

SUSMAN GODFREY L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP
SUITE 5100
1000 LOUISIANA STREET
HOUSTON, TEXAS 77002-5096
(713) 651-9366
FAX (713) 654-6666
WWW.SUSMANGODFREY.COM

SUITE 1400
1900 AVENUE OF THE STARS
LOS ANGELES, CALIFORNIA 90067-6029
(310) 789-3100

SUITE 3000
401 UNION STREET
SEATTLE, WASHINGTON 98101-2683
(206) 516-3880

32ND FLOOR
1301 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6023
(212) 336-8330

NEAL S. MANNE
DIRECT DIAL (713) 653-7827

E-MAIL NMANNE@SUSMANGODFREY.COM

January 25, 2023

VIA EMAIL

Honorable David Peeples
Prichard Young LLP
10101 Reunion Place, Suite 600
San Antonio, Texas 78216
dpeeples99@gmail.com

Re: Consolidation of Election Contest Cases

Dear Judge Peeples:

I write on behalf of the four contestees represented by Susman Godfrey (the Honorable Marilyn Burgess, the Honorable Lina Hidalgo, the Honorable Teneshia Hudspeth, and the Honorable Carla Wyatt) in support of the Court's proposed consolidation of all election contests related to the 2022 Harris County elections. Contrary to the representations made by counsel for the contestants in these four cases, there are no unique obstacles to consolidation of election contests. Texas Election Code § 231.002 provides: "Except as otherwise provided by this subtitle, the rules governing civil suits in the district court apply to an election contest in the district court." The only provision in the election contest subtitle related to consolidation involves consolidation of challenges to ballot measures, which is not applicable, so TRCP 174 governs whether consolidation is appropriate in this case.

TRCP 174 establishes that the Court should consolidate the election contests related to the 2022 Harris County elections. It says: "When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." Appellate courts have routinely recognized that trial courts have broad discretion in deciding whether to

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consolidate. *E.g.*, *Thuesen v. Amerisure Ins. Co.*, 487 S.W.3d 291, 296 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (“A trial court has broad discretion to consolidate cases, and appellate courts review such decisions for an abuse of that discretion.”). The current election contests involve common questions of law and fact, and adjudicating them together would avoid unnecessary costs and delay, so the Court should exercise its discretion to order consolidation under TRCP 174.

The contestants in all the pending election contests seek the same result and raise overlapping allegations, including the completely unsubstantiated claim that certain polling locations ran out of paper ballots, which allegedly prevented some voters from voting at those locations, which allegedly caused those voters not to vote at all. The contestants have not identified a single person who was unable to vote because of an absence of paper ballots, yet on the basis of this attenuated theory, they seek to overturn the will of Harris County voters. This is the principal theory of the four contestants in my firm’s four cases, which Elizabeth Alvarez filed, and it also is a theory in the case filed by Andy Taylor. Ex. A ¶ 23 (Lunceford First Am. Petition). At the January 17 hearing, the Court recognized the overlap between the cases filed by Ms. Alvarez and the case filed by Mr. Taylor: “I read both of them, by the way, especially Ms. Alvarez’s and others, also. There is a lot of overlap. And you are both seeking the same thing, basically.” Jan. 17, 2023 Tr. 11:22–25. The Court is correct, and it makes sense for the Court to address together the contestants’ overlapping claims. This will save the parties, the Court, and the County time and resources and will ensure the most efficient resolution of these cases.

Consolidation also is appropriate under TRCP 174 because the Court will address substantially similar discovery issues in all the pending cases, so it will save time and resources to address them all at once. At the hearing on January 17, Ms. Alvarez sought to portray her contests as narrower than the contest that Mr. Taylor has filed, but her first round of discovery requests shows that she is taking the same intrusive approach that Mr. Taylor has adopted. In the Stanart and Daniel contests, Ms. Alvarez filed on January 19, 2023 “Motions to Produce Records,” which purport to compel an unidentified and unserved “custodian of records” to produce 33 categories of information. *E.g.*, Ex. B (Daniel’s Motion to Compel Records). The 33 categories seek sprawling information about the 2022 Harris County elections, whether or not the information has anything to do with the contestants’ paper ballot theories. The contestants each say that if the Department of Elections of the Canvassing Authority is unable to segregate the relevant from irrelevant information **within 2 days**, the contestants should receive all documents that “might contain” the requested documents, which expands the extraordinary scope of the requested discovery even further. Ex. B ¶ 2. The discovery Ms. Alvarez seeks

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closely resembles the discovery Mr. Taylor seeks in the suit where he represents the contestant, though Mr. Taylor at least served the discovery requests on the entity that possesses the information at issue (the County). Ex. C. Once objections are filed by the deadlines set in the Rules, the Court will have to resolve the propriety of these requests, which go far beyond the allegations made in the petitions. The Court should resolve the issues once in a consolidated case, not many times across numerous cases.

The Court's proposed consolidation of the election contests makes sense and is contemplated by the Rules. The facts and circumstances justify consolidation here, and the Court should order it.

Sincerely,

A handwritten signature in cursive script that reads "Neal S. Manne".

Neal S. Manne

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Melanie Galanti on behalf of Neal Manne
Bar No. 12937980
mgalanti@susmangodfrey.com
Envelope ID: 72146222
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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Mary K.Sammons		ksammons@susmangodfrey.com	1/25/2023 3:50:30 PM	SENT
Jonathan Ross		jross@susmangodfrey.com	1/25/2023 3:50:30 PM	SENT
David Peterson		dpeterson@susmangodfrey.com	1/25/2023 3:50:30 PM	SENT
Neal S. Manne	12937980	nmanne@susmangodfrey.com	1/25/2023 3:50:30 PM	SENT
Alejandra Salinas		asalinas@susmangodfrey.com	1/25/2023 3:50:30 PM	SENT
Sy Polky		spolky@susmangodfrey.com	1/25/2023 3:50:30 PM	SENT
Tanya McGinnis		tmcginnis@susmangodfrey.com	1/25/2023 3:50:30 PM	SENT
Hope Barnett		hbarnett@susmangodfrey.com	1/25/2023 3:50:30 PM	SENT
Elizabeth Alvarez		alvarez@guestandgray.com	1/25/2023 3:50:30 PM	SENT
Gail Brand		gail@guestandgray.com	1/25/2023 3:50:30 PM	SENT
Abby Spain		abby@guestandgray.com	1/25/2023 3:50:30 PM	SENT
Melanie Galanti		mgalanti@susmangodfrey.com	1/25/2023 3:50:30 PM	SENT