

2023-00964 / Court: 133

CAUSE NO.: _____

ALEXANDRA MEALER, REPUBLICAN	§	IN THE DISTRICT COURT
GENERAL ELECTION CANDIDATE FOR	§	
HARRIS COUNTY JUDGE,	§	
CONTESTANT	§	
	§	
V.	§	____ JUDICIAL DISTRICT
	§	
HON. LINA HIDALGO, DEMOCRATIC	§	
GENERAL ELECTION CANDIDATE FOR	§	
HARRIS COUNTY JUDGE,	§	
CONTESTEE	§	HARRIS COUNTY, TEXAS

CONTESTANT MEALER’S ORIGINAL PETITION FOR AN ELECTION CONTEST

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

.....

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

I. INTRODUCTION

1. “Other rights, even the most basic, are illusory if the right to vote is undermined.”²
2. The Contested Race produced tight results, results which are tainted by serious irregularities which had a disparate impact on the voting base of the Contestant.
3. Specifically, the Elections Administrator and Commissioners’ Court of Harris County, Texas have suppressed the voting rights of a not statistically insignificant number of Harris County residents residing or voting in high Republican turn-out locations, through a variety of unconstitutional, illegal, and negligent schemes resulting in the constructive closing of their polling locations on election day with no redress. Harris County offered these residents far fewer voting opportunities than non-Republican voters who vote or reside in the urban areas of Harris County.
4. In denying these residents the same opportunities to vote as other voters in Harris County, the County has prevented eligible voters from voting, and engaged in illegal conduct or made mistakes that has resulted in both undermining the confidence the public has in the election’s outcome. But more importantly, as result of these activities and inadequacies, the result of the Election as shown by the final canvass which is not the true outcome.³
5. These facts, explained in detail below, compel Contestant to bring this petition seeking a judicial remedy to which she is entitled: a new election pursuant to TEX. ELEC. CODE § 221.003 and § 221.012.

² *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

³ See TEX. ELEC. CODE § 221.003(a).

II. CLAIMS FOR RELIEF

6. Contestant brings this lawsuit under Title 14, Chapter 221 of the Texas Election Code.
7. This lawsuit arises out of provable, unlawful, and irregular violations of the law and process which clouded the true will of the electorate, preventing it from being discernible, and resulting in an election with a true outcome which cannot be ascertained.
8. Contestant asks this Court to declare that because those officially involved in the administration of the Contested Race failed to count legal votes⁴ 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.⁵
9. Contestant asks the Court to declare that an election officer or officers personally involved in the election administration prevented eligible voters from voting, failed to count legal votes, counted illegal votes, and/or engaged in fraud and other illegal conduct or mistakes which made the true result unknowable⁶.

.....

⁴ 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).

⁵ TEX. ELEC. CODE § 221.003(a).

⁶ 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.

10. Contestant also seeks for this Court to declare that an election officer or officers personally involved in the election administration made a mistake/mistakes substantial enough to affect the outcome of the election.

11. If the outcome has been rendered uncertain by voter suppression and other unlawful activity, and/or mistakes, then the Contestant requests this Court order a new election.⁷

III. DISCOVERY CONTROL PLAN

12. This matter is subject to Discovery Level 2 in accordance with the Texas Rule of Civil Procedure 190.3 in all instances NOT otherwise explicitly covered by the Texas Election Code.⁸

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

IV. PARTIES

14. Contestant Mealer is a resident of Harris County, who may be found at

. 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.

15. Contestee Hon. Lina M. Hidalgo is a resident of Harris County, who may be found at

. Contestee is the proper Defendant pursuant to § 232.003 of the Texas Election Code.

⁷ *Id.* § 221.003; § 221.012

⁸ TEX. ELEC. CODE § 231.002.

V. JURISDICTION & VENUE

16. Contestant brings this action pursuant to Title 14, Chapter 232 of the TEX. ELEC. CODE, to contest the results of the Contested Race held on November 8, 2022 to select the Harris County Judge. Therefore, Harris County is the proper venue for this matter pursuant to § 232.006(c) of the TEX. ELEC. CODE.⁹

17. This Election Contest was timely filed because the Contestant filed his initial petition not later than the 45th day after the date of the official result the contested election was determined,⁰ rolled forward to the next business day.

18. A district court in Harris County has original and exclusive jurisdiction over this matter pursuant to § 221.02 of the TEX. ELEC. CODE ²

19. 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. ³ Therefore, the presiding judge of the administrative judicial region must assign a special judge to preside in the contest.

⁹ TEX. ELEC. CODE § 232.006(c).

⁰ *Id.* § 232.008(c).

Id. § 1.006.

² TEX. ELEC. CODE § 221.002(a) (“Except as otherwise provided by this section, the district court has exclusive original jurisdiction of an election contest.”)

³ “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).

VI. NOTICE TO THE SECRETARY OF STATE

21. A copy of this petition was delivered to the Texas Secretary of State as required by the Texas Election Code.⁴

VII. FACTS

A. THE ELECTION AND ITS RESULTS

22. 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 Contestant and Contestee were both candidates in the race.⁵

23. 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.

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

25. 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.⁶

⁴ TEX. ELEC. CODE § 232.008(d).

⁵ See Contestant’s App.: Ex. 1: Canvass Report at 000033.

⁶ 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.

26. 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.

27. Generally otherwise, Harris County must comply with the provisions regarding the section of polling places found in Chapter 43 of the Code.⁷

28. 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.*"¹⁸ Included in that compliance scheme, is a requirement that Harris County may not designate a location for a polling place which would require a voter in the precinct to travel more than twenty-five (25) miles from their residence to the polling place.⁹

29. 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.²⁰ 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

⁷ TEX. ELEC. CODE §43.

⁸ 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.

⁹ *Id.* See also TEX. ELEC. CODE § 43.002(C).

²⁰ TEX. ELEC. CODE § 43.007(m).

twice the number of countywide polling places located in any other commissioners court precinct.”²

30. On October 11, 2022, the Elections Administrator presented Resolution 22-6134²² 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.²³ The attached polling locations updated the proposed locations with their poll codes.²⁴

31. In all, Harris County had seven hundred thirty-eight (738) separate pre-established polling locations on Election Day.²⁵

32. 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.”²⁶

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

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

²³ Contestant’s App. Ex. 3: Harris County Commissioner’s Court Agenda Tuesday, October 11, 2022 at 000260.

²⁴ Contestant’s App. Ex. 4a: Ex. 4a: 1122 Locations with Poll Codes 080222 v11 Formatted for CC 10/05/22 at 000282.

²⁵ 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.

²⁶ TEX. ELEC. CODE § 43.007(m)(2).

33. The Canvassing Authority, by and through the Harris County Elections Administrator tabulated each kind of balloting separately. The returns, published on the County Elections website (which one can only presume are those results which were sent and certified to the Texas Secretary of State²⁷) show that a total of 1,087,864 ballots were cast in this election (including the provisional ballots eventually qualified and included in vote totals).²⁸ Documents produced by the election department reflect how many ballots were cast in the Contested Race: (i) throughout early voting, across the county; (ii) through mail-in balloting, across the county; and (iii) in person on election day.²⁹

34. The Canvass Report shows the final vote total as 534,720 for Contestee Hidalgo, and 552,903 for Contestant Mealer.³⁰

B. DETAILS OF CONSTRUCTIVE POLL CLOSURES

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

36. 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

²⁷ Contestant will verify this by making a motion under Tex. Elec. Code § 221.008 for those records to be produced before the Court.

²⁸ Conestant's App. Ex. 1: Harris County Canvass Report, at 000033.

²⁹ *Id.*

³⁰ *Id.*

this much is true, originally stating in his update that at least 20 locations reported running out of paper.³

37. 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.³²

38. The Elections Administrator told the Commissioner's Court in his Assessment of his office's performance of the General Election that "Over 1 million voters turning out to vote for the entire election. The EAO projected 1.2 million voters. The EAO identified and deployed voting machines, VCs and election staff/election workers to support that projection."³³

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

40. And yet, this is what happened. Later in his assessment, the Elections Administrator concedes that in reviewing "call logs and support tickets to gain an understanding of what occurred on Election Day," that "[t]EAO's call logs reflect that the Help Desk received calls from 46 VCs (5.9%) requesting additional paper on Election Day."³⁴

³ Contestant's App. Ex. 10: Harris County Elections Administration Office Elections 2022 Assessment at 000700.

³² See Contestant's 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.

³³ *Id.* at 000698.

³⁴ *Id.* at 000700 and 000701.

41. 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.”³⁵

42. 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.”³⁶

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

“The EAO’s analysis from the PJ and AJ calls is largely inconclusive due to the fact that several of the PJs and AJs from the same VCs gave conflicting reports on whether the VC actually ran out of paper, and that many responses did not explain whether the VCs had to turn voters away. According to PJ calls, several VCs (68) reported running out of their initial allotment of paper, although most of them (61) received additional deliveries, according to their respective PJs. In addition, 22 AJs for these 68 VCs gave conflicting reports, stating that they did not run out of paper at all. 64 AJs reported that they ran out of their initial allotment of paper, and 58 of those judges reported receiving paper deliveries. Again, 20 of the PJs for the same VCs reported that they did not run out of paper at all.”

44. Various media sources have reported on the issue, another thing acknowledged by the EAO in his assessment³⁷

³⁵ *Id.* at 000701.

³⁶ *Id.* 000701.

³⁷ *Id.* at 000701.

45. 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."

VIII. 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

42. "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."³⁸

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

"to ascertain whether the outcome of the contested election, as shown by the final canvass, is not the true outcome because:

(1) illegal votes were counted; or

(2) an election officer or other person officially involved in the administration of the election:

(A) prevented eligible voters from voting;

(B) failed to count legal votes; or

(C) engaged in other fraud or illegal conduct or made a mistake."³⁹

44. The contestant in an election contest bears the burden of proving by clear and convincing evidence that voting irregularities materially affected the outcome of the election.⁴⁰ The trial court's job must review the facts before it and decide, as the trier of fact, whether or not, based

³⁸ *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)).

³⁹ TEX. ELEC. CODE § 221.003.

⁴⁰ See *Tiller*, 974 S.W.2d at 772.

on a clear and convincing standard, the the contestant 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.⁴ 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.”⁴²

45.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,⁴³ and cannot ascertain the true outcome of the election, it must declare the election void, and order a new one.⁴⁴

46. One of the primary purposes of the Texas Election Code is to combat fraud, error, and mistake⁴⁵ 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.”⁴⁶

⁴ See *Casino Magic*, 43 S.W.2d at 19.

⁴² *Goodman v. Wise*, 620 S.W.2d 857, 859 (Tex. Civ. App.-Corpus Christi 1981, writ ref'd n.r.e.).

⁴³ TEX. ELEC. CODE § 221.003.

⁴⁴ TEX. ELEC. CODE § 221.012(b); *Tiller*, 974 S.W.2d at 772; *Medrano*, 769 S.W.2d at 688.

⁴⁵ *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 disp'd w.o.j. (quote)); see also *Deffebach v. Chapel Hill Indep. Sch. Dist.*, 650 S.W.2d 510, 512 (Tex.App.--Tyler 1983, no writ)).

⁴⁶ *Reynolds v. Sims*, 377 U.S. 533, 560 (1964).

47. 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.

48. Contestant will show that the actions of Harris County precipitated the suppression of the votes of a not statistically insignificant number of Harris County voters, through the use of quantitative analysis to model the number of voters that were probably disenfranchised from voting at each location.

49. The Code makes it the primary job of the Election Judge to qualify the voter for voting in person.⁴⁷ The Courts must strictly enforce the sections of the code that exist to prevent fraud,⁴⁸ and the use of “may” makes this provision of the election code mandatory and not directory.

50. Any voter who is accepted for voting in person by an election judge or clerk must sign into a signature roster,⁴⁹ and then they must be entered into the poll list, commonly called the pollbook or poll book.⁵⁰ 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

⁴⁷ TEX. ELEC. CODE §63.001.

⁴⁸ *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)).

⁴⁹ TEX. ELEC. CODE § 63.002.

⁵⁰ TEX. ELEC. CODE § 63.003.

acceptance of voters at polling places with each other or with the list of registered voters.”⁵⁵ It is unlawful and a person commits an offense if they permit an ineligible voter to vote.⁵²

51. 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.⁵³ 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 place⁵⁴ - failure to do so is an offense under the Code.⁵⁵

52. 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.⁵⁶

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⁵ TEX. ELEC. CODE § 63.004.

⁵² TEX. ELEC. CODE § 63.012.

⁵³ TEX. ELEC. CODE § 65.013.

⁵⁴ TEX. ELEC. CODE § 65.014(b)(1).

⁵⁵ TEX. ELEC. CODE § 65.010(d);(e).

⁵⁶ Contestant’s App. Ex. 10: Harris County Elections Administration Office Elections 2022 Assessment at 000700.

53. Media reports, however, note that anywhere from forty (40) to at least sixty-eight (68) polling locations ran out of paper at some point,⁵⁷ and also note that because the EAO has conceded it does not have the tools or wherewithal to track complaints contemporaneously their only method of investigation is to call election workers from the almost 800 election locations 1-2 months after the election, and attempt to collect call slips and review them.⁵⁸
54. 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.⁵⁹
55. 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.⁶⁰

⁵⁷ Contestant’s 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.

⁵⁸ Contestant’s App. Ex. 10: Harris County Elections Administration Office Elections 2022 Assessment at 000700.

⁵⁹ 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.

⁶⁰ 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.

56. The detrimental impact of such a closure could be anywhere from 1.5-3.6% compared to other poll closures in similar urban locations.⁶

57. There have been however, three waves of scholarship that discuss the impact of poll closures on a community in Texas, before the elimination of pre-clearance for Texas after the *Shelby v. Holder* decision; the period just following the *Shelby* decision; and the period following the move towards county wide voting centers in Texas. But all these waves agree that there is a statistically significant impact on voter turnout for the population that uses a polling place when it closes.⁶² The only question is to what degree.

58. 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.⁶³ Such options however, would have been available to a person whose polling location is effectively constructively closed on Election Day.

⁶ *Id.*

⁶² *Id.*

⁶³ *Id.* at 116-17.

59. Voting is a calculation that people internally do via an internal cost benefit analysis.⁶⁴ The voter weighs internally the opportunity cost of the time they will spend casting their ballot, and views it as cost.⁶⁵

60. 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.⁶⁶

61. 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.⁶⁷

62. 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.⁶⁸ These costs are thought to reduce when a voter repeatedly votes at the same polling place.

⁶⁴ "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.

⁶⁵ *Id.* *See also* Anthony Downs. *An economic theory of democracy*. Harper and Row: New York, NY, 1957.

⁶⁶ John H. Aldrich. Rational choice and turnout. *American Journal of Political Science*, 37(1):246-278, 1993.

⁶⁷ 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.

⁶⁸ *Id.*

63. 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.

64. 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.⁶⁹

65. In fact, when voters find out *before* election day that they can no longer vote at their regular voting location, they are two percentage points less likely to cast an in-person ballot on Election Day, even if that location is equally far from their house as was the original polling location.⁷⁰ And this is when the individual is assigned a new polling location some time before Election Day, in fact before early voting.

66. There is also work that demonstrates 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.⁷

67. There is some existing research shows that most potential voters who are dissuaded from voting in-person on Election Day by changes that result in increases in search and transportation costs will simply switch to early in-person voting or another form of

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⁶⁹ Brady and McNulty [2011] at 116.

⁷⁰ *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 percentage point decline, and Yoder [2018] and Clinton et al. [2019] finding less.” at 2.

⁷ Tomkins et al [2021] at 2.

convenience voting,⁷² 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.⁷³

68. 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.

69. 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.

70. 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.

71. 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.

⁷² 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.

⁷³ 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.

72. 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.”⁷⁴ So while elections should not be overturned merely due to human error, when an election is materially impacted, they must be.

73. 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,⁷⁵ and the code should not be used to disenfranchise votes based on mere irregularities of procedure.⁷⁶ But what has happened in this election is not merely the irregularity of procedure. Rather, there is such gross error, stemming from acts that could only be the result of intentional fraud or such gross error and incompetence as to shock the conscious and undermine the public's faith in the outcome as reported because it is these terrible errors which have disenfranchised them.

74. 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.

75. Upon conclusion of the Inspection of Election Records and Discovery, on good faith and belief, Contestant 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

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⁷⁴ *Welch v. McKenzie*, 592 F.Supp. 1549, 1557-58 (S.D. Miss. 1984) (citing *Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964)).

⁷⁵ *See Alvarez*, 844 S.W.2d at 249.

⁷⁶ *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)).

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 Contestant lost to make the true outcome of the election unknowable, requiring another one.

IX. PRAYER & RELIEF

WHEREFORE, PREMISES CONSIDERED, Contestant Mealer respectfully requests:

76. That this cause be set for trial and given precedence over all other causes as provided by law;
77. That notice of the filing of the petition and of the hearing date be given to all parties;
78. That if, after hearing the evidence, the true outcome of the election can be determined to show that Contestant is the lawful winner, that Contestant be declared the winner of the Race and declared Harris County Judge; or
79. In the alternative, that if the outcome of the election as reflected in the canvass is not the true outcome, and it is impossible to ascertain the true results, that the election be declared void and an order issue for a new election under the supervision of the Court, for the contested office pursuant to § 232.041, TEX. ELEC. CODE ; and
80. That Contestant be awarded costs of this action and any other relief to which Contestant may be entitled.

RESPECTFULLY SUBMITTED, JANUARY 5TH, 2022,

/s/Elizabeth D. Alvarez
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Texas Bar No. 24071942

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COUNSEL FOR CONTESTANT

Alexandra Mealer

CERTIFICATE OF SERVICE

I certify that on Thursday, January 5, 2020, I served a copy of this Petition on the Contestee, and their counsel of record if known, in accordance with the Texas Rules of Civil Procedure and the Texas Election Code via email, and through service of process.

/s/Elizabeth D. Alvarez

Elizabeth D. Alvarez

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Joshua Alvarez on behalf of Elizabeth Alvarez
Bar No. 24071942
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Status as of 1/6/2023 11:20 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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