

No. 20-0394

In the Supreme Court of Texas

IN RE STATE OF TEXAS,
Relator.

On Petition for Writ of Mandamus
to the Harris County Clerk, the Travis County Clerk,
the Dallas County Elections Administrator, the Cameron County Elections
Administrator, and the El Paso County Elections Administrator

MOTION TO INTERVENE

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**Pro hac vice application forthcoming

INTRODUCTION

Intervenor-Respondents, Zachary Price, League of Women Voters of Texas (“LWVTX”), League of Women Voters of Austin Area (“LWV-AA”), MOVE Texas Action Fund (“MOVE”), and Workers Defense Action Fund (“WDAF”), file this motion to intervene as Real Parties in Interest in this proceeding.

Intervenor-Respondents are Real Parties in Interest because the relief sought by this mandamus action directly negates the injunctive relief afforded them as Intervenor-Plaintiffs in *Texas Democratic Party v. DeBeauvoir*, No. D-1-GN-20-001610, in the 201st District Court in Travis County. That case is on interlocutory appeal to the 14th Court of Appeals as *State v. Texas Democratic Party*, No. 14-20-00358-CV (“*State v. TDP*”). In that case, the trial court, after an evidentiary hearing, determined that Intervenor-Plaintiffs, their members, and more generally voters without immunity to COVID-19 met the plain language definition for disability under the Texas Election Code, and are eligible to cast a mail ballot.

The district court issued an injunction specifically prohibiting Travis County from rejecting applications for mail ballots or refusing to tabulate ballots from voters who use the disability category because they lack COVID-19 immunity. The district court also enjoined the State from issuing contrary guidance or otherwise taking actions to prevent county elections officials from accepting mail ballot applications

or tabulating ballots from voters who use the disability category because they lack COVID-19 immunity.

Here, the State seeks mandamus relief that would prevent Travis County from doing precisely what the district court enjoined it to do, and that would more broadly negate the basis of the injunctive relief afforded to Intervenor-Respondents in that action. Accordingly, because this mandamus action directly affects the interests of Intervenor-Respondents, they should have been identified as Real Parties in Interest originally and should now be permitted to intervene here.

BACKGROUND

The Parties' Already-Pending Litigation on this Issue

On March 20, 2020, several plaintiffs, including the Texas Democratic Party, sued Defendant Dana DeBeauvoir, in her official capacity as the Travis County Clerk and Election Administrator seeking a declaratory judgment, a temporary injunction, and a permanent injunction. Plaintiffs sought a declaration that they and other Texans could vote by mail under the category of disability due to COVID-19.

On March 27, 2020, the State of Texas filed a petition in intervention in that case. On April 1, 2020, Intervenor-Plaintiffs (Intervenor-Respondents here) intervened in the same case. On April 7, 2020, Intervenor-Plaintiffs filed an application for a temporary injunction, and Intervenor-Defendant filed a Plea to the

Jurisdiction challenging Plaintiffs' and Intervenor-Plaintiffs' standing and arguing that the case was not ripe and barred by governmental immunity.

On April 15, 2020, the trial court held a full evidentiary hearing, with participation by all parties, on Plaintiffs' and Intervenor-Plaintiffs' Applications for Temporary Injunction, as well as the State's Plea to the Jurisdiction. On April 17, 2020, Judge Tim Sulak issued an order granting the Applications for Temporary Injunction and denying the Plea to the Jurisdiction.

The trial court's temporary injunction enjoined Defendant Travis County and Intervenor-Defendant the State of Texas and their agents from issuing guidance or otherwise taking actions that would prevent counties from accepting and tabulating any mail ballots received from voters who apply to vote by mail based on the disability category of eligibility as a result of the COVID-19 pandemic. The order applied to upcoming elections in which mail ballots were submitted under the disability category based on the COVID-19 pandemic. The order also enjoined counties from issuing guidance or taking other actions during the COVID-19 pandemic that would prohibit individuals from submitting mail ballots based on the disability category of eligibility or suggesting that individuals may be subject to penalty solely for doing so.

Events Since the Court Order

Shortly following the trial court entering its order, the State filed a notice of appeal. Defendant Travis County has not appealed.

On May 6, 2020, after the Attorney General issued a letter threatening prosecution of those who did not follow his interpretation of the law that the trial court had rejected, Plaintiffs and Intervenor-Plaintiffs filed an Emergency Motion with the Third Court of Appeals, No. 03-20-00251-CV, to clarify the effect of the order, or to issue a temporary order to preserve the rights of the parties in the litigation. Subsequently, the underlying cause was transferred to the 14th Court of Appeals, now No. 14-20-00358-CV. The State responded to the Emergency Motion on May 11, 2020, and Plaintiffs and Intervenor-Plaintiffs filed a reply the same day.

On May 13, 2020 the State filed this mandamus proceeding, which collaterally attacks Judge Sulak's order by prohibiting the Travis County Clerk from complying with it, and requesting this Court to vacate any conflicting orders from the Fourteenth Court of Appeals. Relators' Petition for Writ of Mandamus at 8, n.3. The State did not join Intervenor-Respondents as Real Parties in Interest to this proceeding, nor did it notify them that an action had been filed that fundamentally affects their rights in a pending case.

On May 14, 2020, the 14th Court of Appeals issued an Order in Case No. 14-20-00358-CV, ordering that the trial court's injunction remains in effect through the

duration of the appeal. On May 15, 2020, the State filed a writ of mandamus with respect to that Order, and an emergency motion for temporary relief asking to stay the Fourteenth Court's order granting emergency temporary relief. ..

ARGUMENT

As Real Parties in Interest, Intervenor-Respondents should be permitted to intervene. In original proceedings before this Court, “[a] person whose interest would be directly affected by the relief sought is a real party in interest and a party to the case.” Tex. R. App. P. 52.2.

Because the State seeks relief that would directly affect the litigation interests of Intervenor-Respondents, they are proper Real Parties in Interest. The relief sought by the State here includes ordering a defendant in the collateral action to cease complying with an injunction issued by the District Court and affirmed by the Fourteenth Court of Appeals that runs in favor of Intervenor-Plaintiffs; the State also seeks to have the emergency ruling by the Fourteenth Court of Appeals vacated in this action; and, more broadly, the State ask this Court to overrule the trial court's holding concerning the ability to vote by mail during COVID-19, relying in part on the clerk's record in the collateral action which the State has included in its entirety in the record in this proceeding.

For example, Intervenor-Respondent Zachary Price brought suit in Travis County because he needed immediate injunctive relief to apply for a mail ballot

without fear of it being rejected or being prosecuted. He achieved that relief, which is currently subject to appeal. However, if the State succeeds in this mandamus action, this Court could order Travis County to advise Mr. Price and others similarly situated that they cannot vote by mail. The interests of Intervenor-Respondents are directly threatened.

Because the State seeks to collaterally attack the trial court's judgment and appellate court's order from an action in which Intervenor-Respondents are parties, Intervenor-Respondents are Real Parties in Interest here, should have been so named, and now should be permitted to intervene.

PRAYER

Intervenor-Respondents respectfully request that the Court grant Intervenor-Respondents' Motion to Intervene.

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** *pro hac vice forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on the May 15, 2020, a true and correct copy of the foregoing *Motion to Intervene* was served upon counsel of record in this proceeding via e-service.

/s/ Thomas Buser-Clancy
Thomas Buser-Clancy

CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this document contains 1,189 words, excluding the portions of the document exempted by Rule 9.4(i)(1).

/s/ Thomas Buser-Clancy
Thomas Buser-Clancy

CERTIFICATE OF CONFERENCE

The State opposes the intervention of Intervenor-Respondents.

/s/ Thomas Buser-Clancy
Thomas Buser-Clancy

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