

No. 20-20574

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Steven F. Hotze, M.D.; Wendell Champion; Honorable Steve Toth; Sharon
Hemphill,

Plaintiffs-Appellants

v.

Teneshia Hudspeth, in her official capacity as Harris County Clerk,

Defendant-Appellee,

Andrea Chilton Greer; Yekaterina Snezhkova; Joy Davis-Harasemay; Diana
Untermeyer; Michelle Colvard; Karen Vidor; Malkia Hutchinson-Arvizu; Anton
Montano; Helen Shelton; Elizabeth Furler; Alan Mauk; Jenn Rainey; Brian Singh;
Mary Bacon; Kimberly Phipps-Nichol; Nyguen Griggs; Nelson Vanegas; Jessica
Goodspero; Amy Ashmore; Richard Frankel; Elaine Frankel; Ryan Frankel; Celia
Veselka; Sergio Aldana; Russell “Rusty” Hardin; Douglas Moll; Carey Jordan;
Christina Massara; Jerelyn M. Gooden; Stanley G. Schneider; Mary Currie;
Carlton Currie, Jr.; JeKaya Simmons; Daniel Coleman; David Hobbs; Bettye
Hobbs,

Intervenor Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of Texas
(No. 4:20-CV-3709)

**SUPPLEMENTAL BRIEF OF INTERVENOR DEFENDANTS-APPELLEES
MARY CURRIE, CARLTON CURRIE, JR., JEKAYA SIMMONS, AND
DANIEL COLEMAN**

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TABLE OF CONTENTS

RESPONSE TO COURT’S ORDER FOR SUPPLEMENTAL BRIEFING.....	1
CERTIFICATE OF SERVICE	4

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TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Diffenderfer v. Central Baptist Church of Miami, Inc.</i> , 404 U.S. 412 (1972) (per curiam).....	1
<i>Houston Justice v. Abbott</i> , No. 5:21-cv-00848 (Filed Sept. 7, 2021 W.D. Tex.).....	2
<i>La Union del Pueblo Entero v. Abbott</i> , No. 5:21-cv-00844 (Filed Sept. 3, 2021 W.D. Tex.).....	2
<i>LULAC Texas v. Esparza</i> , No. 1:21-cv-00786 (Filed Sept. 7, 2021 W.D. Tex.).....	2
<i>Perez v. Texas</i> , 970 F. Supp. 2d 593 (W.D. Tex. 2013)	1
<i>Princeton Univ. v. Schmid</i> , 455 U.S. 100 (1982).....	1

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RESPONSE TO COURT'S ORDER FOR SUPPLEMENTAL BRIEFING

In response to this Court's September 8, 2021 Order, which asks for the parties' positions on whether Senate Bill 1 moots this appeal, Intervenor-Defendant Appellees Mary Currie, Carlton Currie, Jr., JeKaya Simmons, and Daniel Coleman respond as follows:

First, because Senate Bill 1's effective date is December 2, 2021, Senate Bill 1 cannot moot this appeal until that date.

Second, because Senate Bill 1 does impose a substantial new statutory framework for drive-thru voting in Texas elections, Senate Bill 1 will moot this appeal after it takes effect. *See, e.g., Princeton Univ. v. Schmid*, 455 U.S. 100, 103 (1982) (appeal concerning old regulatory framework was moot after "the regulation at issue is no longer in force"); *Diffenderfer v. Central Baptist Church of Miami, Inc.*, 404 U.S. 412, 415 (1972) (per curiam) (holding judgment on statute would be "inappropriate now that the statute has been repealed"). In particular, when "a law has been sufficiently altered so as to present a substantially different controversy," the case is surely moot. *Perez v. Texas*, 970 F. Supp. 2d 593, 602 (W.D. Tex. 2013) (citing *Ne. Fla. Chapter of the Assoc. Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 662 & n.3 (1993)).

This is precisely what has occurred (or will occur) here: Beginning December 2, this lawsuit will effectively challenge Harris County's compliance with a state law

that is no longer in effect. Whether Harris County's drive-thru voting program complies with Senate Bill 1 is not the question that was before the district court, and that question is not before this Court. To the extent Plaintiffs believe that Harris County intends to violate Texas's new statutory framework, they must present those new claims to the trial court.¹ No court has yet had an opportunity to apply Senate Bill 1 to drive-thru voting in Texas, the scope of which is likely to be disputed. This Court should not be the first to make a finding about the effect of a brand new state law without a full record or full briefing from the parties.

But this Court does not need to determine the precise impact of Senate Bill 1 on drive-thru voting to find that this case is not justiciable. Even before Senate Bill 1, Plaintiffs' lawsuit would have required this Court to stretch its jurisdictional limits beyond the breaking point. As Intervenor-Defendants have already exhaustively briefed, *see* Currie Brief at 13-29, Plaintiffs lack standing to press their claims. In particular, Plaintiffs still have not identified how Harris County's drive-thru voting program caused (or will cause) them any particularized injury. Senate Bill 1 does not change that analysis. This Court should affirm the district court and dismiss this appeal.

¹ Indeed, Senate Bill 1's restrictions on drive-thru voting have spurred litigation challenging the law in both state and federal court. *See, e.g., Houston Justice v. Abbott*, No. 5:21-cv-00848 (Filed Sept. 7, 2021 W.D. Tex.); *LULAC Texas v. Esparza*, No. 1:21-cv-00786 (Filed Sept. 7, 2021 W.D. Tex.); *La Union del Pueblo Entero v. Abbott*, No. 5:21-cv-00844 (Filed Sept. 3, 2021 W.D. Tex.).

Dated: September 20, 2021

Respectfully Submitted,

/s/ Marc E. Elias

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. I certify that counsel for the Plaintiff-Appellants are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Marc E. Elias

Marc E. Elias

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