

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

TERRY PETTEWAY, et al.

Plaintiffs,

v.

GALVESTON COUNTY, TEXAS, et al.

Defendants.

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Civil Action No. 3:22-CV-00057  
(Consolidated)

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**DEFENDANTS', GALVESTON COUNTY'S AND HON. JUDGE MARK HENRY'S, MOTION TO DISMISS SECOND AMENDED COMPLAINT OF HON. MICHAEL MONTEZ, HON. TERRY PETTAWAY, HON. SONNY JAMES, HON. DERRICK ROSE, AND HON. PENNY POPE**

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COMES NOW, Defendants Galveston County, Texas, and Mark Henry, in his capacity as Galveston County Judge, (“Defendants”) and file this MOTION TO DISMISS (“Motion”) pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6). Defendants ask this Court to dismiss Plaintiffs’ claims for the following reasons:

*First*, this Court lacks jurisdiction because, although adorned in language sounding in the Voting Rights Act and the Fourteenth Amendment, Plaintiffs’ allegations amount to partisan gerrymandering claims.

*Second*, this Court lacks jurisdiction because the case is now moot. On May 18, 2022, County Judge Mark Henry appointed Dr. Robin Armstrong to serve as Commissioner for Precinct 4. Dr. Armstrong is himself African American. Now, the five-member Commission has two African American Commissioners. If Plaintiffs contend that only Democrats are the candidates of choice for Black and Latino voters, then this Court should dismiss for lack of jurisdiction as a non-justiciable political question. If Plaintiffs contend that only African Americans can represent the views of minority voters, then Plaintiffs’ case is now moot because there are two minority Commissioners on the five-member Commissioners Court, providing minority representation that is proportional to the population. Plaintiffs no longer have a live controversy.

*Third*, this Court lacks jurisdiction to adjudicate Plaintiffs’ racial gerrymandering claim. Racial gerrymandering claims are district-specific. Jurisdiction-wide claims are prohibited. Plaintiffs fail to identify which precinct is racially gerrymandered. This is fatal because, among other reasons, Plaintiffs do not have a plaintiff in Precinct 4.

Without identifying which precinct is a racial gerrymander, this Court cannot assure itself that it has jurisdiction. Accordingly, this Court lacks jurisdiction to adjudicate this claim.

*Fourth*, Plaintiff Michael Montez lacks standing because he resides in Commissioners Precinct 1 under both the 2012 Benchmark Plan and under the 2021 Enacted Plan. There are no allegations that he would reside in Commissioners Precinct 3, the only Precinct that Plaintiffs allege could be a minority opportunity-to-elect precinct. Furthermore, the percentage share of minority Citizen Voting Age Population (“CVAP”) increased in Precinct 1. Plaintiff Montez cannot complain that he is injured when his prospects for electing a candidate of choice have increased.

*Fifth*, relatedly, because Plaintiff Montez lacks standing, Plaintiffs fail to state a claim under the Voting Rights Act. Plaintiff Montez is the only Latino Plaintiff identified in this Complaint. Without a Latino Plaintiff, the Petteway Plaintiffs cannot allege that the minority CVAP in Benchmark Precinct 3 is sufficiently large and geographically compact. The Petteway Plaintiffs therefore fail the first *Gingles* precondition.

*Sixth*, Plaintiffs also fail to allege sufficient facts showing that Defendants enacted the Commissioners Precinct plan with illicit intent. This Court should therefore dismiss Plaintiffs intentional vote dilution claims.

Instead of arguing legal theories that support the existing facts, Plaintiffs scramble to create facts that support their legal theories. The Court should not bite at Plaintiffs’ creative lure to achieve partisan gains by attempting to disguise their partisan objectives as racial complaints. After all, to borrow from Shakespeare, “a [partisan claim] by any other name” is still a partisan claim.

## INTRODUCTION

Redistricting is always a complex endeavor. In addition to requiring strict adherence to sometimes conflicting constitutional and statutory requirements, redistricting also involves balancing political judgments and grouping voters in sensible ways that minimize the risk of confusion for administrators of elections.<sup>1</sup> Adding to the complexity of the redistricting process for this decade was the fact that the 2020 Census was conducted in the midst of a pandemic. Despite these obstacles, and Plaintiffs' unsupported legal conclusions couched as factual allegations to the contrary, the Galveston County Commissioners Court (the "Commission") was able to timely enact a new precinct map for the County Commission that clearly passes constitutional and statutory muster. Unfortunately for Plaintiffs, failing to obtain their desired map does not provide them with legal means to enact through the law what they were unsuccessful in enacting through political means. Such is not the role of federal courts. After all, redistricting "inevitably has and is intended to have substantial political consequences"—such is the case with the Commission. *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2497 (2019) (quoting *Gaffney*, 412 U.S. at 753).

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<sup>1</sup> *See Abbott v. Perez*, 138 S. Ct. 2305, 2315 (2018) (observing that "[s]ince the Equal Protection Clause restricts consideration of race and the VRA demands consideration of race, a legislature attempting to produce a lawful districting plan is vulnerable to 'competing hazards of liability[,]'" and describing redistricting as a "legal obstacle course" (citations omitted)); *see also Gaffney v. Cummings*, 412 U.S. 735, 753 (1973) (observing that the substantial political consequences of redistricting are intentional and inevitable); *Miller v. Johnson*, 515 U.S. 900, 915 (1995) ("Electoral districting is a most difficult subject for legislatures, and so the States must have discretion to exercise the political judgment necessary to balance competing interests.").

## FACTUAL BACKGROUND

Congress mandates that the Census Bureau release redistricting data by April 1, 2021. *See* 13 U.S.C. § 141(c). Because of the pandemic, the Census Bureau was unable to release to the states the data necessary to conduct redistricting until August 12, 2021, and even then did not release the data in an easier-to-use format until September 16, 2021.<sup>2</sup> *See Alabama v. U.S. Dep’t of Com.*, 546 F. Supp. 3d 1057, 1065-66 (M.D. Ala. 2021) (three-judge court). Compounding the already complex and now compressed process, the Census Bureau added a new wrinkle to the redistricting calculus: differential privacy. *See id.* at 1066. Differential privacy is a disclosure avoidance method that “injects a calibrated amount of noise into the raw census data to control the privacy risk of any calculation or statistic.” *Id.* at 1064. As the Census Bureau itself explains, the very goal of differential privacy “is to obscure the presence or absence of any individual (in a database) . . . .”<sup>3</sup> Although differential privacy protects confidentiality, “it also makes the data less accurate.” *Id.* Thus, the already complex process of redistricting was made even more complicated because the Census Bureau released less accurate data five months later than was statutorily required.

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<sup>2</sup> *See* U.S. Census Bureau, *Census Bureau Delivers 2020 Census Redistricting Data in Easier-to-Use Format*, U.S. Census Bureau (Sept. 16, 2021) available at <https://www.census.gov/newsroom/press-releases/2021/2020-census-redistricting-data-easier-to-use-format.html#:~:text=SEPTEMBER%2016%2C%202021-,Census%20Bureau%20Delivers%202020%20Census,in%20Easier%2Dto%2DUse%20Format&text=SEPT.,on%20data.census.gov> (last visited June 8, 2022).

<sup>3</sup> *See* U.S. Census Bureau, *Disclosure Avoidance for the 2020 Census: An Introduction 6*, U.S. Government Publishing Office (Nov. 2021) available at <https://www2.census.gov/library/publications/decennial/2020/2020-census-disclosure-avoidance-handbook.pdf> (last visited June 8, 2022).

The five-month delay compressed the time that the Commission had to analyze the data, craft, and draft new precinct districts. Texas's Constitution requires that counties be divided into four commissioner precincts. Tex. Const. art. V, § 18(b). Texas law does not establish a deadline to complete redistricting of commissioner court precincts, but the U.S. Constitution requires that commissioner courts' precincts be substantially equal in population. *See Avery v. Midland Cnty.*, 390 U.S. 474, 484-485 (1968). As the Texas Secretary of State made clear, for those candidates wishing to compete in Texas's 2022 elections, the candidate qualifying period began on November 13, 2021. *See* Tex. Elec. Code § 172.023; *see also* Keith Ingram, Director of Elections, Election Advisory No. 2021-14 (Nov. 1, 2021).<sup>4</sup> Accordingly, the Secretary of State established November 13, 2021, as the deadline for county commissioner precinct districts to submit their new district lines. The Commission was therefore required to conduct its redistricting process in less than two months. Generally, the good faith of the legislature is presumed, but under these circumstances, the good faith of the Commissioners Court's redistricting of its precincts should be presumed. *See Miller*, 515 U.S. at 915. Even when Plaintiffs allege a history of discrimination, this Court still presumes that the Commissioners Court acted in good faith. *Abbott*, 138 S. Ct. at 2324.

During these two months, any member of the Commission had the authority to place redistricting on the Commission's agenda at any of its regularly scheduled meetings. *See* Tex. Att'y Gen. Op. No. DM-228 at 3 (1993) (concluding that "a county

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<sup>4</sup> Available at <https://www.sos.texas.gov/elections/laws/advisory2021-14.shtml> (last visited May 4, 2022).

commissioner may place a matter on the agenda for a meeting”). In fact, Texas law prohibits enacting procedures that would “preclude a member of the court from placing an item on an agenda so that it may be discussed publicly.” *Id.* Texas law further prohibits any procedure that would preclude a representative on the Commission “from at a minimum providing a public forum for discussion of any particular issue.” *Id.*<sup>5</sup>

Furthermore, from May 28, 2021 to December 31, 2021, the Commission held twenty-one public meetings. *See* Ex. A. All regular biweekly meetings of the Commissioners Court took place at 722 Moody in Galveston, Texas in accordance with Texas law requiring the Court to conduct its regular meetings at the County seat. All other “special” meetings of the Commissioners Court took place at 174 Calder Dr. in League City, Texas. *See id.*; Tex. Local Gov’t Code § 81.005 (b), (c). All of the meetings began during normal business hours with the majority starting at 9:30 a.m. As previously mentioned, *any* Commissioner could have placed redistricting on the agenda of *any* one of these meetings, but none did. *See* Tex. Att’y Gen. Op. No. DM-228 at 3.

After September 16, 2021, Galveston County attorneys met with the Commissioners, including Commissioner Holmes, to understand what their desires were for districts. *See* Pls.’ Second Am. Compl. ¶ 96, ECF No. 42 (hereinafter “SAC”). Then, on October 29, 2021—two weeks before the public meeting on the maps—Galveston

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<sup>5</sup> The Fifth Circuit has observed that “[t]he Texas Constitution authorizes the Attorney General to issue legal advice in the form of opinions to government entities and officials. . . .These opinions clarify the legal obligations and liabilities of state officials.” *Freedom from Religion Found., Inc. v. Mack*, 4 F.4th 306, 309 n.2 (5th Cir. 2021). Those government officials who rely on the Attorney General’s opinions in their public duties may use the opinion as a shield against personal liability. *See id.*

County posted alternative redistricting plans, Map 1 and Map 2, on the County website. The website permitted the public to submit comments concerning the two redistricting plans.<sup>6</sup> Then, on November 9, 2021, the Commission posted a public notice about a special meeting on redistricting to be held on November 12, 2021. Ex. A. Consistent with all its other public meetings in 2021, the meeting was held during normal business hours. *Id.* Consistent with every other special meeting called in 2021, the meeting was held at the Calder Meeting location in League City, Texas. *Id.* And, after receiving public comment, the Galveston County Commissioners Court approved Map 2. It is within this context that Plaintiffs sued.

Terry Petteway, Derrick Rose, Michael Montez, Sonny James, and Penny Pope (collectively “Plaintiffs”) filed their Second Amended Complaint on May 25, 2022. *See* SAC. Plaintiffs are all citizens, registered voters and are either current or former elected officials of Galveston County. *Id.* ¶ 12. All Plaintiffs allege that the Commissioners Court plan enacted in 2021 (“Enacted Plan”) deprives Plaintiffs of an equal opportunity to elect their candidate of choice. *See id.* ¶¶ 17, 21, 25, 28, 31. Four of the Plaintiffs are African American, *id.* ¶¶ 14, 18, 26, 29, and one Plaintiff is Latino. *Id.* ¶ 22. Under the current Enacted Plan, Plaintiffs reside in Precincts 1, 2, and 3. *Id.* ¶¶ 16, 20, 24, 27, 30. No Plaintiff resides in Commissioners Precinct 4.

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<sup>6</sup> *See* County of Galveston, Texas, *Galveston County Commissioners Proposed Precincts*, available at <https://www.galvestoncountytexas.gov/our-county/county-judge/redistricting> (last visited June 8, 2022).



Plaintiffs claim that the enacted plan as a whole is the result of intentional racial discrimination in violation of the Fourteenth and Fifteenth Amendments and Section 2 of the Voting Rights Act (Counts 1,2, and 5). Plaintiffs also claim that the Enacted Plan, as a whole, without identifying any specific precinct, constitutes an unconstitutional racial gerrymander. (Count 3). Finally, Plaintiffs claim that the plan as a whole violates Section 2 of the Voting Rights Act. (Count 4).

This Court should grant this Motion to Dismiss Plaintiffs' claims in their entirety.

### **STANDARD OF REVIEW**

Federal Rule of Civil Procedure 8(a)(2) requires a plaintiff to plead “‘a short and plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what the . . . claim is and the ground upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). A “formulaic recitation of the elements of a cause of action will not do,” and courts are “‘not bound to accept as true a legal conclusion couched as a factual allegation.’” *Id.* (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Although Rule 8 does not require “detailed factual allegations” at the pleading stage, it still “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). “[C]onclusory allegations, unwarranted factual inferences, or legal conclusions” will not be accepted. *Plotkin v. IP Axxess Inc.*, 407 F.3d 690, 696 (5th Cir. 2005) (citation omitted).

It is not enough for a complaint to contain some factual evidence, however, if the facts pleaded do not add up to a plausible claim. “To survive a motion to dismiss, a

complaint must contain sufficient factual matter which, when taken as true, states ‘a claim to relief that is *plausible on its face*.’” *Innova Hosp. San Antonio, Ltd. P’ship v. Blue Cross & Blue Shield of Ga., Inc.*, 892 F.3d 719, 726 (5th Cir. 2018) (quoting *Twombly*, 550 U.S. at 570) (emphasis added). A complaint is facially plausible “‘when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’” *Cicalese v. Univ. of Tex. Med. Branch*, 924 F.3d 762, 765 (5th Cir. 2019) (quoting *Iqbal*, 556 U.S. at 678). A plaintiff who alleges only facts that, even when taken as true, fail to “nudge [] their claim[] across the line from conceivable to plausible” has not adequately stated a claim upon which relief can be granted. *Twombly*, 550 U.S. at 570.

Moreover, when deciding a motion to dismiss for failure to state a claim, this Court may consider publicly-available documents that were generated by a governmental body. *See Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011). Accordingly, Defendants respectfully request that this Court take judicial notice of (1) Exhibit A, which is a collection of all 2021 public meeting notices for the Galveston County Commissioners Court; (2) the information from the U.S. Census Bureau’s website, [www.census.gov](http://www.census.gov); and (3) the information contained on the website <https://www.galvestoncountytexas.gov/our-county/county-judge/redistricting>. These publicly available documents are capable of accurate and ready determination by resort to “sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2); *see Funk*, 631 F.3d at 783 (holding that district court took appropriate judicial notice of government-generated documents that were matters of public record and directly relevant to the issues); *Norris v. Hearst Tr.*, 500 F.3d

454, 461 n.9 (5th Cir. 2007) (“[I]t is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.”).

Additionally, when faced with a motion to dismiss for lack of subject matter jurisdiction under 12(b)(1), Plaintiffs bear the burden of proving that this Court has jurisdiction. *Southern Recycling, L.L.C. v. Aguilar*, 982 F.3d 374, 379 (5th Cir. 2020).

Lastly, it should be remembered that when analyzing Plaintiffs’ allegations, they must be balanced against the presumption that the Commission acted in good faith. *Miller*, 515 U.S. at 915. Even when Plaintiffs allege a history of discrimination, the Court must still presume that the Commission acted in good faith. *Abbott*, 138 S. Ct. at 2324.

## ARGUMENT

### I. THIS COURT SHOULD DISMISS PLAINTIFFS’ CLAIMS FOR LACK OF SUBJECT-MATTER JURISDICTION.

Article III of the U.S. Constitution limits the jurisdiction of federal courts to deciding actual cases and controversies. *Rucho*, 139 S. Ct. at 2493. This, in part, means that courts are limited to deciding cases that are “historically viewed as capable of resolution through the judicial process.” *Id.* 2493-94. Cases that lack judicially manageable standards to resolve them are nonjusticiable political questions. *Id.* at 2494.

Only three types of redistricting claims are justiciable: (1) one-person, one-vote challenges; (2) racial gerrymandering claims; and (3) vote dilution claims under Section 2 of the Voting Rights Act. *Id.* at 2495-96; *Thornburg v. Gingles*, 478 U.S. 30, 70-71 (1986); *Gingles*, 478 U.S. at 84 (O’Connor, J., concurring). Judicially manageable standards to adjudicate partisan gerrymandering claims are elusive. This is because

partisanship is expected to happen in redistricting. *Gaffney*, 412 U.S. at 753. Without clear judicially manageable standards, courts “risk assuming political, not legal, responsibility for a process that often produces ill will and distrust.” *Rucho*, 139 S. Ct. at 2498.

The problem with adjudicating partisan gerrymandering claims is that they are premised upon the “instinct that groups with a certain level of political support should enjoy a commensurate level of political power and influence.” *Id.* at 2499. But this premise finds no support in our system of elections—a wholly at-large system of elections on party lines, or proportional representation. *Id.* Essentially, partisan gerrymandering claims request that courts “make their own political judgment about how much representation particular parties *deserve*—based on the votes of their supporters—and to rearrange the challenged districts to achieve that end.” *Id.* But, federal courts lack the authority and competence to apportion political power. *Id.* How to apportion political power is not a legal question, but a political one. *Id.* at 2500. This is so because it is the role of the courts to “vindicate the individual rights of the people appearing” before the court. *Id.* at 2501 (internal quotation marks omitted). This Court is not responsible for “vindicating generalized partisan preferences.” *Id.* At bottom, this Court lacks the authority to “allocate political power and influence” in the absence of judicially manageable standards. *Id.* at 2508.

This case is about politics. By the terms of the SAC, Blacks and Latinos are cohesive because they vote for Democrats in the general elections. *See* SAC ¶ 124. Anglo voters prevent Black and Latino voters from electing Democrats to office because “Anglo voters in Galveston County overwhelmingly”—by over 88%—“favor Republican

candidates.” SAC ¶¶ 126-27. Plaintiffs fail to allege any election results from the primary elections. *LULAC v. Abbott*, No. 3:21-cv-00259, 2022 U.S. Dist. LEXIS 80659, at \*38 (W.D. Tex. May 4, 2022) (three-judge court) (hereinafter *LULAC I*) (stating that although voting behavior in general elections is relevant to voter cohesion determinations, it is not sufficient). Plaintiffs complain that the new configuration of Commissioners Court Precinct 3 will no longer allow voters of that precinct to elect Commissioner Holmes, who is a Democrat. Simply dressing their partisan desires as racial problems does not morph Plaintiffs’ partisan claims into racial claims—especially given the dearth of supporting factual content in Plaintiffs’ Second Amended Complaint. Allowing this type of artful pleading would essentially disavow *Rucho*, permitting any plaintiff to complain about the partisan nature of a map by simply stating such a map makes it more difficult to elect Democrats, because the Democratic Party is so closely aligned with minority voters. Plaintiffs attempt to do exactly that here. See SAC ¶¶ 124-28.

Plaintiffs ask this Court to allocate political power and primarily use the Voting Rights Act as their vehicle to accomplish this goal. Plaintiffs consistently allege that the new Commissioners Court plan prevents Black and Latino voters from electing their candidates of choice, SAC ¶¶ 6, 17, 21, 25, 28, 31, 62, 78, 106. But what the Plaintiffs mean is that the map reduces the ability of voters who—according to the Complaint—consistently vote Democrat to elect Democrats. SAC ¶ 124. Essentially, Plaintiffs ask this Court to order a map that is “commensurate [with Plaintiffs] level of political power and influence.” *Rucho*, 139 S. Ct. at 2499. In a post-*Rucho* world, the facts included in the SAC are not enough.

And when Plaintiffs ask this Court to declare the Commissioners Court plan unconstitutional because it prevents Black and Latino voters from electing their candidate of choice, SAC at 33, Plaintiffs are asking this Court to declare that the Commissioners Court plan does not allow Democrats to get elected. This Court is not responsible for “vindicating generalized partisan preferences.” *Rucho*, 139 S. Ct. at 2501. The Court lacks the authority to “allocate political power and influence” in the absence of judicially manageable standards. *Id.* at 2508. This partisan wolf comes as a partisan wolf. *Cf. Morrison v. Olson*, 487 U.S. 654, 699 (1988) (Scalia, J., dissenting).

## **II. PLAINTIFFS’ CASE IS MOOT.**

The jurisdiction of federal courts is limited to actual cases and controversies. *See* U.S. Const., Art. III, § 2; *Alvarez v. Smith*, 558 U.S. 87, 92 (2009). For federal courts to have the power to adjudicate a dispute, an “actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.” *Id.* (internal quotation marks omitted). This is so because in our constitutional structure “courts have ‘no business’ deciding legal disputes or expounding on law in the absence of such a case or controversy.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90 (2013) (citation omitted). Federal courts lose jurisdiction, therefore, “when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.” *Id.* at 91. Stated differently, a case becomes moot, and this Court loses jurisdiction, “if the dispute is no longer embedded in any actual controversy about the plaintiffs’ particular legal rights.” *Id.* (internal quotation marks omitted). It is Plaintiffs’ burden to prove that this Court has jurisdiction. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

Plaintiffs allege that Commissioner Holmes, who is African American, is the only commissioner to represent the interests of the Black and Latino communities. SAC ¶ 80.<sup>7</sup> Plaintiffs do not allege why Commissioner Holmes represents the interests of the Black and Latino communities. But on May 18, 2022, County Judge Henry appointed Dr. Robin Armstrong, who is African American, to the Commission serve as the Commissioner for Precinct 4. Of the five members on the Commissioners Court, two are African American. 40% of the Commissioners Court members are African American. Black and Latino residents in Galveston County account for 35.6% of the total voting-age population. SAC ¶ 52. Thus African American representation on the Commissioners Court is greater than the proportion of Black and Latino residents in Galveston County.

This case is now moot. Although the Voting Rights Act does not create a right to proportional representation, the lack of proportional representation is evidence of a Section 2 violation. *Gingles*, 478 U.S. at 46. Since the African American representation on the Commission is greater than the combined African American and Latino population in the County, SAC ¶ 52 (35.6%), there is no evidence of vote dilution, unless Plaintiffs' real injury is that there are insufficient Democrats on the Commission, which is a non-justiciable political question. *Rucho*, 139 S. Ct. at 2508. Plaintiffs therefore lack a personal interest in the result. *Dailey v. Vought Aircraft Co.*, 141 F.3d 224, 227 (5th Cir. 1998).

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<sup>7</sup> As a matter of law, this is wrong. Elected officials represent all constituents of their districts. *See United States v. Hays*, 515 U.S. 737, 744 (1995). Elected officials do not represent certain racial or ethnic segments of society because doing so is precisely the injury under racial gerrymandering claims. *See id.*

### III. PLAINTIFF MICHAEL MONTEZ LACKS STANDING.

Because Article III of the U.S. Constitution limits this Court's jurisdiction to "cases" and "controversies" this requires each plaintiff to prove that they have suffered an invasion of a legally protected interest, that is concrete and particularized to the plaintiff. *Lujan*, 504 U.S. at 560. Generalized grievances about governmental actions are insufficient. *Lance v. Coffman*, 549 U.S. 437, 439 (2007). The requirement that a plaintiff show a particularized injury "ensures that we act as *judges*, and do not engage in policymaking properly left to elected representatives." *Gill v. Whitford*, 138 S. Ct. 1916, 1923 (2018) (internal quotation marks omitted). Plaintiffs are also required to show that their harm is traceable to the defendants' actions and that it is likely that this Court can redress their injury with a favorable decision. *Lujan*, 504 U.S. at 560-61.

Plaintiff Montez fails to plead that the Commissioners Court's Enacted Plan has injured him in a particular and individualized way. This requirement is especially important here because the right to vote is "individual and personal in nature." *Gill*, 138 S. Ct. at 1929 (internal quotation marks omitted). Thus, to have standing here, Plaintiff Montez is required to plead sufficient "facts showing disadvantage to [himself] as [an] individual[]." *Id.* (internal quotation marks omitted). The claimed injury of vote dilution is district specific and the injury to the individual right to vote "results from the boundaries of the particular district in which he resides." *Id.* at 1930. And a plaintiff's remedy must be "limited to the inadequacy that produced [his] injury in fact." *Id.* at 1931 (internal quotation marks omitted). Thus, plaintiffs are prohibited from bringing jurisdiction-wide claims; rather, they must bring district-specific claims. *Id.*



Plaintiff Montez alleges that due to cracking of minority voters from the former Commissioners Precinct 3, he now, under the current Commissioners Court plan, “lack[s] the opportunity to elect his candidate of choice for Commissioners Court.” SAC ¶25; *see also id.* ¶¶ 6, 65. But under both the prior plan—the 2012 Benchmark Plan—and the current Enacted Plan, Constable Montez resides in Precinct 1. SAC ¶¶ 23-24. Precinct 1 was not a minority-opportunity district either before or after 2021 redistricting. *See* SAC ¶¶ 46, 56 (describing Precinct 3 as the opportunity to elect district under the Benchmark Plan, the precinct where Black and Latino voters form a sufficiently large and geographically compact majority). Under the Benchmark Plan and under the Enacted Plan, Constable Montez does not live in a majority-minority district. *See* SAC ¶ 121 (showing that under the Benchmark Plan for Precinct 1, Hispanic and Black CVAP amounted to 28.2%). In fact, under the Enacted Plan, Constable Montez’s situation actually improves as his district now has 32.4% Hispanic and Black CVAP. SAC ¶ 109.

Accordingly, the Enacted Plan has not negatively impacted Constable Montez’s ability to vote. If anything, the Enacted Plan has improved Constable Montez’s position. Under both the Benchmark Plan and the Enacted Plan, Constable Montez does not reside in a minority opportunity to elect district. *See Gill*, 138 S. Ct. at 1933 (stating that Professor Whitford lacked standing because even under plaintiffs’ desired map, Professor Whitford resided in the same district with substantially the same district composition). Crucially, Plaintiffs do not allege that it is possible to draw Constable Montez into the Benchmark Precinct 3, or into another sufficiently large and geographically compact majority-minority district. Accordingly, Constable Montez lacks standing.

**IV. WITHOUT PLAINTIFF MONTEZ, THIS COURT SHOULD DISMISS THE PLAINTIFFS' VOTING RIGHTS ACT CLAIM.**

Because Constable Montez lacks standing, this Court should dismiss the Petteway Plaintiffs' Voting Rights Act Claim. Plaintiffs no longer have a Latino plaintiff. The remaining Plaintiffs identified in this Complaint—all African Americans—cannot allege harm on the Latino community by proxy. Specific injuries must be alleged by specific Plaintiffs. *LULAC v. Abbott*, No. 21-CV-259, 2022 U.S. Dist. LEXIS 91761, at \*15 (W.D. Tex. May 23, 2022) (three-judge court) (hereinafter *LULAC II*) (“Standing is assessed plaintiff by plaintiff and claim by claim” (citing *In re Gee*, 941 F.3d 153, 171 (5th Cir. 2019))).

By the terms of the SAC itself, without Constable Montez, Plaintiffs cannot state a claim that minority CVAP of Benchmark Precinct 3 is sufficiently large and geographically compact under the first *Gingles* precondition. Plaintiffs' Voting Rights Act claim is premised on both Blacks and Latinos forming a sufficiently large and geographically compact district in Precinct 3. SAC ¶ 121 (Black and Latino CVAP amounting to 58.5% in Benchmark Plan Precinct 3). But without a Latino plaintiff, African Americans alone are not sufficiently large to form a majority. SAC ¶ 121 (Black CVAP amounting to 33.3% in Benchmark Plan Precinct 3). This is insufficient to state a claim under Section 2 of the Voting Rights Act's first *Gingles* precondition which requires the minority population to be a majority in the proposed district. *See Gingles*, 478 U.S. at 50; *Bartlett v. Strickland*, 556 U.S. 1, 19-20 (2009) (“It remains the rule, however, a party asserting § 2 liability must show by a preponderance of the evidence that the minority

population in the potential election district is greater than 50 percent.”); *Campos v. Baytown*, 840 F.2d 1240, 1242 (5th Cir. 1988) (finding that a jurisdiction’s combined Black and Latino population formed a sufficiently large and geographically compact group).

Additionally, each of the *Gingles* preconditions “must be shown on a district-by-district basis.” *LULAC II*, 2022 U.S. Dist. LEXIS 91761 at \*47-48. Plaintiffs allege that Benchmark Plan Precinct 3 should have remained a majority-minority district. SAC ¶¶ 121-24. To satisfy *Gingles* precondition 1—a sufficiently large and geographically compact minority group—Plaintiffs must have both Latino and Black Plaintiffs in their hypothetical Benchmark Plan Commissioners Precinct 3. SAC ¶ 121 (under Benchmark Plan Precinct 3, Black or Latinos Citizens alone do not constitute a majority). Because Constable Montez resides in Precinct 1 under both the current and prior map—the benchmark map—by the terms of the Second Amended Complaint, Plaintiff Montez is not part of the sufficiently large and geographically compact minority group of Benchmark Plan Precinct 3. Plaintiffs therefore fail to allege sufficient facts to satisfy the first *Gingles* precondition.

Furthermore, because Plaintiff Montez resides in Precinct 1, Plaintiffs fail to state a claim that Black and Latino voters are politically cohesive under the *Gingles* Second Precondition. Again, each of the *Gingles* preconditions “must be shown on a district-by-district basis.” *LULAC II*, 2022 U.S. Dist. LEXIS 91761 at \*47-48; *see also Gill*, 138 S. Ct. at 1929-30 (stating that vote dilution claims proceed district-by-district). Because Plaintiff Montez resides in Commissioners Court Precinct 1 and resided in Precinct 1

under the Benchmark Plan, Plaintiffs cannot show that Black and Latino voters in Benchmark Precinct 3 are cohesive. In fact, Plaintiffs fail to establish that the Benchmark Plan Precinct 3 Latino and Black voters are politically cohesive. For Precinct 3, Plaintiffs fail to allege the percentage, level, or degree of cohesion between Black and Latino voters. SAC ¶ 123. This is insufficient to state a claim. *LULAC II*, 2022 U.S. Dist. LEXIS 91761, at \*64-65. Although Plaintiffs provide county-wide percentages of cohesion, the second *Gingles* precondition must be proven in the Benchmark Plan Precinct 3, not countywide. *See LULAC II*, 2022 U.S. Dist. LEXIS 91761 at \*47. Accordingly, this Court must dismiss Plaintiffs' Voting Rights Act claim with prejudice.

V. **PLAINTIFFS FAIL TO STATE A CLAIM THAT THE ENACTED PLAN IS AN UNCONSTITUTIONAL RACIAL GERRYMANDER.**

To succeed on a racial gerrymandering claim, Plaintiffs must plead and prove that “the legislature subordinated traditional race-neutral districting principles . . . to racial considerations.” *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 797 (2017). A plaintiff can attempt to show this through alleging that the district’s shape deviates from traditional redistricting principles such as compactness, or more direct evidence going to legislative purpose. *See id.* at 798. As for evidence of legislative purpose, in past cases, plaintiffs have successfully proven that race predominated in the drawing of districts through pleading and proving that the legislature established population percentage targets for the minority population. *See id.* at 799; *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 267 (2015) (“That Alabama expressly adopted and applied a policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote)

provides evidence that race motivated the drawing of particular lines in multiple districts in the State.”); *LULAC II*, 2022 U.S. Dist. LEXIS 91761, at \*82 (observing that plaintiffs had pleaded sufficient facts to survive a motion to dismiss where the plaintiffs alleged that the “House committee chairman’s statements stressing the number of majority-minority districts, the legislature’s apparent desire to keep various racial groups above 50% of certain districts, *and the irregular shapes of CD 6 and 33*”) (emphasis added).

Here, as Plaintiffs allege racial gerrymandering where racial identification correlates highly with political affiliation, SAC ¶¶ 124, 126-28, Plaintiffs must also plead and prove that “the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles.” *Easley v. Cromartie*, 532 U.S. 234, 258 (2001). Plaintiffs have failed to meet their burden.

**A. Plaintiffs Fail To Identify Which Commissioners Precinct Constitutes A Racial Gerrymander.**

Racial gerrymandering claims are district specific and therefore apply “to the boundaries of individual districts.” *Ala. Legis. Black Caucus*, 575 U.S. at 262. By contrast, racial gerrymandering claims do not apply to the map as an undifferentiated whole. *See id.* The harm in a racial gerrymandering claim is personal and includes being “personally . . . subjected to [a] racial classification . . . as well as being represented by a legislator who believes his primary obligation is to represent only the members of a particular racial group.” *Id.* at 263 (internal quotation marks and citations omitted, alterations in the original). Thus, racial gerrymanders “directly threaten a voter who lives in the *district* attacked[.]” and not those who live elsewhere. *See id.*

Plaintiffs' Second Amended Complaint does not identify which district is the result of a racial gerrymander. Furthermore, there is a Plaintiff in Commissioners Precincts 1, 2, and 3, but not in 4. Thus, because Plaintiffs have not identified which particular district is the result of a racial gerrymander, this Court cannot assure itself that it has jurisdiction since Plaintiffs lack standing to challenge districts where they do not live. *Hays*, 515 U.S. at 739. None of the allegations identify which district line was the result of a racial gerrymander. This is insufficient and therefore Plaintiffs have failed to state a racial gerrymander claim. *See LULAC II*, 2022 U.S. Dist. LEXIS 91761, at \*81-82.

**B. Plaintiffs Fail To Allege That Any Commissioners Precinct Line Subordinates Traditional Redistricting Principles To Race.**

Additionally, the SAC contains no allegations that any particular precinct line in the Enacted Plan violates traditional redistricting principles. *See generally* SAC. There are no allegations that any precinct is not compact, divides communities of interest, is not contiguous, or does not respect political subdivision lines. *Ala. Legis. Black Caucus*, 575 U.S. at 272 (listing traditional redistricting criteria). Plaintiffs must plead that Defendants subordinated all other redistricting criteria—e.g., compactness, avoiding contests between incumbents, maintaining communities of interest, partisanship—to race. *Miller*, 515 U.S. at 916. And, although not a necessary element to a racial gerrymandering claim, the Supreme Court has not “affirmed a predominance finding, or remanded a case for a determination of predominance, without evidence that some district lines deviated from traditional [redistricting] principles.” *Bethune-Hill*, 137 S. Ct. at 799. In fact, “[c]lassic racial-gerrymandering cases often included vivid descriptions of the specific districts at

issue.” *LULAC II*, 2022 U.S. Dist. LEXIS 91761, at \*81 (citing *Shaw v. Reno*, 509 U.S. 630, 635-36 (1993) (describing that district as looking like a “Rorschach ink-blot test” or a “bug splattered on a windshield”)); *see also Bush v. Vera*, 517 U.S. 952, 973-74 (1996) (describing district as resembling a “sacred Mayan bird”). But the SAC contains no description that a district’s shape is bizarre or otherwise violates traditional redistricting principles. Thus, the Supreme Court concluded that often, without evidence that a legislature violated traditional redistricting principles in drawing district lines, plaintiffs “will be unable to prove” a racial gerrymander because it will be “difficult for challengers to find other evidence sufficient to show that” race predominated over traditional redistricting principles in the drawing of district lines. *See Bethune-Hill*, 137 S. Ct. at 799.

To be sure, the Second Amended Complaint alleges that traditional redistricting principles were subordinated to race. SAC ¶ 116. But this allegation is a threadbare recital of the elements of a racial gerrymandering claim. Even if coupled with the conclusory statements that the Commissioners Court’s goal was to crack minority groups, *id.* ¶¶ 112, 116, this is conclusory and insufficient to unlock the doors of discovery. *See Iqbal*, 556 U.S. at 678-79. Compounding the problem is that there are no allegations that any particular Commissioners Precinct constitutes a racial gerrymander. Accordingly, there are no allegations that make this assertion rise above conceivable to plausible. *See id.* Plaintiffs simply failed to plead any facts that tend to show traditional redistricting principles were subordinated to race.<sup>8</sup>

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<sup>8</sup> Additionally, even though Plaintiffs plead that race and political preferences correlate in Galveston County, SAC ¶¶ 124-26, they failed to plead any facts that race and not political

**VI. PLAINTIFFS FAIL TO STATE A CLAIM FOR INTENTIONAL VOTE DILUTION AND DISCRIMINATION UNDER THE FOURTEENTH AND FIFTEENTH AMENDMENTS AND THE VOTING RIGHTS ACT.**

In an intentional vote dilution claim under the Fourteenth and Fifteenth Amendments, a plaintiff must plead that the challenged redistricting plan was enacted with a discriminatory purpose and has discriminatory effects. *See Harding v. Cty. of Dall.*, 948 F.3d 302, 312 (5th Cir. 2020). The gravamen of an intentional vote dilution claim is that the Commission enacted “a particular voting scheme as a purposeful device to minimize or cancel out the voting potential of racial or ethnic minorities.” *Perez v. Abbott*, 253 F. Supp. 3d 864, 932 (W.D. Tex. 2017) (internal quotation marks omitted). These claims are “infrequently” asserted. *Harding*, 948 F.3d at 313. This is so because intentional vote dilution claims “are more difficult to prove than are effects-only Section 2 claims. *LULAC I*, 2022 U.S. Dist. LEXIS 80659, at \*25 (citing *Harding*, 948 F.3d at 313 n.47).

Initially, this Court should dismiss Plaintiffs claim under the Fifteenth Amendment. Under Fifth Circuit precedent, there is no cause of action for intentional vote dilution under the Fifteenth Amendment. *See Prejean v. Foster*, 227 F.3d 504, 519 (5th Cir. 2000). This makes sense because the U.S. Supreme Court has never held that vote dilution claims are cognizable under the Fifteenth Amendment. *See Voinovich v. Quilter*, 507 U.S. 146, 159 (1993). Instead, intentional vote dilution cases are resolved under the Fourteenth Amendment. *See LULAC I*, 2022 U.S. Dist. LEXIS 80659, at \*25.

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preferences predominated the reasons for the placement of the precinct boundaries. Failure to do so fails to state a claim. *See Easley*, 532 U.S. at 257-58.



For a Fourteenth Amendment claim, Plaintiffs must plead that Defendants “acted at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” *Id.* at \*26 (quoting *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979)). Courts use the factors outlined in *Village of Arlington Heights v. Metropolitan Housing Development Corp.* to determine if the decisionmakers acted with illicit intent. *Id.* at \*26-27. Essentially, in intentional vote dilution claims, Plaintiffs must plead that race was “part of Defendants’ redistricting calculus...”. *LULAC I*, 2022 U.S. Dist. LEXIS 80659, at \*29.

Similarly, in a Section 2 Voting Rights Act claim of intentional discrimination, Plaintiffs must plead that racial discrimination was one purpose of the challenged government action. *United States v. Brown*, 561 F.3d 420, 433 (5th Cir. 2009). The *Arlington Heights* factors are also used here to determine intent. *See id.*

**A. Plaintiffs Fail To Allege Any Legally Cognizable Indicia Of Illicit Intent.**

Any allegations of evidence of an illicit racial purpose in the Second Amended Complaint are thin at best. The intentional discrimination claim arises from Plaintiffs’ allegation that the Commission did not adopt redistricting criteria, held only one meeting to discuss the proposed redistricting plans, that Commissioner Holmes was allegedly “not allowed to be involved in the process for developing the proposed maps,” and that the maps were allegedly drawn without his input. SAC ¶¶ 69, 84, 95-96.

Plaintiffs’ legal authority for the proposition that these allegations constitute illicit intent rests almost exclusively on a 2012 letter from the Department of Justice concerning whether the Commissioners Court map then presented to the Department for preclearance satisfied Section 5 of the Voting Rights Act. *See* SAC Ex. 1. But the Department of

Justice's determination in 2012 that the Commissioners Court map did not satisfy Section 5 does not bind this Court to find that the 2021 Commissioners Court map is an unconstitutional intentional vote dilution under the Fourteenth Amendment. Importantly, what Plaintiffs do not say is that this Court dismissed Plaintiffs' 2012 racial gerrymandering claim concerning the Justice of the Peace districts—by agreement of counsel where Plaintiffs were represented by the same counsel here—at the close of evidence. *See Petteway, et al. v. Galveston Cnty., et al.*, No. 13-308, Trial Tr. Vol. 3 at 29:14-17 (S.D. Tex. Jan. 16, 2014) (attached as Ex. B).

More fundamentally, however, is that when conducting constitutional adjudication, a Department of Justice preclearance memorandum is not authoritative. This Court retains “an independent obligation in adjudicating consequent equal protection challenges.” *Miller*, 515 U.S. at 922. It is the duty of this Court, and not the Department of Justice, to say what the law is. *Id.* (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)). Additionally, the Department of Justice's “legal conclusion[s] [are] still [] legal conclusion[s]—i.e. something that the Court can't consider when evaluating whether [Plaintiffs] have stated a claim.” *LULAC II*, 2022 U.S. Dist. LEXIS 91761 at \*68 (citing *Iqbal*, 556 U.S. at 678). Accordingly, when engaging in constitutional scrutiny, courts do not give deference to the Department of Justice's interpretation of the Voting Rights Act. *See id.* at 923. That the Department of Justice thought that the 2012 County Commissioners Court map was the product of intentional racial discrimination is of no moment for this Court's analysis of whether intentional discrimination drove part of the drawing of the 2021 Commissioners Court Precinct boundaries.

And, as it is, this Court should not give “deference” to the Department of Justice letter from nearly a decade ago that the Plaintiffs assert is relevant.

*First*, in the 2012 redistricting process, the fact that Galveston County did not adopt procedures to guide redistricting was not a problem in and of itself. Instead, the Department alleged that procedures were not established because the county wanted to “avoid being held to a procedural or substantive standard of conduct . . . .” SAC Ex. 1 at 2. By contrast, Plaintiffs here do not make a similar allegation that the decision not to enact redistricting criteria in 2021 was to cloak the Commissioners Court’s true motive. *See* SAC. ¶ 69. Instead, Plaintiffs merely inform the Court of the DOJ’s conclusion in 2012. Additionally, as a matter of law, the Commission is not required to adopt redistricting criteria in addition to what federal and state law already require.<sup>9</sup>

*Second*, Plaintiffs assert that the redistricting maps evidence illicit intent because only one meeting was held to discuss redistricting and that meeting was held in the afternoon during working hours. SAC ¶ 84. But all the public meetings that the Commissioners Court held in 2021 were during normal business hours. *See* Ex. A. There is nothing unusual about the timing of the meetings. In fact, the date and time of the regularly scheduled meetings are established a year in advance. Tex. Local Gov’t Code § 81.005(a). And, the date and time of the redistricting meeting held on November 12, 2021,

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<sup>9</sup> Arkansas, Illinois, Indiana, Maryland, Massachusetts, New Hampshire, New Jersey, Tennessee, and Wisconsin do not adopt redistricting criteria for its congressional districts. *See* Nat’l Conf. of State Legislatures, *Redistricting Criteria* (July 16, 2021) available at <https://www.ncsl.org/research/redistricting/redistricting-criteria.aspx> (last visited June 8, 2022).

was announced with the requisite 72-hour public notice required for such meetings. Tex. Gov't Code § 551.0413. Furthermore, the Galveston County Commissioners Court precinct maps were posted online on the County website for at least two weeks for people to review and submit public comments. *See Galveston County Commissioners Proposed Precincts*, supra note 6. When posting online, while not required to do so under Texas law, the Commission provided ample public notice that it would be “discussing and voting to redistrict county commissioners’ precincts in the next few weeks.” *Id.* Therefore, the allegation that Galveston County residents were somehow caught completely off-guard is simply disingenuous. Again, that the redistricting meeting held on November 12 was during business hours is consistent with the County Commissioners Court’s normal and usual practice. To have held the meeting later would have been a departure from standard practice. Additionally, there is no requirement that the Commissioners Court hold more than one public meeting prior to enacting any redistricting lines.

Plaintiffs make much of the Commission’s alleged departure from normal practice regarding how the Commissioners Court held meetings regarding the adoption of new precinct maps. But there was nothing normal about this redistricting cycle. Even the U.S. Census Bureau was required to depart from its normal practices because of the COVID-19 pandemic. *See Alabama*, 546 F. Supp. 3d at 1065-66. In the compressed timeframe that the Commission was dealt, it provided the maps to its constituents two weeks in advance of its meeting and allowed the public to submit comments comment online. It held a special meeting for people to voice their concerns and then held a public vote. Plaintiffs’ allegations of illicit intent due to alleged departures from past practices are insufficient

when the whole world had to depart from its normal routines and past practices due to COVID-19.

*Third*, Commissioner Holmes was not prevented from participating in the redistricting process nor was Commissioner Holmes prevented from providing input. As a duly elected Commissioner, Commissioner Holmes himself had the legal authority to place redistricting on the agenda at any of the regularly scheduled meetings from September 16 to November 12. *See* Tex. Att’y Gen. Op. No. DM-228 at 3. Commissioner Holmes also had the authority to suggest a timeline for redistricting if he thought it appropriate. *See* SAC ¶ 98. Commissioner Holmes was not prohibited from participating in the redistricting process. Rather, Commissioner Holmes simply chose not to exercise his statutory authority as a duly elected Commissioner to place redistricting on the agenda at any of the six regularly scheduled meetings between September and November.<sup>10</sup>

Furthermore, as the Second Amended Complaint itself notes, Commissioner Holmes met with the Galveston County attorney on one occasion regarding the drawing of

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<sup>10</sup> As part of their *Gingles* totality of the circumstances analysis, Plaintiffs make several allegations concerning recent examples of racist actions. Several of these allegations, however, do not involve the Commission, which is a specific governmental body, not simply a geographical location. For example, the allegations against the League City Police Department, SAC ¶ 139, involve a separate incorporated city and not Galveston County. Similarly, the allegations against the Galveston Police Department, involved the City of Galveston Police Department, not the County. SAC ¶ 140. The same holds true for the allegations concerning the racial tensions surrounding public housing in the City of Galveston. SAC ¶ 141-54. Although these alleged examples are recent, their probative value concerning the Galveston County Commissioners Court’s liability under Section 2 of the Voting Rights Act is limited. *Cf. Veasey v. Abbott*, 830 F.3d 216, 232 (5th Cir. 2016) (stating that evidence of racial animus in individual Texas counties is not probative of racial animus in the state legislature).

the redistricting maps prior to the November public hearing. *Id.* ¶ 96. Importantly, the SAC does not allege that in the compressed time that redistricting maps were to be drawn, the county attorney met with other Commission members about redistricting more than once.

As a matter of law, the allegations of illicit intent on the part of the Commissioners Court are not legally cognizable. The timing of the meeting was normal, its location was common for special meetings, and Commissioner Holmes had the legal authority to introduce his redistricting maps and hold redistricting meetings at will, subject to the notice and meeting requirements under Texas law. He also met with the county attorney about districts. Furthermore, nothing about the timing of the meetings, the location of the meetings, or Commissioner Holmes's involvement, or lack thereof, in the redistricting process evidences that racial intent predominated all other traditional redistricting principles. Accordingly, this Court should dismiss Plaintiffs' intentional vote dilution and intentional discrimination claims.

There are no allegations that rise to the level of showing that the Commission "selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects." *Miller*, 515 U.S. at 916 (quoting *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 279 (1979)). This Court should dismiss Plaintiffs' Fourteenth and Fifteenth Amendment intentional discrimination claims, and its claim of intentional racial discrimination under Section 2 of the Voting Rights Act.

**CONCLUSION**

For the foregoing reasons, this Court should grant Defendants’ Motion to Dismiss and dismiss Plaintiffs’ with Prejudice.<sup>11</sup>

Date: June 8, 2022

Respectfully submitted,

*/s/ Dallin B. Holt*

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<sup>11</sup> Courts in the Fifth Circuit regularly dismiss complaints with prejudice for failure to properly state a claim in an amended pleading. *See, e.g., Smith v. Houston Indep. Sch. Dist.*, 229 F. Supp. 3d 571, 582 (S.D. Tex. 2017) (“Because further opportunities to replead would be futile, the third amended complaint is dismissed with prejudice.”); *Schiller v. Physicians Res. Grp., Inc.*, 342 F.3d 563, 567 (5th Cir. 2003) (“[A]t some point a court must decide that a plaintiff has had a fair opportunity to make his case; if, after that time, a cause of action has not been established, the court should finally dismiss the suit.” (citation omitted)). In addition to already having filed two amended complaints, Plaintiffs’ counsel is also counsel in *LULAC v. Abbott*, which is currently pending in the Western District of Texas; where that court, just weeks ago, laid out in great detail how a plaintiff might avoid the same deficiencies Plaintiffs make here. *See* 2022 U.S. Dist. LEXIS 91761 (W.D. Tex. 2022).

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*Counsel for Defendants*



**CERTIFICATE OF SERVICE**

I hereby certify that on June 8, 2022, the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Dallin B. Holt  
Counsel for Defendants

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**EXHIBIT A**

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# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA**

**January 11, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

### **REGULARLY SCHEDULED MEETING**

#### **Call to Order**

#### **Invocation and Pledge of Allegiance**

#### **Public Comment**

#### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Approval of the accounts payable checks dated 1/4/2021 and 1/11/2021
  - b. Order for payroll period ending 1/6/2021 bi-weekly #1
  - c. Order for supplemental payroll period ending 1/6/2021 bi-weekly #1
  - d. Indemnification request from the Tax Office
  - e. Internal audit report of The Children's Center for period of 8/1/2019 - 9/30/2020 with response letter from Brent Hartzell, Chief Financial Officer, dated 12/30/2020
  - f. Internal audit report of the agreement between Galveston County and Friends for Life for period of 10/1/2019 - 9/30/2020 with response letter from Brent Hartzell, Chief Financial Officer, dated 12/29/2020
  - g. Internal audit report of the close out for Constable Jerry Fisher, Precinct 4



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA**

**January 25, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

### **REGULARLY SCHEDULED MEETING**

#### **Call to Order**

#### **Invocation and Pledge of Allegiance**

#### **Public Comment**

#### **Consent Agenda**

- \*1. Submitted by the County Auditor's Office:
  - a. Approval of the accounts payable checks dated 1/15/2021 and 1/25/2021
  - b. Order for payroll period ending 1/20/2021 bi-weekly #2
  - c. Order for supplemental payroll period ending 1/20/2021 bi-weekly #2
  - d. Internal audit report of the Sheriff's Office Commissary and Inmate Property accounts for period of 10/1/2019 - 9/30/2020 with response letter from Sheriff Henry Trochesset
  - e. Monthly financial report for period ending 12/31/2020
  - f. Internal audit report of the Mosquito Control chemical and fuel inventory for period of 10/29 - 12/3/2020 with response letter from John Marshall, Director of Mosquito Control
  - g. Internal audit quarterly report for Constable, Precinct 1 for period of October - December 2020



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry      Darrell Apffel      Joe Giusti      Stephen Holmes      Ken Clark  
County Judge    Commissioner, Precinct 1    Commissioner, Precinct 2    Commissioner, Precinct 3    Commissioner, Precinct 4

**CALDER MEETING LOCATION**  
**174 Calder Rd., Rm 117**  
**League City, Texas 77573**

**SPECIAL MEETING-AGENDA**  
**January 29, 2021 – 2:30 PM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

## **Call to Order**

## **Public Comment**

## **Consent Agenda**

- \*1. Consideration of *approval of extension of Declaration of Local Disaster related to COVID-19* submitted by the County Judge

## **Adjourn**

## **Appearances before Commissioners Court**

A speaker whose subject matter as submitted relates to an identifiable item of business on this agenda will be requested by the County Judge or other presiding court members to come to the podium where they will be limited to three minutes (3). A speaker whose subject matter as submitted does not relate to an identifiable item of business on this agenda will be limited to three minutes (3) and will be allowed to speak before the meeting is adjourned. Please arrive prior to the meeting and sign in with the County Clerk.



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA**

**February 8, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

### **REGULARLY SCHEDULED MEETING**

#### **Call to Order**

#### **Invocation and Pledge of Allegiance**

#### **Public Comment**

#### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Approval of the accounts payable checks dated 2/1/2021 and 2/8/2021
  - b. Order for payroll period ending 2/3/2021 bi-weekly #3
  - c. Order for supplemental payroll period ending 2/3/2021 bi-weekly #3
  - d. Internal quarterly audit report for the Juvenile Justice Department for period of October - December 2020
  - e. Internal quarterly audit report for Justice of the Peace, Precinct 1 for period of October - December 2020
  - f. Internal quarterly audit report for Justice of the Peace, Precinct 2 for period of October - December 2020
  - g. Internal quarterly audit report for Justice of the Peace, Precinct 3 for period of October - December 2020



# GALVESTON COUNTY, TEXAS

COMMISSIONERS COURT 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

**CALDER MEETING LOCATION**  
**174 Calder Rd., Rm 117**  
**League City, Texas 77573**

**SPECIAL MEETING-AGENDA**  
**February 22, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

## Call to Order

## Public Comment

## Consent Agenda

- \*1. Submitted by the Auditor's office:
  - a. Approval of the accounts payable checks dated 2/12/21 and 2/22/21
  - b. Order for payroll period ending 2/17/21 bi-weekly #4
  - c. Order for supplemental payroll period ending 2/17/21 bi-weekly #4
  - d. Early check release for check dated 2/8/2021 to Galveston Insurance Association
  - e. Indemnification request from the Tax Office dated 2/1/2021
  - f. Internal audit report of the District Clerk's fee audit for period of 1/1-12/31/2020 with response letter from Honorable John D. Kinard dated 2/8/2021
  - g. Monthly financial report for period ending 1/31/2021
- \*2. Receive and file *restitution check list from Odyssey* submitted by Collections Improvement Program



# GALVESTON COUNTY, TEXAS

COMMISSIONERS COURT 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## AGENDA

March 8, 2021 – 9:30 AM

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

### REGULARLY SCHEDULED MEETING

#### Call to Order

#### Invocation and Pledge of Allegiance

#### Public Comment

#### Consent Agenda

- \*1. Submitted by the Auditor's office:
  - a. Approval of the accounts payable checks dated 3/1/21 and 3/8/21
  - b. Order for payroll period ending 3/3/21 bi-weekly #5
  - c. Order for supplemental payroll period ending 3/3/21 bi-weekly #5
  - d. Internal audit quarterly audit report of the continuous monitoring activities for period of 10/1/2020 - 12/31/2020
  - e. Pro-Rata Tobacco Settlement Distribution County Expenditure Statement 2021
  - f. Monthly financial report for period ending 2/28/2021
- \*2. Receive and file *restitution check list from Odyssey* submitted by Collections Improvement Program
- \*3. Receive and file *refund check list from Odyssey* submitted by the County Clerk





# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA**

**March 22, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

## **REGULARLY SCHEDULED MEETING**

### **Call to Order**

### **Invocation and Pledge of Allegiance**

### **Public Comment**

### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Approval of the accounts payable checks dated 3/15/21 and 3/22/21
  - b. Order for payroll period ending 3/17/21 bi-weekly #6
  - c. Order for supplemental payroll period ending 3/17/21 bi-weekly #6
  - d. Internal audit report of the County Treasurer's office for period of 11/1/2019 - 10/31/2020 with response letter from County Treasurer, Kevin Walsh dated 2/26/2021
  
- \*2. Receive and file *restitution check list from Odyssey* submitted by Collections Improvement Program
  
- \*3. Receive and file *refund check list from Odyssey* submitted by the County Clerk
  
- \*4. Receive and file *refund check list from Odyssey* submitted by the District Clerk



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA April 5, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

### **REGULARLY SCHEDULED MEETING**

#### **Call to Order**

#### **Invocation and Pledge of Allegiance**

#### **Public Comment**

#### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Approval of the accounts payable checks dated 3/29/21 and 4/5/21
  - b. Order for payroll period ending 3/31/21 bi-weekly #7
  - c. Order for supplemental payroll period ending 3/31/21 bi-weekly #7
  - d. Pursuant to Local Government Code 111.0106 certification of funds from Guardian Insurance
  - e. Receive and file Rosenberg Library - 2021 Budget - 2020 Audit
  - f. Internal audit report of the Justice of the Peace, Precinct 1 for period of 1/1-12/31/2020 with response letter from Honorable Gregory Rikard, dated 3/25/2021
  - g. Internal audit report of the District Clerk's Registry and Trust Audit for period of 1/1-12/31/2020 with response letter from Honorable John D. Kinard, dated 3/22/2021



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA April 19, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

### **REGULARLY SCHEDULED MEETING**

#### **Call to Order**

#### **Invocation and Pledge of Allegiance**

#### **Public Comment**

#### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Approval of the accounts payable checks dated 4/12/21 and 4/19/21
  - b. Order for payroll period ending 4/14/21 bi-weekly #8
  - c. Order for supplemental payroll period ending 4/14/21 bi-weekly #8
  - d. Internal audit report of the inventory of fixed assets of the Fleet Department for period of 3/12-23/2021 with response letter from Walter Chargois, Fleet Administrative Manager dated 3/31/2021
  - e. Monthly financial report for period ending 3/31/2021
  - f. Quarterly audit report of payroll audit for period of 1/1-3/31/2021
  - g. Request the increase of cash change fund for Bolivar Beach Sticker Program
- \*2. Receive and file *restitution check list from Odyssey* submitted by Collections Improvement Program



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA May 3, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

### **REGULARLY SCHEDULED MEETING**

#### **Call to Order**

#### **Invocation and Pledge of Allegiance**

#### **Public Comment**

#### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Approval of the accounts payable checks dated 4/26/21 and 5/3/21
  - b. Order for payroll period ending 4/28/21 bi-weekly #9
  - c. Order for supplemental payroll period ending 4/28/21 bi-weekly #9
  - d. Internal audit quarterly report for the Court Collections Office for period of Jan - March 2021
  - e. Internal audit quarterly report for Justice of the Peace, Precinct 1 for the period of Jan - March 2021
  - f. Internal audit Quarterly report for Justice of the Peace, Precinct 2 for the period of Jan - March 2021
  - g. Internal audit Quarterly report for Justice of the Peace, Precinct 3 for the period of Jan - March 2021



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA May 17, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

### **REGULARLY SCHEDULED MEETING**

#### **Call to Order**

#### **Invocation and Pledge of Allegiance**

#### **Public Comment**

#### **Consent Agenda**

- \*1. Submitted by the County Auditor's office:
  - a. Approval of the accounts payable checks dated 5/10/21 and 5/17/21
  - b. Order for payroll period ending 5/12/21 bi-weekly #10
  - c. Order for supplemental payroll period ending 5/12/21 bi-weekly #10
  - d. Internal audit report of Justice of the Peace, Precinct 3 for period of 2/1/2020 - 1/31/2021 with response letter from Honorable Billy A. Williams dated 4/23/2021
  - e. Internal audit report of Court Collections for period of 3/1/2020 - 2/28/2021 with response letter from Director of Personal Bonds & Collections, Aaron Johnson dated 5/4/2021
  - f. Monthly financial report for period ended 4/30/2021
  - g. Comprehensive Annual Financial Report for the fiscal year ended 9/30/2020



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

**CALDER MEETING LOCATION**  
**174 Calder Rd., Rm 117**  
**League City, Texas 77573**

**SPECIAL MEETING-AGENDA**  
**May 28, 2021 – 1:00 PM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

## **Call to Order**

## **Public Comment**

## **Consent Agenda**

- \*1. Submitted by the County Auditor's office:
  - a. Approval of the accounts payable checks dated 5/24/21 and 5/28/21
  - b. Order for payroll period ending 5/26/21 bi-weekly #11
  - c. Order for supplemental payroll period ending 5/26/21 bi-weekly #11
  - d. Internal audit report of the Juvenile Justice Department for period of 2/1/20 - 1/31/21 with response letter from Glen Watson, Director of Juvenile Justice, dated 5/12/21
  - e. Internal audit report of Justice of the Peace, Precinct 4 for period of 3/1/20 - 2/28/21 with response letter from Honorable Kathleen McCumber dated 5/17/21
  - f. Internal audit report of Justice of the Peace, Precinct 2 for period of 2/1/20 - 1/31/21 with response letter from Honorable Michael Nelson dated 5/19/21
  - g. Pursuant to Local Government Code 130.902 change fund request for the Law Library



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA June 14, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

### **REGULARLY SCHEDULED MEETING**

#### **Call to Order**

#### **Invocation and Pledge of Allegiance**

#### **Public Comment**

#### **Consent Agenda**

- \*1. Submitted by the County Auditor's office:
  - a. Approval of the accounts payable checks dated 6/7/21 and 6/14/21
  - b. Order for payroll period ending 6/9/21 bi-weekly #12
  - c. Order for supplemental payroll period ending 6/9/21 bi-weekly #12
  - d. Pursuant to Local Government Code 130.902 change fund request for District Clerk's office
  - e. Internal audit report of the Sheriff's Office Bond Division for period of 4/1/20-3/31/21 with response letter from Honorable Sheriff, Henry Trochesset dated 5/19/21
  - f. Internal audit report of the Countywide Fuel Usage Audit for period of 3/1/20 - 2/28/21 with response letter from Lee Crowder, Road Administrator, dated 6/4/21
  - g. Monthly financial report for period ending 5/31/2021



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA**

**June 28, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

## **REGULARLY SCHEDULED MEETING**

### **Call to Order**

### **Invocation and Pledge of Allegiance**

### **Public Comment**

### **Consent Agenda**

- \*1. Submitted by the County Auditor's office:
  - a. Approval of the accounts payable checks dated 6/21/21 and 6/28/21
  - b. Order for payroll period ending 6/23/21 bi-weekly #13
  - c. Order for supplemental payroll period ending 6/23/21 bi-weekly #13
  - d. Internal audit report of the Personal Bond Office for period of 5/1/20 - 4/30/21 with response letter from Mr. Aaron Johnson dated 6/15/21
  - e. Internal audit report of fixed assets of the Road and Bridge Department with response letter from Mr. Lee Crowder, Director of Road and Bridge dated 6/21/21
  - f. Patient-Centered Outcomes Research Institute ("PCORI") reporting fee calculations for 2020 benefit plan year and IRS Form 720 for signature and dating





# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA July 12, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

### **REGULARLY SCHEDULED MEETING**

#### **Call to Order**

#### **Invocation and Pledge of Allegiance**

#### **Public Comment**

#### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Approval of the accounts payable checks dated 7/2/21 and 7/12/21
  - b. Order for payroll period ending 7/7/21 bi-weekly #14
  - c. Order for supplemental payroll period ending 7/7/21 bi-weekly #14
  - d. Indemnification request from the Tax Office dated 6/28/21
  - e. Pursuant to Local Government Code 111.0106 certification of first tranche of the American Rescue Plan transfer from U.S. Treasury
  - f. Pursuant to Local Government Code 111.0106 certification of receipt for 40% of Emergency Rental Assistance from U.S. Treasury
  - g. Monthly financial report for period ending 6/30/21
- \*2. Receive and file *refund check list from Odyssey* submitted by the County Clerk



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

**CALDER MEETING LOCATION**  
**174 Calder Rd., Rm 117**  
**League City, Texas 77573**

**SPECIAL MEETING-AGENDA**  
**July 19, 2021 – 11:00 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

## **Call to Order**

## **Public Comment**

## **Consent Agenda**

- \*1. Submitted by the County Auditor's office:
  - a. Execution of IRS forms 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds

## **Action Agenda**

- 2. Purchasing
  - a. Consideration of approval of a contract with Cotton under the Omnia Cooperative Purchasing agreement to perform remediation and construction rebuild of the Justice Center due to fire-water damage submitted by Purchasing on behalf of Facilities
- 3. Professional Services
  - a. Consideration of approval of the following budget amendment:



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

**CALDER MEETING LOCATION**  
**174 Calder Rd., Rm 117**  
**League City, Texas 77573**

**SPECIAL MEETING-AGENDA**  
**July 23, 2021 – 1:00 PM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

## **Call to Order**

## **Public Comment**

## **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Approval of the accounts payable checks dated 7/19/21 and 7/23/21
  - b. Order for payroll period ending 7/21/21 bi-weekly #15
  - c. Order for supplemental payroll period ending 7/21/21 bi-weekly #15

## **Adjourn**

## **WORKSHOP AGENDA**

- 1 Budget workshop discussion



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **SPECIAL MEETING-AGENDA July 27, 2021 – 1:30 PM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

### **Call to Order**

### **Invocation and Pledge of Allegiance**

### **Public Comment**

### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Pursuant to Local Government Code 111.0106 certification of reimbursement of costs related to implementing new insurance plan
  - b. Pursuant to Local Government Code 111.0106 certification of funds sale of Capital Assets through GovDeals Auction
  - c. Pursuant to Local Government Code 111.0106 certification of funds sale of Capital Assets through GovDeals Auction
  - d. Pursuant to Local Government Code 111.0106 certification of funds sale of Capital Assets through GovDeals Auction
  - e. Internal audit report of the County Engineering Department for period of 6/1/20 - 5/31/21 with response letter from Michael Shannon, County Engineer, dated 7/6/21
  - f. Quarterly audit report of the payroll audit for period of 4/1-6/30/21
  
- \*2. Receive and file *restitution check List from Odyssey* submitted by Collections Improvement Program



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA**

**August 9, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

## **REGULARLY SCHEDULED MEETING**

### **Call to Order**

### **Invocation and Pledge of Allegiance**

### **Public Comment**

### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
- a. Approval of accounts payable checks dated 8/2/21 and 8/9/21
  - b. Order for payroll period ending 8/4/21 bi-weekly #16
  - c. Order for supplemental payroll period ending 8/4/21 bi-weekly #16
  - d. FY20 Galveston County financial trend analysis
  - e. Quarterly audit report for Constable, Precinct 1 for period of April - June 2021
  - f. Quarterly audit report for Constable, Precinct 2 for period of April - June 2021
  - g. Quarterly audit report for Constable, Precinct 3 for period of April - June 2021
  - h. Quarterly audit report for Constable, Precinct 4 for period of April - June 2021
  - i. Quarterly audit report for Court Collections Office for period of April - June 2021



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA**

**August 23, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

### **REGULARLY SCHEDULED MEETING**

#### **Call to Order**

#### **Invocation and Pledge of Allegiance**

#### **Public Comment**

#### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Approval of the accounts payable checks dated 8/16/21 and 8/23/21
  - b. Order for payroll period ending 8/18/21 bi-weekly #17
  - c. Order for supplemental payroll period ending 8/18/21 bi-weekly #17
  - d. Internal audit report of the inventory of the assets of Department of Parks and Cultural Services with response letter from Julie Diaz, Director of Parks and Cultural Services dated 8/11/2021
  - e. Internal audit report of the cash count and inventory of Constable, Precinct 1
  - f. Internal audit report of the cash count and inventory of Constable, Precinct 2
  - g. Internal audit report of the cash count and inventory of Constable, Precinct 3
  
- \*2. Receive and file *restitution check list from Odyssey* submitted by Collections Improvement Program



# GALVESTON COUNTY, TEXAS

COMMISSIONERS COURT 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

**CALDER MEETING LOCATION**  
**174 Calder Rd., Rm 117**  
**League City, Texas 77573**

## **SPECIAL MEETING-AGENDA** **September 3, 2021 – 1:30 PM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

### **Call to Order**

### **Public Comment**

### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Approval of the accounts payable checks dated 8/30/21 and 9/3/21
  - b. Order for payroll period ending 9/1/21 bi-weekly #18
  - c. Order for supplemental payroll period ending 9/1/21 bi-weekly #18

### **Action Agenda**

- 2. General Counsel
  - a. **Break into Executive Session:**
  - b. **Executive Session:** Texas Government Code Section 551.074, Personnel Matters: the Commissioners Court will enter into executive session as permitted under the Open Meetings Act, Chapter 551 of the Texas Government Code, pursuant to Section 551.074 of the Texas Government Code, Personnel Matters: to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee, respectively:



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **SPECIAL MEETING-AGENDA September 7, 2021 – 10:00 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

### **Call to Order**

### **Invocation and Pledge of Allegiance**

### **Public Comment**

### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Pursuant to Local Government Code 111.0106 certification of funds from Great American Insurance initial payment for fire and water damage
  - b. Internal audit report of the District Attorney's office change fund with response letter from Honorable Jack Roady dated 8/24/2021
- \*2. Receive and file *July 2021 collections and personal bond report* submitted by Personal Bond/Collections Office
- \*3. Receive and file *refund check list from Odyssey* submitted by the County Clerk
- \*4. Receive and file *refund check list from Odyssey* submitted by the District Clerk
- \*5. Receive and file *summary of bi-weekly personnel movements pay period #17, August 5 - 18, 2021* submitted by Human Resources
- \*6. Consideration of *adoption of updates to HR Policy Manual (Policy HR011-Leaves of Absence: Paid Quarantine Leave)* submitted by Human Resources





# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA**

**September 20, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

## **REGULARLY SCHEDULED MEETING**

### **Call to Order**

### **Invocation and Pledge of Allegiance**

### **Public Comment**

### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
- a. Approval of the accounts payable checks dated 9/13/21 and 9/20/21
  - b. Order for payroll period ending 9/15/21 bi-weekly #19
  - c. Order for supplemental payroll period ending 9/15/21 bi-weekly #19
  - d. Pursuant to Local Government Code 111.0106 certification of funds from City of Kemah
  - e. Monthly financial report for period ending 8/31/2021
  - f. Contract agreement with DebtBook for debt and lease management software to track debt and leases in compliance with GASB requirements
  - g. Consideration of approval of addition of a grant-funded accountant for ARP and related grant activity



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA**

**October 4, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

### **REGULARLY SCHEDULED MEETING**

#### **Call to Order**

#### **Invocation and Pledge of Allegiance**

#### **Public Comment**

#### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Approval of the accounts payable checks dated 9/27/21 and 10/4/21
  - b. Order for payroll period ending 9/29/21 bi-weekly #20
  - c. Order for supplemental payroll period ending 9/29/21 bi-weekly #20
  - d. Early check release dated 9/20/2021 check no. AP00446498 Texas Division of Emergency Management
  - e. Early check release dated 9/20/2021 check no AP00446497 GIA Insurance Agency, LLC
  - f. Early check release dated 9/28/2021 check no.AP00446644 DMP BPO PBA Burke Asset
  - g. Internal audit report of the cash count of the Galveston County Senior Services Division on behalf of the Department of Parks & Cultural Services



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA**

**October 18, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

## **REGULARLY SCHEDULED MEETING**

### **Call to Order**

### **Invocation and Pledge of Allegiance**

### **Public Comment**

### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Approval of the accounts payable checks dated 10/11/21 and 10/18/21
  - b. Order for payroll period ending 10/13/21 bi-weekly #21
  - c. Order for supplemental payroll period ending 10/13/21 bi-weekly #21
- \*2. Receive and file *restitution check list from Odyssey* submitted by Collections Improvement Program
- \*3. Receive and file *refund check list from Odyssey* submitted by the District Clerk
- \*4. Receive and file *summary of bi-weekly personnel movements pay period #20, September 16-29, 2021* submitted by Human Resources
- \*5. Consideration of *execution of service agreement with CPS HR Consulting for the recruitment and hiring of a new Chief Financial Officer* submitted by Human Resources



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA**

**November 1, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

### **REGULARLY SCHEDULED MEETING**

#### **Call to Order**

#### **Invocation and Pledge of Allegiance**

#### **Public Comment**

#### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Approval of the accounts payable checks dated 10/25/21 and 11/1/21
  - b. Order for payroll period ending 10/27/21 bi-weekly #22
  - c. Order for supplemental payroll period ending 10/27/21 bi-weekly #22
  - d. Early check release to GIA Insurance Agency check number AP00447392
  - e. Internal audit report of the Department of Parks and Cultural Services for period of 9/1/20-8/31/21 with response letter from Director Julie Diaz dated 10/25/21
  - f. Internal audit report of Galveston County Child Welfare for period of 7/1/20 - 6/30/21 with response letter from Jim Gentile, Director of Grants Administration dated 10/22/21
  - g. Quarterly audit report for Constable, Precinct 1 for period of 7/21-9/21
  - h. Quarterly audit report for Constable, Precinct 2 for period of 7/21-9/21



# GALVESTON COUNTY, TEXAS

COMMISSIONERS COURT 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

**CALDER MEETING LOCATION**  
**174 Calder Rd., Rm 117**  
**League City, Texas 77573**

**SPECIAL MEETING-AGENDA**  
**November 12, 2021 – 1:30 PM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

**Call to Order**

**Public Comment**

**Consent Agenda**

- \*1. Consideration of *approval of cloud-based budget book and capital budgeting services with ClearGov* submitted by the County's Office
- \*2. Consideration of *approval of the following budget amendment* submitted by the Auditor's Office:
  - a. 22-038-1109-A  
**Professional Services** - Request increase to Professional Services Cloud Subscription Services for ClearGov subscription funded by General Fund interest revenue received through the American Rescue Plan Stimulus funding. The interest earned on the ARP funds can be used at the County's discretion.

**Action Agenda**

- 3. County Judge
  - a. Consideration of an order establishing new commissioners precinct boundaries

**Adjourn**



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA**

**November 15, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

### **REGULARLY SCHEDULED MEETING**

#### **Call to Order**

#### **Invocation and Pledge of Allegiance**

#### **Public Comment**

#### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Approval of the accounts payable checks dated 11/8/21 and 11/15/21
  - b. Order for payroll period ending 11/10/21 bi-weekly #23
  - c. Order for supplemental payroll period ending 11/10/21 bi-weekly #23
  - d. Pursuant to Local Government Code 111.0106 certification of Great American Insurance advanced payment on building and business personal property damage claim A00374923
  - e. Internal audit report of the FY2021 property tax refunds review for period of 10/1/20 - 9/30/21 with response letter from Honorable Cheryl E. Johnson dated 11/4/2021
  - f. Consideration of approval of a contract with Patillo, Brown Hill, LLP. for annual auditing services



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA**

**November 29, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

## **REGULARLY SCHEDULED MEETING**

### **Call to Order**

### **Invocation and Pledge of Allegiance**

### **Public Comment**

### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
- a. Approval of the accounts payable checks dated 11/22/21 and 11/29/21
  - b. Order for payroll period ending 11/24/21 bi-weekly #24
  - c. Order for supplemental payroll period ending 11/24/21 bi-weekly #24
  - d. Internal audit report of the Alternative Dispute Resolution Fund for period of 9/1/20 - 8/31/21 with response letter from Thayer Evans dated 11/12/21
  - e. Monthly financial report for period ending 10/31/2021
  - f. Execution of IRS form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds
  - g. Internal audit report of the Sheriff's Office Petty Cash Fund for period of 10/1/20 - 9/30/21 with response letter from Honorable Henry Trochesset dated 11/18/21
- \*2. Receive and file *refund check list from Odyssey* submitted by the District Clerk



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA**

**December 13, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

## **REGULARLY SCHEDULED MEETING**

### **Call to Order**

### **Invocation and Pledge of Allegiance**

### **Public Comment**

### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Approval of the accounts payable checks dated 12/6/21 and 12/13/21
  - b. Order for payroll period ending 12/8/21 bi-weekly #25
  - c. Order for supplemental payroll period ending 12/8/21 bi-weekly #25
  - d. Internal audit report of the Community Supervision and Corrections Department for period of 10/1/20 - 9/30/21 with response letter from Willie Lacy, Director, dated 11/22/21
  - e. Internal audit report for the Mosquito Control office for the period of 10/1/20 - 9/30/21 with response letter from John Marshall, Director of Mosquito Control, dated 12/3/21
  - f. FY 2021 Chapter 59 Asset Forfeiture report for Constable, Precinct 3 for period of 10/1/20 - 9/30/21





# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

**CALDER MEETING LOCATION**  
**174 Calder Rd., Rm 117**  
**League City, Texas 77573**

**SPECIAL MEETING-AGENDA**  
**December 14, 2021 – 9:00 AM**

*CONSENT AGENDA:* ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

## **Call to Order**

## **Public Comment**

## **Action Agenda**

1. County Judge
  - a. Consideration of adopting new voting precincts only to conform to Commissioner precincts previously adopted

## **Adjourn**

## **Appearances before Commissioners Court**

A speaker whose subject matter as submitted relates to an identifiable item of business on this agenda will be requested by the County Judge or other presiding court members to come to the podium where they will be limited to three minutes (3). A speaker whose subject matter as submitted does not relate to an identifiable item of business on this agenda will be limited to three minutes (3) and will be allowed to speak before the meeting is adjourned. Please arrive prior to the meeting and sign in with the County Clerk.



# **GALVESTON COUNTY, TEXAS**

**COMMISSIONERS COURT** 722 Moody, County Courthouse, Galveston, TX 77550 (409) 766-2244

Mark Henry County Judge      Darrell Apffel Commissioner, Precinct 1      Joe Giusti Commissioner, Precinct 2      Stephen Holmes Commissioner, Precinct 3      Ken Clark Commissioner, Precinct 4

## **AGENDA**

**December 27, 2021 – 9:30 AM**

**CONSENT AGENDA:** ALL ITEMS MARKED WITH A SINGLE ASTERISK (\*) ARE PART OF THE CONSENT AGENDA AND REQUIRE NO DELIBERATION BY THE COMMISSIONERS COURT. ANY COMMISSIONERS COURT MEMBER MAY REMOVE AN ITEM FROM THIS AGENDA TO BE CONSIDERED SEPARATELY.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding contact the County Judge's office at 722 Moody, Galveston, Texas 77550 (409) 766-2244.

## **REGULARLY SCHEDULED MEETING**

### **Call to Order**

### **Invocation and Pledge of Allegiance**

### **Public Comment**

### **Consent Agenda**

- \*1. Submitted by the Auditor's Office:
  - a. Approval of the accounts payable checks dated 12/20/21 and 12/27/21
  - b. Order for payroll period ending 12/22/21 bi-weekly #26
  - c. Order for supplemental payroll period ending 12/22/21 bi-weekly #26
  - d. Monthly financial report for period ending 11/30/2021
  - e. Pursuant to Local Government Code 111.0106 certification of funds Galveston County Community Action Council
- \*2. Receive and file *restitution check list from Odyssey* submitted by Personal Bond/Collections
- \*3. Receive and file *summary of bi-weekly personnel movements pay period #25, November 25 - December 8, 2021* submitted by Human Resources

**EXHIBIT B**

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

HONORABLE TERRY PETTEWAY, et al., )  
Plaintiffs, )  
VS. ) CIVIL ACTION NO.  
3:13-CV-308  
GALVESTON COUNTY, TEXAS, et al., ) 9:06 A.M.  
Defendants. )

BENCH TRIAL  
BEFORE THE HONORABLE GREGG COSTA  
JANUARY 16, 2014  
VOLUME 3

APPEARANCES:

**FOR PLAINTIFFS:**

MR. NEIL G. BARON  
Law Office of Neil G. Baron  
1010 East Main Street, Suite A  
League City, Texas 77573  
(281)534-2748

MR. CHAD W. DUNN  
MR. K. SCOTT BRAZIL  
Brazil & Dunn  
4407 Bee Caves Road  
Building 1, Suite 111  
Austin, Texas 78746  
(512)717-9822

**FOR DEFENDANTS:**

MR. ROBERT BARRON BOEMER  
Galveston County Legal Department  
Galveston County Courthouse  
722 Moody, 5th Floor  
Galveston, Texas 77550-2317  
(409)770-5562

Proceedings recorded by mechanical stenography, transcript  
produced by computer.

1 time yesterday to call the number that they gave on the e-mail  
2 because I was in here.

09:38:25 3 **THE COURT:** Right. Okay. So subject to that, the  
4 plaintiffs rest.

09:38:29 5 All right. Mr. Nixon?

09:38:33 6 **MR. NIXON:** Judge, as you probably anticipated, we're  
7 prepared to make a Rule 52C motion at this time.

09:38:38 8 **THE COURT:** Okay.

09:38:39 9 **MR. NIXON:** And what I'd like to do, if I may, is --  
10 there's, like, five parts, and if I could ask the Court -- I'm  
11 going to talk about each part, and then maybe the -- and ask  
12 Court to make a ruling at the conclusion of each part, if the  
13 Court chooses to do that.

09:39:00 14 **THE COURT:** So you want to do one part; have them  
15 respond? Do it that way?

09:39:05 16 **MR. NIXON:** It -- I think that may make sense.

09:39:06 17 **THE COURT:** Okay.

09:39:07 18 **MR. NIXON:** And it may be easier for the Court. And  
19 based upon the Court's rulings, it'll -- it'll tell us kind of  
20 how we need to proceed with the rest of the case.

09:39:16 21 **THE COURT:** No, I understand that.

09:39:17 22 **MR. NIXON:** Okay. All right. Well, the first part  
23 I'd like to address is their Count 3, their *Shaw v. Reno* claim.  
24 And the claim, basically, is that race was used as a predominant  
25 factor. The remedy for that is to undo District 3.

09:39:39 1 There's just no evidence. There's no evidence that --  
2 from any witness at any point that race was the predominant  
3 factor for drawing that district, District 3, or drawing the map  
4 at all. That's very simple.

09:40:04 5 **THE COURT:** I mean, most of the *Shaw* -- or at least a  
6 number of the *Shaw v. Reno* cases are white citizens complaining,  
7 right, they were put in a minority district that was drawn for  
8 racial reasons. Isn't that a fair -- typical case under that?

09:40:22 9 **MR. NIXON:** Right. This count just doesn't make sense  
10 in this case.

09:40:26 11 **THE COURT:** Mr. Dunn, what is your -- are you going  
12 forward on that claim?

09:40:32 13 **MR. DUNN:** We are not, Judge.

09:40:33 14 **THE COURT:** I mean, it didn't seem to me to not make  
15 sense in light of the other claims. All right. Well, that  
16 one's easy. Count 3, by agreement, the *Shaw v. Reno* claim will  
17 be dismissed.

09:40:43 18 **MR. NIXON:** Okay. Then let's talk about Count 2.  
19 Count 2 is the -- or my point number two is a Section 2 -- I  
20 guess is their Count 1, is their Section 2 claim under the  
21 Voting Rights Act.

09:41:00 22 We have a safe harbor under Section 2. It's called  
23 proportionality. Even by their own experts' admission that  
24 Section [sic] 3 is a minority-majority district. It contains  
25 more minorities than does Section [sic] 2 and 3 in the old map.