

formal training or expertise about election law. *See* Tex. R. Evid. 702-705 (requirements for expert testimony). Although Contestant's purported expert claims that the County used an "illegal" process to spoil illegible ballots and issue new ballots to voters, the expert's opinion does not cite a Texas statute or law. The expert also makes no attempt to analyze facts under the Texas Election Code. *See* Tex. R. Evid. 702 ("A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.").

Indeed, with respect to the County's two-page ballot, the County not only followed the Texas Election Code procedure for spoiling ballots, but the County also conferred with the voting equipment manufacturer (HART) and followed their published guidelines regarding multiple page ballots. *See* HART Knowledge Article, attached hereto as Ex. A. Importantly, the County also immediately advised the Secretary of State ("SOS") of the process of spoiling ballots and re-issuing new ballot pages and the agency did not object.

Texas law specifically allows for a spoiled ballot and the issuance of a new ballot to voters, but Contestant challenges Harris County's process of spoiling one but not both ballot pages and allowing the voter to re-vote and scan the not-yet-cast ballot page. Section 64.007(a) of the Texas Election Code provides that "[i]f a voter mismarks, damages, or otherwise spoils the ballot in the process of voting, ***the voter is entitled to receive a new ballot ...***") (emphasis added). A voter can spoil up to three ballots during their voting session. *See* Tex. Elec. Code § 64.007(b). The County followed the Texas Election Code's procedure for spoiled ballots.

Contestant's Response concedes that the County provided a written response advising the now-purported expert, Ms. Siegel, that her suggested process would not work. The County

response highlighted Ms. Siegel’s lack of technical expertise about voting machine and scanner functionality. The County explained that when a ballot page is illegible and cannot be read by the Early Vote Ballot Board (“EVBB”), placing the illegible ballot page in the emergency slot prevents the County from recording the voter’s choices for their candidates and is not a solution.

On Sun, Oct 30, 2022 at 12:29 PM Obakozuwa, Rachelle (Elections)
 <Rachelle.Obakozuwa@vote.hctx.net> wrote:

Good afternoon Chair Siegel,

We have reviewed your edits and cannot recommend as suggested for the following reasons:

First: We already have instructions on how to reprint a ballot if it jams in the printer and the voter notifies the clerk of this before the voter walks away from the DUO. However, once the voter selects that their ballot printed correctly, the Clerk will not be able to reprint a ballot. Once the voter does that, the options at that point for illegible second page ballots are to either spoil both pages and give the voter another access code, or allow the voter to scan the 1st page and create an access code to allow the voter to create a second page to scan.

If the voter has already scanned the 1st page, the only other option is to spoil the second page and generate another access code to allow the voter to create a second page.

The judges are trained to follow the reprint instructions on a jammed printer. See instructions that are included on page 114 of manual. This is not the problem.

<p>Voter's Ballot jams in the Duo and the vote can be reprinted</p>	<p>Paper only</p>	<ol style="list-style-type: none"> 1. Press the blue poll worker button on back of the Duo 2. Enter the Poll Worker Code and select "Reprint" 3. Select "Clear Paper", forward or backward 4. Judge retains the original Ballot paper (now considered spoiled) and gives Voter new blank Ballot paper 5. Select "Reprint Sheet" 6. Voter may complete voting as normal 7. Record the Voter's information in the Register of Spoiled Ballots form 8. Place the original Ballot (now considered spoiled) inside the Spoiled Ballot Envelope 9. Record the Voter's information on the Spoiled Ballot List on
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Second: If someone selects that the ballot printed correctly, there is no way it can be reprinted using the reprint button.

Third: If the ballot is illegible, we do not want the voter to deposit it into the emergency slot; the Central

Erin LunoeFord 000420

Count Board would not be able to duplicate an illegible ballot. We suspect you mean that if it doesn't scan; and that's what our initial instructions provide.

Finally: The emergency slot ballots are inserted into an emergency slot envelope and then returned in an emergency slot pouch; these are kept separately from the scanned ballots.

As we were on the ground observing operations yesterday, it appears that the judges understand our initial communication. We are also seeing that the judges are already marking the spoiled ballots on the spoiled ballot log. Please also note that the judges have also been in contact with our IT team for assistance as issues arise related to illegible and smudged ballots. We will continue to review and clarify the process for the judges as needed and ensure that the judges communicate the process to all on their team.

Best regards,



Rachelle Obakozuwa
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See Contestant’s Response, at Ex. 43.

Contestant’s Response also admits that the County provided clear instructions to election

judges.

Judges: We are requesting all Ballot Box Clerks to ask each Voter to double and triple check their Ballot pages and look for smudging or illegibility of any kind. Should this be discovered before any pages are scanned, both pages should be spoiled and the Voter should revote. In the case where it is not noticed in time and one of the Ballot pages is already scanned, the Judge should take the smudged Ballot paper, reissue a new access code for the Voter to mark a second Ballot. The Judge should have someone remain with the Voter during this process. When the Voter is prompted to insert the page that was successfully scanned already, use the smudged Ballot page to prevent wasting a blank Ballot paper. After the Duo prints the second Ballot Page, take the page that was printed on twice and spoil it; allow the voter to enter the other page into the scan. After the Duo prints the second Ballot Page, take the page that was printed on twice and spoil it; allow the voter to enter the other page into the scan.

Contestant's Response, at Ex. 41. The County instructed poll election workers to direct voters to "double and triple check their Ballot pages and look for smudging or illegibility of any kind" prior to scanning their ballots. *See id.* Voters could review the ballot prior to scanning and, if the ballot is illegible, voters could immediately spoil the entire ballot and re-vote. *See id.* If, however, a voter scanned the first ballot page and thereafter discovered that the second ballot page is illegible, election workers would follow the County directions above to spoil a single page of the ballot as allowed by the Election Code. Harris County election procedures further provide that election judges enter spoiled ballots on Spoiled Ballot Envelope. *See* [https://files.harrisvotes.com/harrisvotes/prd/docs/Training/Training%20Manual%20\(Nov.%202022\).pdf](https://files.harrisvotes.com/harrisvotes/prd/docs/Training/Training%20Manual%20(Nov.%202022).pdf). No Harris County procedure directs election workers to place spoiled ballots in the emergency slot to be counted.

Contestant's expert offers speculation and conjecture to conclude that voters *might* cast more than one vote; however, the County's procedures outlined above and instructions to judges did not direct voters to cast more than one vote on every race on their ballot.

B. CONTESTANT HAS NO EVIDENCE THAT THE COUNTY VIOLATED TEX. ELEC. CODE § 51.005 OR THAT VOTERS COULD NOT CAST A BALLOT.

Contestant claims that Texas Election Code § 51.005(a), which sets a benchmark for the supply of ballots to precincts based on prior election turnout, applies here. *See* Contestant's Response at 9-14. It does not.

By its own terms, Texas Election Code § 51.005(a) applies to *precinct-based voting* only. Specifically, it states:

The authority responsible for procuring the election supplies for an election shall provide for each election precinct a number of ballots equal to at least the percentage of voters who voted *in that precinct* in the most recent corresponding election plus 25 percent of that number, except that the number of ballots provided may not exceed the total number of registered voters *in the precinct*.

Tex. Elec. Code § 51.005(a) (emphasis added). Clearly, this statute applies only to precinct-based elections, where voters on election day must vote in the precinct in which they reside. Section 51.005(a) creates a benchmark based on past turnout in that same precinct. This is particularly important because in precinct-based elections voters may only vote in their own precincts on election day.

Harris County stopped using precinct-based voting in 2019. In 2009,¹ the Legislature enacted the current version of Texas Election Code § 43.007, which permits “countywide polling.” Countywide polling allows voters to vote at any polling location (or “vote center”) on election day, and therefore eliminates the requirement that polling locations be allocated by precinct. *See* Tex. Elec. § 43.007 (stating the secretary of state (SOS) “shall implement a program” so counties may “**eliminate county election precinct** polling places and establish countywide polling places”)

¹ Under the rule of Code Construction, a later-enacted statute controls over a conflicting statute that was enacted earlier. *See* Gov't Code § 311.025 (if a conflict exists between statutes, “the statute latest in date of enactment prevails”). Therefore, to the extent a conflict exists here, Texas Election Code § 43.007 controls because it was enacted after § 51.005. *Compare* Tex. Elec. Code §§ 43.007 (countywide voting that “eliminates” precincts, enacted in 2009, last amended in 2021) *with* § 51.005 (precinct-based voting supply allocation, enacted in 1985, last amended in 2005).

(emphasis added);² *see also* the Secretary of State’s definition of “Countywide Polling Place Program” (stating it is “[a]lso referred to as “Vote Centers” and defined as “[a] polling place system in which the **county election precinct polling places are eliminated** and instead any registered voter eligible to vote in the county-run election may vote at any polling place open on election day”)³ (emphasis added). Accordingly, because countywide polling “eliminates” precincts, strict precinct-based voting allocations—be it polling locations, election judges, supplies, or otherwise—are not directly applicable.

In a countywide polling program, polling locations are allocated according to a methodology developed by the county using the program. Tex. Elec. Code § 43.007(f). Under the current version of § 43.007⁴, countywide voting programs may use only 65% of the polling locations used for precinct-based voting in the first countywide election after the program is implemented in that county, and 50% of the locations thereafter. *Id*; *see also* Ex. B (SOS Election Advisory No. 2022-38 (includes guidance about choosing the number and location of polling locations in countywide voting)). They may also increase the number of polling locations, and distribute polling locations to better serve the actual needs of voters, as opposed to being restricted by precinct lines.

Counsel for *amicus* is not aware of any provision of the election code or other law that prescribes how supplies, like ballot paper, are allocated in a countywide polling program. *See generally*, Tex. Elec. Code. And despite its obligation to do so, the SOS has failed to provide any

² Tex. Elec. Code § 1.005(2) defines “County election precinct” as “an election precinct established under Section 42.001.” Tex. Elec. Code § 42.001(a) states a “commissioners court by order shall divide all the territory of the county into county election precincts in accordance with this subchapter.”

³ SOS website, “Glossary of Elections Terminology” <https://www.sos.state.tx.us/elections/laws/glossary.shtml>

⁴ A previous version of Texas Election Code § 43.007 did not prescribe a methodology for allocating polling locations in countywide voting, and another previous version prescribed a different methodology than is used today.

guidance on this issue. *Compare* Tex. Elec. Code § 43.007 (stating, the SOS “shall implement a program” so counties may “eliminate county election precinct polling places and establish countywide polling places”) *with* 1 Tex. Admin. Code Ch. 81 (SOS’s applicable election regulations, which are silent on this issue) and SOS’s website (containing advisories and guidance on many elections issues, but nothing on this issue).

Nevertheless, *assuming arguendo* Texas Election Code § 51.005 applies to countywide voting—it does not—Contestant’s allegation still fails for two reasons. First, as drafted, § 51.005’s methodology is both illogical and, if used in countywide voting, likely illegal. Second, it would have been impossible to use during the 2022 November Election because that was Harris County’s first election after redistricting.

First, applying Texas Election Code § 51.005’s requirements to countywide polling is illogical. As drafted, it requires “a number of ballots equal to at least the percentage of voters who voted in that precinct in the most recent corresponding election plus 25 percent of that number . . .” Tex. Elec. Code § 51.005(a). What “percentage” would mean in the countywide polling context is entirely unclear. *See Id.* In countywide voting, all of a county’s voters could choose to vote in the same vote center in one election. If that county had a million voters in one election, during the next election, the county would be forced to provide 1,250,000 ballots to that vote center (assuming that vote center still existed as a vote center), according to Contestant’s reasoning. And the County would have no obligation to provide more than zero (125% of zero) ballots to all other vote centers. Alternatively, Contestant might claim that *all* vote centers must receive 1,250,000 ballots because any vote center could correspond to a vote center (or precinct) in the most recent corresponding election, given that any voter can vote any vote center. In a county with one million voters (close to some Harris County voter turnouts), that could result in upwards of 750 million ballots having

to be distributed (if there were 600 vote centers, for example). Contestant does not contend with these absurdities, instead claiming in conclusory fashion that “the statutorily required amount of ballot paper is determined by multiplying the actual turnout of voters in November of 2018 at a specific polling location by 125%.” Contestant’s Resp. at p. 10. But there is simply nothing in the election code suggesting that this rule should apply in countywide polling, and Contestant’s approach would only lead to absurd results.

The inapplicability of Section 51.005(a) to countywide polling is further evidenced by Section 51.005(a)’s last clause: “except that the number of ballots provided may not exceed the total number of registered voters in the precinct.” *Id.* This clause likely makes almost any allocation under countywide voting illegal because it would be virtually impossible not to exceed the total number of registered voters in many precincts. For example, if five adjoining precincts are projected to be served by the same countywide polling location, and all five precincts have 100 registered voters who all voted in the previous election, under Contestant’s reading, a county must supply that polling location with 625 ballots. But in doing so, that county would violate § 51.005(a)’s last clause—for all five precincts—because it provided ballots 525 more ballots than each precinct has voters. Accordingly, as drafted, it is virtually impossible not to violate Texas Election Code § 51.005 under countywide voting.

Second, again *assuming arguendo* Texas Election Code § 51.005 applies to countywide voting—it does not—Contestant’s allegation also fails because, for Harris County in November 2022, there was not a “recent corresponding election” upon which to base ballot calculations. Tex. Elec. Code § 51.005(a). After the 2020 U.S. Census was delayed, it caused a domino effect that resulted in redistricting delays and subsequent delays in getting voters registered in their new election precincts, which did not start to occur until January 2022. Accordingly, voters had to be

registered *for the first time* into new precincts less than 10 months prior to the November 2022. See SOS Election Advisory 2021-14 (noting the delay of the U.S. Census caused delays in redistricting, meaning there was delay in getting voters registered into their new election precincts—a process that started in January 2022); SOS Election Advisory No. 2022-26 (noting it was impossible to use 2018 election numbers as a basis to allocate election judges in 2022 because new election precincts were created after redistricting; thus, even precinct-based counties were advised to use the countywide percentage method listed in Tex. Elec. Code § 32.002(c-1)).

Therefore, because Harris County had new precincts in 2022, with new voters registered in those new precincts, there was no “corresponding election” to use—it simply was not possible for the November 2022 Election. Contestant’s silence on this issue speaks volumes.

Contestant also has provided no evidence suggesting that the Harris County “prevented eligible voters from voting” or made a mistake that “materially affected the election’s outcome.” Tex. Elec. Code § 221.003(a)(2); *Woods v. Legg*, 363 S.W.3d 710, 731 (Tex. App.—Houston [1st Dist.] 2011, no pet.). The only evidence Contestant relies on is that some eyewitnesses purportedly saw voters who were in line leave polling locations because they were “turned away” due to ballot paper shortages. See Contestant’s Response, at p. 14, Ex. A, Ex. 30. However, Contestant does not provide *any* evidence that *any* voter was unable to cast a ballot after being turned away from a poll that ran out of paper. That is likely because, in a countywide polling system, such voters could have driven to a different nearby polling location and cast their ballots there. In much of Harris County, the closest would have been a short drive away.

At least that is what Contestant’s attorney believes, in addition to the Harris County Republican Party, and the State of Texas—or at least that is what they have previously represented

to another court. Specifically, during an Emergency Hearing on Election Day,⁵ the Harris County Republican Party (“HCRP”) opposed polls remaining open for an extra hour after some locations opened late. *See* Lunceford000928-29 (Emergency Hearing at 9:10-12:6) and 000940 (at 21:2-11). With 782 polling locations on Election Day, HCRP believed voters were not prevented from voting if their preferred polling location was temporarily closed—even for an hour or more—because there were nearby “alternative locations” to choose from. *See* Lunceford000977 (Emergency Hearing at 21:2-11). Specifically, regarding the Ripley House polling location, which opened late, HCRP Attorney Andy Taylor⁶ argued the voters were not prevented from voting because “there’s another polling site nine blocks from there, it’s called Settegast. It’s a four-minute drive. There’s also Eastwood Park, it’s a five-minute drive ... So there are alternative locations.” Erin Lunceford000977 (Emergency Hearing at 21:2-11).

Moreover, after the court ordered the polls to remain open for an extra hour, the State of Texas intervened and echoed HCRP’s sentiment. Specifically, the Deputy Chief of General Litigation for the Office of the Texas Attorney General, Attorney Kimberly Gdula, argued voting hours should not have been extended because there was no evidence “why any of the [voters] at these 12 polling locations [that opened late] were unable to use one of the 770 other polling locations or that those 770 other polling locations could not somehow accommodate these additional voters...” Erin Lunceford000977 (Emergency Hearing at 58:10-14).

C. CONTESTANT HAS NO EVIDENCE THAT THERE WERE MORE MAIL-IN BALLOTS THAN TRANSMITTAL FORMS.

During their time serving on the independent, bi-partisan Early Voting Board (EVBB), two

⁵ *See Texas Organizing Project v. Harris County, et al*, Cause 2022-73765 (ordering Harris County polling locations to remain open for an extra hour at 12 locations that opened late, which required all 782 locations to remain open due to countywide voting).

⁶ At that hearing, Contestant’s Attorney Andy Taylor was representing the HCRP on behalf of all Republican candidates, including Contestant. *See* Lunceford000928-929 (Emergency Hearing at 9:10-10:16).

of Contestant's fact witnesses apparently failed to retain their personal copies of certain transmittal forms⁷ that they claim account for 2,159 mail-in ballots ("BBMs"). Due to *her witnesses' failure* to retain their personal copies, Contestant somehow—without any law to support it—leaps to the illogical and inequitable conclusion that these BBMs should not have been counted and 2,159 Harris County voters should lose their right to vote.⁸ *See* Response at ¶¶ 40 - 43.

However, the EA accounted for the transmittal forms Contestant's witnesses failed to retain and produced said copies to Contestant on July 14, 2023, under bates labels LUNCEFORDHC_0252587- LUNCEFORDHC_0252704 and LUNCEFORDHC_0252571- LUNCEFORDHC_0252586.

Therefore, because the EA's Office has provided copies of the transmittal forms her two witnesses were missing, Contestant should withdraw this unsupported claim because the evidence clearly contradicts it; otherwise, the Court should dismiss this claim as a matter of law.

D. CONTESTANT HAS NO EVIDENCE OF DOUBLE VOTES

Contestant claims that 13⁹ voters allegedly voted twice—they did not. Contestant's purported expert is no expert at all. The purported expert, Ms. Vera, provides no information about her education, training, or expertise in election law. Ms. Vera offers the conclusory opinion that 13 people voted twice with no methodology or explanation at all. *See* Tex. R. Evid. 702-705. Contestant's argument highlights her lack of knowledge of election laws and process—as well as

⁷ Transmittal forms are just that, forms, not the actual ballots. Moreover, Contestant provides no law to support her claim that thousands of votes must be thrown out if copies of some transmittal forms are missing, despite the fact said votes were already accepted by both the SVC and EVBB.

⁸ Apparently, Contestant believes democracy in Texas should hang by such a thin thread. *See* Response at ¶¶ 40 – 43 and *generally*.

⁹ Contestant's Response references 16 voters, but the alleged expert Affidavit only references 13. The number is immaterial as the expert's opinion is conclusory.

her willingness to advance unfounded arguments to this Court to seek a new election.

While her methodology is never explained, it appears that Contestant may have reviewed unofficial mail-in ballot, early vote, and election day rosters, and assumed that there was a double vote if a voter's name appeared on more than one list. There are several reasons why a voter may appear on more than one unofficial list, although the voter only cast one vote. Contestant's expert considers none. Contestant completely fails to consider that a voter can appear in person at a polling site, surrender a mail ballot, and vote a regular ballot. The Texas Election Code permits an applicant to appear in person at any polling place that is open for early voting by personal appearance or on election day to surrender their ballot by mail and vote a regular ballot. *See* Tex. Elec. Code § 84.032. The surrendered ballot by mail is not counted and the regular ballot cast in person is counted.

Contestant also fails to account for the fact that a voter can initially go to an early voting polling site, not vote, and return later to vote. The voter can complete the check in process, but decide not to vote at that moment. A voter who is checked in according to proper procedures, but then does not vote, did not cast a vote. These voters, therefore, had not exercised their ability to cast a ballot and have the right to return later, check-in, and vote on Election Day. *See* Tex. Elec. Code § 64.007(b)

Contestant's Response adduces no evidence to support her double voting claim.

E. CONTESTANT HAS NO EVIDENCE THAT MAIL IN BALLOTS WERE NOT TIMELY OR PROPERLY SUBMITTED.

Contestant's Response does not cite a single Texas statute or law to support her argument regarding mail-in ballot envelopes. Instead, Contestant offers a conclusory affidavit that simply states "In my opinion, and, based on my experience, training, and expertise, none of these ballots by mail should have been accepted and counted . . ." There are no additional references to Texas

law. There is no attempt to analyze facts or individual ballots based on election law. *See* Response, Ex. B.

Contestant's Response fails to consider and ignores the fact that the EVBB has the sole authority to review and accept mail-in ballot votes. Tex. Elec. Code § 87.041. The bi-partisan EVBB reviewed and accepted each mail-in ballot envelope Contestant challenges. This Court should not substitute its judgment for that of the EVBB. *See Alvarez v. Espinoza*, 844 S.W.2d 238, 244 (Tex. App.—San Antonio 1992, writ dismissed w.o.j.) (noting “[t]he law presumes that the EVBB acted properly in rejecting and accepting ballots; to overcome this presumption, a challenger must show by clear and satisfactory evidence that the board erred”).

1. POST MARK DATES

Contestant's actual claim regarding mail-in ballot postmark dates is unclear. Contestant earlier argued that mail-in ballots must be postmarked the day before the election—November 7. Contestant wrongly advanced this argument to the judge in open court. The argument is patently false and demonstrates her complete misunderstanding of basic election law. For the November 8, 2022 election, regular mail-in ballots must have arrived on election day—November 8,¹⁰ or the day after on November 9 with a *November 8* postmark.¹¹ Tex. Elec. Code § 86.007(a)(1-2); *see also* SOS November 2022 Election Law Calendar, SOS Advisory No. 2022-25, p. 45. Contestant's Response confusingly challenges ballots “post-marked after November 8” and “post-marked on November 8”. Response, ¶ 46. Likewise, her list of identified documents refers to mail-in ballots

¹⁰ Tex. Elec. Code § 86.007(a)(1) (“a marked ballot voted by mail must arrive at the address on the carrier envelope: (1) before the time the polls are required to close on election day; or”).

¹¹ Tex. Elec. Code § 86.007(a)(2) (“not later than 5 p.m. on the day after election day, if the carrier envelope was placed for delivery by mail or common or contract carrier before election day *and bears a cancellation mark of a common or contract carrier or a courier indicating a time not later than 7 p.m. at the location of the election on election day.*”) (emphasis added).

postmarked “on” Nov. 8.

Bates Numbers for Postmark on or after Nov. 8

1 0114823 & 0114824

Response, ¶ 46. Accordingly, Contestant’s Response admits that mail-in ballots she challenges were properly postmarked “on” November 8. This statement alone undermines Contestant’s claim.

The face of the challenged mail-in ballot envelopes reveals that nearly all have an original postmark date on or before November 8, 2022. *See* Response, at Ex. 12. Contestant conveniently ignores the fact that many ballots have two postmark stamps—the original with the day the voter mailed the ballot—and the second postmark documenting when that ballot was transferred to the downtown Houston post office. *See* Response, at pp. 29-32.

Moreover, Contestant incorrectly includes ballots with an illegible, original postmark stamp. An illegible postmark stamp is no evidence that a voter did not timely mail the ballot. *See* Response, Ex. 12. In fact, the Election Code provides that “if the early voting clerk cannot determine whether a ballot arrived before the deadline, the ballot is considered to have arrived at the time and the place at which the carrier envelopes are deposited was last inspected for removal of returned ballots.” Tex. Elec. Code § 86.007 (b). Contestant’s Response is silent about Section 86.007 (b) and fails to address this category of BBM envelopes. *See* Response, at pp. 29-32.

Finally, Contestant fails to adduce evidence on whether a mail-in ballot was sent from an address outside the United States or whether the mail-in ballot is from a military voter, spouse, or dependent. Tex. Elec. Code §§ 101.057(b), 86.007 (d-e).

2. Carrier Envelopes

Contestant claims that mail-in ballots were not signed and should not have been accepted by

the EVBB. As an initial matter, Contestant wrongly identifies “unsigned” mail-in ballot envelopes that clearly contain a signature or mark by the voter. *See* Response, at Ex. 11. Contestant seeks to void mail-in ballots because a voter may have signed the ballot in the witness or assistant sections or in another space on the ballot. *See id.* This Court should not discard cast ballots based on technicalities advanced by Contestant.

Contestant’s argument is also flawed because she fails to consider that carrier envelopes can be cured. *See* Tex. Elec. Code § 87.0411(a)(4). Contestant offers no evidence or argument related to cured carrier envelopes.

Contestant also fundamentally misunderstands election laws because “witness” and “assistant” signatures are allowed under the law. *See* Tex. Elec. Code § 86.0051(a). A witness can sign for a voter. Contestant’s Response is silent about witness and assistant signatures.

In fact, Contestant’s expert cites no Texas Election Code provisions and offers no explanation about an individual mail-in ballot. Contestant’s evidence is again incomplete and deficient. Contestant has no evidence to support her claims as to her mail-in ballot claims.

F. CONTESTANT HAS NO EVIDENCE THAT TECHNICAL ERRORS OR OMISSIONS VOID PROVISIONAL BALLOTS ACCEPTED BY THE EVBB.

Contestant unbelievably argues that this court should void **81.2%** of all provisional ballots cast by Harris County voters. Response, at Exs. 10B, H. Contestant asks this Court to discard most of the provisional ballots duly accepted and counted by the bi-partisan EVBB for hyper-technical reasons. *See Contra Alvarez*, 844 S.W.2d at 244 (noting, “[t]he law presumes that the EVBB acted properly in rejecting and accepting ballots; to overcome this presumption, a challenger must show by clear and satisfactory evidence that the board erred”). However, it is telling that Contestant’s Summary Judgment Response does not cite a single Texas statute or case that states an unchecked box or a missing data field on an election document makes a cast vote

illegal. Not one Texas statute. Not one Texas case. That's because it simply is not the law. Contestant's concocted argument has no basis in law, and her expert's opinion is conclusory and speculative. This Court cannot discard Harris County residents' votes and substitute its own judgment for that of the EVBB that is authorized under Texas law to review and accept provisional ballots.

The Texas Election Code mandates creation of the EVBB. Tex. Elec. Code § 87.001 ("An early voting ballot board shall be created in each election to process early voting results from the territory served by the early voting clerk."). The early voting ballot board consists of a presiding judge, an alternate presiding judge, and at least one other member. Tex. Elec. Code § 87.002(a). County chairs from each political party on the ballot nominate individuals to be on the early voting ballot board. Tex. Elec. Code § 87.002(c). The county election board is required to pick the same amount of people from each list for the board. *Id.* Therefore, through basic math, the early voting ballot board cannot be partisan, because there are an equal number of Republicans and Democrats on the board. It is a bipartisan board that is the ultimate decision maker on whether provisional ballots should be counted.

The EVBB is tasked with accepting or rejecting provisional ballots cast in an election. Tex. Elec. Code § 65.054(a) ("The early voting ballot board shall examine each affidavit . . . and determine whether to accept the provisional ballot of the voter who executed the affidavit"). *See also* 1 Tex. Admin. Code § 81.176. Indeed, the EVBB is the only body with the power to accept provisional ballots for the official count. *Morales v. Segura*, No. 04-15-00365-CV, 2015 WL 8985802, at *3 (Tex. App.—San Antonio Dec. 16, 2015, no pet.). The EVBB accepts a provisional ballot when it determines that the voter is eligible to vote based on information in the affidavit or "information contained in the public records." *See* Tex. Elec. Code § 65.054(b)(1) ("A provisional

ballot shall be accepted if the board determines that: (1) from the information in the affidavit *or contained in public records*, the person is eligible to vote in the election and has not previously voted in that election[.]” (emphasis added). There is no other entity authorized to accept provisional ballots, therefore, this Court should not usurp the EVBB’s power and discard provisional ballots that were accepted.

In fact, the Texas Administrative Code provides that despite any technical requirements, the EVBB *shall* accept all ballots when “[t]he voter registrar has information in the office that the voter did complete an application, and the voter is otherwise qualified, the ballot shall be counted.” 1 Tex. Admin. Code § 81.176 (c)(3)(H) (emphasis added). The EVBB is fully authorized to review all available information “in the [County] office” about a completed application, including voter registration information when accepting a ballot. *Id.* Moreover, the EVBB has to authority and duty to accept a ballot after considering whether “the voter is otherwise qualified” to cast a ballot. *Id.* For this reason, Contestant’s challenges to all PBAs based on the face of the document itself fails. Contestant’s conclusions are based on incomplete information because the document itself does not reflect the totality of information available to and reviewed by the EVBB when accepting a ballot. Accordingly, Contestant’s hyper-technical arguments related to scrivener errors or unintentional mistakes or omissions—like an unchecked box on a form or a missing date—do **not** invalidate or void ballots cast by residents and accepted by the EVBB.

Indeed, the regulations promulgated by the Texas Secretary of State found at Texas Administrative Code § 81.176 specify the limited circumstances when a provisional ballot cannot be counted. *See* Tex. Admin Code § 81.176(c)(2). These circumstances typically require that the election judge and/or the voter registrar affirmatively indicate that the voter cannot be qualified to

vote for reasons such as not showing proper identification or not being registered to vote. For example, Texas Administrative Code § 81.176(c)(2)(A) states that the EVBB may not count a provisional ballot “if the election judge *indicated* that the voter did not provide an acceptable form of identification described by § 63.0101 of the Code and the voter registrar *noted* that the voter did not present an acceptable form of identification to the voter registrar, complete one of the curing affidavits set out in § 65.054(b)(2)(B), or apply for and receive a disability exemption by the sixth day after election day, then the ballot shall not be counted.” (emphasis added). Every other provision of that subsection likewise requires confirmation from an election judge or voter registrar, except when a voter votes provisionally when they have a mail ballot that has not been cancelled and has been counted. *See id.* at § 81.176(c)(2)(C). Contestant, however, would seek to have *any* provisional ballot thrown out, even if they do not fall into the mandatory rejection categories in Section 81.176(c)(2). This fundamentally misrepresents the law on acceptance of provisional ballots and fails to understand the discretion given to the EVBB to accept provisional ballots that can be associated with a voter who has substantially complied with the requirements to qualify to vote.

Contestant’s standards for the EVBB could create chaos as nearly every election in every county across the State of Texas—which all involve individual residents serving as volunteer election judges, election clerks, and EVBB members—would be subject to upheaval simply because a candidate sought to review every election document for technical errors or omissions. Worse, every election throughout the State would be subject to upheaval if a single EVBB member attempts to hold herself out as a self-purported expert and nullify the decisions jointly made by other bi-partisan EVBB team members when accepting cast votes. That is neither the purpose and intent of election contests under the Texas Election Code nor the outcome required under Texas

law. *See Contra Alvarez*, 844 S.W.2d at 244; Tex. Elec. Code § 65.054; 1 Tex. Admin. Code § 81.176.

G. CONTESTANT HAS NO EVIDENCE THAT ILLEGAL VOTES WERE CAST BY VOTERS WITH CANCELED REGISTRATIONS

For the November 2022 Election, Contestant alleges, based on a roster containing updated registrations posted one month after the election, that 2,970 voters cast ballots despite having cancelled registrations. Response, at ¶¶ 58-60. This is wrong.

In response to a discovery request for production, the EA's office generated a report to reflect all voters who voted in the November 2022 election but whose registration was canceled when they checked-in to cast their ballot. The report, which was produced to Contestant as bates label LUNCEFORDHC_0252570, does admittedly have five people who potentially voted after their registration was canceled.¹² But this is not the 2,970 voters Contestant claims. Instead, the remaining 2,965 voters had active registrations and were eligible to vote when they checked-in to cast their ballot. *See* Tex. Elec. Code §§ 11.001 - 11.002 (a voter is eligible to vote if they are registered on the date their vote is cast). But subsequently, their registration was cancelled, after they cast their ballots, during the reconciliation period that always occurs after every election, when all Texas counties reconcile their registrations based on updated information received from the SOS' Teams statewide system.

Therefore, Contestant should withdraw this unsupported claim that is clearly contradicted by the evidence, at least for the number alleged; otherwise, the Court should dismiss this claim as a matter of law.

¹² Notably, the November 2022 election had more voters checked-in than ballots cast.

H. CONTESTANT HAS NO EVIDENCE THAT ILLEGAL VOTES WERE CAST AND COUNTED WITHOUT A STATEMENT OF RESIDENCE BASED ON ONLINE POST OFFICE DATA.

Contestant challenges thousands of votes, including votes relating to Statements of Residence (“SOR”) and Provisional Ballots Affidavits (“PBA”), based on interpretations made by her Microsoft Office “expert,”¹³ who compared the voter roster to the United States Postal Service’s National Change of Address program (“NCOA”). *See* Response at ¶¶ 62 – 63. Basically, Contestant alleges these voters’ registrations should be cancelled and their votes should be tossed out because they did, or did not, self-report mailing address changes to NCOA. *Id.* But, forwarding mail or a request for a postal service address change is no evidence that a voter has established a new, permanent residence under the Texas Election Code.

Notably, the Postal Service has acknowledged NOCA is horribly mismanaged (necessitating over \$21 million in refunds in 2021) and its insufficient verification controls have resulted in inherently flawed data and rampant fraud (including a 167% rise of identity theft and fraud in 2021 and a “significant fraud scheme in [fiscal year] 2022”).¹⁴ But notwithstanding these major problems with Contestant’s underlying NCOA data, what Contestant asks this Court to do clearly violates both Texas and federal election laws.

Under Texas election law, the County cannot ignore the voter’s registered address and cancel a voter’s registration based on NCOA data alone. If a voter registrar believes a registered

¹³ *See* Response’s Exhibit I: “Declaration of Steve Carlin ...”. Mr. Carlin professes to be an expert in Microsoft Office products, and he apparently created spreadsheets and graphs based on this expertise. However, Mr. Carlin’s Declaration contains no applicable references to his education, training, and experience in Texas Election Law, generally, or voter registration, specifically. *See* Tex. R. Evid. 702-705 (requirements for expert testimony). Accordingly, if this Court wants to create spreadsheets or give some pizzazz to a power point presentation, Mr. Carlin might be able to help—but when it comes to elections, his testimony provides no help at all.

¹⁴ Office of Inspector General, United States Postal Service, *Issues identified with Internet Change of Address*, Report Number 22-058-R22, April 12, 2022, <https://www.uspsoig.gov/sites/default/files/reports/2023-01/22-058-22.pdf> (last visited July 23, 2023).

voter might have moved—be it from the inherently flawed NCOA or a more reputable source—the registrar must send the voter a notice “requesting confirmation of the voter's current residence.” Tex. Elec. Code § 15.051. That notice contains a warning that the voter must confirm their residence¹⁵ within two general elections, i.e., four years—but they can still vote during this timeframe. Tex. Elec. Code § 15.052. Federal election law has the same requirement. *See* National Voter Registration Act at 52 U.S.C.A. § 20507 (c) and (d) (a state is prohibited from cancelling a voter’s registration based on NCOA information unless a voter is given notice that they must confirm their residence within two federal elections, or four years, and the voter fails to do so).

And Contestant’s expert had no basis to conclude that voters changed their permanent residence. Contestant’s Microsoft “expert” did not verify whether other, rational explanations exist for them to not also change their voter registration. He failed to account for the fact NCOA has temporary options, with some temporary requests being for as little as 15 days, up to 364 days—he failed to verify whether some of the “moves” might only be for 15 days. The purported expert made no effort to contact voters and determine whether their “move” was only to reroute their mail while they were away on vacation. He failed to verify whether voters may have rathered receive mail and packages at a P.O. box or their business instead of their home. He did not verify whether any of these voters is a traveling nurse who works at out-of-county or out-of-state hospitals but keeps a permanent residence in Harris County. He failed to consider whether a voter is someone simply moving temporarily to be with a terminal parent who is in hospice. He failed to determine whether a student voter is away at college, but still considers their family home their residence.

For all the voters whose votes he wants to toss out, Contestant’s Microsoft “expert” made

¹⁵ “Residence” means, in relevant part, a “domicile, that is, one's home and fixed place of habitation to which one intends to return after any temporary absence ... A person does not lose the person's residence by leaving the person's home to go to another place for temporary purposes only ... [a residence is a place the] the person inhabits ... at the time of designation and intends to remain.” Tex. Elec. Code § 1.015.

no effort to contact a single person to verify his “analysis”. Or put another way: Contestant’s Microsoft “expert” did absolutely nothing to corroborate his underlying allegation—that these voters allegedly provided false or inaccurate information on their voter registration, or SOR, or PBA. Therefore, his analysis is worthless because the underlying data and methodology are flawed, meaning the analytical gap between his “evidence” and his opinion is clearly way too far a leap. *See Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 727 (Tex. 1998) (if the analytical gap between the data and an offered opinion is too great, the opinion is unreliable). And because there is no evidence this NCOA data was corroborated with the voters or the required confirmation process, Texas law states these registrations are valid and not cancelled when these voters cast their ballots, meaning their votes are legal must be counted. *See* Tex. Elec. Code §§ 11.001 - 11.002 (a voter is eligible to vote if they are registered on the date their vote is cast) and § 11.005 (even if a voter has moved but is “permitted to vote by an election officer who does not know of the erroneous registration [... the vote is] valid unless the voter intentionally gave false information to procure the erroneous registration”); *see also Slusher v. Streater*, 896 S.W.2d 239, 247 (Tex. App.—Houston [1st Dist.] 1995, no writ) (applying Tex. Elec. Code §§ 11.001, .002, and .005 to hold a vote for city council was valid, despite the fact the voter’s two addresses were listed as a place outside the city and a P.O. box within the city, because the voter believed his actual residence was his shrimp boat that he docked within city limits, he was registered to vote in the city when he cast his ballot, and “[t]here was no evidence that [he] intentionally gave false information to procure an erroneous registration”).

Therefore, regarding this NCOA data and issues relating to voter registrations, Contestant has failed to carry the weight of her heavy burden and the Court should dismiss this issue. *See Olsen v. Cooper*, 24 S.W.3d 608, 610 (Tex. App.—Houston [1st Dist.] 2000, no pet.) (a

“contestant's burden is a heavy one and the declared results of an election will be upheld in all cases except where there is clear and convincing evidence of an erroneous result”); *O’Cana v. Salinas*, No. 13-18-00563-CV, 2019 WL 1414021, at *11 (Tex. App.—Corpus Christi—Edinburg Mar. 29, 2019, pet. denied) (reversing a trial court decision to void an election because “in an era when State and federal elected officials seek to sow doubt and mistrust of government by grossly exaggerating the prevalence of illegal voting, we must also remain vigilant to safeguard a voter's right to have his or her lawful vote counted. The Texas Legislature has prescribed a heightened standard of proof in election contests for precisely this reason” and the losing contestant failed to meet this heightened standard).

I. CONTESTANT HAS NO EVIDENCE THAT ILLEGAL VOTES WERE CAST AND COUNTED WITHOUT AN APPROPRIATE REASONABLE IMPEDIMENT DECLARATION.

Without any law to support it, Contestant alleges “approximately 530” reasonable impediment declarations (“RIDs”) should be tossed out. Response at ¶ 64. Basically, she claims her witness(es) will testify these RIDs “are not sufficient to have permitted those specific voters to be eligible to cast a regular ballot or the documents present significant doubt as to the acceptability of the voter...” Response at ¶ 64. For example, Contestant complains that some RIDs are allegedly “are not signed and/or failed to identify what type of identification and/or the reason for the impediment, and therefore each of these votes that were cast and counted are ineligible to be counted.” Response at ¶ 64. But this is not the law in Texas.

Under Texas law, RIDs are not rejected and a person’s vote tossed out because of what is tantamount to scrivener’s errors, on either the part of the voter or the election official.¹⁶ In fact, the

¹⁶ See e.g. *Alvarez*, 844 S.W.2d at 242 (even if “several procedural irregularities permeated the election ... [and] officials... fail[ed] to follow certain code provisions ... [procedural provisions are directory, not mandatory] and their violation does not require a new election”).

Texas Election Code states, “[a]n election officer may not question the reasonableness of an impediment sworn to by a voter in a” RID. Texas Election Code § 63.001(d). Moreover, SOS has provided guidance that a signed RID “shall be rejected only upon conclusive evidence that the person completing the declaration is not the person in whose name the ballot is cast.” Secretary of State, Elections Division, *Handbook for Election Judges and Clerks, Qualifying Voter on Election Day 2022, For Use In General, Primary, and Other Political Subdivisions* at 21 and 27 (revised July 2022).

Accordingly, because Contestant’s allegations are contrary to Texas Election Code and relevant SOS guidance, the claims relating to RIDS should be dismissed as a matter of law.

J. CONTESTANT HAS NO EVIDENCE THAT ILLEGAL PROVISIONAL BALLOTS WERE CAST AND COUNTED BY VOTERS WITH AN IMPROPER REGISTRATION ADDRESS

Contestant argues that voters’ ballots should be rejected because their registered address appears to be a commercial address or P.O. box based on their purported expert’s internet search. Contestant’s argument fails because her expert’s methodology is flawed and unreliable because the search of allegedly “commercial” properties captured not only residential homes, but also dwellings like apartment complexes, university dorms, assisted living facilities, condos, and trailer parks—all of which are clearly locations where people reside and claim as their domicile.¹⁷ *See* Response, Ex. 10A, I.

Further, Contestant has not met her burden to show that voters with a “commercial post office box or similar address” are not also using it for their residence.¹⁸ *See* Tex. Elec. Code §§ 15.051 and .053 (implying such addresses are permitted if they “correspond to a residence”).

¹⁷ Contestant also claims that some provisional ballot voters live out of county; however, she relies on post office mail request changes and not the registered addresses voters identified on each ballot. *See infra* at Issue 10 (discussing deficiencies in Contestant’s claim and expert testimony based on post office data).

¹⁸ A voter Registrar must accept a voter’s address unless the registrar has reason to believe that “the voter’s residence address is a commercial post office box or similar location *that does not correspond to a residence.*” *See* Tex. Elec. Code § 15.051(a) (emphasis added).

Contestant has failed to confirm that each of these addresses do not also correspond to a residence. Contestant has failed to confirm none of these voters live in a church, nursing home, apartment complex, trailer park, or student housing that uses a P.O. Box or similar type of mailing address. *See e.g.*, Tex. Elec. Code § 15.054(f) (“a full-time student who lives on campus at an institution of higher education may use the address of a post office box on the campus ... or in a dormitory...”).

Finally, Contestant has failed to confirm these voters are not judges and their spouses, peace officers, or prosecutors, who may use a business address under the alternate address program through the Texas Department of Public Safety. *See e.g.*, SOS Advisory 2020-28. Contestant has also failed to confirm these voters are not crime victims permitted to list a P.O. box as their residence under the address confidentiality property administered by the Office of the Attorney General. *See e.g.* Tex. Elec. Code §§ 13.002(e), 13.004, and 84.0221; 1 Tex. Admin. Code § 81.38. Because Contestant has not definitively excluded these possibilities—and the lack of evidence shows she has not—she has failed to carry her burden to show that these voters’ registrations and related votes should be tossed out.

II. PRAYER

The Harris County Elections Administrator respectfully prays that this Court grant Contestee Tamika Craft’s No-Evidence Motion for Summary Judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2023, a true and correct copy of the foregoing document was served via the Court's electronic filing system to all counsel of record.

/s/ Christopher Garza
CHRISTOPHER GARZA

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