

CAUSE NO.: 2023-00964

ALEXANDRA MEALER, ET AL

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IN THE DISTRICT COURT

v.

133rd JUDICIAL DISTRICT

HON. LINA HIDALGO, ET AL

HARRIS COUNTY, TEXAS

CONTESTANTS MEALER’S FIRST AMENDED PETITION FOR AN ELECTION
CONTEST

COME NOW, CONTESTANTS ALEXANDRA MEALER et al, a Republican General Election Candidate for Harris County Judge, a county-wide office (the “Office”) and files this Election Contest complaining against Hon. Lina M. Hidalgo et al, the incumbent County Judge of Harris County, who holds *prima facie* title to the Office because she had the most votes in the General Election (“Election”) at the close of the Canvas¹ and was therefore declared winner of the Office for the Election and certified as such, in the race to be the County Judge of Harris County (the “Contested Race”). In support of this contest, the Contestants shows the Court the following:

I. INTRODUCTION

¹ “The Canvass” has the meaning ascribed to it, below.

1. The scope of inquiry for at trial court in an election contest “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.”²
2. “The purpose of the [Election] Code is to prohibit error, fraud, mistake, and corruption, and yet it may not be used as an instrument of disfranchisement for irregularities of procedure.”³
3. But although mere irregularities on their own are just procedural and not normally enough, this Court must take seriously it’s obligation to protect the constitutionally protected right to vote which underscores this matter “[R]ights, even the most basic, are illusory if the right to vote is undermined.”⁴ “The right to vote includes the right to have one's ballot counted. This includes the right to not have one's ballot diluted by the casting of illegal ballots or weighting off one ballot more than another.”⁵
4. The trial court should use the factual allegations before it to ascertain if the true will of the voters can be known, and if it cannot be because of fraud or mistake, then it should order a

² Tex. Elec. Code Ann. § 221.003. See also *Miller v. Hill*, 698 S.W.2d 372, 375 (Tex. App.-Houston [14th Dist.] 1985), writ dismissed w.o.j., 714 S.W.2d 313 (Tex. 1986) (per curiam); see also *Tiller*, 974 S.W.2d at 77

³ *Honts v. Shaw*, 975 S.W.2d 816, 822 (Tex. App. 1998) (citing *Prado v. Johnson*, 625 S.W.2d 368, 369-70 (Tex. Civ. App.--San Antonio 1981, writ dismissed w.o.j.); see also *Deffebach v. Chapel Hill Indep. Sch. Dist.*, 650 S.W.2d 510, 512 (Tex. App.--Tyler 1983, no writ)).

⁴ *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

⁵ *Welch v. McKenzie*, 592 F.Supp. 1549, 1557-58 (S.D. Miss. 1984) (citing *Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964)).

new election. The Contestants here bear the burden of proving by clear and convincing evidence that voting irregularities materially affected the outcome of the election.⁶

5. The Contested Races produced tight results, results which the Contestants allege are tainted by activities and decisions made by Harris County which constituted violation of law or the prevention of lawful Harris County voters from voting.
6. Specifically, the Elections Administrator and Commissioners' Court of Harris County, Texas have, by and through a failure to ensure that all Election Day polling locations (1) opened on time; and (2) were adequately supplied with working machines, technical support; and paper ballots; and other violations of the laws dictating and relating to the administration of election, did prevent a not statistically insignificant number of Harris County lawful voters from exercising their right to vote.
7. So while elections should not be overturned merely due to human error, when an election is materially impacted, they must be. There are some instances where the errors of election officials can be chalked up to human error, and can be said to be disturbing, but not of material impact on an election,⁷ and the code should not be used to disenfranchise votes based on mere irregularities of procedure.⁸
8. Ultimately, through a variety of unconstitutional, illegal, and negligent schemes, Harris County constructive closed several polling locations on election day, creating an impediment to

⁶ See *Tiller*, 974 S.W.2d at 772.

⁷ See *Alvarez v. Espinoza*, 844 S.W.2d 238, 249 (Tex. App.—San Antonio 1992, writ dismissed w.o.j.)

⁸ *Honts v. Shaw*, 975 S.W.2d 816, 822 (Tex. App. 1998) (citing *Prado v. Johnson*, 625 S.W.2d 368, 369-70 (Tex. Civ. App.—San Antonio 1981, writ dismissed w.o.j.); see also *Deffebach v. Chapel Hill Indep. Sch. Dist.*, 650 S.W.2d 510, 512 (Tex. App.—Tyler 1983, no writ)).

voting for otherwise legal voters who relied upon the County's preferred compliance with the Texas Election Code and with its own posted Voting Location Infrastructure with no redress.

9. What has happened in this election is not merely the irregularity of procedure. Rather, there is such gross error, stemming from acts that could only be the result of intentional fraud or such gross error and incompetence as to shock the conscious and undermine the public's faith in the outcome as reported because it is these terrible errors which have disenfranchised them.
10. In denying these residents the same opportunities to vote as other voters in Harris County, the County has prevented eligible voters from voting, and engaged in illegal conduct or made mistakes that has resulted in both undermining the confidence the public has in the election's outcome. But more importantly, as result of these activities and inadequacies, the result of the Election as shown by the final canvass which is not the true outcome.⁹
11. These facts, explained in detail below, compel Contestants to bring this petition seeking a judicial remedy to which she is entitled: a new election pursuant to TEX. ELEC. CODE § 221.003 and § 221.012.

II. CLAIMS FOR RELIEF

12. Contestants brings this lawsuit under Title 14, Chapter 221 of the Texas Election Code.
13. This lawsuit arises out of provable, unlawful, and irregular violations of the law and process which clouded the true will of the electorate, preventing it from being discernible, and resulting in an election with a true outcome which cannot be ascertained.

⁹ See TEX. ELEC. CODE § 221.003(a).

14. Contestants asks this Court to declare that because those officially involved in the administration of the Contested Race failed to count legal votes^{10,11} and prevented voters legally entitled to vote from voting and/or having their ballot counted, the outcome of the election cannot now be determined to any reasonable degree of certainty, and is divergent from the will of the electorate.¹²

15. Contestants asks the Court to declare that an election officer or officers personally involved in the election administration prevented eligible voters from voting, failed to count legal votes,¹³ and/or engaged in fraud and other illegal conduct or mistakes which made the true result unknowable.¹⁴

16. Contestants also seeks for this Court to declare that an election officer or officers personally involved in the election administration made a mistake/mistakes substantial enough to affect the outcome of the election such that it makes the true result unknowable.

17. If the outcome of the contested races has been rendered uncertain and/or unknowable by the County's failure to (a) ensure that polling locations were opened timely; (b) had an

¹⁰ TEX. ELEC. CODE §221.003(a)(1) ((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: ... (2) an election officer or other person officially involved in the administration of the election: ... (B) failed to count legal votes).

¹¹ Contestants only contend that the votes that should have counted but were not counted exist to the extent they refer to the same votes as those the otherwise lawful voters who were disenfranchised by the County's failure to open locations on time or adequately disseminate supplies would have cast but for the county's malfeasance and/or negligence.

¹² TEX. ELEC. CODE § 221.003(a).

¹³ supra n.4.

¹⁴ TEX. ELEC. CODE § 221.003(a)(2)(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.

adequate allocation of supplies; (c) and otherwise comply with the statutes, rules, and regulations related to the administration of an election; or any other mistakes made by the County connected to the administration of the November 8, 2022 General Election, then the Contestants requests this Court order a new election.¹⁵

III. DISCOVERY CONTROL PLAN

18. This matter is subject to Discovery Level 2 in accordance with the Texas Rule of Civil Procedure 190.3 in all instances NOT otherwise explicitly covered by the Texas Election Code.¹⁶

19. There is however no formal discovery period, and this suit is an expedited matter under the TEX. ELEC. CODE and TEX.R.CIV.PRO, as well as by order of the Supreme Court of Texas.

IV. PARTIES

20. Contestant Mealer is a resident of Harris County and she may be served with process by and through her attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D'Arc, Forney, Tx, 75126.

21. Contestee Hon. Lina M. Hidalgo is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.

22. Contestant Adams is a resident of Harris County and he may be served with process by and through her attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D'Arc, Forney, Tx, 75126

¹⁵ *Id.* § 221.003; § 221.012

¹⁶ TEX. ELEC. CODE § 231.002.

23. Contestee Hon. LaShawn Williams is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.
24. Contestant Archer is a resident of Harris County and he may be served with process by and through her attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D'Arc, Forney, Tx, 75126.
25. Contestee Horwitz is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.
26. Contestant Bal is a resident of Harris County and he may be served with process by and through her attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D'Arc, Forney, Tx, 75126.
27. Contestee Finch is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.
28. Contestant Bain is a resident of Harris County and he may be served with process by and through her attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D'Arc, Forney, Tx, 75126.
29. Contestee Hon. Cory Sepolio is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.
30. Contestant Buss is a resident of Harris County and she may be served with process by and through her attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D'Arc, Forney, Tx, 75126.
31. Contestee Hon. David M. Fleischer is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.

32. Contestant Copeland is a resident of Harris County and he may be served with process by and through her attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.
33. Contestee Hon. Latosha Lewis Payne is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.
34. Contestant Daniel is a resident of Harris County and he may be served with process by and through her attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.
35. Contestee Hon. Marilyn Rockett Burgess is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.
36. Contestant Dexter is a resident of Harris County and he may be served with process by and through her attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.
37. Contestee Draper is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.
38. Contestant Fraga is a resident of Harris County and he may be served with process by and through her attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.
39. Contestee Hon. Christine Weems is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.

40. Contestant Goldberg is a resident of Harris County and he may be served with process by and through her attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.
41. Contestee Hon. Erika Ramirez is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.
42. Contestant Montgomery is a resident of Harris County and he may be served with process by and through her attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.
43. Contestee Andrews is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.
44. Contestant Scott is a resident of Harris County and he may be served with process by and through her attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.
45. Contestee Hon. Carla L. Wyatt is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.
46. Contestant Simons is a resident of Harris County and he may be served with process by and through her attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.
47. Contestee Hon. Sedrick Walker II is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.

48. Contestant Spjut is a resident of Harris County and he may be served with process by and through her attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D'Arc, Forney, Tx, 75126
49. Contestee Hon. Juanita Jackson is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.
50. Contestant Staley is a resident of Harris County and he may be served with process by and through her attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D'Arc, Forney, Tx, 75126.
51. Contestee Hon. M. K. Monica Singh is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.
52. Contestant Stanart is a resident of Harris County and he may be served with process by and through her attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D'Arc, Forney, Tx, 75126.
53. Contestee Hon. Teneshia Hudspeth is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.

V. JURISDICTION & VENUE

54. Contestants brings this action pursuant to Title 14, Chapter 232 of the TEX. ELEC. CODE, to contest the results of the Contested Race held on November 8, 2022 to select the Harris County Judge. Therefore, Harris County is the proper venue for this matter pursuant to § 232.006(c) of the TEX. ELEC. CODE.¹⁷

¹⁷ TEX. ELEC. CODE § 232.006(c).

55. This Election Contest was timely filed because the Contestants filed his initial petition not later than the 45th day after the date of the official result the contested election was determined,¹⁸ rolled forward to the next business day.¹⁹

56. A district court in Harris County has original and exclusive jurisdiction over this matter pursuant to § 221.02 of the TEX. ELEC. CODE²⁰

57. However, pursuant to § 231.004 of the TEX. ELEC. CODE, the judges of Harris County's district courts are disqualified to preside over this contest.²¹ Therefore, the presiding judge of the administrative judicial region must assign a special judge to preside in the contest.

VI. NOTICE TO THE SECRETARY OF STATE

58. A copy of this petition was delivered to the Texas Secretary of State as required by the Texas Election Code.²²

59. Copies of both the email notices and the certified mail return receipts are available for inspection and reproduction.

¹⁸ *Id.* § 232.008(c).

¹⁹ *Id.* § 1.006.

²⁰ TEX. ELEC. CODE § 221.002(a) (“Except as otherwise provided by this section, the district court has exclusive original jurisdiction of an election contest.”)

²¹ “The judge of a judicial district that includes any territory covered by a contested election that is less than statewide is disqualified to preside in the contest.” TEX. ELEC. CODE § 231.004(a).

²² TEX. ELEC. CODE § 232.008(d).

VII. FACTS

A. ELECTION DAY

60. On Election Day, Harris County voters faced numerous access issues when trying to cast their vote. These access issues can be best broken down into two categories: (1) a failure to arrange for the on-time opening of polls; and (2) a failure to adequately distribute supplies.

1. HARRIS COUNTY FAILED TO ENSURE ALL ELECTION DAY POLLING LOCATIONS OPENED ON TIME, AND REMAINED OPEN FOR 12 HOURS, PREVENTING PEOPLE FROM VOTING

61. The first set of access issues encountered in Election Day by Harris County voters, was a failure of some locations to open on time at 7 am as required by the Texas Election Code.

62. Beginning early in the morning (sometimes even right at 7 am when polls were required to be open) and continuing all throughout the day and into the evening, voters in Harris County complained of polling places issues.²³

63. Based on knowledge and belief, from the status of their investigations thus far, Contestants believe the following locations failed to open on time:

- (1) **Neighborhood Centers Inc Ripley House Campus – Gym**, 4410 Navigation Boulevard, Houston, Tx, 77011;
- (2) **Green House International Church**, located at 16711 Ella Blvd., Houston, Tx, 77090;

²³ See Contestant's App.: Ex. 15: Article, KHOU 11, 11/08/22: Polling place delays blamed on voting Machine Issues, Supply Shortages, Missing Key at 000757 (<https://www.khou.com/article/news/politics/harris-county-voting-sites/285-d33065ea-5614-4ca4-b710-fdfd0ee82f52> last accessed 05/31/2023).

- (3) **Bayland Park Community Center – Auditorium**, located at 6400 Bissonnet Street, Houston, Tx, 77074;
- (4) **Saint Timothy Lutheran Church – Adult Education Building**, 14225 Hargrave Road, Houston, Tx, 77070;
- (5) **Helms Community Learning Center – Cafeteria**, 503 West 21st Street, Houston, Tx, 77008;
- (6) **Bruce Elementary School**, 510 Jensen Drive, Houston, Tx, 77020;
- (7) **Cypresswood Elementary School – Music Room**, 6901 Cypresswood Point Avenue, Humble, Tx, 77338;
- (8) **Baker Ripley Cleveland Campus**, 720 Fairmont Parkway, Pasadena, Tx, 77504;
- (9) **Sunnyside Multi-Service Center**, 9314 Cullen Boulevard, Houston, Tx, 77051;
- (10) **West Gray Center**, 1355 W Gray Street, Houston, Tx, 77019;
- (11) **Wainwright Elementary School**, 5333 Milwee Street, Houston, Tx, 77092;
- (12) **Kashmere Multi-Service Center**, 4802 Lockwood Drive, Houston, Texas 77026

64. All of the above mentioned locations opened more than one hour late, and, in at least one instance, over three hours late.

65. Texas law requires polling locations to open at 7 am, and be available for 12 hours on Election Day, until 7 am. and these locations were not open at their designated time, which directly prevented Harris County Voters from voting.

2. LACK OF PROPER SUPPLY ALLOCATION: HARRIS COUNTY FAILED TO ADEQUATELY DISTRIBUTE SUPPLIES TO POLLING LOCATIONS AS REQUIRED BY THE TEXAS ELECTION CODE, PREVENTING OTHERWISE LEGAL VOTERS PEOPLE FROM VOTING

66. Although some voting locations failed to open because the election staff assigned to the location were late or did not have adequate access to the location to set-up the polls before 7 am, many others did not open timely or operate totally throughout the day because Harris County failed to meet its statutory obligation to properly allocate and distribute supplies.

67. Multiple news outlets, from The Chronicle, to the Tribune, to Axios, to KHOU 11, to KROC 2 reported election issues and paper shortages throughout the day.

68. When confronted contemporaneously to the election and the issues, Harris County Election Admin Tatum appeared to both (1) concede the problems were happening; and (2) indicate he had roving bands of techs and other staff and helpers on location evaluating wait times, providing technical support, and passing out paper.

69. Remarkably however, later we will see the elections admin attempt to walk back these statements markedly when faced with official requests for explanation by the Commissioners' Court.

70. Contestants would show that supply allocation issues affected 29 additional locations, including the following locations:

- (1) **Atascocita Middle School**, 18810 W Lake Houston Pkwy, Atascocita, Tx, 77346;
- (2) **Hamilton Middle School**, 12330 Kluge Rd, Cypress, Tx, 77429;
- (3) **Mandarin Immersion Magnet School**, 5445 W Alabama St, Houston, Tx, 77056;
- (4) **NRG Stadium**; 1 NRG Parkway, Houston, Tx, 77054;
- (5) **Neighborhood Centers Inc Ripley House Campus – Gym, 4410 Navigation Boulevard, Houston, Tx, 77011;**

(6) **Palm Center 5300 Griggs Rd**, Houston, Tx, 77021;

(7) **Saint Mary's Episcopal Church**, 15415 N Eldridge Pkwy, Cypress, Tx, 77429;

(8) **Salyards Middle School**, 21757 Fairfield Pl, Cypress, Tx, 77433;

(9) **Shadow Forrest Elementary School**, 2300 Mills Branch Dr., Kingwood, Texas
77345;

(10) **Tracy Gee Community Center**, 3599 Westcenter Drive, Houston, Tx 77042;

(11) **West Gray Multi-Service Center**, 1475 West Gray St., Houston, Tx, 77019;

71. Although Harris County established NRG Stadium (where the Houston Texans play) as a large Voting Center for Election Day, 21 of the 44 machines assigned to the location were not operational at opening through the mid-afternoon. The county conceded this was true, via a statement made by Elections Dept. Staff member Leah Shah to KHOU on Election Day.²⁴

72. The election judge at another location, Neighborhood Centers Inc Ripley House Campus – Gym, located at 4410 Navigation Boulevard, Houston, TX 77011, stated they were unable to get the location operating on time because the Department of Elections failed to deliver a key to one of the voting machines.

73. As a result, “[a] handful of voters told KHOU 11 that they were waiting as early as 7 a.m. and that they'd seen more than 200 people come and go without voting.”

²⁴ See Contestant's App.: Ex. 15 at 000757.

74. Election Administrator Clifford Tatum conceded that this had been the case, later telling KHOU 2 that “There’s a location at Baker Ripley where the judge had a mishap with a supply box and the key to the machines which then delayed the opening of that location[.]”²⁵

75. Tatum also indicated that they eventually sent a technician and supplies to the site to help the judge get set up to receive voters, discovering only *after* the technician arrived that Tatum some of the clerks assigned to work the voting center had not shown up. He stated the county had to locate and provide additional staff to that location.²⁶

76. At Tracy Gee Community Center, voters told KHOU they witnessed voters being turned away because machines had not yet been delivered by 7 am, so the location could not process voters. One voter there, who told KHOU they wished to remain anonymous stated ““We were told it's because the machines hadn't been delivered," one voter who didn't want to be identified said. "So they were still trying to set up. I'm so angry and I'm sad. I've seen people leave. People who said they can't come back to vote.”

77. At West Gray Multi-Service Center, KROC2 reported at 9:02 am that when the voting center at the West Gray Multi-Service Center opened at 7 am, only two machines were working. (Harris County elections administrator addresses ‘mishaps’ after several machines down, multiple issues reported at polling locations.

²⁵ See Contestant’s App.: Ex. 14: Article, KPRC, 11/09/22: Harris County Elections Administrator Addresses’ Mishaps’ After Several Machines Down, Multiple Issues Reported At Polling Locations at 000754 (<https://www.click2houston.com/news/local/2022/11/08/we-are-well-aware-several-machines-down-multiple-issues-reported-at-harris-county-polling-location/>) last accessed on 05/31/2023).

²⁶ *Id.*

78. KROC 2 sent a team, including a photographer Cesar Martinez, to the location to investigate. The news organization reported then when Martinez left sometime before 9 am, only 10/50 machines were operational.
79. When asked to provide a statement, the department of elections provided KROC 2 with “We are well aware of the issues, and we have had all hands on deck to answer the support lines for our election workers to get things resolved as quickly as possible.”
80. Similarly, when KHOU 2 checked back in with Tatum around lunchtime, he acknowledged there were indeed issues affecting voter access to voting, but did not proffer an explanation, saying “Some of it has to do with the manner of which it was set up, some of it has to do with perhaps the printers not doing what it was supposed to do.” He did indicate that “the good news is that voters are voting. I was just informed that we’ve had at least 120,000 today as of noon time and we’d like to remind our voters that the polls are open until 7 p.m.”
81. KHOU 11 reports that, by the afternoon, the county had only managed to increase that to 20 of the 60 voting machines at West Gray Multi-Service Center were working.
82. KHOU 11 Reporter Michelle Choi reported that several voters, after waiting over 2 hours to vote because of the delay, were unable to vote and went home without voting.²⁷

²⁷ See Contestant’s App.: Ex. 22: Series of Tweets from KHOU Reporter Michelle Choi at 000804 (https://twitter.com/michellekhoul/status/1590054644411412480?s=46&t=vYQYd4tS_TdouD4dV8n2jk5DU1e1nPmEl6wz_Sl4IF0 last accessed 05/31/2023).

83. At the Palm Center located at 5300 Griggs Rd in Houston, Tx, the reporting team at KHOU 11 reported that voting machines at Palm Center went down because they were overwhelmed - seemingly information they obtained from the County.²⁸
84. In response to the issues at this location at at the Multi-Services Center, Nadia Hakim, the Harris County Elections Dept. Deputy Director of Communication and Voter Outreach claimed to KHOU 11 that the county had “doubled up on tech support at the those spots in case the problems cropped up again.” This of course implied every location had adequate tech support to begin with.
85. The Presiding Election Judge of Mandarin Immersion Magnet School, Alex Solis, told the Houston Chronicle that he ran out of paper for a short time around 4 or 5pm, but that he was quickly resupplied.²⁹
86. Election Judge Chris Russo was stationed at El Lago City Hall on Election Day.
87. Russo reported to the Houston Chronicle that he called the Election Department Hotline for 3 hours without an answer, trying to get a remedy for his rapidly dwindling supply of paper.³⁰

²⁸ See Contestant’s App.: Ex. 16: Article, KHOU 11, 03/01/22: Glitches with voting machines reported at some busy sites Tuesday at 000761 (<https://www.khou.com/amp/article/news/politics/elections/glitches-voting-machines-harris-county/285-88984df0-a3b6-46f0-8fc4-6e39b1ab7baa> last accessed 05/31/2023).

²⁹ See Contestant’s App.: Ex. 19: Article, The Houston Chronicle, 11/09/22: Harris County Election Problems, Court Orders Could Cloud Election Results, at 000791 (<https://www.houstonchronicle.com/politics/election/2022/article/How-did-the-election-go-under-Tatum-17557297.php> last accessed at 05/31/2023).

³⁰ See Contestant’s App.: Ex. 18: Article, The Houston Chronicle, 04/21/23: GOP Leaders Say Harris County’s Ballot Shortage Was Targeted At Republicans. Here’s What The Data Says, at 000768 (<https://www.houstonchronicle.com/politics/houston/article/harris-county-ballot-paper-shortage-investigation-17849980.php> last accessed on 05/31/2023).

88. Russo also told the Chronicle that he ran out of paper at 6 pm, with approximately 40 voters in line.³¹

89. Russo claims he told people in line that if they remained and stayed in line, they'd get to vote that day, but if they thought they could make it somewhere else by 7, they were welcome to try.³²

90. More paper did not arrive until 9 pm, at which point most people had gone home already.³³

91. At approximately 5:20-5:30 pm, the poll workers at Freed-Montrose began telling voters in line that the location ran out of paper ballots. Voters were told that they could leave and attempt to get in line and vote somewhere else before 7 pm, or wait here to vote.

92. The Chronicle reported voter Tala Hasbini decided to stay because this was her second election to participate in, as she was a recently naturalized citizen, and she did not want to risk leaving and being unable to vote.

93. The Chronicle reported it had confirmed Election workers at T.H. Rogers School had no paper ballots between 4:30 and 6:30 pm.

94. This is information which is supported by the time stamps in the pollbooks from Election Day, and can be confirmed by lining up witness statements reported to the media and other avenues along with these stamped poll book data analysis.

³¹ *Id.*

³² *Id.*

³³ *Id.*

95. Contestants continue to examine and sort through Discovery, and anticipate they will continue to uncover more relevant facts in support of their contention that these locations, and possibly more, had shortages of election supplies on Election Day.

3. FAILURE TO REMEDY: JUDICIAL INTERVENTION ON ELECTION DAY PROVIDED ONLY A PARTIAL REMEDY OF THESE FAILURES, BUT ILLUSTRATES THE COUNTY'S KNOWLEDGE OF THEIR OBLIGATIONS

96. Mid-morning on Election Day, the Texas Organizing Project, a Texas community organizing non-profit established in 2009 which operates in Harris, Bexar, and Dallas counties, filed for Injunctive Relief under Section 273.081 of the Texas Election Code, requesting that these access issues violated the election code and as such relief was warranted.³⁴

97. Specifically, the TOP asked a state district court in Harris County to extend polling hours at 12 polling locations for one additional hour.

98. The TOP petition also clearly recognized however, that because Harris County was part of Texas' County-Wide Voter Program, Section 43.007(p) of the Tex. Elec. Code provided that "[i]f a court orders any countywide polling place to remain open after 7 p.m., all countywide polling places located in that county shall remain open for the length of time required in the court order."³⁵

99. The emergency petition filed by TOP covered both access issues the Contestants in this matter are here to litigate: (1) a failure by Harris County to ensure its polling places opened on time in violation of Tex. Elec. Code 43.031; and (2) a failure by Harris County to adequately distribute supplies in violation of the Tex. Elec. Code.

³⁴ See Contestant's App.: Ex. 23: Cause No. 2022-73765: TOP Application to Extend Polling Hours at 000810.

³⁵ Tex. Elec. Code § 43.007®.

100. The petition was verified as to the non-declaring testimony by TOP Co-Executive Director, Michelle Tremillo.

101. As to the failure to open locations in a timely manner, the TOP's petition notes that all 12 locations "opened more than one hour late, and, in at least one instance, for over three hours, and many of the locations have continued to experience machine malfunctions causing delays and temporary closure."³⁶

102. The petition and order both note that the county was notified about the suit and pending injunction hearing by and through their county attorney via phone call and email.³⁷

103. Upon information and belief, Contestants believe the person so notified was County Attorney Jonathan Fombonne.

104. During a hearing on the injunctive relief, the Court granted the petitioner's request, amending it however to include all locations instead of just the twelve mentioned by the Petition.

105. Furthermore, the order states in paragraph 7 that "Supplies, including paper ballots, needed for voting and provisional ballots must be supplied to all polls."

B. THE ELECTION AND ITS RESULTS

106. On November 8, 2022 ("Election Day"), the Harris County Republican Party, by and through the Harris County Elections Administrator (the "Administrator") conducted the

³⁶ See Contestant's App.: Ex. 23: Cause No. 2022-73765: TOP Application to Extend Polling Hours at 000810.

³⁷ *Id.*

Contested Race in Harris County, Texas, and Contestants and Contestees were both candidates in the race.³⁸

107. The Contested Race, like all Texas elections, saw voters cast their ballots in one (1) of three (3) ways; through: (a) in-person early voting; (b) mail-in balloting; or (c) in-person election day voting on Election Day.

108. On Election Day, voters cast their ballots at various pre-established voting locations across the County (each a “Voting Location”).

109. Harris County was approved by the Texas Secretary of State to participate in the County-Wide voting process as provided by § 43.007(i) of the TEX. ELEC. CODE for the November 8, 2022 General Election.³⁹

110. As a part of the program and the Code’s requirements for polling places, Harris County had to comply with the officer line rule (TEX. ELEC. CODE § 42.005 (officer line rule); requirements related to population found in TEX. ELEC. CODE § 42.006, and the TEX. ELEC. CODE § 42.007 requirements concerning the combining or incorporated and unincorporated territory.

111. Generally otherwise, Harris County must comply with the provisions regarding the section of polling places found in Chapter 43 of the Code.⁴⁰

112. According to the Texas Secretary of State, “*Generally, Section 43.001 of the Code dictates that each election day precinct established for an election shall be served by a single polling place located within the*

³⁸ See Contestants App.: Ex. 1: Canvass Report at 000033.

³⁹ Texas Secretary of State, Counties Approved to Use the Countywide Polling Place Program (CWPP) for the November 8, 2022 General Election, found at <https://www.sos.state.tx.us/elections/laws/countywide-polling-place-program.shtml>, last accessed on 01/05/23.

⁴⁰ TEX. ELEC. CODE §43.

*boundary of the precinct. The number and location of polling places need to adequately serve the voters so that the county is in compliance with the Voting Rights Act.*⁴¹ Included in that compliance scheme, is a requirement that Harris County may not designate a location for a polling place which would require a voter in the precinct to travel more than twenty-five (25) miles from their residence to the polling place.⁴²

113. Additionally, the Code requires a county participating in the countywide polling place program to have at least one countywide polling place in each commissioners court precinct.⁴³ And the number of countywide polling places within a commissioner's court precinct for a county participating in the countywide polling place program⁴⁴ may not exceed more than twice the number of countywide polling places located in any other commissioners court precinct."⁴⁴

114. On October 11, 2022, the Elections Administrator presented Resolution 22-6134⁴⁵ to the Harris County Commissioner's Court, requesting to adopt/approve the updated Election Day polling location list for the November 8, 2022 General Election.⁴⁶ The attached polling locations updated the proposed locations with their poll codes.⁴⁷

⁴¹ Texas Secretary of State, Election Advisory No. 2021-01, found at <https://www.sos.state.tx.us/elections/laws/advisory2021-01.shtml>, last accessed on 01/05/23.

⁴² *Id.* See also TEX. ELEC. CODE § 43.002(c).

⁴³ TEX. ELEC. CODE § 43.007(m).

⁴⁴ *supra* n.18. See also TEX. ELEC. CODE § 43.007(m)(2).

⁴⁵ Contestants App. Ex. 4: Resolution 22-6134 Request for approval of updated Election Day polling locations list for the November 8, 2022 General Elections.

⁴⁶ Contestants App. Ex. 3: Harris County Commissioner's Court Agenda Tuesday, October 11, 2022 at 000260.

⁴⁷ Contestant's App. Ex. 4a: Ex. 4a: 1122 Locations with Poll Codes 080222 v11 Formatted for CC 10/05/22 at 000282.

115. In all, Harris County had seven hundred thirty-eight (738) separate pre-established polling locations on Election Day.⁴⁸

116. The Code also makes clear that “A county participating in the program must establish a plan to provide notice informing voters of the changes made to the locations of polling places under the program. The plan must require that notice of the location of the nearest countywide polling place be posted on election day at each polling place used in the previous general election for state and county officers that is not used as a countywide polling place.”⁴⁹

117. The returns, published on the County Elections website show that the following votes were cast in each of the relevant Races, with the final breakdown of the vote totals as follows:

Votes for Adams: 517, 281; Votes for Williams: 541,438; Total Votes: 1,058,719.

Votes for Archer: 511,630; Votes for Horwitz: 539,741; Total Votes: 1,051,371.

Votes for Bain: 516,472; Votes for Sepolo: 540,755; Total Votes: 1,057,227.

Votes for Bal: 513,302; Votes for Finch: 540,277; Total Votes: 1,053,579.

Votes for Buss: 526,669; Votes for Fleischer: 529,747; Total Votes: 1,056,416.

Votes for Copeland: 523,089; Votes for Payne: 549,149; Total Votes: 1,071,283.

Votes for Daniel: 520,487; Votes for Burgess: 546,127; Total Votes: 1,066,614.

Votes for Dexter: 523,216; Votes for Draper: 530,441; Total Votes: 1,053,657.

Votes for Fraga: 514,774; Votes for Weems: 542,820; Total Votes: 1,057,594.

Votes for Goldberg: 516,502; Votes for Ramirez: 542,004; Total Votes: 1,058,506.

⁴⁸ Constant’s App. Ex. 2: Harris County Polling Locations via Texas SOS, found at <https://earlyvoting.texas-election.com/Elections/getElectionEVDates.do>, last accessed on 01/05/22.

⁴⁹ TEX. ELEC. CODE § 43.007(m)(2).

Votes for Mealer: 534, 720; Votes for Hidalgo: 552,903; Total Votes: 1,087,864.

Votes for Montgomery: 519,116; Votes for Andrews: 537,695; Total Votes: 1,056,811.

Votes for Scott: 515,472; Votes for Wyatt: 550,214; Total Votes: 1,065,686.

Votes for Simons: 520,782; Votes for Walker II: 533,538; Total Votes: 1,054,320.

Votes for Spjut: 516,891; Votes for Jackson: 541,026; Total Votes: 1,057,917

Votes for Staley: 512,942; Votes for Singh: 545,095; Total Votes: 1,058,037.

Votes for Stanart: 515,206; Votes for Hudspeth: 549,654; Total Votes: 1,064,860.w

C. POST ELECTION ASSESSMENT: DETAILS OF CONSTRUCTIVE POLL CLOSURES

118. There were also irregularities in the conduct of administering this election which go beyond mere administrative technicalities that must be addressed by this Court.

119. There is no dispute that there were several dozens of polling locations who at some point in the day, ran out of paper and turned voters away - even the Elections Administrator concedes this much is true, originally stating in his update that at least 20 locations reported running out of paper.⁵⁰

120. On November 9, 2022 as the citizens of Harris County and beyond gazed around at the rubble of another failed election, the PR campaign to remedy the image of any wrongdoing on the part of the county was already in full swing.

121. Unfortunately, its earnestness to ease the burden of responsibility and accountability, the agents of the County provided contradictory statements and positions on the actions leading up to Election Day, all the way until the aftermath and clean-up. These are discrepancies this

⁵⁰ Contestants App. Ex. 10: Harris County Elections Administration Office Elections 2022 Assessment at 000700.

Court must now weigh and parse while evaluating the scope of relief Contestants are due under the Tex Elec. Code.

122. Before this election, Harris County was on notice that its technology was not up to par, and its system of tracking supplies (such as paper) and real-time voter check-in (so as to balance its supply provision at locations) was severely lacking.⁵¹

123. The Elections Administrator told the Commissioner's Court in his Assessment of his office's performance of the General Election that "Over 1 million voters turning out to vote for the entire election. The EAO projected 1.2 million voters. The EAO identified and deployed voting machines, VCs and election staff/election workers to support that projection."⁵²

124. This does not explain how how then the EAO ended up with fewer ballots and fewer machines in polling locations than needed, if overall turnout was less than it predicted by 200 thousand people.

125. And yet, this is what happened.

126. Originally, when confronted initially with reports that locations were running out of paper, the Harris County Elections Administrator and his staff pushed back on idea, claiming that they had no knowledge locations were facing a paper shortage.⁵³

127. In fact, Tatum seemed to indicate he was confused by the claims, because he claimed to have given judges EXTRA paper beyond their forecasted needs: "We are receiving requests

⁵¹ See Contestants App. Ex. 5: Executive Summary, Texas Secretary of State 2020 Audit General Election in Texas at 000295-296; and Ex. 6: Final Report on Texas Secretary of State Audit of 2020 General Election in Texas at 000362-000482.

⁵² *Id.* at 000698.

⁵³ See Contestant's App.: Ex. 24: As Hundreds Waited to Vote in Houston, a Dozen-plus Polling Sites Ran Out of Ballot Sheets, at 000957 (<https://www.houstonchronicle.com/politics/election/2022/article/Paper-chase-Some-Houston-voting-sites-ran-out-of-17569645.php> last accessed on 05/31/2023).

from some of the polling locations that indicate that they are running out of paper,...We know that we provided judges with extra paper when they came to pick up their supplies on Saturday and Sunday. So we're assessing what's actually going on.”⁵⁴

128. When Texas Tribune Reporter asked Hani Mizra, an attorney and Voting Rights Program Director with the Texas Organizing Project, about the group’s choice to take Harris County to Court, Mizra said “We went to court because these closures and errors, especially in communities of color across Harris County, robbed voters of the opportunity to cast their ballot,...These folks got to the polls early, wanting to do their civic duty, and they would have were it not for these issues.”

129.

130. Ura also asked why the county had made no objection to the TOP lawsuit, Harris County Attorney Christian Menefee “We didn’t oppose the original relief because we want to make sure every single eligible voter in Harris County has the chance to cast their ballot, and there were polling places that had some issues[.]”⁵⁵

131. When asked about paper shortage issues, Tatum told the Houston Chronicle ““I have staff in the field at this very moment delivering paper to any location that's requested," Tatum said in the early evening. "We've been delivering paper throughout the day, and we should see that that's not an issue for voters standing in line.” This is a markedly different position than the

⁵⁴ *Id.*

⁵⁵ See Contestant’s App.: Ex. 17: Article, Texas Tribune, 11/08/22: Texas Supreme Court Ruling Opens Possibility That Late Harris County Ballots Wont Be Counted, at 000765.

county took at either the hearing on Election Day, or in the Assessment after the fact on December 3rd.⁵⁶

132. Indeed, at approximately 7 pm Tatum claimed he was in the process of providing paper “at least 12 to 17” locations of the 782 countywide that had requested paper from the Elections Department.⁵⁷

133. Furthermore, he claimed to be able to confirm that the shipments had already arrived at five of those sites.⁵⁸

134. Similarly, when quizzed by a reporter from local Harris County Station KHOU 2, Tatum told reporters that “The long and the short of it is we have to control the things that we can. We need to control our supplies a little better, control our access a little better and those are things we will assess post-election to ensure we get it right the next time.”⁵⁹

135. Tatum originally called most of Election Day’s issues “routine” with speaking with a chronicle reporter, claiming “That’s part of the process,” Tatum said. “We need to plan for the worst and be prepared to respond. It just took a little bit of time to get it straightened out.”⁶⁰

136. But Contestants urge that a chronic failure to properly open locations on time or allocate supplies across a county so that voters have equal access to voting issues shouldn’t be categorized as normal at all. In fact, if we are to believe Tatum’s classification, it fails to

⁵⁶ See Contestant’s App.: Ex. 19.

⁵⁷ See Contestant’s App.: Ex. 17.

⁵⁸ *Id.*

⁵⁹ See Contestant’s App.: Ex. 14.

⁶⁰ See Contestant’s App.: Ex. 19.

explain why he behaved after the fact as if a failure to distribute the correct amount of paper at the outset failed so horribly.

137. Later in his assessment, the Elections Administrator however, he concedes that in reviewing “call logs and support tickets to gain an understanding of what occurred on Election Day,” that “[t]EAO’s call logs reflect that the Help Desk received calls from 46 VCs (5.9%) requesting additional paper on Election Day.”⁶¹

138. The EAO continues however, claiming that “[t]his does not indicate that these VCs ran out of paper and had turn voters away as a result - only that they required additional paper at some point on Election Day.”⁶²

139. Indeed, because it is relying solely on witness statements surveyed some one to two months after the election, that it is unable to reconcile the conflicting reports of paper shortages, and determine the number of people who were turned away from polling places, noting “Our investigation has not yet revealed how many of these VCs had to turn voters away due to a paper shortage.”⁶³

140. The EAO elaborated on the inadequacy and incomplete nature of making a determination via witness statements without contemporaneous notes, observing that:

“The EAO’s analysis from the PJ and AJ calls is largely inconclusive due to the fact that several of the PJs and AJs from the same VCs gave conflicting reports on whether the VC actually ran out of paper, and that many responses did not explain whether the VCs had to turn voters away. According to PJ calls, several VCs (68) reported running out of their initial allotment of paper, although

⁶¹ *Id.* at 000700 and 000701.

⁶² *Id.* at 000701.

⁶³ *Id.* 000701.

most of them (61) received additional deliveries, according to their respective PJs. In addition, 22 AJs for these 68 VCs gave conflicting reports, stating that they did not run out of paper at all. 64 AJs reported that they ran out of their initial allotment of paper, and 58 of those judges reported receiving paper deliveries. Again, 20 of the PJs for the same VCs reported that they did not run out of paper at all.”

141. Various media sources have reported on the issue, another thing acknowledged by the EAO in his assessment⁶⁴

142. As a final conclusion, the EAO’s assessment concedes that the media’s reporting has exposed that the issue is far larger than it has been able to confirm noting that “Overall, while the initial media reports suggested a problem more extensive than what the EAO has been able to confirm, the EAO will continue reviewing the processes and will implement systems to ensure this type of challenge is never encountered in the future.”

IV. BASIS FOR RELIEF: THE COURT MUST RECOGNIZE THAT THE CONSTRUCTIVE POLL CLOSURES THAT TOOK PLACE ON ELECTION DAY EQUATE TO VOTER SUPPRESSION, WHICH MAKES THE TRUE RESULT OF THE ELECTION UNKNOWNABLE

143. “The purpose of the [Election] Code is to prohibit error, fraud, mistake, and corruption, and yet it may not be used as an instrument of disfranchisement for irregularities of procedure.”⁶⁵

144. The scope of inquiry for this Court in an election contest

“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*

⁶⁴ *Id.* at 000701.

⁶⁵ *Honts v. Shaw*, 975 S.W.2d 816, 822 (Tex. App. 1998) (citing *Prado v. Johnson*, 625 S.W.2d 368, 369-70 (Tex.Civ.App.--San Antonio 1981, writ dismissed w.o.j.); see also *Deffebach v. Chapel Hill Indep. Sch. Dist.*, 650 S.W.2d 510, 512 (Tex.App.--Tyler 1983, no writ)).

(C) *engaged in other fraud or illegal conduct or made a mistake.*⁶⁶

145. The Contestants in an election contest bears the burden of proving by clear and convincing evidence that voting irregularities materially affected the outcome of the election.⁶⁷

146. The trial court's job must review the facts before it and decide, as the trier of fact, whether or not, based on a clear and convincing standard, the the Contestants presented sufficient evidence to produce in the mind of the fact finder a firm belief or conviction as to the truth of the allegations sought to be established.⁶⁸

147. The trial court should use the factual allegations before it to ascertain if the true will of the voters can be known, or irregularities were such as to render it impossible to determine the will of the majority of the voters participating.⁶⁹

148. If the Court cannot because of fraud or mistake, or because an election official engaged in activity that prevented eligible voters from voting, be certain that the outcome as posted in the final canvas represents the true outcome,⁷⁰ and cannot ascertain the true outcome of the election, it must declare the election void, and order a new one.⁷¹

⁶⁶ TEX. ELEC. CODE § 221.003.

⁶⁷ See *Tiller*, 974 S.W.2d at 772.

⁶⁸ See *Casino Magic*, 43 S.W.2d at 19.

⁶⁹ *Goodman v. Wise*, 620 S.W.2d 857, 859 (Tex. Civ. App.-Corpus Christi 1981, writ ref'd n.r.e.).

⁷⁰ TEX. ELEC. CODE § 221.003.

⁷¹ TEX. ELEC. CODE § 221.012(b); *Tiller*, 974 S.W.2d at 772; *Medrano*, 769 S.W.2d at 688.

149. One of the primary purposes of the Texas Election Code is to combat fraud, error, and mistake⁷² and to protect the public from errors which might make them doubt the integrity of the results of an election, or otherwise cause the public to lose faith in the quality and health of the democratic process. “No other right is more precious in a free country than having a voice in the election of those who make the laws under which, as good citizens we must have.”⁷³

150. Thus the Code is not merely a series of formalities created to make the process of voting difficult, but to create a series of paper trails and redundancies that allow us to ensure that the ballot cast by the voter was counted, and not diluted.

151. Contestants will show, through the use of quantitative analysis to model the number of voters that were probably disenfranchised from voting at each location., that the actions of Harris County precipitated the inability of otherwise legally qualified Harris County voters of a not statistically insignificant number, to be unable to exercise their right to vote, because the county failed to ensure all polling locations on Election Day would open on time and with adequate supplies such that are necessary to administer an election.

152. The Code makes it the primary job of the Election Judge to qualify the voter for voting in person.⁷⁴ The Courts must strictly enforce the sections of the code that exist to prevent

⁷² *Honts v. Shaw*, 975 S.W.2d 816, 822 (Tex. App. 1998) (citing *Prado v. Johnson*, 625 S.W.2d 368, 369-70 (Tex.Civ.App.--San Antonio 1981, writ dism'd w.o.j. (quote)); see also *Deffebach v. Chapel Hill Indep. Sch. Dist.*, 650 S.W.2d 510, 512 (Tex.App.--Tyler 1983, no writ)).

⁷³ *Reynolds v. Sims*, 377 U.S. 533, 560 (1964).

⁷⁴ TEX. ELEC. CODE §63.001.

fraud,⁷⁵ and the use of “may” makes this provision of the election code mandatory and not directory.

153. Any voter who is accepted for voting in person by an election judge or clerk must sign into a signature roster,⁷⁶ and then they must be entered into the poll list, commonly called the pollbook or poll book.⁷⁷ The Texas Secretary of State may create combination forms “that combine the poll list, the signature roster, or any other form used in connection with the acceptance of voters at polling places with each other or with the list of registered voters.”⁷⁸ It is unlawful and a person commits an offense if they permit an ineligible voter to vote.⁷⁹

154. Furthermore, Each judge must keep track of those ballots which were received, defective, used by voters, spoiled, and unused and indicate this on an *original* record prepared by the judge for that box.⁸⁰ The judge must also complete Precinct Returns (usually done on the form proscribed by the Texas Secretary of State) which show the total number of voters who voted at the polling place⁸¹ - failure to do so is an offense under the Code.⁸²

155. There is no dispute that there were several dozens of polling locations who at some point in the day, ran out of paper and turned voters away - even the Elections Administrator concedes

⁷⁵ *Honts v. Shaw*, 975 S.W.2d 816, 822 (Tex. App. 1998) (citing *Prado v. Johnson*, 625 S.W.2d 368, 369-70 (Tex.Civ.App.--San Antonio 1981, writ dismiss'd w.o.j. (quote)); see also *Deffebach v. Chapel Hill Indep. Sch. Dist.*, 650 S.W.2d 510, 512 (Tex.App.--Tyler 1983, no writ)).

⁷⁶ TEX. ELEC. CODE § 63.002.

⁷⁷ TEX. ELEC. CODE § 63.003.

⁷⁸ TEX. ELEC. CODE § 63.004.

⁷⁹ TEX. ELEC. CODE § 63.012.

⁸⁰ TEX. ELEC. CODE § 65.013.

⁸¹ TEX. ELEC. CODE § 65.014(b)(1).

⁸² TEX. ELEC. CODE § 65.010(d);(e).

this much is true, originally stating in his update that at least 20 locations reported running out of paper.⁸³

156. Media reports, however, note that anywhere from forty (40) to at least sixty-eight (68) polling locations ran out of paper at some point,⁸⁴ and also note that because the EAO has conceded it does not have the tools or wherewithal to track complaints contemporaneously their only method of investigation is to call election workers from the almost 800 election locations 1-2 months after the election, and attempt to collect call slips and review them.⁸⁵

157. But, because people are inherently bad at “crowd counting” themselves, the Court cannot assign such an investigation the credibility due one that is conducted with any degree of accuracy.⁸⁶

158. There is no disputing that closing the polling location of a community has a detrimental impact on the voting population that makes use of that polling place.⁸⁷

⁸³ Contestants App. Ex. 10: Harris County Elections Administration Office Elections 2022 Assessment at 000700.

⁸⁴ Contestants Ex. 7: Article, Houston Chronicle, Editorial 11/09/22: Voting in Texas Hard Enough, Why is Harris County Making it Harder?; Ex. 8: Article, Texas Tribune 11/18/22: Here’s Why We Still Don’t Know What Went Wrong in Harris County on Election Day; Ex. 9: Article, Texas Tribune, 12/30/22: Almost Two Months After Election Day, Harris County Still Doesn’t Know If Polling Site Problems Kept People From Voting; Ex. 11: Article, The Houston Chronicle, Editorial 01/05/23: Harris County Elections Report is No Smoking Gun. Just Smoky; Ex. 12: Article, Texas Monthly 12/01/22: Harris County Botched Another Election; and Ex. 13: Article, The Houston Chronicle: Harris County Election Systems In ‘Immediate Need of Upgrades’ and Other Takeaways From New Report.

⁸⁵ Contestants App. Ex. 10: Harris County Elections Administration Office Elections 2022 Assessment at 000700.

⁸⁶ See ex. "Attention guided feature pyramid network for crowd counting". *Journal of Visual Communication and Image Representation*. **80**: 103319. 2021-10-01. doi:10.1016/j.jvcir.2021.103319.

⁸⁷ Henry E. Brady and John E. McNulty. Turning out to vote: The costs of finding and getting to the polling place. *The American Political Science Review*, 105 (1):116–120, 2011.

159. The detrimental impact of such a closure could be anywhere from 1.5-3.6% compared to other poll closures in similar urban locations.⁸⁸

160. There have been however, three waves of scholarship that discuss the impact of poll closures on a community in Texas, before the elimination of pre-clearance for Texas after the *Shelby v. Holder* decision; the period just following the *Shelby* decision; and the period following the move towards county wide voting centers in Texas. But all these waves agree that there is a statistically significant impact on voter turnout for the population that uses a polling place when it closes.⁸⁹ The only question is to what degree.

161. The reduction in turnout can be offset by up to half by the availability of convenience voting which includes voting by mail or voting somewhere else during early voting.⁹⁰ Such options however, would have been available to a person whose polling location is effectively constructively closed on Election Day.

162. Voting is a calculation that people internally do via an internal cost benefit analysis.⁹¹ The voter weighs internally the opportunity cost of the time they will spend casting their ballot, and views it as cost.⁹²

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 116-17.

⁹¹ “The Effect of polling place assignment on voting,” Sabina Tomkins, Keniel Yao, Johann Gaebler, Tobias Konitzer, David Rothschild, Marc Meredith, and Sharad Goel. Stanford University PredictWise Microsoft Research May 6, 2021 at 2. *See also* William H. Riker and Peter C. Ordeshook. A theory of the calculus of voting. *American Political Science Review*, 62:25–42, 1968.

⁹² *Id.* *See also* Anthony Downs. *An economic theory of democracy*. Harper and Row: New York, NY, 1957.

163. Because of this internal calculation, even small increases in a voter's expectations about the amount of time it will take them to cast their ballot in any given election reduces voter turnout.⁹³

164. Potential voters likely to consider two factors when deciding if they will vote: the cost of transportation and the search costs associated with casting an in-person ballot.⁹⁴

165. And in this case, the most troubling factor at play is the search costs. These search costs refer to the cost of looking for a place to cast a ballot - finding where a polling place the voter is eligible to use is located and how to reach it.⁹⁵ These costs are thought to reduce when a voter repeatedly votes at the same polling place.

166. Transportation costs are the costs of actually traveling to a polling place. These costs will typically and predictably increase as a polling place moves further from potential voter's residence.

167. And although research by political scientists show that turnout is impacted as a voter's decisions are affected by these two costs (search and transportation costs), the search cost tends to assume the bulk of the weight in making that decision.⁹⁶

168. In fact, when voters find out *before* election day that they can no longer vote at their regular voting location, they are two percentage points less likely to cast an in-person ballot on Election Day, even if that location is equally far from their house as was the original polling

⁹³ John H. Aldrich. Rational choice and turnout. *American Journal of Political Science*, 37(1):246–278, 1993.

⁹⁴ Henry E. Brady and John E. McNulty. Turning out to vote: The costs of finding and getting to the polling place. *The American Political Science Review*, 105 (1):115–134, 2011.

⁹⁵ *Id.*

⁹⁶ Brady and McNulty [2011] at 116.

location.⁹⁷ And this is when the individual is assigned a new polling location some time before Election Day, in fact before early voting.

169. There is also work that demonstrate that even potential voters who live in the same neighborhood as the new location are less likely to vote when the new polling place that they would need to vote at on Election Day is further from their residence.⁹⁸

170. There is some existing research shows that most potential voters who are dissuaded from voting in-person on Election Day by changes that result in increases in search and transportation costs will simply switch to early in-person voting or another form of convenience voting,⁹⁹ which was not available to the voters disenfranchised by the Harris County Election Department. But other research shows that, in contrast, approximately *up to 60 percent* of the potential voters who were dissuaded from voting in-person on Election Day because of higher search costs abstained. And in such a scenario, that's only with the other 40 percent of shifting to mail ballots or early voting.¹⁰⁰

171. With the knowledge that an unknown number of polling locations did not have paper or working machines so that voters could exercise their right to vote, the evidence on the record

⁹⁷ *Id.* at 116-119. Tomkins et al [2021] notes that “Two percentage points represents the median estimated reduction in in-person voting on Election Day from a polling place change in existing work, with McNulty et al. [2009] and Amos et al. [2017] finding more than a two percentag point decline, and Yoder [2018] and Clinton et al. [2019] finding less.” at 2.

⁹⁸ Tomkins et al [2021] at 2.

⁹⁹ Joshua Clinton, Nick Eubank, Adriane Fresh, and Michael E Shepherd. Polling place changes and political participation: Evidence from north carolina presidential elections, 2008-2016. Technical report, Working Paper, 2019.

¹⁰⁰ Brady and McNulty [2011] at 116 - 120; an Amos, Daniel A. Smith, and Casey Ste. Claire. Redistricting and voting behavior. *Political Behavior*, 39(1):133–156, 2017.

in this matter so far make it abundantly clear that the true result of the election cannot be known, but that it most certainly is not reflected by the results posted in the final canvas.

172. Furthermore, there has been no satisfactory effort undertaken to clarify the extent to which votes were suppressed, even though there are clear guidelines and statutes in place to prevent such things.

173. There remains no satisfactory explanation on the record that would indicate that the votes of a statistically significant number of registered Harris County voters were not suppressed.

174. And, as the biggest factor involved in making a decision when your polling place is closed *before Election Day* is the "search factor" - which is the process of having to look up and find or locate a polling place - how much more so did that impact turnout when a non-zero number of people were turned away from more than one location.

175. One of the most fundamental rights proscribed by our U.S. Constitution is the right to vote. It is often referred to as sacred. "The right to vote includes the right to have one's ballot counted."¹⁰¹ So while elections should not be overturned merely due to human error, when an election is materially impacted, they must be.

176. There are some instances where the errors of election officials can be chalked up to human error, and can be said to be disturbing, but not of material impact on an election,¹⁰² and the

¹⁰¹ *Welch v. McKenzie*, 592 F.Supp. 1549, 1557-58 (S.D. Miss. 1984) (citing *Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964)).

¹⁰² *See Alvarez*, 844 S.W.2d at 249.

code should not be used to disenfranchise votes based on mere irregularities of procedure.¹⁰³

But what has happened in this election is not merely the irregularity of procedure.

177. In addition, the election code does not require a trial court to rely solely on illegal votes in attempting to determine the true outcome of an election.¹⁰⁴

178. The outcome of an election may be blurred not only by the counting of illegal votes or the failure to count legal votes, but also mistakes made by elections officers.¹⁰⁵ A contestant may allege and indeed prove that “irregularities rendered impossible a determination of the majority of the voter’ true will.”¹⁰⁶

179. Constructively closing polling locations without any notice on Election Day suppressed the votes of voters in Harris County, and made the true outcome of the election unknowable.

180. Upon conclusion of the Inspection of Election Records and Discovery, on good faith and belief, Contestants will prove that a quantitative analysis of the available data can demonstrate a number of individuals probably disenfranchised by voter suppression through the inability of polling locations to function so as to allow these voters to vote is statistically significant enough in relation to the number of votes by which the Contestants lost to make the true outcome of the election unknowable, requiring another one.

¹⁰³ *Honts v. Shaw*, 975 S.W.2d 816, 822 (Tex. App. 1998) (citing *Prado v. Johnson*, 625 S.W.2d 368, 369-70 (Tex.Civ.App.--San Antonio 1981, writ dismissed w.o.j.); see also *Deffebach v. Chapel Hill Indep. Sch. Dist.*, 650 S.W.2d 510, 512 (Tex.App.--Tyler 1983, no writ)).

¹⁰⁴ Tex. Elec. Code §221.003.

¹⁰⁵ Tex. Elec. Code §221.003(a)(2)(C); *Alvarez*, 844 S.W.2d at 242.

¹⁰⁶ *Gonzalez v. Villarreal*, 251 S.W.3d 763, 778 (2008) (citing *Guerra v. Garza*, 865 S.W.2d 573, 576 (Tex. App.—Corpus Christi 1993, writ dismissed w.o.j.))

V. PRAYER & RELIEF

WHEREFORE, PREMISES CONSIDERED, Contestants Mealer respectfully requests:

181. That this cause be set for trial and given precedence over all other causes as provided by law;
182. That notice of the filing of the petition and of the hearing date be given to all parties;
183. That after hearing the evidence, the Court shall find that the outcome of the election as reflected in the canvass is not the true outcome, and that it is impossible to ascertain the true results, that the election be declared void and an order issue for a new election under the supervision of the Court, for the contested office pursuant to § 232.041, TEX. ELEC. CODE ; and
184. That Contestants be awarded costs of this action and any other relief to which Contestants may be entitled.

RESPECTFULLY SUBMITTED, MAY 31ST, 2023,

/s/Elizabeth D. Alvarez
Elizabeth D. Alvarez
Texas Bar No. 24071942
alvarez@guestandgray.com
GUEST & GRAY, PC

Abby Spain
Texas Bar No. 24033087
abby@guestandgray.com

Scott Gray
Texas Bar No. 24043701
scott@guestandgray.com

315 S. Bois D'Arc St.
Forney, Texas 75126
Tel. (972) 564-4644
Fax. (866) 209-9785

COUNSEL FOR CONTESTANTS

Alexandra Mealer, et al

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CERTIFICATE OF SERVICE

I certify that on Wednesday, May 31st, 2023, I served a copy of this Petition on the Contestees, and their counsel of record if known, in accordance with the Texas Rules of Civil Procedure and the Texas Election Code via email, and through service of process.

/s/Elizabeth D. Alvarez

Elizabeth D. Alvarez

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Scott Gray on behalf of Elizabeth Alvarez

Bar No. 24071942

scott@guestandgray.com

Envelope ID: 76177503

Filing Code Description: Motion (No Fee)

Filing Description: Mealer's First Amended Petition for an Election contest

Status as of 6/1/2023 9:14 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Joyce Ingram		jingram@susmangodfrey.com	6/1/2023 8:52:34 AM	SENT
Mary K.Sammons		ksammons@susmangodfrey.com	6/1/2023 8:52:34 AM	SENT
Jonathan Ross		jross@susmangodfrey.com	6/1/2023 8:52:34 AM	SENT
David Peterson		dpeterson@susmangodfrey.com	6/1/2023 8:52:34 AM	SENT
Neal S. Manne	12937980	nmanne@susmangodfrey.com	6/1/2023 8:52:34 AM	SENT
Alejandra Salinas		asalinas@susmangodfrey.com	6/1/2023 8:52:34 AM	SENT
Sy Polky		spolky@susmangodfrey.com	6/1/2023 8:52:34 AM	SENT
Tanya McGinnis		tmcginnis@susmangodfrey.com	6/1/2023 8:52:34 AM	SENT
Hope Barnett		hbarnett@susmangodfrey.com	6/1/2023 8:52:34 AM	SENT
Elizabeth Alvarez		alvarez@guestandgray.com	6/1/2023 8:52:34 AM	SENT
Gail Brand		gail@guestandgray.com	6/1/2023 8:52:34 AM	SENT
Abby Spain		abby@guestandgray.com	6/1/2023 8:52:34 AM	SENT
Tiffany Bingham		tiffany.bingham@harriscountytexas.gov	6/1/2023 8:52:34 AM	SENT
Andy Drumheller		adrumheller@dhmlaw.com	6/1/2023 8:52:34 AM	SENT
Kristin Hagen		khagen@dhmlaw.com	6/1/2023 8:52:34 AM	SENT
Jacqueline Bauerband		jacqueline.bauerband@harriscountytexas.gov	6/1/2023 8:52:34 AM	SENT
Jonathan Fombonne		jonathan.fombonne@harriscountytexas.gov	6/1/2023 8:52:34 AM	SENT
Christopher Garza		Christopher.Garza@harriscountytexas.gov	6/1/2023 8:52:34 AM	SENT