

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**MI FAMILIA VOTA, TEXAS STATE
CONFERENCE OF THE NATIONAL
ASSOCIATION FOR THE
ADVANCEMENT OF COLORED
PEOPLE, MICAELA RODRIGUEZ and
GUADALUPE TORRES**

Plaintiffs

vs.

**GREG ABBOTT, Governor of Texas;
RUTH HUGHS, Texas Secretary of State,**

Defendants.

No. 5:20-cv-00830

PLAINTIFFS' COMPLAINT

INTRODUCTION

1. In this time of unprecedented crisis, as the novel coronavirus and the resulting respiratory illness, COVID-19, ravage our country and threaten the health and life of anyone who contracts the disease, Defendants have failed to ensure that voters in Texas will be able to safely cast their ballots in upcoming elections. As a result, voters in Texas will be forced to face a constitutionally unacceptable choice: exercising their right to vote, or protecting their own lives and the lives of their loved ones and community. Plaintiffs bring this case because there are practical and constitutionally-required measures that both protect the public health and guarantee the right to vote: namely, opening additional polling stations and expanding the availability of early voting (thereby reducing long wait times and large crowds), and ensuring that voters may

use paper ballots in lieu of electronic voting machines (thereby reducing the risk of contamination of using a heavily-trafficked touch-screen voting device and long delays associated with disinfecting voting machines between uses).

2. Across the country, more than 138,000 people have already died, and more than 3.4 million cases have been confirmed.

3. There is no vaccine for the coronavirus, and there is likely not going to be one for at least another year, if then. There is no cure, and only limited treatments.

4. The Texas 2020 elections will put voters at risk of transmitting or being infected with the coronavirus. But the risk will not be shared equally. Some voters will be able to vote easily by mail. Others will not. Some will have easy access to early voting locations. Others will not. And some will be able to vote quickly on Election Day by a hand-marked paper ballot handled by a single poll worker, or on a properly disinfected machine. Others will have to wait for hours at understaffed locations, without the option to vote on a hand-marked paper ballot, forced to vote on a machine used by dozens or hundreds of voters, which should, but might not, be properly disinfected after each use, much less protected from aerosolized particles from the last voter's breathing in the same space. Even if election administrators take some steps to protect public health, under current plans, those steps are not sufficient to protect voters and may, in some cases, exacerbate lines and the risk of virus transmission. Texas proposes to rely on election policies that, during the pandemic, will create inordinate burdens on the right to vote. The burden will be particularly high for Black and Latino voters. Without the relief this lawsuit requests, voters' exercise of the franchise will be compromised.

5. Black, Latino, and Native American voters have been disproportionately affected by the pandemic, experiencing higher incidences of coronavirus infection, hospitalization, and

fatalities. They also face greater risks to their health by voting, particularly because Defendants have reduced the number of polling places available in their communities, exacerbating the health and safety risks of overcrowding during the pandemic.

6. In the last ten years, the State of Texas, by and through Defendants, has made participation in elections less accessible to voters in a variety of ways: it has shuttered more than 750 polling places, limited counties' ability to provide flexible early voting places and hours, and passed a rigid voter identification law repeatedly found to have violated Section 2 of the Voting Rights Act. All of these actions create an election system in which the right to vote is already in a precarious position. In the midst of the pandemic, these election practices will impose an unconstitutional burden on the right to vote.

7. Many counties in Texas require all voters to use electronic voting machines, forcing all voters to handle shared surfaces and often to be in close quarters with poll workers, not to mention the unreasonably burdensome delays that would be associated with using such machines if proper disinfection procedures are implemented between uses.

8. Under normal conditions, the aforementioned measures already undermine the freedom and fairness of Texas elections. For example, in Texas's most recent election, held on March 3, 2020 (before social distancing measures were put in place because of COVID-19), voters throughout Texas waited for hours after the polls closed to vote because of insufficient polling places, voting machines, and poll workers. *See* Alex Ura, "Texas Lawmakers to Hold Hearing into Excessive Super Tuesday Voting Lines," Texas Tribune (Mar. 5, 2020), <https://www.texastribune.org/2020/03/05/texas-lawmakers-excessive-voting-lines-primary/>.

9. Now, during the pandemic, insufficient polling places, unreliable and unsafe voting machines, long lines, crowds, and other barriers will *de facto* force voters out of the political process.

10. Regardless of the lawfulness of these voting burdens under standard conditions, under pandemic conditions, Defendants' actions and the resulting Texas voting infrastructure unlawfully burden Texans' right to vote.

11. Other states have failed to take appropriate steps to protect voters during the pandemic, and the results have been disastrous for voters and the states as a whole. In April, ahead of its primary election, Wisconsin abruptly closed a number of its polling places and was unprepared for the deluge of vote-by-mail requests it received. As a result, thousands of people were disenfranchised, and dozens of people can now trace their coronavirus infections directly to having voted in person in Wisconsin. Nicholas Reimann, "Coronavirus Infections Spiked in Wisconsin After In-Person Election, Study Says," *Forbes*, May 19, 2020, <https://bit.ly/31gjR5w>.

12. Georgia's primary elections in June were plagued by closed polling locations, a shortage of poll workers, e-pollbook and voting machine failures, and a lack of back-up paper pollbooks and ballots. Thousands of voters had to wait in line for hours in many counties throughout the state, including in Fulton County, where Atlanta is located. As a result, many voters were forced to either go home without voting, or to remain in line for hours in conditions conducive to the spread of COVID-19. Amy Gardner, et al., "In Georgia, Primary Day Snarled By Long Lines, Problems With Voting Machines—A Potential Preview of November," *Wash. Post*, June 9, 2020, <https://wapo.st/3eybzcW>.

13. Defendants must take swift action to avoid placing Texas voters at similar risk and to protect Texans' right to vote in upcoming elections.

14. Defendants must make immediate changes to in-person voting protocols to ensure that all voters—no matter how they choose or need to vote—can do so safely and with minimal risk to their health and to other voters, poll workers, and the Texas community.

JURISDICTION AND VENUE

15. Plaintiffs bring this action pursuant to 42 U.S.C. §§ 1983 and 1988 for violations of their rights under the First, Fourteenth, and Fifteenth Amendments to the U.S. Constitution; and Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973.

16. This Court has jurisdiction under Article III, § 2 of the United States Constitution, and pursuant to 28 U.S.C. §§ 1331, 1343, and 1357.

17. This Court has authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

18. Venue in this district is proper under 28 U.S.C. § 1391 because some of the parties, including at least one of the Defendants, reside in this District, and a substantial part of the events or omissions giving rise to this claim occurred in this District.

PARTIES

I. Plaintiffs

19. Plaintiff Mi Familia Vota is a national, non-profit civic engagement organization that unites Latino, immigrant, and allied communities to promote social and economic justice. Mi Familia Vota encourages voter registration and participation, and has challenged voter suppression around the nation. It has operations in six states, including Texas.

20. Plaintiff Mi Familia Vota has had to divert personnel, time, and resources away from its planned activities due to the conduct alleged here. Specifically, Mi Familia Vota has spent money, time, and other resources to provide voter registration support and educate voters about the voting restrictions listed above that already disparately impact Latino voters, to focus

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