No. 22-50690

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TEXAS STATE LULAC; VOTO LATINO,

Plaintiffs-Appellees,

v.

BRUCE ELFANT, et al.,

Defendants

v.

LUPE C. TORRES, IN HER OFFICIAL CAPACITY AS THE MEDINA COUNTY ELECTIONS ADMINISTRATOR; TERRIE PENDLEY, IN HER OFFICIAL CAPACITY AS THE REAL COUNTY TAX ASSESSOR-COLLECTOR; KEN PAXTON, TEXAS ATTORNEY GENERAL

Intervenor-Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of Texas
(No. 1:21-cv-00546-LY)

PLAINTIFFS-APPELLEES' RESPONSE TO MOTION FOR STAY PENDING APPEAL

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CERTIFICATE OF INTERESTED PERSONS

1. In the district court, this case is captioned as *Texas State LULAC v. Elfant*, No. 1:21-cv-00546-LY. In this Court, it is captioned as *Texas State LULAC v. Paxton*, No. 22-50690.

2. The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

3. Counsel for Plaintiffs-Appellees further certify under Federal Rule of Civil Procedure 26.1 that no organizational plaintiff has any parent corporation and no publicly held corporation owns 10% or more of stock in any organizational plaintiff.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

INTRODUCTION AND BACKGROUND

Texas law has long required that citizens register to vote at their "domicile"—their true home and fixed place of habitation. This case does not concern that common-sense requirement. Instead, it challenges three newly enacted provisions that create confusion and impose unlawful restrictions on the registration process. The district court correctly found that these provisions violate the federal Constitution and enjoined them. The Texas Attorney General and two intervening counties now seek a stay of that injunction, yet they do not come close to meeting the high bar to warrant such extraordinary relief.

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). This prohibits Texans from "voting where they live, depending on what 'purpose' they have for living there." Order on Cross-Mots. for Summ. J. ("Order") at App.1111. Defendants—election administrators in some of Texas's largest counties—consistently testified that they "don't understand" what "for the purpose of" means in this section, and do not know how to apply the provision or answer voter questions about it. App.643. 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.

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-Appellants—Real and Medina Counties—rejected that interpretation in their depositions and have refused to join the Attorney General's argument on this point. As Judge Yeakel explained, the Attorney General's interpretation is simply "not what the Residence Provision says." Order at App.1110. Appellants—who cannot even agree on the Residence Restriction's meaning—have failed to show they are likely to succeed on the merits.

Judge Yeakel also correctly found that the Temporary Relocation Provision leaves many voters "without a country" while confusing election officials in the process. *Id*. at App.1112. 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. Defendants agreed the provision is "vague," "confusing," and a "gray area." App.664-65, App.598. Appellants 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.

Finally, the PO Box Provision erects a pointless burden on voters seeking to cure their registrations. Tex. Elec. Code § 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's Rule 30(b)(6) designee—Elections Division Director Keith Ingram—even admitted that this rule serves no purpose, and that registrars should be able to update a registration without documentation. Appellants, again, ignore this concession, which undercuts any likelihood of success on the merits.

Because the merits so strongly weigh in Plaintiffs' favor, Appellants stake much of their argument on standing. But Judge Yeakel 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 Appellants during briefing below 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. Likewise, Appellants have no response to testimony that SB 1111 "makes it very difficult for [Voto Latino] to be able to communicate . . . with our constituents and our potential registered voter[s]," App.565-66. That chill is caused both by the risk of prosecution to registrants—"because we know that Texas [] prosecutes people who accidentally may not understand the law," App.566—and to Plaintiffs themselves, because it is a crime in Texas 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).

The remaining equitable factors also weigh against a stay. Not only will Appellants 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 the district court's injunction, that poses the greatest risk of confusion and disenfranchisement in the upcoming election. This Court should deny Appellants' request to stay Judge Yeakel's well-reasoned order.

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. Appellants have no likelihood of success on the merits.

A. 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. App.648; App.654-55; App.706.

The Attorney General—but notably not Real or Medina Counties, *see* Mot. at 14 n.4—contends this provision simply "requires someone to register using their

actual residence—not a false address aimed at influencing an election." *Id.* at 14. The Attorney General insists that this is what the Texas Legislature intended. But "[i]t is cardinal law in Texas that a court construes a statute, 'first, by looking to'" its plain language, *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 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 supported "by looking at the act as a whole rather than isolated portions of it." Mot. at 14 (quotation omitted). Notwithstanding the Attorney General's insistence to the contrary, reading the Residence Restriction in context with § 1.015(a) changes nothing—that provision *already* limited 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 Judge Yeakel 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 (Tex. 2006). The "interpretation" advanced by the Attorney General was not included in the guidance sent by the Secretary to county election officials about SB 1111 after the bill's passage. App.81-84, App.829-45. 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) (quotation omitted).

1. The Residence Restriction is unconstitutionally vague.

Appellants 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 is 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.*, App.584-85 ("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."); App.643 ("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."); App.612 ("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.*, App.582; App.609-10; App.633-34; App.672; App.677.

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. Int'l Union v. City of Houston*, 595 F.3d 588, 596-97 (5th Cir. 2010). And Appellants' 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 Appellees' speech by placing Appellees 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 App.1093.[1] As Judge Yeakel properly found, "[t]he threat of prosecution is particularly fraught 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 App.1093 (quoting Tex. Atty Gen., Election Integrity (July 28, 2022), https://www.texasattorneygeneral.gov/initiatives/election-integrity).

2. The Residence Restriction unlawfully regulates core political speech.

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

[1] The Residence Restriction is unlike the law at issue in *Voting for America, Inc. v. Steen*, 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." 732 F.3d 382, 391 (5th Cir. 2013). 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.

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). 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).

Appellants 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,"App.823-24; but even assuming these interests are compelling, the provision is not narrowly tailored to achieve them. It restricts the political speech of those who *do* live at their designated residence. And it is not limited to voting; the Residence Restriction 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. App.584-85; App.648; App.654-55; App.706.[2] Such sweeping bans on political speech cannot satisfy any degree of constitutional scrutiny, let alone strict scrutiny.

B. The Temporary Relocation Provision violates the First and Fourteenth Amendments.

Judge Yeakel correctly found that the Temporary Relocation Provision creates a "man without a country," Order at App.1112, and Appellants point to no evidence or argument suggesting 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]." *Id.* 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

[2] The Residence Restriction serves no interest even under the Attorney General's flawed interpretation. Section 1.015(a) already required that voters register at their "fixed place of habitation," rendering the Attorney General's reading of § 1.015(b)—that "a person may establish any residence . . . so long as his intent in doing so is to make that residence his fixed place of habitation," Mot. 14—redundant.

anyways bars claiming residence where a person resides "for temporary purposes only." *Id.* § 1.015(c)-(d). Unrebutted expert testimony 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. App.532-35. Judge Yeakel 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 App.1112-13.

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. App.664-67. 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." App.635. Thus, he is "not entirely clear on how to answer the questions posed to [Dallas County] by some student voters." App.636. Officials in Travis County—home to over 40,000 undergraduates—agree the provision is "a gray area" and "a bit unclear." App.598.

Appellants insist the provision is sensible because "a college student who intends to return to his parents' home . . . never loses his residence at this parents' home under Texas Election Code section 1.015(c)." Mot. at 16. That argument, once again, fails to reconcile Appellants' proposed interpretation with the plain language of the statute. Nowhere do Appellants 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.

Rather than defend the law as written, Appellants instead complain that the district court's "facial injunction was improper" because the provision only impacts college students. Mot. at 17. That is false. The law applies to *any* Texan temporarily away from home, whether for school, work, or family matters. No permissible interest justifies barring someone from registering at the domicile they intend "to return [to] after any temporary absence." Tex. Elec. Code § 1.015(a).

Finally, Appellants' objection to the district 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 the

district 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 it to constitutional requirements." *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 329 (2006) (cleaned up). Appellants cite no authority that courts must excise *specific sentences* from otherwise unconstitutional subsections, particularly where all that remains is surplusage. Regardless, Appellees never alleged voters may register at residences they have not inhabited; any overbreadth in the injunction does not establish that Appellants are likely to succeed "on the merits" of Appellees' *actual* claims, nor does it cast doubt on the district court's correct determination that § 1.015(f) imposes an unconstitutional burden.

C. 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. App.730.

The Secretary's Rule 30(b)(6) corporate representative admitted this provision serves no purpose when a voter supplies a valid residential address. He explained that he did not know why a mere change of address form would not suffice. App.731-34. "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*. He also 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. App.732. But similarly situated voters updating an inaccurate residential address face no such burden.

Appellants 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 13. That does not vindicate the burdensome application of the provision correctly enjoined by Judge Yeakel. *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 advances no interest sufficient to justify this burden, the PO Box Provision law is unlawful.

D. Appellees have standing to seek redress of their injuries.

1. Appellees have Article III standing.

Appellees have organizational standing to bring this action for two reasons. *First*, SB 1111 injures Appellees 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). Appellees 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. App.571, App.579-80. Voto Latino has diverted funding from its voter registration efforts in other states, terminating its Colorado voter registration program altogether. App.559-60, App.564. This diversion of resources has impaired Appellees' ability to further their missions and confers standing to challenge each provision in this case. App.552, App.568.

Appellants' argument that Appellees' diversion of resources was not caused by SB 1111 is demonstrably false. App.564 (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.570 ("We're looking at the first time we're going to be spending maybe $1 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).

Second, SB 1111 deters Appellees from engaging in protected First Amendment activities. The law is vague and overbroad, and Appellees face criminal prosecution for misadvising registrants about its requirements. Undisputed record evidence demonstrates how Appellees' 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 voter[s] on where they can establish residency . . . because we know Texas also prosecutes people who

accidentally may not understand the law." App.565-66. LULAC's President expressed concern 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. App.576, App.578.

Appellants wrongly insist there is no risk of prosecution because the Election Code criminalizes registration fraud by voters and not by those who advise them, Mot. at 10, ignoring that 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). And Appellees 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 Judge Yeakel 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 App.1093. The threat that voter registrars will refer Respondents for criminal prosecution is, by itself, sufficient to chill Appellees' 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).

2. Appellees have statutory standing.

Judge Yeakel correctly found that Appellees 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 App.1096; *see* App.555-58, (testifying that SB 1111 chills Appellees' efforts to encourage Texans to register); *see also id.* (explaining how the Temporary Relocation Provision "prohibits [Appellees] from affirmatively stating that [college students] are not going to be on the wrong side of the law if they register to vote on campus," which "impacts our ability to speak to them freely"). Appellants ignore the law's impact on Appellees' own constitutional rights—injuries that this lawsuit seeks to redress—which confers statutory standing under section 1983 as the party injured. *Excel Willowbrook, L.L.C. v. JP Morgan Chase Bank, Nat'l Ass'n*, 758 F.3d 592, 603 n.34 (5th Cir. 2014). Having established Article III standing and an injury that is actionable under § 1983, the Court "cannot limit [Appellees'] cause of action merely because 'prudence' dictates." *Id*. (quoting *Lexmark Int'l., Inc. v. Static Control Components, Inc.,* 572 U.S. 118, 128 (2014) (cleaned up)).

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

Appellants face no threat of irreparable harm absent a stay, and the balance of the equities similarly favors denial of their 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 "people . . . vote where they live," Mot. at 1, and Judge Yeakel's injunction does nothing to imperil that commonsense requirement. *See* Tex. Elec. Code. § 1.015(a).

There is no merit to Appellants' suggestion that the injunction "risks confusing voters or incentivizing them to stay away from the polls." Mot. at 19. 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); *cf. Rose v. Raffensperger*, No. 22A136, 2022 WL 3568483, at *1 (U.S. Aug. 19, 2022) (holding that Eleventh Circuit misapplied the *Purcell* principle in staying a district court injunction where record undermined State's representation that the injunction was infeasible). Appellants 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.[3]

Granting a stay will injure Appellees and Texas voters because the principal effect of SB 1111 is to chill Appellees' First Amendment rights via the threat of criminal prosecution for misinforming registrants about the statute's vague terms. As "this court and the Supreme Court have held, . . . the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *See Sambrano v. United Airlines, Inc.*, No. 21-11159, 2022 WL 486610, at *8 (5th Cir. Feb. 17, 2022) (quoting *Elrod v. Burns,* 427 U.S. 347, 373 (1976)) (cleaned up). Beyond chilling Appellees' First Amendment rights, the diversion of resources from other projects and states to combat SB 1111's effects is "enough to satisfy their 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 Appellants' request for a stay. *U.S. Navy Seals 1-26 v. Biden*, 27 F.4th 336, 353 (5th Cir. 2022) (quotation omitted). And the "cautious protection of . . . franchise-related

[3] There is accordingly no basis for Appellants' assertion that the Court enter an administrative stay "to prevent confusion and other irreparable harm while the Court considers a larger stay." *See* Mot. at 20. Appellants have provided no evidence or explanation of how Judge Yeakel's injunction gives rise to these concerns.

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) (quotation omitted). Because the injunction eliminates the confusion introduced by SB 1111 and the accompanying burden on constitutional rights, it advances the public interest and poses no harm to Appellants.

CONCLUSION

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

Dated: August 25, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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I hereby certify that on August 25, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. I certify that counsel for the Intervenor-Defendant-Appellants are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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