

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

KENNETH ZIMMERN, A Harris County)
Registered Voter, WILLIAM SOMMER, A)
Harris County Registered Voter, and CAROLINE)
KANE, A Harris County Registered Voter,)

Plaintiffs,

v.

Civil Action No. 4:24-cv-04439

JUDGE LINA HIDALGO, in her official)
capacity as County Judge for Harris County, Texas;)
TENESHIA HUDSPETH, in her official)
capacity as County Clerk for Harris County, Texas,)

Defendants.

**PLAINTIFFS' FIRST AMENDED COMPLAINT AND REQUEST FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

No one, especially the government, should be able to know how anyone voted. This case requires the court to decide an issue of first impression, that is, whether the United States Constitution provides voters the right to a secret ballot.

Voters should have a constitutional right to a secret ballot. Plaintiffs ask the court to declare that the voting system used by the Defendants in Harris County violates this right. Additionally, Plaintiffs request an injunction to prevent Defendants from collecting voter data that allows both Harris County and third parties to identify a voter's vote. Plaintiffs bring this action under 42 U.S.C. § 1983 for violations of The Equal Protection and Due Process Clause of the Fourteenth Amendment and for violations of the Freedom of Speech and Association Clauses of the First Amendment of the U.S. Constitution.

INTRODUCTION

1. This Complaint seeks declaratory and injunctive relief arising from failures of Harris County to comply with the United States Constitution. The Defendants deprive Plaintiffs and others similarly situated of their right to a secret ballot in violation of the First and Fourteenth Amendments to the United States Constitution. *See*, U.S. Const. Amend. I; U.S. Const. Amend. XIV. As a result of the Defendants' actions, Plaintiffs seek relief from this court under 42 U.S.C. § 1983, as well as declaratory and injunctive relief.

2. Harris County has adopted and implemented a system of voting which permits many, and possibly all, voters' ballots to be traced back to the individual voter. The system of voting adopted and implemented by Harris County collects and maintains information specific to each voter and their ballot.

3. To audit elections, Texas' public disclosure laws make public the poll books of voting centers (i.e. voter roster), ballots images and cast vote records. The combination of those documents makes it possible for Harris County and third parties to trace certain voters back to their actual ballots. The system of auditability of the election required by the Texas Election Code, in combination with the use of county-wide vote centers, defeats a voter's right to a secret ballot. Defendants, therefore, have traded the secrecy of elections for a system of voting that violates a voter's constitutional right to privacy.

Importance of the Secret Ballot and Voter Privacy

4. The secret ballot, also known as the Australian ballot, is a now cornerstone of democratic processes around the world. Its significance lies in promoting free and fair elections, protecting voter privacy, and encouraging the exercise of the right to vote. One of the most crucial functions of the secret ballot is to safeguard the autonomy of the voter, protect the voter

from undue influence and mitigate against corruption. By ensuring that votes are cast privately, individuals can express their preferences without fear of retribution or social pressure. Privacy is essential where certain political opinions may be unpopular or where voters may face repercussions for their choices, such as ostracism, retribution, extortion, bribery or job loss. The ability to vote confidentially allows individuals to prioritize their true beliefs and values, fostering a more genuine democratic expression.

5. Moreover, the secret ballot enhances the integrity of elections. By reducing the opportunities for coercion and vote buying, it creates a level playing field where candidates must appeal to voters based on their policies and character rather than through bribery, coercion or corrupt manipulation. This contributes to a healthier political environment, as candidates are encouraged to engage in meaningful dialogue with constituents, focusing on issues rather than leveraging intimidation or deceit.

6. The secret ballot also plays a critical role in boosting voter turnout. When votes are private, individuals feel more confident exercising their right to vote. This increased participation leads to a representative government that reflects the will of the people. In contrast, there is a disincentive for participation when voting is public, as potential voters fear judgment or backlash based on their choices.

7. Historically, the implementation of the secret ballot has been a significant advancement in the fight for democratic rights. Routledge, Taylor & Francis Group, *How the Secret Ballot Changed Democracy*, Posted July 18, 2022, https://www.routledge.com/blog/article/how-the-secret-ballot-changed-Democracy?srltid=AfmBOorpGhezXM8yZ6LrrWqm_EgUEjx7DkAS13Ds1255Zczhnmcu3t2C. Many movements around the world have advocated for a secret ballot to ensure that elections are

conducted fairly and transparently. *Id.* The adoption of the secret ballot has often accompanied broader social changes, including the expansion of suffrage and the fight against corruption in political systems. *Id.*

Constitutional Basis for the Right to a Secret Ballot

8. Political privacy, and the essential privacy right of a secret ballot, is in the First Amendment and is inseparable from “liberty” as guaranteed in the Fourteenth Amendment. In deciding that the right of association included the right to associate privately, the Supreme Court reasoned:

It is beyond debate that the freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the “liberty” assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. *See Gitlow v. New York*, 268 U.S. 652, 268 U.S. 665; *Palko v. Connecticut*, 302 U.S. 319, 302 U.S. 324; *Cantwell v. Connecticut*, 310 U.S. 296, 310 U.S. 303; *Staub v. City of Baxley*, 355 U.S. 313, 355 U.S. 321. “Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.

NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 461-62 (1958).

9. The Supreme Court found repugnant to the First and Fourteenth Amendments an Alabama law which required the NAACP to disclose its donors. “Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs,” the Supreme Court reasoned. *Id.* at 462. The Supreme Court went on to conclude that the Alabama statute requiring disclosure of donors was an unconstitutional infringement on the right to associate privately because it subjected the donors to retaliation and intimidation. “We hold that the immunity from state scrutiny of membership lists which the Association claims on behalf of its members is here so related to the right of the members to pursue their lawful private interests privately and to

associate freely with others in so doing as to come within the protection of the Fourteenth Amendment.” *Id.* at 466.

10. As the right to associate privately is protected, so is the right to speak anonymously. The Supreme Court held in *McIntyre v. Ohio Elections Commission*, the First Amendment’s “... freedom to publish anonymously extends beyond the literary realm,” into the political realm. 514 U.S. 334, 348 (1995).

Thus, even in the field of political rhetoric, where “the identity of the speaker is an important component of many attempts to persuade,” *City of Ladue v. Gilleo*, 512 U.S. 43, 56 (1994) (footnote omitted), the most effective advocates have sometimes opted for anonymity. The specific holding in *Talley* related to advocacy of an economic boycott, but the Court’s reasoning embraced a respected tradition of anonymity in the advocacy of political causes. **This tradition is perhaps best exemplified by the secret ballot, the hard-won right to vote one’s conscience without fear of retaliation.**

Id. at 342-43. (emphasis added)

11. In protecting the right to anonymous speech, the Supreme Court has already characterized the right to a secret ballot as a “hard-won right” derived from the rights of speech and association under the First Amendment and is to be protected by the Due Process Clause of the Fourteenth Amendment. *Id.* at 342-43. The right to a secret ballot is indispensable from the right to vote.

12. Accordingly, Plaintiffs seek a declaration that the United States Constitution’s First and Fourteenth Amendment rights include the right to not have their votes made public and that the Defendants’ actions as described below violate the First and Fourteenth Amendments by allowing the government and, subsequently, the public to discover how individuals voted. Plaintiffs seek preliminary and permanent injunctions and a declaratory judgment prohibiting Defendants from adopting and utilizing a voting system that violates the secrecy of any voter’s

ballot. Finally, Plaintiffs request the Court order the Defendants to amend the system of voting in Harris County to protect the privacy of a voter's ballot so neither the government nor the public know how a voter voted.

JURISDICTION AND VENUE

13. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation of rights by Defendants, under color of state law, secured by the United States Constitution.

14. Plaintiffs and others similarly situated are denied voting rights, due process, and equal protection accorded them by the First and Fourteenth Amendments to the Constitution of the United States under color of state law by the actions of the Defendants.

15. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343, because the matters in controversy arise under the Constitution and laws of the United States and involve the assertion of a deprivation, under color of state law, of rights guaranteed under the Constitution of the United States.

16. This Court has personal jurisdiction over Defendant Teneshia Hudspeth, who is sued in her official capacity as Harris County Clerk.

17. This Court has personal jurisdiction over Defendant Judge Lina Hidalgo, who is sued in her official capacity as Harris County Judge.

18. Venue in in this Court is proper under 28 U.S.C. § 1391(b)(1), because the Plaintiffs and Defendants all reside in this district, and under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claim occurred in this district.

19. This Court has authority to enter a declaratory judgment in this action under 28 U.S.C. §§ 2201 and 2202.

PARTIES

20. Kenneth Zimmern is a qualified and registered voter in Harris County, Texas. As an attorney licensed by the Bar of the State of Texas, Mr. Zimmern does not want anyone, including the government, to know how he voted. He has voted at early vote centers and is concerned about the negative effects of the lack of secrecy regarding his ballot and potentially facing retribution from anyone who could discover his ballot, particularly the county and district clerks and the judges in whose courts he appears. He voted in the 2024 GOP Primary and 2024 General Election.

21. William Sommer is a qualified and registered voter in Harris County, Texas. Mr. Sommer is concerned about the negative effects of the lack of secrecy regarding his ballot and potentially facing retribution from anyone who could discover his ballot. He does not want anyone, including the government, to know how he voted. He voted at an early vote center in the 2024 General Election. He did not vote in the 2024 primary election out of fear that his ballot from the primary election would be exposed. He is also a Harris County election clerk for early voting and an alternate election judge on election day.

22. Caroline Kane is a qualified and registered voter in Harris County, Texas. Ms. Kane is concerned about the negative effects of the lack of secrecy regarding her ballot and potentially facing retribution from those who have discovered her ballot. She does not want anyone, including the government, to know how she voted. Ms. Kane voted in the 2024 Republican Primary and has had her ballot disclosed and made public. She was also a candidate for the United States House of Representatives this election cycle, earning the Republican nomination for Congressional District 7. She lost to the Democrat nominee, Hon. Lizzie Fletcher. Her primary ballot was made an issue in her campaign.

23. Defendant Judge Lina Hidalgo is the County Judge for Harris County, Texas. She is charged with the administration of federal and state election laws, including overseeing the election process within the county and ensuring compliance with state laws and regulations. She is sued in her official capacity, has appeared herein and is represented by counsel, the Harris County Attorney, Christian D. Menefee.

24. Defendant Teneshia Hudspeth is the County Clerk of Harris County, Texas. She is charged by Texas state statutes with the administration of federal and state election laws. The County Clerk is also the Chief Election Official for Harris County. The County Clerk's office conducts special, primary, and general elections for Harris County. She is sued in her official capacity, has appeared herein and is represented by counsel, the Harris County Attorney, Christian D. Menefee.

25. Although no direct challenge to the constitutionality of a Texas Statute is made in this complaint, a courtesy file-stamped copy of the amended complaint is being sent to the Texas Attorney General, Ken Paxton, at Office of the Attorney General, P.O. Box 12548, Austin, Texas 78701.

FACTUAL ALLEGATIONS

A. The Texas Countywide Voting Program

26. In 2009, the Texas state legislature passed HB 719, which authorized the establishment of the Countywide Polling Place Program. Tex. Elec. Code. Sec. 43.007.

27. Under Section 43 of the Election Code, approximately 99 counties across Texas have adopted a "countywide voting program," commonly known as "Vote Centers." Tex. Elec. Code. Sec. 43.007.

28. A Vote Center permits voters registered in a county to cast their ballots at any polling location with that county during early voting and on Election Day, rather than being restricted to the location assigned to their specific precinct. Tex. Elec. Code. Sec. 43.007

29. For the General Election on November 5, 2024, ninety-nine of Texas' two hundred fifty-four counties were authorized to utilize the Countywide Polling Place Program. Texas Secretary of State, Counties Approved to Use the Countywide Polling Place Program, (Oct. 17, 2024), <https://www.sos.state.tx.us/elections/laws/countywide-polling-place-program.shtml>.

30. Harris County is approved to participate in the Countywide Polling Place Program. Texas Secretary of State, Counties Approved to Use the Countywide Polling Place Program, (Oct. 17, 2024), <https://www.sos.state.tx.us/elections/laws/countywide-polling-place-program.shtml>.

31. Harris County operated and used countywide polling locations for the primary and general elections held in 2024.

32. Harris County will continue to use countywide polling locations in 2025 and 2026.

33. After each election, the poll books from every Vote Center are made publicly available in accordance with Tex. Elec. Code §1.012(e).

34. After each election, the ballots cast from every voter are made publicly available in accordance with state law Tex. Elec. Code §1.012(e), which reads: "Except as provided by Subsections (f) and (g), an election record shall be available not later than the 15th day after election day in an electronic format for a fee of not more than \$50."

35. After each election, the electronic poll book for each Vote Center and precinct is made publicly available.

36. After each election, the electronic cast vote records from each Vote Center, which contain both voter and precinct data, are made publicly available.

37. After each election, the electronic voter roster from each Vote Center and precinct is made publicly available.

38. The purpose of public disclosure for all election records, paper and electronic, including but not limited to the poll books, ballot images, and electronic cast vote records, is to ensure auditability of the election. The precinct report should match the number of ballots cast from each precinct, regardless of which Vote Center a voter used. The ballots also need to match the vote total received by each candidate regardless of where the vote was cast.

B. Harris County's Collection of Voter Data Defeats Voter Privacy.

39. Harris County uses electronic poll books to record where and when a voter votes. The electronic poll books are connected to an internet system which notifies each of the other Vote Centers that specific individuals have presented themselves to vote so that voters may not vote more than once and at more than one Vote Center.

40. Harris County also records each vote on a cast vote record by which votes are counted. The cast vote records include such information as the time, date, place and voting precinct for each ballot, and serial number of the machine tabulating each ballot.

41. Harris County's election system collects data from electronic poll books, ballots and ballot images, cast vote records, and voter rosters in such a way that it allows ballots to be traced back to the voter by Harris County and third parties.

C. Ballot Secrecy Cannot Be Maintained Under the Current System.

i. The Public Can Obtain Ballots and See How Voters Voted.

42. Harris County chose to participate in the Countywide Polling Place Program and created Countywide Vote Centers.

43. Due to the implementation of Countywide Vote Centers, maintaining ballot secrecy for voters has become impossible under current Texas law.

44. The voter rolls for each Vote Center are publicly accessible as required by statute and can be requested for public inspection. Tex. Elec. Code §1.012(e).

45. The individual ballots of voters and electronic vote records are made publicly available pursuant to Tex. Elec. Code §1.012(e) and can be requested by the public for inspection after the election has been concluded.

46. By comparing publicly available records from poll books, voter rosters, ballot images, and cast voter records it is possible for Harris County and the public to connect specific voters to their individual ballots and cast vote records to learn how they voted in that election. For example, if voter John Doe from precinct 1 voted at a Countywide Vote Center, his ballot and cast vote record could be easily identifiable and traced back to him. The poll book and voter rosters record John Doe's name, precinct, vote center where he voted, and the date and time he voted. The ballot image does not indicate the voter's name, but, in addition to the vote selections, it does indicate the voter's precinct, vote center, date, election judge's signature, and sequential number. The cast vote record does not indicate the voter's name, but does indicate the voter's precinct, the vote center, style and method voting (early, election day, by mail), tabulating machine serial numbers and cast vote record.

47. Consequently, the identities of voters and their ballots can be identified because Harris County administers a system that collects precinct level voter data from Voter Centers throughout the county. Voter data the county collects is then made publicly available through open records requests, making it simple for Harris County and third parties to learn how a voter voted.

48. The Texas Tribune has written about these problems in the system utilized by Harris and other Texas counties. This issue disproportionately impacts less populated counties, small precincts, and elections with low voter turnout. According to Williamson County District Attorney Shawn Dick,

What bothers me is that people cannot vote in secret in the United States. If people's ballots don't remain anonymous, that's a huge affront to our system of government and our system of elections."

Natalia Contreras, et al., Texas Officials Compromised Ballot Secrecy As They Increased Election Transparency, The Texas Tribune, (May 29, 2024), <https://www.texastribune.org/2024/05/29/texas-ballot-compromised-election-security-transparency/>.

49. Organizations such as Votebeat and the Texas Tribune have successfully demonstrated the ability to match certain voters to their ballots. Natalia Contreras, et al., Texas Officials Compromised Ballot Secrecy As They Increased Election Transparency, The Texas Tribune, (May 29, 2024), <https://www.texastribune.org/2024/05/29/texas-ballot-compromised-election-security-transparency/>.

50. While organizations like Votebeat and the Texas Tribune have already done this, it is possible for any individual to recreate the same steps through the release of publicly available information.

51. Attached hereto and incorporated herein as if set out in full is Exhibit 1, the Affidavit of Barry Wernick, who through Public Information Act requests lawfully obtained the voter rosters and cast vote records from the Harris County Republican and Democrat Primaries held in 2024. Mr. Wernick explains in his Affidavit how voters' ballots are made known by this system implemented by the Defendants in Harris County.

52. Mr. Wernick has identified the ballots and votes of Texas court of appeals justices, district court judges, state senators, state representatives, congressmen and congressional candidates and, most ironically, the ballot of Texas Secretary of State Jane Nelson.

53. Mr. Wernick has outlined how Harris County's system has made known the votes of over 28,000 Harris County voters.

54. Some Harris County voters' ballots, including Ms. Kane's, have already been made available to the public.

55. Some Texas Voters' ballots have been made available to the public through various news organizations.

56. In May, the news organization Current Revolt claimed to have discovered and published the ballot of the former Republican Party Texas Chair Matt Rinaldi. Tommy Oliver, EXCLUSIVE: Hacked Ballot Proves Texas Elections in CRISIS, Current Revolt, (May 22, 2024), <https://www.currentrevolt.com/p/exclusive-hacked-ballot-proves-texas>.

57. In June, Current Revolt published an article claiming to have the ballot of Democratic Representative Colin Allred. Current Revolt, Voter Ballot Belonging to Democrat Representative Identified, Current Revolt, (Jun 1, 2024), <https://www.currentrevolt.com/p/voter-ballot-belonging-to-democrat>.

58. Other public requestors have utilized the same or similar methods to learn the ballots of judges, election officials, and various notable individuals. *See* Affidavit of Barry Wernick.

59. Current expert estimates indicate that using this analog method, around 10% of all Democratic Primary Voters and about 5% of all Republican Primary Voters' ballots may be discoverable just by using public and legally available records. *See* Affidavit of Barry Wernick.

60. Other expert reports indicate that a significantly higher percentage of ballots may not be confidential based on the algorithms used for electronic ballots. *See e.g., Pressly v. Nelson*, No. 1:24-cv-00318-DII, (W.D. TX. May 20, 2024) Amend. Compl. ECF 32 ¶ 115.

ii. Government Officials Can See How Voters Voted.

61. Both the Texas Attorney General and Secretary of State are aware of the ability to identify voters' ballots through information collected by counties. Christina Worrell Adkins, Election Advisory No. 2024-20, Texas Secretary of State, <https://www.sos.state.tx.us/elections/laws/advisory2024-20.shtml>.

62. On June 6, 2024, Christina Worrell Adkins, Director of Elections issued Election Advisory No. 2024-20. Christina Worrell Adkins, Election Advisory No. 2024-20, Texas Secretary of State, <https://www.sos.state.tx.us/elections/laws/advisory2024-20.shtml>.

63. Advisory No. 2024-20 acknowledges and confirms the issue of ballot secrecy and advises "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." Christina Worrell Adkins, Election Advisory No. 2024-20, Texas

Secretary of State, <https://www.sos.state.tx.us/elections/laws/advisory2024-20.shtml>. Categories of information subject to redaction include:

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

Christina Worrell Adkins, Election Advisory No. 2024-20, Texas Secretary of State,

<https://www.sos.state.tx.us/elections/laws/advisory2024-20.shtml>.

64. The advisory from the Secretary of State to redact information from poll books and ballots in response to an open records request is tantamount to an admission by the Texas Secretary of State that Texas counties, including Harris County, violate the voter's right to a secret ballot by collecting and maintaining certain voter data.

65. Texas statutes require the information listed in paragraph 63 to be collected and maintained by Harris County.

66. Texas statutes require the information listed in paragraph 63, collected and maintained by Harris County, to be publicly released in response to open records requests.

67. Harris County collects the voter data listed in paragraph 63. The voter data needed to learn a voter's vote is collected, known and maintained by Harris County.

68. To effectively redact voter data as suggested by the Secretary of State, an election official must review voter data directly.

69. Redacting voters' data in response to an open records request is tantamount to an admission that Harris County election officials collect and possess the information necessary to learn a voter's vote.

70. Thus, even if information about the voter is redacted in response to open records requests, so that it becomes impossible for the general public be able to trace ballots to individual voters, it is still possible for election officials to trace voters to ballots, and visa-versa, because Harris County has access to all of the information required to match a voter to their ballot.

71. Perhaps more importantly, Harris County has not properly followed the guidance by the Secretary of State in Election Advisory No. 2024-20. Harris County has, in fact, released ballots without the recommended redactions taking place.

72. On September 30, 2024, Stuart Wernick made a request for information related to Harris County voting records and on October 2, 2024, all the records from Harris County were delivered without the redactions recommended by Election Advisory No. 2024-20.

73. After the general election in November 2024, Harris County election officials are required to disclose the most recent records of poll books and ballots.

74. A significant number of additional individual ballots are discoverable by the county election officials who have access to all of the unredacted records.

75. Additionally, the Texas Secretary of State has been made aware that some county's voting systems may have a direct link between the E-poll book and the direct numbering system so that there is a direct link between the voter and the voter's ballot. Christina Worrell Adkins, Election Advisory No. 2024-21, Texas Secretary of State, <https://www.sos.state.tx.us/elections/laws/advisory2024-21.shtml>.

76. Election Advisory No. 2024-21 prohibits, "The generation of ballot numbers using electronic poll book systems or using peripheral devices that directly connect to electronic poll book systems. Jurisdictions using those systems are now required to use ballot numbering methods that do not involve the use of the electronic poll book system or peripherals that are directly connected to those systems."

77. It has not yet been confirmed whether Harris County's system creates a direct link between the electronic poll book and the voter's ballot through direct numbering of the ballot. In Hart Intercivic Verity Voting Systems used by Harris County, a peripheral device, known as a controller, creates a ballot style for each voter and includes the time, place, precinct, and a random ballot number for each ballot. Therefore, it appears that direct numbering is possible between the electronic poll book, the controller, and the ballot marking device. Election Advisory No. 2024-21 acknowledges that peripheral devices can be used to generate numbers from the electronic poll book, creating a link between the voter check-in information and what information is added to the ballot.

78. In addition to Mr. Wernick's method of learning a voter's vote, computer professionals can write a mathematical algorithm which will disclose many more and possibly all

voter's votes. Attached hereto as Exhibit 2 and incorporated herein as if set out in full is the affidavit of Rick Weible, a certified network engineer and data analyst expert with 25 years of experience. Mr. Weible can map out the randomization process using the information possessed by the Defendants and available by public request to learn voters' ballots on a greater scale than by using Mr. Wernick's method alone. Mr. Wernick's method creates enough data points so that experts can write an algorithm which will disclose a larger number of voters' ballots.

CAUSES OF ACTION

COUNT 1

(42 U.S.C. § 1983: Violation of First Amendment of the U.S. Constitution – Free Speech and Freedom of Association)

U.S. Const. Amend. I

79. The Plaintiff realleges the preceding paragraphs as if fully stated herein.

80. Under the color of state law, Defendants are violating the Plaintiff's constitutional right to a secret ballot.

81. Plaintiffs assert violations of the Free Speech and Free Association Clauses of the First Amendment of the United States Constitution because of the Defendants' failure to protect Texas' voters ballot secrecy.

82. The First Amendment to the United States Constitution guarantees the right to political privacy and free speech, which includes the right to express political opinions and participate in the democratic process without fear of intimidation, coercion, bribery, or retaliation. It also protects the right of individuals to vote privately and without intimidation, thereby preserving the integrity of the electoral process.

83. By allowing the implementation of practices that compromise the secrecy of ballots, Defendants have created an environment in which voters are at risk of being coerced or intimidated based on their voting choices by private individuals or the government. This compromises the very essence of free expression and undermines the foundational principle of democratic participation.

84. The lack of ballot secrecy means that individuals may hesitate to vote according to their true beliefs due to fears of retribution from employers, peers or others in their community. Such an environment suppresses political privacy, free speech and limits the exercise of the right to vote, thereby infringing upon Plaintiffs' First Amendment rights.

85. The actions and inactions of Defendants, as described herein, constitute a violation of Plaintiffs' First Amendment rights to political privacy, free speech, association, and the right to participate in elections without fear of surveillance or intimidation. Plaintiffs fear intimidation, coercion, and retaliation as a result of their votes becoming public.

COUNT II

(42 U.S.C. § 1983: Violation of Fourteenth Amendments of the U.S. Constitution –Equal Protection and Due Process)

U.S. Const. Amend. XIV

86. The Plaintiff realleges the preceding paragraphs as if fully stated herein.

87. Plaintiffs assert violations of the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the United States Constitution because of the Defendants' failure to protect Texas' voters ballot secrecy.

88. The Fourteenth Amendment to the United States Constitution guarantees that no state shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

89. The Equal Protection Clause is also violated through the unequal treatment of voters who vote at countywide election centers, as opposed to those who vote on election day in their home precinct. It is more difficult to ascertain the ballot of a voter who votes in their home precinct on election day.

90. Defendants' actions, by failing to ensure the secrecy of the ballot, have effectively deprived Plaintiffs and others similarly situated of their fundamental right to vote in a manner that is private and free from intimidation, bribery, retribution, or coercion. This failure to maintain ballot secrecy undermines the procedural due process owed to every voter, as it creates an environment where individuals may be subjected to intimidation or retaliation based on their voting choice.

91. By permitting practices that compromise the secrecy of ballots, Defendants not only infringe upon the due process rights of Plaintiffs but also perpetuate systemic inequalities within the electoral process, undermining the principle of equal protection under the law.

92. Plaintiffs fear retaliation, coercion, and intimidation because of their ballots becoming public.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for a preliminary injunction, a permanent injunction, and a judgment:

1. Declaring that the Plaintiffs have the right to a secret ballot under the First and Fourteenth Amendments to the United States' Constitution.

2. Declaring that Defendants are in violation of the First and Fourteenth Amendments of the U.S. Constitution in the manner of which the Defendants are conducting elections in Harris County.

3. Ordering the Defendants to refrain from collecting, maintaining and/or making public voter identifying information from poll books and ballot records.

4. Ordering the Defendants to abstain from viewing information that may lead to the discovery of a voter's ballot and from identifying to anyone a voter's vote or ballot.

5. Ordering the Defendants to pay Plaintiffs' actual damages.

6. Ordering the Defendant to pay Plaintiff's reasonable attorney's fees, including litigation expenses and costs, pursuant to 42 U.S.C. § 1988; and

7. Granting Plaintiffs further relief that this Court deems just and proper.

Respectfully submitted,

/s/ Joseph M. Nixon

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2025, a true and correct copy of the foregoing Amended Complaint was electronically filed using the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Joseph M. Nixon
Joseph M. Nixon

Dated: April 14, 2025.