

## Number of Absentee-Ballot Drop-Off Locations Per County in Texas

*Texas LULAC v. Abbott (1:20-cv-1006),  
Straty v. Abbott (1:20-cv-1015), and  
Texas State Conference of NAACP Branches v. Abbott  
(1:20-cv-1024) (Robert Pitman, W.D. Tex.)*

Because of the global infectious Covid-19 pandemic in 2020, Texas's governor expanded the time period when voters could drop off absentee ballots. A subsequent order limited the number of drop-off locations to one per county. A district judge issued a preliminary injunction against the second order, but the court of appeals viewed it as part of the first order and therefore part of an expansion of voting opportunities.

*Subject:* Absentee and early voting. *Topics:* Absentee ballots; early voting; Covid-19; poll locations.

On March 13, 2020, President Trump declared a national state of emergency in the face of the outbreak of Covid-19 in the United States. That same day, Governor Abbott declared a state of disaster in Texas. In April 2020, Governor Abbott issued a stay-at-home order and postponed local elections scheduled for May until November to avoid further spread of the disease. . . .

. . .

Because voting in person risks exposing voters to Covid-19, many more voters who qualify to vote absentee have chosen, or will choose, to cast an absentee ballot in the November election. However, widespread delays in the [postal service] have left voters “increasingly concerned” that their mailed ballots will not reach election officials in time to be counted.<sup>1</sup>

Three organizations and two voters filed a federal complaint in the Western District of Texas against election officials for Texas and four of its counties on Thursday, October 1, 2020, alleging that the governor's limiting the number of absentee-ballot drop-off locations to one per county would cause many voters to be unable to cast timely absentee ballots.<sup>2</sup> On the following day, the plaintiffs filed a motion for a temporary restraining order or a preliminary injunction.<sup>3</sup> On Monday, the plaintiffs filed an amended complaint<sup>4</sup>

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1. *Tex. LULAC v. Abbott*, 493 F. Supp. 3d 548, 561 (W.D. Tex. 2020) (citations omitted).

2. Complaint, *Tex. LULAC v. Abbott*, No. 1:20-cv-1006 (W.D. Tex. Oct. 1, 2020), D.E. 1; *see Tex. LULAC*, 493 F. Supp. 3d at 560 (“On October 1, 2020, after voting had already begun, Governor Abbott changed the rules and . . . ordered county election officials to offer their absentee voters no more than one ballot return center per county.”); *see also* James Barragán, *Suit Targets Drop-Off Change*, Dallas Morning News, Oct. 3, 2020, at B1; Taylor Goldenstein, *Suit Fights Order on Ballot Dropoff*, Houston Chron., Oct. 3, 2020, at A1.

3. Motion, *Tex. LULAC*, No. 1:20-cv-1006 (W.D. Tex. Oct. 2, 2020), D.E. 5.

4. Amended Complaint, *id.* (Oct. 5, 2020), D.E. 16.

and another motion for a temporary restraining order and a preliminary injunction.<sup>5</sup>

Judge Robert Pitman set the case for a videoconference hearing on October 8.<sup>6</sup> An amended order on October 7 included a second case in the hearing.<sup>7</sup>

An October 2 complaint filed in the Western District by two organizations and a voter against Texas’s governor and its secretary of state also challenged the order forbidding counties from providing voters with more than one location to return absentee ballots.<sup>8</sup> On October 5, these plaintiffs also filed a motion for a temporary restraining order and a preliminary injunction.<sup>9</sup> Following a telephonic conference that day,<sup>10</sup> Judge Pitman consolidated the two cases on October 7.<sup>11</sup>

On October 9, he issued a preliminary injunction against the prohibition against more than one drop-off location per county.<sup>12</sup>

Another case was pending before Judge Pitman: an October 6 complaint filed in the Western District by the NAACP against Texas’s governor and its secretary of state challenging the limit of one absentee-ballot drop-off location per county.<sup>13</sup> On the following day, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.<sup>14</sup> Judge Pitman set the case for a telephonic conference on October 15.<sup>15</sup>

The court of appeals issued an administrative stay of Judge Pitman’s injunction on Saturday, October 10,<sup>16</sup> and stayed the injunction pending appeal two days after that—on Columbus Day.<sup>17</sup> The appellate court viewed the restriction of one location per county as part of the governor’s expansion of when absentee ballots could be delivered: “Properly understood, . . . the Oc-

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5. Amended Motion, *id.* (Oct. 5, 2020), D.E. 20; Motion, *id.* (Oct. 5, 2020), D.E. 15.

6. Order, *id.* (Oct. 5, 2020), D.E. 23; *see* Transcript, *id.* (Oct. 8, 2020, filed Oct. 12, 2020), D.E. 64.

7. Order, *id.* (Oct. 7, 2020), D.E. 32.

8. Complaint, *Straty v. Abbott*, No. 1:20-cv-1015 (W.D. Tex. Oct. 2, 2020), D.E. 1.

9. Motion, *id.* (Oct. 5, 2020), D.E. 9.

10. Docket Sheet, *id.* (Oct. 1, 2020) (D.E. 20).

11. Order, *id.* (Oct. 6, 2020), D.E. 21; *Tex. LULAC v. Abbott*, 493 F. Supp. 3d 548, 557–58 (W.D. Tex. 2020).

12. *Tex. LULAC*, 493 F. Supp. 3d at 584–85; *see* James Barragán, *Judge Blocks Abbott on Mail-Ballot Sites*, Dallas Morning News, Oct. 10, 2020, at A1; Taylor Goldenstein, *County Can Reopen 11 Ballot Drop Sites*, Houston Chron., Oct. 10, 2020, at A3; Brent Kendall & Alexa Corse, *Voting-Rule Disputes Bring Flurry of Rulings*, Wall St. J., Oct. 12, 2020, at A3.

13. Complaint, *Tex. State Conference of NAACP Branches v. Abbott*, No. 1:20-cv-1024 (W.D. Tex. Oct. 6, 2020), D.E. 1 (noting in the caption that the case was related to the other two cases before Judge Pitman).

14. Motion, *id.* (Oct. 7, 2020), D.E. 6.

15. Order, *id.* (Oct. 14, 2020), D.E. 16.

16. Order, *Tex. LULAC v. Hughs*, No. 20-50867 (5th Cir. Oct. 10, 2020), D.E. 19; *see* Kendall & Corse, *supra* note 12.

17. *Tex. LULAC v. Hughs*, 978 F.3d 136 (5th Cir. 2020).

tober proclamation is part of an *expansion* of absentee voting in Texas, not a *restriction* of it.”<sup>18</sup>

Judge Pitman accepted the NAACP’s voluntary dismissal of its case on October 16.<sup>19</sup>

On February 22, 2021, the court of appeals vacated Judge Pitman’s injunction and ordered the cases before him dismissed as moot.<sup>20</sup>

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18. *Id.* at 140.

19. Order, *Tex. State Conference of NAACP Branches*, No. 1:20-cv-1024 (W.D. Tex. Oct. 16, 2020), D.E. 23; see Notice, *id.* (Oct. 16, 2020), D.E. 22.

20. Order, *Tex. LULAC*, No. 20-50867 (5th Cir. Feb. 22, 2021), D.E. 146.