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

KENNETH ZIMMERN; WILLIAM SOMMER; and CAROLINE KANE,

Plaintiffs,

v.

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

Defendants.

Civil Action No. 4:24-cv-04439

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND OBJECTIONS

TABLE OF CONTENTS

Page

STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING……...1

STATEMENT OF THE ISSUES AND STANDARD OF REVIEW……...2

SUMMARY OF THE ARGUMENT……..…….2

BACKGROUND…….3

ARGUMENT AND AUTHORITIES……..…4

I. THE COURT SHOULD DENY THE MOTION FOR SUMMARY JUDGMENT BECAUSE PLAINTIFFS FAIL TO MEET THEIR BURDEN OF ESTABLISHING THE ESSENTIAL ELEMENTS OF THEIR CLAIMS AND THAT THERE ARE NO GENUINE DISPUTES AS TO ANY MATERIAL FACTS…….4

A. As to Plaintiffs' claims against Judge Hidalgo, the Court should deny the motion for summary judgment because Plaintiffs fail to establish any connection between Judge Hidalgo and the alleged violations…….6

B. The Court should deny the motion for summary judgment because Plaintiffs have failed to establish essential elements of their claims……..8

C. Defendants' Objections to Plaintiffs' Second Affidavit of Barry Wernick (Exhibit 1) and Affidavit of Rick Weible (Exhibit 2)…….11

II. THE COURT SHOULD DENY THE MOTION FOR SUMMARY JUDGMENT BECAUSE PLAINTIFFS' CLAIMS ARE NOT LEGALLY VIABLE AND PLAINTIFFS ARE THEREFORE NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW…….12

CONCLUSION……14

STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING

Plaintiffs bring this suit under 42 U.S.C. § 1983, asserting claims for alleged violations of the First Amendment and the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Defendants are Harris County Judge Lina Hidalgo ("Judge Hidalgo") and Harris County Clerk Teneshia Hudspeth ("Clerk Hudspeth"), whom Plaintiffs sue in their official capacities only. Plaintiffs claim that various election records—records that Texas law requires county clerks to maintain and make accessible to the public in order to ensure election transparency and auditability—contain information that may make it possible for third parties to ascertain how certain voters voted. As this response explains, Plaintiffs fail to offer summary-judgment evidence to support these claims as a factual matter, and they present no viable legal theory to support these claims as a matter of law.

Plaintiffs filed their original complaint in November 2024. ECF No. 1. Defendants promptly filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6). ECF No. 8. On February 4, 2025, the Court held a hearing on the motion to dismiss. ECF No. 17. On February 28, 2025, the Court held a pre-motion conference and directed Plaintiffs to amend their complaint and Defendants to file an answer. ECF No. 32. The Court did not rule on Defendants' motion to dismiss. The Court permitted limited discovery in the form of ten interrogatories for each side. Plaintiffs subsequently filed an amended complaint, which contains only minor changes from their original complaint. ECF No. 33. Defendants filed a timely answer. ECF No. 34. The parties have exchanged interrogatories. Defendants have responded to Plaintiffs' interrogatories, and the period for Plaintiffs to respond to Defendants' interrogatories ends on August 15, 2025. Presently before the Court is Plaintiffs' motion for summary judgment, ECF No. 35.

STATEMENT OF THE ISSUES AND STANDARD OF REVIEW

To prevail on their motion for summary judgment, Plaintiffs must establish "that there is no genuine dispute as to any material fact" and that they are "entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Because Plaintiffs "bear[] the burden of proof" for each of their claims, they "must establish beyond peradventure *all* of the essential elements" of those claims in order to obtain summary judgment. *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986) (emphasis in original). The issues presented are whether Plaintiffs have satisfied their summary-judgment burden, given that: they have failed to establish facts demonstrating a connection between Judge Hidalgo and the alleged conduct underlying their claims; they have failed to establish facts demonstrating essential elements of their claims, including facts showing that election records within the custody of the Clerk Hudspeth can be used to ascertain how particular voters vote; and their claims rely on invalid legal theories.

SUMMARY OF THE ARGUMENT

I-A. The Court should deny Plaintiffs' motion for summary judgment as to their claims against Judge Hidalgo. Plaintiffs fail to adduce evidence establishing that Judge Hidalgo has a legally sufficient connection to the election records and practices that form the basis of their claims. Furthermore, Texas law and the summary-judgment evidence establish that Judge Hidalgo is not responsible for matters pertaining to the custody of the pertinent election records.

I-B. The Court should deny Plaintiffs' motion because Plaintiffs have failed to satisfy their summary-judgment burden of establishing "beyond peradventure" the essential elements of their claims. Among other things, Plaintiffs fail to establish that election records can even be used to ascertain how voters vote in Harris County, let alone that any purported instances have resulted from actions or policies for which Defendants may be held liable under § 1983.

I-C. Pursuant to Federal Rule of Civil Procedure 56(c), Defendants object to the Affidavit of Barry Wernick (ECF No. 35-1, Exhibit 1) and the Affidavit of Rick Weible (ECF No. 35-1, Exhibit 2). *See, e.g.*, *Akin v. Q-L Investments, Inc.*, 959 F.2d 521, 530–31 (5th Cir. 1992). Although Plaintiffs' motion for summary judgment must be denied regardless of whether these non-party affidavits are considered for the purposes that Plaintiffs cite them, the affidavits contain significant amounts of extraneous and irrelevant material that should be disregarded and stricken. Furthermore, neither affiant demonstrates that he qualifies as an expert, and any opinions they purport to impart are not relevant to the present claims concerning Harris County, offer nothing greater than the opinion of an ordinary person, and impermissibly rely on hearsay.

II. The Court should also deny Plaintiffs' motion for summary judgment because Plaintiffs are not entitled to judgment as a matter of law. In addition to their failure to establish undisputed, material facts demonstrating the essential elements of their claims, Plaintiffs' constitutional claims contain legal defects that preclude them from succeeding as a matter of law.

BACKGROUND

Briefing previously filed in connection with Defendants' motion to dismiss provides an overview of Plaintiffs' claims, *see* ECF No. 8, which Plaintiffs' amended complaint, ECF No. 33, did not change in any substantive respects. In brief, Texas law requires that statutorily-designated custodians of "election records" preserve those records and make them available to the public for inspection following an election. TEX. ELEC. CODE § 1.012; *id.* § 66.058. Control of these records is entrusted to the "general custodian of election records," which, so far as this case is concerned, the Texas Election Code defines to be "the county clerk of each county." TEX. ELEC. CODE § 66.001(1). It is undisputed that the Texas Legislature saw fit to require the collection and retention of, and means for public access to, these election records in order to ensure the

auditability of elections, and thereby to prevent election fraud and promote public trust in the electoral process. *E.g.*, TEX. ELEC. CODE § 1.0015 (expressing the legislature's intent to "reduce the likelihood of fraud").

Plaintiffs' claims center on their allegations that certain election records within the custody of the Harris County Clerk may contain information that, "when combined," may "allow county employees and the public to determine how some voters voted." ECF No. 35 at 6. Plaintiffs' original complaint failed to provide a coherent explanation as to how this process of matching votes to voters was supposed to function, and their amended complaint fares no better. Now, despite having had the opportunity to obtain an answer to their amended complaint and to obtain some discovery from Defendants, Plaintiffs are still unable to demonstrate a factual basis for their claims. Plaintiffs' motion for summary judgment fails to adduce evidence establishing that this has occurred in Harris County or establishing that it occurs as a result of Defendants' actions. As explained in more detail below, Plaintiffs base their motion, not on facts and competent summary-judgment evidence, but on their own allegations and arguments.

ARGUMENT AND AUTHORITIES

I. THE COURT SHOULD DENY THE MOTION FOR SUMMARY JUDGMENT BECAUSE PLAINTIFFS FAIL TO MEET THEIR BURDEN OF ESTABLISHING THE ESSENTIAL ELEMENTS OF THEIR CLAIMS AND THAT THERE ARE NO GENUINE DISPUTES AS TO ANY MATERIAL FACTS.

"Summary judgment is appropriate only when 'the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Shepherd ex rel. Est. of Shepherd v. City of Shreveport*, 920 F.3d 278, 282–83 (5th Cir. 2019) (quoting Fed. R. Civ. P. 56(a)). "A material fact is one that might affect the outcome of the suit under governing law," and "a fact issue is genuine if the evidence is such that a reasonable jury could return a verdict

for the non-moving party." *Renwick v. PNK Lake Charles, LLC*, 901 F.3d 605, 611 (5th Cir. 2018) (citations and internal quotation marks omitted).

As the movants here, Plaintiffs "bear[] the initial responsibility of informing the [Court] of the basis for [their] motion" and identifying the record evidence that "demonstrate[s] the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Furthermore, because they seek summary judgment on claims for which they would bear the burden of proof at trial, Plaintiffs bear the heavy burden of "establish[ing] beyond peradventure *all* of the essential elements of th[ose] claim[s]." *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986) (emphasis in original). When a "moving party fails to meet its initial burden, the motion for summary judgment must be denied, regardless of the nonmovant's response." *Lozano v. Collier*, 98 F.4th 614, 620 (5th Cir. 2024) (quotation omitted). In deciding a summary judgment motion, "the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his or her favor." *Waste Mgmt. of La., LLC v. River Birch, Inc.*, 920 F.3d 958, 972 (5th Cir. 2019) (alterations omitted) (quoting *Tolan v. Cotton*, 572 U.S. 650, 656 (2014)).

Plaintiffs bring their claims under 42 U.S.C. § 1983. Plaintiffs maintain that their official-capacity claims against Judge Hidalgo and Clerk Hudspeth are effectively claims against Harris County. *E.g.*, ECF No. 35 at 1 (asserting that "Harris County is chilling the exercise of speech and association"); *id.* at 3 ("Harris County has violated Plaintiffs' First and Fourteenth Amendment rights"). To establish liability against the county under § 1983, Plaintiffs must establish the following essential elements: "(1) an official policy (or custom), of which (2) a policymaker can be charged with actual or constructive knowledge, and (3) a constitutional violation whose 'moving force' is that policy or custom." *Valle v. City of Houston*, 613 F.3d 536, 541–42 (5th Cir. 2010) (internal quotation marks and citations omitted)); *Monell v. Department of Social Servs. of*

the City of New York, 436 U.S. 658, 694 (1978); *Rivera v. Houston Indep. Sch. Dist.*, 349 F.3d 244, 247 (5th Cir. 2003); *Krueger v. Reimer*, 66 F.3d 75, 77 (5th Cir. 1995).

A. As to Plaintiffs' claims against Judge Hidalgo, the Court should deny the motion for summary judgment because Plaintiffs fail to establish any connection between Judge Hidalgo and the alleged violations.

Plaintiffs fail to satisfy their summary-judgment burden with respect to their claims against Judge Hidalgo. Throughout their briefing, Plaintiffs attack "Harris County's voting system," arguing that "Harris County collects, maintains, and discloses voting records that—when combined—allow county employees and the public to determine how some voters voted." ECF No. 35 at 6. But Plaintiffs fail to articulate, let alone demonstrate with citations to competent summary-judgment evidence, how Judge Hidalgo can be charged with any constitutional violations arising from the collection, maintenance, and disclosure of the election records that form the basis of their claims. *See* Fed. R. Civ. P. 56(c)(1) (requiring that a party must support a factual assertion on summary judgment by "citing to particular parts of materials in the record").

Plaintiffs contend that they are suing Judge Hidalgo because she is "the chief executive officer of Harris County and is a final policymaker for [Harris] County under Texas law." ECF No. 35 at 21. They further contend that Judge Hidalgo "plays a central role in selecting and approving the County's voting system and its budget." *Id.* But Plaintiffs provide no authority or factual support for the proposition that because Judge Hidalgo might be a final policymaker for the county for some purposes, or that because she may play some role in approving some aspects of the county's budget and voting system (Plaintiffs' do not specify what role or what aspects), she is automatically an appropriate defendant for the particular violations alleged in this case. *See Valle*, 613 F.3d at 542 (5th Cir. 2010) (explaining that "[m]unicipal liability attaches only where the decisionmaker possesses final authority to establish municipal policy with respect to the action

ordered." (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986))).[1] Plaintiffs have not shown that Judge Hidalgo is the final policymaker with respect to the collection, maintenance, and disclosure of election records at issue in this case. Their failure to meet their initial summary-judgment burden of establishing Judge Hidalgo's role as a policymaker with respect to the constitutional violations they allege means that their motion "must be denied, regardless of [Defendants'] response." *Lozano v. Collier*, 98 F.4th 614, 620 (5th Cir. 2024) (quotation omitted).

What is more, the law and unrebutted summary-judgment evidence demonstrate that Judge Hidalgo is not the final policymaker with respect to Plaintiffs' allegations in this case. As mentioned above, Texas law designates the County Clerk as the custodian of the election records at issue here. TEX. ELEC. CODE § 66.001(1); Ex. 1, Declaration of Teneshia Hudspeth ¶ 3 (explaining that the election records at issue in this case are within Clerk Hudspeth's custody and that her duties as County Clerk include election administration and overseeing responses to public requests for election records). In addition, the Texas Constitution creates the position of Harris County Clerk and provides the Texas Legislature with the authority to prescribe the duties of the County Clerk—including her duties related to election records involved in this case. Tex. Const. art. V, § 20; Ex. 1, Hudspeth Decl. ¶ 5. Clerk Hudspeth does not act at the direction of Judge Hidalgo or the county's governing body (the Harris County Commissioners Court) with respect to these election records. *Id.* Since Plaintiffs' claims stem from custodial duties over those records, Plaintiffs cannot establish essential elements of their § 1983 claims against Judge Hidalgo and therefore are not entitled to summary judgment.

[1] Plaintiffs assert that "Judge Hidalgo has admitted that suing her in her official capacity is equal to suing Harris County," but they cite, not an admission, but a legal argument made in Defendants' motion to dismiss. ECF No. 35 at 21 (citing ECF No. 8-1 at 11). Indeed, the very paragraph that Plaintiffs cite argues that Plaintiffs had alleged nothing to connect Judge Hidalgo to the claimed constitutional violations.

B. The Court should deny the motion for summary judgment because Plaintiffs have failed to establish essential elements of their claims.

To obtain summary judgment, Plaintiffs must establish "beyond peradventure" a deprivation of a constitutional right and that the "moving force" behind that deprivation is an official policy or custom attributable to Defendants. *E.g.*, *Valle*, 613 F.3d at 541–42. Because Plaintiffs' claims are all based on alleged violations of their right to ballot secrecy, they must establish that the election records at issue in this case can actually be used to ascertain how particular voters voted in Harris County. This they fail to do.

Plaintiffs assert that "[t]he data collected and disclosed by Harris County enables government employees and third parties to determine how specific voters voted." ECF No. 35 at 8. They characterize this assertion as an "undisputed material fact," *id.* at 6, but provide no citations to the record to support that claim. *See* Fed. R. Civ. P. 56(c)(1) (requiring that a party asserting that a fact cannot be genuinely disputed must support the assertion by citing to particular parts of materials in the record"). Instead, Plaintiffs rely entirely on a single sentence that they take out of context from Defendants' motion to dismiss. ECF No. 35 at 8 (quoting ECF No. 8-1 at 4–5). There, applying the Rule 12(b)(6) legal standard that requires all well-pleaded facts alleged by Plaintiffs to be taken as true, Defendants argued that because "[i]t is the person who obtains the election records and attempts to extract and match pieces of information contained in those records who takes the steps necessary to ascertain how a voter voted," a custodian of the records who makes them available for public inspection cannot be fairly said to reveal how a voter votes. ECF No. 8-1 at 4. This legal argument, which simply applied the applicable legal standard for that motion, is in no way an "admission" and does not establish any facts for summary-judgment purposes. *See Hargis v. Renzi*, No. 522CV0132GTSML, 2023 WL 2242093, at *3 n.1 (N.D.N.Y. Feb. 27, 2023) ("Plaintiff offered an additional argument that Defendant admitted to his unconstitutional conduct

in his memorandum of law supporting his motion to dismiss. Plaintiff misunderstood Defendant's memorandum of law. Defendant was arguing that even if all statements of fact made by Plaintiff were in fact true, Plaintiff still would not have a viable claim for the reasons stated by Defendant. This was not an admission by Defendant, but rather a legal argument.").

Plaintiffs' failure to establish the fact most central to their claims is fatal to their motion for summary judgment. Nowhere in their summary-judgment briefing do Plaintiffs point to evidence establishing that election records can be used to ascertain voters' votes in Harris County. For example:

- Plaintiffs refer to Defendants' responses to Plaintiffs' set of interrogatories, ECF No. 9, but do not cite any response establishing this point.
- Plaintiffs reference their own affidavits, but cite nothing in them establishing this point. In her affidavit, Plaintiff Caroline Kane states that her "ballot was available to be viewed," but does not explain how that occurred. ECF No. 35-1, Ex. 6.

In their statement of "undisputed material facts," Plaintiffs make a number of assertions that are not supported by competent summary-judgment evidence and that do not establish any violation of ballot secrecy in Harris County. For example:

- Plaintiffs assert that it is undisputed that the information "embedded in every cast vote record" makes those records "traceable to specific locations and times." ECF No. 35 at 7. But cast vote records "do not contain information about the specific time (i.e., hour and minute) that voters cast their votes." Hudspeth Decl. ¶ 3; Defendants' Responses to Plaintiffs' Interrogatories, ECF No. 35-1 at 29 (Interrogatory No. 6; "The CVRs do not have, and are not linked to, the time of when the ballot was cast.").

- Plaintiffs assert that Defendants "admit that electronic poll books track and store" certain "voter-specific information at the time of voting." ECF No. 35 at 7. But the summary-judgment evidences shows that electronic poll books "record information at the time that the voter checks in to vote"—they "do not record, and do not store, the time that the voter actually votes," nor do they "track or store any voter information at the time the voter makes his or her ballot selections, prints the [printed vote record], or scans the [printed vote record]." Hudspeth Decl. ¶ 11; *see also* Defendants' Responses to Plaintiffs' Interrogatories, ECF No. 35-1 at 29 (Interrogatory No. 5; "There is no log or record that links the time a voter checked in to the time the voter printed or cast a ballot."). There is thus no support for Plaintiffs' assertion that this information "can be used in combination with cast vote records." ECF No. 35 at 7.
- Plaintiffs assert that information from voting rosters "serves as a foundation for cross-referencing voter identities with other election records," but provide no citation for this claim. ECF No. 35 at 7. The citation they provide to Defendants' answer to the amended complaint admits only that voting rosters are made publicly available after an election and list the relevant precinct. ECF No. 34 at 6.
- Plaintiffs assert that Harris County Clerk's Office elections staff "hav[e] access to the data which would allow them to learn how a voter votes," ECF No. 35 at 7, but the interrogatory response Plaintiffs cite does not support that statement. The response states that staff have access to certain records and that the list of staff does not assure that any of those individuals will access the information. ECF No. 35-1 at 31 (Response to Interrogatory No. 10). In addition, the record demonstrates that it is not within the job duties of any elections staff members to access election records in order to learn

how a voter voted. Hudspeth Decl. ¶ 3. Such access would be unauthorized, and there is no evidence that a member of the Harris County Clerk's election staff has ever accessed election records for that purpose. *Id.*

- Plaintiffs state that Defendants have "admit[ted]" that the information in the election records "can be used to match voters to ballots." ECF No. 35 at 8. But as already explained, the portion of Defendants' motion to dismiss that Plaintiffs rely upon is a legal argument that applied the generous 12(b)(6)-standard. It is not an "admission" that Harris County's "system produces records that defeat ballot secrecy."

Plaintiffs' failure to establish this essential element of their claims failure requires the Court to deny their motion for summary judgment.

C. Defendants' Objections to Plaintiffs' Second Affidavit of Barry Wernick (Exhibit 1) and Affidavit of Rick Weible (Exhibit 2).

Pursuant to Federal Rule of Civil Procedure 56(c), Defendants object to the Affidavit of Barry Wernick (ECF No. 35-1, Exhibit 1) and the Affidavit of Rick Weible (ECF No. 35-1, Exhibit 2). *See, e.g.*, *Akin v. Q-L Investments, Inc.*, 959 F.2d 521, 530–31 (5th Cir. 1992).

Although Plaintiffs' motion for summary judgment must be denied regardless of whether these non-party affidavits are considered for the purposes that Plaintiffs cite them, these affidavits contain significant amounts of extraneous and irrelevant material that should be struck and disregarded by the Court.

The affidavit of Barry Wernick is based almost entirely on his own personal allegations concerning a 2024 primary race in Dallas County, not Harris County, and thus is irrelevant to this case. Dallas County use an entirely different voting system than Harris County. Hudspeth Decl. ¶ 14. Furthermore, Wernick's account of Dallas County's election records relies heavily on Dallas County's use of a "Batch Report by Polling Location" election record, *e.g.*, ECF No. 25-1 at 4; no

record by that name exists in Harris County. Hudspeth Decl. ¶ 14. And despite Wernick's suggestion that he has successfully ascertained voters' votes in Harris County, he fails to explain how he has done so and has not demonstrated that he has the education, training, or experience necessary to qualify as an elections data expert. *See* ECF No. 35-1 at 3 (stating that Wernick is an attorney/mediator and unsuccessful 2024 Republican primary election candidate in Dallas County). In addition, Wernick claims that "[s]imple visual comparisons of the Voter Roster, the Batch Report by Polling Location, and the paper ballots . . . allow any person to find a voter's ballot." ECF No. 35-1 at 3. But elsewhere Wernick states that he obtained CVR images from Harris County, not the paper ballots that he states are necessary to trace voters' votes. *Id.* at 26. Finally, as he is unqualified to be an expert, Wernick cannot rely on or use hearsay evidence. Consequently, all of the analysis contained in his affidavit that is based on hearsay information from his "team" must be disregarded. *E.g.*, ECF No. 35-1 at 14–16 (relying on "conversations my team and I have had with election administrators and county clerks in various counties" and on conversations with Stuart Wernick).

Similarly, the affidavit of Rick Weible does not help to establish Plaintiffs' claims and should be struck and disregarded. Plaintiffs characterize Weible's affidavit as "unrebutted expert testimony," ECF No. 35 at 15, but his affidavit expressly states that Weibel "ha[s] not reviewed the Harris County records." ECF No. 35-1 at 24 ¶ 22. Thus, he provides no expert testimony that is reliable or relevant to this case. In fact, Plaintiffs do not even rely on Weible's affidavit to establish their assertion that some voters' votes are ascertainable in Harris County.

II. THE COURT SHOULD DENY THE MOTION FOR SUMMARY JUDGMENT BECAUSE PLAINTIFFS' CLAIMS ARE NOT LEGALLY VIABLE AND PLAINTIFFS ARE THEREFORE NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW.

Plaintiffs' failure to meet their summary-judgment burden of establishing the essential elements of their claims and demonstrating the absence of genuine issues of material fact is sufficient to deny their motion. These failure underscore why the legal theories on which their claims are based are meritless. On Plaintiffs' own theory, their First Amendment and Due Process claims require a showing that ballot secrecy is actually impaired in Harris County. As explained above, they have failed to make the necessary showing to prevail on either claim.

Plaintiffs' Equal Protection Clause claim is also not viable. Plaintiffs base that claim on allegations that voters who vote at countywide election centers are treated differently than voters who vote on election day in their home precincts. ECF No. 35 at 21. But Plaintiffs fail to establish the "purposeful discrimination" necessary to establish a disparate treatment claim. *Johnson v. Rodriguez*, 110 F.3d 299, 306–07 (5th Cir. 1997) (to make out an Equal Protection claim, a plaintiff must prove "the existence of purposeful discrimination" motivating the state action which caused the complained-of injury; this "implies that the decisionmaker selected a particular course of action at least in part because of, and not simply in spite of, the adverse impact it would have on an identifiable group"). Plaintiffs' Equal Protection claim is based on a disparate impact theory, and such a claim is not viable under the Equal Protection Clause. *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 272, (1979); *Washington v. Davis*, 426 U.S. 229, 239 (1976) (Equal Protection Clause does not prohibit the government from taking actions which have an unintentional disparate impact); *Johnson*, 110 F.3d at 306–07 ("The Supreme Court has instructed us time and again . . . that disparate impact alone cannot suffice to state an Equal Protection violation").

Plaintiffs take issue with various defenses contained in Defendants' answer. Because Plaintiffs have failed to meet their initial summary judgment burden as to their own claims, the

Court need not reach any arguments regarding Defendants' affirmative defenses. *See Exxon Corp. v. Oxxford Clothes, Inc.*, 109 F.3d 1070, 1074 (5th Cir. 1997). Furthermore, Plaintiffs' conclusory denials of Defendants' defenses does not satisfy their initial summary-judgment burden as to these defenses. *Id.*

Finally, Plaintiffs suggests that newly-passed legislation makes it possible for this Court to order a remedy under which Harris County would be forced to withdraw from the countywide polling place program and require voters to vote in combined precincts. ECF No. 35 at 23. But as Plaintiffs acknowledge, this new law is not yet in effect. Moreover, such relief would provide no real remedy to Plaintiffs because it would not remove the possibility that voters who exhibit sufficiently unique data points could still have their votes ascertained.

CONCLUSION

For these reasons, the Court should deny Plaintiffs' motion for summary judgment.

Dated: July 31, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2025, a true and correct copy of the foregoing document and its attachments was electronically filed using the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Edward D. Swidriski III
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