UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TEXAS STATE LULAC;
VOTO LATINO,

Plaintiffs,

v.

BRUCE ELFANT, in his official capacity as the Travis County Tax Assessor-Collector; JACQUELYN CALLANEN, in her official capacity as the Bexar County Elections Administrator; ISABEL LONGORIA, in her official capacity as the Harris County Elections Administrator; YVONNE RAMÓN, in her official capacity as the Hidalgo County Elections Administrator; MICHAEL SCARPELLO, in his official capacity as the Dallas County Elections Administrator; LISA WISE, in her official capacity as the El Paso County Elections Administrator,

Defendants,

and

KEN PAXTON, in his official capacity as Attorney General of Texas; LUPE TORRES, in their official capacity as Medina County Election Administrator; TERRIE PENDLEY, in her official capacity as the Real County Tax-Assessor Collector,

Intervenor-Defendants.

Case No. 1:21-cv-00546-LY

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT

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TO THE HONORABLE LEE YEAKEL:

MOTION FOR SUMMARY JUDGMENT

Plaintiffs TEXAS STATE LULAC and VOTO LATINO ("Plaintiffs"), by and through their undersigned counsel, respectfully move for summary judgment and ask the Court to enter an order enjoining Defendants and Intervenors from enforcing the challenged provisions of Senate Bill 1111, 87th Leg., Reg. Sess. (Tex. 2021).[1] In support of this Motion, Plaintiffs state as follows:

STATEMENTS OF GROUNDS AND CAUSES OF ACTION

Pursuant to Local Rule CV-7(C)(1), Plaintiffs bring their Motion for Summary Judgment on Counts I, II, and III of their complaint and seek to enjoin enforcement of SB 1111, 87th Leg., Reg. Sess. (Tex. 2021).

Plaintiffs are entitled to judgment as a matter of law under Count I because SB 11111 violates the First and Fourteenth Amendments by restricting Plaintiffs' freedom of expression. Plaintiffs are entitled to judgment as a matter of law under Count II because SB 1111 imposes burdens on the right to vote that cannot be justified by a sufficiently weighty state interest. Plaintiffs are entitled to judgment as a matter of law under Count III, because SB 1111 violates the Twenty-Sixth Amendment to the U.S. Constitution by preventing newly enfranchised, young Texans from effectively exercising their right to vote.

INTRODUCTION

Texas law requires that voters register to vote at their "residence"—their home and fixed place of habitation. But SB 1111 erects new barriers to establishing a residence for voting purposes. None of these barriers are justified by any existing issue with election administration in

[1] Plaintiffs challenge sections 1-5, of SB 1111, which amend Tex. Elec. Code §§ 1.015(b), (f), 15.051(a), 15.052(b), 15.053(a), 15.054(a). Plaintiffs will refer to these challenged provisions collectively as "SB 1111."

Texas. To the contrary, it is SB 1111 that *creates* problems by unconstitutionally restricting who may register to vote.

Three of SB 1111's suppressive provisions are at issue in this case. *First*, the law bars prospective voters from establishing a residence "for the purpose of influencing the outcome of a certain election." SB 1111 § 1 (App. 1) ("Residence Restriction"). Texans are thus prohibited from registering at an address if they moved there to engage in constitutionally-protected speech and political expression—even when the address is their new true residence. The law therefore acts as a content-based restriction on core political speech; chills protected speech through its impermissibly vague language; and unduly burdens the right to vote, in violation of the First and Fourteenth Amendments.

Second, SB 1111 prohibits registering to vote at a "previous residence" unless the registrant "inhabits the place at the time of designation and intends to remain." *Id.* ("Temporary Relocation Provision"). Texans who temporarily relocate for school or work cannot register at their true home or domicile if they do not "inhabit" or "intend to remain" there "at the time" they register. This burden is compounded by existing Texas law that precludes registering at an address where a person "has come for temporary purposes only and without the intention of making that place [their] home." Tex. Elec. Code § 1.015(d). SB 1111 leaves many Texans, particularly college students, without an acceptable residence for registration—they do not "inhabit" or "intend to remain" at the residence they are temporarily away from, but cannot register where they currently reside knowing it is temporary (e.g., a dorm). The Temporary Relocation Provision thus violates the First and Fourteenth Amendments by unduly burdening voting rights and violates the Twenty-Sixth Amendment by erecting an age-based barrier to voting.

Finally, SB 1111 creates new burdens for how some voters confirm their registration address. Texas has historically used a single confirmation notice to update a voter's address when it appears that their actual residence no longer corresponds to their registration. But SB 1111 bifurcates this process: voters whose registration addresses appear to be "commercial post office boxes or [a] similar location that does not correspond to a residence" must now submit photocopied proof of residence to confirm their registration, or alternatively affirm that they qualify for an exemption. SB 1111 §§ 2-5 ("PO Box Provision") (App. 001-002). This burden applies even when such voters seek to update their registrations with residential addresses. No good reason exists for requiring some voters, but not others, to supply proof when correcting residence information on their voter registration form. The PO Box Provision therefore also unduly burdens the right to vote.

Plaintiffs Texas State League of United Latin American Citizens ("LULAC") and Voto Latino are organizations committed to educating and registering voters in Texas. Both organizations have diverted resources in response to SB 1111, detracting from their ability to pursue other goals. They filed this suit to obtain injunctive and declaratory relief for themselves, their constituents and supporters, and—in LULAC's case—their members. Both Plaintiffs now move for summary judgment that each of SB 1111's suppressive provisions are unconstitutional.

BACKGROUND

I. SB 1111 creates new barriers to establishing residency and voting in Texas.

In Texas, a person's residence is their "domicile"—that is, "one's home and fixed place of habitation to which one intends to return after any temporary absence." Tex. Elec. Code § 1.015(a). SB 1111 made three significant changes to the Texas Election Code, each of which makes it more difficult for bona fide Texas residents to register to vote.

A. The Residence Restriction bars Texans from establishing residency in places where they have moved to engage in political activity.

SB 1111 first amends the Election Code's definition of "residence" to provide that "[a] person may not establish residence for the purpose of influencing the outcome of a certain election." SB 1111 § 1 (App. 001). The code now states both that a person's residence is their "domicile," but also that the same person may not establish residence to engage in political activity. *See* Texas Elec. Code §§ 1.015(a), (b). Nothing in the text of the Residence Restriction exempts Texans who in good faith choose to move their domicile to engage in political activity, such as voting, running for office, or volunteering for a political campaign. By its plain terms, the Residence Restriction bars such individuals from establishing a new residence, even at a "fixed place of habitation to which one intends to return." *Id*. § 1.015(a). The law also does not define the terms "establish," "for the purpose of," or "influencing the outcome of a certain election." Registrars in some of the largest counties in the State repeatedly testified that they do not understand the Residence Restriction and would not be able to advise a voter about its meaning. *See infra* 15-17.

B. The Temporary Relocation Provision bars Texans from registering at a residence they do not "inhabit," or at which they do not "intend[] to remain."

SB 1111 also creates a new subsection in the definition of "residence," providing that a "person may not designate a previous residence as a home and fixed place of habitation unless the person inhabits the place at the time of designation and intends to remain." SB 1111 § 1 (App. 001). The provision provides no definition of the terms "inhabits" or "intends to remain."

Texas law already provides that a person "does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home." Tex. Elec. Code § 1.015(d). Read together with SB 1111's Temporary Relocation Provision, Texas law now prohibits voters both from registering at a place they do not

"inhabit . . . at the time of designation," but also at a place they have "come for temporary purposes only." *Id.* §§ 1.015(d), (f). For example, a college student in Austin wishing to register at their parents' home in Amarillo may do so only if they "inhabits" their parents' home and "intend[] to remain" there "at the time of designation." *Id.* § 1.015(f). Likewise, they may only register using their school address in Austin if they have "the intention of making that place [their] home" and have not moved there "for temporary purposes only." *Id.* § 1.015(c), (d), (f). The Temporary Relocation Provision therefore leaves many Texas college students—as well as other Texans who have temporary relocated for education or work—without a clear residence address to use when registering to vote. And like the Residence Restriction, registrars repeatedly testified that the Temporary Relocation provision was "vague" and "confusing," Mar. 30, 2022 30(b)(6) Dep. of Lisa Wise ("Wise Tr.") 114:10-16, (App. 198), and that they were unable to explain the meaning of these terms to voters. *See infra* 22-25.

C. SB 1111 makes it more difficult for voters to confirm their registration status.

Texas law previously included provisions for confirming the addresses of voters who appeared not to reside at the address listed on their voter registration records. Specifically, if a registrar had "reason to believe that a voter's current residence is different from that indicated on the registration records," the registrar would "deliver to the voter a written confirmation notice requesting confirmation of the voter's current residence." Tex. Elec. Code § 15.051(a) (omitting changes enacted by SB 1111). Before SB 1111, Texas used a single confirmation notice form for all voters whose registration addresses appeared not to correspond to their actual residence. Apr. 29, 2022 30(b)(6) Dep. of Brian Keith Ingram on behalf of John Scott ("Ingram Tr.") 206:18-207:2 (App. 258-59). These forms required voters to supply "all of the information that a person must include in an application to register to vote," but did not require any documentary proof of residence. *Id.* 250:3-7, 251:7-18.

Texas continues to use a modified version of this existing confirmation notice form for all voters, save when it appears that a "voter's residence address is a commercial post office box or similar location that does not correspond to a residence." SB 1111 § 2 (App. 001-002) (amending Tex. Elec. Code § 15.051(a)). Voters whose addresses appear to be commercial post office boxes or similar locations must complete a separate notice form that requires submission of "evidence of the voter's residence address." *Id.* § 4 (App. 002-003) (enacting Tex. Elec. Code § 15.053(a)(3))). The "voter's residence may be documented by providing a photocopy" of one of several forms of identification. *Id.* § 5 (enacting Tex. Elec. Code § 15.054). Voters subject to this provision receive a distinct confirmation notice that did not exist prior to SB 1111. *See* Form SOS 17-4 (App. 381-384); Ingram Tr. 205:1-16 (App. 257), 217:3-7 (App. 263); Apr. 14, 2022 Dep. of Isabel Longoria ("Longoria Tr.") 114:4-16 (App. 163). The law exempts certain voters from providing documentation. SB 1111 § 5 (App. 003-005) (enacting Tex. Elec. Code § 15.054(d)).

Only voters whose addresses appear to be commercial post office boxes are required to provide evidence of their residence or affirm that they are exempt. All other voters, including those whose addresses do not appear to correspond to their actual residences, still receive confirmation notices that do not require them to submit any proof of residence. Ingram Tr. 210:21-211:6 (App. 260-261), 224:16-225:15 (App. 268-269).

II. Plaintiffs seek to register voters across Texas and are harmed by SB 1111.

Plaintiffs in this case are organizations committed to registering voters across Texas, particularly Latino voters and young voters. Plaintiff Texas State LULAC is the oldest and largest Latino civil rights organization in the United States. LULAC was founded with the mission of protecting the civil rights of Latinos, including voting rights. Mar. 23, 2022 30(b)(6) Dep. of Texas State LULAC ("LULAC Tr.) 14:14-18 (App. 102). LULAC regularly engages in voter registration, voter education, and other activities and programs designed to increase voter turnout

among its members and their communities. *Id.* at 29:16-17 (App. 104). These efforts are key to LULAC's mission of increasing civic participation among its members.

Voto Latino is a nonprofit, social welfare organization that engages, educates, and empowers Latino communities across the United States, working to ensure that Latino voters are enfranchised and included in the democratic process. Apr. 5, 2022 30(b)(6) Dep. of Voto Latino ("Voto Latino Tr.") 26:8-12 (App. 086). Voto Latino expends significant resources to register and mobilize thousands of Latino voters each election cycle, including the nearly 5.6 million eligible Latino voters in Texas. Voto Latino Tr. 34:15-35:6 (App. 087-088). Voto Latino mobilizes Latino voters in Texas through statewide voter registration initiatives, as well as peer-to-peer and digital voter education and get-out-the-vote campaigns. *See id*. 90:12-15 (App. 098).

SB 1111 injures Plaintiffs in several ways. *First*, the law impairs and deters their voter registration activities by limiting their ability to advise and register prospective voters. *See infra* 31-32. This deterrence is compounded by the threat of criminal prosecution for misadvising potential registrants about Texas's residency requirements. *Id. Second*, SB 1111 has forced both Voto Latino and LULAC to divert resources away from other critical activities, including voter registration efforts in other states, funding scholarships, and pursuing other policy goals. *See infra* 32-34. *Finally*, LULAC's membership—which includes collegiate members and hundreds of members on the verge of turning 18—are chilled from registering and exercising free speech rights by the law. *See infra* 34-35. Plaintiffs seek injunctive and declaratory relief to stop these harms.

III. Procedural history.

Plaintiffs' Complaint alleges that SB 1111 infringes on the rights to free speech and expression in violation of the First Amendment (Count I), unduly burdens the right to vote in violation of the First and Fourteenth Amendments (Count II), and denies or abridges the right to

vote on account of age in violation of the Twenty-Sixth Amendment (Count III). Compl., ECF No. 1, ¶¶ 52-78 (App. 007-026). Plaintiffs move for summary judgment on each count.

The Complaint named county election officials in Travis, Bexar, Harris, Dallas, El Paso, and Hidalgo Counties as defendants. On August 11, 2021, Real and Medina Counties moved to intervene. ECF No. 48 (collectively "County Defendants"). Attorney General Ken Paxton ("State Defendant") moved to intervene the following day under 28 U.S.C. § 2403(b), which authorizes the State to intervene "for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of [the] constitutionality" of SB 1111. Att'y Gen.'s Mot. to Intervene (Aug. 12, 2021), ECF No. 53. This Court granted both motions to intervene on September 21, 2021. Order, ECF No. 76.

STANDARD OF REVIEW

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is "material" only if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is "genuine" where "there is sufficient evidence favoring the nonmoving party" to support a verdict for that party. *Id.* at 249. But the nonmoving party must "do more than simply show that there is some metaphysical doubt as to the *material* facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (emphasis added). The nonmoving party instead must identify specific facts that show a genuine dispute for trial. *Matsushita*, 475 U.S. at 587.

ARGUMENT

Plaintiffs move for summary judgment on all counts in their Complaint. *First*, Plaintiffs move for summary judgment on Count I, because the Residence Restriction violates the First Amendment. The provision does so in three separate ways—as a content-based regulation; as a

restriction on core political speech; and as an impermissibly vague statute. *Second*, all three suppressive provisions in SB 1111 independently burden the right to vote in a manner that cannot be justified by any legitimate state interest. Plaintiffs therefore move for summary judgment on Count II under the First and Fourteenth Amendments.[2] *Finally*, Plaintiffs move for summary judgment on Count III, because that the Temporary Relocation Provision violates the Twenty-Sixth Amendment by denying or abridging the right to vote based on an age-based barrier.

I. The Residence Restriction violates the First Amendment.

The Residence Restriction violates the First Amendment in three ways, each of which is sufficient to grant summary judgment on Count I. The Residence Restriction is an unlawful content-based regulation because it singles out political speech—and only political speech—as an impermissible motivation for establishing residence in Texas. In a similar vein, it directly curtails core political speech by preventing voters from establishing residence in Texas for the purpose of engaging in a wide range of lawful acts of expression, such as running for office, volunteering for a campaign, and voting for particular candidates. Finally, the Residence Restriction is drafted so vaguely that it chills political speech in violation of the First Amendment.

A. The Residence Restriction is an unlawful content-based speech regulation.

Statutes that regulate based on content are subject to strict scrutiny and thus "presumptively invalid" under the First Amendment. *Nat'l Press Photographers Ass'n v. Mccraw*, 1:19-cv-946-RP, 2022 WL 939517, at *10 (W.D. Tex. Mar. 28, 2022) (quoting *United States v. Stevens*, 559 U.S. 460, 468 (2010)). A content-based regulation is "one that creates distinctions between 'favored speech' and 'disfavored speech.'" *Serv. Emps. Int'l Union v. City of Hous.*, 595 F.3d 588,

[2] Because each challenged provision independently burdens the right to vote in an unconstitutional manner, the Court may grant summary judgment on Count II if it concludes that any single provision, or any combination of provisions, is unconstitutional.

596 (5th Cir. 2010). It is "well established that the First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints," but also to restrictions on "particular subjects." *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, No. 20-1029, __ S. Ct. __, 2022 WL 1177494, at *5 (U.S. Apr. 21, 2022) (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 169 (2015)) (cleaned up). Accordingly, "a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter." *Id.* (quoting *Reed,* 576 U.S. at 169). "For example, a law banning the use of sound trucks for political speech—and only political speech—would be a content-based regulation, even if it imposed no limits on the political viewpoints that could be expressed." *Id.*; *Reed*, 576 U.S. at 169.

The Residence Restriction is a content-based speech regulation because it bans political speech—and only political speech—as a reason for establishing residence in Texas. Its plain terms prohibit Texas voters from "establish[ing] residence for the purpose of influencing the outcome of a certain election." Tex. Elec. Code § 1.015(b). While the Residence Restriction does not purport to list activities that "influence the outcome of an election," Defendants testified that such activities encompass voting, Ingram Tr. 100:3-10 (App. 240), running for office, Wise Tr. 86:20-87:11 (App. 188-189), and donating to and volunteering for political campaigns, Ingram Tr. 100:14-19 (App. 240). *See also* Apr. 12, 2022 30(b)(6) Dep. of Michael Scarpello ("Scarpello Tr.") 78:13-15 (App. 182) (testifying that registering to vote is one way of "influencing an election"); Mar. 31, 2022 30(b)(6) Dep. of Gretchen Nagy on behalf of Bruce Elfant ("Nagy Tr.") 108:16-109:10 (App. 118-119) ("there are so many different forms" of "influenc[ing] the outcome of a certain election"). No other category of speech is targeted for similar disfavored treatment. By targeting political speech, "and only political speech," as a prohibited basis for establishing residency, the Residence Restriction "singles out specific subject matter for differential treatment" and is therefore a

content-based restriction, "even if it does not discriminate among viewpoints within that subject matter." *City of Austin*, 2022 WL 1177494, at *5 (quoting *Reed*, 576 U.S. at 169).

Because SB 1111 is a content-based speech regulation, it "may be justified only if the government proves that [it is] narrowly tailored to serve compelling state interests." *Reed*, 576 U.S. at 163. In other words, the restriction must be "actually necessary to achieve a compelling interest" and "narrowly tailored to achieve that interest." *United States v. Alvarez*, 567 U.S. 709, 725 (2012); *Reed*, 576 U.S. at 171. The Attorney General and Secretary of State identify several interests that they claim are served by the Residence Restriction, including "preventing fraud, maintaining election uniformity, facilitating election administration, and avoiding unfair election impacts." App. 357-358; *see also* Apr. 29, 2022 30(b)(6) Dep. of Charles Eldred on behalf of Att'y Gen. Ken Paxton ("Eldred Tr.") 56:9-12 (App. 274); Ingram Tr. 111:8-15 (App. 246).[3]

Even assuming these interests are compelling, the Residence Restriction comes nowhere close to being narrowly tailored to achieve them. The Attorney General and Secretary assert that the Residence Restriction furthers these interests by preventing people from establishing residence to commit voter fraud—*i.e.*, by "mak[ing] sure that people vote where they live" and do not "sway the outcome of elections in another place where they don't actually live." Ingram Tr. 111:5-15 (App. 246); Eldred Tr. 45:14-18 (App. 273). But the Residence Restriction is far from "the least

[3] Notably, most County Defendants could not name *any* interest. *See, e.g.*, Longoria Tr. 62:2-10 (App. 148) ("Q. Do you believe that any interests of Harris County are served by the residency restriction? A. I find it difficult to determine . . . what this residency restriction even means, and therefore what benefit, if any, there would be to Harris County."); *id.* at 62:12-15 (App. 148) ("Q. So sitting here today, you can't identify any interest of Harris County that is served by the residence restriction? A. No."); *id.* at 62:16-63:19 (App. 148-149); Nagy Tr. 138:19-139:2 (App. 138-139) ("Q. Any interest of yours that you can think of that Senate Bill 1111 helps or benefits? A. No, I – I cannot identify something at this time."); Ramón Tr. 57:18-22 (App. 213) ("Q. What interests of Hidalgo County are served by [the Residence Restriction] provision of SB 1111? A. There are no interests served by this provision."); Wise Tr. 108:16-110:14 (App. 195-197).

restrictive means" of achieving this. *United States v. Playboy Ent. Grp.*, 529 U.S. 803, 813 (2000). For one thing, it restricts the political speech of anyone attempting to establish residence in Texas—including those who *do* live at their designated residence. For another, the Residence Restriction is not limited to *voting*. Instead, it broadly prevents voters from establishing residence "for the purpose of *influencing the outcome of a certain election*." As Defendants have admitted, voting is not the only way a person can influence an electoral outcome. *See, e.g.*, Scarpello Tr. 78:13-15 (App. 182); Wise Tr. 86:20-87:11 (App. 188-189); Ingram Tr. 100:11-101:2 (App. 240); Nagy Tr. 108:16-109:10 (App. 118-119). By targeting all forms of political influence, the Restriction needlessly encompasses a broad range of protected conduct including volunteering on campaigns, donating to candidates, and even running for office. Because it is plainly not the "least restrictive means" of achieving the State's proffered interests, it fails strict scrutiny.

B. The Residence Restriction directly regulates core political speech.

The Residence Restriction also violates the First Amendment because it "directly regulates core political speech," an imposition that calls for the same strict scrutiny analysis above. *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 207 (1999) (Thomas, J., concurring) (collecting cases); *see also Voting for Am., Inc. v. Steen*, 732 F.3d 382, 391 (5th Cir. 2013) (describing voter registration as speech). Such "regulations of core political speech" do not require courts to "determine burden first" because "restrictions on core political speech so plainly impose a 'severe burden.'" *Buckley*, 525 U.S. at 208.

The Residence Restriction punishes voters for a broad range of political expression, including voting, running for office, and donating to or volunteering for political campaigns. *See supra* 9-11; *see also* Ingram Tr. 100:11-101:2 (App. 240-241) (agreeing there are many ways to influence an election); Nagy Tr. 108:16-109:10 (App. 118-119). These acts necessarily involve key elements of political speech, including "the expression of a desire for political change" and "a

discussion of the merits of the proposed change." *Meyer v. Grant*, 486 U.S. 414, 421 (1988). Seeking to influence the outcome of an election includes acts intended to "secure political change, and the First Amendment, by way of the Fourteenth Amendment, guards against the State's efforts to restrict free discussions about matters of public concern." *Buckley*, 525 U.S. at 211.

The Residence Restriction regulates expressive conduct in a manner that the volunteer deputy registrar law ("VDR law") at issue in *Steen* did not. That law regulated "the receipt and delivery of completed voter-registration applications," which the court determined were "non-expressive activities," by non-residents in Texas. *Steen*, 732 F.3d at 391. But the court contrasted those non-expressive activities with the expressive act of registering to vote. *See id.* at 390 ("Logically, what the VDR does with the voter's form *follows* the voter's completion of the application but is not itself 'speech.'"). The Residence Restriction regulates the latter category of activity because it directly regulates who may register to vote and does so based on their efforts to secure political change—core expressive speech. *Buckley*, 525 U.S. at 208; *cf. Steen*, 732 F.3d at 390 ("Assuming a voter registration application is speech, it is the *voter's* speech indicating his desire to be registered."). Unlike the VDR law, which did not "restrict or regulate who can advocate pro-voter registration messages, the manner in which they may do so, or any communicative conduct," *Steen*, 732 F.3d at 391, the Residence Restriction limits who may vote based on their expression of a political message, *Buckley*, 525 U.S. at 207.

The Residence Restriction fails to pass strict scrutiny as a regulation of core political speech for the reasons that it fails to pass muster as a content-based regulation. *See supra* 11-12.

C. The Residence Restriction is impermissibly vague.

The First Amendment also prohibits vague speech regulations. *SEIU*, 595 F.3d at 596-97. Government regulations "must be drawn with some specificity" to provide sufficient "breathing space" for First Amendment freedoms. *Id.* (quoting *Howard Gault Co. v. Tex. Rural Legal Aid,*

Inc., 848 F.2d 544, 559 (5th Cir. 1988)). "Flexibility is permitted but not at the expense of a statute's failure to provide 'fair notice' to people who wish to avoid its prohibitions." *Doe I v. Landry*, 909 F.3d 99, 116 (5th Cir. 2018). To prevail on a vagueness challenge, a plaintiff must show that the law "ha[s a] capacity to chill constitutionally protected conduct, especially conduct protected by the First Amendment." *Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 546 (5th Cir. 2008). And in evaluating vagueness, a reviewing court should consider "(1) whether the law gives the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly; and (2) whether the law provides explicit standards for those applying them to avoid arbitrary and discriminatory applications." *Id.* at 551 (internal quotations omitted).

The Residence Restriction is the hallmark of an unconstitutionally vague speech regulation. It prohibits establishing residence "for the purpose of influencing the outcome of a certain election," but provides no definition of "influencing the outcome of an election." *See* SB 1111 § 1 (App. 001). And the Secretary's office, charged with providing guidance to local election officials on election legislation, has done no such thing regarding the Residence Restriction.[4] Ingram Tr. 38:20-39:5 (App. 234-235), 102:17-103:2 (App. 242-243), 108:15-109:1 (App. 244-245). To be sure, a statute need not "delineate the exact actions a person would have to take to avoid liability" if the undefined terms are "commonly understood." *Doe I*, 909 F.3d at 118 (statute requiring "full

[4] Ingram Tr. 101:3-5 (App. 241), 102:17-103:2 (App. 242-243), 108:11-109:1 (App. 244-245), 135:18-136:1 (App. 248-249), 140:22-141:6 (App. 250-251), 142:7-13 (App. 252), 142:21-143:2 (App. 253-254), 144:9-21 (App. 254); *see also* Longoria Tr. 55:9-56:13 (App. 145-146), 84:2-5, 84:12-20 (App. 152), 86:20-87:20 (App. 154-155), 89:1-5 (App. 157), 89:19-90:6 (App. 157-158); Wise Tr. 150:10-151:21 (App. 202-203); Scarpello Tr. 89:17-21 (App. 185); Nagy Tr. 152:19-153:15 (App. 126-127), 154:2-155:10 (App. 127-128), 159:18-160:1 (App. 130-131), 177:7-11 (App. 136); Mar. 31, 2022 30(b)(6) Dep. of Jacquelyn Callanen ("Callanen Tr.") 90:12-22 (App. 209); Apr. 8, 2022 30(b)(6) Dep. of Yvonne Ramón ("Ramón Tr.") 56:16-18 (App. 212), 97:11-15 (App. 216); Apr. 13, 2022 30(b)(6) Dep. of Terrie Pendley ("Pendley Tr.") 52:12-16 (App. 223); Apr. 8, 2022 30(b)(6) Dep. of Lupe Torres Tr. 74:20-75:6 (App. 231-232); Eldred Tr. 62:13-15 (App. 277), 63:21-64:1 (App. 278-279), 64:6-8 (App. 279), 65:2-8 (App. 280).

coverage of the breasts and buttocks" not vague for failing to define those terms because "[t]hese are commonly understood anatomical terms"). But that is not the case here because the Residence Restriction, by the Secretary's own admission, encompasses "many" activities that are not set forth in the statute. Ingram Tr. 100:20-101:1 (App. 240-241). Without further guidance, voters are left to speculate—as the Secretary's designee did—about the range of activities that can "influence an election." *Id.* at 100:14-19 (App. 240) (speculating a person "could" influence an election outcome by canvassing on behalf of a political campaign or donating money).

The Residence Restriction also fails to provide explicit standards to avoid arbitrary and discriminatory applications. The County Defendants—voter registrars in some of the largest counties in Texas who process voter registration applications that incorporate the modified definition of residence—consistently testified that they do not understand the Residence Restriction and are not able to uniformly interpret and apply it. *E.g.*, Nagy Tr. 108:20-109:10 (App. 118-119) ("To influence an outcome of a certain election, that can take many different forms . . . so it's really hard to pinpoint exactly what this is – this is addressing"); *id*. at 114:1-8 (App. 121) (Residence Restriction is "unclear"); Scarpello Tr. 68:4-15 (App. 177) ("I don't understand what ["for the purpose of"] means in reference to this, taking in the whole context of the overall sentence. Q. And is the same true for influencing the outcome of a certain election? A. Yes."); Longoria Tr. 56:14-19 (App. 146) ("Q. Do you think it's clear how your office is supposed to apply the term 'establish residence' within the context of the residence restriction? A. In the context of this residence restriction, no."); *id.* at 59:4-11 (App. 147) ("Q. You don't think it's clear from the language in the bill what the meaning of the term 'influencing the outcome of a certain election' is?" . . . A. "No. I think it, depending on the situation or context, could have multiple meanings or interpretations."). As Travis County Voter Registration Director Gretchen Nagy

explained, "it's hard to determine" what is proscribed "with th[e] language" in the Residence Restriction. Nagy Tr. 107:14-109:10 (App. 117-119) (explaining "it's really hard to pinpoint exactly" what the provision addresses and that she doesn't "know how [she's] supposed to make th[e] determination" of whether someone seeks to influence an election). It is not reasonable to expect ordinary Texans to understand standards their own county election officials do not.

The confusion among the County Defendants about what the Residence Restriction is deeply problematic, given that voters rely on these officials to answer questions about registering to vote. *See, e.g.*, Callanen Tr. 83:6-10 (App. 206); Longoria Tr. 34:19-35:1 (App. 143-144); Nagy Tr. 51:18-22 (App. 116); Ramón Tr. 27:2-6 (App. 211); Scarpello Tr. 35:19-21 (App. 167), 37:7-13 (App. 168). Indeed, certain voter registration materials, including the address confirmation form, direct voters to their county registrars with questions. App. 380 (Form 17-1); Nagy Tr. 196:12-21 (App. 139). The Secretary acknowledged in its materials that SB 1111 may change how administrators answer voters' questions, App. 365 ("Change in statute may affect how you answer voter questions"). But due to the vague terms in the Residence Restriction, SB 1111's changes have effectively prevented voters receiving clear answers to their questions, furthering voters' confusion. County administrators testified that because of the law's broad language, they will not feel comfortable answering voters' questions about the Residence Restriction's meaning. Michael Scarpello, Dallas County Elections Administrator, explained that "if [voters] asked us to explain 'for the purposes of influencing election,' we don't really know what that means. We don't know how to further explain that." Scarpello Tr. 65:6-66:8 (App. 174-175); *see also id.* at 57:20-58:4 (App. 170-171) (Q. "And when you're not clear to the answer of a question, how does it affect what information you then tell the voter that may have that question? A. I think there's a sense of frustration from the voter and sometimes confusion."); *id.* at 67:11-14 ("If asked a question [about

the Residence Restriction], I don't know how quite to answer that question to a voter.") (App. 176). Other County Defendants expressed similar sentiments, explaining that they "wouldn't know" how to answer a voter's question about what it means to influence an election, Callanen Tr. 83:1-5 (App. 206), and "really can't tell" what that term means, Pendley Tr. 37:18-38:6 (App. 219-220) (Real County Tax Assessor acknowledging she "really can't tell" what it means to influence the outcome of an election); *see also* Nagy Tr. 200:22-201:4 (App. 140) ("Q. As we discussed today, there are a number of questions about Section 1.015 that you do not feel equipped to answer if a voter were to call and ask them; is that correct? A. That is correct."); Wise Tr. 122:6-21 (App. 201) ("Q. Do you feel like you have enough information about the changes made by Senate Bill 1111 to the Texas Election Code to give [voters] any other answer [than to refer to the text]? A. Not that I would be comfortable with, no. Q. Why not? A. Because . . . The definitions – they are vague. They mean different things to different people, and because it is not so specific, I don't feel like I am really able to give them the information that they would need from – from my standpoint, from our office."); Nagy Tr. 113:1-115:18 (App. 120-122) ("Q. … [I]f a voter came in and they had a question about what establishing residence for the purpose of influencing the outcome of a certain election meant, you don't feel like you have enough information to answer that question for them; is that right? A. That is correct."); Ramón Tr. 56:19-57:5 (App. 212-213) (refusing to speculate as to the meaning of the provision).

More confusing still, the Secretary's office and County Defendants hold directly conflicting views of what the term "establish residence" means. Mr. Ingram repeatedly insisted the "words 'establish residence' don't mean actually living there." Ingram Tr. 98:2-11 (App. 239) (explaining a person would not violate the Residence Restriction if "they actually lived there"); *see also id.* at 94:6-10 (App. 238) ("establish residence" means a person cannot "establish a

residence where they don't actually live"); *id.* at 90:18-91:4 (App. 236-237) ("It means that a person can't claim a residence that's not their residence address for the purpose of influence the outcome of a particular election[.]"). That interpretation would surprise County Defendants, who understand "establish residence" to refer to where a registrant *does* reside. *E.g.*, Torres Tr. 44:22-45:1 (App. 225-226) ("establish residence" means "that they reside in – at the residence"); Pendley Tr. 36:18-19 (App. 218) ("Establish residence means your residence, where you live at[.]"); Callanen Tr. 72:15-21 ("establish residence" refers to "where you sleep"). Mr. Ingram also asserted that § 1.015(a) carves out a safe harbor for non-fraudulent residents. *E.g.*, Ingram Tr. 108:1-10 (App. 244) (explaining Residence Restriction "is not implicated" if "they moved there, they live there" because of § 1.015(a)); 101:3-16 (App. 241); 98:2-11 (App. 239); 94:11-22 (App. 238). That, too, would surprise County Defendants who believe the Residence Restriction *adopts* § 1.015(a) into of its use of the term "establish residence." *E.g.*, Wise Tr. 92:22-93:3 (App. 190-191) ("establish residence" means "to inhabit a location based on the definition of Section A" of § 1.015); Scarpello Tr. 61:18-19 (App. 172) (term refers to "the plain language found under the definition of 'residence' in the code"). Texas voters are left only to guess at who is right.

These vague terms have a particularly powerful "capacity to chill constitutionally protected conduct" because they are accompanied by the threat of criminal prosecution. *Roark*, 522 F.3d at 546. The voter registration application on which voters list their residence requires the applicant to affirm their understanding "that giving false information to procure a voter registration is perjury, and a crime under state and federal law" that "may result in imprisonment up to one year in jail, a fine up to $4,000, or both." App. 362. The Attorney General's office admitted it investigates and prosecutes individuals for making false statements on voter registration forms. *See* Eldred Tr. 58:8-13 (App. 276). And State and County Defendants agreed that a voter

potentially makes such an unlawful false statement by attempting to establish residence in a manner that is contrary to state law. *See* Longoria Tr. 81:7-82:5 (App. 149-150); Wise Tr. 97:12-99:18 (App. 192-194); Callanen Tr. 86:13-87:21 (App. 207-208); Scarpello Tr. 71:6-72:22 (App. 178-179); Nagy Tr. 128:2-17 (App. 123), 194:11-196:6 (App. 137-139); Ramón Tr. 82:15-83:21 (App. 214-215); Pendley Tr. 44:1-45:11 (App. 221-222); Torres Tr. 61:7-63:5 (App. 227-229); Eldred Tr. 56:22-58:13 (App. 274-276). The risk of prosecution persists after registration, because casting a ballot using an impermissible address is itself a crime. *See, e.g.*, Tex. Elec. Code § 64.012(a); *Heath v. State*, No. 14-14-00532-CR, 2016 WL 2743192, at *1–2 (Tex. Ct. App. May 10, 2016) (affirming conviction where voter cast ballot after registering at address that did not qualify as proper residence under Election Code).

Lisa Wise, Elections Administrator in El Paso County, testified that the Residence Restriction will "suppress lawful voter turnout" because "when people don't know for sure . . . how to interpret the law and there is no real clear direction, they may just choose not to participate." Wise Tr. 108:16-110:21 (App.195-197). It is unrealistic to expect voters to resolve ambiguities their own county officials cannot. Voters cannot rely on the registrars to resolve their uncertainties, and their unanswered questions could lead to errors that expose the them to criminal liability. As Dr. John Holbein explains in his expert report, this deterrent effect is particularly acute among first-time voters, including young voters, given their lack of familiarity with voter registration rules. Holbein Rep. at 6 (App. 032), 25-26 (App. 051-052). Texans have cited SB 1111 as a reason for choosing not to register to vote. *See* Longoria Tr. 147:8-148:2 (App. 164-165).

The Residence Restriction also chills Plaintiffs' speech and advocacy. By adding confusion and risk of criminal liability to the registration process, the restriction interferes with Plaintiffs' abilities to encourage and support voter registration and to register voters—activity protected by

the First Amendment. *See Steen*, 732 F.3d at 390 ("voter registration drives involve core protected speech" including "'urging' citizens to register; 'distributing' voter registration forms; 'helping' voters to fill out their forms; and 'asking' for information to verify that registrations were processed successfully"); *see also Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 700 (N.D. Ohio 2006) (similar); *Tenn. State Conf. of NAACP. v. Hargett*, 420 F. Supp. 3d 683, 699 (M.D. Tenn. 2019) (similar).

Maria Teresa Kumar, the president and co-founder of Voto Latino, testified that SB 1111 "has a chilling effect on our ability to communicate freely and declaratively to potential voters, and as a result we cannot do the same type of activities of speaking freely and encouraging them to register" which "makes it difficult for us to be able to have conversations of enfranchisement in our community." Voto Latino Tr. 51:3-24 (App. 089); *see also id*. at 70:3-8 (App. 095) (describing injury to Voto Latino as, in part, the "chilling effect [SB 1111] has on my ability and my organization's ability to speak to voters"). Voto Latino was able to communicate voter residency requirements effectively and register voters prior to the passage of SB 1111, so this is a new restriction of Voto Latino's speech and expressive conduct under the First Amendment.

The Residence Restriction chills protected First Amendment speech of Plaintiffs, their constituencies, and even election officials in Texas. This unconstitutional vagueness provides an additional basis for granting summary judgment on Count I.

II. SB 1111 unduly burdens the right to vote in violation of the First and Fourteenth Amendments.

The suppressive provisions of SB 1111 independently and substantially burden the right of Texans to vote while failing to advance a sufficiently weighty state interest to justify such a burden.

To determine whether a state law imposes an undue burden on the right to vote in violation of the First and Fourteenth Amendment, federal courts apply the *Anderson-Burdick* balancing test,

which "weigh[s] 'the character and magnitude of the asserted injury' . . . against 'the precise interests put forward by the State as justifications for the burden imposed by its rule.'" *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). When the burden is severe, the state's asserted interest must be compelling, and the challenged restriction must be narrowly tailored to advance it. *Tex. Indep. Party v. Kirk*, 84 F.3d 178, 182 (5th Cir. 1996). But even if the burden is less than severe, the challenged restriction must be supported by "interest[s] sufficiently weighty to justify the limitation." *Norman v. Reed*, 502 U.S. 279, 288-89 (1992); *see also Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318-19 (11th Cir. 2019) ("[E]ven when a law imposes only a slight burden on the right to vote, relevant and legitimate interests of sufficient weight still must justify that burden."). For all burdens, however slight, the Court must take "into consideration 'the extent to which [the State's] interests make it necessary to burden plaintiff's rights.'" *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 788-89). Because none of burdens imposed by SB 1111 is justified by a legitimate state interest, the Court should grant Plaintiffs summary judgment on Count II and enjoin these provisions.

A. The Residence Restriction unduly burdens the right to vote.

As explained, the Residence Restriction bars voters in Texas from establishing residency in a location they moved to for the purpose of engaging in expressive political behavior, such as voting, running for office, or volunteering on a political campaign. Ordinarily, a Texas voter's residence is their "home and fixed place of habitation to which [they] intend[] to return after any temporary absence." Tex. Elec. Code § 1.015(a). But SB 1111 amended that portion of the Election Code so that a person "may not establish residence for the purpose of influencing the outcome of a certain election." *Id.* § 1.015(b). In other words, if a Texas voter moves from Harris to Dallas County to volunteer on a political campaign—and thus to influence the outcome of a certain election—SB 1111 bars that person from establishing residence in Dallas County, even if that same

person intends for Dallas County to become their "home and fixed place of habitation." *Id.* §§ 1.015(a), (b). The Residence Restriction does not merely burden some voters—it completely disenfranchises those voters who move to or within Texas to advocate for political change.

The Residence Restriction's burden on such voters is compounded by the fact that local election officials are unable interpret the provision's "unclear, vague, and ambiguous" language. Scarpello Tr. 64:10-66:8 (App. 173-175); *see also supra* 15-17. Voters who are not sure whether they fall within the restriction's ambit cannot rely on their local county officials or the Secretary's office to provide guidance, even though those offices typically offer such guidance. *E.g.*, Callanen Tr. 83:6-10 (App. 206); Longoria Tr. 34:19-35:1 (App. 143-144); Nagy Tr. 51:18-22 (App. 116); Ramón Tr. 27:2-6 (App. 211); Scarpello Tr. 35:19-21 (App. 167), 37:7-13 (App. 168). The concern that the Residence Restriction will confuse voters is not hypothetical—Ms. Longoria testified that at least one voter expressly told her that his confusion about SB 1111 caused him to choose not to register. *See* Longoria Tr. 147:8-148:2 (App. 164-165). Despite the likelihood of further confusion, the Secretary's office has not provided guidance on the meaning of the Residence Restriction's key terms. *See* Ingram. Tr. 108:15-18 (App. 244) ("Q. Has your office provided a definition of what influencing the outcome of a certain election means? A. We have not.").

Because the Residence Restriction imposes a complete barrier to the franchise for voters who have recently relocated, it imposes a severe burden that must be narrowly tailored to advance a compelling state interest. *See Burdick*, 504 U.S. at 434. As discussed, the Residence Restriction comes nowhere close to satisfying strict scrutiny. *See supra* 10-11.

B. The Temporary Relocation Provision unduly burdens the right to vote.

The Temporary Relocation Provision also unduly burdens voters in Texas. It states that "person may not designate a previous residence as a home and fixed place of habitation unless the person inhabits the place at the time of designation and intends to remain." Tex. Elec. Code §

1.015(f)). According to the expert testimony of Dr. Holbein, the Temporary Relocation Provision "places many young people in a difficult scenario." Holbein Rep. at 40 (App. 066.) "Under SB 1111, college students living on campus cannot register to vote at their home address—because they do not physically inhabit their home address" when they register. *Id.* But given the "opaque and subjective" nature of the term "intends to remain," such students "might not be able to list their college address as their registration address—given that by definition residents cannot 'intend to remain' in their campus address past a certain period and many may see their residency as a temporary one." *Id.* The Temporary Relocation Provision gives the impression to many young Texans that they lack *any* adequate address to register to vote and "adds complexity to an already complex system and substantially increases barriers to youth voting." *Id.* at 43 (App. 069).

The confusion engendered by the Temporary Relocation Provision is exacerbated by the fact that it targets younger votes who often do not "understand the specific rules for voter registration" and are intimidated by what is, for them, a new process. Holbein Rep. at 26 (App. 052); *see also id.* at 25-34 (App. 051-060) (discussing impact of registration complexity on youth voting). SB 1111 thus "has the unique potential to confuse and discourage younger voters who are registering to vote and going through the voting process for the first time." *Id.* at 40 (App. 066).

Testimony from County Defendants confirms Dr. Holbein's conclusion that the Temporary Relocation Provision is likely to confuse younger voters. El Paso County Election Administrator Lisa Wise repeatedly explained the provision is "vague" and "confusing," and further stated that she did not feel "able to really give [students] the information that they would need" to determine where to register under the provision. Wise Tr. 114:10-16, 116:16-117:18, 122:6-21 (App. 198-99, 201) (testifying she would not be comfortable answering questions about the Temporary Relocation Provision). The Dallas County Elections Administrator testified that even after

receiving the Secretary's advisory on SB 1111, he still "think[s] there's [] some confusion about some of the language, especially as it relates to student voters and their residency." Scarpello Tr. 56:12-19 (App. 169). Thus, he is "not entirely clear on how to answer the questions posed to [Dallas County] by some student voters." *Id.* at 57:10-18 (App. 170). The County's inability to answer such questions generates "a sense of frustration from the voter and sometimes confusion." *Id.* at 57:20-58:4 (App. 170-71). This confusion comes from SB 1111's text:

> A. In particular, we're a little bit confused, looking at the plain language here—when it comes to college students. There's situations where a person moves away. And it's not clear whether or not they can list, you know -- whether they can register at mom's or not once they're away from home. So a person who lives in Dallas, but goes to UT Austin, but they intend to vote in Dallas because that's what they consider their residence, we're not sure -- and they haven't registered to vote already -- whether or not they can vote in Dallas -- register to vote in Dallas.

Id. at 74:6-19 (App. 181); *see also id.* at 82:18-83:12 (App. 183-84) (similar and finding the "language" of the Temporary Relocation Provision "to be confusing to us and to voters"); *id.* at 90:13-19 (App. 186) (similar). County officials in Travis County—home to the University of Texas's flagship campus and over 40,000 undergraduates—agree that the Temporary Relocation Provision "is a bit of a gray area and it is a bit unclear." Nagy Tr. 167:5-11 (App. 132); *see also* Longoria Tr. 82:13-91:2 (App. 150) (testifying the Temporary Relocation Provision is unclear and Harris County requires additional guidance from the Secretary on its meaning). Emails produced by the Secretary's office show that non-party county officials shared these concerns. *See, e.g.*, Jan. 18, 2022 Email from Charisa Hauser, Rockwall Cnty. Sr. Registration Clerk (App. 388); Aug. 23, 2021 Email from Alicia Monk, Jefferson Cnty. Voter Registration Supervisor (App. 386).

Younger voters in Texas are further burdened by the Temporary Relocation Provision because it chills the activities of groups that seek to educate them about voting, including Plaintiffs, whose missions include helping younger Texans register to vote. *E.g.*, Voto Latino Tr. 26:8-12

(App. 086); LULAC Tr. 14:12-18 (App. 102). The people Voto Latino seeks to register are "disproportionally young people," many of whom "live on college campuses." Voto Latino Tr. 52:2-7 (App. 090). But as the President of Voto Latino testified, SB 1111 "prohibits [the group] from affirmatively stating that they're not going to be on the wrong side of the law if they register to vote on campus. We don't know that because it is not clear." *Id*. (App. 090). Because of the Temporary Relocation Provision, groups like Voto Latino "can't even tell the person if they can register on a college campus or not." *Id.* at 79:9-12 (App. 097). SB 1111 therefore deprives younger votes of information intended to help them register to vote.

Defendants have not presented any credible interest in the Temporary Relocation Provision. Several Defendants could not name an interest in the provision at all. *See, e.g.*, Longoria Tr. 92:3-6 (App. 160) ("Q. Can you name any interests of the Harris County Elections Administrator that are served by the temporary relocation provision? A. No."); Nagy Tr. 169:16-171:13 (App. 133). Mr. Ingram suggested that Texas has an interest in "making sure that people vote where they live so that they get the proper ballot style and don't improperly skew an election someplace else." Ingram Tr. 129:9-16 (App. 247); *see also* Torres Tr. 70:15-20 (App. 230). But Defendants have put forth no evidence that the Provision serves this interest. Nor could they. Evidence of Texas voters giving false residence information on voter registration forms is vanishingly rare, and Defendants fail to explain how the Temporary Relocation Provision addresses that supposed problem.

C. The PO Box Provision unduly burdens the right to vote.

Finally, the PO Box Provision also burdens voters without justification. Texas law requires registrars to send confirmation notices to voters whose current residences appear different from that indicated on their registration records. *See* Tex. Elec. Code § 15.051(a). Prior to the enactment of SB 1111, Texas counties previously used a single form to confirm a voter's registration address.

See Ingram Tr. 205:17-207:2 (App. 257). The pre-existing registration confirmation form was sent to voters whose addresses appeared to have changed, along with voters whose addresses did not appear to correspond to a residence. *Id.* at 206:18-207:2 (App. 258-59); Longoria Tr. 101:18-102:5 (App. 161). This form did not require any voter to submit any documentation of residence when submitting their confirmation form, regardless of why they were first sent a confirmation form. Ingram Tr. 207:3-6 (App. 259).

The PO Box Provision establishes a new and burdensome confirmation process for voters who register at a "commercial post office box or similar location that does not correspond to a residence." Tex. Elec. Code § 15.051(a) (App. 001). Specifically, SB 1111 created a new confirmation form—the Notice to Confirm Voter Registration Address by Providing Documentation (Form 17-4)—for these voters alone. Ingram Tr. 216:20-217:7 (App. 262-63); Form 17-4 (App. 382). If a registrar determines or a challenger alleges that a voter's residence address is a commercial post office box or similar location that does not correspond to a residence, the voter must now submit "evidence of the voter's residence," unless the voter is able to affirm they are exempted. SB 1111 § 4 (App. 2-3) (enacting Tex. Elec. Code § 15.053(a)(3)). SB 1111 and the new form require that these voters photocopy a form of identification; complete and sign the form with a wet signature; and then submit the documentation and completed form to a registrar. SB 1111 §§ 2, 4-5 (App. 001-05). This new, more burdensome confirmation process applies only to those voters whose registration addresses appear to be commercial post office boxes or the like. All other voters continue to use the existing forms, which do not require any proof of residence. Ingram Tr. 218:12-17 (App. 264).

Mr. Ingram acknowledged the disparate burden imposed by this provision on similarly-situated voters, admitting he did not "know why we can't use [Form 17-4] as a change of address

form. If they're not still claiming to live at the [commercial post office box or the like], then I think we should maybe use this as a change of address form . . . ." *Id.* at 221:4-224:2 (App. 265-68). But even though Mr. Ingram agreed that such a voter has supplied all the information necessary under the existing confirmation notice, he explained they would not satisfy the new PO Box Provision without supplying proof of residence. *Id.* at 222:1-4 (App. 266) ("If they put a different address on here and they don't supply a copy of their driver's license or anything else on that list, then they would still go on the suspense list."). The PO Box Provision thus creates additional burdens for some voters—particularly transient voters and others without fixed addresses.

Defendants fare no better in attempting to put forward an interest justifying the PO Box Provision. When asked what interest the provision serves, Mr. Ingram explained:

> A. Well, again, it's important to recognize this is not in the context of an address change. This is where someone resides at an address that they're not – they're not moving, there's not any evidence that they are moving. They live there or they say they live there and that address is not a residence.

Ingram Tr. 207:11-17 (App. 259). But that explanation fails to justify the added burden placed on voters who supply a qualifying residential address in response to a confirmation notice. As Mr. Ingram later admitted, a voter subject to the PO Box Provision who supplies a valid residential address in response to a confirmation notice still fails to cure if they cannot submit proof of residence, or affirm that they qualify for an exemption. *Id.* at 221:21-222:4 (App. 265-66). Thus, even to the extent some Defendants have pointed to superficially legitimate state interests in the PO Box Provision, they have not explained how the law advances such interest, and the provision thus violates the First and Fourteenth Amendments. *See Soltysik v. Padilla*, 910 F.3d 438, 447 (9th Cir. 2018) (even a "important government interest" could not justify the burden imposed because the court "struggled to understand how [the challenged] regime . . . advance[d] that goal").

III. The Temporary Relocation Provision violates the Twenty-Sixth Amendment by preventing newly enfranchised young Texans from exercising their right to vote.

The Temporary Relocation Provision denies and abridges the voting rights of Texas college students who live away from home, but who do not intend to remain where they are indefinitely, in violation of the Twenty-Sixth Amendment. Such an age-based barrier to voting can survive neither strict scrutiny nor rational-basis review. *See* Compl. ¶¶ 74-78.

The Twenty-Sixth Amendment provides that "[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age." U.S. Const. amend. XXVI, § 1. Under the Twenty-Sixth Amendment, a statute "denies" the right to vote if it results in a person being "prohibited from voting," and "abridges" the right to vote if it "makes voting *more difficult* for that person than it was before the law was enacted or enforced." *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 188, 191 (5th Cir. 2020) ("*TDP II*") (further explaining that a law that "creates a barrier that makes it more difficult for the challenger to exercise her right to vote relative to the *status quo*" abridges the right to vote). The applicable level of scrutiny for Twenty-Sixth Amendment claims remains an open question in the Fifth Circuit, *id.* at 194, but other circuits have held that laws denying or abridging the right to vote an account of age are subject to heightened judicial scrutiny, *see, e.g.*, *Luft v. Evers*, 963 F.3d 665, 671 (7th Cir. 2020) (applying *Anderson-Burdick* framework); *Walgren v. Howes*, 482 F.2d 95, 100-102 (1st Cir. 1973) (explaining that "compelling interest" standard would apply where town denied or abridged right to vote).

"The legislative history preceding the adoption of the amendment clearly evidences the purpose not only of extending the voting right to younger voters but also of encouraging their participation by the elimination of all unnecessary burdens and barriers." *Worden v. Mercer Cnty. Bd. of Elections*, 294 A.2d 233, 237 (N.J. 1972). The Twenty-Sixth Amendment thus "nullifies

sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise . . . although the abstract right to vote may remain unrestricted." *Jolicoeur v. Mihaly*, 488 P.2d 1, 4 (Cal. 1971) (quoting *Lane v. Wilson*, 307 U.S. 268, 275 (1939)); *accord TDP II*, 978 F.3d at 191 ("We agree with *Jolicoeur* to the extent it means that a voting scheme that adds barriers primarily for younger voters constitutes an abridgement due to age."). While the Twenty-Sixth Amendment "speaks only to age discrimination, it has . . . particular relevance for the college youth," who constitute a significant portion of voters enfranchised by the amendment. *Walgren*, 482 F.2d at 101.

A. The Temporary Relocation Provision denies and abridges many young Texans the right to vote because of their age.

By restricting registration opportunities for college students—including Plaintiffs' members and constituents—SB 1111 denies and abridges the right to vote to newly enfranchised young Texans. The Temporary Relocation Provision prohibits "[a] person [from] establish[ing] a residence at any place the person has not inhabited" and further commands that "[a] person may not designate a previous residence as a home and fixed place of habitation unless the person inhabits the place at the time of designation and intends to remain." SB 1111 § 1 (App. 001) (adding Tex. Elec. Code § 1.015(f)). Consequently, college students and other young Texans who have temporarily relocated cannot register to vote using a home that they do not actively "inhabit" when they attempt to register even if they consider that previous address to be their home. *See id.* (App. 001); *see also* Holbein Rep. at 39-40 (App. 065-66). Texas law already provided that "[a] person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home," Tex. Elec. Code § 1.015(d), voters who do not intend to remain in their temporary locations are precluded from registering to vote altogether.

As Dr. Holbein explains, "[i]n Texas the large majority of students living at dorms use . . . temporary housing locations as their voter registration address." Holbein Rep. at 39-40 (App. 065-66). SB 1111 prohibits these students from establishing residence where they attend school temporarily, or at the home they inhabited before leaving for school, offering no other avenue for college students to register and vote. The Temporary Relocation Provision therefore denies and abridges the right to vote of many young Texans.

B. The Temporary Relocation Provision fails strict scrutiny.

The Temporary Relocation Provision should be subject to strict scrutiny because it denies young a fundamental right—the right to vote. *See Duarte v. City of Lewisville*, 858 F.3d 348, 353–54 (5th Cir. 2017) (explaining that in the equal protection context, "[s]trict scrutiny is required if the legislative classification operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution"); *Walgren*, 482 F.2d at 100-02. The Temporary Relocation Provision cannot survive strict scrutiny because it is not narrowly tailored to any compelling government interest.

Here again, the State relies on its interest in "making sure that people vote where they live so that they get the proper ballot style and don't improperly skew an election someplace else." Ingram Tr. 129:9-16 (App. 247); *see also* Torres Tr. 70:15-20 (App. 230). But even if this interest is compelling, Defendants have put forth no evidence that the Temporary Relocation Provision advances it. Nor could Defendants show that it is narrowly tailored. Texas law elsewhere prohibits voters from providing false residence information on a voter registration form, which accomplishes the same objectives—ensuring people vote where they live—without depriving young voters a place to register and vote with confidence that they are not breaking the law. *See* Tex. Elec. Code § 13.007. Further, by prohibiting young Texans from registering to vote at a place where they may not currently reside but that may well be their domicile—their parents' home, for example—the

Temporary Relocation Provision criminalizes a wider range of conduct than necessary to prevent voter fraud. It cannot withstand strict scrutiny.

IV. Plaintiffs have suffered a concrete injury as a direct result of SB 1111 and have standing to raise this challenge.

Organizational plaintiffs can establish standing in two ways: through "associational standing" or "organizational standing." *Tenth St. Residential Ass'n v. City of Dall.*, 968 F.3d 492, 500 (5th Cir. 2020). Associational standing "requires that the individual members of the group each have standing and that 'the interest the association seeks to protect be germane to its purpose.'" *Id.* (quoting *OCA-Greater Hous. v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017)) Organizational standing, on the other hand, "does not depend upon the standing of the organization's members" but instead on whether the organization itself has standing. *Id.* Both theories turn on the familiar three-pronged test of (1) injury, (2) traceability, and (3) redressability. *Id.*; *see also Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

Plaintiffs LULAC and Voto Latino have each established organizational standing for two reasons. *First*, SB 1111 injures both by deterring them from engaging in voter registration efforts. SB 1111 is unclear and both organizations face the threat of criminal prosecution for misadvising potential registrants about what the law requires. *See* Voto Latino Tr. 51:3-24 (App. 089), 106:22-107:19 (App. 099-100); LULAC Tr. 31:14-32:4 (App. 106-07). As Ms. Kumar explained, Voto Latino's members "are disproportionately young people" and SB 1111 deters Voto Latino from communicating with them:

> Our job is to provide them with accurate information. So [when] we don't have accurate information where they will not be on the wrong side of the law, that impacts our ability to speak to them freely . . . It's that we can't in good heart give someone erroneous information if they, in fact, may be penalized and on the wrong side of the law. . . So we have an affect in our ability to actually communicate with our audience because we just the – the law seems to be not clear and it hurts our ability to communicate directly.

Id. at 53:17-54:16 (App. 090-091); *see also id.* at 70:20-71:10 (App. 095-96) ("If we can't speak freely to our audience on their rights and where they can register, where they do not fall afoul of the law, it . . . makes it difficult for us to be able to engage in our primary purpose of" voter enfranchisement); *id*. at 106:22-107:19 (App. 099-100) ("The totality of what [SB 1111] says makes it very difficult for us to be able to communicate . . . with our constituents and our potential registered voter on where they can establish residency. . . because we know Texas also prosecutes people who accidentally may not understand the law").

These activities are protected under the First Amendment, *see Steen*, 732 F.3d at 389, and the threat of prosecution against Plaintiffs for engaging in such expression constitutes an injury for standing purposes. *See Speech First, Inc. v. Fenves*, 979 F.3d 319, 335 (5th Cir. 2020). These injuries are traceable to the County Defendants who process voter registration applications, *see* Eldred Tr. 196:1-6, and are required to notify the Attorney General, Secretary, and local prosecutors if they become aware of unlawful voting or registration. Tex. Elec. Code § 15.028. "[P]otential enforcement of [SB 1111 has] caused [Plaintiffs'] self-censorship, and the injury could be redressed by enjoining enforcement of those policies." *Speech First*, 979 F.3d at 338 (quoting *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 661 (5th Cir. 2006)).

Second, SB 1111 injures LULAC and Voto Latino directly by forcing them to divert resources away from their routine activities. "The Supreme Court has recognized that when an organization's ability to pursue its mission is 'perceptibly impaired' because it has 'diverted significant resources to counteract the defendant's conduct,' it has suffered an injury under Article III." *Tenth St. Residential Ass'n v. City of Dallas*, 968 F.3d 492, 500 (5th Cir. 2020) (quoting *City of Kyle*, 626 F.3d at 238). In *OCA-Greater Houston v. Texas*, the Fifth Circuit held that a plaintiff established an organizational injury by showing that its mission of getting out the vote was harmed

by the "additional time and effort spent explaining the [challenged] provisions at issue to limited English proficient voters," which "frustrate[d] and complicate[d] its routine community outreach activities." 867 F.3d at 610; *see also Lewis v. Hughs*, 475 F. Supp. 3d 597, 612 (W.D. Tex. 2020) (holding Voto Latino established standing where "its mission is registering voters and getting out the vote, and it alleges that this mission is frustrated by its need to divert funds to educate voters on the burdens imposed by the challenged restrictions"), *rev'd and remanded on other grounds sub nom. Lewis v. Scott*, 28 F.4th 659 (5th Cir. 2022).

Plaintiffs have likewise shown that they must divert resources from their usual activities to lessen SB 1111's harm to their missions. LULAC's mission is "to ensure that the civil rights of Latinos in the United States are protected" by, among other things, "creating programs that help young men and women [achieve] economic and political empowerment in the United States." LULAC Tr. 14:14-18 (App. 102). LULAC, however, has declined to fund immigration reform and criminal justice reform programs this year to focus on educating voters about SB 1111's requirements. *Id.* at 72:11-73:5 (App. 113-14). LULAC's president testified that, due to SB 1111, the group is expending funds "that we would have usually sent somewhere else" such as "on scholarships or educational programs or other areas" related to the organization's mission. *Id.* at 30:10-13 (App. 105). LULAC will be forced to rework information it provides to candidates, voters, and campaign workers due to SB 1111 and is already "having to spend more money on our voter registration and get out the vote efforts" than in the past. *Id.* at 28:19-30:13 (App. 103-105) ("We're looking at the first time we're going to be spending over maybe $1 million to $2 million in Texas to deal with the issues and the residency requirements and advising students"). It will also have to change the information it supplies at voter registration drives to inform individuals of SB 1111's new requirements and has had to retrain deputy voter registrars. *Id.* at 70:20-25 (App. 112).

Similarly, Voto Latino routinely engages in voter registration drives throughout the country to further its mission of mobilizing Latino voters. Voto Latino Tr. 26:8-17 (App. 086). But due to the need to educate voters about SB 1111, Voto Latino has diverted funding away from its efforts in other states to focus on Texas. *Id.* at 90:12-17 (App. 098). As a result, Voto Latino had to shut down its voter registration program in Colorado—the first time it was not able to run a voter registration drive there in over a decade. *Id.* at 55:17-24 (App. 093), 56:7-9 (App. 094); 90:12-17 (App. 098). It also had to retool its strategy and communications in Texas, and it will have to retrain volunteers. As a result of this diversion of time and funds, Voto Latino dropped the number of low propensity voters it plans to reach in Texas by 25 percent. *Id.* at 56:17-57:13 (App. 094).

This second organizational injury is also traceable to the County Defendants' conduct because Plaintiffs have diverted resources from their routine activities to educate citizens about requirements in SB 1111 that County Defendants implement by processing voter registration applicationsAnd these injuries will be redressed by a favorable decision because an order enjoining SB 1111 will ensure that Plaintiffs no longer need to redirect resources away from the routine activities discussed above in order to educate voters about the challenged provisions. LULAC Tr. 72:11-16 (App. 113), 72:24-73:5 (App. 113-14); Voto Latino Tr. 55:17-24 (App. 093), 56:7-9 (App. 094).

LULAC also has associational standing because SB 1111 injures its members. LULAC is a membership organization with a large youth population, including collegiate chapters across Texas. LULAC Tr. 31:14-32:4 (App. 106-07). It has more than 500 members under the age of 18 who "are going to be registering to vote and leaving for college or the military." *Id.* at 31:7-10 (App. 106). Once these members are eligible to register and vote, the Residence Restriction will unconstitutionally chill their protected speech because of its vague terms backed by the potential

for criminal prosecution. *Id.* at 31:10-13 (App. 106). And the Temporary Relocation Provision will make it more difficult for members that relocate for school to register to vote in the future. In addition to these members under the age of 18, LULAC also has collegiate councils at post-secondary schools across Texas. *Id.* at 31:14-32:9 (App. 106-07). LULAC's younger members "are disproportionately being impacted by these residency requirements." *Id.* at 31:10-11 (App. 106). The Temporary Relocation Provision is chilling the protected speech of LULAC members—and college students generally—by discouraging them from registering to vote. *Id.* at 31:2-32:13 (App. 106-07) (discussing "the chilling impact it may have on [young LULAC members] registering to vote in the first place" and on college students registering to vote). The Temporary Relocation Provision also unduly burdens younger LULAC members and the members of LULAC collegiate councils and creates an age-based barrier to voting. *Id.* at 47:9-17 (App. 109); 65:8-19 (App. 111). LULAC's suit on behalf of these voters is germane to its purpose as an organization that seeks to register and politically empower younger Latinos. LULAC Tr. 14:12-18 (App. 102); 63:21-25 (App. 110). As with the organizational injuries discussed above, these ongoing and future injuries to LULAC's members are traceable to the Defendants who enforce SB 1111 and are redressable by a court order enjoining enforcement of the statute. *Speech First*, 979 F.3d at 338.

CONCLUSION

For the foregoing reasons, Plaintiffs are entitled to summary judgment as a matter of law on Counts I-III of the Complaint.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

On May 9, 2022, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Western District of Texas, using the electronic case filing system of the Court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Uzoma N. Nkwonta
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