IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

LAURA PRESSLEY, ROBERT BAGWELL, TERESA SOLI, THOMAS L. KORKMAS, and MODELON HIGHSMITH *Plaintiffs*,	§	
v.	§	Civil Action No. 1:24-cv-00318
JANE NELSON, in her official capacity as the Texas Secretary of State, CHRISTINA ADKINS, in her official capacity as the Director of the Elections Division of the Texas Secretary of State, BRIDGETTE ESCOBEDO, in her official capacity as Williamson County Elections Administrator, DESI ROBERTS, in his official capacity as Bell County Elections Administrator, and ANDREA WILSON, in her official capacity as Llano County Elections Administrator, *Defendants.*	§	

DEFENDANTS' JOINT RESPONSE TO PLAINTIFFS' BRIEF ON MOOTNESS

TO THE HONORABLE JUDGE EZRA:

Defendants Texas Secretary of State Jane Nelson and Texas Elections Director Christina Adkins in their official capacities (collectively, the "Secretary of State Defendants"), and Defendants Williamson County, Bell County, and Llano County (collectively, the "County Defendants") file this Response to Plaintiffs' Brief on Mootness.

I. INTRODUCTION

Since Plaintiffs filed their suit, two of the Defendant Counties—Williamson and Bell—

have altered their procedures to consecutively number their ballots. Plaintiffs had alleged that randomly-generated numbers—as opposed to consecutive numbers—printed on ballots posed a risk to the secrecy of ballots because individuals could allegedly request and receive these documents and corresponding voter lists under the Texas Public Information Act and match voters with their ballots by applying an undefined "algorithm." In addition, Secretary of State Election Advisory No. 2024-21, issued in June 2024, prohibits any county, including Williamson and Bell, from generating ballot numbers using electronic pollbook systems or using peripheral devices that directly connect to electronic pollbook systems. Plaintiffs had previously contended that the algorithm worked because the ballot numbers were generated in such way, as opposed to being consecutively numbered. Thus, Plaintiffs' claims that the secrecy of the ballot is at risk for these two reasons in Williamson and Bell County are moot.

Llano County does not generate ballot numbers using electronic pollbook systems or peripheral devices that directly connect to electronic pollbook systems. There is no information printed on the ballot that can be connected back to the voter and no reports that can be generated identifying any particular voter to any unique identifier. The voting process in Llano County already complied with requirements of Secretary of State Election Advisory No. 2024-21. Therefore, Plaintiffs have no basis to demand any of these changes of Llano County, and their entire case—with respect to all Defendants—is moot.

Further, because of Attorney General Opinion No. KP-0463, which requires counties to redact identifying information in response to open records requests, ballot information that might reveal how an individual voter voted is adequately protected regardless of any county's ballot numbering system. Plaintiffs' Brief contains no argument nor evidence to the contrary.

Accordingly, KP-0463, along with the interpretive guidance of Secretary of State Election Advisory No. 2024-20, renders the case triply moot. Importantly, ballot secrecy is the only remedy requested in this suit *potentially* guaranteed by the Fourteenth Amendment. There is no good faith basis to claim that the Fourteenth Amendment requires any specific means or method to protect the secrecy and security of ballots, and it would be beyond the *Ex parte Young* exception to entertain that notion. Thus, Plaintiffs' arguments that their suit is not moot because the Secretary of State Defendants are allegedly not in compliance with *state* law are entirely frivolous. This court does not have jurisdiction over claims alleging state law violations. And since their allegations of violations of federal law are moot, the case should be dismissed.

II. ARGUMENT

A. The case is moot because Williamson and Bell Counties have begun printing consecutive numbers on their ballots.

As Plaintiffs note in their brief, both Bell and Williamson Counties have complied with Secretary of State Election Advisory No. 2024-21 and utilize consecutively numbered paper ballots, and do not assign a computer-generated unique identifier either via electronic voting system software or hardware. (Dkt. #79 at ¶¶ 3-4). Plaintiffs also admit that compliance with Advisory 2024-21 is mandatory and nondiscretionary by Defendants Roberts and Escobedo ("Advisory 2024-21 communicates two changes to the State Defendants' in-person voting ballot marking device ballot numbering policy: (1) prohibition against generating 'ballot numbers using electronic pollbooks' and (2) the requirement 'to use ballot numbering methods that do not involve the use of the electronic pollbook system." (Dkt. #79 at ¶ 7)). As detailed *supra,* the voluntary cessation doctrine is inapplicable to this case as to Defendants Roberts and Escobedo because they, as Plaintiffs admit, are prohibited from generating ballot numbers using electronic pollbooks.

Plaintiffs' red herring dispute over the technical capabilities of the electronic pollbook systems is therefore inapposite to their mootness argument.

In addition, Tex. Attorney General Opinion No. KP-0463 and Tex. Secretary of State Election Advisory 2024-20 requires Roberts and Escobedo to redact all personally identifiable information contained in election records and keep voter secrecy data confidential. These actions, taken together, moot Plaintiffs' claims as to Defendants Roberts and Escobedo, as Plaintiffs cannot allege that there is a non-speculative ongoing harm to them by either Defendant. *See Eubanks v. Nelson*, No. 23-10936, 2024 WL 1434449 *2 (5th Cir. Apr. 3, 2024); *Lutostanski v. Brown*, 88 F.4th 582, 586-7 (5th Cir. 2023). Plaintiffs cannot show there is an actual controversy remaining between them and the County Defendants with regard to protecting voter secrecy data from disclosure. (Dkt. #79 at ¶¶ 52-54).

Since the relief requested by Plaintiffs has already been mandated by the Secretary of State and implemented by Bell and Williamson Counties, this case is moot as to Defendants Roberts and Escobedo, and this case must be dismissed as to them. (Dkt. #79 at ¶¶ 6–8).

B. This case is moot against Llano County.

As referenced in Plaintiff's brief, Llano County complied with the requirements discussed in Secretary of State Election Advisory No. 2024-21 prior to its issuance. In Llano County, the election process neither generates ballot numbers using electronic pollbook systems nor uses peripheral devices that directly connect to electronic pollbook systems. As stated in Advisory No. 2024-21, the Secretary of State's Office "has the authority to adopt specific standards for the certification of electronic pollbook systems and to adopt specific requirements relating to the form and content of electronic voting system ballots, including the methods used to comply with requirements in Texas law relating to the numbering of ballots." Tex. Sec'y State Elec. Adv. No.

2024-21. Thus, the Secretary of State's Office "revised the standards for certification of an electronic pollbook system [-- prohibiting] the generation of ballot numbers using electronic pollbook systems or using peripheral devices that directly connect to electronic pollbook systems." *Id.*

Plaintiffs have not and cannot demonstrate a basis to demand any changes to the election process in Llano County and their entire case is moot. It is clear that Plaintiffs either misunderstand the voting equipment in Llano County or misinterpret the information associated with the equipment and the election process. In Llano County, "there are three (3) separate and independent processes taking place at the polling location – (1) verification that the voter is qualified at the poll pad; (2) the voter has been provided with the correct ballot style and the ability to mark their correct ballot style; and (3) the voter casts their ballot." *See* Exhibit 1. The Knowink Poll Pad verifies that the voter is qualified to vote and a barcode with no identifying information to the voter is printed only for the purpose of providing a correct ballot style for the voter. *Id.* The Hart Verity Controller ("Controller") verifies the ballot style only and confirms that it matches the ballot style provided to the voter during the verification process. The Hart Verity Controller is separate and independent and is in no way tied to the Knowink Poll Pad and does not contain any identifying information of the voter. *Id.* Upon confirmation of the ballot style, "an access code is printed for the voter to utilize at the voting booth at the Hart Verity Duo ("Duo"), also known as a ballot marking device. The Controller and Duo are linked with the various ballot styles and are not linked to the voter's information from the Poll Pad." *Id.* Following marking their selections, the voter will print their ballot – "no data regarding their selections is saved on the Duo once the ballot has been printed and cannot be reprinted or duplicated anywhere." *Id.* The ballot is then

scanned into the Hart Verity Scanner which accepts the ballot and deposits it into the ballot bag. *Id.*

"No information printed on the ballot can be connected back to the voter as no information is saved on the Controller and Duo and no reports can be generated identifying any particular voter or unique identifier. A voter could choose to write down the randomly generated unique identifier listed on their printed ballot and release it to the public, as Ms. Highsmith did in this matter. There would still be no way for anyone to identify any other voters or cast ballots. Although a list of unique identifiers can be printed from the Controller, the Controller doesn't contain personal identifying information as it is not linked to the Poll Pad and cannot be linked to any specific voter. Further, the voter's selections on their marked ballot are not retained and cannot be reprinted or linked to any unique identifiers." *Id.*

Further, Texas Attorney General Opinion No. KP-0463 provides that "[a]ny personally identifiable information contained in election records that could tie a voter's identity to their specific voting selections must be redacted for purposes of disclosure to protect the constitutional right to a secret ballot in Texas." Tex. Att'y Gen. Op. No. KP-0463. Similarly, Secretary of State Election Advisory No. 2024-20 entitled "Emergency Guidance of Voter Privacy" dated June 6, 2024, provides that "[t]he purpose of this advisory is to address concerns regarding the constitutional right to a secret ballot." Tex. Sec'y State Elec. Adv. No. 2024-20. "If an election official receives a public information request for specific election records and/or ballot images and the county election official determines that producing the records in their original form could compromise a voter's right to a secret ballot, the official should consider additional redactions in consultation with their county or district attorney and public information coordinator. Below are

some specific categories to consider when evaluating a public information request.

- Possible Redactions
  - Location at which a voter voted on the early voting roster or any associated epollbook reports
  - Serial numbers and time stamps on epollbook reports
  - Polling place identifiers such as a ballot number (either electronic or pre-printed) on the ballot image
  - Precinct information on the ballot image
  - Presiding judge's signature or early voting clerk's initials on the back of a ballot
  - Information on chain of custody documents that provide location identifiers that would appear on a ballot
  - Information on a ballot inventory form that shows what range of pre-printed ballot numbers are assigned to a given location
  - Provisional notations on specific ballots
  - Date a ballot was received on an Early Voting Roster
  - The voter's name and the ballot serial number on the Register of Spoiled Ballots."

Id.

The election process in Llano County, Texas Attorney General Opinion No. KP-0463, and Secretary of State Election Advisory No. 2024-20 taken together, moot Plaintiffs' claims as to Defendant Wilson, as Plaintiffs cannot allege that there is a non-speculative ongoing harm to them by Defendant Wilson. *See Eubanks v. Nelson*, No. 23-10936, 2024 WL 1434449 *2 (5th Cir. Apr. 3, 2024) and *Lutostanski v. Brown*, 88 F.4th 582, 586-7 (5th Cir. 2023). Plaintiffs cannot show there is an actual controversy remaining between them and the County Defendants with regard to protecting voter secrecy data from disclosure. (Dkt. #79 at ¶¶ 52-54).

As demonstrated above, the Court should dismiss Plaintiffs' claims against Defendant Andrea Wilson as moot.

C. This case is moot because of Attorney General Opinion No. KP-0463.

Attorney General Opinion No. KP-0463 requires counties to redact any personally identifiable information contained in election records in response to an open records request that

could tie a voter's identity to their specific voting selections.[1] (Dkt. #46-2); *see also id.* (Dkt. #46-3). Secretary of State Election Advisory No. 2024-20 provides guidance on what type of information state law requires to be redacted to protect the secrecy of the ballot. *See* (Dkt. #46-1). Plaintiffs' theory of their Complaint hinged on the public's alleged ability to violate ballot secrecy through the application of an "algorithm" to documents one could allegedly obtain through the Texas Public Information Act. *See, e.g.,* (Dkt. #32 at ¶¶ 114, 116, 119). Plaintiffs did not address Attorney General Opinion No. KP-0463 or Secretary of State Election Advisory No. 2024-20 in their Brief on Mootness, seemingly conceding that they no longer contend there is a risk of possible breaches of ballot secrecy due to the inclusion of information in documents the public could potentially obtain by submitting open records requests. *See generally* (Dkt. #79). This concession is dispositive—warranting dismissal regardless of pollbooks or ballot numbering.

Indeed, the only discussion remotely touching on whether it is still possible to violate ballot secrecy without these open records—which Plaintiffs allegedly received unredacted from Williamson County in the past—is their conclusory statement that the mere "capability" of an electronic voting machine to randomly assign numbers—as opposed to consecutively numbered ballots—is seemingly a violation of the Fourteenth Amendment.[2] (Dkt. #79 at ¶ 35). This moving of the goalposts warrants no credibility. Plaintiffs, in fact, contended the *opposite* in their Complaint—arguing that a county need not replace its voting machines to guarantee ballot secrecy. (Dkt. #32 at ¶¶ 152–53). Plaintiffs alleged that the County Defendants, as allegedly Dallas,

[1] Secretary of State Election Advisory No. 2024-20 provides guidance on the type of information that KP-0463 requires a county election official to redact in order to protect the secrecy of the ballot in response to an open records request. *See* (Dkt #46-1).

[2] Plaintiffs also make the conclusory claim that mere use of uncertified equipment "directly" resulted in the breach of ballot secrecy in Williamson County, but entirely fail to factually allege—much less provide evidence—how any breach of ballot secrecy could result from mere use of alleged "uncertified"—whatever they mean by that term—equipment divorced from the open records component. (Dkt. #79 at ¶ 31).

Jefferson, Ellis, and Hood Counties had already done, need only turn off the unique ballot tracking number feature of their voting machines to protect the secrecy of the ballot. (Dkt. #32 at ¶¶ 58–59, 100). To argue the opposite in an attempt to avoid dismissal for mootness—without any supporting evidence—warrants rejection out of hand.[3]

Simply put, Texas law, as evidenced by Election Advisory No. 2024-20, which interprets Attorney General Opinion No. KP-0463, which itself is an interpretation of pre-existing law found in article VI, section 4, of the Texas Constitution, guarantees Texas citizens the right to a secret ballot. Neither Plaintiffs' Brief nor their Complaint contain any factual allegations, much less evidence, demonstrating how ballot security breaches—without using open records requests—might be accomplished. Thus, without this puzzle piece, Plaintiffs' entire premise falls apart. The whole case is moot regardless of whether or how the County Defendants print or number their ballots.

D. Plaintiffs cannot survive dismissal by pointing to actions they allege the Secretary of State is required to take under state law.

The Plaintiffs concede that Secretary of State Election Advisory No. 2024-21 prohibits, for all counties where applicable—e.g., Williamson and Bell—"the generation of ballot numbers using electronic pollbook systems or using peripheral devices that directly connect to electronic pollbook systems"—relief they have requested in this suit. (Dkt. #79 at ¶¶ 6–8). Accordingly, this issue is moot. As for their contention that the case is not moot because, according to them, the ballot secrecy allegations should have been mooted in a different or additional way, that argument is baseless because mootness can occur and require dismissal regardless of the method of

[3] None of the paragraphs cited in Plaintiffs' footnote 43 in fact alleged that the mere capability to assign randomly generated numbers to ballots was a threat to ballot secrecy. The Court is not required to accept new legal theories—especially ones such as these—advanced out of a mere attempt to survive dismissal.

accomplishment. *See Center for Indiv. Freedom v. Carmouche*, 449 F.3d 655, 661 (5th Cir. 2006) ("[A]ny set of circumstances that eliminates actual controversy after the commencement of a lawsuit renders that action moot.").

For example, Plaintiffs contend the case is not moot because the Secretary of State Defendants: 1) have not prohibited the placement of "unique identifiers" on ballots used in Llano County or other counties that use the Hart Intercivic voting systems;[4] (Dkt. #79 at ¶¶ 7–10); 2) have not issued an order requiring all counties to consecutively number their ballots; (Dkt. #79 at ¶ 11); 3) have not changed their minds regarding their interpretation of state law; (Dkt. #79 at ¶¶ 12–17); 4) have not rescinded a 2019 Advisory Opinion or a certain e-mail; (Dkt. #79 at ¶¶ 18–21); 5) "continue to waive certification requirements for ES&S ExpressLink and Activation Card printer [sic] … and electronic pollbooks;" and 6) allegedly only issued an advisory, not an order directed at a specific election official abusing their authority pursuant to section 31.005 of the Election Code. (Dkt. #79 at ¶¶ 31–46). To neatly summarize these arguments, Plaintiffs are asking the Court to order the Secretary of State Defendants to act in line with the Plaintiffs' interpretation of state law and undertake certain affirmative actions within the discretion granted to them by state law. Thus, not only would such actions be *at most* superfluous—redundant to the mootness already resulting from the actions discussed above—ordering such relief was never on the table because it is outside the Court's jurisdiction due to the state's sovereign immunity and inapplicability of the *Ex parte Young* exception. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984); *Williams On Behalf of J.E. v. Reeves*, 954 F.3d 729, 740 (5th Cir. 2020); *Stern v. Tarrant County Hospital Dist.*, 778 F.2d 1052, 1059 (5th Cir. 1985) (en banc), *cert. denied* 476 U.S. 1108 (1986).

[4] To do so would be unnecessary. *See supra* § B.

"The appropriate standard is one of federal law." *Neuwirth v. La. State Bd. of Dentistry*, 845 F.2d 553, 558 (5th Cir. 1988); *see also Richardson v. Tex. Sec'y of State*, 978 F.3d 220, 242 (5th Cir. 2020) (prohibiting court's ruling ordering affirmative discretionary actions). Accordingly, these arguments fail to demonstrate the case is not moot.

In a similar vein, Plaintiffs contend without any legal support that their suit is not moot because the Secretary of State Defendants "have not entered into a legally binding consent decree to cease all actions that breach ballot secrecy and violate Plaintiffs' constitutional rights." (Dkt. #79 at ¶¶ 38–39). But as with the above, *any* set of circumstances that eliminates the actual controversy between the parties will require dismissal for mootness. *Carmouche*, 449 F.3d at 661. A binding consent decree has never been a requirement of mootness.

To summarize, the only possible *federal law* question is whether the secrecy of the ballot is secured. As discussed above, that federal question is moot—any actual controversy regarding this issue has been addressed in multiple ways. Since the Fourteenth Amendment says nothing about pollbooks, how ballots should be numbered, or any other issue discussed by Plaintiffs, the Court cannot issue a declaratory judgment applying state law to these issues. Moreover, to the extent Plaintiffs mean to argue that the case is not moot because the Secretary of State did not issue an Election Advisory affecting voters in counties other than the counties in which they live, *see* (Dkt. #79 at ¶ 11), this contention—as with any contention respecting voters in other counties—likewise has no relevance to mootness because the Plaintiffs simply lack standing to present such grievances on behalf of others when they themselves would not benefit. *See Hernandez v. Cremer*, 913 F.2d 230, 233 (5th Cir. 1990) (holding that if the litigant will not benefit from issuance of an injunction, the case is moot).

E. The voluntary cessation doctrine is not applicable.

1. The voluntary cessation doctrine is inapplicable to Bell and Williamson County Defendants.

In attempting to address both the inapplicability of the "voluntary cessation" doctrine and the mootness of their claim, Plaintiffs misstate the authority of Defendants Escobedo and Roberts. Plaintiffs assert that the policy changes implemented by Defendants Escobedo and Roberts are voluntary in nature, despite being mandated by the Secretary of State. Plaintiffs claim that advisories issued by the Secretary of State are mere suggestions which Defendants Escobedo and Roberts are entitled to disregard. Plaintiffs attempt to differentiate between an advisory and an order. (Dkt. #61, ¶ 14 and Dkt #62, ¶ 15). However, Secretary of State Advisory 2024-21 (Dkt. #60-2, p. 1) clearly references the two statutes upon which the advisory rests, both of which vest the Secretary of State with authority to bind county election officials.

First, Advisory 2024-21 relies upon Tex. Elec. Code § 31.014 (Certification of Electronic Devices to Accept Voters). That statute reads, in relevant part, "[t]he secretary of *state shall prescribe specific requirements and standards*, consistent with this code, for the certification of an electronic device used to accept voters…." [emphasis added]. Second, Advisory 2024-21 cites to Tex. Elec. Code § 52.075 (Modification of Ballot Form for Certain Voting Systems). That statute reads, "[t]he secretary of state may *prescribe* the form and content of a ballot for an election using a voting system, including an electronic voting system…" [emphasis added].

These two statutes clearly empower the Secretary of State to prescribe specific standards and requirements for election related equipment. To prescribe means "to order that an action be taken." *Am. Inst. of Certified Pub. Accountants v. Internal Revenue Serv.*, No. 16-5256 (D.C. Cir. Aug. 14, 2018). To "prescribe" is to "lay down rules [and] laws," or to "lay down as a rule or direction to

be followed" or "impose authoritatively." Oxford English Dictionary (3d ed. 2007), http://www.oed.com/view/Entry/150644." Therefore, an advisory issued by the Secretary of State is an order that county election officials are required to follow. If Defendants Escobedo and Roberts were to act contra to Advisory 2024-21, they would be violating a duly promulgated order issued by the state's chief elections officer.

Despite Plaintiffs' assertion, Defendants Escobedo and Roberts are not free to resume utilizing electronic pollbooks to assign randomized ballot numbers; to do so would be to violate the standards prescribed by the Secretary of State. Since Defendants Roberts and Escobedo have no ability to alter or supersede state law, the Secretary of State's actions guarantee as a matter of law that Bell and Williamson Counties do not remain "free to return to [their] old ways." *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953); Tex. Elec. Code §122.003 (allowing the secretary of state to limit the use of equipment in elections to conditions stated, binding on local election officials).

Finally, a governmental entity's conclusive abandonment of the challenged policy is sufficient to demonstrate that the threat of injury has abated, even when the change in policy is not accomplished by a statutory repeal or amendment. *See, e.g., Sossamon v. Lone Star State of Texas*, 560 F.3d 316, 325 (5th Cir. 2009), *aff'd*, 131 S. Ct. 1651 (2011). (holding that the TDCJ director's affidavit explaining a revision to the policy in question was sufficient to establish that the plaintiff would no longer be subject to the challenged restrictions on attendance at religious services); *Coalition of Airline Pilots Ass'n v. F.A.A.*, 370 F.3d 1184, (D.C. Cir. 2004) ("[T]he agencies' commitment to draft new regulations that will provide additional administrative review procedures—a commitment made both to this court and in the formal entry in the TSA rulemaking

dockets—provides sufficient assurance that the agencies will never return to [the]allegedly unlawful procedures."). Government entities are entitled to a presumption of good faith when a change in policy eliminates the case or controversy. *See Sossamon*, 560 F.3d at 325 ("Without evidence to the contrary, we assume that formally announced changes to official governmental policy are not mere litigation posturing.").

2. The voluntary cessation doctrine is inapplicable to the Secretary of State Defendants.

The Secretary of State Defendants did not issue Attorney General Opinion No. KP-0463. The Office of the Attorney General did. As such, the voluntary cessation doctrine does not apply to the mootness resulting from this opinion. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs., Inc.*, 528 U.S. 167, 189 (2000) (requiring *defendant* to have taken voluntary action to cause mootness). Further, since Election Advisory No 2024-20 was in response to, and interpretive of KP-0463, it can hardly be thought of as "voluntary," much less a litigation tactic to moot this case.

Moreover, the voluntary cessation doctrine does not apply even to Election Advisory No. 2024-21, which was issued by the Secretary of State. Government defendants are "accorded a presumption of good faith because they are public servants, not self-interested private parties." *Moore v. Brown*, 868 F.3d 398, 407 (5th Cir. 2017). "[W]hen a government entity assures a court of continued compliance, and the court has no reason to doubt the assurance, then the voluntary cessation doctrine does not apply." *Miraglia v. Bd. of Supervisors of La. State Museum*, 901 F.3d 565, 572 (5th Cir. 2018). Courts therefore "assume that formally announced changes to official governmental policy are not mere litigation posturing." *Moore*, 868 F.3d at 407.

Plaintiffs appear to claim the doctrine should apply by asserting that the "State Defendants have a pattern and practice of issuing incorrect election advisories and guidance, overstepping their

authority, … and ignoring the efforts of Plaintiffs … to correct their improper legal interpretations." (Dkt. #79 at ¶¶ 24–30). Plaintiffs' disagreement with the Secretary of State's interpretation of state law, again, is irrelevant. And with respect to the only pertinent *federal* question—the issue of ballot secrecy—Plaintiffs have absolutely no basis to claim that the State Defendants have a history of bad faith that might prompt the court to question whether their position is mere "litigation posturing" or there is *any* likelihood *at all* they will seek to reverse policies meant to ensure the secrecy of the ballot once the litigation has concluded. Of course, no Defendant desires the public to have the capability to breach ballot secrecy. Plaintiffs lack any evidence to the contrary, and it would be simply preposterous for the Plaintiffs to levy that argument. Since the Court has no reason to doubt any Defendants' commitment to ensuring the secrecy of the ballot, there is no live controversy between the parties, rendering any ruling at this point a mere advisory opinion, which is beyond the Court's jurisdiction.

III. PRAYER

For all these reasons, Defendants respectfully ask the Court to dismiss Plaintiffs' claims against them.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent by electronic notification through ECF on January 6, 2025, to all counsel of record. I further certify that a true and correct copy of the foregoing instrument has been sent via e-mail as follows:

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