UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

VOTE.ORG,

Plaintiff,

v.

JACQUELYN CALLANEN, in her official capacity as the Bexar County Elections Administrator; BRUCE ELFANT, in his official capacity as the Travis County Tax Assessor-Collector; REMI GARZA, in his official capacity as the Cameron County Elections Administrator; MICHAEL SCARPELLO, in his official capacity as the Dallas County Elections Administrator,

Defendants,

and

KEN PAXTON, in his official capacity as Attorney General of Texas, and LUPE C. TORRES, in his official capacity as Medina County Elections Administrator, TERRIE PENDLEY, in her official capacity as Real County Tax Assessor-Collector,

Intervenor-Defendants.

Civil Action

Case No. 5:21-cv-649-JKP-HJB

PLAINTIFF VOTE.ORG'S CONSOLIDATED REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Despite the voluminous briefing in this case, Defendants have failed to articulate a cogent explanation for why a wet signature is needed on voter registration applications. Defendants' purported rationales include fraud prevention, confirming that the applicant's information is accurate, and even that a signature itself is a qualification for voting. But even if these justifications were legitimate (and they are not), they only make a case for requiring *a* signature, and do not explain why that signature must be entered in "wet ink" to accomplish these purposes.

In the absence of any rationale for the Wet Signature Rule, Defendants are left attempting to challenge Vote.org's standing. That challenge is strange because it is undisputed that Defendants implemented the Wet Signature Rule with the intent of preventing Vote.org from using its web application in the state. And Vote.org has presented ample testimony demonstrating how it is being forced to divert its resources to counteract the Wet Signature Rule. Specifically, Vote.org had to shift its human capital away from efforts in other states to focus on Texas and spend staff time investigating and strategizing alternative, less effective means of carrying out its mission and advancing its voter registration goals. Vote.org's extensive testimony regarding these diversions of resources is sufficient to establish its ongoing injury conferring standing.

Defendants also fail to make their case on the merits. They have failed to demonstrate how a wet signature—as opposed to a signature in general—is material to determining a registrant's qualifications to vote, dooming their defense against Vote.org's Materiality Provision claim. Even their latest proffered justification of ensuring that registrants understand the severity of providing false information fails to explain how a wet signature suffices but an imaged signature does not. The Wet Signature Rule does not pass constitutional muster either; Defendants and the Court have acknowledged the burdens imposed by the Wet Signature Rule on the right to vote, but Defendants' proffered state interests, which have little to do with a *wet* signature, fail to justify them. Once

again, Defendants' purported interests in the Wet Signature Rule ignore the key word—"wet"—and fixate instead on generic rationales for requiring a signature at all. The Court should grant Vote.org's Motion for Summary Judgment.

ARGUMENT

A. Vote.org is being forced to divert its resources to counteract the Wet Signature Rule, which is an injury conferring Article III standing.

Vote.org challenges the Wet Signature Rule, a law drafted specifically to frustrate Vote.org's operations in Texas. App. to Pl.'s Mot. for Summ. J. ("Pl.'s App.") at 143, ECF No. 111-2 (Ingram Dep. at 102:3-104:8). In 2018, when the Secretary of State's Office first declared that wet signatures were required on voter registration applications, Vote.org ceased operation of its e-sign tool in the state. Since then, the organization has continued to (1) divert resources to identify alternative means by which it could advance its mission in Texas, and (2) pursue its mission in Texas through less effective, more resource-intensive methods—injuries that are ongoing and will persist unless the Wet Signature Rule is enjoined. Vote.org therefore has standing.

To argue otherwise, Defendants incorrectly suggest that no evidence supports Vote.org's standing allegations—perhaps not recognizing that testimony (from Vote.org's CEO and Rule 30(b)(6) witness) *is* evidence. Indeed, courts routinely find sufficient evidence for standing from testimony alone. *E.g.*, *Richardson v. Tex. Sec'y of State*, 485 F. Supp. 3d 744, 766 (W.D. Tex. 2020) (finding diversion of resources based exclusively on "unrebutted testimony" from organization's representative), *rev'd on other grounds* 978 F.3d 220 (5th Cir. 2020); *Black Voters Matter Fund v. Raffensperger*, 508 F. Supp. 3d 1283, 1292 n.7 (N.D. Ga. 2020) (finding organizational standing based on "declarations and hearing testimony"). Defendants' reliance on *El Paso County v. Trump*, 982 F.3d 332 (5th Cir. 2020) on this point is misplaced. That case

involved an organizational plaintiff that relied wholly on a declaration which the court described as "vague" and "conclusory." *Id*. at 344.[1] By contrast, Vote.org has offered sworn testimony detailing the precise nature of its injury. *El Paso County*'s reasoning also rested on the organization's failure to show "traceab[ility]"; for example, the organization alleged harm from "increased noise and traffic" but did not explain the connection of that harm to the challenged policy. *Id*. at 344. That is not the case here. As discussed below, Vote.org has made clear through testimony the ways in which the Wet Signature Rule—a policy devised to interfere with its operations—has harmed it.

Defendants' contention that Vote.org's injuries are not sufficiently "concrete and particularized" is also incorrect. Vote.org's CEO, Andrea Hailey, testified that Vote.org had to: (1) engage in other, "less effective" efforts to carry out its mission, *see* App. to Defs.' Mot. for Summ. J. ("Defs.' App.") at 129, ECF No. 108-1 (Hailey Dep. at 298:12-299:9); (2) shift "human capital" away from its efforts in other states and into Texas, *id*. at 119 (Hailey Dep. at 259:1-8, 259:18-260:13); (3) ensure its "work flows are . . . compliant with Texas [law]," *id*. at 124 (Hailey Dep. at 110:2-13); and (4) spend staff time identifying new ways by which it could advance its mission of registering voters in Texas. *Id*. at 81-82 (Hailey Dep. at 109:12-110:13). And the CEO even highlighted examples, including sending messages to individuals who interacted with Vote.org's web tools to inform them of the wet signature requirement, Defs.' App. at 85 (Hailey

[1] In Vote.org's Response to Defendants' Motions for Summary Judgment, Vote.org cited to *El Paso County v. Trump*, 408 F. Supp. 3d 840 (W.D. Tex. 2019), for the proposition that diversion of resources encompasses non-monetary costs. Pl.'s Resp. at 13. Vote.org mistakenly omitted *El Paso*'s subsequent history, which would have indicated that a subsequent order in the same case also addressing standing was overturned on other grounds in *El Paso County v. Trump*, 982 F.3d 332 (5th Cir. 2020). The Fifth Circuit did not address the question of non-monetary diversion of resources but instead focused on the flaws in the evidence offered to support standing—a solitary declaration that made vague and conclusory assertions. *Id*. at 344-45.

Dep. 121:7-123:18), and working with NextDoor as part of Vote.org's effort to establish a program that would allow voters to sign their applications in wet ink.[2] *Id*. at 129 (Hailey Dep. at 298:12-299:9).

Defendants' objection to the absence of supporting documents is baseless, as demonstrated by the discovery requests and the pleadings they cite. The State complains that it received no documents referencing NextDoor in response to its request for production of records "reflecting Plaintiff's diversion of resources and expenditure of funds . . . ," Defs.' Resp. in Opp. to Pl.'s Mot. for Summ. J. ("Defs.' Resp.") at 10, ECF No. 124, but Vote.org produced all of its yearly budgets and financial projections, as Defendants requested, along with documents estimating the cost of an alternative print and mail program. These records did not reference NextDoor because there are no monetary expenditures associated with such collaboration. The primary resource diverted for this purpose is Vote.org's limited staff time and "human capital" spent devising alternative solutions for voters. Pl.'s App. at 130 (Hailey Dep. at 258:17-260:13). As Vote.org's CEO testified, Vote.org does not use time sheets to capture the number of hours its employees work on specific tasks, *id*. (Hailey Dep. at 260:14-17), does not pay its employees hourly, *id*. (Hailey Dep. at 259:9-11), and has not calculated or assigned dollar amounts to staff time diverted in response to the Wet Signature Rule that would be reflected in any account statements, tax returns, invoices or other related documents, *id*. (Hailey Dep. at 260:7-13).

Nor is Vote.org required to quantify or capture its "resource diversion" in any documents

[2] The NextDoor collaboration was just one of several concrete examples offered by Vote.org's CEO in her deposition. In discussing the potential use of neighbors' printers through NextDoor, the CEO also referenced Vote.org efforts to send messages to its users reminding them of the wet signature requirement. Defs.' App. at 85 (Hailey Dep. at 122:19-123:8). Defendants provide no legitimate basis to refute Vote.org's CEO's testimony that the Wet Signature Rule forces the organization to divert resources to alternative, less-effective means of advancing its mission.

to establish standing. *See*, *e.g.*, *Mi Familia Vota v. Abbott*, 497 F. Supp. 3d 195, 208 (W.D. Tex. 2020) ("The fact that the added cost has not been estimated and may be slight does not affect standing." (quoting *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007))); *see also Richardson*, 485 F. Supp. 3d at 765 ("[T]here is no requirement that a Plaintiff must quantify a specific monetary cost in order to satisfy the injury in fact requirement."), *rev'd on other grounds Richardson v. Flores*, 28 F.4th 649 (5th Cir. 2022). Ms. Hailey's detailed testimony is sufficient evidence for these purposes and is consistent with Vote.org's allegation that the Wet Signature Rule has forced the organization to divert resources to re-configure its programs in Texas and to utilize "less effective" means of advancing its voter registration goals. *See*, *e.g.*, Compl. ¶ 20, ECF No. 1.

What is more, the NextDoor blog post that Defendants cite only corroborates Ms. Hailey's testimony. Defendants' attempt to dismiss Vote.org's collaboration with NextDoor as merely "a response to COVID-19" immediately unravels after reading the blog post, which states: "With some states requiring hardcopy documents and physical signatures in order to register to vote . . . printing has become an issue for many as we continue to work from home without printer access." Vote.org, *NextDoor and Vote.org Team Up to Help Neighbors Get the Vote Out*, NextDoor (Aug. 25, 2020), https://blog.nextdoor.com/2020/08/25/nextdoor-and-vote-org-team-up-to-help-neighbors-get-the-vote-out/. But for the Wet Signature Rule, Vote.org users would have no reason to seek out neighbors to print their application forms. *See* Defs.' App. at 129 (Hailey Dep. at 298:12-299:9) (explaining why using NextDoor is "less effective than the literally two minutes it could take using . . . the app or using somebody's smartphone").

Defendants had ample opportunity to probe all relevant (and some not relevant) details of those efforts during Ms. Hailey's more than seven-hour deposition—where she discussed

NextDoor on multiple occasions—and in the remaining discovery period following that deposition. *See*, *e.g.*, *id*. at 84-85 (Hailey Dep. at 120:21-123:18) (discussing NextDoor in response to State's counsel's questions about "new ways to innovate and serve voters" that Vote.org explored in response to Wet Signature Rule), 88 (Hailey Dep. at 137:18-138:23) (discussing NextDoor in response to State's counsel's questions about the diversion of resources referenced in paragraph 20 of the Complaint), 129 (Hailey Dep. at 297:12-299:9) (discussing NextDoor in response to question seeking examples of the "less effective means" of pursuing voter registration goals to which Vote.org diverted resources because of Wet Signature Rule). The Court should reject Defendants' attempt to avoid testimony that they themselves elicited in the course of discovery.

Though Defendants scoff at the notion that Vote.org "merely thinking" about how to respond to the Wet Signature Rule is an injury, Defs.' Resp. at 9-10, that too is a cognizable harm for purposes of standing. "[T]he injury alleged as an Article III injury-in-fact need not be substantial; it need not measure more than an identifiable trifle." *OCA-Greater Hous. v. Texas*, 867 F.3d 604, 612 (5th Cir. 2017) (quoting *Ass'n of Cmty. Orgs. for Reform Now v. Fowler*, 178 F.3d 350, 358 (5th Cir. 1999) (cleaned up)). The "thinking" to which Defendants refer is Vote.org's strategic planning and requires diverting staff time from other projects to identify and implement other means by which Vote.org can advance its mission in Texas. *See, e.g.*, *Mia. Valley Fair Hous. Ctr., Inc. v. Connor Grp.*, 725 F.3d 571, 576 (6th Cir. 2013) (finding diversion of "staff time and energy" sufficient for standing); *Greater New Orleans Fair Hous. Action Ctr. v. Kelly*, 364 F. Supp. 3d 635, 646 (E.D. La. 2019) (finding organization established standing based on expenditure of resources such as "staff time"). Indeed, the Fifth Circuit has recognized that "changing one's campaign plans or strategies in response to an alleged injurious law can itself be a sufficient injury

to confer standing." *Zimmerman v. City of Austin, Tex.*, 881 F.3d 378, 390 (5th Cir. 2018) (denying standing where feared prosecution causing injury was not inevitable).

Last, Defendants reprise their assertion that Vote.org's injury was "self-inflicted." Vote.org rebutted this flawed reasoning it in its opposition to Defendants' motions for summary judgment; the argument lacks as much merit now as it did then, and it fails for the same reasons. Pl.'s Resp. in Opp. to Mot. for Summ. J. ("Pl.'s Resp.") at 13-14, 14 n. 3 (Apr. 29, 2022), ECF No. 128. Similarly, Defendants' reliance on *Fair Elections* and *NEOCH* is misplaced. Defs.' Resp. at 11-12. Unlike AMOS in *Fair Elections*, Vote.org was correct about the state of the law in Texas, as exemplified by two district courts agreeing that the law imposed no wet signature requirement. *Stringer v. Pablos*, 320 F. Supp. 3d 862, 896 (W.D. Tex. 2018) (noting, pre-HB 3107, "there is nothing in [Texas election] law that precludes the use of . . . electronic signatures), *rev'd and remanded on other grounds sub. nom Stringer v. Whitley*, 942 F.3d 715 (5th Cir. 2019); Order at 2, *Tex. Democratic Party v. Hughs*, 5:20-cv-00008-OLG (W.D. Tex. July 28, 2020), ECF No. 29 (finding, pre-HB 3107, that "the codified signature requirement . . . makes no mention of an original wet ink signature."). County election officials also agreed with that interpretation of the law and accepted applications with imaged signatures until the Secretary of State instructed them not to—and, even then, one county continued to accept applications with imaged signatures. Pl.'s App. at 98 (Elfant Dep. at 146:16-22), 100 (Elfant Dep. at 153:7-154:5). Tellingly, Defendants cannot cite any law requiring a wet signature for voter registration before HB 3107; instead, they cite only provisions requiring a signature, which again demonstrates their failure to distinguish between the two concepts.

B. Defendants have failed to demonstrate how a *wet* signature is material to determining a registrant's eligibility to vote.

Section 10101 prohibits states from imposing arbitrary requirements on voting or

registration, *see Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003), mandating that such requirements be "material" to determining a registrant's eligibility to vote. 52 U.S.C. § 10101(a)(2)(B). Contrary to what Defendants imagine, Vote.org does not challenge the requirement that applicants sign their voter registration application, Defs.' Resp. at 19; Vote.org specifically challenges the requirement that applicants sign their application using a "wet" signature. The flaws in Defendants' arguments flow from this mistake. Rather than identify why having a "wet" signature is material to determining voter eligibility, Defendants instead have asserted an array of shifting justifications which either support only *a* signature requirement—as opposed to a *wet* signature requirement—or have nothing to do with eligibility to vote at all.

Defendants presently assert that the Rule is material to determining voter eligibility because applicants must "attest to meeting the qualifications necessary to vote" and a signature "impresses on applicants the severity of providing false information." Defs.' Resp. at 16. But these objectives require only *a* signature, without respect to the particular flavor of the signature. Moreover, if an imaged signature were insufficient for the claimed purposes, Texas law would not recognize, as it does, the validity of electronic signatures in a variety of other important contexts. *E.g.*, Tex. Health & Safety Code § 166.011 (advance health directive); *Bartee v. Bartee*, No. 11-18-0017-CV, 2020 WL 524909, at *3 (Tex. Ct. App. Jan. 31, 2020) (divorce decree).

All this finds confirmation in the fact that if a "wet" ink signature *were* relevant, Defendants would make some effort to identify whether there is or is not such a signature on a given application. But Defendants have admitted they make no meaningful effort to distinguish between wet or imaged signatures and spend only "seconds" looking at each signature. Pl.'s App. at 85 (Callanen Dep. at 158:15-6), 154 (Ingram Dep. at 192:12-22), 155-156 (Ingram Dep. at 212:4-213:1, 213:16-214:5), 158 (Ingram Dep. at 224:5-10), 166 (Pendley Dep. at 69:13-18), 169

(Pendley Dep. at 85:21-86:9), 170 (Pendley Dep. at 102:6-104:6), 196 (Torres Dep. at 97:20-98:8); *see also* Pl.'s Mot. for Summ. J. ("Pl.'s Mot.") at 10-11, ECF No. 111 (discussing Defendants' non-use of signatures in registration process). Some have even conceded that they cannot tell the difference between "wet" and imaged signatures. *See, e.g.*, Defs.' App. at 259-260 (Elfant Dep. at 148:18-149:16), 269 (Elfant Dep. at 188:8-15), 516 (Lopez Dep. at 132:11-22). Accordingly, Defendants cannot now claim with credibility that the difference is "material" to determining an applicant's eligibility.

Defendants also contend against the obvious by claiming that "wet" signatures provide assurance that the person is "attesting to the information on the form" and "has done so in the context of" the eligibility requirements. Defs.' Resp. at 17. Defendants then opine that imaged signatures provide no such "guarantee." But this is speculative at best. Defendants have no way of knowing whether a "wet" signature affixed to an application is that of the applicant or if the applicant signed the form only after reading the eligibility requirements. And the State has conceded that an imaged signature serves the same purpose as a wet ink signature on a voter registration application "in the context where you are reading the same three statements and then . . . putting the JPEG of your signature under those three statements." Defs.' App. at 419 (Ingram Dep. at 173:8-21).

In an effort to distract from these realities, Defendants quibble with the particulars of how Vote.org's web application operated four years ago, in 2018. These disputes are irrelevant because Vote.org seeks prospective relief and because the Wet Signature Rule bars not only what Defendants now claim are flaws in Vote.org's web application, but the use of *all* imaged signatures. Even if these minutiae were pertinent, Defendants' argument still fails because it does not accurately describe the facts. For example, Defendants opine that "[t]here is no guarantee that

applicants read or even had the opportunity to review Texas's eligibility requirements" through Vote.org's e-sign tool.[3] In fact, Vote.org's CEO testified that "there's a button that would take you to . . . review your application," *id.* at 98, which includes the enumeration of eligibility requirements stated on the *federal* voter registration form. App. to Defs.' Resp. in Opp. to Pl.'s Mot. for Summ. J. ("Defs.' Resp. App.") at 52, ECF No. 125-1. Texas must, by law, accept otherwise-proper voter registration applications submitted on that form. 52 U.S.C. § 20505(a)(1) (requiring each state to "accept and use the mail voter registration application form prescribed by the Federal Election Commission . . . for the registration of voters in elections for Federal office"). In addition, and in contrast to an application completed with a "wet" signature, a Vote.org user cannot proceed with their application at all unless they select a box to "swear and affirm" that they are "a US citizen" and "eligible to register to vote in Texas." Defs.' Resp. App. at 47. Therefore, while there is no way to "guarantee" that anyone—whether signing with a "wet" signature or not—reads the eligibility requirements, Vote.org's users had ample opportunity to affirm their qualifications and understand the seriousness of making a false statement.

Defendants' scant authority is also misplaced. Contrary to Defendants' assertions, the instant case is incomparable to *Howlette v. Richmond*, 485 F. Supp. 17 (E.D. Va. 1978), because *Howlette* upheld a notarization requirement for signatures on referenda petitions, whereas here neither a "wet" nor an imaged signature entail appearing in person or taking an oath and both have the same legal effect.[4] Nor is *Diaz v. Cobb*, 435 F. Supp. 2d 1206 (S.D. Fla. 2006), analogous. There, a court upheld a requirement that registrants check specific boxes affirming their eligibility

[3] Defendants also assert that Vote.org's application was "broken." This, again, refers to an isolated event in 2018 and is therefore irrelevant. It is also inaccurate, as explained in prior briefing. Pl.'s Resp. at 4, 34-35.

[4] Furthermore, *Howlette*'s reasoning is fatally flawed for the reasons Vote.org has previously identified. *See* Pl.'s Resp. at 45-46.

to vote specifically because the boxes in question enumerated the qualifications for voting; it was not akin to "failure to follow needlessly technical instructions, such as the color of ink to use in filling out the form." *Id*. at 1213. Here, Vote.org challenges just such a "needlessly technical instruction[]," which regulates the manner in which the form is filled out rather than what a registrant puts on the form. *Id*. If anything, *Diaz* illustrates the absurdity—and immateriality—of the Wet Signature Rule: it would be comparable only if Florida had required voters to check the challenged boxes using a specific kind or color of ink.

Finally, Defendants briefly restate their arguments from prior briefing that the Wet Signature Rule does not deprive anyone of the right to vote, that private parties cannot enforce the Materiality Provision, and that a Materiality Provision claim requires a demonstration of intentional racial discrimination. These arguments are without merit for the reasons Vote.org described in Plaintiff's Opposition to Intervenor-Defendant Paxton's Motion to Dismiss and for Judgment on the Pleadings and in Plaintiff's Consolidated Opposition to Defendants' Motions for Summary Judgment. Pl.'s Opp. to Att'y Gen.'s Mot. to Dismiss at 8-10 (Nov. 23, 2021), ECF No. 56 (no requirement of showing racial discrimination for Materiality Provision claim), 10-15 (private parties can enforce Materiality Provision); Pl.'s Mot. at 36-42 (private enforcement), 46-47 (deprivation of right to vote), 47-49 (racial discrimination). Because Defendants marshal no additional arguments, authority, or facts in support of these claims, their arguments fail for the reasons previously articulated.

C. Defendants' rationales for the Wet Signature Rule are insufficient to justify the Rule's unconstitutional burdens on the right to vote.

The burdens imposed by the Wet Signature Rule are not seriously in dispute; they have been implicitly acknowledged by both Defendants and the Court. Paxton/Garza Mot. at 1-2; Order Denying Mot. to Dismiss at 4 (Dec. 17, 2021), ECF No. 70 ("A favorable ruling may allow . . .

prospective registrants . . . to register to vote without having to print the form or travel to an application distribution site and without having to have access to a printer, a scanner, a computer, or a stand-alone fax machine."). Vote.org's unrebutted expert, Dr. Bryant, explained these burdens in detail, both in her Expert Report, Pl.'s App. at 39-58, and her deposition testimony, Defs.' App. at 437-83. *See also* Pl.'s Mot. at 14-15.[5]

Defendants attempt to diminish this evidence by misstating the law, misrepresenting Dr. Bryant's testimony, and raising irrelevant distinctions that fail to obviate the clear burdens imposed by the Wet Signature Rule. For instance, Defendants misconstrue *Richardson* as standing for the proposition that "the Court must analyze the burden on Texas voters globally." Defs.' Resp. at 20. In fact, the Fifth Circuit took issue with the district court "mistakenly focus[ing] only on the burden to the *plaintiffs*," because "the severity analysis is not limited to the impact that a law has on a small number of voters." *Richardson v. Texas Sec'y of State*, 978 F.3d 220, 236 (5th Cir. 2020) (emphasis added).[6] Unlike Defendants, the *Richardson* court noted that only a few *concurring* Justices in *Crawford* concluded that individual impacts are irrelevant, and the plurality "did not go as far." *Id.* (citing *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198, 205 (2008)). Specifically, the *Crawford* plurality held that a *lack* of burden on "most voters" would not save the statute at issue, and that the relevant burdens were those imposed on eligible voters who lacked identification that complied with the statute. 553 U.S. at 198; *see also* Pl.'s Resp. to Defs.' Mots. for Summ. J. ("Pl.'s Resp.") at 28, ECF No. 128. And six justices in total agreed that courts should

[5] Defendants are incorrect that Vote.org has presented no evidence that some voters have been unable to register to vote. Pl.'s App. at 73 (Bryant Rep. 35).

[6] The court must conduct the *Anderson-Burdick* balancing test by analyzing the burden on the right to vote of *voters*, not the burden on the *plaintiff*'s right to vote. *E.g.*, *Burdick v. Takushi*, 504 U.S. 428, 445 (1992) (analyzing "burden on voters" of prohibition on write-in voting). As a result, it is immaterial whether Vote.org is "devoid of any concrete right to register to vote or cast a ballot." Defs.' Resp. at 21.

consider the law's impact on identifiable subgroups for whom the burden is more severe. *Id*. at 199-203 (plurality op.); *id*. at 212-23, 237 (Souter, J., dissenting); *id*. at 237 (Breyer, J., dissenting). Defendants' attempts to distinguish *Abbott* on the basis that it concerned the right to cast a ballot similarly ignore settled authority establishing that restrictions on registration—as a prerequisite to voting—are subject to the same standard. *E.g.*, *United States v. McLeod*, 385 F.2d 734, 740 (5th Cir. 1967) ("The right to vote encompasses the right to register."). Consistent with these rulings, Vote.org has presented unrefuted evidence regarding the burdens imposed on registrants who will have difficulty complying with the Wet Signature Rule. Pl.'s Mot. at 14-15.

It thus goes without saying that Vote.org has not asked the Court to "skip the step of *Anderson-Burdick* analysis." Defs.' Resp. at 20. Dr. Bryant has testified at length regarding the specific burdens imposed by the Wet Signature Rule; Defendants offered no expert to refute that testimony, and their attempts to diminish the impact of Dr. Bryant's analysis are unavailing. For example, Defendants suggest that Dr. Bryant's acknowledgment that it is easier to locate a printer than a fax machine somehow means the burden of the Wet Signature Rule is *de minimis*. In reality, that decontextualized testimony is irrelevant; what matters is the *ability to send a fax*, which any person can easily do via a smartphone, as Dr. Bryant testified. Defs.' App. at 459 (Bryant Dep. at 88:9-12). No Vote.org user, for instance, would ever have to "locate" an actual fax machine. Defendants' insistence that this testimony is somehow damning only demonstrates their continued misunderstanding of what is at issue. In the absence of the Wet Signature Rule, there is no need for voters to access a fax machine (or printer) because they can complete and submit their applications using a smartphone. While Defendants persist in challenging Dr. Bryant's credibility by citing out-of-circuit cases that stand for the unremarkable proposition that courts *may* exclude testimony that is beyond an expert's area of expertise, Defs.' Resp. at 22, the Court already denied

the State's motion to exclude Dr. Bryant's testimony, and for good reason. Order (Mar. 30, 2022), ECF No. 106. As an expert in voter registration with extensive experience analyzing data, the analysis and conclusions in her report are well within her wheelhouse. *See* Pl.'s App. at 40-41 (Bryant Rep. 2-3).

Void of any legitimate basis to challenge Dr. Bryant's qualifications, Defendants resort to outright misrepresenting Dr. Bryant's methodologies and data. They argue that Dr. Bryant's conclusions that certain Texans will be disproportionately impacted by the Wet Signature Rule are "based on . . . national data that is not representative of Texas," and that "any Texas-focused data . . . showed that citizens in County Defendants' jurisdictions own computers and printers . . . at a greater rate than most other counties in Texas . . . ." Defs.' Resp. at 22. Not true. Dr. Bryant utilized Texas-specific data from the U.S. Census Bureau's American Community Survey (2015-2019) to analyze smartphone dependence and found that Bexar, Medina, and Cameron counties all have greater smartphone dependence than the state average. Pl.'s App. at 51 (Bryant Rep. 13). The burdens of the Wet Signature Rule are clear and undisputed.

Finally, Dr. Bryant's acknowledgement that registering at DPS "is a better confirmation of identity than a signature on a voter registration form," Defs.' App. at 466 (Bryant Dep. 114:1-11), does nothing to explain the State's inconsistency in accepting imaged signatures from some voters but not others. Signatures on voter registration applications play no role in the identity verification process, Pl.'s Resp. at 33-34, Pl.'s Mot. at 12, 16-17, so it is no answer to suggest that wet signatures are required on non-DPS applications for security reasons. Nor can Defendants plausibly assert that a wet signature is a "better confirmation of identity" than an imaged signature. Nor can they explain why a registrant's "faceless interaction" with Vote.org's web application is unacceptable while an equally faceless interaction with a paper registration form printed or

received by mail is just fine. Defs.' Resp. at 23. Vote.org does not dispute that Texas is empowered "to engage in 'substantial regulation of elections' to ensure that elections are well run," *id.* (quoting *Storer v. Brown,* 415 U.S. 724, 730 (1974)); however, Texas's authority to do so exists only if such regulation complies with federal law.

Even if Defendants were correct that the Wet Signature Burden imposes only a "slight burden on voters," *id.* at 25, their proffered interests are insufficient to justify that burden. As explained with regard to the Materiality Provision, *supra* at 8-9, Defendants' purported interests in preventing election fraud and preserving electoral integrity, confidence, and solemnity completely fail to address why a *wet* signature is necessary to advance these interests.[7]

CONCLUSION

For all the foregoing reasons, Vote.org's motion for summary judgment should be granted, and Defendants' motions for summary judgment should be denied.

[7] Defendants present no evidence or authority to support its interest in the "solemnity" of wet signatures, an argument which they now all but abandon. *Compare* Tex. Att'y Gen.'s Mot. to Dismiss at 19, ECF No. 53 (discussing "maintaining the solemnity of voter registration"), *with* Defs.' Resp. at 25 (addressing interest in "solemnity" only cursorily in response to Vote.org's arguments, but without expressly invoking "solemnity" as a rationale). As Vote.org explained in its oppositions to Intervenor-Defendant Paxton's motion to dismiss and motion for summary judgment (ECF Nos. 56 and 128), many important—indeed, solemn—state-regulated transactions in Texas do not require a wet signature.

Dated: May 6, 2022

Respectfully submitted,

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