

No. 01-22-00122-CV

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**In the Court of Appeals  
for the First Judicial District  
Houston, Texas**

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FILED IN  
1st COURT OF APPEALS  
HOUSTON, TEXAS  
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JOHN OR JANE DOE, IN HIS OFFICIAL CAPACITY AS THE  
SECRETARY OF THE STATE OF TEXAS; JOE ESPARZA IN HIS  
OFFICIAL CAPACITY AS THE DEPUTY SECRETARY OF THE STATE  
OF TEXAS; AND KEN PAXTON, IN HIS OFFICIAL CAPACITY AS THE  
ATTORNEY GENERAL OF TEXAS,

*Appellants,*

v.

TEXAS STATE CONFERENCE OF THE NAACP; COMMON CAUSE  
TEXAS; DANYAHIEL NORRIS; HYUN JA NORMAN; FREDDY  
BLANCO; MARY FLOOD NUGENT; AND PRISCILIA BLOOMQUIST,

*Appellees.*

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On Appeal from the  
189th Judicial District Court, Harris County

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**BRIEF FOR APPELLANTS**

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**ORAL ARGUMENT REQUESTED**

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## IDENTITY OF PARTIES AND COUNSEL

### **Appellants:**

John B. Scott, in his official capacity as the Secretary of the State of Texas<sup>1</sup>  
Joe Esparza in his official capacity as the Deputy Secretary of the State of Texas  
Ken Paxton, in his official capacity as the Attorney General of Texas

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### **Appellees:**

Texas State Conference of the NAACP  
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and Priscilia Bloomquist

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<sup>1</sup> At the time the Petition was filed, John B. Scott had not yet been appointed as the Secretary of State. *See* CR.32-33 (¶ 77). Upon his appointment, he was automatically substituted as a defendant in the case. *See* Tex. R. App. P. 7.2.

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## STATEMENT OF THE CASE

- Nature of the Case:* Two interest groups and five Texas residents seek a judgment (1) declaring that various newly enacted Texas Election Code provisions violate both particular provisions of the Texas Constitution (CR.79-93, 94) and the Constitution as a whole (CR.93-94), and (2) enjoining the Secretary of State, the Deputy Secretary of State, and the Attorney General from enforcing the challenged provisions (CR.95).
- Course of Proceedings:* Defendants moved to dismiss all of Plaintiffs' claims under Texas Rule of Civil Procedure 91a, asserting the trial court lacked subject-matter jurisdiction because Plaintiffs lacked standing and Defendants are immune from suit. CR.115-23.
- Trial Court:* 189th Judicial District Court, Harris County  
Hon. Scott Dollinger
- Trial Court Disposition:* The trial court denied Defendants' Rule 91a motion, CR.339, and Defendants noticed this interlocutory appeal under Texas Civil Practice and Remedies Code section 51.014(a)(8), CR.343.

## STATEMENT REGARDING ORAL ARGUMENT

Defendants respectfully suggest that oral argument will assist in the Court’s deliberation regarding this case. Plaintiffs assert numerous constitutional claims against certain provisions of an omnibus election-reform bill commonly known as “SB 1” — including a novel claim that these provisions cumulatively violate “the Texas Constitution.” CR.93.<sup>2</sup> Their claims lack merit. Even so, they are manifestly important to the jurisprudence of the State and should only be litigated by plaintiffs with a justiciable interest in the outcome against defendants against whom the Court may enter effective relief. Plaintiffs lack any such interest, and Defendants’ immunity prevents any such order. Oral argument will permit the Court to explore any questions it may have regarding either point.

## ISSUES PRESENTED

1. Whether Plaintiffs’ lawsuit seeking equitable remedies should be dismissed for lack of subject-matter jurisdiction because Plaintiffs’ allegations negate that (a) Plaintiffs have suffered any injury in fact, which (b) is fairly traceable to—or redressable by—the named Defendants.
2. Whether Plaintiffs’ lawsuit should be dismissed for want of subject-matter jurisdiction because sovereign immunity bars their claims.

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<sup>2</sup> SB 1 is titled “An Act Relating to Election Integrity and Security,” SB 1, 87th Leg., 2d C.S. (2021), but may also be cited as the “Election Integrity Act of 2021.” SB 1 § 1.01. As that was also the title of a bill that did not pass, *Texas House Bill 6*, LegiScan, <https://legiscan.com/TX/text/HB6/id/2341373> (last visited Apr. 1, 2022), this brief uses the designator “SB 1” to avoid confusion. Unless otherwise specified herein, “section” refers to sections of SB 1. For the Court’s convenience, the Appendix includes a table cross-referencing those sections to where they are codified in the Texas Election Code.



## INTRODUCTION

Plaintiffs have brought a pre-enforcement lawsuit challenging myriad provisions of the Texas Election Code for allegedly violating their rights under the Texas Constitution. The challenged statutory provisions were amended or added to the Election Code late last summer as part of SB 1. *See supra* n.2. SB 1 finds that “fraud in elections threatens the stability of a constitutional democracy by undermining public confidence in the legitimacy of public officers chosen by election” and that “reforms are needed to the election laws of this [S]tate to ensure that fraud does not undermine the public confidence in the electoral process.” SB 1 § 1.03(2)(3). The Legislature’s stated intention for SB 1 is to ensure that “the application of [the Election Code] and the conduct of elections [is] uniform and consistent throughout this [S]tate to reduce the likelihood of fraud in the conduct of elections,” as well as to “protect the secrecy of the ballot, promote voter access, and ensure that all legally cast ballots are counted.” *Id.* § 1.04.

Towards these ends, SB 1 focuses on several aspects of the State’s election system. It regulates, among other things, poll watchers, *id.* §§ 4.01, 4.06, 4.07, 4.09, and 6.01; the solicitation of registered voters to submit mail-in ballots, *id.* § 7.04; mail-in ballot applications and envelopes, *id.* §§ 5.02, 5.03, 5.07, 5.08, 5.10, 5.12, 5.13; voter assistance, *id.* §§ 6.01, 6.03, 6.04, 6.05; early voting, *id.* § 3.09; voting hours, *id.* § 3.10; curbside voting, *id.* §§ 3.04, 3.12, 3.13; and drop boxes, *id.* § 4.12. Plaintiffs’ sprawling complaint alleges that various SB 1 provisions violate constitutional guarantees of: equal protection, CR.79, (Count I); the right to vote, CR.81, 87-88, 91 (Counts II, IV, V, VII); due course of law, CR.83 (Count III); and freedom of speech,

expression, and association, CR.89 (Count VI). They also assert a catchall category challenging the “cumulative changes to the Texas Election Code from SB 1’s enactment.” CR.93 (Count VIII).

The merits of SB 1 are not before the Court in this appeal—only whether the trial court has subject-matter jurisdiction over Plaintiffs’ claims. It does not.

Plaintiffs fail to meet their burden to “plead facts that, if true, ‘affirmatively demonstrate’” that subject-matter jurisdiction exists for at least two reasons. *Matzen v. McLane*, No. 20-0523, 2021 WL 5977218, at \*4 (Tex. Dec. 17, 2021). *First*, Plaintiffs lack standing to bring these claims because they have not affirmatively demonstrated that they have suffered any injury in fact that is traceable to the challenged conduct of, or redressable by an order against, these Defendants. *Second*, Plaintiffs’ claims are also barred by sovereign immunity. They cannot show that immunity from suit was waived because they have sued individual officers—not agencies that fall within the scope of the waiver of sovereign immunity the Texas Supreme Court has found in the Uniform Declaratory Judgment Act (“UDJA”)—and because their constitutional claims are not viable.

Accordingly, this Court should reverse the trial court’s order denying Defendants’ motion to dismiss under Texas Rule of Civil Procedure 91a and render judgment dismissing Plaintiffs’ lawsuit.

## STATEMENT OF FACTS

### I. Background

#### A. The 2020 election

Plaintiffs allege the following facts in their Original Petition (CR.4-95): the 2020 election was unprecedented because of the COVID-19 pandemic, which precipitated a global health crisis in Texas and throughout the world. *See* CR.5, 35-38 (¶¶ 2-3, 86-92).<sup>3</sup> Statewide, Governor Abbott extended the early-voting period ahead of the November 2020 general election and allowed counties to accept hand-delivery of mail-in ballots before Election Day. *See* The Governor of the State of Tex., Proclamation No. 41-3752, 45 Tex. Reg. 5449, 5456-57 (2020). And the Secretary of State provided detailed guidance to local officials regarding administration of the election during the pandemic. *See* The Tex. Secretary of State, Election Advisory No. 2020-14, *COVID-19 (Coronavirus) Voting and Election Procedures* (2020), <https://www.sos.state.tx.us/elections/laws/advisory2020-14.shtml>.

In addition, local election officials across the State experimented with various “alternative methods of voting,”<sup>4</sup> “including increased access to early in-person

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<sup>3</sup> Although Defendants do not concede that Plaintiffs’ allegations are true, this Statement of Facts is drawn from Plaintiffs’ live petition. *See Bethel v. Quilling, Selander, Lownds, Winslett & Moser, P.C.*, 595 S.W.3d 651, 656 (Tex. 2020). As permitted by the Texas Supreme Court, additional background facts, which are matters of public record, are presented for clarity and context—not to contradict the facts alleged. *Compare Office of Pub. Util. Counsel v. PUC of Tex.*, 878 S.W.2d 598, 600 (Tex. 1994) (per curiam) (explaining when a court of appeals may consider matters of public record on appeal), *with Bethel*, 595 S.W.3d at 656.

<sup>4</sup> Plaintiffs’ use of “methods of voting” is imprecise. There are two “methods of voting” in Texas: in person and by mail. Tex. Elec. Code chs. 64, 85-86. To avoid confusion, except

voting and the use of drop boxes to collect mail-in ballots.” CR.5 (¶ 3). Harris County, for example, experimented with “drive-thr[ough] voting, returning mail-in ballots at drop boxes, overnight voting, and sending mail-in-ballot applications directly to voters over sixty-five years of age.” CR.5, 36-38 (¶¶ 3, 89-92).

None of these alternate voting rules was contemplated by state law; some were entirely unique. For instance, Harris County was the only Texas county offering drive-through voting. CR.37 (¶ 91). And it was the only county to send unsolicited mail-in-ballot applications to roughly 380,000 registered voters, CR.36 (¶ 89), and to offer 24/7 voting, CR.37 (¶ 92). In addition, Harris County initially “established twelve drop box sites for voters to deposit mail-in ballots for the general election,” and “Travis County, similarly, established four drop box locations.” CR.37 (¶ 90).

These alternate voting rules proved to be controversial. Harris County’s original plan to send unsolicited applications to all 4 million registered voters in the county was held to be illegal. *State v. Hollins*, 620 S.W.3d 400, 409 (Tex. 2020) (per curiam).<sup>5</sup> Harris County’s drive-through voting similarly prompted a legal challenge, which was never adjudicated on the merits. *See In re Hotze*, 610 S.W.3d 909 (Tex. 2020) (orig. proceeding) (Devine, J., dissenting from denial of mandamus relief and emergency stay). Governor Abbott, by proclamation, declared that ballots could be delivered during early voting only at one location per county, The Governor of the

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when quoting Plaintiffs, Defendants will use the term “rules” rather than “methods” because it better describes the grab-bag of challenges Plaintiffs assert.

<sup>5</sup> Because the State learned of the conduct only after applications were sent to those over 65, the legality of *that* action was not addressed. *Hollins*, 620 S.W.3d at 404-05 nn.15, 17.

State of Tex., Proclamation No. 41-3772, 45 Tex. Reg. 7073, 7080-81 (2020)—a decision upheld by both the Fifth Circuit and the Texas Supreme Court, *Tex. League of United Latin Am. Citizens v. Hughs*, 978 F.3d 136, 146 (5th Cir. 2020) (*LULAC*); *Abbott v. Anti-Defamation League Austin, Sm., & Texoma Regions*, 610 S.W.3d 911, 923 (Tex. 2020) (per curiam).<sup>6</sup>

Texas was also hit with numerous lawsuits insisting that its voting laws were suppressing the vote of minorities and/or populations particularly vulnerable to the pandemic. *E.g.*, *Tex. All. for Retired Ams. v. Scott*, No. 20-40643, 2022 WL 795862 (5th Cir. Mar. 16, 2022) (*TARA*); *Lewis v. Scott*, No. 20-59654, 2022 WL 795861 (5th Cir. Mar. 16, 2022); *Richardson v. Scott*, 2022 WL 795859 (5th Cir. Mar. 16, 2022); *In re State*, 602 S.W.3d 549, 569 n.13 (Tex. 2020). The State successfully defended its law against all challengers—but only at the cost of significant state resources.

In the end, more than 11 million Texans cast votes in the 2020 general election—the most in Texas history. CR.5 (¶ 2). The 11 million votes cast were an increase of 2 million votes over those cast in the 2016 general election. CR.36 (¶ 87). And voter turnout increased in some of the State’s most populous counties. CR.36 (¶ 87).

## **B. The 2021 passage of SB 1**

In his 2021 State of the State address, Governor Abbott announced that “Election Integrity [would] be an emergency item” during that year’s legislative session. Press Release, Office of the Tex. Gov., *Governor Abbott Delivers 2021 State of The*

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<sup>6</sup> Plaintiffs’ use of the term “drop box” is again imprecise. Texas law has never allowed an unmanned, off-site “drop box”—only that a “voter may deliver a marked ballot in person to the early voting clerk’s office.” Tex. Elec. Code § 86.006(a-1).

*State Address* (Feb. 1, 2021), <https://tinyurl.com/abbott2021address>. The next month, Governor Abbott “held a press conference in Houston on the importance of election integrity legislation,” during which he noted that “[i]n the 2020 election, we witnessed actions throughout our [S]tate that could risk the integrity of our elections and enable voter fraud.” Press Release, Office of the Tex. Gov., *Governor Abbott Holds Press Conference on Election Integrity Legislation* (Mar. 15, 2021), <https://tinyurl.com/abbotelectionconference>. Consistent with the Governor’s statements, election integrity was a priority item for the 87th Legislature.

### **1. Regular session**

The Texas Senate introduced SB 7, CR.39 (¶ 97), entitled “AN ACT relating to elections, including election integrity and security; creating a criminal offense; providing civil penalties.” SB 7, Introduced Version, <https://tinyurl.com/sb7introduced>. And the Texas House of Representatives introduced a companion bill, HB 6. CR.39 (¶ 97). Designed as omnibus bills to address (among other things) irregularities observed during the 2020 election, each bill made several changes to the Election Code, and both were referred to their respective Senate and House committees. CR.40 (¶ 98).

Over the next 10 weeks, the committees considered the bills. *See* CR.40-44 (¶¶ 98-110). The process eventually produced a conference committee report in the Senate, which was designated CSSB 7. CR.44 (¶ 109); S.J. of Tex., 87th Leg., R.S. 2914 (2021). CSSB 7 was sent to the House on the final day of the regular session, and “many House members chose to walk out of the chamber, denying the Bill’s

advocates the quorum necessary to pass legislation” and running out the clock on the legislation. CR.44 (¶ 110).

## **2. First called session**

Governor Abbott called a special session to commence on July 8, 2021, to once again take up “[l]egislation strengthening the integrity of elections in Texas.” CR.44 (¶ 111); The Governor of the State of Tex., Proclamation No. 41-3848, 46 Tex. Reg. 4233, 4238 (2021). Both the House and Senate introduced new versions of their previous election-integrity bills; CSSB 7 was retitled SB 1, and HB 6 was retitled HB 3. CR.44 (¶ 111). The bills were immediately referred to their respective committees. CR.44 (¶ 112); H.J. of Tex., 87th Leg., 1st C.S. 5 (2021); S.J. of Tex., 87th Leg., 1st C.S. 3 (2021). Those committees held public hearings. CR.44-45 (¶ 112); SB 1, Tex. S. Comm. on State Affairs, Witness List, 87th Leg., 1st C.S. (July 10, 2021), <https://tinyurl.com/sb1witnesslist>; HB 3, Tex. House Select Comm. on Constitutional Rights and Remedies, Witness List, 87th Leg., 1st C.S. (July 10, 2021), <https://tinyurl.com/hb3witnesslist>.

Public testimony complete, the bills were advanced out of both committees with favorable reports. CR.45 (¶ 113); H.J. of Tex., 87th Leg., 1st C.S. 32 (2021); S.J. of Tex., 87th Leg., 1st C.S. 14 (2021). The next day, Democratic House members broke quorum and left the State to prevent HB 3’s passage. CR.45 (¶ 114). For its part, the Senate passed SB 1. CR.45-46 (¶ 114); S.J. of Tex., 87th Leg., 1st C.S. 23 (2021). Ultimately, neither bill became law. CR.46 (¶ 114).

### 3. Second called session

As the walkout had prevented votes on several significant pieces of legislation, Governor Abbott called a second special session to commence on August 7, which would consider—among other things—legislation “strengthening the integrity of elections in Texas.” CR.46 (¶ 115); The Governor of the State of Tex., Proclamation No. 41-3852, 46 Tex. Reg. 5109, 5115-16 (2021). Days later, the Senate passed CSSB 1, and SB 1 was engrossed. CR.46 (¶ 115); S.J. of Tex., 87th Leg., 2d C.S. 84, 86 (2021). This version of SB 1 was sent to the House and referred to the Select Committee on Constitutional Rights and Remedies. S.J. of Tex., 87th Leg., 2d C.S. 41-42 (2021).

After considerable acrimony—and ultimately, a ruling from the Texas Supreme Court that the House could arrest members who did not report to work, *In re Abbott*, 628 S.W.3d 288, 292 (Tex. 2021) (orig. proceeding)—Democratic House members who had broken quorum returned to the Capitol, and the House to its business. CR.46 (¶ 116); H.J. of Tex., 87th Leg., 2d C.S. 45 (2021). The Select House Committee filed a favorable report of SB 1 as substituted. CR.46-47 (¶ 117); H.J. of Tex., 87th Leg., 2d C.S. 184 (2021); Tex. House Select Comm. on Constitutional Rights & Remedies, Summary of Comm. Action, 87th Leg., 2d C.S. (Aug. 23, 2021), <https://tinyurl.com/sb1committeesummary>.

SB 1 passed the House with some changes. CR.47 (¶ 118); H.J. of Tex., 87th Leg., 2d C.S. 79, 93, 103, 104, 105, 110-11, 118, 140, 152, 162, 167-68, 187 (2021). The Senate rejected the House amendments, and a conference committee was appointed. H.J. of Tex., 87th Leg. 2d C.S. 271 (2021).



The conference committee filed a report. S.J. of Tex., 87th Leg., 2d C.S. 182 (2021); S.B. 1, Conference Comm. Rep. 3d Printing, <https://tinyurl.com/sb1conferencecommittee>. The report became the final version of SB 1 and passed both the House and Senate along party lines. CR.47 (¶ 119); S.J. of Tex., 87th Leg., 2d C.S. 188 (2021). Governor Abbott promptly signed the bill into law. CR.47 (¶ 119); S.J. of Tex., 87th Leg., 2d C.S. 268 (2021).

## II. Procedural History

### A. Plaintiffs' original petition

Almost immediately after SB 1 was signed into law, Plaintiffs filed the underlying lawsuit in Harris County district court, asserting, generally, that SB 1 violates their voting rights. CR.4-5.<sup>7</sup> The petition seeks declaratory and injunctive relief. CR.11 (¶ 19).

In a sprawling complaint, Plaintiffs challenge multiple provisions of SB 1. CR.94. These provisions either amend or add sections to the Texas Election Code and include provisions relating to:

- poll watchers, SB 1 §§ 4.01(g), 4.06(g), 4.07(e), 4.09, and 6.01(e);<sup>8</sup>
- the solicitation of applications to vote by mail, *id.* § 7.04;

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<sup>7</sup> The Governor was also listed as a defendant, but Plaintiffs nonsuited their claims against him. CR.138, 142.

<sup>8</sup> Plaintiffs' inclusion of section 8.01 in their list of poll-watcher provisions (*see, e.g.*, CR.56) is puzzling: this provision creates an enforcement regime that is not specific to poll watchers. Tex. Elec. Code §§ 31.128-.130. To the extent that this was anything other than an error, it fails for the same reasons as the other poll-watcher provisions.

- identification requirements to vote by mail, *id.* §§ 5.02, 5.03, 5.07, 5.08, 5.10, 5.12, and 5.13;
- voter assistance, *id.* §§ 6.01, 6.03, 6.04, and 6.05; and
- other voting rules that Plaintiffs call “alternative voting methods,” *id.* §§ 3.04, 3.09, 3.10, 3.12, 3.13, and 4.12.

CR.94.

Plaintiffs assert eight “counts” of alleged constitutional violations, which fall in five general buckets:

- **Count I** – all the challenged sections violate the equal-protection guarantees in article I, sections 3 and 3a of the Texas Constitution. CR.79-81 (¶¶ 213-22);
- **Count II, IV, V, VII** – the poll-watcher provisions CR.81-83 (¶¶ 223-30); a ban on the solicitation of mail-in ballot applications, CR.87-88 (¶¶ 245-48); provisions regarding voter assistants, CR.88-89 (¶¶ 249-52); and identification requirements regarding mail-in ballots, CR.91-93 (¶¶ 262-68), violate a “right to vote” putatively found in article I, section 3 of the Texas Constitution;<sup>9</sup>
- **Count III** – the poll-watcher provisions violate due course of law in article I, section 19 of the Texas Constitution. CR.83-87 (¶¶ 231-44);
- **Count VI** – the voter assistants provisions violate the right to freedom of speech, expression, and association in article I, section 8 of the Texas Constitution. CR.89-91 (¶¶ 253-61); and
- **Count VIII** – the cumulative changes to the Texas Election Code brought about by all the challenged provisions deprive persons of their constitutional rights. CR.93 (¶¶ 269-72).

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<sup>9</sup> The cited provision guarantees equal protection and does not mention a freestanding right to vote. Tex. Const. art. I, § 3. For present purposes, the distinction is not pertinent.

Plaintiffs request that Defendants be enjoined from enforcing the challenged provisions and imposing any attendant civil or criminal penalties. CR.95.

### **B. Petition in intervention**

Soon after Plaintiffs filed suit, the Harris County Republican Party, Dallas County Republican Party, National Republican Senatorial Committee, and National Republican Congressional Committee filed a petition in intervention pursuant to Texas Rule of Civil Procedure 60. CR.103-12. No motion to strike Intervenors' petition was filed. *See* CR.340-42.

### **C. Defendants' and Intervenors' Rule 91a motions**

Defendants filed, pursuant to Texas Rule of Civil Procedure 91a, a motion to dismiss all of Plaintiffs' claims. CR.115-23. The motion asserted two grounds for dismissal: standing and sovereign immunity. CR.115-23.

Specifically, Defendants argued there is no basis in law or fact for Plaintiffs' constitutional claims against Defendants and that, even taking Plaintiffs' allegations as true, Plaintiffs are not entitled to the relief sought because the trial court lacks subject-matter jurisdiction over all of Plaintiffs' claims. *See* CR.117, 120-22. In other words, Plaintiffs have not alleged facts that affirmatively demonstrate the court's jurisdiction over any of their claims, and thus, dismissal of Plaintiffs' entire lawsuit is appropriate. *See* CR.117, 120-22.

Like Defendants, Intervenors moved to dismiss Plaintiffs' suit under Rule 91a. CR.165-210. Unlike Defendants, Intervenors' Rule 91a motion does not challenge

the trial court's jurisdiction—only that Plaintiffs have failed to plead facts plausibly establishing their right to relief. *See* CR.175, 180-209.

#### **D. Trial court's order and interlocutory appeal**

On January 31, 2022, the trial court denied Defendants' and Intervenor's Rule 91a motions. CR.339. On February 19, Defendants noticed this interlocutory appeal pursuant to Texas Civil Practice and Remedies Code section 51.014(a)(8). CR.343-45. Intervenor's motion is not at issue in the appeal.

#### **STANDARD OF REVIEW**

Standing is a constitutional prerequisite to suit, *Heckman v. Williamson County*, 369 S.W.3d 137, 150 (Tex. 2012), and a component of subject-matter jurisdiction, *State v. Naylor*, 466 S.W.3d 783, 787 (Tex. 2015). Further, “[i]n Texas, sovereign immunity deprives a trial court of subject matter jurisdiction for lawsuits in which the state or certain governmental units have been sued unless the [S]tate consents to suit.” *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004). Thus, for purposes of establishing appellate jurisdiction, denying a Rule 91a motion on these grounds is like denying “a plea to the jurisdiction by a governmental unit.” Tex. Civ. Prac. & Rem. Code § 51.014(a)(8); *see San Jacinto River Auth. v. Medina*, 627 S.W.3d 618, 621 (Tex. 2021); *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 549 (Tex. 2019) (quoting *Harris County v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004)); *Lexington v. Treece*, No. 01-17-00228-CV, 2021 WL 2931354, at \*15 & n.7 (Tex. App.—Houston [1st Dist.] July 13, 2021, no pet.) (mem. op.).

Under Rule 91a, a claim may be dismissed for having no basis in law or in fact. *See* Tex. R. Civ. P. 91a.1. “In ruling on a Rule 91a motion to dismiss, a court may not consider evidence but ‘must decide the motion based solely on the pleading of the cause of action, together with any [permitted] pleading exhibits.’” *In re Farmers Tex. Cnty. Mut. Ins. Co.*, 621 S.W.3d 261, 266 (Tex. 2021) (orig. proceeding) (quoting Tex. R. Civ. P. 91a.6). A trial court’s ruling on a Rule 91a motion is subject to de novo review on appeal, *id.*, just like a ruling on a plea to the jurisdiction, *City of Austin v. Liberty Mut. Ins.*, 431 S.W.3d 817, 822 (Tex. App.—Austin 2014, no pet.) (citing *Miranda*, 133 S.W.3d at 226).

Because a Rule 91a motion challenges the sufficiency of the pleadings, the Court reviews the trial court’s order using the standard of review for pleas to the jurisdiction that challenge only the pleadings. *Lexington*, 2021 WL 2931354, at \*15 & n.7; *Johnson v. Gutierrez*, No. 01-18-00068-CV, 2018 WL 6053623, at \*3 (Tex. App.—Houston [1st Dist.] Nov. 20, 2018, no pet.) (mem. op.). The Court construes the pleadings in Plaintiff’s favor and determines whether they have alleged facts that affirmatively demonstrate the trial court’s jurisdiction to hear the case. *See, e.g., Lexington*, 2021 WL 2931354, at \*15; *Liberty Mut. Ins.*, 431 S.W.3d at 822.

## SUMMARY OF THE ARGUMENT

For two reasons, the trial court lacks jurisdiction over Plaintiffs’ claims: standing and sovereign immunity.

I. The allegations in Plaintiffs’ live petition do not affirmatively demonstrate standing. Indeed, Plaintiffs’ allegations negate standing. Plaintiffs allege no injuries in fact that are cognizable under the relevant legal tests. The provisions challenged

are facially neutral rules ensuring that all lawful—but no unlawful—votes are counted, and Plaintiffs do not adequately allege that they are part of a protected class disadvantaged by those rules. Many of the provisions challenged on a right-to-vote theory relate to mail-in ballots. To the extent regulations on voting by mail implicate a right to vote, they make that right easier to exercise and thus do not form the basis of a cognizable injury. And the specific Plaintiffs bringing void-for-vagueness and free-speech claims have not alleged how the alleged problems with the regulations will change their personal behavior or cause them personal harm.

Additionally, Defendants—the Secretary of State, Deputy Secretary of State, and Attorney General—are not the government officials authorized to enforce the challenged provisions. Indeed, Plaintiffs attempt to tie Defendants to a single provision—section 6.01—that addresses record-keeping requirements for individuals who aid multiple voters. CR.25 (¶ 53), 63 (¶ 182). But Plaintiffs do not explain how keeping those records cause Plaintiffs a distinct harm beyond the records’ creation, with which Defendants are *not* involved. Moreover, they do not explain how enjoining that recordkeeping requirement would redress the alleged injuries they insist SB 1 has wrought. Therefore, Plaintiffs’ allegations do not affirmatively demonstrate that their alleged injuries are fairly traceable to Defendants and that a judgment granting equitable relief against Defendants will redress the alleged constitutional violations.

**II.** Even if Plaintiffs could show standing, sovereign immunity would still bar their claims. Sovereign immunity is waived only if the live petition affirmatively demonstrates that Plaintiffs’ constitutional claims are viable. But Plaintiffs have sued

the wrong defendants, and their constitutional claims are legally and factually incognizable under the relevant legal tests.

## ARGUMENT

“[W]here the plea[] to the jurisdiction challenge[s] each and every cause of action or claim asserted in the petition, jurisdiction must be examined on a claim-by-claim basis.” *City of Houston v. Guthrie*, 332 S.W.3d 578, 588 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). If the trial court lacks jurisdiction over all the claims asserted, the lawsuit must be dismissed. *See Heckman*, 369 S.W.3d at 150. Here, jurisdiction is lacking as to every claim asserted by Plaintiffs; thus, the lawsuit should have been dismissed.

### I. Plaintiffs Lack Standing.

“Standing is implicit in the concept of subject matter jurisdiction,” *Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993), and a constitutional prerequisite to suit, *Heckman*, 369 S.W.3d at 150. Texas’s standing doctrine mirrors the federal test for Article III standing and serves to prevent “the rights of [potentially] million[s]” of Texans from “be[ing] adjudicated” by “plaintiffs who cannot show more than the merest possibility of injury to themselves.” *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 307 (Tex. 2008); *Tex. Ass’n of Bus.*, 852 S.W.2d at 445. Because of the similarities of the two tests, Texas courts “turn for guidance to precedent from the U.S. Supreme Court,” which has elaborated three elements of standing:

*First*, the plaintiff must have suffered an “injury in fact” —an invasion of a legally protected interest which is (a) concrete and particularized, and

(b) “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Second*, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.” *Third*, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.”

*Heckman*, 369 S.W.3d at 154-55 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations omitted)) (emphasis added).

Like other aspects of subject-matter jurisdiction, standing is analyzed “on a plaintiff-by-plaintiff, claim-by-claim basis.” *Id.* at 153. Whether there are few claims or many, there must be a “careful judicial examination of a complaint’s allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted.” *Id.* at 156 (quoting *Allen v. Wright*, 468 U.S. 737, 752 (1984), *abrogated in part on other grounds*, *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014)); *see also*, e.g., *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2200 (2021). Far from affirmatively demonstrate their standing to bring claims alleging violations of the Texas Constitution, Plaintiffs’ allegations negate standing.

#### **A. Plaintiffs’ pleadings negate the injury-in-fact element.**

To satisfy the first element of standing, “the plaintiff must have suffered an ‘injury in fact’—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) ‘actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Heckman*, 369 S.W.3d at 154 (quoting *Lujan*, 504 U.S. at 560-61 (citations omitted)). That is, the plaintiff must allege—and ultimately prove—that he has been “*personally* injured,” or face imminent personal injury. *Id.* at 155 (citing *S. Tex. Water Auth.*



*v. Lomas*, 223 S.W.3d 304, 307 (Tex. 2007)); *Neeley v. W. Orange-Cove Consol. ISD*, 176 S.W.3d 746, 774 (Tex. 2005). Standing alone, Plaintiffs’ status as voters—or associations of voters—cannot represent a cognizable harm because any injury stemming from that status is a generalized grievance shared by the entire population. *Brown v. Todd*, 53 S.W.3d 297, 302 (Tex. 2001). Examining the petition, plaintiff by plaintiff and claim by claim, reveals no cognizable injury in fact here.

**1. Count I: Texas NAACP, CC Texas, Norris, and Norman’s equal-protection claim**

Plaintiffs’ Count I (CR.79) asserts that legislators enacted SB 1 for a discriminatory purpose in violation of the equal-protection provisions of the Texas Constitution. *See* Tex. Const. art. I, §§ 3, 3a. Although equal-protection challenges to allegedly discriminatory voting laws are among the few instances where a voter *does* have standing, that rule applies only if Plaintiffs plausibly allege that the “classification disfavors” them as voters by “placing them in a position of a constitutionally unjustifiable inequality vis a vis [other] voters.” *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 9 (Tex. 2011). Plaintiffs cannot do so.

Plaintiffs acknowledge that SB 1 is facially neutral. CR.79 (¶¶ 215-16). But they assert the bill is “specifically aimed at curtailing methods of voting used by Black, Hispanic, and Asian voters,” CR.80 (¶ 219), and “was enacted with the purpose of discriminating based on race or ethnicity, in particular, making it harder for Black, Hispanic, and Asian voters, as well as other minorities, to vote,” CR.81 (¶ 222). But

Plaintiffs have not alleged facts affirmatively demonstrating concrete and particularized injuries to themselves as members of a disfavored class that are actual and imminent as opposed to just hypothetical and speculative.

a. To begin, Plaintiffs cannot show that SB 1’s ban on the alternate voting rules used in 2020 by one (at most, two) of Texas’s 254 counties—such as mass-mailing unsolicited mail-in ballot applications, drive-through voting, overnight early voting, or providing multiple drop-box locations—will have any impact at all on any protected class of which they are a part.

Because Plaintiffs seek prospective relief, they must identify an imminent future injury. They cannot because whether any Texas counties would offer all, or even one, of these alternative voting procedures in the future but for SB 1’s enactment is pure speculation. Plaintiffs concede that no county in Texas was constitutionally required to offer those alternative voting rules in 2020 but insist that they had a “choice” whether to do so. CR.37 (¶ 90).<sup>10</sup> And Plaintiffs acknowledge, as they must, that Harris County and Travis County were the only counties to adopt any of those rules in 2020 and that they did so only because of a global pandemic. CR.36 (¶ 88); *see also* CR.4 (¶¶ 2-3), CR.36-38 (¶¶ 86-92). It is speculative whether these alternative voting procedures will even be needed for a future public-health crisis resembling that in 2020. “Speculation as to the potential for disparate impact cannot serve as evidence of such impact itself,” *Walls v. City of Petersburg*, 895 F.2d 188, 191

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<sup>10</sup> For the avoidance of doubt, Defendants do not concede that these practices—many of which spawned emergency litigation requiring the expenditure of significant state resources—were lawful in 2020.

(4th Cir. 1990), and it does not establish standing for prospective relief, *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 402 (2013); cf. *Garcia v. City of Willis*, 593 S.W.3d 201, 207 (Tex. 2019).

**b.** Plaintiffs have not adequately alleged that voter turnout will decrease in a way that will harm them simply because SB 1 bans their preferred voting rules. They certainly allege that Harris—and to a lesser extent Travis County—used idiosyncratic voting measures in response to the pandemic, and that statewide turnout increased in 2020. *See* CR.36-39 (¶¶ 87-94). But it does not follow that statewide turnout increased *because* Harris and Travis County utilized some pandemic voting measures, that voter turnout will fall if those two counties are required to follow the same procedures as the State’s other 252 counties, or that any fall in turnout will have a disparate impact on any protected class. Indeed, according to Plaintiffs’ own allegations, Harris County’s voter turnout rate (66%) was the *same* as the statewide rate. CR.36 (¶ 87). A plaintiff “cannot manufacture standing” through speculative allegations that depend on a complex chain of contingencies without showing each contingency is more likely than not to occur, *Clapper*, 568 U.S. at 402—which Plaintiffs have not done.

**c.** Plaintiffs also have not shown that the challenged provisions disproportionately burden voting for any protected class of voters. A right to vote “is not abridged unless the challenged law creates a barrier to voting that makes it more difficult for the challenger to exercise her right to vote relative to some benchmark.” *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 192 (5th Cir. 2020) (*TDP II*). And a disparate-impact claim premised on the right to vote requires that barrier to impact individuals

in a way that has some “practical significance.” *Sw. Fair Hous. Council, Inc. v. Maricopa Domestic Water Improvement Dist.*, 17 F.4th 950, 964 n.11 (9th Cir. 2021); *accord Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2358 n.4 (2021) (Kagan, J., dissenting) (acknowledging that there are some disparities that are “just too trivial for the legal system to care about”). Plaintiffs have not alleged any facts tending to demonstrate that SB 1 substantially and impermissibly erects a “barrier to voting that makes it more difficult” for a protected class to vote. *TDP II*, 978 F.3d at 192. The relevant baseline is the generally applicable voting rules applied throughout the State, not the pandemic-related modifications Harris and Travis Counties adopted in 2020. The alternative voting rules Plaintiffs seek may make it more convenient for some to vote, but that is not the test. *See Crawford v. Marion Cnty. Elec. Bd.*, 553 U.S. 181, 208 (2008) (Scalia, J., concurring).

Plaintiffs similarly cannot establish a cognizable injury through reference to the facts that minority voters in Harris County comprised (1) 56% of those who used extended early voting hours in the Democratic Party primary and (2) 53% of voters who used drive-through voting during the November 2020 general election. CR.37 (¶¶ 91, 92). Standing alone, these percentages do not evidence a meaningful disparity between minority and non-minority voters. If anything, as Plaintiffs’ own figures show that 70.7% of Harris County’s population is non-white, CR.35 (¶¶ 81), these

figures seem to show that the extended voting options were disproportionately used by *whites*, and their abolition disfavors *those* voters.<sup>11</sup>

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In sum, to demonstrate standing, Plaintiffs had to allege facts affirmatively demonstrating that they are part of a protected class of voters that SB 1 harms in some concrete way. *Andrade*, 345 S.W.3d at 9. Plaintiffs did not do so.

## **2. Counts II, IV, V, VII: Texas NAACP, CC Texas, Norris, and Norman’s right-to-vote claims**

a. Plaintiffs’ also fail to establish standing regarding Counts II, IV, V, and VII in their Original Petition, which assert voting-rights claims. CR.81-83 (¶¶ 223-30); CR.87-89 (¶¶ 245-52); CR.91-93 (¶¶ 262-68). Texas courts reviewing the constitutionality of laws affecting voting rights have borrowed the framework established by the U.S. Supreme Court in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983), and *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). *See Abbott*, 610 S.W.3d at 919. Under this test, known as *Anderson-Burdick*, a court first “considers the character and magnitude of the asserted injury to [voting] rights,” and then balance the purported injury against the “interests put forward by the State as justifications for the burden imposed by its rule.” *Id.* (quoting *Anderson*, 460 U.S. at 789).

A law that causes a “severe” impediment to voting must to survive strict scrutiny, which places the burden of proof on the government to demonstrate that its restriction is narrowly tailored to achieve a compelling governmental interest. *Id.*

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<sup>11</sup> Normally voting regulations are assessed based on voting-age populations, but Plaintiffs do not provide these figures for minorities in Harris County. *See* CR.36 (¶¶ 83) (providing *statewide* CVAP for Hispanics).

(citing *Burdick*, 504 U.S. at 434). But “not every challenge to voting regulations warrants strict scrutiny.” *Id.* Courts therefore apply much less searching review to election laws “imposing lesser burdens” than to those “imposing severe burdens.” *Id.* at 920 (quoting *Clingman v. Beaver*, 544 U.S. 581, 603 (2005) (O’Connor, J., concurring)). “Such reasonable, nondiscriminatory restrictions on the franchise will be presumed valid by a reviewing court.” *Id.* (cleaned up). Such a regulation “is valid if it ‘is a reasonable way’ of furthering ‘a legitimate interest.’” *Abbott*, 610 S.W.3d at 920 (quoting *Burdick*, 504 U.S. at 440). And “the State need not show a compelling interest,” “produce empirical evidence that the harm the statute is designed to avoid has actually occurred,” *id.* (cleaned up); see also *Burdick*, 504 U.S. at 434; *Anderson*, 460 U.S. at 789, or establish that the statute is “narrowly tailored” to ameliorate that harm, *Abbott*, 610 S.W.3d at 920 (citing *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 365 (1997)).

Thus, to show the requisite injury, Plaintiffs had to allege that the challenged provisions of SB 1 “place a barrier or prerequisite to voting, or otherwise make it more difficult to vote” compared to the relevant benchmark. *LULAC*, 978 F.3d at 145. Moreover, Plaintiffs do not plead an injury cognizable under the *Anderson-Burdick* by pleading that “a law . . . makes it easier for *others* to vote,” *id.* at 145 (second emphasis added), or even by showing a slight, non-discriminatory burden imposed on all voters equally, see *Abbott*, 610 S.W.3d at 918-22. Plaintiffs have not alleged an injury in fact cognizable under on *Anderson-Burdick* claim.

i. Many of the challenged provisions of SB 1 do not affect voters; they provide additional protections for poll watchers. See CR.82-83 (¶¶ 227-29 (citing SB 1

§§ 4.01, 4.06, 4.07, 4.09, 6.01(e))). They clarify that poll watchers are entitled to effectively observe proceedings at a polling place and may not be denied this right except in certain circumstances. And they require poll watchers to swear an oath that they will not “disrupt the voting process or harass voters.” SB 1 § 4.06(h). Thus, these provisions do not affect a voter’s ability to cast a ballot at all, let alone create “a significant increase over the usual burdens of voting.” *Crawford*, 553 U.S. at 198.

Plaintiffs complain that a presiding election judge is authorized to remove poll watchers for any improper conduct witnessed by an election judge or clerk, *see* Tex. Elec. Code § 32.075(a)-(c), but *not* for violations that the presiding judge or other official did *not* witness, *see* CR.83 (¶ 228) (citing SB 1 § 4.01g). Plaintiffs do not allege how that could place a burden on *their* ability to vote. Indeed, Plaintiffs have not pointed to a single pre-SB 1 incident where this change would have changed how an Election Code violation would have been addressed. And it is not hard to see why: presiding judges still have the authority to ask law enforcement to remove a poll watcher, to remove a poll watcher for violations the judge observes, and to remove a poll watcher for violating the Penal Code. *See* Tex. Elec. Code § 32.075(g)-(h). Plaintiffs have not attempted to show how—in light of their retained authority—any changes the presiding judge’s role will lead to an increase in improper behavior of poll watchers, let alone one in a location where Plaintiffs will be present, that will create an undue burden on *their* voting rights. Standing is absent under such circumstances because it is entirely speculative that any—let alone all—of the contingencies required for an injury to materialize will actually occur. *Clapper*, 568 U.S. at 402.

ii. Plaintiffs also have not alleged a harm to their individual voting rights based on a law prohibiting public officials from soliciting submission of a mail-in ballot application or distributing such unsolicited applications. *See* CR.87-88 (¶¶ 246-47) (citing SB 1 § 7.04). Nor could they: “the fundamental right to vote does not extend to a claimed right to cast an absentee ballot by mail,” *Abbott*, 610 S.W.3d at 919 n.9 (quoting *Tully v. Okeson*, 977 F.3d 608, 611 (7th Cir. 2020))—let alone a right to receive unsolicited application to vote by mail. And, because mail-in voting “lower[s] barriers to casting ballots” compared to the relevant benchmark—namely, in-person voting—reasonable limits on its practice cannot be said to burden Plaintiffs’ ability to vote. *Id.* at 918.

iii. Next, Plaintiffs challenge requirements that voter assistants complete certain forms and affirm compliance with the law. That theory suffers both flaws discussed above. *See* CR.88-89 (¶¶ 250-51). Like the poll-watcher provisions, these provisions impose no obligations on voters; and like mail-in ballot rules, they actually lower the usual burdens of voting by allowing approved applicants to assist eligible voters in casting a ballot.

Plaintiffs complain that requiring a voter assistant to take SB 1’s amended oath, Tex. Elec. Code § 64.032, will “deter” people assisting voters in the future, *see* CR.88-89 (¶¶ 250-51). But Plaintiffs do not allege that they need assistance, making any connection between that hypothetical discouragement of unidentified *assistants* and *Plaintiffs’* ability to vote entirely speculative.<sup>12</sup> Because any harm to the right

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<sup>12</sup> It has been black-letter law for half a century that Plaintiffs lack standing to vindicate *others’* need for assistance. *Warth v. Seldin*, 422 U.S. 490, 499 (1975).



that Counts II, IV, V, and VII seeks to vindicate “is not certainly impending,” the potential that there might someday be fewer volunteer voter assistants does not give Plaintiffs standing to bring these counts today. *Clapper*, 568 U.S. at 402.

iv. Furthermore, Plaintiffs have not alleged a concrete injury based on a requirement that the identifying information submitted with their mail-in ballot applications and on returned mail-in ballot envelopes match the identifying information provided on their voter-registration application. *See* CR.91-92 (¶¶ 263-68). Again, regulations on mail-in voting do not implicate an individual’s right to vote. *Abbott*, 610 S.W.3d at 919 n.9. Moreover, requiring identification information is less burdensome than having to procure and produce a photo identification, which the U.S. Supreme Court has upheld. *Crawford*, 553 U.S. at 198-200.

Plaintiffs insist that the cure process for paperwork containing incorrect or missing numbers is flawed. *See* CR.92 (¶ 264). But the cure process is a regulation on mail-in voting, which makes it even easier for Plaintiffs to vote by ensuring they have the opportunity to vote in person should something go wrong in the application process. Moreover, as Plaintiffs do not allege that their applications are likely to be rejected in the future, it is entirely speculative that they will suffer a personal injury from any flaws in the cure process. Plaintiffs lack standing under such circumstances. *City of Los Angeles v. Lyons*, 461 U.S. 95, 105-06 (1983); *Garcia*, 593 S.W.3d at 207.

### **3. Count III: Blanco, Nugent, and Bloomquist’s void-for-vagueness claim**

Similarly deficient are Blanco, Nugent, and Bloomquist’s allegations that they are injured because election officials’ authority vis-à-vis poll watchers is allegedly

vague. *See* CR.87 (¶ 243). To satisfy this due-process standard, a statute must only provide an ordinary person “fair notice” of the prohibited conduct. *Bynum v. State*, 767 S.W.2d 769, 773 (Tex. Crim. App. 1989); *Duncantell v. State*, 230 S.W.3d 835, 844-45 (Tex. App.—Houston [14th Dist.] 2007, pet. ref’d). “A statute satisfies vagueness requirements if the statutory language ‘conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.’” *Wagner v. State*, 539 S.W.3d 298, 314 (Tex. Crim. App. 2018) (quoting *Jordon v. De George*, 341 U.S. 223, 231-32 (1951)). “In the context of pre-enforcement review,” as here, “examining facial vagueness”—or even injury—“is often difficult, perhaps impossible, because facts are generally scarce.” *Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 547 (5th Cir. 2008). Here, Plaintiffs have challenged a number of poll-watcher provisions as impermissibly vague, but they have not adequately alleged how the purported lack of clarity will cause them imminent harm.

a. Plaintiffs first challenge section 4.06, which amends Texas Election Code section 33.051 to prohibit an election judge from “intentionally or knowingly refus[ing] to accept a watcher for service when acceptance is required by this section.” CR.85 (¶ 238). But Plaintiffs do not allege facts establishing how they are injured by any failure to provide “fair notice” of the prohibited conduct. *See Bynum*, 767 S.W.2d at 773. To the contrary, they contend section 33.051 is vague because it allegedly “duplicates” Texas Election Code section 33.061. Assuming duplication renders a statute vague (and it does not), Plaintiffs do not explain how they are injured because the same conduct is mandated by two statutes instead of one.

**b.** Plaintiffs challenge section 4.09, *see* CR.85-86 (¶ 240), which amends section 33.061(a) of the Election Code and prohibits an election judge from “knowingly prevent[ing] a watcher from observing” an “activity” at a polling place. Contrary to Plaintiffs’ contention, section 4.09 is clarifying. It prohibits only those actions of a judge that deprive the watcher the ability to observe activities that the official “knows the watcher is entitled to observe” such as “obstruct[ing]” a poll watcher’s view and “distanc[ing]” the poll watcher from an activity “in a manner that would make observation not reasonably effective.” *Id.* A scienter requirement typically saves a statute from a vagueness challenge. *McFadden v. United States*, 576 U.S. 186, 197 (2015). And it eviscerates Plaintiffs’ standing because they do not allege that they intend to knowingly violate the law in the future. *Garcia*, 593 S.W. at 207.<sup>13</sup>

**c.** Plaintiffs challenge section 4.01 (adding Tex. Elec. Code § 32.075(g)), which states:

A presiding judge may not have a watcher duly accepted for service . . . removed from the polling place for violating a provision of this code or any other provision of law relating to the conduct of elections, other than a violation of the Penal Code, unless the violation was observed by an election judge or clerk.

CR.86 (¶ 242). Plaintiffs contend that election judges may not be able to remove poll watchers where it is unclear whether the behavior violates the Election Code or other provision of law relating to the conduct of elections. *See* CR.86 (¶ 242).

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<sup>13</sup> Because sections 4.07 and 6.01 define where a watcher is entitled to watch—not what Plaintiffs are entitled to do—they add nothing from a standing perspective to Plaintiffs’ challenge to section 4.09. *See* Tex. Elec. Code §§ 33.056(e)-(f), 64.009(e).

Assuming that ambiguity is unconstitutional—and it is not (*see infra* at Part II.C.3)—it is entirely speculative that this could lead to a cognizable injury to Plaintiffs. A presiding judge can have a poll watcher removed for violating election law, violating the Penal Code, breaching the peace, or violating other law. *See* Tex. Elec. Code § 32.075(g)-(h). Section 4.01 simply requires that to remove a poll watcher for a violation of election law, he or another election judge or clerk must have witnessed the behavior. The hypothetical poll-watcher behaviors suggested by Plaintiffs (*e.g.*, CR.87 (¶ 241)) would presumably be witnessed by an election judge, but even if it were not, it could constitute “interfer[ing] in the orderly conduct of an election” and thus subject the watcher to removal for violating the Election Code. *Id.* § 33.0015. No doubt there may be close cases as to what may constitute behavior necessitating a watcher’s removal from the polling place, but the prospect of some close cases does not render the statute “impermissibly vague” in all applications. *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 495 (1982). And Plaintiffs do not plausibly allege that the need to make such close calls would lead to some change in behavior by Plaintiffs now that constitutes a cognizable injury. *See Clapper*, 568 U.S. at 402.

#### **4. Count VI: Norman’s freedom of speech, expression, and association claim**

Next, Norman asserts that SB 1’s requirement that voter assistants swear oaths and complete forms violate her rights to free speech, expression, and association embodied in article I, section 8 of the Texas Constitution. *See* CR.89-91 (¶¶ 254, 259-60). She does not challenge *existing* oath and paperwork requirements but alleges that

SB 1 has made it “more difficult” to assist voters and “dissuade[s]” people from assisting voters. CR.90-91 (¶ 259). She further asserts that “[a]ssisting a voter who cannot vote without assistance is protected speech” because “such assistance is intended to convey a particularized message about voting by helping voters navigate a process that would otherwise be inaccessible to them.” CR.90 (¶ 257). And last, she contends that voter assistance is a form of “core political speech,” CR.89-90 (¶¶ 255, 258), triggering strict scrutiny of the challenged provisions that allegedly impose “significant burdens on these protected speech and associational rights,” CR.90-91 (¶¶ 259, 261).

Norman’s claim fails for lack of an injury in fact because she does not plausibly allege that any of the provisions will affect *her* expressive activity. She voices concern that “she will [be] punished for engaging in . . . conversations” necessary to “convince Korean American voters to accept the help that they are guaranteed under the law.” CR.25 (¶ 52). But she has not alleged facts that SB 1 has been or would be enforced in such a way (against her or anyone else). Such vague allegations do not establish a “credible threat of enforcement,” which is necessary to allege a concrete injury in fact in the pre-enforcement context. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014); *accord In re Abbott*, 601 S.W.3d 802, 812 (Tex. 2020) (orig. proceeding) (per curiam). Nor can she bridge the gap by asserting that SB 1’s paperwork requirements will make assistance “more difficult” and will “dissuade” people from assisting voters. *See* CR.90-91 (¶ 259). Norman does not have standing to assert the injuries of unidentified third parties. *Warth*, 422 U.S. at 499.

## **5. Count VIII: Plaintiffs' novel "cumulative changes" claim**

Finally, Plaintiffs assert that "[t]he cumulative changes to the Texas Election Code from SB 1's enactment . . . violate[s] [their] constitutional rights." CR.93 (¶ 270). But determining whether jurisdiction exists "requires a provision-by-provision analysis" because "the Texas Election Code delineates between the authority of the Secretary of State and local officials." *TDP II*, 978 F.3d at 179. Assuming such a claim even exists (and it does not, *infra* Part II.C.5), this catchall depends on the same alleged harms listed in Plaintiffs' claims in Counts I-VII; thus, Count VIII, *see* CR.93 (¶¶ 270-72), and fails for lack of cognizable injury-in-fact for the same reasons discussed above.

### **B. Plaintiffs' pleadings negate the traceability and redressability elements.**

Assuming Plaintiffs can establish a cognizable injury, they still lack standing because that injury is neither traceable to nor redressable by Defendants. These elements often "overlap as two sides of a causation coin." *Nova Health Sys. v. Gandy*, 416 F.3d 1149, 1159 (10th Cir. 2005); *see also Dynalantic Corp. v. Dep't of Def.*, 115 F.3d 1012, 1017 (D.C. Cir. 1997). "The difference is that while traceability looks backward (did the defendants cause the harm?), redressability looks forward (will a favorable decision alleviate the harm?)." *Toll Bros. v. Twp. of Readington*, 555 F.3d 131, 142 (3d Cir. 2009) (citing *Lujan*, 504 U.S. at 560-61). In this case, both traceability and redressability turn on Defendants' alleged roles in enforcing SB 1's provisions. *See* CR.32-33 (¶¶ 77-79). Plaintiffs' claims fail because they have not affirmatively demonstrated that Defendants did (or will) cause Plaintiffs harm by enforcing

SB 1's challenged provisions, *or* that an order preventing Defendants from enforcing those provisions will redress Plaintiffs' alleged injuries.

**1. Plaintiffs' alleged harms regarding all their claims are not traceable to Defendants' actions.**

To satisfy the traceability element of standing, Plaintiffs must plead facts showing “a causal connection between the injury and the conduct complained.” *Heckman*, 369 S.W.3d at 154. An injury is not “fairly traceable” to the challenged action of the defendant if it would “‘result[] from the independent action of some third party not before the court.’” *Id.* at 155 (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41-42 (1976)). And “the relevant inquiry is whether the plaintiffs’ injury can be traced to allegedly unlawful conduct of the defendant, not to the provision of law that is challenged.” *Collins v. Yellen*, 141 S. Ct. 1761, 1779 (2021) (quotation marks omitted). While this standard requires “less of a causal connection than tort law,” it still “requires something more than conjecture.” *Env’t Tex. Citizen Lobby, Inc. v. ExxonMobil Corp.*, 968 F.3d 357, 368 (5th Cir. 2020). Plaintiffs cannot show traceability.

**a. Secretary of State.** Plaintiffs insist that the Secretary has authority to enforce SB 1 based on his: (1) job description as the State’s “chief election officer,” (2) authority to “assist and advise all election authorities” in the interpretation of the Election Code, and (3) oversight authority over the Texas Elections Division. CR.32-33. Courts have repeatedly held these general facts to be insufficient to establish jurisdiction—including three times last month. *E.g.*, *TARA*, 2022 WL 795862, at \*4; *Lewis*, 2022 WL 795861, at \*3; *Richardson*, 2022 WL 795859, at \*3; *cf. In re*

*Hotze*, 627 S.W.3d 642, 649 (Tex. 2020) (Blacklock, J., concurring) (observing that the Secretary’s titular role as “chief election officer” does not “authorize” or “impose a duty” to take any particular action).

Instead, Plaintiffs must plead that the named official “can act” with respect to the challenged law and that “there’s a significant possibility that he or she will act to harm [the] plaintiff.” *City of Austin v. Paxton*, 943 F.3d 993, 1002 (5th Cir. 2019), *cert. denied*, 141 S. Ct. 1047 (2021). “It is well-established that when a plaintiff brings a pre-enforcement challenge to the constitutionality of a particular statutory provision,” as Plaintiffs did here, “the traceability or causation element of standing requires the named defendants to possess authority to enforce the complained-of provision.” *Bronson v. Swensen*, 500 F.3d 1099, 1119 (10th Cir. 2007).<sup>14</sup> And because “in the particular context of Texas elections, . . . the Secretary’s role varies,” Plaintiffs must “identify the Secretary’s specific duties within the particular statutory provision” at issue. *Tex. Democratic Party v. Hughs*, 860 F. App’x 874, 877 (5th Cir. 2021) (per curiam) (citing *TDP II*, 978 F.3d at 179-80). That is, Plaintiffs had the burden to allege facts explaining what, exactly, the Secretary did wrong and how, exactly, they trace their alleged injuries to his conduct. *See Lewis v. Governor of Ala.*, 944 F.3d 1287, 1296 (11th Cir. 2019).

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<sup>14</sup> *E.g.*, *Okpalobi v. Foster*, 244 F.3d 405, 426-28 (5th Cir. 2001) (en banc); *accord Digital Recognition Network, Inc. v. Hutchinson*, 803 F.3d 952, 957-58 (8th Cir. 215); *Socialist Workers Party v. Leahy*, 145 F.3d 1240, 1248 (11th Cir. 1998); *Shell Oil Co. v. Noel*, 608 F.2d 208, 211 (1st Cir. 1979); 13 Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* § 3531.5 (3d ed. Apr. 2021 update).



Plaintiffs failed to meet this burden. In particular, they failed to plead that, as a result of the Secretary enforcing the challenged SB 1 provisions—“either because he is actually enforcing it, has threatened to enforce it, or at the very least hasn’t ‘indicat[ed] his intent not to enforce’”—their constitutional rights have been or will be violated. *See id.* at 1296-97. Nor have Plaintiffs alleged facts affirmatively demonstrating that their alleged injuries depend on the actions of the Secretary as opposed to “the unfettered choices made by independent actors not before the court[] and whose exercise of broad and legitimate discretion the court[] cannot presume either to control or to predict.” *ASARCO Inc. v. Kadish*, 490 U.S. 605, 615 (1989).

To the contrary, Plaintiffs’ *only* specific allegation regarding the Secretary—which appears in only two paragraphs—concerns section 6.01, which amended the paperwork required of voter assistants. CR.25-26 (¶ 53), 63 (¶ 182). At most, this could show standing for Count VI brought by Norman. “It is now beyond cavil that plaintiffs must establish standing for each and every provision they challenge.” *In re Gee*, 941 F.3d 153, 160 (5th Cir. 2019) (per curiam); *see also, e.g., TDP II*, 978 F.3d at 179. Plaintiffs have not attempted to draw a connection between this record-keeping requirement—or any other duty of the Secretary of State—and their challenges to provisions concerning poll watchers, election judges, mail-in ballots, the solicitation and distribution of mail-in ballot applications, drive-up voting, early voting, election clerks, the rejection of mail-in ballot applications, or associated criminal penalties (which the Secretary of State cannot enforce).

Plaintiffs' reference to section 6.01 does not even establish Norman's standing to bring Count VI. Plaintiffs complain that this provision requires certain voter assistants to fill out a form, which must be delivered to and retained by the Secretary and be made available to the Attorney General for inspection upon request. CR.63 (referring to Tex. Elec. Code § 64.009(g)). But Plaintiffs have failed to affirmatively allege facts establishing how the Secretary's record-retention obligation causes them any direct harm. Because nothing in Plaintiffs' "pleading demonstrates any enforcement connection between the challenged provisions and the [Secretary of] State," they have failed to establish traceability as to the Secretary. *Paxton v. Simmons*, No. 05-20-00058-CV, 2022 WL 190302, at \*10 (Tex. App.—Dallas Jan. 21, 2022, no pet. h.). And their claims against the Secretary must be dismissed.<sup>15</sup>

**b. Deputy Secretary.** It is unclear if Plaintiffs' claims against the Deputy Secretary of State—which were made “until such time as the office of the Secretary of State is filled,” CR.33—are live. Even if they are, they add nothing to the traceability analysis because the only allegation against the Deputy is that he “perform[s] the duties prescribed by law for the secretary of state when the secretary of state is absent or unable to act.” CR.33 (citing Tex. Elec. Code § 405.004). Thus, Plaintiffs' claims against the Deputy Secretary fail for the same reasons as their claims against the Secretary.

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<sup>15</sup> *E.g.*, *Ector Cnty. All. of Bus. v. Abbott*, No. 11-20-00206-CV, 2021 WL 4097106, at \*10 (Tex. App.—Eastland Sept. 9, 2021, no pet.) (mem. op.); *City of El Paso v. Tom Brown Ministries*, 505 S.W.3d 124, 147 (Tex. App.—El Paso 2016, no pet.); *Lone Starr Multi Theatres, Inc. v. State*, 922 S.W.2d 295, 297-98 (Tex. App.—Austin 1996, no writ).

**c. Attorney General.** As with the Secretary (and Deputy Secretary), Plaintiffs' pleadings do not affirmatively allege facts showing how the Attorney General enforces the challenged provisions. Instead, Plaintiffs generally cite the Attorney General's constitutional role as the "chief law enforcement officer of Texas." CR.33 (¶ 79) (citing Tex. Const. art. IV, § 22). Identifying the Attorney General's general enforcement authority does not satisfy the traceability requirement. *Paxton*, 943 F.3d at 1002-03.

**i.** Plaintiffs' only specific allegation regarding the Attorney General concerns section 6.01 dealing with voter-assistant forms and requiring the Secretary to deliver such forms to the Attorney General upon request. But Plaintiffs do not explain how the Attorney General's ability to request information from the Secretary of State affects *them*. Indeed, simple requests for information are not considered enforcement actions even when they are directed at the person providing the information—let alone a third-party custodian of information. *See Twitter, Inc. v. Paxton*, 26 F.4th 1119, 2022 WL 610352, at \*3 (9th Cir. 2022).

**ii.** To the extent that the challenged provisions create criminal liability, under current law, Plaintiffs cannot show standing because the Attorney General's enforcement role is entirely dependent on the actions of independent third parties not before the court. *Heckman*, 369 S.W.3d at 154-55. Absent the consent of a local prosecutor or the request of a district or county attorney for assistance, the Attorney General typically may not represent the State in criminal cases in trial courts. *See Saldano v. State*, 70 S.W.3d 873, 880-81 (Tex. Crim. App. 2002). "Speculation that [the Attorney General] might be asked by a local prosecutor to assist in enforcing"

the law does not suffice to create a present, justiciable. *In re Abbott*, 956 F.3d 696, 709 (5th Cir. 2020), *vacated as moot sub nom. Planned Parenthood Ctr. for Choice v. Abbott*, 141 S. Ct. 1261 (2021) (quotation marks omitted). Section 273.021 of the Election Code does grant the Attorney General independent authority to prosecute election-law violations, but the Court of Criminal Appeals recently declared this authority unconstitutional. *See State v. Stephens*, Nos. PD-1032-20, PD-1033-20, 2021 WL 5917198, at \*10 (Tex. Crim. App. Dec. 15, 2021).<sup>16</sup> When the Attorney General does not have the authority to enforce a penal law, a justiciable issue is not present between the challenger of that law and the Attorney General. *See Am. Veterans, Dep't of Tex. v. City of Austin*, No. 03-03-00762-CV, 2005 WL 3440786, at \*2 (Tex. App.—Austin Dec. 15, 2005, no pet.) (mem. op).

Accordingly, Plaintiffs cannot affirmatively establish the traceability element of standing, and all their claims against the Attorney General should be dismissed for want of jurisdiction. *See Simmons*, 2022 WL 190302, at \*10.

## **2. A favorable judgment against Defendants will not redress Plaintiffs' alleged harms.**

For closely related reasons, Plaintiffs' live pleadings also do not satisfy the redressability element of standing, which requires Plaintiffs to show it is "'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Heckman*, 369 S.W.3d at 154-55 (quoting *Lujan*, 504 U.S. at 560-61). To

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<sup>16</sup> For the avoidance of doubt, the Attorney General disagrees with the Court of Criminal Appeals' reading of the law and has sought rehearing in *State v. Stephens*, No. PD-1032-20, No. PD-1033-20, Mot. for Rehr'g (Tex. Crim. App.) (Dec. 30, 2021).

satisfy this element, Plaintiffs must show a “‘substantial likelihood that the requested relief will remedy the alleged injury in fact.’” *Id.* at 155-56 (quoting *Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 771 (2000)). Moreover, Plaintiffs must satisfy this burden for *each* form of relief sought. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000); *see also, e.g., Lyons*, 461 U.S. at 109. “If, for example, a plaintiff suing in a Texas court requests injunctive relief, but the injunction could not possibly remedy his situation, then he lacks standing to bring that claim.” *Heckman*, 369 S.W.3d at 155.

“Whether a plaintiff has sufficiently pled that the requested remedy will redress its harm can turn on whether the plaintiff has shown that the defendant has authority to respond to any requested injunctive relief,” *Meyers v. JDC/Firethorne, Ltd.*, 548 S.W.3d 477, 487 (Tex. 2018) (citing *Lujan*, 504 U.S. at 568-70). If the defendant has no legal power over the challenged actions, then the plaintiff has not shown a substantial likelihood that its requested relief will remedy its alleged injury. *Id.* at 487-88.

Here, because Plaintiffs have not shown that Defendants have authority to enforce the challenged provisions, an order enjoining them from doing so would be “utterly meaningless.” *See Okpalobi*, 244 F.3d at 421, 426-27; *accord Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1253, 1258 (11th Cir. 2020); *People First of Ala. v. Merrill*, 491 F. Supp. 3d 1076, 1139 (N.D. Ala. 2020). Texas courts lack jurisdiction to take such hollow actions—even if they might clarify the law for the future. *Tex. Ass’n of Bus.*, 852 S.W.2d at 444.

Additionally, when a plaintiff's alleged injury is not redressable because the government officials lacks enforcement authority, the plaintiff lacks standing to seek declaratory relief. *See Constit. Party of Pa. v. Cortes*, 712 F. Supp. 2d 387, 400 (E.D. Pa. 2010), *aff'd*, 433 F. App'x 89 (3d Cir. 2011). In that circumstance, granting declaratory relief would be deciding an abstract question of law without binding the parties and, thus, would be a prohibited advisory opinion. *See Holcomb v. Waller County*, 546 S.W.3d 833, 838 (Tex. App.—Houston [1st Dist.] 2018, pet. denied); *see also Brinkley v. Tex. Lottery Comm'n*, 986 S.W.2d 764, 767 (Tex. App.—Austin 1999, no pet.).

In sum, because Plaintiffs cannot allege facts affirmatively demonstrating Defendants' specific authority to enforce SB 1's challenged provisions, the relief Plaintiffs request cannot be redressed by a favorable judgment. Any order in their favor would be an advisory opinion, which is prohibited by the Texas Constitution's separation-of-powers clause. Tex. Const. art. II, § 1; *Pedestrian Beach, LLC v. State*, No. 01-17-00870-CV, 2019 WL 6204838, at \*6 (Tex. App.—Houston [1st Dist.] Nov. 21, 2019, no pet.) (mem. op.). Because Plaintiffs have not affirmatively demonstrated any of the elements of standing, their suit should be dismissed.

## **II. Sovereign Immunity Bars Plaintiffs' Suit.**

### **A. Sovereign immunity bars constitutional claims that name a government official who lacks enforcement power or that are not viable.**

Plaintiffs' claims should also be dismissed because sovereign immunity protects the State of Texas and its agencies and subdivisions from suit and from liability. *PHI*,

*Inc. v. Tex. Juv. Just. Dep't*, 593 S.W.3d 296, 301 (Tex. 2019). “[S]overeign immunity is inapplicable when a suit challenges the constitutionality of a statute and seeks only equitable relief.” *Patel v. Tex. Dep’t of Licensing & Reg.*, 469 S.W.3d 69, 75-76 (Tex. 2015); *see also City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 n.6 (Tex. 2009); *City of Beaumont v. Bouillion*, 896 S.W.2d 143, 148-49 (Tex. 1995). But this exception does not apply to “facially invalid” constitutional claims. *Klumb v. Hous. Mun. Emps. Pension Sys.*, 458 S.W.3d 1, 13 (Tex. 2015). In other words, merely asserting that a statute is unconstitutional will not avoid sovereign immunity if that claim is not “viable.” *Andrade*, 345 S.W.3d at 11.

The test for facial invalidity focuses on the viability of the constitutional claim as alleged in the live pleadings. *See Matzen*, 2021 WL 5977218, at \*4; *accord Patel*, 469 S.W.3d at 77 (requiring “claims against state officials . . . be properly pleaded in order to be maintained”). Plaintiffs must do more than just name a cause of action and assert that a constitutional violation exists. *See, e.g., Klumb*, 458 S.W.3d at 13-14; *Andrade*, 345 S.W.3d at 11. Furthermore, a pleading that seeks equitable relief against the State based on an alleged violation of the Texas Constitution is viable only if it names the relevant defendants. *See TxDOT v. Sefzik*, 355 S.W.3d 618, 621-22 & n.3 (Tex. 2011) (per curiam); *Heinrich*, 284 S.W.3d at 373 n.6. After all, courts enjoin those who enforce laws—not “the laws themselves.” *Whole Woman’s Health v. Jackson*, 141 S. Ct. 2494, 2495 (2021) (per curiam); *accord Patino v. Tex. Dep’t of Ins.-Div. of Workers’ Comp.*, 631 S.W.3d 163, 174 (Tex. App.—Houston [14th Dist.] 2020, no pet.); *City of Houston v. Johnson*, 353 S.W.3d 499, 505 (Tex. App.—Houston [14th Dist.] 2011, pet. denied).

In short, to successfully avoid sovereign immunity, Plaintiffs must affirmatively allege facts that, if proven, would demonstrate Defendants’ active involvement in the allegedly unconstitutional acts. *See, e.g., Patel*, 469 S.W.3d at 76; *Patino*, 631 S.W.3d at 174. Plaintiffs neither named such a defendant nor pleaded a viable claim.

### **B. State officials are not proper defendants under the UDJA.**

Plaintiffs’ claims against the Secretary of State, Deputy Secretary of State, and Attorney General fail at the outset because they are not proper defendants in a UDJA action. The Texas Supreme Court has held the UDJA’s implied waiver of immunity “requires that *the relevant governmental entities* be made parties.” *Patel*, 469 S.W.3d at 76 (quoting *Heinrich*, 284 S.W.2d at 373 n.6) (emphasis added); *Tex. Educ. Agency v. Leeper*, 893 S.W.2d 432, 466 (Tex. 1994). Accordingly, to challenge the constitutionality of provisions of SB 1 via the UDJA’s sovereign-immunity waiver, Plaintiffs were required to sue the *Office* of the Secretary of State and the *Office* of the Attorney General—not the individual officeholders named as defendants. They did not do so.

Even if suing the officers could be seen as somehow close enough—and it cannot<sup>17</sup>—Plaintiffs still do not adequately allege that Defendants’ respective agencies enforce the provisions in SB 1 that Plaintiffs challenge. Alleging the agencies’ general duties is insufficient; Plaintiffs must allege (at minimum) how those duties relate to the challenged provisions. *See, e.g., TARA*, 2022 WL 795862, at \*2 (collecting cases

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<sup>17</sup> *See, e.g., Hall v. McRaven*, 508 S.W.3d 232, 246 (Tex. 2017) (Willett, J., concurring) (“[A]mid the Byzantine complexity of sovereign-immunity law, which admittedly elevates form over substance, missing a procedural bull’s-eye is sometimes fatal.”).



regarding analogous *Ex parte Young* doctrine). Plaintiffs’ failure to plead facts affirmatively establishing a viable claim in the immunity context—like their failure to plead facts affirmatively establishing traceability and redressability, *supra* Part I.B—deprives this Court of jurisdiction.

**C. Plaintiffs’ constitutional claims are not viable, so the UDJA does not waive immunity from suit.**

**1. Count I: Equal-Protection**

The Court also lacks jurisdiction because Plaintiffs have not stated viable constitutional claims. Plaintiffs fail to state a viable discrimination-based claims because they do not plead that Defendants acted with discriminatory *intent*—not just knowledge of potential discriminatory effects. The Texas Supreme Court has stated that “the federal analytical approach applies to equal[-]protection challenges under the Texas Constitution.” *Abbott*, 610 S.W.3d at 923 n.14 (quoting *Bell v. Low Income Women of Tex.*, 95 S.W.3d 253, 266 (Tex. 2002)). As a result, absent an express suspect classification, an equal-protection claimant must establish that the action stems from a discriminatory purpose. *Bell*, 95 S.W.3d at 259 (citing *Hunt v. Cromartie*, 526 U.S. 541, 546 (1999)). A claimant cannot show an equal-protection injury “solely because [official action] results in a racially disproportionate impact.” *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 259-60 (1977); *Bell*, 95 S.W.3d at 259-60. Absent “racially discriminatory intent or purpose,” there is no “violation of the Equal Protection Clause.” 429 U.S. at 264-65.

Determining discriminatory purpose “demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” *Id.* at 266. To demonstrate “constitutionally unjustifiable inequality,” *Andrade*, 345 S.W.3d at 9, Plaintiffs need not plead that racial animus was the actor’s sole motivation, but they must plead facts that, if proven, would show that a “discriminatory purpose was a motivating factor” behind the action. *Arlington Heights*, 429 U.S. at 270; *Abbott*, 610 S.W.3d at 923. When analyzing discriminatory purpose, courts presume legislators “act[ed] in good faith and without invidious bias in formulating policy.” *Abbott*, 610 S.W.3d at 923 (citing *Miller v. Johnson*, 515 U.S. 900, 915 (1995)); see also *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018). A challenged action’s disparate impact “does not raise concerns of discriminatory classification unless the measure was adopted *because of*, and not merely in spite of, its disparate impact on the affected class.” *Abbott*, 610 S.W.3d at 923 (citing *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979)).<sup>18</sup>

Plaintiffs plead five facts that they assert meet this standard. They do not. *First*, Plaintiffs point to a single legislator’s use of the phrase “preserving the purity of the ballot” during debate on a bill that did not pass in the regular session as evidence of discriminatory purpose behind the statute that did pass in the second special session. CR.81 (¶ 220). Leaving aside the temporal disconnect between the statement and

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<sup>18</sup> For that reason, Plaintiffs’ contention that “legislators . . . shepherded to final passage a Bill that they know will disenfranchise the votes of Black, Hispanic, and Asian voters, in addition to elderly and disabled voters” does not suffice. CR.81 (¶ 220). Assuming this conclusory allegation is sufficient (and it is not), mere “awareness” or knowledge of a disparate impact does not establish discriminatory purpose. *Feeney*, 442 U.S. at 279.

the statute the Legislature ultimately enacted, the Texas Constitution itself states that “the Legislature shall . . . preserve the purity of the ballot box.” Tex. Const. art. VI, § 4. And the Texas Supreme Court noted the phrase in upholding election rules just last year. *See Abbott*, 610 S.W.3d at 922. A legislator’s use of a phrase from the Texas Constitution that has been cited with favor by the Texas Supreme Court does not prove that discriminatory purpose was a motivating factor for SB 1’s enactment. *Arlington Heights*, 429 U.S. at 270; *Abbott*, 610 S.W.3d at 923.

*Second*, Plaintiffs point to the contentious legislative history of SB 1 and departures “from the normal course of procedure” in enacting the law. CR.81 (¶ 220). But “procedural violations do not demonstrate invidious intent of their own accord.” *Rollerson v. Brazos River Harbor Navigation Dist. of Brazoria Cnty. Tex.*, 6 F.4th 633, 640 (5th Cir. 2021); *see also Greater Birmingham Ministries v. Sec’y of State for State of Ala.*, 992 F.3d 1299, 1326–27 (11th Cir. 2021). Rather, procedural violations “must have occurred in a context that suggests the decision-makers were willing to deviate from established procedures in order to accomplish a discriminatory goal.” *Rollerson*, 6 F.4th at 640. To show discriminatory intent, the “fail[ure] to follow the proper procedures” must be “targeted to an[] identifiable minority group.” *Rollerson v. Port Freeport*, No. 3:18-CV-00235, 2019 WL 4394584, at \*8 (S.D. Tex. Sept. 13, 2019), *aff’d*, 6 F.4th 633 (5th Cir. 2021). Here, Plaintiffs have alleged no facts affirmatively showing that the Legislature deviated from established procedures to accomplish a discriminatory goal or in a way that targeted a minority group.

Plaintiffs also allude to “actions behind closed doors” and “bad faith negotiations.” CR.81 (¶ 220). But such subjective and conclusory descriptors of events do

not prove departures from “established procedures.” *Rollerson*, 6 F.4th at 640. Leaving aside that many of the supposedly excluded legislators chose to abscond from the jurisdiction during key periods of the development of the final bill—and thus could not have been included in discussions occurring Austin—private meetings and tough negotiations are a usual part of the legislative process. Persons unsatisfied with the results of legislative negotiations can always claim “bad faith,” but that is not the same as alleging facts that affirmatively demonstrate “a discriminatory goal,” *id.*, or “target[ing] [of] any identifiable minority group,” *Rollerson*, 2019 WL 4394584, at \*8.

In fact, Plaintiffs’ allegations demonstrate the opposite: SB 1’s proponents accommodated hundreds of people seeking to testify about the legislation, CR.44 (¶ 112), and legislators considered dozens of amendments, CR.47 (¶ 118). The fact that the legislative process involving SB 1 was partisan and contentious is hardly surprising. It does not mean the Legislature acted with a racially discriminatory purpose.

*Third*, Plaintiffs allege the fact that the Legislature did not conduct a racial-impact analysis establishes a discriminatory purpose. CR.81 (¶ 220). But such an analysis is not part of the Legislature’s “normal procedural sequence.” *Arlington Heights*, 429 U.S. at 267. The absence of such analysis thus proves nothing.

*Fourth*, Plaintiffs allege that “calling for the arrest of mostly minority legislators who left the Capitol protest” demonstrates discriminatory purpose. CR.81 (¶ 220). It does not because—as Plaintiffs seem to recognize—calls to arrest truant lawmakers included any *white* absentee legislators. *See* CR.51 (¶ 133). Plaintiffs are mistaking a partisan issue for a racial one, and “partisan motives are not the same as racial

motives” — particularly when one party chooses to break quorum rather than attend to the business of the House. *Brnovich*, 141 S. Ct. at 2349.<sup>19</sup>

*Fifth*, Plaintiffs allege the Legislature had a discriminatory purpose because “[l]egislators have repeatedly cited voter fraud as the predominant reason for enacting SB 1, despite absolutely no evidence of widespread voter fraud and virtually no evidence of even minor voting irregularities in Texas.” CR.81 (¶ 221). That is not available theory of intent. As the U.S. Supreme Court recently made clear, a State may enact laws to prevent fraud before it occurs—and doing so does not evince a discriminatory purpose. *Brnovich*, 141 S. Ct. at 2347-48. Indeed, because “[f]raud is a real risk,” a State may act prophylactically to prevent fraud “without waiting for it to occur and be detected within its own borders.” *Id.* at 2348.

## **2. Counts II, IV, V, VII: Right to Vote**

Many of the same principles doom Plaintiffs’ claims that SB 1 unconstitutionally abridged their ability to vote. This is particularly so because Plaintiffs assert that the challenged provisions—relating to poll watchers, election officials soliciting and distributing mail-in ballot applications, voter assistants, and mail-in-ballot application procedures—are facially unconstitutional. *See* CR.94-95. Such a challenge requires the plaintiff to demonstrate that “the statute always operates unconstitutionally.” *EBS Sols., Inc. v. Hegar*, 601 S.W.3d 744, 753 (Tex. 2020); *see also United States v. Salerno*, 481 U.S. 739, 745 (1987).

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<sup>19</sup> Plaintiffs’ related assertion that minority legislators who are Democrats were excluded from “participating in key [unspecified] aspects of the legislative process,” CR.81 (¶ 220), fails for similar reasons.

For several reasons, Plaintiffs cannot carry their heavy burden to show that the challenged provisions *always* impose a severe and impermissible burden on their alleged voting rights. Indeed, as discussed above (at Part. I.A.2), the challenged provisions do not impose any burdens on voters, much less “a significant increase over the usual burdens of voting.” *Crawford*, 553 U.S. at 198; *Abbott*, 610 S.W.3d at 920-922 (stating that the Texas Constitution does not prohibit “reasonable, nondiscriminatory restrictions” on voters). But the claims are not viable for two additional reasons: *First*, Plaintiffs have not pleaded that any of the challenged provisions impose burdens on “most voters,” as *Anderson-Burdick* requires. *Abbott*, 610 S.W.3d at 921. *Second*, the challenged provisions are justified by the State’s interests in “decreas[ing] the opportunity for fraud,” “increas[ing] confidence in electoral integrity,” and “promot[ing] uniformity of elections” statewide. *Id.* at 922.

a. The *Anderson-Burdick* framework requires a showing that the challenged law places an unconstitutional burden on “most voters,” not just some voters more than others. *Crawford*, 553 U.S. at 198-99; *see also id.* at 204-06 (Scalia, J., concurring) (stating that the only relevant burdens are those that affect voters “categorically”); *Abbott*, 610 S.W.3d at 921. Without this requirement, assessing “ordinary and widespread burdens . . . based solely on their impact on a small number of voters” would “subject virtually every electoral regulation to strict scrutiny, hamper the ability of States to run efficient and equitable elections, and compel . . . courts to rewrite state electoral codes.” *Richardson v. Tex. Sec’y of State*, 978 F.3d 220, 236 (5th Cir. 2020) (quoting *Clingman*, 544 U.S. at 593).

Plaintiffs do not allege that the challenged provisions impose material burdens on “most voters.” Instead, Plaintiffs focus their allegations on the burdens allegedly imposed on subgroups of voters. *See* CR.82-83 (¶¶ 227-29); CR.87-88 (¶¶ 246-47); CR.88 (¶¶ 250-51); CR.91-92 (¶¶ 263-67). A court may not invalidate an election law as to “*all* voters” simply because it allegedly “imposes ‘excessively burdensome requirements’ on *some* voters.” *Brakebill v. Jaeger*, 905 F.3d 553, 558 (8th Cir. 2018).

To take one example, Plaintiffs complain about flaws in the cure process for faulty mail-in ballots. *See* CR.92 (¶ 264). That process requires election officials to notify voters if their applications or ballots were rejected, provide information on how to correct or add the required information, and allow voters to cure any errors, for a period of six days after Election Day for rejected ballots. *See* Tex. Elec. Code §§ 86.001(f-1), 87.0271(b)-(c). Voters typically can mail their applications “in plenty of time before” the deadline “to eliminate the chance of untimely delivery.” *Abbott*, 610 S.W.3d at 921. Plaintiffs point to nothing to suggest that the cure process will apply to significant numbers of people—let alone that it will prove ineffective for most voters.

**b.** Moreover, the challenged provisions promote legitimate state interests, such as “deterring and detecting voter fraud” and preventing ballot tampering. *Crawford*, 553 U.S. at 191. Courts have recognized the legitimacy of States’ concerns about voter fraud, including in the context of absentee voting. *See, e.g., id.* at 195-96; *Griffin v. Roupas*, 385 F.3d 1128, 1130-31 (7th Cir. 2004) (“Voting fraud is a serious problem in U.S. elections generally . . . and it is facilitated by absentee voting.”).

Plaintiffs complain that there is not *enough* voter fraud in Texas to justify SB 1's restrictions, *see* CR.6 (§ 5); CR.72 (§ 201), but courts have repeatedly rejected such arguments as insufficient to state a viable constitutional claim. Voter fraud has occurred in Texas, as elsewhere, and is notoriously "difficult to detect and prosecute." *Tex. Democratic Party v. Abbott*, 961 F.3d 389, 396 (5th Cir. 2020) (*TDP I*). Moreover, "it should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders." *Brnovich*, 141 S. Ct. at 2348. And courts have repeatedly held that the Legislature is not required to "show specific local evidence of fraud in order to justify preventive measures," *Voting for Am., Inc. v. Steen*, 732 F.3d 382, 394 (5th Cir. 2013), or "prove the efficacy of the regulation with evidence in court," *Abbott*, 610 S.W.3d at 922.

Additionally, the challenged provisions serve other interests such as "promot[ing] uniformity of elections and increase[ing] confidence in electoral integrity." *Abbott*, 610 S.W.3d at 922. The U.S. Supreme Court has recognized that "public confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process." *Crawford*, 553 U.S. at 197; *see also Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam) ("Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy."). And the challenged provisions promote the State's interest in making "the conduct of elections . . . uniform and consistent throughout this state." SB 1 § 1.04; *Abbott*, 610 S.W.3d at 922. Every SB 1 provision that Plaintiffs challenge is "rationally related" to these legitimate interests. *See Abbott*, 610 S.W.3d at 922.



### 3. Count III: Void for Vagueness

Every provision Plaintiffs challenge as impermissibly vague also provides ample notice of the proscribed behavior. Texas courts generally interpret the due-course-of-law provision in the same way as its federal counterpart. *Patel*, 469 S.W.3d at 86; *Univ. of Tex. Med. Sch. at Hous. v. Than*, 901 S.W.2d 926, 929 (Tex. 1995); *accord Fleming v. State*, 341 S.W.3d 415, 416 (Tex. Crim. App. 2011) (per curiam) (Keasler, J., concurring). The vagueness doctrine does not require “perfect clarity and precise guidance” in statutory text. *Ex parte Ellis*, 309 S.W.3d 71, 86 (Tex. Crim. App. 2010). “Many perfectly constitutional statutes use imprecise terms,” *Sessions v. Dimaya*, 138 S. Ct. 1204, 1214 (2018), and “due process does not require ‘impossible standards’ of clarity,” *Kolender v. Lawson*, 461 U.S. 352, 361 (1983). Moreover, because the challenged provisions carry civil rather than criminal penalties, “less precision” is demanded. *Comm’n for Lawyer Discipline v. Benton*, 980 S.W.2d 425, 437 (Tex. 1998). And Plaintiffs had to plead facts affirmatively demonstrating that SB 1’s poll-watcher provisions—the only provisions at issue in this Count—are “impermissibly vague in all of [their] applications.” *Hoffman Estates*, 455 U.S. at 495.

Plaintiffs did not carry their burden for *any* challenged provision. For example, Plaintiffs complain that section 4.07’s phrasing allowing poll watchers “free movement” may “encompass conduct and activity that have nothing to do with any legitimate purpose of the law” and “implies that poll watchers may be anywhere in a polling location and that election officials may not ask watchers to move.” CR.85 (¶ 239). But Plaintiffs nowhere suggest that prohibiting election officials from deny-

ing a watcher “free movement where election activity is occurring within the location at which the watcher is serving,” *see* Tex. Elec. Code § 33.056(e), is impermissibly vague in *all contexts*. Nor could they: clearly, election officials may remove poll watchers from any area where election activity is not occurring and any location where the watcher is not serving.

Similarly insufficient is Plaintiffs’ claim that section 6.01 (adding Tex. Elec. Code § 64.009(e)) is vague because it permits poll watchers to observe “any activity” related to voter assistance. CR.86 (¶ 241). Subsection (e) provides that “[e]xcept as provided by Section 33.057, a poll watcher is entitled to observe any activity conducted under this section.” The phrase “under this section” indicates that the subsection applies only to assistance for voters who are physically unable to enter the polling place—*i.e.*, curbside voting. *Id.* Thus, contrary to Plaintiffs’ allegation, the phrase “any activity” in subsection (e) does not “provide[] poll watchers with license to hover over and shadow the entire assistance process.” CR.86 (¶ 241). Section 6.01 merely extends existing rules governing poll watchers’ observations of voter assistance—which Plaintiffs do not allege are impermissibly vague—to curbside voting.<sup>20</sup>

#### **4. Count VI: Freedom of Speech**

**a.** Norman’s First Amendment claim similarly fails for numerous reasons—not least of which is that assisting persons to vote is not protected speech. As the

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<sup>20</sup> Plaintiffs likely do not challenge existing rules because, read with section 33.057 (as it must be), section 64.009 permits a poll watcher to observe an *election officer* providing voter assistance but may not be present at the voting station when the voter is preparing his or her ballot or has an assistant of the voter’s choice.

Fifth Circuit has explained, “not every procedural limit on election-related conduct automatically runs afoul of the First Amendment.” *Steen*, 732 F.3d at 392. To be actionable, “[t]he challenged law must restrict political discussion or burden the exchange of ideas,” not merely regulate non-expressive conduct. *Id.* (emphasis omitted).

Only conduct that is “inherently expressive” receives the protection of the First Amendment. *Rumsfeld v. Forum for Acad. & Instit. Rts., Inc.*, 547 U.S. 47, 66 (2006); *cf. Texas v. Johnson*, 491 U.S. 397, 404 (1989). And a court must “analyze” each “discrete step[]” of electoral activity to determine whether it qualifies for free-speech protections. *Steen*, 732 F.3d at 388. Conduct only has sufficient “communicative elements” to warrant First Amendment protection if it meets two requirements. *First*, the speech must reflect an intent “to convey a particular message.” *Johnson*, 491 U.S. at 404 (cleaned up). *Second*, “the likelihood [must be] great that the message would be understood by those who viewed it.” *Id.*; *see also Ex parte Flores*, 483 S.W.3d 632, 639 (Tex. App.—Houston [14th Dist.] 2015, pet. ref’d).

Voter assistance as contemplated by state law satisfies neither requirement. Assisting voters to complete their ballots and transporting them to the polls are not actions that “inherently express[]” anything. *Id.* at 389; *see also Rumsfeld*, 547 U.S. at 66; *United States v. O’Brien*, 391 U.S. 367, 376 (1968). And it is unlikely that voter assistance would be understood by others to convey any “particularized message.” *See Johnson*, 491 U.S. at 404. Rather, a voter seeking assistance is likely to see the assistant as faithfully relaying either the content of the ballot or the *voter’s* view—not expressing the assistant’s own message. Although an assistant might view his or

her own activities as conveying a particular message, that is insufficient: “[c]onduct does not become speech for First Amendment purposes merely because the person engaging in the conduct intends to express an idea.” *Steen*, 732 F.3d at 388; *see also O’Brien*, 391 U.S. at 376. As a result, one of this Court’s sister courts has already held that “[p]roviding special assistance to disabled or illiterate voters is a privilege,” not an exercise of the assistant’s “protected speech.” *Guerrero v. State*, 820 S.W.2d 378, 382 (Tex. App.—Corpus Christi 1991, pet. ref’d).

Providing voter assistance does not constitute “core political speech” simply because it is related to the voting process. “[N]on-expressive conduct does not acquire First Amendment protection whenever it is combined with another activity that involves protected speech.” *Steen*, 732 F.3d at 389. After all, “[i]f combining speech and conduct were enough to create expressive conduct, a regulated party could always transform conduct into ‘speech’ simply by talking about it.” *Rumsfeld*, 547 U.S. at 66.

**b.** Even if voter assistance were protected speech, Norman’s claim still fails. Election rules implicating protected speech are subject to the *Anderson-Burdick* test and not automatically subject to strict scrutiny as she contends. *Steen*, 732 F.3d at 387; *see also Fusaro v. Cogan*, 930 F.3d 241, 259-60 (4th Cir. 2019).

Under the *Anderson-Burdick* framework, courts must first determine if an election rule imposes a cognizable burden on protected speech and associational rights. *See Fusaro*, 930 F.3d at 257. If the burden is slight, the rule needs to be only “rationally related” to “legitimate [state] interests.” *See Abbott*, 610 S.W.3d at 922; *see also Burdick*, 504 U.S. at 434. Only severe burdens on First Amendment rights around

voting are subject to strict scrutiny. *See Abbott*, 610 S.W.3d at 922; *accord Burdick*, 504 U.S. at 434; *Luft v. Evers*, 963 F.3d 665, 671 (7th Cir. 2020). Norman does not state a viable claim against either SB 1’s paperwork or oath requirements.

*First*, sections 6.01, 6.03, and 6.05 do not restrict individuals from assisting voters: they require individuals who transport seven or more voters needing curbside assistance to a polling place or who assist voters in accordance with the Election Code to complete and submit a short informational form. *See Tex. Elec. Code* § 64.009(f). Norman does not dispute the relevance of the information requested. And rather than explaining how fulfilling this requirement is burdensome, she jumps to the conclusion that filling out the form will make assistance “more difficult” and will “dissuade” people from assisting voters. *See CR.90-91* (¶ 259). Conclusory allegations, however, cannot demonstrate a significant burden on one’s First Amendment rights. *Cf., e.g., Weizhong Zheng v. Vacation Network, Inc.*, 468 S.W.3d 180, 186 (Tex. App.—Houston [14th Dist.] 2015, pet. denied); *In re Canales*, 113 S.W.3d 56, 72 (Tex. Rev. Trib. 2003, appeal denied).

*Second*, the updated oath in section 6.04 does not impose a significant burden on protected speech. It requires the assistant to swear that she “did not pressure or coerce the voter into choosing [her] to provide assistance.” *CR.91* (¶ 260). Norman objects that the term “pressure” is overly broad and may sweep in benign activities such as “holding up signs and instructing fellow congregation members to seek out her assistance.” *CR.91* (¶ 260). But ordinary rules of construction require “pressure” to be read in context of the terms around it. *E.g., TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 441-42 (Tex. 2011). Applied here, that principle suggests

that “pressure,” which is used in conjunction with the term “coerce,” is best understood to refer to the use of “intimidation to make someone do something.” New Oxford American Dictionary (3d ed. 2010). Defendants are aware of no authority or principle supporting the proposition that one voter has a constitutionally protected right to intimidate another.

c. Lastly, it is evident from the face of the pleadings that any burden the challenged provisions may create is outweighed by Texas’s legitimate interests in protecting the integrity of votes involving voter assistance and in furthering voter confidence in the integrity of the State’s elections. *See supra* p. 48.

## **5. Count VIII: The Constitution**

Finally, Count VIII, which alleges a novel theory of cumulative harm, has no basis in law. In the trial court, Plaintiffs were unable to cite a single case from either the U.S. or Texas Supreme Courts supporting the theory advanced in Count VIII. *Compare* CR.209 (asserting that Count VIII “has no basis in law”), *with* CR.316-18 (citing lower-court cases from other jurisdictions). For good reason: the *Anderson-Burdick* balancing test was developed precisely because “[e]very decision that a State makes in regulating its elections will, inevitably, result in somewhat more inconvenience for some voters than for others.” *Lee v. Va. State Bd. of Elections*, 843 F.3d 592, 601 (4th Cir. 2016). To properly apply this standard, the Court must first identify the relevant state action, and then “weigh ‘the character and magnitude of the asserted injury’” to Plaintiffs’ constitutionally protected right “against ‘the precise interests put forward by the State as justifications for the burden imposed.’” *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 789). That precision is entirely

incompatible with a theory of cumulative harm. And even if it were not, the claim would have to be dismissed as “duplicative” of other counts. *See, e.g., Tex. DPS v. Salazar*, No. 03-11-00478-CV, 2013 WL 5878905, at \*9 (Tex. App.—Austin Oct. 31, 2013, pet. denied) (mem. op.).

\* \* \*

In sum, Plaintiffs have not alleged any viable constitutional claim waiving immunity from suit. Therefore, their lawsuit should be dismissed for want of jurisdiction.

### **PRAYER**

The Court should reverse the trial court’s order denying Defendants’ Rule 91a motion and render judgment dismissing Plaintiffs’ lawsuit.

Respectfully submitted.

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I certify that on April 11, 2022, a copy of Appellants' Brief was served via File & Serve Texas, and/or email upon all counsel listed below.

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## **CERTIFICATE OF COMPLIANCE**

Microsoft Word reports that this brief contains 14,681 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

/s/Lanora C. Pettit

LANORA C. PETTIT

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**In the Court of Appeals  
for the First Judicial District  
Houston, Texas**

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JOHN OR JANE DOE, IN HIS OFFICIAL CAPACITY AS THE  
SECRETARY OF THE STATE OF TEXAS; JOE ESPARZA IN HIS  
OFFICIAL CAPACITY AS THE DEPUTY SECRETARY OF THE STATE  
OF TEXAS; AND KEN PAXTON, IN HIS OFFICIAL CAPACITY AS THE  
ATTORNEY GENERAL OF TEXAS,

*Appellants,*

*v.*

TEXAS STATE CONFERENCE OF THE NAACP; COMMON CAUSE  
TEXAS; DANYAHEL NORRIS; HYUN JA NORMAN; FREDDY  
BLANCO; MARY FLOOD NUGENT; AND PRISCILIA BLOOMQUIST,

*Appellees.*

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On Appeal from the  
189th Judicial District Court, Harris County

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**APPENDIX**

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## **TAB A: TRIAL COURT ORDER**

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CAUSE NO. 2021-57207

Pgs-1

DISMY

TEXAS STATE CONFERENCE OF THE NAACP,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff(s)</i>	§	
vs.	§	HARRIS COUNTY, TEXAS
GOVERNOR GREG ABBOT (IN HIS OFFICIAL CAPACITY AS THE GOVERNOR OF,	§	
	§	189th JUDICIAL DISTRICT
<i>Defendant(s)</i>	§	

**ORDER**

Pending is **STATE DEFENDANTS' MOTION TO DISMISS PURSUANT TO RULE 91a OF THE TEXAS RULES OF CIVIL PROCEDURE.**

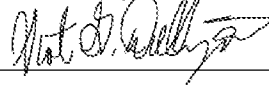
Defendants' motion DENIED.

Pending is **REPUBLICAN COMMITTEES' MOTION TO DISMISS UNDER RULE 91a.**

The court does not consider Intervenor's motion late filed. Regardless, the court grants Intervenor leave to file their motion such that it is properly before the court.

Intervenor's motion DENIED.

Signed January 31, 2022.



Hon. SCOT DOLLINGER  
Judge, 189th District Court

**TAB B: TEX. S.B. 1, 87TH LEG.,  
2D C.S. (2021)**

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## Chapter 1

S.B. No. 1

### AN ACT

relating to election integrity and security, including by preventing fraud in the conduct of elections in this state; increasing criminal penalties; creating criminal offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

#### ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. SHORT TITLE. This Act may be cited as the Election Integrity Protection Act of 2021.

SECTION 1.02. PURPOSE. The purpose of this Act is to exercise the legislature's constitutional authority under Section 4, Article VI, Texas Constitution, to make all laws necessary to detect and punish fraud.

SECTION 1.03. FINDINGS. The legislature finds that:

(1) full, free, and fair elections are the underpinnings of a stable constitutional democracy;

(2) fraud in elections threatens the stability of a constitutional democracy by undermining public confidence in the legitimacy of public officers chosen by election;

(3) reforms are needed to the election laws of this state to ensure that fraud does not undermine the public confidence in the electoral process;

(4) the reforms to the election laws of this state made by this Act are not intended to impair the right of free suffrage guaranteed to the people of Texas by the United States and Texas



1 Constitutions, but are enacted solely to prevent fraud in the  
2 electoral process and ensure that all legally cast ballots are  
3 counted. Integral to the right to vote is the assurance of voter  
4 access and the right for all votes legally cast to be counted;

5 (5) additionally, preventing a valid vote from being  
6 counted violates the basic constitutional rights guaranteed to each  
7 citizen by the United States Constitution; and

8 (6) providing for voter access and increasing the  
9 stability of a constitutional democracy ensures public confidence  
10 in the legitimacy of public officers chosen by election.

11 SECTION 1.04. Chapter 1, Election Code, is amended by  
12 adding Section 1.0015 to read as follows:

13 Sec. 1.0015. LEGISLATIVE INTENT. It is the intent of the  
14 legislature that the application of this code and the conduct of  
15 elections be uniform and consistent throughout this state to reduce  
16 the likelihood of fraud in the conduct of elections, protect the  
17 secrecy of the ballot, promote voter access, and ensure that all  
18 legally cast ballots are counted.

19 SECTION 1.05. Section 1.003, Election Code, is amended by  
20 adding Subsection (a-1) to read as follows:

21 (a-1) Election officials and other public officials shall  
22 strictly construe the provisions of this code to effect the intent  
23 of the legislature under Section 1.0015.

24 SECTION 1.06. Section 1.005, Election Code, is amended by  
25 amending Subdivision (4-a) and adding Subdivision (4-b) to read as  
26 follows:

27 (4-a) "Election official" means:

- 1                    (A) a county clerk;  
2                    (B) a permanent or temporary deputy county clerk;  
3                    (C) an elections administrator;  
4                    (D) a permanent or temporary employee of an  
5 elections administrator;  
6                    (E) an election judge;  
7                    (F) an alternate election judge;  
8                    (G) an early voting clerk;  
9                    (H) a deputy early voting clerk;  
10                   (I) an election clerk;  
11                   (J) the presiding judge of an early voting ballot  
12 board;  
13                   (K) the alternate presiding judge of an early  
14 voting ballot board;  
15                   (L) a member of an early voting ballot board;  
16                   (M) the chair of a signature verification  
17 committee;  
18                   (N) the vice chair of a signature verification  
19 committee;  
20                   (O) a member of a signature verification  
21 committee;  
22                   (P) the presiding judge of a central counting  
23 station;  
24                   (Q) the alternate presiding judge of a central  
25 counting station;  
26                   (R) a central counting station manager;  
27                   (S) a central counting station clerk;



(T) a tabulation supervisor;

(U) an assistant to a tabulation supervisor; and

(V) a chair of a county political party holding a primary election or a runoff primary election.

(4-b) "Federal judge" means:

(A) a judge, former judge, or retired judge of a United States court of appeals;

(B) a judge, former judge, or retired judge of a United States district court;

(C) a judge, former judge, or retired judge of a United States bankruptcy court; or

(D) a magistrate judge, former magistrate judge, or retired magistrate judge of a United States district court.

SECTION 1.07. Section 1.018, Election Code, is amended to read as follows:

Sec. 1.018. APPLICABILITY OF PENAL CODE. In addition to Section 1.03, Penal Code, and to other titles of the Penal Code that may apply to this code, Titles 2 and [Title] 4, Penal Code, apply ~~[applies]~~ to offenses prescribed by this code.

SECTION 1.08. Chapter 1, Election Code, is amended by adding Section 1.022 to read as follows:

Sec. 1.022. REASONABLE ACCOMMODATION OR MODIFICATION. A provision of this code may not be interpreted to prohibit or limit the right of a qualified individual with a disability from requesting a reasonable accommodation or modification to any election standard, practice, or procedure mandated by law or rule that the individual is entitled to request under federal or state

1 law.

2 ARTICLE 2. REGISTRATION OF VOTERS

3 SECTION 2.01. Section 13.002, Election Code, is amended by  
4 adding Subsection (c-1) to read as follows:

5 (c-1) The information required under Subsections (c)(3),  
6 (4), (5), (6), and (8) must be supplied by the person desiring to  
7 register to vote.

8 SECTION 2.02. Section 13.007, Election Code, is amended to  
9 read as follows:

10 Sec. 13.007. FALSE STATEMENT ON APPLICATION. (a) A person  
11 commits an offense if the person knowingly or intentionally:

12 (1) makes a false statement; or

13 (2) requests, commands, coerces, or attempts to induce  
14 another person to make a false statement on a registration  
15 application.

16 (b) An offense under this section is a Class A ~~[B]~~  
17 misdemeanor, except that an offense under this section is a state  
18 jail felony if the person:

19 (1) directly or through a third party offers or  
20 provides compensation or other benefit to a person for activity  
21 described by Subsection (a); or

22 (2) solicits, receives, or accepts compensation or  
23 other benefit for an activity described by Subsection (a).

24 (c) If conduct that constitutes an offense under this  
25 section also constitutes an offense under another law, the actor  
26 may be prosecuted under this section, the other law, or both. ~~For~~  
27 ~~purposes of this code, an offense under this section is considered~~



1 ~~to be perjury, but may be prosecuted only under this section.]~~

2 SECTION 2.03. Section 15.021, Election Code, is amended by  
3 amending Subsections (b) and (d) and adding Subsections (d-1) and  
4 (d-2) to read as follows:

5 (b) Except as provided by Subsection (d), the ~~[The]~~ voter  
6 shall use the registration certificate or a registration  
7 application form as the notice, indicating the correct information  
8 in the appropriate space on the certificate or application form  
9 unless the voter does not have possession of the certificate or an  
10 application form at the time of giving the notice.

11 (d) A voter ~~[who continues to reside in the county in which~~  
12 ~~the voter is registered]~~ may correct information under this section  
13 by digital transmission of the information under a program  
14 administered by the secretary of state and the Department of  
15 Information Resources.

16 (d-1) If the notice indicates that a voter no longer resides  
17 in the county in which the voter is registered, the registrar shall  
18 forward the notice and the voter's application for registration to  
19 the registrar of the county in which the voter resides. The  
20 registrars shall coordinate to ensure that the voter's existing  
21 registration is canceled immediately after the voter is registered  
22 in the county in which the voter resides in accordance with  
23 Subsection (d-2).

24 (d-2) A registrar who receives a voter's notice and  
25 application from another registrar under Subsection (d-1) shall  
26 treat it as an original application for registration under Section  
27 13.002, and shall register the voter if the voter resides in the



1 county and is otherwise eligible under Section 13.001.

2 SECTION 2.04. Section 15.028, Election Code, is amended to  
3 read as follows:

4 Sec. 15.028. NOTICE OF UNLAWFUL VOTING OR REGISTRATION ~~[TO~~  
5 ~~PROSECUTOR]~~. ~~[(a)]~~ If the registrar determines that a person who  
6 is not eligible to vote registered to vote or ~~[a registered voter]~~  
7 voted in an election, the registrar shall, within 72 hours not  
8 including weekends after making the determination, execute and  
9 deliver to the attorney general, the secretary of state, and the  
10 county or district attorney having jurisdiction in the territory  
11 covered by the election an affidavit stating the relevant facts.

12 ~~[(b) If the election covers territory in more than one~~  
13 ~~county, the registrar shall also deliver an affidavit to the~~  
14 ~~attorney general.]~~

15 SECTION 2.05. Section 16.0332, Election Code, is amended  
16 by amending Subsection (a) and adding Subsections (a-1), (d), and  
17 (e) to read as follows:

18 (a) After the registrar receives notification ~~[a list]~~  
19 under Subsection (a-1) of this section, Section 18.068 of this  
20 code, or Section 62.113, Government Code, of persons excused or  
21 disqualified from jury service because of citizenship status or  
22 notification of persons who indicate a lack of citizenship status  
23 in connection with a motor vehicle or Department of Public Safety  
24 record as provided by Subsection (a-1), the registrar shall deliver  
25 to each registered voter whose name appears on the list a written  
26 notice requiring the voter to submit to the registrar proof of  
27 United States citizenship in the form of a certified copy of the



1 voter's birth certificate, United States passport, or certificate  
2 of naturalization or any other form prescribed by the secretary of  
3 state. The notice shall be delivered by forwardable mail to the  
4 mailing address on the voter's registration application and to any  
5 new address of the voter known to the registrar.

6 (a-1) The secretary of state shall enter into an agreement  
7 with the Department of Public Safety under which information in the  
8 existing statewide computerized voter registration list is  
9 compared against information in the database of the Department of  
10 Public Safety on a monthly basis to verify the accuracy of  
11 citizenship status information previously provided on voter  
12 registration applications. In comparing information under this  
13 subsection, the secretary of state shall consider only a voter's  
14 information in the database of the Department of Public Safety that  
15 was derived from documents presented by the voter to the department  
16 after the person's current voter registration became effective, and  
17 may not consider information derived from documents presented by  
18 the voter to the department before the person's current voter  
19 registration became effective.

20 (d) The secretary of state shall prescribe rules for the  
21 administration of this section.

22 (e) Not later than December 31 of each year, the secretary  
23 of state shall provide a report to the legislature of the number of  
24 voter registrations canceled under this section during the calendar  
25 year.

26 SECTION 2.06. Section 18.065, Election Code, is amended by  
27 adding Subsections (e), (f), (g), (h), and (i) to read as follows:



1       (e) If the secretary of state determines that a voter  
2 registrar is not in substantial compliance with a requirement  
3 imposed on the registrar by a provision or rule described in  
4 Subsection (a), the secretary of state shall:

5           (1) for the first violation, require the registrar to  
6 attend a training course under Subsection (h);

7           (2) for the second violation, audit the voter  
8 registration list for the county in which the registrar serves to  
9 determine the actions needed to achieve substantial compliance  
10 under Subsection (a) and provide the results of the audit to the  
11 registrar; or

12           (3) for a third or subsequent violation, if the  
13 secretary of state determines that the registrar has not performed  
14 any overt actions in pursuance of compliance with the actions  
15 identified under Subdivision (2) as necessary for the registrar to  
16 achieve substantial compliance under Subsection (a) within 14 days  
17 of receiving the results of the audit conducted under that  
18 subsection, inform the attorney general that the county which the  
19 registrar serves may be subject to a civil penalty under Subsection  
20 (f).

21       (f) A county is liable to this state for a civil penalty of  
22 \$1,000 for each day after the 14th day following the receipt of the  
23 results of the audit conducted under Subsection (e)(2) that the  
24 county's voter registrar fails to take overt action to comply with  
25 the actions identified under that subsection as necessary for the  
26 registrar to achieve substantial compliance under Subsection (a).  
27 The attorney general may bring an action to recover a civil penalty



1 imposed under this section.

2 (g) A civil penalty collected by the attorney general under  
3 this section shall be deposited in the state treasury to the credit  
4 of the general revenue fund.

5 (h) The secretary of state shall develop and implement a  
6 training course for registrars on substantial compliance with  
7 Sections 15.083, 16.032, and 18.061 and with rules implementing the  
8 statewide computerized voter registration list.

9 (i) The secretary of state shall adopt rules and prescribe  
10 procedures for the implementation of this section.

11 SECTION 2.07. Section 18.068, Election Code, is amended by  
12 amending Subsection (a) and adding Subsection (a-1) to read as  
13 follows:

14 (a) The secretary of state shall quarterly compare the  
15 information received under Section 16.001 of this code and Sections  
16 [Section] 62.113 and 62.114, Government Code, to the statewide  
17 computerized voter registration list. If the secretary determines  
18 that a voter on the registration list is deceased or has been  
19 excused or disqualified from jury service because the voter is not a  
20 citizen or a resident of the county in which the voter is registered  
21 to vote, the secretary shall send notice of the determination  
22 to the voter registrar of the counties considered appropriate by  
23 the secretary.

24 (a-1) The secretary of state is not required to send notice  
25 under Subsection (a) for a voter who is subject to an exemption from  
26 jury service under Section 62.106, Government Code, if that  
27 exemption is the only reason the voter is excused from jury service.



SECTION 2.08. Section 31.006, Election Code, is amended to read as follows:

Sec. 31.006. REFERRAL [~~OF COMPLAINT~~] TO ATTORNEY GENERAL.

(a) If, after receiving or discovering information indicating that [~~a complaint alleging~~] criminal conduct in connection with an election has occurred, the secretary of state determines that there is reasonable cause to suspect that [~~the alleged~~] criminal conduct occurred, the secretary shall promptly refer the information [~~complaint~~] to the attorney general. The secretary shall deliver to the attorney general all pertinent documents and information in the secretary's possession.

(b) The documents and information submitted under Subsection (a) are not considered public information until:

(1) the secretary of state makes a determination that the information [~~complaint~~] received does not warrant an investigation; or

(2) if referred to the attorney general, the attorney general has completed the investigation or has made a determination that the information [~~complaint~~] referred does not warrant an investigation.

SECTION 2.09. Subchapter B, Chapter 87, Election Code, is amended by adding Section 87.028 to read as follows:

Sec. 87.028. ACCESS TO INFORMATION. (a) On request, a county election official shall provide to a member of an early voting ballot board all available information necessary to fulfilling the functions of the board, including any information from the statewide computerized voter registration list under



1 Section 18.061.

2 (b) On request, a county election official shall provide to  
3 a member of a signature verification committee all available  
4 information necessary to fulfilling the functions of the committee,  
5 including any information from the statewide computerized voter  
6 registration list under Section 18.061.

7 (c) The secretary of state shall adopt rules as necessary to  
8 prevent a member of an early voting ballot board or signature  
9 verification committee from retaining or sharing personally  
10 identifiable information from the statewide computerized voter  
11 registration list under Section 18.061 obtained under this section  
12 for any reason unrelated to the official's official duties.

13 SECTION 2.10. Section 62.113(b), Government Code, is  
14 amended to read as follows:

15 (b) On the third business day of each month, the clerk shall  
16 send a copy of the list of persons excused or disqualified because  
17 of citizenship in the previous month to:

- 18 (1) the voter registrar of the county;  
19 (2) the secretary of state; and  
20 (3) the county or district attorney~~[, as applicable,]~~  
21 for an investigation of whether the person committed an offense  
22 under Section 13.007, Election Code, or other law.

23 SECTION 2.11. Sections 62.114(b) and (c), Government Code,  
24 are amended to read as follows:

25 (b) On the third business day of each month, the clerk shall  
26 send ~~[to the voter registrar of the county]~~ a copy of the list of  
27 persons excused or disqualified in the previous month because the

1 persons do not reside in the county to:

2           (1) the voter registrar of the county; and

3           (2) the secretary of state.

4           (c) A list compiled under this section may not be used for a  
5 purpose other than a purpose described by Subsection (b) or Section  
6 15.081 or 18.068, Election Code.

7           ARTICLE 3. CONDUCT AND SECURITY OF ELECTIONS

8           SECTION 3.01. Section 2.053(a), Election Code, is amended  
9 to read as follows:

10           (a) On receipt of the certification, the governing body of  
11 the political subdivision by order or ordinance shall ~~may~~ declare  
12 each unopposed candidate elected to the office. If no election is  
13 to be held on election day by the political subdivision, a copy of  
14 the order or ordinance shall be posted on election day at each  
15 polling place used or that would have been used in the election.

16           SECTION 3.02. Section 2.056(c), Election Code, is amended  
17 to read as follows:

18           (c) A certifying authority shall ~~may~~ declare a candidate  
19 elected to an office of the state or county government if, were the  
20 election held, only the votes cast for that candidate in the  
21 election for that office may be counted.

22           SECTION 3.03. Sections 43.007(c) and (d), Election Code,  
23 are amended to read as follows:

24           (c) In conducting the program, the secretary of state shall  
25 provide for an audit of the voting system equipment ~~direct~~  
26 ~~recording electronic voting units~~ before and after the election,  
27 and during the election to the extent such an audit is practicable.



(d) The secretary of state shall select to participate in the program each county that:

(1) has held a public hearing under Subsection (b);

(2) has submitted documentation listing the steps taken to solicit input on participating in the program by organizations or persons who represent the interests of voters;

(3) has implemented a computerized voter registration list that allows an election officer at the polling place to verify that a voter has not previously voted in the election;

(4) uses direct recording electronic voting machines, ballot marking devices, or hand-marked scannable paper ballots that are printed and scanned at the polling place or any other type of voting system equipment that the secretary of state determines is capable of processing votes for each type of ballot to be voted in the county; and

(5) is determined by the secretary of state to have the appropriate technological capabilities.

SECTION 3.04. Section 43.031(b), Election Code, is amended to read as follows:

(b) Each polling place shall be located inside a building. No voter may cast a vote from inside a motor vehicle unless the voter meets the requirements of Section 64.009.

SECTION 3.05. Section 52.092(a), Election Code, is amended to read as follows:

(a) Except as provided by Section 2.053(c) or 2.056(e), for ~~For~~ an election at which offices regularly filled at the general election for state and county officers are to appear on the ballot,

the offices shall be listed in the following order:

- (1) offices of the federal government;
- (2) offices of the state government:
  - (A) statewide offices;
  - (B) district offices;
- (3) offices of the county government:
  - (A) county offices;
  - (B) precinct offices.

SECTION 3.06. Section 61.002, Election Code, is amended to read as follows:

Sec. 61.002. OPENING AND CLOSING POLLING PLACE FOR VOTING.

(a) Immediately before opening the polls for voting on the first day of early voting and on election day, the presiding election judge or alternate election judge shall confirm that each voting machine has any public counter reset to zero and shall print the tape that shows the counter was set to zero for each candidate or measure on the ballot.

(b) At the official time for opening the polls for voting, an election officer shall open the polling place entrance and admit the voters.

(c) Immediately after closing the polls for voting on election day, the presiding election judge or alternate election judge shall print the tape to show the number of votes cast for each candidate or ballot measure for each voting machine.

(d) Each election judge or alternate election judge present shall sign a tape printed under this section.

SECTION 3.07. Section 64.007(c), Election Code, is amended



to read as follows:

(c) An election officer shall maintain a register of spoiled ballots at the polling place. An election officer shall enter on the register the name of each voter who returns a spoiled ballot and the spoiled ballot's number. The secretary of state shall create and promulgate a form to be used for this purpose.

SECTION 3.08. Subchapter A, Chapter 66, Election Code, is amended by adding Section 66.004 to read as follows:

Sec. 66.004. POLLING PLACE CHECKLISTS. The secretary of state shall adopt rules and create a checklist or similar guidelines to assist the presiding judge of a polling place in processing forms and conducting procedures required by this code at the opening and closing of the polling place.

SECTION 3.09. Section 85.005, Election Code, is amended to read as follows:

Sec. 85.005. REGULAR DAYS AND HOURS FOR VOTING. (a) Except as provided by Subsection (c), in an election in which a county clerk ~~[or city secretary]~~ is the early voting clerk under Section 83.002 ~~[or 83.005]~~, early voting by personal appearance at the main early voting polling place shall be conducted on each weekday of [the weekdays of] the early voting period that is not a legal state holiday and for a period of at least nine hours, except that voting may not be conducted earlier than 6 a.m. or later than 10 p.m. ~~[during the hours that the county clerk's or city secretary's main business office is regularly open for business.]~~

(b) In an election to which Subsection (a) does not apply, early voting by personal appearance at the main early voting



1 polling place shall be conducted at least nine [~~eight~~] hours each  
2 weekday of the early voting period that is not a legal state holiday  
3 unless the territory covered by the election has fewer than 1,000  
4 registered voters. In that case, the voting shall be conducted at  
5 least four [~~three~~] hours each day. The authority ordering the  
6 election, or the county clerk if that person is the early voting  
7 clerk, shall determine which hours the voting is to be conducted.

8 (c) In a county with a population of 55,000 [~~100,000~~] or  
9 more, the voting in a primary election or the general election for  
10 state and county officers shall be conducted at the main early  
11 voting polling place for at least 12 hours on each weekday of the  
12 last week of the early voting period, and the voting in a special  
13 election ordered by the governor shall be conducted at the main  
14 early voting polling place for at least 12 hours on each of the last  
15 two days of the early voting period. Voting under this subsection  
16 may not be conducted earlier than 6 a.m. or later than 10 p.m.  
17 Voting shall be conducted in accordance with this subsection in  
18 those elections in a county with a population under 55,000  
19 [~~100,000~~] on receipt by the early voting clerk of a written request  
20 for the extended hours submitted by at least 15 registered voters of  
21 the county. The request must be submitted in time to enable  
22 compliance with Section 85.067.

23 (d) A voter who has not voted before the scheduled time for  
24 closing a polling place is entitled to vote after that time if the  
25 voter is in line at the polling place by closing time. The  
26 secretary of state shall promulgate any materials and provide any  
27 training to presiding judges necessary to properly process voters



1 under this subsection [~~In an election ordered by a city, early~~  
2 ~~voting by personal appearance at the main early voting polling~~  
3 ~~place shall be conducted for at least 12 hours.~~

4 [~~(1) on one weekday, if the early voting period~~  
5 ~~consists of less than six weekdays, or~~

6 [~~(2) on two weekdays, if the early voting period~~  
7 ~~consists of six or more weekdays]~~.

8 SECTION 3.10. Sections 85.006(b) and (e), Election Code,  
9 are amended to read as follows:

10 (b) In an election in which a county clerk [~~or city~~  
11 ~~secretary~~] is the early voting clerk under Section 83.002 [~~or~~  
12 ~~83.005~~], only the early voting clerk may order voting on a Saturday  
13 or Sunday. The clerk must do so by written order.

14 (e) In a primary election or the general election for state  
15 and county officers in a county with a population of 55,000  
16 [~~100,000~~] or more, the early voting clerk shall order voting by  
17 personal appearance [~~voting~~] at the main early voting polling place  
18 to be conducted on the last Saturday of the early voting period for  
19 at least 12 hours, except that voting may not be conducted earlier  
20 than 6 a.m. or later than 10 p.m., [~~on the last Saturday~~] and on the  
21 last Sunday of the early voting period for at least six [~~five~~]  
22 hours, except that voting may not be conducted earlier than 9 a.m.  
23 or later than 10 p.m. [~~on the last Sunday of the early voting~~  
24 ~~period~~]. The early voting clerk shall order voting to be conducted  
25 at those times in those elections in a county with a population  
26 under 55,000 [~~100,000~~] on receipt of a written request for those  
27 hours submitted by at least 15 registered voters of the county. The



request must be submitted in time to enable compliance with Section 85.007. This subsection supersedes any provision of this subchapter to the extent of any conflict.

SECTION 3.11. Section 85.010(a-1), Election Code, is amended to read as follows:

(a-1) In this section, "eligible county polling place" means an early voting polling place~~[, other than a polling place established under Section 85.062(e),]~~ established by a county.

SECTION 3.12. Section 85.061(a), Election Code, is amended to read as follows:

(a) In a countywide election in which the county clerk is the early voting clerk under Section 83.002, an early voting polling place shall be located inside ~~[at]~~ each branch office that is regularly maintained for conducting general clerical functions of the county clerk, except as provided by Subsection (b). If a suitable room is unavailable inside the branch office, the polling place may be located in another room inside the same building as the branch office.

SECTION 3.13. Section 85.062, Election Code, is amended by amending Subsection (b) and adding Subsection (f-1) to read as follows:

(b) A polling place established under this section may be located, subject to Subsection (d), at any place in the territory served by the early voting clerk and may be located inside ~~[in]~~ any building ~~[stationary structure]~~ as directed by the authority establishing the branch office. The polling place may not be located in a movable structure in the general election for state and



county officers, general primary election, or runoff primary election. Ropes or other suitable objects may be used at the polling place to ensure compliance with Section 62.004. Persons who are not expressly permitted by law to be in a polling place shall be excluded from the polling place to the extent practicable.

(f-1) Notwithstanding any other provision of this section concerning the location of temporary branch polling places, in an election in which countywide polling places are used, the commissioners court of a county shall employ the same methodology it uses to determine the location of countywide polling places to determine the location of temporary branch polling places.

SECTION 3.14. Section 87.002, Election Code, is amended to read as follows:

Sec. 87.002. COMPOSITION OF BOARD. (a) The early voting ballot board consists of a presiding judge, an alternate presiding judge, and at least one ~~[two]~~ other member ~~[members]~~.

(b) Except as provided by Subsection (d), the presiding judge and the alternate presiding judge are ~~[is]~~ appointed in the same manner as a presiding election judge and alternate presiding election judge, respectively. Except as provided by Subsection (c), each ~~[the]~~ other member is ~~[members are]~~ appointed by the presiding judge in the same manner as the precinct election clerks.

(c) In the general election for state and county officers, each county chair of a political party with nominees on the general election ballot shall submit to the county election board a list of names of persons eligible to serve on the early voting ballot board in order of the county chair's preference. The county election



board shall appoint at least one person from each list to serve as a member of the early voting ballot board. The same number of members must be appointed from each list. The county election board shall appoint persons as members of the early voting ballot board in the order of preference indicated on each list.

(d) In addition to the members appointed under Subsection (c), the county election board shall appoint as the presiding judge the highest-ranked person on [from] the list provided under that subsection by the political party whose nominee for governor received the most votes in the county in the most recent gubernatorial general election and as the alternate presiding judge the highest-ranked person on the list provided under that subsection by the political party whose nominee for governor received the second most votes in the county in the most recent gubernatorial general election.

SECTION 3.15. Section 124.002, Election Code, is amended by adding Subsection (c) to read as follows:

(c) Voting system ballots may not be arranged in a manner that allows a political party's candidates to be selected in one motion or gesture.

SECTION 3.16. Sections 127.006(a) and (c), Election Code, are amended to read as follows:

(a) The [Both the] manager, [and] the presiding judge, and the alternate presiding judge may appoint clerks to serve at the central counting station.

(c) A clerk appointed by the manager serves under the manager and shall perform the functions directed by the manager. A



1 clerk appointed by the presiding judge or the alternate presiding  
2 judge serves under the presiding judge and shall perform the  
3 functions directed by the presiding judge.

4 SECTION 3.17. Subchapter A, Chapter 127, Election Code, is  
5 amended by adding Section 127.009 to read as follows:

6 Sec. 127.009. ELECTRONIC DEVICES IN CENTRAL COUNTING  
7 STATION. (a) A counting station manager and the presiding judge of  
8 the counting station shall develop a protocol under which any  
9 electronic device inside a central counting station that is  
10 necessary to count votes is equipped with software that tracks all  
11 input and activity on the electronic device.

12 (b) The counting station manager and the presiding judge of  
13 the counting station shall ensure that the input and activity  
14 tracked by the software is delivered to the secretary of state not  
15 later than the fifth day after vote counting is complete.

16 (c) This section applies only to a central counting station  
17 located in a county with a population of 250,000 or more.

18 SECTION 3.18. Section 127.1232, Election Code, is amended  
19 to read as follows:

20 Sec. 127.1232. SECURITY OF VOTED BALLOTS. (a) The general  
21 custodian of election records shall post a licensed peace officer  
22 [guard] to ensure the security of ballot boxes containing voted  
23 ballots throughout the period of tabulation at the central counting  
24 station.

25 (b) The general custodian of election records in a county  
26 with a population of 100,000 or more shall implement a video  
27 surveillance system that retains a record of all areas containing



1 voted ballots:

2 (1) from the time the voted ballots are delivered to  
3 the central counting station until the canvass of precinct election  
4 returns; and

5 (2) from the time the voted ballots are delivered to  
6 the signature verification committee or early voting ballot board  
7 until the canvass of precinct election returns.

8 (c) A video from a system implemented under Subsection (b)  
9 shall be made available to the public by a livestream.

10 (d) The video recorded is an election record under Section  
11 1.012 and shall be retained by the general custodian of election  
12 records until the end of the calendar year in which an election is  
13 held or until an election contest filed in the county has been  
14 resolved, whichever is later.

15 SECTION 3.19. Chapter 127, Election Code, as effective  
16 September 1, 2021, is amended by adding Subchapter J to read as  
17 follows:

18 SUBCHAPTER J. RANDOMIZED AUDITS

19 Sec. 127.351. RANDOMIZED COUNTY AUDITS. (a) Immediately  
20 after the uniform election date in November of an even-numbered  
21 year, the secretary of state shall conduct an audit of the elections  
22 held in four counties during the previous two years.

23 (b) The secretary of state shall select the counties to be  
24 audited under Subsection (a) at random, except that:

25 (1) two of the counties selected must have a total  
26 population of less than 300,000;

27 (2) two of the counties selected must have a total



1 population of 300,000 or more; and

2 (3) a county selected in the most recent audit cycle  
3 may not be selected in the current audit cycle.

4 (c) A county selected to be audited may not pay the cost of  
5 performing an audit under this section.

6 (d) The secretary of state shall adopt rules as necessary to  
7 implement this section.

8 ARTICLE 4. ELECTION OFFICERS AND OBSERVERS

9 SECTION 4.01. Section 32.075, Election Code, is amended by  
10 adding Subsections (g) and (h) to read as follows:

11 (g) A presiding judge may not have a watcher duly accepted  
12 for service under Subchapter A, Chapter 33, removed from the  
13 polling place for violating a provision of this code or any other  
14 provision of law relating to the conduct of elections, other than a  
15 violation of the Penal Code, unless the violation was observed by an  
16 election judge or clerk.

17 (h) Notwithstanding Subsection (g), a presiding judge may  
18 call a law enforcement officer to request that a poll watcher be  
19 removed if the poll watcher commits a breach of the peace or a  
20 violation of law.

21 SECTION 4.02. Subchapter A, Chapter 33, Election Code, is  
22 amended by adding Section 33.0015 to read as follows:

23 Sec. 33.0015. CHAPTER PURPOSE AND WATCHER DUTY. The  
24 purpose of this chapter is to preserve the integrity of the ballot  
25 box in accordance with Section 4, Article VI, Texas Constitution,  
26 by providing for the appointment of watchers. It is the intent of  
27 the legislature that watchers duly accepted for service under this



chapter be allowed to observe and report on irregularities in the conduct of any election, but may not interfere in the orderly conduct of an election. To effect that purpose, a watcher appointed under this chapter shall observe without obstructing the conduct of an election and call to the attention of an election officer any observed or suspected irregularity or violation of law in the conduct of the election.

SECTION 4.03. Subchapter A, Chapter 33, Election Code, is amended by adding Section 33.0016 to read as follows:

Sec. 33.0016. REFERENCES TO EARLY VOTING BALLOT BOARD IN THIS CHAPTER. A reference in this chapter to an early voting ballot board includes a signature verification committee.

SECTION 4.04. Subchapter A, Chapter 33, Election Code, is amended by adding Section 33.008 to read as follows:

Sec. 33.008. TRAINING PROGRAM. The secretary of state shall develop and maintain a training program for watchers. The training program must:

(1) be available:

(A) entirely via the Internet; and

(B) at any time, without a requirement for prior registration; and

(2) provide a watcher who completes the training with a certificate of completion.

SECTION 4.05. Section 33.031, Election Code, is amended by adding Subsection (b) to read as follows:

(b) In addition to the requirements of Subsection (a), to be eligible to serve as a watcher, a person must complete training



1 under Section 33.008.

2 SECTION 4.06. Section 33.051, Election Code, is amended by  
3 amending Subsections (a), (b), (d), and (e) and adding Subsections  
4 (a-1), (g), and (h) to read as follows:

5 (a) A watcher appointed to serve at a precinct polling  
6 place, a meeting place for an early voting ballot board, or a  
7 central counting station must deliver the following materials [~~a~~  
8 ~~certificate of appointment~~] to the presiding judge at the time the  
9 watcher reports for service:

10 (1) a certificate of appointment; and

11 (2) a certificate of completion from training  
12 completed by the watcher under Section 33.008.

13 (a-1) A watcher appointed to serve at an early voting  
14 polling place must deliver the certificates under Subsection (a) [~~a~~  
15 ~~certificate of appointment~~] to the early voting clerk or deputy  
16 clerk in charge of the polling place when the watcher first reports  
17 for service.

18 (b) The officer presented with a watcher's certificates  
19 [~~certificate of appointment~~] shall require the watcher to  
20 countersign the certificate of appointment to ensure that the  
21 watcher is the same person who signed the certificate of  
22 appointment. Except as provided by Subsection (c), a watcher who  
23 presents himself or herself at the proper time with the  
24 certificates required under Subsection (a) [~~a certificate of~~  
25 ~~appointment~~] shall be accepted for service unless the person is  
26 ineligible to serve or the number of appointees to which the  
27 appointing authority is entitled have already been accepted.



(d) The certificates [~~certificate~~] of a watcher serving at an early voting polling place shall be retained at the polling place until voting at the polling place is concluded. At each subsequent time that the watcher reports for service, the watcher shall inform the clerk or deputy in charge. The officer may require the watcher to sign the watcher's name in the officer's presence, for comparison with the signature on the certificate of appointment, if the officer is uncertain of the watcher's identity.

(e) If a watcher is not accepted for service, the certificates [~~certificate of appointment~~] shall be returned to the watcher with a signed statement of the reason for the rejection.

(g) An election officer commits an offense if the officer intentionally or knowingly refuses to accept a watcher for service when acceptance of the watcher is required by this section. An offense under this subsection is a Class A misdemeanor.

(h) Before accepting a watcher, the officer presented with a watcher's certificate of appointment shall require the watcher to take the following oath, administered by the officer: "I swear (or affirm) that I will not disrupt the voting process or harass voters in the discharge of my duties."

SECTION 4.07. Section 33.056, Election Code, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) Except as provided by Section 33.057, a watcher is entitled to observe any activity conducted at the location at which the watcher is serving. A watcher is entitled to sit or stand [~~conveniently~~] near enough to see and hear the election officers



conducting the observed activity, except as otherwise prohibited by this chapter.

(e) Except as provided by Section 33.057(b), a watcher may not be denied free movement where election activity is occurring within the location at which the watcher is serving.

(f) In this code, a watcher who is entitled to "observe" an election activity is entitled to sit or stand near enough to see and hear the activity.

SECTION 4.08. Subchapter C, Chapter 33, Election Code, is amended by adding Section 33.0605 to read as follows:

Sec. 33.0605. OBSERVING DATA STORAGE SEALING AND TRANSFER.

(a) A watcher appointed to serve at a polling place in an election who is available at the time of the action may observe all election activities relating to closing the polling place, including the sealing and transfer of a memory card, flash drive, hard drive, data storage device, or other medium now existing or later developed used by the voting system equipment.

(b) Notwithstanding any other provision of this code, a watcher duly accepted for service at a polling location is entitled to follow the transfer of election materials from the polling place at which the watcher was accepted to a regional tabulating center, the central counting station, or any other location designated to process election materials. The authority responsible for administering a regional tabulating center or another location where election materials are processed must accept duly appointed watchers for service in the same manner a watcher is accepted for service under Section 33.051 and must accept the same number of



watchers that may serve under Section 33.007(a).

SECTION 4.09. Section 33.061(a), Election Code, is amended to read as follows:

(a) A person commits an offense if the person serves in an official capacity at a location at which the presence of watchers is authorized and knowingly prevents a watcher from observing an activity or procedure the person knows the watcher is entitled to observe, including by taking any action to obstruct the view of a watcher or distance the watcher from the activity or procedure to be observed in a manner that would make observation not reasonably effective.

SECTION 4.10. Subchapter C, Chapter 33, Election Code, is amended by adding Section 33.063 to read as follows:

Sec. 33.063. RELIEF. The appointing authority for a watcher who believes that the watcher was unlawfully prevented or obstructed from the performance of the watcher's duties may seek:

(1) injunctive relief under Section 273.081, including issuance of temporary orders;

(2) a writ of mandamus under Section 161.009 or 273.061; and

(3) any other remedy available under law.

SECTION 4.11. Section 34.005, Election Code, is amended to read as follows:

Sec. 34.005. ACTION BY SECRETARY OF STATE. (a) The secretary of state may refer a reported violation of law for appropriate action to the attorney general, if the attorney general has jurisdiction, or to a prosecuting attorney having jurisdiction.

(b) If the secretary of state believes that a state inspector was unlawfully prevented or obstructed from the performance of the inspector's duties, the secretary of state may seek:

(1) injunctive relief under Section 273.081, including issuance of temporary orders;

(2) a writ of mandamus under Section 161.009 or 273.061; and

(3) any other remedy available under law.

SECTION 4.12. Section 86.006, Election Code, is amended by amending Subsection (a) and adding Subsection (a-2) to read as follows:

(a) A marked ballot voted under this chapter must be returned to the early voting clerk in the official carrier envelope. The carrier envelope may be delivered in another envelope and must be transported and delivered only by:

(1) mail;

(2) common or contract carrier; or

(3) subject to Subsections ~~[Subsection]~~ (a-1) and (a-2), in-person delivery by the voter who voted the ballot.

(a-2) An in-person delivery of a marked ballot voted under this chapter must be received by an election official at the time of delivery. The receiving official shall record the voter's name, signature, and type of identification provided under Section 63.0101 on a roster prescribed by the secretary of state. The receiving official shall attest on the roster that the delivery complies with this section.



SECTION 4.13. Chapter 121, Election Code, is amended by adding Section 121.004 to read as follows:

Sec. 121.004. COMMUNICATIONS WITH VOTING SYSTEMS VENDOR PUBLIC INFORMATION. (a) Except as provided by Subsection (b), a written letter, e-mail, or other communication, including a communication made confidential by other law, between a public official and a voting systems vendor:

(1) is not confidential;

(2) is public information for purposes of Chapter 552, Government Code; and

(3) is not subject to an exception to disclosure provided by Chapter 552, Government Code, other than Sections 552.110 and 552.1101, Government Code.

(b) A written letter, e-mail, or other communication between a public official and a voting systems vendor is excepted from disclosure under Chapter 552, Government Code, if the communication discloses information, data, or records relating to the security of elections critical infrastructure.

SECTION 4.14. Section 127.1301, Election Code, is amended to read as follows:

Sec. 127.1301. [~~TALLYING, TABULATING, AND REPORTING~~] CENTRALLY COUNTED OPTICAL SCAN BALLOTS [~~BALLOT UNDERVOTES AND OVERVOTES~~]. (a) In an election using centrally counted optical scan ballots, the undervotes and overvotes on those ballots shall be tallied, tabulated, and reported by race and by election precinct in the form and manner prescribed by the secretary of state.



1        (b) An authority operating a central counting station under  
2 this chapter may not purchase or use a centrally counted optical  
3 ballot scan system that uses a data storage disc on which  
4 information, once written, is capable of being modified.

5        (c) An authority that purchases system components in order  
6 to comply with this section is eligible to have 100 percent of the  
7 cost of those system components reimbursed.

8        (d) Subsection (b) applies starting on the earlier of:

9            (1) the date on which the state certifies the first  
10 centrally counted optical ballot scan system under this section; or

11            (2) September 1, 2026.

12        (e) This subsection and Subsection (d) expire October 1,  
13 2026.

14        SECTION 4.15. Section 127.131, Election Code, is amended by  
15 adding Subsection (f) to read as follows:

16        (f) The presiding judge of the central counting station  
17 shall provide and attest to a written reconciliation of votes and  
18 voters at the close of tabulation for election day and again after  
19 the central counting station meets for the last time to process  
20 late-arriving ballots by mail and provisional ballots. The  
21 secretary of state shall create and promulgate rules and a form to  
22 facilitate compliance with this subsection. The form shall be  
23 posted on a website maintained by the county along with election  
24 returns and results.

25        SECTION 4.16. Section 129.023, Election Code, is amended by  
26 adding Subsections (b-2) and (c-1) to read as follows:

27        (b-2) If the test is being conducted for an election in



1 which a county election board has been established under Section  
2 51.002, the general custodian of election records shall notify each  
3 member of the board of the test at least 48 hours before the date of  
4 the test. If the county election board chooses to witness the test,  
5 each member shall sign the statement required by Subsection (e)(1).

6 (c-1) A test conducted under this section must also require  
7 the general custodian of election records to demonstrate, using a  
8 representative sample of voting system equipment, that the source  
9 code of the equipment has not been altered.

10 ARTICLE 5. VOTING BY MAIL

11 SECTION 5.01. Section 84.001(b), Election Code, is amended  
12 to read as follows:

13 (b) Subject to Section 1.011, an [An] application must be  
14 submitted in writing and signed by the applicant using ink on paper.  
15 An electronic signature or photocopied signature is not permitted.

16 SECTION 5.02. Section 84.002, Election Code, as effective  
17 September 1, 2021, is amended by amending Subsection (a) and adding  
18 Subsection (b-1) to read as follows:

19 (a) An early voting ballot application must include:

20 (1) the applicant's name and the address at which the  
21 applicant is registered to vote;

22 (1-a) the following information:

23 (A) the number of the applicant's driver's  
24 license, election identification certificate, or personal  
25 identification card issued by the Department of Public Safety;

26 (B) if the applicant has not been issued a number  
27 described by Paragraph (A), the last four digits of the applicant's

1 social security number; or

2 (C) a statement by the applicant that the  
3 applicant has not been issued a number described by Paragraph (A) or  
4 (B);

5 (2) for an application for a ballot to be voted by mail  
6 on the ground of absence from the county of residence, the address  
7 outside the applicant's county of residence to which the ballot is  
8 to be mailed;

9 (3) for an application for a ballot to be voted by mail  
10 on the ground of age or disability, the address of the hospital,  
11 nursing home or other long-term care facility, or retirement  
12 center, or of a person related to the applicant within the second  
13 degree by affinity or the third degree by consanguinity, as  
14 determined under Chapter 573, Government Code, if the applicant is  
15 living at that address and that address is different from the  
16 address at which the applicant is registered to vote;

17 (4) for an application for a ballot to be voted by mail  
18 on the ground of confinement in jail, the address of the jail or of a  
19 person related to the applicant within the degree described by  
20 Subdivision (3);

21 (5) for an application for a ballot to be voted by mail  
22 on any ground, an indication of each election for which the  
23 applicant is applying for a ballot;

24 (6) an indication of the ground of eligibility for  
25 early voting; and

26 (7) for an application for a ballot to be voted by mail  
27 on the ground of involuntary civil commitment, the address of the



1 facility operated by or under contract with the Texas Civil  
2 Commitment Office or of a person related to the applicant within the  
3 degree of consanguinity described by Subdivision (3).

4 (b-1) A person may use the number of a driver's license,  
5 election identification certificate, or personal identification  
6 card that has expired for the purpose of fulfilling the requirement  
7 under Subsection (a)(1-a) if the license or identification is  
8 otherwise valid.

9 SECTION 5.03. Section 84.011(a), Election Code, as  
10 effective September 1, 2021, is amended to read as follows:

11 (a) The officially prescribed application form for an early  
12 voting ballot must include:

13 (1) immediately preceding the signature space the  
14 statement: "I certify that the information given in this  
15 application is true, and I understand that giving false information  
16 in this application is a crime.";

17 (2) a statement informing the applicant of the  
18 offenses prescribed by Sections 84.003 and 84.004;

19 (3) spaces for entering an applicant's voter  
20 registration number and county election precinct of registration,  
21 with a statement informing the applicant that failure to furnish  
22 that information does not invalidate the application;

23 (3-a) a space for entering the information required  
24 under Section 84.002(a)(1-a); and

25 (4) on an application for a ballot to be voted by mail:

26 (A) a space for an applicant applying on the  
27 ground of absence from the county of residence to indicate the date



1 on or after which the applicant can receive mail at the address  
2 outside the county;

3 (B) a space for indicating the fact that an  
4 applicant whose application is signed by a witness cannot make the  
5 applicant's mark and a space for indicating the relationship or  
6 lack of relationship of the witness to the applicant;

7 (C) a space for entering an applicant's telephone  
8 number, with a statement informing the applicant that failure to  
9 furnish that information does not invalidate the application;

10 (D) a space or box for an applicant applying on  
11 the ground of age or disability to indicate that the address to  
12 which the ballot is to be mailed is the address of a facility or  
13 relative described by Section 84.002(a)(3), if applicable;

14 (E) a space or box for an applicant applying on  
15 the ground of confinement in jail or involuntary civil commitment  
16 to indicate that the address to which the ballot is to be mailed is  
17 the address of a relative described by Section 84.002(a)(4) or (7),  
18 if applicable;

19 (F) a space for an applicant applying on the  
20 ground of age or disability to indicate if the application is an  
21 application under Section 86.0015;

22 (G) spaces for entering the signature, printed  
23 name, and residence address of any person assisting the applicant;

24 (H) a statement informing the applicant of the  
25 condition prescribed by Section 81.005; and

26 (I) a statement informing the applicant of the  
27 requirement prescribed by Section 86.003(c).

SECTION 5.04. Subchapter A, Chapter 84, Election Code, is amended by adding Section 84.0111 to read as follows:

Sec. 84.0111. DISTRIBUTION OF APPLICATION FORM. (a)  
Except as provided by Subsection (c) or as otherwise authorized by this code, an officer or employee of this state or of a political subdivision of this state may not distribute an application form for an early voting ballot to a person who did not request an application under Section 84.001.

(b) An officer or employee of this state or of a political subdivision of this state may not use public funds to facilitate the distribution by another person of an application form for an early voting ballot to a person who did not request an application under Section 84.001.

(c) A political party or a candidate for office may distribute an application form for an early voting ballot to a person who did not request an application under Section 84.001.

SECTION 5.05. Section 84.032(c), Election Code, is amended to read as follows:

(c) An applicant may submit a request after the close of early voting by personal appearance by appearing in person and:

(1) returning the ballot to be voted by mail to the early voting clerk; or

(2) executing an affidavit that the applicant:

(A) has not received the ballot to be voted by mail; ~~[or]~~

(B) never requested a ballot to be voted by mail;

or



(C) received notice of a defect under Section 87.0271(b) or (c) or 87.0411(b) or (c).

SECTION 5.06. Section 84.035, Election Code, is amended to read as follows:

Sec. 84.035. BALLOT SENT TO APPLICANT. (a) If the early voting clerk cancels an application by an applicant to whom an early voting ballot has been sent, the clerk shall:

(1) remove the applicant's name from the early voting roster; and

(2) make any other entries in the records and take any other action necessary to prevent the ballot from being counted if returned.

(b) An election judge may permit a person to whom an early voting ballot has been sent who cancels the person's application for a ballot to be voted by mail in accordance with Section 84.032 but fails to return the ballot to be voted by mail to the early voting clerk, deputy early voting clerk, or presiding judge as provided by that section to vote only a provisional ballot under Section 63.011.

SECTION 5.07. Section 86.001, Election Code, is amended by adding Subsections (f), (f-1), and (f-2) to read as follows:

(f) If the information required under Section 84.002(a)(1-a) included on the application does not identify the same voter identified on the applicant's application for voter registration under Section 13.002(c)(8), the clerk shall reject the application.

(f-1) If an application is rejected under Subsection (f),



1 the clerk shall provide notice of the rejection in accordance with  
2 Subsection (c). The notice must include information regarding the  
3 ability to correct or add information required under Section  
4 84.002(a)(1-a) through the online tool described by Section  
5 86.015(c).

6 (f-2) If an applicant corrects an application for a ballot  
7 to be voted by mail online and that application subsequently  
8 identifies the same voter identified on the applicant's application  
9 for voter registration, the clerk shall provide a ballot to the  
10 applicant as provided by this chapter.

11 SECTION 5.08. Section 86.002, Election Code, is amended by  
12 adding Subsections (g), (h), and (i) to read as follows:

13 (g) The carrier envelope must include a space that is hidden  
14 from view when the envelope is sealed for the voter to enter the  
15 following information:

16 (1) the number of the voter's driver's license,  
17 election identification certificate, or personal identification  
18 card issued by the Department of Public Safety;

19 (2) if the voter has not been issued a number described  
20 by Subdivision (1), the last four digits of the voter's social  
21 security number; or

22 (3) a statement by the applicant that the applicant  
23 has not been issued a number described by Subdivision (1) or (2).

24 (h) A person may use the number of a driver's license,  
25 election identification certificate, or personal identification  
26 card that has expired for purposes of Subsection (g) if the license  
27 or identification is otherwise valid.

(i) No record associating an individual voter with a ballot may be created.

SECTION 5.09. Section 86.011(c), Election Code, is amended to read as follows:

(c) If the return is not timely, the clerk shall enter the time of receipt on the carrier envelope and retain it in a locked container for the period for preserving the precinct election records. The clerk shall destroy the unopened envelope and its contents after the preservation period.

SECTION 5.10. Section 86.015(c), Election Code, as effective September 1, 2021, is amended to read as follows:

(c) An online tool used under this section must:

(1) for each election, record:

(A) each application for a ballot to be voted by mail received by the clerk; and

(B) each carrier envelope sent to a voter by the clerk;

(2) for each carrier envelope, record or assign a serially numbered and sequentially issued barcode or tracking number that is unique to each envelope; ~~and~~

(3) update the applicable Internet website as soon as practicable after each of the following events occurs:

(A) receipt by the early voting clerk of the person's application for a ballot to be voted by mail;

(B) acceptance or rejection by the early voting clerk of the person's application for a ballot to be voted by mail;

(C) placement in the mail by the early voting



1 clerk of the person's official ballot;

2 (D) receipt by the early voting clerk of the  
3 person's marked ballot; and

4 (E) acceptance or rejection by the early voting  
5 ballot board of a person's marked ballot; and

6 (4) allow a voter to add or correct information  
7 required under Section 84.002(a)(1-a) or Section 86.002(g).

8 SECTION 5.11. Sections 87.027(d), (e), and (i), Election  
9 Code, are amended to read as follows:

10 (d) The early voting clerk shall determine the number of  
11 members who are to compose the signature verification committee and  
12 shall state that number in the order calling for the committee's  
13 appointment. A committee must consist of not fewer than five  
14 members. In an election in which party alignment is indicated on  
15 the ballot, each county chair of a political party with a nominee or  
16 aligned candidate on the ballot shall submit to the appointing  
17 authority a list of names of persons eligible to serve on the  
18 signature verification committee in order of the county chair's  
19 preference. The authority shall appoint at least two persons from  
20 each list in the order of preference indicated on each list to serve  
21 as members of the committee. The same number of members must be  
22 appointed from each list. The authority shall appoint as [the]  
23 chair of the committee the highest-ranked person on [from] the list  
24 provided by the political party whose nominee for governor received  
25 the most votes in the county in the most recent gubernatorial  
26 general election. The authority shall appoint as vice chair of the  
27 committee the highest-ranked person on the list provided by the



1 political party whose nominee for governor received the second most  
 2 votes in the county in the most recent gubernatorial general  
 3 election. A vacancy on the committee shall be filled by appointment  
 4 from the original list or from a new list submitted by the  
 5 appropriate county chair.

6 (e) To be eligible to serve on a signature verification  
 7 committee, a person must be eligible under Subchapter C, Chapter  
 8 32, for service as a presiding election judge, except that the  
 9 person must be a qualified voter:

10 (1) of the county, in a countywide election ordered by  
 11 the governor or a county authority or in a primary election;

12 (2) of the part of the county in which the election is  
 13 held, for an election ordered by the governor or a county authority  
 14 that does not cover the entire county of the person's residence; or

15 (3) of the political subdivision, in an election  
 16 ordered by an authority of a political subdivision other than a  
 17 county.

18 (i) The signature verification committee shall compare the  
 19 signature on each carrier envelope certificate, except those signed  
 20 for a voter by a witness, with the signature on the voter's ballot  
 21 application to determine whether the signatures are those of the  
 22 voter. The committee may also compare the signatures with any  
 23 known signature [~~two or more signatures~~] of the voter [~~made within~~  
 24 ~~the preceding six years and~~] on file with the county clerk or voter  
 25 registrar to determine whether the signatures are those of the  
 26 voter. Except as provided by Subsection (1), a determination under  
 27 this subsection that the signatures are not those of the voter must



1 be made by a majority vote of the committee's membership. The  
2 committee shall place the jacket envelopes, carrier envelopes, and  
3 applications of voters whose signatures are not those of the voter  
4 in separate containers from those of voters whose signatures are  
5 those of the voter. The committee chair shall deliver the sorted  
6 materials to the early voting ballot board at the time specified by  
7 the board's presiding judge.

8 SECTION 5.12. Subchapter B, Chapter 87, Election Code, is  
9 amended by adding Section 87.0271 to read as follows:

10 Sec. 87.0271. OPPORTUNITY TO CORRECT DEFECT: SIGNATURE  
11 VERIFICATION COMMITTEE. (a) This section applies to an early  
12 voting ballot voted by mail:

13 (1) for which the voter did not sign the carrier  
14 envelope certificate;

15 (2) for which it cannot immediately be determined  
16 whether the signature on the carrier envelope certificate is that  
17 of the voter;

18 (3) missing any required statement of residence;

19 (4) missing information or containing incorrect  
20 information required under Section 84.002(a)(1-a) or Section  
21 86.002; or

22 (5) containing incomplete information with respect to  
23 a witness.

24 (b) Not later than the second business day after a signature  
25 verification committee discovers a defect described by Subsection  
26 (a) and before the committee decides whether to accept or reject a  
27 timely delivered ballot under Section 87.027, the committee shall:



(1) determine if it would be possible for the voter to correct the defect and return the carrier envelope before the time the polls are required to close on election day; and

(2) return the carrier envelope to the voter by mail, if the committee determines that it would be possible for the voter to correct the defect and return the carrier envelope before the time the polls are required to close on election day.

(c) If the signature verification committee determines under Subsection (b)(1) that it would not be possible for the voter to correct the defect and return the carrier envelope before the time the polls are required to close on election day, the committee may notify the voter of the defect by telephone or e-mail and inform the voter that the voter may request to have the voter's application to vote by mail canceled in the manner described by Section 84.032 or come to the early voting clerk's office in person not later than the sixth day after election day to correct the defect.

(d) If the signature verification committee takes an action described by Subsection (b) or (c), the committee must take either action described by that subsection with respect to each ballot in the election to which this section applies.

(e) A poll watcher is entitled to observe an action taken under Subsection (b) or (c).

(f) The secretary of state may prescribe any procedures necessary to implement this section.

(g) Notwithstanding any other law, a ballot may not be finally rejected for a reason listed in Section 87.041(b)(1), (2), or (6) before the seventh day after election day.



SECTION 5.13. Section 87.041, Election Code, is amended by amending Subsections (b) and (e) and adding Subsection (d-1) to read as follows:

(b) A ballot may be accepted only if:

(1) the carrier envelope certificate is properly executed;

(2) neither the voter's signature on the ballot application nor the signature on the carrier envelope certificate is determined to have been executed by a person other than the voter, unless signed by a witness;

(3) the voter's ballot application states a legal ground for early voting by mail;

(4) the voter is registered to vote, if registration is required by law;

(5) the address to which the ballot was mailed to the voter, as indicated by the application, was outside the voter's county of residence, if the ground for early voting is absence from the county of residence;

(6) for a voter to whom a statement of residence form was required to be sent under Section 86.002(a), the statement of residence is returned in the carrier envelope and indicates that the voter satisfies the residence requirements prescribed by Section 63.0011; ~~and~~

(7) the address to which the ballot was mailed to the voter is an address that is otherwise required by Sections 84.002 and 86.003; and

(8) the information required under Section 86.002(g)

provided by the voter identifies the same voter identified on the voter's application for voter registration under Section 13.002(c)(8).

(d-1) If a voter provides the information required under Section 86.002(g) and it identifies the same voter identified on the voter's application for voter registration under Section 13.002(c)(8), the signature on the ballot application and on the carrier envelope certificate shall be rebuttably presumed to be the signatures of the voter.

(e) In making the determination under Subsection (b)(2), to determine whether the signatures are those of the voter, the board may also compare the signatures with any known signature ~~[two or more signatures]~~ of the voter ~~[made within the preceding six years and]~~ on file with the county clerk or voter registrar ~~[to determine whether the signatures are those of the voter]~~.

SECTION 5.14. Subchapter C, Chapter 87, Election Code, is amended by adding Section 87.0411 to read as follows:

Sec. 87.0411. OPPORTUNITY TO CORRECT DEFECT: EARLY VOTING BALLOT BOARD. (a) This section applies to an early voting ballot voted by mail:

(1) for which the voter did not sign the carrier envelope certificate;

(2) for which it cannot immediately be determined whether the signature on the carrier envelope certificate is that of the voter;

(3) missing any required statement of residence;

(4) missing information or containing incorrect



1 information required under Section 84.002(a)(1-a) or Section  
2 86.002; or

3 (5) containing incomplete information with respect to  
4 a witness.

5 (b) Not later than the second business day after an early  
6 voting ballot board discovers a defect described by Subsection (a)  
7 and before the board decides whether to accept or reject a timely  
8 delivered ballot under Section 87.041, the board shall:

9 (1) determine if it would be possible for the voter to  
10 correct the defect and return the carrier envelope before the time  
11 the polls are required to close on election day; and

12 (2) return the carrier envelope to the voter by mail,  
13 if the board determines that it would be possible for the voter to  
14 correct the defect and return the carrier envelope before the time  
15 the polls are required to close on election day.

16 (c) If the early voting ballot board determines under  
17 Subsection (b)(1) that it would not be possible for the voter to  
18 correct the defect and return the carrier envelope before the time  
19 the polls are required to close on election day, the board may  
20 notify the voter of the defect by telephone or e-mail and inform the  
21 voter that the voter may request to have the voter's application to  
22 vote by mail canceled in the manner described by Section 84.032 or  
23 come to the early voting clerk's office in person not later than the  
24 sixth day after election day to correct the defect.

25 (d) If the early voting ballot board takes an action  
26 described by Subsection (b) or (c), the board must take either  
27 action described by that subsection with respect to each ballot in



1 the election to which this section applies.

2 (e) A poll watcher is entitled to observe an action taken  
3 under Subsection (b) or (c).

4 (f) The secretary of state may prescribe any procedures  
5 necessary to implement this section.

6 (g) Notwithstanding any other law, a ballot may not be  
7 finally rejected for a reason listed in Section 87.041(b)(1), (2),  
8 or (6) before the seventh day after election day.

9 SECTION 5.15. Section 87.0431(b), Election Code, is amended  
10 to read as follows:

11 (b) The early voting clerk shall, not later than the 30th  
12 day after election day, deliver notice to the attorney general,  
13 including certified copies of the carrier envelope and  
14 corresponding ballot application, of any ballot rejected because:

15 (1) the voter was deceased;

16 (2) the voter already voted in person in the same  
17 election;

18 (3) the signatures on the carrier envelope and ballot  
19 application were not executed by the same person;

20 (4) the carrier envelope certificate lacked a witness  
21 signature; ~~or~~

22 (5) the carrier envelope certificate was improperly  
23 executed by an assistant; or

24 (6) the early voting ballot board or the signature  
25 verification committee determined that another violation of the  
26 Election Code occurred.

27 SECTION 5.16. Sections 87.062(a) and (c), Election Code,



1 are amended to read as follows:

2 (a) On the direction of the presiding judge, the early  
3 voting ballot board, in accordance with Section 85.032(b), shall  
4 open the containers [~~container~~] for the early voting ballots that  
5 are to be counted by the board, remove the contents from each [~~the~~]  
6 container, and remove any ballots enclosed in ballot envelopes from  
7 their envelopes.

8 (c) Ballots voted by mail shall be tabulated and stored  
9 separately from the ballots voted by personal appearance and shall  
10 be separately reported on the returns [~~The results of all early~~  
11 ~~voting ballots counted by the board under this subchapter shall be~~  
12 ~~included in the same return~~].

13 SECTION 5.17. Section 87.103, Election Code, is amended to  
14 read as follows:

15 Sec. 87.103. COUNTING BALLOTS AND PREPARING RETURNS. (a)  
16 The early voting electronic system ballots counted at a central  
17 counting station, the ballots cast at precinct polling places, and  
18 the ballots voted by mail shall be tabulated separately [~~from the~~  
19 ~~ballots cast at precinct polling places~~] and shall be separately  
20 reported on the returns.

21 (b) The early voting returns prepared at the central  
22 counting station must include any early voting results obtained by  
23 the early voting ballot board under Subchapter [~~Subchapters~~] D [~~and~~  
24 ~~E~~].

25 SECTION 5.18. Section 87.126, Election Code, is amended by  
26 adding Subsection (a-1) to read as follows:

27 (a-1) Electronic records made under this section shall



1 record both sides of any application, envelope, or ballot recorded,  
2 and all such records shall be provided to the early voting ballot  
3 board, the signature verification committee, or both.

4 SECTION 5.19. Subchapter G, Chapter 87, Election Code, is  
5 amended by adding Section 87.128 to read as follows:

6 Sec. 87.128. NOTES. (a) Each member of an early voting  
7 ballot board and each member of a signature verification committee  
8 is entitled to take any notes reasonably necessary to perform the  
9 member's duties under this chapter.

10 (b) Notes taken under this section may not contain  
11 personally identifiable information.

12 (c) Each member who takes notes under this section shall  
13 sign the notes and deliver them to the presiding judge or committee  
14 chair, as applicable, for delivery to the custodian of election  
15 records.

16 (d) Notes collected under this section shall be preserved in  
17 the same manner as precinct election records under Section 66.058.

18 ARTICLE 6. ASSISTANCE OF VOTERS

19 SECTION 6.01. Section 64.009, Election Code, is amended by  
20 amending Subsection (b) and adding Subsections (e), (f), (f-1),  
21 (g), and (h) to read as follows:

22 (b) The regular voting procedures, except those in  
23 Subchapter B, may be modified by the election officer to the extent  
24 necessary to conduct voting under this section.

25 (e) Except as provided by Section 33.057, a poll watcher is  
26 entitled to observe any activity conducted under this section.

27 (f) A person who simultaneously assists seven or more voters



1 voting under this section by providing the voters with  
2 transportation to the polling place must complete and sign a form,  
3 provided by an election officer, that contains the person's name  
4 and address and whether the person is providing assistance solely  
5 under this section or under both this section and Subchapter B.

6 (f-1) Subsection (f) does not apply if the person is related  
7 to each voter within the second degree by affinity or the third  
8 degree by consanguinity, as determined under Subchapter B, Chapter  
9 573, Government Code.

10 (g) A form completed under Subsection (f) shall be delivered  
11 to the secretary of state as soon as practicable. The secretary  
12 shall retain a form delivered under this section for the period for  
13 preserving the precinct election records and shall make the form  
14 available to the attorney general for inspection upon request.

15 (h) The secretary of state shall prescribe the form  
16 described by Subsection (f).

17 SECTION 6.02. Section 64.031, Election Code, is amended to  
18 read as follows:

19 Sec. 64.031. ELIGIBILITY FOR ASSISTANCE. A voter is  
20 eligible to receive assistance in marking or reading the ballot, as  
21 provided by this subchapter, if the voter cannot prepare or read the  
22 ballot because of:

23 (1) a physical disability that renders the voter  
24 unable to write or see; or

25 (2) an inability to read the language in which the  
26 ballot is written.

27 SECTION 6.03. Subchapter B, Chapter 64, Election Code, is



1 amended by adding Section 64.0322 to read as follows:

2 Sec. 64.0322. SUBMISSION OF FORM BY ASSISTANT. (a) A  
3 person, other than an election officer, who assists a voter in  
4 accordance with this chapter is required to complete a form  
5 stating:

6 (1) the name and address of the person assisting the  
7 voter;

8 (2) the relationship to the voter of the person  
9 assisting the voter; and

10 (3) whether the person assisting the voter received or  
11 accepted any form of compensation or other benefit from a  
12 candidate, campaign, or political committee.

13 (b) The secretary of state shall prescribe the form required  
14 by this section. The form must be incorporated into the official  
15 carrier envelope if the voter is voting an early voting ballot by  
16 mail and receives assistance under Section 86.010, or must be  
17 submitted to an election officer at the time the voter casts a  
18 ballot if the voter is voting at a polling place or under Section  
19 64.009.

20 SECTION 6.04. Section 64.034, Election Code, is amended to  
21 read as follows:

22 Sec. 64.034. OATH. A person, other than an election  
23 officer, selected to provide assistance to a voter must take the  
24 following oath, administered by an election officer at the polling  
25 place, before providing assistance:

26 "I swear (or affirm) under penalty of perjury that the voter I  
27 am assisting represented to me they are eligible to receive



1 assistance; I will not suggest, by word, sign, or gesture, how the  
 2 voter should vote; I will confine my assistance to reading the  
 3 ballot to the voter, directing the voter to read the ballot, marking  
 4 the voter's ballot, or directing the voter to mark the ballot;  
 5 ~~[answering the voter's questions, to stating propositions on the~~  
 6 ~~ballot, and to naming candidates and, if listed, their political~~  
 7 ~~parties,]~~ I will prepare the voter's ballot as the voter directs; I  
 8 did not pressure or coerce the voter into choosing me to provide  
 9 assistance; [and] I am not the voter's employer, an agent of the  
 10 voter's employer, or an officer or agent of a labor union to which  
 11 the voter belongs; I will not communicate information about how the  
 12 voter has voted to another person; and I understand that if  
 13 assistance is provided to a voter who is not eligible for  
 14 assistance, the voter's ballot may not be counted."

15 SECTION 6.05. Sections 86.010(e), (h), and (i), Election  
 16 Code, are amended to read as follows:

17 (e) A person who assists a voter to prepare a ballot to be  
 18 voted by mail shall enter on the official carrier envelope of the  
 19 voter:

20 (1) the person's signature, printed name, and  
 21 residence address;

22 (2) the relationship of the person providing the  
 23 assistance to the voter; and

24 (3) whether the person received or accepted any form  
 25 of compensation or other benefit from a candidate, campaign, or  
 26 political committee in exchange for providing assistance ~~[on the~~  
 27 ~~official carrier envelope of the voter]~~.



(h) Subsection (f) does not apply:

(1) to a violation of Subsection (c), if the person is related to the voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, or was physically living in the same dwelling as the voter at the time of the event; or

(2) to a violation of Subsection (e), if the person is related to the voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code.

(i) An offense under this section for a violation of Subsection (c) is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

(1) the defendant was previously convicted of an offense under this code;

(2) the offense involved a voter 65 years of age or older; or

(3) the defendant committed another offense under this section in the same election.

SECTION 6.06. Section 86.0105, Election Code, is amended by amending Subsections (a), (c), and (e) and adding Subsection (f) to read as follows:

(a) A person commits an offense if the person:

(1) compensates or offers to compensate another person for assisting voters as provided by Section 86.010[, ~~as part of any performance-based compensation scheme based on the number of voters assisted or in which another person is presented with a quota of~~

1 ~~voters to be assisted as provided by Section 86.010]; or~~

2 (2) solicits, receives, or ~~[engages in another~~  
3 ~~practice that causes another person's compensation from or~~  
4 ~~employment status with the person to be dependent on the number of~~  
5 ~~voters assisted as provided by Section 86.010; or~~

6 ~~[(3) with knowledge that accepting compensation for~~  
7 ~~such activity is illegal,]~~ accepts compensation for an activity  
8 described by Subdivision (1) ~~[or (2)]~~.

9 (c) An offense under this section is a state jail felony ~~[if~~  
10 ~~it is shown on the trial of an offense under this section that the~~  
11 ~~defendant was previously convicted two or more times under this~~  
12 ~~section]~~.

13 (e) For purposes of this section, compensation means an  
14 economic benefit as defined by Section 38.01, Penal Code ~~[any form~~  
15 ~~of monetary payment, goods, services, benefits, or promises or~~  
16 ~~offers of employment, or any other form of consideration offered to~~  
17 ~~another person in exchange for assisting voters]~~.

18 (f) This section does not apply if the person assisting a  
19 voter is an attendant or caregiver previously known to the voter.

20 SECTION 6.07. Section 86.013(b), Election Code, is amended  
21 to read as follows:

22 (b) Spaces must appear on the reverse side of the official  
23 carrier envelope for:

24 (1) indicating the identity and date of the election;  
25 ~~[and]~~

26 (2) entering the signature, printed name, and  
27 residence address of a person other than the voter who deposits the



1 carrier envelope in the mail or with a common or contract carrier;  
2 and

3 (3) indicating the relationship of that person to the  
4 voter.

5 SECTION 6.08. (a) The secretary of state shall conduct a  
6 study regarding the implementation of educational programs,  
7 including the production and publication on the secretary of  
8 state's Internet website of instructional videos, to help voters  
9 with disabilities understand how to use voting systems used in this  
10 state.

11 (b) Not later than December 1, 2022, the secretary of state  
12 shall submit to the standing committees of the legislature with  
13 jurisdiction over elections a report on the study required by this  
14 section.

15 (c) The secretary of state, using existing resources, may  
16 contract with a qualified vendor to conduct the study required by  
17 this section.

18 (d) This section expires December 1, 2023.

19 ARTICLE 7. FRAUD AND OTHER UNLAWFUL PRACTICES

20 SECTION 7.01. Chapter 63, Election Code, is amended by  
21 adding Section 63.0111 to read as follows:

22 Sec. 63.0111. OFFENSES RELATED TO PROVISIONAL VOTING. (a)  
23 An election judge commits an offense if the judge knowingly  
24 provides a voter with a form for an affidavit required by Section  
25 63.001 if the form contains information that the judge entered on  
26 the form knowing it was false.

27 (b) An offense under this section is a state jail felony.



SECTION 7.02. Sections 276.004(a) and (b), Election Code, are amended to read as follows:

(a) A person commits an offense if, with respect to another person over whom the person has authority in the scope of employment, the person knowingly:

(1) refuses to permit the other person to be absent from work on election day or while early voting is in progress for the purpose of attending the polls to vote; or

(2) subjects or threatens to subject the other person to a penalty for attending the polls on election day or while early voting is in progress to vote.

(b) It is an exception to the application of this section that the person's conduct occurs in connection with an election in which the polls are open on election day or while early voting is in progress for voting for two consecutive hours outside of the voter's working hours.

SECTION 7.03. Sections 276.013(a) and (b), Election Code, are amended to read as follows:

(a) A person commits an offense if the person knowingly or intentionally makes any effort to:

(1) influence the independent exercise of the vote of another in the presence of the ballot or during the voting process, including by altering the ballot of another or by otherwise causing a ballot to not reflect the intent of the voter;

(2) cause a voter to become registered, a ballot to be obtained, or a vote to be cast under false pretenses; ~~[or]~~

(3) cause any false or intentionally misleading

statement, representation, or information to be provided:

(A) to an election official; or

(B) on an application for ballot by mail, carrier envelope, or any other official election-related form or document;

(4) prevent a voter from casting a legal ballot in an election in which the voter is eligible to vote;

(5) provide false information to a voter with the intent of preventing the voter from voting in an election in which the voter is eligible to vote;

(6) cause the ballot not to reflect the intent of the voter;

(7) cause a ballot to be voted for another person that the person knows to be deceased or otherwise knows not to be a qualified or registered voter;

(8) cause or enable a vote to be cast more than once in the same election; or

(9) discard or destroy a voter's completed ballot without the voter's consent.

(b) An offense under this section is a Class A misdemeanor, unless:

(1) the person committed the offense while acting in the person's capacity as an elected official, in which case the offense is a state jail felony; or

(2) the person is convicted of an attempt, in which case the offense is a Class B [A] misdemeanor.

SECTION 7.04. Chapter 276, Election Code, is amended by adding Sections 276.015, 276.016, 276.017, 276.018, and 276.019 to



1 read as follows:

2 Sec. 276.015. VOTE HARVESTING. (a) In this section:

3 (1) "Benefit" means anything reasonably regarded as a  
4 gain or advantage, including a promise or offer of employment, a  
5 political favor, or an official act of discretion, whether to a  
6 person or another party whose welfare is of interest to the person.

7 (2) "Vote harvesting services" means in-person  
8 interaction with one or more voters, in the physical presence of an  
9 official ballot or a ballot voted by mail, intended to deliver votes  
10 for a specific candidate or measure.

11 (b) A person commits an offense if the person, directly or  
12 through a third party, knowingly provides or offers to provide vote  
13 harvesting services in exchange for compensation or other benefit.

14 (c) A person commits an offense if the person, directly or  
15 through a third party, knowingly provides or offers to provide  
16 compensation or other benefit to another person in exchange for  
17 vote harvesting services.

18 (d) A person commits an offense if the person knowingly  
19 collects or possesses a mail ballot or official carrier envelope in  
20 connection with vote harvesting services.

21 (e) This section does not apply to:

22 (1) an activity not performed in exchange for  
23 compensation or a benefit;

24 (2) interactions that do not occur in the presence of  
25 the ballot or during the voting process;

26 (3) interactions that do not directly involve an  
27 official ballot or ballot by mail;



(4) interactions that are not conducted in-person with a voter; or

(5) activity that is not designed to deliver votes for or against a specific candidate or measure.

(f) An offense under this section is a felony of the third degree.

(g) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

(h) Records necessary to investigate an offense under this section or any other section of this code shall be provided by an election officer in an unredacted form to a law enforcement officer upon request. Records obtained under this subsection are not subject to public disclosure.

Sec. 276.016. UNLAWFUL SOLICITATION AND DISTRIBUTION OF APPLICATION TO VOTE BY MAIL. (a) A public official or election official commits an offense if the official, while acting in an official capacity, knowingly:

(1) solicits the submission of an application to vote by mail from a person who did not request an application;

(2) distributes an application to vote by mail to a person who did not request the application unless the distribution is expressly authorized by another provision of this code;

(3) authorizes or approves the expenditure of public funds to facilitate third-party distribution of an application to vote by mail to a person who did not request the application; or

(4) completes any portion of an application to vote by



1 mail and distributes the application to an applicant.

2 (b) An offense under this section is a state jail felony.

3 (c) Subsection (a)(2) does not apply if the public official  
4 or election official engaged in the conduct described by Subsection  
5 (a)(2) by providing access to an application to vote by mail from a  
6 publicly accessible Internet website.

7 (d) Subsection (a)(4) does not apply if the public official  
8 or election official engaged in the conduct described by Subsection  
9 (a)(4) while lawfully assisting the applicant under Section 84.003.

10 (e) Subsection (a) does not apply if the public official or  
11 election official:

12 (1) provided general information about voting by mail,  
13 the vote by mail process, or the timelines associated with voting to  
14 a person or the public; or

15 (2) engaged in the conduct described by Subsection (a)  
16 while acting in the official's capacity as a candidate for a public  
17 elective office.

18 (f) The remedy provided under this chapter is cumulative,  
19 and does not restrict any other remedies provided by this code or by  
20 law. A violation of this section is subject to injunctive relief or  
21 mandamus as provided by this code.

22 Sec. 276.017. UNLAWFUL DISTRIBUTION OF EARLY VOTING BALLOTS  
23 AND BALLOTING MATERIALS. (a) The early voting clerk or other  
24 election official commits an offense if the clerk or official  
25 knowingly mails or otherwise provides an early voting ballot by  
26 mail or other early voting by mail ballot materials to a person who  
27 the clerk or official knows did not submit an application for a



1 ballot to be voted by mail under Section 84.001.

2 (b) An offense under this section is a Class A misdemeanor.

3 Sec. 276.018. PERJURY IN CONNECTION WITH CERTAIN ELECTION  
4 PROCEDURES. (a) A person commits an offense if, with the intent to  
5 deceive, the person knowingly or intentionally makes a false  
6 statement or swears to the truth of a false statement:

7 (1) on a voter registration application; or

8 (2) previously made while making an oath, declaration,  
9 or affidavit described by this code.

10 (b) An offense under this section is a state jail felony.

11 Sec. 276.019. UNLAWFUL ALTERING OF ELECTION PROCEDURES. A  
12 public official or election official may not create, alter, modify,  
13 waive, or suspend any election standard, practice, or procedure  
14 mandated by law or rule in a manner not expressly authorized by this  
15 code.

16 ARTICLE 8. ENFORCEMENT

17 SECTION 8.01. Subchapter E, Chapter 31, Election Code, is  
18 amended by adding Sections 31.128, 31.129, and 31.130 to read as  
19 follows:

20 Sec. 31.128. RESTRICTION ON ELIGIBILITY. (a) In this  
21 section, "election official" does not include a chair of a county  
22 political party holding a primary election or a runoff primary  
23 election.

24 (b) A person may not serve as an election official if the  
25 person has been finally convicted of an offense under this code.

26 Sec. 31.129. CIVIL PENALTY. (a) In this section, "election  
27 official" has the meaning assigned by Section 31.128.



(b) An election official may be liable to this state for a civil penalty if the official:

(1) is employed by or is an officer of this state or a political subdivision of this state; and

(2) violates a provision of this code.

(c) A civil penalty imposed under this section may include termination of the person's employment and loss of the person's employment benefits.

Sec. 31.130. SUIT AGAINST ELECTION OFFICER. An action, including an action for a writ of mandamus, alleging that an election officer violated a provision of this code while acting in the officer's official capacity may only be brought against the officer in the officer's official capacity.

SECTION 8.02. Sections 232.008(b), (c), and (d), Election Code, are amended to read as follows:

(b) Except as provided by Subsection (c), a contestant must file the petition not later than the later of the 45th [~~30th~~] day after the date the election records are publicly available under Section 1.012 or the official result of the contested election is determined.

(c) A contestant must file the petition not later than the later of the 15th [~~10th~~] day after the date the election records are publicly available under Section 1.012 or the official result is determined in a contest of:

(1) a primary or runoff primary election; or

(2) a general or special election for which a runoff is necessary according to the official result or will be necessary if

the contestant prevails.

(d) A contestant must deliver, electronically or otherwise,  
a copy of the petition to the secretary of state by the same  
deadline prescribed for the filing of the petition.

SECTION 8.03. Title 14, Election Code, is amended by adding  
Subtitle D to read as follows:

SUBTITLE D. OTHER ELECTION LAWSUITS

CHAPTER 247. LAWSUIT ALLEGING IMPROPER ELECTION ACTIVITIES

Sec. 247.001. PETITION ALLEGING FRAUD. This chapter  
applies to a civil suit in which a candidate in an election alleges  
in the petition that an opposing candidate, an agent of the opposing  
candidate, or a person acting on behalf of the opposing candidate  
with the candidate's knowledge violated any of the following  
sections of this code:

- (1) Section 13.007;
- (2) Section 64.012;
- (3) Section 64.036;
- (4) Section 84.003;
- (5) Section 84.0041;
- (6) Section 86.0051;
- (7) Section 86.006;
- (8) Section 86.010;
- (9) Section 276.013; and
- (10) Section 276.015.

Sec. 247.002. PROCEDURE. A candidate in an election may  
file a petition for an action under this chapter in any county where  
a defendant resided at the time of the election. If the election is



1 for a statewide office, the candidate may also file the petition in  
2 a district court in Travis County.

3 Sec. 247.003. FILING PERIOD FOR PETITION. A candidate in an  
4 election may file a petition for an action under this chapter not  
5 earlier than the day after the date the election is certified and  
6 not later than the 45th day after the later of that date or the date  
7 election records are made publicly available under Section 1.012.

8 Sec. 247.004. DAMAGES. (a) If it is shown by a  
9 preponderance of the evidence that a defendant, an agent of the  
10 defendant, or a person acting on behalf of the defendant with the  
11 defendant's knowledge committed one or more violations of a section  
12 described by Section 247.001, the defendant is liable to the  
13 plaintiff for damages in an amount of \$1,000 for each violation.

14 (b) Notwithstanding Section 41.004, Civil Practice and  
15 Remedies Code, a court shall award damages under Subsection (a) to  
16 the plaintiff irrespective of whether the plaintiff is awarded  
17 actual damages.

18 Sec. 247.005. ATTORNEY'S FEES. In an action under this  
19 chapter, the court may award reasonable attorney's fees to the  
20 prevailing party.

21 SECTION 8.04. Section 273.061, Election Code, is amended to  
22 read as follows:

23 Sec. 273.061. JURISDICTION. (a) The supreme court or a  
24 court of appeals may issue a writ of mandamus to compel the  
25 performance of any duty imposed by law in connection with the  
26 holding of an election or a political party convention, regardless  
27 of whether the person responsible for performing the duty is a



1 public officer.

2       **(b) The court of criminal appeals may issue a writ of**  
3 **mandamus to compel the performance of any duty imposed by law in**  
4 **connection with the provision, sequestration, transfer, or**  
5 **impoundment of evidence in or records relating to a criminal**  
6 **investigation conducted under this code or conducted in connection**  
7 **with the conduct of an election or political party convention. If a**  
8 **writ of mandamus is issued under this subsection, it shall include**  
9 **an order requiring the provision, sequestration, transfer, or**  
10 **impoundment of the evidence or record.**

11       SECTION 8.05. Subchapter D, Chapter 22, Government Code, is  
12 amended by adding Sections 22.304 and 22.305 to read as follows:

13       **Sec. 22.304. COURT SITTING IN PANELS FOR CERTAIN ELECTION**  
14 **PROCEEDINGS; CRIMINAL OFFENSE. (a) In this section, "public**  
15 **official" means any person elected, selected, appointed, employed,**  
16 **or otherwise designated as an officer, employee, or agent of this**  
17 **state, a government agency, a political subdivision, or any other**  
18 **public body established by state law.**

19       **(b) Notwithstanding any other law or rule, a court**  
20 **proceeding entitled to priority under Section 22.305 and filed in a**  
21 **court of appeals shall be docketed by the clerk of the court and**  
22 **assigned to a panel of three justices determined using an automated**  
23 **assignment system.**

24       **(c) A person, including a public official, commits an**  
25 **offense if the person communicates with a court clerk with the**  
26 **intention of influencing or attempting to influence the composition**  
27 **of a three-justice panel assigned a specific proceeding under this**



1 section.

2 (d) An offense under this section is a Class A misdemeanor.

3 Sec. 22.305. PRIORITY OF CERTAIN ELECTION PROCEEDINGS. (a)

4 The supreme court or a court of appeals shall prioritize over any  
5 other proceeding pending or filed in the court a proceeding for  
6 injunctive relief or for a writ of mandamus under Chapter 273,  
7 Election Code, pending or filed in the court on or after the 70th  
8 day before a general or special election.

9 (b) If granted, oral argument for a proceeding described by  
10 Subsection (a) may be given in person or through electronic means.

11 SECTION 8.06. Section 23.101, Government Code, is amended  
12 by amending Subsection (a) and adding Subsections (b-1) and (b-2)  
13 to read as follows:

14 (a) Except as provided by Subsection (b-1), the [The] trial  
15 courts of this state shall regularly and frequently set hearings  
16 and trials of pending matters, giving preference to hearings and  
17 trials of the following:

18 (1) temporary injunctions;

19 (2) criminal actions, with the following actions given  
20 preference over other criminal actions:

21 (A) criminal actions against defendants who are  
22 detained in jail pending trial;

23 (B) criminal actions involving a charge that a  
24 person committed an act of family violence, as defined by Section  
25 71.004, Family Code;

26 (C) an offense under:

27 (i) Section 21.02 or 21.11, Penal Code;



(ii) Chapter 22, Penal Code, if the victim of the alleged offense is younger than 17 years of age;

(iii) Section 25.02, Penal Code, if the victim of the alleged offense is younger than 17 years of age;

(iv) Section 25.06, Penal Code;

(v) Section 43.25, Penal Code; or

(vi) Section 20A.02(a)(7), 20A.02(a)(8), or 20A.03, Penal Code;

(D) an offense described by Article 62.001(6)(C) or (D), Code of Criminal Procedure; and

(E) criminal actions against persons who are detained as provided by Section 51.12, Family Code, after transfer for prosecution in criminal court under Section 54.02, Family Code;

(3) election contests and suits under the Election Code;

(4) orders for the protection of the family under Subtitle B, Title 4, Family Code;

(5) appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims and claims under the Federal Employers' Liability Act and the Jones Act;

(6) appeals of final orders of the commissioner of the General Land Office under Section 51.3021, Natural Resources Code;

(7) actions in which the claimant has been diagnosed with malignant mesothelioma, other malignant asbestos-related cancer, malignant silica-related cancer, or acute silicosis; and

(8) appeals brought under Section 42.01 or 42.015, Tax



Code, of orders of appraisal review boards of appraisal districts established for counties with a population of less than 175,000.

(b-1) Except for a criminal case in which the death penalty has been or may be assessed or when it would otherwise interfere with a constitutional right, the trial courts of this state shall prioritize over any other proceeding pending or filed in the court a proceeding for injunctive relief under Chapter 273, Election Code, pending or filed in the court on or after the 70th day before a general or special election.

(b-2) A hearing in a proceeding described by Subsection (b-1) may be held in person or through electronic means, as determined by the court.

SECTION 8.07. Chapter 23, Government Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. GENERAL PROVISIONS

Sec. 23.301. ASSIGNMENT OF CERTAIN ELECTION PROCEEDINGS; CRIMINAL OFFENSE. (a) Notwithstanding any other law or rule, the clerk of a district court in which a proceeding entitled to priority under Section 23.101(b-1) is filed shall docket the proceeding and, if more than one district court in the county has jurisdiction over the proceeding, randomly assign the proceeding to a district court using an automated assignment system.

(b) Notwithstanding any other law or rule, the clerk of a county court or statutory county court in which a proceeding entitled to priority under Section 23.101(b-1) is filed shall docket the proceeding and, if more than one court in the county has jurisdiction over the proceeding, randomly assign the proceeding to



1 a court using an automated assignment system.

2 (c) A person, including a public official, commits an  
3 offense if the person communicates with a county or district clerk  
4 with the intention of influencing or attempting to influence the  
5 court or judge assigned to a proceeding under this section.

6 (d) An offense under this section is a Class A misdemeanor,  
7 except that the offense is a state jail felony if it is shown on the  
8 trial of the offense that the person committed the offense while  
9 acting in the person's official capacity as an election official.

10 (e) If a district or county clerk does not comply with this  
11 section, a person may seek from the supreme court or a court of  
12 appeals a writ of mandamus as provided by Section 273.061, Election  
13 Code, to compel compliance with this section.

14 Sec. 23.302. DEADLINES IN CERTAIN ELECTION PROCEEDINGS.

15 (a) Not later than 24 hours after the proceeding is filed, a judge  
16 to whom a case is assigned under Section 23.301(b) who wishes to be  
17 recused from the proceeding must, before recusal:

18 (1) hear an application for any emergency temporary  
19 relief sought;

20 (2) grant or deny any emergency temporary relief  
21 sought; and

22 (3) set a scheduling order that provides:

23 (A) a date for a hearing on any injunction sought  
24 not later than five days after the date on which the proceeding was  
25 filed; and

26 (B) discovery and deposition deadlines before  
27 the expiration of any emergency relief order entered.



1        (b) The presiding judge of an administrative region shall  
2 assign a new judge to a proceeding assigned under Section 23.301(b)  
3 not later than 12 hours after the original judge assigned to the  
4 proceeding is recused under Subsection (a).

5        (c) A final order in a proceeding filed under Section  
6 273.081, Election Code, shall be submitted in writing to the  
7 parties not later than 24 hours after the judge makes a final  
8 determination in the proceeding.

9        (d) If a district judge does not comply with this section, a  
10 person may seek from the supreme court, the court of criminal  
11 appeals, or a court of appeals a writ of mandamus as provided by  
12 Section 273.061, Election Code, to compel compliance with this  
13 section.

14        (e) Notwithstanding Section 23.101(b-1), a proceeding  
15 relating to a permanent injunction being sought in connection to a  
16 challenge under Section 141.034, Election Code, may be heard after  
17 the primary election has been canvassed.

18            ARTICLE 9. INELIGIBLE VOTERS AND RELATED REFORMS

19            SECTION 9.01. Chapter 42, Code of Criminal Procedure, is  
20 amended by adding Article 42.0194 to read as follows:

21            Art. 42.0194. FINDING REGARDING FELONY CONVICTION. In the  
22 trial of a felony offense, if the defendant is adjudged guilty of  
23 the offense, the court shall:

24            (1) make an affirmative finding that the person has  
25 been found guilty of a felony and enter the affirmative finding in  
26 the judgment of the case; and

27            (2) instruct the defendant regarding how the felony

1 conviction will impact the defendant's right to vote in this state.

2 SECTION 9.02. Article 42.01, Code of Criminal Procedure, as  
3 effective September 1, 2021, is amended by adding Section 16 to read  
4 as follows:

5 Sec. 16. In addition to the information described by  
6 Section 1, the judgment should reflect the affirmative finding and  
7 instruction entered pursuant to Article 42.0194.

8 SECTION 9.03. Section 64.012, Election Code, is amended by  
9 amending Subsections (a) and (b) and adding Subsections (c) and (d)  
10 to read as follows:

11 (a) A person commits an offense if the person knowingly or  
12 intentionally:

13 (1) votes or attempts to vote in an election in which  
14 the person knows the person is not eligible to vote;

15 (2) [~~knowingly~~] votes or attempts to vote more than  
16 once in an election;

17 (3) [~~knowingly~~] votes or attempts to vote a ballot  
18 belonging to another person, or by impersonating another person;  
19 [~~or~~]

20 (4) [~~knowingly~~] marks or attempts to mark any portion  
21 of another person's ballot without the consent of that person, or  
22 without specific direction from that person how to mark the ballot;  
23 or

24 (5) votes or attempts to vote in an election in this  
25 state after voting in another state in an election in which a  
26 federal office appears on the ballot and the election day for both  
27 states is the same day.



(b) An offense under this section is a Class A misdemeanor ~~[felony of the second degree unless the person is convicted of an attempt. In that case, the offense is a state jail felony]~~.

(c) A person may not be convicted solely upon the fact that the person signed a provisional ballot affidavit under Section 63.011 unless corroborated by other evidence that the person knowingly committed the offense.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

SECTION 9.04. The change in law made by this article in adding Section 64.012(c), Election Code, applies to an offense committed before, on, or after the effective date of this Act, except that a final conviction for an offense under that section that exists on the effective date of this Act remains unaffected by this article.

ARTICLE 10. REPEALER; SEVERABILITY; TRANSITION; EFFECTIVE DATE

SECTION 10.01. The following provisions of the Election Code are repealed:

- (1) Section 85.062(e);
- (2) Section 86.0105(b); and
- (3) Section 127.201(f).

SECTION 10.02. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared



1 to be severable.

2       SECTION 10.03. (a) Except as otherwise provided by this  
3 Act, the changes in law made by this Act apply only to an offense  
4 committed on or after the effective date of this Act. An offense  
5 committed before the effective date of this Act is governed by the  
6 law in effect when the offense was committed, and the former law is  
7 continued in effect for that purpose. For purposes of this section,  
8 an offense was committed before the effective date of this Act if  
9 any element of the offense occurred before that date.

10       (b) The changes in law made by this Act apply only to an  
11 election ordered on or after the effective date of this Act. An  
12 election ordered before the effective date of this Act is governed  
13 by the law in effect when the election was ordered, and the former  
14 law is continued in effect for that purpose.

15       (c) The changes in law made by this Act apply only to an  
16 application to vote an early voting ballot by mail submitted on or  
17 after the effective date of this Act. An application to vote an  
18 early voting ballot by mail submitted before the effective date of  
19 this Act is governed by the law in effect when the application was  
20 submitted, and the former law is continued in effect for that  
21 purpose.

22       (d) The changes in law made by this Act apply only to an  
23 application for voter registration submitted on or after the  
24 effective date of this Act.

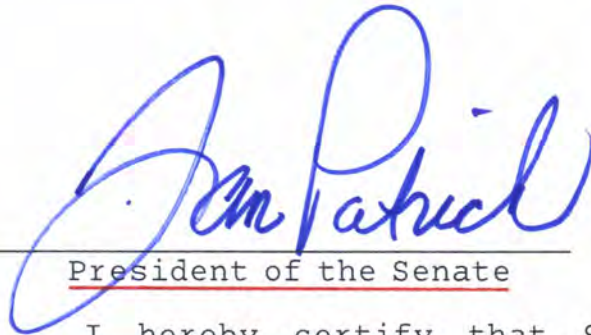
25       (e) Chapter 247, Election Code, as added by this Act,  
26 applies only to a cause of action for which the associated election  
27 occurred after the effective date of this Act.

1           SECTION 10.04. This Act takes effect on the 91st day after  
2 the last day of the legislative session.

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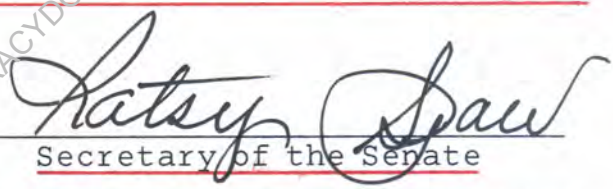


S.B. No. 1

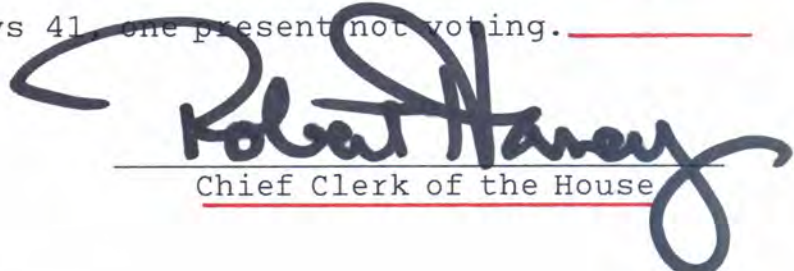
  
President of the Senate

  
Speaker of the House

I hereby certify that S.B. No. 1 passed the Senate on August 12, 2021, by the following vote: Yeas 18, Nays 11; August 27, 2021, Senate refused to concur in House amendments and requested appointment of Conference Committee; August 29, 2021, House granted request of the Senate; August 31, 2021, Senate adopted Conference Committee Report by the following vote: Yeas 18, Nays 13. \_\_\_\_\_

  
Secretary of the Senate

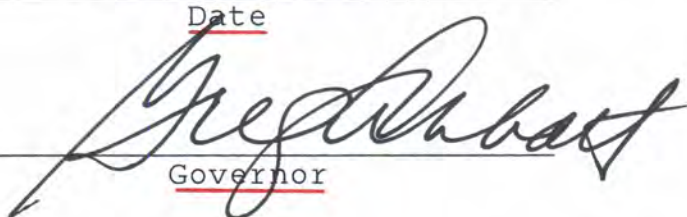
I hereby certify that S.B. No. 1 passed the House, with amendments, on August 27, 2021, by the following vote: Yeas 80, Nays 41, one present not voting; August 29, 2021, House granted request of the Senate for appointment of Conference Committee; August 31, 2021, House adopted Conference Committee Report by the following vote: Yeas 80, Nays 41, one present not voting. \_\_\_\_\_

  
Chief Clerk of the House

Approved:

9-7-21

Date

  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
7pm O'CLOCK

SEP 07 2021

  
Secretary of State



**TAB C: TABLE OF STATUTORY  
CROSS-REFERENCES**

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## TABLE OF STATUTORY CROSS-REFERENCES

Provision of SB 1	Texas Election Code Location
§ 1.04	§ 1.0015
§ 3.04	§ 43.031(b)
§ 3.09	§ 85.005*
§ 3.10	§ 85.006(e)*
§ 3.12	§ 85.061(a)*
§ 3.13	§ 85.062(b), (f-1)*
§ 4.01	§ 32.075(g)
§ 4.06	§ 33.051(g)
§ 4.07	§ 33.056(e)-(f)
§ 4.09	§ 33.061(a)*
§ 4.12	§ 86.006(a-2)
§ 5.02	§ 84.002(a)*, (b-1)
§ 5.03	§ 84.011(a)*
§ 5.07	§ 86.001(f)-(f-2)
§ 5.08	§ 86.002(g)-(i)
§ 5.10	§ 86.015(c)*
§ 5.12	§ 87.0271
§ 5.13	§ 87.041(b), (d-1), (e)
§ 6.01	§ 64.009(e), (f), (f-1), (h)
§ 6.03	§ 64.0322

§ 6.04	§ 64.034*
§ 6.05	§ 86.010(e), (h), (i)*
§ 7.04	§ 276.016
§ 8.01	§§ 31.128-.130

\* Indicates a provision that has been codified as amended.

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Maria Mendoza-Williamson on behalf of Lanora Pettit  
Bar No. 24115221  
maria.williamson@oag.texas.gov  
Envelope ID: 63471833  
Status as of 4/12/2022 7:41 AM CST

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