

NO. 2022CI19669

TEXAS ORGANIZING PROJECT

Plaintiff

v.

JUDGE NELSON WOLFF, in his official capacity as Bexar County Judge; COMMISSIONER REBECCA CLAY-FLORES, in her official capacity as Bexar County Commissioner; COMMISSIONER JUSTIN RODRIGUEZ, in his official capacity as Bexar County Commissioner; COMMISSIONER MARIALYN BARNARD, in her official capacity as Bexar County Commissioner; COMMISSIONER TOMMY CALVERT, in his official capacity as Bexar County Commissioner

Defendants

§ IN THE DISTRICT COURT

§ OF BEXAR COUNTY, TEXAS

§ ___th JUDICIAL DISTRICT

ORDER ON APPLICATION FOR TEMPORARY INJUNCTION

On October 10, 2022, 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:

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

- 1) Defendants’ adoption of a methodology for choosing countywide polling locations on Election Day violates Texas Election Code Section 43.007(f)(1) by allowing for the operation of as few as 259 countywide polling locations, which is fewer than “50 percent

of the number of precinct polling places that would otherwise be located in the county for that election.”

- 2) Defendants imminently stand to violate Texas Election Code Section 43.007 by planning to operate only 267 Election Day polling locations for the 2022 General Election.
- 3) Bexar County has 776 election precincts. Texas Election Code Section 43.007 requires 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.” Texas Election Code 43.001 holds that “Each election precinct established for an election shall be served by a single polling place located within the boundary of the precinct.” 50 percent of 776 is 388 locations.
- 4) Although there is a provision which would allow for a combination of election precincts, and hence a reduction in the baseline number of precincts, that ability to combine precincts is prescribed by a specific statutory scheme.
- 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 effect to a redistricting plan;” and (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 2022 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) Even if the County Commissioners sought to combine polling locations, not all under-750 voter precincts would be combinable. Numerous under-750 voter precincts are not combinable because they do not currently exist as a result of a redistricting plan. Only precincts that are redrawn to give effect to a redistricting plan are combinable under the law. *See, e.g., Ex. I to Plaintiff’s Original Verified Petition (Hearing Transcript, TOP v. Callanen, 2020CI19387 (45th Dist. Bexar Co., Oct. 12, 2020))* at 11:21 – 13:02.
- 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, in contravention of Texas Election Code Section 42.0051(d). *Id.* at 28:15-55:20.
- 9) In adopting its methodology for choosing countywide polling locations, Bexar County did not solicit the input of any persons or organizations representing minority voters, in contravention of the plain language of Texas Election Code Section 43.007(h).
- 10) The Bexar County Commissioners Court has publicly expressed that it will support Election Administrator Callanen with whatever resources are necessary to run a successful election.
- 11) 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.

- 12) 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.
- 13) The injury to the Plaintiffs as a result of Defendants' violations of the Election Code outweighs the burden, if any, to Defendants.
- 14) 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:

- 15) Defendants and all of their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them to refrain from acting pursuant to the adopted methodology for choosing polling locations which provides for 259 countywide polling locations.
- 16) Defendants to adopt a methodology for choosing countywide polling locations that, absent a lawful combination of election precincts by the Commissioners Court, includes operating a minimum of 388 Election Day polling locations on November 8, 2022 from 7 a.m. to 7 p.m.
- 17) Defendants to solicit the input of persons or organizations representing minority voters in adopting its methodology for choosing countywide polling locations by holding at least one public hearing to which such persons or organizations are invited, as required by Texas Election Code Section 43.007(h).
- 18) Defendants to post a Notice of the Election that includes a list of Election Day polling locations to the Bexar County Election Department's website no later than October 18, 2022, in compliance with Texas Election Code Section 4.003. For any polling locations

that are not yet finalized, the Notice shall have a placeholder indicating that the location is forthcoming.

19) Defendants to update the online list of Election Day polling locations with additional sites within 24 hours of securing those sites.

It is further ORDERED that for this Temporary Injunction Order to be effective under the law, cash bond in the amount of \$ 500⁰⁰ 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 1/9/23 at 9:10 a.m./p.m.

SIGNED October 10, 2022



Judge Presiding

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