

NO. 2020-CI-19387

TEXAS ORGANIZING PROJECT; MOVE § IN THE DISTRICT COURT
TEXAS CIVIC FUND; JENNIFER K. §
FALCON §

Plaintiffs

v.

§ OF BEXAR COUNTY, TEXAS
§

JACQUE CALLANEN, in her official §
capacity as the Bexar County Elections §
Administrator; JUDGE NELSON WOLFF, §
in his official capacity as Bexar County §
Judge; COMMISSIONER SERGIO §
RODRIGUEZ, in his official capacity as §
Bexar County Commissioner; §
COMMISSIONER JUSTIN RODRIGUEZ, §
in his official capacity as Bexar County § 45th JUDICIAL DISTRICT
Commissioner; COMMISSIONER KEVIN §
WOLFF, in his official capacity as Bexar §
County Commissioner; COMMISSIONER §
TOMMY CALVERT, in his official capacity §
as Bexar County Commissioner §

Defendants

ORDER ON APPLICATION FOR TEMPORARY INJUNCTION

On October 12, 2020, came to be heard the Plaintiffs’ Application for Temporary Injunction. The Court, having considered the application along with the supporting and opposing briefing and the applicable law cited therein, evidence presented, arguments of counsel, and the pleadings on file in this case, is of the opinion:

Defendants’ Plea to the Jurisdiction should be, and hereby is, DENIED.

Plaintiffs’ Application for a Temporary Injunction should be GRANTED. The Court further FINDS:

- 1) Defendants imminently stand to violate Texas Election Code Section 4.003 by failing to post a notice containing each polling place on the Bexar County Elections Department's website twenty-one days before Election Day.
- 2) Defendants imminently stand to violate Texas Election Code Section 43.007 by planning to operate 284 Election Day polling locations for the 2020 General Election.
- 3) Bexar County has 734 election precincts. Texas Election Code Section 43.007 requires that that a county using countywide polling must operate "50 percent of the number of precinct polling places that would otherwise be located in the county for that election." 50 percent of 734 is 367 locations.
- 4) Defendants base their ability to operate only 284 locations on a theoretical ability to combine all precincts with fewer than 750 registered voters together with other precincts under Texas Election Code Section 42.0051.
- 5) Texas Election Code Section 42.0051 only allows precincts with fewer than 750 registered voters to be combined if: (a) the Commissioners Court formally orders specific precincts to be combined; (b) the precincts being combined were drawn in order to "give to give effect to a redistricting plan;" (c) the combination of the precincts would not "result[] in discouraging participation by a group covered by the Voting Rights Act in any political or electoral process or procedure because of the location of a polling place or other factors."
- 6) The Bexar County Commissioners Court has not ordered that any precincts containing fewer than 750 registered voters be combined with other precincts for the November 2020 election. For precincts to be combined, the Commissioners Court must order them to be so. *See Honts v. Shaw*, 975 S.W.2d 816, 821 (Tex. App.—Austin 1998, no pet.) ("[The] administrator simply joined certain polling places due to the fact that he could not find a

polling place or election workers for those precincts; the joining of the nineteen polling places therefore did not constitute combining of precincts under section 42.0051 of the Election Code.”).

- 7) Numerous under-750 voter precincts are not combinable because they do not currently exist as a result of a redistricting plan. Pl. Supp. Appx. at 577-616 (Ex. M to App. for Temporary Injunction – precinct shapes and electoral districts). Only precincts that are redrawn to give effect to a redistricting plan are combinable under the law.
- 8) Defendants would also not be able to combine all of the proposed precincts because doing so would discourage participation by groups covered by the Voting Rights Act.
- 9) Voter turnout is negatively impacted by increasing the time and distance it takes to get to a polling place, as well as voter confusion when locations are closed. Evidence shows that an increase of .25 miles to a polling location can lead to a decrease in turnout of up to 5%.
- 10) Voters of color are especially sensitive to and impacted by increased distances.
- 11) Combining all of the precincts with fewer than 750 registered voters into other precincts would affect voters in those precincts by significantly increasing those distances. Pl. Supp. Appx. at 619 (Ex. N to Pl. App. for Temp. Inj. – analysis of distances to polling locations).
- 12) Bexar County has not analyzed what impact the proposed combinations would have on VRA-protected groups, nor can it because Commissioners Court has not ordered specific precincts to be combined. This failure additionally demonstrates that Bexar County has not done the analysis to determine whether it is theoretically possible to legally combine all of the proposed precincts combinations.
- 13) The evidence shows that combining polling locations demonstrably increases burdens on voters of color and Spanish-language voters, in particular on those voters who live in

precincts with fewer than 750 registered voters. Specifically, the additional closure of polling locations in 2020 will negatively impact African American and Hispanic voters in those precincts as well as all Bexar County voters. Therefore, these precincts are not combinable under the Texas Election Code and cannot be used to calculate the baseline for the minimum number of polling locations under the Countywide Polling Place Program.

14) Because Bexar County has predicated its ability to operate fewer than 367 polling locations on a theoretical, but unlawful, ability to combine certain precincts, it therefore does not have the ability to reduce the number of election day polling locations down to the proposed 284. Because Bexar County Commissioners Court has not ordered any precinct combinations for the Nov. 2020 general election, the legally required number of locations is 367. Even if the Commissioners Court had ordered precincts combined, a significant enough number of precincts cannot be combined because they are not drawn to give effect to a redistricting plan and because their combination would have a legally significant impact on discouraging VRA-protected groups such that the County would have to operate 302 or more Election Day vote centers.

15) Bexar County Elections has received \$1,740,599 in federal funds appropriated from the Help America Vote Act and \$4,400,000 in federal Coronavirus Relief Funds appropriated by the Bexar Commissioners Court to support the administration of elections during the global pandemic. Ex. H to Pl. Verified Pet.

16) Bexar County has appropriated \$4,278,082 in funding to the Elections Department for the fiscal year 2020-2021 from the county's general fund. Pl. Supp. Appx. at 91 (Ex. L, Attachment G to Pl. App. for Temp. Inj. – Bexar County 2020-2021 proposed budget).

- 17) Bexar County was awarded a \$1.9 million grant for election support from the Center for Tech and Civic Life. Pl. Verified Pet. at ¶ 56.
- 18) Prior to the filing of this lawsuit, the Bexar County Commissioners Court publicly expressed that they would support Defendant Callanen with whatever resources are necessary to expand access and successfully administer the 2020 General Election. Pl. Verified Pet. at ¶ 55.
- 19) Judson ISD, Northside ISD, and Northeast ISD have designated Election Day as a staff and student holiday in order to have their campuses available for use as polling locations. Pl. Supp. Appx. at 65-67 (Ex. L, Attachments D-F to Pl. App. for Temp. Inj. – school district calendars).
- 20) Defendant Callanen testified that 14 of the Election Day polling locations that were operated in 2018 but are not being operated in 2020 were at school campuses in Judson ISD, Northside ISD, and Northeast ISD. If these campuses were used as Election Day sites in 2020, there would only be 4 additional locations that Defendants need to identify.
- 21) Defendant did not provide evidence of a burden on the County to operate the same number of polling locations as it did in 2018.
- 22) During its Get Out The Vote (GOTV) efforts, Plaintiff MOVE has encountered individuals who have expressed that they are unlikely to go vote because they cannot make it to a polling place due to lack of transportation.
- 23) Plaintiff MOVE works primarily with populations that are majority persons of color.
- 24) Plaintiff TOP's membership is majority persons of color. These voters are harmed by increased travel distances to the polls and longer lines at the polls due to consolidated or removed locations.

- 25) Plaintiff TOP's members additionally help individuals who lack transportation get to the polls in order to vote. These efforts are made more difficult when polling places are closed or are made more distant from the voters.
- 26) Closure of historic polling places increases information costs for voters, including TOP members seeking to vote on Election Day. Not providing proper notice of polling locations also increases those voter information costs and harms Plaintiff organizations in their ability to execute their GOTV activities and plan for Election Day.
- 27) The injury to the Plaintiffs as a result of Defendants' violations of the Election Code outweighs the burden, if any, to Defendants.
- 28) The public interest lies in increased voter participation and following the plain language of the Texas Election Code with regards to the provisions at issue in this case.

The Court therefore ORDERS:

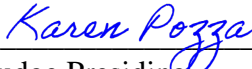
- 29) Defendants to operate a minimum of 302 Election Day polling locations on November 3, 2020 from 7 a.m. to 7 p.m.
- 30) Defendants to post a Notice of the Election that includes a complete list of Election Day polling locations to the Bexar County Election Department's website no later than October 13, 2020.
- 31) Defendants to update the online list of Election Day polling locations with additional sites within 24 hours of securing those sites.
- 32) Defendants to identify by October 22, 2020 the additional locations required to operate 302 Election Day polling locations and provide those specific locations to Plaintiffs and update the online notice with any new locations within 24 hours therefrom.

It is further ORDERED that for this Temporary Injunction Order to be effective under the

law, cash bond in the amount of \$ 500.00 shall be required of Plaintiffs and filed with the District Clerk of Bexar County, Texas. The Clerk of Court shall forthwith issue a writ of Temporary Injunction in conformity with the law and terms of this Order. Once effective, this Order shall remain in full force and effect until final judgment in the trial on this matter.

The Court ORDERS a final trial on this matter to begin on 10/23/20 at 9:00 a.m./p.~~m.~~

SIGNED October 13, 2020



Judge Presiding