

IN THE UNITED STATE DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LA UNION DEL PUEBLO ENTERO, et	§	
al.,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	CIVIL ACTION NO. 5:21-CV-00844-XR
v.	§	(Consolidated Case)
	§	
	§	
GREGORY W. ABBOTT, et al.,	§	
	§	
<i>Defendants.</i>	§	
	§	

**DEFENDANT KIM OGG’S REPLY TO  
THE OCA PLAINTIFFS’ RESPONSES TO OGG’S MOTION TO DISMISS**

Defendant Kim Ogg, in her capacity as Harris County District Attorney (“Ogg”), files this reply to Plaintiffs OCA-Greater Houston, League of Women Voters of Texas, REVUP-Texas, Texas Organizing Project, and Workers Defense Action Fund’s (collectively, the “OCA Plaintiffs”) Response (Dkt. 377)<sup>1</sup> to Ogg’s motion to dismiss all claims brought against her in any of the matters consolidated by the Court under Civil Action No. 5:21-CV-00844-XR (Dkt. 344).

In the same fashion as the various other plaintiffs in this consolidated litigation, the OCA Plaintiffs argue that the Court should not dismiss Ogg because:

- (1) The OCA Plaintiffs’ non-statutory claims against Ogg satisfy the *Ex parte Young* exception to sovereign immunity based solely on Ogg’s jurisdiction to enforce challenged criminal statutes, despite the absence of any allegation that Ogg has enforced or threatened to enforce any of the challenged provisions;

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<sup>1</sup>The reply to various other plaintiffs’ responses to the motion to dismiss (Dkt. 378) indicated in a footnote that the OCA Plaintiffs’ response was untimely filed. Ogg corrects that statement here: the OCA Plaintiffs’ response to the motion was timely pursuant to this Court’s order of April 4, 2022. This reply accordingly addresses the merits of that response.

- (2) The OCA Plaintiffs have Article III standing to sue Ogg based on their desire to engage in certain conduct they believe to be within the scope of these criminal statutes and their subjective fear that they will be prosecuted by Ogg for doing so; and
- (3) The OCA Plaintiffs' statutory claims under the Voting Rights Act, the Americans with Disability Act, and the Rehabilitation Act all abrogate Ogg's entitlement to sovereign immunity.

For the same reasons asserted in Ogg's reply to the LULAC and HAUL Plaintiffs' responses (Dkt. 378), which Ogg hereby incorporates into this reply, these duplicative arguments are unavailing to overcome dismissal of their claims against Ogg.

**1. The mere fact that Ogg has jurisdiction to enforce criminal statutes is not enough to defeat her entitlement to sovereign immunity.**

From the outset, the OCA Plaintiffs' response misrepresents Ogg's position in an effort to create a straw man argument. Contrary to what is claimed in the response, Ogg has never argued that "there is no party responsible for enforcing the criminal provisions added to the Texas Election Code in 2021 by Senate Bill 1." (Dkt. 377, at 2). Ogg of course fully accepts her general jurisdictional authority to bring criminal prosecutions in Harris County. (Dkt. 344, at 6). But a "mere fact" allegation of general criminal jurisdiction is not enough to drag every district attorney in Texas into federal court every time the Texas Legislature enacts or modifies a criminal statute and someone wants to challenge that law.

The law protects officials like Ogg from precisely this scenario through limitations on federal jurisdiction and the doctrine of sovereign immunity, including the limitations on the scope of the *Ex parte Young* exception to a state actor's Eleventh Amendment immunity from suit. As the Fifth Circuit has explained, application of the *Ex parte Young* exception requires a "higher showing of 'enforcement'" than mere enforcement authority. *City of Austin v. Paxton*,

943 F.3d 993, 1000 (5th Cir. 2019). When the Fifth Circuit has permitted suits under *Ex parte Young*, it has done so based on “specific enforcement actions of the respective defendant state officials warranting the application of the *Young* exception.” *Id.* at 1001 (citing *K.P. v. LeBlanc*, 627 F.3d 115 (5th Cir. 2010); *Air Evac EMS, Inc. v. Tex. Dep’t of Ins., Div. of Workers’ Comp.*, 851 F.3d 507 (5th Cir. 2017); and *NiGen Biotech, L.L.C. v. Paxton*, 804 F.3d 389 (5th Cir. 2015)).

The OCA Plaintiffs—like the others who have brought Ogg into the case—premise their arguments on the concept that if they believe a statute is unconstitutional, they *have to be able to sue someone*. This is obviously a false premise. As the courts have recognized many times over:

Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.

*Kokkonen v. Guardian Life Ins. Co.*, 114 S. Ct. 1673, 1675 (1994) (citations omitted); *see also* Wright & Miller, FEDERAL PRACTICE AND PROCEDURE § 3522 (“It is a principle of first importance that the federal courts are tribunals of limited subject matter jurisdiction.”).

Two of the important considerations in the limitations imposed on the ability of allegedly aggrieved persons to get relief in federal court against a particular defendant are sovereign immunity and standing. With respect to sovereign immunity as a limitation on the ability of an allegedly aggrieved plaintiff to seek federal court relief:

It was well established in 1989 when *Union Gas* was decided that the Eleventh Amendment stood for the constitutional principle that state sovereign immunity limited the federal courts’ jurisdiction under Article III. The text of the Amendment itself is clear enough on this point: “The Judicial power of the United States shall not be construed to extend to any suit....” And our decisions since *Hans* had been equally clear that the Eleventh Amendment reflects “the fundamental principle of sovereign immunity [that] limits the grant of judicial authority in Art. III.”

*Seminole Tribe of Florida v. Florida*, 116 S. Ct. 1114, 1127 (1996) (overruling *Pennsylvania v. Union Gas. Co.*, 109 S. Ct. 2273 (1989)) (additional citations omitted).

With respect to standing:

In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues. This inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise. In both dimensions it is founded in concern about the proper—and properly limited—role of the courts in a democratic society.

*Warth v. Seldin*, 95 S. Ct. 2197, 2205 (1975) (citations omitted); *see also TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (“The ‘law of Art. III standing is built on a single basic idea—the separation of powers.’” (quoting *Raines v. Byrd*, 117 S. Ct. 2312 (1997))).

The absence of a claim against Ogg is not a deprivation of a right held by the OCA Plaintiffs or any other plaintiff. Ogg is not a properly sued defendant within the limited scope of federal jurisdiction because the plaintiffs have not alleged—and have in fact acknowledged and admitted they cannot allege—she is enforcing, or even threatening to enforce, any criminal provisions created or modified by S.B. 1. The OCA Plaintiffs themselves even quote language from the Fifth Circuit acknowledging the need for plaintiffs to show that the defendant-official they are suing not only “can act,” but likely *will act*. (Dkt. 377, at 8 (quoting *City of Austin*, 943 F.3d at 1002 (“a significant possibility that [the official] will act to harm a plaintiff”))). The absence of any factual basis to allege that Ogg “will act” to enforce any of the provisions the plaintiffs seek to have the Court declare unconstitutional is fatal to their claims against Ogg.

Besides the false premise that “I can sue Ogg, because I have to be able to sue someone,” the OCA Plaintiffs’ only response to the *City of Austin* case, and the line of cases it discusses (*K.P.*, *Air Evac*, and *NiGen Biotech*), is that they all involved enforcement of civil, rather than criminal, laws. This is a distinction without a difference. Regardless of the kind of statute a

plaintiff is challenging, that plaintiff must do more than allege that the defendant-official sued can theoretically enforce the challenged statute. *City of Austin*, 943 F.3d at 1001-02; *Okpalobi v. Foster*, 244 F.3d 405, 417 (5th Cir. 2001) (*en banc*) (requiring “a demonstrated willingness to exercise” a “particular duty to enforce the statute in question”).<sup>2</sup> The OCA Plaintiffs’ citation to *Steffel v. Thompson*, 415 U.S. 452 (1974), is no help to their position for at least two reasons. First, *Steffel* was not an *Ex parte Young* case at all. Second, the petitioner in *Steffel* had “been twice warned” to stop distributing handbills and had “been told by police” that if he did so again “he [would] likely be prosecuted.” *Id.* at 459. The absence of any such allegations of conduct involving Ogg and the provisions challenged here is deafening.

**2. Similarly, the lack of factual allegations showing a credible threat of prosecution prevents the OCA Plaintiffs from establishing standing.**

The OCA Plaintiffs cite numerous cases for the basic and undisputed proposition that a plaintiff, in the right circumstances, may bring a pre-enforcement challenge to a statute. *E.g.*, *Doe v. Bolton*, 410 U.S. 179, 188 (1973); *Nat’l Rifle Ass’n of Am., Inc. v. McCraw*, 719 F.3d 338, 345 (5th Cir. 2013). However, any such pre-enforcement challenge requires an actionable allegation of a credible threat of prosecution. *E.g.*, *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298-99 (1979). When a plaintiff has “no fears of state prosecution except those that are imaginary or speculative,” that plaintiff lacks standing to sue. *Younger v. Harris*, 401 U.S. 37, 42 (1971); *see also McCraw*, 719 F.3d at 345 n.5 (state defendant conceded plaintiffs faced credible threat of prosecution).

Many of the authorities cited by the OCA Plaintiffs are First Amendment cases in which suits were allowed to proceed against statutes that had not yet been enforced. *E.g.*, *Speech First*,

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<sup>2</sup>The OCA Plaintiffs have also failed to show Ogg has an “particular duty to enforce” any of the challenged provisions. Texas law gives Ogg absolute discretion to prosecute such cases (or not). *Neal v. State*, 150 S.W.3d 169, 173 (Tex. Crim. App. 2004).

*Inc. v. Fenves*, 979 F.3d 319, 336-37 (5th Cir. 2020); *Virginia v. Am. Booksellers Ass’n, Inc.*, 484 U.S. 383, 393 (1988). Of course, a significant distinction is that the defendants in those First Amendment cases were directly responsible for the policies being challenged. *Fenves*, 979 F.3d at 323 (university president sued over university speech policies); *Am. Booksellers*, 484 U.S. at 386 (State of Virginia sued over criminal statute). In that scenario, it is fair to ask, as the Fifth Circuit did in *Fenves*, why the policy is even on the books if it is not going to be enforced. *Fenves*, 979 F.3d at 337. The distinction here is the absence of any allegation that Ogg had anything to do with the enactment of S.B. 1, much less any control over the Texas Legislature when it enacted the legislation. The “mere fact” that the Legislature passed a criminal statute that falls within the jurisdiction of Ogg in Harris County is just not enough under the law to involve Ogg in these plaintiffs’ constitutional challenges.

In addition to a lack of allegations of intent or willingness to enforce any of the challenged statutory provisions, the record before the Court shows that Ogg has in fact expressed the *opposite* intent. The OCA Plaintiffs quibble with Ogg’s proffered non-enforcement stipulation, saying that it was not permanent. This is another quibble without a cause. Once the constitutional challenges raised by plaintiffs are resolved by this Court and any reviewing court, there is no need for a promise of non-enforcement. The judicial process either decides plaintiffs’ claims against them, in which case there is no basis for an injunction, or that the plaintiffs’ claims as to the unconstitutionality of a challenged statute are justiciable and have merit, in which case there is no basis to sue Ogg or anyone else unless an actor actually took action to enforce a statute the judicial system had determined to be unconstitutional. There is simply no place in our federal system to subject the office of a district attorney to the burdens of litigation

over the validity of statutes that the district attorney's office has no alleged intention or willingness to enforce.

The burdens of participating in this litigation are not hypothetical or abstract. Naming Ogg as a defendant forces her office to expend resources—time and money—on civil litigation that has nothing to do with the day-to-day criminal work of her office's prosecutors. It also subjects Ogg and her office to burdensome and harassing discovery requests. For example, the OCA Plaintiffs have sought from Ogg's office "all documents and communications" over a *six-year period* spanning a variety of topics including topics as broad as "suspected violation[s] of criminal election law," even laws that have nothing to do with S.B. 1. *See Ex. A* (OCA Plaintiffs' First RFPs to Ogg). Similarly, Ogg has been served with more than a dozen interrogatories demanding that Ogg itemize and describe all such criminal investigations or prosecutions, among other topics. *See Ex. B* (OCA Plaintiffs' First Set of Interrogatories to Ogg).

- 3. Given the absence of allegations that Ogg has enforced, is enforcing, or has threatened to enforce any of the challenged criminal provisions of S.B. 1, the OCA Plaintiffs have not stated an actionable claim for violation of the Voting Rights Act, the Americans with Disabilities Act, or the Rehabilitation Act against Ogg.**

As explained in more detail in Ogg's reply to the LULAC and HAUL Plaintiffs' responses, the lack of any allegation that Ogg has violated the Voting Rights Act, Americans with Disabilities Act, or Rehabilitation Act is fatal to those statutory causes of action. (Dkt. 378, at 2-6.)

Like the other plaintiffs, the OCA Plaintiffs' allegations focus not on any actions taken by Ogg but on actions taken by the Texas Legislature and its members:

2. In response to this increase in civic participation, the Texas Legislature passed an omnibus elections bill targeting many of the precise methods that local election authorities and community groups used to make voting easier and more accessible to traditionally marginalized voters, such as voters with disabilities and voters with limited English proficiency. In their determination to push this omnibus legislation through the legislative process, lawmakers ignored widespread opposition by diverse groups of Texans—including business executives, faith leaders, community organizers, local elected officials, and countless everyday people—and refused to conduct any serious study of how this new law would impact voters.

55. The 2021 legislative sessions were marked by a disregard for procedural rules and a proclaimed ignorance of or indifference to the potential discrimination resulting from proposed voter suppression legislation. Against that backdrop, the Legislature's second special session culminated in the passage of an omnibus elections bill, SB 1, that will illegally disenfranchise voters with disabilities and voters with limited English proficiency—who, in Texas, are also overwhelmingly voters of color—while making it harder for community groups to continue the outreach that has led to the growing participation among these communities of voters in recent years.

(Dkt. 200). On the other hand, the allegations regarding Ogg are prospective and hypothetical, asserting what “will” happen in the future, rather than describing things that have actually occurred:

136. By enforcing and implementing those challenged provisions of SB 1, the AG, the SOS and county officials acting pursuant to SOS directives and using materials he created will exclude Plaintiffs' members and other voters with disabilities from participation in, and deny them the benefits of, or otherwise discriminate against them in, their service, program, or activity of voting via the State's mail-in voting program.



144. Accordingly, by enforcing and implementing those challenged provisions of SB 1, the AG, SOS, and county officials acting pursuant to SOS directives and using materials he created will discriminate against Plaintiffs and their members by denying them a full and equal opportunity to participate in their voting programs.

181. Plaintiffs are entitled to injunctive relief against the SOS, who as set forth already is expressly charged with implementing the Oath and related provisions set forth in Sections 6.04, 6.05, and 6.06 of SB 1; the AG, Harris DA, and Travis DA, who as set forth already are charged with enforcing the criminal law penalties in Sections 6.04 and 6.06, and other county officials to whatever extent they are required to comply with directives from the SOS and the AG regarding the enforcement of the challenged provisions, as well as reasonable attorney's fees and costs.

*Id.* In the absence of any factual allegations that Ogg has actually done something that constitutes an alleged violation of the Voting Rights Act, Americans with Disabilities Act, or Rehabilitation Act, Ogg is entitled to dismissal of those claims as well.

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Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT  
KIM OGC, IN HER OFFICIAL  
CAPACITY AS HARRIS COUNTY  
DISTRICT ATTORNEY**

**CERTIFICATE OF SERVICE**

I hereby certify that on April 22, 2022, a true and correct copy of the foregoing document was served on all counsel of record by filing with the Court's CM/ECF system.

/s/ Eric J.R. Nichols

Eric J.R. Nichols

# EXHIBIT A

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

LA UNIÓN DEL PUEBLO ENTERO, et al.,

*Plaintiffs,*

v.

TEXAS, et al.,

*Defendants.*

Civil Action No. 5:21-cv-844(XR)  
(Lead Case)

OCA-GREATER HOUSTON, LEAGUE  
OF WOMEN VOTERS OF TEXAS,  
REVUP-TEXAS, TEXAS  
ORGANIZING PROJECT, and  
WORKERS DEFENSE ACTION FUND,

*Plaintiffs,*

v.

TEXAS SECRETARY OF STATE JOHN  
SCOTT, *in his official capacity*, TEXAS  
ATTORNEY GENERAL KEN  
PAXTON, *in his official capacity*,  
HARRIS COUNTY ELECTIONS  
ADMINISTRATOR ISABEL  
LONGORIA, *in her official capacity*,  
TRAVIS COUNTY CLERK DANA  
DEBEAUVOIR, *in her official capacity*,  
HARRIS COUNTY DISTRICT  
ATTORNEY KIM OGG, *in her official  
capacity*, TRAVIS COUNTY DISTRICT  
ATTORNEY JOSÉ GARZA, *in his  
official capacity*,

*Defendants.*

1:21-cv-0780-XR  
(Consolidated Case)

**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANT  
HARRIS COUNTY DISTRICT ATTORNEY KIM OGG, IN HER OFFICIAL  
CAPACITY**

TO: Harris County District Attorney Kim Ogg, in her official capacity, by and through her attorney of record, Eric J.R. Nichols, Butler Snow LLP, 1400 Lavaca Street, Suite 1000, Austin, TX 78701.

Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiffs OCA-Greater Houston, League of Women Voters of Texas, REVUP-Texas, Texas Organizing Project, and Workers Defense Action Fund serve these Requests for Production upon Defendant Harris County District Attorney Kim Ogg, in her official capacity (“Defendant” or “Defendant Ogg”). Plaintiffs request that Defendant Ogg produce the items specified below on or before 30 days after issuance of this request, in electronic format, or if electronic format is not available, at 1405 Montopolis Drive, Austin, Texas 78741. Each Request for Production is subject to the Definitions and Instructions listed below.

**DEFINITIONS**

1. The terms “and” and “or” are to be construed both conjunctively and disjunctively, and each shall include the other wherever such dual construction will serve to bring within the scope of this demand any document or thing which would otherwise not be brought within its scope.
2. All phrases following the terms “including,” “including without limitation,” and “including but not limited to” are intended to illustrate the kinds of information responsive to each request. Such examples are not intended to be exhaustive of the materials sought by the request and shall not in any way be read to limit the scope of the request.
3. “Documentation” or “documents” includes, but is not limited to, the following items whether printed or recorded or reproduced by any other mechanical process or written or produced by hand: agreements, communications, reports, charges, complaints, correspondence, telegrams,

memoranda, applications, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, e-mails, diaries, schedules, charts, graphs, worksheets, reports, notebooks, note charts, plans, drawings, sketches, maps, summaries or records of meetings or conferences, summaries or reports or records of investigations or negotiations, opinions or reports of consultants, bills, statements, invoices, and all other writings of whatever nature, photographs, motion picture film, brochures, pamphlets, advertisements, circulars, press releases, drafts, letters, tape recordings, disc, data sheet or data processing card, any marginal comments appearing on any document or thing or any other written, recorded, transcribed, filed or graphic master, however produced or reproduced, to which you, as defined in Definition 9 below, will have or have had access.

4. "Communication" or "communications" means any disclosure, conveyance, transfer, or exchange of any information or documents from one person to another or among multiple persons by any means or in any form, including but not limited to oral, written, in-person, telephonic, electronic, digital, mailed, or otherwise.
5. "Concern," "concerning," "regarding," or "relating to" shall mean having any connection, relation, or reference to and include, by way of example and without limitation, discussing, identifying, containing, showing, evidencing, describing, reflecting, dealing with, regarding, pertaining to, analyzing, evaluating, estimating, constituting, comprising, studying, surveying, projecting, recording, relating to, summarizing, assessing, criticizing, reporting, commenting on, referring to in any way, either directly or indirectly, or otherwise involving, in whole or in part.
6. "Identify" when referring:

- a. to a person, means to state the person’s full name, present or last known address, telephone number, and email address;
  - b. to an organization or entity, means to state its full name, present or last known address, telephone number, fax number, and email address;
  - c. to a document, means to describe its contents; to identify when, where, and how it was made; to identify who made it; and to identify who has present or last known possession, custody, or control of the document;
  - d. to a statement or communication, means to describe its contents; to identify when, where, and how it was made; to identify who made it and who was present when it was made; and to identify who has present or last known possession, custody, or control of any recording of the statement or communication;
  - e. to a social media account, means to provide the username of the account, identify all persons who control or have access to the account, provide the date on which the account was created, and describe whether the account is still in existence and/or in use.
7. “SB1” means Senate Bill No. 1, a law passed during the Second Special Session of the 87th Texas Legislature in 2021. SB1 contains the provisions at issue in this Lawsuit.
  8. “Criminal election law” means any criminal provision of the Texas Election Code, or any criminal provision of any other law regulating conduct in connection with voting or elections. This includes but is not limited to SB1 sections 6.04, 6.06, and 7.04.
  9. “You” or “your office” means Harris County, including the Office of the Harris County District Attorney, the Harris County District Attorney, her predecessors and successors as Harris County District Attorney, and the current and former employees, officers, attorneys, agents, trustees, investigators, representatives, contractors, and consultants of the Office of the Harris County District Attorney.
  10. “OAG” means the Office of the Texas Attorney General and includes the Texas Attorney General, his predecessors and successors as Texas Attorney General, and the current and former employees, officers, attorneys, agents, trustees, investigators, representatives,

contractors, and consultants of the Office of the Texas Attorney General.

11. “SOS” means the Office of the Texas Secretary of State and includes the Texas Secretary of State, his predecessors and successors as Texas Secretary of State, and the current and former employees, officers, attorneys, agents, trustees, investigators, representatives, contractors, and consultants of the Office of the Texas Secretary of State.
12. “State officials” means the current and former employees, officers, attorneys, agents, trustees, investigators, representatives, contractors, and consultants of any statewide office of the State of Texas, as well as the statewide office itself, including but not limited to the OAG and the SOS as set out in the definitions above.
13. “Local officials” means the current and former employees, officers, attorneys, agents, trustees, investigators, representatives, contractors, and consultants of any political subdivision or office of a political subdivision of the State of Texas, as well as the political subdivision or office of a political subdivision itself. This includes but is not limited to Texas County District Attorney’s Offices, Texas County Criminal District Attorney’s Offices, Texas County Attorney’s Offices, Texas County Election Administrator’s Offices, Texas County Clerk’s Offices, and Texas County Tax-Assessor-Collector’s Offices, along with their current and former employees, officers, attorneys, agents, trustees, investigators, representatives, contractors, and consultants.
14. “Texas Legislature” means the current and former members of the Texas Legislature and the current or former employees, officers, attorneys, agents, trustees, investigators, representatives, contractors, and consultants of those members.
15. “Members of the public” means any natural person or natural or legal entity not included in the definitions of you, the OAG, the SOS, State officials, local officials, or the Texas



Legislature as set out in the definitions above.

### INSTRUCTIONS

1. To the fullest extent permitted by the Federal Rules of Civil Procedure, these Requests are intended to be continuing in nature. Defendant is requested and required to timely supplement its production when appropriate or necessary to make it correct or complete.
2. This request requires you to produce all responsive, non-privileged documents that are in your actual or constructive possession, custody, or control under Federal Rule of Civil Procedure 34.
3. These Requests are intended to include all documents in Defendant's possession, or subject to Defendant's custody or control, whether directly or indirectly. A document is deemed to be within Defendant's possession, custody, or control if:
  - a. it is in Defendant's physical control; or
  - b. it is in the physical control of any other person or entity, and Defendant, individually or otherwise, (i) owns the document or thing in whole or in part; (ii) has a right by contract, statute, or otherwise, to use, inspect, examine, or copy that document or thing on any terms; or (iii) has, as a practical matter, been able to use, inspect, examine, or copy that document or thing when Defendant have sought to do so.
4. For each request seeking data maintained by you, the request includes a request for any coding information or explanatory materials necessary to understand the data provided.
5. For each request seeking data maintained by you, if the specific data is not available or not available in the requested format, please provide documents or electronically stored information that contain as much of the requested information as is available and/or the closest approximation to the information that is available.

6. If you object to any item or category, you must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part objected to and permit inspection of the rest.
7. All pages stapled, clipped, or otherwise fastened together shall be produced in such form and all documents that cannot be legibly copied shall be produced in their original form.
8. Unless otherwise requested, the responses to these requests shall comprise all information in your possession, custody or control; these requests are not limited to documents within the physical possession of Defendant.
9. If you are unable to comply with any request, you shall (a) supply such information as is available; (b) explain why such answer is incomplete and what efforts you have made to obtain the information; and (c) identify the source from which complete compliance can be obtained.
10. Each request contemplates production of the document in its entirety, without abbreviation or expurgation, except as justified by claims of attorney-client privilege or work product protection, and any redacted material must be clearly identified on the document.
11. Partial Production: Whenever you object to a particular demand, or portion thereof, produce all documents called for which are not subject to that objection. Similarly, wherever a document is not produced in full, state with particularity the reason or reasons it is not being produced in full and describe, to the best of your knowledge, information, and belief, and with as much particularity as possible, those portions of the document which are not produced.
12. In the event that any document called for by any request has been destroyed, discarded or otherwise disposed of, identify each such document by stating: (i) the author, addressor or addressee; (ii) the addressee or recipient of any indicated or blind copies; (iii) the date, subject matter and number of pages of the document; (iv) the identity of any attachments or appendices

to the document; (v) all persons to whom the document was distributed, shown or explained; (vi) the date, reason and circumstances of disposal of the document; and (vii) the person authorizing and carrying out such disposal and each and every person with knowledge concerning the circumstances under which such document was destroyed or disposed of.

13. If documents that provide accurate answers are not available, you shall so state, shall provide best estimates, and shall describe how those estimates were derived, identifying the sources or bases of such estimates. Estimated data shall be followed by the notation “est.”

14. Withheld documents or things: If any document or thing is withheld under a claim of privilege or other protection, so as to aid the Court and the parties hereto to determine the validity of the claimed privilege or protection, please provide a log describing the following with respect to each such document within 5 days after submitting a response claiming privilege or other protection: (i) the identity of the person who prepared the document, who signed it, and/or over whose name it was sent or issued; (ii) the identity of the person or entity to whom the document was directed; (iii) the nature and substance of the document with sufficient particularity to enable the Court and the parties to identify the document; (iv) the date of the document; (v) the identity of the person presently in custody or control of the document and each copy thereof; (vi) the identity of each person to whom copies of the document were furnished; (vii) the number of pages of the document; (viii) the basis on which any privilege or other protection is claimed; and (ix) whether any non-privileged or non-protected matter is included in the document.

15. For the purpose of interpreting and construing the scope of these requests, Defendant is instructed to give words their most expansive and inclusive meanings, unless otherwise specifically limited by the language of an individual request. Defendant should, therefore:

- a. construe the words “and” as well as “or” in the disjunctive or conjunctive, as necessary to make the request more inclusive;
- b. construe the term “including” to mean “including, but not limited to;”
- c. construe the singular form of a word to include the plural and the plural form to include the singular;
- d. construe a masculine noun or adjective to include the feminine and *vice versa*; and
- e. construe the words “all” and “each” to mean both all and each.

16. If you are unsure of the meaning of any word, phrase or abbreviation used herein, please contact counsel in writing for clarification.

17. All definitions and rules of construction contained in the Federal Rules of Evidence and the Federal Rules of Civil Procedure are incorporated herein by reference.

18. Unless otherwise indicated, the use in these Requests of the name or identity of any person, business organization, or other entity shall specifically include all of that entity’s present or former: employees, officers, directors, agents, representatives, members, attorneys, departments, sections, affiliates, subsidiaries, parents, and all other persons acting on its behalf.

19. Any terms not expressly defined herein, but defined in any agreement between the parties, shall have the same meanings as in those agreements.

20. Whenever possible, responsive documents should be in electronic form, pursuant to any agreement concerning electronically stored information between the parties.

21. References to “Plaintiffs First Set of Interrogatories” or to Interrogatory No. 1, 2, and so forth should be understood to refer to Plaintiff OCA-Greater Houston’s First Set of Interrogatories to Defendant Harris County District Attorney Kim Ogg, in her official capacity, served by e-mail upon counsel of record for Defendant Ogg in tandem with the instant Requests for

Production, on April 12, 2022.

**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANT  
HARRIS COUNTY DISTRICT ATTORNEY KIM OGG IN HER OFFICIAL CAPACITY**

All requests for production are limited in time from January 1, 2016, until present day.

**Request for Production No. 1:** All documents and communications relating to investigations, criminal proceedings, or prosecutions initiated or participated in by your office and predicated at least in part on a violation or suspected violation of criminal election law.

**RESPONSE:**

**Request for Production No. 2:** All documents and communications relating to the role of local officials or State officials identified in your response to Interrogatory No. 2.

**RESPONSE:**

**Request for Production No. 3:** All documents and communications relating to your office's practices or policies specific to the investigation or prosecution of violations or suspected violations of criminal election law.

**RESPONSE:**

**Request for Production No. 4:** All communications between you and the OAG related to the investigation or prosecution of violations or suspected violations of criminal election laws.

**RESPONSE:**

**Request for Production No. 5:** All communications between you and the SOS related to the investigation or prosecution of violations or suspected violations of criminal election laws.

**RESPONSE:**

**Request for Production No. 6:** All communications between you and State officials, other than the OAG or the SOS, related to the investigation or prosecution of violations or suspected violations of criminal election laws.

**RESPONSE:**

**Request for Production No. 7:** All communications between you and local officials other than you related to the investigation or prosecution of violations or suspected violations of criminal election laws.

**RESPONSE:**

**Request for Production No. 8:** All communications between you and the Texas Legislature related to the investigation or prosecution of violations or suspected violations of criminal election laws.

**RESPONSE:**

**Request for Production No. 9:** All communications between you and members of the public related to the investigation or prosecution of violations or suspected violations of criminal election laws.

**RESPONSE:**

**Request for Production No. 10:** All communications between you and members of the public related to the investigation or prosecution of violations or suspected violations of criminal election laws. This includes any communication described in your response to Interrogatory No. 13.

**RESPONSE:**

**Request for Production No. 11:** All documents identified in response to Interrogatory No. 4 or Interrogatory No. 5.

**RESPONSE:**

**Request for Production No. 12:** All documents or communications identified or described in response to Plaintiffs' First Set of Interrogatories not already included in Requests for Production No. 1 through No. 11.

**RESPONSE:**

Date: April 12, 2022

Respectfully submitted,

*/s/ Zachary Dolling*

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*\*Admitted pro hac vice*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 12, 2022, I served a true and correct copy of the foregoing via electronic mail on all counsel of record.

*/s/ Zachary Dolling*

Zachary Dolling

Texas Bar No. 24105809

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# EXHIBIT B

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

LA UNIÓN DEL PUEBLO ENTERO, et al.,

*Plaintiffs,*

v.

TEXAS, et al.,

*Defendants.*

Civil Action No. 5:21-cv-844(XR)  
(Lead Case)

OCA-GREATER HOUSTON, LEAGUE  
OF WOMEN VOTERS OF TEXAS,  
REVUP-TEXAS, TEXAS  
ORGANIZING PROJECT, and  
WORKERS DEFENSE ACTION FUND,

*Plaintiffs,*

v.

TEXAS SECRETARY OF STATE JOHN  
SCOTT, *in his official capacity*, TEXAS  
ATTORNEY GENERAL KEN  
PAXTON, *in his official capacity*,  
HARRIS COUNTY ELECTIONS  
ADMINISTRATOR ISABEL  
LONGORIA, *in her official capacity*,  
TRAVIS COUNTY CLERK DANA  
DEBEAUVOIR, *in her official capacity*,  
HARRIS COUNTY DISTRICT  
ATTORNEY KIM OGG, *in her official  
capacity*, TRAVIS COUNTY DISTRICT  
ATTORNEY JOSÉ GARZA, *in his  
official capacity*,

*Defendants.*

1:21-cv-0780-XR  
(Consolidated Case)

**PLAINTIFF OCA-GREATER HOUSTON'S FIRST SET OF INTERROGATORIES TO**  
**DEFENDANT HARRIS COUNTY DISTRICT ATTORNEY KIM OGG IN HER**  
**OFFICIAL CAPACITY**

TO: Harris County District Attorney Kim Ogg, in her official capacity, by and through her attorney of record, Eric J.R. Nichols, Butler Snow LLP, 1400 Lavaca Street, Suite 1000, Austin, TX 78701.

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff OCA-Greater Houston requests that Defendant Harris County District Attorney Kim Ogg, in her official capacity (“Defendant” or “Defendant Ogg”), answer the following interrogatories, separately and fully, in writing and under oath. Plaintiff requests that Defendant Ogg serve her answers and any objections to undersigned counsel within 30 days of service of these interrogatories.

**DEFINITIONS**

1. The terms “and” and “or” are to be construed both conjunctively and disjunctively, and each shall include the other wherever such dual construction will serve to bring within the scope of this demand any document or thing which would otherwise not be brought within its scope.
2. All phrases following the terms “including” or “including but not limited to” are intended to illustrate the kinds of information responsive to each request. Such examples are not intended to be exhaustive of the materials sought by the request and shall not in any way be read to limit the scope of the request.
3. “Communication” or “communications” means any disclosure, conveyance, transfer, or exchange of any information or documents from one person to another or among multiple persons by any means or in any form, including but not limited to oral, written, in-person, telephonic, electronic, digital, mailed, or otherwise.
4. “Documentation” or “documents” includes, but is not limited to, the following items whether printed or recorded or reproduced by any other mechanical process or written or produced by hand: agreements, communications, reports, charges, complaints, correspondence, telegrams,

memoranda, applications, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, e-mails, diaries, schedules, charts, graphs, worksheets, reports, notebooks, note charts, plans, drawings, sketches, maps, summaries or records of meetings or conferences, summaries or reports or records of investigations or negotiations, opinions or reports of consultants, bills, statements, invoices, and all other writings of whatever nature, photographs, motion picture film, brochures, pamphlets, advertisements, circulars, press releases, drafts, letters, tape recordings, disc, data sheet or data processing card, any marginal comments appearing on any document or thing or any other written, recorded, transcribed, filed or graphic master, however produced or reproduced, to which you, as defined in Definition 9 below, will have or have had access.

5. “Concern,” “concerning,” “regarding,” or “relating to” shall mean having any connection, relation, or reference to and include, by way of example and without limitation, discussing, identifying, containing, showing, evidencing, describing, reflecting, dealing with, regarding, pertaining to, analyzing, evaluating, estimating, constituting, comprising, studying, surveying, projecting, recording, relating to, summarizing, assessing, criticizing, reporting, commenting on, referring to in any way, either directly or indirectly, or otherwise involving, in whole or in part.
6. “Identify” when referring:
  - a. to a person, means to state the person’s full name, present or last known address, telephone number, and email address;
  - b. to an organization or entity, means to state its full name, present or last known address, telephone number, fax number, and email address;
  - c. to a document, means to describe its contents; to identify when, where, and how it was made; to identify who made it; and to identify who has present or last known possession, custody, or control of the document;

- d. to a statement or communication, means to describe its contents; to identify when, where, and how it was made; to identify who made it and who was present when it was made; and to identify who has present or last known possession, custody, or control of any recording of the statement or communication;
  - e. to a social media account, means to provide the username of the account, identify all persons who control or have access to the account, provide the date on which the account was created, and describe whether the account is still in existence and/or in use.
7. “SB1” means Senate Bill No. 1, a law passed during the Second Special Session of the 87th Texas Legislature in 2021. SB1 contains the provisions at issue in this Lawsuit.
  8. “Criminal election law” means any criminal provision of the Texas Election Code, or any criminal provision of any other law regulating conduct in connection with voting or elections. This includes but is not limited to SB1 sections 6.04, 6.06, and 7.04.
  9. “You” or “your office” means Harris County, including the Office of the Harris County District Attorney, the Harris County District Attorney, her predecessors and successors as Harris County District Attorney, and the current and former employees, officers, attorneys, agents, trustees, investigators, representatives, contractors, and consultants of the Office of the Harris County District Attorney.
  10. “OAG” means the Office of the Texas Attorney General and includes the Texas Attorney General, his predecessors and successors as Texas Attorney General, and the current and former employees, officers, attorneys, agents, trustees, investigators, representatives, contractors, and consultants of the Office of the Texas Attorney General.
  11. “SOS” means the Office of the Texas Secretary of State and includes the Texas Secretary of State, his predecessors and successors as Texas Secretary of State, and the current and former employees, officers, attorneys, agents, trustees, investigators, representatives, contractors, and consultants of the Office of the Texas Secretary of State.
  12. “State official” or “State officials” means the current and former employees, officers,

attorneys, agents, trustees, investigators, representatives, contractors, and consultants of any statewide office of the State of Texas, as well as the statewide office itself, including but not limited to the OAG and the SOS as set out in the definitions above.

13. "Local official" or "local officials" means the current and former employees, officers, attorneys, agents, trustees, investigators, representatives, contractors, and consultants of any political subdivision or office of a political subdivision of the State of Texas, as well as the political subdivision or office of a political subdivision itself. This includes but is not limited to Texas County District Attorney's Offices, Texas County Criminal District Attorney's Offices, Texas County Attorney's Offices, Texas County Election Administrator's Offices, Texas County Clerk's Offices, and Texas County Tax-Assessor-Collector's Offices, along with their current and former employees, officers, attorneys, agents, trustees, investigators, representatives, contractors, and consultants.
14. "Texas Legislature" means the current and former members of the Texas Legislature and the current or former employees, officers, attorneys, agents, trustees, investigators, representatives, contractors, and consultants of those members.
15. "Members of the public" means any natural person or natural or legal entity not included in the definitions of you, the OAG, the SOS, State officials, local officials, or the Texas Legislature as set out in the definitions above.

### **INSTRUCTIONS**

1. To the fullest extent permitted by the Federal Rules of Civil Procedure, these Interrogatories are intended to be continuing in nature. Defendant is requested and required to timely supplement its answers when appropriate or necessary to make them correct or complete.

2. In each instance where you answer an Interrogatory on information and belief, set forth the basis for such information and belief.
3. In each instance where you deny knowledge or information sufficient to answer an Interrogatory, set forth the name and address of each person, if any, who knows, or you believe possesses such knowledge.
4. In each instance where you claim insufficient knowledge or information to provide a complete answer to an Interrogatory, set forth the description of the efforts you made to locate information needed for such answers.
5. Identify all documents upon which you rely in responding to each interrogatory (by Bates number if available).
6. For the purpose of interpreting and construing the scope of these Interrogatories, Defendant is instructed to give words their most expansive and inclusive meanings, unless otherwise specifically limited by the language of an individual request. Defendant should, therefore:
  - a. construe the words “and” as well as “or” in the disjunctive or conjunctive, as necessary to make the request more inclusive;
  - b. construe the term “including” to mean “including, but not limited to;”
  - c. construe the singular form of a word to include the plural and the plural form to include the singular;
  - d. construe a masculine noun or adjective to include the feminine and *vice versa*; and
  - e. construe the words “all” and “each” to mean both all and each.
7. All definitions and rules of construction contained in the Federal Rules of Evidence and the Federal Rules of Civil Procedure are incorporated herein by reference.
8. Unless otherwise indicated, the use in these Interrogatories of the name or identity of any person, business organization, or other entity shall specifically include all of that entity’s present or former: employees, officers, directors, agents, representatives, members, attorneys, departments, sections, affiliates, subsidiaries, parents, and all other persons acting on its behalf.



9. Any terms not expressly defined herein, but defined in any agreement between the parties, shall have the same meanings as in those agreements

**PLAINTIFF OCA-GREATER HOUSTON'S FIRST SET OF INTERROGATORIES TO  
DEFENDANT HARRIS COUNTY DISTRICT ATTORNEY KIM OGG IN HER  
OFFICIAL CAPACITY**

All interrogatories are limited in time from January 1, 2016, until present day.

**Interrogatory No. 1:** Identify and describe with particularity all investigations, criminal proceedings, or prosecutions initiated or participated in by your office and predicated at least in part on a violation or suspected violation of criminal election law.

**RESPONSE:**

**Interrogatory No. 2:** For each investigation, criminal proceeding, or prosecution identified in response to Interrogatory No. 1, identify all local officials or State officials involved, other than you, and describe with particularity the role each local official or State official played. This identification may be limited to the political subdivision, political subdivision office, or statewide office with which the officials are affiliated rather than the names of individual persons.

**RESPONSE:**

**Interrogatory No. 3:** Identify and describe with particularity any practices or policies of your office specific to the investigation or prosecution of violations or suspected violations of criminal election law.

**RESPONSE:**

**Interrogatory No. 4:** If you contend that the OAG is responsible for or engages in the investigation or prosecution of violations or suspected violations of criminal election law within Harris County:

- A. State the facts that support your contention; and
- B. Identify all documents that support your contention.

**RESPONSE:**

**Interrogatory No. 5:** If you contend that any local official other than you is responsible for or engages in the investigation or prosecution of violations or suspected violations of criminal election law within Harris County:

- A. Identify the local official(s);

B. State the facts that support your contention(s); and

C. Identify all documents that support your contention(s).

**RESPONSE:**

**Interrogatory No. 6:** Identify and describe with particularity all investigations, criminal proceedings, or prosecutions in Harris County carried out by any local official other than you and predicated at least in part on a violation or suspected violation of criminal election law.

**RESPONSE:**

**Interrogatory No. 7:** Identify and describe with particularity any communications your office has had with the OAG regarding the investigation or prosecution of violations or suspected violations of any criminal election law, including the specific topic of communication, the date of the communications, the individuals who participated in the communications, and the outcome of the communications.

**RESPONSE:**

**Interrogatory No. 8:** Identify and describe with particularity any communications your office has had with the SOS regarding the investigation or prosecution of violations or suspected violations of any criminal election law, including the specific topic of communication, the date of the communications, the individuals who participated in the communications, and the outcome of the communications.

**RESPONSE:**

**Interrogatory No. 9:** Identify and describe with particularity any communications your office has had with State officials, if not identified and described in your responses to Interrogatories No. 7 and 8 above, regarding the investigation or prosecution of violations or suspected violations of any criminal election law, including the specific topic of communication, the date of the communications, the individuals who participated in the communications, and the outcome of the communications.

**RESPONSE:**

**Interrogatory No. 10:** Identify and describe with particularity any communications your office has had with local officials other than you regarding the investigation or prosecution of violations or suspected violations of any criminal election law, including the specific topic of communication, the date of the communications, the individuals who participated in the communications, and the outcome of the communications.

**RESPONSE:**

**Interrogatory No. 11:** Identify and describe with particularity any communications your office has had with the Texas Legislature regarding the investigation or prosecution of violations or

suspected violations of any criminal election law, including the specific topic of communication, the date of the communications, the individuals who participated in the communications, and the outcome of the communications.

**RESPONSE:**

**Interrogatory No. 12:** Identify and describe with particularity any communications your office has had with members of the public regarding the investigation or prosecution of violations or suspected violations of any criminal election law, including the specific topic of communication, the date of the communications, the individuals who participated in the communications, and the outcome of the communications.

**RESPONSE:**

**Interrogatory No. 13:** Identify and describe with particularity any press releases, public announcements, or any other communication made by your office to persons, entities, or media external to your office relating to the enforcement of criminal election law.

**RESPONSE:**

Date: April 12, 2022

Respectfully submitted,

*/s/ Zachary Dolling*

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GREATER HOUSTON, ET AL.***

\*Admitted *pro hac vice*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 12, 2022, I served a true and correct copy of the foregoing via electronic mail on all counsel of record.

/s/ Zachary Dolling  
Zachary Dolling

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