

**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.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND
MEMORANDUM

INTRODUCTION

This Court is asked to answer an issue of first impression: Does the First Amendment's rights of speech and association, protected by the Fourteenth Amendment, provide a privacy right to a secret ballot? If the Court finds there is a privacy right to a secret ballot, then summary judgment is merited on all of Plaintiffs' claims. Even if the Court rules there is no constitutional right to a secret ballot, the Court must decide whether the lack of a secret ballot for some voters and not others is violative of the Fourteenth Amendment's right to equal protection.

No material facts are in dispute. Harris County collects voter data in poll books, voter rosters, ballot images and cast vote records that allow both county employees and the public to access sufficient information to learn how a voter voted. Harris County admits that more than 200 election staff have access to look at poll books, vote rosters, ballot images, and cast vote records.¹ Access to those voting records, which are also subject to public disclosure via the Texas Freedom of Information Act, Tex. Gov't Code § 552.001 *et seq.*, allow any person to learn how a voter has voted. It is undisputed that many Harris County voters' votes are either known or knowable.

Plaintiffs request the Court to grant judgment and relief as pleaded.

¹ Defendants' Responses to Plaintiffs Set of Interrogatories No. 10. Ex. 3.

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Plaintiffs move this Court for summary judgment because there are no genuine issues of material fact and they are entitled to judgment as a matter of law.

SUMMARY OF THE ARGUMENT

Plaintiffs present two core constitutional questions: whether the right to political privacy encompasses a right to a secret ballot and whether there is an equal protection violation in the disparity between voters whose ballot is secret and those whose ballot can be known.

The relevant facts are not in dispute. Plaintiffs identify specific, admitted, and ongoing practices that threaten the integrity of the electoral process and infringe upon personal constitutional rights. The requested injunctive and declaratory relief is narrowly tailored to redress these violations and enforce constitutional guarantees.²

I. CONSTITUTIONAL RIGHT TO A SECRET BALLOT

The right to political privacy is rooted in the First Amendment's protection of anonymous association and expression, safeguarded by the Fourteenth Amendment's Due Process Clause.

By collecting and disclosing voter data, Harris County is chilling the exercise of speech and association. It offers no compelling interest for collecting or retaining

² In Senate Bill 2753, now enrolled and effective September 1, 2025, the 89th Texas Legislature created a pathway for a court-ordered remedy, which is discussed on page 16 below.

information that can be used to identify voters' selections. The current system is functionally equivalent to publishing voters' individual ballots online in a searchable database. The right to a secret ballot should be universal. If the privacy right is not constitutionally protected, it is within a state's power to post all voters' votes online. That would be shocking, but lawful.

The right to associate privately is integral to the "liberty" protected by the Due Process Clause. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 459 (1958). In *NAACP*, the Supreme Court invalidated Alabama's requirement that the NAACP disclose its membership lists because compelled disclosure violates the First and Fourteenth Amendments by exposing members to retaliation and intimidation. *Id.* at 462-63. The Supreme Court emphasized that privacy in group associations is indispensable to preserving the freedom of association. *Id.* at 466.

The First Amendment's right to speak anonymously is equally protected. In *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 357 (1995), the Supreme Court struck down an Ohio law requiring disclosure of authorship on political leaflets. The Supreme Court held that the statute failed strict scrutiny because it was not narrowly tailored to serve an overriding state interest. *Id.* at 370.

The Supreme Court incorporated the First Amendment's protection of the freedom of speech to the States via the Fourteenth Amendment's Due Process Clause in *Gitlow v. New York*, 268 U.S. 652, 666 (1925). The Court expanded this protection

to the freedom of association and anonymous speech in *NAACP* and *McIntyre*, respectively. *See NAACP*, 357 U.S. at 460; *see also McIntyre*, 514 U.S. at 336 n. 1, 342. These incorporated rights form the foundation of political privacy.

The voting system employed in Harris County defeats any right to a secret ballot, thereby creating an obstacle to the right to vote subject to strict scrutiny. *See McIntyre*, 514 U.S. at 342; *Buckley v. Valeo*, 424 U.S. 1, 29 (1976); *Baker v. Carr*, 369 U.S. 186, 208 (1962); *Catholic Leadership Coal. of Tex. v. Reisman*, 764 F.3d 409, 423 (5th Cir. 2014).

Harris County has violated Plaintiffs' First and Fourteenth Amendment rights by collecting, maintaining, and making publicly available voter-specific ballot information in the nature of poll books, voter rosters, ballot images and cast vote records. Plaintiffs seek declaratory and injunctive relief under 42 U.S.C. § 1983 to remedy these ongoing constitutional violations.

II. EQUAL PROTECTION VIOLATION

The Equal Protection Clause of the Fourteenth Amendment requires that individuals similarly situated be treated equally under the law. In the voting context, the Supreme Court has made clear that any burden on the right to vote must be carefully examined, as the franchise is “preservative of other basic civil and political rights.” *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 667 (1966) (citing *Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964)).

Contrary to the obligations imposed by the Equal Protection Clause, Harris County's voting system gives unequal protections and rights based on when and where a person votes. Voters using countywide vote centers, particularly in low-turnout elections or casting ballots far from home, face an exponentially higher risk of having their ballot being exposed. The exposure risk is a direct result of the system's design and the way voting data is collected and published. This unequal treatment cannot survive constitutional scrutiny because "once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." *Harper*, 383 U.S. at 665.

Protecting the right of privacy for most voters is not good enough. A secret ballot belongs either to all voters or to none. A system that protects some voters' ballot secrecy while exposing others', based solely on the mechanics of when and where they vote, violates the Equal Protection Clause. This policy-driven decision lacks any compelling justification.

STATEMENT OF ISSUES TO BE RULED UPON BY THE COURT

1. Whether the First and Fourteenth Amendments of the United States Constitution guarantees a voter the right to cast a secret ballot.
2. Whether Harris County's voting system, which permits ballots to be matched to individual voters through government collected and publicly available

election records, violates voters' constitutional rights to political privacy, anonymous political expression, and anonymous association.

3. Whether the Harris County voting system's disparate treatment of voters violates the Equal Protection Clause of the Fourteenth Amendment by providing ballot secrecy to some voters but not all.

4. Whether Plaintiffs are entitled to declaratory and injunctive relief under 42 U.S.C. § 1983 to remedy and prevent the ongoing constitutional violations caused by the challenged voting system.

STANDARD OF REVIEW

Summary judgment is warranted when the pleadings and record show "no genuine dispute as to any material facts and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The evidence considered by the court must be viewed in the light most favorable to the nonmoving party. *United Fire & Cas. Co. v. Hixson Bros., Inc.*, 453 F.3d 283, 285 (5th Cir. 2006). "Once the moving party has initially shown 'that there is an absence of evidence to support the non-moving party's cause,' the non-movant must come forward with specific facts showing a genuine factual issue for trial." *TIG Ins. Co. v. James*, 276 F.3d 754, 759 (5th Cir. 2002) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)) (citation modified).

ARGUMENT

The undisputed material facts show that Harris County’s voting system violates voters’ constitutional right to a secret ballot under the First and Fourteenth Amendments. The County collects, maintains, and discloses voting records that—when combined—allow county employees and the public to determine how some voters voted. This system, which Harris County has adopted and continues to operate, compromises the secrecy of the ballot and imposes unconstitutional burdens on the fundamental rights of some, but not all, voters.³

UNDISPUTED MATERIAL FACTS

I. Harris County’s voting system generates a separate cast vote record for each individual ballot. Harris County admits it uses a voting system that creates a cast vote record for every ballot cast. Each cast vote record is an electronic record that reflects the selections made on a single ballot. These cast vote records are stored and can be retrieved following an election. *See* Defs.’ Answer ¶ 40, ECF No. 34.

II. Harris County admits that cast vote records include the polling place, precinct, and machine serial number, and further concede that the date of voting is included for ballots cast on election day. These data fields are embedded in every

³ Harris County admits in its answer “that it is currently expected that countywide polling locations will be used in Harris County in 2025 and 2026.” ECF 34, p. 6. ¶ 32.

cast vote record, making them traceable to specific locations and times. *See* Defs.’ Answer ¶ 39-40, ECF No. 34; Defs.’ Interrog. No. 3.

III. Electronic poll books used in Harris County elections record the name of each voter, the exact time of check-in, and the specific vote center where the voter cast their ballot. Harris County admits that electronic poll books track and store this voter-specific information at the time of voting. The system creates a precise log connecting individual voters to vote centers and timestamps, which can be used in combination with cast vote records. *See* Defs.’ Answer ¶ 39, ECF No. 34; Defs.’ Interrog. No. 3, 6.

IV. Voting rosters listing individual voters and their registered home precincts are made publicly available after each election. Harris County admits that voting rosters, which include voter names and home precinct information, are released following elections as public records. Tex. Gov’t Code § 552.001; Tex. Elec. Code § 66.001(1). This data serves as a foundation for cross-referencing voter identities with other election records. *See* Defs.’ Answer ¶ 37, ECF No. 34.

V. The County admits that “all Harris County Clerk’s Office election staff have access to look at the pollbooks [*sic*], voter rosters, ballot images and cast vote records.” Defs.’ Interrog. No. 10. Over 200 County Clerk’s Office election staff are then listed in the interrogatory answer as having access to the data which would allow them to learn how a voter votes. *Id.*

VI. The County makes the cast vote records, poll book data, and voting rosters available to the public upon request under Texas open records law. Harris County acknowledges that all three categories of records—cast vote records, poll book logs, and rosters—are accessible to the public under Texas open records laws. Although the County refers to “possible” redactions, it does not dispute that the data is collected and maintained by the County and is routinely provided to the public. *See* Defs.’ Answer ¶¶ 36–37, 63, 65–67, ECF No. 34; *see also* Compl. ¶ 71, ECF No. 33. Tex. Gov’t Code § 552.201(b); Tex. Elec. Code § 66.001(1).

VII. The data collected and disclosed by Harris County enables government employees and third parties to determine how specific voters voted. Harris County admits that the information it collects can be used to match voters to ballots. In its motion to dismiss, Harris County states: “It is the person who obtains the election records and attempts to extract and match [the data] who takes the steps necessary to ascertain how a voter voted.” ECF No. 8-1 at 4–5. This is an admission that Harris County’s system produces records that defeat ballot secrecy. *See id.*; Defs.’ Resp. to Interrog. No. 10.

VIII. Harris County intends to continue using the same voting system for future elections. Thus, the challenged conduct is not only ongoing but guaranteed to recur, reinforcing the need for prospective injunctive relief. *See* Defs.’ Answer ¶ 32, ECF 34.

IX. Barry Wernick's affidavit is attached as Exhibit 1 and incorporated as if set out in full.

X. Rick Weible's affidavit is attached as Exhibit 2 and incorporated as if set out in full.

XI. Harris County's Responses to Plaintiffs' Set of Interrogatories is attached as Exhibit 3 and incorporated as if set out in full.

XII. Kenneth Zimmern's affidavit is attached as Exhibit 4 and incorporated as if set out in full.

XIII. William Sommer's affidavit is attached as Exhibit 5 and incorporated as if set out in full.

XIV. Caroline Kane's affidavit is attached as Exhibit 6 and incorporated as if set out in full.

**HARRIS COUNTY HAS VIOLATED RIGHTS
SECURED BY THE CONSTITUTION**

To prevail on a claim under 42 U.S.C. § 1983, a plaintiff must show: (1) the deprivation of a right secured by the Constitution or laws of the United States, and (2) that the deprivation was committed by someone acting under color of state law. *See Valle v. City of Houston*, 613 F.3d 536, 541 (5th Cir. 2010). There is no genuine dispute of material fact as to either element.

First, the record establishes that Plaintiffs have suffered deprivations of rights secured by the First and Fourteenth Amendments by the lack of a secret ballot. *See*

NAACP, 357 U.S. at 462. These rights are central to a functioning democracy and are especially critical when disclosure of political affiliations or beliefs could expose individuals to retaliation, coercion, or social stigma. *See Harper*, 383 U.S. at 667. Harris County concedes that it and others may “extract and match” publicly disseminated voter data to individual ballots. Defs.’ ECF No. 8-1 at pp. 4-5.

The First Amendment protects the right to political anonymity and privacy. *See McIntyre*, 514 U.S. at 342. These protections extend to voting—the ultimate act of political expression. *See Reynolds*, 377 U.S. at 562. The Supreme Court has affirmed that anonymous participation in the democratic process is essential to preserving freedom of thought and action, particularly when disclosure invites retaliation, coercion, or social ostracism. *See e.g. Burson v. Freeman*, 504 U.S. 191, 200–06 (1992); *NAACP*, 357 U.S. at 460. Harris County’s system violates this principle. In *McIntyre*, the Supreme Court went so far as to say that this principle is **“perhaps best exemplified by the secret ballot, the hard-won right to vote one’s conscience without fear of retaliation.”** 514 U.S. at 343 (emphasis added).

The First Amendment prohibits government action that burdens political expression unless the restriction is narrowly tailored to serve a compelling state interest. *McIntyre*, 514 U.S. at 345-46 (citing *Meyer v. Grant*, 486 U.S. 414, 420 (1988)); *Buckley*, 424 U.S. at 25; *Catholic Leadership Coal. of Tex.*, 764 F.3d at 430-31. Harris County claims that “transparency” justifies its system, but it offers

no evidence or justification that its chosen method of collecting election data is the least restrictive means of achieving that interest. Harris County's system fails strict scrutiny. *McIntyre*, 514 U.S. at 345-46 (citing *Meyer*, 486 U.S. at 420).

Additionally, the Due Process Clause of the Fourteenth Amendment prohibits government conduct that violates fundamental rights. *NAACP*, 357 U.S. at 460. A system that forces voters to choose between casting a ballot or protecting their political privacy is constitutionally intolerable. *See Reynolds*, 377 U.S. at 554. The Equal Protection Clause likewise prohibits election practices that treat similarly situated voters unequally. *See Harper*, 383 U.S. at 665. Harris County's system violates the Equal Protection Clause by treating voters unequally. *See id.* Voters who cast ballots early at countywide vote centers are far more likely to have their ballots identified than voters who vote in their home precincts on Election Day. Compl. ¶ 89, ECF No. 33. This disparate treatment is unconstitutional. *See Harper*, 383 U.S. at 665.

These constitutional violations are not hypothetical. Plaintiff Kane's ballot was publicly exposed. Ex. 6. Plaintiff Sommer refrained from voting out of fear of exposure. Ex. 5. Plaintiff Zimmern faces an ongoing risk of retaliation from judges in whose court he appears regularly. Ex. 4. Harris County has not disputed the system malfunctions as Plaintiffs describe. Nor has it demonstrated the existence of

safeguards sufficient to prevent future harm. Accordingly, the ability to match ballots with voters is firmly established in the undisputed record.

Second, there is no dispute that Harris County acted under color of state law. Harris County is responsible for administering elections and managing voting records pursuant to authority granted by Texas law. *See* Tex. Elec. Code § 123.001 et seq. The challenged conduct—the design, operation, and maintenance of a voting system that enables vote traceability—is an official function carried out by Harris County under color of state law.

Section 1983 provides a cause of action for constitutional violations arising from election practices. *See Reynolds*, 377 U.S. at 566. The material facts demonstrating the deprivation of constitutional rights and state action are not in dispute. Consequently, Plaintiffs are entitled to judgment as a matter of law under 42 U.S.C. § 1983. *Ford v. Anderson Cnty.*, 102 F.4th 292, 306 (5th Cir. 2024) (citing Fed. R. Civ. P. 56(a)).

The dangers of a non-secret ballot are well established in jurisprudence. As the Supreme Court explained in *Burson v. Freeman*, 504 U.S. at 200–06, non-secret voting systems historically invited bribery, intimidation, employer coercion, and social ostracism. The Court emphasized that “[a]pproaching the polling place under this system was akin to entering an open auction place,” *id.* at 202, and praised the secret ballot as a reform that ended “battle, murder, and sudden death” on election

days. *Id.* at 203–04 (quoting W. Ivins, The Electoral System of the State of New York, 29th Ann. Mtg. N.Y. Bar Ass’n 316 (1906)). The constitutional values protected by ballot secrecy are not antiquated—they are essential to the modern democratic process.

Such government-imposed conditions on the right to vote are constitutionally impermissible. As the Fifth Circuit has recognized, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Croft v. Governor of Tex.*, 562 F.3d 735, 745 (5th Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The same principle applies here: requiring voters to sacrifice their political privacy in order to participate in elections is an unconstitutional burden on both First and Fourteenth Amendment rights.

Harris County’s system returns voters to a pre-reform era. It subjects voters to identification, scrutiny, and potential reprisal simply for exercising their right to vote. Government action that burdens political speech and association is subject to strict scrutiny. *See McIntyre*, 514 U.S. at 347; *see also Buckley*, 424 U.S. at 25.

While transparency in elections to assure election integrity is a legitimate governmental interest, it does not justify a system that enables the public exposure of individual votes. Harris County has not shown—and cannot show—that its method of collecting, maintaining, and releasing election records is narrowly tailored

to achieve election integrity. Harris County's failure to adopt privacy safeguards imposes a broad and unnecessary burden on voters' First Amendment rights.

Because there is no genuine dispute as to any material fact establishing burdens on anonymous political association and expression, and because Harris County has failed to offer a constitutionally sufficient justification, Plaintiffs are entitled to summary judgment on their First Amendment claims.

HARRIS COUNTY'S SYSTEM VIOLATES EQUAL PROTECTION

The Equal Protection Clause of the Fourteenth Amendment requires that similarly situated individuals be treated equally under the law. *See Baker*, 369 U.S. at 207.

The undisputed facts demonstrate that Harris County's voting system imposes unequal burdens on voters depending on whether they vote early at countywide vote centers or on Election Day in their assigned precincts. Compl. ¶ 89, ECF No. 33. Voters who cast ballots at vote centers face a significantly heightened risk that their ballot will be identified. This is due to the ability to cross-reference cast vote records, poll book logs, and voting rosters—publicly collected and released records that contain overlapping information about time, location, and precinct. Compl. ¶ 46, ECF No. 33.

Harris County has not disputed this risk. Former Texas House candidate and elections observer Barry Wernick has obtained nearly 30,000 Harris County voters'

ballots. Wernick Aff. ¶ 26, ECF No. 1-1; Ex. 1. Plaintiffs have also presented evidence, including unrebutted expert testimony of computer network engineer and data analyst Rick Weible, that the disparities are systemic and predictable. Ex. 2. The exposure risk is not incidental or speculative, it is a structural flaw embedded in the system's design and exacerbated by how data is collected and published. Weible Aff. ¶¶ 8-21, ECF No. 33-2; Ex. 3.

This unequal treatment cannot survive constitutional scrutiny. Ballot secrecy is an integral part of the franchise. A system that protects the secrecy of some voters' ballots while exposing others', based solely on the mechanics of when and where they voted, violates the Equal Protection Clause.

Harris County has not offered any compelling justification for this disparity. Because the disparate treatment is a direct consequence of the County's official policy, Plaintiffs are entitled to summary judgment on their Equal Protection claim.

HARRIS COUNTY'S SYSTEM VIOLATES DUE PROCESS

The Due Process Clause protects against arbitrary deprivations of fundamental rights. *Harper*, 383 U.S. at 667–68. The right to vote anonymously is fundamental to the integrity of democratic participation. Harris County's system ignores this right, requiring voters to choose between political privacy and political participation. Such a choice is incompatible with due process. It is arbitrary,

unnecessary, and repugnant to the principles the Fourteenth Amendment was designed to protect.

No material fact regarding the Due Process Clause is in dispute. Plaintiffs have demonstrated that the current voting system undermines ballot secrecy and imposes unequal and arbitrary burdens on their right to vote. They are therefore entitled to judgment as a matter of law on their due process and equal protection claims.

REMEDY

During an earlier hearing the Court asked about formulating a remedy. In this past session, the Texas Legislature passed Senate Bill 2753 (hereinafter “SB 2753”), now signed by the Governor, and enrolled and effective on September 1, 2025. Tex. S.B. 2753, 89th Leg., Reg. Sess. (Tex. 2025). Ex. 7. SB 2753 alters the election code to allow for any county, regardless of population, to withdraw from the countywide polling place program and require voters to vote in a combined precinct. A combined precinct may not contain more than 10,000 voters. Tex. Elec. Code. § 42.0051(c). This means that a voter, instead of voting at the countywide vote location, could be required to vote at the combined precinct. The Court may order Harris County to use combined precincts as a remedy, thereby protecting a voter’s vote from being discovered.

SB 2753 also altered the early voting period to be one continuous voting period beginning twelve days before election day and continuing through election day. Tex. Elec. Code. §§ 85.001(a) and (c). The continuous voting period includes Saturdays, Sundays, and holidays.

The use of combined precincts instead of countywide voting would eliminate the ability to discover how a voter has voted in the method discovered by Mr. Wernick available to both county employees and the public.

RESPONSES TO HARRIS COUNTY'S AFFIRMATIVE DEFENSES

I. FIRST DEFENSE - PLAINTIFFS' COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Plaintiffs have not only stated a claim under 42 U.S.C. § 1983—they have supported it with undisputed facts demonstrating that Defendants, acting under color of state law, violated clearly established constitutional rights protected by the First and Fourteenth Amendments. Plaintiffs challenge a specific government practice that enables the identification of how individuals vote, burdening political expression, association, and the right to a secret ballot. No further factual development is necessary for adjudication. Summary judgment is appropriate.

II. SECOND DEFENSE - PURSUANT TO ARTICLE III OF THE UNITED STATES CONSTITUTION, THIS COURT LACKS SUBJECT-MATTER JURISDICTION OVER THIS ACTION BECAUSE: PLAINTIFFS LACK STANDING; PLAINTIFFS' CLAIMS ARE NOT RIPE; PLAINTIFFS' CLAIMS ARE MOOT; AND PLAINTIFFS' CLAIMS PRESENT A NON-JUSTICIABLE POLITICAL QUESTION.

Each component of this defense fails:

Standing: Plaintiffs have shown actual injuries—Plaintiff Kane's ballot was exposed; Plaintiff Sommer declined to vote; Plaintiff Zimmern faces ongoing risk of exposure. These harms are traceable to Harris County's conduct and redressable through injunctive relief. *See Clapper v. Amnesty International USA*, 568 U.S. 398, 409 (2013).

Ripeness: The challenged system is operational and being used in current elections. The legal questions are fit for judicial resolution, and withholding review would impose hardship. *Rosedale Missionary Baptist Church v. New Orleans City*, 641 F.3d 86, 91 (5th Cir. 2011) (citing *Nat'l Park Hospitality Ass'n v. DOI*, 538 U.S. 803, 808 (2003)).

Mootness: Harris County argues that Plaintiffs' claims are moot on the theory that the harm has already occurred. The record confirms that Harris County continues to collect, store, and release election records—including cast vote records, poll book data, and voting rosters—that, when combined, allow a voter's ballot to be identified. The data must be maintained for two years and is always

subject to disclosure. The constitutional harm is not a past event—it is ongoing and systemically embedded in the way the County conducts elections. Defs.’ Ans. ¶ 32, ECF 34. Plaintiffs’ claims are a classic example of harm that is capable of repetition yet evading review.

Mootness applies only when the issues presented are no longer “live” or when “the parties lack a legally cognizable interest in the outcome.” *U.S. Parole Comm’n v. Geraghty*, 445 U.S. 388, 396 (1980) (quoting *Powell v. McCormick*, 395 U.S. 486, 496) (1969)). Plaintiffs’ claims are neither abstract nor speculative. How a voter voted can still be discovered under the current system, and nothing in the record suggests Harris County has eliminated or even substantively changed the policies or practices that caused the violations at issue.

In election cases, the “capable of repetition, yet evading review” exception to mootness also applies with particular force. *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007). This exception applies when (1) the disputed conduct is too short in duration to be fully litigated before it ceases, and (2) there is a reasonable expectation that the same party will be subject to the same harm again. *Id.* Both elements are satisfied here. Election cycles move quickly, yet the same voting system is scheduled to be used in future elections. Plaintiffs, as regular participants in the democratic process, will be exposed to the same risk of identification and constitutional injury each time they vote.

Moreover, even if the Court were to consider the possibility that Harris County might improve the system in the future, the Supreme Court has repeatedly held that voluntary cessation of unconstitutional conduct does not moot a case unless the defendant carries the “heavy burden” of showing that the challenged conduct will not recur. *United States v. W.T. Grant Co.*, 345 U.S. 629, 632-33 (1953). Harris County has offered no formal policy change, no redesign of the voting system, and no regulatory commitment to eliminate the ability to match ballots to voters. Instead, the County admits it will continue to use its current voting system. As a result, the risk remains real and immediate.

The relief Plaintiffs seek—prospective declaratory and injunctive relief to ensure ballot secrecy—directly addresses this ongoing harm. Without intervention from the Court, Plaintiffs remain at risk of continued violations of their rights to political privacy, anonymous expression, and equal protection.

Because the constitutional violations are ongoing, and because no evidence supports a conclusion that the system has been fixed or discontinued, Plaintiffs’ claims are not moot. Summary judgment is not only appropriate but necessary to prevent future harm.

Political Question: This case does not raise a political question. Plaintiffs ask the Court to determine whether a government-run voting system violates constitutional rights—precisely the type of legal question courts are competent and required to

resolve. *Reynolds*, 377 U.S. at 566 (stating that a “denial of constitutionally protected rights demands judicial protection.”).

III. THIRD DEFENSE - DEFENDANT JUDGE HIDALGO IS NOT A PROPER PARTY TO THIS ACTION.

Judge Hidalgo is sued in her official capacity as the chief executive officer of Harris County and is a final policymaker for the County under Texas law. She plays a central role in selecting and approving the County’s voting system and its budget. Judge Hidalgo has admitted that suing her in her official capacity is equal to suing Harris County. Defs. Memo 11, ECF 8-1. *See Kentucky v. Graham*, 473 U.S. 159, 166 (1985).

IV. FOURTH DEFENSE - PURSUANT TO THE ELEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND THE PRINCIPLE OF SOVEREIGN IMMUNITY THAT IT EMBODIES, DEFENDANTS ARE IMMUNE FROM THIS SUIT, AND THIS COURT LACKS JURISDICTION.

The Eleventh Amendment does not bar this suit. *See Ex parte Young*, 209 U.S. at 155-56 (stating that government officials engaged in illegal or unconstitutional acts do not enjoy sovereign immunity.). Plaintiffs seek nominal damages, as well as prospective declaratory and injunctive relief against county officials in their official capacities to halt ongoing violations of federal law. These claims fall squarely within the *Ex parte Young* exception. *See id.*

Defendants cannot shield their unconstitutional conduct behind the Eleventh Amendment. While sovereign immunity generally protects states and state officials

from suits in federal court, the well-established exception articulated in *Ex parte Young* permits plaintiffs to seek nominal damages, as well as prospective declaratory and injunctive relief to halt ongoing violations of federal law by state officials in their official capacities. *Id.*

To fall within the *Ex parte Young* exception, a plaintiff must (1) sue a state official in their official capacity, (2) allege an ongoing violation of federal law, and (3) seek prospective relief. *Mi Familia Vota v. Ogg*, 105 F.4th 313, 325 (5th Cir. 2024) (citing *Green Valley Special Util. Dist. v. City of Schertz*, 969 F.3d 460, 471 (5th Cir. 2020)).

Each requirement is satisfied here. Plaintiffs bring suit against Judge Lina Hidalgo and County Clerk Teneshia Hudspeth in their official capacities as Harris County election officials.⁴ Plaintiffs allege ongoing constitutional violations—namely, that Harris County continues to collect, maintain, and publicly release data that permits identification of how individuals voted, infringing upon the First and Fourteenth Amendments. Plaintiffs seek only prospective declaratory and injunctive relief, not actual damages. They ask this Court to enjoin future use of the current voting system until safeguards are implemented to ensure ballot secrecy.

⁴ Harris County admits that suing the County Judge in her official capacity has the same legal effect as suing Harris County. Defs. Memo, ECF 8-1, p. 11 (“...because Zimmern sues Judge Hidalgo in her official capacity, his claims against her are, in effect, claims against Harris County itself.”).

The Fifth Circuit has repeatedly applied *Ex parte Young* in election-related constitutional cases involving prospective relief. *See Tex. Dem. Party v. Abbott*, 961 F.3d 389, 400 (5th Cir. 2020); *see also Mi Familia Vota*, 105 F.4th at 325. Because Plaintiffs seek forward-looking remedies to prevent the recurrence of constitutional violations, Eleventh Amendment immunity does not apply.

V. FIFTH DEFENSE - AT ALL TIMES, DEFENDANTS ACTED IN GOOD FAITH AND HAD REASONABLE GROUNDS FOR BELIEVING THEIR ACTIONS WERE IN COMPLIANCE WITH FEDERAL AND STATE LAW.

Good faith is not a defense against prospective injunctive or declaratory relief under § 1983. Whether Defendants believed their conduct was lawful is irrelevant to the constitutional question before the Court. The focus is on the constitutionality of the ongoing practices, not the subjective intent of the officials.

VI. SIXTH DEFENSE - PLAINTIFFS ARE NOT ENTITLED TO DAMAGES IN THIS ACTION.

Plaintiffs are not seeking actual damages in this case. They seek only nominal damages, as well as declaratory and injunctive relief to prevent further constitutional violations. *See, e.g., Mi Familia Vota*, 105 F.4th at 325.

VII. SEVENTH DEFENSE - TO THE EXTENT PLAINTIFFS ASSERT CLAIMS AGAINST DEFENDANTS IN THEIR INDIVIDUAL CAPACITIES, DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY.

Qualified immunity does not apply. Plaintiffs do not assert claims against Defendants in their individual capacities. All claims are brought against Judge

Hidalgo and Clerk Hudspeth in their official capacities for prospective relief. As such, the doctrine of qualified immunity is inapplicable.

VIII. EIGHTH DEFENSE - PLAINTIFFS HAVE NOT ALLEGED SUFFICIENT FACTUAL OR LEGAL BASES FOR THEIR REQUEST FOR COSTS AND ATTORNEY'S FEES.

Plaintiffs are entitled to seek reasonable attorney's fees and costs under 42 U.S.C. § 1988 if they prevail in establishing a violation of constitutional rights under § 1983. Plaintiffs have asserted viable constitutional claims and supported them with undisputed facts. This defense is premature and does not defeat Plaintiffs' entitlement to relief under governing law.

CONCLUSION

For the foregoing reasons, this Court should grant the Plaintiffs' Motion for Summary Judgment.

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 eliminate use of the countywide vote system and replace it with combined precincts as allowed by with SB 2753.
6. Ordering the Defendants to pay Plaintiffs' nominal damages.
7. Ordering the Defendant to pay Plaintiff's reasonable attorney's fees, including litigation expenses and costs, pursuant to 42 U.S.C. § 1988; and
8. Granting Plaintiffs further relief that this Court deems just and proper.

Dated: July 10, 2025.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 10, 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
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Dated: July 10, 2025.

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