

1. The Texas Election Code requires the Harris County Voter Registrar to maintain the integrity of Harris County's voter registration roll. Because Defendant Bennett has chosen not to fulfill her statutory duties, the Harris County voter registration roll contains tens of thousands of names of persons who should not

remain on that roll, such as voters who have moved out of Harris County, voters who have died, voters who are felons, voters who have registered at post office or private mail boxes with commercial mail receiving agencies (“CMRAs”), scores of voters who are not related to each other but have registered at the same address, voters who have registered at a commercial address and do not reside there, and voters who claim to live on vacant property with no structure, utilities, or other indicia of actual residency. Permitting voters to cast ballots when they are not entitled to vote is a frontal assault on democracy and a constitutional republic. This lawsuit seeks: (i) to force the Harris County Voter Registrar to monitor and maintain the accuracy and integrity of Harris County’s voter registration roll; (ii) to remove those listed on the voter registration role who are not eligible to remain listed; (iii) to review the National Change of Address database on a monthly basis, and, when necessary, investigate specific instances where a voter’s registration status in Harris County should be reasonably questioned; (iv) to promptly review and determine challenges to the registration status of a voter; (v) to promptly initiate confirmation notices to voters whose registration status has or may have come into question; (vi) to ensure that voters are placed on a suspense list so that their current residency credentials may be determined through a statement of residence form required to be filled out as a prerequisite to voting; and (vii) all other actions necessary to force compliance with the voter registration roll in order to stop her ultra vires conduct.

DISCOVERY-CONTROL PLAN

2. Plaintiffs intend to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4 and ask that the Court enter an order setting forth a suitable discovery control plan. Pursuant to Texas Rule of Civil Procedure 47(c)(2), Plaintiffs solely seek declaratory and prospective-only injunctive relief. No monetary damages are sought.

PARTIES

3. All three Plaintiffs are Harris County residents and registered voters. Plaintiff Trahan is currently the Republican nominee for Texas State Senate District 15, and his name appears on the ballot for the November 5, 2024, General Election of Harris County, Texas. Plaintiff Kane is currently the Republican nominee for Congressional District 7 of the United States House of Representatives, and her name appears on the ballot for the November 5, 2024, General Election in both Harris County and Fort Bend County. Plaintiff Hotze is a major political activist in Harris County and beyond who intends to support Republican candidates whose name appears on the ballot for the November 5, 2024, General Election in Harris County.

4. The Harris County Voter Registration Department serves over 2.5 million registered voters in the Nation's third largest county. As the Voter Registrar for Harris County, Defendant Bennett has the primary duty and responsibility of

maintaining the integrity of the voter registration roll in order to ensure fair and honest elections are conducted in Harris County. Unfortunately, in her capacity as Voter Registrar for Harris County, Defendant Bennett has committed, and, if not restrained, will continue to commit, certain ultra vires acts, the effect of which is to deprive her of successfully asserting governmental immunity as a subject matter jurisdictional bar to Plaintiffs' claims against her herein. In order to reestablish Harris County's legitimate assertion of governmental control over her illegal and unauthorized ultra vires actions, Defendant Bennett is sued in her official capacity as the Voter Registrar for Harris County. Service may be effectuated upon this Defendant by serving her in her official capacity as Voter Registrar, 1001 Preston, Houston, Texas 77002, with a copy to the Harris County Attorney, Christian D. Menefee, Legal Department, 1019 Congress, 15th Floor, Houston, Texas 77002.

5. Defendant Harris County, Texas is a body corporate and politic under the laws of the State of Texas. Plaintiffs assert no direct claims against Harris County. However, the relief sought herein by the Plaintiffs will nevertheless affect Harris County because it is the entity that was (and still is) ultimately responsible for the November 5, 2024, General Election. Thus, Defendant Harris County is not only an interested party, but it is a necessary party. Because Defendant Harris County is a necessary party to the declaratory and injunctive relief asserted herein by the Plaintiffs, Chapter 37 of the Texas Civil Practice and Remedies Code contains a

statutory waiver of its governmental immunity. Service may be effectuated upon this Defendant by serving the County Judge of Harris County, Lina Hidalgo, at 1001 Preston, Suite 911, Houston, Texas 77002, with a copy to the Harris County Attorney, Christian D. Menefee, Legal Department, 1019 Congress, 15th Floor, Houston, Texas 77002.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this matter by virtue of the relief sought herein. The November 5, 2024, General Election is countywide and includes candidates who are included in election ballots being used in this election cycle. Each of the Plaintiffs and each of the Defendants are located in Harris County. This Court also has personal jurisdiction over all of the parties as they are either Texas residents or governmental bodies that do business in Texas. Section 273.081 of the Texas Election Code specifically provides that a person who is being harmed or is in danger of being harmed by a violation or threatened violation of the Texas Election Code is entitled to appropriate injunctive relief to prevent the violation from continuing or occurring.

7. Venue is not only proper, but it is mandatory, in Harris County.

WAIVER OF GOVERNMENTAL IMMUNITY

8. Plaintiffs assert that no immunity exists for a claim brought under the “ultra vires” exception to governmental immunity. As explained in City of El Paso

v. Heinrich, 284 S.W.3d 366, 369-76 (Tex. 2009), the ultra vires exception allows a plaintiff to sue a local official in an official capacity, thereby binding the governmental body, through its agent, for injunctive and/or declaratory relief to restrain the official from violating statutory or constitutional provisions. Governmental immunity does not bar such a suit because, in concept, acts of local officials that are not lawfully authorized are *not* considered to be acts of the local government. Thus, the remedy of compelling such officials to comply with the law, while binding on the local governmental body, does not attempt to exert control over the governmental body, but instead attempts to reassert the control of the local governmental body. It is for this reason that Plaintiffs have sued Defendant Bennett in her official capacity as Voter Registrar of Harris County.

9. In addition, the Texas Declaratory Judgments Act contains a waiver of immunity from suit for governmental bodies whose presence is necessary to effectuate and bind them to a judicial declaration. Plaintiffs assert claims under the Texas Declaratory Judgments Act against Defendant Bennett. More specifically, Plaintiffs seek a judicial declaration that, due to multiple instances of certain ill-advised and illegal alterations of election procedures, each of which has been implemented for the November 5, 2024, General Election, Defendant Bennett has repeatedly violated Section 276.019 of the Texas Election Code (unlawful altering of election procedures). Given that fact, Plaintiffs seek a finding that Defendant

Bennett did not, and does not, possess the legal or constitutional authority to implement these voting policies for Harris County.

10. In order to bind the governmental body which would be affected by such a judicial declaration, Plaintiffs are required to join Harris County as a necessary party. Accordingly, governmental immunity does not preclude equitable remedies in official-capacity suits against government actors who have violated statutory and constitutional provisions, by acting without legal authority, or by failing to perform a purely ministerial act. *Heinrich*, 284 S.W.3d at 372-73. Of significance, suits requiring government officials to comply with the law and the constitution are not prohibited even if a declaration to that effect compels the payment of money. Thus, to the extent this Court rules in favor of the Plaintiffs, immunity does not exist to bar the requested declaratory and injunctive relief.

FACTS OF THE CASE

11. Harris County early in-person voting begins on Monday, October 21, 2024, and ends on November 1, 2024. Election Day voting will take place on Tuesday, November 5, 2024. As the Voter Registrar for Harris County, Defendant Bennett has the responsibility of maintaining the integrity of the Harris County voter registration roll in order to ensure fair and honest elections are conducted in Harris County. Instead of complying with this mandate, Defendant Bennett has not maintained the integrity of the Harris County voter registration role. By failing to

perform her statutorily mandated job, Houston citizens are left with the very real probability that persons who are currently listed as validly registered Harris County registered voters, are not actually entitled to cast a ballot in this current or future election cycles in Harris County. Indeed, many individuals whose names are currently listed on the Harris County registration roll should have been purged from that role—or at least placed in category known as a suspense voter—and many of those voters will cast ballots for Democratic candidates that are illegal and ineligible to be counted. By not complying with her duty to monitor and maintain the Harris County voter registration role, Defendant Bennett actions and inactions have permitted, and if not stopped, will continue to permit, illegal voting by felons, dead people, out-of-county residents, non-citizens, voters who have not been properly registered, and registered voters who have either not been placed on suspense or are on suspense but have not properly filled out a statement of residence form. These transgressions by Defendant Bennett are allowing Harris County elections to be run in such a manner that it illegally disenfranchised countless registered voters from casting their legal votes for the candidates of their choice.

Legal Argument and Authorities

12. Chapter 276.019 of the Texas Election Code prohibits Defendant Bennett from unlawfully altering election procedures. One of the reasons for this law

is to ensure that everyone can trust the outcome of an election, and that no voter is disenfranchised.

13. The Texas Supreme Court has held that the right to vote is protected by Article I, Section 3 of the Texas Constitution. *State v. Hodges*, 92 S.W.3d 489, 496, 501-02 (Tex. 2002). In reviewing the constitutionality of laws affecting voting rights under this provision, the Texas Supreme Court has borrowed from the framework established by the U.S. Supreme Court for reviewing alleged infringements on voting rights. *Id.* A court applying this framework "first consider[s] the character and magnitude of the asserted injury to [voting] rights," and then balances the purported injury against the "interests put forward by the State as justifications for the burden imposed by its rule." *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983). Under this "flexible standard," a "severe" impediment to the right to vote must survive strict scrutiny, an exacting standard that places the burden of proof on the government to demonstrate that its restriction is narrowly tailored to achieve a compelling governmental interest. *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992). The government carries this burden only by establishing "a 'strong basis in evidence,'" *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 500, 109 S. Ct. 706, 102 L. Ed. 2d 854 (1989) (quoting *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 277, 106 S. Ct. 1842, 90 L. Ed. 2d 260 (1986) (plurality opinion)), beyond mere "anecdote [or]

supposition"—demonstrating that the restriction on constitutional rights is the least restrictive means of achieving legitimate regulatory goals. *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 822, 120 S. Ct. 1878, 146 L. Ed. 2d 865 (2000).

14. "The right to vote is fundamental, as it preserves all other rights." *Andrade*, 345 S.W.3d at 12 (citing *Yick Wo v. Hopkins*, 118 U.S. 356, 370, 6 S. Ct. 1064, 30 L. Ed. 220 (1886)); see also *Tex. Const. art. I, § 3* (providing equal rights). Courts have zealously protected the right to vote. See *Reynolds v. Sims*, 377 U.S. 533, 555, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964) ("The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."); *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964) ("No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."); *Stewart v. Blackwell*, 444 F.3d 843, 862 (6th Cir. 2006) ("Few rights have been so extensively and vigorously protected as the right to vote. Its fundamental nature and the vigilance of its defense, both from the courts, Congress, and through the constitutional amendment process, stem from the recognition that our democratic structure and the preservation of our rights depends to a great extent on the franchise."); see also *United States v. Mosley*, 238 U.S. 383, 386, 35 S. Ct. 904, 59 L. Ed. 1355 (1915)

("We regard it as equally unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box."); Avery v. Midland County, 406 S.W.2d 422, 425 (Tex. 1966) ("Petitioner as a voter in the county has a justiciable interest in matters affecting the equality of his voting and political rights."); Thomas Paine, Dissertation on the Principles of Government, 1795 ("The right of voting . . . is the primary right by which all other rights are protected.").

15. Because of the ill-advised and illegal procedure implemented by the Defendant Bennett, Plaintiffs and their supporting voters in the November 5, 2024, General Election are susceptible to having their votes totally disenfranchised and/or diluted in violation of the Texas Election Code.

ELIGIBILITY REQUIREMENTS FOR VOTING IN TEXAS

16. In order to be eligible to vote in Texas, a person must: (1) be a qualified voter under Tex. Elec. Code § 11.002; (2) be a resident of the territory covered by the election for the office on which the person desires to vote; and (3) satisfy all other requirements for voting prescribed by law for the particular election. Tex. Elec. Code § 11.001. A "qualified voter" is someone who is at least 18 years of age, a citizen of the United States, a Texas resident, and a registered voter. Tex. Elec. Code § 11.002. Thus, a vote that is cast by a voter *who does not reside in the county of the election is an illegal vote* that cannot be counted. Gonzalez v. Villarreal, 251 S.W.3d

763, 776 (Tex. App.—Corpus Christi 2008, pet. dismiss'd w.o.j.); *Alvarez v. Espinoza*, 844 S.W.2d 238, 247 (Tex. App.—San Antonio 1992, writ dismiss'd w.o.j.).

17. In order to register to vote in Texas a person must fill out an application to register to vote. The registration must be in writing and must be signed by the applicant. Among several items, the application must include the following: the applicant's full name, applicant's date of birth, a statement that the applicant is a United States citizen, the applicant's resident address or if the residence does not have an address, the address at which the applicant receives mail and a concise description of the location of the applicant's residence; and the voter's Texas driver's license number or the number of a personal identification card issued by the Department of Public Safety, the last four digits of their social security card or a statement that they do not have one of the three forms of identification. Tex. Elec. Code § 13.002. Both federal and state law contemplate that the voter registrar will keep the list of registered voters up to date by removing ineligible or deceased voters. Both the federal and Texas law mention using the National Change of Address database as a means to maintain the voter roll. In *Husted, Ohio Secretary of State v. Phillip Randolph Institute et al*, the concern was over the Ohio law that keeps the voter roll up to date by removing names of those who have moved out of the district where they are registered. 201 L. Ed. 141 (2018). Voters who have not voted for two years are identified as potential voters who have moved. These voters are sent

confirmation cards and if they fail to return the card and fail to vote for four years, they are removed from the voter roll. In its discussion of the voter roll maintenance, the Court discusses the use of the U.S. Postal Service's change of address database as a tool to identify voters who moved and sending notice to the voters as "undisputedly lawful". *Husted v. Phillip Randolph*, 201 L. Ed. 141, 151 (2018) (citing 52 U.S.C. § 20507 (c)(1)).

18. Voters are required to be registered where they reside. For a variety of reasons, a voter registrar may have placed a voter on the suspense list. The pertinent statutory materials regarding suspense lists are listed below:

Sec. 15.081. SUSPENSE LIST. (a) The registrar shall maintain a suspense list containing the name of each voter:

- (1) who fails to submit a response to the registrar in accordance with Section 15.053;
- (2) whose renewal certificate is returned to the registrar in accordance with Subchapter B, Chapter 14; or
- (3) who appears on the list of nonresidents of the county provided to the registrar under Section 62.114, Government Code.

(b) The list shall be arranged alphabetically by voter name and for each voter must contain the voter's name, residence address, date of birth, registration number, and date the name is entered on the list. The names shall be grouped according to county election precincts.

(c) The secretary of state may prescribe an alternative form or procedure for maintaining the list.

(d) Notwithstanding Subsection (b), the suspense list may not contain the residence address of a voter whose residence address is confidential under Section 13.004.

Sec. 15.111. NOTATION ON LIST OF REGISTERED VOTERS. (a) The registrar shall enter the notation "S", or a similar notation approved by the secretary of state, on the list of registered voters beside each voter's name that also appears on the suspense list.

(b) The registrar shall delete the notation from the list if the voter's name is deleted from the suspense list.

Sec. 15.112. AUTHORIZATION TO VOTE ON STATEMENT. In an election held on or after the date the voter's name is entered on the suspense list and before November 30 following the second general election for state and county officers that occurs after the beginning of the period, a voter whose name appears on a precinct list of registered voters with the notation "S", or a similar notation, may vote in the election precinct in which the list is used if the voter satisfies the residence requirements prescribed by Section 63.0011 and submits a statement of residence in accordance with that section.

19. Every voter on the suspense list is required to fill out a Statement of Residence ("SOR") in order to vote. In addition, every single voter is asked by the election officials whether their voter registration address is current. If a voter relays information that they have moved, then that voter is required to fill out a SOR. Tex. Elec. Code § 63.0011. See *Harris County Election Manual 2022-2023*, p. 89 & 175 and Secretary of State's *Handbook for Election Judges and Clerks – Qualifying Voters on Election Day 2022*, p. 31. Statements of Residence may also be required for mail ballots. Tex. Elec. Code § 87.041. The pertinent forms and statutory material are summarized below:

Statement of Residence Form

Instructions for Voting by Mail on Back

(Al Donor: Instrucciones si vota por correo)

17-5 (12/21)

Prescribed by
Secretary of State

STATEMENT OF RESIDENCE

For persons whose residence address does not match voter registration address.

CONSTANCIA DE DOMICILIO PERMANENTE

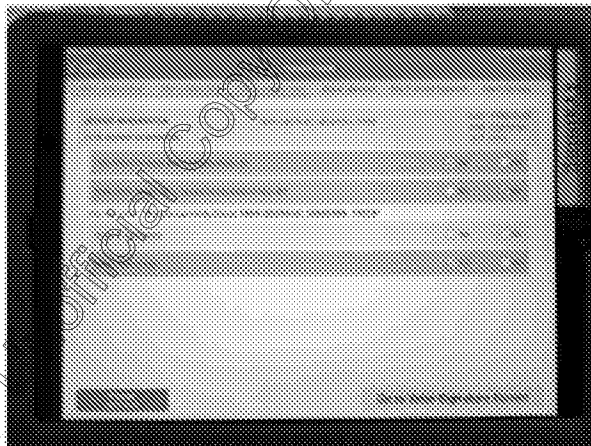
Para personas cuya dirección no coincide con la que aparece en la lista oficial de votantes inscritos.

Last Name Include suffix if any Apellido incluir sufixo si lo hay (Jr., Sr., III)	First Name Nombre de pila	Middle Name (if any) Segundo nombre (si aplica)	Former Name Apellido anterior
Residence Address: Street Address and Apartment Number, City, State, and Zip. If none, describe where you live. (Do not include P.O. Box, Rural Route, or Business Address) Domicilio residencial: Número y calle, y número de apartamento, Ciudad, Estado, y Código postal. Si no existe un domicilio, describa donde vive (no incluya apartados postales, rutas rurales o dirección del trabajo).			Gender (Optional) Sexo (Opcional) <input type="checkbox"/> Male Masculino <input type="checkbox"/> Female Femenino
Mailing Address: Address, City, State, and Zip. If mail cannot be delivered to your residence address, Dirección postal: Número y calle, y número de apartamento, Ciudad, Estado, y Código postal (si no se puede entregar correo en su domicilio residencial).		Date of Birth: month, day, year Fecha de Nacimiento: mes, día, año <div style="display: flex; justify-content: space-around;"> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> <div style="border: 1px solid black; width: 20px; height: 20px;"></div> </div>	
City and County of Former Residence in Texas Ciudad y condado de residencia anterior en Texas	City and County of Current Residence in Texas Ciudad y condado de residencia actual en Texas	Telephone Number (Optional) Include Area Code Teléfono (Opcional) - Incluya código de área	
Texas Driver's License No. or Texas Personal I.D. No. (Issued by the Department of Public Safety) No. de licencia de conducir de Texas o no. de identificación personal de Texas (Emitido por el Departamento de Seguridad Pública)		If no Texas Driver's License or Personal Identification, give last 4 digits of your Social Security Number. Si no tiene licencia de conducir de Texas o no. de identificación personal, proporcione los 4 últimos dígitos de su número de Seguro Social.	
<input type="checkbox"/> I have not been issued a Texas Driver's License/Personal Identification Number or Social Security Number. Yo no tengo una Licencia de conducir de Texas/Cédula de identidad personal de Texas o Número de Seguro Social.			
<p>I understand that giving false information to procure a voter registration is perjury, and a crime under state and federal law. Conviction of this crime may result in imprisonment up to one year in jail, a fine up to \$4,000, or both. Please read all three state manuals to affirm before signing. Entiendo que el dar información falsa para obtener una tarjeta de registro electoral constituye un delito de perjurio bajo las leyes estatales y federales. La condena por este delito puede resultar en encarcelamiento de hasta un año de cárcel, una multa de hasta \$4,000, o ambas cosas. Por favor lee cada una de las tres declaraciones antes de firmar.</p> <ul style="list-style-type: none"> I am a resident of this country and a U.S. citizen, and I have not been finally convicted of a felony, or if a felon, I have completed all of my punishment including any term of incarceration, parole, supervision, period of probation, or I have been pardoned, and I have not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote. <p>soy residente de este condado y ciudadano de los Estados Unidos; y</p> <p>no he sido finalmente condenado por un delito grave, o si soy un delincuente, he purgado mi pena por completo, incluyendo cualquier plazo de encarcelamiento, libertad condicional, supervisión, período de libertad condicional, o he sido indultado; y</p> <p>no he sido determinado por un fallo final de un tribunal que ejerce la jurisdicción testamentaria que estoy totalmente incapacitado mentalmente o parcialmente incapacitado mentalmente sin derecho a voto</p>			
<div style="border: 1px solid black; width: 100px; height: 40px; display: flex; align-items: center; justify-content: center;"> X </div>		Date / /	
Signature of Applicant or Agent and Relationship to Applicant or Printed Name of Applicant if Signed by Witness and Date. Firma del solicitante o su agente (apoderado) y relación de éste con el solicitante, o nombre en letra del molde del solicitante si la firma es la de un testigo, y fecha.			
<div style="border: 1px solid black; padding: 2px;">Print</div>		<div style="border: 1px solid black; padding: 2px;">Reset</div>	

- D. Ask the Voter, "Do you currently live at (street name)?" Voters prefer that you only read the street name and apartment number (if there is one) from the ePollBook screen for their privacy.

The address on the ID provided by the Voter does NOT have to match the Voter Registration address.

1. If the Voter answers "Yes", check the "Yes" box.
2. If the Voter answers "No", check the "No" box, instructions on the screen will direct you to have the Voter fill out an SOR.
3. Tell the Voter to return to the front of the line to submit their completed SOR and be re-checked in to vote. The clerk must check the SOR to confirm the Voter still lives in Harris County.
 - A. If the Voter has **moved within** Harris County, the Voter would vote using the same address shown on the ePollbook, as long as they still reside in the same political subdivision holding the election.
 - B. If the Voter has **moved outside** Harris County, refer the Voter to the Judge who can only offer them a Provisional Ballot.
 - C. If the Voter has **moved into** Harris County from another Texas county, but their registration is not yet effective, they may vote a Limited Ballot by mail or in person at 1001 Preston Street, 4th floor, during the Early Voting period only.



If giving the Voter an SOR, choose "OK" and return to the Home Screen so that the next Voter can be processed. When the Voter returns with their completed SOR, place it in the Judges' SOR Envelope, and process the Voter regularly.

After verifying the identity of the voter, follow these steps:

1. Ask the voter if the voter's residence address on the precinct list of registered voters is current and whether the voter has changed residence within the county; if changed, have voter complete a statement of residence form. [Sec. 63.0011]

NOTE: Some voters may not have their addresses on the list of registered voters due to their participation in an address confidentiality program. Nevertheless, election judges should continue to ask whether or not the voter has moved from the address at which the voter is registered to vote. If the voter's registration address is omitted due to participation in an address confidentiality program, you must ask the voter if the residence address listed on the voter's acceptable form of photo ID or, if applicable, the acceptable form of supporting identification, is current and whether the voter has changed residence within the county.

Sec. 63.0011. STATEMENT OF RESIDENCE REQUIRED. (a) Before a voter may be accepted for voting, an election officer shall ask the voter if the voter's residence address on the precinct list of registered voters is current and whether the voter has changed residence within the county. If the voter's address is omitted from the precinct list under Section 18.005(c), the officer shall ask the voter if the voter's residence, if listed, on identification presented by the voter under Section 63.001(b) is current and whether the voter has changed residence within the county.

(b) If the voter's residence address is not current because the voter has changed residence within the county, the voter may vote, if otherwise eligible, in the election precinct in which the voter is registered if the voter resides in the county in which the voter is registered and, if applicable:

- (1) resides in the political subdivision served by the authority ordering the election if the political subdivision is other than the county; or
- (2) resides in the territory covered by the election in a less-than-countywide election ordered by the governor or a county authority.

(c) Before being accepted for voting, the voter must execute and submit to an election officer a statement including:

- (1) a statement that the voter satisfies the applicable residence requirements prescribed by Subsection (b);
 - (2) all of the information that a person must include in an application to register to vote under Section 13.002; and
 - (3) the date the statement is submitted to the election officer.
- (c-1) The statement described by Subsection (c) must include a field for the voter to enter the voter's current county of residence.

(d) The voter registrar shall provide to the general custodian of election records a sufficient number of statements of residence for use in each election.

(e) The voter registrar shall retain each statement of residence on file with the voter's voter registration application.

(f) Information included on a statement of residence under Subsection (c)(2) is subject to Section 13.004(c).

Sec. 87.041. ACCEPTING VOTER. (a) The early voting ballot board shall open each jacket envelope for an early voting ballot voted by mail and determine whether to accept the voter's ballot.

(b) A ballot may be accepted only if:

- (1) the carrier envelope certificate is properly executed;
- (2) neither the voter's signature on the ballot application nor the signature on the carrier envelope certificate is determined to have been executed by a person other than the voter, unless signed by a witness;
- (3) the voter's ballot application states a legal ground for early voting by mail;
- (4) the voter is registered to vote, if registration is required by law;
- (5) the address to which the ballot was mailed to the voter, as indicated by the application, was outside the voter's county of residence, if the ground for early voting is absence from the county of residence;
- (6) for a voter to whom a statement of residence form was required to be sent under Section 86.002(a), the statement of residence is returned in the carrier envelope and indicates that the voter satisfies the residence requirements prescribed by Section 63.0011;
- (7) the address to which the ballot was mailed to the voter is an address that is otherwise required by Sections 84.002 and 86.003; and
- (8) the information required under Section 86.002(g) provided by the voter identifies the

same voter identified on the voter's application for voter registration under Section 13.002(c)(8).

VOTER REGISTRATION REQUIREMENTS IN TEXAS

20. In order to be eligible for registration as a voter in Texas, a person must, among other things, be at least 18 years old, be a citizen of the United States, and be a resident of the county in which application for registration is made. Tex. Elec. Code § 13.002. A person who desires to vote must fill out an application to register to vote. Id. The voter registration application must be turned into the Voter Registrar no later than thirty (30) days before an election in order to be eligible to vote in that

election. Tex. Elec. Code § 13.143. The registration becomes effective on the 30th day after the date the application is submitted to the registrar or on the date the applicant becomes 18 years of age, whichever is later. Id.

21. The voter registration application must be in writing and must be signed by the applicant. Among several items, the application must include the following: the applicant's full name; applicant's date of birth; a statement that the applicant is a United States citizen; Tex. Elec. Code § he statement that the applicant is a resident of the county; the applicant's resident address, or, if the resident does not have an address, the address at which the applicant receives mail and a concise description of the location of the applicant's residence; and either of the following: (i) the voter's Texas driver's license number; or (ii) the number of a personal identification card issued by the Department of Public Safety; or, if the applicant has neither (i) nor (ii), then (iii) the last four digits of their social security card or a statement that they do not have one of the three forms of identification. Tex. Elec. Code § 13.002.

22. The Texas Legislature has defined the term "residence address" to mean "the street address and any apartment number, or the address at which mail is received if the residence has no address, and the city, state, and zip code that correspond to a person's residence." Tex. Elec. Code § 1.005(17). It is further defined by Section 1.015 of the Texas Election Code, as follows:

(a) In this code, "residence" means domicile, that is, one's home and fixed place of habitation to which one intends to return after any temporary absence.

(b) A person may not establish residence for the purpose of influencing the outcome of a certain election.

(c) A person does not lose the person's residence by leaving the person's home to go to another place for temporary purposes only.

(d) A person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home.

(e) A person who is an inmate in a penal institution or who is an involuntary inmate in a hospital or eleemosynary institution does not, while an inmate, acquire residence at the place where the institution is located.

(f) A person may not establish a residence at any place the person has not inhabited. A person may not designate a previous residence as a home and fixed place of habitation unless the person inhabits the place at the time of designation and intends to remain.

23. It is important to note that people cannot register to vote at any place that a person has not inhabited, which would obviously include commercial post office boxes. If the registrar has reason to believe that a voter's current residence is different from the voter registration records, or that the address is a commercial post office box or similar location that does not correspond to a residence, then *the registrar is required to send a confirmation notice to the voter to confirm their address.* Tex. Elec. Code § 15.051. There are some limited exceptions to the

prohibition of using a post office box as a residence, such as military personnel and their spouses, confidential voters, federal and state judges and their spouses, peace officers, and students of higher education who use a post office box located on campus as their address. Tex. Elec. Code § 15.054 (c) (2021).

LEGAL REQUIREMENTS FOR MAINTENANCE OF VOTER REGISTRATION ROLL

24. The Voter Registrar is required to provide a list of registered voters to the Election Administrator. The list must contain the name of each over whose registration will be effective on the date of the first election held in the county in the voting year. Tex. Elec. Code § 18.001(a). Federal law requires states like Texas to “conduct a general program that make a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of the death of the registrant or a change in the residence of the registrant. National Voting Rights Act. 52 U.S.C. § 20507(a)(4) (2021).

25. Under the Texas Election Code, the Voter Registrar is responsible for maintaining the voter roll for each county. There are numerous reasons why a voter will be removed from the voter roll:

- Confirms change of address or otherwise confirms ineligibility. Tex. Elec. Code §§ 13.072, 15.021, 15.053 or 16.033 (2021);
- Remains on the suspense list for two federal general elections without updating their registration. Tex. Elec. Code § 16.032 (2021);
- Dies and the Voter Registrar receives an abstract of the voter’s death certificate or other notice. Tex. Elec. Code §§ 16.001 and 16.031 (2021);
- Is adjudged mentally incapacitated. Tex. Elec. Code § 16.002 (2021); or

- Is convicted of a felony and has not completed their sentence and/or time. Tex. Elec. Code § 16.003; or
- The Registrar receives notice from a voter registration official in another county or state that the voter has registered outside of Texas. Tex. Elec. Code § 16.031.

26. One of the means to maintain the voter roll is through the use of the National Change of Address (“NCOA”) database information supplied by the United States Postal Service. In fact, the National Voting Rights Act specifically identifies the NCOA as a means to help with maintenance of the voter roll. The NCOA is one of the standards that is used by election officials to maintain the integrity of voter rolls across the nation.

27. Indeed, federal law states the following:

(c) Voter removal programs

(1) A State may meet the requirement of subsection (a)(4) by establishing a program under which—

(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(B) if it appears from information provided by the Postal Service that—

(i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(ii) the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) to confirm the change of address.

(2)(A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

(B) Subparagraph (A) shall not be construed to preclude—

(i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a); or (ii) correction of registration records pursuant to this chapter.

52 USC § 20507 (c).

28. Furthermore, the National Change of Address database is clearly contemplated as a necessary resource by the Texas Legislature. The 88th Texas Legislature has passed Senate Bill 1070, which states that in order to maintain the statewide voter registration list and to prevent duplication of registration in more than one state or jurisdiction, the secretary of state is required cooperate with other states and jurisdictions to develop systems to compare voters, voter history and voter registration lists to identify voters whose address has changed or are registered to vote in more than one state. If the secretary of state enters into a contract to cooperate with other states, the contract **must** use data from the National Change of Address database. Tex. Elec. Code § 18.062 (h)(2).

29. It is widely recognized that the NCOA is a viable resource for Election Officials to use to identify voters who have moved. In a recent publication by the United States Election Assistance Commission, it is recommended under “Tips for a Stronger Voter List Maintenance Program” that “Election officials can use National Change of Address (NCOA) data to keep registered voters’ address information current.” State election offices may subscribe to an NCOA product to receive and process updated information on an ongoing basis or push updates to local election officials for processing. NCOA records may provide an in-jurisdiction address update or indicate an out-of-jurisdiction move for a voter. In addition, the 2020 Election Administration and Voting Survey (EAVS), 58.9% of states indicated that they used NCOA reports to identify potentially ineligible voters.¹ In 2017, the National Association of Secretaries of State stated in their report that:

The National Voter Registration Act of 1993 (NVRA) provides the backdrop for discussions about state efforts to identify voters who no longer reside at their registered address. Under NVRA, any program designed to identify voters who have moved must be conducted no later than 90 days prior to a primary or general election for federal office.² Election officials must send a forwardable notice to any voter identified

¹ *Best Practices: Voter List Maintenance*, March 2023, p. 7, citing *Election Administration and Voting Survey 2020 Comprehensive Report*. U.S. Election Assistance Commission, https://www.eac.gov/sites/default/files/document_library/files/2020_EAVS_Report_Final_508c.pdf, p. 67. Accessed 5 December 2022.

² NVRA applies to 44 states and the District of Columbia. North Dakota is exempt from NVRA because it does not have a voter registration requirement. Five other states are also exempt from NVRA because they allow voters to register to vote on Election Day (ID, MN, NH, WI, & WY). See United States Department of Justice Civil Rights Division, About the National Voter Registration Act, http://www.usdoj.gov/crt/voting/nvra/activ_nvra.php.

as having changed their residence outside of the jurisdiction. The notice must inform the voter that if s/he still resides at the same address (or within the same jurisdiction) and does not return the notice by the stated deadline, the voter may need to affirm their address before voting. The notice must also state that, if the voter does not return the notice and does not vote in either of the following two general federal elections, the voter may be removed from the registration list.³

One way states may meet NVRA requirements for an address confirmation program is through the use of National Change of Address (NCOA) data.⁴ While not mandatory, NVRA provides guidelines for states to follow in implementing a NCOA program. If NCOA data shows that a registered voter has moved to a new address, but resides in the same election jurisdiction (e.g., county or municipality), the election official for that jurisdiction updates the voter's registration with the new address and sends the voter a notice of the change. If the NCOA data shows that a voter has moved outside of the election jurisdiction, the election official sends the notice described in the preceding paragraph.⁵

NASS Report: Maintenance of State Voter Registration Lists, A review of relevant policies and procedures, Released 2009; Updated December 2017.

30. In June of 2019, the United State Government Accountability Office (“GAO”) issued a report to Congressional Requesters explaining the use of the National Change of Address database. Listing the NCOA as one of the resources to

³ Id. § 1973gg-6(d)(2).

⁴ NCOA is a service provided by a licensee of the United States Postal Service. The licensee has access to a Postal Service database containing records of relocating postal customers who have filed a permanent Change of Address form. The NCOA database contains approximately 160 million permanent change of address records. An address change match is made when information when a person's name and address information provided by the customer matches the name and address information in the NCOA database. If a match is made, the NCOA licensee will provide the customers with the person's new address. See United States Postal Service, USPS-NCOA Link systems, <http://www.usps.com/ncsc/addressservices/moveupdate/changeaddress.htm>.

⁵ iv 42 U.S.C. § 1973gg-6(c)(A), (B)(i), (B)(ii).

maintain voter registration lists and remove voters who become ineligible due to a move, death or disqualifying criminal conviction, the GAO noted that “NCOA data helped [election officials] maintain accurate lists by identifying registrants who moved outside the election jurisdiction; however, they also noted that NCOA data may not capture all address changes because people do not always notify the U.S. Postal Service when they move.”⁶ The GAO interviewed election officials in five states and reported that the officials stated that list maintenance provides cost savings, smoother Election Day processes, reductions in administrative burden, and fewer opportunities for election fraud. Additionally, using data sources improved voters registration list accuracy, despite some limitations. *Id.* p. 43. The GAO explained how election officials may use the NCOA,

The NCOA database comprises change-of-address records with the names and addresses of individuals, families, and businesses who filed a change of address with the U.S. Postal Service. Election Officials can access the NCOA data by obtaining a license to directly receive the data from the U.S. Postal Service or having their voter registration list processed by a licensed third-party service provider.⁷

Id. at 46.

⁶ *Voter Registration – Information on Federal Enforcement Efforts and State and Local List Management*, p. 1 June 2019. <https://www.gao.gov/assets/gao-19-485.pdf>.

⁷ The U.S. Postal Service allows vendor/entities to use the NCOA database to obtain the most current and accurately formatted mailing address to help reduce undeliverable mail. The U.S. Postal Service offers six different licensing categories by which entities can use and provide NCOA data to customers. State and local election officials can directly license or contract with a NCOA licensed vendor to acquire either: (i) 18 months of change of address data that is updated monthly; or (ii) 48 months of change of address data that is updated weekly. Election officials may also use the NCOA data in mail processing to ensure that the mail is sent to the most recent address in the NCOA database, if available. *Id.*

31. The Texas Election Code *requires that the voter registrar request from the United States Postal Service on at least a monthly basis* “any available information indicating address reclassifications affecting the registered voters of the county.” Tex. Elec. Code § 15.022. Clearly, it is important both under the National Voting Rights Act and Texas law to maintain a clean voter roll.

32. The Texas Secretary of State provides advisories and training to election administrators and voter registrars. In August of 2022, provided an *Update from SOS* which discussed List Maintenance discussion.

Sections 18.068 and 18.0681 require the SOS to conduct comparative reviews of the statewide voter registration list with information received under TEC Chapter 16. Following the identification of matched records, the SOS is required to send this information to county voter registrars for further review. It is the responsibility of the county voter registrar to review these records on the grounds of eligibility and/or to eliminate duplicative records to ensure the accuracy and integrity of the county voter list.⁸

33. Additionally, in the same document, the secretary of state discusses the role of the County as follows:

- It is important that counties perform their role in list maintenance.
- The state provides the data, but the investigation, examination and potential cancellation are all the duty of the county voter registrar.

⁸*Update from SOS, August 1, 2022, p. 33.*
[https://www.sos.state.tx.us/elections/forms/secretary-of-state-updates-7-30-22%20\(2\).pdf#search=List%20maintenance.](https://www.sos.state.tx.us/elections/forms/secretary-of-state-updates-7-30-22%20(2).pdf#search=List%20maintenance)

- SB 1113 reflects that the counties are expected to perform their list maintenance obligations.

34. In summary, the Voter Registrar is responsible for registering voters, creating a voter roll, maintaining the voter roll by removing voters who are no longer eligible. Voters must reside in the jurisdiction where they are registered to vote. There are several tools for the Voter Registrar, including the National Change of Address database.

35. Applying this information to this lawsuit, Plaintiffs will introduce evidence of a simple comparison of: (i) the Statements of Residence (“SORs”) to the NCOA database; and/or (ii) a comparison of the Harris County Voter Roster to the NCOA database. This comparison will reveal countless instances whereby voters cast a ballot in Harris County elections, despite the fact that they previously have told the United States Postal Service that they have an address which calls into question whether that individual is or is not currently still eligible to vote.

36. Unless and until the Defendants comply with their duties, the current and future elections of Harris County will permit specific voters to cast a ballot that was counted but was ineligible to have been counted. Such a scenario is unhealthy for a democracy, and subjects candidates to the specter of having to file an election contest to rectify these wrongs. Under Section 221.003 (2)(C) of the Texas Election Code, a Court may declare the purported outcome void on the basis that the Voter Registrar failed to perform her legal responsibility of maintaining the integrity of

their voter registration role (“engaged in other fraud or illegal conduct or made a mistake”). When understood in this contest, Plaintiff’s evidence can be summarized as follows: If Defendant Bennett had faithfully performed her obligation every month to compare its Voter Role with the NCOA database, then the Defendants would have captured the same data comparison that Plaintiffs have captured. In response, then Defendant Bennett was obligated to send out confirmation notices prior to the expiration of a statutorily imposed timeframe before the date of the election. Had Bennett actually done her job, then these discrepancies would have been addressed, resulting in a particular person either remaining or coming off of the list of eligible registered voters. Having failed to do so, a Court will be unable to ascertain whether these specific voters did or did not cast a legal vote in the specific election that is eventually contested in Harris County. Pursuant to Section 221.012(b) of the Texas Election Code, the “tribunal shall declare the election void if it cannot ascertain the true outcome of the election.” Cf. *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1840, 201 L. Ed. 2d 141 (June 11, 2018), citing 52 U.S.C. § 20507(c)(1)(explaining constitutionality of Ohio’s system, which uses NCOA data, to remove voter’s from the voter roll when the voter changed address and failed to vote for a certain period of time). Simply put, Plaintiffs intend to demonstrate that Defendant Bennett failed to comply with her obligations to maintain the Harris County voter roll, and, had she done so, these challenged voters

would have been asked to supply a SOR upon check-in for voting or as a condition to cast a ballot by mail. These failures on the part of the Defendants can and should be addressed by this Court both by issuing declaratory relief but also in issuing prospective-only injunctive relief.

CAUSES OF ACTION

37. Plaintiffs incorporate all previous paragraphs of this Petition by this reference.

A. Suit for Declaratory Judgment and Injunctive Relief.

38. Pursuant to Section 37 of the Texas Civil Practice and Remedies Code, Plaintiffs seek the following declaratory and injunctive relief:

(i) to force the Harris County Voter Registrar to monitor and maintain the accuracy and integrity of Harris County's voter registration roll;

(ii) to remove those listed on the voter registration role who are not eligible to remain listed;

(iii) to review the National Change of Address database on a monthly basis, and, when necessary, investigate specific instances where a voter's registration status in Harris County should be reasonably questioned;

(iv) to promptly review and determine challenges to the registration status of a voter;

(v) to promptly initiate confirmation notices to voters whose registration status has or may have come into question;

(vi) to ensure that voters are placed on a suspense list so that their current residency credentials may be determined through a statement of residence form required to be filled out as a prerequisite to voting; and

(vii) all other actions necessary to force compliance with the voter registration roll in order to stop her ultra vires conduct.

Defendant Bennett has therefore violated Section 276.019 of the Texas Election Code.

B. Application for Prospective-Only Injunctive Relief.

39. Plaintiffs adopt and incorporate by reference the allegations in the preceding paragraphs as though fully set forth herein, and apply to this Court for an injunction against the Defendants in order to make sure this never happens again in a future election. Such relief is not moot, as it is capable of repetition yet evading review. *Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001). Plaintiffs assert that: (1) the challenged action was too short in duration to be litigated fully before the action ceased or expired; and (2) a reasonable expectation exists that the same complaining party will be subjected to the same action again. *Id.* Where, as here, each Plaintiff intends to vote in future elections, and where, as here, Plaintiffs Trahan and Kane intend to run as candidates in future elections, this exception applies.

40. Plaintiffs have a valid cause of action against each of the Defendants, a probable right to the relief sought, and a probable, immediate, and irreparable injury in the interim, entitling Plaintiffs to a prospective-only injunction in this matter. Accordingly, harm is imminent, and if the Court does not issue injunctive relief,

Plaintiffs will be immeasurably and irrevocably harmed without an adequate remedy at law in that the Defendants will, directly or indirectly, continue to implement the ill-advised and illegal procedures described above.

41. Therefore, in order to preserve the last, actual, peaceable, non-contested status which preceded the pending controversy, Plaintiffs request that this Court issue a prospective-only against both Defendants, along with their respective officers, agents, servants, employees, representatives, assigns and/or any other person or entities acting on behalf of, or in concert or participation with, any of the Defendants, directly or indirectly, are hereby restrained from doing the following: the Defendants are prohibited, directly or indirectly, from continuing to violate Chapter 276.019 of the Texas Election Code as described above.

42. Plaintiffs are prepared to post a reasonable bond in this matter.

PRAYER

WHEREFORE, Plaintiffs respectfully pray that Defendants Bennett and Harris County be cited to appear and answer, and that declaratory judgment be granted herein. In addition, Plaintiffs seek injunctive relief as described above. Plaintiffs seek no relief directly against Harris County, other than to be bound by the judicial declarations and injunctive relief granted herein. Finally, Plaintiffs seek the recovery of attorneys' fees and expenses, and court costs against the Defendants.

Respectfully submitted,

/s/ Jared R. Woodfill

JARED R. WOODFILL
State Bar No. 00788715
Woodfill Law Firm, P.C.
3 Riverway, Suite 750
Houston, Texas 77056
P:(713) 751-3080
Fax: (713) 751-3058
woodfillservice@gmail.com

ATTORNEY FOR PLAINTIFFS

Unofficial Copy Office of Marilyn Burgess District Clerk