for Emergency Relief pursuant to TRAP 29.3 and TRAP 29.4 to either enforce the trial court’s temporary injunction or to issue an order that the lower court’s injunction remains in effect to preserve the parties’ rights until the disposition of the appeal and designate an amount of bond Appellees are to pay, and grant all other relief to which Appellees may be entitled.

Respectfully submitted,

By: /s/ Joaquin Gonzalez

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** Pro hac vice application forthcoming

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VERIFICATION

STATE OF TEXAS §
BEXAR COUNTY §

My name is Joaquin Gonzalez, my date of birth is Nov. 27, 1984 , and my address is 1410 Guadalupe St. #129, San Antonio, TX, 78207. Pursuant to Tex. Civ. Prac. & Rem. Code § 132.001(a), I, Joaquin Gonzalez, do verify under penalty of perjury, that:

1. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I have reviewed the attached Appellee's Verified Motion for Emergency Relief and the facts stated therein are either (a) part of the record or (b) within my personal knowledge and are true and correct.
3. Attached to the motion as Exhibit A is a true and correct copy of a letter published by the Texas Attorney General's entitled *Re: Ballot by Mail Based on Disability*, downloaded from https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Mail-in%20Ballot%20Guidance%20Letter_05012020.pdf on May 5, 2020.
4. Attached to the motion as Exhibit B is a true and correct copy of Press Release published by the Texas Attorney General's Office entitled *AG Paxton: Voting by Mail Based on Disability Reserved for Texans with Actual Illness or*

Medical Problem Rendering them Unable To Vote In-Person, downloaded from <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-voting-mail-based-disability-reserved-texans-actual-illness-or-medical-problem-rendering> on May 5, 2020.

5. Attached to the Motion as Exhibit C is a true and correct copy of a website published by the Travis County Clerk's Office entitled *COVID-19 Updates*, downloaded from <https://countyclerk.traviscountytexas.gov/countyclerknews/covid-19-updates.html> on May 5, 2020.

6. Attached to the Motion as Exhibit D is a true and correct copy of an article published by the Houston Chronicle entitled *Harris County OKs up to \$12M for Mail Ballots Amid Coronavirus Concerns*, downloaded from <https://www.houstonchronicle.com/news/houston-texas/houston/article/Harris-County-OKs-up-to-12M-for-mail-ballots-15232775.php> on May 5, 2020.

Executed in Bexar County, State of Texas on May 5, 2020.



Joaquin Gonzalez

CERTIFICATE OF CONFERENCE

By email communication with Defendants/Appellants' Counsel Lanora Pettit on May 5, 2020, the Defendants have indicated they are opposed to this Motion.

/s/ Joaquin Gonzalez

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2020, a true and correct copy of the foregoing document was served upon Lanora Pettit, attorney for Appellants via email at Lanora.Pettit@oag.texas.gov in accordance with TEX. R. CIV. P. 21(a).

/s/ Joaquin Gonzalez

Ex. A



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 1, 2020

To: County Judges and County Election Officials

Re: Ballot by Mail Based on Disability

Due to misreporting and public confusion, the Texas Attorney General provides this guidance addressing whether a qualified voter, who wishes to avoid voting in-person because the voter fears contracting COVID-19, may claim a disability entitling the voter to receive a ballot by mail regardless of whether the voter would need personal assistance to vote in-person or risk injuring their health because of a sickness or physical condition. Based on the plain language of the relevant statutory text, fear of contracting COVID-19 unaccompanied by a qualifying sickness or physical condition does not constitute a disability under the Texas Election Code for purposes of receiving a ballot by mail. Accordingly, public officials shall not advise voters who lack a qualifying sickness or physical condition to vote by mail in response to COVID-19.

The Election Code establishes specific eligibility requirements to obtain a ballot by mail for early voting. TEX. ELEC. CODE §§ 82.001–.004. While any qualified voter is eligible to early vote by personal appearance, the Legislature has limited access to early voting by mail for individuals who meet specific qualifications. Section 82.002 of the Election Code, titled “Disability,” allows a qualified voter to early 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 likelihood of needing personal assistance or of injuring the voter’s health.” *See id.* § 82.002(a). Thus, a voter has a disability under this section and, therefore, is eligible to receive a ballot by mail if:

- (1) the voter has a sickness or physical condition; *and*
- (2) the sickness or physical condition prevents the voter from appearing in-person without:
 - (a) needing personal assistance; *or*
 - (b) injuring the voter’s health.

Only a qualifying sickness or physical condition satisfies the requirements of section 82.002. The Election Code does not define “sickness” or “physical condition.”¹ The

¹ Our objective in construing a statute is to give effect to the Legislature’s intent, which requires us to examine the statute’s plain language. *Leland v. Brandal*, 257 S.W.3d 204, 206 (Tex. 2008). We presume the Legislature included each word in the statute for a purpose and that words not included were purposefully omitted. *In re M.N.*, 262 S.W.3d 799, 802 (Tex. 2008). In determining the plain meaning of undefined words in a statute, we consult dictionary definitions. *Fort Worth Transp. Auth. v. Rodriguez*, 547 S.W.3d 830, 838 (Tex. 2018); *see* Tex. Att’y Gen. Op. KP-

common understanding of the term “sickness” is “the state of being ill” or “having a particular type of illness or disease.” NEW OXFORD AM. DICTIONARY 1623 (3d ed. 2010).² A person ill with COVID-19 would certainly qualify as having a sickness. However, a reasonable fear of contracting the virus is a normal emotional reaction to the current pandemic and does not, by itself, amount to a “sickness,” much less the type of sickness that qualifies a voter to receive a ballot by mail under Election Code section 82.002.

In addition to “sickness,” the Election Code allows voters to vote by mail if they have a “physical condition” that prevents them from appearing at the polling place without assistance or without injury to their health. TEX. ELEC. CODE § 82.002(a). “Physical” is defined as “of or relating to the body as opposed to the mind.” NEW OXFORD AM. DICTIONARY 1341 (3d ed. 2010). “Condition” is defined as “an illness or other medical problem.” *Id.* at 362. Combining the two words, a physical condition is an illness or medical problem relating to the body as opposed to the mind. To the extent that a fear of contracting COVID-19, without more, could be described as a condition, it would at most amount to an emotional condition and not a physical condition as required by the Election Code to vote by mail. Thus, under the specifications established by the Legislature in section 82.002 of the Election Code, an individual’s fear of contracting COVID-19 is not, by itself, sufficient to meet the definition of disability for purposes of eligibility to receive a ballot by mail.

To the extent third parties advise voters to apply for a ballot by mail for reasons not authorized by the Election Code, including fear of contracting COVID-19 without an accompanying qualifying disability, such activity could subject those third parties to criminal sanctions imposed by Election Code section 84.0041. TEX. ELEC. CODE § 84.0041 (providing that a person commits an offense if the person “intentionally causes false information to be provided on an application for ballot by mail”); *see also id.* § 276.013 (a person commits election fraud if the person knowingly or intentionally causes a ballot to be obtained under false pretenses, or a misleading statement to be provided on an application for ballot by mail). However, whether specific activity constitutes an offense under these provisions will depend upon the facts and circumstances of each individual case.

A lawsuit recently filed in Travis County District Court does not change or suspend these requirements. In that case, the District Court ordered the Travis County Clerk to accept mail ballot applications from voters who claim disability based on the COVID-19 pandemic, and to tabulate mail ballots received from those voters. The Texas Attorney General immediately appealed that order. Accordingly, pursuant to Texas law, the District Court’s order is stayed and has no effect during the appeal. Moreover, even if the order were effective, it would not apply to any county

0009 (2015) (concluding that to be able to vote by mail, a voter must satisfy the standard of disability established under section 82.002, and that standards of disability set in other unrelated statutes are not determinative).

² *See also* Tex. Att’y Gen. Op. KP-0149 (2017) (noting that a behavioral abnormality of a sexually violent predator sufficient to result in civil commitment qualifies as a sickness, understood as an “unsound condition” or disease of the mind, under section 82.002(a)).

clerk or election official outside of Travis County. Those officials must continue to follow Texas law, as described in this letter, concerning eligibility for voting by mail ballot.

Sincerely,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style with a large, prominent "K" and "P".

KEN PAXTON
Attorney General of Texas

Ex. B



[HOME \(/\)](#) > [NEWS \(/NEWS\)](#) > [NEWS RELEASES \(/NEWS/RELEASES\)](#) >

[AG PAXTON: VOTING BY MAIL BASED ON DISABILITY RESERVED FOR TEXANS WITH ACTUAL ILLNESS OR MEDICAL PROBLEM RENDERING THEM UNABLE TO VOTE IN-PERSON](#)

April 15, 2020 | Press Release

AG Paxton: Voting by Mail Based on Disability Reserved for Texans With Actual Illness or Medical Problem Rendering Them Unable to Vote In-Person

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Texas Attorney General Ken Paxton today issued a letter in response to Representative Stephanie Klick's request for guidance on whether, under the Texas Election Code, Texans may claim disability based on fears of contracting the Coronavirus (COVID-19) and receive a ballot to vote by mail in upcoming elections.

The letter states that disability, as that term is used in the Texas Election Code's provisions allowing voting by mail, must involve a "sickness or physical condition" that prevents a voter from voting in-person. A voter ill with COVID-19 and who is unlikely to be able to appear in-person to vote without assistance or without injuring their health may apply for a ballot by mail; however, fear of contracting COVID-19 does not qualify a person for disability.

"Mail ballots based on disability are specifically reserved for those who are physically ill and cannot vote in-person as a result. Fear of contracting COVID-19 does not amount to a sickness or physical condition as required by the Legislature," said Attorney General Paxton. "The integrity of our democratic election process must be maintained, and law established by our Legislature must be followed consistently."

It is a direct violation of the Texas Election code to "intentionally cause false information to be provided on an application for ballot by mail," to knowingly or intentionally cause a ballot to be obtained under false pretenses, or give a misleading statement on an application for ballot by mail.

The Texas Democrats filed a lawsuit in Travis County arguing that anyone with a fear of contracting COVID-19 should be allowed to claim a “disability” and vote by mail. Their request diminishes voting protections the Legislature has made available to Texans with actual illness or disabilities.

Read a [copy of the letter here](#)

<https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/4.14.20%20Letter%20to%20Rep.>

For information on the spread or treatment of Coronavirus (COVID-19), please visit the [Texas Department of State Health Services \(https://dshs.texas.gov/coronavirus/\)](#) website.

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[AG Paxton Leads Amicus Brief Supporting Challenge to Unlawful Actions by Office of Federal Contract Compliance Programs \(/news/releases/ag-paxton-leads-amicus-brief-supporting-challenge-unlawful-actions-office-federal-contract\)](#)

May 05, 2020 | Amicus Brief

[AG Paxton Joins Coalition Expanding Crack-Down on Robocallers \(/news/releases/ag-paxton-joins-coalition-expanding-crack-down-robocallers\)](#)

May 04, 2020 | Noteworthy

[AG Paxton Joins Amicus Brief Calling for Clarity in the Rules Governing Appellate Review of Remand Orders \(/news/releases/ag-paxton-joins-amicus-brief-calling-clarity-rules-governing-appellate-review-remand-orders\)](#)

May 01, 2020 | Amicus Brief

[AG Paxton Advises County Officials to Avoid Misleading the Public on Vote by Mail Laws \(/news/releases/ag-paxton-advises-county-officials-avoid-misleading-public-vote-mail-laws\)](#)

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Ex. C



[COVID-19 Updates/Lobby Closures – Learn More](#)

COVID-19
UPDATES

COVID-19 UPDATES

Stay Home Order

On April 13, 2020 Travis County Judge Sarah Eckhardt signed Order No. 2020-7, extending the previous Stay Home Work Safe Order through May 8, 2020, unless terminated or modified by a subsequent order. [Learn More](#)

Offices and Lobbies are Closed

As of March 24th, the Travis County Clerk has closed all office lobbies in an effort to minimize face-to-face interaction due to the COVID-19 pandemic. All Divisions will conduct business via efile, mail, telephone or email during regular business hours. In case of an emergency, please call 512-854-9188 to setup an appointment. [Learn More](#)

Elections

Due to COVID-19 and proclamations from the Governor's Office, the May 2, 2020 Uniform Election has been moved to the November 3, 2020 Uniform Election date. The May 26, 2020 primary runoff election has been moved to July 14, 2020.

Based on the Trial Court's recent order, mail-in-ballots are a legal alternative to in-person voting for many voters while COVID-19 is in general circulation. Anyone interested should review the Trial Court's order and should continue monitoring the situation because the Trial Court's order has been appealed. [Learn More](#)

Civil

Effective March 16, 2020, the Travis County Civil and Family Courts are suspending in-person non-emergency hearings until at least May 11, 2020. This Order effectively includes all jury trials, all non-jury trials and all non-essential hearings in the family and civil courts. [Learn More](#)

Effective April 10, 2020, County Judge Sarah Eckhardt signed order 2020-6: Relating to Notices to Vacate, Eviction Proceedings in response to COVID-19, which is effective immediately until May 8, 2020, unless terminated or modified by a subsequent Order. [Learn More](#)

Probate

Effective March 13, 2020 all hearings at the Probate Court will be by video through Zoom or telephonically if video is unavailable. Until further order, there will be no in-person hearings for probate or guardianship matters held at the Probate Court. If you have a hearing that has been previously scheduled, the Court will contact you to confirm whether the hearing can be done by video through Zoom. [Learn More](#)

The Travis County Clerk maintains the county's records, administers elections, and oversees legal documentation (such as property deeds, marriage licenses and assumed name certificates).

Main Phone Line: (512) 854-9188 | **24 Hour Voter Hotline:** (512) 238-VOTE (8683) | **Election Division:** (512) 854-4996 | **Misdemeanor Division:** (512) 854-9440



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Ex. D

Coronavirus Local Texas Sports Nation Election 2020 Weather Business Preview ReNew Fo

coronavirus concerns

Zach Despart

April 28, 2020 | Updated: April 28, 2020 7:07 p.m.



Voters wait to cast their ballots, Tuesday morning, March 3, 2020, at the Fiesta on Kirby in Houston.

Photo: Mark Mulligan, Houston Chronicle / Staff photographer

Harris County Commissioners Court on Tuesday voted to spend up to \$12 million for an expected uptick in requests for mail-in ballots in the July primary runoff and November general election from voters concerned about contracting the novel coronavirus at polling places.

Trautman said her office is planning for any outcome in a lawsuit filed by Democrats and voting rights advocates seeking to force the Texas secretary of state to allow any resident to request a mail ballot.

“No matter what the courts and the state decide for the July and November elections, we must be prepared for an increase in mail ballots, which we are already seeing,” Trautman said.

Attorney General Ken Paxton earlier this month said fear of the coronavirus is not an acceptable excuse to vote by mail, though a state district judge in Travis County ruled otherwise. The state almost certainly will appeal the case, which may not be resolved for months. A similar Texas case is pending in federal court.

Under Texas election law, mail-in ballots are available only to voters 65 and older, who are away from their county of residence on election day or who have a disability.

Trautman said her office “can’t turn on a dime” and must begin preparing to accommodate more mail ballots, which are more expensive to process than votes cast at electronic voting machines because they would require more equipment and staff, as well as the cost of postage.

She outlined the costs of an expanded mail voting program: about \$3 million for 700,000 ballots; \$8 million for 1.2 million ballots; and \$12 million for all 2.4 million ballots. The Democratic majority — County Judge Lina Hidalgo and commissioners Rodney Ellis and Adrian Garcia — opted for the full sum, noting the county clerk may end up spending only a portion of the funds.

“We want to make sure, with the possibility of a record turnout, we’re giving... the support they need,” Ellis said. “I want us to do what we can to improve the percentage of people who vote in this county, because it’s embarrassing.”

Hidalgo urged Trautman to keep the court and the county health department apprised of her plans to ensure upcoming balloting is safe for voters.

Coronavirus Local Texas Sports Nation Election 2020 Weather Business Preview ReNew Fo

“I’m not going to vote for something to find out what it is,” Precinct 4 Commissioner Jack Cagle said.

Cagle noted that primary runoff elections often draw less than 100,000 voters and high-turnout November general elections can draw more than 1.2 million. He and Precinct 3’s Steve Radack questioned why the county would ask for enough money for 2.4 million ballots — enough for the entire voter roll — and more than 1 million more votes than have been cast in any Harris County election.

About 117,000 Harris County voters used mail ballots in 2018, about 9 percent of the total cast.

Elections Administrator Michael Winn said the county must gird for the possibility, however remote, that a coronavirus resurgence in the fall severely limits in-person voting.

“We have to prepare for the chance that we have millions of voters who may want a ballot by mail in November,” Winn said.

The Texas Election Code does not address how a pandemic may affect voting. The Secretary of State’s Office, however, on April 3 informed county clerks that voters could claim a disability, an acceptable reason to request a mail ballot, if they feared voting in person during the pandemic could endanger their health.

Trautman on April 13 said her office would not challenge any voter’s request for a mail ballot, effectively opening the accommodation to anyone.

Her office has consulted with the county Republican and Democratic parties, Brennan Center for Justice, U.S. Elections Assistance Commissions and community groups about expanding mail-in voting, Trautman said.

Harris County Democratic Party Chairwoman Lillie Schecter said Texas should expand mail voting to avoid a situation like that in Wisconsin, which held an election April 7

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avoid the same fate here, Texas Democrats preemptively sued Greg Abbott. While we are thrilled with the Travis County judge's ruling, we are waiting to see what the appeal looks like.”

Alan Vera, chairman of the Harris County Republican Party's ballot security committee, warned that expanding mail voting would be a “logistical nightmare” that would render the county clerk unable to count all votes on election night.

Vera said Harris County should instead adopt an in-person voting system similar to South Korea, which held a national election in mid-April. Election workers in that nation sanitized polling stations and took the temperature of each voter. Residents with confirmed coronavirus cases still could vote by mail.

Trautman said her office already has ordered sanitation supplies for poll workers, including masks, gloves and face shields.

Budget Officer Bill Jackson said some of the added expenses may be reimbursable through \$426 million Harris County received from the federal government to respond to the coronavirus pandemic.

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