

No. 22-50536

In the United States Court of Appeals for the Fifth Circuit

VOTE.ORG,

Plaintiff-Appellee

v.

JACQUELYN CALLANEN, ET AL.,

Defendants

KEN PAXTON, IN HIS OFFICIAL CAPACITY AS THE ATTORNEY
GENERAL OF TEXAS; LUPE C. TORRES, IN HIS OFFICIAL
CAPACITY AS THE MEDINA COUNTY ELECTIONS ADMINISTRATOR;
TERRIE PENDLEY, IN HER OFFICIAL CAPACITY AS THE REAL
COUNTY TAX ASSESSOR-COLLECTOR,

Intervenor Defendants-Appellants

On Appeal from the United States District Court
for the Western District of Texas, San Antonio Division

**INTERVENOR DEFENDANTS' EMERGENCY
MOTION TO STAY INJUNCTION PENDING
APPEAL AND FOR A TEMPORARY
ADMINISTRATIVE STAY**

(Counsel Listed on Inside Cover)

ROBERT HENNEKE
General Counsel

KEN PAXTON
Attorney General of Texas

CHANCE WELDON
Director of Litigation

BRENT WEBSTER
First Assistant Attorney General

AUTUMN HAMIT PATTERSON
Senior Attorney
apatterson@texaspolicy.com

JUDD E. STONE II
Solicitor General
Judd.Stone@oag.texas.gov

Texas Public Policy Foundation
901 Congress Avenue
Austin, Texas 78701
Telephone: (512) 472-2728
Facsimile: (512) 472-2728

MICHAEL R. ABRAMS
Assistant Solicitor General

KATHLEEN T. HUNKER
Special Counsel

Counsel for Intervenor Defendants-
Appellants Lupe C. Torres and Terrie
Pendley

CORY A. SCANLON
JOHNATHON STONE
Assistant Attorneys General

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697

Counsel for Intervenor Defendant-
Appellant Ken Paxton, Attorney
General of Texas

CERTIFICATE OF INTERESTED PERSONS

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Under the fourth sentence of Fifth Circuit Rule 28.2.1, appellants, as governmental parties, need not furnish a certificate of interested persons.

/s/ Judd E. Stone II

JUDD E. STONE II

*Counsel of Record for Intervenor Defendant-
Appellant Ken Paxton, in his official capacity as
the Attorney General of Texas*

INTRODUCTION AND NATURE OF EMERGENCY

The Texas Election Code offers Texans ample methods to register to vote. But just as “[n]o court has ever held that a voter has a right to cast a ballot by the method of his choice,” *Veasey v. Abbott*, 830 F.3d 216, 307 (5th Cir. 2016) (en banc) (Jones, J., concurring in part and dissenting in part), no court has ever held that a voter has a right to *register* to vote by the method of his choice, either.

The district court’s decision below broke new ground in that regard. Plaintiff Vote.org developed a web app to assist voters in submitting their registration forms. But the app’s functionality is incompatible with the Election Code. The app scans the voter’s signature and then submits the voter’s completed registration form to a third-party vendor, which in turn faxes the form to the voter’s county registrar. The Election Code, however, requires voters who submit a faxed form to mail that form to the registrar with the voter’s original, “wet” signature. Plaintiff’s app does not afford voters the chance to comply with that requirement.

Plaintiff did not identify, and the district court did not cite, a single case determining that States must allow voters to register by digital signature. But in an unprecedented decision, the district court held that the Election Code’s wet signature rule violates section 1971 of the Civil Rights Act and unduly burdens the right to vote under the *Anderson-Burdick* standard for First and Fourteenth Amendment challenges to election laws.

This Court is likely to reverse. Plaintiff is a nonprofit entity with no members. It lacks standing to bring voting rights claims on behalf of third-party Texas citizens who are capable of bringing those claims on their own accord and are not parties to

this litigation. Plaintiff's section 1971 claim is likely to fail because Congress did not provide a cause of action to sue under section 1971, and because Texas's wet signature requirement does not hinder voters from registering to vote. Plaintiff's *Anderson-Burdick* claim is just as dubious. Framed in the proper light, the wet signature rule is part of a broad *expansion* of the opportunity to register to vote. It is not a burden at all. And even if it does impose some *de minimis* burdens, those burdens are vastly outweighed by the rule's function as a bulwark against election fraud.

With a major midterm election rapidly approaching, the district court's permanent injunction prevents the uniform enforcement of the State's election laws across Texas's 254 counties. It threatens the State's interests in preserving the integrity of its elections. And it forebodes substantial confusion for voters and election officials alike. Because of these irreparable injuries, the Court should enter a stay pending appeal, and it should immediately enter a temporary administrative stay while it considers this application. Recently, this Court has entered multiple stays pending appeal and temporary administrative stays of "patently wrong" district court orders like the one entered in this case. *See, e.g., In re Abbott*, 954 F.3d 772, 778, 781 (5th Cir. 2020). It should do the same here.

BACKGROUND

1. Texas election officials make every effort to ensure that "[r]egistering to vote in Texas is easy[.]" *See* Voter Registration, <https://www.votetexas.gov/register-to-vote/> (last accessed June 23, 2022). Applicants must fill out and submit a signed, written application form to a voter registrar. Tex. Elec. Code §§ 13.002; 13.143(d-

2). Any “person desiring to register to vote” can submit his application to the county registrar by personal delivery or mail. *Id.* § 13.002(a). If a voter needs assistance, he may appoint an agent to submit the application on his behalf. *Id.* § 13.003. The Code designates certain government offices to act as “voter registration agencies,” including the Department of Public Safety (DPS), the Health and Human Services Commission, and public libraries. *Id.* § 20.001. Each of these offices “provide[s] a voter registration application form to each” qualified individual “in connection with the person’s application for initial services” and any subsequent renewals. *Id.* § 20.031.

In 2013, the Legislature enacted, and the Governor signed, SB 910, legislation that for the first time allowed individuals to transmit voter registration forms via fax. Act of May 26, 2013, 83rd Leg., R.S., ch. 1178, § 3, 2013 Tex. Gen. Laws 2923, 2923-24. The legislation provided that registrars were deemed to have received an application on the day it was faxed to them, so long as the application was subsequently submitted by mail and received within four business days. *Id.*

During the 2021 regular legislative session, the Legislature passed HB 3107, a “cleanup” measure that clarified several provisions of the Code. Act of May 28, 2021, 87th Leg., R.S., ch. 711, 2021 Tex. Sess. Law Serv. 1469. HB 3107 modified the language in SB 910 to provide that “a copy of the original registration application containing the voter’s original signature must be submitted by personal delivery or mail” within four business days of the fax transmission of the form. Tex. Elec. Code § 13.143(d-2). A registrant may correct any signature defect within ten days of being

notified of the issue, thereby preserving the original effective date of the registration. *Id.* § 13.073.

2. Plaintiff Vote.org is a nonprofit entity that advocates for internet-based voter registration options. Exhibit A at 5. It does not have members; the prospective voters who use plaintiff's web apps are not members of the organization itself. Exhibit B at 83. In 2018, plaintiff developed a web app that allowed prospective registrants to input their information into embedded fields and upload an electronic image of their signature. Exhibit A at 5. The web app transposed the information and signature file onto a voter registration application form and transmitted the application form to plaintiff's fax vendor, which in turn sent the form via fax to the county voter registrar. *Id.* at 5-6. Another third-party vendor then mailed a printed version of the application to the county voter registrar. *Id.*

In 2018, plaintiff introduced its software in several Texas counties without first clearing its use with the Secretary of State. Exhibit B at 78, 102. This initial rollout was marred by technical difficulties. Approximately 15 percent of the applications submitted through the app to Dallas County contained signature lines that were blank, blacked out, illegible, or otherwise of very poor quality. *Id.* at 516. Other counties experienced similar problems. The Travis County Tax Assessor-Collector's office was alarmed to find that many signatures were poor, blank, or blacked out, and warned that "[t]his is a real problem and [the office is] concerned about proceeding until this is cleared up." *Id.* at 7. To make matters worse, plaintiff's "pilot program" failed to transfer all the applications to county election officials via fax, including at least 259 applications in Dallas County. *Id.* at 519. In this litigation,

plaintiff's CEO has admitted that her engineering team will need to "fix" the issues with imaged signatures before the app can be used again. *Id.* at 76.

Concerned that voters might find themselves disenfranchised because of these types of apps, the Secretary issued a press release cautioning that "[a]ny web site that misleadingly claims to assist voters in registering to vote online by simply submitting a digital signature is not authorized to do so." Press Release, Texas Secretary of State, Secretary Pablos Reminds Texans To Exercise Caution When Registering To Vote (Oct. 4, 2018). Various plaintiff groups then sued the Secretary, contending that requiring a wet signature on a voter registration form violates the Constitution and section 1971. *Tex. Democratic Party v. Hughs*, 860 F. App'x 874, 876 (5th Cir. 2021) (per curiam). But this Court held that the Secretary retained immunity from suit under *Ex parte Young*. *Id.* at 879.

3. On July 8, 2021, plaintiff sued four county election officials seeking to enjoin the wet signature requirement contained in section 13.143(d-2) of the Election Code. Exhibit A at 1. Texas Attorney General Ken Paxton intervened in the suit to defend the constitutionality of the statute. *See* 28 U.S.C. § 2403(b). Lupe C. Torres and Terrie Pendley, in their official capacities as the Medina County Election Administrator, and Real County Tax Assessor-Collector, respectively, intervened as well.¹

After extensive discovery, the court issued an opinion on the parties' competing motions for summary judgment. The court found that the wet signature requirement

¹ For ease of reference, this motion refers to these Intervenor-Defendants as "Defendants."

violates section 1971 because a wet signature is “not material” to determining whether the applicant is “qualified to vote.” Exhibit C at 16-22. Even though “Texas provide[d] abundant evidentiary and legal support for the conclusion that a signature is important and vital to determine a voter’s qualification to vote,” *id.* at 17, the court held that Texas did not sufficiently demonstrate that the wet signature requirement was “necessary to prevent voter registration fraud” or useful in investigating fraud. *Id.* at 18, 21.

The court also held that the wet signature requirement violates the First and Fourteenth Amendments. The court determined that the requirement imposed “more than slight” burdens on Texas voters. *Id.* at 28. Although the court recognized that Texas’s asserted interest in protecting election integrity was compelling, the court faulted Defendants for purportedly failing to provide any “argument or . . . evidence” showing that the wet signature rule serves that interest. *Id.* at 30-34. On that basis, the court concluded that there was “no valid justification” for the burden. *Id.* at 34.

Based on these rulings, the court granted a permanent injunction providing that “Defendants, Intervenors, and their officers, agents, servants and employees . . . may not require a voter registrant who submits a voter registration form by telephonic facsimile machine to also provide a copy of the original registration application containing the voter’s original signature.” *Id.* at 37. Defendants filed a notice of appeal the day that the court issued its final judgment. ECF No. 145; Exhibit D at 1. One business day later, Defendants asked the district court to stay its

injunction pending appeal. On June 21, the district court denied that motion. Exhibit E; *see* Fed. R. App. P. 8(a)(2).

STATEMENT OF JURISDICTION

This Court has appellate jurisdiction over the district court's permanent injunction under 28 U.S.C. § 1291.

ARGUMENT

“An appellate court's power to hold an order in abeyance while it assesses the legality of the order has been described as ‘inherent[.]’” *Nken v. Holder*, 556 U.S. 418, 426 (2009) (citation omitted). All four factors relevant to a stay are met here: (1) Defendants are likely to succeed on the merits; (2) they will suffer irreparable harm in the absence of a stay; (3) plaintiff will not be substantially harmed by a stay; and (4) the public interest favors a stay. *See id.*

I. Defendants Are Likely to Succeed on Appeal.

Defendants are likely to succeed on appeal for three reasons. *First*, plaintiff lacks standing to remediate injuries suffered by third-party voters. *Second*, plaintiff is unlikely to succeed on its section 1971 claim. That statute does not create a private cause of action, and even if it did, section 1971 was enacted to address race discrimination, and plaintiff has not alleged or introduced any evidence of race discrimination in this suit. On the merits, plaintiff's section 1971 claim is fatally flawed because a signature is “material in determining whether such individual is qualified under State law to vote in such election,” 52 U.S.C. § 10101(a)(2)(B), and no voter is deprived of the opportunity to vote by virtue of the wet signature

requirement. *Third*, plaintiff's *Anderson-Burdick* claim is likely to fail because any burden that the wet signature requirement causes is outweighed by the State's interests in stamping out fraud and preserving the integrity of its elections.

A. Plaintiff lacks standing to sue on behalf of Texas voters.

Plaintiff brings its section 1971 and *Anderson-Burdick* claims under section 1983. Exhibit A at 4. Because plaintiff is not a membership organization, Exhibit B at 83, it must show that it has standing as an organization to bring suit. *NAACP v. City of Kyle*, 626 F.3d 233, 237 (5th Cir. 2010). Even assuming plaintiff has identified a diversion of resources sufficient to make that showing, *see id.*, plaintiff still must demonstrate that it has *statutory* standing to bring suit under section 1983.

As a general rule, a plaintiff "must assert his own legal rights and interests, not those of third parties." *McCormack v. Nat'l Collegiate Athletic Ass'n*, 845 F.2d 1338, 1341 (5th Cir. 1988). Section 1983 is no exception: it provides a cause of action only when the plaintiff suffers "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. It does not provide a cause of action to plaintiffs claiming an injury based on the violation of a third party's rights. Thus, "like all persons who claim a deprivation of constitutional rights," plaintiff was "required to prove some violation of [its] personal rights." *See Coon v. Ledbetter*, 780 F.2d 1158, 1160 (5th Cir. 1986). So when "[t]he alleged rights at issue" belong to a third party, rather than the plaintiff, that plaintiff lacks statutory standing, regardless of whether the plaintiff was injured. *Danos v. Jones*, 652 F.3d 577, 582 (5th Cir. 2011). *Conn v. Gabbert*, 526 U.S. 286, 290 (1999), is a good illustration. The Supreme Court found that a lawyer "clearly had no standing" to bring a section 1983

claim for an injury he suffered as a result of “the alleged infringement of the rights of his client,” because a plaintiff “generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.” *Id.* at 292-93.

The claims that plaintiff has brought hinge on allegations that Texas has unlawfully infringed its citizens’ access to the franchise. Exhibit A at 8, 10-11. But plaintiff is an artificial entity without voting rights. Plaintiff claims that it has suffered an injury because it cannot use its preferred technology to register voters, but that injury is not remotely equivalent to a *voter’s* personal claim that he has been denied the right to vote. “[A] plaintiff who has been subject to injurious conduct of one kind [does not] possess by virtue of that injury the necessary stake in litigating conduct of another kind, although similar, to which he has not been subject.” *Nat’l Fed’n of the Blind of Tex., Inc. v. Abbott*, 647 F.3d 202, 209 (5th Cir. 2011).

Consider plaintiff’s constitutional claims. Plaintiff avers that the wet signature requirement imposes a “logistical hurdle that eligible Texans must navigate to exercise their most fundamental right.” Exhibit A at 12. The focus is on voters—not plaintiff’s rights as a nonprofit entity. That makes sense because plaintiff does not, and cannot, explain how the wet signature rule precludes anyone in its organization from speaking or otherwise exercising its First or Fourteenth Amendment rights. Plaintiff’s inability to use its preferred software until that software complies with the Election Code is insufficient. *See Voting for Am., Inc. v. Steen*, 732 F.3d 382, 392 (5th Cir. 2013). The entire inquiry therefore turns on whether plaintiff can assert statutory and constitutional claims on behalf of Texas voters. Unsurprisingly, the

district court did not identify any case allowing a nonprofit entity lacking both members and any close connection to voters to assert voting rights claims.²

This is also not one of the rare circumstances in which the “third party for some reason cannot assert its own rights.” *McCormack*, 845 F.2d at 1341. Individual voters, and organizations that have voters as members, assert claims challenging provisions of the Texas Election Code all the time. Indeed, various groups sued the Secretary to challenge the wet signature rule in 2018. Plaintiff offered no evidence that voters would be unable to bring challenges to the rule if they desired to do so. The fact that no voter joined this suit thus underscores not just plaintiff’s lack of standing, but also the relative ease with which voters can register in Texas.

B. Plaintiff is unlikely to prevail on its section 1971 claim.

Plaintiff is unlikely to prevail on its section 1971 claim for three reasons: first, the statute does not authorize a cause of action. Second, section 1971 only outlaws race discrimination, and plaintiff advanced no arguments that the wet signature rule is racially discriminatory. And third, an original, wet signature is material to determining whether an individual is qualified to vote, and no voter is deprived of the opportunity to vote by virtue of the wet signature requirement.

1. Section 1971 of the Civil Rights Act provides that:

No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act

² Plaintiff’s CEO explained that “Vote.org doesn’t assist people in registering to vote.” Exhibit B at 135. Rather, “Vote.org has built the tech, a voter goes to it and they register themselves to vote.” *Id.* at 139.

requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.

52 U.S.C. § 10101(a)(2)(B). Congress provided that the Attorney General may bring an action to enjoin violations of this “materiality” provision. *Id.* § 10101(c).

“[P]rivate rights of action to enforce federal law must be created by Congress.” *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). “The judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy.” *Id.* Absent that intent, “a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute.” *Id.* at 286-87.

Section 1971 contains no indication of congressional intent to create a private right, much less a private remedy. The text is focused on the local official it regulates, not individual voters. “Statutes that focus on the person regulated rather than the individuals protected create no implication of an intent to confer rights on a particular class of persons.” *Id.* at 289 (quotation omitted). Section 1971 “is framed in terms of the obligations imposed on the regulated party” (the local official), while voters are “referenced only as an object of that obligation.” *Logan v. U.S. Bank Nat’l Ass’n*, 722 F.3d 1163, 1171 (9th Cir. 2013).

Accordingly, section 1971 does not create a federal right “in clear and unambiguous terms.” *Gonzaga Univ. v. Doe*, 536 U.S. 273, 290 (2002). Nor does section 1971 create private remedies. Instead, it authorizes the Attorney General to bring suit. *See* 52 U.S.C. § 10101(c). The “express provision of one method of

enforcing a substantive rule suggests that Congress intended to preclude others.” *Sandoval*, 532 U.S. at 290.

Multiple courts have agreed that section 1971 does not create an implied cause of action. See *McKay v. Thompson*, 226 F.3d 752, 756 (6th Cir. 2000); e.g., *McKay v. Altobello*, No. 2:96-cv-3458, 1996 WL 635987, at *2 (E.D. La. Oct. 31, 1996). Although the Eleventh Circuit has held to the contrary, see *Schwier v. Cox*, 340 F.3d 1284, 1297 (11th Cir. 2003), the court’s analysis of *Sandoval* was limited to a “see also” citation, *id.* at 1296, and it relied on repudiated reasoning from *Allen v. State Board of Elections*, 393 U.S. 544, 556-57 (1969), which arose from an era before the Court adopted “a far more cautious course before finding implied causes of action.” *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1855 (2017) (plurality op.).

2. Plaintiff’s claim fails for another reason: “[w]ell-settled law establishes that § 1971 was enacted pursuant to the Fifteenth Amendment for the purpose of eliminating racial discrimination in voting requirements.” *Broyles v. Texas*, 618 F. Supp. 2d 661, 697 (S.D. Tex. 2009) (Rosenthal, J.). Accordingly, “only racially motivated deprivations of rights are actionable under 42 U.S.C. § 1971.” *Id.* But plaintiff’s complaint contained no allegations that the wet signature requirement was racially motivated.

3. On the merits, the wet signature requirement is “material,” among other reasons, because any person who refuses to subject themselves to Texas’s common-sense fraud prevention measures is disqualified from registering to vote. Moreover, a defect in signature does not result in “denial” of the vote. Texas law ensures that the registrant can correct the defect within 10 days of notification of rejection, which

in turn preserves the original effective date for the registration. 52 U.S.C. § 10101(a)(2)(B); Tex. Elec. Code § 13.073.

The district court's holding on plaintiff's 1971 claim compels election officials to allow online voter registration even though the Legislature has never authorized it. And the court's reasoning wholly ignores the State's well-founded concerns that defective third-party software might disenfranchise vulnerable voters. Defendants are likely to prevail on this claim. At a minimum, a stay pending appeal is warranted to allow this Court to carefully address the district court's novel determinations.

C. Plaintiff is unlikely to prevail on its *Anderson-Burdick* claim.

Courts assess claims challenging election restrictions under the *Anderson-Burdick* test. That test requires courts to “first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate.” *Steen*, 732 F.3d at 387 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). Then, courts “must identify and evaluate the precise interest put forward by the State as justifications for the burden imposed by its rule.” *Id.* (quoting *Anderson*, 460 U.S. at 789). Finally, courts weigh the “character and magnitude of the asserted injury” against the “precise interests put forward by the State,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiff's rights.” *Id.* at 387-88 (quoting *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)). When a state election law imposes only “reasonable, nondiscriminatory restrictions” upon the rights of voters, “the state's important regulatory interests are generally sufficient to justify” the restrictions. *Anderson*, 460 U.S. at 788.

1. Here, any burden on voters is *de minimis*. When the Legislature enacted HB 3107 in 2021, it refined legislation from 2013 that had provided, for the first time, a right to submit registration forms via fax. HB 3107 expands the methods that Texans can use to register to vote; it does not take opportunities away from voters.

This Court's decision in *Texas League of United Latin American Citizens v. Hughs*, 978 F.3d 136 (5th Cir. 2020) ("*LULAC*") is instructive. At the height of the Covid-19 pandemic, Governor Abbott issued a proclamation allowing voters to deliver a mail-in ballot anytime until Election Day, rather than just on Election Day itself. *Id.* at 140. Based on concerns that certain counties wanted to set up multiple delivery locations, which threatened election uniformity and integrity, the Governor released a subsequent proclamation specifying that mail-in ballots could be delivered to only one designated location per county. *Id.* Various voters and groups objected to that follow-on proclamation. The Court rejected those challenges and explained that "the proclamation is part of the Governor's expansion of opportunities to cast an absentee ballot in Texas well beyond the stricter confines of the Election Code." *Id.* at 144.

That reasoning maps neatly onto these facts. HB 3107's language requiring an "original wet signature" does not burden voters at all. It helps them: it is part of the Legislature's expansion of the opportunity to register for the vote. Like the proclamations at issue in *LULAC*, HB 3107 only makes sense when considered together with SB 910. In tandem, the two pieces of legislation ensure that voters can submit registration forms via fax. They also reflect security measures that the Legislature found necessary to prevent potential abuses.

The district court analyzed the wet signature rule in a vacuum. Exhibit C at 24-25. *LULAC* makes clear that such a narrow focus constitutes error. The Court there observed that the district court’s analysis of the one delivery location rule “fail[ed] to account for the numerous ways Texans can vote early or absentee in the November 3 election.” *LULAC*, 978 F.3d at 145. The same is true here—the district court failed to consider the numerous ways that voters can register to vote. *See* Tex. Elec. Code §§ 13.002(a), 13.003, 20.001. Those extensive registration options render plaintiff’s *Anderson-Burdick* claim a nonstarter.

Even if this Court were to consider fax registration in isolation, the burdens it imposes are still quite slight. Signature requirements are a familiar aspect of modern life. Asking for a signature from a citizen registering to vote is not a serious inconvenience. *See Lemons v. Bradbury*, 538 F.3d 1098, 1104 (9th Cir. 2008). Further, this burden is equally shared and non-discriminatory. All Texans registering to vote must provide a signature. *See Anderson*, 460 U.S. at 788. And the burden of mailing a registration form is not severe; it is the same burden that voters who submit ballot applications to vote by mail, and then use that method to vote, comply with frequently.

The district court reasoned that the wet signature rule “renders the [fax] option identical to the option of submitting a voter registration postcard” because “the registrant must have a printer and must pay for postage or pay for transportation.” Exhibit C at 27. But that reasoning ignores the most salient benefit of faxing the registration form: the effective date of the submission is the day the fax is transmitted, not the day the original form is placed in the mail. Tex. Elec. Code

§ 13.143(d)(2). And that distinction may make all the difference between a voter's application being accepted or rejected.

2. The district court also improperly discarded the State's interests in the wet signature requirement. "Texas 'indisputably has a compelling interest in preserving the integrity of its election process.'" *Richardson v. Tex. Sec'y of State*, 978 F.3d 220, 239 (5th Cir. 2020) (citation omitted). Inaccuracies in voter registration are a serious problem. *See Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1838 (2018). "Any corruption in voter registration affects a state's paramount obligation to ensure the integrity of the voting process and threatens the public's right to democratic government." *Voting for Am., Inc.*, 732 F.3d at 394.

The wet signature requirement advances the State's interests in multiple respects. It guarantees that registrants attest to meeting the qualifications to vote. Exhibit B at 419. Early voting ballot boards and signature verification committees might compare the voter's wet signature with later signatures the voter provided if the authenticity of the registration or corresponding ballot is in question. Tex. Elec. Code § 87.027. Registration files with county officials are also subject to inspection by Texas authorities investigating election-related offenses concerning signature misappropriation. *E.g.*, Exhibit B at 179-80.

The district court discounted those interests for two primary reasons. First, the court faulted the State for allowing voters to use electronic signatures in other circumstances—for example, when an individual renews his driver's license through DPS. Exhibit C at 31. That comparison is inapt. The State is confident in not just the

reliability and security of DPS's keypad software but also DPS's processes. The same cannot be said for software developed and maintained by outside parties.

Second, the district court concluded that Defendants did not offer sufficient evidence that the wet signature requirement prevents election fraud. Exhibit C at 18, 20. The court again engaged in reasoning that this Court repudiated in *LULAC*. The district court there “demanded evidence of ‘actual examples of voter fraud’ justifying the centralization of mail ballot delivery locations.” 978 F.3d at 147. But such evidence “has never been required to justify a state’s prophylactic measures to decrease occasions for vote fraud or to increase the uniformity and predictability of election administration.” *Id.*

Legislatures, rather than courts, are best equipped to determine the particular risks associated with electronic submission of signatures. The Texas Legislature chose “among many permissible options” when designing its registration process. *Thompson v. Dewine*, 976 F.3d 610, 620 (6th Cir. 2020) (per curiam) (citation omitted). Accordingly, plaintiff’s *Anderson-Burdick* claim is unlikely to succeed on appeal.

II. The Other Factors Favor a Stay.

Enjoining state officials from carrying out validly enacted, constitutional laws governing elections imposes irreparable harm. *Cf. Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). “It is beyond cavil that ‘voting is of the most fundamental significance under our constitutional structure.’” *Burdick*, 504 U.S. at 433 (citation omitted). And it is one of the most fundamental obligations of the State to enact clear and uniform laws for voting to ensure “fair and honest”

elections, to bring “order, rather than chaos, . . . [to] the democratic process[],” and ultimately to allow the right to vote to be fully realized. *Storer v. Brown*, 415 U.S. 724, 730 (1974).

The permanent injunction upsets those crucial interests. The injunction cannot apply statewide—the Attorney General intervened solely to defend the constitutionality of a statute that neither he nor the State enforces. 28 U.S.C. § 2403(b). This means that the injunction applies only to the four counties that plaintiff initially sued and the two intervenor-counties who joined the case as defendants. Haphazard enforcement of the Code threatens to cause substantial confusion in the months leading up to the voter registration deadline.

The Court must also consider whether issuance of a stay will substantially injure plaintiff. In considering that factor, “the maintenance of the status quo is an important consideration in granting a stay.” *E.T. v. Paxton*, 19 F.4th 760, 770 (5th Cir. 2021). A stay would maintain the status quo that has existed in Texas since 2013, or at a minimum, since 2018, when the Secretary issued his press release confirming that wet signatures are required for faxed applications. In the one instance in which plaintiff’s app was live, things went terribly awry. Thus, there is no guarantee that voters would even want to use plaintiff’s platform or be able to do so. *See* Exhibit B at 76. And no Texas voters came forward in this suit to express support for, or a desire to use, plaintiff’s web app to register to vote. Whatever plaintiff’s interest, it must give way to the irreparable harm the injunction inflicts on the public interest in the integrity of the ballot. *Veasey v. Abbott*, 870 F.3d 387, 391 (5th Cir. 2017) (per

curiam) (when the State seeks a stay pending appeal, “its interest and harm merge with that of the public.”).

III. The Court Should Enter a Temporary Administrative Stay.

For the reasons set out above, Defendants are entitled to a stay pending appeal. They further request that the Court immediately enter an administrative stay while the Court considers this motion. Such administrative stays are routine. *E.g., Richardson*, 978 F.3d at 227-28. In the absence of a stay pending appeal, a temporary administrative stay will prevent irreparable harm while the Court considers the motion for a stay pending appeal.

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CONCLUSION

The Court should immediately enter a temporary administrative stay while it considers this motion and then stay the district court's injunction pending appeal.

Respectfully submitted.

ROBERT HENNEKE
General Counsel

KEN PAXTON
Attorney General of Texas

CHANCE WELDON
Director of Litigation

BRENT WEBSTER
First Assistant Attorney General

/s/ Autumn Hamit Patterson
AUTUMN HAMIT PATTERSON
Senior Attorney
apatterson@texaspolicy.com

/s/ Judd E. Stone II
JUDD E. STONE II
Solicitor General
Judd.Stone@oag.texas.gov

Texas Public Policy Foundation
901 Congress Avenue
Austin, Texas 78701
Telephone: (512) 472-2728
Fascimile: (512) 472-2728

MICHAEL R. ABRAMS
Assistant Solicitor General

KATHLEEN HUNKER
Special Counsel

Attorneys for Intervenor
Defendants-Appellants Lupe C.
Torres and Terrie Pendley

CORY SCANLON
JOHNATHON STONE
Assistant Attorneys General

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697

Counsel for Intervenor Defendant-
Appellant Ken Paxton, Attorney
General of Texas

CERTIFICATE OF COMPLIANCE WITH RULE 27.3

I certify the following in compliance with Fifth Circuit Rule 27.3:

- Before filing this motion, counsel for Appellants contacted the clerk's office and opposing counsel to advise them of Appellants' intent to file this motion.
- The facts stated herein supporting emergency consideration of this motion are true and complete.
- The Court's review of this motion is requested as soon as possible, but **no later than Friday, July 1, 2022**. Appellants respectfully request an immediate temporary administrative stay while the Court considers this motion.
- True and correct copies of relevant orders and other documents are attached as exhibits to this motion.
- This motion is being served at the same time it is being filed.

/s/ Judd E. Stone II

JUDD E. STONE II

CERTIFICATE OF CONFERENCE

On June 24, 2022, counsel for Appellants conferred with counsel for Appellee, who stated that Appellee opposes the relief requested in this motion and will file a response in opposition to the motion.

/s/ Judd E. Stone II

JUDD E. STONE II

CERTIFICATE OF SERVICE

On June 27, 2022, this document was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. Counsel further certifies that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned with the most recent version of Symantec Endpoint Protection and is free of viruses.

/s/ Judd E. Stone II
JUDD E. STONE II

CERTIFICATE OF COMPLIANCE

This motion complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 5,188 words, excluding the parts of the motion exempted by rule; and (2) the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Equity) using Microsoft Word (the same program used to calculate the word count).

/s/ Judd E. Stone II
JUDD E. STONE II

No. 22-50536

In the United States Court of Appeals for the Fifth Circuit

VOTE.ORG,

Plaintiff-Appellee

v.

JACQUELYN CALLANEN, ET AL.,

Defendants

KEN PAXTON, IN HIS OFFICIAL CAPACITY AS THE ATTORNEY
GENERAL OF TEXAS; LUPE C. TORRES, IN HIS OFFICIAL
CAPACITY AS THE MEDINA COUNTY ELECTIONS ADMINISTRATOR;
TERRIE PENDLEY, IN HER OFFICIAL CAPACITY AS THE REAL
COUNTY TAX ASSESSOR-COLLECTOR,

Intervenor Defendants-Appellants

On Appeal from the United States District Court
for the Western District of Texas, San Antonio Division

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**EXHIBIT A: COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

VOTE.ORG,

Plaintiff,

v.

JACQUELYN CALLANEN, in her official capacity as the Bexar County Elections Administrator; BRUCE ELFANT, in his official capacity as the Travis County Tax Assessor-Collector; REMI GARZA, in his official capacity as the Cameron County Elections Administrator; MICHAEL SCARPELLO, in his official capacity as the Dallas County Elections Administrator,

Defendants.

Civil Action

Case No. 5:21-cv-649

Related to *Stringer, et al. v. Hughs, et al.*, No. 5:20-cv-00046-OLG

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

**52 U.S.C. § 10101 and the First and
Fourteenth Amendments to the U.S.
Constitution**

Plaintiff VOTE.ORG, by and through its undersigned counsel, files this COMPLAINT for DECLARATORY and INJUNCTIVE RELIEF against Defendants JACQUELYN CALLANEN, in her official capacity as the Bexar County Elections Administrator, BRUCE ELFANT, in his official capacity as the Travis County Tax Assessor-Collector, REMI GARZA, in his official capacity as the Cameron County Elections Administrator, and MICHAEL SCARPELLO, in his official capacity as the Dallas County Elections Administrator, and alleges as follows:

NATURE OF CASE

1. Registering to vote in Texas is a cumbersome process, and intentionally so. Despite a concerted effort to modernize election procedures, when it comes to voter registration—and, for that matter, other procedures that expand access to the franchise—Texas continues to embrace and reinforce antiquated rules that serve no purpose other than to make voting harder. For instance, Texas does not provide online registration, and for years the Secretary of State (the “Secretary”)

ignored federal laws that require the State to allow voters to simultaneously update their driver's licenses and voter registration information.

2. This lawsuit challenges yet another outdated and unlawful voter registration rule. Under Texas law, voters must sign their registration applications with original, *wet* signatures (the “Wet Signature Rule”)—a perplexing requirement given that the method by which a voter enters their signature has absolutely nothing to do with their eligibility to register.

3. In 2018, this antiquated rule resulted in the rejection of voter registration applications signed using a web application developed by Plaintiff Vote.org, simply because the applications were signed with imaged rather than wet signatures. Indeed, five days before the voter registration deadline for the 2018 midterm election, then-Secretary of State Roland Pablos instructed county registrars to reject all registration applications prepared using the e-signature function of Plaintiff's web application, claiming that the registration applications were incomplete because they lacked original, wet signatures.¹

4. During the 2021 legislative session—mere months after Texas officials sought to overturn the 2020 presidential election results and disenfranchise millions of voters in *other states*, and on the heels of an election that the State's elections administrators described as safe and secure—the Texas Legislature codified the Wet Signature Rule through House Bill 3107 (“HB 3107”). *See* HB 3107, 87th Leg., Reg. Sess. (Tex. 2021).

5. HB 3107 provides that in order “[f]or a registration application submitted by telephonic facsimile machine to be effective, a copy of the *original* registration application

¹ The rule announced by Secretary Pablos was the subject of a lawsuit filed by the Texas Democratic Party, DSCC, and DCCC against the Secretary on January 6, 2020. *See* Compl. for Declaratory & Injunctive Relief, *Tex. Democratic Party v. Hughs*, No. 5:20-cv-00008-OLG (W.D. Tex. Jan. 6, 2020), ECF No. 1. That lawsuit was dismissed following the Fifth Circuit's determination that the claims against the Secretary were barred by sovereign immunity.

containing the voter's original signature must be submitted." *Id.* § 14 (amending Tex. Elec. Code § 13.143(d-2)). In other words, a voter cannot complete their registration form electronically, nor can they use an imaged signature; instead, the voter must provide a copy of their registration application with a wet-ink signature affixed.

6. For a bill that makes various upgrades to the Election Code—including allowing documents to be filed via e-mail, *see id.* § 1 (amending Tex. Elec. Code § 1.007(c))—the Wet Signature Rule is a conspicuous addition. It contradicts the State's longstanding recognition that electronic signatures carry the force of law, *see, e.g.*, Tex. Bus. & Com. Code § 322.007(d) ("If a law requires a signature, an electronic signature satisfies the law."), and is irreconcilable with the State's ongoing practice of accepting electronic or imaged signatures on voter registration applications submitted through state agencies.

7. Voters who renew their licenses or change their addresses through the Texas Department of Public Safety ("DPS"), for instance, can enter their signatures on electronic keypads; these signatures are then stored electronically, allowing DPS officials to piece together a voter registration application by combining the personal information populated on the renewal or change of address form with the voter's signature from the electronic file. This information, once compiled, becomes the voter's registration application and is approved if the applicant meets the eligibility requirements.

8. Thus, even with the Wet Signature Rule enshrined in the Election Code, thousands of Texans will continue to register at state agencies with imaged or electronic signatures, which undermines any suggestion that the Wet Signature Rule is somehow essential to protecting election integrity.

9. Instead, the Wet Signature Rule—from its inception at the Secretary’s whim shortly before the 2018 midterm election to its codification through HB 3107—is an assault on innovative methods of expanding voter participation like the e-signature function of Plaintiff’s web application.

10. The ability to complete and sign registration applications electronically is critical to ensure that voters with limited access to printers or mailing facilities, or who otherwise need assistance to register to vote, have meaningful opportunities to do so. The Wet Signature Rule imposes unnecessary roadblocks that are not only hopelessly out of step with other provisions of Texas law, but also create undue burdens for voters and the organizations that help them register, all while failing to advance any sufficiently weighty state interest that could justify such restrictions.

11. Accordingly, the Wet Signature Rule violates the U.S. Constitution and the federal Civil Rights Act by selectively targeting and burdening private organizations’ efforts to increase voter turnout, and by imposing an arbitrary barrier to registration that has already denied many Texans the opportunity to vote for reasons entirely unrelated to their eligibility. For these reasons and those stated below, Plaintiff requests that the Court declare that the Wet Signature Rule violates the Civil Rights Act of 1964 and the First and Fourteenth Amendments to the U.S. Constitution, and enjoin Defendants from enforcing the Wet Signature Rule.

JURISDICTION AND VENUE

12. Plaintiff brings this action under 52 U.S.C. § 10101 and 42 U.S.C. §§ 1983 and 1988 to redress the deprivation, under color of state law, of rights secured by the federal Civil Rights Act and the U.S. Constitution.

13. This Court has original jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws

of the United States and involve the assertion of deprivation, under color of state law, of rights under the U.S. Constitution and federal law.

14. This Court has personal jurisdiction over Defendants, who are sued in their official capacities.

15. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events that give rise to Plaintiff's claims occurred and will occur in this judicial district.

16. This Court has the authority to enter declaratory judgment and provide injunctive relief under Federal Rules of Civil Procedure 57 and 65 and 28 U.S.C. §§ 2201 and 2202.

PARTIES

17. Plaintiff Vote.org is the largest 501(c)(3) nonprofit, nonpartisan voter registration and get-out-the-vote ("GOTV") technology platform in the country. Vote.org uses technology to simplify political engagement, increase voter turnout, and strengthen American democracy. Vote.org works extensively to support low-propensity voters, including racial and ethnic minorities and younger voters who tend to have lower voter-turnout rates. In total, Vote.org has registered more than 6.7 million new voters and verified more than 16 million voters' registration statuses. Since 2012, it has helped over 776,000 Texans register to vote and 1.9 million Texans verify their registration statuses.

18. In preparation for the 2018 elections, Vote.org invested significant resources in developing and launching a web application that helped Texans complete their voter registration forms, just as it had done successfully in Alaska, Colorado, the District of Columbia, Kansas, and South Carolina. The e-signature function of Vote.org's web application allowed potential registrants in Bexar, Cameron, Dallas, and Travis Counties to enter information into a virtual voter registration application; sign the form by uploading an image of their signature into the web application; review their signed voter registration application; fax the completed application to

their county registrar; and generate a hard copy to be mailed to the county registrar, as required by Texas law.

19. Between late September and early October of 2018, more than 2,400 voters in Texas used Vote.org’s web application, including the e-signature function, to complete their voter registration applications. Just five days before the registration deadline, Secretary Pablos called the validity of those 2,400 voter registrations into question. He claimed, without any basis in the law, that registration forms prepared using Vote.org’s web application were invalid because they did not contain original, wet signatures. His announcement—and the decision of Texas counties to abide by it—effectively ended Vote.org’s use of the e-signature function included in its voter registration web application.

20. Section 14 of HB 3107—the Wet Signature Rule—is simply a codification of the rule that Secretary Pablos devised in 2018. It continues to prevent Vote.org from making full use of one of its most effective tools: the e-signature function of its voter registration web application. No longer able to use features of its web application that it created specifically for Texas, Vote.org has been forced to divert resources from its general, nationwide operations—as well as its specific programs in other states—to redesign its Texas voter registration and GOTV programs and utilize more expensive (and less effective) means of achieving its voter registration goals in the State.

21. Defendant Jaquelyn Callanen is sued in her official capacity as the Bexar County Elections Administrator. In this capacity, she serves as the voter registrar for Bexar County and oversees its voter registration activities. *See* Tex. Elec. Code §§ 12.001, 13.004, 13.071–13.072, 15.022. This includes “review[ing] each submitted application for registration to determine whether it complies with Section 13.002” of the Election Code. *Id.* § 13.071; *see also id.* § 13.002

(enumerating registration application requirements). The Bexar County Elections Administrator is sued for the manner in which she enforces the Wet Signature Rule.

22. Defendant Bruce Elfant is sued in his official capacity as the Travis County Tax Assessor-Collector. In this capacity, he serves as the voter registrar for Travis County and oversees its voter registration activities. *See id.* §§ 12.001, 13.004. 13.071–13.072, 15.022. This includes “review[ing] each submitted application for registration to determine whether it complies with Section 13.002” of the Election Code. *Id.* § 13.071; *see also id.* § 13.002 (enumerating registration application requirements). The Travis County Tax Assessor-Collector is sued for the manner in which he enforces the Wet Signature Rule.

23. Defendant Remi Garza is sued in his official capacity as the Cameron County Elections Administrator. In this capacity, he serves as the voter registrar for Cameron County and oversees its voter registration activities. *See id.* §§ 12.001, 13.004. 13.071–13.072, 15.022. This includes “review[ing] each submitted application for registration to determine whether it complies with Section 13.002” of the Election Code. *Id.* § 13.071; *see also id.* § 13.002 (enumerating registration application requirements). The Cameron County Elections Administrator is sued for the manner in which he enforces the Wet Signature Rule.

24. Defendant Michael Scarpello is sued in his official capacity as the Dallas County Elections Administrator. In this capacity, he serves as the voter registrar for Dallas County and oversees its voter registration activities. *See id.* §§ 12.001, 13.004. 13.071–13.072, 15.022. This includes “review[ing] each submitted application for registration to determine whether it complies with Section 13.002” of the Election Code. *Id.* § 13.071; *see also id.* § 13.002 (enumerating registration application requirements). The Dallas County Elections Administrator is sued for the manner in which he enforces the Wet Signature Rule.

STATEMENT OF FACTS AND LAW

25. Texas law provides several avenues through which eligible citizens may submit their voter registration applications to their county registrars: by personal delivery, mail, or fax. *See id.* § 13.002(a).

26. Prior to the enactment of the Wet Signature Rule, none of these options required a wet signature on a voter's registration application. Although a voter who chose to register by fax was required to mail a copy of the application to their registrar, the previous version of Section 13.143(d-2) did not require that the copy include an original, wet signature.

27. In 2018, Plaintiff deployed a web application to assist voters with completing their registration forms. As discussed above, five days before the registration deadline, Secretary Pablos indicated that any applications signed using Plaintiff's web application were invalid because every registration required an original, wet signature. A spokesperson for Secretary Pablos went so far as to declare that use of the web application's e-signature function to prepare voter registration applications was "illegal."

28. Secretary Pablos's announcement created confusion among Texas counties and voters, who were forced to reconcile the inherent conflict between the registration laws and the newly announced rule.

29. For example, the day after Secretary Pablos announced the Wet Signature Rule, the Travis County Tax Assessor-Collector said that he would process and accept registration applications without wet signatures despite the new rule. According to his legal counsel, state law allowed for copies of voter registration forms to be submitted without wet signatures. The next day, the Travis County Tax Assessor-Collector reversed course and claimed that between 400 and 500 applications submitted without wet signatures would be rejected. He also acknowledged that not all affected voters would be able to resubmit their applications and register before the deadline.

After much confusion and multiple conversations between county officials and Secretary Pablos, the Travis County Tax Assessor-Collector decided that he would accept the applications given the limited time remaining before the deadline, but would follow the new rule moving forward and reject any future applications without wet signatures.

30. In addition to its problematic inception, the Wet Signature Rule contradicts well-established federal and state laws that recognize the validity of electronic and other non-ink signatures.

31. For example, the Texas Administrative Code authorizes election officials to capture voters' signatures using electronic devices for election day signature rosters, and specifically defines "Electronic Signature" as "a digitized image of a handwritten signature." 1 Tex. Admin. Code § 81.58(a)–(b). The Texas Business and Commerce Code recognizes that a signature "may not be denied legal effect . . . solely because it is in electronic form" and expressly states that "[i]f a law requires a signature, an electronic signature satisfies the law." Tex. Bus. & Com. Code § 322.007(a), (d). And if a person completes a voter registration application through DPS, the agency must "inform the applicant that the applicant's electronic signature provided to the department will be used for submitting the applicant's voter registration application." Tex. Elec. Code § 20.066(a)(2).

32. The processing of voter registration applications through DPS underscores that the Wet Signature Rule serves no useful or justifiable purpose. DPS employs a system that, like Plaintiff's web application, allows voters to sign voter registration applications using electronically captured signatures. When an applicant interacts with DPS—whether by applying for or renewing a driver's license or changing their address—they complete the relevant DPS forms and sign an electronic keypad. The electronic keypad is just that: it is not a physical, paper form but rather a

separate electronic device with a space for an applicant to sign. DPS then captures and electronically stores the signatures entered into the keypad. *See Stringer v. Pablos*, 320 F. Supp. 3d 862, 872–74 (W.D. Tex. 2018), *rev'd and remanded on other grounds sub nom. Stringer v. Whitley*, 942 F.3d 715 (5th Cir. 2019).

33. DPS reviews its own forms and selects information relevant to voter registration and then combines this information with the electronically stored signatures to create separate voter registration applications, which it then submits electronically to the Secretary's office. The Secretary then transmits the information to local registrars to complete the registration process. *See id.* at 872–73.

34. DPS applicants do not review or complete this voter registration application, nor do they ever physically sign the application form. *See id.* And DPS acknowledged in previous litigation that the information it transmits to the Secretary's office includes only a “digital image” of the applicant's signature taken from DPS forms. App. to Pls.' Mot. for Summ. J. at 117, *Stringer v. Pablos*, No. 5:16-cv-00257-OLG (W.D. Tex. June 30, 2017), ECF No. 77-1. An applicant's wet-ink signature on DPS's physical forms is not used for any purpose in the voter registration process. *Id.* at 39; *see also Stringer*, 320 F. Supp. 3d at 873.

35. In short, the inconsistency between DPS's practices and the Wet Signature Rule for faxed and mailed registration applications demonstrates that the latter serves no legitimate governmental interest—let alone an interest sufficiently weighty to justify the added burdens on voting—and is entirely unrelated to any determination of an individual's eligibility to register to vote.

36. For some eligible Texans, the burdens caused by the Wet Signature Rule will be insurmountable. In order to register under the Wet Signature Rule, a voter needs access to a printer

to print and sign an application. If the voter lacks access to a printer, then they must wait for local officials or another third party to provide a physical copy of the form for them to sign. For many voters—such as those whose local officials choose not to distribute applications, who do not have access to registrar’s offices due to lack of transportation, or who live in rural areas outside the reach of third-party organizations—these options are insufficient and create unnecessary barriers to the franchise.

CLAIMS FOR RELIEF

COUNT I

52 U.S.C. § 10101; 42 U.S.C. § 1983 Violation of Section 1971 of the Civil Rights Act of 1964 Against All Defendants

37. Plaintiff realleges and reincorporates by reference all prior paragraphs of this Complaint and the paragraphs in the count below as though fully set forth herein.

38. Section 1971 of the Civil Rights Act of 1964 provides that

[n]o person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.

52 U.S.C. § 10101(a)(2).

39. The Wet Signature Rule is immaterial to determining whether an elector is qualified to vote in Texas. In prior litigation involving the State’s voter registration procedures, the Secretary’s office admitted that “it never uses physical, manual, or wet ink handwritten signatures on paper for voter registration purposes.” *Stringer*, 320 F. Supp. 3d at 899. DPS utilizes electronic signatures for voter registration purposes. And Texas expressly permits election officials to collect electronic signatures for election day signature rosters.

40. Defendants' enforcement of the Wet Signature Rule will deprive Texans—including the voters that Plaintiff helps register—of the constitutional right to vote, as well as the rights secured to them by Section 1971 of the Civil Rights Act of 1964.

COUNT II

U.S. Const. Amends. I, XIV; 42 U.S.C. § 1983 Undue Burden on the Right to Vote Against all Defendants

41. Plaintiff realleges and reincorporates by reference all prior paragraphs of this Complaint and the paragraphs below as though fully set forth herein.

42. Under the First and Fourteenth Amendments to the U.S. Constitution, a state cannot utilize election practices that unduly burden the right to vote.

43. When addressing a challenge to a state election practice, a court balances the character and magnitude of the burden that the challenged practice imposes on any First and Fourteenth Amendment rights the plaintiff seeks to vindicate against the justifications offered by the state in support of the challenged law. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

44. “However slight th[e] burden may appear . . . it must be justified by relevant and legitimate state interests ‘sufficiently weighty to justify the limitation.’” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191 (2008) (controlling op.) (quoting *Norman v. Reed*, 502 U.S. 279, 288–89 (1992)).

45. The Wet Signature Rule imposes yet another logistical hurdle that eligible Texans must navigate to exercise their most fundamental right. In order to register, a voter must have access to a printer (to print and sign their applications form) or wait for their local officials or another third party to provide a physical copy of the form for them to sign—and then must mail their original application form to their county registrar.

46. These additional procedural hurdles imposed by the Wet Signature Rule cannot be justified by any legitimate state interest. Texas statutes already recognize electronic signatures as legally binding. *See Stringer*, 320 F. Supp. 3d at 895–96. And election officials are not expected to, and typically do not, analyze or compare signatures on voter registration applications. *See id.* at 874.

47. The Wet Signature Rule thus furthers no legitimate governmental interest. Consequently, the burden it imposes on voters—including the voters that Plaintiff helps register—violates the First and Fourteenth Amendments to the U.S. Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment:

- a. Declaring that the Wet Signature Rule, as it appears in Section 14 of HB 3107 (amending Texas Election Code § 13.143(d-2)), and any other provisions requiring a voter to sign an application form with an original, wet signature in order to register to vote, violate Section 1971 of the Civil Rights Act of 1964 and the First and Fourteenth Amendments to the U.S. Constitution;
- b. Preliminarily and permanently enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to the Wet Signature Rule;
- c. Awarding Plaintiff its costs, disbursements, and reasonable attorneys' fees incurred in bringing this action pursuant to 42 U.S.C. § 1988 and other applicable laws; and
- d. Granting such other and further relief as the Court deems just and proper.

Dated: July 8, 2021.

Respectfully submitted,

/s/ John R. Hardin

John R. Hardin
Texas State Bar No. 24012784
PERKINS COIE LLP
500 North Akard Street, Suite 3300
Dallas, Texas 75201-3347
Telephone: (214) 965-7700
Facsimile: (214) 965-7799
johnhardin@perkinscoie.com

Uzoma N. Nkwonta*
Kathryn E. Yukevich*
PERKINS COIE LLP
700 Thirteenth Street NW, Suite 800
Washington, D.C. 20005-3960
Telephone: (202) 654-6200
Facsimile: (202) 654-9996
unkwonta@perkinscoie.com
kyukevich@perkinscoie.com

Jonathan P. Hawley*
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Telephone: (206) 359-8000
Facsimile: (206) 359-9000
jhawley@perkinscoie.com

Counsel for Plaintiff

**Pro Hac Vice Application Forthcoming*

EXHIBIT B: SUMMARY JUDGMENT RECORD EXCERPTS*

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* Attorney General Paxton and Remi Garza's appendix in support of their motion for summary judgment was initially filed publicly but then placed under seal because one two-page exhibit was subject to the Court's protective order. The documents attached here as exhibits to Defendants' motion to stay were included in that appendix but were not subject to the protective order, and no party contended that these specific documents needed to be placed under seal.

<p style="text-align: right;">70</p> <p>1 Q. Well, I'll make sure we loop back 2 with you before we conclude today, but I'm 3 sure your counsel can help you. I don't want 4 to intrude too much on that, but we do -- I 5 just want to know the answer to that. 6 Does this form look familiar in 7 terms of as a sample of what the e-signature 8 app would generate on the back end? 9 A. Yeah, I mean, it looks -- it looks - 10 - it looks familiar. You know, for me, we 11 have to shut off the e-sign, you know, feature 12 -- a few years back now, so we haven't really 13 been working with the e-sign feature 14 unfortunately, but this looks like a voter 15 registration application form -- 16 Q. And this -- 17 A. Uh-huh. 18 Q. I'm sorry. I didn't mean to cut you 19 off. 20 A. That's okay. I was probably just, 21 you know, like mumbling, so go ahead. What's 22 your question? 23 Q. Sure. So this box here in the 24 middle of the page where it says, "Sign full 25 name," do you see on the left-hand side of</p>	<p style="text-align: right;">72</p> <p>1 in and fix. You know, but our pilot program, 2 basically we can't use it, and so we haven't 3 gone back in to -- to do more engineering 4 work, but I spoke with our vice president of 5 technology and he assures me that if we're 6 willing to dedicate a little bit of 7 engineering time to it, but it's not something 8 that's a very difficult fix. 9 Q. Okay. And we may come back, so I'll 10 take this down for now. 11 You're aware the law that's being 12 challenged in this case requires that when a 13 application is submitted by fax, it is then 14 required to be mailed out. I mean, we 15 discussed that as part of your process, 16 correct? 17 A. Yes. 18 Q. Do you know how long that law has 19 been in effect? 20 A. That if you fax something out, that 21 you also have to mail it? How long that law 22 has been in effect? 23 Q. Yes. 24 A. No, could you tell me? 25 Q. Well, I'm asking if you know, but I</p>
<p style="text-align: right;">71</p> <p>1 this box where there is a -- kind of a shaded 2 area with what looks to be a signature inside 3 of it? 4 A. Yes. 5 Q. And was that a common, I guess, 6 occurrence with the forms that people would 7 use with the e-signature app? 8 A. Well, I do know that some of the 9 forms have like darkness in the signature, 10 which is something, you know, we were running 11 a pilot project here, and so something that 12 our engineers are like really eager to work 13 on. I think a few forms did have darkness and 14 that there was, you know, some -- some, you 15 know, some -- some issue with that, but I 16 think that's something that can easily be 17 solved with a little bit of engineering time. 18 It just hasn't been worth the time for us now 19 to do it because we can't use the feature. 20 Q. Okay. And you mentioned that this 21 is part of the pilot program, so at that time 22 when these applications were going out, is 23 this something that you anticipated? 24 A. No. You know, I think it's 25 something that we would like to be able to dig</p>	<p style="text-align: right;">73</p> <p>1 guess what I'm getting at is was this 2 requirement in place before you developed the 3 e-signature app? 4 A. Oh, yeah. The requirement that you 5 have to both fax -- like fax and mail 6 something out, and that's why, I think, it was 7 the perfect place for us to use technology to 8 streamline that process. Because now you have 9 things like HelloFax or other digital services 10 that voters can use, and so basically they can 11 now initiate that process -- or they could 12 initiate that process through the, you know, 13 site and it would do it for them, so that way 14 we could be, you know, we could offer a 15 service so the voter could be in compliance 16 with that law, but they wouldn't have to be 17 inconvenience -- again, like get in their car, 18 drive to a Kinko's, fax it out. Most people 19 don't have fax machines in their houses, most 20 people don't have printers in their house, and 21 then, like, go to a post office, find a stamp 22 and all of, you know, then get it to their 23 county official like that. This was a way for 24 the voter being able to actually have some 25 ease in the process and then the automation</p>

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1 Q. Okay. So this mentions that
2 Vote.org talks to some local officials,
3 correct?
4 A. Yes.
5 Q. Before launching. Which local
6 officials did Vote.org talk to?
7 A. I know that Vote.org -- two members
8 from Vote.org went to Texas to speak with
9 election administration officials to make
10 sure. I think the main concern, you know, one
11 of the concerns is Vote.org receives a high
12 amount of volume in general at process sites.
13 So like if -- if somebody, you know, you want
14 to make sure that you're talking to people on
15 the ground and newly partnering with election
16 administration officials in states to make
17 sure that if a lot of people were to use the
18 tool, can they literally, you know, process
19 that? If they're getting a lot of faxes at
20 once, something like that. So it's really to,
21 you know, we want to make sure that we don't,
22 you know, we don't overwhelm anyone and we
23 don't have any issues. I think that --
24 Q. Sure. So which local officials did
25 Vote.org meet with?

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1 A. I believe we met with officials in
2 every county that used the tool.
3 Q. And which counties were those? Were
4 those only the counties involved in this
5 lawsuit?
6 A. That's right.
7 Q. Did you meet with anyone in Harris
8 County?
9 A. You know, at this time I was on the
10 board of Vote.org and not internal with
11 Vote.org, so I would need to go back and look
12 to see if they met with somebody in Harris
13 County.
14 Q. Okay. We'll need to get an answer
15 to that, also.
16 A. I can tell you that they met with,
17 you know, several election officials and the,
18 you know, counties. Remember, it's a pilot
19 project that we were launching. We wanted to
20 see if this was something that was going to be
21 really helpful and be of service to the voters
22 of Texas. So, you know, again, it's to
23 everybody's advantage to make sure that
24 there's, you know, conversations in advance of
25 sending a lot of faxes into an office or

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1 something like that, and so the counties that
2 -- that said that they could handle it, are
3 the ones we ended up running the pilot with.
4 I know that there was, you know,
5 some confusion among different election
6 officials. There was some people that --
7 that, you know, were and weren't clear and so
8 I think this is the -- where we launched the
9 pilot is the -- are the people that were
10 willing to run the pilot.
11 Q. How did Vote.org ensure that only
12 residents of the pilot program utilized the
13 web app?
14 A. Well, we didn't turn it on in
15 counties that didn't, you know, that -- that
16 didn't want to participate.
17 Q. So what would happen if someone went
18 to Vote.org to use the web app and they live
19 in Pecos County or whatever, and they went
20 through the process?
21 A. It wouldn't be an option for them.
22 Like they wouldn't be able to go through
23 Vote.org because of the county they lived in.
24 Q. Okay. So how does that work? Is it
25 when they put in their address, it just --

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1 they get a notification that the web app won't
2 work?
3 A. Well, we can turn on the feature,
4 only -- we can turn it on in counties. We can
5 turn it on in specific, you know, much like
6 our states national work. We can turn it on
7 in the state and not another state. So for
8 the pilot what we did is we turned it on for
9 residents that were coming through the site
10 that were, you know, in those counties.
11 Q. So does that work through the IP
12 address? In other words, like if someone is
13 in a non-pilot county and they log into the
14 webpage, it's just not even -- it doesn't
15 populate on their computer?
16 A. I think it's address-based, so we're
17 able to --
18 Q. Okay.
19 A. -- kind of be address-based. You
20 know, if you're, you know, a resident of that
21 -- if your address is within a specific
22 county, then your workflow would look
23 different.
24 Q. And I mentioned IP address, but
25 you're talking about physical address?

<p style="text-align: right;">98</p> <p>1 ground in Texas, everybody having like a lot 2 of confusion, different counties wanting to 3 engage, but then not engaged, and then not a 4 lot of clarity around, you know, around the 5 web, you know, around whether the technology - 6 - something that counties wanted to engage in, 7 and that is my guess about, you know, her use 8 of the term, "fun stories." 9 But I can't guess. She speaks in a 10 lot of, you know, she's just speaking in 11 hyperbole. I think she's, you know, probably 12 wanting to look for, you know, look for people 13 to have an interest in what she's talking 14 about. 15 A lot of times, these facts and 16 figures, like, you know, driver's license 17 obtainment has dropped every single year. 18 That's true, but like it's hard to, you know, 19 keep people interested or printer home 20 ownership has decreased by a certain 21 percentage. Or what does like the future of 22 automation mean for people having driver's 23 licenses and how will this all affect our 24 democracy? 25 Like we all enjoy discussing this at</p>	<p style="text-align: right;">100</p> <p>1 know, other entity. I know we sent emails 2 out. I think, you know, we produced all those 3 like to grass roots telling people what's 4 happening and that. 5 So the extent that somebody received 6 those, I don't know, but yeah, I think that 7 would be the bulk of the work would be ten 8 voters initiate the process, ten would be 9 streamlined for them, I can officials process 10 the paperwork on the other end would be the 11 big questions that we probably would have been 12 trying to answer. 13 Q. Okay. And you mentioned "grass 14 roots" organizations, I think? 15 A. Not organizations. That's just how 16 I refer to, you know, are users. We have 39 17 million users that came through the platform 18 in, say, 20 -- 2020. So our users would be -- 19 that would be the way of talking about that. 20 For us that's like a -- that's a -- I use 21 that, I guess it's on a technical term, but I 22 use it interchangeably. It's the wider 23 audience that uses and engages with Vote.org. 24 Q. Okay. We can move on to Topic 3. 25 And I'll go ahead and at this time pull up our</p>
<p style="text-align: right;">99</p> <p>1 Vote.org all the time, but I don't know that 2 that's the case everywhere. And I think she's 3 using a hyperbole there to -- to -- to try to 4 keep interest. 5 Q. Okay. I want to go on to Topic 2 6 now. I mean, we've skipped around a little 7 bit, but basically in connection with this 8 lawsuit or in connection with your efforts to, 9 you know, have the e-sign to work, we talked 10 about the Rightfax company that you use and 11 print shop. I don't need to know the name of 12 that print shop, but were there any other 13 entities that Vote.org communicated with in 14 its efforts specifically related to the Texas 15 and the wet signature rule? 16 A. I mean, so from the platform 17 perspective, it would just be the voter 18 initiating the process and then the automated 19 process, like, executing with the different 20 vendors. From the, you know, making sure we 21 want to turn on this tool in certain areas, 22 there would be conversations, you know, with 23 county official to run the pilot. Anyone else 24 in conversation, I know that there -- I can't 25 think of -- I can't think of a specific, you</p>	<p style="text-align: right;">101</p> <p>1 -- your responses to our interrogatories, 2 which is Exhibit 2. 3 And just very quickly, I want to 4 specif -- at this time just go to 5 Interrogatory No. 16, so we ask: "Please 6 state whether Vote.org is a membership 7 organization." 8 The answer: "Vote.org does not 9 currently have members who pay dues or elect 10 board representatives." 11 Did I read that correctly? 12 A. Yes. 13 Q. And is that still true and accurate? 14 A. Yes. 15 Q. How would Vote.org characterize its 16 relationship with the users that try to use 17 the e-sign platform? 18 A. How to characterize the 19 relationship? 20 Q. But those people would not be 21 considered "members" of Vote.org. Is that 22 fair to say? 23 A. Users, anyone coming through 24 Vote.org's platform is a user. You know, we - 25 - so like I said, in the last election, we had</p>

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1 MR. NKWONTA: So that's my
 2 instruction to answer.
 3 MR. SCANLON: Thank you for
 4 clarifying that. I appreciate it. I think
 5 that should be it for now if we're ready to go
 6 back off the record.
 7 THE REPORTER: We're going off the
 8 record. The time is 12:57 p.m.
 9 (Recess taken.)
 10 THE REPORTER: We are back on the
 11 record. The time is 2:02 p.m.
 12 MR. SCANLON: Hello, Ms. Hailey.
 13 BY MR. SCANLON:
 14 Q. Over the break, we had asked I guess
 15 you to kind of see if you could get some
 16 response to some of the questions we asked
 17 earlier. Were you able to track the
 18 information down?
 19 A. Yes.
 20 Q. Okay. I'll go ahead and start with
 21 our question about -- just a second here.
 22 Okay. Exhibit -- the question I had about
 23 Exhibit 25, which was a copy of the fax. I'll
 24 go ahead and screen share Exhibit 25 right
 25 now.

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1 -- when they go through the e-sign process.
 2 Q. Okay.
 3 A. I can add even more clarity to that
 4 down the road.
 5 Q. Okay. Does the user see a picture
 6 of what this will look like before they -- the
 7 -- the -- the full application before they
 8 send the e-signature application?
 9 A. Yes.
 10 Q. Okay. And how does that happen, is
 11 that with a popup?
 12 A. Not a -- not a popup I don't think.
 13 I think they can -- it takes you -- I think
 14 there's a button that would take you to, you
 15 know, review your application so that's --
 16 that's probably how they see it. And I can
 17 talk to our engineer to get like a line by
 18 line on how they see it.
 19 Q. Okay. Is that who you talked to
 20 during the break, your engineer?
 21 A. Yes.
 22 Q. And what is his name?
 23 A. Jake --
 24 Q. Or -- I'm sorry, it could be --
 25 could be her. I don't think you specified

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1 Were you able to tell whether this
 2 notation at the top of this form was applied
 3 by Vote.org or one of the entities that it
 4 contracted with to do the e-sign app?
 5 A. Yes. It was applied by Vote.org.
 6 It's in the code.
 7 Q. Okay.
 8 A. And a voter can see -- see that
 9 before they -- before they send. So when they
 10 see the registration application, they see
 11 that at the top.
 12 Q. So they see this basically before
 13 they send or they just see the notation at the
 14 top?
 15 A. I believe they can see -- the -- the
 16 portion you're talking about that's affixed to
 17 the form, I believe they can see that.
 18 Q. Okay. So the part where it says,
 19 "Application previously submitted by fax at 22
 20 Sep 2018 16:24 CDT," when do they -- when does
 21 the user see that in the process that we
 22 discussed earlier?
 23 A. I'd have to -- I'd have to go back
 24 again, but I know that that's put on there by
 25 Vote.org and that the user sees that at -- at

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1 gender. I'm sorry, being a sexist again.
 2 A. Jake Levine.
 3 Q. Jake Levine. Okay. So we talked
 4 about the fax notation.
 5 We also wanted to follow up on who,
 6 if anybody, at the Texas Secretary of State's
 7 Office was contacted by Vote.org prior to the
 8 launch of the web app?
 9 A. No one was contacted prior to the
 10 launch of the web app. They went to counties
 11 and talked to different counties before the
 12 launch of the web app.
 13 Q. Okay. And do you know, are there
 14 any counties that were contacted other than
 15 the counties that are named parties to this
 16 lawsuit?
 17 A. Yes.
 18 MR. NKWONTA: Objection. Beyond of
 19 scope of topic 11, but you may answer to the
 20 extent that you know, Andrea.
 21 THE WITNESS: Yes, there are other
 22 counties. This is, you know, the counties
 23 that are -- that ran the pilot are the
 24 counties in the lawsuit, but there were other
 25 counties contacted that -- that Sarah, you

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1 complaint against Vote.org?
 2 MR. NKWONTA: Objection.
 3 Foundation, and beyond the scope of the
 4 notice.
 5 THE WITNESS: No. I mean, I don't -
 6 - I haven't -- I have not seen a complaint
 7 filed against Vote.org.
 8 BY MR. SCANLON:
 9 Q. Do you know of any in the past five
 10 years?
 11 MR. NKWONTA: Objection. Asked and
 12 answered, and beyond the scope of the 30(b)(6)
 13 notice.
 14 THE WITNESS: No, I have not. I
 15 mean, I have not seen any complaint filed
 16 against Vote.org.
 17 BY MR. SCANLON:
 18 Q. You have no knowledge of any AG
 19 complaints against Vote.org?
 20 A. Well, what is an AG complaint? Like
 21 an AG writing us and asking for -- for --
 22 saying that we, you know, that we have a
 23 complaint? Or what -- what is a -- what do
 24 you mean by that?
 25 Q. Are you aware of any complaint

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1 to worry about. I'm just trying to get her to
 2 say that she doesn't have any knowledge of any
 3 complaints.
 4 MR. NKWONTA: I'm just telling you
 5 that this is so far beyond the scope of -- of
 6 the case and the 30(b)(6) notice that it's
 7 bord -- bordering on harassment.
 8 MR. SCANLON: I'm not here to harass
 9 anybody, Ms. Hailey.
 10 BY MR. SCANLON:
 11 Q. I think we -- I mean, you mentioned
 12 that you didn't want to talk about Debra
 13 Cleaver. Is this the reason why?
 14 A. Not -- no. I mean, there -- I don't
 15 want to talk about a former CEO because our
 16 transition was a couple of years ago. So,
 17 yeah. No, it's not the reason why.
 18 Q. And I think it was -- going back to
 19 Interrogatory No. 8, we talked about how
 20 Vote.org would not have had a routine practice
 21 in Texas of using its e-signature tool prior
 22 to the launch that we've discussed at length
 23 today. Is that accurate?
 24 A. Can you say that again?
 25 Q. Vote.org would not have had a

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1 submitted by any person to the California AG's
 2 Office directed at Vote.org?
 3 A. I'm not.
 4 MR. NKWONTA: Objection again. This
 5 is beyond the scope of the case and the
 6 30(b)(6) notice.
 7 BY MR. SCANLON:
 8 Q. And you have no knowledge of that?
 9 MR. NKWONTA: Same objection.
 10 THE WITNESS: Like, I -- I have not
 11 seen a complaint that has been filed against
 12 Vote.org from, you know, with the California
 13 Attorney General.
 14 BY MR. SCANLON:
 15 Q. Sure. You said that you haven't
 16 seen it. Do you have any knowledge of any
 17 complaint?
 18 A. I don't have knowledge of a
 19 complaint filed against Vote.org.
 20 MR. NKWONTA: I didn't get a chance
 21 to register an object, but I object to the
 22 question as beyond the scope of the notice.
 23 Corey, this is getting -- going nowhere.
 24 MS. SCANLON: Well, if she doesn't
 25 have any knowledge, she doesn't have anything

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1 routine practice of using the e-signature app
 2 in Texas prior to its launch that we've
 3 discussed in 2018. Is that accurate?
 4 A. That we wouldn't have -- what number
 5 are we on?
 6 Q. Number 8. This is related to
 7 routine activities.
 8 A. Okay. So what is it? that we
 9 wouldn't have talked to someone before the
 10 launch of our app?
 11 Q. Correct? Or, no, that you wouldn't
 12 -- you didn't have a -- the e-signature app
 13 operating regularly in Texas prior to the 2018
 14 launch.
 15 A. No.
 16 Q. Correct?
 17 A. Correct.
 18 Q. Okay. Going to No. 9, does Vote.org
 19 keep track of the number of voters that it
 20 assists in registering to vote?
 21 A. Vote.org doesn't assist people in
 22 registering to vote. People use our tools to
 23 register to vote or to, you know, eligible
 24 voters use our tool sets to facilitate, you
 25 know, their process.

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1 person in registering to vote, yes or no?
 2 A. Have you -- have you seen the tools?
 3 Have you used the Vote.org tools? Like, our
 4 tools are built so that voters have a
 5 streamlined process, which means they can go
 6 on their phone, their iPad, their computer,
 7 and register themselves to vote. I mean, they
 8 fill out their --
 9 MR. SCANLON: Objection. Non-
 10 responsive. She's not answering the question,
 11 Uzoma. This is a very straightforward
 12 question.
 13 THE WITNESS: Oh, my god.
 14 MR. SCANLON: I'm asking her is what
 15 Vote.org does considered assisting a person in
 16 voting and it's a very simple yes or no
 17 question.
 18 MR. NKWONTA: Core -- Corey I under
 19 --
 20 MR. SCANLON: Can you instruct the
 21 witness to answer this question yes or no.
 22 MR. NKWONTA: Corey, I -- I
 23 understand. People are getting pretty upset
 24 and you're yelling at the witness. Do -- do
 25 you want to go off the record for five

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1 A. That process is that the voter is
 2 registering themselves to vote.
 3 Q. Vote.org does not assist then?
 4 A. Vote.org does not do anything.
 5 Vote.org has built the tech, a voter goes to
 6 it and they register themselves to vote. That
 7 is -- that is it. I think maybe what we're,
 8 you know, arguing is just like the difference
 9 in --
 10 Q. I am simply -- Ms. Hailey, I am
 11 simply asking, does Vote.org assist a person
 12 in registering to vote?
 13 MR. NKWONTA: If I can be helpful to
 14 you -- and if you don't think I can, I'm --
 15 I'll step aside. But if I can be helpful --
 16 helpful here.
 17 I wondering if the distinction is --
 18 is -- that you all are caught up on is between
 19 assisting in registering versus assisting in
 20 applying, or assisting in submitting, or
 21 assisting in fax. You know, that's just my
 22 suggestion, just because I think we've got to
 23 get past this impasse.
 24 MR. SCANLON: We do have to get past
 25 this, and she said that people register

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1 minutes, just to --
 2 MR. SCANLON: I do not want to go
 3 off the record until I get an answer to this
 4 question.
 5 MR. NKWONTA: Well, we can stay on
 6 the record, but the question's been asked and
 7 answered, and I'm going to object to --
 8 MR. SCANLON: She hasn't -- it
 9 hasn't been answered. It hasn't been
 10 answered. When was it answered?
 11 THE WITNESS: I answered it like ten
 12 times. Just now. I just didn't say what you
 13 wanted me to say, but what I'm saying is
 14 there's tool sets we build, the voters
 15 register themselves to vote.
 16 They go on their computer, they type
 17 in their name, type in their address, they
 18 type in their information, they use the tech
 19 tools that we have built, and they do it
 20 themselves. That's what I'm saying and I'm
 21 saying it over and over and over again.
 22 BY MR. SCANLON:
 23 Q. Is that process not considered
 24 Vote.org assisting a person in registering to
 25 vote?

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1 themselves. I do not dispute that.
 2 BY MR. SCANLON:
 3 Q. Does Vote.org assist the person in
 4 registering themselves?
 5 A. Vote.org builds technology, and the
 6 person uses that technology to register
 7 themselves. We are a techno -- like a civic
 8 tech program. We build the technology; they
 9 register themselves. So that is, like, how
 10 I'm going to answer that question ten times
 11 over again -- like 30 times over again.
 12 People are using the technology
 13 that's already built that's sitting there, and
 14 they register themselves to vote using that
 15 technology. We are not --
 16 Q. Ma'am, all my question is asking is
 17 Vote.org does not consider that to be
 18 assisting a person in registering to vote.
 19 You can answer it no. That's fine. You have
 20 explained what you mean several times.
 21 All I'm trying to say is: Does
 22 Vote.org consider that assisting a person in
 23 registering to vote?
 24 MR. NKWONTA: Objection, asked and
 25 answered.

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1 Q. Okay. And how long do you keep those
 2 images?
 3 A. I think forever. I mean --
 4 Q. Okay. And when you send that form to
 5 the state that you've put in the database, does
 6 that form include a space for an image of the
 7 person's signature?
 8 A. No, ma'am.
 9 Q. Okay. Do you ever send those signatures
 10 to the state?
 11 A. No, ma'am. No, ma'am.
 12 Q. And what do you do with the paper cards,
 13 the physical copies?
 14 A. The physical copy is stored here in our
 15 warehouse.
 16 Q. When -- I'm going to ask you a couple of
 17 questions about the physical copies.
 18 How long do you keep the physical copies
 19 in your office, in the space that you work?
 20 A. In the space that we work, before we
 21 send them to the warehouse?
 22 Q. Yes.

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1 move that card to the warehouse; is that right?
 2 A. Yes, ma'am, but please understand we're
 3 in the same building.
 4 Q. Okay. So that was -- you anticipated my
 5 next question, is where is that warehouse located?
 6 A. Again, it's in the same building. We're
 7 blessed to all be under one roof. Six years ago,
 8 the county arranged for us to be under one roof.
 9 Prior to that, we were in three separate
 10 locations. The elections staff was in one
 11 building, voter registration in another, and the
 12 operations center was in a warehouse off-site.
 13 Q. And have you ever had any reason, after
 14 you've put a voter registration card in your
 15 warehouse, to go back and look at that card?
 16 A. Yes, ma'am.
 17 Q. What were those reasons?
 18 A. We've had a couple of inquiries on --
 19 they wanted to see the original voter registration
 20 card, if those happened to be investigations or
 21 something like that.
 22 But the main thing we do, Kassi, which,

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1 A. They'll stay here until after that
 2 election. Whenever -- you know, by the time we
 3 finish the canvass, which is like 11 or 12 days
 4 past that election, then we have them go to the
 5 warehouse for storage.
 6 Q. And, again, to be clear, I'm referring
 7 to the voter registration cards.
 8 A. Understood. Yes, ma'am.
 9 Q. And if I were to register, say, in
 10 January of 2022, I registered January 1st, 2022,
 11 how long would you keep my physical registration
 12 card?
 13 A. Well, again, we'll keep it forever, but
 14 it stays in the front of the office through the
 15 March 1st primary until we get through the
 16 canvass. And then we'll move those to the back
 17 and then start over.
 18 Q. Okay. And when you say -- so as you
 19 move them to your warehouse -- is that right?
 20 After the March 1st primary, you moved my --
 21 someone registers January 1st. After the
 22 March 1st primary and after the canvass, you would

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1 again, just warms my heart, is -- a lot of people
 2 want it for sentimental reasons. And so we do
 3 that for them. That's -- I don't want to say
 4 that's a big problem, but when we do our mass
 5 mail-outs, which we're going to do here soon --
 6 every two years everyone gets a new card. And we
 7 mail out those cards.
 8 And there's a number of those cards that
 9 we don't get back because we've found out that if
 10 a spouse has passed away, the remaining spouse
 11 keeps that card as a sentimental token, which is
 12 wonderful.
 13 Q. So apart from those sentimental reasons,
 14 have you -- you mentioned going back and looking
 15 at specific voter registration cards for the
 16 purpose of investigation; is that right?
 17 A. Yes.
 18 Q. Okay. And that's not your office doing
 19 those investigations; right?
 20 A. Correct, correct.
 21 Q. Okay. Can you give me an example of one
 22 of those times where you had to go back and look

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1 at the voter registration card?

2 A. Yes. In the past couple of years, we've

3 had ongoing investigations with the Attorney

4 General's Office. And they've sent us a list of

5 registrants that they needed to see the actual

6 registration card from. A number of the

7 investigations were on deputy voter registrars and

8 they wanted to see the registration cards that a

9 particular person had turned in.

10 And so, yes, for me -- I'm sorry to say

11 we've had to do that and just bring all the boxes,

12 you know -- we keep them in serialized numbers, so

13 when somebody says, can you find this one, well,

14 okay, it's going to be in one of those three

15 boxes. And then at that point, it's literally

16 going through the cards one by one to find the one

17 they want.

18 Q. Okay. And would you say those types of

19 requests are relatively uncommon or --

20 A. Absolutely. They are getting more

21 common, but, I mean, we went years without anyone

22 requesting.

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1 Q. Understood.

2 I'd like to move on from how you process

3 paper voter registration applications and go

4 forward with how you process voter registration

5 applications that come from DPS specifically.

6 Can you just walk me through -- in the

7 same way that you walked me through the paper

8 voter registration process, can you walk me

9 through how you process voter registration

10 applications that come from DPS.

11 A. I'm only smiling, Kassi, because to me

12 that's like magic.

13 Q. Okay.

14 A. We send our file up at night, as I said.

15 And I'm just guessing, but let's say we send up

16 100 records. When we bring the report back in, we

17 may have 500 records in that same import that we

18 bring back because they include the DPS in it.

19 And so it comes up because the DPS records don't

20 come directly to us. They go through the state so

21 that the state can assign the VUID that we talked

22 about, the voter registration number. And so then

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1 they come back in with our import.

2 Q. And when you get those 500 -- or I'll

3 say when you get those records back from the state

4 that came from DPS, do you receive an image of the

5 voter's signature with that record?

6 A. No, ma'am. No, ma'am.

7 Q. Okay. So if someone registers through

8 DPS -- okay. Let's walk through this. So one --

9 sorry. Just one moment.

10 So if someone registers through DPS,

11 when does your office receive a signature from

12 them that you can put on file?

13 A. It comes in in a separate file. So that

14 if we had to look at Jackie Callanen's, we'd have

15 to go into another file to get that signature.

16 When they come back to us, they're not attached

17 like ours are. It's not like, okay, here's

18 Jackie's record and here's her signature. It

19 comes down and it's held in a different place.

20 And I can't speak to that because, like

21 I said, I'm just not computer literate, but it

22 comes down into another batch. And if it's

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1 needed, we can go into that other piece and find

2 that signature.

3 So we do get the signatures, I don't

4 want to misrepresent that, but they're not

5 attached. For instance, if I bring up a record --

6 if I brought up Jackie Callanen's record right

7 now, there would be one button that I could hit

8 and I'd see the card with the actual signature on

9 it. The image is there. But with DPS, we don't

10 get that. You don't have that same record.

11 Q. Okay. And that signature -- say someone

12 registers through DPS, and you'd like to look at

13 their signature, do you get that the same day you

14 get that download from the state? The signature

15 file, do you get it the same day that you

16 download --

17 A. Yes.

18 Q. -- the information in the --

19 A. Yes, we do. However, there is another

20 option for us. When we're doing provisional

21 ballots, when we're qualifying the provisional

22 ballots and someone says they registered at DPS on

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1 can't get any supply from their county.
 2 Q. Okay. And is this top part,
 3 above where it says Registration Receipt, is
 4 that the same as the paper registration
 5 application that you have in front of you?
 6 A. No.
 7 Q. Okay. What's different about
 8 it?
 9 A. So it's got an extra section
 10 here at the top, where it says
 11 Qualifications. That's not on the paper one
 12 that I have.
 13 Q. Is that provided to deputy
 14 voter registrars, that they have that
 15 information at the top?
 16 Or why is that on this one and
 17 not the one that you have?
 18 A. Right. Because volunteer
 19 deputy registrars, what they do is they go
 20 out and interact with people, trying to get
 21 them to register to vote.
 22 And so it's important for the

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1 volunteer deputy registrars to have at hand a
 2 list of the qualifications.
 3 Q. If a voter requests a paper
 4 registration application from your office,
 5 does it include these qualifications at the
 6 top? Or no?
 7 A. No.
 8 Q. And it also wouldn't include
 9 the registration receipt at the bottom. Is
 10 that correct?
 11 A. That's right.
 12 Q. Can we look specifically at
 13 box 10 here.
 14 MS. YUKEVICH: If you can zoom
 15 in on box 10, Mr. White.
 16 THE VIDEOGRAPHER: My
 17 apologies. My audio messed up. Say
 18 it again, Counsel.
 19 MS. YUKEVICH: If you could
 20 zoom in on box 10, please.
 21 THE VIDEOGRAPHER: Yes, ma'am.
 22 MS. YUKEVICH: Thank you.

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1 BY MS. YUKEVICH:
 2 Q. Okay. So is box 10 the
 3 signature box on the voter registration
 4 application?
 5 A. It is the place where the
 6 signature is captured, yes.
 7 Q. All right. And when a voter
 8 signs here, do they affirm that the
 9 information in the voter registration
 10 application, specifically boxes 1 through 9,
 11 are correct?
 12 A. Right. As well as the three
 13 statements right above the signature.
 14 Q. And those three statements are
 15 that they're a resident of this county and a
 16 U.S. citizen -- I'm going to paraphrase --
 17 that they've not been convicted of a felony
 18 or, if they have, they are -- they've
 19 completed their incarceration, parole,
 20 supervision, probation, or they've been
 21 pardoned; and that they have not been found,
 22 by a final judgment, to be completely

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1 mentally incapacitated, or partially, with
 2 regard -- without the right to vote.
 3 Is that right?
 4 A. That's right.
 5 Q. Okay. And so they're
 6 signing/affirming that those three statements
 7 listed in box 10 are correct and that the
 8 information listed in box 1 through 9 is
 9 correct?
 10 A. And that they know that lying
 11 about that could result in imprisonment.
 12 Q. Yes. And they know that lying
 13 can result in imprisonment or fine of up to
 14 \$4,000, or both. Is that correct?
 15 A. That's right.
 16 Q. Okay. And the purpose of the
 17 signature on the voter registration
 18 application is to affirm those statements are
 19 true and that they understand the
 20 qualifications in box 10. Is that right?
 21 A. And they understand the penalty
 22 for lying.

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<p>1 from Vote.org.</p> <p>2 A Yes.</p> <p>3 Q And on October 2nd, you got 24</p> <p>4 applications from Vote.org.</p> <p>5 A Yes.</p> <p>6 Q Were all of those applications by fax?</p> <p>7 A Yes.</p> <p>8 Q So I tallied that up and I came up with</p> <p>9 737 applications from Vote.org. Does that sound</p> <p>10 accurate to you?</p> <p>11 A It sounds right.</p> <p>12 Q On October 4th, the Secretary of State</p> <p>13 issued guidance that a wet ink signature was</p> <p>14 necessary for applications that were submitted via</p> <p>15 fax, right?</p> <p>16 A Yes.</p> <p>17 Q And October 9th was the deadline --</p> <p>18 October 9th, 2018, was the deadline to register to</p> <p>19 vote that year.</p> <p>20 A I can't remember the exact day the</p> <p>21 cutoff was, but it's right around there.</p> <p>22 Q Okay. Were there any problems with the</p>	<p>1 Q And when you received the paper copy</p> <p>2 that was mailed, was the signature quality the</p> <p>3 same as the copy that had been faxed?</p> <p>4 A No, because it was actually a duplicate</p> <p>5 of the one that was faxed.</p> <p>6 Q So it was -- did they have exactly the</p> <p>7 same problems as the copy that was faxed?</p> <p>8 A Yes.</p> <p>9 Q Did you tell Toni that?</p> <p>10 A Yes, I showed her.</p> <p>11 Q I'm sorry?</p> <p>12 A Yes, I showed her. I showed her the --</p> <p>13 Q You showed her.</p> <p>14 A Yes.</p> <p>15 Q How did Toni respond?</p> <p>16 A She said if you can't see them, you're</p> <p>17 going to have to ask for another application, send</p> <p>18 them out a paper application in the mail because</p> <p>19 we don't -- we can't see the signature.</p> <p>20 Q Ask who for another voter registration</p> <p>21 application?</p> <p>22 A The voter who submitted the application</p>
<p>1 signature lines on the applications that were</p> <p>2 submitted by Vote.org?</p> <p>3 A Yes, there were some signatures and some</p> <p>4 of them came with -- you know, you can barely see</p> <p>5 them. Some of them came with just black. So I</p> <p>6 don't know if it was the application or what was</p> <p>7 going on.</p> <p>8 Q And of the 737 applications that were</p> <p>9 submitted by Vote.org, how many of them,</p> <p>10 approximately, had problems with the signature</p> <p>11 line where it was blank, blacked out, illegible,</p> <p>12 or just such poor quality you couldn't accept it?</p> <p>13 A Not a lot. Like I would say 20 percent.</p> <p>14 I wouldn't even go that high. It was probably</p> <p>15 closer to 15 percent.</p> <p>16 Q Approximately 15 percent, right?</p> <p>17 A Right.</p> <p>18 Q And you testified that for those</p> <p>19 approximate 15 percent, Toni directed you to wait</p> <p>20 until the mailed applications arrived. Is that</p> <p>21 correct?</p> <p>22 A Yes.</p>	<p>1 that we couldn't see their signature, we would</p> <p>2 send them a new blank application.</p> <p>3 Q Did you also communicate to Vote.Org?</p> <p>4 A No.</p> <p>5 Q Why not?</p> <p>6 A That was just an internal discussion --</p> <p>7 internal process that we did.</p> <p>8 Q Prior to meeting with Vote.org on</p> <p>9 September 21st of 2018, what was your policy on</p> <p>10 wet signatures in relation to faxed voter</p> <p>11 registrations?</p> <p>12 A Same thing that I said earlier, it's</p> <p>13 a -- when a fax comes in, they -- we put them in</p> <p>14 and we wait for the original signature to come,</p> <p>15 continue processing their application to get</p> <p>16 registered. If it doesn't come within four</p> <p>17 business days, they get rejected.</p> <p>18 Q And after your meeting with Vote.org on</p> <p>19 September 21st of 2018 until the Secretary of</p> <p>20 State issued a statement on October 4th of 2018,</p> <p>21 what was your office's policy on wet signatures in</p> <p>22 relation to faxed voter registration applications?</p>

29 (Pages 113 to 116)

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1 Q And if they cure that defect, what is
 2 the effective date of their voter application?
 3 A They respond ten days from the rejection
 4 or incomplete letter. It goes back to the
 5 original application date. If it's after, then
 6 they -- the dates, say if it's the 12th day, then
 7 it goes off of that date.
 8 Q So the -- sorry. I got a notification
 9 that my Internet wasn't stable so I paused for a
 10 moment.
 11 So the 478 applications received,
 12 applicants that submitted applications by fax in
 13 2018 that were rejected would have received
 14 notification from your office at some point,
 15 right?
 16 A Right.
 17 Q Of that 478 applications that were
 18 submitted by fax in 2018, do you know how many of
 19 them were actually from Vote.org?
 20 A I don't.
 21 Q Is it fair to say, though, not all of
 22 the 478 voter registration applications that you

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1 applications, you could not have sent out a notice
 2 to them that their application had been rejected,
 3 could you?
 4 A That's right.
 5 Q Those 259 voters potentially were
 6 disenfranchised, weren't they?
 7 A Could have been, yes.
 8 Q By Vote.org?
 9 A From when they sent the original
 10 application and I got them registered, I don't
 11 have that information, though.
 12 Q Do you know how many of the -- do you
 13 know how many of the applications -- voter
 14 registration applications that were submitted by
 15 Vote.org, how many of the applicants themselves
 16 subsequently cured the defects with their
 17 applications?
 18 A No, I don't.
 19 Q If they didn't cure the defects with
 20 their applications, they couldn't vote, right?
 21 MR. HARRIS: Objection. Calls for
 22 speculation.

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1 received in 2018 were from Vote.org?
 2 A Yes, that's fair.
 3 Q So we've got two numbers. We've got the
 4 number provided by Vote.org of 737 individuals who
 5 used their app and wanted to register via fax,
 6 right?
 7 A Right.
 8 Q And then we've got the 478 applications
 9 that you received on the 28th that were actually
 10 by fax, right?
 11 A Yes.
 12 Q And not even all of those were from
 13 Vote.org, right?
 14 A Right.
 15 Q Let's just assume they were. That's
 16 just still 259 applications that you never
 17 received from Vote.org, right?
 18 MR. HARRIS: Objection. Calls for
 19 speculation.
 20 Q Oh, go ahead and answer. I'm sorry.
 21 A I said yes. I'm sorry.
 22 Q If you didn't receive those 259

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1 A Yes, if they never got registered, they
 2 couldn't vote.
 3 MR. STONE: I am almost done. If we
 4 could take a five-minute break, I think when we
 5 come back, I may just have a few more questions
 6 and I'll pass the witness.
 7 VIDEO TECHNICIAN: All right. The time
 8 is 4:49 p.m. Off the record.
 9 (A brief recess was taken.)
 10 VIDEO TECHNICIAN: All right. The time
 11 is 5:02 p.m. We are back on the record.
 12 MR. STONE: I pass the witness.
 13 MR. HARRIS: Okay. I didn't expect that
 14 one. Fair enough.
 15 FURTHER EXAMINATION
 16 BY MR. HARRIS:
 17 Q All right. So let's -- I only have a
 18 few questions, Mr. Lopez, and then I will be out
 19 of your face. And so what I want to do is circle
 20 back on your meeting with my client, Vote.org.
 21 Okay? And so as I understand your earlier
 22 testimony was that you were not there for the

EXHIBIT C: MEMORANDUM OPINION AND ORDER

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

VOTE.ORG,

Plaintiff,

v.

Case No. SA-21-CV-00649-JKP

JACQUELYN CALLANEN, in her official capacity as the Bexar County Elections Administrator; BRUCE ELFANT, in his official capacity as the Travis County Tax Assessor-Collector; REMI GARZA, in his official capacity as the Cameron County Elections Administrator; and MICHAEL SCARPELLO, in his official capacity as the Dallas County Elections Administrator;

Defendants,

KEN PAXTON, in his official capacity as the Attorney General of Texas, LUPE C. TORRES, in his official capacity as the Medina County Elections Administrator; TERRIE PENDLEY, in her official capacity as the Real County Tax Assessor-Collector

Intervenor Defendants.

MEMORANDUM OPINION AND ORDER

Before the Court are Plaintiff Vote.org's Motion for Summary Judgment and Defendants' and Intervenor Defendants' (collectively referred to as "Texas" because these parties are all representatives of the state) Motions for Summary Judgment, and the responsive filings. *ECF Nos. 108, 109, 111, 120, 121, 122, 124, 128, 132, 134*. Upon consideration, the Court concludes

Vote.org has standing to assert the causes of action raised and to bring this action. The Court concludes Texas's Motions for Summary Judgement (*ECF Nos. 108, 109*) are DENIED. Vote.org's Motion for Summary Judgment (*ECF No. 111*) is GRANTED. Vote.org's request for permanent injunction is GRANTED, and Vote.org's request for declaratory relief is GRANTED IN PART.

The Court declares the provision contained in Texas Election Code § 13.143(d-2) that requires "a copy of the original registration application *containing the voter's original signature* must be submitted by personal delivery or mail" violates Section 1971 of the Civil Rights Act and violates the First and Fourteenth Amendments of the U.S. Constitution by placing an undue burden on Texas citizens' right to vote. Vote.org's request for declaratory relief that "any other provision which requires a voter to sign an application form with an original, wet signature in order to register to vote" violates the Civil Rights Act and the First and Fourteenth Amendment is denied.

UNDISPUTED FACTUAL BACKGROUND

The facts underlying this action are primarily undisputed. Vote.org is a nonprofit, nonpartisan organization. Vote.org's mission and outreach activities include: (1) use technology to simplify political engagement, increase voter turnout, and strengthen American democracy; (2) work to support low-propensity voters, including racial and ethnic minorities and younger voters who tend to have lower voter-turnout rates; and (3) help Texans register to vote and verify registration status. The named Defendants serve as voter registrars and oversee voter registration activities in Texas.

To assist voters in completing voter registration applications, Vote.org developed and launched an application (“web app”) accessed by computer or smartphone. By accessing Vote.org’s web app, a prospective voter registrant can submit their required information through prompts. This information is then auto-populated into an electronic version of the federal voter registration form. The prospective voter registrant then signs a piece of paper, takes a picture of the signature, and uploads that picture to the web app. The web app affixes the signature to the populated electronic voter registration form and sends this form to a third-party vendor. The third-party vendor then “faxes” the voter registration form to the registrant’s appropriate county registrar.¹

In October 2018, Secretary of State Pablo independently questioned the validity of the voter registration forms submitted by telephonic facsimile using Vote.org’s web app on the basis the registration forms were not “signed by the applicant” as required by the Texas Elections Code because the submissions contained a graphic image, or “electronic” signature, not an original, “wet signature.” Thus, Secretary Pablo deemed the voter registration forms incomplete because they lacked original, wet signatures. Upon Secretary Pablo’s instruction, Texas Elections Administrators rejected all voter registration forms submitted that included only an electronic signature, effectively ending Vote.org’s use of the web app.

Thereafter, Section 14 of House Bill 3107 (HB 3107) was codified during the 2021 legislative session. HB 3107 §14, 87th Leg., Reg. Sess. (Tex. 2021). HB 3107 amended Texas Election Code Section 13.143, among others, by adding the original, “wet signature” requirement to Section 13.143(d-2), which states, as amended, “[f]or a registration application submitted by telephonic facsimile machine to be effective, a copy of the original registration application *contain-*

¹ The form of submission used by the third-party vendor is not clear from the record, i.e. whether the document is printed and sent by telephonic facsimile machine, or whether the electronic version is sent by email. However, this distinction is not relevant to the Court’s substantive determination herein.

ing the voter's original signature must be submitted by personal delivery or mail and be received by the registrar not later than the fourth business day after the transmission by telephonic facsimile machine is received." Tex. Elec. Code Ann. § 13.143(d-2)(2021)("the Wet Signature Rule")(emphasis added to designate amendment).² Upon receipt of the printed, signed copy, the previous telephonic-facsimile submission is deemed "complete," with no further discretionary review. *Id.* If the printed version with the wet signature is not received within four business days, the telephonic-facsimile submission is deemed incomplete and rejected. If a voter registration form is rejected for any reason, the registrar or Elections Administrator must send a notice of incomplete-ness to the registrant and permit the registrant to resubmit another voter registration form curing the deficiencies. Tex. Elec. Code Ann. § 13.073 (2003).

Vote.org brought this action on July 8, 2021. In its Complaint seeking declaratory and injunctive relief, Vote.org specifically challenges § 13.143(d-2) of the Texas Election Code (the Wet Signature Rule).³ Vote.org alleges the addition of the Wet Signature Rule unlawfully targets and burdens its efforts to increase voter turnout by imposing an arbitrary barrier to registration that denies citizens the opportunity to vote for reasons entirely unrelated to their eligibility to vote. On this basis, Vote.org asserts two causes of action. First, Vote.org alleges the Wet Signature Rule violates § 1971 of the Civil Rights Act of 1964, codified at 52 U.S.C. § 10101(a)(2) (for clarity, this specific provision will be referred to simply as "the Civil Rights Act"). Second, Vote.org alleges the Wet Signature Rule violates the First and Fourteenth Amendments of the

² Prior to enactment of the Wet Signature Rule, a voter who chose to register by telephonic facsimile machine was required to mail a copy of the application to their registrar; however, the previous version did not require that the copy include an original, wet signature. Prior to amendment, § 13.143(d-2) stated: "For a registration application submitted by telephonic facsimile machine to be effective, a copy of the registration application must be submitted by mail and be received by the registrar not later than the fourth business day after the transmission by telephonic facsimile machine is received." 2013 Tex. Sess. Law Serv. Ch. 1178 (S.B. 910).

³ Other cases have used the term "Wet Signature Rule" in analysis of other challenges to other provisions in the Texas Election Code. This Court uses this moniker limited to reference to Texas Election Code § 13.143(d-2), only, as that is the only statute challenged in this action.

U.S. Constitution by placing an undue burden on citizens' right to vote. Vote.org asserts its causes of action under 42 U.S.C. § 1983.⁴ Vote.org requests preliminary and permanent injunction enjoining enforcement of the Wet Signature Rule and requests this Court declare "the Wet Signature Rule . . . and any other provision requiring a voter to sign an application form with an original, wet signature in order to register to vote violates . . . the Civil Rights Acts and violates the First and Fourteenth Amendments of the U.S. Constitution."

Ken Paxton, in his official capacity as the Attorney General of Texas, intervened in the suit and now acts as the lead party in asserting the Defendants' and Intervenors' position. The matter is now before the Court upon the parties' competing Motions for Summary Judgment. This Court held a status conference on May 18, 2022, during which the Court accepted limited argument on some of the issues presented. At the hearing, both parties agreed no additional hearing or argument is necessary, and the Court can decide and dispose of this matter upon submission of the summary-judgment briefs. The Court provided another opportunity for hearing, and the parties did not request further hearing. *ECF No. 141*. Consequently, the Court will only examine the request for permanent injunctive relief upon submission of the summary judgment briefs.

DISCUSSION

I. STANDING

Texas first asserts this Court does not have subject matter jurisdiction over Vote.org's causes of action because Vote.org lacks standing, as it has no concrete injury, and Texas does not cause Vote.org's alleged injury. *ECF No. 108, pp. 8-16, 24-25; ECF No. 109, pp. 2-8, 11-13*.

⁴ Section 1983 "provides a federal cause of action for the deprivation, under color of law, of a citizen's rights, privileges, or immunities secured by the Constitution and laws of the United States." *Livadas v. Bradshaw*, 512 U.S. 107, 132 (1994) (citation and internal quotation marks omitted).

Further, Texas argues Vote.org has no private cause of action under the Civil Rights Act because the statute only authorizes the Attorney General to bring suit. Finally, Texas argues Vote.org lacks statutory standing to sue on behalf of voters under § 1983. *Id.*

A party's standing is essential to a court's exercise of subject matter jurisdiction. *Somers Drug Stores Co. Emp. Profit Sharing Tr. v. Corrigan*, 883 F.2d 345, 348 (5th Cir. 1989). A Court must examine its jurisdiction at any stage of litigation. *Id.*

This Court already determined these same arguments and challenge to the Court's subject matter jurisdiction in its disposition of Texas's Motions to Dismiss for Lack of Jurisdiction. In that disposition, this Court held Vote.org does have organizational standing to assert this action. Specifically, this Court held Vote.org can bring an action under the Civil Rights Act and § 1983 because the Civil Rights Act does allow a private action, and an organization can allege personal injury under § 1983. *See ECF Nos. 49,70* (citing collection of cases recognizing a private right of action under the Civil Rights Act and § 1983). Texas repeats the same arguments as presented in the previously disposed Motions to Dismiss and fails to address the flaws in its argument that this Court identified. Texas does not cite any new authority or support for these same arguments it presented in the Motions to Dismiss. *See id.*

Consequently, to the extent Texas seeks summary judgment of this action based upon Vote.org's lack of standing, summary judgment is denied for the same reasons provided in disposition of the Motions to Dismiss.

II. FAILURE TO STATE A CLAIM

Intervenor Defendants Lupe Torres and Terrie Pendley assert additional argument that the Civil Rights Act does not provide Vote.org with a cause of action because Vote.org failed to

allege any racial discrimination. For this reason, Torres and Pendley assert Vote.org fails to state a claim under the Civil Rights Act, and they are entitled to judgment as a matter of law.

This Court addressed this same argument which cited the same supporting cases, in its disposition of Torres and Pendley's Motion to Dismiss. *See ECF Nos. 49,70*. In addressing this argument, this Court held it did not find support for the contention that Vote.org's cause of action challenging the Civil Rights Act failed because it did not allege racial discrimination. *See id.* This Court explained why Torres and Pendley's cited cases, *Broyles v. Texas*, 381 Fed.Appx. 370 (5th Cir. 2010) and *Kirksey v. City of Jackson*, 663 F.2d 659 (5th Cir. 1981), do not apply in this action and concluded, "the Court cannot find that a failure to allege racial motivation bars [Vote.org's] claim."

Consequently, to the extent Lupe Torres and Terrie Pendley seek summary judgment on any portion of this action based upon Vote.org's failure to state a claim due to their failure to assert racial discrimination, summary judgment is denied.

III. COMPETING MOTIONS FOR SUMMARY JUDGMENT

LEGAL STANDARD

1. Summary Judgment

Summary judgment is appropriate if the record shows "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see also Rodriguez v. Pacificare, Inc.*, 980 F.2d 1014, 1019 (5th Cir. 1993).⁵ "A fact is material only if its resolution would affect the outcome of the action." *Wiley v. State Farm Fire & Cas. Co.*, 585 F.3d 206, 210 (5th Cir.

⁵Although 2010 amendments replaced "issue" with "dispute," the summary judgment standard "remains unchanged." Fed. R. Civ. P. 56 advisory committee notes (2010 amend.).

2009). A genuine dispute for trial exists if the record taken as a whole could lead a reasonable trier of fact to find for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Bayle v. Allstate Ins. Co.*, 615 F.3d 350, 355 (5th Cir. 2010). Because there must be a genuine dispute of material fact, “the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

The moving party bears the initial burden of informing the court of the basis for the motion and of identifying those portions of the record which demonstrate the absence of a genuine dispute of material fact or the appropriateness of judgment as a matter of law. *Celotex Corp.*, 477 U.S. at 323; *Adams v. Travelers Indem. Co.*, 465 F.3d 156, 163 (5th Cir. 2006). The movant is not required to negate the elements of the nonmovant’s case but may satisfy its summary judgment burden by demonstrating the absence of facts supporting specific elements of the nonmovant’s cause(s) of action. *Little v. Liquid Air Corp.*, 37 F. 3d 1069, 1075, 1076 n.16 (5th Cir. 1994).

To satisfy this burden, the moving party must provide affidavits or identify any portion of the pleadings, discovery or admissions that demonstrate the absence of a triable dispute of material fact. *Celotex Corp.*, 477 U.S. at 323; *Rodriguez*, 980 F.2d at 1019. “If the moving party fails to meet this initial burden, the motion must be denied, regardless of the nonmovant’s response.” *Pioneer Expl., L.L.C. v. Steadfast Ins. Co.*, 767 F.3d 503, 511 (5th Cir. 2014)(internal citation omitted). To be entitled to summary judgment on its own cause of action, a plaintiff must show there is no genuine dispute of material fact and establish each element of its cause of action as a matter of law. *Fontenot v. Upjohn Co.*, 780 F.2 1190, 1194 (5th Cir. 1986).

If the movant carries its initial burden, the burden shifts to the nonmovant to present competent summary judgment evidence showing the existence of a genuine dispute of material fact. *Matsushita*, 475 U.S. at 586-87; *see also* Fed. R. Civ. P. 56(c). Upon the shifting burden, “[u]nsubstantiated assertions, improbable inferences, and unsupported speculation are not sufficient to defeat a motion for summary judgment.” *Brown v. City of Houston, Tex.*, 337 F.3d 539, 541 (5th Cir. 2003); *see also Eason v. Thaler*, 73 F.3d 1322, 1325 (5th Cir. 1996). The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which this evidence raises a genuine dispute of material fact. *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998)(citing *Forsyth v. Barr*, 19 F.3d 1527, 1537 (5th Cir. 1994)).

2. Permanent Injunction

A court may grant a permanent injunction upon a properly supported Motion for Summary Judgment. *Calmes v. United States*, 926 F. Supp. 582, 591 (N.D. Tex. 1996). To obtain permanent injunction, a plaintiff must demonstrate “(1) actual success on the merits; (2) a substantial threat that failure to grant the injunction will result in irreparable injury; (3) the threatened injury outweighs any damage that the injunction may cause the opposing party; and (4) the injunction will not disserve the public interest.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006); *O’Connor v. Smith*, 427 Fed. Appx. 359, 365 (5th Cir. 2011). The decision to grant or deny a permanent injunction is grounded in principles of equity and is in the discretion of the district court. *eBay Inc.*, 547 U.S. at 391; 15 U.S.C. § 1116(a).

ANALYSIS

1. Success on the Merits

A. Clarification of the Scope of Analysis

All parties in this case, through their argument in the briefs and orally during hearing, attempt to expand the scope of this case to be a challenge to the prohibition of any electronic submission of the voter registration form in Texas. However, as revealed by the clear terms of § 13.143(d-2), which is the only Election Code provision challenged in this action, the challenges presented are limited in scope to the tender of a voter registration form by telephonic facsimile machine. Consequently, the Court’s analysis and review of the legality and constitutionality of the “Wet Signature Rule” as defined for this action applies only to a registrant who chooses to submit a voter registration form by telephonic facsimile machine, not to the much broader scope of tender of a voter registration form through any electronic submission. A telephonic facsimile machine, sometimes referred to as “Fax” or “telefax,” by definition, is “equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line onto paper.” [LawInsider.com/definitions](https://www.lawinsider.com/definitions). When using a telephonic facsimile machine, the transmission is sent to a telephone number connected to a printer or other output device. See [Cornell Law School Legal Information Institute](https://www.cornell.edu/law-library/legal-information-institute/), citing 42 U.S.C.A. § 227(a)(3) (ruled unconstitutional on other grounds, *Barr v. Am. Ass’n of Political Consultants, Inc.*, 140 S. Ct. 2335, 2341 (2020)); see also Wikipedia.

Similarly, Vote.org seeks to expand declaratory relief by requesting the Court declare “any other provisions requiring a voter to sign an application form with an original, wet signature in order to register to vote violates . . . the Civil Rights Acts and the First and Fourteenth

Amendments of the U.S. Constitution.” This expanded request for declaratory relief goes beyond Vote.org’s statutory challenge, and therefore, is not properly before the Court.

Finally, the parties present the same arguments in their own Motions for Summary Judgments as they present in their Responses to the opposing parties’ Motions for Summary Judgment. Consequently, this Court will analyze all parties’ arguments pertinent to each cause of action, while applying the pertinent summary-judgment burdens of proof to each party.

B. CAUSE OF ACTION ONE: CIVIL RIGHTS ACT; 52 U.S.C. § 10101(a)(2)

Section 1971 of the Civil Rights Act provides:

[n]o person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.

52 U.S.C. § 10101(a)(2).

Framing this language of the Civil Rights Act as it pertains to this action: Texas cannot deny a citizen the right to vote based upon the citizen’s failure to provide a wet signature on a copy of the registration form in conjunction with a voter registration form submitted previously by telephonic facsimile machine, if this wet signature is not material in determining whether the registrant is qualified to vote. *See id.* In this context, the Court must look to Texas law to determine the requirements to be qualified to vote.

Texas Election Code 11.002(a) enumerates the requirements to be *qualified* to vote:

In this code, “qualified voter” means a person who: (1) is 18 years of age or older; (2) is a United States citizen; (3) has not been determined by a final judgment of a court exercising probate jurisdiction to be: (A) totally mentally incapacitated; or (B) partially mentally incapacitated without the right to vote; (4) has not been finally convicted of a felony or, if so convicted, has: (A) fully discharged the per-

son's sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court; or (B) been pardoned or otherwise released from the resulting disability to vote; (5) is a resident of this state; and (6) *is a registered voter*....

Tex. Elec. Code Ann. § 11.002(a) (2011)(emphasis added). Following § 11.002(a)(6), to be *eligible to register* to vote, Texas Election Code 13.001 equally requires:

a person must: (1) be 18 years of age or older; (2) be a United States citizen; (3) not have been determined by a final judgment of a court exercising probate jurisdiction to be: (A) totally mentally incapacitated; or (B) partially mentally incapacitated without the right to vote; (4) not have been finally convicted of a felony or, if so convicted, must have: (A) fully discharged the person's sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court; or (B) been pardoned or otherwise released from the resulting disability to vote; and (5) be a resident of the county in which application for registration is made....

Tex. Elec. Code Ann. § 13.001 (2011). To register to vote in Texas, a registrant must fill out and submit a voter registration form to a voter registrar. Tex. Elec. Code Ann. § 13.002 (2021). A voter “registration application must be in writing and signed by the applicant.” Tex. Elec. Code § 13.002(b). A registrant may submit a voter registration form to the county registrar by personal delivery, by mail, or by telephonic facsimile machine. Tex. Elec. Code § 13.002(a).

1. Summary Judgment Arguments

Texas⁶ contends it is entitled to summary judgment on the Civil-Rights-Act cause of action on two bases: (1) the requirement that a telephonic-facsimile registrant also submit a copy of the original form with a wet signature is material to determination of the registrant’s qualification⁷ to vote, and (2) no registrant is denied the right to vote even if a registration form submitted by telephonic facsimile is rejected. *ECF No. 108, pp. 24-25; ECF No. 109, pp. 9-13*. With regard

⁶ All Defendants and Intervenor Defendants join in these arguments or present the same arguments in their own Motion for Summary Judgment.

⁷ Texas and Vote.org use the terms “qualification to vote” and “eligibility to vote” interchangeably. However, the Civil Rights Act specifically focuses on a voter’s qualification to vote. For this reason, the Court will presume the parties’ use of “eligibility” is intended to mean “qualification.” The Court will analyze only whether the Wet Signature Rule is material to determining a registrant’s qualification to vote.

to the first argument, Texas argues it is well settled that “requiring a signature” on a registration form is material to determining whether a voter is qualified to vote. Following this precedent, because the Wet Signature Rule simply requires those who register by telephonic facsimile machine provide a signature, it is material to helping Texas elections administrators determine whether a registrant is qualified to vote. Texas contends there are two reasons that “requiring a signature” is material to the determination of a registrant’s qualification to vote. First, the governmental interest in the prevention of fraud requires that elections administrators have a means to verify the registrant is the person they claim to be. Second, a signature is an affirmative confirmation by the registrant that the information provided is correct.

Next, Texas contends the Wet Signature Rule does not deny any person the right to vote, and therefore, cannot be determined to violate the Civil Rights Act. Because a telephonic-facsimile registrant is informed and permitted to resubmit the proper registration form if it is deemed incomplete due to the omission of a wet signature, Texas contends no voter is denied the right to vote, and therefore, the Civil Rights Act cannot be implicated.

In response, and in its own Motion for Summary Judgment, Vote.org contends it is entitled to summary judgment declaration that the Wet Signature Rule violates the Civil Rights Act because a wet signature is not material to determination of an individual’s qualification to vote. *ECF No. 111, pp. 8-12*. Specifically, Vote.org contends the requirement that a prospective voter who seeks to register by telephonic facsimile machine also submit an additional wet signature on the original voter registration form does not relate to any of the statutory requirements to be qualified to vote. The Wet Signature Rule does not support Texas’s asserted interest in preventing fraud or ensuring the registrant’s identity or accuracy of information provided.

2. Substantive Analysis

Texas's Motion for Summary Judgment

Argument One: Whether the Wet Signature Rule Denies the Right to Vote

As a preliminary argument, Texas contends the Wet Signature Rule does not deny a citizen the right to vote because any registrant who submits an incomplete voter registration form is notified and given an opportunity to cure any deficiency. Because it does not deny anyone the right to vote, the Wet Signature Rule cannot violate the Civil Rights Act.

Vote.org attempts to reframe the injury necessary to implicate the Civil Rights Act to a direct denial of the right to vote. However, a restriction need not be directly fatal to the right to vote to be violative of the Civil Rights Act. The language of the statute states a voter cannot be denied the right to vote because of “an error or omission on any . . . paper relating to any application, registration, or other act requisite to voting. . . .” 52 U.S.C. § 10101(a)(2). Based upon the specific language of the statute, Texas’s argument that the Civil Rights Act cannot be violated by the Wet Signature Rule must fail.

Further, the undisputed facts defeat this argument. The parties do not dispute that registration applications containing a graphic image of a signature are deemed incomplete and rejected because they are not “signed by the applicant.” *ECF No. 111, App. p. 89 (Elfant Dep. 67:6-20), p. 201 (Callanen Resp. to Pl.’s Interrogs. No. 1); ECF No. 108, App. (Garza Dep. pp. 85-88)*. Defendant Michael Scarpello admits, “[i]f you can’t register to vote, you can’t vote. [The Wet Signature Rule] makes it harder to register to vote . . .” *ECF No. 111, App. p. 182 (Scarpello Dep., at p. 101:2-8)*.

If a registrant does not timely cure the deficiency by providing a form with a wet signature, the registrant will not be registered to vote, and therefore, cannot vote. *ECF No. 111, App.*

p. 265 (Elfant Dep. 172:5-175:4), p. 86 (Callanen Dep. pp. 248), 190-91 (Scarpello Dep, pp. 184:15-186:14). Even if the registrant has the opportunity to cure any deficiencies, a registrant who is unable to print or provide postage for the form or one who is unable to personally deliver the form will not be registered to vote, and therefore, cannot vote. *See id.*

Consequently, the Wet Signature Rule imposes an avenue to deny a citizen the right to vote due to “an error or omission on any record or paper relating to any application, registration, or other act requisite to voting.” *See* 52 U.S.C. § 10101(a)(2). This error or omission of a wet signature on a supplemental copy of the voter registration form of a registration submitted by telephonic facsimile machine necessarily implicates and poses the potential threat to a citizen’s right to vote. Although the registrant has multiple choices of the manner in which to submit a voter registration form, the Wet Signature Rule may still be violative of the Civil Rights Act.

For this reason, Texas’s preliminary argument must fail, and the Court will determine whether the Wet Signature Rule violates the Civil Rights Act.

Argument Two: Whether Texas’s Signature Requirement Violates the Civil Rights Act

First, in making this argument, Texas attempts to expand the scope of the Court’s scrutiny of § 13.143(d-2) to be whether Texas’s requirement of a signature on the voter registration form is violative of the Civil Rights Act. Through these semantics, Texas attempts to subtly strengthen the importance of § 13.143(d-2) by re-framing Vote.org’s challenge to be contesting Texas’s “requirement of a signature.” However, Vote.org is not challenging Texas’s requirement of a signature on the voter registration form, nor is Vote.org disputing or challenging the importance of the requirement that the registration form submitted by telephonic facsimile machine be “signed by the applicant.” Through its challenge in this action, Vote.org does not attempt to eliminate the requirement that a voter registration form contain a signature. Instead, Vote.org

challenges the requirement that a registration form submitted by telephonic facsimile machine also be supplemented with a mailed or delivered copy of the registration form containing a wet signature. For this reason, to the extent Texas argues the requirement of a signature on the voter registration form is material to determination whether the applicant is qualified to vote, this argument is misguided and must fail under the facts and challenges of this action.

The true issue of this matter is Texas seeks to conform the meaning of the term “signed by the applicant,” as required in Texas Election Code § 13.002⁸, to be “wet signature,” only, when applied in the context of a voter registration form submitted by telephonic facsimile machine.

Nowhere in the Texas Elections Code is “signed by the applicant” defined or limited to a wet signature, only. Elsewhere in the Election Code, a graphic image of a signature is accepted to render a registrant’s form complete. The parties do not dispute that Texas accepts voter registration forms submitted electronically through the Texas Department of Public Safety (DPS). *ECF No. 111, App. p. 92 (Elfant Dep. pp. 107-108), p. 139 (Ingram Dep. pp. 81-82)*. To provide this service to those requesting it, DPS combines the registrant’s personal information provided through the DPS services rendered with an image of the applicant’s signature that is held within DPS’s database. *Id.* Texas accepts these electronic submissions as complete registration and holds the voter’s signature electronically when submitted through this avenue. *Id.* Texas does not require those who register through DPS to also provide a hard copy of the registration form with a wet signature. *See id.*

In other Texas statutory provisions, a graphic image of a signature is widely accepted as true and correct and the binding inscription of the signatory. For example, under the Texas Business & Commerce Code, “(a) A record or signature may not be denied legal effect or enforcea-

⁸ A voter “registration application must be in writing and signed by the applicant.” Tex. Elec. Code § 13.002(b).

bility solely because it is in electronic form; (b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation; (c) If a law requires a record to be in writing, an electronic record satisfies the law; (d) If a law requires a signature, an electronic signature satisfies the law.” Tex. Bus. & Comm. Code Ann. § 322.007(d); Uniform Electronic Transactions Act. Similarly, electronic signatures are accepted in executing an advance health directive, Tex. Health & Safety Code § 166.011, signing a divorce decree, *see Bartee v. Bartee*, No. 11-18-0017-CV, 2020 WL 524909, at *3 (Tex. Ct. App. Jan. 31, 2020), and closing on real property, Tex. Prop. Code Ann. § 12.0013.

In making this argument that “signed by the applicant” can only mean a wet signature, Texas provides abundant evidentiary and legal support for the conclusion that a signature is important and vital to determine a voter’s qualification to vote; however, Texas fails to show or explain why a *wet signature* is required in this instance to determine the registrant’s qualification to vote. Texas fails to demonstrate why the signature provided on the registration form submitted by telephonic facsimile is any less reliable than the wet signature provided on the later submitted copy. Texas also does not provide evidence or argument to show how the required wet signature relates to any of the statutory enumerations for being qualified to vote. *See* Tex. Elec. Code § 11.002.

Texas argues the registrant’s wet signature confirms the accuracy of information provided; however, the signature provided through telephonic facsimile machine must also provide this attestation.⁹ Tex. Elec. Code Ann. § 13.122 (2006); *ECF No. 111, App. pp. 175-176 (Scarpello*

⁹ Texas Election Code 13.122: (a) In addition to the other statements and spaces for entering information that appear on an officially prescribed registration application form, each official form must include: (1) the statement: “I understand that giving false information to procure a voter registration is perjury and a crime under state and federal law. . . . (13) a statement warning that a conviction for making a false statement may result in imprisonment for up to the maximum amount of time provided by law, a fine of up to the maximum amount provided by law, or both the imprisonment and the fine. . . .

Dep. pp. 67, 75), p. 270 (Scarpello Answer to Int.), p. 115 (Hailey Dep. pp. 49-53), p. 97 (Elfant Dep. pp. 129-130). Consequently, the voter submits effective attestation of the accuracy of the information provided through the registration form submitted by telephonic facsimile machine. Although Texas asserts “[a] signature” performs this function, Texas does not show or provide proof or legal support demonstrating these attestations of accuracy are only valid or effective through submission of a wet signature.

Texas also asserts its interest in fraud prevention makes the Wet Signature Rule material to determining a registrant’s qualification to vote. Again, Texas provides no evidence or support for its argument that a wet signature is necessary to prevent voter registration fraud. Texas provides no credible evidence that a wet signature submitted by mail or personal delivery is less susceptible to fraud than the imaged counterpart submitted by telephonic facsimile machine. The other forms of voter registration through submission of the postcard by mail or personal delivery also carry the same risk of voter fraud, as it is undisputed that no one checks the registrant’s identity to verify accuracy, or lack of fraud, and the registration form is only reviewed for completeness upon receipt. *ECF No. 111, App. p. 176 (Scarpello Dep. pp. 74-78), p. 97 (Elfant Dep. pp. 129-30).* Consequently, Texas does not provide evidence or support to demonstrate a wet signature on a copy of the registration form is any different or more reliable than the signature submitted by telephonic facsimile machine or that this wet signature is material to determination whether a voter is qualified to vote.

Texas asserts that errors during the implementation of Vote.org’s web app in 2018 supports the Wet Signature Rule and the conclusion that a wet signature is material in determining a registrant’s qualification to vote. However, the summary judgment evidence provided demonstrates these errors have been corrected. *ECF No. 108, App. p. 269 (Elfant Dep. 188:8-15).* Re-

regardless, even if the glitches in Vote.org's web app still exist, the Texas Elections Administrators have authority to reject any voter registration form if it is illegible or otherwise incomplete, regardless of the manner of submission. If telephonic facsimile transmission is poor or renders an illegible form or signature, or is subject to other omission, then according to Elections Code and Texas's own admission, the form shall be rendered incomplete and the registrant provided an opportunity to cure the omissions or errors. *ECF No. 111, App. p. 161 (Lopez Dep. pp. 124-125), Paxton App. at 426, Ingram Dep. at 202:13–203:1; ECF No. 108 App. p. 206 (Callanen Dep. at 248:3–7); pp. 514-15 (Lopez Dep. at 124:17–125:7)*. The Wet Signature Rule is not necessary to impart this authority to reject a registration form that is illegible or otherwise incomplete, regardless of the avenue in which it is submitted.

For these reasons, Texas fails to prove entitlement to summary judgment on the Civil Rights Act cause of action as a matter of law. Texas's Motion for Summary Judgment on this cause of action is denied.

Vote.org's Motion for Summary Judgment

In support of its Motion for Summary Judgment on this cause of action, Vote.org provides evidence of the county registrars' admission that they do not use any signature to check for "fraud" or to verify identity during the registration process. *ECF No. 111, App. pp. 178-79 (Scarpello Dep. 84:3-85:1), 166 (Pendley Dep. 70:14-18, 71:18-21)*. The registrars do not compare the telephonic-facsimile submitted signature against the wet signature, nor do they use either signature for identity verification purposes. *ECF No. 108, App. p. 248 (Elfant Dep. p. 104:19-22), p. 177 (Scarpello Dep. p. 77:4-6), p. 108 (Garza Dep. p. 103:19-22)*. The signature provided during the registration phase is saved electronically for comparison if a voter fraud investigation is initiated or undertaken. *ECF No. 111, App. pp. 78-79 (Callanen Dep. at pp. 111-115)*.

At the registration stage, the Elections Administrator checks only that the registrant provided all required information, provided attestation of the accuracy of this information, and the form is otherwise “complete.” *Id.* (*Callanen Dep. at pp. 159:2-6*); (*Garza Dep., at 107:17-108:1*). The Election Administrators do not exercise any discretion or substantive review upon submission of a voter registration form other than to ensure it is complete and legible. *Id.*; *ECF No. 111, App. p. 176* (*Scarpello Dep. pp. 74-78*), *p. 97* (*Elfant Dep. pp. 129-30*).

Vote.org provides summary judgment evidence that when a registrant submits a registration form by postcard, the Elections Administrator scans the postcard, including the voter’s signature and stores this information electronically. The original postcard with the wet signature is not saved or stored for later use. *ECF No. 111, App. p. 81* (*Callanen Dep. p. 135*).

Vote.org provides summary judgment evidence that when a registrant registers to vote through any form or through DPS, the voter information and electronic signature is sent to the Texas Secretary of State. *ECF No. 111, App. pp. 92-93* (*Elfant Dep., at 107:13-108:17, 109:22-110:8*). The Secretary of State checks that individual’s “last name, the date of birth, and whatever number provided, either their driver’s license number or [S]ocial [Security number]” against the information in the DPS database. *ECF No. 111, App. (Ingram Dep. at pp. 70:6-71:17)*; *ECF No. 108, App. pp. 92-93* (*Elfant Dep., at 107:13-108:17, 109:22-110:8*). If those fields match, the voter is assigned a voter-unique identifier (VUID). *Id.* Neither the Secretary nor any Election Administrator uses a “wet” signature to determine a registrant’s qualification to vote. *Id.* The Secretary of State’s office does not have access to the registrant’s “wet” signature. *ECF No. 111, App. (Torres Dep. at pp. 44:19-45:14, 70:5-8)*; (*Pendley Dep. at pp. 50:14-51:5, 52:16-53:5, 75:5-16*); (*Ingram Dep., at pp. 74:1-13*).

Vote.org presents summary judgment evidence showing that when county officials (not Elections Administrators) investigate reported or suspected voter fraud, they use the voter's electronically-stored registration signature as an exemplar of the voter's signature. *ECF No. 111, App. pp. 78-79 (Callanen Dep. at pp. 111-115)*. Of consequence, in this investigation, the investigating official uses a scanned image of the registration signatures, not the original, wet signature. *Id.* at 81-82, (*Callanen Dep. at pp. 135-136, 139*). Any fraud investigation is conducted completely electronically using computer programs to compare exemplars of the voter's signatures provided upon registration and at the previous six times of voting. *Id.* At no time is an original, wet signature used to conduct a voter-fraud investigation. *See id.*

Bexar County Elections Administrator Jackie Callanen testified that voters' signatures change significantly over time and even at various times of the day. Therefore, comparison of one signature at one point in time is not a sufficient exemplar for investigation purposes. *ECF No. 111, App. pp. 78-81 (Callanen Dep. pp. 112-115)*. Further, County Administrators testified they are aware of no instances in which a graphic image of a signature submitted by telephonic facsimile machine was used fraudulently on a registration application. *ECF No. 111, App. p. 133 (Ingram Dep. 218:13-219:5), p. 170 (Pendley Dep. 103:1-12, 104:2-12), p. 196 (Torres Dep. 98:10-13, 98:21-99:8)*.

Finally, Texas Election Code § 11.002 does not enumerate a wet signature on the voter registration form as one of the elements for being qualified to vote. *See Tex. Elec. Code § 11.002*. The attestation contained within the voter registration form confirms the registrant's compliance with all of the listed elements to be qualified. This attestation provides the verification that Texas needs to prevent voter fraud and confirm identity. The voter's signature on the voter registration form clearly confirms the attestations and qualification. While Section 13.002 does require the

registration form be “signed by the applicant” to affirm these attestations, this signature is not limited to a wet signature, only. The Court finds no legal support or provision defining a wet signature as the only valid indication of confirmation or attestation.

For these reasons, the Court concludes Vote.org provides sufficient summary judgment evidence and support to show, as a matter of law, the Wet Signature Rule, within the context of the facts and challenges in this case, is not material to determination whether a registrant is qualified to vote. Accordingly, Vote.org satisfies its summary judgment burden to establish the Wet Signature Rule violates § 1971 of the Civil Rights Act, codified at 52 U.S.C. § 10101. Vote.org’s Motion for Summary Judgment on this cause of action is granted.

C. CAUSE OF ACTION TWO: UNDUE BURDEN IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS

1. Summary Judgment Arguments

Vote.org brings this challenge to Texas Election Code § 13.143(d-2) alleging the requirement that a Texas citizen who registers to vote by telephonic facsimile machine also mail or deliver a copy of the registration form with an original, wet signature places an undue burden on Texas citizens’ fundamental right to vote, thereby violating the First and Fourteenth Amendments of the United States Constitution.

Texas first contends it is entitled to summary judgment in its favor on this undue-burden constitutional challenge to Texas Election Code § 13.143(d-2) because the Wet Signature Rule does not implicate Texas citizens’ right to vote. Second, Texas contends the Wet Signature Rule must be upheld as constitutional because the burden created, if any, on a Texas citizen’s right to vote is minimal and significantly outweighed by Texas’s compelling state interest to uphold election integrity and prevent fraud. Texas contends Vote.org has no credible summary judgment

evidence of a burden on voters created by the Wet Signature Rule, and the fact that Texans have numerous other avenues to register to vote, necessarily demonstrates Texas’s compelling interests easily outweigh any *de minimus* burden created by the Wet Signature Rule.

Vote.org contends in its Response and in its own Motion for Summary Judgment, there is long-standing precedent holding imposition of procedural requirements to the voting registration process burdens the right to vote. Vote.org contends the Wet Signature Rule violates the First and Fourteenth Amendments because it unlawfully and unnecessarily impedes a citizen’s right to vote by presenting an unnecessary obstacle to the registration process, and the State reveals no state interest that is sufficiently weighty to justify the burden it imposes upon Texas voters.

2. Substantive Analysis

Texas’s Motion for Summary Judgment

Argument One: Whether the Wet Signature Rule Implicates a Texas Citizen’s Right to Vote

Texas contends its citizens have other means to register to vote, and therefore, the Wet Signature Rule does not implicate (or deny) their fundamental right to vote. Because the Wet Signature Rule “does not take anything away from anybody,” but, instead, adds to the means already available to register to vote, “the Court should conclude that the fundamental right to vote is not implicated by [Vote.org’s] claims and uphold HB 3107 as constitutional on this ground alone.”¹⁰

Texas attempts to create a new initial test for determination whether a statute places an undue burden on a citizen’s right to vote, contending if another method for voter registration ex-

¹⁰ To the extent Texas argues Vote.org’s constitutional claim fails because Vote.org does not possess a right to cast a ballot, this Court will not address this argument again.

ists, then a citizen’s right to vote cannot be implicated. Texas presents no applicable case law to support the application of this test or rationale.

The focus in this analysis is whether the challenged regulation impermissibly burdens a citizen’s fundamental right to vote. It is true, as Texas contends, that a court may not reach this analysis unless the challenged statutory provision touches upon, implicates, or is connected to, a citizens’ fundamental right to vote; however, the fact that another method for voter registration exists does not automatically suggest a regulation does not implicate the right to vote.

The Court concludes established precedent clearly supports the conclusion that any restriction placed upon a citizen’s ability to register to vote necessarily implicates the citizen’s fundamental right to vote. Each provision of a code, “whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—the individual’s right to vote. . . .” *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983); *see also* 52 U.S.C. § 20501(a)(3) (Congressional findings); *see Stringer v. Pablos*, No. SA-16-CV-257-OG, 2020 WL 532937, at *7 (W.D. Tex. Jan. 30, 2020) (overruled on other grounds); *Mi Familia Vota v. Abbott*, 497 F. Supp. 3d 195, 219 (W.D. Tex. 2020).

Here, the Wet Signature Rule imposes a new requirement upon a citizen who chooses to register to vote by telephonic facsimile machine. Fundamentally, registration to vote is necessary for a Texas citizen to be qualified to vote. Tex. Elec. Code § 11.002(a). Consequently, registration to vote necessarily implicates a citizen’s fundamental right to vote, and similarly, any requirement placed upon voter registration imposes a burden on the right to vote. *Burdick v. Takushi*, 504 U.S. 433, 434 (1993); *Anderson*, 460 U.S. at 788. The central question is whether the burden is undue. Regardless of whether there are other means to register, this imposition created

by the Wet Signature Rule implicates a Texas citizens' fundamental right to vote. *Burdick*, 504 U.S. at 434; *Anderson*, 460 U.S. at 788.

Aside from the statutory provisions requiring a voter to be registered to vote to be qualified to vote, as demonstration of this implication on the right to vote, Vote.org presents summary judgment evidence of the deposition of Defendant Michael Scarpello, stating, “[i]f you can’t register to vote, you can’t vote. [The Wet Signature Rule] makes it harder to register to vote ...” *ECF No. 111, App. p. 182 (Scarpello Dep. p. 101:2-8)*.

For this reason, Texas’s argument that it is entitled to summary judgment on the basis the Wet Signature Rule does not implicate a Texas citizen’s right to vote must fail as a matter of law. Texas’s Motion for Summary Judgment on this basis is denied.

Argument Two: Whether the Wet Signature Rule Places an Undue Burden upon the Right to Vote

“[V]oting is of the most fundamental significance under our constitutional structure.” *Burdick*, 504 U.S. at 433. However, even in light of this magnitude, the right to vote in any manner is not absolute. *Id.* “Under the federalist structure of the United States, the states are responsible for regulating the conduct of their elections. It is well recognized that state regulations will invariably affect the individual’s right to vote....” *Voting for Am., Inc. v. Steen*, 732 F.3d 382, 387 (5th Cir. 2013) (quoting *Anderson*, 460 U.S. at 788). However, state regulated election laws may not unduly burden the right to vote. *Burdick*, 504 U.S. at 434. *Steen*, 732 F.3d at 387. Consequently, when an election statute is challenged, a Court must examine and balance a state’s interest in regulating elections against any burden upon the citizens’ right to vote. *Burdick*, 504 U.S. at 434; *Anderson*, 460 U.S. at 789.

The rigorousness of a court’s inquiry into the propriety of a state election law, that is, whether strict-scrutiny review, rational-basis review, or some intermediate standard applies, de-

depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights (here, the right to vote). *Burdick*, 504 U.S. at 434; *Anderson*, 460 U.S. at 788. At one end of the spectrum, regulations imposing severe burdens on the plaintiffs’ constitutional rights are subject to strict scrutiny and must be narrowly tailored and advance a compelling state interest. *Burdick*, 504 U.S. at 434. At the other end, “[l]esser burdens . . . trigger less exacting review, and a state’s ‘important regulatory interests’ will usually be enough to justify ‘reasonable, non-discriminatory restrictions.’” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997); *Steen*, 732 F.3d at 387–88.

In challenges that impose a burden that falls between either end of these boundaries, i.e. severe and slight, the court must weigh “the character and magnitude of the asserted injury” to the plaintiffs’ fundamental right to vote against “the precise interests put forward by the State as justifications for the burden imposed.” *Anderson*, 460 U.S. at 789; *Burdick*, 504 U.S. at 433–34; *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 213–214 (1986). The court must not only determine the legitimacy and strength of each of the state’s asserted interests; it also must consider “the extent to which the state’s asserted interests make it necessary to burden the plaintiff’s rights.” *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 78); *Steen*, 732 F.3d at 387–88. This weighing-of-interests is not an exacting standard. *Burdick*, 504 U.S. at 434 ; *Anderson*, 460 U.S. at 788–89). “However slight the burden may appear, ... it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.” *Crawford v. Marion Cty. Elec. Bd.*, 553 U.S. 181, 191 (2008); *Stringer*, 2020 WL 532937 at *7.

The Court turns now to the task of identifying the burden that the Wet Signature Rule places upon a Texas citizen’s right to vote weighed against Texas’s asserted interest in its implementation.

i. Burden: Character and Magnitude of Asserted Injury to Texas Citizens' Right to Vote

The Court first considers “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendment.” *Anderson*, 460 U.S. at 789.

The Wet Signature Rule requires a telephonic-facsimile registrant to also print the form, sign it, and deliver or mail it to the registrar. While the only requirement added by Section 13.143(d-2) is the wet signature, this requirement, coupled with the existing requirement of printing and mailing or delivering the form, negate any reason or motivation for registering by telephonic facsimile. Effectively, the Wet Signature Rule nullifies the option to register by telephonic facsimile machine because it renders the option identical to the option of submitting a voter registration postcard. In this instance, however, the registrant must have a printer and must pay for postage or pay for transportation. This effective nullification of an avenue to register to vote places a burden upon potential voters.

In addition, the registrant must ensure the printed copy with the wet signature is received within four business days of transmission. The lasting advantage, and only useful purpose, of registration by telephonic transmission is effective submission before the voting registration deadline. However, should a voter choose telephonic-facsimile transmission through Vote.org's web app or other means to meet the registration deadline, the requirement that it be received by the county registrar within four days of transmission poses a risk of disenfranchisement if the voter is unable to drive and deliver, or the USPS is unable to timely deliver their additional, signed form. By requiring a registrant take the additional step of ensuring its wet-signature copy of the registrant form, which contains the same statutorily-required information submitted

through telephonic facsimile, be received by the County Registrar within four days, the Court finds the Wet Signature Rule imposes a burden upon Texas citizens' right to vote.

Finally, the Wet Signature Rule creates an additional step to register to vote by telephonic facsimile machine. By forcing registrants who choose to register by telephonic facsimile transmission to print and sign the same form and to incur additional expense of printing and posting, the Court finds the Wet Signature Rule imposes a burden upon Texas citizens' right to vote. *See also ECF No. 111, App. pp. 115-116 (Hailey Dep. pp. 49-50).*

While, as discussed, a citizen's right to vote is of most fundamental significance, the Court's focus remains on the character and magnitude of the asserted injury to Texas citizens' right to vote caused by the Wet Signature Rule. This injury is limited to registration to vote by telephonic facsimile, only, not to the right to vote as a whole. In this limited context, the burden imposed by the Wet Signature Rule is more than slight, or "minimal" and "miniscule," as the State contends.

Consequently, the court must assess Texas's asserted interests in establishing this wet signature requirement to determine if the state's interests are sufficiently weighty to justify the imposition upon its citizens' voting rights.

ii. Texas's Asserted Interests

Texas asserts it "has a compelling interest in protecting the integrity of its election process." Because "[i]naccuracies in voter registration are a significant problem," Texas contends it holds "a weighty 'interest in preventing voter registration fraud,' and other conduct that frustrates the operation of the electoral process by inserting confusion and disruption." Texas asserts Vote.org's web app creates this confusion and disruption, so the Wet Signature Rule "helps maintain accurate voting rolls and combat the use of fraudulent signatures." To achieve this in-

terest, Texas contends it investigates alleged voter fraud “by analyzing signatures on voter registration records,” and authorities could not achieve this purpose without “good exemplars of a person’s physical signature.” Because Vote.org’s web app “produced images of signatures that were in many cases illegible” and unacceptable, Texas contends the submission of only electronic signatures through the web app defeats this weighty interest. Finally, Texas contends Vote.org’s use of electronic signatures disrupts public confidence in election results.

“A State indisputably has a compelling interest in preserving the integrity of its election process.” *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 231 (1989). “Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006).

Accordingly, the Court concludes Texas asserts valid interests.

iii. *Anderson-Burdick* Weighing

Countering Texas’s compelling interest in preventing voter fraud and protecting election integrity is the strong interest in the exercise of the fundamental right to vote. *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). Given the asserted state interest in imposing the Wet Signature Rule and the burden this regulation places upon Texas citizens’ right to vote, the Court will weigh the asserted justifications against the burden. *Burdick*, 504 U.S. at 434; quoting *Anderson*, 460 U.S. at 789. Upon review of the arguments, evidence and law, this Court found the burden on Texas citizens’ right to vote to be more than slight, noting the Wet Signature Rule “must be justified by relevant and legitimate state interests sufficiently weighty to justify the implementation.” *Crawford*, 553 U.S. at 191; *Stringer*, 2020 WL 532937 at *7.

Prevent Voter Registration Fraud

While it is indisputable that Texas has a valid interest in preventing voter fraud and protecting the integrity of its election process, the Court must examine the extent to which the state's asserted interests make it necessary to burden citizens' right to vote to determine the constitutional validity of § 13.143(d-2). *Burdick*, 504 U.S. at 434; *Anderson*, 460 U.S. at 789; *Steen*, 732 F.3d at 387–88. Under these facts, the Court concludes Texas fails to present argument or summary judgment evidence to demonstrate how the Wet Signature Rule achieves or supports this interest to show the regulation serves any useful or justifiable purpose. Consequently, Texas fails to show its asserted interest to prevent voter fraud, though valid, justifies the burden upon citizens' right to vote.

First and foremost, to prevent fraud and ensure receipt of good exemplars of voters' signatures, Texas always holds the authority and ability to reject a voter registration application if the signature is illegible or unacceptable or the application is otherwise incomplete, whether submitted by telephonic facsimile machine, hand delivery, or a posted card. The Wet Signature Rule does not provide Texas any means to prevent fraud based simply upon the submission of a wet signature.

Next, Texas defendants admit they do not compare the wet signature provided against the earlier submitted telephonic facsimile. *ECF No. 111, App. (Callanen Dep. at pp. 159:2-6); (Garza Dep., at 103: 19-22, 107:17-108:1), p. 176 (Scarpello Dep. pp. 74-78), p. 97 (Elfant Dep. pp. 129-30)*. To the contrary, even without the Wet Signature Rule, Texas still holds the authority to prevent voter fraud by rejecting any voter registration form in good faith on the basis of an illegible signature.

The fact that Vote.org's web app at one time, or could possibly in the future, produce illegible or unacceptable images of signatures does not justify the Wet Signature Rule. Texas has the means and procedural protocol to reject a voter registration application submitted by telephonic facsimile machine due to illegible signature outside of the stricture of the Wet Signature Rule. This argument must fail because Texas's asserted interest is not valid (in this context), and therefore, does not make it necessary to burden its citizens' right to vote in this way. Consequently, no weight will be given to this asserted state interest.

Election Code Requirement that Potential Voter Provide a Signature

Texas attempts to change the focus of this analysis and tip the scale in its favor by arguing in general terms of the "signature" requirement under Texas election law. Texas attempts to change the crux of its interest into simple requirement of a "signature," and characterize the Wet Signature Rule as in line with this longstanding and understood requirement that a potential voter must provide "a signature." Specifically, a voter "registration application must be in writing and signed by the applicant." Texas Election Code § 13.002(b). However, the term "signed by the applicant" is not defined by the Election Code, nor is the term specifically limited to wet signature, only, anywhere in the Election Code. As discussed previously, Texas points to neither federal nor state law which limits the signature requirement to wet signatures, and the Court finds none.

Further, in contradiction to its argument, as discussed, Texas utilizes electronic signatures captured by the Texas DPS for every Texan who uses that agency's online system for driver's license renewal or change of address. *ECF No. 111, App. (Callanen Dep. p. 132:5), (Elfant Dep., p. 104:5-14), Scarpello Dep. p. 60:6-8*). Defendants admit they do not use a wet signature at any time or with any form of voter registration submission to determine a voter's qualification to

vote. *ECF No. 111, App. (Elfant Dep., pp. 103:15-104:9, 107:13-108:17, 109:22-110:8), (Torres Dep. pp. 44:19-45:14, 70:5-8); (Pendley Dep. pp. 50:14-51:5, 52:16-53:5, 75:5-16); (Ingram Dep. pp. 74:1-13, 81:8-220, 82: 1-3); (Callanen Dep. p. 131:8-14)*. Texas officials do not use the signature on a voter registration card submitted in any form other than to verify that the voter submitted one, or that it exists. Defendants admit they do not use any signature submitted during the registration process for identity verification purposes. *ECF No. 111, App. (Scarpello Dep. pp. 74:20-75:9, 76:19-22, 77:4-6, 85:19-86:6), (Torres Dep., at 61:13-22, 68:3-14); (Elfant Dep., at 104:19-22, 129:10-21), (Pendley Dep., at 71:18-72:2, 85:21-86:9)*.

The Court relies upon the same analysis and reasoning discussed previously to conclude Texas's general argument that a signature is required under the Texas Election Code must also fail, and no weight will be given to this asserted interest.

Investigate Voter Fraud

Similarly, Texas's argument that the Wet Signature Rule supports its interest in investigating voter fraud must fail. Texas contends it requires "good exemplars of a person's physical signature" to investigate alleged voter fraud. However, as stated, the need to possess "good exemplars" may be achieved without the Wet Signature Rule, as Texas must examine any voter registration application upon its receipt to determine whether it is complete, which includes analysis of the sufficiency of the signature provided. Contrary to Texas's arguments, authorities can achieve this justification without the Wet Signature Rule, and this purpose can be achieved whether the signature is submitted through telephonic facsimile machine or with an original, wet signature. Further, in contradiction to this argument, Texas obtains a "good exemplar" of some voter's signatures through electronic submission of signatures when those voters chose to register through Texas DPS upon renewal of their driver's license.

Finally, as discussed previously, Texas officials investigate voter fraud by comparing the electronically-stored exemplar of the voter's signature at registration with the voter's signature at various times while voting. *See ECF No. 111, App. pp. 78-82, (Callanen Dep. at pp. 111-115, 135-136, 139), p. 92 (Elfant Dep. pp. 107-108), p. 139 (Ingram Dep. pp. 81-82), (Garza Dep. p. 85:17, 103:19-22)*. Any fraud investigation is conducted completely electronically using computer programs to compare these electronically-stored exemplars of the voter's signatures. *See id.; see also id. at (Scarpello Dep. pp. 84:3-85:1); (Pendley Dep. pp. 70:14-18, 71:18-21)*. At no time is an original, wet signature used to conduct a voter-fraud investigation. *See id.; see also App. (Scarpello Dep. pp. 153:17-154:3), (Callanen Dep. at pp. 1345-136, 139-140), (Elfant Dep. p. 253:10-16), (Torres Dep. p. 75:6-22)*. Because Texas stores voters' signatures electronically and uses the electronic exemplar to investigate voter fraud, this argument fails to justify the Wet Signature Rule.

For these reasons, Texas fails to show the Wet Signature Rule supports or works to protect its interest of investigating voter fraud to justify its imposition, and no weight will be given to this asserted interest.

Conclusion

The restriction on voter registration created by the Wet Signature Rule imposes a burden on the fundamental right to vote that warrants the demonstration of a sufficiently weighty state interest to justify the imposition. Texas does not present any valid justification for imposing the Wet Signature Rule nor does it show how the Wet Signature Rule supports or fulfills its asserted interests. Because the asserted justifications are not legitimate, and therefore carry no weight, there can be no state interest that outweighs the burden imposed upon Texas voters. Therefore, the Court concludes § 13.143(d-2) unduly burdens Texas citizens' fundamental right to vote in

violation of the First and Fourteenth Amendments. *Burdick*, 504 U.S. at 434; quoting *Anderson*, 460 U.S. at 789; *Steen*, 732 F.3d at 387–88. Consequently, even though Texas holds weighty interest in protecting election integrity, because Texas fails to demonstrate the Wet Signature Rule serves or supports these asserted interests, it provides no valid justification to burden citizens’ right to vote.

For these reasons, Vote.org satisfies its summary judgment burden to establish § 13.143(d-2) places an undue burden on Texas citizens’ fundamental right to vote in violation of the First and Fourteenth Amendments. Vote.org’s Motion for Summary Judgment on this cause of action is granted.

IV. PERMANENT INJUNCTION

1. Success on the Merits

As determined, Vote.org satisfied the first element for entitlement to permanent injunction by establishing success on the merits on both causes of action.

2. Threat of Irreparable Injury

“[A]n injury is irreparable only if it cannot be undone through monetary remedies.” *Deerfield Medical Center v. Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981). The denial of constitutional rights “for even minimal periods of time constitutes irreparable injury justifying” injunctive relief. *Id.* Consequently, Vote.org’s demonstration of deprivation of the constitutional right to vote and violation of the Civil Rights Act satisfies the requirement that Vote.org demonstrate an irreparable harm. This factor supports permanent injunction.

3. Weighing of the Harms

Balancing the parties' interests, the Court finds in favor of Vote.org. Texas is not harmed by enjoinder of its enforcement of the Wet Signature Rule. Vote.org demonstrated the injuries caused by failure to grant injunctive relief will outweigh any damage that permanent injunction may cause the Defendants and Intervenors. *See Sells v. Livingston*, 750 F.3d 478, 480 (5th Cir. 2014). Consequently, this factor supports injunctive relief.

4. Whether the injunction will disserve the public interest

Injunctions protecting constitutional freedoms are always in the public interest. *Texans for Free Enter. v. Tex. Ethics Comm'n*, 732 F.3d 535, 539 (5th Cir. 2013). Therefore, under these facts and conclusions outlined, injunction protects the fundamental right to vote. Consequently, this factor supports permanent injunction.

Conclusion

For the reasons stated, the Court concludes each element of permanent injunction is satisfied as a matter of law, with no issues of fact.

V. DECLARATORY RELIEF

Summary judgment may be granted in actions for declaratory judgments, as in other actions, when there are no disputes as to any material fact and when either party is entitled to judgment as a matter of law. Under the Declaratory Judgment Act (DJA) a court "may declare the rights of and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201. The DJA offers the court broad discretion to decide whether it will decline the party's request for a declaratory judgment, provided it explains its actions. *Mission Ins. Co. v. Puritan Fashions Corp.*, 706 F.2d 599, 601 (5th Cir. 1983); *DM Arbor Court, Ltd. v. City of Houston*, No. CV H-18-1884, 2021 WL 4926015, at *9 (S.D. Tex. Oct. 21, 2021).

Vote.org requests the Court declare “the Wet Signature Rule as it appears in Section 14 of HB 3107 (amending Texas election Code § 13.143(d-2)), and any other provisions requiring a voter to sign an application form with an original, wet signature in order to register to vote, violate Section 1971 of the Civil Rights Act of 1964 and the First and Fourteenth Amendments to the U.S. Constitution.”

For the reasons stated, the Court declares the provision contained in Texas Election Code § 13.143(d-2) that requires “a copy of the original registration application *containing the voter’s original signature* must be submitted by personal delivery or mail” violates Section 1971 of the Civil Rights Acts and violates the First and Fourteenth Amendments of the U.S. Constitution by placing an undue burden on Texas citizens’ right to vote. To this extent, Vote.org’s request for declaratory relief is granted.

However, Vote.org’s request exceeds the scope of its challenge and this Court’s review. Consequently, Vote.org’s request for declaratory relief that “any other provision which requires a voter to sign an application form with an original, wet signature in order to register to vote” violates the Civil Rights Act and the First and Fourteenth Amendment is denied.

CONCLUSION

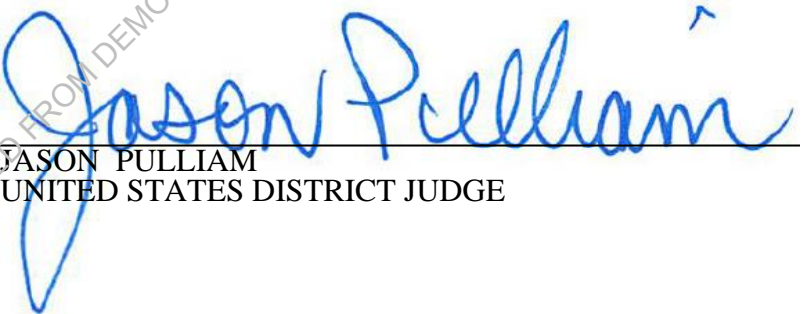
For the reasons stated, Texas’s Motions for Summary Judgment on both of Vote.org’s causes of action (*ECF Nos. 108,109*) are DENIED. Vote.org’s Motion for Summary Judgment (*ECF No. 111*) on its cause of action asserting violation of the Civil Rights Act, 52 § 10101, and its cause of action asserting violation of the First and Fourteenth Amendments is GRANTED.

The Court declares the provision contained in Texas Election Code § 13.143(d-2) that requires “a copy of the original registration application containing the voter’s original signature

must be submitted by personal delivery or mail” violates Section 1971 of the Civil Rights Acts and violates the First and Fourteenth Amendments of the U.S. Constitution by placing an undue burden on Texas citizens’ right to vote.

Under the equitable powers of this Court IT IS ORDERED that Defendants, Intervenors, and their officers, agents, servants and employees are permanently ENJOINED and RESTRAINED from enforcing the Wet Signature Rule contained within Texas Election Code 13.143(d-2), that is, these parties may not require a voter registrant who submits a voter registration form by telephonic facsimile machine to also provide a copy of the original registration application containing the voter’s original signature.

It is so ORDERED.
SIGNED this 16th day of June, 2022.


JASON PULLIAM
UNITED STATES DISTRICT JUDGE

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EXHIBIT D: FINAL JUDGMENT

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

VOTE.ORG,

Plaintiff

Case No. SA-21-CV-00649-JKP

v.

JACQUELYN CALLANEN, IN HER
OFFICIAL CAPACITY AS THE
BEXAR COUNTY ELECTIONS
ADMINISTRATOR; BRUCE ELFANT,
IN HIS OFFICIAL CAPACITY AS
THE TRAVIS COUNTY TAX
ASSESSOR-COLLECTOR; REMI
GARZA, IN HIS OFFICIAL
CAPACITY AS THE CAMERON
COUNTY ELECTIONS
ADMINISTRATOR; AND MICHAEL
SCARPELLO, IN HIS OFFICIAL
CAPACITY AS THE DALLAS
COUNTY ELECTIONS
ADMINISTRATOR;


Defendants

FINAL JUDGMENT

The Court considered the issues presented in this action and rendered its decision. For the reasons stated in the Memorandum Opinion and Order issued contemporaneously with this Final Judgment the Court **GRANTED** summary judgment for Plaintiff. Having disposed of all causes of action and requests for relief, final judgment is hereby entered in favor of Plaintiff. The Court **DISMISSES** this action with prejudice.

The Clerk of the Court shall close this case upon entry of this judgment.

SIGNED this 17th day of June, 2022.



JASON PULLIAM
UNITED STATES DISTRICT JUDGE

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**EXHIBIT E: ORDER DENYING MOTION TO STAY
PENDING APPEAL**

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

VOTE.ORG,

Plaintiff,

v.

Case No. SA-21-CV-00649-JKP

JACQUELYN CALLANEN, IN HER OFFICIAL CAPACITY AS THE BEXAR COUNTY ELECTIONS ADMINISTRATOR; BRUCE ELFANT, IN HIS OFFICIAL CAPACITY AS THE TRAVIS COUNTY TAX ASSESSOR-COLLECTOR; REMI GARZA, IN HIS OFFICIAL CAPACITY AS THE CAMERON COUNTY ELECTIONS ADMINISTRATOR; AND MICHAEL SCARPELLO, IN HIS OFFICIAL CAPACITY AS THE DALLAS COUNTY ELECTIONS ADMINISTRATOR;

Defendants,

KEN PAXTON, in his official capacity as the Attorney General of Texas, LUPE C. TORRES, in his official capacity as the Medina County Elections Administrator; TERRIE PENDLEY, in her official capacity as the Real County Tax Assessor-Collector


Intervenor Defendants.

ORDER

Before the Court is Intervenor-Defendants' Motion for Stay Pending Appeal. *ECF No.*

147. Upon consideration, the Motion for Stay is DENIED.

It is so ORDERED.
SIGNED this 21st day of June, 2022.



JASON PULLIAM
UNITED STATES DISTRICT JUDGE

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