

CAUSE NO. 2022-79328

ERIN ELIZABETH LUNCEFORD	§ § § § § § § § § § § §	IN THE DISTRICT COURT 164 th JUDICIAL DISTRICT HARRIS COUNTY, TEXAS
Contestant,		
v.		
TAMIKA "TAMI" CRAFT		
Contestee.		

CONTESTANT ERIN ELIZABETH LUNCEFORD'S PROPOSED CONCLUSIONS OF LAW

TO THE HONORABLE JUDGE OF THIS COURT:

Contestant, Erin Elizabeth Lunceford, hereby files these Proposed Conclusions of Law, and in support hereof, would show as follows:

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**I.
CONCLUSIONS OF LAW**

The Right To Vote Is A Fundamental Constitutional Right Which Must Be Protected.

1. "The right to vote is fundamental, as it preserves all other rights." *Andrade*, 345 S.W.3d at 12 (citing *Yick Wo v. Hopkins*, 118 U.S. 356, 370, 6 S. Ct. 1064, 30 L. Ed. 220 (1886)); see also Tex. Const. art. I, § 3 (providing equal rights). Courts have zealously protected the right to vote. See *Reynolds v. Sims*, 377 U.S. 533, 555, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964) ("The right to vote freely for the

candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."); *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964) ("No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."); *Stewart v. Blackwell*, 444 F.3d 843, 862 (6th Cir. 2006) ("Few rights have been so extensively and vigorously protected as the right to vote. Its fundamental nature and the vigilance of its defense, both from the courts, Congress, and through the constitutional amendment process, stem from the recognition that our democratic structure and the preservation of our rights depends to a great extent on the franchise."); see also *United States v. Mosley*, 238 U.S. 383, 386, 35 S. Ct. 904, 59 L. Ed. 1355 (1915) ("We regard it as equally unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box."); *Avery v. Midland County*, 406 S.W.2d 422, 425 (Tex. 1966) ("Petitioner as a voter in the county has a justiciable interest in matters affecting the equality of his voting and political rights."); *Thomas Paine*, *Dissertation on the Principles of Government*, 1795 ("The right of voting . . . is the primary right by which all other rights are protected.").

The Constitutional Right To Vote Is Denied When A Reported Outcome Is Not The True Outcome Of An Election.

2. "No one who has imbibed anything of the spirit and genius of our free government will ever question the peerless value and sacred inviolability of the elective franchise. It will be guarded with sleepless vigilance by all who appreciate the blessings of free institutions." *Arberry v. Beavers*, 6 Tex. 457, 470 (1851). Because the sacred right to vote is fundamental to a democratic society, this Court has a solemn obligation to ensure that the purported outcome of the 189th Civil Judicial District Court election, as reported by Harris County in its final canvass, is the true outcome. This duty does not and cannot derive from a political perspective. Indeed, the political victor will almost always support the status quo, while the reportedly defeated candidate very well may not, especially when the reported margin of victory is narrow and close. But the Court's job here is to render a judgment that is based purely on the facts and the law, and must be made *in spite of, not because of*, the political ramifications it may generate. Thus, in order for the parties and the public to have confidence in its system of democratic elections, and after hearing all of the evidence in this case, it is the Court's considered judgment that that the reported outcome of the 189th Civil Judicial District Court of Harris County is void, and that a new election must be ordered for this specific contested race. To ignore the clear and convincing evidence in this case that illegal votes were counted, legal votes were discarded, eligible voters were prevented from voting, and election officials engaged in fraud or illegality or made mistakes, would be

tantamount to accepting the old adage of “it’s good enough for government work.” The Texas Election Code mandates this result, and it is not within the sound discretion of this Court to turn a blind eye to these transgressions, as to do so would not protect, but would denigrate, the constitutional right to vote.

3. After weighing all of the evidence, and after applying the law to the evidence, this Court holds that it cannot ascertain that the outcome, as reported in the final canvass, is the true outcome for the 189th Civil District Court of Harris County (the “Contested Election”). Accordingly, the Court declares the Contested Election void and a new election is ordered pursuant to TEX.ELEC.CODE ANN. § 221.009(b) (Vernon 1986).

The Trial Court’s Duty in an Election Contest.

4. The Texas Election Code mandates that an election tribunal "*shall* declare the election outcome if it can ascertain the true outcome of the election." *Tex. Elec. Code §221.009(a)*(emphasis added). Conversely, if a court cannot ascertain the true outcome of the election, it "*shall* declare the election void" and order a new election. *Tex. Elec. Code §221.009(b)*(emphasis added); *Green v. Reyes*, 836 S.W.2d 203, 212 (Tex. App.-Houston [14th Dist.] 1992, no writ). Because this Court cannot ascertain that the reported outcome, as shown by the official canvass, see Contestant’s Exhibit 2, is the true outcome, this Court has no discretion

but to declare this election void and to order a new election, as is required under the above-quoted section of the Texas Election Code.

5. A contestant must prove by clear and convincing evidence that, with respect to each voter whose vote is challenged, one or more violations of the Texas Election Code occurred and that these violations materially affected the outcome of the election. *Woods v. Legg*, 363 S.W3d 710 (Tex. App.-Houston [1st Dist.] 2011, no pet.).

6. The Texas Civil Practices and Remedies Code defines "clear and convincing" as "the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." *Tex. Civ. Prac. & Rem. Code, Section 41.001(2)*.

7. The focus of this Court's inquiry then, as dictated by the election code, is to first attempt to determine the true outcome of the election, if possible. If the true outcome can be ascertained, then this Court has no discretion but to declare that the reported outcome is, indeed, the true outcome. Conversely, Texas Election Code § 221.012(b) mandates that an election tribunal "shall declare the election void if it cannot ascertain the true outcome of the election."

8. Section 221.003 of the Texas Election Code sets forth the general parameters of an election contest:

Sec. 221.003. SCOPE OF INQUIRY.

(a) The tribunal hearing an election contest shall attempt to ascertain whether the outcome of the contested election, as shown by the final canvass, is not the true outcome because:

- (1) illegal votes were counted; or
- (2) an election officer or other person officially involved in the administration of the election:
 - (A) prevented eligible voters from voting;
 - (B) failed to count legal votes; or
 - (C) engaged in other fraud or illegal conduct or made a mistake.

TEX. ELEC. CODE ANN. § 221.003(a) (Vernon 2003).

9. The appellate standard of review applicable to this Court's judgment is whether the record shows that the trial court abused its discretion. *Guerra v. Garza*, 865 S.W.2d 573, 576 (Tex. App. — Corpus Christi 1993, writ dismissed w.o.j.); *Reese v. Duncan*, 80 S.W.3d 650, 655 (Tex. App.-Dallas 2002, pet. denied).

Voter Eligibility.

10. To be eligible to vote in an election, a person "must be a qualified voter on the day the person offers to vote; be a resident of the territory covered by the election; and satisfy all other requirements for voting prescribed by law." *Slusher v. Streater*, 896 S.W.2d 239, 247 (Tex. App. — Houston [1st Dist.] 1995, no writ)(citing TEX. ELEC. CODE ANN. § 11.001 (Vernon 1986)).

11. The Texas Election Code defines a "qualified voter" as "one who is 18 years of age or older; is a United States citizen; has not been determined mentally incompetent; has not been finally convicted of a felony, except under certain

circumstances; is a resident of this state; and is a registered voter." Id. (citing TEX. ELEC. CODE ANN. § 11.002 (Vernon 1986)).

§ 221.003(a)(1)'s Reference to Illegal Voting

12. An "illegal vote" is one that "is not legally countable." TEX. ELEC. CODE ANN. § 221.003(b) (Vernon 2003). For example, a vote cast in a precinct by a person who does not reside in the county of the election is an illegal vote that cannot be counted. *Alvarez v. Espinoza*, 844 S.W.2d 238, 247 (Tex. App.-San Antonio 1992, writ dismiss'd w.o.j.).

Statements of Residence.

13. Contestant's Exhibit 9A is a compilation of 2,351 Statements of Residence ("SORs"). Of that total, Contestant's contended that some of these SORs represented voters who resided outside of Harris County at the time they cast their ballot, and, as a result, Contestant contended that each of these voters cast a ballot which was illegal and should not have been counted. In addition, Contestant contended that, because certain SORs lacked basic required information, such as the designation of where they resided at the time of their vote, these incomplete SORs did not satisfy the SOR requirement in the Texas Election Code and, therefore, each of these votes were illegal and should not have been counted.

Ballots Cast By Out Of County Voters Were Illegally Cast.

14. The Court finds that any voter who designated their county of residence in an SOR as somewhere outside of Harris County at the time they voted, did not have the legal right to vote in the November 8, 2022 General Election. As such, as such votes constitute an illegal vote within the meaning of § 221.003(a) of the Texas Election Code.

15. Applying this law to the facts of this contested election, the Court finds that 1,113 SOR voters did not reside in Harris County at the time their vote was cast. Of that number, 1,000 SORs demonstrated out of county status without the need to resort to any extrinsic evidence, while 113 SORs contained information supplied by the voter which, after resorting to various forms of extrinsic evidence, were proven by the Contestant to be out of county. Accordingly, the Court finds that all 1,113 of these out of county voters cast illegal ballots in the November 8, 2022 General Election. In the alternative, the Court also finds that the failure on the part of the election officials to prevent an out of county voter from casting a regular ballot is a mistake that the Court has taken into account when determining whether it is possible to ascertain the true outcome of this Contested Election.

16. The question arises, however, whether any of these 1,113 illegal ballots cast by out of county voters were actually counted and included in the canvassed totals disclosed in Contestant's Exhibit 2, which is the final canvass. In that respect, the Court finds that the Harris County Voter Roster, which is a publicly available

database, is the most reliable and accurate method of determining which out of county SOR voters' votes are actually in the canvassed totals. Based upon a comparison of that database with the 1,113 out of county voters, the Court finds that 966 are listed on the Harris County Voter Roster.

17. Evidence was also introduced that HCEA agreed to look at VMAX, which is its own internal system, and which is not available to the public, to see if any other voters with out of county SORs can be determined to have cast a ballot in the November 8, 2022 General Election, even though these voters are not listed on the Harris County Voter Roster. As a result of that work, ninety-three (93) additional voters were found to have cast a ballot. Accordingly, adding those voters listed on the Harris County Voter Roster and VMAX together, the Court finds that a grand total of 1,059 of the 1,113 illegal votes were cast and counted in the November 8, 2022 General Election.

18. The next question is whether any of those 1,059 illegal votes were cast in the specific Contested Election, which is the 189th Civil Judicial District Court race that occurred in Harris County. For the reasons which follow, the Court finds that Contestant was not and is not required to demonstrate whether an illegal vote was cast and counted in the Contested Election in order to be afforded a new election.

19. In *Green v. Reyes*, 836 S.W.2d 203 (Tex. App.-Houston [14th Dist.] 1992, no writ), the 14th Court of Appeals in Houston affirmed a trial court's decision

to grant a new election. One of the conclusions of law by the trier of fact in that case, which was affirmed by the 14th Court, stated the following:

“[t]he Court may reach this result ‘without attempting to determine how individual voters voted’ so long as ‘the number of illegal votes is equal to or greater than the number of votes necessary to change the outcome of an election.’ Texas Election Code § 221.009(b).”

Id. at 207. That same appellate court also upheld the following conclusions of law:

“Section 221.009(b) must be interpreted and applied in a manner that makes sense. It clearly must mean that an election tribunal in its discretion may order a new election when, as here, the number of illegal votes exceeded the official margin of victory without either requiring testimony from each illegal voter, or proof by the Contestant that collecting such testimony represented a physical impossibility. The statute must envision the circumstance in which the magnitude of the illegal voting along with some evidence of the tendencies of the illegal voting warrant the relief of a new election without the laborious, lengthy, and expensive process of a single trial judge trying to call a close election weeks or months afterwards by the testimony of hundreds of voters with uncertain memories.”

“Plainly worded statutes must be read in their common sense. Section 221.009(b) must mean that in some reasonable circumstances the presumption of correctness of the official outcome no longer prevents relief in the form of a new election.”

“Section 221.011 requires the court to deduct illegal votes from the candidates receiving them, but when it "cannot ascertain how the [illegal] voters voted, the tribunal shall consider those votes in making its judgment." The law assumes that in some cases, as here, some illegal votes will remain in doubt after all the evidence is concluded in an election contest, and further mandates that the court take those illegal but unknown votes into account.”

“When the court, with some degree of certainty, can determine the outcome of the election based upon the evidence presented by the parties, section 212.012(a) requires it to do so. Failing this, the court's

only alternative is defined by § 221.012(b), which requires the voiding of the election. Whatever may be the case when Contestant fails to sustain its burden of proof concerning the number of illegal voters, or proves a number of illegal voters less than the margin in the official returns for the election, once a Contestant has satisfied its burden of proving the number of illegal voters necessary to trigger the powers of the court under § 221.009(b), § 221.012(b) cannot be read to require a Contestant to prove the unavailability or lack of memory on the part of each and every voter whose vote might make a difference in order for the court to declare a new election. Such a burden would make some election contests logistically impossible.”

“An application of sections 221.009 and 221.012 in this fashion carefully balances two competing public policies which clash when illegal voting exceeds the margin of "victory" by some magnitude: the policy of promptly determining election results versus the policy of maintaining public confidence in the integrity of an election process that is free from taint.”

Green v. Reyes, 836 S.W.2d 203, 207 (Tex. App.-Houston [14th Dist.] 1992, no writ).

20. The Court further finds that it was both impossible and impractical to subpoena and obtain testimony from these out of county voters. First, the sheer number of voters creates significant logistical and financial burdens on the parties and on this Court to obtain this information in admissible form. Indeed, the Court has reviewed thirty-seven (37) depositions upon written questions, and takes note of how many questions were asked by Contestant and by Contestee, as well as the fact that Contestee served a request for the production of documents to every single one of these witnesses. Obtaining answers to these questions involved the assistance of a court reporter, required the presence of a notary, and as shown by the bill of costs in this case, resulted in approximately a \$100 charge for each single witness

deposition, not to mention the time and cost for the lawyers for both the Contestant and Contestee to pursue this information. Moreover, the Court takes judicial notice of the fee structure in Harris County. In order to obtain the issuance of a single trial subpoena in Harris County from the Clerk's Office, the cost is \$8.00. The cost to serve that one (1) subpoena through a deputy is \$150.00. Second, the Court finds that there is no method or paper trail by which to test the memory or veracity of a voter's testimony, should it be procured. For example, because of the constitutional secrecy associated with a voter's vote, the governing authority in charge of this election, HCEA, has no ability to tie a particular vote with a particular voter, which is by design, and which exists for a valid and sound public policy reason, which is to protect a voter from being vilified or punished for their electoral choices. As a result, and assuming a voter's memory several months later is good enough to remember whether a vote was cast in the Contested Election specifically, the fact remains that a voter's testimony cannot be rebutted, as there is nothing in existence to prove what they are saying is or is not accurate. Third, even though the Election Code imbues this Court with the power to order, should it so desire, a voter who cast an illegal ballot to disclose for whom they voted, the statute is silent as to whether this Court also has the power to order a voter who cast an illegal ballot to disclose whether they voted in a particular race, as opposed to ordering that vote to disclose for whom they voted. Fourth, Texas case law is replete with court decisions declaring

that a trial court may properly determine whether an election is or is not void, without ever resorting to any investigation whatsoever as to which candidate for whom a particular voter's illegal vote was cast. And, while it is true that an intellectual distinction may be made between whether a voter cast an illegal ballot in this contested election, as opposed to whether a voter cast an illegal ballot specifically for either Contestant Lunceford or Contestee Craft, the public policy rationale for not requiring the effort to gather this evidence is virtually the same in either scenario. Indeed, a trial court in Hidalgo County on January 27, 2022 expressly extended this reasoning to relieve a contestant from having to establish that an illegal voter cast a ballot in the contest election. *Leal v. Pena*, No. 2020-DCL-06433, which was affirmed by the Corpus Christi Court of Appeals on April 27, 2023. *Pena v. Leal*, 13-22-00204-CV (PFR pending) (“it was not necessary to engage into the inquiry as to whether those illegal ballots were actually cast in the subject election”). Accordingly, for all of these reasons, the Court finds that it is neither possible nor practical for Contestant to prove that any illegal ballots which were cast in the November 8, 2022 General Election were, in fact, cast in this specific contested race.

Ballots Cast By Voters Who Turned In Incomplete SORs Were Illegally Cast Incomplete SORs.

21. Another SOR category that Contestant challenged were those voters who cast a ballot but who failed to supply sufficient information on their SOR to meet the minimum residency requirements necessary to confirm their right to cast a

ballot in Harris County. Contestant's initial category of challenged SOR voters was 467. After the cross-examination of Steve Carlin, which, in part, focused on this category of challenged SORs, Contestant withdrew 185 challenges in this specific category, such that only 284 challenges remain. The Court finds that all 284 challenged SORs fail to satisfy the information requirements set forth in Section 63.0011 of the Texas Election Code. Thus, because each SOR fails to contain the minimum information required for an election official to confirm whether a voter does or does not have the right to cast a regular ballot in the November 8, 2022 General Election, in violation of Section 63.0011, this Court finds each of these incomplete SORs represent an illegal vote. In the alternative, the Court also finds that the failure on the part of the election officials to ensure that a voter completely filled out a SOR is a mistake that the Court has taken into account when determining whether it is possible to ascertain the true outcome of this Contested Election.

22. The Court also finds that all of the 284 incomplete SOR voters are listed on the Harris County Roster, such that the Court finds that all 284 of the incomplete SOR challenges represent votes that were both cast and counted in the November 8, 2022 General Election.

23. For the reasons expressed previously, the Court finds that it was not and is not necessary for the Contestant to marshal evidence of how these specific SOR

voters voted. The fact that these voters voted in November 8, 2022 General Election is enough.

Suspense Voters Who Voted Without An SOR Are Illegal Voters.

24. Registered voters whose address has come into question through a variety of processes, may be placed on a suspense list (“Suspense”). The Court finds that Section 63.0011 of the Texas Election Code requires voters whose name is on Suspense must fill out a Statement of Residence (“SOR”) prior to be accepted for voting. If those voters fail to properly fill out a SOR, then are not allowed to vote, and, if they are nonetheless permitted to vote a regular ballot, then that vote is an illegal vote that is not eligible to be counted.

25. The Court finds that the Harris County Voter Roster, Contestant’s Exhibit 14C, 14D, and 14E, shows 2,039 voters were on the Suspense list. The evidence at trial was that eighty-two (82) of those voters did submit a SOR, but 38 of those SORs were challenged on other grounds by the Contestant, and the Court sustains those challenges. Thus, there are forty-four (44) SORs which remain unchallenged, leaving 1,995 as the remaining total of Suspense list voters who failed to submit a SOR. The Court finds that these 1,995 voters who cast a ballot without a SOR cast a vote that was illegal.

23. The conclusions of law which relieved Contestant of the burden of showing how these voters actually voted, as well as whether these voters voted in

the Contested Election, is equally applicable to this group of voters, and therefore Contestant was not obligated to make this showing.

Ballots Cast By Voters With Cancelled Voter Registrations Are Illegal Votes.

26. The Harris County Voter Roster, see Contestant's Exhibits 14C, 14D, and 14E, shows that a total of 2,970 voters cast ballots with a "registration cancelled" designation next to their respective names. Further research conducted by HCEA and shared with the parties demonstrated that only five (5) of these voters had cancelled voter registrations at the time they cast their ballots. Accordingly, the Court finds that all five (5) of these votes were cast illegally, and, for the reasons previously expressed, Contestant was not required to prove that these votes were actually cast in the Contested Election. Proof that these votes were cast and counted in the November 8, 2022 General Election is sufficient.

Certain BBMs that were Accepted and Counted Are Illegal Votes.

27. Based upon the testimony of Colleen Vera, coupled with Contestant's Exhibits 11 and 12, the Court finds that forty-four (44) BBMs were not signed and therefore should not have been accepted and counted, and the Court further finds that twelve (12) BBMs were postmarked on or after November 8, 2022 and therefore should not have been accepted and counted. All fifty-six (56) accepted BBMs represent illegal votes that must be subtracted from the reported margin of defeat.

28. Unlike SOR voters, the Court finds that it was not necessary for Contestant to prove that a specific voter was listed on the Harris County Voter Roster. For the entire universe of BBMs that were produced to the parties by HCEA, a written representation was made as to whether a specific BBM was accepted and counted by the Early Voting Ballot Board (“EVBB”). That listing is part of the Court’s file, which is HCEA’s Third Supplemental Objections and Responses to Contestant’s Subpoena, and was filed on June 15, 2023. For the reasons previously expressed, Contestant was not required to prove that these votes were actually cast in the Contested Election. Proof that these votes were cast and counted in the November 8, 2022 General Election is sufficient.

Extra Hour of Provisional Ballot Voting Constituted Illegal Voting.

29. After reviewing Contestant’s Exhibits 25A thru 25L, Contestant’s Exhibits 26A through 26H, and Contestant’s Exhibits 27A through 27L, the Court finds that the temporary restraining order entered by the Harris County Ancillary Judge on November 8, 2022 extending voting by one (1) hour was improvidently granted. Accordingly, all of the provisional ballots cast after 7pm on Election Day were illegally cast and must be subtracted from the totals in the Official Canvass, see Contestant’s Exhibits 2 and 3. This results in 325 votes being subtracted from Contestee’s total number of cast votes. In addition, the Court also finds that it was a mistake for HCEA to have agreed to that order.

30. The temporary restraining order, see Contestant's Exhibit 25C, was not properly granted for a number of reasons, not the least of which was the fact that the court found the written declarations in support of the application for emergency temporary restraining order relief to be invalid. For example, the declarations attached to the emergency lawsuit in support of a request for an emergency temporary restraining order lacked information required to be disclosed, such as dates of birth and addresses for the declarant, in order to satisfy the statutory requirements for a declaration to be valid under Section 132.001 of the Texas Civil Practice and Remedies Code. Without that statutorily required information, there was no evidence before the Ancillary Court which would have empowered the Trial Court to grant the relief requested.

31. In addition, notwithstanding the fact the Trial Judge recognized these fatal deficiencies, the Court nevertheless asked the plaintiffs if they could bring any witnesses to the emergency hearing to testify. Rule 680 of the Texas Rules of Civil Procedure does not permit the granting of an ex parte temporary restraining order based upon oral testimony. To the contrary, the rule requires the proof to come in the form of a verified petition with sworn affidavits. Otherwise, parties that were not afforded notice will not know the basis for the relief, and will not be able to competently move to dissolve the emergency order because the evidentiary basis was oral not written.

32. The Trial Court improperly heard and accepted oral testimony, which is not proper in a temporary restraining order situation such as this where relief was granted without notice to any affected parties, including, but not limited to, the State of Texas, the Texas Secretary of State, the Attorney General of Texas, the Office of Attorney General, or any of the candidates on the ballot. Simply put, the Trial Court's power to enter an ex parte temporary restraining order should have been confined to the actual sworn paperwork on file and before the Court.

33. Moreover, it was established at the emergency hearing that if the polls are to be kept open after 7:00 pm, the law requires that 100% of the polling locations are required to extend their hours, rather than just a subset of polling locations. And, given the fact that multiple polling locations had run out of paper, then, by definition, extending voting for an additional hour past 7pm would not apply to 100% of the polling locations, and would only serve to exacerbate, rather than mitigate, the problems associated with not having ballot paper on hand to permit voters to vote after 7pm. Although live testimony is not permitted under the rules governing temporary restraining orders under these unique circumstances, the Court nevertheless permitted such testimony and granted relief.

34. During the emergency hearing, the argument was made that an extra hour of voting was not necessary, given that countywide voting was available, such that any voter who could not vote at a particular polling location could simply travel

to another voting location. The Ancillary Judge did not find this argument to be persuasive, and granted an extra hour of voting. In this lawsuit, Contestee made the same argument, e.g., that voters who turned away at a particular polling location could simply vote at another polling location. The Court does not find this argument persuasive, and would note that most voters tend to vote at their neighborhood polling location.

35. Because the Texas Supreme Court ordered that all PBs cast after 7pm be segregated and reported separately, the Court finds that all 822 votes cast for Contestant and all 1,147 votes cast for Contestee must be subtracted from the respective candidates' vote totals, as these votes are illegal. Alternatively, the Court also finds that these votes constitute a mistake on the part of election officials, and should, for that reason, be subtracted from the vote totals for each candidate. The conclusions of law which relieved Contestant of the burden of showing how these voters actually voted, as well as whether these voters voted in the Contested Election, is equally applicable to this group of voters, and therefore Contestant was not obligated to make this showing.

Unascertainable Illegal Votes.

36. In addition, Contestant also proved that a certain number of illegal votes occurred where it was impossible to even identify the specific voter. Section 221.012(b) of the Texas Election Code comes into play where there were illegal

votes cast which upon reasonable inquiry at an election contest cannot be attributed to either the Contestant or Contestee. See TEX.ELEC.CODE ANN. § 221.012(a) (b) (Vernon 1986); see also *Medrano v. Gleinser*, 769 S.W.2d 687, 688 (Tex. App. — Corpus Christi 1989, no writ). The trial court may void the election results and order that a new election be held where there is a sufficient number of illegal votes which cannot be attributed to either candidate, namely, where the number of illegal unascertainable votes is greater than or equal to the margin of victory. TEX.ELEC.CODE ANN. § 221.012(b) (Vernon 1986), see also *Medrano*, 769 S.W.2d at 688.

37. For example, the Court finds that 1,151 voters who cast page one of two different ballots cannot be identified, as their ballots cannot be tied to a specific voter, and, because two different ballot access codes are involved, there is no way to tie the ballot for the first ballot with the voter for the second ballot. Thus, the Court finds that Contestant has proven that illegal votes were cast and counted in the November 8, 2022 General Election where it cannot be ascertained which voters did so, much less how those unidentified voters actually voted.

§ 221.003(a)(2)(B)'s Reference to Eligible Voters Prevented From Voting

38. Although Section 221.003(a)(1) of the Texas Election Code refers to illegal voting, the other parts of that statute refer to things besides illegal voting. For

example, (a)(2)(B) refers to an election official preventing an eligible voter from casting a vote.

39. When understood in this context, the case law which discusses whether proof of how a voter voted is solely limited to illegal voting. In the case at bar, Contestant made many other challenges, the crux of which did not contend that certain votes which had been cast were illegal. For example, with respect to the entire subject matter of voters turned away as a result of certain polling locations running out of ballot paper, no allegation was made that these turned away voters ultimately cast a ballot that was illegal. To the contrary, the complaint is centered around the fact that these voters did not cast a ballot at all, at least with respect to a certain specified number of identified polling locations. The Court therefore finds that it was not necessary for Contestant to prove whether these turned away voters cast a ballot in the Contested Election, as that information does not even exist.

40. The Court also finds that it was impossible and impractical for Contestant to prove who these turned away voters were, and whether they ultimately voted elsewhere. These facts are not knowable. Contestant is not required to prove these unprovable facts.

§ 221.003(a)(2)(C)'s Reference to Fraud, Illegality, Mistake By Election Officials

41. The election code does not require a trial court to rely solely on "illegal votes" in attempting to ascertain the true outcome of an election. As is evident from

section 221.003, the outcome of an election can be muddled not just by the counting of illegal votes or the failure to count legal votes, but also by mistakes made by election officers. TEX. ELEC. CODE ANN. § 221.003(a) (2)(C) (Vernon 2003); see Alvarez, 844 S.W.2d at 242. A contestant may allege and prove that "irregularities rendered impossible a determination of the majority of the voters' true will." Guerra v. Garza, 865 S.W.2d 573, 576 (Tex. App. — Corpus Christi 1993, writ dismissed w.o.j.). "The election code does not provide any guidance as to how a trial court should weigh a "mistake" by an election clerk. But given the importance of recording the true will of the voters, we believe that if a sufficient number of voters are rendered potentially ineligible by mistakes made during the recording process to account for the entire margin of victory, the trial court is within its discretion to declare the election void because it is impossible to determine the true outcome of the election." Gonzalez v. Villarreal, 251 S.W.3d 763, 782 (Tex. App. —Corpus Christi-Edinburg 2008), pet. dismissed w.o.j.

42. There are many provisions contained in the election code that demonstrate the code's purpose to preserve evidence of the qualified voters' true will. This Court finds that violations of certain recording provisions by election clerks can certainly undermine the purpose of the election code and obscure the true will of the qualified voters. By necessity, election officials are required to obtain and record certain information from individuals who present themselves at a polling place to

vote. Election officials, under the code, are provided with certain tools with which they can verify information provided by a voter. *Gonzalez v. Villarreal*, 251 S.W.3d 763, 782 (Tex. App. –Corpus Christi-Edinburg 2008, pet. dismiss’d w.o.j).

§ 51.005 Safe Harbor for Initial Paper Ballot Allotments

43. The Court holds that Section 51.005 of the Texas Election Code applies to Harris County.

44. The Court also finds that Harris County violated Section 51.005, which provides as follows:

“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.”

45. Harris County violated this statute because HCEA Tatum failed to provide ballot paper in sufficient quantities and did not even attempt to calculate how much ballot paper would constitute 125% of the voters from the last-like election who voted in that precinct or in the case of combined or county-wide polls, the polling location. This statute serves as a safe harbor to counties, so that they need not worry about ensuring ballot paper shortages which may result from higher-than-expected turnout at certain polling locations.

46. The Court has taken this illegal activity on the part of Election Officials into account when considering whether it can ascertain that the reported outcome of

the Contested Election is the true outcome. Alternatively, the manner in which HCEA determined its initial ballot paper allocation, even if Section 51.005 of the Texas Election Code does not apply to Harris County, constituted a mistake for which this Court will consider when determining whether it can ascertain that the reported outcome is the true outcome.

BBMs Not Reviewed In Compliance With Section 87.041(b)(8).

47. The Court finds that Contestant proved approximately seven hundred (700) BBMs were processed by the Signature Verification Committee (“SVC”) without confirming the identification information contained in that voter’s registration record matched the identification information on the BBM application and/or BBM return carrier envelope, in violation of Section 87.041(b)(8) of the Texas Election Code.

Early Voting Results Were Illegally Reported Before Election Day Voting Had Ended.

48. Even though EA Tatum agreed to keep the polls open for an additional hour, his office posted the early voting results online at approximately 7:30 pm, which was approximately thirty (30) minutes prior to the time that he expected the polls to close in violation of Section 61.007 of the Texas Election Code. This illegal act informed those who had not yet voted the election results of those who had voted. This Court has taken this illegal act into account when trying to ascertain whether the reported outcome is the true outcome.

49. Thus, with respect to Contestant's evidence that: (i) initial ballot paper allocations were insufficient; (ii) the SVC's failure to confirm that a BBM voter's identification information matches the identification information contained within a voter's registration records; (iii) discrepancies in the number of early votes between the canvass and the roster such that there are more votes cast than the actual number of voters (699); (iv) mathematical discrepancies in the official reconciliation report by HCEA regarding 9,307 more BBMs being counted than were in existence and available to be counted; (v) 532 votes that were cast and counted without presentation of a photo identification, even though these voters' respective RIDs were not completed as required; (vi) 3,406 PBs were accepted and counted even though these PB voters' respective PBAs were not completed as required; and (vii) 284 SOR voters' votes were cast and counted even though those voters' respective SORs were not completed as required, etc., the Court finds that Contestant has established that election officials engaged in "fraud or illegal conduct or made a mistake" sufficient to satisfy Section 221.003(a)(2)(C) of the Texas Election Code.

50. For the above-referenced categories of complaint, the Court finds that Contestant need not prove that these voters voted in the Contested Election. To the contrary, all that is required is to show that these things occurred, so that the Court may take them into account when determining whether the true outcome of the election may be ascertained.

51. Support for this Court's Conclusions of Law can be found in *Gonzalez v. Villarreal*, 251 S.W.3d 763, 782 (Tex. App. –Corpus Christi-Edinburg 2008, pet. dismiss'd w.o.j.), as follows:

“In reality, election contests are not so cut and dry. The election code, however, recognizes that it may be impracticable or even impossible to determine for whom an illegal vote was cast. The election code does not require such an inquiry. Rather, the code provides that "if the tribunal finds that illegal votes were cast but cannot ascertain how the voters voted, the tribunal shall consider those votes in making its judgment." Id. § 221.011(b) (Vernon 2003). Although section 221.011 does not dictate exactly how those illegal votes should be considered, section 221.009 provides the answer: " [i]f the number of illegal votes is equal to or greater than the number of votes necessary to change the outcome of an election, the tribunal may declare the election void without attempting to determine how individual voters voted." Id. § 221.009(b) (Vernon 2003). In other words, if a trial court determines that illegal votes were cast and that the number of illegal votes equals or is greater than the margin of victory, the trial court can then declare the election void without ever inquiring as to the candidate for whom those illegal votes were cast. See, e.g., *Slusher*, 896 S.W.2d at 240; *Alvarez*, 844 S.W.2d at 242 (holding that the election code permits a trial court to determine whether the number of illegal votes cast exceeded contestee's margin of victory without determining for which candidate illegal votes were cast); *Kelley v. Scott*, 733 S.W.2d 312, 314 (Tex. App.-El Paso 1987, writ dismiss'd) (judgment declared void because one illegal vote was cast, which equaled the number of votes to change the outcome of the election, regardless of the candidate for whom the illegal voter casts her vote).”

PBA Analysis

52. Contestant introduced evidence challenging a total of 3,406 PBAs. The Court has already found that all of the PBAs cast after 7pm should be subtracted from the canvass totals of cast votes in support of both Contestant Lunceford and

Contestee Craft. With respect to each of the categories of challenge, which are set forth with specificity in Contestant's Exhibit 10C, the Court finds that all of these PBAs contain evidence of mistakes on the part of either the voter, the election official at the polling location, the voter registrar, or the EVBB. The Court has taken into account each of these mistakes in determining whether it can ascertain whether the reported outcome is the true outcome of the Contested Election.

53. Additional anomalies exist, however. According to the final canvass regarding PBs cast after 7pm, see Contestant's Exhibit 3, the grand total of such PBs in Contestant's specific race was 2,073. This number makes no sense, as it does not equal the totals calculated by Contestant (which was 2,206), nor does it equal the totals calculated by Harris County in their post-election report (which was 1,999, calculated by subtracting 205 missing PBs from 2,204, which is the total listed in that report), which means that the total number of PBs reported in the final canvass as having been cast and counted in Contestant Lunceford's race is less than the total number of PBs cast and counted in general. This discrepancy is a concern, as these two numbers should be the same, with the only difference being the number of undervotes in that specific race (which was 104). Thus, it is unclear whether 2,073 is a reliable number. In addition, the segregated final canvass report issued by Harris County specifically refers to Box number 5 on the provisional ballot affidavit ("PBA"), but there are many PBAs that the judge did not check Box number 5, but

checked Box 8 instead and identified the voter as a post 7:00 pm voter. It is unclear whether the 2,073 reported PB accepted ballots includes those Box 8 PBAs with the Box 5 PBAs. In any event, of 2,073 reportedly cast, 104 PB voters did not vote in Contestant Lunceford's specific race, meaning that the adjusted grand total of PBs accepted and counted is 1,969. According to that same canvass, of the 1,969 total, 822 PBs were cast and counted for Contestant Lunceford and 1,147 PBs were cast and counted for Contestee Craft.

54. In addition, there are other discrepancies where the EVBB did not act consistently, as shown by Contestant's Exhibit 10E. The Court finds that all of these PBAs contain evidence of mistakes on the part of the EVBB. The Court has taken into account each of these mistakes in determining whether it can ascertain whether the reported outcome is the true outcome of the Contested Election.

How to Deal With the Undervote.

55. The Court finds that the undervote in the Contested Election, when expressed as a percentage, is 3.86%. This means that for every 1000 voters who voted in the November 8, 2022 General Election, 38 voters did not cast a ballot in the Contested Election, while 962 did so.

56. The reported margin of defeat in the Contested Election was 2,743. Taking the undervote percentage into account, approximately 106 voters out of 2,743 voters did not vote in the Contested Election. Thus, in order to ensure that the

undervote is considered, the Court finds that the margin necessary to demonstrate a material impact on the Contested Election is 2,849.

57. The Court's view of how to deal with the undervote is supported by a similar conclusion of law by a trial court in Cameron County which was entered on January 27, 2022. In the case of *Leal v. Pena*, No. 2020-DCL-06433, the trial court found the following:

“41. The Court is mindful that overturning an election is not to be taken lightly. To this end the Court has considered using an approximate "under vote ratio" of 6,000/40,000. The evidence shows 15% of voters in this election "under voted" in the school board election. By using this ratio an 8 vote margin of victory requires approximately ten (10) illegally cast votes to equate to in order to invalidate the election results. The Court has found 24 illegally cast votes. This number is more than twice the calculated "over vote" cushion favoring the Contestee.”

The trial court's judgment, including the above-quoted conclusion of law, was affirmed by the Corpus Christi Court of Appeals. *Pena v. Leal*, 13-22-00204-CV (PFR pending).

HCEA's Failure To Timely Issue Confirmation Notices To Voters.

58. William Ely and Steve Carlin both testified that several thousand voters were challenged in the summer of 2022 based upon the belief that these registered voters did not actually reside at the address listed in their voter registration records. Although they filed written challenges with the HCEA, those same registered voters remain on the Harris County Voter Roll as of the date of Mr. Ely's trial testimony. The Court has taken the HCEA's failure to issue confirmation

notices to these challenged individuals into account when trying to ascertain whether the reported outcome is the true outcome for this Contested Election.

59. Any Conclusion of Law that is a Finding of Fact shall be deemed to be a Finding of Fact.

60. Any Finding of Fact that is a Conclusion of Law shall be deemed to be a Conclusion of Law.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Texas Rule of Civil Procedure 21a, a true and correct copy of the foregoing instrument was forwarded to all counsel of record and/or parties on August 31, 2023.

/s/ Andy Taylor
Andy Taylor

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CAUSE NO. 2022-79328

ERIN ELIZABETH
 LUNCEFORD

Contestant,

v.

TAMIKA "TAMI" CRAFT

Contestee.

§
 § IN THE DISTRICT COURT
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 §
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 § 164th JUDICIAL DISTRICT
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 §
 §
 § HARRIS COUNTY, TEXAS
 §
 §

CONTESTANT ERIN ELIZABETH LUNCEFORD'S PROPOSED FINDINGS OF FACT

TO THE HONORABLE JUDGE OF THIS COURT:

Contestant, Erin Elizabeth Lunceford, hereby files these Proposed Findings of Fact, and in support hereof, would show as follows:

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**I.
FINDINGS OF FACT**

1. Contestant Erin Elizabeth Lunceford is the Republican nominee who ran for election to the 189th Civil Judicial District Court of Harris County during the November 8, 2022 General Election cycle.

2. Contestee Tamika "Tami" Craft is the Democratic nominee who ran for election to the 189th Civil Judicial District Court of Harris County during the November 8, 2022 General Election cycle.

3. This particular countywide contested judicial election was conducted in

Harris County and encompasses the entire county.

4. On November 19, 2022, the Harris County Commissioner's Court (the canvassing authority) issued its final canvass on behalf of Harris County, Texas. See Contestant's Exhibit 2. According to the final canvass, Contestant received 530,967 votes (49.87%) and Contestee received 533,710 votes (50.13%). Thus, the margin of reported defeat is 2,743 votes, which equates to 0.26 of one percent of the total votes cast in that specific race. This purported outcome was timely contested by the Contestant.

5. Early Voting in Harris County began on Monday, October 24, 2022 and ended on November 4, 2022.

6. There were ninety-nine (99) Early Voting polling locations throughout Harris County.

7. Election Day voting took place on Tuesday, November 8, 2022.

8. There were seven hundred eighty-two (782) Election Day polling locations throughout Harris County.

9. The ballot for the November 8, 2022 General Election was two pages in length, both of which were 8.5 by 14 inches in width and length, respectively. The candidates for the 189th Civil Judicial District Court race appeared on page one of the two-page ballot.

10. In March of 2019, Harris County opted to permit countywide voting.

This meant that any registered voter may vote in-person at any polling location. Thus, in this particular election, any Harris County registered voter may vote at any of the ninety-nine (99) Early Voting and seven hundred eighty-two (782) Election Day polling locations.

11. The only exception to FOF number 10 relates to those voters who had recently moved into Harris County before they voted but were not registered to vote in time to vote in that particular election. This class of voters may cast what is called a Limited Ballot, whereby a voter may cast a vote for candidates whose office is consistent with the district from which the voter came and where they are in Harris County, such as a statewide elected candidate for Governor, by way of an example.

12. According to Contestant's Exhibit 20, there were a total of 636 voters who cast a Limited Ballot in the November 8, 2022 General Election. For those Limited Ballot voters, the only location by which a Limited Ballot may be cast is at NRG Stadium, and those Limited Ballot voters may only vote during Early Voting, not during Election Day voting.

13. The November 8, 2022 General Election was overseen and conducted by Clifford Tatum, who is the Elections Administrator ("EA" or "HCEA") for Harris County.

How In Person Voting Is Conducted In Harris County.

14. The established procedure for voting in person for this election in Harris

County at a polling location began by directing a potential voter who arrived to cast a vote to what is referred to as the Qualifying Table.

15. At the Qualifying Table, an election official will attempt to determine if the voter is listed as a registered voter on the Harris County Voter Roll, which is the list of every registered voter in Harris County, and an election official will also ask the voter to present one of the statutorily required forms of photo identification, which is referred to as the “List A” forms of identification.

16. If the voter’s name is on the Harris County Voter Roll, and if the voter presents one of the List A forms of photo identification, then that voter will be checked into the E-Poll Book system, which is an iPad connected to the internal voting data information of Harris County. The list of every voter who voted in the November 8, 2022 General Election is maintained in a database called the Harris County Voter Roster.

17. Upon check-in, a ballot access code is printed out from a device called a Controller. Using that specific access code, the voter will then proceed to a machine called a Duo, which has an electronic touchscreen upon which a voter may select amongst the various candidates for whom they wish to vote. The specific access code given to the voter is tied to the specific registration address where the voter is registered to vote, so that the voter’s ballot choices are limited to only those political offices which have geographical political boundaries which encompass the

area where the voter resides.

18. For those voters who arrive at the Qualifying Table that were not listed on the Harris County Voter Roll, an election official will attempt to determine whether that voter was indeed a registered voter. If that voter's registration status is confirmed, then an election official will add that voter to a list of registered voters who are not presently on the list of registered voters, which is called a Registration Omissions List, and that voter will proceed in the same manner as a voter who was already on the Harris County Voter Roll.

19. If the voter is not on the Harris County Voter Roll, and if the election official is not able to verify that this voter was indeed a registered voter, then that voter is not permitted to cast a regular ballot. If that voter wishes to vote anyway, then an election official will permit that voter to cast what is called a Provisional Ballot, but not a regular ballot.

20. If the voter whose name is on the Harris County Voter Roll (or who has now been added to the Registration Omissions List) does not present one of the List A forms of photo identification, then that voter will be provided an opportunity to nevertheless qualify to cast a regular ballot as explained in FOF number 21.

21. Once a voter is determined to be listed as a registered voter on the Harris County Voter Roll, or if the voter is found to be a registered voter despite not being listed on the Harris County Voter Roll (and thus added to the Registration Omissions

List), but that voter fails to present one of the List A forms of photo identification, then the election official will require the voter to present one of the substitute forms of identification, which is referred to as the List B forms of permitted identification. In addition, the election official will require the voter to completely fill out a form called a Reasonable Impediment Declaration (“RID”). The RID form requires the voter to identify what reasonable impediment prevents them from having one of the List A forms of photo identification, and it also requires the voter to sign that document. The election official may not question the reasonableness of the impediment claimed by the voter, but the voter is required to indicate on the RID form what reasonable impediment they claim to have. The RID form also requires the election official to identify what type of List B identification was presented by the voter, and it also requires the election official to sign that document.

22. If the voter does not present a List A form of photo identification, and if the voter also does not present both a List B form of identification and a reasonable impediment for not having a List A form of photo identification, then that voter may not be permitted to cast a regular ballot. If that voter still wants to vote, then that voter is permitted to cast a provisional ballot.

23. In addition to determining whether the voter who has appeared at the Qualifying Table is listed on the Harris County Voter Roll and has satisfied all identification requirements, the election official is also required to ask the voter, as

required by the election code, if they still reside at the address shown on the Harris County Voter Roll. If the answer to that question was yes, then the voter was asked to sign the iPad and ultimately was given an access code, and then that voter proceeds to vote at a machine called a Duo. Once finished, the Duo has the ability to print out the electronically selected choices onto the two-page ballot.

24. After the voter completed their selections on the Duo and printed out their ballot, then they proceeded to the final step of the in-person voting process, which was for the voter to go to a Scanner, which is the device by which both pages of the voter's ballot would be scanned in. Once scanned, that ballot was electronically recorded on a special flash drive, which is called a V-drive, and also on a hard drive of the Scanner. The paper ballot was collected in the ballot box underneath the Scanner. Eventually, that voter's recorded vote will be reflected as a cast vote record, and will be included in the vote totals reflected in the Official Final Canvass.

25. The various polling locations are staffed and run largely by volunteers. These well-intentioned citizens receive some training, but the experience and expertise of these individuals is varied. The process by which Presiding Judges and Alternative Presiding Judges for the various polling locations are selected involved the local Republican and Democratic parties nominating certain individuals for service. The Harris County Commissioners' Court eventually accepts those

nominations, and the various nominees receive official credentials from the Harris County EA's Office in order to serve in a specific capacity. Whether a particular polling location's Presiding Judge is the Democratic or Republican nominee depends upon which Gubernatorial candidate carried a majority of the precinct in which this polling place was located in the 2018 election for Governor. Thus, if a particular polling location is located within a precinct for which a majority of the voters turned out to vote in 2018 supported Greg Abbott, then the Presiding Judge for that location in 2022 would be a Republican nominee, and the Alternative Presiding Judge would be a Democratic nominee, and vice-versa for those precincts that supported Lupe Valdez in 2018.

26. An issue which arose frequently during Early Voting and on Election Day voting was how to handle the situation where the Scanner would scan the first page of the ballot, but not the second page. When this occurred, the first page that was scanned successfully was recorded electronically onto a V-drive and entered into the cast vote record for the election. But the second page that was not scanned successfully was not recorded electronically on the V-drive and was not part of the cast vote record for the election.

27. During the trial of this matter, evidence was introduced on how to deal with this situation. According to Hart InterCivic, the manufacturer of the voting machines, the proper protocol was to: (i) spoil page two by placing that page in the

Spoiled Ballot Envelope, which is the receptacle for ballots that should be disregarded; (ii) give the voter a new ballot access code; (iii) allow the voter to return to the Duo and vote a second time; (iv) make sure that the first page of the second ballot was spoiled and placed in the Spoiled Ballot Envelope; and (v) make sure the second page of the second ballot was successfully scanned into the Scanner.

28. Evidence was also introduced as to what the HCEA instruction manual directed election officials to do in this situation. See Contestant's Exhibit 16, page 115. The protocol which was taught during training was different than what was recommended by the manufacturer of the voting machine. According to the HCEA training manual, instead of spoiling page two of the first ballot and revoting a second ballot, the proper protocol was simply to place page two of the ballot into the Emergency Chute, which is a receptacle for ballots which are supposed to be counted, but for whatever reason could not be scanned at one of the polling locations. By placing the problem page of the ballot in the Emergency Chute, this would permit Central Count at NRG Stadium to count that ballot page. The scanner at Central Count was of much higher quality than any of those scanners at a polling location, and a well-established procedure was already in place for both Republicans and Democrats to ensure that the members of Central Count would correctly scan ballots and, if not scannable, would correctly duplicate the problem ballot by hand. Thus, under the instructions given in the HCEA training manual, no new ballot access code

would be given, and the voter would not vote a second time. Thus, there would not be a second ballot to process, and there would be less risk that mistakes would be made by the election officials whereby duplicate scans of page one of the first ballot and page one of the second ballot occurred.

29. In addition, avoiding the practice of giving multiple ballot access codes to the same voter would avoid the problem of rendering a post-election audit by the Texas Secretary of State futile, because there would be no mechanism by which to tie the first ballot with the second ballot, as each ballot had a unique serial number, rendering it impossible to connect those two ballots to each other.

30. Harris County EA Clifford Tatum testified by video deposition that he instituted a third set of instructions. The protocol he instituted, which was disseminated by email to the election officials on the eve of the election and after training had already occurred, was to place page two of the first ballot in the Emergency Chute if it was legible, but to spoil page two of the first ballot if it was not legible, and then issue a new ballot access code, and permit the voter to cast a second ballot. To make matters even more complicated and susceptible to the commission of errors by the election officials, HCEA added another level of confusion: In order to conserve paper, Mr. Tatum testified that election officials were supposed to place the illegible second page of the first ballot, in lieu of a blank piece of ballot paper, into the Scanner. This was supposed to be accomplished by placing

the illegible second page of the first ballot backwards into the Scanner, coupled with placing the second page of the second ballot into the Scanner. Tatum also testified that the second page of the first ballot should be placed into the Spoiled Ballot envelope.

31. The Court finds that these three (3) sets of instructions are inconsistent with each other. Given that the election officials had been given three different sets of instructions, coupled with the fact that they are volunteers with various levels of expertise and experience, the evidence showed that not all polling locations handled the problem with scanning ballots the same way. The Court further finds that multiple and conflicting sets of instructions caused election officials to make mistakes, such that ballots that should have been spoiled were not spoiled, ballots that were supposed to be placed into the Emergency Chute were not so placed, ballots that were not supposed to be placed into the Emergency Chute were so placed, and pages of ballots that were supposed to have been scanned once were scanned more than once. Furthermore, evidence was introduced from Paul Stalnaker, who served as an Alternate Presiding Judge at Hardy Street Senior Citizens Center during early in-person voting, that hundreds of ballots that should have been spoiled during early in-person voting were not placed into the Spoiled Ballot Envelope. He further testified that more than twenty (20) ballots were placed into the Emergency Chute that should have been spoiled. This evidence demonstrates that ballot pages

were being scanned in more than once.

32. Additional evidence was introduced from Colleen Vera, who served as a member of Central Count, that ballots were placed in the Emergency Chute at one particular polling location (Hardy Street Senior Citizens Center) that should have been spoiled instead. She further testified that more ballots were cast at this location than the number of actual voters who voted.

33. Evidence was also introduced that the number of Cast Vote Records was different for the 189th Civil Judicial District Court race than other county races further down the ballot. Evidence was also introduced that the number of Cast Vote Records should always be the same for each countywide race, as that number is the sum total of all votes cast during early and election day voting, plus mail-in ballots, plus provisional ballots, plus undervotes and overvotes.

34. In total, there were 1,151 more Cast Vote Records in Contestant's specific race than were recorded for the countywide races at the bottom of the ballot. Evidence from the manufacturer of the voting machines demonstrated that a successful scan of page one of the ballot would cause an increment in the cast vote record, but that an unsuccessful scan of page two of the ballot would not. Thus, the explanation for the variance of 1,151 Cast Vote Records is explained by the fact that 1,151-page ones were scanned in more than once.

35. The race for the 189th Civil Judicial District Court was on page one of

the two-page ballot.

Failure to Supply Sufficient Ballot Paper in Advance to Polling Places on Election Day.

36. From the evidence provided by the Harris County Election Administrator's Office, including, but not limited to, Attachment 2 to their post-election assessment issued last November of 2022, see Contestant's Exhibit 20, the vast majority of the election day polling locations received the same amount of ballot paper, which was purportedly enough for 600 voters (e.g., 1200 pages)¹.

37. During his video deposition, Clifford Tatum explained the HCEA's rationale for its intentional decision to supply ballot paper in the manner in which it did. His rationale started with the projection that turnout would be 65% of the registered voters. Actual turnout was 43% of the registered voters. When asked why polling locations ran out of ballot paper when turnout was 22% less than projected, Mr. Tatum had no answer, but simply stated that the plan which was implemented started with an initial allocation, coupled with the plan that additional paper would be supplied during the day where and when needed.

38. Evidence was submitted that this plan failed. In particular, HCEA admitted in Contestant's Exhibit 20 that 68 polling locations ran out of their initial

¹ In reality, 1200 pages would not likely service the needs of 600 voters, for multiple reasons, including the fact that EA Tatum's instructions on how to handle scanning problems would require more than two (2) pages per voter.

ballot paper allocation. Several Presiding Judges at various Election Day polling locations testified that it was difficult, if not impossible, to get thru on the phone to HCEA on to request additional ballot paper, as hold times exceeded thirty (30) minutes in some cases, while in other cases election officials were not able to reach an actual person who answered the phone. Other testimony demonstrated that, even when someone with HCEA was contacted, additional ballot paper was not delivered in time for voters to actually vote.

39. HCEA Tatum made no effort to compare 2018 turnout for a particular polling location and then multiply that known turnout by 125% in order to calculate what amount of ballot paper should be allocated to the same polling location in 2022. He also did not consider areas where there were hotly contested races that might increase participation in a particular district, nor did he increase in an amount to account for spoiled ballots.

40. Although redistricting and other factors caused Harris County to change precinct boundaries and to assign different numbers to precincts that were in existence during the 2018 election from those precincts that were utilized in the 2022 election, it is nevertheless possible to determine actual turnout of a specific polling location in 2018 and then it is also possible to project anticipated turnout at the same polling location in 2022. And, to the extent one 2018 polling location was configured within a particular 2018 precinct, but for purposes of the 2022 election was

combined with one or more other precincts for the 2022 election, whereby all combined precincts utilized the same physical polling location, it was nevertheless still possible to analyze 2018 turnout for each polling location within each combined precinct, add them together, and then make a projection for turnout at that specific polling location in 2022 for all of the combined precincts. EA Tatum did not attempt to perform these calculations, nor did Beth Stevens, the retained expert for Contestee. In many cases, the polling location that was used in 2018 was the same polling location used in 2022. Voters in 2022 would likely be turning out to the same location where they voted in 2018.

41. HCEA Tatum also made no effort to project turnout on a specific polling location by polling location basis. Instead, with only a few exceptions, turnout was predicted to be exactly the same, e.g., 600 voters, at virtually every single polling location. See Contestant's Exhibit 20, Attachment 2. Contestant's Exhibits 14C, 14D, and 14E, the Harris County November 8, 2022 Voter Roster demonstrates that the same number of people did not turnout at every polling location. In fact, 380 out of 782 polling locations had more than 600 voters.

42. Contestant's Exhibit 75 demonstrated 2018 turnout on a precinct-by-precinct basis. Contestant's Exhibit 76 demonstrated 2018 canvass totals on a precinct-by-precinct basis. By comparing these two exhibits, it is possible to determine actual turnout for a specific polling location for 2018, and then by

multiplying 125% for the actual 2018 turnout for each specific polling location, it is possible to calculate the total projected turnout for the same polling location in 2022. Once that number is compared to the specific polling locations listed in Attachment 2 to Contestant's Exhibit 20, HCEA's initial allocation for 600 voters was less than the 125% calculation for well in excess of 100 specific polling locations.

43. Regardless of whether a specific polling location in 2022 received an initial ballot paper allocation of less than 125% of actual turnout for 2018, evidence was also introduced that compared the initial ballot paper allotment for 2022 as shown in Attachment 2 to Contestant's Exhibit 20, on the one hand, with the actual canvassed turnout for a specific polling location on Election Day, on the other hand. See Contestant's Exhibit 2, as well as Contestant's Exhibits 14C, 14D, and 14E.

44. That comparison shows that HCEA initially undersupplied 121 Harris County polling locations with paper ballots. Of that total number, 111 polling locations were located in neighborhoods where voters have previously voted in at least two (2) Republican primaries out of a total of seven (7) primaries spanning twelve (12) years, from 2010 to 2022. In addition, 109 polling locations were located in neighborhoods where voters voted in at least six (6) Republican primaries out of a total of seven (7) primaries spanning twelve (12) years, from 2010 to 2022. The evidence demonstrated that there was an extremely high correlation of ballot shortages with Republican voting patterns. In order to answer the question "what is

the probability this pattern occurred by chance?, ” a mathematical formula called a binomial function was used by Russ Long, one of Contestant’s non-retained experts. See Contestant’s Exhibit 78. The answer: the probability of getting 111 (using 2 R) or 109 (using 6 R) undersupplied polling locations inside Republican areas, out of the identified total of 121 “in/out” possibilities, in a fair distribution, is very low, about 0.00021% (using 2 R) and 0.0224 (using 6 R). See *id.* The Court finds that HCEA’s decision on how to initially allocate ballot paper at a particular polling location disproportionately affected neighborhoods with likely Republican voters.

(i) Polling Locations Ultimately Ran Out of Paper and Turned Voters Away.

45. The evidence during the trial demonstrated that at least twenty-four (24)² polling places ran out of ballot paper on election day. According to the collective testimony of 27 witnesses (one live witness, two witnesses by video deposition, and twenty-one (21) witnesses by deposition upon written questions), approximately 2,535 voters were estimated to have been turned away from these polling locations as a result.

² Contestant’s last allegation in her Fifth Amended Original Petition was that twenty-nine polling locations ran out of paper, with 2,615 voters turned away as a result. Although this allegation was supported by twenty-nine different declarations, each of which was produced during the discovery phase of this lawsuit, five (5) of those declarants did not submit sworn answers to their respective deposition upon written questions served upon them. Thus, both the total number of locations and the total number of voters turned away declined accordingly.

46. Of that total number of twenty-four (24) locations, twenty (20) polling locations were located in neighborhoods where a majority of the turnout in 2018 supported Greg Abbott for Governor in 2018. Thus, approximately 83.3% of the polling locations that ran out of ballot paper were in Republican precincts. The Court finds that the loss of ballot paper disproportionately affected neighborhoods with likely Republican voters.

47. Contestee has pointed out that Contestant's proof in this regard was deficient. Among the reasons asserted by Contestee were the following: (i) no evidence of the names of the turned away voters; (ii) no evidence of the voter registration status of the turned away voters; (iii) no evidence of whether any of the turned away voters actually voted elsewhere; (iv) no evidence of whether any turned away voters intended to vote in the 189th Civil Judicial District race; and (v) no evidence of which candidate turned away voters intended to support. After hearing the evidence, the Court finds that it was both impossible and impractical to obtain this information from turned away voters. To begin with, the Court finds credible the live testimony of Victoria Williams, who served as a Presiding Judge, and who testified that, as an election official, it would have been "inappropriate, unethical, and illegal" to ask a turned away voter to disclose their identify or to reveal how they intended to vote. Indeed, the Election Code only empowers this Court with the authority to force a voter to disclose for whom they voted if and only if the Court

first finds that the voter cast a ballot that was ineligible to have been counted. Where, as here, we are talking about voters who were turned away, that statutory authority does not apply, and, by logic, would not authorize an election official at a polling location to conduct a mini trial and investigation in the middle of a busy election day of voting. Further, the witnesses who testified about turning away voters from their polling locations were election officials, and they were duty bound to continue their work as election officials, which included working inside of the polling location, rather than standing around outside where the voters were turned away. Moreover, testimony was provided by several witnesses that turned away voters were upset over the fact that ballot paper was not available, creating a hostile and toxic environment (e.g., one such voter actually spit on a Presiding Judge, while others engaged in conduct that required calling the police to come out and calm things down). Accordingly, the Court finds that it was impractical, if not impossible, to obtain any information about the voters who were turned away.

47. Even if it were possible to track down turned away voters, the Court finds that it would be financially and logistically impossible and/or impractical to subpoena these individuals and to pay the costs associated with a deposition upon written questions, an oral deposition, or to secure in-person trial appearances.

Polling Locations Turned Away Voters for Other Reasons.

48. In addition to voters being turned away for lack of ballot paper, fifteen (15) witnesses testified there were also other issues beyond ballot paper shortages that caused voters to leave specific polling sites without casting their ballots at those locations. For example, there was evidence of machine malfunctions, the inability to reach the HCEA on the phone or by other means, a lack of equipment or supplies and other problems, which occurred on Election Day. Based upon that evidence, the Court finds that a total of fifteen (15) polling locations were affected, with 411 voters that were turned away. Thus, adding the number of voters turned away for ballot paper shortages with the number of voters turned away for other reasons, the Court finds that the grand total number of voters who were turned away is 2,946. This category alone exceeds the reported margin of defeat in this contested race and the undervote percentage of 3.86%.

49. The Court makes the same findings of impracticality and impossibility for these turned away voters as it did in FOF 46 and 47 above. The chart below summarizes the Court’s factual findings for voters turned away, as follows:

Polling Location	Poll Number	Number of Voters Turned Away	Election Worker	Position
Seabrook Intermediate School	52045	207	Kelley Hubenak-Flannery	PJ
T H Rogers School	82032	187	Frances Rauer	PJ
Brill Elementary School	22036	28	Neal Richard	PJ
City of El Lago City Hall	52047	100	Chris Russo	PJ
Linkwood Park Community Center	92087	75	Betty Edwards	AJ
Saint Marys Episcopal Church	12115	60	Cody McCubbin	PJ
Oak Forest Elementary School	12140	40	Patricia Phillips	PJ
Salyards Middle School	12131	500	Terry Wheeler	PJ
Spring First Church	22042	190	Victoria Williams	PJ
Northpointe Intermediate School	12027	120	James Schoppe	PJ
Zwink Elementary	22016	30	Richard Self	PJ
Katherine Tyra Branch Library	12007	120	Linda Zachary	PJ
North Hampton Mud Community Center	22019	40	MARTIN RENTERIA	PJ
Twin Creeks Middle School	22122	250	Elizabeth Kocurek	PJ

Laura Welch Bush Elementary	62009	100	Lydia Cantu	AJ
Ginger McNabb Elementary	22118	10	Cindy Adamek	PJ
Unity of Houston	82031	100	Dorothy Nall	AJ
*Ashford United Methodist Church	82018	42	Lamar Strickland	PJ
HCC Alief Hayes Campus Building C	82013	80	Erin Eitel	AJ
Lake Houston Church of Christ	32007	0	SAN BRANHAM	PJ
IPSP	92045	40	Richard Hawley	AJ
Poe Elementary School	92096	20	Matthew Goitia	AJ
Northgate Crossing Elementary School	22120	75	Mike Guillory	AJ
**Heritage Park Baptist Church	62004	19	Jeff Larson	PJ
French Elementary	22017	40	DeAnna Snyder	PJ
St. Lukes Missionary Baptist Church	92050	97	Margaret King	PJ
Viola Cobb Elementary School	42035	43	Pearline Burton	PJ
Parkview Intermediate School	52006	40	Robert Kenney	PJ
Element Houston Katy	82070	3	Lisa Musick	PJ
Deer Park Junior High School	52053	25	Connie Dellaface	PJ
Hardy Street Citizens Center	SRD 140 [EV]	N/A	Paul Stalnaker	AJ
Jensen Elementary School	52012	150	Erik Munoz	PJ
University Baptist Church	52034	3	Phyllis Tacquard	PJ
Red Elementary School	72029	N/A	Erich Wolz	AJ
Rummel Creek Elementary School	82027	N/A	Charles Grindon	PJ
Paul Revere Middle School	82010	29	Robert Dorris	Voter
James E Taylor High School	82044	N/A	Susan Clasen	PJ
Birkes Elementary School	12024	10	Thomas Nobis	PJ
Shadowbriary Elementary School	82023	15	Damian Derby	PJ
Rice Univeristy Welcome Center	92077	30	Ana Flor Lopez Millan	AJ
	TOTAL	2946	Total Declarants =40	

Agreeing To A Court Order To Permit Voting For An Extra Hour On Election Day.

50. An emergency court hearing late in the day on Election Day resulted in HCEA Tatum agreeing to keep all 782 of the polls open for one additional hour. Under the terms of that order, all such voters who arrived at a polling location to vote after 7:00 p.m. were supposed to cast Provisional Ballots rather than voting regularly.

51. The Court finds that it was a mistake for HCEA to have agreed to the entry of this order, as doing so only served to exacerbate, rather than ameliorate, the disproportionate impact upon the voters in the neighborhoods served by polling locations that ran out of paper.

52. The Court further finds that no notice of this emergency hearing was given to Contestant Lunceford, even though she was a candidate on the ballot and even though her candidacy would be affected by the relief being sought by the plaintiffs.

53. The Court also finds that no notice of the initial emergency hearing was given to the State of Texas, the Secretary of State, or the Office of Attorney General.

54. The Court finds that the parties described in FOF 52-53 were necessary parties that should have been provided notice.

55. Evidence was admitted during the trial that the State of Texas, Secretary of State, and the Office of Attorney General, jointly filed a motion to dissolve the temporary restraining order that the Trial Court had granted. Despite this new development, the Trial Court did not do so.

56. Parallel emergency mandamus proceedings were also filed by the same parties who had filed the joint motion to dissolve before the Harris County Ancillary Judge. The Texas Supreme Court thereafter issued a stay of the Trial Court's temporary restraining order, but an hour of voting had already occurred by the time the stay has issued.

57. Despite EA Tatum's assurances to the Trial Court earlier in the evening that sufficient supplies would be available to accommodate voting for an extra hour, EA Tatum ultimately admitted in a subsequent hearing that same evening before the

Trial Court that not all polling locations had access to ballot paper during the extra hour of allotted time to vote. This caused the Trial Court to express concern for what EA Tatum had promised and what EA Tatum had actually delivered. This Court shares the same concern.

58. A second mandamus proceeding was filed by the same parties as had jointly filed the motion to dissolve the previously entered temporary restraining order. The Supreme Court thereafter issued a subsequent order which required Harris County to announce separate canvass totals, one counting the after 7pm provisional ballots and one not including those totals. Those separately canvassed results are contained in Contestant's Exhibit 3.

59. Ordinarily, there is no technological basis to determine which candidate in a specific race received a vote from a Provisional Ballot ("PB") voter whose vote was cast and counted. The reason for this is that, once the Early Voting Ballot Board ("EVBB") has accepted a PB, all such accepted provisional ballot affidavits ("PBAs") are then transferred to the Harris County EA's office for actual counting. EA Staff then open the accepted PBA envelopes, remove the PB, and then scan those ballots so that they are electronically recorded onto the V-Drive. Once scanned, the PB votes become part of the vote totals, but there is no tracking system to be able to connect which candidate received a vote from which specific PB voter. Thus, it is ordinarily impossible for the Court to declare the outcome of these PB votes.

60. In this election, however, there is one notable exception to what is described above. The Texas Supreme Court issued a stay on November 8, 2022, and ordered that Harris County segregate all PBs cast and counted after 7pm by court order from the rest of the PBs. A subsequent order from the Texas Supreme Court resulted in Harris County reporting in the final canvass results the actual breakdown, by candidate, of how this discrete group of PB voters cumulatively voted, if such voters cast PBs after 7pm by court order. Thus, although ordinarily it would not be possible to do so, in this election, Harris County reports in the final canvass totals that Contestant Lunceford received 822 PBs cast after 7pm by court order, while Contestee Craft received 1,147. This means that Contestee received 325 more PBs than did Contestant. To the extent this Court finds that all PBs cast after 7pm on Election Day were illegal, then the result of that ruling would be to subtract 822 PBs from Contestant Lunceford and 1,147 PBs from Contestee Craft, which would then result in a net gain to Contestant Lunceford and a corresponding net loss of 325 votes from the canvass totals of votes received by Contestee Craft. To the extent this Court finds that, although not illegal, it was a mistake for the election officials to have agreed to extend voting for one hour, the Court will take the result of that mistake, which was to allow Contestee Craft to build her lead by 325 more votes than had no court order been entered.

Mail-in Ballots Were Not Initially Handled Properly.

61. The evidence at trial demonstrated that approximately 700 mail-in ballots (“BBMs”) were counted without conducting the required review and analysis by the Signature Verification Committee (“SVC”) before agreeing to accept a BBM for counting by the Early Voting Ballot Board (“EVBB”). In particular, the HCEA’s office instructed the Signature Verification Committee (“SVC”) to deviate from established procedure on the first day that they processed BBMs.

62. Kay Tyner, the Vice Chair of the Signature Verification Committee, testified that when the Signature Verification Committee began its process in the November 8, 2022 Election, one of the Election Administrator’s staff members instructed the Signature Verification Committee that they were only supposed to compare the identification information provided on the mail ballot carrier envelope to the information that was included on the mail ballot application. Additionally, the EA staff member declared that it was not necessary to review the signatures. Members of the Signature Verification Committee protested and requested that the process be reviewed.

63. In addition, Kay Tyner testified that after this improper process was brought to the attention of the EA staff member, the process was fixed by a retraction from the EA staff member of the earlier instructions, but approximately 700 BBMs that were processed during that time were not re-reviewed. These mail ballots should have been reviewed properly in order to determine if they were acceptable. Not

knowing which mail ballot envelopes were incorrectly reviewed, and not knowing how many of these 700 mail ballots were accepted and how many were rejected, it is not possible to ascertain the impact of these improperly processed mail in ballots on either Contestant or Contestee. The Court finds Kay Tyner's testimony to be credible, especially in light of the fact that Contestee listed Jennifer Colvin as a testifying witness, but chose not to call her to rebut Kay Tyner's testimony. The Court will take this evidence of "illegality" and/or "mistake" into account when determining whether the true outcome of this contested election can be ascertained.

Mail-In Ballots.

64. Contestant introduced evidence challenging certain mail-in ballots that were cast and counted. Those challenges fall into three (3) categories, as follows: (i) BBMs post-marked after November 8; (ii) BBMs post-marked on November 8 for a non-military and non-overseas voter who postmarked their ballot on Election Day in a city like San Antonio or Fredericksburg; and BBMs (iii) not signed by the voter.

65. Contestant's Exhibit 12 represent the twelve (12) BBMs which were accepted by the EVBB and counted, even though each one was postmarked on or after November 8. Those specific documents are listed below:

Bates Numbers for Postmark on or after Nov. 8

0173314 & 0173315
0175803 & 0175804
0175821 & 0175822
0204880 & 0204881

0220036 & 0220037
0220084 & 0220085
0220954 & 0220955
0223064 & 0223065
0223928 & 0223929
0224028 & 0224029
0224550 & 0224551
0225050 & 0225051

66. Contestant's Exhibit 11 represent the forty-four (44) BBMs which were accepted by the EEVB and counted, even though the BBM return carrier envelopes had no signatures. Those specific documents are listed below:

Bates Numbers for Missing Signature

0111947 & 0111948
0112133 & 0112134
0114383 & 0114384
0118895 & 0118896
0124351 & 0124352
0127124 & 0127125
0127558 & 0127559
0128530 & 0128531
0132010 & 0132011
0132972 & 0132973
0133565 & 0133566
0135219 & 0135220
0138667 & 0138668
0142979 & 0142980
0146689 & 0146690
0154695 & 0154696
0155247 & 0155248
0158195 & 0158196
0162769 & 0162770
0178045 & 0178046
0179245 & 0179246
0181141 & 0181142
0182277 & 0182278
0184364 & 0184365
0186736 & 0186737
0192638 & 0192639

RETRIEVED FROM DEMOCRACYDOCKET.COM

0193478 & 0193479
0193722 & 0193723
0196616 & 0196617
0198108 & 0198109
0199230 & 0199231
0200798 & 0200799
0204232 & 0204233
0210020 & 0210021
0216766 & 0216767
0217572 & 0217573
0218326 & 0218327
0230684 & 0230685
0231874 & 0231875
0236494 & 0236495
0236824 & 0236825
0239960 & 0239961
0237204 & 0237205
0252216 & 0252217

Provisional Ballots During Early Voting and Election Day During non-Extended Hours.

67. Contestant also contended that certain provisional ballots that were cast and counted should not have been counted. Those challenges fall into multiple categories. Contestant's Exhibits 10A, 10C, 10D, and 10E show the specific challenges and why those challenges were made. Because the list of challenged PBAs is so lengthy, the Court will attach a list hereto as Exhibit A. This exhibit identifies each specific bates-labeled PBA which falls into each of Contestant's specific category of challenge.

68. HCEA is the entity in possession of all of the election records. As such, HCEA produced to the parties in this lawsuit a copy of all PBAs that existed. Out of the grand total of 6,355 PBAs produced, multiple PBAs were either marked as

“void,” or do not reflect any action being taken by the Early Voting Ballot Board, or both, meaning these specific PBAs were neither “accepted” nor “rejected,” and, presumably, none of these provisional ballots (“PB”) contained inside the PBA envelopes were included in the final canvass totals reported by Harris County. In addition, there are multiple duplicates of PBAs, both accepted and rejected, that were assigned different bates numbers. By deducting all duplicate PBAs, all PBAs marked void, and all PBAs which reflect no action by the EVBB, the total universe of PBAs which were either accepted or rejected does not equal 6,355, which is the total number of PBAs produced by Harris County. To the contrary, it appears that the actual count of PBAs (at least to the extent of what Harris County has produced to Contestant, and further assuming all PBAs in existence have been produced to Contestant) is 6,275.

69. There is some doubt as to whether 6,275 is an accurate count of the global universe of PBAs that were either accepted or rejected by the Early Voting Ballot Board in this election. Based upon the evidence presented at trial, this number of 6,275 does not tie to any of the numbers issued by Harris County. For example, according to the post-election report by the Harris County EA’s Office, the total amount of PBs accepted and rejected is supposedly 6,302. But this count is not the same as the count from the actual PBA production sent by Harris County to the parties, even though these counts should be the same. Because one PB is supposed

to be inside of one PBA envelope, a one-to-one correlation should exist between PBAs and PBs either accepted or rejected.

70. To make the numbers even more confusing, Harris County reports the total number of PBAs accepted as 4,538 and the total number of PBAs rejected as 1,764. The summation of these two numbers is 6,302, which does not match the totals reflected by the PBAs produced by Harris County. Evidence in the form of Contestant's own analysis of the PBAs produced reflect 4,557 as the total number of PBAs accepted and 1,718 as the total number of PBAs rejected. The summation of these two numbers is 6,275.

71. Of the 4,538 PBAs which were supposedly accepted, Harris County reports that 205 of these PBAs did not have an actual PB inside the PBA envelope. This fact should not impact how many PBAs were accepted, but it does affect how many accepted PBs are actually in the canvassed totals for PBs. Thus, assuming that HCEA's numbers are accurate (which the Court finds that they are not), the revised count of PBs actually accepted and counted should be 4,538 minus 205, for a reduced total of 4,333 PBs, which is what Harris County has reported in its post-election report. Using Contestant's numbers, however, would require a deduction of 205 missing PBs from 4,557 PBAs accepted for counting, for a subtotal of 4,352 PBs actually counted. Regardless of which set of numbers is accurate, the 205 missing PBs raise a concern as to whether those PB votes are mistakenly included in the

canvassed totals as regular ballots or not. This could be explained in at least two ways. First, if an election official at a polling site on either Early Voting or Election Day Voting provided a provisional voter with a regular ballot by mistake, then that regular ballot is capable of being scanned at the specific polling location and, if scanned, is electronically captured, and recorded on a V-Drive. In that situation, a PB vote is not recorded as a PB vote, but is added to the total of the regular ballot count. Provisional Ballots are given a unique ballot code, which is distinct from the ballot code provided on a regular ballot. If the correct ballot code is given, then the scanner will not accept the PB, and it will not be electronically captured and recorded on a V-Drive. Conversely, if the incorrect ballot code is given, then the scanner will accept the PB as if it were a regular ballot, and that ballot will be electronically captured and recorded on a V-Drive. Second, the same is true for the Emergency Chute. If a PB is placed in the Emergency Chute with the correct ballot code, then any scanning attempt at Central Count would be rejected, but if a PB is placed in the Emergency Chute with the incorrect ballot code, then such PB would be interpreted as a regular ballot and is capable of being scanned and electronically captured and recorded on a V-drive.

72. The evidence in this trial demonstrated the following analysis of PBAs, which the Court finds to be credible. As shown below, the following table represents the summary findings from the analysis of the Provisional Ballot Affidavits (PBAs)³.

ITEM	COUNT
Total PB Affidavits (PBA)	6,310
Total PBA EA Rejected	1,737
Total PBA EA Accepted	4,573
Of PBA Accepted:	
After 7PM	2,213
No ID or Blank	2,462
Invalid or Blank EJ Date	823
EJ Date after Nov 8 (subset of above)	90
No Citizenship or Blank	123
Blank Residential Address	45
No EJ Signature	25
No BB Signature	13
No Voter Signature	7
Invalid VR Date	6
No VR Signature	1

The following table represents the summary results from the HCEA:

From HCEA Official Results Summary:	Count
PB Total	6,302
PB Rejected	1,764
PB Accepted	4,538
PB Counted	4,333
HCEA Acceptance rate	72.01%
Analysis Acceptance Rate	18.23%

The following table shows the potential results, without counting PBAs having more than one error, by listing the highest categories first:

³ **Note:** the record counts will not add to the total number of PBA's since many of the PBA's had more than one identified error.

ITEM	INVALID	BALANCE
Total PBA Received		6,310
Total PBA Rejected	1,737	4,573
After 7PM	2,213	2,360
No ID or Blank	1,080	1,280
Invalid or Blank EJ Date	105	1,175
No Citizenship or Blank	14	1,161
Blank Residential Address	4	1,157
No EJ Signature	2	1,155
No BB Signature	2	1,153
No Voter Signature	2	1,151
Invalid VR Date	1	1,150
Potentially Valid PBAs		1,150

Analysis Acceptance Rate	18.23%
Analysis: Accepted more than should have:	3,423

57. Beyond the problem of PBs cast after 7pm due to court order, Contestant's analysis demonstrates that a total of 1,200 PBs that were cast and counted but should have been rejected instead. Unlike the anomaly of being able to tie PBs to a specific candidate by virtue of the aforementioned Texas Supreme Court's issuance of a stay and their subsequent order regarding how the canvassing results should be reported, none of these PBs can be connected to either Contestant or Contestee. Thus, it is not possible to ascertain the impact of these 1,200 on the purported vote totals for the Contestant or Contestee. The number of PBAs in each distinct category is reflected in Exhibit A, attached hereto.

Votes by voters who have cancelled voter registrations.

58. Harris County's official Voter Roster (which lists all of the voters who cast a ballot in the election and for whom their vote was counted and included in the

official canvass) lists 2,970 voters in the November 8, 2022 General Election whose status is cancelled. HCEA reviewed those specific fact patterns and informed the parties that five (5) of the 2,970 voters voted in the November 8, 2022 election with an expired voter registration. The Court finds that these five (5) voters voted at a time when their voter registration status had already been cancelled.

Votes by voters who were on the Suspense list.

59. The Harris County Voter Roster lists 2,038 voters who voted and have a SUSPENSE notation next to their name. Evidence was admitted during the trial that 1,995 of these voters did not submit a filled-out Statement of Residence (“SOR”).

Votes Were Cast And Counted Without An SOR.

60. Contestant’s Exhibit 9A is a compilation of 2,351 SORs challenged by the Contestant on various grounds. Contestant’s Exhibit 9B is a detailed spreadsheet of those challenges. Of the various categories, the Court sustained objections to certain categories tied to a database called the National Change of Address (“NCOA”) database, which is compiled and maintained by the United States Postal Service (“USPS”), and, for this lawsuit, was reported by a third party, called True NCOA.

61. The SOR categories which do not relate to NCOA, USPS, or True NCOA, are: (i) out of county voters and (ii) incomplete SORS lacking sufficient

information to determine whether a voter was entitled to vote in the November 8, 2022 General Election in Harris County. As to the first category, the Court finds that 1,113 SORs represent voters who voted in the November 8, 2022 election but who did not reside in Harris County on the date that they voted. Of that 1,113 total, 1,000 of those SORs demonstrated the out of county status of the voter without the need to resort to extrinsic evidence. The remaining 113 of those SORs required some additional research, such as typing in the residence address on google maps to determine what county that address was in, or inputting the address into the Harris County Appraisal District website, or checking other verifiable and public databases. Because the list of these out of county SORs is so lengthy, a tally by bates number for each SOR is attached hereto as Exhibit B. The other SOR category that Contestant challenged were those voters who cast a ballot but who failed to supply sufficient information on their SOR to meet the minimum residency requirements necessary to confirm their right to cast a ballot in Harris County. Contestant's initial category of challenged SOR voters was 467. After the cross-examination of Steve Carlin, which, in part, focused on this category of challenged SORs, Contestant withdrew 185 challenges in this specific category, such that only 284 challenges remain. The Court finds that all 284 challenged SORs fail to satisfy the information requirements set forth in Section 63.0011 of the Texas Election Code. The Court also finds that all of the 284 incomplete SOR voters are listed on the Harris County

Roster, such that the Court finds that all 284 of the incomplete SOR challenges represent votes that were both cast and counted in the November 8, 2022 General Election. Because the list of these incomplete SORs is so lengthy, a tally by bates number for each SOR is attached hereto as Exhibit C.

Votes Were Cast And Counted Without An Appropriate Reasonable Impediment Declaration.

64. Contestant presented testimony about how to qualify and accept a voter to vote, the need for photo identification and/or the need for a reasonable impediment declaration (“RID”), and what to do if information is missing on a RID. Contestant also brought live testimony thru Victoria Williams, a Presiding Judge, that 532 RIDs were not sufficient on their face to permit this Court to confirm that those specific voters—who cast a vote and that vote was counted—were, in fact, eligible to cast a regular ballot. Contestant’s Exhibit 13A is a copy of all of the challenged RIDs, while Contestant’s Exhibit 13C is a spreadsheet demonstrating what is lacking on a particular RID. The Court finds this evidence and testimony to be credible and finds that it was a mistake on the part of the election officials not to have ensured that both the voter and the election official fully completed the RID and both of them signed that document. The Court has taken these mistakes into account when determining whether it can declare the true outcome of this contested election.

Votes Were Cast And Counted Without An Appropriate Registration Address.

65. William Ely and Steve Carlin both testified that approximately 5,000 voters were challenged in the summer of 2022 based upon the belief that these registered voters did not actually reside at the address listed in their voter registration records. Although they filed written challenges with the HCEA, approximately 4,600 of those same registered voters remain on the Harris County Voter Roll as of the date of Mr. Ely's trial testimony. The Court has taken the HCEA's failure to issue confirmation notices to these challenged individuals into account when trying to ascertain whether the reported outcome is the true outcome for this Contested Election.

Discrepancies in the Cast Vote Records.

66. The evidence at trial demonstrated that, according to the Harris County Election Administrator's official canvass, the Cast Vote Record for all county-wide races is not consistent amongst the various contests. See Contestant's Exhibit 2. If all of the ballots were counted correctly for all of the races, the Cast Votes Record would be the same for every county-wide contest. The numerical difference in the Cast Vote Record for the 189th Civil Judicial District Court race is 1,151 higher than the Cast Vote Record for the last countywide race on the ballot (e.g., 1,107,390 minus 1,106,239). The Court finds from the evidence that the reason for the numerical discrepancy is that more page ones of the two-page ballot were scanned into the Scanner and onto the V-drive for the same voter than were supposed to have

been scanned. These mistakes resulted in double votes, and it is impossible to determine which voters were involved. Nor is it possible to determine for whom these voters voted, or whether they voted in this specific contested race. Accordingly, the Court will take these mistaken double votes into account when determining whether the true outcome of this contested election can be ascertained.

There are more votes in the canvassed totals than the actual number of Voters who voted.

67. Colleen Vera testified that at a particular EV poll, SRD 140, which is known as the Hardy Street Senior Citizens Center, they had sixty (60) more ballots to scan than the number of voters who registered to vote at that poll. The Court finds this evidence to be credible and will take this mistake and discrepancy into account when determining whether it can ascertain the true outcome of this election.

68. Given that specific discrepancy, Ms. Vera testified that she then decided to compare the roster for that specific polling center to the final total for that poll on the Early Voting (“EV”) Report. After comparing the totals for Early Voting in the Harris County Official Voter Roster (692,049) to the Official Canvass for the November 8, 2022 election (692,748), the evidence showed that the official canvass for early voting presents shows 699 more votes than voters.

Type	Roster	Canvass	Canvass - Roster
EV	692049	692748	699

The Court finds this evidence to be credible and will take this mistake and discrepancy into account when determining whether it can ascertain the true outcome of this contested election.

EA Tatum’s Failure to Properly Reconcile Mail-in Ballots.

69. The Harris County EA’s official reconciliation report has reported 9,307 more mail-in ballots were counted that were actually turned in by Harris County voters, as follows:

Mail Ballots Sent to Voters	80,995
Mail Ballots Not Returned by Voters	19,486
Mail Ballots Surrendered at Polling Places	6,557
Mail Ballots Returned this Election	54,952
Official Count of All Mail Ballot Voters	64,259
Discrepancy	9,307

70. Although Contestant Lunceford played deposition excerpts from Clifford Tatum’s video deposition, this subject did not come up in those excerpts. HCEA Clifford Tatum was not called as a witness by Contestee Craft. He therefore did not explain this discrepancy, and the Court was not afforded the opportunity to ascertain why the official reconciliation total for BBMs is off. The sole explanation in the evidence comes from the post-election report by HCEA, which is Contestant’s Exhibit 20, which suggests that the number of BBMs not returned was overstated by mistake. This explanation by HCEA comes from an interested and biased source, as

the HCEA is clearly on the side of upholding the outcome of this contested election. Indeed, the Court has had the opportunity to observe the attorneys representing HCEA throughout the life of this litigation, and HCEA has even filed an amicus brief on the side of Contestee's no-evidence motion for summary judgment. It is clear that an adversity of interest exists between HCEA and Contestant. It is equally clear that there is a common interest between HCEA and Contestee. Accordingly, the self-serving explanation for the discrepancy is not found to be persuasive, especially since there is no data or other documentation to actually permit the Court to audit the veracity of how the numbers changed from the date of the official reconciliation, on the one hand, to the explanation of a different calculation in the post-election report, on the other hand. The Court will therefore take this mistake and discrepancy into account when it determines whether it can ascertain the true outcome of this contested election.

Undervote

71. The Court finds that the undervote in the Contested Election, when expressed as a percentage, is 3.86%. This means that for every 1000 voters who voted in the November 8, 2022 General Election, 38 voters did not cast a ballot in the Contested Election, while 962 did so.

72. The reported margin of defeat in the Contested Election was 2,743. Taking the undervote percentage into account, approximately 106 voters out of 2,743

voters did not vote in the Contested Election. Thus, in order to ensure that the undervote is considered, the Court finds that the margin necessary to demonstrate a material impact on the Contested Election is 2,849.

73. Any Finding of Fact herein that is a Conclusion of Law shall be deemed a Conclusion of Law.

74. Any Conclusion of Law which is a Finding of Fact shall be deemed to be a Finding of Fact.

75. All Findings of Fact are supported by clear and convincing evidence.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Texas Rule of Civil Procedure 21a, a true and correct copy of the foregoing instrument was forwarded to all counsel of record and/or parties on August 31, 2023.

/s/ Andy Taylor
Andy Taylor

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Andy Taylor on behalf of Andy Taylor

Bar No. 19727600

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