

CAUSE NO. _____

TEXAS STATE CONFERENCE OF §
THE NAACP, COMMON CAUSE §
TEXAS, DANYAHEL NORRIS, § IN THE DISTRICT COURT
HYUN JA NORMAN, FREDDY §
BLANCO, MARY FLOOD NUGENT, §
and PRISCILLA BLOOMQUIST, §

Plaintiff,

HARRIS COUNTY TEXAS

v.

GREG ABBOTT, in his official §
capacity as the Governor of Texas; §
JOHN or JANE DOE, in his or her §
official capacity as the Secretary of §
State of Texas; JOE ESPARZA, in his §
official capacity as the Deputy Secretary §
of State of Texas; KEN PAXTON, in §
his official capacity as the Attorney §
General of Texas, §

Defendant

____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs TEXAS STATE CONFERENCE OF THE NAACP, COMMON CAUSE TEXAS, DANYAHEL NORRIS, HYUN JA NORMAN, FREDDY BLANCO, MARY FLOOD NUGENT, and PRISCILLA BLOOMQUIST, acting by and through their counsel, file this Complaint against Defendants, GOVERNOR GREG ABBOT, SECRETARY OF STATE JOHN OR JANE DOE, DEPUTY SECRETARY OF STATE JOE ESPARZA, and ATTORNEY GENERAL KEN PAXTON, and for their cause of action would respectfully allege as follows:

INTRODUCTION

1. “The right to vote is fundamental, as it preserves all other rights.” *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 12 (Tex. 2011) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)). “Any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.” *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).

2. Perhaps no event in recent memory symbolized this ideal as much as the 2020 election cycle, when record numbers of Texans turned out to vote in the midst of chaos, confusion, and personal tragedies. Thanks to election administrators who introduced alternative, lawful methods of voting to allow more voters to cast a ballot without physically entering a crowded polling place; poll workers who diligently staffed extra early voting days and extended early voting hours; and civic engagement organizations that helped voters navigate Texas’s complex voting processes during a global pandemic, more than 11 million Texans cast votes—the highest level of voter participation in Texas history.

3. For voters of color, in particular, the 2020 election was an unquestionable success. Though Texas’s voting restrictions are notoriously strict, the pandemic demanded an opening up of the democratic process. Some alternative methods of voting became available across the State, including increased access to early in-person voting and the use of drop boxes to collect mail-in ballots. In Harris County—the largest county in Texas and one of the most racially and ethnically diverse counties in the State—local election officials welcomed the opportunity to expand access to the franchise. Through a series of lawful, innovative initiatives that included offering drive-thru voting, returning mail-in ballots at drop boxes, overnight voting, and sending mail-in-ballot applications directly to voters over sixty-five years of age, Harris County’s voter turnout skyrocketed to 66.1%, its highest in more than thirty years.

4. When the Texas legislature convened two months later, Governor Greg Abbott announced that “election integrity” was one of his top priorities, designating it as an “emergency item” so lawmakers could vote on it within the first sixty days of the session. Governor Abbott and lawmakers used the term “election integrity” interchangeably with “voter fraud” and “election security.”

5. There is absolutely no evidence of widespread fraud and virtually no evidence of even minor voting irregularities in Texas, facts that have been communicated to the Texas legislature on numerous occasions. Indeed, the Director of the Elections Division within the Secretary of State’s office testified during a legislative hearing on March 4, 2021 that in 2020 “Texas had an election that was smooth and secure.” Nevertheless, on March 11 and March 12, legislators introduced two omnibus voter bills, designed to make it more difficult for voters—particularly voters of color—to vote, supposedly to address the “fraud” of the 2020 election.

6. During the 87th Regular Legislative Session, Senate Bill 7 (“SB 7”) and House Bill 6 (“HB 6”) were released amid a sea of smaller election bills taking aim at ID requirements, early voting, and voter registration. Media and local advocates observed that SB 7 and HB 6 were a direct response to both Harris County’s efforts to expand voter participation and increased turnout by voters of color across the State.

7. Since their introduction in mid-March, both Bills were rushed through a legislative process marred by middle-of-the-night votes, minimal public input, last-minute procedural maneuvers, and bad-faith negotiations. Black and Hispanic legislators were almost completely locked out of the process, and the Bills’ drafters refused to discuss the disproportionate impact the provisions would have on communities of color, paying little to no attention to the repeated pleas by members of the public and legislators to conduct a disparate impact analysis before hastily

acting on the Bills. At the eleventh hour before the end of the 87th Regular Legislative Session on May 31, Conference Committee members added brand new provisions to the final SB 7 Bill without giving members of the General Assembly or the general public adequate time to review those provisions.

8. Given these procedural irregularities, SB 7 failed to pass during the Regular Session, with House Democrats walking out and refusing to vote on the Bill. A few weeks later, Governor Abbott retaliated by vetoing a portion of the State budget that funds the Legislature, its staffers, and several legislative agencies. The veto potentially threatens the livelihoods of 2,165 legislative staffers and individuals working at legislative agencies, who earn a median salary of \$52,000 per year.

9. Governor Abbott convened the first special session on July 8, and once again, the purported concern for “election integrity” remained at the top of the leadership’s agenda. The Senate and House introduced new Bills that differed somewhat from the original SB 7 and HB 6 Bills but kept most of the provisions intact. These new Bills were renamed—SB 7 became SB 1 and HB 6 became HB 3. After twenty-four hours of hearings in both houses during which opponents to the legislation stayed at the Capitol throughout the night to voice their opposition to SB 1 and HB 3, the House Elections Committee and the Senate State Affairs Committee passed the Bills. Soon after, the Senate voted out SB 1 and the Bill headed to the House for consideration. When the Bill reached the House Floor, a majority of House Democrats left the State in protest of continuing irregularities and the anti-voter nature of the Bills. Thus, no legislation passed during the 30 days of the first special session—from July 8 to August 7—because the House did not have a quorum.

10. As the end of the thirty days neared, Governor Abbott announced the convening of a second special session on August 7. The seventeen items on the agenda included “legislation strengthening the integrity of elections in Texas.” The Senate and the House both took up SB 1 again, which was identical to the previous version of SB 1 introduced by the senators during the first special session. After a final flurry of hearings and Floor debates, and a brief conference committee process, the final version of SB 1 passed the House and the Senate on August 31 and was signed into law on September 7 by Governor Abbott. The Bill makes considerable changes to various Sections of the Texas Election Code governing poll watchers, voting by mail, voter assistants, and methods of voting, all of which make it harder for voters—particularly voters of color—to vote.

11. SB 1 impermissibly expands the ability of poll watchers to harass and intimidate voters in polling places—tactics that are designed primarily to impact voters of color. By threatening election judges with criminal penalties for exercising their statutory right under current law to keep the peace within polling locations, SB 1’s vague provisions take away the power from election judges to protect voters and clerks from uncomfortable and disruptive behavior by poll watchers. Ultimately, these provisions threaten to stifle community engagement and chip away at the confidence of election judges as well as voters. SB 1 threatens to transform the polling place from its community-oriented culture to a hyper-partisan, toxic, and fearful space where emboldened poll watchers challenge voters, tell election judges how to do their jobs, and intimidate voters, particularly voters of color.

12. SB 1 also bans county election officials from soliciting vote-by-mail requests and distributing unsolicited vote-by-mail applications to voters directly and to third parties like civic engagement organizations. The impact will be acutely felt by Organizational Plaintiffs, who work

closely with county officials to help eligible vote-by-mail voters request mail-in ballots. Plaintiffs' members also rely on local election officials to distribute vote-by-mail applications or leave them at local post offices.

13. SB 1 also requires election officials to reject any application to vote by mail if the same voter cannot be identified when an election clerk matches the voter's identification information on the registration application in the statewide voter registration database against the voter's vote-by-mail application/ballot (i.e., matching the driver's license number, election identification certificate number, personal identification card number, partial Social Security number, or a statement indicating the applicant has none of the above). The new provision says that if the two documents do not identify the same voter, a clerk must reject the application and/or ballot. Thus, the new Law creates additional barriers to voting by mail by introducing a new error-prone matching process that gives early voting ballot boards and/or signature verification committees discretion to reject applications and ballots if a matching process that involves voter registration files fails to identify the same voter.

14. The Law also makes it more difficult for voters with physical disabilities or a limited understanding of English to vote in person at the polls or by mail by imposing significant burdens on those assisting them. Voter assistants give voters confidence, empower voters—especially those who cannot read or write in English—to vote in person, and make the franchise accessible to all American citizens regardless of their backgrounds. Many of Organizational Plaintiffs' members rely on assistants to help them vote. By heightening administrative requirements and imposing onerous and vague oaths, all under the penalty of perjury, SB 1 chills the ability of voter assistants to help others and thereby reduces constitutionally protected speech.

15. Further, by effectively prohibiting drive-thru voting, extended voting hours (including overnight voting), and return of mail-in ballots to ballot drop boxes, SB 1 strips power from local election officials to implement lawful ways for more voters to be able to cast ballots, as Harris County election officials did in 2020. These provisions remained in place in the Bill even after Keith Ingram, top elections official at the Secretary of State's office, testified during Special Session hearings that the State did not "have *any* evidence of actual fraud" in connection with drive-thru voting or overnight voting.

16. Equally troubling is a provision in SB 1 that requires at least twelve hours of Saturday early voting but only requires six hours of Sunday early voting during the final weekend of the early voting period, despite the fact that early voting on the final Sunday before Election Day is a mainstay of Souls to the Polls programs, primarily run by Black voter engagement organizations across the State.

17. Viewed individually or collectively, these provisions of SB 1 gravely threaten the fundamental right to vote of all Texans, but they will hit hardest in communities of color. This is precisely what the legislature intended. It is no accident that SB 1 was rushed through the Texas Legislature on the heels of an election in which voters of color turned out in record numbers, after a decade in which Black, Hispanic, and Asian population growth has soared. It is no accident that SB 1 targets the very methods of voting that were used disproportionately by minority voters. And it is no accident that repeated pleas to assess the Bill's impact on communities of color were repeatedly ignored. This Court should declare SB 1 unlawful and unconstitutional, and permanently enjoin its implementation.

DISCOVERY CONTROL PLAN

18. Discovery is intended to be conducted under Level 3 of Rule 190.4 of the Texas Rules of Civil Procedure.

JURISDICTION AND VENUE

19. The Court has jurisdiction over this matter of election law under Texas Election Code § 273.081 and other laws. Plaintiffs do not seek damages and therefore make no statement under Texas Rule of Civil Procedure 47. Plaintiffs seek declaratory and injunctive relief, which are within the jurisdiction of this Court.

20. Venue is proper in Harris County under Sections 15.002(a)(1) of the Texas Civil Practices and Remedies Code because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Harris County.

PARTIES

21. Plaintiff **TEXAS STATE CONFERENCE OF THE NAACP** ("Texas NAACP") is a subsidiary organization of the National Association for the Advancement of Colored People, Inc. ("NAACP"), a national non-profit, non-partisan organization founded in 1909, which has more than 2,200 units across the nation and is powered by more than two million activists. The NAACP works to ensure the political, educational, social, and economic equality of all persons and to eliminate racial hatred and racial discrimination, including by removing all barriers of racial discrimination through democratic processes.

22. The Texas NAACP is the oldest and one of the largest and most significant organizations promoting and protecting the civil rights of people of color in Texas. The first Texas branches of the NAACP were formed in 1915, and the Texas State Conference was formally organized in 1937. Since then, the Texas NAACP has used litigation, policy advocacy, community

organizing, and public education to ensure the political equality of all Texans. To achieve its mission, the Texas NAACP engages in voter education, registration, mobilization, and other civic engagement activities.

23. The Texas NAACP is headquartered in Austin and has more than sixty local branch units, college chapters, and youth councils across the State, with members in almost every county in Texas. A large portion of the Organization's more than 10,000 members are residents registered to vote in Texas. The Texas NAACP's membership consists largely of Black Americans, and it considers its constituents to be people of color and/or members of other underrepresented and vulnerable populations, such as those with disabilities. The Texas NAACP's members and constituents are more likely than other populations to live in poverty. A large segment of Texas NAACP's membership lives in Harris County.

24. In 2020, Texas NAACP held virtual town halls to prepare members to vote during the COVID-19 pandemic, assisted members directly with voter registration and voting processes, trained volunteers to serve in its election protection program, and participated in litigation to make underlying conditions to COVID-19 a basis for obtaining mail-in ballots. During the 2020 election, Texas NAACP's membership voted early in person and by mail; overnight in Harris County and on Election Day; and by using drop boxes if returning vote-by-mail ballots, curbside if physically disabled, and drive-thru in Harris County. Many Texas NAACP units also helped voters eligible to receive assistance to vote by providing assistance at the polls or driving voters to the polls through its Souls to the Polls Program, which organizes transportation to the polls on Sundays during early voting.

25. Texas NAACP members have routinely experienced voter intimidation by poll watchers, during the 2020 election and long before it. Intimidation encompasses a wide range of

behavior, including hovering close to voters, talking to voters, talking to or directing election clerks while voters are being checked in or are at voting stations, challenging voters' eligibility, and much more. Texas NAACP members and leaders are concerned that the powers given to partisan poll watchers by SB 1 will allow poll watchers to engage in even more intimidating conduct toward Texas NAACP members. If these provisions stand, Texas NAACP will have to commit significant time and resources to develop and run know-your-rights trainings for the public and for its membership and to work with individual members to ensure they feel comfortable and safe exercising their right to vote. By allocating time and resources to these priorities, Texas NAACP will be unable to commit to its other programming.

26. The provisions forbidding election officials from soliciting vote-by-mail requests from voters or distributing vote-by-mail applications will burden the right to vote of many Texas NAACP members who are elderly or disabled and count on solicitation and distribution from local election officials to follow complex vote-by-mail procedures. In 2020, Texas NAACP members over sixty-five years old who were registered to vote in Harris County received mailed vote-by-mail applications from Harris County. Many of these members who were more accustomed to voting in person would not have voted at all for fear of contracting COVID-19 if they had not received mailers from the County. These practices have also proved crucial for those members of Texas NAACP who do not have easy access to a computer or a printer or do not know how to use a computer. If these provisions are left in place, Texas NAACP will have to divert significant time and resources to filling education and resource gaps among its membership, including by developing a vote-by-mail phone-banking campaign and spending funds to print out mail-in ballot applications to ensure voters are aware of vote-by-mail requirements and deadlines.

27. Texas NAACP members who rely on vote-by-mail will be further burdened by provisions of SB 1 that require a match between the identifying information in a voter's mail-in ballot application and the identifying information on the voter's registration application. Without a match that indicates to an election clerk that the two documents identify the same voter, the election clerk has the power to reject the voter's vote-by-mail application and/or ballot. Notice and opportunity to cure are also entirely dependent on timing and discretion of election officials and access to computers. Many Texas NAACP members do not have computer or internet access that would enable them to timely cure using an online tool. These provisions will result in some Texas NAACP members—especially those who are elderly and disabled—being arbitrarily disenfranchised. Texas NAACP will have to expend its limited resources on helping voters make sure their vote-by-mail applications and ballots are not wrongly rejected based on these provisions.

28. Texas NAACP also has members who require assistance with the voting process either because of physical disabilities or because of discomfort reading, writing, or understanding English, the primary language of the ballot. Some members receive assistance requesting vote-by-mail ballots, and others receive assistance at the polling place while voting in person. If these provisions that make it harder for voter assistants to help others are upheld, then Texas NAACP's core programs—including election protection, election assistance, and Souls to the Polls—will suffer because some members will be unwilling to assist others at the risk of being criminally investigated. As a result, these provisions will ultimately reduce the ability of Texas NAACP's members to receive the help they need to vote. Texas NAACP will also have to prepare new voter trainings for voters requiring assistance and for voter assistants, and will have to spend a considerable amount of its limited time and resources revising its in-house voter engagement and education programs.

29. Many Texas NAACP members, including those who live in Harris County, used alternative, lawful forms of voting during the 2020 election held under the pall of a global pandemic, including drive-thru voting, overnight early voting, and returning mail-in ballots at drop boxes. In 2020, some Texas NAACP members took advantage of drop box voting and drive-thru voting in particular because they wished to protect their health and safety or the health and safety of family members. For immunosuppressed individuals, individuals with comorbidities, or individuals living and/or working with someone particularly vulnerable to COVID-19, these options offered a safe and efficient way to vote. Several members of Texas NAACP also used overnight early voting because they were working night shifts or other irregular hours, and overnight early voting provided an opportunity to vote during their free time, without which they may not have voted at all. Texas NAACP is concerned that the surges in COVID-19 infections because of the new variants and their rapid spread will result in another lockdown. With Texas's vaccination rates lagging behind the national average at 47% and with 16,474 new cases being reported every day as of August 30, Texas NAACP is concerned that SB 1's prohibitions on alternative, lawful methods of voting and returning vote-by-mail ballots will burden the right to vote of its members, especially for members seeking to vote in the November 2021 and March 2022 elections as the pandemic continues. Texas NAACP's members rely on election officials who know and understand the community to be able to exercise their discretion in implementing lawful methods of voting that increase access. SB 1 takes away this discretion from local election officials. As a result, many of Texas NAACP's members may not be able to vote safely in future elections. Furthermore, Texas NAACP will have to divert time, money, and resources from their other activities to help these voters access the ballot despite new restrictions.

30. If SB 1 stands, thousands of NAACP members across the State will be burdened by the portions of SB 1 that grant poll watchers significant power within the boundaries of the polling place; ban distribution and solicitation of vote-by-mail applications by election officials; institute match requirements for voters requesting vote-by-mail applications and ballots; complicate voter assistance by threatening assistants with perjury and investigation; and ban lawful, alternative voting methods. Texas NAACP has already diverted significant time and resources towards actions and testimony against SB 1, including by testifying on multiple occasions about the disproportionate harm that SB 1's restrictions would inflict on voters of color and voters from historically disenfranchised communities. If SB 1 is permitted to stand, Texas NAACP will be forced to allocate even more time and resources to educating its members on SB 1's restrictions and ensuring its members feel safe with increased poll watcher activity in place of its other core activities.

31. Plaintiff **COMMON CAUSE TEXAS ("CC Texas")** is a grassroots, democracy-focused non-profit organization, dedicated to promoting equal rights and empowering all people to make their voices heard in the political process. CC Texas is a state chapter of Common Cause National, which has 1.2 million members and supporters nationwide and chapters in thirty states.

32. CC Texas's mission is to build a more equitable democracy and ensure free, fair, and accessible elections in Texas. To that end, CC Texas engages in voter protection, advocacy, education, and outreach activities to ensure that voters are able to register to vote, vote without intimidation, and have their votes counted as cast. CC Texas also conducts legislative advocacy on various issue areas of importance to CC Texas and its constituents and works as a part of coalitions with other groups to mobilize and educate voters.

33. CC Texas has more than 52,000 members and supporters spread across nearly every county in Texas, a substantial number of whom are registered to vote in Texas. CC Texas has more than 7,500 members in Harris County; more than 6,200 members in Travis County; more than 5,700 members in Dallas County; more than 4,000 members in Bexar County; and more than 3,800 members in Tarrant County. CC Texas's membership is diverse in race and ethnicity, age, disability status, and citizenship status. During the 2020 election, CC Texas's members used a variety of voting methods: some members voted early in person, while others voted in person at the polls on Election Day; many voted by mail and returned their ballots via drop boxes; and some members who voted in person used curbside and drive-thru voting if voting in Harris County. CC Texas was active throughout the 2020 election cycle. Its three full-time staff members and five paid fellows ran an in-house election protection program, recruited and trained poll monitors, assisted voters with Texas's registration and voting processes, and educated voters on the mechanics of voting through digital advertising. CC Texas fielded many calls, requests, and questions from prospective voters, many of whom were members, who had difficulty navigating the voting process in 2020.

34. CC Texas's members have experienced harassment and intimidation by poll watchers in the past, including during the 2020 election. Members have had poll watchers challenge their eligibility to vote at the polls, experienced aggressive behavior by poll watchers in and around polling sites while waiting to vote, witnessed poll watcher intimidation of other voters while volunteering at polling sites, and witnessed voters requiring assistance being repeatedly questioned by poll watchers during the process. CC Texas is concerned that the provisions of SB 1 that grant poll watchers free movement throughout polling places will dissuade many of CC Texas's members—particularly young voters, Black voters, Hispanic voters, Asian voters,

disabled and elderly voters, limited-English-speaking voters, and newly naturalized American citizens—from voting at the polls altogether, the only method of voting available to CC Texas’s members who are not eligible to vote by mail. CC Texas will also have to devote significant time and resources away from its current initiatives to educate its membership and the broader public to help them to determine the safest way to vote without harassment and intimidation, including by developing an in-house program to equip voters with know-your-rights trainings and to protect voters against the expanded rights of poll watchers.

35. A significant percentage of both CC Texas’s members and the voters it supports during the election process are eligible to vote by mail under Texas law, typically due to age, illness, and/or mental and/or physical disability. CC Texas’s members and constituents rely on election officials for solicitation and distribution of vote-by-mail applications, and CC Texas staff rely on election officials to provide members and the general public with accurate, specific information about various voting processes. Voting by mail is not easy in Texas. It requires eligible voters to jump through a multi-step process starting with the request for an application. Many prospective voters, including many of CC Texas’s members, do not know that they have to apply to receive a vote-by-mail ballot, and some do not have access to computers, internet, or printers to be able to access an official application and apply to vote by mail. In the past, these individuals have relied on their local election officials to distribute unsolicited vote-by-mail applications. In 2020, some CC Texas members who are registered voters over the age of sixty-five received vote-by-mail applications from Harris County. This was extremely beneficial and made voting by mail accessible to CC Texas’s older members. As an organization, CC Texas also relies on county election officials as experts to inform voters about their voting options and to provide official materials for voters to understand the voting process better, including vote-by-mail applications.

Because SB 1 generally prohibits county election officials from soliciting vote-by-mail applications and distributing such applications, CC Texas is concerned that county election officials will not partner directly with their Organization for fear of being subjected to criminal penalties under SB 1's ambiguous provisions. As a result, CC Texas will now have to devote its limited resources towards additional vote-by-mail education and awareness, instead of towards other types of programming, such as its high school voter registration program and its local and state policy-advocacy efforts on civic education, redistricting, and campaign finance issues.

36. CC Texas members who rely on voting by mail will be further burdened by provisions of SB 1 that require a match between the identifying information in a voter's mail-in ballot application and the identifying information on the voter's registration application and ballot. Without the possibility of a match that indicates to an election clerk that the two documents identify the same voter, the election clerk has the power to reject the voter's vote-by-mail application and/or ballot. Notice and opportunity to cure are also largely dependent on the timing of the application or ballot, the discretion of election officials, and voters' access to computers. Many CC Texas members do not have computer or internet access that would enable them to timely cure using an online tool. These provisions will result in some members—especially those who are elderly and disabled—being arbitrarily disenfranchised, and CC Texas will have to expend its limited resources on helping voters make sure their applications and/or vote-by-mail ballots are not wrongly rejected based on this provision.

37. CC Texas's membership also includes voters who need assistance at the polls or at home if they are voting by mail, as well as individuals who assist voters in various ways. Some CC Texas members who require assistance cannot read English well, and others have physical disabilities that prevent them from seeing and/or marking ballots. CC Texas is concerned that the

provisions of SB 1 requiring voter assistants to provide detailed information under oath will deter assistants from helping voters, thereby making it more difficult for voters to receive the assistance they need from someone of their choice. CC Texas also connects voters to a number of other organizations that provide free transportation to the polls for those who have a physical disability and who need to vote curbside, but do not have access to transportation. These organizations may not operate as they have previously, given the provisions in SB 1 that make providing seven or more such voters with transportation to the polls more cumbersome. With these changes in place, CC Texas expects it will have to devote significant time and resources away from its current initiatives to educate its membership and the broader public about these provisions and ensure they understand the nuances of voter assistance. CC Texas will also have to field requests from voters asking CC Texas volunteers and staff to assist them at the polls. This would significantly increase CC Texas's workload, forcing CC Texas to divert its limited staff time away from its other important initiatives.

38. CC Texas also has members, primarily in Harris County, who used drive-thru voting and overnight early voting and returned vote-by-mail ballots via drop boxes during the 2020 election for various reasons. Many members used drive-thru voting because they had underlying health conditions that left them more vulnerable to contracting COVID-19, they were caretakers of individuals with comorbidities who were more vulnerable to COVID-19, or they were simply afraid to vote in person at polling places during the pandemic. Other members voted overnight to accommodate their work hours or other obligations. Still other members were able to drop off their vote-by-mail ballots at drop box locations because even though they might have timely requested vote-by-mail ballots, they received them too late and were concerned that their ballots would not be delivered in time due to delayed postal service delivery times. CC Texas is concerned that the

surges in COVID-19 infections because of new variants and their rapid spread will result in another lockdown. With Texas's vaccination rates lagging behind the national average at 47% and with 16,474 new cases being reported every day as of August 30, CC Texas is concerned that SB 1's prohibitions on alternative, lawful methods of voting and returning vote-by-mail ballots will burden the right to vote of CC Texas's members, especially during exigent circumstances like the pandemic that will present challenges for members seeking to vote in the November 2021 and March 2022 elections. CC Texas will have to devote significant time and resources away from its current initiatives to educate its membership and the broader public about these provisions, to answer questions about alternative voting methods, and to ensure their members are not relying on alternative voting methods that have been banned.

39. If SB 1 is allowed to stand, the votes of thousands of CC Texas's members will be in jeopardy as voters encounter frequent voter intimidation by newly empowered poll watchers; new hurdles to access vote-by-mail ballots and voter assistance; and restrictions on early voting, drop box voting, and drive-thru voting. Moreover, members who assist voters may not feel safe doing so in the face of potential criminal investigation. If SB 1 remains, CC Texas' other programs and priorities will suffer, including its high school voter registration program and its local and state policy-advocacy efforts on civic education, redistricting, and campaign finance because it will have to devote significant staff time and resources towards mitigating the pernicious effects of the new Law.

40. Plaintiff **DANYAHEL NORRIS** has lived the majority of the last twenty-three years in Harris County. He is a registered voter and votes regularly. Norris is African American.

41. Norris is a member of the Houston Chapter of the Texas NAACP and a past President of the Houston Lawyers' Association, where he led a robust voter education initiative to

teach voters about the implications of SB 14, Texas's photo ID law. During these educational sessions, he helped voters understand and comply with the new ID requirements. Norris also led initiatives to register prospective voters to vote. Over the past several years, Norris has regularly volunteered for election protection with local organizations, fielding calls from voters who have questions about the voting process.

42. The 2020 election cycle presented several challenges for Norris and his family. Norris's wife has high blood pressure, a known comorbidity that makes a person more susceptible to contracting and potentially dying of COVID-19, and he felt the need to remain cautious throughout the year for her health and safety and those of his children.

43. Voting in person at the polls posed significant hurdles to Norris, so when Harris County implemented drive-thru voting in the 2020 general election—by allowing voters to cast their ballots while in their cars—Norris immediately took advantage. Without the option of drive-thru voting, Norris's and his wife's right to vote would have been significantly burdened during the pandemic.

44. Norris is now concerned about the surges in COVID-19 infections because of the new variants and their rapid spread. He is worried about voting in person given that his children are unvaccinated, especially in a State where the vaccination rate remains at 47% and more than 16,400 new cases are being reported daily. He plans to vote in the upcoming elections in November, but feels that his right to vote will be burdened if his county election clerks are unable to offer him and fellow voters safe voting options as they did in 2020.

45. Norris is also extremely concerned about the provisions of SB 1 that expand the rights of poll watchers at polling places and limit the power of election officials to protect voters from the disruptive, uncomfortable, and intimidating behavior of watchers. He believes these

provisions will impact his ability to vote peacefully, free of any disturbance, encumbrance, or potential embarrassment. Norris finds these provisions intimidating both for himself and his wife, and for other Black voters.

46. Plaintiff **HYUN JA NORMAN** is a registered voter who has lived in Harris County for the majority of the last twenty years. Since becoming a naturalized citizen of the United States in 2005, Norman has voted regularly.

47. Norman believes that it is her civic duty to help others access the franchise. For this reason, she has volunteered with the Korean American Association of Houston (“KAAH”) since 2014, when KAAH visited her church to register prospective eligible voters.

48. Approximately 35,000 to 40,000 Korean Americans live in Harris County. The largest concentration of Korean Americans is in the Spring Branch West neighborhood of Houston, also colloquially known as Little Korea because of its many Korean churches and businesses. Many Korean Americans who live in Spring Branch and across Harris County are limited-English proficient in speaking, reading, and writing. Many are also older and have physical disabilities that affect their ability to read or write. This is particularly so for the seniors who attend the Korean senior center in Spring Branch for its day program or who live in the low-income senior apartments run by the City of Houston.

49. Harris County does not provide ballots in Korean. For that reason, many in the Korean American community in Houston cannot vote unless they receive language assistance. Norman devotes a large amount of time to providing these voters with such assistance.

50. Before every major election, Norman and her fellow volunteers designate one day of early voting—usually a Saturday or a Sunday—as Korean American Early Voting Day. On that day, they spend several hours providing language assistance to Korean American voters.

51. Norman typically assists voters at the polls through in-person assistance and drives to the polls. On Korean American Early Voting Day, she waits outside the 100-foot polling place boundary at Trini Mendenhall Community Center and greets Korean Americans with the words “anyo haseo,” a Korean phrase meaning “hello,” letting Korean American voters know that she is a community member and that she speaks Korean. Some voters are afraid of getting in trouble for accepting assistance or doing something wrong during the voting process, so Norman takes care to explain that voters who do not speak or understand English are eligible for assistance under the law. When a voter requests her assistance, Norman enters the polls with the voter and explains to the greeter or the election judge that the voter needs her assistance because he or she does not speak English. At the check-in desk inside the polling place, Norman checks in as a voter assistant and provides her name, address, and other identification information next to the voter’s information, usually in an e-poll book. Some voters who have never voted before and do not speak, read, or write in English do not know anything about the voting process—therefore, sometimes the voter will have questions about the layout of the polling place, how machine voting works, or where to go after the election clerk checks the voter in. Norman answers these questions in Korean. Norman then accompanies the voter to the voting machine to help him or her read and understand the ballot by verbally translating all contents of the ballot in Korean. If the voter does not know how to mark a machine, she shows the voter how to “select” options. Norman does not mark the voter’s ballot unless specifically asked to do so; she prefers that a voter mark his or her own ballot if physically able to do so. Once the voter completes and submits an electronic ballot, Norman walks out with the voter and congratulates the voter on successfully navigating the process and completing an important civic duty.

52. SB 1 will make it harder for Norman to help others, increasing the administrative burden on Norman and other assistants, thus chilling her ability to help voters, deterring people from choosing to provide assistance, and ultimately making it more difficult for voters who need such language assistance to vote. Norman is particularly concerned that the oath provision, which requires her to swear, under penalty of perjury, that she will not “pressure” a voter to choose her to provide assistance will prevent her from effectively helping voters. Norman is accustomed to having to convince Korean American voters to accept the help that they are guaranteed under law. She often has to explain that voters have a right to assistance and should accept help if they need it. As a result of this provision, she fears that she will be punished for engaging in these conversations, holding up signs outside the polling place, or encouraging community members to come to the Trini Mendenhall Center where she provides assistance.

53. Though Norman has not yet transported curbside voters, she regularly transports multiple voters who need language assistance to the polls and she expects she may have to transport curbside voters in the years to come as many in her community are elderly and/or physically disabled. She usually visits the Korean American Senior Center and makes an announcement, explaining that she is available to drive voters who cannot drive themselves and need to vote. Many are elderly Korean Americans who do not speak, read, or write English. As Covid-19 variants continue to threaten many Texas communities, Norman anticipates that more voters who are eligible to vote curbside but do not will now choose to vote curbside because of comorbidities that make entering a polling place dangerous to their health. By requiring Norman to sign a form each time she drives seven or more voters to the polls, including requiring her to state whether she has also provided in-person assistance at the polls and then requiring election officials to make the form available to the Secretary of State and the Attorney General, SB 1’s new provisions present

an administrative nightmare for Norman. She expects that these provisions will dissuade voters from seeking her help, and she knows that these provisions will chill her ability to drive voters and help them at the polls for fear that she may be investigated or held accountable for statements about the voter's eligibility to receive assistance.

54. Norman also assists eligible vote-by-mail voters, typically over the age of sixty-five and typically those who attend her church and ask for help. She assists these voters by explaining the vote-by-mail process to them, including how to request a vote-by-mail ballot. Most elderly community members do not have access to the internet or even if they do, they do not know how to use a computer or read instructions in English. If Norman helps anyone navigate the vote-by-mail ballot, she includes her name, address, and other information as required. If a community member asks her to witness a ballot, she tries to make sure that she only acts as a witness for *one* ballot, providing the information required.

55. As for vote-by-mail applications, Norman usually calls the Harris County clerk's office and asks them if she can pick up multiple mail-in ballot applications for individuals eligible to vote by mail. In the past, Harris County has accommodated Norman's requests and distributed applications to her so that she may share them with the wider community. Norman takes these applications and she gives them to church members and other community members who are typically sixty-five years or older or have physical disabilities preventing them from voting in person, making these individuals eligible to vote by mail under Texas law. If SB 1 goes into effect and prohibits the Harris County clerk's office from distributing unsolicited mail-in ballot applications, Norman does not know how eligible Korean American community members who do not own a computer, do not know how to use a computer, or have limited English proficiency will

be able to access vote-by-mail applications. Norman herself does not have the funds to print out many vote-by-mail ballot applications for distribution.

56. Finally, Norman is extremely concerned about SB 1's expansion of poll watchers' rights. Norman has encountered many intimidating figures in her work at the polls, some of whom have caused election judges to remove her from the polls even though she did nothing wrong, as detailed in the allegations below. Since then, Norman has felt afraid to help her community as she normally does. But she still chooses to because without her help and without a Korean-language ballot, many Korean Americans would be completely disenfranchised. By emboldening poll watchers to move freely within the polling place, Norman feels she will not be able to carry out her work safely. She fears that her community members will no longer vote at all and will choose to stay at home instead.

57. Plaintiff **FREDDY BLANCO** has lived in Harris County for most of his life. In 1991, he became the presiding election judge of Precinct 0072, the precinct serving the Mason Park neighborhood of Houston. Ever since then, Blanco has run elections as the precinct judge of the polling location in Mason Park. Between 2012 and 2013, Blanco began serving as an early voting clerk at the Acres Homes Multi-Services Community Center and the Hardy Community Center. In 2014, he was appointed to be an early voting presiding judge at Houston Community College's early voting location and he continues to serve in that position. Blanco also serves both as an election judge and as an election clerk at different locations in Harris County, as needed.

58. As a presiding election judge of a countywide polling location and early voting location, Blanco takes his job seriously. He believes that his duty is to know the law and understand his authority; provide a comfortable voting experience to voters, including by treating them with respect as they go through the voting process; ensure that all voters properly check in and provide

proper identification; support his election clerks by providing guidance when necessary; permit poll watchers as required under current law; and allow poll watchers to “observe” the polling place, as permitted under the law.

59. Blanco is concerned with the provisions of SB 1 that will subject him and other election judges to civil penalties, including potential loss of employment, and criminal sanctions for obstructing poll watchers. He finds the law vague, and is unsure how he is expected to follow SB 1’s new provisions. For example, Blanco believes that the language in Sections 4.07(e) (denying “free movement”), 4.09 (taking “any action”), and 6.01(e) (authorizing watchers to “observe any activity” during curbside voting) are vague. Blanco believes that other Sections of SB 1 suffer from similar infirmities.

60. Blanco believes that these provisions will prevent his ability to do his job—including his work to preserve the peace within the polling place, allow as many eligible voters as possible to cast ballots, and support his clerks.

61. Faced with a vague law that he cannot follow, Blanco is worried about the potential for criminal penalty or loss of his job.

62. Plaintiff **MARY FLOOD NUGENT** has been an election worker since she was a college student in Massachusetts. She has served as an election official in almost every election in her precinct in Harris County since 1992. Since then, Nugent has alternated between serving as presiding judge and alternate presiding judge of her precinct polling location, and from 2000 onwards, she has served as presiding judge at her polling place. Currently, she is the judge at Precinct 0895, located at Edgar Allan Poe Elementary School, a historic site. This location serves voters in Precincts 0040, 0895, and 0896, as well as voters from all over Harris County. Even before Harris County transitioned into countywide polling locations, the elementary school served

multiple precincts, so Nugent has been overseeing elections for a wide range of voters from different backgrounds and precincts for many years. Leading up to the 2020 general election, Nugent served as the presiding judge at an early voting location at the Texas Medical Center in Houston. In that capacity, she worked closely with hospital administrators and staff to get the Texas Medical Center ready for early voting.

63. To Nugent, precinct polling locations are a core part of the fabric of her neighborhood. Nugent believes that these locations are a sacred space of which every voter becomes a part. Nugent strives to make Election Day at her precinct polling location an enjoyable, comfortable, fair, and efficient process. She strives to create a team environment among her staff and encourages collaboration between staff members.

64. Nugent believes that part of her job is looking out for voters. She feels that it is her duty to protect them from any behavior that causes them to feel uncomfortable and ultimately to leave the polling place without voting. To that end, she has occasionally asked poll watchers to sit as opposed to stand when she observed that voters were uncomfortable with poll watchers hovering over them. Nugent believes that the authority that the Texas Code gives to election judges to control the polling place—including poll workers and poll watchers—is essential for her to be able to carry out her duties.

65. Nugent also finds the provisions of SB 1 governing poll watchers to be vague. For example, Nugent interprets “free movement” as a watcher’s ability to observe within the polling place without coming too close to voters or making them feel uncomfortable. In the past, she has asked poll watchers to sit instead of stand—she does not know whether this would qualify as “an action” that denies them “free movement,” as used in the provisions of SB 1.

66. Nugent fears that the new poll watcher provisions of the Law will completely change the culture of her polling place and early voting locations from community spaces to hostile, lawless spaces in which voters feel that they are being questioned at every turn.

67. Plaintiff **PRISCILLA BLOOMQUIST** has been an election worker in Harris County since 1988. She first moved to Harris County in 1979 and has lived there ever since. Around 1995, she was elected Democratic precinct chair and consequently appointed presiding election judge of Precinct 0453, serving the Westbury South neighborhood of Houston, Texas. To this day, she continues to oversee elections in her home precinct, and adjoining precincts when consolidated, on Election Day. From 2008 through 2011, she served on the Provisional Ballot Board and the Signature Verification Committee for Harris County. In 2011, she was appointed as an early voting clerk at the Tracy Gee Community Center located in State House Representative District 137. In 2012, Bloomquist was appointed as the presiding judge at the early voting location at Tracy Gee; she served in that post until 2015, when she became alternate judge and trainer to the new presiding judge. Then, in 2019, she again became presiding judge and has served in that capacity ever since. In 2020, Bloomquist worked approximately forty-two days of early voting during the primary, primary runoff, and general elections, as well as three Election Days, despite a global pandemic and the many safety precautions necessary to conduct elections.

68. Bloomquist has observed that the stresses and pressures on election judges can affect the environment of the entire polling place. Based on her experience, she believes that election judges should be equipped with as many tools as possible so that they can efficiently manage polling places.

69. A few years ago, during the Early Voting period, she was asked by the County to help at a polling place that served a heavily Vietnamese American voter population. The

arrangement allowed her to switch with the presiding election judge of the other polling place for about two days. When she arrived at the new polling place, she witnessed chaos—there were at least eight poll watchers (two per candidate) inside the polling place and more watchers waiting for their shifts. There were numerous Vietnamese interpreters and assistants inside the polling place. Both the presiding election judge and the alternate election judge were frazzled and did not know what to do. The presiding election judge was overwhelmed by the large number of people in the polling place, and it was clear that the alternate judge was having difficulty keeping track of all the poll watchers, who were talking and interacting with the voters in violation of the Election Code and were listening to the assistants as they helped the voters at the booths. Bloomquist was able to use her authority and experience to manage the situation and create order in the polling place.

70. Two years ago, Bloomquist served as the presiding election judge in a mayoral runoff election. She remembers some of the poll watchers being disruptive—they were eating food, talking loudly with each other, speaking with the election clerks repeatedly, and attempting to communicate with the voters directly. Again, Bloomquist used her authority as an election judge to maintain order within the polling place.

71. Bloomquist believes that it is imperative that an election judge like her be able to convey confidence and authority in the polling place so that her clerks follow her lead and voters leave confident that their votes will be counted.

72. Bloomquist is concerned that SB 1's vague language will prevent her and other judges from being able to control the polling place and provide a safe and comfortable environment for voting. She thinks that SB 1 will empower poll watchers to direct her staff and make it harder for them to serve voters. She is also concerned that younger or newer election judges might feel

intimidated by emboldened watchers who challenge their authority and be unable to carry out their duties for fear of civil sanctions, including potential job termination, and criminal penalties.

73. Bloomquist finds much of the language in SB 1's poll watcher provisions to be vague. She believes that phrases like "denying watchers free movement" or taking "any action against watchers" do not help to clarify the current Election Code and are unnecessary. She interprets "free movement" as a watcher's ability to observe within the polling place without coming too close to voters or making them feel uncomfortable. But she does not know whether, under the new Law, asking a poll watcher to stop hovering over a voter would qualify as "an action" or fall under denying them "free movement."

74. Bloomquist has experienced poll watchers presenting improper paperwork, and has turned them away to correct the omissions. She is concerned that the new Law will make that action a violation of a poll watcher's rights.

75. Bloomquist believes that the new poll watcher provisions of SB 1 are unnecessary given that the current Election Code already provides adequate guidance and appropriate discretion to election judges to be able to carry out their duties. In addition to confusing election judges, she believes that the new provisions will embolden partisan poll watchers to disrupt the polling place and engage in bad behavior. She does not want voters to feel afraid to vote in person or feel that if they enter a polling place, watchers will be able to question their every move.

76. Defendant **GREG ABBOTT** is the Governor of Texas and, pursuant to Article IV, Section I of the Texas Constitution, is the chief executive officer of the State of Texas. Governor Abbott is sued in his official capacity.

77. Defendant **JOHN/JANE DOE** is the Secretary of State of Texas, pursuant to Article IV, Section 21 of the Texas Constitution. The Secretary is the "chief election officer" of

the State and is responsible for “assist[ing] and advis[ing] all election authorities with regard to the application, operation, and interpretation of this code and of the election laws outside of this code.” Tex. Elec. Code §§ 31.001(a), 31.004(a). The Secretary also oversees the Texas Elections Division, which is responsible for administering the Texas Election Code for Texas voters, elections, voting systems, candidates, and political parties. *Id.* at § 31.001(b). The Secretary of State’s office is currently vacant, and a new Secretary will be appointed by Governor Abbott, with confirmation from the Senate. The future Secretary of State of Texas is sued in his or her official capacity.

78. Defendant **JOE ESPARZA** is the Deputy Secretary of State of Texas appointed by former Secretary of State Ruth Hughs in December 2018. The Deputy Secretary “perform[s] the duties prescribed by law for the secretary of state when the secretary of state is absent or unable to act” and “serves at the pleasure of the secretary of state.” Tex. Elec. Code § 405.004. Deputy Secretary Esparza is sued in his official capacity, until such time as the office of the Secretary of State is filled.

79. Defendant **ATTORNEY GENERAL KEN PAXTON** is the chief law enforcement officer of Texas pursuant to Article IV, Section 22 of the Texas State Constitution. The Attorney General investigates and prosecutes cases, including cases of election fraud, and assists local law enforcement in prosecutions and appeals. Attorney General Paxton is sued in his official capacity.

SPECIFIC FACTUAL ALLEGATIONS

The Demographics of Texas

80. Texas is one of the most racially and ethnically diverse states in the country, with the largest number of Black Americans, the second largest number of Hispanic Americans, and the third largest number of Asian Americans of any state in the nation.

81. Texas is also one of the fastest growing states in the country. Since 2010, the State's population has grown by nearly four million, the vast majority of which has come from increases in the State's Hispanic, Black, and Asian residents. Nearly 87% of Texas's population growth between 2010 and 2019 came from non-white population groups. The rate of growth among Asian, Hispanic, and Black Texans was 49%, 20%, and 19%, respectively, while the rate of growth among white Texans was just 4%. As of July 1, 2019, Texas's population of almost 29 million people is 41.2% white, 39.7% Hispanic, 12.9% Black, and 5.2% Asian.

82. Texas's growth in population has been concentrated in the State's five largest urban counties—Harris, Travis, Bexar, Tarrant, and Dallas. Approximately 47% of Texans now live in one of these 5 counties, which are some of the most racially and ethnically diverse counties in the State. Harris County, for example, is home to nearly 2.5 million registered voters, or nearly 15% of the approximately 17 million registered voters in Texas. It is also one of the most racially and ethnically diverse counties in Texas, with a population that is 43.7% Hispanic, 28.7% white, 20% Black, and 7% Asian.

83. As Texas has grown in population, especially in its urban areas and among its minority populations, so too have the State's voter rolls. Since 2010, the number of registered voters in Texas has risen from 13.2 million to nearly 17 million. Over the last decade, the rates of voter registration among Hispanics increased significantly, more than any other demographic

group. As registered voters are entirely drawn from and make up most of the Citizen Voting-Age Population (“CVAP”), the demographics of CVAP are a very strong predictor of the demographics of registered voters. The Hispanic percent of Texas CVAP increased by 4.4 percentage points from 25.5% in 2012 to 29.9% in 2019, signaling a similar increase in the percentage of Texas registered voters who are Hispanic.

84. Over the same period, voters have also experienced increased restrictions on their right to vote, such as being subjected to large voter purges, widespread polling place closures, and the nation’s strictest voter ID law, SB 14, which was remedied only after a number of civil rights organizations (including Plaintiff Texas NAACP) brought litigation to challenge it.

85. Texas has one of the lowest voter turnout rates in the country, and national researchers have identified Texas as “the state with the most restrictive electoral climate,” meaning it currently ranks fiftieth nationwide in terms of how much time and effort it takes a voter to register to vote and cast a ballot. For example, Texas has unusually strict limitations on who can vote by mail, allowing only four categories of voters—sixty-five or older, sick or disabled, out of their home county on Election Day, and confined in jail—to request mail-in ballots.

Voter Turnout During the 2020 Election Cycle

86. Uncertainty and fear clouded the general election last year. Voters were afraid to vote in person for health and safety reasons. There were poll worker shortages across the state because poll workers tend to be older and many felt uncomfortable working in person during the pandemic. Many voters were expecting to encounter aggressive caravans and rallies on Election Day. During the primary election, many voters received robocalls that spread misinformation on the days that Democrats, Republicans, and Independents were supposed to vote. News about the Postal Service’s decisions to restructure its operations and potentially delay mail delivery made

national headlines. And former President Donald Trump used social media to undermine the legitimacy of vote-by-mail ballots, writing “NO WAY (ZERO!) that Mail-In Ballots will be anything less than substantially fraudulent,” and declaring that “This will be a Rigged Election.”

87. Even in the midst of chaos, confusion, and personal tragedies, record numbers of Texans voted in the general election. The general election saw some of the highest voter turnout in decades, even though elections were held under the pall of a global pandemic that would claim the lives of more than 30,000 Texans by the end of the year. Eleven million citizens, or 66% of registered voters, turned out to vote in Texas as compared to nine million, or 59% of registered voters, who voted in the 2016 general election. The five most diverse urban counties each had higher turnout percentages as well. In the 2020 general, 66% of Harris County’s registered voters voted as compared to 58.4% in 2016; in Bexar, that number was 64% in 2020 as compared to 56% in 2016; in Dallas, 66% as compared to 58% in 2016; in Travis, 71% in 2020 as compared to 63% in 2016; and in Tarrant, 68% in 2020 as compared to 62% in 2016.

88. To increase access to the franchise amidst a pandemic, Harris County’s election clerk introduced multiple new measures, including responding proactively to any reports of voter intimidation, coercion, or fraud; allocating machines across polling sites based on known traffic patterns and expected turnout; and recruiting more than enough poll workers to operate polling locations during the Early Voting period and on Election Day.

89. For both the primary run-off and the general election, Harris County sent applications for mail-in ballots to the roughly 380,000 registered voters sixty-five and older who automatically qualified to vote by mail. To receive mail-in ballots, these voters still needed to complete and return their vote-by-mail applications.

90. Harris County also established twelve drop box sites for voters to deposit mail-in ballots for the general election without having to rely on the postal service or appear in person to return their mail-in ballots. Even after Governor Abbott issued a proclamation in October limiting drop boxes to one box per county, Harris County voters still had access to at least one drop box. Travis County, similarly, established four drop box locations before Governor Abbott's proclamation and operated one after. Other counties also had the choice to implement one drop box per county to ensure that those who did not want to use the postal mail or enter into polling places had an option to drop off their mail-in ballots.

91. To make in-person voting safer, Harris County implemented ten drive-thru voting sites—including at the NRG Stadium—open to all voters in Harris County. Drive-thru voting allowed voters to remain socially distanced within their vehicles while still presenting valid photo identification and using the same portable voting machines used by voters inside the polling location. Approximately 127,000 voters took advantage of drive-thru voting in the general election, accounting for about 10% of all in-person ballots cast during early voting in Harris County. More than 53% of these voters were Black, Hispanic, or Asian. Keith Ingram, the Director of Elections for the Texas Secretary of State, advised a Texas Court of Appeals that the Elections Division had concluded that drive-thru voting was permitted under Texas law as long as “counties who want to try this . . . have the location associated with a physical building and . . . take whoever shows up at the location, whether they are walking, riding a bicycle, or driving a car.”

92. Another voting measure that Harris County implemented to increase voter turnout was extended hours of early voting, including twenty-four-hour voting. The County had extended voting hours during the July 2020 primaries, resulting in more than 17,000 votes during extended hours. Black, Hispanic, and Asian voters made up 56% of the voters that voted during those

extended early voting hours, as opposed to just 38% during the early voting period overall in Harris County. In the run-up to the general election, Harris County extended early voting hours on October 27, 28, and 29. All Harris County early voting locations stayed open from 7:00 a.m. until 10:00 p.m., three hours beyond normal closing time. Twenty-four-hour voting was then made available at eight polling locations on October 29. These eight polling locations stayed open for thirty-six consecutive hours, from 7:00 a.m. on October 29 through 7:00 p.m. on October 30. The extended voting period was designed to enable shift workers, who are disproportionately people of color, first responders at Texas Medical Center, and those with irregular work schedules to access the ballot. Although these extended voting hours were only available for one day, many voters took advantage of them. On October 30, 2020, Harris County's Elections Department reported on its Twitter account: "Between 7PM last night and 7AM this morning 10,250 people voted in Harris County."

93. Harris County surpassed the 1.3 million votes that had been cast in the 2016 presidential election by Thursday, October 29, 2020—with one day of early voting and Election Day to spare. Approximately 1.64 million citizens voted in Harris County in the 2020 general election, a 26% increase from the 1.3 million citizens that voted in the 2016 general election.

94. Across the State, Texas saw the highest turnout in decades in the 2020 general election, with 66% of Texas's 17 million registered voters casting ballots in the 2020 election—this figure was 6.6 percentage points higher than in 2016. This was especially true in urban counties: Harris County's turnout increased by 7.1 percentage points between 2016 and 2020; Travis County's increased by 5.9 percentage points between 2016 and 2020; Bexar County's increased by 7.2 percentage points between 2016 and 2020; Tarrant County's increased by 4.7

percentage points between 2016 and 2020; and Dallas County's increased by 6.6 percentage points between 2016 and 2020.

95. There was no evidence of widespread voter fraud and virtually no evidence of even minor voting irregularities in the 2020 election in Harris County or anywhere else in Texas. The Harris County Election Security Task Force issued a final report on the 2020 election, which concluded: "In this election there were nearly 1.7 million votes cast in Harris County. Despite the record turnout, the task force received approximately twenty allegations of wrongdoing that needed to be elevated to the level of a formal investigation. Despite claims, our thorough investigations found no proof of any election tampering, ballot harvesting, voter suppression, intimidation or any other type of foul play that might have impacted the legitimate cast or count of a ballot." The Texas Attorney General's office spent 22,000 staff hours in 2020 investigating voter fraud—more than double the hours spent prosecuting voter fraud cases in 2018. These efforts resulted in 16 minor findings where voters had listed the wrong address on their voter registration card, most of which dated back to the 2018 election. None of these cases resulted in jail time.

96. Importantly, the 2020 election was not an outlier. Between 2005 and 2020, the Attorney General of Texas successfully prosecuted just 140 individuals for voter fraud. The Attorney General's office is prosecuting at least forty-three cases of voter fraud, if not more. Just one of those pending cases involves the 2020 election.

The Development and Passage of SB 1

97. In early March, SB 7 and HB 6 were introduced in the Texas legislature by a group of thirteen white Senators and mostly white Representatives. Many of the provisions in SB 7 mirrored those in HB 6, although SB 7 was the more restrictive of the two Bills. While SB 7 did not initially provide a specific purpose for its provisions, HB 6 stated that its purpose was "to

exercise the legislature's constitutional authority under Section 4, Article VI, Texas Constitution, to make all laws necessary to detect and punish fraud and *preserve the purity of the ballot box.*" Over the course of committee hearings and Floor debate on HB 6, Representative Cain—the primary author of HB 6—also used this “purity of the ballot box” language to defend the Bill. In its final form, SB 7 still referenced Section 4, Article VI of the Texas Constitution, stating that its purpose was to “make all laws necessary to detect and punish fraud.” The final bill included in its first pages a series of “findings,” which stated that “fraud in elections threatens the stability of a constitutional democracy,” “reforms are needed to the election laws of this state to ensure that fraud does not undermine the public confidence in the election process,” and reforms to the election laws “are enacted solely to prevent fraud in the electoral process and ensure that all legally cast ballots are counted.” In specifying the legislative intent behind the Bill, the drafters specified that the intent of the legislation was “to reduce the likelihood of fraud in the conduct of elections,” among other things.

98. Both Bills were immediately referred to the Senate State Affairs Committee and the House Elections Committee, respectively. Over the course of the next ten weeks, SB 7 and HB 6 were rushed through a legislative process defined by procedural irregularity, lack of transparency, and continuous attempts to limit the presentation of opposing viewpoints.

99. From the start, the legislators pushing both Bills forward in the House and Senate gave little to no guidance on opportunities for public testimony, counter to standard operating procedure in the legislature. This resulted in repeated instances in which the public was denied an opportunity to comment meaningfully on the legislation before the Committee.

100. On March 25, 2021, for example, the House Elections Committee held its first hearing on HB 6, and more than 200 people signed up to testify. Representative Briscoe Cain,

Committee Chair and primary sponsor of HB 6, recessed the Committee early, so those 200 members of the public were unable to testify on the Bill that day.

101. Similarly, when the Senate State Affairs Committee held its primary hearing on SB 7 on March 26, 2021, its agenda included thirteen other bills, including several other election bills. Upon arrival, members of the public who had traveled to Austin to testify were informed that their testimony would be limited to two minutes per person on all fourteen bills on the day's agenda. As a result, those interested in testifying had to rush through their testimony on each bill, or choose to testify on only some of the bills. Standard practice in the legislature dictates that members of the public receive a few minutes to testify on each piece of legislation up for debate during public committee hearings.

102. Throughout the Session, the House Election and the Senate State Affairs Committees did not permit virtual testimony to be given, even as the pandemic continued to devastate Texas and to affect low-income communities and communities of color disproportionately. This was unusual in the legislature, as many other Committees had adapted their testimony procedures to account for the challenges posed by the pandemic. Moreover, because Chair Hughes and Chair Cain refused to enforce mask rules during these hearings, many members of the public felt unsafe testifying and opted out of doing so.

103. The legislative text of the versions of SB 7 and HB 6 set for debate in Committees were rarely posted on the legislature's website before public hearings, making it difficult for the public to understand what language they should provide feedback on. Even after the two Bills were debated, legislators often took days or even weeks in uploading the bills to the legislature's website, against standard practice.

104. On at least one occasion, Committee members themselves were not given the legislative text of the bill to be heard before the Committee convened. On April 29, 2021, the House Committee on Elections held another public hearing at which Chair Cain blindsided the Committee and the public by motioning to substitute SB 7 with the text of HB 6, even though neither bill was on the Committee's calendar. As a result, a hearing on SB 7 was never held in the House Elections Committee, and Committee members were handed the thirty-plus pages of replacement language to be inserted into SB 7 just minutes before the vote. When Chair Cain called the vote, he stated that there were no objections to adopting the substitute language, even as Vice Chair González and other members of the Committee shouted in opposition. Representative González said, "I have to object. This is wrong. We deserve to have a public hearing on this." Chair Cain reasoned that because the text of SB 7 was being replaced with the exact text of HB 6, the Committee's hearing on HB 6 was "sufficient."

105. Following this incident, four members of the House Committee on Elections penned a letter to United States Attorney General Merrick Garland requesting the Civil Rights Division of the U.S. Department of Justice monitor the proceedings of the House Elections Committee and the Texas House for the remainder of the legislative session. The letter detailed how "the Chair and members of the Committee on Elections ha[d] violated the rules and norms of the Texas House of Representatives, including preventing the consideration of ameliorative amendments and silencing opposing viewpoints." The letter stated that neither the public nor the Committee members themselves had been given prior notice or a public hearing, which they called "a grave deviation from standard operating procedure in the Texas Legislature."

106. This pattern continued into the final days of the legislative session, when the public and most legislators were kept in the dark about the content of the legislative compromise until the

last minute. While conference committee members spent more than a week meeting behind closed-doors, the public was left wondering how two vastly different bills would be reconciled. When the conference committee finally came to a compromise on the evening of May 28, the Friday of Memorial Day Weekend, Chair Hughes and Chair Cain tweeted on their official accounts that they had “reached an agreement.” But within minutes, Chair Cain’s tweet had been deleted and it was reported that the announcement had been made “prematurely.” Subsequent reporting revealed that several members of the conference committee, including the only people of color on the committee, had not seen the conference committee report before a deal was announced. An additional twenty-one hours passed before the public received the text of the Bill late Saturday afternoon of Memorial Day Weekend. This left Senators and the public with roughly thirteen hours to review the sixty-seven-page bill and its accompanying 112 pages of analysis before a Senate vote was taken.

107. In an unusual development, the conference committee report included a number of substantive “out of bound” amendments, amounting to roughly twelve pages of text that was not included in either HB 6 or SB 7 and therefore had not been the subject of a public hearing or any other form of public input. Legislative rules specify that a conference committee’s charge is “limited to reconciling differences between the two chambers, and the committee may not change, alter, amend, or omit text that is not in disagreement without the adoption of an ‘out of bounds’ resolution by both chambers.” When such a resolution was brought up detailing the additions that were not included in either chamber’s version of the Bill, the resolution was not available online for the first hour of the debate, barring the public from understanding the substance of the Floor debate.

108. Inexplicably, Senator Hughes then scheduled Floor debate on the Bill to begin at 10 p.m., despite releasing the draft and the out-of-bound amendments around 5 p.m. In the interim, he asked legislators to join him in a closed-door briefing to review the out of bound amendments before 10 p.m., though such explanation would typically have been reserved for Floor debate, which is public and broadcast online.

109. As a result of these procedural maneuvers, the Senate's seven-plus hours of debate on the final version of SB 7 took place in the dead of night, ending with a vote at 6:00 a.m.

110. When the House took up SB 7 later that day—the final day of the regular legislative session—the Bill's sponsors refused to take *any* questions about the legislation, despite the fact that it had changed markedly since last being considered by the chamber. In protest, many House members chose to walk out of the chamber, denying the Bill's advocates the quorum necessary to pass legislation.

111. The first special session convened by Governor Abbott commenced on July 8, 2021. Just 24 hours before the House and Senate reconvened for the special session, the Governor released his agenda, which included "election integrity" legislation and 10 other priorities. Within 24 hours, both the House and the Senate had released new versions of their election bills, with SB 7 now titled SB 1 and HB 6 now titled HB 3.

112. Despite the fact that the session began on a Thursday, both the House and the Senate scheduled hearings on their respective bills for Saturday morning. On that Saturday, July 10, hundreds of Texans signed up to testify on the election bills. In the Senate State Affairs Committee, 451 people signed up to testify, 376 in opposition to SB 1. In the House Committee on Constitutional Rights & Remedies, 481 people signed up to testify, 404 in opposition to HB 3. On the House side, public testimony did not begin until the early hours of Sunday at 1:41 a.m.,

seventeen hours after the meeting began at 8:00 a.m. On the Senate side, public testimony began on time around 11 a.m., but did not end until well past midnight. Hundreds of individuals waited hours just for their three minutes to testify in opposition to HB 3 and SB 1. Many members of the public had traveled from across the State to testify on the Bills and were forced to leave before even getting the chance because they were unable to stay at the Capitol for twenty-four hours due to work, family responsibilities, and/or health concerns.

113. Despite the significant public opposition in the hearings, both chambers advanced their legislation out of committee on party-line votes as soon as public testimony ended. In the House Committee on Constitutional Rights & Remedies, members opposing HB 3 offered amendments to ease some voting restrictions that the vast majority of the public testimony had opposed. When those amendments were voted down, Representative Joe Moody petitioned for the panel to delay its vote to consider properly the public's testimony. Representative Moody entreated the Committee to "show respect for the process we went through and the witnesses that came here" and to "give thoughtful public consideration" to the legislation. Instead, the Committee took a roll call vote and passed the legislation without further debate. The Senate State Affairs Committee followed a similar process, accepting only Republican amendments and passing SB 1 out of committee after just 45 minutes of discussion.

114. The next day, more than fifty House Members and nine Senators left the State, breaking the House's quorum and preventing it from passing HB 3. The House Members did so for the express purpose of keeping the legislature from "forc[ing] through dangerous legislation that would trample on Texans' freedom to vote." In public statements, they highlighted how the committee process amounted to a charade in which proponents of SB 1 and HB 3 vowed to make changes and then forced the Bills through without any such consideration. On July 13, the full

Senate proceeded to pass an amended version of SB 1 along strict party lines. The first special session ended on August 6, 2021, without passage of either Bill.

115. On August 5, 2021, Governor Abbott announced that a second special session would begin on August 7, the day after the conclusion of the first special session. Shortly thereafter, the Senate suspended its rule requiring twenty-four-hour notice before a committee hearing and then passed a resolution altering two basic rules of the legislative process. First, the resolution removed the “tag rule,” which had allowed members to ensure a bill receives forty-eight hours of written notice before a hearing is held. Second, the resolution permitted committees to skip public hearings on House bills that have the same subject as Senate bills the committees already considered. These changes ran counter to the legislature’s typical process and ensured, again, that fewer members of the public would have the opportunity to weigh in on the legislation.

116. Two weeks later on August 19, thirty-eight days after the Democrats first broke quorum over the elections bills, the House reconvened for business. The return of a handful of Democratic legislators to the State provided a quorum of exactly ninety-nine members, though it remains unclear whether all ninety-nine members were in fact on the Floor when the House claimed a quorum. A group of thirty-four members released a statement calling out the House leadership’s process, noting that its actions “kept Texans in the dark” and “ben[t] the rules to get their way.” Immediately upon convening with a quorum, the House referred SB 1 to the House Committee on Constitutional Rights & Remedies.

117. On August 23, the House Committee on Constitutional Rights & Remedies took up SB 1. Just two hours prior to the hearing’s start, the Committee inserted HB 3’s language into SB 1, leaving members of the public unclear as to which Bill they were speaking on throughout six

hours of testimony. Once again, the Committee passed the Bill with no changes, despite the Chairman's repeated assurances that he would consider amendments to the Bill.

118. The House's version of SB 1 made its way to the House Floor on August 26. After more than twelve hours of testimony and consideration of more than three dozen amendments, SB 1 passed with a handful of changes.

119. The final version of SB 1—a conference committee report—passed the House and Senate on August 31, making considerable changes to sections of the Texas Election Code governing poll watchers, voting by mail, voter assistants, and methods of voting. None of the Democratic members of the conference committee signed onto the conference report. Before the final vote in the House, one of those members, Representative John Turner, spoke against the Bill, concluding: "Many of the changes to our election laws that are in this Bill are not only unnecessary but are far out of proportion to the level of any actually demonstrated fraud." Governor Abbott signed the Bill on September 7.

Impacts of the Legislation on Communities of Color

120. Throughout consideration of both HB 6 and SB 7 during the Regular Session and HB 3 and SB 1 during the Special Sessions, Black and Hispanic legislators who opposed the Bills were locked out of the legislative process at every turn. Members of the public who opposed the Bills based on the disproportionate impact it would have on communities of color were silenced or ignored, despite repeated pleas at every step of the process for lawmakers to consider the consequences for voters of color.

121. For example, during the March 26 House Elections Committee hearing, Chair Cain refused to let Representative Nicole Collier, who is Black and the Chair of the Legislative Black Caucus, testify, instead informing her she would have to sign up as a witness like any other member

of the public. Representative Collier is not on the House Elections Committee, but standard practice of the legislature dictates that other members can readily testify before Committees they do not serve on without such a procedure.

122. During the March 26 House Elections Committee meeting and in several subsequent hearings, Chair Cain also prevented Vice Chair Jessica González, who is Hispanic, from presiding over the Committee meeting in his absence, even though it is common practice for the vice chair to preside in such situations.

123. On March 26, the Senate State Affairs Committee also held a public hearing on SB 7. When Senator Hughes was asked whether he or his office consulted with any civil rights organizations while drafting the legislation, Senator Hughes confirmed that they “didn’t solicit input from groups,” admitting that he had not spoken with anyone from the Texas NAACP, the League of United Latin American Citizens (“LULAC”), or the Mexican American Legislative Caucus.

124. At hearing after hearing, legislators, advocates, and members of the public voiced opposition to HB 6 and SB 7 on the basis of the Bills’ likely impacts on minority voters. The House and Senate Committees reviewing HB 6 and SB 7 received in-person and written testimony multiple times from Plaintiffs in this case, including Texas NAACP and Common Cause Texas, as well as LULAC, the Mexican American Legal Defense and Educational Fund (“MALDEF”), the League of Women Voters, the Texas Civil Rights Project, and other civil rights groups. Plaintiff Hyun Ja Norman appeared in person to testify against HB 6 and its voter assistants provisions, many of which mirrored the assistant provisions in SB 7.

125. Despite dozens of requests for racial impact analyses and proposed ameliorating amendments to protect minority voters, these calls went unheeded. And in response to dozens of

questions about whether proponents had considered or studied the disparate impact of the Bills on minority populations over the course of the three-month legislative cycle, legislators repeatedly said “they were not advised” or had not looked at the issue. This trend continued through the special sessions where legislators, despite having more time to conduct racial impact analyses and confer with civil rights groups, said that they had not and did not intend to follow up on these requests.

126. During Senate Floor debate on March 31, 2021, a Floor amendment was proposed to amend SB 7 to require the Secretary of State “to conduct a thorough analysis and produce a report that assesses whether this Act, were it to be implemented, would produce a disparate impact on women, the elderly, persons with disabilities, students, or racial and ethnic minorities. If the report produced by the secretary of state concludes that a disparate impact on women, the elderly, persons with disabilities, students, or racial and ethnic minorities is likely to arise from the implementation of this Act, this Act has no effect.” The Amendment was voted down by eighteen white Senators.

127. During that same Floor debate, Senator Juan “Chuy” Hinojosa, who is Hispanic, offered two amendments. The first read: “Every citizen of this state, who is qualified to vote under the Texas Constitution and the provisions of this code, has a fundamental right to vote in any election for which the voter is eligible.” The second read: “Every eligible voter who casts a ballot in an election has a fundamental right to have the voter’s vote counted.” Both Amendments were voted down by 18 white Senators.

128. When it came time for the House and Senate to select members for a Conference Committee to work out remaining differences between the House and Senate versions of the bill during the Regular Session, five white Senators were appointed to the conference committee, along

with three white Representatives, one Black Representative (Representative Nicole Collier), and one Hispanic Representative (Representative Terry Canales).

129. Over the course of the ten-day Conference Committee process, it became clear that the only members of color on the Conference Committee were not privy to the Committee's discussions and had not even seen what was going to be in the final Conference Committee Report. On May 28, 2021, shortly after Chair Hughes and Chair Cain both announced on Twitter that they had reached an agreement on SB 7, Representative Canales tweeted that as a member of the Conference Committee, he had not even seen a legislative counsel draft. He added that the Democratic, Black, and Mexican American Legislative Caucuses had not been informed about the compromise.

130. The next day, Representative Nicole Collier, the only Black member of the Committee, said she had an opportunity to inform the Committee that their new, out of order restriction on Sunday early voting (specifying that early voting cannot start until after 1 p.m.) would directly harm "Souls to the Polls" initiatives organized by Black churches. The provision was left in the final version of the Bill for the remainder of the regular session. At a press conference, Representative Collier said, "It seemed like the fix was in from the beginning. From the beginning, there was no interest in hearing how these measures would impact people of color." When the legislature returned for the first Special Session in July, the provision had been altered, but not entirely removed. It continued to allow for a discrepancy in the number of early voting hours during the final weekend of early voting—requiring twelve hours on Saturday, but requiring only six hours on Sunday, when Souls to the Polls events take place.

131. During the final regular session Floor debate on SB 7 in the middle of the night on May 29, a number of Senators again asked Senator Hughes and his colleagues whether they had

been in contact with any civil rights organizations regarding the conference committee report. Once again, Senator Hughes stated that he had not reached out to the NAACP, LULAC, MALDEF, or any other civil rights organizations.

132. When they returned to the Capitol for the first special session on July 8, legislators of color once again found themselves locked out of the legislative process. In the House, for example, a special committee convened to take up elections legislation included a more diverse group of legislators, but those lawmakers of color were still summarily ignored. As Representative Senfronia Thompson, who is Black, explained: “I left because I’m tired of sitting hostage in a Texas House of Representatives while Republicans strip away the rights of my constituents to vote.”

133. The first special session ended in an impasse with all but four House Democrats leaving the State for thirty days, the duration of the special session, and denying the House its two-thirds quorum. Shortly after, the House Administration Committee passed a motion asking that “the sergeant at arms, or officers appointed by him, send for all absentees ... under warrant of arrest if necessary,” effectively making the missing Democrats legislative fugitives.

134. Separately, Governor Abbott called for the arrest of the House Democrats who left the State in protest. House Speaker Phelan signed a civil warrant for the arrest of Representative Philip Cortez, a Hispanic Democrat from San Antonio, when he returned from Washington, D.C. to Austin temporarily.

135. In response to the arrests and the resulting “anxiety and distress over the separation from their families” and impairment of their reputations, twenty-two House Democrats sued Governor Abbott, Speaker Phelan, and Representative James White in federal district court for infringing on their rights to assemble, to travel, to speak, and to freedom from arrest under the

United States Constitution. They alleged that the defendants had engaged in behavior designed to threaten, coerce, and intimidate them.

136. During the House Floor debate on August 26, the House did not pass any amendments introduced by Representatives of color. In an unusual move early in the debate, House Speaker Dade Phelan instructed members not to use the word “racism” in debating SB 1. Throughout the day, several Black Representatives put forth amendments attempting to clarify the Bill’s intent, all of which were rejected. The House rejected Representative Sheryl Cole’s amendment to clarify that courts and election officials should understand the legislative intent of SB 1 to be expansion of the franchise. House members also rejected Representative Harold Dutton’s amendment to clarify that the purpose of the Bill is to increase turnout in Texas. In response to Representative Dutton’s amendment, Representative Murr, the primary sponsor of SB 1 in the House, said: “I’m not sure the goal of the state is to go actively seek out voters if they’re not interested.” Both Representatives Cole and Dutton are African American. Other members of color also introduced amendments dealing with the racial impact of the SB 1, which the majority of the House rejected. The House adopted only one amendment that concerned one impacted community—the disability community—which was offered by Representative John Bucy, a white Democratic Representative.

Increasing COVID-19 Cases in Texas

137. As of August 30, only about 47% of Texans are fully vaccinated. The State has reported a total of 3,582,287 cases. Since early February 2021, about 8,800 Texans have died due

to COVID-19 or one of its variants. Since March 2020, 56,975 Texans have died due to Covid-19 or one of its variants.

138. At this time, the daily average of COVID-19 cases in Texas is 16,474; the daily average for number of hospitalized is 14,411; and the daily average deaths because of COVID-19 or one of its variants is 209.

139. In July, the Centers for Disease Control and Prevention recommended reinstating mask mandates for all individuals regardless of vaccination status. These mandates have no legal force in Texas. While some local officials, including those in Travis and Harris Counties, have urged people to proceed with caution, including by wearing masks indoors and outdoors and recommending that unvaccinated people stay home, Governor Abbott has refused to reinstate mask mandates, including at schools.

140. These unfortunate COVID-19 developments highlight the uncertainty of the future of elections in Texas.

141. Earlier in the regular legislative session, multiple proponents of the Bills justified the ban on alternative methods of voting—drive-thru, overnight, extended early, and absentee ballot drop box voting—on the grounds that the pandemic was over. The recent surge in cases only serves to illustrate that the pandemic is not over and will continue to impact the ability of counties and local jurisdictions to conduct safe elections.

142. During an interview on Fox News, Lieutenant Governor Patrick noted that the virus is spreading mostly among the unvaccinated. He said that in most states, African Americans are the “biggest group” who are unvaccinated, and they are reliable Democratic voters. However, in Texas, the biggest group of unvaccinated people is white people. There are an estimated 5.6 million

white Texans who are eligible and unvaccinated, as compared to 1.9 million Black Texans who are eligible and unvaccinated.

THE CHALLENGED PROVISIONS OF SB 1

Expanded powers for partisan poll watchers: Sections 4.01(g), 4.06(g), 4.07(e), 4.09, 6.01, and 8.01

143. Under the Texas Election Code, a “watcher” is a person appointed by a candidate or the candidate’s agents, a political party that has one or more nominees on the ballot, or any three members of a county executive committee to observe the conduct of an election on behalf of the candidate, the political party, or the proponents or opponents of a measure appearing on the ballot. Tex. Elec. Code §§ 33.001, 33.002, 33.003(a)–(b).

144. According to current Texas statutes, watchers may be present only at precinct polling places on Election Day, meeting places for early voting ballot boards, central county stations, and early voting polling places. Tex. Elec. Code §§ 33.007(a)–(b).

145. Within a polling place, watchers may be present at the voting station only when a voter is being assisted by an election officer. Watchers are also entitled to examine the ballot of a voter assisted by an election officer before it is deposited in the ballot box to determine whether it is prepared in accordance with the voter’s wishes. Tex. Elec. Code § 33.057(a). However, watchers cannot be present at the voting station when a voter is preparing the ballot or is being assisted by a person of the voter’s choice. *Id.* § 33.057(b).

146. The Texas Election Code places certain restrictions on a watcher’s activities, including prohibiting a watcher from conversing with an election officer except to call attention to an irregularity or violation of law, conversing with a voter, or communicating in any manner with a voter regarding the election. Tex. Elec. Code § 33.058.

147. As a general matter, the law mandates that presiding judges serving at polling places on Election Day or during the early voting period “preserve order and prevent breaches of the peace and violations of [the Election Code] in the polling place and in the area within which electioneering and loitering are prohibited.” Tex. Elec. Code § 32.075(a).

148. A presiding judge has the power of a district judge “to enforce order and preserve the peace, including the power to issue an arrest warrant.” Tex. Elec. Code § 32.075(c). An appeal of an order or other action of the presiding judge tracks the same process as the appeal of an order or other action of a district court in the county in which the polling place is located. *Id.*

149. Election judges and clerks are entitled to compensation for services rendered at a precinct polling place at an hourly rate that is at least equivalent to the federal minimum hourly wage. Tex. Elec. Code § 32.091(a). Election judges are required to complete the Secretary of State’s training programs before they can serve. *Id.* §§ 32.111(a)–(b).

150. Election officials, including election judges, who “knowingly” prevent a watcher from observing activity the watcher is entitled to observe commit a Class A misdemeanor under current Texas law. Tex. Elec. Code §§ 33.061(a)–(b). A Class A misdemeanor is punishable by up to 1 year in jail and/or a fine of up to \$4000. Tex. Penal Code § 12.21.

151. SB 1 includes a series of provisions that limit the rights of election officials with regard to poll watchers and concurrently expand the rights of poll watchers.

152. *Poll Watchers’ Unlimited Movement in Polling Place*: Section 4.07(e) (amending Texas Election Code § 33.056) prohibits an election judge from “den[ying] free movement where election activity is occurring within the location at which the watcher is serving.”

153. *Poll Watchers’ Observation of Voter Assistants*: Section 6.01(e) (amending Texas Election Code § 64.009) grants poll watchers the right to observe “any activity” related to voter

assistance, including when an assistant drives seven or more voters to the polls or when an assistant provides in-person assistance to a voter who is either physically disabled or cannot see and/or read the language on the ballot.

154. *Expanded Prohibition on Election Officials Obstructing Partisan Poll Watchers:* Section 4.09 (amending Texas Election Code § 33.061(a)) makes it an offense for an election judge to “knowingly prevent[] a watcher from observing an activity or procedure” the person knows the watcher is entitled to observe, including “by taking any action to obstruct the view of a watcher or distance the watcher from the activity or procedure to be observed in a manner that would make observation not reasonably effective.” A violation of this provision is a Class A misdemeanor, punishable by up to one year in jail and/or up to a \$4000 fine.

155. *New Criminal Penalty for Election Officials Rejecting Partisan Poll Watchers:* Section 4.06(g) (amending Texas Election Code § 33.051) makes it a Class A misdemeanor for an election judge to “knowingly refuse[] to accept a watcher for service when acceptance of the watcher is required” by the Code. A separate provision of Section 33.051 of the Code already states that “a watcher who presents himself or herself at the proper time with a certificate of appointment shall be accepted for service,” unless the person is ineligible to serve or has possession of a prohibited recording device. And Section 33.061 of the Code already makes it a Class A misdemeanor for an election judge to “knowingly prevent[] a watcher from observing an activity” the watcher is entitled to observe. This provision thus adds another Class A misdemeanor for refusing to accept a watcher. A Class A misdemeanor is punishable by up to one year in jail and/or up to a \$4000 fine.

156. *Removing Poll Watchers:* Section 4.01(g) (amending Texas Election Code § 32.075) severely limits the power of presiding judges to remove poll watchers for misconduct other

than for a violation of the Penal Code. The Section states that a “presiding judge may not have a watcher duly accepted for service . . . removed from the polling place for violating a provision of this code or any other provision of law relating to the conduct of elections, other than a violation of the Penal Code, unless the violation was observed by an election judge or clerk.”

157. *New Civil Penalty for Election Officials for Any Violation:* Section 8.01 (amending Texas Election Code Chapter 31 by adding § 31.129) makes an election official liable to the State for a civil penalty if the official violates any provision of the Election Code, including any of the poll watcher provisions. A civil penalty imposed under this section may include termination of the person’s employment and loss of the person’s employment benefits. Under this provision, any violation of Sections 4.01(g), 4.06(g), 4.07(e), 4.09, or 6.01 could be cause for loss of employment and/or employment benefits.

Ban on election officials’ solicitation and distribution of vote-by-mail applications: Section 7.04

158. Current Texas law does not explicitly prohibit county election officials from mailing unsolicited vote-by-mail ballot applications to voters.

159. SB 1 curtails the discretion of election officials vis-à-vis the vote-by-mail process, particularly around the distribution of vote-by-mail applications.

160. *Ban on Soliciting Vote-by-Mail Applications:* Section 7.04 (adding Texas Election Code § 276.016) makes it a state jail felony for an early voting clerk to make any attempt to “solicit[] the submission of an application to vote by mail from a person who did not request an application.”

161. *Ban on Distributing Vote-by-Mail Applications Unless Requested:* Section 7.04 (adding Texas Election Code § 276.016) also makes it a state jail felony for an election official to distribute an application to vote by mail without an explicit request from a voter first, unless the

distribution is explicitly authorized by another provision of the Code. This Section also makes it a state jail felony for an election official to use public funds to facilitate the distribution of applications to vote by mail by another person without an explicit request from a voter first.

Rejection of vote-by-mail ballot applications and vote-by-mail ballots that do not exactly match voter registration applications: Sections 5.02, 5.03, 5.07, 5.08, 5.10, 5.12, and 5.13

162. Before applying to vote-by-mail, every voter is expected to register to vote at least thirty days before an election. In submitting a voter registration application, applicants must include: (1) the number of the applicant's driver's license, election identification certificate, or personal identification card issued by the Department of Public Safety; (2) the last four digits of the applicant's social security number if the applicant does not have a driver's license, election identification certificate, or personal identification card; or (3) a statement by the applicant that the applicant has not been issued any of those numbers. Tex. Elec. Code. § 13.002(c)(8).

163. Every application to vote by mail must include: (1) the applicant's name and the address at which the applicant is registered to vote; (2) the applicant's out-of-county address if he or she is requesting a mail-in ballot on grounds of absence from county of residence; (3) the address of the hospital, nursing home, or other long-term care facility, or retirement center, or of a person related to the applicant within the second degree by affinity or the third degree by consanguinity if the applicant is requesting a mail-in ballot because of age or disability; (4) the address of the jail or of a person related to the applicant within a degree of consanguinity for an applicant requesting a mail-in ballot because of confinement in jail; (5) each election for which the applicant is applying for a mail-in ballot; and (6) the reason for requesting a mail-in ballot limited to the four categories of voters that are eligible to vote-by-mail in Texas. Tex. Elec. Code § 84.002(a).

164. Texas law provides a notice and cure procedure for vote-by-mail applications rejected for incomplete or incorrect information. Tex. Elec. Code § 86.008. For rejected

applications, the clerk must mail or otherwise deliver another official application form to the applicant, along with a brief explanation of each defect. Tex. Elec. Code § 86.008(a). The State's deadline for receipt of all completed applications is on or before the twelfth day before election day. Tex. Elec. Code § 84.002(c).

165. Each person who applies for a mail-ballot receives an official ballot envelope and a carrier envelope. Under Texas law, these envelopes must meet certain criteria. The early voting clerk is responsible for entering onto the carrier envelope (1) the election information, including the election date and type; (2) the voter's name in printed form; (3) if applicable, a notation that a statement of residence is enclosed with the ballot; and (4) any other information the clerk determines necessary for the proper processing of the ballot. Tex. Elec. Code § 86.002(a)–(c).

166. SB 1 adds several new components to the vote-by-mail application and the vote-by-mail ballot process and sets up matching requirements related to these new components. In doing so, the Bill adds vague language and administrative complexity to the process.

167. *Match Requirement for a Vote-By-Mail Ballot Application:* Sections 5.02 and 5.03 (amending Texas Election Code § 84.002 and Texas Election Code § 84.011(a), respectively) require that mail-in ballot applications have the same identifying information as voter registration applications. Mail-in ballot applicants must now include: (1) the number of the applicant's driver's license, election identification certificate, or personal identification card issued by the Department of Public Safety; (2) the last four digits of the applicant's social security number, if the applicant has not been issued one of those numbers; or (3) a statement by the applicant that the applicant has not been issued any of the above numbers. Section 5.07 (amending Texas Election Code § 86.001) requires an early voting clerk to "reject" a vote-by-mail application unless the information required under Section 5.02, when matched with the information on a voter's application for voter

registration under Section 13.002(c)(8) of the Code, identifies the same voter. Though Sections 5.07 and 5.10 (amending Texas Election Code § 86.001 and § 86.016(c), respectively) permit applicants to add or correct information related to the identification fields through an online tool. The Sections do not consider voters who do not have access to a computer and/or the internet.

168. *Match Requirement for a Vote-By-Mail Ballot:* Section 5.08 (amending Texas Election Code § 86.002) requires that vote-by-mail carrier envelopes also have the same identifying information as voter registration applications. A mail-in ballot must now include: (1) the number of the voter's driver's license, election identification certificate, or personal identification card issued by the Department of Public Safety, the last four digits of the applicant's social security number, or a statement by the applicant that the applicant has not been issued any of the above numbers. Section 5.13 (amending Texas Election Code § 87.041) provides that a vote-by-mail ballot may be accepted *only if* the information required under Section 5.08, when matched with the information on a voter's application for voter registration under Section 13.002(c)(8) of the Code, identifies the same voter. Sections 5.10 and 5.12 (amending Texas Election Code § 86.015(c) and adding Texas Election Code § 87.0271, respectively) provide a notice and opportunity to cure process, but only if election officials on the early voting ballot board and/or the signature verification committee determine that there is adequate time for the voter to cure.

169. Together, Sections 5.02, 5.03, 5.07, 5.08, 5.10, 5.12, and 5.13 threaten to subject voters to disenfranchisement based on a technical mismatch between vote-by-mail applications and ballots and voter registration information.

Additional requirements for voter assistants: Sections 6.01, 6.03, 6.04, and 6.05

170. The Texas Election Code currently has strict regulations on voter assistance, including voter assistance aimed at defrauding the voter. Under Texas statutes, a voter may receive

assistance in marking a ballot only if the voter cannot mark the ballot because of a physical disability that renders the voter unable to write or see, or if the voter is unable to read the language in which the ballot is written. Tex. Elec. Code § 64.031.

171. “Assisting a voter” includes reading the ballot to the voter, directing the voter to read the ballot, marking the voter’s ballot, or directing the voter to mark a ballot. Tex. Elec. Code § 64.0321.

172. A voter eligible for assistance may request assistance either from two election officials from different political parties or from any person of the voter’s choice (as long as that person is not an agent of the voter's employer, or an officer or agent of a labor union to which the voter belongs). Tex. Elec. Code § 64.032(a)-(b).

173. If assistance is provided by a person of the voter's choice, an election officer must enter the person's name and address on the poll list beside the voter's name. Tex. Elec. Code § 64.032(d).

174. If a voter is assisted by a person of the voter's choice, an election officer is required to ask the voter being assisted whether the voter wants the entire ballot read. If so, the election officer must instruct the person assisting the voter to read the entire ballot to the voter. Tex. Elec. § 64.033(b).

175. Texas law requires a person assisting a voter to take an oath, administered by an election officer at the polling place, before providing assistance: “I swear (or affirm) that I will not suggest, by word, sign, or gesture, how the voter should vote; I will confine my assistance to answering the voter's questions, to stating propositions on the ballot, and to naming candidates and, if listed, their political parties; I will prepare the voter's ballot as the voter directs; and I am

not the voter's employer, an agent of the voter's employer, or an officer or agent of a labor union to which the voter belongs.” Tex. Elec. Code § 64.034.

176. Under Texas statutes, any person assisting a voter at the polls commits a criminal offense if he or she knowingly provides assistance to a voter ineligible to receive assistance; prepares the voter’s ballot in a way other than the voter directs; suggests by word, sign, or gesture how the voter should vote; or assists a voter who has not requested assistance. Tex. Elec. Code §§ 64.036(a)–(b).

177. A similar set of rules apply for a person assisting a voter submitting a vote-by-mail ballot. Only a voter who has a physical disability that renders him or her unable to write or see or who does not read the language in which the ballot is written may receive assistance in the form of help marking the ballot. Tex. Elec. Code § 86.010(b). A voter with a disability who cannot physically deposit the complete vote-by-mail ballot in the mail can also receive assistance from a person to deposit the voter’s ballot in the mail. *Id.* The voter’s employer, an agent of the voter’s employer, or an agent of the voter’s labor union cannot assist the voter. *Id.* § 86.010(a).

178. A person assisting a vote-by-mail voter must sign a written oath and provide his or her signature, printed name, and residence address on the carrier envelope of the voter’s vote-by-mail ballot. Tex. Elec. Code §§ 86.010(c), (e). Violation of these sections of the Election Code constitutes a criminal offense and amounts to a state jail felony. *Id.* §§ 86.010(f), (g).

179. SB 1 adds administrative complexity to the voter assistance process, making it more difficult for voters to receive assistance with their ballots and exposing those who assist voters to additional surveillance.

180. *Personal Information from Assistants Helping Voters With their Ballots*: Section 6.03 (adding Texas Election Code § 64.0322) and Section 6.05 (amending Texas Election Code §

86.010) require that a person, other than an election officer, who assists a voter in person at a polling place or assists a voter who is voting by mail to complete a form containing: (1) the person's name and address, (2) the person's relationship to the voter, and (3) whether the person is receiving compensation or other benefit for providing assistance. The form must be submitted to election officials "at the time the voter casts a ballot" if the assistance is provided in person or incorporated into a vote-by-mail carrier envelope if the voter is voting by mail and receives assistance.

181. *New Oath for Persons Assisting Voters:* Section 6.04 (amending Texas Election Code § 64.034) modifies the current oath an assistant must take and requires an assistant to, among other things, swear under "penalty of perjury that the voter I am assisting represented to me they are eligible to receive assistance" and that "I did not pressure or coerce the voter into choosing me to provide assistance."

182. *Personal Information from Assistants Providing Transportation:* Section 6.01 (amending Texas Election Code § 64.009) requires a person who simultaneously provides seven or more curbside voters with transportation to the polling place to complete and sign a form containing (1) the person's name and address, and (2) information on whether the person is also serving as an assistant to the voter. Section 6.01 also mandates that election officials deliver the form to the Secretary of State and that the Secretary maintain the form for the same amount of time required to preserve precinct election records. The Secretary must make the form available to the Attorney General for inspection "upon request." The form requirement does not apply to drivers who are related to "each voter" in the car within a certain degree of relation.

Restrictions on lawful methods of voting: Sections 3.04, 3.09, 3.10, 3.12, 3.13, and 4.12

183. Texas counties have many different types of polling places, including precinct polling places for voting on Election Day and permanent and temporary branch polling places for early voting. In certain counties, all polling places are countywide—meaning that voters can cast their ballots at any polling place regardless of where they live in the county.

184. Under the Texas Election Code, permanent branch polling places are mandatory early voting locations and must be located at each branch office regularly maintained for conducting general clerical functions of the county clerk. Tex. Elec. Code § 85.061(a).

185. Temporary branch polling places are additional early voting locations designated by appropriate county election authorities. *Id.* § 85.062(b). Current Texas law allows such temporary branch polling places to be located in a movable structure in the general election for state and county officers, general primary election, or runoff primary election” and authorizes the use of “[r]opes or other suitable objects” to arrange voting stations in the manner required under Texas Elec. Code § 62.004. *Id.* § 85.062.

186. The Texas Election Code designates local election officials, including early voting clerks, as the officials “in charge of and responsible for the management and conduct of the election.” Tex. Elec. Code § 83.001(c). That authority extends to all forms of early voting, including mail voting and in-person early voting. *Id.* § 83.001(c), § 83.002.

187. Under Texas law, eligible vote-by-mail voters may deliver their marked ballots “in person to the early voting clerk’s office . . . on election day.” *Id.* § 86.006(a-1).

188. SB 1 restricts three types of alternative methods of voting: expanded early voting (including overnight voting), returning mail-in ballots via drop-boxes, and drive-thru voting. In

doing so, it eliminates or severely restricts legitimate voting methods used disproportionately by people of color in the predominantly minority Harris County in 2020.

189. *Ban on Expanded Early Voting, Including Overnight Voting:* Section 3.09 (amending Texas Election Code § 85.005) prohibits overnight voting, even under emergency circumstances, by requiring early voting in general to occur after 6 a.m. and before 10 p.m. on each weekday of the early voting period, except legal state holidays. Early voting locations can be open for a minimum of twelve hours each weekday of the last week of the early voting period in the primary and general elections for state and county officers in counties with populations of 55,000 or more. Voting must be conducted at the main early voting polling place and at no other locations. Section 3.10 (amending Texas Election Code § 85.006(e)) requires early voting clerks of counties with populations of 55,000 or more to conduct at least twelve hours of early voting on the last Saturday of the early voting period (between the hours of 6 a.m. and 10 p.m.), but only requires at least six hours of early voting on the last Sunday of the early voting period (between the hours of 9 a.m. and 10 p.m.).

190. *Ban on Drop Box Voting:* Section 4.12 (amending Texas Election Code § 86.006) prohibits the use of drop boxes for in-person ballot delivery and instead requires all marked ballots to be “received by an election official at the time of delivery” and all election officials to record the voter’s name, signature, and type of ID provided at the time of return.

191. *Ban on Drive-thru Voting:* Three different sections prohibit drive-thru voting. Section 3.04 (amending Texas Election Code § 43.031(b)) prohibits voters casting a vote “from inside a motor vehicle,” unless the voters qualify to vote curbside under Texas Election Code § 64.009. Section 3.12 (amending Texas Election Code § 85.061(a)) requires early voting polling places to be located “inside” a building. And Section 3.13 (amending Texas Election Code §

85.062) requires temporary branch polling places (other than the main early voting location) to be located “inside” any building and prohibits locating a polling place in a “movable structure.” These provisions prohibit drive-thru voting completely.

HISTORY OF POLL WATCHER INTIMIDATION IN TEXAS

192. Texas has a well-documented history of voter intimidation by poll watchers that has disproportionately affected voters of color. The courts have acknowledged this pattern before—in 2014, a federal district court described this very issue: “Minorities continue to have to overcome fear and intimidation when they vote. . . . [T]here are still Anglos at the polls who demand that minority voters identify themselves, telling them that if they have ever gone to jail, they will go to prison if they vote. Additionally, there are poll watchers who dress in law enforcement-style clothing for an intimidating effect.” *Veasey v. Perry*, 71 F. Supp. 3d 627, 636–37 (S.D. Tex. 2014). Such instances are common in counties with a large population of minority voters, including Harris County.

193. In this way, poll watchers with increased powers could easily become a “sort of vigilante force,” especially given Texas’s history of sending white poll watchers into Black and Hispanic precincts to monitor the polls. In 2020, a shocking partisan poll watcher training video showed a trainer directing poll watchers to monitor the polling place in a historically Black precinct—Wheeler Ave Baptist Church—because, according to the trainer, most of the voter fraud in Harris County occurs there.

194. Poll watcher intimidation of voters of color has become routine in Harris County and other counties with significant Black and Hispanic populations.

- a. During the 2009 municipal elections in Houston, Texas, a group called the King Street Patriots (“KSP”) recruited and trained hundreds of predominantly white

volunteer poll watchers to look for voting irregularities in minority precincts. One video produced by KSP featured a doctored photo of a Black woman holding a sign that read, "I only got to vote once!" Complaints about voter intimidation by the KSP poll watchers followed, resulting in a request by U.S. Representative Sheila Jackson Lee for the U.S. Department of Justice to monitor the election in Houston, which it did.

- b. In the 2010 general election, KSP continued their work as poll watchers, "advertis[ing] unsubstantiated reports of 'voter fraud' in order to attract poll watcher volunteers." KSP poll watchers were assigned to polling locations that often "included a significant number of Asian, African American and/or Latino voters." In 2011, Harris County Attorney Vince Ryan responded to complaints of voter intimidation by poll watchers by requesting that the U.S. Department of Justice monitor the election and by calling the county chairmen of both major parties to a meeting to remind them of their responsibility to ensure poll watchers were behaving lawfully. Complaints of intimidation detailed poll watchers "hovering" over voters, "getting in their face," and talking aggressively to election workers. In one incident at a polling place in Houston's majority-Black Kashmere Gardens neighborhood, a female poll watcher stood directly behind a voter and refused to move when asked to by an election judge, telling the judge: "I have the right to stand wherever I want!"
- c. In 2018, several individuals at a polling place in Harris County accused Plaintiff Norman of electioneering in the polling place even though she was there to help limited-English speaking Korean American voters who could not read the English

ballot. As part of Norman's organizing effort, Korean American high school students appeared at the polls to help prospective voters understand the voting process, including how voting machines worked. All voter assistants had checked in with the election officials and taken the required assistant oath. Nevertheless, individuals at the polling place challenged Norman and fellow assistants, accusing them of engaging in unlawful activity because they were speaking in a language other than English that the poll watchers could not understand. This incident was elevated to the County Election Commission, the District Attorney, the Secretary of State, and the Attorney General. Korean American voter assistants were not allowed to enter the polling location and, as a result, many prospective voters did not receive the help they needed and several voters were intimidated and left the polls without voting.

- d. In 2018, Dallas County election officials identified the harassment and intimidation of voters as the worst they had seen in decades. At the Lakeside Activity Center in Mesquite, a city with a majority-minority population, election administrators received multiple complaints of a partisan poll watcher looking over voters' shoulders as they cast their ballots and questioning voters on their politics.
- e. In 2020, the nonpartisan Election Protection coalition received 140 reports of poll watcher misconduct and/or intimidation across Texas. These reports included several instances of harassment by white poll watchers in predominantly Black and Hispanic communities. In one such instance, a white poll watcher stood within three feet of the voting machines so she could see each voter and the voter's ballot.

- f. In 2020, KSP President Catherine Engelbrecht told a reporter that she was intent on recruiting intimidating-looking poll watchers, noting: “You get some SEALs in those polls, and they’re going to say, ‘No, no this is what it says. This is how we’re going to play this show.’”
- g. In 2021, a video surfaced of a presentation by the Harris County Republican Party, in which the Party announced its intention to build an “Election Integrity Brigade” of election workers and poll watchers in Harris County. The presenter in the video indicated that he intended to “build an army of 10,000 people,” including judges, clerks, poll watchers, and ballot board members. In addition to recruiting from traditional Republican channels, the presenter also suggested recruiting through a “military partnership.” The presenter asked viewers living in the suburbs to “have the confidence and courage to come down in here,” pointing to historically Black and Brown neighborhoods in Houston and noting that “this is where the fraud is occurring.” The presenter also noted that he built “contingency” into the recruitment numbers for the Election Integrity Brigade for several reasons, including planning for the possibility that a volunteer is not willing to go down to “Wheeler Baptist Church,” a polling location that serves a historically Black community and was a central gathering point for the Civil Rights Movement in Houston.

HISTORY OF DISCRIMINATION AGAINST BLACK AND HISPANIC VOTERS IN TEXAS

195. Courts have repeatedly recognized Texas’s long history and present-day legacy of enacting racially discriminatory voting laws that disenfranchise voters on account of race. *Veasey v. Perry*, 71 F. Supp. 3d 627, 633 (S.D. Tex. 2014) (“The careful and meticulous scrutiny of alleged

infringement of the right to vote . . . includes understanding the history of impairments that have plagued the right to vote in Texas, the racially discriminatory motivations and effects of burdensome qualifications on the right to vote, and their undeniable legacy with respect to the State's minority population.”); *Vera v. Richards*, 861 F. Supp. 1304, 1317 (S.D. Tex. 1994) (“Texas has a long, well-documented history of discrimination that has touched upon the rights of African Americans and Hispanics to register, to vote, or to participate otherwise in the electoral process. Devices such as the poll tax, an all-white primary system, and restrictive voter registration time periods are an unfortunate part of this State's minority voting rights history.”); *League of United Latin Am. Citizens v. Clements*, 999 F.2d 831, 866 (5th Cir. 1993) (“Texas' long history of discrimination against its black and Hispanic citizens in all areas of public life is not the subject of dispute among the parties.”); *Graves v. Barnes*, 343 F. Supp. 704, 725–26 (W.D. Tex. 1972) (“There exist innumerable instances, covering virtually the entire gamut of human relationships, in which the State has adopted and maintained an official policy of racial discrimination against the Negro. Indeed, even the Negro's right to vote and to participate in the electoral process has not remained untouched by the State's policy.”).

196. Texas’s history of official discrimination in voting stretches back to the end of Reconstruction in the 1870s, which ushered in a period of intimidation, violence, and disenfranchisement of Black Texans. During this time, Texas leaders passed official state policy and implemented unofficial practices to ensure Black voters were unable to cast their ballots, including by implementing all-white primaries, literacy restrictions, poll taxes, and voter purges.

197. *All-White Primary Elections*: After the Civil War, Texas instituted a white primary system that disenfranchised Black voters by denying them participation in primaries. Since the Democratic Party dominated state elections at the time, this practice ensured minority voters had

no meaningful vote in Texas. This system remained in place until the U.S. Supreme Court struck it down in 1927. *Nixon v. Herndon*, 273 U.S. 536 (1927). Undeterred, the Texas legislature passed a new, facially neutral law that allowed political parties to determine for themselves “who shall be qualified to vote or otherwise participate” in their primaries. The Texas Democratic Party proceeded to ban all non-white voters from its primary elections, including both Black and Hispanic voters. This system remained in place until the U.S. Supreme Court struck it down in 1944. *Smith v. Allwright*, 321 U.S. 649 (1944).

198. *Literacy Restrictions*: Beginning in 1905, the Texas legislature prohibited voters from taking someone with them to the polls to assist them in reading, marking, and submitting their ballots. This law was enacted despite the fact that enslaved people had largely been prohibited from learning to read. Even after the Civil War, education remained severely limited, such that in 1900, 45% of African American men were unable to read as compared to 8% of white men. These voters could thus only seek help from white Democratic partisan election judges, and they were often unable to verify that their votes were properly cast. These restrictions were only eliminated after a federal court struck them down in 1970. *Garza v. Smith*, 320 F. Supp. 131 (W.D. Tex. 1970), *vacated and remanded on procedural grounds*, 401 U.S. 1006 (1971), *on appeal after remand*, 450 F.2d 790 (5th Cir. 1971).

199. *Poll Taxes*: In the early 1900s, the Texas legislature proposed and the State quickly ratified a constitutional amendment requiring that voters pay a \$1.50 poll tax as a prerequisite for voting. This provision ensured many voters of color would be unable to afford to cast ballots. In 1964, the Twenty Fourth Amendment to the U.S. Constitution was adopted, rendering the practice unconstitutional as to federal elections. But Texas retained the poll tax for state elections until

1966, when a federal court struck it down. *United States v. Texas*, 252 F. Supp. 234 (W.D. Tex. 1966).

200. *Voter Re-Registration and Purges*: The Texas legislature then proposed a new constitutional amendment that would require voters to re-register to vote every year. Texas voters ratified the amendment, approving a burdensome process that required voters to re-register during a four-month period between October 1 and January 31 before each election. A federal court called the amendment “a direct descendant of the poll tax” aimed at “disenfranchis[ing] multitudes of Texas citizens otherwise qualified to vote,” and held it unconstitutional. *Beare v. Smith*, 321 F. Supp. 1100, 1103 (S.D. Tex. 1971), *aff'd sub nom. Beare v. Briscoe*, 498 F.2d 244 (5th Cir. 1974). In response, the Texas legislature passed a voter purge law, requiring re-registration of the entire electorate. Federal oversight and a subsequent federal court ruling ensured the law was never implemented.

201. *Voter Fraud Prosecutions*: Texas has also disproportionately investigated and prosecuted Black and Hispanic voters for voter fraud, despite the fact that exceedingly few convictions have materialized over the past sixteen years. Since taking office in 2015, Attorney General Ken Paxton has committed substantial time and energy to prosecuting voter fraud across Texas through the newly created Election Integrity Unit. Recent analyses demonstrate that at least 72% of the Election Integrity Unit’s prosecutions targeted Black and Hispanic individuals, though these groups make up only 44% of Texas’s population under the 2018 Census estimates. Moreover, 86% of the prosecutions involved alleged offenses occurring in counties with majority non-white and Hispanic populations.

202. Time and again, Texas lawmakers justified these actions by stating that restrictive voting measures—white primaries, literacy restrictions, poll taxes, re-registration requirements,

and voter purges—were necessary to address voter fraud and protect the “purity of the ballot.” This language was enshrined in Article VI, Section 4 of the Texas Constitution of 1876. It reads: “In all elections by the people, the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box; and the Legislature shall provide by law for the registration of all voters.” Of the ninety delegates who drafted the Constitution of 1876, only 5 were Black. And when it came time for the public to vote on the 1876 Constitution, Black voters across Texas opposed it. But usage of this “purity of the ballot box” language continued long after the passage of the State Constitution.

- a. In 1904, Senator Joseph Bailey echoed this language in a speech in which he said, “I believe more in the purity of the Anglo-Saxon race than in the principles of democracy.”
- b. In 1906, the chief architect of the Texas poll tax, A.W. Terrell, explained in an article entitled “Purity of Ballot” in the *Dallas Morning News* that a poll tax would “protect the citizen against machine politics, convention dictation, and corrupt methods at the polls.”
- c. In 1913, State Representative Joseph O. Boehmer of Eagle Pass formed the Ballot Purification League, and filed a bill admitting his intent was “to disqualify the Mexicans of the Western and Lower Rio Grande Counties.”
- d. In 1937, a Texas court called on the “purity of the ballot box” language to justify the legislature’s enactment of poll taxes for voters between the ages of 21 and 60 as a “necessary qualification for voting.”

- e. In 1943, when Texas's system of all-white primaries was challenged in the U.S. Supreme Court, then Attorney General Gerald C. Mann filed an amicus curiae brief in which he wrote: "The question involved in this litigation . . . is of such importance to the citizenship of Texas and to the preservation of the purity of the ballot box in primary elections, that as Attorney General of Texas, he feels that it is his duty to file this brief."
- f. In 1966, Texas Governor John Connally called a special session to pass the State's voter re-registration law, arguing that "annual registration is the most logical means of preventing fraud and guaranteeing the purity of the ballot box."
- g. During the 1970s, Texas officials defended the State's burdensome voter registration statute on the theory that it would promote the purity of the ballot box and protect against voter fraud. Even then, a federal district court acknowledged that the theory of the "purity of the ballot box" justification for restrictive voting requirements was suspect. The court rejected the State's argument for promoting the "purity of the ballot," finding the "purity" justification amounted to a belief by the State that "those who overcome the annual hurdle of registering at a time remote to the fall elections will more likely be better informed and have greater capabilities of making an intelligent choice than those who do not care enough to register."

203. On countless occasions, the specter of voter fraud and the need to protect the "purity of the ballot box" served as the primary justification for these suppressive policies, despite the fact that no evidence of widespread fraud was ever documented during this 100-year history. Preventing fraud and preserving the purity of the ballot box was a well-known pretext for minimizing the voting strength of Black and Hispanic Texans.

204. This history of official discrimination against voters of color in Texas led to the inclusion of the State as a covered jurisdiction under Section 5 in the 1975 amendments to the Voting Rights Act (“VRA”). Between 1976 and 2013, the U.S. Department of Justice objected to more than 200 proposed voting changes in Texas, more than in any other state in the country during this period. These objections covered a wide range of discriminatory voting rules, ranging from discriminatory implementation of majority vote and runoff requirements, to polling place and election date changes that denied minorities equal voting opportunities, to redistricting practices that denied minority voters an equal opportunity to elect their chosen candidates. These violations continued up until 2013, when the Supreme Court invalidated Section 5 of the VRA and Texas moved forward with similarly restrictive policies outside of the pre-clearance process.

205. Indeed, voting discrimination against Black and Hispanic voters in Texas is no historical artifact. More voting rights lawsuits have been filed against Texas and its State officials in the past ten years than in any other state in the country during this time. Since 2011, Texas has enacted discriminatory voting policies and exacerbated racial disparities in voting access over and over again, including through the use of severe voter ID restrictions, impermissible racial gerrymanders, intimidating voter fraud prosecutions, widespread polling place closures, hours-long lines at polling places, and imprecise voter purges.

206. *Voter ID*: In 2011, Texas enacted Senate Bill 14, widely identified at the time as the strictest voter ID law in the country, which required voters to produce one of only six photo identifications to vote. Texas lawmakers took a series of unprecedented steps to rush the Bill through the legislature—then Governor Rick Perry designated the Bill as emergency legislation to allow it to be considered out-of-order and earlier in the legislative session; the Texas Secretary of State’s office conducted an analysis on the number of voters who lacked an SB 14 ID, but never

reported this analysis to the legislature; and Texas House and Senate sponsors eliminated standard rules to allow the Bill to move through the legislative process with less debate. Unsurprisingly, in 2012, a three-judge district court panel unanimously held it was “virtually certain” that the Bill’s provisions would disproportionately affect racial minorities and that it violated Section 5 of the VRA. As the Court stated, “[s]imply put, many Hispanics and African Americans who voted in the last election will, because of the burdens imposed by SB 14, likely be unable to vote in the next election. This is retrogression.”

207. After the Supreme Court’s decision to invalidate Section 5 of the VRA in 2013 in *Shelby County v. Holder*, 570 U.S. 529 (2013), Texas redoubled its efforts to implement SB 14, despite overwhelming evidence that it would disproportionately harm Black and Hispanic voters from the year prior. On the day *Shelby* was decided, then Attorney General Abbott announced that Texas would immediately implement the voter ID bill which the three-judge panel had refused to pre-clear. Litigation followed, and, once again, a federal court concluded, after substantial discovery and trial, that SB 14 violated the “effects” and “intent” prongs of Section 2 of the VRA, and permanently enjoined implementation of SB 14. *Veasey v. Perry*, 71 F. Supp. 3d 627, 633 (S.D. Tex. 2014). The State appealed to the Fifth Circuit, which resulted in an initial affirmance of the district court’s Section 2 results ruling and a remand of the Section 2 intent ruling, *Veasey v. Abbott*, 796 F.3d 487, 493, 498 (5th Cir. 2015), followed by a similar result after en banc review in which the Fifth Circuit found that the record contained evidence that could support a finding of discriminatory intent and that there was substantial support in the record for the finding that SB 14 burdened Texans of color, who were less likely to possess qualified photo ID and less able to get it. *Veasey v. Abbott*, 830 F.3d 216, 272 (5th Cir. 2016) (en banc).

208. *Redistricting:* In every redistricting cycle since 1970, Texas has been found to have violated constitutional and statutory protections, including under the Fourteenth and Fifteenth Amendments and Section 2 of the Voting Rights Act, by drawing districts that dilute minority voting strength by packing or cracking the minority population. When Section 5 of the Voting Rights Act was still in effect, sixty-one of the 200 total objections made by the Department of Justice addressed proposed congressional, state legislative, county, city, school district, community college district plans—in particular, calling out attempts by the map drawers to dilute minority voting power.

209. *Polling Place Closures:* Between 2012 and 2018, Texas led the South in closing down the most polling stations—750 polling places, all told, largely concentrated in the fastest growing Black and Hispanic neighborhoods in the State. In Harris County, for example, fifty-two polling places were closed during this period. In the fifty counties that gained the most Black and Hispanic residents between 2012 and 2018, 542 polling sites were closed. By contrast, in the fifty counties that gained the fewest Black and Hispanic residents, only thirty-four polling sites were closed. This discrepancy occurred despite the fact that the fifty counties with the largest Black and Hispanic growth had a population increase of nearly 2.5 million, compared to the fifty counties with the lowest Black and Hispanic growth, where the population declined by more than 13,000.

210. *Hours-Long Lines:* Across the country, long lines at the polls are a perennial problem, particularly for voters in predominantly minority districts. Research has confirmed that a voter in a predominantly minority precinct is likely to experience a line that is twice as long, on average, as a voter waiting in a predominantly white precinct. Moreover, voters of color are three times as likely to wait longer than thirty minutes and six times as likely to wait more than sixty minutes to vote. This pattern is evident in Texas, where the recent closure of hundreds of polling

places, among other election administration issues, has led to voters waiting hours to cast a ballot, including cases in which individuals have been forced to wait more than six hours to vote. The vast majority of polling place closures in Texas occurred in counties with significant Black and Hispanic populations, and reports of long lines have come primarily from these same counties. During the 2020 primary election in Harris County, the last voter in line cast his ballot at 1:30 a.m. at Texas Southern University, after waiting in line for more than six hours.

211. *Voter Purges:* Texas lawmakers have been relentless in their efforts to purge the State's voter rolls of "non-citizen voters," which has disproportionately affected voters of color. In 2019, the Texas Secretary of State announced a review of approximately 98,000 voters as part of a "voter registration list maintenance activity," claiming that tens of thousands of Texas voters were non-citizens who had impermissibly registered to vote. Almost immediately upon sending the list, Texas officials realized that approximately 25,000 names should not have been included at all. But in some counties, before the Secretary of State could correct the problem, county officials had already begun sending out "proof of citizenship" letters informing voters that their registrations would be canceled if they did not provide proof of citizenship within thirty days. Even after significant review, no evidence of large-scale voter fraud emerged. A federal court subsequently ordered the Secretary of State to advise and direct local voting officials not to send notice of examination letters or remove voters from registration lists without prior approval of the court, noting that doing so burdened legal naturalized Americans "with what the Court finds to be ham-handed and threatening correspondence from the state which did not politely ask for information but rather exemplifies the power of government to strike fear and anxiety and to intimidate the least powerful among us." *Tex. League of United Latin Am. Citizens v. Whitley*, No. CV SA-19-CA-074-FB, 2019 WL 7938511, at *1 (W.D. Tex. Feb. 27, 2019).

212. Texas’s efforts to restrict voting have suppressed access to the ballot box across the State, especially for voters of color. Texas has one of the lowest voter turnout rates in the country. National comparisons have also identified Texas as “the state with the most restrictive electoral climate,” meaning it currently ranks fiftieth nationwide in terms of how much time and effort it takes a Texas voter to register to vote and cast a ballot.

COUNT I
Discriminatory Intent, Article I, Section 3 and Article I, Section 3(a) of the Texas Constitution
Asserted by Plaintiffs Texas NAACP, CC Texas, Norris and Norman

213. Plaintiffs incorporate the previous allegations as though set forth fully herein.

214. Article I, Section 3 of the Texas Constitution provides that “no man, or set of men, is entitled to exclusive separate public emoluments, or privileges” and Article I, Section 3(a) prohibits the state from denying or abridging the right to “equality under the law” on the basis of “sex, race, color, creed, or national origin.” As it relates to racial discrimination, the Texas Supreme Court has interpreted both constitutional Articles as coextensive with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *Rose v. Doctors Hosp.*, 801 S.W.2d 841, 846 (Tex. 1990) (“Texas cases echo federal standards when determining whether a statute violates equal protection under either provision.”). *See also Richards v. League of United Latin Am. Citizens*, 868 S.W.2d 306, 310–11 (Tex. 1993).

215. Any law that is neutral on its face but was enacted out of a discriminatory purpose must be reviewed under heightened scrutiny and invalidated.

216. Ostensibly neutral laws accompanied by neutral justifications that in reality are a pretext for discriminating on the basis of race are subject to the *Arlington Heights* framework. This framework takes into consideration evidence of a law’s disparate impact on a suspect class; legislative and historical background of official state actions impacting the suspect class; the

decision-making process, including departures from normal procedures; and contemporary statements made by the governmental body responsible for the official action. *Vill. of Arlington Heights v. Metro Housing Dev. Corp.*, 429 U.S. 252 (1997). The Texas Supreme Court has adopted the federal *Arlington Heights* framework. *Richards v. League of United Latin Am. Citizens*, 868 S.W.2d 306, 312 (Tex. 1993).

217. The year 2020 saw the highest turnout of voters in decades. Thousands of voters in predominantly minority counties were able to cast ballots, including in Harris County, which implemented extended early voting, drop boxes, and drive-thru voting to help its voters cast ballots and return vote-by-mail ballots safely during a pandemic. Organizational Plaintiffs' members who identify as Black, Hispanic, and Asian voted safely by using these alternative voting methods. Plaintiff Norris voted through drive-thru voting and was able to protect his immunosuppressed wife and his young children from potentially contracting COVID-19.

218. With the increase in Texas voters who do not speak English as a first language, voter assistants have become increasingly important. Plaintiff Norman, a Korean American community advocate, has assisted limited-English speaking voters from the Korean community to vote in person and by mail for several election cycles. SB 1's provisions target Norman and other assistants seeking to help limited-English speaking voters on the basis of national origin and ultimately chill their ability to help community members vote.

219. SB 1 is specifically aimed at curtailing methods of voting used by Black, Hispanic, and Asian voters that helped increase their political power during the 2020 elections. SB 1 will make it more difficult for these voters to vote by mail, to vote early, and to deliver their ballots, and will make it harder for assistants to help limited-English speaking voters cast ballots.

220. From legislators' failure to conduct racial impact analyses of SB 1's provisions on Black and Hispanic voters, to their stated goals of "preserving the purity of the ballot" at the very early stages of SB 1's development, to their actions behind closed doors, their bad faith negotiations, and their decisions explicitly to exclude minority legislators from participating in key aspects of the legislative process, to calling for the arrest of mostly minority legislators who left the Capitol in protest, to multiple departures from the normal course of procedure, legislators have shepherded to final passage a Bill that they know will disenfranchise the votes of Black, Hispanic, and Asian voters, in addition to elderly and disabled voters.

221. Legislators have repeatedly cited voter fraud as the predominant reason for enacting SB 1, despite absolutely no evidence of widespread voter fraud and virtually no evidence of even minor voting irregularities in Texas.

222. SB 1 was enacted with the purpose of discriminating based on race or ethnicity, in particular, making it harder for Black, Hispanic, and Asian voters, as well as other minorities, to vote.

COUNT II

Violation of the Right to Vote, Article I, Section 3 of the Texas Constitution as to the Poll Watcher Provisions

Asserted by Plaintiffs Texas NAACP, CC Texas, Norris, and Norman

223. Plaintiffs incorporate the previous allegations as though set forth fully herein.

224. The Texas Constitution provides for the equal protection of all laws. Article I, Section 3 of the Texas Constitution provides that "[a]ll free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services." Tex. Const. art. I, § 3. An individual's right to vote falls within the ambit of Article I, Section 3 and is coextensive with the U.S. Constitution's Fourteenth Amendment equal protection clause. *State v. Hodges*, 92 S.W.3d 489, 496, 501–02

(Tex. 2002). See also *Abbott v. Anti-Defamation League Austin*, 610 S.W.3d 911, 919 (Tex. 2020) (“This Court has held that the right to vote is protected by Article I, Section 3 of the Texas Constitution.”). Texas courts apply federal standards to determine a violation of Article I, Section 3. *Rose v. Doctors Hosp.*, 801 S.W.2d 841, 846 (Tex. 1990).

225. When resolving a challenge to a provision of Texas election laws under the State Constitution, the Texas Supreme Court has adopted the balancing test set forth by the United States Supreme Court in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). *State v. Hodges*, 92 S.W.3d 489, 496 (Tex. 2002) (“The parties agree that the proper test for determining the constitutionality of section 162.015(a)(2) is the balancing test articulated in *Anderson*”).

226. Under the *Anderson-Burdick* balancing test, a court must evaluate “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate” and “the precise interests put forward by the State as justifications for the burden imposed by its rule,” while considering “the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Id.* (quoting the *Anderson* standard as described in *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)).

227. Sections 4.01(g), 4.06(g), 4.07(e), 4.09, and 6.01(e), individually and together, impose a significant and substantial burden on the right to vote of Plaintiffs and the members of Texas NAACP and CC Texas because they increase the likelihood that partisan watchers will engage in conduct that will make voters, particularly voters of color, feel uncomfortable or intimidated, or otherwise deter them from voting. Additionally, Organizational Plaintiffs will be injured by having to make expenditures to aid and educate its members and the public that they otherwise would not have to make.

228. Section 4.01(g), which severely limits the power of presiding judges to remove poll watchers for misconduct other than for violation of the Penal Code, significantly burdens the right to vote of Organizational Plaintiffs' members and Plaintiff Norris because it takes away the power from presiding judges to remove poll watchers for misbehaving unless another judge or clerk witnesses the violation.

229. Sections 4.01(g), 4.06(g), 4.07(e), 4.09, and 6.01(e), individually and together, also impose a significant and substantial burden on the right to vote of the members of Texas NAACP and CC Texas because they will deter election officials from taking action to protect voters from conduct that will make voters, particularly voters of color, feel uncomfortable or intimidated, or otherwise deter them from voting.

230. Defendants have no legitimate interest that justifies the burdens on these voters' right to vote.

COUNT III

Violation of Due Process, Article 1, Section 19 of the Texas Constitution as to the Poll Watchers Provisions

Asserted by Plaintiffs Blanco, Nugent, and Bloomquist

231. Plaintiffs incorporate the previous allegations as though set forth fully herein.

232. Under Article 1, Section 19 of the Texas Constitution, “[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.”

233. “Due course” has been interpreted by the Texas Supreme Court to be coextensive with the United State Constitution’s Due Process Clause under which vague or unclear laws, whether criminal or civil, that violate due process cannot be enforced. *Tex. Antiquities Comm. v. Dall. Cty. Cmty. Coll. Dist.*, 554 S.W.2d 924, 928 (Tex. 1977) (“We adhere to the settled principle that statutory delegations of power may not be accomplished by language so broad and vague that

persons ‘of common intelligence must necessarily guess at its meaning and differ as to its application.’”) (citing *Connally v. Gen. Constr. Co.*, 269 U.S. 385 (1926)).

234. A law must be struck down as violating due process if it (1) fails to give fair notice of the punishable conduct, forcing people to guess at the statute’s meaning and threatening to trap the innocent, and (2) invites arbitrary and discriminatory enforcement by failing to establish guidelines for those charged with enforcement of the law. *Comm'n for Law. Discipline v. Benton*, 980 S.W.2d 425, 437 (Tex. 1998); *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498 (1982).

235. Texas courts follow the case law of the United States Supreme Court on procedural due process, including the three-factor test laid out in *Mathews v. Eldridge*. The test considers (1) the private or liberty interest that will be affected by the official action, (2) the risk of an erroneous deprivation of such interest, and the probable value, if any, of additional or substitute procedural safeguards, and (3) the government’s interest, including any fiscal or administrative burdens of additional procedures. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Courts are more likely to strike down a vague, indecipherable law that fails to give fair notice of the punishable conduct and invites arbitrary enforcement because such laws increase the risk of erroneous deprivation of constitutionally protected liberty interests. *Univ. of Tex. Med. Sch. at Houston v. Than*, 901 S.W.2d 926, 930 (Tex. 1995).

236. While a law need not spell out with perfect precision what conduct it prohibits, courts require a higher degree of precision in a statute that threatens a criminal penalty than a statute that only imposes a civil penalty because the consequences of a criminal law are severe. *Comm'n for Law. Discipline v. Benton*, 980 S.W.2d 425, 437 (Tex. 1998).

237. Sections 4.06(g) and 4.09 subject election judges, such as Plaintiffs Blanco, Nugent, and Bloomquist, to criminal penalties for violation of their terms, while Sections 4.01(g), 4.07(e), and 6.01(e) are so vague as to put election officials at risk of violating the Election Code without notice. And Section 8.01 threatens Plaintiffs with civil penalties, including termination of employment and/or loss of the official's employment benefits, for violating any provisions of the Election Code, including the vague poll watcher provisions.

238. Section 4.06(g) is vague and unclear because it duplicates Section 33.061 of the Election Code, which already makes it a Class A misdemeanor for an election judge to “knowingly prevent[] a watcher from observing an activity.” By adding yet another Class A misdemeanor for an election judge who “knowingly refuses to accept a watcher for service,” Section 4.06(g) muddles the Code and forces election judges to weigh their duty to remove disruptive and improper poll watchers against their fear of being charged with a Class A misdemeanor.

239. Section 4.07(e)f is vague because its phrasing—specifying that poll watchers may not be “denied free movement” within the polling location—is unclear and may encompass conduct and activity that have nothing to do with any legitimate purpose of the law. It also implies that poll watchers may be anywhere in a polling location and that election officials may not ask watchers to move, even if they intrude on the personal space of election officials and/or voters. Subjecting election officials to civil penalties under Section 8.01 for failing to enforce this vague provision violates due process principles.

240. Section 4.09 is vague because it is unclear what “observation not reasonably effective” means, including whether an “any action” taken to protect election officials and voters that also has the effect of adding some “distance” between the watcher and the “observed activity” would be considered prohibited conduct. Section 4.09 is also vague because it does not define

“action,” which could encompass any action taken by election judges to distance a poll watcher, including action to protect voters and other election officials. Subjecting election officials to civil penalties under Section 8.01 for failing to enforce this vague provision violates due process principles.

241. Section 6.01(e) entitles a watcher to observe “any activity” related to voter assistance. The phrase “any activity” is vague because it fails to define the activity the watcher is entitled to observe, and provides poll watchers with license to hover over and shadow the entire assistance process, even if doing so makes voters and their assistants feel threatened or uncomfortable. Subjecting election officials to civil penalties under Section 8.01 for failing to enforce this vague provision violates due process principles.

242. Section 4.01(g) is vague because it is unclear what a “violation” relating to the conduct of elections means in the provision’s larger context. Section 4.01(g) states that a “presiding judge may not have a watcher duly accepted for service . . . removed from the polling place for violating a provision of this code or any other provision of law relating to the conduct of elections, other than a violation of the Penal Code, unless the violation was observed by an election judge or clerk.” Actions such as talking loudly in the polling place, hovering over voters, standing extremely close to voters, and making election judges uncomfortable are not behaviors covered by the Code or any other provision of law relating to the conduct of elections. However, the election judge Plaintiffs have presided over polling places where watchers engaged in such behavior. It is unclear whether Plaintiffs can remove watchers for engaging in such behavior even if these behaviors are not “violations” of the Code per se. Moreover, subjecting election officials to civil penalties under Section 8.01 for failing to enforce this vague provision violates due process principles.

243. Sections 4.01(g), 4.06(g), 4.07(e), 4.09, 6.01(e), and 8.01 violate due process because they are impossible to reconcile with the duties imposed on Plaintiffs Blanco, Nugent, and Bloomquist under other sections of Texas law, such as their duty to “preserve order and prevent breaches of the peace and violations [of the Election Code] in the polling place and in the area within which electioneering and loitering are prohibited,” Tex. Elec. Code § 32.075(a), as well as their obligation to protect voters from intimidation.

244. No government interest outweighs the unconstitutional deficiencies in Sections 4.01(g), 4.06(g), 4.07(e), 4.09, 6.01(e), and 8.01

COUNT IV

Violation of the Right to Vote, Article I, Section 3 of the Texas Constitution as to the Restrictions on Solicitation and Distribution of Vote-by-Mail Applications *Asserted by Plaintiffs Texas NAACP and CC Texas*

245. Plaintiffs incorporate the previous allegations as though set forth fully herein.

246. By prohibiting election officials from “soliciting” a person to complete a vote-by-mail application, Section 7.04 is broad enough to chill any public engagement by election officials with Plaintiffs, significantly burdening the right to vote of the members of Texas NAACP and CC Texas. Texas NAACP and CC Texas rely on community gatherings to educate their members on their right to vote by mail for those eligible to do so. Plaintiff CC Texas, for example, maintains strong relationships with local election officials and has planned to work with officials to solicit vote-by-mail applications from eligible voters. These voters may not be able to vote by mail if they are not “solicited” by election officials at these gatherings.

247. By prohibiting election officials from distributing vote-by-mail applications unless a request is made by a voter, Section 7.04 also prevents election officials from providing nonpartisan civic engagement groups, churches, or grassroots volunteers with applications for them to distribute to voters, significantly burdening the right to vote of the members of Texas

NAACP and CC Texas. This provision will prevent election officials from sharing vote-by-mail requests with community groups like Organizational Plaintiffs or leaving applications for pick-up at election offices, post offices, or community events. Many of Plaintiffs' members who are eligible to vote by mail require this additional support to navigate the complex, multi-step vote-by-mail process and would not be able to vote by mail without election officials taking the initiative to distribute applications.

248. Defendants have no legitimate interest that justifies the burdens on these voters or these Organizations.

COUNT V

Violation of the Right to Vote, Article I, Section 3 of the Texas Constitution as to the Restrictions on Voter Assistants *Asserted by Plaintiffs Texas NAACP and CC Texas*

249. Plaintiffs incorporate the previous allegations as though set forth fully herein.

250. Many of Organizational Plaintiffs' members are elderly or physically disabled and/or need language assistance to vote, and many do not have the means or ability to get to polling places on their own. By requiring persons transporting and/or assisting curbside voters to provide identification information and swear, subject to the threat of perjury, that the person is not receiving any "benefit" for providing such assistance and that the persons being transported and/or assisted have represented that they are eligible for such assistance, Sections 6.01, 6.03, 6.04, and 6.05 of SB 1 will deter people from providing such assistance. In doing so, these provisions will significantly burden the right to vote of members of Texas NAACP and CC Texas. Additionally, these restrictions and requirements will force these Organizational Plaintiffs to expend money on educating and aiding their members and the public that they would otherwise not have to spend.

251. Additionally, Section 5.04, which requires voter assistants to take a longer oath than the oath under current law and specifically requires assistants to swear under penalty of perjury

that they will not “pressure . . . the voter into choosing me to provide assistance” significantly burdens the right to vote of Organizational Plaintiffs’ members who are eligible to receive assistance. This is because assistance is a holistic process—voter assistants typically need to answer many questions that first-time voters or limited-English speaking voters have about the voting process and make clear to them that they have a right to assistance and should accept help if they need it. Preventing assistants from encouraging voters to access the help they are due under the law will hamper assistants in trying to provide effective and lawful help to voters, thereby impermissibly burdening voters’ right to vote.

252. Defendants have no legitimate interest that justifies the burdens imposed on the right to vote of these voters.

COUNT VI
Violation of Free Speech, Expression, and Association, Article I, Section 8 of the Texas Constitution as to the Restrictions on Voter Assistants
Asserted by Plaintiff Norman

253. Plaintiffs incorporate the previous allegations as though set forth fully herein.

254. The free exercise of speech, expression, and association falls within the ambit of Article 1, Section 8 of the Texas Constitution, which protects every person’s “liberty to speak, write, or publish his opinions on any subject” and prohibits any law that “curtail[s] the liberty of speech.” The Texas Supreme Court has construed Article I, Section 8 to be coextensive, and in some cases broader, than the First Amendment to the United States Constitution. *Davenport v. Garcia*, 834 S.W.2d 4, 10 (Tex. 1992) (“Today we adopt a test recognizing that article one, section eight of the Texas Constitution provides greater rights of free expression than its federal equivalent.”).

255. The First Amendment protects “core political speech,” which the Supreme Court has identified as speech that “of necessity involves both the expression of a desire for political

change” and “has the inevitable effect of reducing the total quantum of speech on a public issue.” *Meyer v. Grant*, 486 U.S. 414, 421 (1988); *see also Buckley v. Am. Const. Law Found., Inc.*, 525 U.S. 182, 186, 190 (1999); *Voting for Am. Inc. v. Andrade*, 488 F. App’x 890, 897 (5th Cir. 2012) (“[T]he primary act of simply encouraging citizens to vote constitutes core speech and would be protected under the First Amendment”).

256. The First Amendment’s protections of free speech also do “not end at the spoken or written word,” *Texas v. Johnson*, 491 U.S. 397, 404 (1989), and extend to many non-verbal forms of inherently expressive communication. *Buckley v. Valeo*, 424 U.S. 1, 17 (1976). Conduct falls within the ambit of First Amendment protection when (1) “[a]n intent to convey a particularized message was present” and (2) “the likelihood was great that the message would be understood by those who viewed it.” *Johnson*, 491 U.S. at 404.

257. Assisting a voter who cannot vote without assistance is protected speech under Article I, Section 8 of the Texas Constitution because such assistance is intended to convey a particularized message about voting by helping voters navigate a process that would otherwise be inaccessible to them.

258. Assistance is also core political speech because it makes the voting process accessible by expanding the franchise to voters with physical disabilities or those who cannot read the primary language of the ballot, who otherwise would not be able to vote. Assistance also thus provides encouragement, confidence, and support to those entitled to participate in the electoral process.

259. Sections 6.01, 6.03, and 6.05 of SB 1 place significant burdens on these protected speech and associational rights because their requirements of additional forms and statements under penalty of perjury, in addition to those already required by law, will make it more difficult

for Plaintiff Norman to assist voters and dissuade persons like Plaintiff Norman from assisting voters in the first place.

260. Section 6.04 in particular, which requires voter assistants to swear under penalty of perjury that they will not “pressure” voters to accept their assistance, limits voter assistants like Plaintiff Norman from being able to explain to limited-English speaking voters that they can receive lawful assistance. The word “pressure” is extremely broad and may encompass many of Plaintiff Norman’s activities, such as holding up signs and instructing fellow congregation members to seek out her assistance. As a result, by taking this oath, Plaintiff Norman is in danger of committing perjury. In Texas, perjury is a Class A misdemeanor, which is punishable by up to a year in the county jail and a \$4,000 fine. The oath provision will thus chill Plaintiff Norman’s constitutionally permissible speech and dissuade Plaintiff Norman from assisting voters in the future.

261. Defendants cannot show that the burdens imposed on Plaintiffs’ speech and associational rights are substantially tailored to serve a compelling or important government interest.

COUNT VII

Violation of the Right to Vote, Article I, Section 3 of the Texas Constitution as to Rejection of Mail-In Ballot Applications *Asserted by Plaintiffs Texas NAACP and CC Texas*

262. Plaintiffs incorporate the previous allegations as though set forth fully herein.

263. Sections 5.02, 5.03, 5.07, 5.08, 5.10, 5.12, and 5.13 unlawfully and unconstitutionally burden the right to vote of members of Plaintiffs Texas NAACP and CC Texas by imposing a match requirement on voters applying to vote by mail and casting vote-by-mail ballots. If this provision is enforced, it will burden the right to vote of the members of Plaintiffs

Texas NAACP and CC Texas by increasing the likelihood that their applications and/or mail-in ballots are rejected.

264. These Sections impose a match requirement on the vote-by-mail process that leaves voters subject to flawed cure processes. If, while comparing an application or ballot carrier envelope to the voter's registration on file, a clerk finds that the documents do not identify the same voter (e.g., the identifying numbers do not match the number on file in the State's voter registration database), the clerk must reject the application or the mail-in ballot. Tex. Elec. Code §§ 84.002(a)(1-a), 86.002, and 13.002(c)(8).

265. SB 1's requirements burden Plaintiffs by increasing the likelihood that their mail-in ballot applications are rejected—in many cases, too late for them to cure by submitting alternative applications before the twelfth-day deadline to receive applications. These provisions also place an impermissible burden on Organizational Plaintiffs' members—especially those who are elderly or have serious disabilities—and might not be able to navigate the complex cure process associated with rejected mail-in ballot applications, including many members who do not have access to a computer and therefore will be unable to use the online cure system.

266. The new matching process also subjects Organizational Plaintiffs' members to the risk of erroneous rejection if they do not timely receive notice and opportunity to cure their ballots, which is probable given the tight timelines around requesting vote-by-mail ballots, receiving ballots, and returning ballots to election boards in time.

267. Sections 5.02, 5.03, 5.07, 5.08, 5.10, 5.12, and 5.13 therefore impose a significant and substantial burden on the right to vote of members of Plaintiffs Texas NAACP and CC Texas by increasing the likelihood that election clerks erroneously reject mail-in applications and ballots of eligible voters and then deny these voters a timely cure process.

268. Defendants have no legitimate interest that justifies this burden on the right to vote, while Defendants do have an interest in ensuring that all eligible mail-in voters receive their applications and that all eligible vote-by-mail ballots count. The high risk of erroneous deprivation of the right to vote and the added value of adopting procedures outweigh any administrative costs for implementing safeguards to protect Organizational Plaintiffs' members.

COUNT VIII

Violation of the Texas Constitution as to All Challenged Provisions Asserted by Plaintiffs Texas NAACP, CC Texas, Norris, Norman, Blanco, Nugent, and Bloomquist

269. Plaintiffs incorporate the previous allegations as though set forth fully herein.

270. The cumulative changes to the Texas Election Code from SB 1's enactment—in particular Sections 4.01(g), 4.06(g), 4.07(e), 4.09, 6.01(e), and 8.01 (the “poll watcher provisions”); Section 7.04 (the “application solicitation and distribution” provision); Sections 5.02, 5.03, 5.07, 5.08, 5.10, 5.12, and 5.13 (the “mail-ballot application exact match” provisions); Sections 6.01, 6.03, 6.04, and 6.05 (the “voter assistant” provisions); and Sections 3.04, 3.09, 3.10, 3.12, 3.13, and 4.12 (the “alternative voting provisions”)—violate Plaintiffs' constitutional rights and those of Organizational Plaintiffs' members as enshrined in the Texas Constitution.

271. The challenged provisions of SB 1, collectively, impermissibly burden the right to vote of Plaintiffs and Organizational Plaintiffs' members under Article I, Section 3; fail to provide Plaintiffs and Organizational Plaintiffs' members adequate due process under Article 1, Section 19; and deprive Plaintiffs and Organizational Plaintiffs' members of their rights to free speech, expression, and association under Article I, Section 8 of the Texas Constitution.

272. Defendants can point to no legitimate interest that justifies the deprivation of Plaintiffs' and Organizational Plaintiffs' members' basic constitutional rights.

APPLICATION FOR PERMANENT INJUNCTION

273. After a full trial on the merits, Plaintiffs ask the Court to enter a permanent injunction granting the relief requested herein.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

- (i) Declare all challenged provisions were enacted for the purpose of discriminating based on race in violation of Article 1, § 3 and Article 1, § 3(a) of the Texas Constitution;
- (ii) Declare Sections 4.01(g), 4.06(g), 4.07(e), 4.09, 6.01(e), and 8.01 (the “poll watcher provisions”); Section 7.04 (the “application solicitation and distribution” provision); Sections 5.02, 5.03, 5.07, 5.08, 5.10, 5.12, and 5.13 (the “mail-ballot application exact match” provisions); Sections 6.01, 6.03, 6.04, and 6.05 (the “voter assistant” provisions); and Sections 3.04, 3.09, 3.10, 3.12, 3.13, and 4.12 (the “alternative voting provisions”) unconstitutional in violation of the fundamental right to vote under Article I, § 3 of the Texas Constitution;
- (iii) Declare Sections 4.01(g), 4.06(g), 4.07(e), 4.09, and 6.01(e) unconstitutionally vague in violation of due process under Article I, §19 of the Texas Constitution;
- (iv) Declare Sections 6.01, 6.03, 6.04, and 6.05 unconstitutional in violation of the Free Speech Clause under Article I, § 8 of the Texas Constitution;
- (v) Declare Sections 4.01(g), 4.06(g), 4.07(e), 4.09, and 6.01(e), and the civil penalties contained in Section 8.01 and the criminal penalties contained in Sections 4.06(g) and 4.09, unconstitutional in violation of procedural due process under Article I, § 19 of the Texas Constitution;

- (vi) Preliminarily and permanently enjoin Defendants from enforcing the challenged provisions, as well as the civil and criminal penalties contained in those provisions;
- (vii) Retain jurisdiction to render any and all further orders that this Court may deem necessary;
- (viii) Award Plaintiffs their reasonable attorney's fees and costs pursuant to statute; and
- (ix) Grant Plaintiffs such additional relief that this Court deems just and proper.

Dated: September 7, 2021

Respectfully submitted,

/s/ Lindsey B. Cohan
Lindsey B. Cohan
Texas Bar No. 24083903
DECHERT LLP
515 Congress Avenue, Suite 1400
Austin, TX 78701
(512) 394-3000
lindsey.cohan@dechert.com
Counsel for all Plaintiffs

Damon Hewitt*
Jon Greenbaum*
Ezra D. Rosenberg*
Pooja Chaudhuri*
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
1500 K Street, Suite 900
Washington, DC 20005
(202) 662-8600
dhewitt@lawyerscommittee.org
jgreenbaum@lawyerscommittee.org
erosenberg@lawyerscommittee.org
pchaudhuri@lawyerscommittee.org

Counsel for all Plaintiffs

Neil Steiner*
DECHERT LLP
1095 Avenue of the Americas
New York, NY 10036
(212) 698-3822
neil.steiner@dechert.com

Counsel for all Plaintiffs

Gary Bledsoe
Texas Bar No. 02476500
THE BLEDSOE LAW FIRM, PLLC
6633 E Highway 290, Suite 208
Austin, TX 78723
(512) 322-9992
garybledsoe@sbcglobal.net

Counsel for Plaintiff Texas NAACP

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