

NO. D-1-GN-20-005507

MOVE TEXAS ACTION FUND,	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
v.	§	
	§	
	§	OF TRAVIS COUNTY, TEXAS
DANA DeBEAUVOIR, in her official	§	
capacity as Travis County Clerk, and RUTH	§	
HUGHS, in her official capacity as Texas	§	
Secretary of State,	§	419th JUDICIAL DISTRICT
<i>Defendants.</i>	§	

ORDER ON APPLICATION FOR TEMPORARY INJUNCTION

On October 16, 2020, came to be heard the Plaintiff’s 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 is DENIED.

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

- 1) Plaintiff MOVE Texas Action Fund (“MOVE”) has demonstrated it has a probable right to relief for their claim that the requirement to obtain a doctor’s certificate under Texas Election Code § 102.002 violates the Equal Protection Clause of the Texas Constitution on its face.
- 2) MOVE demonstrated it is likely to succeed on the merits of their claim that the requirement to obtain a doctor’s certificate under Texas Election Code § 102.002 constitutes an undue burden on the fundamental right to vote.

- 3) Texas Election Code § 102.002 draws an arbitrary distinction between similarly situated voters who are or become disabled, as defined under Texas Election Code § 82.002, before the 11th day before the Election, and those who become disabled after the 11th day.
- 4) There is no rational basis to distinguish between these classes of voters. There is no evidence or reason to believe that an individual would be more likely to perjure themselves by fabricating a condition for the purposes of obtaining an absentee ballot on the 10th day before Election Day than on the 11th day.
- 5) The requirement to obtain a physician's certificate places a severe burden on the right to vote, and this is likely to burden primarily low-income and uninsured voters, and minority voters, effectively requiring a pay-to-play voting procedure.
- 6) Individuals who, after the mail-in ballot application deadline, acquire a disability will not always see a physician as a result of that disability.
- 7) Particularly during the time of the COVID-19 pandemic, the requirement to obtain a physician's certificate presents a severe burden. Many thousands of individuals may obtain a positive COVID-19 test through third-party providers between the mail ballot application deadline and Election Day, and may not actually visit or speak with a physician as part of that test. These voters will have to spend extra time and money obtaining a physician's certificate, and, as the evidence demonstrates, may still be unable to do so.
- 8) For individuals who are not able to obtain a physician's certificate, they must either face disenfranchisement or risk injury to their health, while voters with the exact same condition are not required to make this choice if their disability originates before the mail-in ballot deadline.

- 9) The physician's certification requirement injures the public interest, as forcing disabled voters out of quarantine will further put at risk the election workers who must assist them in voting, and the general public at large. This finding is supported by mandatory orders and guidelines issued by State and federal executive and public health agencies relating to COVID-19, including the requirement to self-quarantine or isolate after a positive diagnosis of COVID-19.
- 10) MOVE is currently suffering an ongoing injury and will be further injured in the future because of its direct response intended to counteract the probable unconstitutionality of Texas Election Code § 102.002 and the burden it puts on voters.
- 11) MOVE is experiencing an ongoing injury and will imminently experience additional future injuries from the diversion of resources in order to mitigate the burden on voters caused by enforcement of § 102.002 and away from its regular mission priorities. MOVE is spending significant staff time and money to overcome the physician's certificate requirement.
- 12) MOVE Texas has no adequate remedy at law to obtain money damages for its injuries, therefore its injuries are irreparable.
- 13) There is no burden placed on Defendants by a temporary injunction to prevent enforcement of the onerous and unconstitutional doctor's certification provision, and in fact, local election officials are likely to be relieved of administrative burden by enjoining the provision. Evidence from Defendant DeBeauvoir indicates that it is more burdensome on counties to comply with the requirement for a physician's certificate than to follow the same procedure that is in place for all other mail ballots which allows voters to self-certify to the requisite physical condition to qualify for an emergency ballot.
- 14) The harm to Plaintiff MOVE Texas outweighs the burden, if any, on Defendants.

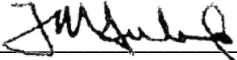
The Court therefore ORDERS:

- 15) Defendant DeBeauvoir to refrain from enforcing the physician's certificate requirement of Texas Election Code § 102.002.
- 16) Defendants Hughs to refrain from enforcing the physician's certificate requirement of Texas Election Code § 102.002, either directly or through the Attorney General as outlined in Texas Election Code § 31.005.
- 17) Defendant Hughs to refrain from advising county election officials to enforce the physician's certificate requirement of Texas Election Code § 102.002 pursuant to her authority under Texas Election Code § 31.004.
- 18) Defendant Hughs to circulate a copy of this Order to the county election officials in each of Texas's 254 counties via electronic mail within 24 hours from the time this ORDER is entered, in accordance with its duties under Texas Election Code §§ 31.003, 31.004, and 31.005.

It is further ORDERED that for this Temporary Injunction Order to be effective under the law, cash bond in the amount of \$10 shall be required of Plaintiff and filed with the District Clerk of Travis 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 November 16, 2020 at 9:00 a.m., unless the parties and the Court find a mutually agreeable alternate date.

SIGNED and ENTERED at 2:45p.m. on October 16, 2020.



Tim Sulak, Judge Presiding