

No. 01-23-00921-CV

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**IN THE FIRST COURT OF APPEALS  
FOR THE STATE OF TEXAS  
AT HOUSTON, TEXAS**

FILED IN  
1st COURT OF APPEALS  
HOUSTON, TEXAS  
2/7/2024 3:18:47 PM  
DEBORAH M. YOUNG  
Clerk of The Court

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**ERIN ELIZABETH LUNCEFORD**

v.

**TAMIKA CRAFT**

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**Appealed from the 164th District Court  
of Harris County, Texas  
Cause No. 2022-79328**

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**APPELLEE'S MOTION TO DISMISS APPEAL**

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Appellee, Tamika Craft, files this *Appellee's Motion to Dismiss Appeal*, and shows as follows:

**A. Appellant Failed to Timely Pay the Appellate Filing Fee.**

1. This is an appeal of an election contest in Harris County District Court. On November 9, 2023, the trial court issued its Final Judgment Denying Election Contest.

2. Thirty-two days later, on December 11, 2023, contestant Erin Lunceford filed her notice of appeal that was assigned to this Court.

3. On December 12, the Clerk of the Court notified Appellant Lunceford that the required filing fee must be paid within twenty days of the notice, making the fee due on January 2, 2024. Appellant Lunceford failed to pay the required filing fee.

4. On January 5, 2024, the Clerk of the Court again notified Appellant Lunceford of the unpaid filing fee. The Clerk instructed Appellant Lunceford to pay the filing fee, or explain why Appellant should not pay the fee, on or before Monday, February 5, 2024, or else the Court may dismiss the appeal. *See* Tex. R. App. P. 42.3.

5. Appellant Lunceford failed to pay the required filing fee by February 5. Lunceford also failed to explain why she should not be required to pay the filing fee by February 5. Lunceford also filed no request for an extension.

6. The Court should therefore dismiss Lunceford's appeal because she failed (twice) to comply with a notice from the clerk requiring a response within a specified time. *See* TEX. R. APP. P. 42.3.

7. Lunceford's appeal should be dismissed even if she attempts to pay the fee after the deadline. Her failure to follow the clerk's requirements and timely pay the \$205 fee after receiving two notices of the deadline indicates her unwillingness to take this appeal seriously. Appellant Erin Lunceford is a former judge. She understands the importance of deadlines. And she cannot claim ignorance of the Court's requirements. Her refusal to comply with the Court's filing fee deadline, after multiple notices and an extension, should not be excused. Doing so would be prejudicial to Tamika Craft, a sitting judge in Harris County whose judicial legitimacy is being attacked by Lunceford. The Court should dismiss Lunceford's appeal for failure to follow the clerk's requirements.

**B. Appellant Failed to Timely File her Notice of Appeal.**

8. Additionally, or alternatively, Appellee Craft requests that the Court dismiss Lunceford's appeal because it was untimely noticed.

9. In the trial court, Appellant Lunceford pleaded in her Fifth Amended Petition (the live petition at the time of trial) that her case should be expedited. She asserted in paragraph 9 of the petition the following:

Section 231.002 of the Texas Election Code provides that the Texas Rules of Civil Procedure apply to this Election Contest. The common law also dictates that **time is of the essence** in an election contest, and [t]here are compelling state interests to **promptly resolve** the disputed issues in order to put into office the duly elected candidate.” *Goodman v. Wise*, 620 S.W.2d 857, 860 (Tex. Civ. App. — Corpus Christi 1981, writ ref d n.r.e.); *see also Wendover v. Tobin*, 261 S.W. 434, 438 (Tex. Civ. App. — San Antonio 1924) (“public welfare . . . demand[s] a swift and expeditious disposal” of election contests). The need for **swift and expeditious disposal of this contest is paramount**. The reason for this need for speed is simple: the candidates and the public need to know whether a new election should be ordered for the 189th Judicial District of Harris County. When this Honorable Court sustains this Election Contest, then a new election will be conducted to determine the winner of this contested election. Accordingly, **it is absolutely critical that this issue be resolved as expeditiously as possible**.

*See* Exhibit A (Contestant’s Fifth Amended Petition) at ¶ 9 (emphasis added).

10. Section 231.009 of the Texas Election Code states, “[a]n election contest has precedence in the appellate courts and **shall** be disposed of as expeditiously as practicable.” TEX. ELEC. CODE ANN. § 231.009 (emphasis added).

11. Appellant argued to the trial court that Section 231.009 mandated an expedited case. She asserted the following in her petition:

Additional **support for expedited treatment** can be found in **statutory law**. More specifically, the Texas Legislature has determined in **Section 231.009** of the Texas Election Code that an election contest **has precedence in the appellate courts** and **shall be disposed of as expeditiously as practicable**. Clearly, as stated above in the rules, common law, and statutory law, the public policy of this State is to resolve this Election Contest as rapidly as possible. Contestant Lunceford and her undersigned counsel **stand ready to assist the Court and the Contestee to move as expeditiously as possible**.

*See* Exhibit A at ¶ 10 (emphasis added). There is precedence for dismissing an appeal under Section 231.009 because it was noticed after the accelerated appeal deadline. *See Launius v. Flores*, 640 S.W.3d 631, 634 (Tex. App.—Dallas 2022, pet. denied) (dismissing a late-filed notice of appeal because “section 231.009 creates an appeal that is statutorily-required to be expedited” and “subject to the accelerated appellate timetable of Rule 26.1(b)”).

12. In an accelerated appeal, the notice of appeal must be filed within 20 days after the judgment or order is signed. *See* TEX. R. APP. P. 26.1(b).

13. Appellant Lunceford failed to file her notice of appeal within 20 days of the November 9 judgment.

14. Appellant Lunceford also failed to request an extension of time to file her notice of appeal within 15 days of the deadline. *See* TEX. R. APP. P. 26.3.

15. Although Lunceford requested a Findings of Fact and Conclusions of Law, that request does not extend the notice deadline when the appeal is accelerated. *See* TEX. R. APP. P. 28.1 (“Filing a motion for new trial, any other post-trial motion, or a request for findings of fact will not extend the time to perfect an accelerated appeal.”). Her notice of appeal was therefore untimely.

### **C. Conclusion**

16. Thus, the Court should dismiss the appeal because (1) Appellant failed to comply with the notice of the clerk to pay the filing fee, or (2) Appellant failed to timely file a notice of an accelerated appeal.

Respectfully submitted,

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**ATTORNEYS FOR TAMIKA CRAFT**

**CERTIFICATE OF CONFERENCE**

I certify that, pursuant to Tex. R. App. P. 10.1(5), I have conferred with Appellant's counsel and Appellant is opposed to this motion.

/s/ Eric A. Hawley  
Eric A. Hawley

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing motion was served upon all parties on February 6, 2024.

/s/ Eric A. Hawley  
Eric A. Hawley

# Exhibit A

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ERIN ELIZABETH  
LUNCEFORD

Contestant,

v.

TAMIKA “TAMI” CRAFT

Contestee.

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IN THE DISTRICT COURT

164<sup>th</sup> JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

**CONTESTANT ERIN ELIZABETH LUNCEFORD’S FIFTH AMENDED  
ORIGINAL PETITION ASSERTING ELECTION CONTEST**

TO THE HONORABLE JUDGE OF THIS COURT:

Contestant, Erin Elizabeth Lunceford, hereby files this Fifth Amended Original Petition Asserting Election Contest and, in support hereof, would show as follows:

**I.  
SUMMARY OF THIS ELECTION CONTEST**

1. Contestant hereby seeks a new election for the 189<sup>th</sup> Judicial District Court of Harris County, Texas. The reason for filing this contest and requesting a new election is very simple: Harris County, under the flawed leadership of its Election Administrator, Clifford Tatum, totally botched the security, integrity, and reliability of the purported election outcomes arising out of the November 8, 2022 General Election. The purported outcome of the race for the 189<sup>th</sup> Judicial District

Court of Harris County, Texas, as reported in the final canvass, shows Contestant with 530,967 votes (49.87%) and Contestee with 533,710 votes (50.13%). Thus, the margin of purported defeat is a mere 0.26 of one percent. This purported 2,743 vote margin, as reported by the final canvass, is not the true outcome. Indeed, as the evidence will demonstrate, this Court will ultimately be unable to declare the true winner, as it is not possible to ascertain the true outcome of this contested race, due to how poorly the election was conducted, coupled with the fact that illegal votes were accepted, while legal votes were rejected. Unless and until this Honorable Court reviews all of the evidence and determines that the true outcome cannot be determined, both the candidates and the public will be in limbo. It is therefore crucial to determine the merits of this Contest as soon as possible.

**II.**  
**THE PARTIES, JURISDICTION AND VENUE**

2. Contestant Lunceford is a resident and registered voter in Harris County. Contestant Lunceford was (and still is) the Republican nominee and candidate for the 189<sup>th</sup> Judicial District Court of Harris County.

3. Contestee Craft also is a resident and registered voter in Harris County. Contestee Craft was (and still is) the Democratic nominee and candidate for the 189<sup>th</sup> Judicial District Court of Harris County. Contestee has filed an appearance in this matter and is represented by counsel. Further service will be effectuated in this case by serving Contestee's counsel via email.



4. Contestant does not accuse Contestee of any wrongdoing, but is required under the Texas Election Code to name Contestee as the defendant in an election contest.

5. Jurisdiction over this Election Contest is vested in a District Court pursuant to Section 231.001 of the Texas Election Code.

6. Venue of this Election Contest is proper in Harris County pursuant to Section 233.005 of the Texas Election Code. However, pursuant to Section 231.004 of the Texas Election Code, all Harris County Judges are disqualified from presiding over this Election Contest. Accordingly, this Election Contest was transferred to the Presiding Judge of this Administrative Judicial Region, and the Honorable Judge David Peeples has been assigned as a Special Judge to preside in this matter.

**III.**  
**EXPEDITED DISCOVERY PLAN**

7. Contestant intends to conduct discovery as permitted under the Texas Election Code and as permitted by the Texas Rules of Civil Procedure and asks that the Court enter an order setting forth a suitable discovery control plan.

8. Pursuant to Texas Rule of Civil Procedure 47(c)(2), Contestant seeks a new election. No monetary damages are sought.

9. Section 231.002 of the Texas Election Code provides that the Texas Rules of Civil Procedure apply to this Election Contest. The common law also dictates that time is of the essence in an election contest, and [t]here are compelling

state interests to promptly resolve the disputed issues in order to put into office the duly elected candidate.” *Goodman v. Wise*, 620 S.W.2d 857, 860 (Tex. Civ. App. — Corpus Christi 1981, writ ref d n.r.e.); *see also Wendover v. Tobin*, 261 S.W. 434, 438 (Tex. Civ. App. — San Antonio 1924) (“public welfare . . . demand[s] a swift and expeditious disposal” of election contests). The need for swift and expeditious disposal of this contest is paramount. The reason for this need for speed is simple: the candidates and the public need to know whether a new election should be ordered for the 189<sup>th</sup> Judicial District of Harris County. When this Honorable Court sustains this Election Contest, then a new election will be conducted to determine the winner of this contested election. Accordingly, it is absolutely critical that this issue be resolved as expeditiously as possible.

10. Additional support for expedited treatment can be found in statutory law. More specifically, the Texas Legislature has determined in Section 231.009 of the Texas Election Code that an election contest has precedence in the appellate courts and shall be disposed of as expeditiously as practicable. Clearly, as stated above in the rules, common law, and statutory law, the public policy of this State is to resolve this Election Contest as rapidly as possible. Contestant Lunceford and her undersigned counsel stand ready to assist the Court and the Contestee to move as expeditiously as possible.

**IV.**  
**BACKGROUND FACTS**

11. Harris County early in-person voting began on Monday, October 24, 2022 and ended on November 4, 2022. Election Day voting took place on Tuesday, November 8, 2022. As the Elections Administrator (“EA” or “HCEA”) for Harris County, Clifford Tatum had the responsibility of enforcing the election laws to ensure a fair and honest election in Harris County. Instead of complying with this mandate, EA Tatum allowed the election to be run in such a manner that: (i) votes which were ineligible to be counted (e.g., illegal votes) were cast and counted; (ii) votes which were eligible to be counted (e.g., legal votes) were cast but not counted; and (iii) one or more election officers or other persons officially involved in the administration of the election: (a) prevented eligible voters from voting; (b) failed to count legal votes; and/or (c) engaged in other fraud and/or illegal conduct and/or made a mistake.

**Example One:**

**A. Issuing Second Ballots To Voters Who Experienced Problems With Scanning One or Both Pages Of Their First Ballot.**

12. One example of how EA Tatum deviated from the proper election procedures has to deal with scanning the ballot. The ballot for the November 8, 2022 General Election was two pages in length, both of which are 8.5 by 14 inches in width and length. Once the voter is finished voting, that voter’s ballot must be

scanned into a scanner. Once scanned, that ballot is electronically recorded on a special flash drive (“V-drive”) and on a hard drive of the scanner and is officially included in the total hard count for the election.

13. The problem that occurred throughout Harris County at a significant number of the ninety-nine (99) early voting polling locations--as well as the seven hundred eighty-two (782) election day polling locations--is that the scanners were not properly scanning both pages of a voter’s ballot. When this occurred, the page that was scanned successfully is recorded electronically onto a V-drive and entered into the total hard count for the election. But the page that is not scanned is not recorded electronically on the V-drive and is not part of the total hard count for the election.

14. Problems like this are not particularly uncommon for Harris County, and there is an established procedure on how to deal with this situation. The remedy for problem ballots involves utilization of what is known as the Emergency Chute, which is a receptacle for placing problem ballots that were not counted (e.g., not recorded on the V-drive), but should be counted. Members of the Central Count team would collaborate with teams to ensure that the unscanned page of the voter’s ballot in the Emergency Chute was accurately scanned and added to the hard count.

15. EA Tatum altered the election procedure for handling unscannable ballot pages, and issued instructions to poll workers to issue a second ballot when

problems like this occurred. The second ballot will have a separate and distinct serial number from all other ballots generated at the polling location. The voter was supposed to scan in the ballot page from the second ballot that did not scan from the first ballot. The judges were required to spoil the unscannable page of the first ballot and the duplicate page of the second ballot. This process of creating a new ballot was normally managed by the Central Count team which had numerous checks and balances to ensure that the correct ballot page was placed in the ballot box. The result of this ill-advised instruction to poll workers resulted in voters accidentally scanning both pages of the second ballot and/or poll workers placing ballots that should be spoiled in the Emergency Chute, which was later counted by Central Count. These mistakes resulted in double votes by those innocent voters, in direct violation of the Texas Election Code. This ill-advised process also would allow an unscrupulous election worker to view the voter's actual votes on their secret ballot before determining whether to place one or more pages in the spoiled ballot envelope or the Emergency Chute.

16. EA Tatum knew better than to do this. In the past May election, the Election Administrator's procedure was to simply place the ballot page that was not scanned properly into the Emergency Chute, which is the collection box for those ballots that were cast and should be counted, but, for whatever reason (e.g., the scanner would not accept the ballot, for example), was not able to be scanned and

therefore is not included in the total hard count. Eventually, all of the ballots placed in the Emergency Chute are triaged by Central Count, where they have the technological capability to match the serial number of the ballot in the Emergency Chute with the serial number in the total hard count, making it feasible to then match the two ballot pages through an audit process and connect those two pages to a specific voter who voted, but could not get one of the two pages of their ballot to properly scan.

17. This new procedure caused a huge problem of a colossal magnitude. This deviation from the Harris County procedures instructed polling officials to spoil the unscanned page of the first ballot that was not able to be scanned, and then scan the specific page of the second ballot that was not scanned on the first ballot. Assuming poll workers did this correctly, then the total hard count on the V-drive will have a ballot for one of the two pages with one serial number, while the hard count will also have a ballot for the other page of the two pages with a different serial number. This procedure makes it impossible for Central Count to connect either page of the second ballot with either page of the first ballot, as both ballots have a unique serial number. Thus, once voting was concluded, no one at Central Count is able to audit the results because there is no way to tie these two separate ballots pages together. This also makes it impossible for the Texas Secretary of State's office to conduct a post-election audit, which is has already announced it intends to do.

18. Moreover, because of EA Tatum's instructions, Contestant is now unable to demonstrate if a legal vote was wrongfully discarded and/or an illegal vote was wrongfully included, much less tie those two ballot pages together to create one ballot.

19. Even worse, by providing the voter with a second ballot, there are countless instances where either the voter or the poll workers failed to follow EA Tatum's new procedure. Indeed, many voters simply scanned in both pages of their new ballots, which means that this specific voter violated the law by voting twice for the candidates on the page that was successfully scanned on the first voting effort when that same page was successfully scanned again on the second ballot. Moreover, poll workers were placing the spoiled ballot in the Emergency Chute, rather than placing them in a segregated envelope solely devoted to holding spoiled ballots. This has caused countless ballots to be counted at Central Count that were not supposed to have been counted, meaning certain voters have had their votes recorded not just once, but twice.

20. As has already been explained, the proper method for managing a partially scanned ballot situation is to place the unscanned ballot in the Emergency Chute and let Central Count audit the ballots to match the unscanned ballot with the matching page of the scanned ballot.

21. But that was not the procedure which EA Tatum instructed in writing. HCRP tried very hard to avoid litigation and to amicably resolve this issue, and even took the time and effort to rewrite the EA's ill-advised and illegal instructions, along with a request that the revised instruction be immediately disseminated to all early voting poll workers. Unfortunately, however, EA Tatum refused to do so, which led to a significant number of double voting or double counting that will not be explainable through normal auditing procedures, and which also caused illegal double counts in flagrant violation of the Texas Election Code.

**Example Two:**

**B. Issuing Second Ballots To Voters Who Experienced Smudges Or Other Legibility Problems With Scanning Their Ballots.**

22. Just as what is described above with scanning problems, the exact same procedure was supposed to have been used for ballots which had legibility problems, such as smudges. But EA Tatum instead insisted that a new ballot be issued. What was supposed to occur was to simply place that problem ballot in the Emergency Chute, and Central Count could then recreate that ballot in the presence of multiple observers. Once duplicated, the ballot would then be scanned in and recorded on V-drive. But by issuing a new ballot, all of the same problems as were described above occurred in violation of the law.

**Example Three:**

**C. Not Supplying Sufficient Election Supplies To Polling Places.**



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

23. From the evidence provided by the Harris County Election Administrator's Office ("HCEA"), including, but not limited to, Attachment 2 to their post-election assessment issued last November of 2022, the vast majority of the polling locations received the same amount of ballot paper, which was purportedly enough for 600 voters (e.g., 1200 pages)<sup>1</sup>. During his deposition, Clifford Tatum explained the HCEA's rationale for its intentional decision to supply ballot paper in the manner in which it did. Contestant Lunceford alleges that, in so doing, the HCEA violated Section 51.005 of the Texas Election Code, 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."

In other words, the authority providing supplies should account for 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.

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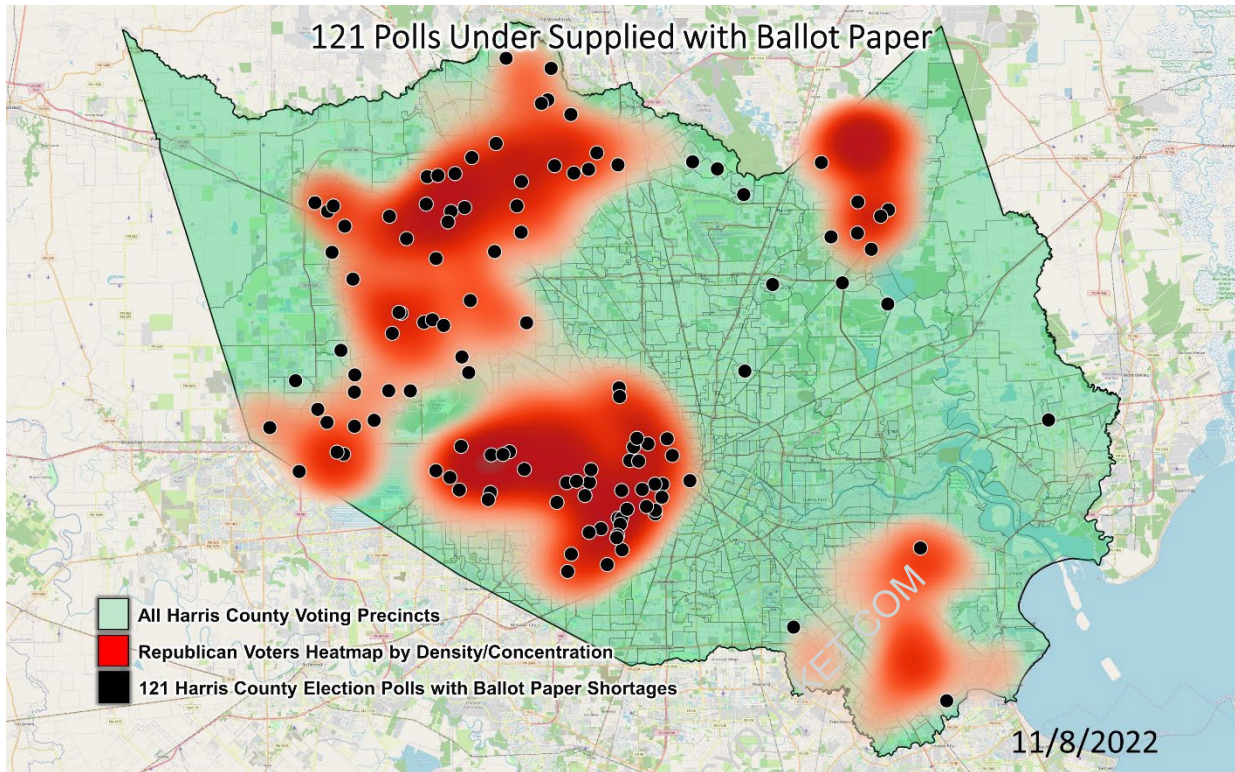
<sup>1</sup> In reality, 1200 pages would not likely service the needs of 600 voters, for multiple reasons, including the fact that EA Tatum's instructions on how to handle scanning problems would require more than two (2) pages per voter.

24. The Texas Secretary of State's Office takes the position that the above-referenced statute continues to apply to Harris County, irrespective of the fact that countywide voting is now permitted. Accordingly, Contestant Lunceford alleges that Section 51.005 of the Texas Election Code applied to the November 8, 2022 General Election conducted in Harris County, notwithstanding the change in voting whereby countywide voting was available.

25. Lunceford will show that the statutorily required amount of ballot paper is determined by multiplying the actual turnout of voters in November of 2018 at a specific polling location by 125%. Based upon that calculation, and by comparing those numbers with the numbers contained in Attachment 2 to the HCEA's post-election assessment, Contestant Lunceford asserts that the HCEA violated this statute well in excess of 100 locations. In addition, Contestant will show by utilizing what is referred to by Russ Long as a "heat map," a comparison of ballot paper supplies in advance of Election Day that were allocated by the HCEA, with the actual turnout for specific polling locations on Election Day. This work was initially performed by an investigative reporter for a local media outlet, and is based on publicly available information. Although this analysis is measuring a different calculation than what is referred to above regarding whether HCEA violated the 125% statutory codification rule, it nevertheless demonstrates the actual impact on voters who attempted to vote on Election Day. Russ Long's is a graphic analysis of

the November 8, 2022 General Election, in which the Harris County Election Administration (HCEA) undersupplied 121 Harris County polling locations with paper ballots. The map identifies those undersupplied polling locations overlaid onto a map of historical Republican voters using their voter registration addresses. The geographic coordinates of the 121 polling places with ballot shortages are represented by black dots. The concentration of Republican voters is represented with the red heat-map. That heat map is a snapshot in time, from July 2022, four months prior to the November election. The heat-map reveals that there is an extremely high correlation of ballot shortages with Republican voting patterns. In fact, there is less than a 1% probability that this is a random occurrence. This heat map is shown below:

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The heat map (above) was originally generated in July of 2022 as part of the Get Out the Vote (GOTV) efforts prior to the November 2022 General Election efforts. After publication of the research identifying the 121 polls undersupplied ballot paper, by Mr. Jeremy Rogalski at KHOU11 (January 2023), those coordinates were overlaid onto the Republican heat map. The immediate question became “what is the probability this pattern occurred by chance?” The answer: the probability of getting 111 under supplied polls inside Republican areas, out of the identified total of 121 “in/out” possibilities, in a fair distribution is very low, about 0.00021%. Two ten-thousands is far, far less than 1%.

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

26. The public policy rationale for Section 51.005 is to ensure that sufficient ballot paper would be available for the voters who turned out to vote on Election Day. In an inexplicable failure of epic proportions, EA Tatum failed to supply certain polling locations with a sufficient amount of ballot paper in violation of the Texas Election Code Sections 51.004, 51.005, 51.010 and 51.011, even after numerous calls were placed to the Harris County Election Administrator's Office. As a result, numerous polls ran out of ballot paper. This deficit caused thousands of voters to be turned away from the polls. There was no excuse for this to occur, as the software system on the HCEA's iPad gave a real-time account of how many voters had arrived at a particular polling location and had already been accepted for voting. That iPad system also tied into the HCEA's inventory management system, so that they would know if they were running out of paper at a particular polling location.

27. But even the HCEA's system was unable to determine how many voters were inside or outside the polling location waiting to vote but who had not yet been signed in to vote. Thus, the severity of the problem cannot be known by relying solely upon electronic poll book information, but must also include eyewitness accounts on just how many voters were affected at each problem location. Based upon an investigation thus far, Contestant asserts that at least 2,615 voters were turned away from twenty-nine (29) specific polling locations on Election Day. Of

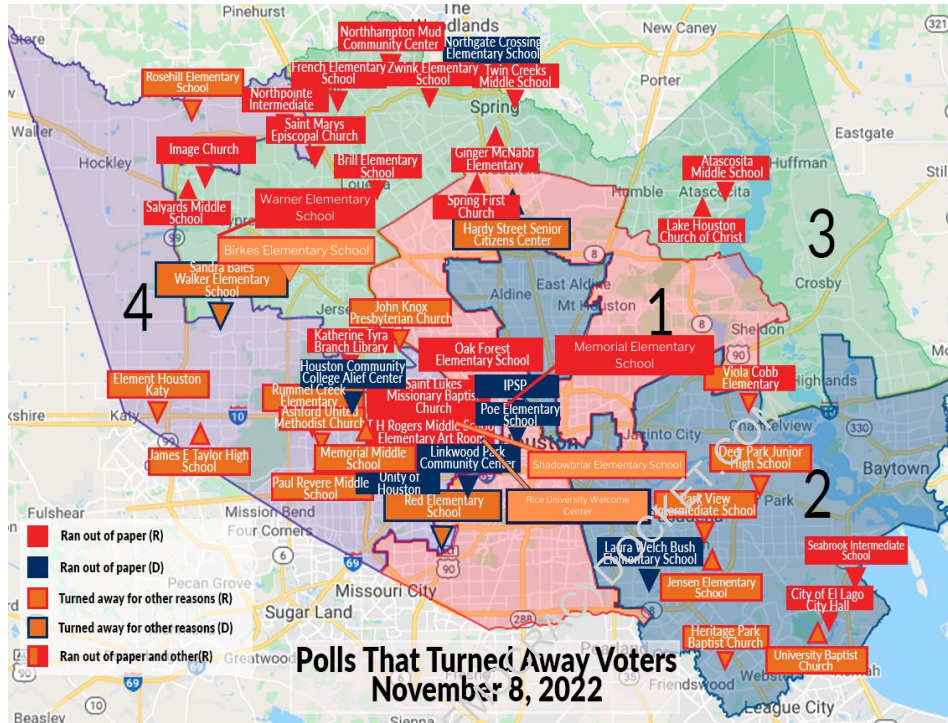
that total number of locations, twenty-two (22) of the paperless polling locations were located in neighborhoods that are traditionally Republican strongholds, while only seven (7) are located in neighborhoods that are traditionally Democratic strongholds. If the mismanagement of ballot paper were truly random, it is troubling that the trend so far demonstrates a significantly disproportionate impact on polling locations that are located in traditionally strong turnout neighborhoods for Republican voters and candidates. Indeed, thus far the investigation demonstrates that roughly 76% of the polling locations without paper fall in Republican stronghold precincts. Roughly 63% of all of the polling locations are considered Democratic stronghold precincts.

(iii) Polling Locations Turned Away Voters for Other Reasons.

28. In addition to voters being turned away for lack of ballot paper, there were also other issues beyond paper shortages that caused voters to leave specific polling sites without casting their ballots at those locations. For example, machine malfunctions, inability to reach the HCEA on the phone or by other means, lack of equipment or supplies and other problems occurred on Election Day. Based upon Contestant's investigation thus far, a total of twenty (20) polling locations were affected, and at a minimum 374 voters were turned away.

(iv) Visual Depiction of Polling Locations That Turned Away Voters.

29. The map below provides a visual demonstration of what seems to have occurred.



**Example Four:**

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

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

31. Contestant will show that, because the Harris County Election Administrator’s Office did not adequately supply certain Election Day polling

locations, there was no factual or legal justification for keeping any of the polling locations open for an additional hour of voting. By EA Tatum agreeing with certain plaintiffs in an emergency court hearing to extend voting for an additional hour, the problems associated with certain polling locations were exacerbated.

32. Although the local HCRP had a vested interest in an emergency request for extra time to vote, neither the plaintiffs nor EA Tatum, who was a named defendant in the emergency lawsuit, notified HCRP that a lawsuit had been filed, or that an emergency hearing was set to occur. Despite the fact that HCRP discovered that a hearing was going to occur, and despite to making an appearance, asking to intervene, being permitted to intervene, and objecting to the request for an extra hour of voting, both the plaintiffs and the defendant EA Tatum nevertheless agreed with each other and asked the Ancillary Judge to enter such an order. That order 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. 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. Next, 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. 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.

33. Public information from the HCEA's office indicates that approximately 199 polls did not have anyone vote after 7pm, as demonstrated in the

spreadsheet marked and produced as Lunceford 005186 to 005215. The Texas Election Code is clear that it is impermissible to leave open a few polling locations open. To the contrary, if a court order permits extra time to vote, then that court order must require every single polling location countywide to remain open. Because certain polling sites ran out of paper, while other sites had equipment and other problems, ordering those specific sites to remain open for an additional hour was an exercise in futility, which ultimately suppressed the vote in those locations, while permitting additional voting in locations which had paper and working equipment. Given the factual and legal basis to permit an extra hour of voting was lacking, the end result was that numerous polls were not able to be open for the extended hour as required under the Texas Election Code 43.007(p). Consequently, no polls should have been permitted to remain open after 7:00 pm to receive voters arriving after 7:00 pm and the votes collected during that time should not be counted.

34. Because necessary parties were not provided notice of the emergency request for a temporary restraining order, the State of Texas, Secretary of State, and the Office of Attorney General, thereafter filed a motion before the Trial Court to dissolve the improvidently granted relief. Despite this new development, the Trial Court did not do so. Parallel emergency mandamus proceedings were also filed by these interested parties. Not surprisingly, the Texas Supreme Court issued a stay of the Trial Court's temporary restraining order, but it was too little too late, as an hour

of illegal voting had already occurred. And despite EA Tatum's assurances to the Trial Court earlier in the day 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 disdain for what EA Tatum had promised and what EA Tatum had actually delivered. Transcripts of the two emergency hearings and the emergency paperwork filed by certain plaintiffs will be introduced during the trial of this matter in support of these paragraphs of this Petition, along with the paperwork filed by the parties before the Trial Court, as well as the Mandamus Petition and subsequent filings in that emergency proceeding, which not only led to the initial stay ruling referenced above, but which also led to a subsequent order by the High Court, which required Harris County to announce separate canvass totals, one counting the after 7pm provisional ballots and one not including those totals.

34. As predicted, the Trial Court's order permitted more problems to occur. For example, not all polls stayed open for an additional hour, even though state law requires all polling locations, not just some polling locations, to stay open when a court order permits additional time to vote. Moreover, a considerable number of polling locations did not have any paper, such that no voters could vote during the extended period. In addition, some polling locations did not require voting to be

provisional, and simply allowed these votes to be cast regularly counted and entered onto the V-drive for election day totals. Finally, not all locations segregated those provisional ballots (“PBs”) that were cast during the extra hour, and simply allowed those voters to vote provisionally without regard to the time of their vote.

35. Even though EA Tatum agreed to keep the polls open for an additional hour, he 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.

36. Ordinarily, there is no technological basis to determine which candidate in a specific race received a vote from a PB voter whose vote was cast and counted. The reason for this is that, once the Early Voting Ballot Board has accepted a PB, all such accepted 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 into 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 not feasible for the Court to declare the outcome of these PB votes.

37. In this election, 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 High Court resulted in Harris County reporting in the final canvass results the actual breakdown, by candidate, of how PB voters 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. Accordingly, after rejecting all such PBs cast and counted after 7pm by court order, Contestant Lunceford's purported margin of defeat is reduced by 325 votes.

38. Additional anomalies exist, however. According to the final canvass, a 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. 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.

**Example Five:**

**E. Mail-in Ballots Were Not Initially Handled Properly.**

39. Contestant will show that approximately 700 mail-in ballots (“BBM”) 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.

40. Kay Tyner, the Vice Chair of the Signature Verification Committee, will testify 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. The proposed process was in direct contradiction of the Texas Election Code. "The signature verification committee shall compare the signature on each carrier envelope . . ." Tex. Elec. Code § 87.027 (i). "The early voting ballot board shall . . . determine whether to accept the voter's ballot." Tex. Elec. Code § 87.041(a). Among many requirements, in order to accept a BBM, the SVC and/or EVBB must determine that carrier envelope certificate is properly executed. ; neither the voter's signature on the ballot application nor the signature on the carrier envelope certificate is determined to have been executed by a person other than the voter, unless signed by a witness; and the information required under 86.002 (g) provided by the voter identifies the same voter identified on the voter's application for voter registration. Tex. Elec. Code § 87.041(b). In short, the Signature Verification Committee is required to ensure there is a signature, compare the

signatures, and compare the identification information from the mail ballot carrier envelope to the voter registration information, not to the mail ballot application as directed by the EA staff member.

41. In addition, Kay Tyner will testify 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.

**Example Six (withdrawn)<sup>2</sup>:**

**F. There are more BBMs counted than are included in the Transmittal Forms.**

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<sup>2</sup> Contestant issued a subpoena several months ago asking HCEA to disclose all transmittal forms. Because HCEA failed to produce any forms beyond what Contestant already possessed, Contestant made the factual assumption that there were, in fact, too few transmittal forms to account for the total number of accepted and counted BBMs. However, after Contestant presented Colleen Vera for deposition, HCEA produced additional forms. Although the timing of this tardy production is concerning, it nevertheless appears that all missing transmittals have now been accounted for, and thus, Contestant withdraws Example Six from her live pleading and no longer seeks relief on this one specific example.



42. The Harris County records indicate that there were more mail ballots counted than were sent and received by Harris County. Contestant Lunceford will produce evidence from eyewitnesses as to how transmittal sheets were sent from the HCEA to the SVC and how the EEVB sent transmittal sheets to the HCEA for counting accepted ballots. She will also present evidence regarding how Kay Tyner and Colleen Vera retained copies of those sheets and how the HCEA asked Kay Tyner for a copy of those sheets, and how she and Colleen Vera determined the universe of such transmittal sheets, including the fact that the HCEA emailed a small group of missing transmittal records, while verifying the remainder accurately constituted the universe of such records.

43. Contestant's witnesses will testify that the records from Harris County show 2,159 more BBMs were counted than are accounted for on the transmittal forms from EVBB to the Harris County Election Administrator ("HCEA"), which means those BBMs are in the count but should not be. The grand total of Accepted BBM Carrier Envelopes from these forms is  $59,106 - 1$  (#5 provisional) = **59,105**. The final, official cumulative report shows that Harris County counted **61,264** ballots. That is a difference of 2,159 BBM ballots counted which do not show up on the transmittal forms. Witnesses will testify that transmittals are required in order to ensure accuracy and chain of custody, and the fact that there are more BBM ballots in the canvassed total than were actually approved for counting by the EVBB is a

very serious concern as to whether the canvassed BBM total is inaccurate, as well as whether HCEA ultimately counted BBMs that had been rejected by the EVBB.

44. To ensure that Contestant Lunceford possessed a copy of all of the transmittal documents, a subpoena was issued to HCEA for all such forms, and a copy of all transmittal forms possessed by Contestant was attached as an exhibit. Concurrently with the service of that subpoena, Contestant suggested that HCEA need not produce a duplicate copy of what Contestant already had, unless it was just easier for it to do so, but it was also made clear that the purpose of the subpoena was to obtain copies of any transmittal forms not already in the possession of Contestant and not already attached to the subpoena. In response, HCEA did not produce any additional transmittal documents to show ballots approved by EVBB and sent to the EA staff to be opened and counted, which means that there are no additional forms. The only transmittal forms produced by HCEA were transmittal forms from the HCEA staff to the EVBB, which is not the same thing. These produced forms do not demonstrate what ballots were approved for counting by EVBB, but only demonstrate what ballots were received by the EVBB for their consideration. The crucial point here is that there are BBMs which were accepted and counted that should not have been.

**Example Seven:**

### **G. Double Voting Occurred<sup>3</sup>.**

45. Contestant will show that at least sixteen (16) specific voters voted more than once in the November 8, 2022 General Election in violation of Texas Election Code Section 64.012, according to the Harris County Election Administrator Records. In addition, Contestant will show that certain Harris County reconciliation reports demonstrate that more ballots were cast in this election than were voters. There are several reconciliation reports, with the disparity between ballots and voters ranging from a high of negative 7,291 to a low of positive 1,190. For those reports showing a negative number, those disparities represent double votes by innocent Harris County registered voters which have been cast and counted but should not have been counted or potentially from persons acting nefariously in the election process. Because these double votes cannot be tied to a specific voter or to a specific candidate, it is not possible to know who these voters are and for whom they voted. Contestant will also show that eight out of twelve days of early voting reported more ballots cast than voters recorded to vote.

### **Example Eight:**

### **H. Mail-In Ballots.**

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<sup>3</sup> Just last week, HCEA filed an amicus brief which asserted, for the very first time, that none of these specific voters had cast more than one ballot. Although the timing of this tardy assertion is concerning, Contestant nevertheless withdraws the first sentence under Example Six from her live pleading and no longer seeks relief on this one specific sentence.

46. Contestant will show that certain mail-in ballots that were cast and counted should not have been counted. Based upon a review of the accepted BBMs, none of these ballots by mail referenced below should have been accepted and counted, for the reasons shown below: (i) post-marked after November 8; (ii) 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 (iii) not signed by the voter.

**Bates Numbers for Postmark on or after Nov. 8**

1. 0114823 & 0114824
2. 0120349 & 0120350
3. 0144029 & 0144030
4. 0173314 & 0173315
5. 0175803 & 0175804
6. 0175821 & 0175822
7. 0178245 & 0178246
8. 0179243 & 0179244
9. 0185698 & 0185699
10. 0192088 & 0192089
11. 0204880 & 0204881
12. 0217654 & 0217655
13. 0220036 & 0220037
14. 0220084 & 0220085
15. 0220954 & 0220955
16. 0223064 & 0223065
17. 0223928 & 0223929
18. 0224028 & 0224029
19. 0224550 & 0224551
20. 0225050 & 0225051
21. 0228584 & 0228585
22. 0228858 & 0228859
23. 0229638 & 0229639

- 24. 0234630 & 0234631
- 25. 0235284 & 0235285
- 26. 0235830 & 0235831

**Bates Numbers for Missing Signature**

- 27. 0111947 & 0111948
- 28. 0112133 & 0112134
- 29. 0114383 & 0114384
- 30. 0118895 & 0118896
- 31. 0124351 & 0124352
- 32. 0127124 & 0127125
- 33. 0127558 & 0127559
- 34. 0128530 & 0128531
- 35. 0132010 & 0132011
- 36. 0132972 & 0132973
- 37. 0133565 & 0133566
- 38. 0133687 & 0133688
- 39. 0135219 & 0135220
- 40. 0138667 & 0138668
- 41. 0142979 & 0142980
- 42. 0146689 & 0146690
- 43. 0154695 & 0154696
- 44. 0155247 & 0155248
- 45. 0158195 & 0158196
- 46. 0162769 & 0162770
- 47. 0178045 & 0178046
- 48. 0179245 & 0179246
- 49. 0181141 & 0181142
- 50. 0182277 & 0182278
- 51. 0184364 & 0184365
- 52. 0186736 & 0186737
- 53. 0192638 & 0192639
- 54. 0193478 & 0193479
- 55. 0193722 & 0193723
- 56. 0196616 & 0196617
- 57. 0198108 & 0198109
- 58. 0199230 & 0199231
- 59. 0200798 & 0200799

60. 0204232 & 0204233
61. 0210020 & 0210021
62. 0216766 & 0216767
63. 0217572 & 0217573
64. 0218326 & 0218327
65. 0227228 & 0227229
66. 0230684 & 0230685
67. 0231874 & 0231875
68. 0236494 & 0236495
69. 0236824 & 0236825
70. 0239960 & 0239961
71. 0237204 & 0237205
72. 0252216 & 0252217

**Example Nine:**

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

47. Contestant will show that certain provisional ballots that were cast and counted should not have been counted.

48. Harris County has produced a grand total of 6,355 Provisional Ballot Affidavits (“PBAs”) to Contestant. These documents contain redactions. Contestant’s review and observations stated herein are made without the benefit of the information which was redacted, and Contestant reserves the right to revise and amend this Petition should such redacted information be disclosed.

49. Out of the grand total of 6,355 PBAs produced, multiple PBAs are 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 are 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. Accordingly, Contestant’s analysis below extends to this revised grand total of 6,275 PBAs rather than 6,355 PBAs.

50. 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 Contestant’s review of the actual PBAs which were produced, that number appears to be correct, once Contestant deducts all of the PBAs referenced above. But that number 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 Contestant, 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.

51. 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 to us by Harris County. 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.

52. 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 and (which 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 Court 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.

54. As will be explained below, and as will be shown in even more significant detail by previously produced spreadsheets and summary observations, as well as the analysis shared on July 3, 2023, Contestant's review team identified

whether each specific PBA produced by Harris County raised a potential instance of a PB being counted which legally was not entitled to be counted. The excel spreadsheets which have been produced reflect the review teams' analysis of each specific PBA. The summary chart on the left side of the page reflects the teams' findings and, because one PBA may suffer from more than one noted deficiency, the totals in the chart on the left side of the summary page denote the summation of all deficiencies, rather than the actual count of PBs accepted that should have been rejected. Inconsistent rulings by the EVBB for similar if not identical fact patterns have also been exemplified in Contestant's July 3, 2023 supplemental findings.

55. The summary chart on the right side of the same page eliminates duplications listed in the summary chart on the left side of the same page. This summary chart demonstrates the total number of PBAs that were accepted for counting that should have been rejected instead. Because of certain production of records by the HCEA on June 15, 2022, as well as further vetting and quality control since that date, the grand total for all categories in this analysis is 3,406. This revised number represents Contestant's evaluation of the total number of accepted PBAs that have been included in the final canvass numbers, but which, according to

Contestant's analysis, should have been rejected and are not entitled to remain in the count of accepted PBAs<sup>4</sup>.

56. This analysis, however, is not yet tied to how Contestant Lunceford's race is impacted. In order to particularize the above-referenced PBA analysis to Contestant Lunceford's race, the next phase of the PBA analysis requires a breakdown of PBs cast after 7pm due to court order from all other PBAs cast for other reasons. Contestant's team did so by counting the total number of PBAs which checked box 5, which is the box for extended voting by court order. But, in their review of the actual PBAs, oftentimes Box 5 was not checked, and Box 8, which is a catch-all "other" or "miscellaneous" category, would often state that the PB vote was being cast as a result of extended voting by court order. It is unclear whether Harris County added these two categories together in their segregated PB canvass report for PBs cast after 7pm due to court order. But, in any event, Contestant's team summed up those two categories. Thus, in order to segregate PBs cast after 7pm due to court order from all other PBs, Contestant's team subtracted 2,206 from the grand total of 3,406, which leaves a difference of 1,200. This means that there are 1,200 PBs in the final canvass results which were accepted for voting that should have

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<sup>4</sup> Contestant asserts that each and every category of challenged PBAs should not remain in the final canvassed results, as each category represents illegal votes. However, even if the Court were to disagree, all of these challenged PBAs demonstrate, at bare minimum, thousands of mistakes by the voters and/or election workers and/or voter registrar and/or EVBB and/or HCEA, all of which must be taken into account for why a new election must be ordered.

been rejected, based upon Contestant's analysis of PBs which do not relate to a PB cast after 7pm by court order. If the Court agrees, then Contestant Lunceford's purported deficit would be reduced by 1,200 votes.

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 PBs in each distinct category is reflected in the previously disclosed spreadsheet, as revised on July 3, 2023, and is likewise reflected in Contestant's summary observations as well.

**Example Ten<sup>5</sup>:**

**J. 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

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<sup>5</sup> HCEA recently produced information which indicates that only five (5) of these 2,970 voters had their registration status cancelled prior to the time that they cast their ballots. Accordingly, Contestant amends the number of challenged voters and ballots accordingly.

status is cancelled. The Court in this election contest will be able to take judicial notice of these facts. To assist the Court, Contestant’s witnesses will explain that there is a link to a December 8, 2022 posting of the Harris County Official Voter Roster for November 8, 2022 election is found:

<https://appfiles.harrisvotes.com/harrisvotes/prd/Reports/1122%20Official%20Vote%20Rosters.zip>.

59. Once this link is opened, there is a box in the middle of that screen. After scrolling inside the box to the 2nd entry, which is December 8, 2022 post of the November 8, 2022 voter roster, Harris County lists the status of voters who voted in the November 8, 2022 General Election, which includes a list of voters who have cancelled voter registrations. This list shows the following:

For Vote Type=PEAZ there were 2,813 “Cancelled” voter records.

For Vote Type=M there were 157 “Cancelled” voter records.

<b>Spreadsheet</b>	<b>E - ED</b>	<b>M - Mail</b>	<b>P - EV</b>	<b>Z - Provisional</b>
1	200	109	450	3
2	677	34	673	4
3	430	14	375	1
Total	1307	157	1498	8
Grand Total	2970			

60. Contestant’s witnesses will testify that the combined total is 2,970 total “Cancelled” voters, which means that there are 2,970 voters who cast votes included

in the canvassed totals that should not have been counted, assuming that each of these voters who voted had their voter registration status cancelled at or before the time they actually cast their ballot. In order to confirm the timing of the cancellation, Contestant Lunceford has issued a third-party subpoena to HCEA on June 9, 2023. Unless HCEA produces evidence that one or more of these 2,970 voters did not have cancelled voter registrations at the time they cast their ballots, Contestant Lunceford will continue to contest all of these votes. As of the date of filing this pleading, HCEA has not produced any such information.

**Example Eleven:**

**K. Votes by voters who were on the Suspense list.**

61. In addition, this same Voter Roster excel spreadsheet lists 2,038 voters who voted and have a SUSPENSE notation next to their names. Contestant's witnesses will testify that the records demonstrate these specific voters must have presented a filled-out Statement of Residence ("SOR") and, if they do not, these votes may not remain in the count. Contestant is currently analyzing whether all of the 2,038 SUSPENSE voters failed to submit a SOR. Every one of these voters were legally obligated to submit a SOR BEFORE they were allowed to vote. Any "S" voter from the voter roster from whom Harris County did not collect an SOR would be an illegal vote. Unless Contestant finds evidence to the contrary, Contestant Lunceford will contest all of these votes.

## **Example Twelve:**

### **L. Illegal Votes Were Cast And Counted Without An SOR.**

62. Contestant will show that voters who were required to fill out a Statement of Residence prior to be accepted for voting voted illegally by not filling out the required document in violation of the Texas Election Code Section 64.0011. Voters whose address has come into question through a variety of processes, may be placed on a suspense list. Voters whose name is on the suspense list are required to fill out an SOR in order to be able to vote in the election.

63. In addition, Contestant's witnesses will testify as to their evaluation of SORs in this case. As shown by spreadsheets and other analyses dated April 24 and May 31 prepared by Steve Carlin, as well as the additional work produced on July 3, 2023, Contestant alleges the following:

1. The votes Contestant intends to challenge on the Official Voter Roster for ineligibility scenarios established by NCOA data:
  - File name: CHALLENGED VOTER ROSTER FOR NCOA - APRIL 24 DEMAND, as updated on May 31, 2023, and again on July 3, 2023.
  - The votes Contestant intends to challenge are identified by column A inputIDNUMBER which comes directly from the IDNUMBER field in the Official Voter Roster identification that contains the voter's CERT.
  - Each ineligibility scenario (that had a non-zero count) that Contestant identified in the documents provided is put into a separate worksheet within the spreadsheet.
  - The total # of challenged votes from this source is 29,559. This number has decreased to 27,103, as explained in the report and summary dated May 31, 2023, as well as the additional work produced on July 3, 2023.
2. The SORs Contestant will challenge from the SORs cataloged:

- File name: CHALLENGED SORs - APRIL 24 DEMAND, as updated on May 31, 2023.
  - The SORs that Contestant will challenge are identified by column N named inputFileName which contains the Bates Number of the document.
  - Each ineligibility scenario (that had a non-zero count) that Contestant identified in the documents provided is put into a separate worksheet within the spreadsheet.
  - The total # of challenged votes from this source is 3,333. That number has decreased to 2,351, as set forth in the May 31, 2023 analysis, and as further described in the July 3, 2023 analysis.
3. Contestant also flagged 43 PBAs that will be challenged as well, as explained in the May 31, 2023 analysis. This is in addition to the PBA challenges previously explained, and has been incorporated in this pleading in the paragraphs pertaining to our evaluation of PBAs.
  4. As explained in Contestant's July 3, 2023 supplemental report, the SORs which are contested as illegal represent votes which were accepted and counted. Because HCEA has not yet produced the entirety of the agreed-upon SORs in unredacted form, Contestant has not yet been able to analyze that data. Of the 2,351 SORs requested, HCEA has failed to produce approximately 1,641 unredacted SORs. Once that data is received, Contestant will supplement its findings.

### **Example Thirteen:**

#### **M. Illegal Votes Were Cast And Counted Without An Appropriate Reasonable Impediment Declaration.**

64. Contestant will present 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 will also bring witnesses who will testify that approximately 532 RIDs are not sufficient to have permitted those specific voters to be eligible to cast a regular ballot or the documents present significant doubt as to the acceptability of



the voter, and, had those voters presented themselves to her polling center, would have required the completion, correction of the RID or corrective action prior to the voter voting or permitted them to cast a provisional ballot. The RIDs referenced herein were produced to the Court and opposing counsel on June 12, 2023, along with an updated spreadsheet and 532 specific RIDs that Contestant is challenging. These witnesses will testify that they are not valid because they are not signed and/or failed to identify what type of identification and/or the reason for the impediment, and therefore each of these votes that were cast and counted are ineligible to be counted.

**Example Fourteen:**

**N. Illegal Votes Were Cast And Counted Without An Appropriate Registration Address.**

65. Contestant will show that illegally registered voters voted in violation of Texas Election Code Sections 1.015, 13.001 and 13.002. The evidence in support of this example is contained in the analysis performed by Steve Carlin.

**Example Fifteen:**

**O. Discrepancies in the Cast Vote Records.**

66. Contestant will show that according to the Harris County Election Administrator's official canvass, the cast votes record for all county-wide races is not consistent amongst the various contests. 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.

**Example Sixteen:**

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

67. Contestant will present evidence 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. Given that specific discrepancy, Contestant's team decided to compare the roster for that specific polling center to the final total for that poll on the EV Report. Contestant's team then compared the totals of BBM, EV and ED for all three rosters to the canvass totals. Contestant's team then compared the Harris County Official Voter Roster to the Official Canvass for the November 8, 2022 election. Evidence will demonstrate that this review demonstrates that the number of voters from the Official Voter Roster for early voting in person is 692,049 voters while the number of votes on the Early Voting Report generated the last day of early voting shows that there are 692,478 votes, which is 429 more votes than voters. Contestant will also point out that the official canvass for early voting presents 692,748 votes which is 699 more votes than voters. The number of votes for early voting grew by 270 votes after early voting ended. There are other anomalies that Contestant's witnesses will point out including that the number of Voters on the Unofficial Voter Roster dropped by 269

voters for the Official Voter Roster for Early Voting. The chart below demonstrates these findings:

Type	Roster	Canvass	Canvass - Roster
BBM	61507	61264	-243
EV	692049	692748	699
ED	349311	349045	-266
Provisionals	4534	4333	-201

**Example Seventeen:**

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

68. 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.

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

**V.**  
**CAUSE OF ACTION**

69. Section 221 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.
- (b) In this title, "illegal vote" means a vote that is not legally countable.
- (c) This section does not limit a provision of this code or another statute expanding the scope of inquiry in an election contest.

70. Many courts interpret an election contest to mean any type of suit in which the validity of an election or any part of the elective process is made the subject matter of the litigation. *Roberts v. Brownsboro Indep. School Dist.*, 575 S.W.2d 371, 374 (Tex. Civ. App. - Tyler 1978, writ dismiss'd) (challenging an order calling a school bond election); *Kennedy v. Burnet Indep. School Dist.*, 474 S.W.2d 742, 746 (Tex. Civ. App. - Austin 1971, no writ) (contesting authority of county judge to call election involving consolidation of school districts); *Weinberg v. Molder*, 312 S.W.2d 393, 396 (Tex. Civ. App. - Waco 1958, writ refused n.r.e.) (challenging school bond election on grounds of misrepresentations by school district officials); *Turner v. Lewie*, 201 S.W.2d 86, 88 (Tex. Civ. App. - Fort Worth 1947, writ dismiss'd) (contesting notice of election to amend city charter).

71. These cases rely on language in *Dickson v. Strickland*, a 1924 Texas Supreme Court case in which it was contended that although the Constitution vested in the legislature exclusive authority to determine contested elections for governor, that authority did not come into being until after the election. *114 Tex. 176, 265 S.W. 1012 (1924)*. In determining that the legislature's authority covered every part of the process of electing a governor, the court stated:

An election contest necessarily involves questions of both fact and law. It may be predicated upon a status or upon facts which existed before an election, upon what took place at the election, and perhaps in some instances upon a status or what took place after an election. The ineligibility of a candidate before an election, whether arising from lack of age, or from personal misconduct, or other infirmities, the manner of giving notice of the election, appointing election officers, their qualification, the creation of election districts, the preparation of the polls or polling places, the manner in which the ballots may have been prepared, and various other things which of necessity precede an election, are all well-known subjects of election contests. A failure to observe any one or more of the many articles of title 49, Revised Statutes, applicable to general elections, may become the subject-matter of an election contest, and many of these provisions concern matters which must occur before the time of actual voting. In determining what a "contested election" is, we must bear in mind that an election in this state is not a single event, but a process, and that the entire process is subject to contest.

*265 S.W. at 1018.*

72. In *Cohen v. Clear Lake City Water Auth.*, the Houston Court of Appeals held that an election contest is meant to include any type of suit in which the validity of an election or any part of the elective process is made the subject matter of the litigation. *687 S.W.2d 406, 408 (Tex. App. -- Houston [14th Dist.] 1985, no writ)*.

The court then determined that it had jurisdiction over matters occurring prior to election day, which may have affected the election. *Id.* Notwithstanding the fact that the provision in the Election Code which sets out the scope of inquiry in an election contest has been revised since *Cohen, TEX. ELEC. CODE ANN. § 221.003* (Vernon 1986), it would be error to read the new provision as restricting a court's inquiry to matters occurring only on election day.

73. Accordingly, Contestant asserts that this Court has subject matter jurisdiction over this Election Contest and over all aspects plead above in the Statement of Facts.

## **VI.** **CONCLUSION**

74. For all of the foregoing reasons, Contestant asks the Court to:
- (i) after a trial on the merits, sustain this Election Contest;
  - (ii) after subtracting all illegal votes that were cast and counted, and after adding all legal votes that were cast but not counted, and after consideration of all of the actions of EA Tatum and all other election officials which occurred before, during, and after the General Election, declare that the true outcome of the election cannot be ascertained;
  - (iii) void the November 8, 2022 General Election conducted in Harris County, Texas, for the 189<sup>th</sup> Judicial District Court; and
  - (iv) award such other and further relief to which Contestant may show herself to be justly entitled.

Respectfully Submitted,

ANDY TAYLOR & ASSOCIATES, P.C.

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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 July 31, 2023.

/s/ Andy Taylor  
Andy Taylor

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