

No. 26-0843

In the Supreme Court of Texas

In re the Honorable Derreck Rose, Wilma Green, and Diane Merchant,
Relators.

REPLY IN SUPPORT OF ORIGINAL EMERGENCY PETITION FOR WRIT OF MANDAMUS

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Voters of Galveston County, Texas

MANDAMUS RECORD

Relators supplement the record with the following:

Appendix A: August 7, 2026 Order of United States District Court Judge Jeffrey Vincent Brown in *Petteway et al. v. Galveston County, et al.*, No. 3:22-cv-00057 (S.D. Tex. 2026), ECF No. 325

Appendix B: August 3, 2026 Order Establishing Election Precinct Boundaries

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INTRODUCTION

On Friday, U.S. District Judge Jeffrey Vincent Brown concluded that the timing of Galveston County's post-primary redistricting is "highly suspicious." Reply App. A at 7. It is also illegal.

The County's action violates the equal protection guarantees of the United States and Texas Constitutions by denying voters and candidates the right to participate in the primary election. It violates the Texas Election Code, which requires that the general election occur in the same territory as the primary election. And it violates equal protection by, for no justification, delaying voters' ability to cast ballots.

The County asks this Court to render Texas's statutes governing candidate filing and primary elections meaningless. The Court should reject that invitation.

ARGUMENT

I. The 2026 Map violates equal protection.

The 2026 Map violates the equal protection guarantees of both the United States and Texas Constitutions. Primary elections "must be exercised in a manner consistent with" equal protection. *Bullock v. Carter*, 405 U.S. 134, 140-41 (1972). That is because "the right to vote in

such a primary for the nomination of candidates . . . like the right to vote in a general election, is a right secured by the Constitution.” *Smith v. Allwright*, 321 U.S. 649, 661-62 (1944); *id.* at 660 (characterizing “the primary and general elections” as “a single instrumentality for choice of officers”). This Court has recognized that “[t]he right to vote is fundamental, as it preserves all other rights.” *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 12 (Tex. 2011).

The County contends (at 22-23) that these authorities are inapposite because they do not establish a “prohibition upon different precinct boundaries in primary and general elections.” But this is semantics; the operative effect of the timing of the 2026 Map’s imposition is to deny large swaths of voters the right to either vote in the primary election or to be candidates for commissioner or justice of the peace this year.

In *State v. Hodges*, this Court upheld a law prohibiting a party’s general election nominee from voting in the opposing party’s primary. 92 S.W.3d 489 (Tex. 2002). In doing so, the Court reasoned that, *inter alia*, the law did not pose a severe burden on the right to vote subject to strict scrutiny because it did not operate to “preclude [the plaintiff] from voting

in the party primary of his choice” and did “not preclude [him] from running as a candidate in the general election except to the extent it requires him to be aligned with the party with whom he is affiliated.” *Id.* at 498.

Those are precisely the severe burdens Galveston County imposes here. Take Relator Derreck Rose. In March 2026, he resided in Commissioner Precinct 1, which last elected its commissioner in 2024 and will not again until 2028. The 2026 Map shifted Mr. Rose to Commissioner Precinct 4, which is on the ballot in November, but did so only *after* the primary election (and candidate filing deadline) had occurred. Accordingly, Relator Rose was denied the right to (1) vote in the primary election for commissioner and (2) consider being a candidate for commissioner.¹ That latter denial extends to independent candidacy as well. *See* Tex. Elec. Code § 142.002(b)(2) (December filing deadline). By contrast, other voters and candidates were permitted to vote in the

¹ Relators dispute the lawfulness of both the commissioner and justice of peace maps. *Contra* Response at 16.

primary and run for the position.² This is a severe burden on the fundamental right to vote and on the right to be a candidate.³

No compelling interest supports the 2026 Map's imposition in this manner. To the contrary, Judge Brown has observed that its timing "is highly suspicious." Reply App. A at 7. The County contends (at 13) that its goal was partisan. But given that the County's action resulted in vote *denial* and in precluding candidates from pursuing office, this justification fails as a matter of law. *Cf. Anderson v. Celebrezze*, 460 U.S. 780, 793 (1983) ("[I]t is especially difficult for the State to justify a restriction that limits political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status.").⁴ In any event, as Judge Brown explains, the mid-election redistricting *harmed Republicans*. "If [Galveston County] really cared about improving Republican partisan

² The County's observation (at 12) that the primary election featured unopposed candidates *underscores* the problem. It blocked potential candidates by waiting until after candidate filing had closed to unveil a new map.

³ Eligible Texans have a right to be candidates and, though not as fundamental as the right to vote, this Court subjects severe burdens on that right to strict scrutiny. *Hodges*, 92 S.W.3d at 498.

⁴ Contrast this with Tarrant County, which redrew its commissioner precincts *last summer*—well in advance of the candidate filing deadline and March 2026 primary election. *See Jackson v. Tarrant Cnty.*, 158 F.4th 571 (5th Cir. 2025).

performance, [it] would have changed the 2021 map *before* the primary election to encourage a Republican to run for Justice of the Peace in that now-Republican-leaning precinct in 2026.” Reply App. A at 7.

The County relies on *Public Integrity Alliance, Inc. v. City of Tucson*, 836 F.3d 1019 (9th Cir. 2016) (en banc), but that case is inapposite. In *Public Integrity Alliance*, the court held that Tucson did not violate equal protection by holding ward-based primary elections and at-large general elections for city council. *Id.* at 1027. The case did not involve redrawing the map between the primary and general elections. To the contrary, in *Public Integrity Alliance*, the court observed that “[e]ach voter may vote for the candidate of her choice in her ward’s primary election. No one may vote in another ward’s primary.” *Id.* The precise opposite is true in this case.

The County’s imposition of the 2026 Map violates equal protection.

II. Neither the Texas Constitution nor the Election Code permit Galveston County’s mid-election redistricting.

The County’s mid-*election* redistricting is not authorized by the Texas Constitution and violates the Election Code. The County contends (at 24-26) that Article V, Section 18 grants it unlimited power to

redistrict whenever it wishes—perhaps even the day before the general election. Not so. In *Avery v. Midland County*, this Court held that

[t]he requirements of Article V, Section 18, of the Texas Constitution are to be construed and enforced consistently with Article I, Section 3, commonly referred to as the equal rights or equal protection clause of the Texas Constitution. Equal protection of laws is not secured if persons are deprived of equality in political rights or otherwise subjected to an arbitrary exercise of governmental powers.

406 S.W.2d 422, 427 (Tex. 1966), *vacated on other grounds*, 390 U.S. 474 (1968). This forecloses the County’s preferred reading of Article V, Section 18. *See supra* Part I.⁵ But the County’s power to redistrict is also limited by its obligation to comply with state law. *See* Tex. Const. art. V, § 18(b); *see also Williams v. Castleman*, 247 S.W. 263, 267 (Tex. 1922) (observing that “reasonable legislative action” can regulate Article V, Section 18 power).⁶

⁵ That the Constitution permits officeholders and candidates to serve when redistricting affects the precinct in which they reside, Tex. Const. art. V, § 18(a), addresses an issue that stems from staggered term offices. It does not, as the County suggests (at 29), authorize redistricting between the primary and general elections.

⁶ The County’s reliance (at 25-26) on *Williams* is misplaced because that case did not involve an argument that the Legislature had restricted the timing of redistricting. Moreover, in *Avery*, this Court read *Williams* narrowly, viewing it as limited to the question of whether justice of the peace precincts could be *added*. *See Avery*, 406 S.W.2d at 426 (“This Court has not written upon the specific duty of the commissioners court under Article V, Section 18, to divide the county from time to time into four commissioners precincts for the convenience of the people.”); *id.* at 427 (citing *Williams* regarding the addition of justice of peace precincts).

“Proper construction requires reading the statute as a whole rather than interpreting provisions in isolation.” *In re Mem’l Hermann Hosp. Sys.*, 464 S.W.3d 686, 701 (Tex. 2015). “We should not give one provision a meaning out of harmony or inconsistent with other provisions, although it might be susceptible to such a construction standing alone. We must presume that the Legislature intends an entire statute to be effective and that a just and reasonable result is intended.” *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001) (internal citation omitted).

The Election Code is a holistic regulation of the entire electoral process—from candidate filing to general election. Candidates for county government positions, whether partisan or independent, must declare their candidacy by “6 p.m. on the second Monday in December of an odd-numbered year.” Tex. Elec. Code § 172.023(a) (partisan candidates); *id.* § 142.002(b)(2) (independent candidates). By that same deadline, those candidates must submit any petition signatures. *Id.* A petition signature “is valid if . . . the signer, at the time of signing, is a registered voter of the territory from which the office sought is elected.” Tex. Elec. Code § 141.063(a)(1) (emphasis added).

Candidates are only eligible to run if they have resided “*in the territory from which the office is elected*” for six months immediately preceding” the December filing deadline. Tex. Elec. Code § 141.001(a)(5)(A) & (B) (emphasis added). An exception is made “if an order creating the precinct or changing the boundary of the precinct” is adopted “less than seven months before” the December filing deadline, *id.* § 141.002(a), not seven months *after* that deadline (as here).

“[N]ominees in the general election for offices of state and county government . . . must be nominated by primary election, held as provided by this code.” Tex. Elec. Code § 172.001. The county clerk must issue a notice of the primary election that satisfies the same requirements as notices of general elections, *see* Tex. Elec. Code § 172.1112(a)-(b), including identifying “each office to be filled,” *id.* § 4.004(b). The primary election must occur on the first Tuesday in March in each even-numbered year. *See* Tex. Elec. Code § 41.007.

To be eligible to vote, a person must, *inter alia*, “be a resident of *the territory covered by the election for the office.*” Tex. Elec. Code § 11.001(a)(2) (emphasis added). After the primary election, the county party chair “shall certify” the “candidate who is nominated for a county

or precinct office *for placement on the general election ballot.*” Tex. Elec. Code § 172.117(a) (emphasis added).

In the County’s view, this is all meaningless. The County contends (at 28) that nothing in the Election Code “bind[s] the two geographic boundaries”—*i.e.*, the territory in which the primary and general election are held—“together.” All that the County says matters is that the nominees who result from the March primary have their names associated with *some* office on the November general election, irrespective of the precinct number to which they were nominated⁷ or whether the primary and general election electorates bear any relation at all to one another.

Not so. By requiring primary candidates’ residence, petition signers, and primary voters to all be linked to the “territory” from which the office is “*elected*,” Tex. Elec. Code §§ 11.001(a)(2), 141.001(a)(5)(A),

⁷ The County has *still* not clearly stated whether voters in justice of the peace precincts 3 or 4 will cast ballots in November. In the span of two sequential paragraphs, the County first says (at 16) that justice of the peace precincts “one, two, and three” are “up for election this November,” and then that the candidate nominated for precinct 3 “will now run in the general election [for] . . . precinct four.” Which is it? Regardless, the Election Code does not permit the County to swap which *office* will be on the ballot between the March primary election and the November general election. *See* Tex. Elec. Code § 172.117(a) (nominee for each office is certified “for placement on the general election ballot”).

141.063(a)(1) (emphasis added), the Election Code mandates that the configuration of the precincts remain identical between the primary and general elections. No candidate is *elected* in the primary election, that occurs only in the general election. The Election Code says so expressly. See Tex. Elec. Code § 1.005(7) (“General election for state and county officers’ means the general election at which officers . . . are *elected*.”) (emphasis added); *id.* § 1.005(14) (“Primary election’ means an election held by a political party under Chapter 172 to select its *nominees* for public office”) (emphasis added). The entire electoral system established by statute—from petition circulation to candidate filing to the primary election to certification of nominees to the November election—is all keyed off the territory of the *general election* for each office—the only election at which a candidate is “elected.”

Rather than treat the Election Code in this coherent manner, the County plucks isolated provisions out of their context. The Court should reject this invitation to launch the Election Code into a war with itself.

First, the County cites Texas Local Government Code section 81.021(a), which regulates when after “the next general election” a map becomes effective. This provision merely ensures that the precincts in

which the candidates are elected align with the precinct boundaries in effect when their term begins. *Id.* And the phrase the County highlights (at 30) applies to elections occurring “*before* the effective date of the change in boundaries,” Tex. Local Gov’t Code § 81.021(a) (emphasis added)—not the situation here. In any event, this Court has held that phrases like “next general election” mean “the next election at which the candidate, subject to reasonable election regulations, is eligible.” *In re Dallas Cnty.*, 697 S.W.3d 142, 163-64 (Tex. 2024). Here, the “reasonable election regulations” that specify candidate eligibility are all those regulating the electoral process from petition circulation to candidate filing to the primary election. The “next general election” to which section 81.021(a) thus refers is the general election that occurs after all those predicate steps are completed; it does not purport to govern (or permit) post-primary, mid-election redistricting. This is why county redistricting always (until now) happens before the candidate filing period.

Second, the County contends (at 31-34, 35-37) that the Election Code’s careful regulation of when county election precincts may be altered—including an express prohibition on doing so between the primary and general election—is irrelevant. But the 2026 Map splits

numerous election precincts, which led the County to reconfigure those election precincts between the primary and general election—the very thing section 42.033(c) prohibits. *See* Reply App. B.⁸ And contrary to the County’s contention (at 32-33), its mid-*election* redistricting was not authorized by section 42.033(c)’s exception for redistricting pursuant to Article V, Section 18. As discussed above, Article V, Section 18 cannot, consistent with either equal protection or the Texas Election Code, be read as authorizing this mid-election redistricting. But that does not strip the statutory exception of its meaning. The two off-cycle commissioner precincts *can* swap territory in the time between the primary and general elections for the two on-cycle precincts. This is meaningful, as a glance at the extensive shared boundary of Galveston County Precincts 1 and 3 reveals. *See* Respondents’ App. 2. Moreover, contrary to the County’s contention (at 33), this interpretation of section 42.033(c)’s exception would not jeopardize decennial redistricting—it would just require it to occur *before* the primary election—as it always does.

⁸ The County’s assertion (at 36) that “county election precincts were used in the 2026 primary election in March and will be used in the general election in November” is thus misleading. It has unlawfully changed the election precinct boundaries.

Third, the County contends (at 34) that Relators’ reading—*i.e.*, giving meaning to the Election Code’s provisions governing candidate filing and primary elections—“leads to absurd results.” This is so, it says, because a county might abruptly discover after a primary but before a general election that its precincts are unconstitutionally malapportioned, a natural disaster might render an area uninhabitable, or a court order could mandate immediate redistricting. Of course, a court can compel compliance with the Constitution. But a post-primary, pre-general election natural disaster would not warrant redistricting on account of “uninhabitable” territory. Such territory must still be assigned to a precinct, and the population basis of the redistricting must still be the “the most recent federal census.” Tex. Const. art. V, § 18(a) .

III. The delayed voting caused by the 2026 Map violates equal protection.

The delayed voting occasioned by the 2026 Map violates equal protection. In all the cases in which delayed voting has been excused, there was *some* valid governmental purpose justifying it—usually complying with equal population requirements. *See* Response at 37-39 (citing cases); *see Pate v. El Paso Cnty.*, 337 F. Supp. 95, 96 (W.D. Tex. 1970) (delayed voting “to comport with” equal population requirement).

Here, the County cites (at 13) partisan gerrymandering as its justification, but as Judge Brown has explained (and the County does not dispute), that goal will not be realized “until the 2028 election,” Reply App. A at 6, leaving the County with *no* justification for causing delayed voting *now*. No court has ever authorized delayed voting unsupported by *any* rationale whatsoever. This Court should not be the first.

IV. Relators promptly and properly sought relief from this Court.

Relators promptly and properly sought relief from this Court. It was not until the July 28 federal court hearing that the County announced publicly that the new map would govern the November general election, as opposed to the next full election cycle. Indeed, Judge Brown likewise had the same question as the plaintiffs in the federal court litigation. Pet. App. at 7. If a federal judge was unsure from reading the County’s order adopting the new map that it would govern the November election, Relators likewise reasonably were. Indeed, the County *still* has not made clear whether it intends to hold a general election under the boundaries of the 2026 Map’s justice of the peace Precinct 3 or 4. *See supra* note 7. The County’s building-the-plane-while-flying-it approach to running this election does not render Relator’s petition untimely.

Moreover, considering upcoming election deadlines, Relators were correct to file their petition in this Court. There was not time to first seek relief in lower courts, especially when Relator's federal constitutional rights are also at stake. Given the need for urgent relief, Relators prudently filed an original emergency petition in this Court.

Finally, as illustrated above, Relators seek mandamus "to compel the performance of [a] duty imposed by law." Tex. Elec. Code § 273.061(a). The United States and Texas Constitutions and the Election Code prohibit the imposition of the 2026 Map and require the general election to be conducted pursuant to the map that governed the primary election.

PRAYER

Relators request that the Court grant the petition and issue a writ of mandamus ordering Respondents not to implement the 2026 Map.

August 11, 2026

Respectfully submitted,

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*Motion for admission *pro hac vice*
forthcoming

CERTIFICATE OF COMPLIANCE

In compliance with Tex. R. App. P. 9.4(i)(3), I certify that this brief was prepared with Century Schoolbook typefaces, in 14-point height for body text and 12-point text for footnotes. I further certify that this document contain 3,227 words, excluding the portions of the document exempted by Rule 9.4(i)(1).

/s/ Chad W. Dunn

Chad W. Dunn

APPELLATE RULES 52.3(J), 52.3(K)(1)(A) AND 52.7(A) CERTIFICATION

My name is Chad Dunn. I am over the age of 18, and I am fully competent to execute this Certification. I am counsel for Relators in this case. I am the person filing this Reply in support of Relator's Petition.

I have reviewed the foregoing Reply and concluded that every factual statement in the Reply is supported by competent evidence included in the Appendix or Record.

The Record contains a true and correct copy of every document that is material to the Relators' claim for relief.

/s/ Chad W. Dunn

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CERTIFICATE OF SERVICE

I certify that on August 11, 2026, a true and correct copy of the foregoing document has been served via the Court's e-filing system on the below parties:

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INDEX TO APPENDIX

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Tab A:

**August 7, 2026 Order
of United States District Court Judge
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ENTERED

August 07, 2026

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISIONTERRY PETTEWAY, *et al.*,

Plaintiffs,

VS.

GALVESTON COUNTY, TEXAS, *et al.*,

Defendants.

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§
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3:22-CV-57

ORDER DENYING SUGGESTION OF MOOTNESS

Before the court is the defendants' suggestion of mootness. Dkt. 310. For the following reasons, the court finds the plaintiffs' remaining claims are not moot.¹

1. The Legal Standard

"Article III's case or controversy requirement permits federal courts to adjudicate only live disputes—a party must retain a legally cognizable interest in the outcome of an issue, or its resolution is moot." *Hinkley v. Envoy Air, Inc.*, 968 F.3d 544, 548 (5th Cir. 2020) (quoting *Campanioni v. Barr*, 962 F.2d 461, 464 (5th Cir. 1992)) (citation modified). There must be

¹ The defendants re-assert lack of standing because the plaintiffs sought relief only for a political coalition. See Dkts. 310 at 8 n.4; 289 at 7–9. The Petteway plaintiffs respond, "[u]nless Galveston has redistricted Plaintiffs out of the county entirely, they are subject to its redistricting map and have standing to raise their legal claims against it." Dkt. 318 at 11 n.3. The court finds the plaintiffs have standing to proceed with their claims.

an “actual controversy” throughout “all stages of a case,” and “any set of circumstances that eliminates actual controversy after the commencement of a lawsuit renders that action moot.” *Robinson v. Ardoin*, 731 F.Supp.3d 711, 718–19 (M.D. La. 2024) (quoting *Yarls v. Bunton*, 905 F.3d 905, 909 (5th Cir. 2018) and *DeOtte v. Nevada*, 20 F.4th 1055, 1064 (5th Cir. 2021)) (citation modified).

There are two general exceptions to mootness: *voluntary cessation* and *capable of repetition yet evading review*. This order focuses on the former. “A defendant’s voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.” *Robinson*, 731 F.Supp.3d at 719 (quoting *Freedom From Religion Found., Inc. v. Abbott*, 58 F.4th 824, 833 (5th Cir. 2023)) (quotation modified). “In general, a defendant’s voluntary conduct moots a case only if it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Id.* (quoting *Freedom From Religion Found., Inc.*, 58 F.4th at 833) (quotation modified).

“[G]overnment entities bear a lighter burden” than the absolutely-clear standard “in proving that the challenged conduct will not recur once the suit is dismissed as moot.” *Id.* (quoting *Freedom From Religion Found., Inc.*, 58 F.4th at 833) (quotation modified). The Fifth Circuit has at times applied a

more “relaxed standard” to “voluntary governmental cessation of possibly wrongful conduct” and treated it with “some solicitude.” *Speech First, Inc. v. Fenves*, 979 F.3d 319, 328 (5th Cir. 2020) (quoting *Sossamon v. Lone Star State of Texas*, 560 F.3d 316, 325 (5th Cir. 2009), *aff’d sub nom. Sossamon v. Texas*, 563 U.S. 277, 131 S. Ct. 1651, 179 L.Ed.2d 700 (2011)) (choosing “not [to] adopt the relaxed standard, but assum[ing] its applicability *arguendo* for the purposes of this case” regarding voluntary cessation by a public university).

This is because the court applies a presumption of good faith to state actors. *See Robinson*, 731 F.Supp.3d at 719. “[U]nless there is evidence to the contrary, the [c]ourt assumes that formally announced changes to official government policy are not mere litigation posturing.” *Id.* (quoting *Freedom From Religion Found., Inc.*, 58 F.4th at 833) (quotation modified). Additionally, “the government’s ability to reimplement the statute or regulation at issue is insufficient to prove the voluntary-cessation exception.” *Id.* (quoting *Freedom From Religion Found., Inc.*, 58 F.4th at 833) (quotation modified).

Here, the parties dispute the appropriate standard. The defendants emphasize the court’s obligation to apply a presumption of good faith and, thereby, hold the defendants to a lesser standard. Dkt. 310 at 4–5. In

contrast, the plaintiffs argue that a “governmental defendant may be accorded ‘some solicitude’ but still must satisfy the ‘absolutely clear’ standard.” Dkt. 318 at 2 (quoting *Speech First*, 979 F.3d at 328). The plaintiffs further note that the Supreme Court recently reinforced that even government defendants must meet the high burden under the voluntary-cessation exception. *Id.* at 2 n.1; Dkt. 317 at 7 n.4; see *FBI v. Fikre*, 601 U.S. 234, 241 (2024) (concluding that the “formidable burden” a defendant has to prove voluntary cessation “holds for governmental defendants no less than for private ones”). Even though the Fifth Circuit has not yet “decide[d] whether the good-faith presumption survives *Fikre*,” the Circuit “note[s] that *Fikre* makes no mention of that presumption.” *Students for Fair Admissions, Inc. v. Univ. of Texas at Austin*, 142 F.4th 819, 826 n.10 (5th Cir. 2025).

Like the Fifth Circuit in *Speech First* and *Students for Fair Admissions*, this court will not definitively decide whether the defendants need only satisfy a lower burden, but rather concludes that the case is not moot regardless of which burden applies and regardless of whether the defendants receive a presumption of good faith. See *Speech First*, 979 F.3d at 328 (“We do not adopt the relaxed standard, but assume its applicability *arguendo* for purposes of this case.”); *Students for Fair Admissions*, 142 F.4th at 826

(“Because UT repealed its previous admissions policy, the UT Board of Regents repealed Rule 40304, and there is no indication that either intends to reconsider its decisions, the case is moot regardless of whether UT receives a presumption of good faith.”).

2. The Three Factors

The presumption of good faith can be overcome “for three reasons: (1) the absence of a controlling statement of future intention; (2) the suspicious timing of the change; and (3) the [defendant’s] continued defense of the challenged policies.” *Speech First*, 979 F.3d at 328 (citing *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 769–70 (6th Cir. 2019)); see *Robinson*, 731 F.Supp.3d at 719; cf. *DeJohn v. Temple Univ.*, 537 F.3d 301, 311 (3d Cir. 2008) (rejecting mootness by voluntary cessation after considering only the timing of a policy change and continued defense of contested policy). In this case, all three factors weigh in favor of the plaintiffs.

First, the defendants have made no controlling statement of future intention. As the Petteway plaintiffs assert, the defendants’ contention in their briefing that “[t]here is no threat that the 2021 map will be reinstated” is insufficient and lacks any evidentiary support. Dkt. 310 at 7; see *Speech First*, 979 F.3d at 328–29 (“Fenves’s statements in brief are not a controlling statement of future intention.”). Like in *Speech First*, the controlling entity

here—the Commissioners Court—has not “affirmatively stated,” whether in a sworn affidavit or otherwise, that it has no intention of reinstating the 2021 map. *Speech First*, 979 F.3d at 328 (quoting *Schlissel*, 939 F.3d at 769).

Second, the 2026 map’s timing is suspicious, even presuming that the new map is not litigation posturing. The defendants’ stated reasons for the map’s change are those listed in the Commissioners Court’s resolution for its June 8, 2026, meeting: (1) compliance with applicable law, (2) the 2020 Census results, and (3) “improving partisan performance in favor of Republican candidates.”² Dkt. 321-1; see Dkt. 321 at 14. But as the defendants acknowledged during the court’s hearing, the new map does not change partisan outcomes in the 2026 general election except to make the commissioners’ precincts slightly more Republican. See Dkt. 322 at 38:11–39:7. The primary partisan change under the new map is that the winner of the Constable election in Precinct 3 will likely be a Republican rather than a Democrat—as the current incumbent is—but not until the 2028 election. See *id.* Moreover—and oddly for a map drawn to improve Republican prospects—under the 2026 map a Democratic nominee for Justice of the Peace will run unopposed in a precinct that, as newly drawn, would otherwise

² The order adopting the 2026 map does not enumerate these same justifications. Dkt. 310-1. Rather, the order states generally that the “Commissioners’ Court has determined that the interests of the people of the county are best served by changing the existing Commissioners, Constables, and Justices of the Peace Precinct Boundaries.” *Id.*

likely elect a Republican. *See id.* at 36:12–23, 37:20–24, 40:9–17. If the defendants really cared about improving Republican partisan performance, they would have changed the 2021 map *before* the primary election to encourage a Republican to run for Justice of the Peace in that now-Republican-leaning precinct in 2026.

Indeed, the defendants could have changed the 2021 map to accomplish these partisan goals any time before this election cycle. The defendants did not have to wait until *between* the primary and general elections this cycle to change the map. And nothing in the Supreme Court’s intervening redistricting opinions requires the Commissioners Court to adopt a new map in the middle of this election cycle. *See, e.g., Louisiana v. Callais*, 146 S. Ct. 1131, 1146–47 (2026). Even with the presumption of good faith in their favor, the defendants’ timing is highly suspicious.

Third, the defendants continue to defend the 2021 map on its merits—even in the same hearing as they argued this litigation is moot. *See generally* Dkts. 316, 322.

Accordingly, the court finds the voluntary-cessation exemption applies, and the plaintiffs’ claims are not moot.³

³ The defendants’ mootness argument is also undermined by the plaintiffs’ recent announcement that they are seeking nominal damages in this litigation. Dkt. 324.

Additionally, the court grants the plaintiffs' request for leave to supplement their complaints as represented to the court during its hearing on July 28, 2026. *See* Dkt. 322 at 41:19–43:22.

Signed on Galveston Island this 7th day of August, 2026.



JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE

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Tab B:

August 3, 2026 Order Establishing Election Precinct Boundaries

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On the 3rd day of August 2026, the Commissioners' Court of Galveston County, Texas, convened in a regularly scheduled meeting with the following members thereof present:

Mark A. Henry, County Judge;
Darrell A. Apffel, Commissioner, Precinct No. 1;
Joe Giusti, Commissioner, Precinct No. 2;
Hank Dugie, Commissioner, Precinct No. 3;
Robin Armstrong, MD, Commissioner, Precinct No. 4; and
Dwight D. Sullivan, County Clerk

when the following proceedings, among others, were had, to wit:

An Order Establishing the Boundaries of Election Precinct Lines in Galveston County
--

Whereas, the redefining of the boundary lines of justice of the peace, constables, and commissioner precincts, and for the convenience of voters, it is necessary for the Commissioners' Court to address the matter of the boundary lines of the election precincts throughout the county to give effect to a redistricting plan under Texas Election Code §42.032; and

Whereas, Texas Election Code §42.005 provides that Texas county election precincts, including consolidated precincts, may not contain territory from more than one of each of the following types of territorial units:

- (1) a commissioners precinct;
- (2) a justice precinct;
- (3) a congressional district;
- (4) a state representative district;
- (5) a state senatorial district; or
- (6) a State Board of Education district.

Whereas, although the boundary lines of some of the election precincts may be re-established without change, it is also necessary to establish new election precincts, to combine portions of election precincts, to change the boundaries of other election precincts and to renumber several election precincts; and

Whereas, since the population in Galveston County is, according to the 2020 federal census, 350,682, under the provisions of the V.T.C.A. Election Code §42.006, each election precinct should contain at least 100 but no more than 5,000 registered voters; and

Whereas, a number of the existing election precincts are not in compliance with Election Code V.T.C.S. §42.006; and

Whereas, in accordance with V.T.C.A. Election Code §42.001 in establishing the boundaries of the election precincts, the Commissioners' Court attempted to make them compact and contiguous. In addition, the Court considered the availability of buildings to use as polling

places so that a voter in each precinct will not have to travel more than 25 miles from the voter's residence to reach the polling place for the precinct; and

It is Therefore Ordered by the Commissioners' Court of Galveston County, Texas, that, pursuant to V.T.C.A. Election Code §42.032 effective September 1, 2026:

- 1) The following election precincts have no changes in their boundary lines or their precinct number:

Pct. 1	Pct. 2	Pct. 3	Pct. 4
137	202	333	401
142	203	340	421
143	204	341	422
146	206	351	429
148	214	353	431
150	215	355	432
151	216	371	436
166	218	384	460
167	221	387	461
172	223	389	462
191	224	398	481
193	225	399	482
	274		483
	275		492
	276		495
	277		
	278		

- 2) The following election precincts have no changes in their boundary lines; only their precinct number changed:

Current	Proposed	Current	Proposed
144	344	370	170
152	352	412	338
168	211	434	234
185	385	435	335
196	496	438	338
230	130	439	339
230.1	130.1	439.1	335
245	145	458	258
356	456	479	279
357	457		

- 3) The following election precincts are established or have had changes in their boundary lines:

Pct. 1	Pct. 2	Pct. 3	Pct. 4
158	226	312	419
159	227	338	420
165	228	339.1	421
173	232	351	427
197	232.1	354	428
	232.3	363	430
	268	364	432.2
		388	438
		390	464
		392	479
			480
			480.1

- a) 158: new precinct absorbed portion of 159
- b) 159: split to create new precinct 158
- c) 165: split to create new precinct 351
- d) 173: enlarged to include a portion of 390
- e) 197: portion of 197 merged into 392
- f) 226: portion of 226 merged into 427
- g) 227: portion of 227 merged into 228
- h) 228: absorbed portion of 227
- i) 232: new precinct absorbed 232.1 and 232.3
- j) 232.1: merged into 232
- k) 232.3: merged into 232
- l) 268: merged into 211
- m) 312: merged into 338
- n) 338: absorbed portion of 419
- o) 339.1: merged into 339
- p) 351: new precinct absorbed some of 165
- q) 354: portion of 354 merged into 364
- r) 363: split to create new precinct 421
- s) 364: enlarged to include a portion of 354
- t) 388: portion of 388 merged into 364
- u) 390: portion split into 173
- v) 392: enlarged to include portion of 197
- w) 418: new precinct absorbed portion of 419
- x) 419: enlarged to include portion of 438
- y) 420: split to create new precinct 430
- z) 421: new precinct absorbed portion of 363
- aa) 427: absorbed a portion of 226

- bb) 428: absorbed a portion of 227
- cc) 430: new precinct absorbed portion of 420
- dd) 432.2: merged into 432
- ee) 438: portion of 438 merged into 419
- ff) 464: absorbed portion of 354
- gg) 479: new precinct absorbed portion of precinct 480
- hh) 480: split to create new precinct 479
- ii) 480.1: merged into 480

- 4) That the total number of election precincts is now 95.
- 5) That pursuant to V.T.C.A. Election Code §42.003, the boundaries for the 95 election precincts shall be established and re-defined as follows:

See Attached

Exhibit "A"- Election Precinct Boundary Descriptions
Exhibit "B"- Election Precinct by Coordinates for Shapefile

Be it Further Ordered that pursuant to V.T.C.A. Election Code §42.035(1), a brief - description in general terms of the election precinct changes be published both in Spanish and in English in the Daily News, a newspaper of general circulation in Galveston County, once a week for three (3) consecutive weeks.

Be it Further Ordered that pursuant to V.T.C.A. Election Code §42.034, a certified copy of this **Order** be delivered to the voter registrar not later than the seventh day after this date.

Be it Further Ordered that pursuant to V.T.C.A. Election Code §42.035(d), not later than the 20th day after the date of this **Order**, the County Clerk deliver to the Secretary of State a copy of the notice published.

Be it Further Ordered that pursuant to V.T.C.A. Election Code §42.037, not later than the 120th day after the date of this **Order**, the County Clerk deliver to the Secretary of State a map depicting the affected precinct boundaries as changed and showing the number of each precinct.

Upon Motion of Commissioner Hank Dugie and Seconded by
Commissioner Darrell Apffel the above Order passed with
5 votes in favor thereof and 0 votes against.

Passed and Approved this 3rd day of August, 2026.



County of Galveston

By:

Mark Henry
Mark Henry, County Judge

Darrell A. Apffel
Darrell A. Apffel, Comm., Pct. #1

Joe Giusti
Joe Giusti, Comm., Pct. #2

Stephen D. Holmes
Stephen D. Holmes, Comm., Pct. #3

Robin Armstrong
Robin Armstrong, MD, Comm., Pct. #4

HANK
DUGIE

Automated Certificate of eService

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Gwen Kelly on behalf of Chad Dunn

Bar No. 24036507

gwen@brazilanddunn.com

Envelope ID: 118466848

Filing Code Description: Reply to Petition

Filing Description: Relators Reply In Support of Original Emergency

Petition for Writ of Mandamus

Status as of 8/11/2026 11:18 AM CST

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