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

LA UNIÓN DEL PUEBLO ENTERO, *et al.*,	§	
	§	
Plaintiffs,	§	
	§	
V.	§	
	§	Case No. 5:21-cv-00844-XR
STATE OF TEXAS, *et al.*,	§	[Lead Case]
	§	
Defendants.	§	
	§	
HARRIS COUNTY REPUBLICAN PARTY, *et al.*,	§	
	§	
Intervenor-Defendants.	§	

JOINT PRETRIAL ORDER

(1) A short statement identifying the Court's jurisdiction. If there is an unresolved jurisdictional question, state it:

Plaintiffs assert that this Court has original jurisdiction of this action under 28 U.S.C. §§ 1331, 1343(a)(3)–(4), 1345, 1357, and 2201(a) and 52 U.S.C. §§ 10101(d). State Defendants and Intervenor-Defendants contest this Court's jurisdiction on the following grounds: (i) Plaintiffs lack Article III standing to bring their claims against State Defendants; they also lack standing to challenge multiple provisions outright; and (ii) Organization Plaintiffs seek to vindicate the rights of third parties but do not fall under any recognized exception. In addition, State Defendants and Intervenor-Defendants maintain that sovereign immunity bars Plaintiffs' claims against State Defendants and that the Voting Rights Act did not create a private cause of action for these Plaintiffs, precluding their Section 2 and Section 208 claims. Finally, Defendant Harris County District Attorney Defendant Kim Ogg asserts sovereign from Plaintiffs' constitutional claims, and contends that Plaintiffs' statutory claims against her are an improper end-run on her sovereign immunity and that none of Plaintiffs has standing to sue her on any of their constitutional or

statutory claims.[1]

(2) A brief statement of the case, one that the judge could read to the jury panel for an introduction to the facts and parties:

These consolidated cases challenge certain provisions of Texas Senate Bill 1, 87th Leg., 2d Called Session (2021) ("SB 1") that make changes to voter assistance, vote by mail, poll-watching, and other aspects of voting. Plaintiffs allege that enforcement of various provisions of SB 1 violate Section 2 and Section 208 of the federal Voting Rights Act ("VRA"), 52 U.S.C. §§ 10301, 10508; Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131–65; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and the First, Fourteenth, and Fifteenth Amendments to the U.S. Constitution.[2] Specifically, Plaintiffs challenge the following provisions of Texas law enacted through SB 1 (collectively, the "Challenged Provisions"):

a. SB 1 §§ 2.05-2.07

b. SB 1 §§ 3.04, 3.09, 3.10, 3.12, 3.13, 3.15

c. SB 1 §§ 4.01, 4.06, 4.07, 4.09, 4.12

d. SB 1 §§ 5.02-5.04, 5.06-5.08, 5.10-5.14

e. SB 1 §§ 6.01, 6.03-6.07

f. SB 1 §§ 7.02, 7.04

g. SB 1 § 8.01

The State Defendants and Intervenor-Defendants deny Plaintiffs' allegations against SB 1.

[1] These issues of sovereign immunity are currently pending before the Fifth Circuit in *Mi Familia Vota v. Ogg*, No. 22-50732, which was argued July 12, 2023.

[2] The parties are proceeding on all claims during the September 11 Phase I trial with the caveat that the trial record remains open with respect to claims for intentional discrimination pending resolution of LUPE v. Bettencourt, No. 23-50201 (5th Cir.), and any related subsequent discovery, consistent with the Court's proposal in its Amended Order. See ECF No. 700 at 2 n.2. Specifically, the record would remain open to the LULAC Plaintiffs' Voting Rights Act ("VRA") Section 2 claim, see ECF No. 207 ¶¶ 249-56 (Count I); the HAUL/MFV Plaintiffs' Fourteenth and Fifteenth Amendment intentional discrimination claims, as well as its VRA Section 2 claim, see ECF No. 199 ¶¶ 270-317 (Counts II-IV); and the LUPE Plaintiffs' Fourteenth and Fifteenth Amendment intentional discrimination claims, as well as VRA Section 2 claim, see ECF No. 208 ¶¶ 230-265 (Counts II-IV).

They contend that SB 1 complies with all constitutional and legal requirements. District Attorney Ogg contends that she has not taken any action that would allow any of Plaintiffs to meet the threshold requirements of the *Ex parte Young* exception to sovereign immunity, much less to prove that she violated any of the statutes they raise in their claims.

(3) A summary of the remaining claims and defenses of each party:

The Parties provide summaries of their remaining claims and defenses, below. The Parties have also appended a chart illustrating which parties have overlapping claims and defenses as Exhibit 1.

A. Remaining Claims:

LUPE Plaintiffs:

LUPE Plaintiffs claim that Sections 5.07, 5.13, 6.03, 6.04, 6.05, 6.06, and 7.04's "vote harvesting" provision violate the First and Fourteenth Amendments by imposing an unjustified, severe burden on the right to vote. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). This claim is against Defendants Nelson, Colmenero, Scarpello, Wise, Creuzot, Rosales, and Garza.

LUPE Plaintiffs claim that Sections 6.03, 6.04, 6.05, 6.06, and 7.04's vote harvesting provision violate the Fourteenth Amendment by intentionally discriminating against voters on the basis of race. *Vill. of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977). This challenged claim is against Defendants Nelson, Colmenero, Scarpello, Wise, Creuzot, Rosales, and Garza.

LUPE Plaintiffs claim that Sections 6.03, 6.04, 6.05, 6.06, and 7.04's vote harvesting provisions violate the Fifteenth Amendment, by denying and abridging the rights of citizens of the United States to vote on account of race, color, or previous condition of servitude. *Mobile v.*

Bolden, 446 U.S. 55, 62 (1980) (plurality opinion) (citing *Vill. of Arlington Heights*, 429 U.S. at 265). This claim is against Defendants Nelson, Colmenero, Scarpello, Wise, Creuzot, Rosales, and Garza.

LUPE Plaintiffs claim that Sections 6.03, 6.04, 6.05, 6.06, and 7.04's vote harvesting provision violate Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, et seq., because these provisions create political processes that are "not equally open to participation" by minority voters, such that those voters "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." This claim is against all Defendants against whom LUPE Plaintiffs have filed suit.

LUPE Plaintiffs claim that Sections 6.03, 6.04, 6.05, 6.06, and 7.04's vote harvesting provision violate Title II of the Americans with Disability Act, 42 U.S.C. § 12131, et seq., because these provisions discriminate against qualified Texas voters with disabilities on the basis of their disability. This claim is against Nelson, Colmenero, Scarpello, Wise, Creuzot, Rosales, and Garza.

LUPE Plaintiffs claim that Sections 6.03, 6.04, 6.05, 6.06, and 7.04's vote harvesting provision also violate Section 208 of the Voting Rights Act, 52 U.S.C. § 10508 because these provisions impede voters' practical ability to get necessary and statutorily guaranteed assistance. This claim is against all Defendants against whom LUPE Plaintiffs have filed suit.

LUPE Plaintiffs claim that Sections 4.09 and 8.01 violate the Fourteenth Amendment's Due Process Clause because these provisions are unconstitutionally vague. This claim is against Defendants Nelson, Colmenero, Creuzot, Rosales, and Garza.

LUPE Plaintiffs claim that Section 7.04's vote harvesting provision violates the First and Fourteenth Amendments to the U.S. Constitution because this provision is unconstitutionally vague and burdens free speech. This claim is against Defendants Nelson, Colmenero, Scarpello,

Wise, Creuzot, Rosales, and Garza.[3]

OCA Plaintiffs:

REVUP-Texas brings claims, on behalf of itself and its members, that SB 1 Sections 5.02, 5.03, 5.07, 5.10, 5.12, and 6.04 violate Title II of the Americans with Disability Act, 42 U.S.C. § 12131, et seq., and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 et seq.[4] The Article 5 claims are brought against Defendants Nelson, Tatum, and Limon-Mercado. The Section 6.04 claims are brought against Defendants Nelson, Colmenero, Tatum, Limon-Mercado, Ogg, and Garza.

OCA-Greater Houston and League of Women Voters of Texas bring claims, on behalf of themselves and their members, that (1) SB 1 Section 6.06, Tex. Elec. Code § 86.0105, conflicts with and is preempted by Section 208 of the Voting Rights Act, 52 U.S.C. § 10508; and (2) SB 1 Section 7.04, Tex. Elec. Code § 276.015, is overbroad and void for vagueness in violation of the First and Fourteenth Amendments.[5] The Section 6.06 claims are brought against Defendants Nelson, Colmenero, Tatum, Limon-Mercado, Ogg, and Garza. The Section 7.04 claims are brought against Defendants Colmenero, Ogg, and Garza.

[3] On May 26, 2023, LUPE Plaintiffs filed their Unopposed Motion for Voluntary Dismissal, *see* ECF No. 613, which this Court granted on June 6, 2023, *see* ECF No. 624. As a result, LUPE Plaintiffs dismissed without prejudice their claims that SB 1 §§ 2.04, 2.06, 2.07, 2.08, 2.11, 3.04, 3.09, 3.10, 3.12, 3.13, 4.01, 4.06, and 4.07 violate the First, Fourteenth, and Fifteenth Amendments of the U.S. Constitution (Counts I, II, and III) and Section 2 of the Voting Rights Act (Count IV). LUPE Plaintiffs also dismissed without prejudice a number of challenges to SB 1 §§ 5.07, 5.13, 6.03, 6.04, 6.05, 6.06, and 7.04 that are not set out in the body of this JPTO. LUPE Plaintiffs also intend to file a motion to voluntarily dismiss without prejudice their remaining challenges to SB 1 § 6.01, which will be filed as soon as they have given Defendants an opportunity to provide their position on the motion.

[4] REVUP-Texas voluntarily withdraws all claims challenging SB 1 Sections 5.06 and 6.06, as well as its claims that SB 1 Section 6.04 violates Section 208 of the Voting Rights Act. REVUP-Texas additionally maintains that it has pleaded challenges to SB 1 Sections 5.08, 5.13, and 5.14 under both Title II of the Americans with Disabilities Act and the Rehabilitation Act but has not included them here because it recognizes that the Court rejected that position in the Court's summary ruling on OCA Plaintiffs' materiality claims. See ECF No. 724 at 5–6. REVUP-Texas is not affirmatively waiving its claims against Sections 5.08, 5.13, and 5.14 by not including them in this Joint Pretrial Order.

[5] OCA-Greater Houston and the League of Women Voters of Texas voluntarily withdraw all of their claims under the Americans with Disabilities Act and Rehabilitation Act, as well as their claims that SB 1 Section 6.04 violates Section 208 of the Voting Rights Act. Additionally, all OCA Plaintiffs previously voluntarily withdrew their challenges to SB 1 Section 5.06 under the Materiality Provision of the Civil Rights Act of 1964. See ECF No. 611 at 8 n.1.

HAUL Plaintiffs:

HAUL Plaintiffs claim Sections 3.04, 3.09, 3.10, 3.12, 3.13, and 4.12 individually and collectively, impose an undue burden on the right to vote in violation of the First and Fourteenth Amendments.[6] The burden is severe and/or discriminatory and not justified by sufficiently weighty state interests. Plaintiffs Houston Area Urban League and Delta Sigma Theta Sorority bring this claim against Defendants Colmenero, Ogg, Gonzales, Nelson, Tatum, and Callanen.

HAUL Plaintiffs claim Sections 3.04, 3.09, 3.10, 3.12, 3.13, 3.15, 4.01, 4.06, 4.07, 4.09, 4.12, 5.02, 6.01, 6.03, 6.04, 6.05, and 6.07 violate the Fourteenth Amendment because race was a motivating factor in the decision-making process that led to their enactment.[7] Plaintiffs Houston Area Urban League and Delta Sigma Theta Sorority bring this claim against Defendants Colmenero, Ogg, Gonzales, Nelson, Tatum, and Callanen.

HAUL Plaintiffs claim Sections 3.04, 3.09, 3.10, 3.12, 3.13, 3.15, 4.01, 4.06, 4.07, 4.09, 4.12, 5.02, 6.01, 6.03, 6.04, 6.05, and 6.07 violate the Fifteenth Amendment because they were enacted to deny, abridge, or suppress the right to vote on account of race and ethnic origin.[8] Plaintiffs Houston Area Urban League and Delta Sigma Theta Sorority bring this claim against Defendants Colmenero, Ogg, Gonzales, Nelson, Tatum, and Callanen.

HAUL Plaintiffs claim Sections 3.04, 3.09, 3.10, 3.12, 3.13, 3.15, 4.01, 4.07, 6.01, 6.03, 6.04, 6.05, and 6.07 violate Section 2 of the Voting Rights Act, 52 U.S.C. § 10301 *et seq.* because they were motivated by a discriminatory purpose, and/or because, individually and collectively, they result in a political process that is not equally open to participation by minority voters such that they have less opportunity to elect candidates of their choice.[9] Plaintiffs Houston Area Urban

[6] HAUL Plaintiffs voluntarily dismiss their challenge to SB1 §§ 5.04 and 7.04 under this claim (Count 1).
[7] HAUL Plaintiffs voluntarily dismiss their challenge to SB1 § 7.04 under this claim (Count 2).
[8] HAUL Plaintiffs voluntarily dismiss their challenge to SB1 § 7.04 under this claim (Count 3).
[9] HAUL Plaintiffs voluntarily dismiss their challenge to SB1 §§ 5.04 and 7.04 under this claim (Count 4).

League and Delta Sigma Theta Sorority bring this claim against Defendants Colmenero, Ogg, Gonzales, Nelson, Tatum, and Callanen.

HAUL Plaintiffs claim Sections 6.01, 6.03, 6.04, 6.05, and 6.07 violate Section 208 of the Voting Rights Act, 52 U.S.C. § 10508, because they impede the right of voters with disabilities and voters with limited English proficiency to receive assistance from a person of their choice. Plaintiffs Delta Sigma Theta and the Arc of Texas bring this claim against Colmenero, Ogg, Gonzales, Nelson, Tatum, and Callanen.

HAUL Plaintiffs claim Sections 4.06, 4.07, and 4.09 violate the Due Process Clause of the Fourteenth because they are unconstitutionally vague. Jeffrey Lamar Clemmons brings this claim against Defendants Nelson, Garza, Colmenero, Tatum, and Callanen.

HAUL Plaintiffs claim Sections 5.02, 5.03, 5.06, 5.07, 5.10, 6.03, 6.04, 6.05, and 6.07, individually and collectively, discriminate against qualified Texas voters with disabilities in violation of Title II of the Americans with Disabilities Act. Plaintiff the Arc of Texas brings this claim against Defendants Nelson, Ogg, Gonzales, Tatum, and Callanen.

HAUL Plaintiffs claim Sections 5.02, 5.03, 5.06, 5.07, 5.10, 6.03, 6.04, 6.05, and 6.07, individually and collectively, discriminate against qualified Texas voters with disabilities in violation of Section 504 of the Rehabilitation Act. Plaintiff the Arc of Texas brings this claim against Defendants Nelson, Ogg, Colmenero, Paxton, Tatum, and Callanen.

LULAC Plaintiffs:[10]

[10] Pursuant to the Court's instructions at the August 22 status conference, *see* Tr. at 11:19-23, LULAC Plaintiffs no longer intend to challenge the following provisions of SB 1:

- §§ 4.01, 4.02, 4.06, 4.07, and 4.09 (previously challenged under LULAC Plaintiffs' VRA Section 2 and *Anderson-Burdick* claims);
- § 5.01 (previously challenged under LULAC Plaintiffs' VRA Section 2 claim);

LULAC Plaintiffs assert that SB 1 §§ 3.04, 3.09, 3.10, 3.12, 3.13, 4.12, 5.02, 5.03, 5.07, 5.08, and 7.04 violate Section 2 of the Voting Rights Act because SB 1 was enacted with an impermissible discriminatory intent against Black and Latino voters. This claim is brought against all Defendants.

LULAC Plaintiffs assert that SB 1 §§ 5.02, 5.03, 5.07, and 5.08 violate the First and Fourteenth Amendments to the United States Constitution because they impose an undue burden on the right to vote. This claim is brought against Defendants Callanen, Scarpello, Wise, Tatum, Salinas, Ramon, Limon-Mercado, DeBeauvoir, Gonzales, Garza, Ogg, Palacios, Creuzot, and Hicks.

LULAC Plaintiffs assert that SB 1 § 7.04 violates the First and Fourteenth Amendments to the United States Constitution because it infringes on the rights of free speech and free expression and is not narrowly tailored to advance any compelling state interest. This claim is brought against Defendants Callanen, Scarpello, Wise, Tatum, Salinas, Ramon, Limon-Mercado, DeBeauvoir, Gonzales, Garza, Ogg, Palacios, Creuzot, and Hicks.

LULAC Plaintiffs assert that SB 1 § 7.04 violates Section 208 of the Voting Rights Act because it denies voters qualified for assistance the right to receive assistance from the person of their choice. This claim is brought against all Defendants.

Mi Familia Vota Plaintiffs:

Mi Familia Vota Plaintiffs assert that SB 1 violates the First, Fourteenth, and Fifteenth Amendments of the U.S. Constitution, as well as Sections 2 and 208 of the Voting Rights Act.

- §§ 6.03, 6.04 (previously challenged under LULAC Plaintiffs' VRA Section 2 and *Anderson-Burdick* claims).

LULAC Plaintiffs' decision to no longer challenge these specific provisions of SB 1 is without prejudice to any other Plaintiff's continued challenge to the same.

Specifically, the Mi Familia Vota Plaintiffs assert:

a) The challenged provisions of SB 1 individually and collectively place an undue burden on the ability of the Plaintiffs, as well as Texas's Black and Latino voters, to participate in elections and cast a ballot that will count, in violation of the First and Fourteenth Amendment. The challenged provisions include SB 1 §§ 3.04, 3.12, 3.13 (prohibiting most voters from voting inside a motor vehicle and requiring polling places to be located inside a building, banning drive-through voting); SB §§ 3.09, 3.10 (limiting voting hours and prohibiting 24-hour voting); SB 1 § 4.12 (eliminating drop boxes); SB 1 §§ 4.01, 4.07, 6.01 (providing partisan poll watchers with expanded access to voters and election workers, limiting election workers' ability to remove poll watchers who intimidate voters or otherwise interfere with voting or counting processes); SB 1 § 5.04, 7.04 (restricting the distribution of absentee ballot applications by election officials and third parties); SB 1 §§ 5.02-5.03, 5.07-5.08, 5.13 (requiring early voting ballot applications to include specific identification numbers and the rejection of applications and ballots that contain mismatched identification numbers even where both numbers are accurate and merely obtained from different identification documents; and prohibiting the use of electronic or photocopied signatures); SB § 6.01 (requiring anyone who provides transportation to more than seven voters to submit a form with their personal information and authorization for providing transportation); SB 1 § 6.03 (requiring assistants to fill out forms and take an oath affirming that the voter has confirmed to them that they are qualified to obtain assistance); SB 1 § 6.05, 6.07 (requiring assistants to people voting by mail to provide on their ballot envelop their relationship to the voter, whether they received

compensation, their contact information, and their signature); SB 7.02 (eliminating employers' obligation to provide employees with leave to vote where the employee had any two-hour block outside that job's working hours during the voting period). The burdens imposed by the challenged provisions individually and collectively on eligible Texas voters' fundamental right to vote are severe and neither justified by nor necessary to promote any legitimate interest of the State.[11]

b) The above-referenced challenged provisions also violate the equal protection clause of the Fourteenth Amendment because race was a motivating factor in the decision-making process that led to SB 1. In particular, the challenged provisions, individually and collectively, bear more heavily on Latino, Black, and other voters of color and were adopted for the purpose of denying Latino, Black, and other voters of color full and equal access to the political process. Further supporting this claim is the historically racist voting policies and laws of the State of Texas and the abnormal legislative procedure that led to the passing of SB 1, which included, for example, two special sessions following the intentional absences of legislators opposing SB 1, the Texas speaker of the house oddly banning legislators from using the term "racism" while debating SB 1, and the final bill not including a provision proposed by SB 1 opponents whereby a committee would have been formed to study to the racial impacts of SB 1. Under this Claim, Mi Familia Vota also challenges SB 1 §§ 2.05-2.07 (establishing additional voter roll purges, requiring targeted voters to satisfy onerous requirements

[11] Pursuant to the Court's instructions at the August 22 status conference, *see* Tr. at 11:19-23, Mi Familia Vota Plaintiffs no longer intend to challenge the following provisions of SB 1: §§ 2.05-2.07; and 5.11, 5.12 and 5.14 as part of its undue burden Claim. It is voluntarily dismissing its challenge to SB 1 § 5.01 in its entirety.

to defeat erroneous removal from the rolls, and penalizing voter registrars alleged to be noncompliant with the purging requirements); and SB 1 §§ 5.11-5.14 (allowing for the rejection of ballots without notice by either the signature verification committee or early ballot committee if either committee determines that the signature allegedly does not match any known signature of the voter without regard to the age of the comparison signature);

c) All of the above-referenced challenged provisions violate Section 1 of the Fifteenth Amendment because the provisions were enacted with racially discriminatory intent and abridge, if not outright deny, Latino, Black, and other voters of color of their right and freedom to vote.

d) All of the above-referenced challenged provisions violate Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, because they are intended to and under the totality of circumstances do disproportionately burden and erect barriers to Black and Latino voters' ability to participate in the political process.

e) SB 1 §§ 6.01, 6.03, 6.04, 6.05, and 6.07 deny qualified voters access to assistors of their choice, thereby violating Section 208 of the Voting Rights Act, 52 U.S.C. § 10508.

B. Remaining Defenses:

State Defendants and Intervenor-Defendants

1. *General Defenses*

a) This Court lacks jurisdiction to hear Plaintiffs' claims. (i) Plaintiffs do not have Article III standing to bring their claims against State Defendants; they also lack standing to challenge multiple provisions outright. (ii) Organization Plaintiffs seek to vindicate the rights of third parties but do not fall under any recognized exception. (iii) Sovereign

immunity bars Plaintiffs' claims against State Defendants. (iv) The Voting Rights Act did not create a private cause of action for these Plaintiffs, precluding their Section 2 and Section 208 claims. (v) The Civil Rights Act did not create a private cause of action, precluding Plaintiffs' claim under 52 U.S.C. § 10101.

b) If the Court reaches the merits, State Defendants and Intervenor-Defendants deny that any provision of SB 1 is unlawful. SB 1 a commonsensical, constitutional, and legal statute enacted to "to prevent fraud in the electoral process," promote "voter access," "increas[e] the stability of [] constitutional democracy," and make "the conduct of elections . . . uniform and consistent throughout [Texas]." SB 1 §§ 1.03, 1.04, 4.02. Indeed, multiple provisions in SB 1, including those challenged by Plaintiffs, expand voter access and protections; others simply clarified existing standards and practices.

2. *Standing*

a) Plaintiffs do not satisfy Article III standing with respect to the State Defendants; the Governor, Secretary of State, Attorney General and State of Texas either (i) do not enforce the SB1 sections Plaintiffs challenge, or (ii) do not harm Plaintiffs with the actions they take to implement a particular provision and could not redress any injuries by changing their behavior.

b) Plaintiffs do not have standing to challenge provisions in SB 1 that clarified or confirmed preexisting standards or practices as neither they nor Organization Plaintiffs' members suffered an injury-in-fact that would be redressable by this Court.

c) Multiple Organization Plaintiffs do not have members and therefore cannot rely on associational standing to meet Article III requirements. At minimum, this includes Southwest Voter Registration Project, the William C. Valequez Institute, Voto Latino,

and Mi Familia Vota.

d) Organization Plaintiffs cannot rely on associational standing to challenge SB 1 under the ADA and Rehabilitation Act since the involvement of individual members as parties is essential to the resolution of the claims as well as the relief sought.

e) Organization Plaintiffs cannot establish a cognizable injury-in-fact in their own right, as the Challenged Provisions: (i) do not directly regulate Organization Plaintiffs or their activities; (ii) do not pose a direct conflict with Organization Plaintiffs' mission; (iii) have not caused Organization Plaintiffs to engage in conduct that differs from their routine activities, and/or (iv) have not caused them to divert resources in response to a reasonably certain injury. An interest in abstract social concerns does not impart standing.

f) Individual Plaintiffs have not suffered an injury-in-fact. Their alleged harm is conjectural or hypothetical, as opposed to actual or imminent, which does not confer Article III standing. This is also true of many of Organization Plaintiffs' members.

g) Organization Plaintiffs violate the general rule that a plaintiff must assert his own legal rights and interests, not those of third parties, and therefore lack statutory standing. The limited exception does not apply here.

3. *Sovereign Immunity*

a) State Defendants maintain that sovereign immunity bars Plaintiffs' claims against them.

b) The State of Texas is an improper party. States are generally immune from suit under the terms of the Eleventh Amendment and the doctrine of sovereign immunity.

c) The *Ex parte Young* exception to sovereign immunity does not apply since State Defendants lack a sufficient enforcement connection to the Challenged Provisions.

i. In accordance with the Court of Criminal Appeals' decision in *State v. Stephens*, the Attorney General cannot initiate prosecution of election cases unilaterally but is instead limited to assisting the district or county attorney upon request. PD-1032-20, 2021 WL 5917198, at *1, 8 (Tex. Crim. App. Dec. 15, 2021). Plaintiffs cannot establish that formal enforcement is on the horizon.

ii. The Secretary of State's title of chief election officer is not a delegation of authority. Accordingly, the Secretary does not enforce the Challenged Provisions—local county-level officials do. Any action the Secretary takes does not compel or constrain anyone into compliance and therefore does not constitute an enforcement connection for the purposes of *Ex parte Young.*

d) Plaintiffs cannot demonstrate an alternative exception to sovereign immunity.

i. State Defendants have not waived sovereign immunity for any of Plaintiffs' claims.

ii. Congress did not abrogate state sovereign immunity under § 1983 or the Civil Rights Act.

iii. The Supreme Court established a three-part test for determining whether Title II of the ADA validly abrogates states' sovereign immunity on a claim-by-claim basis. Under this standard, the Secretary of State is entitled to sovereign immunity. The claims against the Attorney General were previously dismissed.

iv. Although *OCA-Greater Houston v. Texas* holds that the VRA abrogates sovereign immunity, 867 F.3d 604, 614 (5th Cir. 2007), that case was wrongly

decided. State Defendants preserve this argument for appeal.

4. *14th & 15th Amendment – Intentional Discrimination Claims*

a) No provision of SB 1 was adopted with the intent to discriminate on the basis of race.

b) The Texas Legislature is entitled to a presumption of good faith. Plaintiffs cannot overcome that presumption.

c) Plaintiffs cannot prove that any provision of SB 1 resulted in a meaningful disparate impact on racial grounds.

5. *Section 2 VRA Claim – Disparate Impact/ Intentional Discrimination*

a) SB 1 does not violate Section 2 because voting is equally open to voters of all races in Texas.

b) No challenged provision of SB 1 blocks or seriously hinders voting by members of any minority group.

c) Many of the SB 1 Challenged Provisions incorporate standard practice at the time Section 2 was adopted in 1982.

d) None of the Challenged Provisions resulted in a racial disparate impact—let alone one significant enough to trigger Section 2 VRA liability.

e) Even if discriminatory burden existed, that burden is neither caused by nor linked to social and historical conditions that have or currently produce discrimination against a minority group.

f) Early and in-person voting are broadly available to all Texans. Mail-in voting is available to particular categories of Texans.

g) Texas has the authority to structure its elections.

h) The challenged provisions fall in line with the election laws and practices implemented by many other states and the federal government for the purpose of administering secure and orderly elections.

i) The VRA did not create a private cause of action.

6. *Constitutional Right to Vote Claims*

a) None of the Challenged Provisions are subject to constitutional scrutiny because none impose severe burdens on the right to vote.

b) If non-severe burdens are sufficient to invoke constitutional scrutiny, SB 1's Challenged Provisions are supported by important state interests.

c) If the Court concludes any provision of SB 1 imposes a severe burden on voting, it is supported by compelling state interests.

d) All of the Challenged Provisions have plainly legitimate sweeps, so Plaintiffs' facial challenges to SB 1's provisions are inappropriate.

e) The right to vote is not implicated where the State permits voters to cast their ballot by other means.

f) Texas has the authority to structure its elections.

g) The Challenged Provisions fall in line with the election laws and practices implemented by many other states and the federal government for the purpose of administering secure and orderly elections.

7. *First Amendment Free Speech Claims*

a) Plaintiffs cannot bring a facial challenge because § 7.04 of SB 1 has a plainly legitimate sweep.

b) Under the *Anderson/Burdick* test—which governs this claim—§ 7.04 clearly passes muster because (i) it is supported by important state interests, and (ii) any burden on speech is incidental and modest.

c) Even if strict scrutiny applies, § 7.04 is narrowly tailored to advance compelling state interests.

d) The conduct regulated by § 7.04 is not protected speech.

8. *Constitutional Vagueness Claims*

a) Plaintiffs' challenges are improper pre-enforcement challenges. All provisions must be challenged in defenses to enforcement actions.

b) This Court should not adjudicate Plaintiffs' vagueness challenges because Texas's courts have not been given a chance to interpret the Challenged Provisions or potentially adopt narrowing constructions.

c) Plaintiffs lack standing to bring their vagueness challenges because there is no imminent enforcement action against any of them or Organization Plaintiffs' members.

d) The Challenged Provisions are not vague or overbroad and comply with the Constitution.

e) The Challenged Provisions give fair notice of the conduct the provisions proscribe.

9. *Section 208 VRA Claims*

a) Plaintiffs lack standing because no Plaintiff alleges that he or she was denied voter assistance; likewise, Plaintiffs do not allege that any member of Organization Plaintiffs was denied voter assistance.

b) Section 208 does not preempt the Challenged Provisions.

c) None of the Challenged Provisions results in the State selecting the person who will assist any voter.

d) Section 208's text contemplates that States may place reasonable restrictions on whom disabled individuals can select to provide voter assistance.

e) To that end, the Challenged Provisions are reasonable regulations of voter assistance—precisely the sort of state regulations that Section 208 envisions.

f) Section 208 does not specify that States must allow assistance beyond that allowed by Texas law.

g) The VRA does not create a private cause of action.

10. *Title II ADA/ Rehabilitation Act Claims*

a) Plaintiffs lack standing because no Plaintiff has alleged that he or she was denied a reasonable accommodation.

b) Plaintiffs cannot make out a prima facie case of an ADA or Rehabilitation Act violation.

c) Voting is a service or program that is provided by Texas's political subdivisions and political parties, not the Secretary of State.

d) The ADA and Rehabilitation Acts are not election laws. The Secretary of State is not responsible for any non-compliance with the ADA or Rehabilitation Act committed by local officials.

e) The Challenged Provision do not discriminate against qualified Texas voters with disabilities.

i. No provision of SB 1 was adopted with the intent to discriminate against voters with disabilities.

ii. The Challenged Provisions do not impose eligibility criteria that exclude or tend to exclude people with disabilities.

iii. Voters with disabilities are not excluded from participation in, or denied benefits of, or otherwise discriminated against by the Challenged Provisions. Voters with disabilities have meaningful access to voting, especially when the program is viewed in its entirety.

iv. Plaintiffs can point to no one who requested a reasonable accommodation—nor can they point to anyone who was denied a reasonable accommodation.

f) As a matter of law, Texas law provides ample reasonable accommodations for voters with disabilities.

g) Plaintiffs have not identified a reasonable modification to the challenged public program that would grant their members the meaningful access their members are allegedly denied. Their request to enjoin the Challenged Provisions for all Texas voters fails on its face.

h) Neither the ADA nor the Rehabilitation Act mandates that public entities adopt a particular technology or accommodation, so long as individuals with qualifying disabilities have meaningful access to government programs.

i) Enjoining the Challenged Provisions in their entirety would represent a fundamental alteration of state policy.

j) Plaintiffs are not entitled to seek complete non-enforcement of Challenged Provisions because they did not seek to certify, and the court did not certify, a class.

C. Parties Taking No Position on Contested Issues in this Joint Pretrial Order

The Bexar County Elections Administrator, Jacquelyn Callanen; Bexar County District Attorney, Joe D. Gonzales; Dallas County Elections Administrator, Michael Scarpello; Dallas County District Attorney, John Creuzot; El Paso County Elections Administrator, Lisa Wise; Harris County Clerk, Teneshia Hudspeth; Hidalgo County Elections Administrator, Hilda A. Salinas; Hidalgo County District Attorney, Toribio "Terry" Palacios; Travis County Clerk, Dyana Limon-Mercado; and Travis County District Attorney, José Garza, take no position on the contested issues in this Joint Pretrial Order; however, the foregoing parties do not waive any available defenses, including defenses asserted in their respective answers.

(4) A list of facts all parties have reached agreement upon & (6) A list of legal propositions that are not in dispute;

A. Legislative History of SB 1:

1. On March 11, 2021, Texas Senator Bryan Hughes introduced Senate Bill 7 ("SB7") in the Texas Legislature.

2. Senator Bryan Hughes introduced Senate Bill 1 ("SB 1'). The bill was heard before the Senate State Affairs Committee on August 9, 2021, and voted out of committee that same day.

3. SB 1 passed the Senate on August 12, 2021 on a party-line vote, following a 15-hour filibuster by Senator Carol Alvarado.

4. SB 1 was heard before the House Select Committee on Constitutional Rights and Remedies on August 23, 2021. During the hearing, the Committee Chair permitted two witnesses to testify virtually in favor of the bill without calling a vote to authorize virtual testimony or alerting the public that such testimony would be permitted. The Committee passed SB 1 that same day.

5. The House debated SB 1 on August 26, 2021, and adopted seventeen amendments to the bill.

6. The House passed SB 1 on August 27, 2021.

7. The House and Senate convened a conference committee, which issued its report to each chamber on August 30, 2021.

8. The Senate and the House both passed the SB 1 conference committee report on August 31, 2021, and the Legislature sent SB 1 to the Governor for his signature on September 1, 2021.

9. The Governor signed SB 1 into law on September 7, 2021.

10. SB 1 went into effect on December 2, 2021.

B. Provisions of SB 1:

11. A true and correct copy of SB1, highlighted to show the provisions Plaintiffs challenge, is attached to the Joint Pretrial Order as Appendix A.

12. The parties have been unable to reach agreement on any further description of the Challenged Provisions of SB 1. Plaintiffs have attached as Appendix B a summary description of the provisions of SB1 that Plaintiffs challenge, including the location those challenged provisions are found in the Texas Election Code.

C. The Parties

13. Plaintiff La Unión Del Pueblo Entero (LUPE) is a 501(c)(3) non-partisan membership organization headquartered in San Juan, Texas.

14. Plaintiff Friendship-West Baptist Church ("Friendship-West") is a 501(c)(3) non-partisan religious organization in Dallas County.

15. Plaintiffs Anti-Defamation League Austin, Southwest, and Texoma Regions ("ADL") are made up of the regional offices of the non-partisan Anti-Defamation League in Texas.

16. Plaintiff Southwest Voter Registration Education Project ("SVREP") is a 501(c)(3) nonprofit and non-partisan organization headquartered in San Antonio, Texas.

17. Plaintiff Texas Impact is a 501(c)(4) non-partisan, multi-denominational organization.

18. Plaintiff Mexican American Bar Association of Texas ("MABA-TX") is a professional association of Latino lawyers located in Texas.

19. Plaintiff Texas Hispanics Organized For Political Education ("TEXAS HOPE") is a 501(c)(3) nonprofit membership organization.

20. Plaintiff JOLT ACTION is a 501(c)(4) nonprofit membership organization.

21. Plaintiff William C. Velasquez Institute ("WCVI") is a 501(c)(3) nonprofit and non-partisan public policy analysis organization.

22. Plaintiff FIEL Houston Inc. ("FIEL") is a 501(c)(3) nonprofit, non-partisan membership organization based in Houston, Texas.

23. Plaintiff James Lewin is a registered voter residing in Austin, Texas.

24. Plaintiff Jeffrey Clemmons is a registered voter residing in Austin, Texas.

25. Plaintiff LULAC Texas ("LULAC") is the Texas chapter of the League of United Latin American Citizens, a Latino civil rights membership organization in the United States. LULAC's mission is to protect the civil and voting rights of Latinos.

26. Plaintiff Voto Latino is a 501(c)(4) nonprofit, social welfare organization. Voto Latino engages, educates, and empowers Latino communities across the United States, working to ensure that Latino voters are enfranchised and included in the democratic process.

27. Plaintiff Texas Alliance for Retired Americans (the "Alliance") is incorporated in Texas as a 501(c)(4) nonprofit, social welfare, membership organization. The Alliance's mission is to ensure social and economic justice and full civil rights for retirees.

28. Plaintiff Texas AFT is a statewide labor union in Texas. Texas AFT advocates for the employment rights of its members and champions high-quality public education, fairness,

democracy, and economic opportunity for students, families, and communities. Part of Texas AFT's mission is to help its members select and elect leaders who embrace and uphold the interests of its members and the values of the union.

29. Plaintiff Marla López is a registered voter who resides in Harris County, Texas.

30. Plaintiff Marlon López is a registered voter who resides in Harris County, Texas.

31. Plaintiff Paul Rutledge is a registered voter who resides in Montgomery County, Texas.

32. Plaintiff Mi Familia Vota is a national, non-profit civic engagement organization with a state office in Texas.

33. Plaintiff Houston Area Urban League ("HAUL") is a nonpartisan, nonprofit corporation with its principal office in Houston, Texas. HAUL is an affiliate of the National Urban League.

34. Plaintiff The Arc of Texas is a nonpartisan, nonprofit corporation with its principal office in Austin, Texas. The Arc of Texas is an affiliate of The Arc of the United States.

35. Plaintiff Delta Sigma Theta Sorority, Inc. ("Delta Sigma Theta") is a national, nonpartisan, not-for-profit membership service organization.

36. Plaintiff OCA-Greater Houston ("OCA-GH") is a non-profit membership organization and the Greater Houston arm of the national organization OCA – Asian Pacific American Advocates.

37. Plaintiff League of Women Voters of Texas is a statewide non-profit membership organization.

38. Plaintiff REVUP-Texas is a grassroots organization whose name stands for "Register, Educate, Vote, Use Power." Defendant Greg Abbott is the Governor of Texas.

39. Defendant Jane Nelson is the Secretary of State of Texas (the "Secretary"). The office of the Secretary of State is an executive department or agency of the State of Texas.

40. Defendant Angela Colmenero is the Provisional Attorney General of Texas (the "Attorney

General"). The office of the Texas Attorney General is an executive department or agency of the State of Texas.

41. Defendant Jacquelyn Callanen is the Bexar County Elections Administrator (the "Bexar County EA") and is responsible for the administration of elections in Bexar County.

42. Defendant Michael Scarpello is the Dallas County Elections Administrator (the "Dallas County EA") and is responsible for the administration of elections in Dallas County.

43. Defendant Lisa Wise is the El Paso County Elections Administrator (the "El Paso County EA") and is responsible for the administration of elections in El Paso County.

44. Defendant Clifford Tatum is the former Harris County Elections Administrator (the "Harris County EA") and was responsible for the administration of elections in Harris County during his service as Harris County EA.[12]

45. Teneshia Hudspeth is the Harris County Clerk and Chief Election Officer for Harris County, and is responsible for the administration of elections in Harris County. Plaintiffs are in the process of moving under Rule 25(d) to substitute Ms. Hudspeth, in her official capacity, for Defendant Tatum.

46. Defendant Hilda Salinas is the Hidalgo County Elections Administrator (the "Hidalgo County EA") and is responsible for the administration of elections in Hidalgo County.

47. Defendant Dyana Limon-Mercado is the Travis County Clerk (the "Travis County Clerk") and is responsible for administration of elections in Travis County.[13]

48. Defendant Joe Gonzales is the Bexar County District Attorney (the "Bexar County DA's

[12] The Harris County Elections Administrator has stipulated to the authenticity, accuracy, and conditional admission of certain discovery responses. Exhibit 8. The Harris County Elections Administrator's office was abolished on September 1, 2023, pursuant to 88th Leg. R.S., S.B. 1750 (to be codified as an amendment to Tex. Elec. Code § 31.050). Plaintiffs intend to shortly file a motion to substitute the Harris County Clerk in her official capacity as a Defendant in place of the Harris County Elections Administrator.

[13] The Travis County Clerk has stipulated to the authenticity, accuracy, and conditional admission of certain discovery responses. Exhibit 9.

Office") and is responsible for the investigation and prosecution of alleged criminal violations of the Texas Election Code in Bexar County, including SB 1 §§ 4.06, 4.09, 6.04, 6.05, and 7.04. *See* Exhibit 2 (Stip. of the Dist. Att'y of Bexar Cnty.), ¶¶ 1-2.

49. The Bexar County DA's Office does not disclaim an intent to investigate or enforce these criminal provisions. Ex. 2, ¶¶ 3-6.

50. Defendant José Garza is the Travis County District Attorney (the "Travis County DA's Office") and is responsible for the investigation and prosecution of alleged criminal violations of the Texas Election Code in Travis County, including SB 1 §§ 4.06, 4.09, 6.05, 6.06, and 7.04 (the "Criminal Provisions"), and the crime of perjury. *See* Exhibit 3 (Stip. of the Dist. Att'y of Travis Cnty.), ¶¶ 1-2.

51. The Travis County DA's Office does not disclaim an intent to investigate or enforce these criminal provisions. Ex. 3, ¶¶ 3-6.

52. Plaintiffs and the Harris County DA's Office continue to work towards a negotiated stipulation ahead of trial. The parties will apprise the Court if a stipulation is reached.

53. Defendant Toribio "Terry" Palacios is the Hidalgo County District Attorney (the "Hidalgo County DA's Office") and is responsible for the investigation and prosecution of criminal violations of the Texas Election Code in Hidalgo County, including SB 1 §§ 4.06, 4.09, 6.04, and 7.04. *See* Exhibit 10 (Stip. of the Dist. Att'y of Hidalgo Cnty.) ¶¶ 1-2..

54. The Hidalgo County DA's Office does not disclaim an intent to investigate or enforce these criminal provisions. Ex. 10, ¶¶ 3-8.

55. Defendant John Creuzot is the Dallas County District Attorney (the "Dallas County DA's Office") and is responsible for the investigation and prosecution of alleged criminal violations of the Texas Election Code in Dallas County, including SB 1 §§ 4.06, 4.09, 6.04, 6.05, 6.06, and 7.04.

See Exhibit 4 (Stip. of the Dist. Att'y of Dallas Cnty.), ¶¶ 1-2.

56. The Dallas County DA's Office does not disclaim an intent to investigate or enforce these criminal provisions. Ex. 4, ¶¶ 3-4.

57. Defendant Bill Hicks is the District Attorney of the 34th Judicial District, which encompasses El Paso, Hudspeth, and Culberson counties, and is responsible for the investigation and prosecution of alleged criminal violations of the Texas Election Code in El Paso County, including SB 1 §§ 4.06, 4.09, 6.04, 6.05, 6.06, and 7.04, and the crime of perjury. *See* Exhibit 5 (Stip. of the Dist. Att'y of 34th Judicial District), ¶¶ 1-2.

58. Mr. Hicks does not disclaim an intent to investigate or enforce these criminal provisions. Ex. 5, ¶¶ 6-7.

59. Intervenor-Defendant Harris County Republican Party is the county Republican Party for Harris County, Texas.

60. Intervenor-Defendant Dallas County Republican Party is the county Republican Party for Dallas County, Texas.

61. Intervenor-Defendant National Republican Senatorial Committee is the national senatorial committee of the Republican Party as defined by 52 U.S.C. § 30101(4).

62. Intervenor-Defendant National Republican Congressional Committee is the national congressional committee of the Republican Party as defined by 52 U.S.C. § 30101(4).

63. Intervenor-Defendant Republican National Committee is the national committee of the Republican Party as defined by 52 U.S.C. § 30101(4).

(5) A list of contested issues of fact & (7) A list of contested issues of law;

A. <u>Standing:</u>

1. Have one or more Plaintiffs established a cognizable, concrete, and particularized injury-

in-fact?

2. If Plaintiffs establish a cognizable, concrete, and particularized injury, is that injury traceable to and redressable by particular defendants?[14]

3. Have Organization Plaintiffs satisfied the requirements for standing?

4. Do the claims and relief asserted under ADA and Rehabilitation Act require the participation of individual members as parties?

5. Do any of the Plaintiffs have statutory standing?

B. First Amendment Free Speech:

1. Whether any of the challenged provisions of SB 1 violate the First Amendment.

2. Whether Plaintiffs may bring a facial challenge to § 7.04.

3. Whether § 7.04 has a plainly legitimate sweep so as to preclude a facial challenge.

4. Whether § 7.04 is subject to the *Anderson/Burdick* test or to strict scrutiny under the First Amendment, and if the former, whether § 7.04 satisfies the *Anderson/Burdick* test.

5. Whether the conduct regulated by § 7.04 is protected speech.

6. Whether § 7.04 restricts political speech.

7. Whether § 7.04 applies to particular speech because of the topic discussed or the idea or message expressed.

8. Whether § 7.04 furthers a compelling interest and is narrowly tailored to achieve that interest.

C. Fourteenth Amendment Void for Vagueness:

1. Whether any of SB 1's provisions are unconstitutionally vague.

[14] In a motion for summary judgment pending before the Court (ECF 614), District Attorney Ogg contends that there is no genuine issue of material fact for trial on the ability of any of the Plaintiffs to establish these standing requirements as against her.

2. Whether Plaintiffs can bring pre-enforcement vagueness challenges to SB 1 §§ 4.06, 4.07, 4.09, 7.04, and 8.01, or whether they can only be raised as defenses to prosecutions or civil actions.

3. Whether SB 1 §§ 4.06, 4.07, 4.09, 7.04, and 8.01 provide regulated persons fair notice of the conduct they proscribe.

4. What the appropriate standard is for evaluating Plaintiffs' vagueness challenges to SB 1 §§ 4.06, 4.07, 4.09, 7.04, and 8.01.

D. First Amendment Overbreadth

1. Whether § 7.04 unreasonably restricts constitutionally protected speech or expressive conduct.

2. Whether Texas's courts should be given a chance to interpret and potentially adopt narrowing constructions of § 7.04 before a federal court assesses whether it is unconstitutionally vague or overbroad.

3. Whether a substantial number of SB 1 § 7.04's applications are unconstitutional when judged against the provision's legitimate sweep.

4. Whether SB 1 § 7.04 might operate unconstitutionally under some conceivable set of circumstances.

E. **First And Fourteenth Amendment Right to Vote :** Undue Burden

1. The extent to which SB 1 §§, 3.04, 3.09-3.10, 3.12, 3.13, 4.01, 4.06-4.07, 4.09, 4.12, 5.02-5.04, 5.07-5.08, 5.13, 6.01, 6.03-6.07, 7.02, and 7.04 burden the right to vote.

2. If any of the challenged provisions of SB 1 impose an undue burden on the right to vote, whether they are justified by sufficient state interests.

3. What the appropriate standard is for evaluating Plaintiffs' vagueness challenges to SB 1 §§ 4.06, 4.07, 4.09, 7.04, and 8.01.

F. Fourteenth And Fifteenth Amendments Intentional Discrimination:

1. Whether SB 1 §§ 2.05-2.07, 3.04, 3.09-3.10, 3.12, 3.13, 3.15, 4.01, 4.06-4.07, 4.09, 4.12, 5.01-5.04, 5.07-5.08, 5.11-5.14, 6.01, 6.03-6.07, 7.02, and 7.04 violate the Fourteenth and Fifteenth Amendment Prohibitions on Intentional Racial Discrimination.

2. Whether Plaintiffs can overcome the presumption that the Legislature acted in good faith.

3. Whether the Legislature adopted SB 1 §§ 2.05-2.07, 3.04, 3.09-3.10, 3.12, 3.13, 3.15, 4.01, 4.06-4.07, 4.09, 4.12, 5.01-5.04, 5.07-5.08, 5.11-5.14, 6.01, 6.03-6.07, 7.02, and 7.04 with the intent to discriminate on the basis of race.

4. Whether race was a motivating factor in the adoption of SB 1 §§ 3.04, 3.09-3.10, 3.12, 3.13, 3.15, 4.01, 4.06-4.07, 4.09, 4.12, 5.01-5.04, 5.07-5.08, 5.11-5.14, 6.01, 6.03-6.07, 7.02, and 7.04.

5. Whether any of the Challenged Provisions had a sufficient disparate impact on any racial group.

6. Whether the legislative supporters of any of the Challenged Provisions of SB 1 reasonably foresaw that those provisions would cause a disparate impact on any racial group.

7. Whether the purported justifications for the Challenged Provisions of SB 1 were pretextual.

8. Whether the legislative process leading up to the passage of SB 1 included departures from the normal procedural sequence.

9. Whether the specific sequence of events leading up to the enactment of SB 1 reveals a racially discriminatory purpose.

10. Whether the legislative history of SB 1 reveals a discriminatory purpose or any racist statements by supporters of the law.

11. Whether additional evidence reveals a racially discriminatory purpose in the enactment of

SB 1.

12. Whether the supporters of SB 1 refused to include a provision that would study the impact of SB 1 on Black, Latino, and other voters of color.

13. Whether there were less discriminatory alternatives to any or all of the challenged provisions of SB 1.

14. Whether the supporters of SB 1 showed a willingness to adopt amendments to the originally proposed law.

G. Section 2 of the VRA:

Discriminatory Effects Claim

1. Whether SB 1 §§ 2.05-2.07, 3.04, 3.09-3.10, 3.12-3.13, 3.15, 4.01, 4.06-4.07, 4.09, 4.12, 5.01-5.04, 5.07-5.08, 5.11-5.14, 6.01, 6.03-6.07, 7.02, and 7.04 result in the denial or abridgement of the right of any citizen of Texas to vote on account of race of color.

2. Whether SB 1 §§ 2.05-2.07, 3.04, 3.09-3.10, 3.12-3.13, 3.15, 4.01, 4.06-4.07, 4.09, 4.12, 5.01-5.04, 5.07-5.08, 5.11-5.14, 6.01, 6.03-6.07, 7.02, and 7.04, based on the totality of the circumstances, create state political processes that are not equally open to participation by minority voters, such that those voters have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

Discriminatory Intent Claim

1. Whether a holistic assessment of the relevant factors—including the existence of a racially disparate impact, the historical background, the specific sequence of events, departures from the normal procedural sequence, departures from normal substantive considerations, the law's legislative history, or other relevant evidence—reveals that an intent to discriminate on the basis of race was a motivating factor in enacting the provisions of SB 1 challenged under this claim.

H. Section 208 of the VRA:

1. Whether SB 1 §§ 6.01, 6.03-6.07, and 7.04 impair the ability of a voter, who requires assistance to vote by reason of blindness, disability, or inability to read or write to receive assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

2. Whether Defendant Ogg has violated Section 208 of the VRA.

I. Title II of the ADA and Section 504 of the Rehabilitation Act:

1. Whether SB 1 §§ 5.02-5.03, 5.06-5.08, 5.10, 5.12-5.14, 6.01, 6.03-6.07, and 7.04 discriminate against Texas voters on the basis of disability.

2. Whether Defendant Ogg has violated any provision of the ADA or Section 504 of the Rehabilitation Act.

(6) A LIST OF THE LEGAL PROPOSITIONS THAT ARE NOT IN DISPUTE

1. The parties have been unable to reach agreement on an appropriate list of legal propositions that are not in dispute. Plaintiffs attach as Appendix C a statement of legal propositions that they contend are not in dispute.

(6) A list of contested issues of law;

1. Whether the Challenged Provisions of SB 1 violate the First Amendment of the U.S. Constitution.

2. Whether the Challenged Provisions of SB 1 are unconstitutionally vague in violation of the Due Process Clause of the Fourteenth Amendment.

3. Whether the Challenged Provisions of SB 1 are unconstitutionally overbroad in violation of the First Amendment.

4. Whether the Challenged Provisions of SB 1 violate the First and Fourteenth Amendments of the U.S. Constitution.

5. Whether the Challenged Provisions of SB 1 violate the Fifteenth Amendment of the U.S. Constitution.

6. Whether the Challenged Provisions of SB 1 result in an abridgment of the right of any citizen to vote on account of race, color, or membership in a language minority group in violation of Section 2 of the VRA.

7. Whether an intent to discriminate on the basis of race was a motivating factor in the enactment of the Challenged Provisions of SB 1 in violation of Section 2 of the VRA.

8. Whether the Challenged Provisions of SB 1 violate Section 208 of the VRA.

9. Whether the Challenged Provisions of SB 1 violate Title II of the ADA.

10. Whether the Challenged Provisions of SB 1 violate Section 504 of the Rehabilitation Act.

(7) A list of all exhibits expected to be offered;

The Parties' exhibit lists were initially filed as part of their Rule 26(a)(3) disclosures on July 28, 2023. The parties have since conferred and identified a number of joint exhibits, a list of which is attached hereto as Exhibit 6. In addition, each party is separately filing exhibit lists concurrently with their trial outlines, *see infra*, that disclose any objections that have been raised and the grounds therefore.

As noted in the Parties' Notice Concerning Trial Procedures, ECF No. 683, in lieu of moving individual exhibits into evidence during trial, the Parties have agreed that disclosure of exhibits shall constitute a request to move such exhibits into evidence. The parties have further agreed to the use of disclosed exhibits during trial subject to oral and written objections, in expectation that the Court will rule on oral objections when made and on written objections prior to the close of evidence.

(8) A list of the names and addresses of witnesses who may be live called with a brief statement of the nature of their testimony;

The Parties' witness lists were previously filed, and an updated Private Plaintiffs witness list is attached as Exhibit 7. These lists separately identify the witnesses that each party expects to offer for live testimony and those that the party may offer if the need arises. In addition, Mi Familia Vota now intends to call Dr. Franita Tolson in this phase of the trial rather than wait to call her at any subsequent intent phase.[15]

(9) An estimate of trial length;

Private Plaintiffs' pretrial disclosures "announced that 58 individuals will offer live trial testimony." ECF No. 700 at 1. The Court resolved the materiality-provision claims on summary judgment on August 17, and specifically noted parties' representations that such a resolution would reduce the number of witnesses called to testify at trial. ECF No. 724 at 2. Private Plaintiffs' current witness list now identifies 52 witnesses whom they will call to provide live testimony at trial. Ex. 7.

State Defendants and Intervenor-Defendants seek equal time to cross-examine Private Plaintiffs' witnesses as Private Plaintiffs propose to take for their affirmative case. Based upon Private Plaintiffs' request for 43 hours to present their affirmative cases, ECF No. 707 at 4, if State Defendants and Intervenor-Defendants take an equal amount of time on cross-examination, Private Plaintiffs' case in chief and cross-examination will take up to 86 hours of trial time, or approximately 14 trial days.

State Defendants and Intervenor-Defendants will need an estimated 8 trial days to present their case and to provide an equal amount of time for cross-examination by Private Plaintiffs.

[15] By signing this joint pretrial order, State Defendants and Intervenor Defendants do not waive their right to object to the testimony of Dr. Franita Tolson.

ECF No. 709 at 3. Thus, approximately 22 trial days should be needed for presentation of evidence.

(10) For a jury trial, include (a) proposed questions for the voir dire examination, and (b) a proposed charge, including instructions, definitions, and special interrogatories, with authority;

This case will not be heard by a jury.

(11) For a nonjury trial, include (a) proposed findings of fact and (b) proposed conclusions of law, with authority;

The Parties have not provided proposed findings of fact and law, consistent with the Court's order during its May 16, 2023, status conference.

(12) A list of the names of witnesses whose testimony will be offered by deposition designation, including the page and line of the testimony offered;

For witnesses who will testify only by deposition designation, the Parties have exchanged exhibits containing the page and line of the deposition testimony offered and the Parties have also exchanged objections. The existing scheduling order does not specify the deadline for counter designations; the Parties intend to negotiate a date that all counter designations must be filed.[16]

The Parties continue to negotiate the exchange of exhibits containing the page and line designations of the deposition testimony for witnesses whose testimony will "hybrid" at trial.

Trial Outlines

During the August 22, 2023 status conference, the Court instructed the parties to provide a submission organized by claim, listing the witnesses and exhibits the parties contend support their arguments related to each claim. State Defendants and Intervenor Defendants refer the Court to their August 11, 2023 Trial Advisory, ECF 709, which identifies the witnesses State Defendants and Intervenor Defendants plan on calling to trial and the subject and anticipated length of their testimony. State Defendants and Intervenor Defendants will provide additional information to the

[16] State Defendants, Intervenor- Defendants, and District Attorney Ogg maintain that deposition designations are improper for any witness absent an agreement by the Parties or a showing that the requirements of Fed. R. Civ. P. 32 have been met.

Court near or at the time Plaintiffs rest, as necessary. The remaining parties intend to file these trial outlines individually, concurrent with the deadline for this Joint Pretrial Order.

The signatures of all attorneys;

Dated: September 5, 2023 Respectfully Submitted,

For LUPE Plaintiffs:

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It is so **ORDERED**.

SIGNED this ___ day of _____, 2023.

_____
XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

APPENDIX B

APPENDIX B

DESCRIPTION OF PROVISIONS OF SB 1 THAT PLAINTIFFS CHALLENGE

As set forth in the Joint Pretrial Order, Plaintiffs challenge the following provisions of SB 1 (collectively, the "Challenged Provisions"):

a. SB 1 §§ 2.05-2.07

b. SB 1 §§ 3.04, 3.09, 3.10, 3.12, 3.13, 3.15

c. SB 1 §§ 4.01, 4.06, 4.07, 4.09, 4.12

d. SB 1 §§ 5.02-5.04, 5.06-5.08, 5.10-5.14

e. SB 1 §§ 6.01, 6.03-6.07

f. SB 1 §§ 7.02, 7.04

g. SB 1 § 8.01

Specifically, Plaintiffs describe the Challenged Provisions as follows:

1. Section 2.05 of SB 1 amended Section 16.0332 of the Texas Election Code to require the Secretary of State to enter into an agreement with the Department of Public Safety through which the Department of Public Safety will provide information about persons who "indicate a lack of citizenship status in connection with a motor vehicle or Department of Public Safety record" each month and the Secretary of State will use this information to "verify the accuracy of citizenship status information previously provided on voter registration applications." The Secretary of State may use information garnered in this fashion to cancel voter registrations.

2. Section 2.05 of SB 1 amended Section 16.0332 of the Election Code, inter alia, by adding subsection (a-1).

3. Subsection (a-1) of Section 16.0332 of the Election Code provides that:

The secretary of state shall enter into an agreement with the Department of Public Safety

under which information in the existing statewide computerized voter registration list is compared against information in the database of the Department of Public Safety on a monthly basis to verify the accuracy of citizenship status information previously provided on voter registration applications. In comparing information under this subsection, the secretary of state shall consider only a voter's information in the database of the Department of Public Safety that was derived from documents presented by the voter to the department after the person's current voter registration became effective, and may not consider information derived from documents presented by the voter to the department before the person's current voter registration became effective.

4. Section 2.05 of SB 1 further provides that "[t]he secretary of state shall provide rules for the administration of this section."

5. Section 2.06 of SB 1 amended Section 18.065 of the Texas Election Code to authorize the Secretary of State to require a voter registrar who he has determined is not in substantial compliance with Sections 15.083, 16.032, and 18.061 of the Texas Election Code to attend additional training, to audit the voter registration list for the county in which that voter registrar serves, or to inform the Attorney General that such a voter registrar's county may be subject to civil penalty.

6. Section 2.06 of SB 1 adds subsections (e), (f), (g), and (h) to Section 18.065 of the Election Code.

7. Section 18.065(e) provides in relevant part that "if the secretary of state determines that a voter registrar is not in substantial compliance with a requirement imposed on the registrar by a provision of rule described in Subsection (a)," the secretary will impose consequences that include mandating training for a first violation, auditing the county voter registrar list for a second

violation; and for a third violation, "if the secretary of state determines that the registrar has not performed any overt actions in pursuit of compliance . . . inform the attorney general that the county which the registrar serves may be subject to a civil penalty under Subsection (f)."

8. Section 18.065(f) provides "a county is liable to this state for a civil penalty of $1,000 for each day after the 14th day following the receipt of the results of the audit conducted under Subsection (e)(2)."

9. Section 2.07 of SB 1 amended Section 18.068 of the Texas Election Code to add that the Secretary of State shall also quarterly compare information received under Texas Election Code 16.001 and Government Code Sections 62.113 and 62.114 to the statewide computerized voter registration list to determine whether voters on the registration list are residents of the county in which they are registered to vote.

10. Section 2.07 of SB 1 in relevant part adds subsection (a-1) to Section 18.068 of the Election Code.

11. Subsection (a-1) of Section 18.068 provides that "The secretary of state is not required to send notice under Subsection (a) for a voter who is subject to an exemption from jury service under Section 62.106, Government Code, if that exemption is the only reason the voter is excused from jury service.

12. The Secretary of State has entered into an agreement with the Department of Public Safety under which information in the existing statewide computerized voter registration list is compared against information in the database of the Department of Public Safety.

13. Comparisons between the statewide computerized voter registration list and the Department of Public Safety information occurs on a monthly basis.

14. Voters whose citizenship status as previously provided on voter registration applications

does not match information in the database of information from the Department of Public Safety records will be subject to removal from the voter registration list unless that voter provides to the registrar proof of U.S. citizenship in the form of a certified copy of the voter's birth certificate, a U.S. passport, certificate of naturalization, or any other form that the Secretary of State has proscribed.

15. The Secretary of State, in carrying out quarterly review of the statewide computerized voter registration list, is not required by SB 1 to send notice to voters who are removed from the voter registration list for allegedly seeking exemption from jury service on the basis of non-citizenship.

16. Section 3.04 of SB 1 amended Section 43.031(b) of the Texas Election Code to add that "no voter may cast a vote from inside a motor vehicle unless the voter meets the requirements of Section 64.009."

17. Section 64.009 of the Texas Election Code governs curbside voting, which allows a voter who is physically unable to enter the polling place without personal assistance or likelihood of injuring their health to vote at the polling place entrance or curb.

18. Section 3.09 of SB 1 amended Section 85.005 of the Texas Election Code to prohibit voting to be conducted on weekdays during the early voting period earlier than 6 a.m. or later than 10 p.m.

19. Section 3.10 of SB 1 amended Section 85.006(e) of the Texas Election Code to prohibit voting to be conducted on the last Saturday of the early voting period earlier than 6 a.m. or later than 10 p.m. Section 3.10 of SB 1 also amended Section 85.006(e) of the Texas Election Code to prohibit voting to be conducted on the last Sunday of the early voting period earlier than 9 a.m. or later than 10 p.m.

20. Section 3.12 of SB 1 amended Section 85.061(a) of the Texas Election Code to require that

an early voting polling place be located inside each branch office of the county clerk.

21. Section 3.13 of SB 1 amended Section 85.062 of the Texas Election Code to prohibit the placement of early voting polling places in movable structures.

22. Sections 3.04, 3.12, and 3.13 of SB 1 prevent Texas counties from offering drive thru voting.

23. Section 3.15 of SB 1 amended Section 124.002 of the Texas Election Code to prohibit a political party's candidate to be selected in one motion or gesture.

24. Section 4.01 of SB 1 amended Section 32.075 of the Texas Election Code to prohibit election judges from having a duly accepted poll watcher removed from the polling place unless the election judge or clerk observed the poll watcher violate the law relating to the conduct of elections. The election judge may call a law enforcement officer to request that a poll watcher be removed if the poll watcher commits a breach of the peace or a violation of law.

25. A "watcher" is "a person appointed under [Subchapter A of Chapter 33 of the Texas Election Code] to observe the conduct of an election on behalf of a candidate, a political party, or the proponents or opponents of a measure." Tex. Elec. Code Section 33.001.

26. Section 4.06 of SB 1 amended Section 33.051 of the Texas Election Code to require appointed poll watchers to present a certificate of completion from training to the presiding judge before serving. Section 4.06 also states that an election officer commits a Class A misdemeanor if the officer intentionally or knowingly refuses to accept a duly appointed and qualified watcher for service.

27. Section 4.07 of SB 1 amended Section 33.056 of the Texas Election Code to state that a poll watcher is entitled to sit or stand near enough to see and hear the election officers conducting the observed activity. Section 4.07 of SB 1 also adds a provision to the Texas Election Code stating

that "a watcher may not be denied free movement where election activity is occurring within the location at which the watcher is serving."

28. Section 4.09 of SB 1 amended Section 33.061(a) of the Texas Election Code to state that it is an offense for an election official to take 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.

29. Section 4.12 of SB 1 amended Section 86.006 of the Texas Election Code to prohibit the use of ballot drop-boxes by requiring that an election official receive the in-person delivery of a marked mail ballot at the time of delivery and that the receiving election official attest that the voter provided their name, signature, and identification when the ballot was delivered.

30. Section 5.02 of SB 1 amended Section 84.002 of the Texas Election Code to add subsection (a)(1-a), which requires that an application for a ballot by mail include: "(A) the number of the applicant's driver's license, election identification certificate, or personal identification card issued by the Department of Public Safety" [hereinafter collectively "DPS number"]; or "(B) if the applicant has not been issued a number described by Paragraph (A), the last four digits of the applicant's social security number" [hereinafter "SSN4"]; or "(C) a statement by the applicant that the applicant has not been issued a number described by Paragraph (A) or (B)."

31. Subsection (b-1) of Section 84.002(a) allows a person to "use the number of a driver's license, election identification certificate, or personal identification card that has expired for the purpose of fulfilling the requirement under Subsection (a)(1-a) if the license or identification is otherwise valid.

32. Subsection (f-1) of Section 86.001 of the Texas Election Code requires that if a mail ballot application is rejected, the clerk must provide notice to the voter with information "regarding the

ability to correct or add information required under Section 84.002(a)(1-a) through the online tool described by Section 86.015(c)."

33. Subsection (f-1) of Section 86.001 of the Texas Election Code provides that "[i]f an applicant corrects an application for a ballot to be voted by mail online and that application subsequently identifies the same voter identified on the applicant's application for voter registration, the clerk shall provide a ballot to the applicant as provided by this chapter."

34. Section 5.03 of SB 1 amended Section 84.011(a) of the Texas Election Code to require the officially prescribed application form for an early voting ballot to include space to enter the information required under Section 84.002(a)(1-a), which was amended by Section 5.02 of SB 1.

35. Section 5.04 of SB 1 amended Section 84.0111 of the Texas Election Code to prohibit an officer or employee of the state or a political subdivision of the state from: (1) distributing an application for an early voting ballot to a person who did not request the application; or (2) using public funds to facilitate third-party distribution of an application for an early voting ballot to a person who did not request the application.

36. Section 5.06 of SB 1 amended Texas Election Code Section 84.035 to provide that a voter who has already been sent a mail ballot, but who cancels their vote by mail application before returning their mailed ballot to the appropriate official, may be permitted by an election judge "to vote only under a provisional ballot."

37. Section 5.07 of SB 1 amended Section 86.001 of the Texas Election Code to require the clerk to reject an application for an early voting ballot if the personal identifying information included on the application as required under Section 84.002(a)(1-a) of the Texas Election Code (amended by Section 5.02 of SB 1) does not identify the same voter identified on the applicant's application for voter registration.

38. Section 5.08 of SB 1 amends Section 86.002 of the Election Code to add, inter alia, subsections (g) and (h).

39. Subsection (g) of Section 86.002 provides that the carrier envelope for mail ballots to include a space "for the voter to enter the following information: (1) the number of the voter's driver's license, election identification certificate, or personal identification card issued by the Department of Public Safety; (2) if the voter has not been issued a number described by Subdivision (1), the last four digits of the voter's social security number; or (3) a statement by the applicant that the applicant has not been issued a number described by Subdivision (1) or (2)."

40. Subsection (h) of Section 86.002 allows a person to use "the number of a driver's license, election identification certificate, or personal identification card that has expired for purposes of Subsection (g) if the license or identification is otherwise valid."

41. Section 5.10 of SB 1 amended Texas Election Code Section 86.015(c) to require that the state's mandated online ballot tracker "allow a voter to add or correct" an omitted number required by SB 1 on a mail ballot application or a driver's license number, election identification certificate number, personal identification card number, or the last four digits of a Social Security Number that does not match the numbers contained in voter registration records.

42. Section 5.11 amended 87.027(i) of the Texas Election Code to authorize a signature verification committee to compare the signature on each carrier envelope certificate for a mail ballot "with any known signature of the voter on file with the county clerk or voter registrar to determine whether the signatures are those of the voter."

43. Section 5.12 of SB 1 adds Section 87.0271 to Texas Election Code to provide curative procedures for ballots that the signature verification committee determines are incomplete due to missing a signature on the carrier envelope certificate, statement of residence, other required

information contained in Section 84.002(a)(1-a) or Section 86.002, incomplete required information regarding a witness, or "for which it cannot immediately be determined whether the signature of the carrier envelope certificate is that of the voter."

44. Section 87.0271(b) of the Texas Election Code provides that, with regard to early voting ballots voted by mail, "[n]ot later than the second business day after a signature verification committee discovers a defect . . . and before the committee decides whether to accept or reject a 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."

45. Section 87.0271(e) of the Texas Election Code provides that "[a] poll watcher is entitled to observe an action taken under Subsection (b) or (c)."

46. Section 5.13 of SB 1 amended Section 87.041 of the Texas Election Code to provide that "A ballot may be accepted only if . . . 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)."

47. Subsection (e) of Section 87.041 authorizes the early voting ballot board to compare the voter's signature with any known signature of the voter on file with the county clerk or voter registrar to determine whether the signatures on the ballot application and on the carrier envelope certificate "are those of the voter."

48. Section 5.14 of SB 1 adds Section 87.0411 to the Texas Election Code to provide that "Not later than the second business day after an early voting ballot board discovers a defect described

by Subsection (a) and before the board decides whether to accept or reject a timely delivered ballot under Section 87.041, the board 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 board 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."

49. Section 87.0411(c) provides that "[i]f the early voting ballot board 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 board 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."

50. Section 87.0411(e) of the Election Code provides that "[a] poll watcher is entitled to observe an action taken under Subsection (b) or (c)."

51. Section 6.01 of SB 1 amended Section 64.009 of the Texas Election Code to require a person who "simultaneously" provides seven or more voters with transportation to the polls to complete and sign a form reporting their name, address, and whether they are only providing transportation or also serving as an assistant to the voters. Section 6.01 also notes that "a poll watcher is entitled to observe any activity conducted under this section."

52. Section 6.03 of SB 1 added Section 64.0322 of the Texas Election Code to require a person, other than an election officer, who assists a voter to complete a form stating: (1) the name and address of the person assisting the voter; (2) the relationship to the voter of the person assisting

the voter; and (3) whether the person assisting the voter received or accepted any form of compensation or other benefit from a candidate, campaign, or political committee. The form must be incorporated into the official carrier envelope if the voter is voting a mail ballot and receives assistance or must be submitted to an election officer at the time the voter casts a ballot in person and receives assistance.

53. A voter may not receive assistance in voting from an assistor who is not an election official and who does not complete the form required by Section 64.0322(a).

54. Section 6.04 of SB 1 amended the assistor oath required under Texas Election Code Section 64.034. The new oath requires an assistor to swear, under penalty of perjury, that the voter "represented to [the assistor that] they are eligible to receive assistance," and that the assistor did not "pressure" the voter to choose them as the assistor.

55. Section 6.05 of SB 1 amended Texas Election Code Section 86.010 to require that a person who assists a voter in preparing a ballot to be voted by mail to include on the official carrier envelope: (1) the person's signature, printed name, and residence address, (2) the relationship of the person providing the assistance to the voter, and (3) whether the person received or accepted any form of compensation or other benefit from a candidate, campaign, or political committee in exchange for providing assistance.

56. Section 6.06 of SB 1 amended Section 86.0105 of the Texas Election Code to make it a state jail felony for a person to: (1) compensate or offer to compensate another person for assisting voters, or (2) solicit, receive, or accept compensation for assisting voters. Section 6.06 of SB 1 defines compensation as an economic benefit. Section 6.06 of SB 1 does not apply if the person assisting the voter is an attendant or caregiver previously known to the voter.

57. Section 6.07 of SB 1 amended Section 86.013(b) of the Texas Election Code to require

carrier envelopes to include a space for assistors to indicate his or her relationship to the voter being assisted.

58. Section 7.02 of SB 1 amended Sections 276.004(a) and (b) of the Texas Election Code to expand the exception to the offense described in Section 276.004 of the Texas Election Code so that a person who refuses to permit another person from being absent from work for the purpose of attending the polls to vote on election day or while early voting is in progress does not commit an offense if the polls are open for two consecutive hours on election day or while early voting is in progress outside of the voter's working hours.

59. Section 7.04 of SB 1 adds Section 276.015 to the Texas Election Code, which makes it a felony of the third degree for a person, directly or through a third party, to knowingly: (1) provide or offer to provide vote harvesting services in exchange for compensation or other benefit; (2) provide or offer to provide compensation or other benefit to another person in exchange for vote harvesting services; or (3) collect or possess a mail ballot or official carrier envelope in connection with vote harvesting services. Section 7.04 of SB 1 defines "benefit" as "anything reasonably regarded as gain or advantage… whether to a person or another party whose welfare is of interest to the person." The provision defines "vote harvesting services" as "in-person interaction with one or more voters, in the physical presence of an official ballot or a ballot voted by mail, intended to deliver votes for a specific candidate or measure."

60. Section 7.04 of SB 1 adds Section 276.016 to the Texas Election Code, which makes it a state jail felony for a public official or election official, acting in their official capacity, to knowingly (1) solicit the submission of an application to vote by mail from a person who did not request an application; (2) distribute an application to vote by mail to a person who did not request the application; (3) authorize or approve 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) complete any portion of an application to vote by mail and distribute the application to an applicant.

61. Section 7.04 of SB 1 adds Section 276.017 to the Texas Election Code, which prohibits the early voting clerk or other election officials from knowingly mailing or providing early voting by mail ballot materials to any person who the official knows did not submit an application for a ballot to be voted by mail.

62. Section 7.04 of SB 1 adds Section 276.018 to the Texas Election Code, which makes it an offense to make a false statement or swear to the truth of a false statement on a voter registration application or in an oath, declaration, or affidavit.

63. Section 7.04 of SB 1 adds Section 276.019 to the Texas Election Code, which prohibits election officials from creating, altering, modifying, waiving, or suspending any election standard, practice, or procedure in a manner not expressly authorized by code.

64. Section 8.01 of SB 1 adds Section 31.128 to the Texas Election Code, which prohibits a person from serving as an election official if the person has been finally convicted of an offense under the Texas Election Code. An election official does not include a chair of a county political party holding a primary election or a runoff primary election.

65. Section 8.01 of SB 1 adds Section 31.1 to the Texas Election Code which states that 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 violates a provision of the Texas Election Code.

66. Section 8.01 of SB 1 adds Section 31.130 to the Texas Election Code which states that an action, including an action for a writ of mandamus, may be brought against an election judge, in

their official capacity, for violations of the Election Code.

67. Section 32.075 to the Texas Election Code states that a presiding judge must preserve order and prevent breaches of peace and violations of the Texas Election Code in the polling place.

68. An election judge is considered an "election official" and an "election officer" under the Texas Election Code.

APPENDIX C

APPENDIX C

PLAINTIFFS' STATEMENT OF LEGAL PROPOSITIONS THAT ARE NOT IN DISPUTE

CONSTITUTIONAL PROVISIONS

1. The First Amendment to the U.S. Constitution protects against laws "abridging the freedom of speech." U.S. Const. Amend. I.

2. The Fourteenth Amendment to the U.S. Constitution provides, in relevant part: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV.

3. The Fifteenth Amendment to the U.S Constitution provides, in relevant part: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." U.S. Const. amend. XV.

FIRST AMENDMENT FREE SPEECH

4. Free speech is protected both "from abridgment by Congress" and "from impairment by the States." *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

5. Courts apply "strict scrutiny" to content-based restrictions on speech. *Reed v. Town of Gilbert*, 576 U.S. 155, 164 (2015).

6. A regulation is "content-based" if it "single[s] out specific subject matter for differential treatment . . . even if it does not discriminate among viewpoints within that subject matter." *City of Austin v. Reagan Nat'l Advert. Of Austin, LLC*, 142 S. Ct. 1462, 1471, 1472 (2022); *see also Turner Broadcasting System, Inc. v. Federal Communications Commission*, 512 U.S. 622, 643 (1994) ("As a general rule, laws that, by their terms, distinguish favored speech from disfavored

speech on the basis of the ideas or views expressed are content based.").

7. Courts apply "strict scrutiny" to laws that burden political speech. *E.g.*, *Dep't of Tex., Veterans of Foreign Wars of U.S. v. Tex. Lottery Comm'n*, 760 F.3d 427, 438–39 (5th Cir. 2014) (en banc).

8. Political speech includes speech "uttered during a campaign for political office." *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971).

9. Under "strict scrutiny," a challenged law is "presumptively unconstitutional and may be justified only if the government proves that [the law is] narrowly tailored to serve compelling state interests." *Reed*, 576 U.S. at 163.

10. To satisfy strict scrutiny, the government's asserted state interests must be rooted in an "actual problem," which requires more than "anecdote and supposition." *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 822 (2000).

11. To show that a law is narrowly tailored, the government must show there is no "less restrictive alternative that would serve the Government's purpose[.]" *Playboy Entertainment*, 529 U.S. at 813.

FOURTEENTH AMENDMENT VOID FOR VAGUENESS

12. The Due Process Clause of the Fourteenth Amendment applies to state and local officials.

13. A law is unconstitutional under the Due Process Clause if it is "so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement." *Johnson v. United States*, 576 U.S. 591, 595 (2015).

14. A law must define the offense "with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *United States v. Brooks*, 681 F.3d 678, 696 (5th Cir. 2012).

15. "When a statute 'interferes with the right of free speech or of association, a more stringent vagueness test should apply.'" *Holder v. Humanitarian Law Project*, 561 U.S. 1, 19 (2010).

FIRST AMENDMENT OVERBREADTH

16. A law is unlawfully overbroad in violation of the First Amendment if "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 473 (2010).

FIRST AND FOURTEENTH AMENDMENTS UNDUE BURDEN

17. The right to vote is a "fundamental political right, because [it is] preservative of all rights." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

18. Under the First and Fourteenth Amendments to the United States Constitution, a state may not unduly burden the right to vote.

19. To determine whether a state election practice unduly burdens the right to vote, a court must balance the character and magnitude of the burden the practice imposes on the right to vote against the justifications offered by the state in support of the challenged law. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992).

20. When a state election law severely burdens the right to vote or is discriminatory, a court must find that it is "narrowly drawn to advance a state interest of compelling importance" in order to survive constitutional muster. *Burdick*, 504 U.S. at 434 (citation omitted); *see also Norman v.Reed*, 502 U.S. 279, 280 (1992)

21. Even a "slight" burden must be "justified by relevant and legitimate state interests 'sufficiently weighty to justify the limitation.'" *Crawford*, 553 U.S. at 191 (controlling op.).

FOURTEENTH AND FIFTEENTH INTENTIONAL DISCRIMINATION

22. The Fourteenth Amendment prohibits intentional racial discrimination by state actors.

Discriminatory intent may be established by proof that the defendants used race as a motivating factor in their decisions. *Vill. of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977).

23. The Fifteenth Amendment enfranchised voters nationwide, regardless of race or color, and is an independent source of authority to protect against discrimination in voting. "The Amendment bans racial discrimination in voting by both state and nation. It thus establishes a national policy . . . not to be discriminated against as voters in elections to determine public governmental policies or to select public officials . . . ." *Terry v. Adams*, 345 U.S. 461, 467 (1953).

24. Like the Fourteenth Amendment, discriminatory intent under the Fifteenth Amendment may be established by proof that the defendants used race as a motivating factor in their decisions. *Mobile v. Bolden*, 446 U.S. 55, 62, (1980) (plurality opinion) (citing *Vill. of Arlington Heights*, 429 U.S. at 265).

SECTION 2 OF THE VRA

25. Section 2 of the VRA applies nationwide and prohibits voting standards, practices, or procedures that are motivated by a discriminatory purpose or that result in the denial or abridgement of the right of any citizen to vote on account of race, color or membership in a language minority group. 52 U.S.C. § 10301.

Discriminatory Effects Claim

26. Subsection (b) of 52 U.S.C. § 10301 provides that a violation is established if "based on the totality of the circumstances," it is shown that the political processes leading to election in the State "are not equally open to participation" by members of a protected class of citizens.

27. In *Thornburg v. Gingles*, 478 U.S. 30 (1986) and *Brnovich v. DNC*, 141 S. Ct. 2321 (2021), the Supreme Court set out frameworks for determining whether voting rules violate Section 2 by

resulting in an abridgement of the right of any citizen to vote on account of race, color, or membership in a language minority group.

28. The *Gingles* inquiry, which looks to discriminatory effects, requires the Court "to consider the 'totality of the circumstances' and to determine, based upon a practical evaluation of the past and present realities whether the political process is equally open to minority voters." *Thornburg v. Gingles*, 478 U.S. 30, 32 (1986). The Senate Judiciary Committee, in a report accompanying the 1982 amendments to the Voting Rights Act, provided a non-exclusive list of factors that a court should consider in determining whether the challenged practice impermissibly impairs the ability of the minority group to elect their preferred representatives.

29. These 'totality of the circumstances' factors include, but are not limited to:

a. The extent of any history of official discrimination in the state or political subdivision affecting the right of a member of a minority group to register, vote, or participate in the democratic process;

b. The extent to which voting in government elections is racially polarized;

c. The extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group;

d. Exclusion of minorities from a candidate slating process;

e. The extent to which minority group members in the state or political subdivision bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;

f. The use of overt or subtle racial appeals in political campaigns;

g. The extent to which minorities have been elected to public office in the jurisdiction.

h. Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the minority group

i. Whether the policy underlying the use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

30. A violation of Section 2 exists where "'the political processes leading to nomination or election' are not 'equally open to participation' by members of the relevant protected group 'in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.'" Courts must evaluate the totality of the circumstances to make this determination.

31. With respect to vote denial, there are additional guideposts that may be relevant to the totality of the circumstances analysis. *Brnovich*, 141 S. Ct. at 2338-40. These guideposts include, but are not limited to:

a. The "size of the burden" placed by the challenged voting rule;

b. The "degree to which a voting rule departs" from voting practices that were in effect in 1982 (when Section 2 was last amended);

c. The "size of any disparities" in a voting rule's effect on "members of different racial or ethnic groups";

d. The opportunities afforded by "a State's entire system of voting";

e. The "strength of the state interests" served by the challenged voting rule.

Discriminatory Intent Claim

32. Apart from prohibiting discriminatory effects, Section 2 also prohibits intentional racial discrimination in voting laws.

33. A voting law violates Section 2's prohibition on intentional racial discrimination if the State used race as a motivating factor in its decisions. *Veasey v. Abbott*, 830 F.3d 216, 231 (5th Cir. 2016)

34. Even if the challenged legislation is neutral on its face, discriminatory intent can be inferred under the test set forth in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), and its progeny, which entails a consideration of available evidence through a non-exhaustive set of factors. *Id*. at 266-68; *see also Veasey*, 830 F.3d at 230 (applying Arlington Heights test in Section 2 challenge asserting intentional race discrimination).

35. Among the factors relevant to determining discriminatory intent are: "(1) the historical background of the decision; (2) the specific sequence of events leading up to the decision; (3) departures from the normal procedural sequence; (4) substantive departures; and (5) legislative history." *Overton v. City of Austin*, 871 F.2d 529, 540 (5th Cir. 1989).

36. In determining the existence of discriminatory intent, "courts may consider both circumstantial and direct evidence of intent; however, "direct evidence" is not a prerequisite as "neutral reasons can and do mask racial intent[.]" *Veasey*, 830 F.3d at 235; *Vill. of Arlington Heights*, 429 U.S. at 266-68 (instructing courts to perform a "sensitive inquiry into such circumstantial and direct evidence as may be available").

SECTION 208 OF THE VRA

37. Section 208 of the VRA applies nationwide and provides that "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write" in English for any reason "may be given assistance by a person of the voter's choice, other than the voter's

employer or agent of that employer or officer or agent of the voter's union." 52 U.S.C. § 10508.

38. Section 208 of the VRA preempts state laws that interfere with its voting assistance guarantee, including state laws that restrict the actions of assisters. *See OCA Greater Hous. v. Texas* (*OCA-Greater Hous. II*), No. 1:15-CV-679, 2022 WL 2019295, at *3 (W.D. Tex. June 6, 2022) (modifying injunction to enjoin new state law "limiting the activities eligible for assistance to 'marking or reading the ballot'" (citation omitted)); *Disability Rts. N.C. v. N.C. State Bd. of Elections* (*Disability Rts. N.C. II*), No. 5:21-CV-361, 2022 WL 2678884, at *7 (E.D.N.C. July 11, 2022) (holding Section 208 preempted a restriction on choice of assister during absentee voting); *Ark. United II*, 626 F. Supp. 3d at 1087 (finding Section 208 preempted a limitation on the number of voters assisters could serve); *Carey v. Wis. Elections Comm'n*, 624 F. Supp. 3d 1020, 1032 (W.D. Wis. 2022) (enjoining restriction on absentee ballot return assistance).

39. Section 208 of the VRA guarantees a voter's choice in assister. *OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017) (holding that Texas law limiting who can provide assistance to non-English speaking voters violated Section 208 of the Voting Rights Act and noting that "a state cannot restrict this federally guaranteed right [Section 208] by enacting a statute tracking its language, then defining terms more restrictively than as federally defined.").

40. Section 208 of the VRA defines the word "vote" to "include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this chapter, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election." 52 U.S.C. § 10310(c)(1).

41. Section 208 of the VRA guarantees the right to assistance in the voting process before

entering the ballot box, "registration," and it includes steps in the voting process after leaving the ballot box, "having such ballot counted properly." *OCA-Greater Houston v. Texas*, 867 F.3d 604, 614-615. (5th Cir. 2017).

TITLE II OF THE ADA

42. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

43. A qualified person with a disability under Title II of the ADA means "a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment." 42 U.S.C. § 12102(1)(A).

44. Title II of the ADA defines a "public entity" as any state or local government [or] any department, agency, special purpose district, or other instrumentality of a State or States or local government." 42 U.S.C. § 12131(1)(A)-(B).

45. Title II of the ADA provides that "[n]o qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity." 28 C.F.R. § 35.130(a).

46. Title II of the ADA provides that "[a] public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability [. . .] [d]eny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service." 28 C.F.R. § 35.130(b)(1)(i).

47. Title II of the ADA provides that "[a] public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability [. . .] [a]fford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others." 28 C.F.R. § 35.130(b)(1)(ii).

48. Title II of the ADA provides that "[a] public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability [. . .] [p]rovide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others." 28 C.F.R. § 35.130(b)(1)(iii).

49. Title II of the ADA provides that "[a] public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability [. . .] [p]rovide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others." 28 C.F.R. § 35.130(b)(1)(iv).

50. Title II of the ADA provides that "[a] public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability [. . .] [o]therwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service." 28 C.F.R. § 35.130(b)(1)(vii).

51. Title II of the ADA provides that "[a] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(b)(7)(i).

52. Title II of the ADA provides that "[n]o private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part." 28 C.F.R. § 35.134(b).

53. Title II of the ADA provides that "[a] public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered." 28 C.F.R. § 35.130(b)(8).

54. Title II of the ADA provides that [a] public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration: That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities." 28 C.F.R. § 35.130(b)(3)(ii).

SECTION 504 OF THE REHABILITATION ACT

55. Section 504 provides that "no otherwise qualified individual with a disability in the United States, shall, solely by reason of her or his disability, be excluded from the participation

in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service." 29 U.S.C. § 794(a).

56. A qualified person with a disability under Section 504 means "any person who has a disability as defined in section 12102 of title 42 [of the ADA]." 29 U.S.C. § 794(a).

57. Under Section 504, a "program or activity" "means all of the operations of—(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or (B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government." 29 U.S.C. § 794(b).