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,

Intervenors.

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

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PLAINTIFFS' RESPONSE IN OPPOSITION TO INTERVENORS' MOTION FOR STAY PENDING APPEAL

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INTRODUCTION

Plaintiffs challenged three newly-enacted provisions that inject confusion and unlawful restrictions into the registration process. This Court correctly found that these provisions violate the Constitution and enjoined them. Intervenors now seek a stay of that injunction, but their motion is largely a retread of the same arguments this Court soundly rejected and they do not come close to meeting the high bar to warrant such extraordinary relief. Despite this weak showing, Intervenors have already rushed to seek similar relief from the Court of Appeals.

The first provision at issue (the "Residence Restriction") bars prospective voters from establishing a residence "for the purpose of influencing the outcome of a certain election." Tex. Elec. Code § 1.015(b). As this Court correctly held, the Residence Restriction prohibits Texans from "voting where they live, depending on what 'purpose' they have for living there.'" Order at 29. It further harms Plaintiffs—two organizations that actively register voters in Texas—by chilling their ability to encourage citizens to register and requiring them to divert resources in response to the law's harmful effects.

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The Attorney General offers no defense of this provision as written, and instead claims it only bars people from registering where they do *not* live—something already forbidden by Texas law. But his interpretation of the Residence Restriction is nonsensical; indeed, his co-Intervenors and signatories of the same motion to stay—Real and Medina Counties—rejected that interpretation in their depositions and have refused to join the Attorney General's argument on this point. Intervenors' Motion for Stay (hereinafter "Mot.") at 10 n.1, ECF No. 174. As this Court explained, the Attorney General's interpretation is simply "not what the Residence Provision says." Order at 28. Intervenors—who cannot even agree on the Residence Restriction's meaning—have failed to show they are likely to succeed on the merits.

This Court also correctly found that the Temporary Relocation Provision left many voters "without a country" and confused election officials in the process. *Id.* at 30. The provision prohibits registration at any residence the voter does not "inhabit" and "intend[] to remain," Tex. Elec. Code. § 1.015(f), yet Texas law simultaneously bars voters from acquiring residence at a place they inhabit for "temporary purposes only." *Id*. § 1.015(c)-(d). Thus, Texans who relocate temporarily for work, school, or any other reason cannot register at their temporary abode, or at their permanent homes, because they do not "inhabit" and "intend to remain" in either location. Intervenors continue to ignore this inherent inconsistency and the confusion it causes, and they offer *no* rationale for this added restriction given that Texas law already required voters to register where they live.

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Finally, the PO Box Provision, as this Court recognized, erects a pointless burden on voters seeking to cure their registrations. *Id*. § 15.051(a). Previously, any voter who appeared to live at an address different from the residence on their registration records could correct their registration by providing their residential address on a confirmation form. SB 1111 selectively burdens one class of voters—those whose registrations reflect non-residential addresses, such as PO Boxes—by creating a new form that requires them to submit documentary proof of residence when correcting their registrations, while allowing other voters to update their registration with a new residential address without any additional documentation. The Secretary of State even admitted that this rule serves no purpose, and that registrars should be able to update a registration without documentation. Intervenors, again, ignore this concession, which undercuts any likelihood of success on the merits.

Because the merits so strongly weigh in Plaintiffs' favor, Intervenors use this stay motion as a vehicle to re-litigate the settled issue of standing. But this Court correctly found that Plaintiffs

established organizational standing in two ways: through unrefuted testimony that SB 1111 chills their ability to speak with voters about registering to vote, and also by requiring them to divert resources from other programs. Both grounds were supported by testimony—ignored by Intervenors during summary judgment briefing and again now—that, *specifically because of SB 1111*, Voto Latino had to shutter its Colorado voter registration program, and LULAC had to implement a novel voter education drive in Texas at the expense of its immigration and criminal justice advocacy programs.

The remaining equitable factors also weigh against a stay. Not only will Intervenors suffer no harm from being unable to enforce an unconstitutional law which, on their reading, adds nothing to existing Texas law, but the county registrars who were originally sued by Plaintiffs—and are charged with enforcing laws like SB 1111—are uniformly confused by the law and, tellingly, do not join this appeal. At bottom, it is SB 1111, not this Court's injunction, that poses the greatest risk of confusion and disenfranchisement in the upcoming election. This Court should deny Intervenors' request to stay its grant of an injunction.

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LEGAL STANDARD

When weighing a stay request, courts consider: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quotation omitted). Because it is an "intrusion into the ordinary processes of administration and judicial review," the "party requesting a stay bears the burden of showing" a stay is justified. *Id.* at 427, 433–34 (quotation omitted).

ARGUMENT

I. Intervenors have no likelihood of success on the merits on appeal.

A. This Court correctly found that the Residence Restriction violates the First Amendment.

The Residence Restriction violates the First Amendment because it criminalizes political expression. The provision states that, "[a] person may not establish residence for the purpose of influencing the outcome of a certain election." Tex. Elec. Code. § 1.015(b). While the provision does not identify activities that "influence the outcome of an election," Defendants testified that such activities include voting, running for office, and volunteering for political campaigns. ECF No. 141 at App. 182, App. 188–89, App. 240.

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The Attorney General—but, notably, not Real or Medina Counties, *see* Mot. at 10 n.1—contends this provision simply "applies where a person claims a residence at a location where he or she is not domiciled in order to influence the outcome of a certain election." *Id*. at 10. In support of this interpretation, the Attorney General does not rely upon reference to any statutory text, but rather "the circumstances and events leading up to SB 1111's enactment." *Id*. But "[i]t is cardinal law in Texas that a court construes a statute, 'first, by looking to the plain and common meaning of the statute's words,'" *Fitzgerald v. Advanced Spine Fixation Sys.*, 996 S.W.2d 864, 865–66 (Tex. 1999), and determines the Legislature's intent from "the plain and common meaning of the statute's words," *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 25 (Tex. 2003). The phrase "influencing the outcome of a certain election," encompasses activities protected by the First Amendment and the Residence Restriction punishes establishing residency in Texas to engage in such activities. The Attorney General's gloss on the Residence Restriction cannot be squared with the plain meaning of these terms.

Nor is the Attorney General's interpretation plausible when the provisions defining residence are "read in [their] entirety." Mot. at 10. Contrary to the Attorney General's claims, reading the Residence Restriction in context with § 1.015(a) changes nothing. That provision limits a person to claiming residence at their "home and fixed place of habitation." Tex. Elec. Code. § 1.015(a). Subsection (b)—the Residence Restriction—adds that a person may not "establish" a Residence as defined in § 1.015(a) if they do so "for the purpose of influencing the outcome of a certain election." *Id.* § 1.015(b). The provision thus prohibits establishing residence "for the purpose of influencing the outcome of a certain election" without regard to where a person actually lives.

While the Attorney General suggests that this Court should have adopted the Secretary's interpretation of the provision—offered for the first (and only) time through ad hoc deposition testimony—Texas law is clear that the deference owed to an agency's interpretation of a statute only "applies to formal opinions adopted after formal proceedings, not isolated comments during a hearing or opinions in [informal] documents." *Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 748 (2006); ECF No. 141 at App. 238–39. Regardless, the witness's stray comments about the meaning of the Residence Restriction would not be entitled to deference in any form because it "contradict[s] the plain language of the statute." *R.R. Comm'n of Tex. v. Tex. Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 625 (Tex. 2011).

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Intervenors otherwise offer no argument on the merits of the statute as written. That is unsurprising: on its face, the provision is vague, overbroad, regulates core political speech, and operates as a content-based regulation. The County Defendants who process registration applications in Texas's largest counties consistently testified that they do not understand the Residence Restriction. *E.g.*, ECF No. 141 at App. 118–19 ("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 App. 177 ("I don't understand what ["for the purpose of"] means in reference to this – taken in the whole context of the overall sentence. Q: And is the same true for 'influencing the outcome of a certain election'? A: Yes."); *id*. at 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."). They further testified that they are unable to answer questions about the provision due to its vagueness, despite frequently being asked questions about registering to vote by the public. *E.g.*, *id.* at App. 116, App. 143–44, App. 167–68, App. 206, App. 211.

Although "[f]lexibility in a statute is permissible," the Residence Restriction fails to "provide fair notice, so that its prohibitions may be avoided by those who wish to do so." *Serv. Emps. Intern. Union v. City of Houston*, 595 F.3d 588, 596–97 (5th Cir. 2010). And Intervenors' textually baseless effort to narrow the law's scope is no cure; there is "no authority lying in a federal court to conduct a narrowing of a vague state regulation." *Id*. Moreover, the vagueness of the Residence Restriction deters political expression and chills Plaintiffs' speech by placing Plaintiffs at risk of prosecution for misadvising registrants—because it is illegal in Texas for a person to "request[], command[], coerce[], or attempt[] to induce another person to make a false statement on a registration application." Tex. Elec. Code § 13.007(a)(2); *id.* §§ 64.012, 276.012; *see also* Order at 11.[1] As this Court explained, "[t]he threat of prosecution is particularly fraught

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[1] The Residence Restriction is unlike the law at issue in *Voting for Am., Inc. v. Steen*, 732 F.3d 382 (5th Cir. 2013), which regulated "the receipt and delivery of completed voter-registration applications" and did not "restrict or regulate who can advocate pro-voter registration messages, the manner in which they may do so, or any communicative conduct." *Id.* at 391. Even assuming that "establishing residence for the purpose of influencing the outcome of a certain election" is conduct rather than speech, it is precisely the sort of "inherently expressive" conduct that is entitled to First Amendment protection because of its "intent to convey a particular message." *Id.* at 388.

where, as here, the State has publicly declared one of its key priorities to be 'to investigate and prosecute the increasing allegations of voter fraud to ensure election integrity within Texas.'" Order at 11 (quoting Tex. Att'y Gen., *Election Integrity* (July 28, 2022)).[2]

Vagueness aside, the Residence Restriction violates the First Amendment for another independent reason: it "directly regulates core political speech." *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 207 (1999) (Thomas, J., concurring) (collecting cases); *Steen*, 732 F.3d at 391 (describing voter registration as speech). 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 (Thomas, J., concurring). Because the Residence Restriction targets *only* political speech as a prohibited basis for establishing residency and thus "single[s] out a specific subject matter for differential treatment," it is a content-based restriction "even if it does not discriminate among viewpoints within that subject matter." *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 142 S. Ct. 1464, 1472 (2022) (quotation omitted). Such "regulations of core political speech" are "presumptively invalid" and subject to strict scrutiny. *Buckley*, 525 U.S. at 208 (finding restrictions on political speech "plainly impose a 'severe burden.'") (Thomas, J., concurring).

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[2] Intervenors cite Voto Latino's testimony in response to the question, "You're not subject to criminal liability if you speak with college students, correct, about voter registration?" in which Voto Latino's 30(b)(6) representative and President Maria Teresa Kumar responded, "That is correct." Her answer was accurate as the question was presented. Plaintiffs' potential criminal liability would come from inducing false statements on registration applications as a result of SB 1111's confusing requirements, not the simple act of speaking with a college student about registration. As the rest of Voto Latino's testimony, including on that same page of the appendix—ECF No. 141 at App. 91—makes clear, Voto Latino was concerned about unintentionally providing false information and ceased some of its communications with young voters as a result. That is concrete harm.

Intervenors have not satisfied their burden "to rebut [this] presumption." *United States v. Stevens*, 559 U.S. 460, 468 (2010). They previously suggested the Residence Restriction serves the State's interests in "preventing fraud, maintaining election uniformity, facilitating election administration and avoiding unfair election impacts," ECF No. 141 at App. 357–58, but even assuming these interests are compelling, the provision is not narrowly tailored to achieve them. For one, it restricts the political speech of those who *do* live at their designated residence. For another, the Residence Restriction is not limited to voting; it broadly prevents establishing residence "for the purpose of *influencing the outcome of a certain election*." Defendants admitted that voting is not the only way a person can influence an election outcome. ECF No. 141 at App. 118–119, App. 182, App. 188–89, App. 240. Such sweeping bans on political speech cannot satisfy any degree of constitutional scrutiny, let alone strict scrutiny.

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Finally, in yet another attempt to evade the statute's plain language, Intervenors argue that because Texas courts have not yet interpreted the Residence Restriction, this Court should seek guidance from the Texas Supreme Court on its meaning. Mot. at 12. But certification is reserved for only "exceptional" cases, *Lavespere v. Niagra Mach. & Tool Works, Inc.*, 920 F.2d 259, 262 (5th Cir. 1990), and the decision to certify turns in part on "the closeness of the question and the existence of sufficient sources of state law." *Swindol v. Aurora Flight Scis. Corp.*, 805 F.3d 516, 522 (5th Cir. 2015). The Fifth Circuit has granted certification, for instance, where "the plain text of the statute does not appear to answer" the statutory interpretation question at issue. *JCB, Inc. v. Horsburgh & Scott Co.*, 912 F.3d 238, 241 (5th Cir. 2018). Here, the Attorney General seeks certification not because the law is unsettled, but instead to rewrite a provision that is plainly unconstitutional. No federal or state-law principle of statutory interpretation supports the Attorney

General's reading of the statute, and the "lack of state precedent" is not a reason to grant a stay. Mot. at 12.

B. This Court correctly found that the Temporary Relocation Provision violates the First and Fourteenth Amendments.

This Court agreed that the Temporary Relocation Provision creates a "man without a country," Order at 30, and Intervenors offer point to no evidence or argument that suggests otherwise. The Provision states 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." Tex. Elec. Code § 1.015(f). But some Texans, whether for school, work, or family obligations, spend extended periods away from their homes on a temporary basis. These would-be voters cannot register at their home while temporarily away from it because, by definition, they do not "inhabit[] the place at the time of designation and intend[] to remain there." Tex. Elec. Code § 1.015(f). At the same time, they cannot register at temporary abodes that they do not consider their "home and fixed place of habitation to which [they] intend[] to return after any temporary absence," *id.* § 1.015(a), and Texas law anyways bars claiming residence where a person resides "for temporary purposes only," *id.* § 1.015(c)–(d). Unrebutted expert testimony below confirmed that college students are particularly likely to be left without a home for voting purposes because many do not consider their temporary school housing a "residence" as defined by law, but also do not "inhabit" the family residences they are away from. ECF No. 141 at App. 66–69. This Court correctly found this provision could "not overcome any degree of constitutional scrutiny" because it imposes a "severe" burden on Texans temporarily living away from home, leaving them "without *any* residence" for voter registration purposes while advancing no countervailing state interests. Order at 30–31.

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The County Defendants admitted this provision creates confusion as to where students can claim residence. El Paso County's Election Administrator 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. ECF No. 141 at App. 198–99, App. 201. Dallas County's 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." *Id.* at App. 169. Thus, he is "not entirely clear on how to answer the questions posed to [Dallas County] by some student voters." *Id.* at App. 170. Officials in Travis County—home to over 40,000 undergraduates—agree the provision is "a gray area" and "a bit unclear." *Id.* at App. 132; *see also id*. at App. 150.

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Intervenors insist the Provision is sensible because college students may continue to designate their family home as their residence under § 1.015(c). Mot. at 14. That argument, once again, fails to reconcile Intervenors' proposed interpretation with the statute's plain language. Nowhere do Intervenors explain how a student away from home seeking to register at their parents' address can comply with § 1.015(f), which requires they "inhabit[] the place at the time of designation." Nor do they identify a sufficiently important state interest to justify this broad restriction on voter registration. For these reasons alone, they are unlikely to prevail on the merits. *See Common Cause/N.Y. v. Brehm*, 432 F. Supp. 3d 285, 314 (S.D.N.Y. 2020) (granting judgment where the "State provide[d] no legitimate interest to justify th[e] burden" imposed by law).

Finally, Intervenors' objection to the Court's injunction of § 1.015(f), which prohibits "establish[ing] a residence at any place the person has not inhabited," is both academic and incorrect. Section 1.015(a) already defines a residence as a registrant's "domicile, that is, one's home and fixed place of habitation," which plainly excludes a home a person has "not inhabited."

While this Court had a duty "to nullify [no] more of a legislature's work than is necessary," so too did it have a duty to "restrain" itself from "rewriting state law to conform to constitutional requirements." *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 329 (2006) (cleaned up). Intervenors cite no authority that courts must excise *specific sentences* from otherwise unconstitutional subsections, particularly where all that remains is surplusage. Regardless, Plaintiffs never alleged voters may register at residences they have not inhabited; any overbreadth in the injunction does not establish that Intervenors are likely to succeed "on the merits" of Plaintiffs' claims, nor does it cast doubt on this Court's correct determination that § 1.015(f) imposes an unconstitutional burden.

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C. This Court correctly found that the PO Box Provision violates the First and Fourteenth Amendments.

The PO Box Provision unjustifiably burdens voters who cure their registrations by supplying valid residential addresses after previously registering at a "commercial post office box or similar location that does not correspond to a residence." Tex. Elec. Code § 15.051(a). Supplying a valid residential address was enough to cure an improper registration address pre-SB 1111, but the statute creates a new form that requires voters registered at non-residential addresses to submit "evidence of [their] residence," *id.* § 15.053(a)(3), specifically by photocopying acceptable identification, completing and signing the form with a wet signature, and submitting the documentation to a registrar. *Id.* § 15.053–.054. All other voters may continue to use the pre-existing form to change their residence address without providing proof of residence. ECF No. 141 at App. 264.

The Secretary's Rule 30(b) corporate representative admitted this provision serves no purpose when a voter supplies a valid residential address. He further explained that he did not "know why we can't use [the new form] as a change of address form. If they're not still claiming

to live at the [commercial PO box or the like], then I think we should maybe use this as a change of address form . . . ." *Id.* at App. 265–68. He agreed that a voter whose registration records reflect a non-residential address, but has supplied all the information necessary to cure their registration, would still have their registration suspended absent proof of residence. *Id.* at App. 266. But similarly situated voters updating an inaccurate residential address face no such burden.

Intervenors ignore the Secretary's concession, quibbling instead that suspended voters may still vote by complying with statutory cure provisions if they later vote in person. Mot. at 9. That does not vindicate the burdensome application of the provision correctly enjoined by this Court. *Cf. Fish v. Schwab*, 957 F.3d 1105, 1131–32 (10th Cir. 2020) (rejecting speculative suggestion that voters may later cure applications), *cert. denied*, 141 S. Ct. 965 (2020). The State must explain what "interests make it necessary to burden the plaintiff's rights" to begin with. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). The Secretary conceded there is no reason to treat individuals offering valid residential addresses differently based on their *prior* registration addresses. Because the "State provides no legitimate interest to justify [the law's] burden," *Brehm*, 432 F. Supp. 3d at 314, it is unlawfully burdensome.

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D. This Court correctly found that Plaintiffs have standing.

This Court correctly found that Plaintiffs have Article III organizational standing to bring this action for two reasons. First, SB 1111 injures Plaintiffs by forcing them to divert resources from their routine activities. *Tenth St. Residential Ass'n v. City of Dallas*, 968 F.3d 492, 500 (5th Cir. 2020). Plaintiffs can establish organizational standing by identifying "specific projects [they] had to put on hold" or by "describ[ing] in detail how [they] had to re-double efforts in the community to" further their missions. *NAACP v. City of Kyle*, 626 F.3d 233, 238 (5th Cir. 2010) (quotation omitted). Plaintiffs have done just that: LULAC has declined to fund immigration reform and criminal justice reform programs, and has diverted funding away from its scholarship

programs, to focus on educating voters about SB 1111's requirements. ECF No. 141 at App. 105, App. 113–14. Voto Latino has diverted funding from its voter registration efforts in other states, terminating its Colorado voter registration program altogether. *Id*. at App. 093–94, App. 098. This diversion of resources has impaired Plaintiffs' ability to further their missions and confers standing fir challenge each provision in this case. *Id*. at App. 086, App. 102.

Intervenors argument that Plaintiffs' diversion of resources was not caused by SB 1111 is demonstrably false. *See id.* at App. 098 (Q: "But what specific projects or activities has Voto Latino needed to divert resources from *because of SB 1111*. A: One is reducing the amount of voter contact and outreach and registration that we do within the state of Texas . . . . And the other has been shutting down the Colorado program."); App. 103–05 ("Were looking at the first time we're going to be spending maybe $1 million to $2 million in Texas to deal with the issues and the residency requirements and advising students."). There is nothing "routine" about being forced to cancel a longstanding statewide voter registration program or to launch a *new* program to counteract a law's harmful effects. Both reflect costs "beyond those normally expended" in pursuit of Plaintiffs' missions. *Nat'l Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1434 (D.C. Cir. 1995).

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Second, SB 1111 deters Plaintiffs from engaging in protected First Amendment activities. The law is vague and overbroad, and Plaintiffs face criminal prosecution for misadvising registrants about its requirements. *See supra* pp. 6–7. Undisputed record evidence demonstrates how Plaintiffs' fear of facilitating their (and their constituents') prosecution has burdened their First Amendment Rights. Voto Latino's President testified that SB 1111 "makes it very difficult for us to be able to communicate . . . with our constituents and our potential registered voters on where they can establish residency . . . because we know Texas also prosecutes people who

accidentally may not understand the law." ECF No. 141 at App. 099–100. LULAC's President testified that the organization's ability to "do voter registration drives" and "train" prospective voters would be deterred by the criminal penalties associated with registration violations. *Id.* at App. 110, App. 112.

Intervenors insist there is no risk of prosecution because the Texas Election Code criminalizes registration fraud by voters and not by those who advise them. Mot. at 8. That is wrong. As Plaintiffs explained, it is a crime under Texas law to "knowingly or intentionally . . . request[ ], command[ ], coerce[ ], or attempt[ ] *to induce another person* to make a false statement on a registration application." Tex. Elec. Code. § 13.007(a)(2). Intervenors acknowledge that helping voters commit fraud is a crime but argue Respondents do not "intend" to do so. Mot. at 8. That is a red herring—Plaintiffs risk prosecution regardless of whether they intend to break the law. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 153, 158–61 (2014). As this Court noted, that risk is acute "where, as here, the State has publicly declared one of its key priorities to be to 'investigate and prosecute the increasing allegations of voter fraud to ensure election integrity within Texas.'" Order at 11. The threat that voter registrars will refer Respondents for criminal prosecution is, by itself, sufficient to chill Plaintiffs' expression and provide standing to bring this action. *Driehaus*, 573 U.S. at 159–61 (Plaintiff had standing to bring First Amendment claim due to chilling effect of possible referral for prosecution).

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Intervenors also assert that Plaintiffs lack statutory standing because they cannot "bring § 1983 claims on behalf of potential Texas voters." Mot. at 6. But as this Court correctly found, Plaintiffs have statutory standing because "subsumed in Plaintiffs' cause here are two direct harms, not only to its pocketbook, but also to its First-Amendment right to advise voters without threat of prosecution." Order at 14; *see also, e.g.*, ECF No. 141 at App. 89–91 (testimony that SB

1111 chills Plaintiffs' efforts to encourage Texans to register). Intervenors ignore the law's impact on Plaintiffs' own constitutional rights—injuries that this lawsuit seeks to redress. Plaintiffs here have statutory standing under section 1983 as "the party injured," and the Court accordingly "cannot limit [their] cause of action merely because 'prudence' dictates." *Excel Willowbrook, L.L.C. v. JP Morgan Chase Bank, Nat'l Ass'n*, 758 F.3d 592, 603 n.4 (5th Cir. 2014) (quoting *Lexmark Int'l, Inc. v. Static Control Components, Inc*., 572 U.S. 118, 128 (2014) (cleaned up)).

II. Intervenors cannot satisfy the remaining equitable factors for a stay.

Intervenors face no threat of irreparable harm absent a stay, and the balance of equities similarly favor denial of the stay motion. For one, they have no interest in enforcing an unconstitutional law that furthers no plausible state interest. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018). Texas law already unambiguously requires that one "vote where one lives," Mot. at 10, and this Court's injunction does nothing to imperil that commonsense requirement. *See* Tex. Elec. Code. § 1.015(a).

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There is no merit to Intervenors' suggestion that the injunction will result in threats to "election integrity" and greater "voter confusion." Mot. at 15. Nor is there any bright-line rule barring courts from "enjoin[ing] a State's election laws in the period close to an election"; rather, courts considering the propriety of such an injunction should assess "the nature of the election law at issue, and how easily the State could make the change without undue collateral effects." *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J. concurring). Intervenors identify no record evidence whatsoever—and provide no explanation—as to how this Court's injunction impacts the electoral process. Nor will the injunction "change the rules of the road" in a manner that creates "unanticipated and unfair consequences for candidates, political parties, and voters," *id*., since it is already illegal under Texas law for someone to register to vote using a fraudulent address.

The principal effect of SB 1111 is to chill Plaintiffs' First Amendment rights via the threat of criminal prosecution for misinforming registrants about the statute's vague terms.[3] Granting a stay will injure Plaintiffs and Texas voters because, as the Fifth Circuit "and the Supreme Court have held, . . . the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Sambrano v. United Airlines, Inc.*, No. 21-11159, 2022 WL 486610, at *8 (5th Cir. Feb. 17, 2022) (cleaned up). Beyond chilling Plaintiffs' First Amendment rights, the diversion of resources from other projects and even states to combat SB 1111's effects is "enough to satisfy [Plaintiffs] burden of showing a likelihood of suffering irreparable harm." *Action NC v. Strach*, 216 F. Supp. 3d 597, 643 (M.D.N.C. 2016).

Finally, this Court has recognized that "'injunctions protecting First Amendment freedoms are always in the public interest,'" which weighs against Intervenors' request for a stay. *U.S. Navy Seals 1-26 v. Biden*, 27 F.4th 336, 353 (5th Cir. 2022). And the "cautious protection of . . . franchise-related rights is without question in the public interest." *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005). Conversely, it is not "in the public's interest to allow the state . . . to violate the requirements of federal law." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Because the injunction eliminates the confusion introduced by SB 1111 and the accompanying burdens on constitutional rights, it advances the public interest and poses no harm to Intervenors.

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[3] Intervenors argue that because Plaintiffs did not identify an injured member or injured voter by the time of the lawsuit, the equities somehow favor them. Mot. at 15. But that is an issue of standing as this Court addressed in its Order below, and Intervenors entirely ignore the significance of Plaintiffs' organizational harm in making this equities argument. In any event, Isabel Longoria—Elections Administrator of Harris County—testified that she did "know of at least one voter in [her] personal knowledge who did not register to vote because of SB-1111." ECF No. 141 at App. 164–65.

CONCLUSION

For the reasons above, Intervenors' motion should be denied.

Dated: August 22, 2022

Respectfully submitted,

/s/ Uzoma N. Nkwonta

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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2022, I electronically filed the foregoing document through the Court's ECF system, which automatically serves notification of the filing on counsel for all parties.

/s/ Uzoma N. Nkwonta
Uzoma N. Nkwonta

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