March 30, 2020

The Honorable Ruth Hughes
Secretary of State
P.O. Box 12887
Austin, TX 78711

Dear Secretary Hughes,

We are civil rights organizations that work directly with voters across this state and advocate for a free and fair democracy in Texas. We write to insist you take immediate action in light of the COVID-19 pandemic to ensure all eligible voters can safely cast a ballot in the upcoming May 2nd local elections,1 July 14th primary runoff elections, and November 3rd general elections. As the pandemic has dramatically altered the lives of Texans across the state, you have been shockingly silent. Instead of acting quickly to help clarify voters’ rights and counties’ duties, you have provided nothing -- no guidance to voters or to counties on how to conduct upcoming elections. Indeed, despite calls from the community and the repeated advice of experts,2 you have refused to take even the most obvious first step that is fully within your power: issuing advisory guidance instructing counties to allow all eligible voters to vote by mail during this crisis. As the State’s Chief Elections Officer, you have a responsibility to mobilize all of the state’s election infrastructure to confront this emergency. Your failure to lead on responding to the pandemic is endangering the fundamental right to vote of all Texans, and will inevitably lead to litigation against you and county election officials as Texas voters seek to vindicate their rights under state and federal law. Accordingly, you must take action now to prevent the pandemic from overwhelming the upcoming elections.

There is every reason to believe this pandemic will continue in some form for months to come. According to public health experts, there will likely be subsequent outbreaks -- including possibly during periods of in-person voting -- requiring measures like social distancing, frequent sanitization of surfaces and hands, and shielding of high-risk populations from infections.3 It is your affirmative duty under state law to ensure uniform operation of elections throughout the state, and to assist and advise counties in running elections.4 Texas voters need your proactive, determined leadership, and you must treat this as an urgent priority requiring a mobilization akin to wartime. Specifically, we urge you to issue the following guidance:

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1 Some localities -- for instance the City of Waco -- are not delaying their May 2nd elections. See, e.g., City of Waco planning to hold May 2 election, KXXV.com (Mar. 26, 2020), https://www.kxxv.com/hometown/mclennan-county/city-of-waco-planning-to-hold-may-2-election.
• **Hold a safe Primary Runoff Election:** The Primary Runoff Election cannot be delayed past July 14th, and counties need to be fully prepared to conduct elections under any circumstances existing at that time.

• **Make vote by mail available to all Texans:** Issue advisory guidance instructing counties to allow all eligible voters to vote by mail in all upcoming elections during this crisis. A national bipartisan group of experts have identified this as a necessary first step to an adequate COVID-19 response, and there is a clear path under current state law.

• **Help counties offer expanded vote by mail and track status of mail ballots:** Provide best practices to counties to operate a larger-than-normal vote by mail program, and use your statutory authority to assist counties by using any available funds to institute a central system to keep track of the processing of applications, mailing of ballots, and return of ballots. You should also use any available funds (including from the recent stimulus package passed by Congress and any available Help America Vote Act (HAVA) funds) to pay for voters’ postage.

• **Help counties select safe polling places:** Provide best practices and other necessary support to assist counties in relocating polling places away from high risk populations (such as nursing homes and senior citizen centers) and selecting polling places that enable COVID-19 preventative measures (such as sufficient social distancing among voters, election workers, and members of the public).

• **Boost curbside voting:** Issue advisory guidance that counties must comply with the curbside voting law as it relates to a pandemic and accommodate an increased demand for curbside voting. All polling places should be equipped to process voters as they drive up to designated areas without them having to go inside to request curbside voting. Accommodations need to be made to ensure that poll workers have sufficient cover from the elements and any necessary resources to prevent heat exposure if they need to process voters outside a building.

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5 National Taskforce Guide, supra n.2 at 4, https://tinyurl.com/vevyk2h.
7 Tex. Elec. Code § 31.004(a) (“The secretary of state shall assist and advise all election authorities with regard to the application, operation, and interpretation of this code and of the election laws outside this code.”).
8 Every election cycle there are countless complaints from voters who never receive their properly requested mail ballots, receive the ballots too late to return them, or whose mail ballots arrive to the county late or not at all due to postal error. See, e.g., Diane Smith & Anna M. Tinsley, *Waiting for a mail-in ballot from Tarrant County? You’re not alone. Here's Why*, Fort Worth Star-Telegram (Oct. 29, 2018), https://www.star-telegram.com/news/politics-government/election/article220789875.html. Counties and their third-party vendors have time and again shown they are not up to the task of properly coordinating and tracking numerous mail ballot requests.
9 Similar to the vote-by-mail language, the Election Code currently allows voters to have ballots delivered to them curbside “[i]f a voter is physically unable to enter the polling place without personal assistance or likelihood of injuring the voter's health.” Tex. Elec. Code § 64.009(a).
• Make sure polling places have sufficient protective supplies to ensure public safety: That includes sanitizer, gloves, approved face masks, and disinfectant spray. You must provide guidance to election officials on how to use these supplies effectively.

• Assist counties with recruiting and training a sufficient pool of poll workers: Provide best practices on how to staff positions. This includes guidance on hiring backup election workers to fill in for election workers who do not show up, and how to protect election workers who face a higher risk of suffering significant injury or even death from contracting COVID-19.

• Make sure that every vote cast by mail is accurately and fairly counted: Provide detailed guidance for all Early Voting Ballot Board and Signature Verification Committee members on how to verify signatures on mail-in ballots. Recommend a uniform notice and cure process that requires election officials to provide meaningful notice of a rejected mail-in ballot (by mail as well as by phone and/or email if such information is provided on a voter’s Application for Ballot by Mail or Federal Post Card Application), and a simple verification procedure to cure the rejected mail-in ballot that can be completed by the voter in-person, by mail, over the phone, or through email or fax.

• Provide guidelines for continuing to ensure voter registration services throughout the pandemic: County registrars have been providing unclear guidelines to individuals inquiring about voter registration, and some have even indicated that they may not be processing registration applications. You must instruct counties to have at least one staff member regularly collect registration cards and process them in a timely manner. Further, you must immediately come into compliance with the National Voter Registration Act as it relates to online driver’s license transactions.

The federal government has just passed the largest stimulus package in history, and specifically set aside “$400,000,000, to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle.” 10 The stimulus explicitly requires States to report how it uses the funds to respond to the coronavirus. Your office must ensure these funds are put to their intended use in ways that actually serve the needs of Texas voters during this crisis. Furthermore, it appears that Texas has yet to apply for an additional $26 million tranche of HAVA funds that it could and should use to respond to this crisis. 11 We formulated the above-outlined guidelines based on our direct relationship with Texas voters and the knowledge and recommendations of national experts. We urge you to use stimulus and HAVA funds to help counties comply with these necessary guidelines, and any further guidance from the National Task Force on Election Crises and the Election Assistance Commission.

The health, safety, and voting rights of all Texans, regardless of ideological preference, are at issue. Decisions taken (or not taken) today will have an outsized impact on voters later on -- time is of the essence. Now is the time to reverse course and show that you are committed to ensuring free and fair elections for all Texans during the pandemic by taking the steps outlined above.

Sincerely,

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