

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 ET AL'S SECOND AMENDED PETITION FOR AN
ELECTION CONTEST**

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COME NOW, CONTESTANTS ALEXANDRA MEALER et al (the “Contestants”), a Republican General Election Candidate for Harris County Judge, a county-wide office (the “Office”), along with 16 of her fellow Republican candidates for office (the “Offices”) in the November 2022 General Election (the “Contested Election”) and files this Election Contest complaining against Hon. Lina M. Hidalgo et al, the incumbent County Judge of Harris County, and their other 16 Democratic opponents (together the “Contestees”) who hold *prima facie* title to the Offices because they had the most votes in the General Election (“Election”) at the close of the Canvass.¹ The Contestants were declared winners of the Offices for the Election and certified as such in their respected races detailed below (the “Contested Races”). In support of this contest, the Contestants would humbly show the Court the following:

I. INTRODUCTION

1. The scope of inquiry for a 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

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

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 Contested Races produced tight results, results which the Contestants allege are not the true results. Harris County, violated the law, and fell woefully short of its obligations, which in turn prevented eligible³ qualified⁴ Harris County voters from exercising their right to vote.⁵

3. Specifically the Elections Administrator and commissioners court of Harris county Texas failed (1) one to adequately prepare supplies for each polling location pursuant to the Texas election code; (2) failed to adequately allocate supplies for each polling location pursuant to the Texas election code; (3) adequately distribute those supplies pursuant to the Texas election code (4) failure to adequately deliver supplies pursuant to the Texas election code; (5) failed to adequately, prepare judges for emergency situations (such as when they run out of paper or machines stop working) pursuant to the Texas election code, and the requirements of the Secretary of State (6) failed to maintain a chain of custody and real time records of ballots and supplies; (7) failed to open polling locations on time; (8) failed to provide adequate assistance to judges in

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 v. Martinez*, 974 S.W.2d 769, 777 (Tex. App. 1998).

³ TEX. ELEC. CODE § 11.001

⁴ TEX. ELEC. CODE § 11.002

⁵ See supra n.2.

need on Election Day pursuant to the Texas Election Code; and (9) failed to ensure every location accepted all qualified voters

4. “ 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.”⁶ “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 of one ballot more than another.”⁷
5. Ultimately, through a variety of unconstitutional, illegal, and negligent schemes, Harris County constructively closed over 20% of their polling locations on Election Day, creating an impediment to voting for legal voters who relied upon the County’s compliance with the TEX. ELEC. CODE who were left with no recourse.
6. Contestants bear the burden of proving by clear and convincing evidence that these voting irregularities materially affected the outcome of the election,⁸ and they concede that 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.”⁹ But what has happened in this election is not merely the

⁶ *Wesberry v. Sandes*, 376 U.S. 1, 17 (1964).

⁷ *Welch v. McKenzie*, 592 F.Supp. 1549, 1557-58 (S.D. Miss. 1984) (citing *Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964)).

⁸ *See Tiller*, 974 S.W.2d at 772.

⁹ *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.); *see also Deffebach v. Chapel Hill Indep. Sch. Dist.*, 650 S.W.2d 510, 512 (Tex.App.--Tyler 1983, no writ)).

irregularity of procedure. Rather, there is clear and convincing evidence of a encumbrance on the right to vote, 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.

7. Harris County prevented eligible voters from voting, and engaged in illegal conduct or made mistakes that makes the result of the Election unknowable, as a result, the result of the Election shown by the final canvass is not the true outcome.¹⁰
8. The trial court should weigh the factual allegations before it below and conclude that because an election official prevented people from voting, Harris County made mistakes, and violated the law related to the administration of an election, the true will of the voters cannot be known, and it should.
9. Award Contestants the judicial remedy to which they are entitled: a new election pursuant to TEX. ELEC. CODE § 221.003 and § 221.012.

II. CLAIMS FOR RELIEF

10. Contestants brings this lawsuit under Title 14, Chapter 221 of the TEX. ELEC. CODE.
11. This lawsuit arises out of provable, unlawful, and irregular violations of the law and process which materially impacted the Contested Election clouding the true

¹⁰ See TEX. ELEC. CODE § 221.003(a).

will of the electorate, resulting in an election with a true outcome which cannot be ascertained.

12. Contestants ask this Court to declare that because those officially involved in the administration of the Contested Race failed to count legal votes^{11,12} 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.¹³

13. Contestants ask 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,¹⁴ and/or engaged in fraud and other illegal conduct or mistakes which made the true result unknowable.¹⁵

¹¹ 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).

¹² 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.

¹³ TEX. ELEC. CODE § 221.003(a).

¹⁴ supra n.4.

¹⁵ 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.

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

15. Because 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 adequate allocation of supplies; (c) and otherwise comply with the statutes, rules, and regulations related to the administration of the November 8, 2022 General Election, the Contestants requests this Court order a new election.¹⁶

III. DISCOVERY CONTROL PLAN

16. This matter is subject to Discovery Level 2 in accordance with the TEX.R.CIV.PRO 190.3 in all instances NOT otherwise explicitly covered by the TEX. ELEC. CODE.¹⁷

17. 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

¹⁶ *Id.* § 221.003; § 221.012

¹⁷ TEX. ELEC. CODE § 231.002.

18. 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.
19. Contestee Hon. Lina M. Hidalgo is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the TEX. ELEC. CODE and may be served by here attorney of record.
20. Contestant Adams is a resident of Harris County and he may be served with process by and through his attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126
21. Contestee Hon. LaShawn Williams is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the TEX. ELEC. CODE.
22. Contestant Archer is a resident of Harris County and he may be served with process by and through his attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.
23. Contestee Horwitz is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the TEX. ELEC. CODE.
24. Contestant Bal is a resident of Harris County and he may be served with process by and through his attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.

25. Contestee Finch is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the TEX. ELEC. CODE.
26. Contestant Bain is a resident of Harris County and he may be served with process by and through his attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.
27. Contestee Hon. Cory Sepolio is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the TEX. ELEC. CODE.
28. 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.
29. Contestee Hon. David M. Fleischer is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the TEX. ELEC. CODE.
30. Contestant Copeland is a resident of Harris County and he may be served with process by and through his attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.
31. Contestee Hon. Latosha Lewis Payne is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the TEX. ELEC. CODE.
32. Contestant Daniel is a resident of Harris County and he may be served with process by and through his attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.

33. Contestee Hon. Marilyn Rockett Burgess is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the TEX. ELEC. CODE.
34. Contestant Dexter is a resident of Harris County and he may be served with process by and through his attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.
35. Contestee Draper is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the TEX. ELEC. CODE.
36. Contestant Fraga 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.
37. Contestee Hon. Christine Weems is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the TEX. ELEC. CODE.
38. Contestant Goldberg is a resident of Harris County and he may be served with process by and through his attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.
39. Contestee Hon. Erika Ramirez is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the TEX. ELEC. CODE.
40. Contestant Montgomery is a resident of Harris County and he may be served with process by and through his attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.

41. Contestee Andrews is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the TEX. ELEC. CODE.
42. Contestant Scott is a resident of Harris County and he may be served with process by and through his attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.
43. Contestee Hon. Carla L. Wyatt is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the TEX. ELEC. CODE.
44. Contestant Simons is a resident of Harris County and he may be served with process by and through his attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.
45. Contestee Hon. Sedrick Walker II is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the TEX. ELEC. CODE.
46. Contestant Spjut is a resident of Harris County and he may be served with process by and through his attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126
47. Contestee Hon. Juanita Jackson is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the TEX. ELEC. CODE.
48. Contestant Staley is a resident of Harris County and he may be served with process by and through his attorney of record Elizabeth Alvarez, at Guest & Gray, P.C, located at 315 S. Bois D’Arc, Forney, Tx, 75126.

49. Contestee Hon. M. K. Monica Singh is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the TEX. ELEC. CODE.

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

51. Contestee Hon. Teneshia Hudspeth is a resident of Harris County. Contestee is the proper Defendant pursuant to § 232.003 of the TEX. ELEC. CODE.

V. JURISDICTION & VENUE

52. 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 and other races consolidated into this matter. Therefore, Harris County is the proper venue for this matter pursuant to §232.006(c) of the TEX. ELEC. CODE.¹⁸

53. This Election Contest was timely filed because the Contestants filed their initial petition not later than the 45th day after the date of the official result the contested election was determined,¹⁹ rolled forward to the next business day.²⁰

¹⁸ TEX. ELEC. CODE § 232.006(c).

¹⁹ *Id.* § 232.008(c).

²⁰ *Id.* § 1.006.

54. A district court in Harris County has original and exclusive jurisdiction over this matter pursuant to § 221.02 of the TEX. ELEC. CODE²¹

55. 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.²² 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

56. A copy of this petition was delivered to the Texas Secretary of State as required by the TEX. ELEC. CODE.²³

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

VII. TO ENSURE UNIFORM, FAIR, AND FREE ELECTIONS THE TEX. ELEC. CODE ESTABLISHES THE DUTIES AND OBLIGATIONS ELECTION OFFICIALS HAVE IN THE ADMINISTRATION OF ELECTIONS.

A. THE PROVISIONS OF THE CODE ARE TO BE STRICTLY INTERPRETED

²¹ TEX. ELEC. CODE § 221.002(a) (“Except as otherwise provided by this section, the district court has exclusive original jurisdiction of an election contest.”)

²² “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).

²³ TEX. ELEC. CODE § 232.008(d).

AND ENFORCED BY ELECTION OFFICIALS

58. Section 1.0015 of the TEX. ELEC. CODE states the legislature's intent to create a regulatory and statutory apparatus which would ensure all citizens can expect free and fair access to elections which are to be uniform and consistent throughout the state.²⁴

59. The code demands election officials "strictly construe the provisions of this code to effect the intent of the legislature under Section 1.0015."²⁵

60. The TEX. ELEC. CODE contains numerous provisions which instruct and direct election officials on what steps they must take to adequately prepare for an election such as the Contested Election.

61. In keeping with the legislature's desire that elections be uniform across the state, the code proscribes that all Elections shall take place on uniform dates and at uniform times.²⁶

62. The Code makes clear that Harris County Election Administrator Clifford Tatum is an "election official" with all the duties and obligations assigned and imparted to those individuals.²⁷

²⁴ TEX. ELEC. CODE § 1.0015.

²⁵ TEX. ELEC. CODE § 1.003.

²⁶ TEX. ELEC. CODE § 40.001.

²⁷ TEX. ELEC. CODE § 1.005 (4-A)(c).

63. The administration of the Contested Election was and is governed by the TEX. ELEC. CODE.²⁸

64. The duties of the Elections Administrator are detailed by the code.²⁹

65. The position itself is created by order of the Commissioners Court.³⁰ The position is filled through an appointment of the County Election Commission, which is made up of various county government members, plus the county chairs of each political party.³¹

66. To be eligible for appointment to this position one only need be a qualified voter of the state, at least, according to the requirements outlined in the Code.³²

67. However, given the serious nature of the extensive duties to be performed by a person holding this position, that cannot be the only requirement a body would consider before selecting a person to hold this office.

68. A person who accepts this appointment is forbidden from engaging in overly partisan activity, such as contributing to campaigns.³³ And, when a person accepts this responsibility, they must pay a bond to the county that appoints them that can be no

²⁸ TEX. ELEC. CODE § 1.002.

²⁹ TEX. ELEC. CODE § 31.043.

³⁰ TEX. ELEC. CODE § 31.031(a)

³¹ TEX. ELEC. CODE § 31.032.

³² TEX. ELEC. CODE § 31.034.

³³ TEX. ELEC. CODE § 31.035.

more than \$20,000, which is conditioned on “faithful performance of their duties
“ under the election code.³⁴

69. The Commissioner’s Court sets the number of deputies and other persons the
Election Administrator may employ.³⁵

70. The Commissioner’s Court also chooses the Election Administrator’s budget, and
provides for adequate office space. In providing a budget for the Election
Administrator, the Commissioner’s Court is limited only by whatever previous
allocation it had made to the county clerk and county tax assessor to perform the duties
related to the administration of elections.³⁶

71. When they assume their official responsibilities, the Election Administrator gets an
official seal of office,³⁷ indicating their role as an administrator for the county. They
must agree to perform all duties previously performed by other county officials
responsible for voter registration and the administration of elections.³⁸

³⁴ TEX. ELEC. CODE § 31.040.

³⁵ TEX. ELEC. CODE § 31.039.

³⁶ TEX. ELEC. CODE § 31.039.

³⁷ TEX. ELEC. CODE § 31.041.

³⁸ TEX. ELEC. CODE § 31.043.

72. To facilitate this transition, all records relating to voter registration, and the administration of the election, as well as voting equipment and supplies, must be transferred to the possession and custody of the administrator with all due haste.³⁹
73. There are some duties which may be split between the county clerk and the Election Administrator.⁴⁰ The Secretary of State shall adopt rules, which are consistent with the provisions of TEX. ELEC. CODE which classify those duties,⁴¹ and if an individual official is unsure which duty is theirs, they shall request classification of that function from the Secretary of State.⁴²
74. To ensure that there is no confusion about the scope and breadth of the duties of the Elections Administrator, the Secretary of State must provide a standardized training program for all election officials.⁴³ The Secretary of State must also ensure the Election Administrator gets copies of all the rules and notices that describe the allocation of duties between himself and the county clerk. ⁴⁴

³⁹ TEX. ELEC. CODE § 31.042.

⁴⁰ TEX. ELEC. CODE § 31.044.

⁴¹ TEX. ELEC. CODE § 31.045(a)

⁴² TEX. ELEC. CODE § 31.045(b). Note the presence of “shall” creates a non optimal ministerial duty subject to writ.

⁴³ TEX. ELEC. CODE § 31.126.

⁴⁴ TEX. ELEC. CODE § 31.045(c)-(e).

75. The Election Administrator must assume responsibility for posting the notice of an election, as well as polling place information on the County website.⁴⁵
76. The appropriate body to which an Election Administrator should refer their resignation,⁴⁶ is the County Election Commission, which may also terminate them with a 4/5 vote.⁴⁷
77. All criminal penalties which apply to other election officials in this Code, transfer to the Election Administrator upon their assumption of those same duties.⁴⁸
78. Additionally, an Election Administrator is liable to the state for a civil penalty if they violate any provision of this code while in office.⁴⁹
79. And they may be subject to a civil suit for the violation of these duties, although only in their official capacity.⁵⁰
80. This individual assumes responsibility for advising the county of the choices and selections it must make to comply with the laws, regarding the compilation and composition of election precincts, the selection, and noticing of polling places, the access of individuals with disabilities to voting in polling places, as well as the training

⁴⁵ TEX. ELEC. CODE § 31.125.

⁴⁶ TEX. ELEC. CODE § 31.036.

⁴⁷ TEX. ELEC. CODE § 31.037.

⁴⁸ TEX. ELEC. CODE § 31.049.

⁴⁹ TEX. ELEC. CODE § 31.129.

⁵⁰ TEX. ELEC. CODE § 31.130

and supervision of Election Judges, and the preservation of any and all records under the Code throughout the preservation period.

81. The Election Administrator must also assume responsibility for the proper allocation of supplies,⁵¹ and their distribution.⁵²

82. This includes assuming responsibility for the allocation⁵³ and distribution of ballots.⁵⁴ They also assume responsibility for a failure to make the required allocation and delivery.⁵⁵

83. The Election Administrator is also the custodian of ensuring they obtain all election equipment,⁵⁶ such as the machines which are used to vote, and is in charge of approval of all voting stations through the Secretary of State.⁵⁷

84. A thorough reading of the TEX. ELEC. CODE evidences The Election Administrator assumes much power and authority, but with that, much responsibility for the administration of an election. In exchange for that power, they are to be held severely

⁵¹ TEX. ELEC. CODE § 51.003.

⁵² TEX. ELEC. CODE § 51.004.

⁵³ TEX. ELEC. CODE § 51.005; 50.013.

⁵⁴ TEX. ELEC. CODE § 51.006; 51.007; 51.008.

⁵⁵ TEX. ELEC. CODE § 51.010; 51.011.

⁵⁶ TEX. ELEC. CODE § 51.036.

⁵⁷ TEX. ELEC. CODE § 51.031.

accountable for the strict interpretation and enforcement of the statutory scheme⁵⁸ created by the legislature to administer uniform, fair, and free elections.⁵⁹

85. Along with these responsibilities, The TEX. ELEC. CODE also charges the Administrator with maintaining chain of custody and document preservation. “Any certificate, application, notice, report, or other document or paper issued or received by government under this code” is an election record,⁶⁰ which must be preserved under the code through the preservation period, (and at least through the conclusion of this contest).⁶¹

86. Establishing the compliance of Harris County with the provisions of this Code, and accompanying provisions in the TEX. ADMIN. CODE and TEX. GOV'T. CODE. Should be simple if these obligations have been fulfilled & the records are readily available.

87. Indeed, the report makes clear that one of the most important integral procedures of election integrity is chain of custody, which is “a chronological documentation or paper trail that records, the sequence of packaging, custody, control, transportation, transfer, analysis, storage, and disposition of physical or electronic evidence.”⁶²

⁵⁸ TEX. ELEC. CODE § 1.002; 1.003.

⁵⁹ TEX. ELEC. CODE § 1.0015.

⁶⁰ TEX. ELEC. CODE § 1.012 (D)(1)-(3).

⁶¹ TEX. ELEC. CODE § 1.013.

⁶² Id. at *261 (citing Chain of Custody Best Practices, Election Law Seminar. Texas Secretary of State, (December 2021), <https://www.sos.state.tx.us/elections/forms/seminar/2021/33rd/chain-of-custody-best-practices-2021.pptx>.)

88. Elections are fundamental to our society, and so elections may not be cancelled without explicit authority to do so by statute.⁶³ “So an elections official must exercise extreme caution in assuming the responsibility and power which come together by assuming their position. One cannot abandon the administration of the election simply because one is overwhelmed, and one is not relieved of obligations under this code just because one is not prepared.”

B. THE TEX. ELEC. CODE PLACES HEAVY EMPHASIS ON PROVIDING THE PUBLIC WITH ADEQUATE NOTICE OF THE NAMES & LOCATIONS OF POLLING PLACES FAR AHEAD OF THE ELECTION

89. Recognizing that the inability to easily locate a polling place where one can cast their vote represents an impediment to the exercise of that constitutional right,⁶⁴ the TEX. ELEC. CODE places heavy emphasis on noticing the public of the name and location of polling places, as well as the times they will be open, *far* in advance of the election.

90. The Code requires that notice of polling place locations be given to all voters far in advance of the election.⁶⁵

⁶³ TEX. ELEC. CODE § 2.082.

⁶⁴ TEX. ELEC. CODE § 43.007(f),(h). *See* Keith Ingram, 2020 Opportunities to Use Countywide Polling Place Program FAQs, Election Advisory No. 2019-30, (Nov. 26, 2019) <https://www.sos.texas.gov/elections/laws/advisory2019-30shtml>.

⁶⁵ TEX. ELEC. CODE § 4.001; 4.002; 4.003.

91. Tex. Elec. Code § 4.011 states unequivocally that "[n]otice of each general and special election shall be given as provided by this chapter."⁶⁶

92. Tex. Elec. Code § 4.002 makes clear who is responsible for issuing that notice, so that there is no confusion about who must notify the voter that an election is coming up.⁶⁷

93. There are also very specific instructions as to how that notice must be provided.⁶⁸

94. "When this code requires notice of a polling place location, the written notice must state the building name, if any, and the street address, including the suite or room number, if any, of the polling place."⁶⁹

95. "Tex. Elec. Code 4.004 says that the notice must contain both the location of every polling place, and the hours that the polls will be open."⁷⁰ "If precincts are consolidated under Section 42.008, the notice must state which precincts have been combined to form each consolidated precinct in addition to the locations of the polling places in the consolidated precincts."⁷¹

96. Among the specific instructions to election officials, the Tex. Elec. Code clarifies that not later than the 21st day before election day, counties have to post a copy of the

⁶⁶ TEX. ELEC. CODE § 4.001.

⁶⁷ TEX. ELEC. CODE § 4.002.

⁶⁸ See e.g. TEX. ELEC. CODE § 4.003.

⁶⁹ TEX. ELEC. CODE § 1.021.

⁷⁰ TEX. ELEC. CODE § 4.004 (a).

⁷¹ TEX. ELEC. CODE § 4.004 (d).

notice of the election and that such notice “must include the location of each polling place, on the county's Internet website, if the county maintains a website.”⁷²

97. Even though Sec. 1.012 indicates that such a notice would be an election record,⁷³ making sure that the public is advised of when and where they can vote ahead of time is so important to the administration of the election, that the legislature added an additional section to make certain that election officials know they have to retain not just the notice itself, but a copy of the published notice that shows the date and place/publication where the notice was published.⁷⁴ This is an example of the kind of paperwork an Elections Administrator assumes responsibility for: documentation that a statute was complied with and who performed the action.

98. Additionally, the Code also obligates that “[f]or each notice posted under Section 4.003(a)(2) or (b), the person posting the notice shall make a record at the time of posting stating the date and place of posting. The person shall sign the record and deliver it to the authority responsible for giving the election notice after the last posting is made.”⁷⁵

99. To further reduce any chance of impediment to voting, the legislature also included a requirement that the authority responsible for giving notice of the election deliver

⁷² TEX. ELEC. CODE § 4.003(3)(b).

⁷³ TEX. ELEC. CODE § 1.012 (d).

⁷⁴ TEX. ELEC. CODE § 4.005.

⁷⁵ TEX. ELEC. CODE § 4.005(b).

notice to every Election Judge no later than the 15th day before election day or the 7th day after the date of the election is (whichever is later) a notice which includes the location of the polling place for the precinct served by the judge and the hours the polls will be open.⁷⁶ This helps judges ensure they are on same page as the county.

100. The legislature, in keeping with their clearly stated intent,⁷⁷ wanted this process to be uniformly followed for all elections, and so extended the requirement to give notice of the election and polling place location and times to any governing body - not just a county - of a political subdivision that orders an election.⁷⁸

101. The Elections Administrator for a county, if it has one (such as Harris county did in the contested election), must assume responsibility for posting the information about polling locations on the County website.⁷⁹

102. Additionally, the county must insure that the information regarding their polling locations, names and addresses and times they will be open is available to the Secretary of State so that they may post it on their website.⁸⁰

C. ELECTION CODE REQUIRES UNIFORM ACCESS AND DISTRIBUTION OF POLLING PLACES

⁷⁶ TEX. ELEC. CODE § 4.007.

⁷⁷ TEX. ELEC. CODE § 1.0015; 1.002; 1.003.

⁷⁸ TEX. ELEC. CODE § 4.008(a).

⁷⁹ TEX. ELEC. CODE § 31.125.

⁸⁰ TEX. ELEC. CODE § 31.016.

103. So important is the concept that polling locations be easily accessible and evenly distributed, that the legislature created an entire section of the code, dedicated to how a county should take these ideas into account when creating election precincts.⁸¹

104. There are multiple provisions of the code that deal with the appropriate way to combine precincts to ensure that all voters can vote, and that they have equal access to polling locations.⁸²

105. “A county must adopt a methodology for determining where each polling place will be located. In order to assess factors such as transportation availability, population size, and building suitability to ensure compliance with the Voting Right Act, the Secretary of State “strongly encourages counties to form voter center advisory committees to obtain feedback on voting locations.”⁸³

106. When a commissioner’s court is establishing election precincts, it should consider available buildings in the boundaries so that they may not establish a precinct where a voter has to drive more than 25 miles to vote.⁸⁴ If changes to the boundaries are made,

⁸¹ TEX. ELEC. CODE CHAPTER 43 SUBCHAPTER A

⁸² TEX. ELEC. CODE § 42.002; 42.003; 42.004; 42.005; 42.0051; 42.006; 42.007; 42.010; 42.031; 42.032.

⁸³ Contestant’ App. Ex. 6 at *73 (citing TEX. ELEC. CODE § 43.007 (f); and Keith Ingram, 2020 Opportunities to Use Countywide Polling Place Program FAQs, Election Advisory No. 2019-30, (Nov. 26, 2019) <https://www.sos.texas.gov/elections/laws/advisory2019-30.shtml>.

⁸⁴ TEX. ELEC. CODE § 42.001.

the commissioner's court must give notice so that the voter is made aware ahead of time.⁸⁵

107. In fact, there are even provisions in the election code, which require additional notice to be given in counties which are more populous,⁸⁶ and which indicate that the commissioners court must ensure that they file a map of new precinct boundaries with the Secretary of State.⁸⁷

108. When a county such as Harris County participates in The County Wide Voting Program, Code still maintains that it must uniformly enforce polling place locations and provide adequate notice to the voter.⁸⁸

109. The TEX. ELEC. CODE also makes clear that not just any building is satisfactory for use as a polling location.⁸⁹ The building must be public and must provide adequate access for individuals with disabilities.⁹⁰

110. And as a catch-all, to make sure that all notices and postings were keeping up with advances in technology, the legislature also added a requirement that "Not later than the 21st day before election day, a county that holds or provides election services for an

⁸⁵ TEX. ELEC. CODE § 42.035.

⁸⁶ TEX. ELEC. CODE § 42.036.

⁸⁷ TEX. ELEC. CODE § 42.037.

⁸⁸ TEX. ELEC. CODE § 43.007.

⁸⁹ TEX. ELEC. CODE § 43.031; 43.032; 42.033.

⁹⁰ TEX. ELEC. CODE § 43.034.

election and maintains an Internet website shall post on its public Internet website for an election of public officials...(1)the date of the election; (and) (2) the location of each polling place;....”⁹¹

111. And, if for some reason, a polling location for a general election (such as the Contested Election) has to change, the Code says “If the location of a polling place changes after notice of an election is given under Section 4.003, the county clerk shall give notice of the change not later than the earlier of: (1) 24 hours after the location is changed; or (2) 72 hours before the polls open on election day.”⁹²

112. Although changing a polling location, at the last minute is clearly heavily disfavored, since there is no contemplation that it ought to be changed much closer than 72 hours before the polls open on election day, if such a change must be made notice must be given at the previous location.⁹³

113. Finally, the Code notes “in an election in which detailed poll location information is available at a polling place through a computer, an election officer shall provide that information to assist voters in determining the correct polling place location for the voters election precinct.”⁹⁴

⁹¹ TEX. ELEC. CODE § 4.009(a).

⁹² TEX. ELEC. CODE § 43.061(a)-(b).

⁹³ TEX. ELEC. CODE § 43.062.

⁹⁴ TEX. ELEC. CODE § 43.063.

114. Therefore, both before and after the advent of the countywide voting program, it is clear that the legislature evidenced an intent that there be heavy emphasis placed on noticing the voter far ahead of the election of the location where they may cast their votes, and when that location might be open. So much so, that if any changes are to be made, there must immediately be notice to the voter.

115. The TEX. ELEC. CODE seems to indicate a clear preference towards never ever expecting or intending the voter to discover their polling place inoperable on Election Day.

116. It would be both in bad faith and counterfactual to indicate that the legislature and the TEX. ELEC. CODE were unconcerned with making absolutely sure that voters had advance notice of the location and time where they might be able to cast their votes on election day so that they may make a plan to do so.⁹⁵

D. THE TEX. ELEC. CODE REQUIRES CAREFUL PREPARATION, ALLOCATION AND DISTRIBUTION OF SUPPLIES

117. The election code defines “election supplies” as “equipment, ballots, forms, lists of registered voters, and all other materials necessary to conduct an election.”⁹⁶

⁹⁵ Contestants acknowledge that 4.006 of the TEX. ELEC. CODE clearly states that a failure to give notice does not automatically affect the validity of the election. Contestants’ position on that statute is that it should be strictly construed, exactly as written. In other words, the election is not invalid on its face, so that it could not be canvassed, just because an entity did not post the required notice. This is easily differentiated from the process of an election contest which the applicable statutes say may concern whether or were election officials prevented qualified voters from voting.

⁹⁶ TEX. ELEC. CODE § 51.001.

118. The procuring and allocation of elections supplies for a general election is a duty which is passed from the county clerk to the Election Administrator.⁹⁷

119. When calculating the allocation of supplies, the Election Administrator needs to 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.⁹⁸ Secretary of State prescribes procedures for determining the number of provisional ballots, which also must be provided.⁹⁹

120. There is no indication in the Code that individual counties who are participating in the county wide voting program are exempt from computing the number of ballots according to the 25+ percent rule in TEX. ELEC. CODE 51.005. In fact the Secretary of State discusses in length how counties in the county wide voting program still must comply with federal law.

121. Finally, the Code also makes the Elections Administrator, as another duty, he assumes from the county clerk, responsible for procuring and allocating supplies.¹⁰⁰

⁹⁷ TEX. ELEC. CODE § 51.003.

⁹⁸ TEX. ELEC. CODE § 51.005(a).

⁹⁹ TEX. ELEC. CODE § 51.005(c).

¹⁰⁰ TEX. ELEC. CODE § 51.003.

122. This responsibility to procure and allocate supplies includes the responsibility “to determine the quantity of the various types of supplies to be provided at each precinct polling place and early voting polling place.”¹⁰¹

123. This responsibility also specifically includes a responsibility to prepare the ballots for distribution¹⁰² and keep a record of that ballot distribution.¹⁰³

124. The appropriate election supplies, including ballots and working machines, have to be distributed by the Election Administrator to the judge of each polling location no later than one hour before the polls are required to be open for voting.¹⁰⁴

125. There is an entire section of the Code, dedicated to the adoption and acquisition of a voting system ahead of the election.¹⁰⁵ This includes specific instructions regarding the maintenance preparation, testing and distribution of all machines used for voting polling locations before the election.

126. Before any voting system can be used on election, the appropriate authority must make a decision about whether to adopt a voting system and which one, but all use of the system is governed by the terms of the Code.¹⁰⁶

¹⁰¹ TEX. ELEC. CODE § 51.003.

¹⁰² TEX. ELEC. CODE § 51.006.

¹⁰³ TEX. ELEC. CODE § 51.007.

¹⁰⁴ TEX. ELEC. CODE § 51.004(b).

¹⁰⁵ TEX. ELEC. CODE Chapter 123.

¹⁰⁶ TEX. ELEC. CODE § 123.001.

127. The Code requires that any vendor who provides electronic voting systems or equipment to vote to a political subdivision, has to provide them with operator manuals, and other instructions, or documents that relate to the use of the particular system that they have purchased.¹⁰⁷ The custodian of records has to make those documents available for inspection to the public.¹⁰⁸

128. Of key importance, is the requirement in the election code that Harris County provide for the proper maintenance and storage of equipment that it uses or acquires in the operation of a voting system.¹⁰⁹

129. There are specific instructions in the election code for creating the ballot and aligning all the parties and names correctly to ensure that the ballot is as clear as possible, and easy for the voter to use.¹¹⁰

130. Instructions must be provided on the ballot that make clear how to mark on the ballot in order for a voter's vote to be counted.¹¹¹ There also must be separate instructions for write in candidates, and there are particular regulations which govern, whether or not write-in space is to be provided.¹¹²

¹⁰⁷ TEX. ELEC. CODE § 123.008(a).

¹⁰⁸ TEX. ELEC. CODE § 123.008(a)-(b).

¹⁰⁹ TEX. ELEC. CODE § 123.034.

¹¹⁰ TEX. ELEC. CODE § 124.002; 124.003; 124.004; 124.005; 124.062; 124.0621.

¹¹¹ TEX. ELEC. CODE § 124.063.

¹¹² TEX. ELEC. CODE § 124.063(c); 124.064.

131. The Election Administrator or other appropriate authority must routinely review the instructions on the ballot so that they can be changed appropriately to reflect however many races may be on the ballot for that particular election.¹¹³ The obvious goal of these provisions is clarity to promote voter access.

132. There are to be sample ballots at each polling place. And "[t]he Secretary of State prescribes standards regarding the form, content, preparation, and use of sample ballots for voting systems."¹¹⁴ This is, again, to ensure clarity for the voter.

133. Similarly, "the Secretary of State may prescribe standards for the form, content, preparation, availability and use of specimen ballots[.]"¹¹⁵ They also may decide which elections require the use of specimen, ballots, and what alternatives may be used.¹¹⁶

134. All of these provisions are clearly part of a complex system to ensure that not only is the Elections Administrator attending to the number of ballots that they are required to allocate and produce per location, but also taking great care to ensure that the ballots are as clear as possible to reduce any impediment to the voter casting their vote.

135. As with paper, ballots and other supplies, the Elections Administrator is responsible for allocating voting system equipment across polling locations. The Election Administrator must decide what and how many pieces of voting system equipment

¹¹³ TEX. ELEC. CODE § 124.063(b)

¹¹⁴ TEX. ELEC. CODE § 124.004.

¹¹⁵ TEX. ELEC. CODE § 124.005(a).

¹¹⁶ TEX. ELEC. CODE § 124.005(b).

goes to each location, based on the number of votes cast of the polling place in previous similar elections, as well as the number of registered voters that could vote at the polling place, the number of units of equipment that he has available to distribute and any other factors that they deem are relevant.¹¹⁷

136. And because providing equipment to polling places which does not work would be no different than providing none at all, the Code makes quite clear that “[b]efore voting system equipment is delivered to a polling place for use in an election, the authority responsible for distributing the election supplies to the polling places, shall have equipment put in proper order for use as prescribed by the [S]ecretary of [S]tate.”¹¹⁸

137. The responsibility the administrator possesses to ensure the equipment is functioning does not stop with preparation.

138. The Secretary of State prescribes procedures in detail that govern the delivery of the voting system equipment to each polling place an order to protect it from tampering in damage.¹¹⁹

139. Indeed, the goal is that voting system equipment be installed at polling places “so that a voter can operate the equipment without violating the secrecy of the ballot.”¹²⁰

¹¹⁷ TEX. ELEC. CODE § 125.001.

¹¹⁸ TEX. ELEC. CODE § 125.002.

¹¹⁹ TEX. ELEC. CODE § 125.003.

¹²⁰ TEX. ELEC. CODE § 124.004(a).

140. The Code also requires that a presiding judge periodically have an election officer inspect the voting system for tampering or damage while voting is in progress. If any tampering or damage were to be discovered, the officer should immediately stop use of the equipment and report to the presiding judge was supposed to take action immediately.¹²¹

141. Harris County and the Election Administrator are responsible for ensuring that some training is provided to judges.¹²² To ensure uniformity in that training in furtherance of the legislative intent behind the Code, the Secretary of State designed a training program for judges and clerks which must be administered to them by and through the county before they can assume responsibility for their roles.¹²³

142. Ultimately, the presiding judge at the polling location is just a volunteer, with very little in the way of qualifications under the statutes.¹²⁴

143. Presiding judges are in charge of and responsible for the management, and conduct of an election at the polling place.¹²⁵ They are also in charge of assigning hours, and shifts to the clerks and alternate judges.¹²⁶

¹²¹ TEX. ELEC. CODE § 125.005.

¹²² TEX. ELEC. CODE § 31.093(b); 32.113; 32.114.

¹²³ TEX. ELEC. CODE § 32.111; 32.115.

¹²⁴ TEX. ELEC. CODE § 32.052; 32.053; 32.054; 32.055; 32.0551; 32.0552.

¹²⁵ TEX. ELEC. CODE § 32.071.

¹²⁶ TEX. ELEC. CODE § 32.072.

144. The presiding judge has the authority of a district court judge at the polling place,¹²⁷ and can appoint special peace officers to assist them in that task.¹²⁸

145. But again, the Code makes clear that the County and the appropriate authority in charge of administering the election on behalf of the County, shall provide one more training session for judges, and clerks, in a general election for free,¹²⁹ and that the Secretary of State has to assist in the training and must design the curriculums.¹³⁰

146. We can derive from this relatively heavily, skewed allocation of responsibility that the legislature intended for the book to stop with the county and the Election Administrator. When looking at the difference in responsibilities and duties between the Elections Administrator, and the judge at various polling locations, it becomes clear that the election code intended for the Election Administrator to bear the brunt of the responsibility to ensure that polling locations machines are operational, and that ballots are always available. Anything the Code requires of a presiding judge, alternate judge, or clerk, is not something they are expected to have learned on their own, but rather information and knowledge they are to have acquired from training that the Secretary of State has designed. And the county, by and through their Election Administrator, is

¹²⁷ TEX. ELEC. CODE § 32.075(c).

¹²⁸ TEX. ELEC. CODE § 32.075(b).

¹²⁹ TEX. ELEC. CODE § 32.114.

¹³⁰ TEX. ELEC. CODE § 32.111; 32.115.

supposed to have provided this training to those judges, in order to prepare them to administer elections at polling locations.

147. However, all of the options provided to the presiding judge in such a situation require that prior to the beginning of voting at that location, they were supplied with additional supplies, paper, ballots, provisional, ballots, and other mechanisms by which to utilize an emergency alternative. That means, that, in order for the presiding judge of an election location to do their job in an emergency situation. When machines are malfunctioning, the election administrator has to have followed every single requirement in the election code, regarding the preparation, distribution and allocation of supplies, or the presiding judge, alternate judge, and clerks will have no options.

148. The election code makes clear, the legislatures intent of the election officers which are serving at polling places, as well as those which are administering the election on behalf of the county, be trained in the necessary and proper operation of their voting system.¹³¹

149. The Code even specifically authorizes a voting system technician as an individual who may be present in a polling place, even if they are not voting, on request of the authority, holding the election “for the purpose of repairing, assembling, maintaining, or operating voting system equipment.”¹³² In sum, the availability of all supplies at

¹³¹ TEX. ELEC. CODE § 125.009.

¹³² TEX. ELEC. CODE § 125.010.

polling locations, as well as delivery, distribution, and operation are all the responsibility of the County.

VIII. THE SECRETARY OF STATE'S AUDIT OF THE 2020 ELECTION WAS A PORTEND OF THINGS TO COME: HARRIS COUNTY WAS WOEFULLY UNPREPARED TO FULFILL ITS STATUTORY OBLIGATIONS IN ADMINISTERING AN ELECTION

A. HARRIS COUNTY WAS THE ONLY COUNTY WHO COULD NOT OR WOULD NOT SUPPLY THE REQUIRED & NECESSARY RECORDS TO THE SECRETARY OF STATE FOR THE AUDIT

150. The Secretary of State plays a key and pivotal role in the administration of an election.

151. In keeping with the legislature's intent that elections be uniform, free, and fair¹³³ the Secretary of State is charged with enforcing uniformity in compliance across the state.¹³⁴

152. The Secretary of State's office is always a source of help and information for Election Administrators and other individuals working for the county who are responsible for administering an election. Their training program for Elections Administrators is required for every person who assumes that office.¹³⁵

¹³³ TEX. ELEC. CODE § 1.0015.

¹³⁴ TEX. ELEC. CODE § 31.003.

¹³⁵ TEX. ELEC. CODE § 31.126.

153. The Code requires the Secretary of State to provide for the content and design of all forms that are necessary to administer the election, consistent with every requirement that imposes an obligation or duty in the code.¹³⁶

154. For every supply distributed or collected, every notice given, every record kept, the Secretary of State has created a form.

155. The Secretary of State's office is also available for assistance and advice to election officials with regards to the application, operation, and interpretation of the TEX. ELEC. CODE.¹³⁷

156. It is also available to provide an informational service if ever an election official, or another person in charge of administering the election requires assistance.¹³⁸

157. The Secretary of State's office also runs a Voting Rights hotline to provide access to the common voter access to assistance if they encounter a problem exercising their right to vote.¹³⁹

¹³⁶ TEX. ELEC. CODE § 31.002.

¹³⁷ TEX. ELEC. CODE § 31.003(a); 31.004.

¹³⁸ TEX. ELEC. CODE § 31.003(b); 31.004.

¹³⁹ TEX. ELEC. CODE § 31.055.

158. In developing the judge training program¹⁴⁰ and assisting counties in administering it,¹⁴¹ the Secretary of State endeavors constantly to ensure uniformity across the state in terms of voter access and election administration.

159. An Election Administrator who is observing all of their requirements related to their duties, as well as utilizing Secretary of State training, would be able to show and demonstrate through proper documentation that they have interpreted and implemented the election code appropriately, and consistent with the interpretation developed by the Secretary of State.

160. In order to “[e]nsure that all Texas voters can have confidence in the Elections systems in our state,” the Texas Secretary of State utilized its authority to order a full forensic audit of the 2020 general election for several of the largest counties in the state of Texas.¹⁴²

161. Harris county was among the counties that were surveyed in the audit, along with Colin, Dallas, and Tarrant.¹⁴³

162. In performing the audit, the Secretary of State’s office undertook a comprehensive examination of the election records from the 2020 general election, including both

¹⁴⁰ TEX. ELEC. CODE § 32.111.

¹⁴¹ TEX. ELEC. CODE § 32.115.

¹⁴² See Contestant’s App.: Ex. 6: Final Report on Audit of 2020 General Election in Texas, at *5.

¹⁴³ See Contestant’s App.: Ex. 6: at *5.

electronic and paper documents of every county who participated.¹⁴⁴ The staff of the forensic audit division also made several trips to all four counties for on site review of the paper documents, as well as to interview election office staff when they were permitted to do so.¹⁴⁵

163. The FAD looked at polling location and tabulation data, attempting to make basic reconciliation across all levels that were available to them. They also attempted to reconcile and establish the physical security of election equipment; the adequacy of the counties training materials as well as the process for ballot by mail and provisional balloting.¹⁴⁶

164. The Secretary of State FAD also looked at various aspects of voter registration in any complaints that they might have received for each of the four counties for the 2020 election.¹⁴⁷

165. The FAD makes clear in the report that although they “reviewed an extra ordinary amount of data, it was at times, limited by the data the counties kept. Not all counties kept the same data, and none kept their data in the same way as the others.”¹⁴⁸

¹⁴⁴ See Contestant’s App.: Ex. 6: at *5.

¹⁴⁵ Id.

¹⁴⁶ Id.

¹⁴⁷ See Contestant’s App.: Ex. 6: at *6.

¹⁴⁸ Id.

166. On December 10, 2021 the FAD division of the Secretary of State sent a letter to the Elections Administrators of all four counties involved in the audit, making a request for various election records.¹⁴⁹

167. At the time, the Election Administrator in Harris county, Miss Isabel Longoria, had been sworn into office nearly a year before on November 18 of 2020. And while all the other Election Administrators provided access to their staff and voluminous accounts of all the records requested by the Secretary of State in order to perform the audit, Harris county did not.¹⁵⁰

168. Instead of providing a thorough response and access to all the records requested so that the FAD could perform the audit. Longoria told Secretary of State, John B. Scott, that she was too busy in the administration of her duties, preparing for the upcoming elections as well as implementing the changes from SB1 to set aside the needed staff and resources to collect his documents for his review.¹⁵¹ That the audit was legally required did not seem at all either persuasive to Longoria, or even relevant.

169. The responses from the other three election administrators indicate both a willingness to help and an obvious compliance with the TEX. ELEC. CODE provisions¹⁵² which require them to preserve and keep all records. It also demonstrated

¹⁴⁹ See Contestant's App.: Ex. 36.

¹⁵⁰ See Contestant's App.: Ex. 6: at *6.

¹⁵¹ See Contestant's App.: Ex. 37 at *9.

¹⁵² See Contestant's App.: Ex. 37 at *1-8.

understanding of Secretary of States inherent authority is the entity responsible for the protection of voting rights and their enforcement.¹⁵³

170. The Code provides that the Secretary of State prescribes the content, design, and form of any and all documents necessary¹⁵⁴ for the administration of each and every activity and duty in the election code. It also provides that every one of these documents and notices must be considered an election record¹⁵⁵, which must be kept.¹⁵⁶ Therefore it should be no problem for any county who is complying with those rules and regulations regarding appropriate record keeping to simply produce these records.

171. But as FAD noted in their Executive Summary,¹⁵⁷ and in their report, that Harris County was the only county not to provide those records.¹⁵⁸

B. THE AUDIT REVEALED HARRIS COUNTY HAD SEVERE DEFICIENCIES IN THEIR CHAIN OF CUSTODY FOR BALLOTS AND KEY SUPPLIES

172. Even though the FAD was unable to interview Harris County's election staff until late 2022, and only had access to limited amounts of the records. They were supposed

¹⁵³ TEX. ELEC. CODE § 31.005; 31.055; 31.006. *See* TEX. ELEC. CODE § 31.002; 31.003; 31.004; 32.111; 32.115; 31.126.

¹⁵⁴ TEX. ELEC. CODE § 31.002.

¹⁵⁵ TEX. ELEC. CODE § 1.012.

¹⁵⁶ TEX. ELEC. CODE § 1.013; 3.008.

¹⁵⁷ *See* Contestant's App.: Ex. 5.

¹⁵⁸ *See* Contestant's App.: Ex. 6: at *6-7.

to keep, the FAD was still able to determine that Harris county had severe deficiencies that would impact the efficient and legally compliant administration of an election.¹⁵⁹

1. HARRIS COUNTY HAD DEFICIENT PROCEDURES TO SECURE BALLOTS, MACHINES, AND LOCATIONS.

173. Specifically, Harris county had serious proper chain of custody issues, and was unable to provide legally required documentation for various aspects of the administration of an election.¹⁶⁰ Harris county “did not have an inventory of their warehouse records for the 2020 general election.” And of the boxes they did have, many were mislabeled.¹⁶¹

174. They were not able to provide documentation for the creation of 17 of their mobile ballot boxes and this documentation applies to at least 124,630 cast a vote records. In addition, at least 14 of the polling locations containing 184,999 cast vote records which were included in their final tally did not have proper chain of custody documentation.¹⁶²

175. Harris county was the only county that did not or could not provide to the FAD a “list of early voting or election day polling locations that had a discrepancy of one

¹⁵⁹ See Contestant’s App.: Ex. 6: at *6-7.

¹⁶⁰ Id.

¹⁶¹ Id. at *7.

¹⁶² Id. at *7.

percent or more between the number of voters that checked in to the number of votes cast at that location, “which was requested by the FAD at the outside of the audit.”¹⁶³

176. The FAD concluded in their report to the information Harris county failed to provide, was “basic reconciliation that should have been easily produced.”¹⁶⁴

177. The FAD noted “the security of the polling location, central count, and the ballots themselves - either physical or electronic - is utmost importance. County should follow strict procedures on security and maintain robust records demonstrating compliance.”¹⁶⁵

178. After examining the security of ballots another election materials, the FAD noted that Harris county also did not have a contingency plan, or any emergency response plans. It also had failed to fully complete the Election Security Toolkit made available by the Texas Secretary of State.¹⁶⁶

179. In addition, the FAD noted that the general custodian of election records must adopt procedures for storing and transporting all voting system equipment.¹⁶⁷ The Secretary of State has adopted rules defining. The classes of protected election data, as well as establishing best practices that help a County identify and reduce risk in the use of

¹⁶³ Id. at *7; *See* Contestant’s App.: Ex. 36.

¹⁶⁴ *See* Contestant’s App.: Ex. 6: at *7.

¹⁶⁵ Id.

¹⁶⁶ Id.

¹⁶⁷ Id. at *35, citing Tex. Elec. Code § 129.052.

electronic data, and in transmission and transportation during an election.¹⁶⁸ The Secretary of State has promulgated an Election Security, Best Practices Guide “that helps it explain the various plans available for use in an emergency.”¹⁶⁹

180. The Secretary of State offers the Election Security Toolkit to all the counties, along with training which allows counties to modify and implement the plans in the tool kit as would best fit their particular jurisdiction.¹⁷⁰

181. Finding Harris County lacking, the report suggested Harris “create a continued continuity of operations plan that would consider how a cyber attack or some other disaster could disrupt an Election, and that would explain all failsafes, back up processes, and Systems to keep critical functions operating if such an incident occurs.”¹⁷¹

¹⁶⁸ Id. at *38.

¹⁶⁹ Id. at *38, n.49 (Election Security Best Practices Guide, Texas Secretary of State Elections Division, (April 2020), <https://www.sos.state.tx.us/elections/forms/election-security-best-practices.pdf>)

¹⁷⁰ Id. at *n.51 (Election Security Best Practices Guide, Texas Secretary of State Elections Division, (April 2020), <https://www.sos.state.tx.us/elections/forms/election-security-best-practices.pdf>.)

¹⁷¹ Id. at *39 n.52 (The general custodian of election records shall create a contingency plan for addressing direct recording electronic voting machine failure. This plan must include the timely notification of the secretary of state. See Tex. Elec. Code § 129.056.)

182. The report notes that “overall, the four counties provided adequate training materials for election workers that address to statutory requirements in the Texas election code.”¹⁷²

183. The report noticed that the FAD was able to review materials from each of the four counties on what a poll worker must know prior to opening the polls as well as training on how to run the election while the polls are open and training on how to properly close down a polling location.¹⁷³ Therefore, the election judge just had access to all the training the SOS provided on how to generally run their polling location, but any training on a contingency plan for what to do when a voting system was attacked or went down would only go as far as what that county had established, which in Harris County’s case was none.

184. What the beginning of the report highlighted, and the executive summary mentioned, Harris county was not able to provide documentation for the creation of 17 mobile ballot boxes, which accounted for \$124,630 cast in the 2020 general election.¹⁷⁴

185. Harris county also could not produce chain of custody records for at least 14 mobile ballot boxes which when combined contained a total of 184,999 ballots included in the total tally for the general election in 2020.¹⁷⁵

¹⁷² Id.

¹⁷³ Id. at *52.

¹⁷⁴ Id.

¹⁷⁵ Id.

186. In the 2020 election Harris county used direct recording electronic devices, or DRE's for voters to cast their ballots, which do not use paper ballots, so there were no paper ballots for the audit. However, the data from the DRE's should have been available in a format that was readily and reliably ascertainable, especially if all forms were properly filled out and every tape was reliable, sealed and accounted for. This was not the case for Harris county.¹⁷⁶

187. Harris county could not provide accurate electronic public records. Electronic public records from at least 26 early voting locations and eight Election Day locations, did not match the Tally Audit Log.¹⁷⁷

188. Harris County, of the four surveyed for the audit, had the most extensive Central Count Station plan with extremely detailed instructions on reconciliation included towards the end of the package that was supposed to serve as a template for each polling place in the county when it came time to do the reconciliation.¹⁷⁸

189. After the closing of the polls, the precinct ballot counter must be locked and sealed to be delivered to the Central Counting or Central Accumulation Station,¹⁷⁹ and the

¹⁷⁶ Id. at *69.

¹⁷⁷ Id.

¹⁷⁸ Id. At *79-80.

¹⁷⁹ Id. at *76 n.183 (“Tex. Elec. Code § 127.066; Keith Ingram, Updates to Voting System Procedures – Precinct Ballot Counters and Central Accumulators, Election Advisory No. 2017-17, (Oct. 20, 2017) <https://www.sos.state.tx.us/elections/laws/advisory2017-17.shtml>.”)

voted ballots from the precinct, as well as the election records, have to be placed in a secure, transfer case,¹⁸⁰ and delivered to the presiding judge of the same.

190. The auditor for the FAD carefully noted that some counties in Texas use auxiliary locations for the drop off of certain election equipment and records on election night due to the size of the county and the feasibility of returning the records to one central location in a timely manner. These locations are referred to as rally stations or Regional sites. Although Dallas and Tarrant county, who are smaller in size than Harris County, used these, Harris county did not use one in 2020.

191. One of the goals of the audit was to reconcile data regarding the number of voters who checked into vote as compared to the number of ballots that were cast of each location as reflected in the final canvas.¹⁸¹

192. Since Harris County had the most detailed instructions in their Central Count Plan and templates to provide assistance when performing the reconciliation, it would seem that reconciling the numbers for Harris County in the audit would have been a relatively easy task. Unfortunately, the FAD was never provided with reports that “should have been available “in order to complete the consolidated reconciliation for election day or for early voting for Harris County.”¹⁸²

¹⁸⁰ Id.

¹⁸¹ Id. at *80.

¹⁸² Id. at *113.

193. The report goes into detail, illustrating with visuals from Election Day and Early Voting, how all of Harris County's records coming from election locations were inaccurate, and therefore unable to be used to perform a final complete reconciliation.¹⁸³

194. As the Secretary of State's office attempted to discern and reconcile the number of voters, who checked in at a location versus the number of ballots that were cast and countered at a particular location, it observed that there were several locations within Harris County "for which there were no entries in the Tally Audit Log, or the entries were significantly different than what was expected based on the other records available regarding those polling locations in total."¹⁸⁴ The report details that for multiple locations, the Tally Audit Log did not match their electronic Poll books or was incomplete. There are locations where the paperwork or tapes are missing in their entirety.¹⁸⁵ In plain English that means that the records Harris county kept could not reliably show how many individuals checked in at a location at all.

195. When examining the Tally Audit Log it became clear to the FAD that the log, though compiled by Harris County from records they are required by law to generate and preserve during an election, did not match those records it supposedly sourced from.

¹⁸³ Id. At *113-129.

¹⁸⁴ Id. At *129.

¹⁸⁵ Id.

196. The table the Secretary of State created, which can be found on pages 129 through 132 of the report, shows there is a wide variance between the expected CVRs and the CVRs actually recorded in the Tally Audit Logs that Harris County produced. The range of the variance starts from the total absence of a location at all in the Audit Log, to over 200,000 ballots in discrepancy as seen at one location SRD SRD 001C - The County Attorney Conference Center.¹⁸⁶

197. These discrepancies cannot be explained, even when looking further at the paperwork Harris county provided.¹⁸⁷

198. Harris county attempted at a later time to provide additional information to the FAD to assist it in the reconciliation process after Tatum became the elections administrator once Longoria was terminated. This information did not actually clarify much.¹⁸⁸ Although the information that Harris county supplemented to the FAD on October 2022, allowed them to fill in for some of the locations which were missing from the original Audit Tally Log, some records were missing because they had been destroyed along with the computers, which had been faulty, or otherwise lost in Harris County.¹⁸⁹

¹⁸⁶ Id. at *129-132.

¹⁸⁷ Id. at *132-155. Note, the Contestants find it interesting that among the records reviewed by the FAD for this audit, however incomplete, were Ballot and Seal Certificates. But when Contestant asked for the Ballot and Seal Certificates for all Election Day Polling Locations, Chris Garza, from the Harris County Attorney's office, informed counsel for the Contestant that Harris County did not keep such records.

¹⁸⁸ Id. at *155.

¹⁸⁹ Id. at * 159.

199. Importantly, however, even those supplemental records which were provided did not ultimately clarify the inability of the FAD to reconcile the information from Harris County, because the CVRs expected in those which were tabulated still did not always match.¹⁹⁰

200. Harris County claimed much of the fault for these issues was due to their usage of the Hart Legacy System which uses MBBs to store CVR's, since it had updated to a new system, called Harts Verity System, which uses a whole different method to store that information, Harris County informed the FAD that there are now procedures in place in the county, to document the proper chain of custody, and ensure that it is followed.¹⁹¹

201. But, SB1 created a new requirement that counties are required to meet that will assist with the mandated reconciliation in the Code. Specifically “a presiding judge of the central count station shall provide and attest to a written reconciliation of ballots and voters at the close of tabulation on election day. Then a final reconciliation form must be filled out after the Central County station meets for the last time to process late arriving ballots by mail and provisionals. This form shall be maintained by the county along with election returns and results. When properly filled out this form has the

¹⁹⁰ Id.

¹⁹¹ Id. at *171.

potential to alleviate many issues that played in the 2020 general election.”¹⁹² So this would determine if Harris Count corrected issues.

202. The report went into detail about the kind of chain of custody that attract along every single county, including Harris. In particular ballots, both voted ballots unvoted ballots, as well as spoiled ballots. The Secretary of State’s office made it clear that a County should be able to account for how many ballots are distributed to a particular judge in Election location, as well as how many ballots at that location were spoiled, how many ballots were returned, both voted on and not voted, as well as those spoiled at the end of the voting day.¹⁹³

203. In clarifying best practices, the report notes that the Secretary of State recommends that counties should “note the election code, provisions for each, and every form that they are replicating from the Secretary of State site in order to maintain consistency in their chain of custody procedures. Loading on their forms at the information is required by state law may cause some election workers to capture information that they may not otherwise have recorded.”¹⁹⁴

¹⁹² Id. at. *179-180.

¹⁹³ Id. At *264-268.

¹⁹⁴ Id. At *268.

204. The chain of custody procedures utilized in Harris county are supposed to be able to match and reconcile the information previously discussed, but were not distributed or collected or completed. That cannot happen.¹⁹⁵

205. Harris County had insufficient records of the results for some polling locations, and many of their Election Day reconciliation package that came from each polling location did not contain the reports for voting equipment that provided a zeroing out at the beginning and end of the day even though election judge's are required to provide this documentation.¹⁹⁶

C. THE TEXAS SECRETARY OF STATE WARNED HARRIS COUNTY OF ITS DEFICIENCIES AHEAD OF THE 2022 ELECTION - A WARNING HARRIS COUNTY FAILED TO HEED

206. Harris county's issues are indeed so serious that they were notified ahead of the election to ensure that they had an opportunity to remedy their issues before the 2022 General election.¹⁹⁷

207. The FAD notes in its report that internal inconsistencies undermine the public's confidence in the administration of the election: "Data from all of the counties had internal inconsistencies. Many sources of data existed for the same event in the election process. Ideally, the numbers from these sources would match, but in many cases the numbers were different. There are valid reasons why this may occur. But data

¹⁹⁵ Id. at *278-282.

¹⁹⁶ Id. at *313.

¹⁹⁷ Id. at *7; *See* Contestant's App.: Ex. 38.

inconsistencies, even with valid reasons, weaken the public's confidence that the election was run properly. Election officials must be more careful to ensure the data made available to the public is both accurate and consistent with other data. And if the data is not consistent, the officials must seek to rectify the issue or provide an explanation."¹⁹⁸

208. The Texas Secretary of State recommended that every county including Harris fully implement the elements of the Secretary of State's Election Security Toolkit.¹⁹⁹ Much like the obligations noted above, the FAD highlighted that the general custodian of election records for Harris county must create and maintain an inventory of all the electronics storage information, and Media, as well as develop a procedure to track the custody of each electronic storage medium from the storage location through election procedures to its final post election disposition and its return to storage.²⁰⁰

209. The report notes that the other counties had some plans in place, and were able to review them and expand them in collaboration with the FAD.²⁰¹

210. Harris County however, specifically advised the FAD that they did not believe they had a Continuity of operations and emergency response plan and that they would

¹⁹⁸ See Contestant's App.: Ex. 6: at *9.

¹⁹⁹ Id.

²⁰⁰ Id. at *34.

²⁰¹ Id. at *39-41.

check and get back to the Secretary of State's office as to whether any of these plans ever existed.²⁰²

211. Harris county also indicated the county did have protections in place to get some cyber threats, but they never produced that information to the Secretary of State's office.²⁰³

212. The report also acknowledged that the counties are responsible for providing training to election judges, alternate judges, clerks, and other election workers based on the training modules, provided by the Secretary of State.²⁰⁴

213. At the end of the day, in order to remedy the deficiencies that were laid bare in this report, Harris county would have to have committed to creating the contingency plans that it promised it would, as well as complete the Secretary of State's Emergency Tool Kit, as well as properly follow the requirements of state and federal law, regarding the placement of polling locations in the provision of notice, when those are moved or relocated, as well as correcting the issues in the creation of generation of audit, tally logs and reliance on a new system to ensure that they can reconcile the number of voters who voted versus the number who cast ballots.

²⁰² Id. at *41.

²⁰³ Id.

²⁰⁴ Id. at *51 n.72 (Election judges are required to complete training based on the standardized training program and materials developed and provided by the Texas Secretary of State. Election clerks are required to complete training regarding the acceptance and handling of identification presented by a voter. See Tex. Elec. Code § 32.114.)

214. But again, shifting the responsibility away from volunteer election judge's onto paid Election Administrators, the Secretary of State knows the best practices do require all paperwork to be kept, and for the chain of custody to demonstrate for each polling location, the name and location of the polling place, as well as how much equipment was delivered, what kind of equipment was delivered, how many ballots were delivered, and how many ballots in whatever format were returned upon the close for election day. And that no county should finalized tabulation procedures, without making an attempt to ensure that the information is always collected and kept.

215. In short the biggest issue amongst all the issues surveyed by this report, conducted by the FAD, the issue which may be seen to underlie all the other problems Harris county had in 2020, is that it maintains no Central inventory for the full scope of its own election records, contrary to guidance from the Texas Secretary of State, and the requirements of the T TEX. ELEC. CODE.²⁰⁵

216. Harris County would need to correct it's underlying issue of a lack of maintaining proper records, which causes a cascading effect among reconciliation of numbers and chain of custody issues, if it could be said to have learned anything from the audit performed on its records post 2020.

IX.A FACTUAL OVERVIEW OF ELECTION DAY: HARRIS COUNTY FAILED TO

²⁰⁵ Id. at *342.

**ENSURE ALL ELECTION DAY POLLING LOCATIONS WERE EQUIPPED TO
ACCEPT VOTERS DURING THE STATUTORY VOTING HOURS**

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

218. The law also requires that (with little few exceptions²⁰⁶), each polling place provide at least one voting station that complies with the applicable sections of the federal Rehabilitation Act of 1973 and Title II of the federal Americans with Disabilities Act as well as the requirements for accessibility under 42 U.S.C. Section 15481(a)(3).²⁰⁷ The voting station must also “provide[] a practical and effective means for voters with physical disabilities to cast a secret ballot.”²⁰⁸

219. It has become clear to contestants from a through reading of the tech call log and other discovery that judges were not given enough supplies to finish the day, and that when they called and asked for help, that help was denied. And if the judges pushed back on that denial they were told to conserve resources by sending as many voters as they could away.

A. MORE THAN 2 DOZEN ELECTION DAY POLLING LOCATIONS WERE

²⁰⁶ TEX. ELEC. CODE § 61.012(A) provides that there is an exception governed by § 61.013.

²⁰⁷ TEX. ELEC. CODE § 61.012(A) (1).

²⁰⁸ TEX. ELEC. CODE § 61.012(A) (2).

UNABLE TO ACCEPT VOTERS AT 7:00 AM

220. The TEX. ELEC. CODE requires that “At the official time for opening the polls for voting, an election officer shall open the polling place entrance and admit the voters.”²⁰⁹

221. 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 TEX. ELEC. CODE.

222. 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.²¹⁰

223. The first recorded call on the Call Log is registered as coming in at 5:40 am.²¹¹

224. The early morning calls were plagued with equipment issues, but some were far more serious than others. The log makes it clear that far more locations than the County is willing to admit to did not open on time.

²⁰⁹ TEX. ELEC. CODE § 61.002(B).

²¹⁰ 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).

²¹¹ Contestant’s App.: Ex. 35 at line *1.

225. A Judge called in at 5:49 am, to say that *all* of her machines were offline. She said that she tried calling last night but again, could not get through.²¹² This was judge was able to get her machines back online, just in time to accept voters at 7, but everyone else was not so lucky.

226. At 5:52 AM the Presiding Judge from **Kenneth J. Tice Elementary School** called in to say that she had serious issues but that in essence her Duo (that powered her machines) would not power on.²¹³ Perhaps even more importantly, she says she called last night to get assistance (presumably so as not to hold up voting on Election Day), but *no one answered the help line*.

1. Judge Linda Smith from **Helms Community Learning Center** called in at 6:41 am to say that her duos were not connecting at all.²¹⁴ She told the tech that she called Tatum's office yesterday when setting up because she could not find any help, and left a message. Her controllers were working but her duos still were not. With less than 20 minutes to go before the polls opened, she needed assistance.

2. At 6:46 am, the Presiding Judge called in to say that both they and the Tech were unable to open the location - and that the Principle of the school came out and told

²¹² *Id.* at line *15.

²¹³ *Id.* at line *6.

²¹⁴ *Id.* at line *79.

them that the polling location had been moved somewhere else. This was a mere 14 minutes before polling was to start.²¹⁵

3. Judge Linda Smith from Helms Community Learning Center called in at 6:41 am to say that her duos were not connecting at all. She told the tech that she called Tatum's office yesterday when setting up because she could not find any help, and left a message. Her controllers were working but her duos still were not. With less than 20 minutes to go before the polls opened, she needed assistance.
4. At 6:46 am, the Presiding Judge called in to say that both they and the Tech were unable to open the location - and that the Principle of the school came out and told them that the polling location had been moved somewhere else. This was a mere 14 minutes before polling was to start.
5. At 7:10 am, the Help Line received a call about BT Washington High School from the Judge, the caller reporting that "Poll Center is completely down... Voters are lined up out the door.... No luck in getting either line going." The Presiding Judge had tried to repower his equipment up multiple times, and even tried switching the data cables, but had no luck. The employee who took the call wrote that the judge "needs technical assistance ASAP." It does not appear the ticket was closed out until some time in the afternoon.
6. Meanwhile, the judge at Douglas Smith Elementary School from ALIEF ISD called in at 7:12 am to say that she wanted to "speak to a supervisor" because it was past 7:00

²¹⁵ *Id.* at line 49.

am and the location was not set up to accept voters yet. At 7:27 am a caller from Smith Elementary confirmed that, calling in and asking to speak to a supervisor because the judge would not “allow people to vote. At 7:35 am another voter called in about the school, saying the polls were not open and voters were leaving because of it. Now this voter asked to speak to a supervisor because voters were being turned away, but was told there was not one available.

7. At 7:13am, a voter called to let the County know that Bruce Elementary School still had not opened its doors, and there were voters lined up outside. As of 7:30 am Bruce Lee Elementary was still experiencing technical difficulties , and there were several voters who had been in line over an hour.
8. WI Stevenson Middle School also did not open on time, and still wasn't open at 7:15am. At 7:38 am another voter called with two complains about Stevenson Middle School, first that it was not at all is not wheel chair accessible; but secondly, that the polls there are also not opened yet.
9. Another voter waiting outside of what Contestants believe to be Foster Elementary called in upset at 7:18 am because “the voting location wasn't open yet.”
10. According to the log, Thorton Middle School still was not open at 7:28 am.
11. At 7:26 am yet another caller says that her polling location she was at was not yet open. Now the notes for the call say it opened as they were assisting the caller, but that is approximately half an hour late.

12. And by 7:29 am, Judges were already turning away voters. At 7:29 am a voter called to say that the Judge at Walker Elementary in Katy was “very discouraging and blaming the county machines for malfunctioning and just told voters to go vote somewhere else”
13. At Valley Oaks, a voter called in at 7:29 am because there was no curbside buzz available for disabled voter access. The County called the judge, but had to relay to the voter to be patient because all the machines inside are down and the Judge is just waiting on technological assistance.
14. At Ortiz Middle School voters called in around 7:32 am to say that the Judges did not know what to do, so “people [are] coming out and leaving.”
15. When a voter called in outside the polling location where Gloria Watkins was serving as a Judge to report that the doors still had not opened at 7:33 am, the County could not get any answer from Watkins.
16. At 7:34am the County had reports that Wainwright Elementary School still wasn't open. The voter called to report that after waiting until 7:20 am she was told they did not have do not have enough workers and she had to go somewhere else to vote.
17. Baker Ripley still was not organized at admitting voters at 7:37 am, and that would not be the last call the County had about Baker Ripley that morning. At 7:38 am another phone call with another voter to discuss that it was not open yet. At 7:45 another voter calls in to say Baker Ripley still isn't open. They were directed to another location down the street.

18. At 7:36 am a caller reported arriving at Bruce Elementary and being told that due to technical difficulties they could not vote there - and they were turned away and told to vote elsewhere. Again, this does not match-up with the County's position on voters being turned away from voting locations.
19. A voter called in about River Pines Elementary School to report that everything was "unorganized," and the judges and staff did not know what was going on, and said they had not been able to vote yet. The caller called it a "complete chaos" It does not appear that the County dispatched any help to River Pines.
20. Judges and staff at Park Lake Elementary School came out of the building just before 7:30 am and told everyone in line that their voting machines were are down. The caller indicated they just wanted the county to know. People would presumably have to vote elsewhere. But the log indicates the ticket was closed one minute after the call began - so it does not appear the fact that the entire location was down and turning voters away caused any alarm. It also does not appear that any help was sent here either.
21. A caller at an unknown location - Ms. Florres - said that the woman (presumably the one in charge?) had told her "some of the voting machines were not all working. That she was advised to go vote somewhere else." Now although Contestants have not yet been able to determine what location Ms. Florres was at, this call is important for two reasons.

22. First, it illustrates perfectly the point that Contestants are making in this petition: that one cannot be sure voters were not turned away from a location simply because voting continued without stopping all day. Rather, it has become clear to contestants from a through reading of the tech call log and other discovery that judges were not given enough supplies to finish the day, and that when they called and asked for help, that help was denied. And if the judges pushed back on that denial they were told to conserve resources by sending as many voters as they could away. Here is an example of just that.

23. The second reason this call is important, is that it indicates that there was no clear chain of escalation to remedy these issues. The worker tells Ms. Florres she will escalate the call, but she closes the ticket 7 minutes after the call begins. She also either did not ask or did not write down the name of the location, without which it would have been impossible to send assistance so what does the “escalation” in the status column even mean then? This is one thing Contestants had hoped to inquire of Mr. Tatum, but he did not attend his deposition, and has indicated he can’t make himself available for one until the end of the month.

24. As of 7:43 am, a voter calls in to report that Memorial Elementary School opened at least 10 minutes late, and that even after it opened half of the voting machines were not working. The voter calls this is “unacceptable.”

25. At approximately 7:48 am a voter calls in to report that the first person to be allowed to vote in Humble Civic Center did not get to do so until after 7:30am [sic]. The

caller also reported that at 7:24, the voters were told the machines were being rebooted and voter says that is “unacceptable.” Just a moment later, another caller phones in about Humble, saying that because the line was so long (presumably caused by the technical difficulties mentioned by the first caller), the Presiding Judge has turned them away, and asked them to go vote somewhere else.

26. This causes even more concern when you read entries like the one on line 309 of the log, where a very “distraught” caller phoned in because they’d been waiting in line for over an hour, and whatever location she is at can only take voters to vote “one at a time.” Clearly the issues were widespread indeed. Again, this call is marked “escalated,” but there’s no indication how that would be possible since the polling location is left off.

27. At 7:52 am, almost an hour after polling should have opened, Cypresswood Elementary still has not let anyone vote. The caller, “Sandra,” had been the 3rd person in line since 6:30 AM but still had not voted. Apparently at 7:10 AM the voters were told that they would open at 7:30 AM. Now, at 7:55 AM they still were not open and were claiming “technical difficulties” were preventing them from doing so.

28. Some other poor caller called in at 7:55 saying he was waiting in line to vote at a location that still did not have its doors open, and he too was instructed to simply “go elsewhere” to vote. The tech who took this call did not write down what location this poor man was stranded outside of, and simply marked the call “Resolved,” so it is unlikely they sent any help to get the location up and running.

29. There were multiple calls about Paul Revere Middle School, which eventually opened at 10:00 am.

30. Denver Harbor Park Community Center was still not open at 9:20 am, also due to “technical issues.”

31. One can only wonder what all the voters turned away were to do, especially when, as a caller reported when they called in at 9:15am, that the Harris County App which showed wait times for voters to find a polling place already was no longer working.

227. There is evidence that the **Ashford Elementary School**, located at 1815 Shannon Valley Drive, Houston, Tx, 77077, did not open until 11:00 am.²¹⁶

228. There is evidence that the **Baker Ripley Cleveland Campus**, located at 720 Fairmont Parkway, Pasadena, Tx, 77504, did not open until 11:00 am.²¹⁷

229. Carmen Ivonne, an Organizer with the TOP was a volunteer stationed at the Baker Ripley polling location on Election Day.²¹⁸

230. Ms. Ivonne stated in a Declaration Pursuant to TEX. CIV. PAC REM §132.001 which was attached as Ex. A to the TOP’s Original Verified Petition and Application for

²¹⁶ Contestants’ App. Ex. 23: at *20-60 (Texas Organizing Project’s Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

²¹⁷ Contestants’ App. Ex. 23: at *20-60 (Texas Organizing Project’s Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

²¹⁸ *Id.*

TRO, Temporary Injunction, and Permanent Injunction, that she reported to the Baker Ripley House location at 6:50 am on November 8, 2022, Election Day and observed a line of over 100 people there to vote.²¹⁹

231. In her declaration, Ms. Ivonne further averred that the polling location did *not* open at 7:00 am, but rather was unable to accept its first voter until approximately 11:00 am.²²⁰

232. She also noted that by 8:00 am, because voters had already waited an hour without being assisted, that some voters began to leave.²²¹

233. Ms. Ivonne indicated in her Declaration that she attempted to find other locations where people could vote instead, but she obviously could not help every voter.²²²

234. There is evidence that the **Bayland Park Community Center**, located at 6400 Bissonnet Street, Houston, Tx, 77504, did not open until 11:00 am.²²³

²¹⁹ *Id.* at ¶ 4.

²²⁰ *Id.* at ¶ 5.

²²¹ *Id.* at ¶ 6.

²²² *Id.* at ¶ 7-10.

²²³ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

235. There is evidence that the **Bruce Elementary School**, located at 510 Jensen Drive, Houston, Tx, 77020, did not open until 11:00 am.²²⁴

236. There is evidence that the **B T Washington High School**, located at 4204 Yale Street, Houston, Tx, 77018, did not open until 11:00am.

237. There is evidence that the **Cypresswood Elementary School - Music Room**, located at 6901 Cypresswood Point Avenue, Humble, Tx, 77338, did not open until 11:00 am.²²⁵

238. There is evidence that the **Douglas Smith Elementary School**, located at 11300 Stancliff Road, Houston, Tx, 77099, did not open until 11:00 am.²²⁶

239. There is evidence that the **Duessen Park Senior Center**, located at 12303 Sonnier Street, Houston, Tx, 77044, did not open until 11:00 am.²²⁷

²²⁴ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

²²⁵ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

²²⁶ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

²²⁷ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

240. There is evidence that the **Foster Elementary School**, located at 3919 Ward Street, Houston, Tx, 77021, did not open until 11:00 am.²²⁸

241. There is evidence that the **Green House International Church**, located at 16711 Ella Boulevard, Houston, Tx, 77090, did not open until 11:00 am.²²⁹

242. There is evidence that the **Helms Community Learning Center - Cafeteria**, located at 503 West 21st Street, Houston, Tx, 77008, did not open until 11:00 am.²³⁰

243. There is evidence that the **Humble Civic Center**, located at 8233 Will Clayton Parkway, Humble, Tx, 77338, did not open until 11:00 am.²³¹

²²⁸ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

²²⁹ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

²³⁰ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

²³¹ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

244. There is evidence that the **Jensen Elementary**, located at 3514 Tulip Street, Pasadena, Tx, 77504 did not open until 11:00 am.²³²

245. There is evidence that the **Kashmere Multi-Service Center**, located at 4802 Lockwood Drive, Houston, Tx, 77026, did not open until 11:00 am.²³³

246. There is evidence that the **Memorial Elementary School**, located at 6401 AMot Strret, Houston, Tx, 77007, did not open until 11:00 am.²³⁴

247. There is evidence that the **Neighborhood Center Inc, Ripley House Campus - Gym**, located at 4410 Navigation Boulevard, Houston, Tx, 77011, did not open until 11:00 am.²³⁵

²³² Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

²³³ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

²³⁴ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746. 1

²³⁵ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

248. There is evidence that the **Park Lakes Elementary School**, located at 4400 Wilson Road, Humble, Tx, 77396, did not open until 11:00 am.²³⁶

249. There is evidence that the **River Pines Elementary School**, located at 2400 Cold River Drive, Humble, Tx, 77396, did not open until 11:00 am.²³⁷

250. There is evidence that the **Saint Timothy Lutheran Church - Adult Education Building**, located at 14225 Hargrave Road, Houston, Tx, 77070, did not open until 11:00 am.²³⁸

251. There is evidence that the **Sunnyside Multi-Service Center**, located at 9314 Cullen Boulevard, Houston, Tx, 77051, did not open until 11:00 am.²³⁹

²³⁶ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

²³⁷ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

²³⁸ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

²³⁹ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

252. There is evidence that the **Thornton Middle School**, located at 19802 Keith Harrow Boulevard, Katy, Tx, 77449, did not open until 11:00 am.²⁴⁰

253. There is evidence that the **Wainwright Elementary School**, located at 5222 Milwee Street, Houston, Tx, 77092, did not open until 11:00 am.²⁴¹

254. There is evidence that the **W.I. Stevenson Middle School**, located at 9595 Winkler Drive, Houston, Tx, 77017, did not open until 11:00 am.²⁴²

255. There is evidence that the **West Gray Center**, located at 1355 West Gray Street, Houston, Tx, 77019, did not open until 11:00 am.²⁴³

256. UNSPECIFIED LOCATION #1: DID NOT OPEN UNTIL AT LEAST 7:28 AM (TECH LOG SHEET LINE 202)

²⁴⁰ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

²⁴¹ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

²⁴² Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

²⁴³ Contestants' App. Ex. 23: at *20-60 (Texas Organizing Project's Original Verified Petition and Application for TRO, Temporary Injunction, and Permanent Injunction, Ex. A-S: Declarations of Voters Pursuant to Texas Civil Practices and Remedies Code 132.001 & 28 U.S.C. 1746.

257. UNSPECIFIED LOCATION #1: DID NOT OPEN UNTIL AT LEAST 8:00 AM (TECH LOG SHEET LINE 206)

258. UNSPECIFIED LOCATION #1: DID NOT OPEN UNTIL AT LEAST 7:49 AM (TECH LOG SHEET LINE 229)

B. MORE THAN 50 ELECTION DAY POLLING LOCATIONS TURNED VOTERS AWAY BECAUSE OF SUPPLY ISSUES

259. 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.

260. *Based on information and belief Contestants allege that approximately 20% of Election Day polling locations suffered from some lack of supplies or functioning supplies, and were unable to obtain assistance from the Department of Elections before they had to turn voters away.*

261. First, there were several locations with complaints coming in related to their lack of access for disabled voters.

262. The presiding judge of **Texas Southern University** location, Alma Brown called in to report that her curbside buzzer pole is missing, along with the key to her supplies box.²⁴⁴ She also reported that the times on Duo are an hour ahead. This of course,

²⁴⁴ *Id.* at line *85.

would mean the time stamps on her poll books would be off, and would later not match the Tally Audit Log much like the data reviewed by the SOS in the 2020 Audit.

263. The presiding judge at **South Early College High School** also had to call to request an additional extension cord for curbside buzzer.²⁴⁵

264. **Green Valley Elementary School** was also reported as being inaccessible to disabled voters.²⁴⁶

265. But most judges had issues unrelated to disability access.

266. Most judges who had problems at their locations on Election Day suffered from issues related to machines, paper ballots, or both.

267. For example, both the presiding judge and the associate judge of one location called to let the County know “that the other day a tech came and placed an ‘out of service’ tag on one of their Duos, and it remains there today.”²⁴⁷ In other words, it was Election Day, but the County had left the with defective equipment.

268. The presiding judge for the **Klein Multipurpose Center** called at 6:49 am to say that he had no ballot paper and “didn’t receive any at supply handout.”²⁴⁸ There is no indication he was told he would get more, or when that would be, and the ticket is still marked “pending.”

²⁴⁵ *Id.* at line *131.

²⁴⁶ *Id.* at line *295.

²⁴⁷ *Id.* at line *95.

²⁴⁸ *Id.* at line *109.

269.The judge at **University of Houston Clear Lake** called at 7:01 am and said he did not have ballot sheets or other supplies.²⁴⁹ His call was transferred to the “judge line,” and never marked resolved.

270.The presiding judge of some unknown location called in at 7:17 am missing er Barcode Reader and Ballot paper.”²⁵⁰

271.As early 7:29 judges were begging for more with supplies. Presiding Judge Jack Vaughan called the hotline asking for more supplies because he as already running out, and was unable to get through on the helpline number he was provided for emergencies.²⁵¹ He was simply transferred.

272. There were multiple calls from voters or judges concerned that malfunctioning equipment had caused a ballot to be destroyed or eaten, and they were concerned the votes would not count. Such calls came from **Conley Elementary**,²⁵² **Smith Elementary**,²⁵³ **Kohrville Elementary School**,²⁵⁴

273.One voter was concerned about his ballot because a malfunction of equipment he was asked to drop his ballot in the emergency slot/box instead of scanning it in and he

²⁴⁹ *Id.* at line *124.

²⁵⁰ *Id.* at line *172.

²⁵¹ *Id.* at line *95.

²⁵² *Id.* at line *354.

²⁵³ *Id.* at line *356.

²⁵⁴ *Id.* at line *583.

wanted to find out what will happen to it.”²⁵⁵ This indicates that no clear directions were being provided.

274. The same issue arose at **Foster Elementary**.²⁵⁶ One voter indicated that since this is not the first time this has happened, she was beginning to "get suspicious and concerned as to why this is a reoccurrence in Kingwood polls.”²⁵⁷ This is an example of what the appellate courts mean when they discuss the idea that malfunction and error can undermine the public’s confidence in the results of an election.

275. At one point, one of the techs asked the supervisor (who earlier had been “unavailable for another voter who was outside a late opening polling place) “if a ballot was ripped due to a printer related issue [would the] ballot [sic] still be valid.?”²⁵⁸ The log says the Supervisor stated “it's still valid,”²⁵⁹ but there is no indication of how they planned to ensure that.

276. The issues relating to paper were popping up everywhere.

277. As early as before polling started there were concerns about no paper.

²⁵⁵ *Id.* at line *432.

²⁵⁶ *Id.* at line *962.

²⁵⁷ *Id.* at line *1216.

²⁵⁸ *Id.* at line *357

²⁵⁹ *Id.*

278. At 8:15 am, the County received a report that **Bayland Community Center** had no paper.²⁶⁰

279. One judge called in at 8:17 am and said she was already almost out of paper. In fact, she had only received one box for the day from the County and she insisted there was no way she'd be able to finish the day with that one box.²⁶¹

280. Another judge called in to say they ran out at 8:54 am.²⁶²

281. Judge Micheline Hutson called in from **Cy Fair College Library at Lone Star** at 9:15 am to say she was down to only 3 boxes of paper and needed more immediately.²⁶³ The tech put down her request for a delivery, but Harris County did not turn over to Contestants any paperwork evidencing that a delivery had been made to her during the day.

282. At 9:15 am the judge from called in and said they were already on their 3rd and final packet of paper, and needed more immediately.²⁶⁴ This all was also “escalated” but we have no record confirming delivery.

283. The judge from **Linkwood Park Community Center** called in and said has very little ballot paper, and she had called several times and they told her they would be

²⁶⁰ *Id.* at line *390.

²⁶¹ *Id.* at line *402.

²⁶² *Id.* at line *510.

²⁶³ *Id.* at line *550.

²⁶⁴ *Id.* at line *575.

delivering it, but had never come. She insisted she was going to run out.”²⁶⁵ Nothing appears to have ever been done for her.

284. 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.²⁶⁶

285. 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.

286. 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.

287. Contestants would show that supply allocation issues affected dozens of additional locations.

288. 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.²⁶⁷

²⁶⁵ *Id.* at line *1503.

²⁶⁶ *Id.* at line *95.

²⁶⁷ *See* Contestant’s App.: Ex. 15 at 000757.

289. 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.

290. 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.”

291. 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[.]”²⁶⁸

292. 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 admitted 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.²⁶⁹

²⁶⁸ 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).

²⁶⁹ *Id.*

293. 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.”

294. 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.)

295. 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.

296. 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.”

297. 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 in 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.”

298. 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.

299. 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.²⁷⁰

300. 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.²⁷¹

301. 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

²⁷⁰ See Contestant’s App.: Ex. 22: Series of Tweets from KHOU Reporter Michelle Choi at 000804 (https://twitter.com/michellekhou/status/1590054644411412480?s=46&t=vYQYd4tS_TdouD4dV8n2jk5DU1e1nPmEl6wz_Sl4IF0 last accessed 05/31/2023).

²⁷¹ 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).

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.

302. 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.²⁷²

303. Election Judge Chris Russo was stationed at El Lago City Hall on Election Day.

304. 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.²⁷³

305. Russo also told the Chronicle that he ran out of paper at 6 pm, with approximately 40 voters in line.²⁷⁴

²⁷² 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).

²⁷³ 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).

²⁷⁴ *Id.*

306. 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.²⁷⁵

307. More paper did not arrive until 9 pm, at which point most people had gone home already.²⁷⁶

308. 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.

309. 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.

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

311. 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.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

C. AS A RESULT OF HARRIS COUNTY'S FAILURE TO COMPLY WITH THE ELECTION CODE, POLLING TIMES HAD TO BE EXTENDED TO ACCOUNT FOR THE POLLING LOCATION MALFUNCTIONS

312. 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 TEX. ELEC. CODE, requesting that these access issues violated the election code and as such relief was warranted.²⁷⁷

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

314. 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."²⁷⁸

315. 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.

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

²⁷⁷ See Contestant's App.: Ex. 23: Cause No. 2022-73765: TOP Application to Extend Polling Hours at 000810.

²⁷⁸ Tex. Elec. Code § 43.007(d).

317. 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."²⁷⁹

318. 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.²⁸⁰

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

320. 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.

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

**D.HARRIS COUNTY'S ATTEMPTS TO PROVIDE HELP AND SUPPORT
PROVED WOEFULLY INADEQUATE**

322. There is no indication that the election code intended for presiding judges, clerks, and alternate judges to be on their own once the supplies have been dropped off and

²⁷⁹ See Contestant's App.: Ex. 23: Cause No. 2022-73765: TOP Application to Extend Polling Hours at 000810.

²⁸⁰ *Id.*

the Election has begun. It is for this reason that the preparation for allocation and distribution of supplies, including paper, ballots, and machines which are operational is so important. It is fundamental to voting that voters not be constructively evicted, or prevented from exercising their vote because there are deficient number of supplies or equipment at a polling location and judges without options.

323. Indeed, the election code indicates that when equipment malfunctions at a polling location, that the judge stop the use of that voting system, immediately upon discovering it,²⁸¹ and have it promptly repaired or replaced, if practicable involves an underlying assumption,²⁸² that the judge has ready access to the elections department and tech assistance.

324. If the presiding judge determines that the equipment cannot be promptly repaired or replaced, and voting, cannot continue by using the only equipment that remains which is operational without “substantially interfering with the orderly conduct of the election,” then the judge is supposed to conduct voting at the polling place by some alternative method.²⁸³

325. The FAD, also made sure to clearly note that if the polling place is left unattended, at any time by the election judge, after the preparation’s for voting begins, the judge

²⁸¹ TEX. ELEC. CODE § 125.006(a).

²⁸² TEX. ELEC. CODE § 125.006(b).

²⁸³ TEX. ELEC. CODE § 125.006(c).

will have to take some sort of appropriate steps to provide for the security of the polling place.²⁸⁴

326. The report noted that all election officers need to keep an emergency plan to address just the sort of incident that occurred in Harris county in the 2022 election and should endeavor to create a universe where presiding election judge's never have to leave the polling location once voting has begun to maintain the standards of security for ballots required by the election code.

327. The report notes that election judge's have to complete the training before they can serve, but that the Secretary of State does standardize training materials and curriculum are available online.²⁸⁵

328. Importantly, the report clarifies that the Secretary of State website contains videos and documents for each, and every topic that is related to the conducting of an election and how to operate a polling location.²⁸⁶

329. This means that along with the training that the Secretary of State provides for the Election Administrators, the Harris county elections department had access to every

²⁸⁴ Id. at *35-36.

²⁸⁵ Id. at n.73 (“Texas Election Training Portal, pollworkertraining.sos.texas.gov, <https://pollworkertraining.sos.texas.gov/> (last visited Dec. 12, 2022) <https://pollworkertraining.sos.texas.gov/>; Office of The Texas Secretary of State, Handbook for Election Judges and Clerks Qualifying Voters on Election Day (2022); Tex. Elec. Code § 32.111; Tex. Elec. Code § 32.114.”)

²⁸⁶ Id. at n.74 (“See Training and Education and Resources, [sos.state.tx.us](https://www.sos.state.tx.us/elections/laws/education-resources.shtml), <https://www.sos.state.tx.us/elections/laws/education-resources.shtml> (last visited Dec. 12, 2022.”)

possible training module it needed to ensure it's judges knew what to do in the event of an emergency, and how to generally run a polling location.

330. Harris county also indicated that they provided training to their judges on how to handle spoiled ballots by using the appropriate registers to keep track.²⁸⁷

331. Harris county was also the only county to provide instructions to its poll workers on what they ought to do in case of an emergency instructing their pool workers who to call and how to prepare in case they need to evacuate. This paperwork they provided indicated that when there was a problem, the judges should call the judges line at 713-755-1617.²⁸⁸

332. This means that when the judges on locations in Harris County needed to evacuate a location; or secure the voting equipment; or deal with an urgent machine malfunction or supply issue, they would simply follow the directions they were provided and contact the County.²⁸⁹

333. Therefore it would seem that so long as Harris county itself kept its promise to develop contingency plans and complete the SOS Emergency Toolkit, an answer would be available to a judge in distress post-haste. But should they fail to develop such contingency plans, there would be no help for judges who called that Judge Line.

²⁸⁷ Id. (citing TEX. ELEC. CODE § 64.007.)

²⁸⁸ Id. at *59.

²⁸⁹ Id.

334. Harris County also had issues with chain of custody as it concerned ballots and equipment relating to casting and counting votes.²⁹⁰

335. And since Harris county, heavily relied on the fact that it provided judges information in emergency as its only form of contingency plan, it must demonstrate that when the judges called that emergency number that there would be a plan in place, and help would be provided to them, since that is the only emergency plan in place from the perspective of their judges.

336. Finally, assuming that they complete the new reconciliation forms required by SBI, as well as rely heavily on the completion of the logs they claim to provide all of their judges in training, but which never showed up in the reconciliation conducted by the audit team from the FAD, then perhaps there would be a plan in a path moving forward to bring Harris county in alignment with the other large counties in the state, who run an election, much more closely aligned with the legislature scores for a uniform election.

337. Indeed, the report makes clear that one of the most important integral procedures of election integrity is chain of custody, which is “a chronological documentation or paper trail that records, the sequence of packaging, custody, control, transportation, transfer, analysis, storage, and disposition of physical or electronic evidence.”²⁹¹

²⁹⁰ Id.

²⁹¹ Id. at *261 (citing Chain of Custody Best Practices, Election Law Seminar. Texas Secretary of State, (December 2021), <https://www.sos.state.tx.us/elections/forms/seminar/2021/33rd/chain-of-custody-best-practices-2021.pptx>.)

338. But the FAD noted that in many cases poll workers in Harris County, failed to consistently fill out, available chain of custody forms, which result in huge gaps in record keeping, but more importantly, the number of chain of custody issues were observed on behalf of the Election Administrator and their team.

339. Trustworthy and transparent chain of custody procedures, would have to involve testing the voting equipment before the election, as well as being able to seal it, track it, and record all of the voting data, and every single duty ritual, and notice along the way.²⁹² In general, the Secretary of State's office believes that "the documentation of chain of custody provides evidence that voting procedures were followed. In general chain of custody practice, it should be thought of as holistic and record data collection, transparency, processing, and review.

340. But Harris County did none of these things. Not only Harris County fail to properly allocate supplies as the required by the Code, but they also failed to distribute the supplies adequately as required by the Code.

341. Failing that, The County had a duty to be prepared to provide that help. In both of these, the County failed.

342. There is no way to review what has happened and believe Harris County took their obligation regarding supplies seriously. And their lack of commitment to this cannot even characterized by the exhaustion of the day catching up with them. No - it started very, very early in the morning.

²⁹² Id. At *262.

343. Starting at 5:52 in the morning, the Judge at **South Early College High School** called in because she needed a new extension cord to allow the buzzer that for the ADA Compliant Curbside Voting Voter to indicate they are outside and need assistance.²⁹³ Without the curbside buzzer, the location cannot effectively serve disabled voters unless they permanently station someone outside to wait. Harris County had an obligation to provide those supplies, and should have responded when the Judge called, so that they would have a chance to help voters most of the day. Instead, they “[a]dvised Judge that the extension cord that was provided, will be the only extension cord that they will receive.”²⁹⁴

344. The judge at **Sinclair Elementary School** called in to the tech line for help because they could not get through to the Judge Resources line - it had been busy all day.²⁹⁵

345. The judge at the **University of Houston Downtown Girard St. Bldg** location called in to report that at 8:45am they still could not resolve the “FAIL TO WRITE VOTE” signal they’d been getting all day.²⁹⁶ The judge indicated that they had had to power the machines off and on multiple times to get it to accept even one ballot. This of course, would make their record keeping off, and could not ensure that the ballots

²⁹³ *Id.* at line *17.

²⁹⁴ *Id.*

²⁹⁵ *Id.* at line *293.

²⁹⁶ *Id.* at line *481.

were being counted. Although it is marked “escalated,” there’s no indication they rushed him any assistance.

346. The judge at the **Heritage Park Baptist Church** was having the same issue with his scanner.²⁹⁷ He too had to continue to reset his scanner between voters and he was not sure it had been working correctly although he’d deposited “several voters” in the 20-30 minutes leading up to his call.²⁹⁸ This call was marked as pending but the only actual help he appears to have been provided was the tech offering to call him back later to check on his status.²⁹⁹

347. A clerk called in from a location Contestants believe to be **Rosehill Elementary School**, called in at 10:59 am (with at least 8 hours of voting to go) to let the County know that voters are wanting to “vote by hand,” presumably because of how long people had been waiting.³⁰⁰ Instead of allowing the to do this, or to follow some emergency plan from the SOS office or that Harris County had worked up, the tech simply “Advised we do not have an option to not use the voting machines,” and then marked the ticket “resolved.”³⁰¹

²⁹⁷ *Id.* at line *528.

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.* at line *790.

³⁰¹ *Id.*

348. At 12:29 pm, with approximately 7 and 1/2 hours to go, presiding judge Loretta Taylor called in to tell the county she'd need more paper.³⁰² The tech indicated that she'd let the "supples" people know, and that they "are aware of it and keeping an eye on it."³⁰³ The tech marked it "Escalated" but also instructed Ms. Taylor to call back if she was closer to running out and no one had been by.

349. At 12:37 pm, Mr. and Mrs. Flanagan called in worried their votes would not count.³⁰⁴ Specifically, because the machines were down the clerks were, just holding all the ballots in their hands.³⁰⁵ This is obviously concerning, but Contestants cannot locate the location because the tech did not put it down, which makes it difficult to believe it was escalated as the log states.

350. At 12:48 a voter called in from **Parker Elementary** to say that the machines are not working because the Judge and Clerks did not have the necessary cables they needed from the elections office.³⁰⁶ At this point, polling had been open from several hours and this location had been working at a limited capacity. Again, the log says the claim was "escalated" but there's no record of the cables being dropped off on the Supply Reserve Log, or of other machines being substituted in. Moreover, the caller

³⁰² *Id.* at line *907.

³⁰³ *Id.*

³⁰⁴ *d.* at line *917.

³⁰⁵ *Id.*

³⁰⁶ *Id.* at line *945.

claims *another* voter came to polling location from Colton Elementary where ‘none of the machines were working,’ and there’s no indication anything was done about that location either.

351. And the rest of the log does not allow Contestant to give the County the benefit of the doubt.

352. The log is all of calls such as the one from the Judge at James E Taylor High School who called in 3-5 times asking for help with their equipment. “Spoke to PJ who said she called earlier regarding controller that is malfunctioning.”

353. At one point, the Judge from Poe Elementary School is begging for more equipment, and the tech admits that the situation is bad in so many places they don’t have a replacement for him, or for anyone anymore really.³⁰⁷ The tech tells him in fact “we are triaging the worst polling locations and only swapping out ones that are really bad.”

354. Left with no other option, one more than one judge has to break the law and leave their location unattended to try to get more paper - a transaction that would not be accounted for in a reserve log. One Judge got fed up and called to say she was going to get more ballot paper from a Hampton Inn.³⁰⁸

355. Another judge called to complain with a tenor that Contestants assume was loud and serious given the tech’s entry in the log: “BALLOT PAPER! This location needs ballot paper. Judge has called twice already requesting it. This location currently has over

³⁰⁷ *Id.* at line *1121.

³⁰⁸ *Id.* at line *1219.

100 people in line @ 6:02.”³⁰⁹ And yet, even with that entry, marked as escalated, no one collected the data, and there are no records of a delivery.

356. The County had no problem dealing with the *image* of paper losses though. The judge of the H Rogers Middle School Elementary Art Room called in because they ran out of ballots at 4:25pm. They had first requested them at noon. They were also sure to point out that they had been told that “someone called a news station, and said that this polling location received ballot paper at around 3 pm today...the location did not receive any ballot paper.”

357. The judge at El Franco Lee Community Center wanted to know “if she could transfer a box of empty ballots to another PJ, trying to call but no one’s picking up.”³¹⁰ Clearly the judges decided they were on their own.

358. 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.

359. But it is clear that the County had a duty to prepare to assist the judges and clerks who called them for help on Election Day, and then to provide that help. But they also failed to take seriously that obligation to provide assistance to the judges at polling locations when they called for help. It was this absolute refusal to take their job seriously directly led to qualified voters being turned away.

³⁰⁹ *Id.* at line *1435.

³¹⁰ *Id.* at line *1472.

E.MORE THAN 120 ELECTION DAY POLLING LOCATIONS TURNED VOTERS AWAY BECAUSE THEY LACKED SUPPLIES TO ADMINISTER THE ELECTION

360. Although Harris County’s Department of Elections, by and through its appearance at the hearing detailed above agreed to provide all the locations in need with “Supplies, including paper ballots, needed for voting and provisional ballots must be supplied to all polls[,]” the records indicated they never received the help they needed, regardless of their efforts to obtain it.

361.Indeed, as referenced previously, the Tex. Elec. Code requires that “at the official time for opening the polls for voting, an election officer shall open the polling place entrance and admit the voters.”³¹¹ But the judges at dozens locations were prevented from doing so.

362.From all accounts, the judges at these locations were performing their duties, constantly scanning their locations for stray paper and ballots,³¹² and trying their best to maintain an appropriate environment for the voter. They were thwarted however, by the insufficiency of Harris County’s help, tech, and supply lines of communication and system to deploy assistance.

363.By 7:29 am, Judges were already turning away voters. At 7:29 am a voter called to say that the Judge at Walker Elementary in Katy was “very discouraging and blaming

³¹¹ TEX. ELEC. CODE § 61.002(B).

³¹² TEX. ELEC. CODE § 61.001.

the county machines for malfunctioning and just told voters to go vote somewhere else”³¹³

364. At 7:20 am was the first time the County knew that people were being turned away because of supply issues when a caller reported that the judge at **Bruce Elementary** indicated people would not be able to vote due to technical difficulties and was told that they may have to vote elsewhere”³¹⁴ And this pattern continued all day.

365. But the County continued to pretend it was not an issue.

366. At 9:50 AM you already have the tech line telling Judges they won’t get anymore help. This judge calls in and asks for more ballot paper already knowing they will not have enough, and is "Informed that ballot paper is allocated by voter turnout.”³¹⁵ In other words “You’ve gotten all you will get; make it last.”

367. They knew at 7:42 a that even though Memorial Elementary had opened up that “half of the voting machines are not working” and they were turning voters away.³¹⁶

368. They knew about people being turned away at Bay Area Controller Center³¹⁷ and at Humble Civic Center.³¹⁸

³¹³ *Id.* at line *214.

³¹⁴ *Id.* at line *250.

³¹⁵ *Id.* at line *663.

³¹⁶ *Id.* at line *278.

³¹⁷ *Id.* at line *302.

³¹⁸ *Id.* at lines *306 and *309.

369. Before 8 am they already had voters complaining of being turned away at more than one suburban location.³¹⁹ They did nothing.

370. Moreover, the County knew that voting was continuing at locations *as voters were turned away because they were the ones giving that direction instead of giving help to get the locations back online.*

371. At just after 8 in the morning, with what would end up being 12 more hours of open polls to go, when a caller calls to find out why they keep getting turned away from locations with issues, the tech line staffer says “told them that they would just have to be directed to another location.”³²⁰

372. Less than an hour later, they tell another caller who was turned away from a voting location not that they will fix it but that “there are many locations with issues with their[sic] machines”³²¹ The location the voter was turned away from?: unknown. The tech did not supply that information, content as early as 9 am, knowing there were “many locations” with issues out there, to let voters figure it out for themselves.

373. At 1:30 in the afternoon when they were unable to help a judge over the phone resolve a paper jamming issue, they simply wrote “Advising judge to alert the rest of

³¹⁹ *Id.* at line *335.

³²⁰ *Id.* at line *472.

³²¹ *Id.* at line *482.

curbside voters that they can wait or go to another vote center” with working equipment.³²²

374. At 1:49pm, while still pretending there was no problem, they knew that the “Tracy Gee Community Center has only 5 of 30 machine working and voters told to try other locations due to wait time.”³²³

375. Even the voters who managed to get to a new polling place could not manage to vote every time because they had been checked in at the first location.³²⁴

376. Voters wanting to vote but being turned away became the norm for the call log.³²⁵

377. Ballots and help never came.³²⁶

378. Contestants allege that the following location, based on information and belief, turned away voters:

Poll ID	Polling Location	Address
21042	Above and Beyond Fellowship	20498 Rhodes Rd, Spring, Tx, 77388
11037	Acres Home Multiservice Center	6719 W Montgomery Rd, Houston, Tx, 77091

³²² *Id.* at line *1006.

³²³ *Id.* at line *1038.

³²⁴ *Id.* at line *1089.

³²⁵ *Id.* at lines *1213; 1226; 1278; 1252; 1268; 1273; 1374; 1436; 1458; 1460; 1481; 1482; 1500; 1503; 1507; 1526; 1529; 1560; 1561; 1591; 1592; and 1596.

³²⁶ *Id.* at lines *1300; 1406; 1503; 1576; and 1596.

Poll ID	Polling Location	Address
92066	African American Library	1300 Victor, Houston, Tx, 77019
72077	Albright Middle School	6315 Winkleman Rd, Houston, Tx, 77083
22066	Aldine Middle School	14908 Aldine Westfield Rd, Houston, Tx, 77032
72008	Alexander Elementary School	8500 Brookwulf Dr, Houston, Tx, 77072
52033	Armand Bayou elementary School	16000 Hickory Knoll Dr, Houston, Tx, 77059
12093	Armandina Farias Early Childhood Center	515 Rittenhouse St, Houston, Tx, 77076
82022	Ashford Elementary	1815 Shannon Valley Dr, Houston, Tx, 77077
82018	Ashford United Methodist Church	2201 S Dairy Ashford Rd, Houston, Tx, 77077
32003	Atascocita Lutheran Church	7927 FM 1960, Humble, Tx, 77346
12136	Ault Elementary School	21010 Maple Village Dr, Cypress, Tx, 77433
92118	Baker Montessori	2100 Yupon St, Houston, Tx, 77006
51013	Baker Ripley Pasadena	720 Fairmont Pkwy, Pasadena, Tx, 77504
52043	Bay Area Controller Center	5002 E NASA Pkwy, Seabrook, Tx, 77586
71060	Bayland Park Community Center	6400 Bissonnet Street, Houston, Tx, 77074
92007	Baylor College of Medicine Academy at Ryan Middle School	2610 Elgin St, Houston, Tx, 77004
12128	Berry Center Arena Foyer	8877 Barker Cypress Rd, Cypress, Tx, 77433

Poll ID	Polling Location	Address
12024	Birkes Elementary School	8500 Queenston Blvd, Houston, Tx, 77095
72063	Bonham Elementary School	8302 Braes River Dr, Houston, Tx, 77074
82033	Briargrove Elementary School	6145 San Felipe St, Houston, Tx, 77057
52032	Brookwood Elementary School	16850 Middlebrook Dr, Houston, Tx, 77059
92072	Bruce Elementary	510 Jensen Drive, Houston, Tx, 77020
12143	BT Washington High School	4204 Yale St, Houston, Tx, 77018
82003	Budewig Intermediate School	12570 Richmond Ave, Houston, Tx, 77082
12082	Buffalo Creek Elementary School	2801 Blalock Rd, Houston, Tx, 77080
22050	Burbank Middle School	315 Berry Rd, Houston, Tx, 77022
	Burnet Elementary School	5403 Canal St, Houston, Tx, 77011
72071	Burnett Bayland Community Center	6000 Chimney Rock Rd, Houston, Tx, 77081
22001	Calvary Hills Funeral Home	21723 Aldine Westfield Rd, Humble, Tx, 77338
12044	Campbell Middle School	11415 Bobcat Rd, Houston, Tx, 77064
12139	Candlelight Park Community Center	1520 Candlelight Ln, Houston, Tx, 77018
12031	Canyon Pointe Elementary School	13002 Northpointe Blvd, Tomball, Tx, 77377
52046	Captain Inn and Suites Seabrook Kemah	2901 E NASA Pkwy, Seabrook, Tx, 77586

Poll ID	Polling Location	Address
62051	Carter G Woodsen K thru 8 School	10720 Southview St, Houston, Tx, 77047
92070	Charles Eliot Elementary School	6411 Laredo St, Houston, Tx, 77020
92008	Christian Hope Baptist Church	3418 Anita St, Houston, Tx, 77004
52047	City of El Lago City Hall	411 Tallowood Dr, El Lago, Tx, 77586
52029	City of Nassau Bay Council Chamber	1800 Space Park Drive, Suite 200, Nassau Bay, Tx, 77058
52048	Clear Lake Church of the Nazarene	14310 Galveston Rd, Webster, Tx, 77598
42035	Cobb Elementary School	915 Dell Dale St, Channelview, Tx, 77530
92014	Cuney Homes Community Center	3260 Truxillo St, Houston, Tx, 77004
22101	Conley Elementary School	3345 W Greens Rd, Houston, Tx, 77066
22011	Creekside Park Junior High School	8711 Creekside Green Dr, The Woodlands, Tx, 77375
92049	Crockett Elementary School	2112 Crockett St, Houston, Tx, 77007
32065	Crosby Kindergarten Center	805 Runneburg Rd, Crosby, Tx, 77532
82052	Crowne Plaza Houston Galleria	7611 Katy Fwy, Houston, Tx, 77024
72067	Cunningham Elementary School	5100 Gulfton St, Houston, Tx, 77081
12129	Cy Fair College Library at Lone Star	9191 Barker Cypress Rd, Cypress, Tx, 77433
22003	Cypresswood Elementary School	6901 Cypresswood Point Avenue, Humble, Tx, 77338

Poll ID	Polling Location	Address
52055	Deer Park Community Center	610 E San Augustine St, Deer Park, Tx, 77536
52053	Deer Park Junior High School	410 E 9th St, Deer Park, TX 77536
91073	Denver Harbor Park Community Center	6402 Market St, Houston, TX 77020
	DeZavala Elementary School	7521 Avenue H, Houston, TX 77012
22035	Doerre Intermediate School	18218 Theiss Mail Rte Rd, Spring, TX 77379
92030	Dogan Elementary School	4202 Liberty Rd, Houston, TX 77026
72020	Douglas Smith Elementary School	11300 Stancliff Rd, Houston, Tx, 77099
32034	Deussen Park Senior Center	12303 Sonnier St, Houston, Tx, 77044
92025	Eastwood Academy Charter High School	1315 Dumble St, Houston, TX 77023
82026	Econolodge West Energy Corridor	715 S Texas 6, Houston, TX 77079
72056	Ed White Elementary School	9001 Triola Ln, Houston, TX 77036
82050	Eighth Church of Christ Scientist	11976 Memorial Dr, Houston, TX 77024
61012	El Franco Lee Community Center	9500 Hall Rd, Houston, TX 77089
82070	Element Houston Katy	23653 Grande Centre Dr, Katy, TX 77494
22027	Ehrhardt Elementary School	6603 Rosebrook Ln, Spring, TX 77379
92098	Faith American Lutheran Church	4600 Bellaire Blvd, Bellaire, TX 77401

Poll ID	Polling Location	Address
32019	Fall Creek Elementary School	14435 Mesa Dr, Humble, TX 77396
12096	First Christian Church	22101 Morton Ranch Road Katy, TX 77449
72039	Fondren Park Community Bldg	11802 Mclain Boulevard, Missouri City, TX 77071
92106	Foster Elementary School	3919 Ward St, Houston, Tx, 77021
22040	Frank Elementary School	9225 Crescent Clover Dr, Klein, TX 77379
12159	Freed Park Clubhouse	6818 Shadyvilla Ln, Houston, TX 77055
52076	Freeman Elementary School	2323 Theta St, Houston, TX 77034
22017	French Elementary School	5802 W Rayford Rd, Klein, TX 77389
12138	Garden Oaks Montessori	901 Sue Barnett Dr, Houston, TX 77018
62034	Garden Villa Park Community Center	6720 S Haywood Dr, Houston, TX 77061
52011	Golden Acres Elementary School	5232 Sycamore Ave, Pasadena, TX 77503
62037	Golfcrest Elementary School	7414 Fairway Dr, Houston, TX 77087
32042	Greater Emmanuel Family Worship Center	3915 Kelley Street, Houston, TX 77026
12073	Greater Macedonia Baptist Church	5510 West Sam Houston Parkway North, Houston, TX 77041
21102	Green House International Church	200 West Greens Road, Houston, TX 77067
42009	Green Valley Elementary School	13350 Woodforest Boulevard, Houston, TX 77015

Poll ID	Polling Location	Address
52044	GW Robinson Elementary School	451 Kirby Road, El Lago, TX 77586
12117	Hamilton Middle School	12330 Kluge Road, Cypress, TX 77429
12100	Harris County Annex 57	19818 Franz Road Enter Eastside of Building, Katy, TX 77449
21038	Harris County Public Library Barbara Bush Branch	6817 Cypresswood Drive, Spring, TX 77379
81046	Harris County Public Library Maud Smith Marks Branch Library	1815 Westgreen Boulevard, Katy, TX 77450
61011	Harris County Scarsdale Annex	10851 Scarsdale Boulevard, Houston, TX 77089
82006	Heflin Elementary School	3303 Synott Road, Houston, TX 77082
92115	Heights High School Gym	560 East 14th Street, Houston, TX 77008
92110	Helms Community Learning Center Cafeteria	503 West 21st Street, Houston, Tx, 77008
52058	Heritage Elementary School	4301 East Boulevard, Deer Park, TX 77536
62004	Heritage Park Baptist Church	2732 FM 528 Road, Webster, TX 77598
72043	Herod Elementary School	5627 Jason Street, Houston, TX 77096
72010	Hicks Elementary School	8520 Hemlock Hill Drive, Houston, TX 77083
12043	High School Ahead Academy	5320 Yale Street, Houston, TX 77091
12040	Highland Park Recreation Center	3316 De Soto Street, Houston, TX 77091
42040	Highlands Elementary School	200 East Wallisville Road, Highlands, TX 77562

Poll ID	Polling Location	Address
82025	Hilton Garden Inn Houston Energy Center	12245 Katy Freeway, Houston, TX 77079
61050	Hiram Clarke Multiservice Center	3810 West Fuqua Street, Houston, TX 77045
92058	Hogg Middle School Korean First Baptist Church	1100 Merrill Street, Houston, TX 77009
12037	Houston Community College Acres Homes Campus	630 W Little York Rd, Houston, TX 77091
82013	Houston Community College Alief Hayes Campus	2811 Hayes Road, Houston, TX 77042
	Houston Community College Northern Campus	
71066	Houston Community College West Loop Campus	5601 West Loop South, Houston, TX 77081
31082	Humble Civic Center	8233 Will Clayton Pkwy, Humble, Tx, 77338
22109	Huntwick Forest Clubhouse Recreational Facility	5300 Coral Gables Drive, Houston, TX 77069
22073	Iglesia Bautista Libre	10331 Veterans Memorial Drive, Houston, TX 77038
12046	Iglesia Trinidad Church	11602 Bobcat Road, Houston, TX 77064
12169	Image Church	20402 Chappell Knoll Drive, Cypress, TX 77433
72023	India House	8888 West Bellfort Street, Houston, TX 77031
	IPSP	
82044	James E. Taylor High School	20700 Kingsland Boulevard, Katy, TX 77450
41030	JD Walker Community Center	7613 Wade Road, Baytown, TX 77521

Poll ID	Polling Location	Address
62040	Jean Hines Caldwell Elementary School	5515 West Orem Drive, Houston, TX 77085
52012	Jensen Elementary	3514 Tulip St, Pasadena, Tx, 77504
52039	JF Ward Elementary School	1440 Bouldercrest Drive, Houston, 77062
52056	Jimmy Burke Activity Center	500 W 13 ^h St, Deer Park, Tx, 77536
11125	John Paul Landing Environmental Education Center	9950 Katy Hockley Road, Cypress, TX 77433
92041	John R Harris Elementary School	801 Broadway Street, Houston, TX 77012
62027	Jones Future Academy	7414 Saint Lo Road, Houston, TX 77033
12038	Josie Ruth Smith Academy	5815 West Little York Road, Houston, TX 77091
12102	Jowell Elementary School	6355 Greenhouse Road, Katy, TX 77449
72055	Judy Bush Elementary School	9730 Stroud Drive, Houston, TX 77036
91032	Kashmere Multi-Service Center	4802 Lockwood Dr, Houston, Tx, 77026
12007	Katherine Tyra Branch Library	16719 Clay Road, Houston, TX 77084
62025	Kelso Elementary School	5800 Southmund Street, Houston, TX 77033
42004	Kenneth J Tice Elementary School	14120 Wallisville Road, Houston, TX 77049
31059	Kingwood Community Center	4102 Rustic Woods Drive, Kingwood, TX 77345
12053	Kirk Elementary School	12421 Tanner Road, Houston, TX 77041

Poll ID	Polling Location	Address
21030	Klein Multipurpose Center	7500 FM 2920, Spring, TX 77379
22020	Klein Oak High School	22603 Northcrest Drive, Spring, TX 77389
22098	Klenk Elementary School	6111 Bourgeois Road, Houston, TX 77066
32041	Knights of Columbus Hall Council 5077	5309 Oates Road, Houston, TX 77013
22015	Kohrville Elementary School	11600 Woodland Shore Drive, Tomball, TX 77375
12019	Labay Middle School	15435 Willow River Drive, Houston, TX 77095
12075	Lafaye Johnson Lee Elementary School	12900 West Little York Road, Houston, TX 77041
32007	Lake Houston Church of Christ	8003 Farmingham Road, Humble, TX 77346
32031	Lakeshore Elementary School	13333 Breakwater Path Drive, Houston, TX 77044
12155	Landrum Middle School	2200 Ridgecrest Drive, Houston, TX 77055
62009	Laura Welch Bush Elementary School	9100 Blackhawk Boulevard, Houston, TX 77075
12106	Legacy Stadium	1830 Katyland Drive, Katy, TX 77493
22107	Lewis Elementary School	3230 Spears Road, Houston, TX 77067
22104	Link Elementary School	2815 Ridge Hollow Drive, Houston, TX 77067
92087	Linkwood Park Community Center	3699 Norris Drive, Houston, TX 77025
	Linkwood Park Elementary School	

Poll ID	Polling Location	Address
22067	Little York Volunteer Fire Station 81	10410 Airline Drive, Houston, TX 77037
52062	Lomax Junior High School	9801 North Avenue L, La Porte, TX 77571
22018	Londonderry Clubhouse	8331 London Way Drive, Spring, TX 77389
12094	Lone Star College Cypress Center	19710 Clay Road, Katy, TX 77449
92114	Love Park Community Center	1000 West 12th Street, Houston, TX 77008
82061	Mandarin Immersion Magnet School	5445 West Alabama Street, Houston, TX 77056
12011	Mayde Creek High School	19202 Groeschke Road, Houston, TX 77084
	MD Anderson Annex	
22084	Melrose Park Community Center	1001 Canino Road, Houston, TX 77076
92047	Memorial Elementary School	6401 Amot St, Houston, Tx, 77007
82055	Memorial Middle School	12550 Vindon Drive, Houston, TX 77024
12014	Metcalf Elementary School	6100 Queenston Boulevard, Houston, TX 77084
91065	Metropolitan Multiservice Center	1475 West Gray Street, Houston, TX 77019
12177	Millsap Elementary School	12424 Huffmeister Road, Cypress, TX 77429
92120	Montrose Branch Houston Public Library	4100 Montrose Boulevard, Houston, TX 77006
91052	Moody Park Community Center	3725 Fulton Street, Houston, TX 77009

Poll ID	Polling Location	Address
12104	Morton Ranch High School	21000 Franz Road, Katy, TX 77449
42047	MT. Rose COGIC City of Refuge	13000 Crosby Lynchburg Road, Crosby, TX 77532
91022	Neighborhood Centers Inc Ripley House Campus Gym	4410 Navigation Boulevard, Houston, Tx, 77011
32014	New Beulah E. Johnson Elementary School	13901 Homestead Road, Humble, TX 77396
32028	New Mount Carmel Baptist Church	4301 Weaver Road, Houston, TX 77016
12010	New Westlake Volunteer Fire Department Station	19636 Saums Road, Houston, TX 77084
12064	Norchester Clubhouse	13439 Jones Road, Houston, TX 77070
41005	North Channel Library	15741 Wallisville Road, Houston, TX 77049
42007	North Shore Middle School	120 Castlegory Road, Houston, TX 77015
12081	Northbrook Middle School	3030 Rosefield Drive, Houston, TX 77080
31061	Northeast MultiService Center	9720 Spaulding Street, Houston, TX 77016
42013	Northshore Friends Church	1013 Maxey Road, Houston, TX 77015
11123	NRG Arena	1 NRG Parkway, Houston, TX 77054
22002	Ogden Elementary School	21919 Rayford Road, Humble, TX 77338
32016	Park Lakes Elementary School	4400 Wilson Rd, Humble, Tx, 77396
52006	Park View Intermediate School	3003 Dabney Drive, Pasadena, TX 77502

Poll ID	Polling Location	Address
52018	Parkgate Community Church	3715 Preston Avenue, Pasadena, TX 77505
82010	Paul Revere Middle School	10502 Briar Forest Drive, Houston, TX 77042
82034	Pilgrim Academy	6302 Skyline Drive, Houston, TX 77057
92097	Pin Oak Middle School	4601 Glenmont Drive, Bellaire, TX 77401
32005	Pine Forest Elementary School	19702 West Lake Houston Parkway, Humble, TX 77346
82038	Piney Point Elementary School	8921 Pagewood Lane, Houston, TX 77063
92096	Poe Elementary School	5100 Hazard Street, Houston, TX 77098
12133	Pope Elementary School	19019 North Bridgeland Lake Parkway, Cypress, TX 77433
12166	Quality Suites Cyfair at Jones Road	17550 Northwest Freeway, Houston, TX 77065
92020	Raul C. Martinez Annex	1001 SSGT Macario Garcia Drive, Houston, TX 77011
92113	Resurrection Metropolitan Community Church	2025 West 11th Street, Houston, TX 77008
92077	Rice University Welcome Center	6100 Main Street, Houston, TX 77005
92067	River Oaks Elementary School	2008 Kirby Drive, Houston, TX 77019
92090	River Oaks Recreation Center	3600 Locke Lane, Houston, TX 77027
32018	River Pines Elementary School	2400 Cold River Dr, Humble, Tx, 77396
32062	Riverwood Middle School	2910 High Valley Drive, Kingwood, TX 77345

Poll ID	Polling Location	Address
92092	Roberts Elementary School	6000 Greenbriar Drive, Houston, TX 77030
22060	Roderick Paige Elementary School	7501 Curry Road, Houston, TX 77093
12006	Ronnie Truitt Middle School	6600 Addicks Satsuma Road, Houston, TX 77084
12029	Rosehill Elementary School	17950 Waller Tomball Road, Tomball, TX 77377
92033	Ross Elementary School	2819 Bay Street, Houston, TX 77026
82027	Rummel Creek Elementary School	625 Brittmoore Road, Houston, TX 77079
61031	Saint Philip Neri Catholic Church	10960 Martin Luther King Boulevard, Houston, TX 77048
22061	Saint Timothy Lutheran Church Adult Education Building	14225 Hargrave Road, Houston, Tx, 77070
12131	Salyards Middle School	21757 Fairfield Place Drive, Cypress, TX 77433
31072	San Jacinto College Generation Park	13455 Lockwood Road, Houston, 77044
12105	Sandra Bales Walker Elementary School	6424 Settlers Village Drive, Katy, TX 77449
92071	Scroggins Elementary School	400 Boyles Street, Houston, TX 77020
92006	Settegast Park Community Center	3000 Garrow Street, Houston, TX 77003
32063	Shadow Forest Elementary School	2300 Mills Branch Drive, Kingwood, TX 77345
32027	Shadydale Elementary School	5905 Tidwell Road, Houston, TX 77016
72057	Sharpstown International School	8330 Triola Lane, Houston, TX 77036

Poll ID	Polling Location	Address
72049	Shearn Elementary School	9802 Stella Link Road, Houston, TX 77025
32020	Sierra Meadow Apartments	9835 North Sam Houston Parkway East, Humble, TX 77396
92108	Sinclair Elementary School	6410 Grovewood Lane, Houston, TX 77008
62019	SJC South Campus Fine Arts Center Bldg 15	13735 Beamer Road Entrance B, Houston, TX 77089
	Smith Elementary School in Alief	
62018	South Belt Elementary School	1801 Riverstone Ranch Road, Houston, TX 77089
62058	South Early College High School	1930 Airport Boulevard, Houston, TX 77051
92082	Southside Place Park Clubhouse	3743 Garnet Street, Houston, TX 77005
72012	Southwest Community Christian Center	14880 Bellaire Boulevard, Houston, TX 77083
12086	Spring Branch Elementary School	1700 Campbell Road, Houston, TX 77080
82049	Spring Branch Memorial Library	930 Corbindale Road, Houston, TX 77024
22044	Spring Chateau	4010 FM 2920, Spring, TX 77388
22042	Spring First Church	1851 Spring Cypress Road, Spring, TX 77388
	Spring First Elementary School	
12175	Springhill Suites by Marriot Houston Northwest	20303 Chasewood Park Drive, Houston, TX 77070
92050	St. Lukes Missionary Baptist Church	714 Detering Street, Houston, TX 77007

Poll ID	Polling Location	Address
82030	St. Martin's Episcopal Church Activity Center	717 Sage Road, Houston, TX 77056
92017	St. Mary's Catholic School	3006 Rosedale Street, Houston, TX 77004
12115	St. Mary's Episcopal Church	15415 North Eldridge Parkway, Cypress, TX 77429
92054	St. Patrick Catholic Church	4918 Cochran Street, Houston, TX 77009
12041	St. Pauls Missionary Baptist Church	2516 Paul Quinn Street, Houston, TX 77091
11003	Steven Radack Community Center	2516 Paul Quinn Street, Houston, TX 77084
22039	Strack Intermediate School	18027 South Kuykendahl Road, Spring, TX 77379
62017	Stuchbery Elementary School	11210 Hughes Road, Houston, TX 77089
72062	Sugar Grove Academy	8405 Bonhomme Road, Houston, TX 77074
61059	Sunnyside Multi-Service Center	9314 Cullen Boulevard, Houston, Tx,77051
82014	Sunset Shadows Apartments Clubhouse	9850 Meadowglen Lane, Houston, TX 77042
52003	Sunset United Methodist Church	709 Allendale Road, Pasadena, TX 77502
72070	Sylvan Rodrigues Jr. Elementary School	5858 Chimney Rock Road, Houston, TX 77081
91009	Texas Southern University Terry Library	3100 Cleburne Street, Houston, TX 77004
82032	TH Roger Middle School Elementary Art Room	5840 San Felipe Street, Houston, TX 77057
	The Community Collective for Houston	

Poll ID	Polling Location	Address
62047	The Crossing Community Church	3225 West Orem Drive, Houston, TX 77045
32017	The Light of the World Christian Fellowship	16161 Old Humble Road, Humble, TX 77396
22034	Theiss Elementary School	17510 Theiss Mail Route Road, Klein, TX 77379
12057	Thomas M. Danish Elementary School	11850 Fallbrook Drive, Houston, TX 77065
12099	Thornton Middle School	19802 Keith Harrow Blvd, Katy, Tx, 77449
12015	Tipps Elementary School	5611 Queenston Boulevard, Houston, TX 77084
92140	Toyota Center	1510 Polk Street, Houston, TX 77002
81008	Tracy Gee Community Center	3599 Westcenter Drive, Houston, TX 77042
92013	Trinity Episcopal Church	1015 Holman Street, Houston, TX 77004
	Trinity Episcopal Church Baytown	
92121	Trinity Lutheran Church Downtown	800 Houston Avenue, Houston, TX 77007
82031	Unity of Houston	2929 Unity Drive, Houston, TX 77057
51038	University of Houston Clear Lake	2700 Bay Area Boulevard, Houston, TX 77058
91001	University of Houston Downtown Girard St. Bldg	201 Girard Street, Houston, TX 77002
91010	University of Houston Student Center South	4455 University Drive, Houston, TX 77004
	Unknown Location #1 (Line 202)	
	Unknown Location #2 (Line 206)	
	Unknown Location #3 (Line 229)	

Poll ID	Polling Location	Address
12160	Valley Oaks	8390 Westview Drive, Houston, TX 77055
12108	Venture Christian Church	25133 Lakecrest Manor Drive, Katy, TX 77493
52014	Vincent Miller Intermediate School	1002 Fairmont Parkway, Pasadena, TX 77054
52073	W.I. Stevenson Middle School	9595 Winkler Dr, Houston, Tx, 77017
12090	Wainwright Elementary School	5333 Milwee Street, Houston, Tx, 77092
12105	Walker Elementary School in Katy	6424 Settlers Village Drive, Katy, TX 77449
12150	Walter and Inez Stovall EC PK K School	3025 Ellington Street, Houston, TX 77088
12127	Warner Elementary School	10400 Warner Smith Boulevard, Cypress, TX 77433
82016	West Briar Middle School	13733 Brimhurst Drive, Houston, TX 77077
32071	West Campus Gym Parker Elementary School	24403 East Lake Houston Parkway, Huffman, TX 77336
	West Gray Center	1355 W Gray Street, Houston, Tx, 77019
92080	West University Community Bldg and Senior Center	6104 Auden Street, Houston, TX 77005
72046	Westbury Baptist Church	10425 Hillcroft Street, Houston, TX 77096
72025	Westbury Senior High School	11911 Chimney Rock Road, Houston, TX 77035
82048	Westland Baptist Church	1407 West Grand Parkway South, Katy, TX 77494
32009	Whispering Pines Elementary School	17321 Woodland Hills Drive, Humble, TX 77346

Poll ID	Polling Location	Address
52002	Williams Elementary School	1522 Scarborough Lane, Pasadena, TX 77502
82071	Wisdom High School	6529 Beverly Hill Street, Houston, TX 77057
12126	Woodie Coker Andre Elementary School	8111 Fry Road, Cypress, TX 77433
12135	Woodard Elementary School	17501 Cypress North Houston, Cypress, TX 77433
32032	Woodcreek Middle School	14600 Woodson Park Drive, Houston, TX 77044
82039	World Theater	1012 South Mason Road, Katy, TX 77450
22056	Worsham Elementary School	3007 Hartwick Road, Houston, TX 77093

X.A FACTUAL OVERVIEW OF THE ELECTION AND ITS RESULTS

379. On November 8, 2022 (“Election Day”), the Harris County Republican Party, by and through the Harris County Elections Administrator (the “Administrator”) conducted the Contested Race in Harris County, Texas, and Contestants and Contestees were both candidates in the race.³²⁷

380. 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.

³²⁷ See Contestants App.: Ex. 1: Canvass Report at 000033.

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

382. 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.³²⁸

383. 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.

384. Generally otherwise, Harris County must comply with the provisions regarding the section of polling places found in Chapter 43 of the Code.³²⁹

385. 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 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.*”³³⁰ Included in that

³²⁸ 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.

³²⁹ TEX. ELEC. CODE §43.

³³⁰ 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.

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.³³¹

386. 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.³³² And the number of countywide polling places within a commissioner's court precinct for a county participating in the countywide polling place program "may not exceed more than twice the number of countywide polling places located in any other commissioners court precinct."³³³

387. On October 11, 2022, the Elections Administrator presented Resolution 22-6134³³⁴ 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.³³⁵ The attached polling locations updated the proposed locations with their poll codes.³³⁶

³³¹ *Id.* See also TEX. ELEC. CODE § 43.002(C).

³³² TEX. ELEC. CODE § 43.007(m).

³³³ *supra* n.18. See also TEX. ELEC. CODE § 43.007(m)(2).

³³⁴ Contestants App. Ex. 4: Resolution 22-6134 Request for approval of updated Election Day polling locations list for the November 8, 2022 General Elections.

³³⁵ Contestants App. Ex. 3: Harris County Commissioner's Court Agenda Tuesday, October 11, 2022 at 000260.

³³⁶ Contestantss's App. Ex. 4a: Ex. 4a: 1122 Locations with Poll Codes 080222 v11 Formatted for CC 10/05/22 at 000282.

388. In all, Harris County had seven hundred thirty-eight (738) separate pre-established polling locations on Election Day.³³⁷

389. 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.”³³⁸

390. 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:

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

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

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

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

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

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

³³⁷ Conestant’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.

³³⁸ TEX. ELEC. CODE § 43.007(m)(2).

397. Votes for Daniel: 520,487; Votes for Burgess: 546,127; Total Votes: 1,066,614.
398. Votes for Dexter: 523,216; Votes for Draper: 530,441; Total Votes: 1,053,657.
399. Votes for Fraga: 514,774; Votes for Weems: 542,820; Total Votes: 1,057,594.
400. Votes for Goldberg: 516,502; Votes for Ramirez: 542,004; Total Votes: 1,058,506.
401. Votes for Mealer: 534, 720; Votes for Hidalgo: 552,903; Total Votes: 1,087,864.
402. Votes for Montgomery: 519,116; Votes for Andrews: 537,695; Total Votes: 1,056,811.
403. Votes for Scott: 515,472; Votes for Wyatt: 550,214; Total Votes: 1,065,686.
404. Votes for Simons: 520,782; Votes for Walker II: 533,538; Total Votes: 1,054,320.
405. Votes for Spjut: 516,891; Votes for Jackson: 541,026; Total Votes: 1,057,917
406. Votes for Staley: 512,942; Votes for Singh: 545,095; Total Votes: 1,058,037.
407. Votes for Stanart: 515,206; Votes for Hudspeth: 549,654; Total Votes: 1,064,860.

XI.A FACTUAL OVERVIEW OF HARRIS COUNTY'S POST ELECTION ASSESSMENT AND REMEDIAL MEASURES

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

409. 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.³³⁹

410. 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.

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

412. 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.³⁴⁰

413. 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

³³⁹ Contestants App. Ex. 10: Harris County Elections Administration Office Elections 2022 Assessment at 000700.

³⁴⁰ 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.

and deployed voting machines, VCs and election staff/election workers to support that projection.”³⁴¹

414. This does not explain 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.

415. And yet, this is what happened.

416. 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.³⁴²

417. 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 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.”³⁴³

418. 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

³⁴¹ *Id.* at 000698.

³⁴² 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).

³⁴³ *Id.*

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.”

419.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[.]”³⁴⁴

420.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 county took at either the hearing on Election Day, or in the Assessment after the fact on December 3rd.³⁴⁵

421. 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.³⁴⁶

³⁴⁴ 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.

³⁴⁵ See Contestant’s App.: Ex. 19.

³⁴⁶ See Contestant’s App.: Ex. 17.

422. Furthermore, he claimed to be able to confirm that the shipments had already arrived at five of those sites.³⁴⁷

423. 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.”³⁴⁸

424. Tatum originally called most of Election Day’s issues “routine” when 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.”³⁴⁹

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

426. Later in his assessment, the Election Administrator however, concedes that in reviewing “call logs and support tickets to gain an understanding of what occurred on

³⁴⁷ *Id.*

³⁴⁸ *See* Contestant’s App.: Ex. 14.

³⁴⁹ *See* Contestant’s App.: Ex. 19.

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.”³⁵⁰

427. 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.”³⁵¹

428. 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.”³⁵²

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

430. “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 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

³⁵⁰ *Id.* at 000700 and 000701.

³⁵¹ *Id.* at 000701.

³⁵² *Id.* 000701.

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.”

431. Various media sources have reported on the issue, another thing acknowledged by the EAO in his assessment³⁵³

432. 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.”

433. The report confirms that “Each table used to accept and qualify voters must have the following: (1) a list of registered voters, including supplemental and correction lists, or a revised original list;³⁵⁴ (2) a registration omissions list;³⁵⁵ (3) a combination form;³⁵⁶ (4) a poll list;³⁵⁷ (5) a signature roster;³⁵⁸ (6) blank affidavits (Voter with Required Documentation Who is Not on List, Affidavit of Voter Without Required

³⁵³ *Id.* at 000701.

³⁵⁴ *Id.* (citing TEX. ELEC. CODE § 18.001, 18.002, 18.003.)

³⁵⁵ *Id.* (citing TEX. ELEC. CODE § 63.005.)

³⁵⁶ *Id.* (citing TEX. ELEC. CODE § 63.004)

³⁵⁷ *Id.* (citing TEX. ELEC. CODE § 63.003.)

³⁵⁸ *Id.* (citing TEX. ELEC. CODE § 63.002.)

Identification, Voter's Similar Name Affidavit);³⁵⁹ (7) a list for tracking provisional voters;³⁶⁰ (8) reasonable impediment declarations;³⁶¹ (9) provisional ballot affidavit envelopes;³⁶² (10) Notice to Provisional Voter for Voter Voting Provisionally Due To Lack Of Acceptable Identification;³⁶³ (11) secrecy envelopes for provisional ballots;³⁶⁴ (12) statements of resident;³⁶⁵ (13) a Register of Spoiled Ballots;³⁶⁶ and (14) Request To Cancel Application To Vote By Mail forms."³⁶⁷ And that all counties were aware of this information and indicated they provided such to their judges.³⁶⁸

XII. 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 UNKNOWABLE

³⁵⁹ Id. (citing TEX. ELEC. CODE § 63.006.)

³⁶⁰ Id. (citing TEX. ADMIN. CODE § 81.173(b)(14)(B).)

³⁶¹ Id. (citing TEX. ELEC. CODE § 63.001(i).)

³⁶² Id. (citing TEX. ELEC. CODE § 63.011.)

³⁶³ Id. (citing TEX. ADMIN. CODE § 81.173(b)(13).)

³⁶⁴ Id. (citing TEX. ADMIN. CODE § 81.173(b)(10).)

³⁶⁵ Id. (citing TEX. ELEC. CODE § 63.0011.)

³⁶⁶ Id. (citing TEX. ELEC. CODE § 64.007(c).)

³⁶⁷ Id. (citing TEX. ELEC. CODE § 84.032.)

³⁶⁸ Id. at *53-43.

434. “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.”³⁶⁹

435. The purpose of the rules and regulations that govern the administration of the election are not just to create tedious requirements for the purpose of creating a morass of rules, but to ensure elections and fair and free. In fact, In the 87th legislative Session, the legislature added a clear statement to clearly state that “It is the intent of the legislature that the application of this code and the conduct of elections be uniform and consistent throughout this state to reduce the likelihood of fraud in the conduct of elections, protect the secrecy of the ballot, promote voter access, and ensure that all legally cast ballots are counted.”³⁷⁰

436. 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:

(1) prevented eligible voters from voting;

(2) failed to count legal votes; or

(3) engaged in other fraud or illegal conduct or made a mistake.”³⁷¹

³⁶⁹ *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)).

³⁷⁰ TEX. ELEC. CODE § 1.0015.

³⁷¹ TEX. ELEC. CODE § 221.003.

437. The Contestants in an election contest bear the burden of proving by clear and convincing evidence that voting irregularities materially affected the outcome of the election.³⁷²

438. 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 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.³⁷³

439. 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."³⁷⁴

440. 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,³⁷⁵ and cannot ascertain the true outcome of the election, it must declare the election void, and order a new one.³⁷⁶

³⁷² See *Tiller*, 974 S.W.2d at 772.

³⁷³ See *Casino Magic*, 43 S.W.2d at 19.

³⁷⁴ *Goodman v. Wise*, 620 S.W.2d 857, 859 (Tex. Civ. App.-Corpus Christi 1981, writ ref'd n.r.e.).

³⁷⁵ TEX. ELEC. CODE § 221.003.

³⁷⁶ TEX. ELEC. CODE § 221.012(b); *Tiller*, 974 S.W.2d at 772; *Medrano*, 769 S.W.2d at 688.

441. One of the primary purposes of the TEX. ELEC. CODE is to combat fraud, error, and mistake³⁷⁷ 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.”³⁷⁸

442. 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.

443. Although the countywide voting program does Place greater flexibility for voters by allowing him to cast a ballot at any approved location within the county on election day instead of limiting them to their home precinct, it does not change the reality that a County must adopt a methodology to determine whether each polling place will be located by assessing factors, like transportation, availability, population size, and building suitability to ensure that they are complying with the voting rights act.³⁷⁹

³⁷⁷ *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. (quote)); see also *Deffebach v. Chapel Hill Indep. Sch. Dist.*, 650 S.W.2d 510, 512 (Tex. App. -- Tyler 1983, no writ)).

³⁷⁸ *Reynolds v. Sims*, 377 U.S. 533, 560 (1964).

³⁷⁹ *Id.* At *72-73.

444. To accomplish the score the Secretary of State “strongly encourage counties to form voter center advisory committees, to obtain feedback on voting locations.”³⁸⁰

445. The report also noted that counties must establish a plan to provide notice to voters of any changes that are made in the locations of polling places, and that each polling place used in the previous general election that is not being used as a County wide polling place in this upcoming election is something the public must receive notice of.³⁸¹

446. But if it is discovered that circumstances could establish that a Counties program for choosing and designating polling locations, as well as providing notice of same, does not comply with section 43.007 of the Texas election code, the Secretary of State may revoke or rescind the termination to designate a County is successful within the county wide voting program, thereby revoking its ability to continue to participate.³⁸²

447. 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

³⁸⁰ Id. at *73 n.162 (“See Keith Ingram, 2020 Opportunities to Use Countywide Polling Places and Countywide Polling Place Program FAQs, Election Advisory No. 2019-30, (Nov. 26, 2019) <https://www.sos.texas.gov/elections/laws/advisory2019-30.shtml>.”)

³⁸¹ Id. *n.163 (“163 In adopting its methodology for determining where each polling place will be located and in creating its plan to provide notice to voters of changes to polling locations, the county is required to solicit input from organizations or persons located within the county who represent minority voters. See Tex. Elec. Code § 43.007 (h).”)

³⁸² Id. at 74 supra n.222.

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.

448. The Courts must strictly enforce the sections of the code that exist to prevent fraud,³⁸³ and the use of “may” makes this provision of the election code mandatory and not directory.

449. The Code makes it the primary job of the Election Judge to qualify the voter for voting in person.³⁸⁴

450. Any voter who is accepted for voting in person by an election judge or clerk must sign into a signature roster,³⁸⁵ and then they must be entered into the poll list, commonly called the pollbook or poll book.³⁸⁶ 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

³⁸³ *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. (quote)); see also *Deffebach v. Chapel Hill Indep. Sch. Dist.*, 650 S.W.2d 510, 512 (Tex.App.--Tyler 1983, no writ)).

³⁸⁴ TEX. ELEC. CODE §63.001.

³⁸⁵ TEX. ELEC. CODE § 63.002.

³⁸⁶ TEX. ELEC. CODE § 63.003.

with the list of registered voters.”³⁸⁷ It is unlawful and a person commits an offense if they permit an ineligible voter to vote.³⁸⁸

451. 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.³⁸⁹ 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 place³⁹⁰ - failure to do so is an offense under the Code.³⁹¹

452. 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.³⁹²

453. Nor did they adapt to one in 2022 after being noticed by the Secretary of State that it would aid in their pick up and distribution of election equipment and materials.

³⁸⁷TEX. ELEC. CODE § 63.004.

³⁸⁸ TEX. ELEC. CODE § 63.012.

³⁸⁹ TEX. ELEC. CODE § 65.013.

³⁹⁰ TEX. ELEC. CODE § 65.014(b)(1).

³⁹¹ TEX. ELEC. CODE § 65.010(d);(e).

³⁹² Contestants App. Ex. 10: Harris County Elections Administration Office Elections 2022 Assessment at 000700.

454. Because Harris county maintained no central inventory for the full scope of its own election records, it was constantly without proper paperwork, and therefore was unable to maintain chain of custody or properly reconcile any of its numbers during this audit.³⁹³

455. The Report comes to the striking conclusion that Harris County had some serious issues with regards to chain of custody and the security of ballots. Similarly, it could not verify that their electronic poll books could match the number of ballots cast correctly to the number of individuals who checked in at a polling location.

456. Media reports, however, note that anywhere from forty (40) to at least sixty-eight (68) polling locations ran out of paper at some point,³⁹⁴ 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

³⁹³ Id at *342 (citing Tex. Elec. Code 66.058; 66.052; and System Procedures Advisory, Election Advisory No. 2019-23, (Oct. 23, 2019) <https://www.sos.state.tx.us/elections/laws/advisory2019-23.shtml>.) Note federal law also requires the records be retained. 52 U.S.C. § 20701.

³⁹⁴ 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.

the almost 800 election locations 1-2 months after the election, and attempt to collect call slips and review them.³⁹⁵

457. 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.³⁹⁶

458. 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.³⁹⁷

459. The detrimental impact of such a closure could be anywhere from 1.5-3.6% compared to other poll closures in similar urban locations.³⁹⁸

460. 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

³⁹⁵ Contestants App. Ex. 10: Harris County Elections Administration Office Elections 2022 Assessment at 000700.

³⁹⁶ *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.*

³⁹⁷ 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.

³⁹⁸ *Id.*

population that uses a polling place when it closes.³⁹⁹ The only question is to what degree.

461. 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.⁴⁰⁰ Such options however, would not have been available to a person whose polling location is effectively constructively closed on Election Day.

462. Voting is a calculation that people internally do via an internal cost benefit analysis.⁴⁰¹ The voter weighs internally the opportunity cost of the time they will spend casting their ballot, and views it as cost.⁴⁰²

463. 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.⁴⁰³

³⁹⁹ *Id.*

⁴⁰⁰ *Id.* at 116-17.

⁴⁰¹ “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.

⁴⁰² *Id.* *See also* Anthony Downs. *An economic theory of democracy.* Harper and Row: New York, NY, 1957.

⁴⁰³ John H. Aldrich. Rational choice and turnout. *American Journal of Political Science*, 37(1):246-278, 1993.

464. 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.⁴⁰⁴

465. 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.⁴⁰⁵ These costs are thought to reduce when a voter repeatedly votes at the same polling place.

466. 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.

467. 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.⁴⁰⁶

468. 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

⁴⁰⁴ 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.

⁴⁰⁵ *Id.*

⁴⁰⁶ Brady and McNulty [2011] at 116.

original polling location.⁴⁰⁷ And this is when the individual is assigned a new polling location some time before Election Day, in fact before early voting.

469. 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.⁴⁰⁸

470. There is some existing research, which 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,⁴⁰⁹ 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.⁴¹⁰

⁴⁰⁷ *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.

⁴⁰⁸ Tomkins et al [2021] at 2.

⁴⁰⁹ 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.

⁴¹⁰ Brady and McNulty [2011] at 116 - 120; an Amos, Daniel A. Smith, and Casey Ste. Claire. Reprecincting and voting behavior. *Political Behavior*, 39(1):133 156, 2017.

471. 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 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.

472. 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.

473. 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.

474. 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.

475. 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."⁴¹¹ So while elections should not be overturned merely due to human error, when an election is materially impacted, they must be.

⁴¹¹ *Welch v. McKenzie*, 592 F.Supp. 1549, 1557-58 (S.D. Miss. 1984) (citing *Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964)).

476. 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,⁴¹² and the code should not be used to disenfranchise votes based on mere irregularities of procedure.⁴¹³ But what has happened in this election is not merely the irregularity of procedure.

477. 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.⁴¹⁴

478. 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.⁴¹⁵ A contestant may allege and indeed prove that “irregularities rendered impossible a determination of the majority of the voter’ true will.”⁴¹⁶

479. 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.

⁴¹² See *Alvarez*, 844 S.W.2d at 249.

⁴¹³ *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.); see also *Deffebach v. Chapel Hill Indep. Sch. Dist.*, 650 S.W.2d 510, 512 (Tex.App.--Tyler 1983, no writ)).

⁴¹⁴ Tex. Elec. Code §221.003.

⁴¹⁵ Tex. Elec. Code §221.003(a)(2)(C); *Alvarez*, 844 S.W.2d at 242.

⁴¹⁶ *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 dismiss'd w.o.j.)

480. 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.

XIII. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Contestants Mealer respectfully requests:

481. That this cause be set for trial and given precedence over all other causes as provided by law;

482. That notice of the filing of the petition and of the hearing date be given to all parties;

483. 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 issued for a new election under the supervision of the Court, for the contested office pursuant to § 232.041, TEX. ELEC. CODE ; and

484. That Contestants be awarded costs of this action and any other relief to which Contestants may be entitled.

RESPECTFULLY SUBMITTED, JULY 6TH, 2023,

/s/Elizabeth D. Alvarez
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COUNSEL FOR CONTESTANTS

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CERTIFICATE OF SERVICE

I certify that on Tuesday, July 6th, 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 TEX. ELEC. CODE via email, and through service of process.

/s/Elizabeth D. Alvarez

Elizabeth D. Alvarez

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