IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

LAURA PRESSLEY, ROBERT BAGWELL, TERESA SOLL, THOMAS L. KORKMAS, and MADELON HIGHSMITH,	§	
Plaintiffs,	§	
v.	§	Civil Action No. 1:24-cv-00318-DII
JANE NELSON, in her official capacity as the Texas Secretary of State, CHRISTINA ADKINS, in her official capacity as the Director of the Elections Division of the Texas Secretary of State, BRIDGETTE ESCOBEDO, in her official capacity as Williamson County Elections Administrator, DESI ROBERTS, in his official capacity as Bell County Elections Administrator, and ANDREA WILSON, in her official capacity as Llano County Elections Administrator,	§	
Defendants,	§	

DEFENDANT BELL COUNTY ELECTIONS ADMINISTRATOR, DR. DESI ROBERTS' RULE 12(b)(1) AND 12(b)(6) MOTION TO DISMISS FIRST AMENDED COMPLAINT WITH BRIEF IN SUPPORT

Ross Fischer
State Bar No. 24004647
ROSS FISCHER LAW, PLLC
430 Old Fitzhugh, No. 7
Dripping Springs, Texas 78620
Telephone: (512) 587-5995
Email: ross@rossfischer.law

Attorney for Defendant Dr. Desi Roberts,
In His Official Capacity as
Bell County Elections Administrator

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TO THE HONORABLE JUDGE OF SAID COURT:

Now Comes Defendant Dr. Desi Roberts, in his official capacity as Bell County Elections Administrator ("Dr. Roberts"), who asks this Court to dismiss the claims against him for lack of subject-matter jurisdiction and for Plaintiffs' failure to state a claim.

I. INTRODUCTION

In this case, the Plaintiffs include one registered voter of Bell County ("Plaintiff Korkmas"). The defendants include the Texas Secretary of State and its Elections Director (collectively, "SOS Defendants") and the election administrators for Bell, Williamson, and Llano Counties (collectively, "County Defendants"). Plaintiffs challenge the use of certain electronic voting systems that allegedly do not use consecutively numbered ballots. Dkt. #32, ¶¶ 27–29. Plaintiffs allege that this feature of the state-approved voting systems violates state and federal law and thereby violates the First and Fourteenth Amendments. Dkt. #32, §§ IV.C., VII. These allegations have no merit and fail to state a claim.

The Amended Complaint includes a declaration from Plaintiff Korkmas that utterly fails to substantiate any of the claims asserted. Dkt. #32-61. Plaintiff Korkmas alleges that, when he attempted to vote in the May 4, 2024, election, he was aided in his efforts to secure a ballot. He ultimately chose, for personal reasons, not to cast the ballot and was aided in cancelling his incomplete ballot. However, neither Dr. Roberts nor any Bell County representative was involved in administering the May 4, 2024, election at which Plaintiff Korkmas felt his rights had been "chilled" – that election was administered solely by the Belton Independent School District, a completely distinct unit of local government. *See* Exhibit A. Nothing in Plaintiff Korkmas's declaration suggests that Dr. Roberts or Bell County coerced, suppressed, or intimidated him as he contemplated his options at the polling place.

The allegation regarding voting systems is clearly a "generalized grievance" that is insufficient to allege a particularized injury. The Fifth Circuit has held that there is no standing to bring claims challenging the use of electronic voting systems. Such claims constitute a "generalized grievance" shared by all voters utilizing the electronic voting systems and, therefore, do not state a particularized injury as necessary for Article III standing. Further, Plaintiffs have entirely failed to assert either an ongoing or non-speculative threat of future injury, making only speculative and vague assertions about potential fraud or ballot secrecy issues.

Plaintiffs fail to articulate either a procedural or substantive Due Process claim. Plaintiffs fail to identify any procedural requirement that was alleged to have been violated. Further, Plaintiffs fail to allege any action that is so egregious or outrageous that it may fairly be said to shock the contemporary conscience.

Plaintiffs further fail to state an Equal Protection claim. There are no facts alleged to indicate that Plaintiff Korkmas's ballot was or will imminently be treated differently by Dr. Roberts than those of other similarly situated voters.

Plaintiffs further fail to state a First Amendment claim. There are no facts alleged that any governmental actor has chilled Plaintiff Korkmas's freedom of speech, right to assemble, or to petition the government. In fact, neither Dr. Roberts nor Bell County administered the election at which Plaintiff Korkmas claims his rights were "chilled."

Plaintiffs seek extraordinary declaratory and injunctive relief supplanting the policy and contracting decisions of the political branches at both the state and local levels with respect to election administration.

The Court should dismiss each and every count.

II. MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION

A. Standard of Review

"A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Miss, Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998) (citation omitted). "The burden of proof for a Rule 12(b)(1) motion to dismiss [for lack of subject-matter jurisdiction] is on the party asserting jurisdiction." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001); *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir. 2001). "[T]here is a presumption against subject matter jurisdiction that must be rebutted by the party bringing an action to federal court." *Coury v. Prot*, 85 F.3d 244, 248 (5th Cir. 1996). "A 'facial attack' on the complaint requires the court merely to look and see if plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion." *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980) (citing *Mortensen v. First Federal Savings & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977)).

B. Arguments & Authorities

1. Plaintiffs lack standing because their generalized, conjectural grievances would not be redressable by any relief this Court could provide.

Plaintiffs lack standing to bring their claims against Dr. Roberts. The requirement that the plaintiff have standing imposes a "fundamental limitation" upon a federal court's subject-matter jurisdiction. *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). "[S]tanding is perhaps the most important of the jurisdictional doctrines." *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990) (internal quotation omitted). To establish standing, a plaintiff must show: (1) an actual or imminent, concrete, and particularized "injury-in-fact"; (2) that is fairly traceable to the challenged action of the defendant; and (3) that is likely to be redressed by a favorable decision. *Friends of*

the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180–81 (2000). All three elements are "an indispensable part of the plaintiff's case," and the party seeking to invoke federal jurisdiction bears the burden to establish them. *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 561 (1992). Finally, "a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Davis v. FEC*, 554 U.S. 724, 734 (2008) (citations and quotations omitted).

a. Plaintiffs lack standing because their claims are merely generalized grievances.

The Supreme Court has "consistently held that a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy." *Lujan*, 504 U.S. at 573–574. A "'generalized grievance' is insufficient to confer standing." *Hollingsworth v. Perry*, 570 U.S. 693, 694 (2013). Here, Plaintiffs raise only generalized grievances that, even if legitimate, would be shared by the general public. Consequently, Plaintiffs lack standing to sue Dr. Roberts.

In two recent cases, the Fifth Circuit has ruled there was no standing to make general challenges to voting systems. In *Eubanks v. Nelson*, the Fifth Circuit affirmed the Northern District's ruling that the plaintiffs lacked standing to challenge multiple counties' use of allegedly "noncompliant, uncertified voting equipment and systems." *Eubanks v. Nelson*, No. 23-10936, 2024 WL 1434449 (5th Cir. Apr. 3, 2024). Citing to its decision last year in *Lutostanski v. Brown*, the Fifth Circuit noted that, in both cases, the plaintiffs did not allege that their votes were treated differently from other votes, but that all voters who used the challenged voting systems were at risk of having their votes not counted as intended. *Id*. at *2; *see also Lutostanski v. Brown*, 88 F.4th

582, 586 (5th Cir. 2023) ("[P]laintiffs' theory would apply equally to all voters in Travis County."). Likewise, with respect to their allegations that ballot secrecy could be compromised, their claims were not specific nor particular to them. *Eubanks*, 2024 WL 1434449 at *1.

Such alleged injuries do not confer standing because the plaintiffs are only raising a "generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large." *Id.* Here, as in those cases, the Plaintiffs merely assert undifferentiated, generalized grievances about the conduct of government. *Id.*; *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (per curiam).

Plaintiffs' First Amendment claims also fail when scrutinized in light of *Eubanks*. In that case, the plaintiffs sought to establish standing by alleging that their personal information had been wrongfully disclosed:

> "Plaintiffs have information and belief that the release of combined private and personal information … has and will continue to be released. Exposing Plaintiffs to intimidation or harassment for merely exercising their right to vote, and will cause apprehension in their exercise of First Amendment rights including the right to vote and freedom of association. Plaintiffs believe that the release of their private and personal combination of information make them easy to identify and thus susceptible to harassment."
>
> *Eubanks v. Nelson*, No. 23-10936, 2024 WL 1434449 (5th Cir. Apr. 3, 2024)

The Fifth Circuit dispatched this standing claim, which essentially mirrors the claims asserted by the Plaintiffs in the instant case. The Fifth Circuit noted that "this alleged injury constitutes an 'undifferentiated generalized grievance' that is not particular to them."

The Supreme Court of Texas has also considered and dismissed such claims for this reason. *See Andrade v. NAACP of Austin*, 345 S.W.3d 1 (Tex. 2011). In *Andrade*, as in this case, voters sued the Texas Secretary of State alleging that the use of a certain electronic voting system violated the Texas Election Code and the Texas Constitution. 345 S.W.3d at 6. The Court concluded that "most of the voters' allegations involve[d] generalized grievances about the lawfulness of government acts." *Id.* at 4.

As relevant here, the *Andrade* plaintiffs argued that "failing to require a paper ballot undermines the framers' intent in drafting the numbering requirement [of TEX. CONST. art. VI, § 4]—a requirement they claim[ed] was intended to secure the integrity of the election process." *Id.* at 15. The Texas Supreme Court held that even "[a]ssuming, as we must, that these allegations are true, they amount only to a generalized grievance shared in substantially equal measure by all or a large class of citizens." *Id*.

Based upon the generalized-grievance principles set forth above, this Court should dismiss Plaintiffs' vague claims for lack of standing.

Despite Plaintiff Korkmas' declaration, the Amended Complaint contains only generalized grievances. Bell County's reliance on state-issued advice and certifications does not constitute a showing that Dr. Roberts has harmed Plaintiff Korkmas or treated him any differently than any other member of the general Bell County populace. Plaintiff Korkmas's distrust of mail-in ballots ("I abhor mail-in ballots as I have no assurance that my ballot will be delivered…") and his distrust of non-sequential ballots ("I believe my vote is no longer secret") do not constitute a governmental action abridging his First Amendment rights. Dkt. #32-61 Importantly, as noted above, the election at which Plaintiff Korkmas opted against voting was not even conducted by Dr. Roberts or Bell County, but was conducted by the Belton Independent School District.

b. Plaintiffs lack standing because their claims are merely conjectural rather than actual or imminent.

To satisfy the injury-in-fact requirement for standing, a plaintiff's injury must also be "actual or imminent" as opposed to merely "conjectural or hypothetical." *See Lujan*, 504 U.S. at 560. The conjectural nature of Plaintiffs' alleged harm is apparent throughout Plaintiff Korkmas' declaration. *See*, *e.g.*, Dkt. #32-61("*I believe* that my vote is no longer secret.") (emphasis added); *Id.* ("[n]o confidentiality is a *prelude* to mass voter suppression" and "*possible consequences* that it can have on my personal and business activities")…but failing to allege any actual or imminent voter suppression) (emphasis added); *Id.* ("asserting that the perceived lack of secrecy "*could* detrimentally affect my business" and that he "*could* be subject to harassment, discrimination and loss of business" and that he "*could* be greatly harmed.") (emphasis added). The Fifth Circuit "does not 'recognize the concept of probabilistic standing based on a non-particularized increased risk—that is, an increased risk that equally affects the general public.'" *E.T. v. Paxton*, 41 F.4th 709, 716 (5th Cir. 2022), at *3 (plurality opinion) (quoting *Shrimpers & Fisherman of RGV v. Tex. Comm'n on Env't Quality*, 968 F.3d 419, 424 (5th Cir. 2020) (per curiam)).

Other than Plaintiff Korkmas' distrust of nonsequential ballots, the crux of Plaintiffs' "ballot secrecy" assertions do not involve Bell County or its election administrator. Rather, they focus on the claim that one of the Plaintiffs (a Williamson County resident) was able to uncover an algorithmic pattern which she applied to the Williamson County records. Dkt. #32, ¶¶ 113–123. Plaintiff Pressley has publicly confirmed that the records were limited to Williamson County and elaborated on how the supposed pattern was uncovered:

> "All the data I got was from the Williamson County Attorney's office, and I got on my knees…and I said, 'Dear Lord, show me the pattern because I know it's here, I know it's happening, I feel it…so I got on my knees and I prayed

and 20 minutes later He showed me the pattern." Dr. Laura Pressley, *Election Integrity Lunch and Learn* - April 16, 2024, at 31:24 (accessible at: https://twitter.com/i/spaces/1gqxvQpWawjJB)

Plaintiffs attempt to bolster Plaintiff Pressley's divine revelation with a declaration of Walter C. Daugherity (Dkt. #32-53). But Daugherty's declaration is limited to his review of Williamson County voting records and his conclusion is limited to his theories about the secrecy of Williamson County election results. He makes no mention of Bell County, has apparently reviewed no Bell County records, and offers no facts relevant to Dr. Roberts or his administration of Bell County elections.

Plaintiffs do not allege that anyone, including Plaintiff Korkmas, has accessed Bell County election records and determined how any Bell County resident, including how Plaintiff Korkmas has voted.

Thus, for this reason also, the Plaintiffs lack standing, and the Court should dismiss the claim for want of jurisdiction. As the Fifth Circuit noted in *Eubanks* and *Lutostanksi*, the types of allegations in the Complaint are "too 'speculative' to provide a basis for standing." *Eubanks*, 2024 WL 1434449 at *2; *Lutostanksi*, 88 F.4th at 587 (noting plaintiffs did not explain why, how, when, or to whom data was unlawfully released (or sold or compromised)).

c. The *Ex parte Young* exception does not apply to claims arising under state law.

While Plaintiffs pay lip service to the Fourteenth Amendment, the thrust of their complaints relate to their assertions that the Defendants have violated the Texas Constitution and various provisions of the Election Code. *See, e.g.*, Dkt. #32, § IV.C. Alleging a violation of state law "is neither a necessary nor a sufficient condition for a finding of a due process violation [or equal

protection]." *See Stern v. Tarrant County Hospital Dist.*, 778 F.2d 1052, 1059 (5th Cir.1985) (en banc), *cert. denied* 476 U.S. 1108 (1986).

Sovereign immunity would bar any state law claims against Dr. Roberts. The *Ex parte Young* exception "is not a way to enforce state law through the back door." *Williams On Behalf of J.E. v. Reeves*, 954 F.3d 729, 740 (5th Cir. 2020). The doctrine is "inapplicable in a suit against state officials on the basis of state law." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984); *see also Neuwirth v. Louisiana State Bd. of Dentistry*, 845 F.2d 553, 556 (5th Cir. 1988) (noting that the *Ex parte Young* exception does not apply to "suits which would seek to have federal judges order state officials to conform their conduct to state law"); *Papasan v. Allain*, 478 U.S. 265, 277 (1986) (holding that *Ex parte Young* "does not foreclose an Eleventh Amendment challenge where the official action is asserted to be illegal as a matter of state law alone"). Accordingly, to the extent Plaintiffs assert claims against Dr. Roberts based on violations of state law, they are barred by sovereign immunity and should be wholly disregarded.

2. Article III prevents adjudication of the Plaintiffs' claims, as Political Questions are inextricably present.

The question of whether to use a certain electronic voting system is one of policy, and therefore a "political question." As the Complaint notes, the Secretary of State is the state's chief election officer, and Dr. Roberts is a county officer responsible for the administration of elections in Bell County. Dkt. #32, ¶¶ 30, 31 Dr. Roberts relies upon policy directives promulgated by the Secretary of State, including those related to ballot numbering and voting system certification. The Court should defer to the political decisions made by the state and local governments to use the selected electronic voting systems. The likelihood of electoral disarray wrought by a sudden change in voting systems highlights the risk of potential embarrassment resulting from a judicial decision supplanting the policy choices of other political departments.

As further evidence of the policy-based nature of this issue, it should be noted that the Texas House of Representatives Elections Committee met this month to seek testimony related to "Texas election law relating to ballot secrecy". *House of Representatives Notice of Public Hearing* https://capitol.texas.gov/tlodocs/88R/schedules/html/C2402024061210001.htm

"The political-question doctrine forecloses as nonjusticiable actions which would improperly require judicial review of decisions exclusively within the purview of the political branches of government." *Kuwait Pearls Catering Company, WLL v. Kellogg Brown & Root Services, Inc.*, 853 F.3d 173 (5th Cir. 2017) (*KPCC*). "The nonjusticiability of a political question is primarily a function of the separation of powers." *Baker v. Carr*, 369 U.S. 186, 210 (1962). The political-question doctrine has been recognized as a limit on the subject-matter jurisdiction of the federal courts since the very earliest days of the Republic. *See Marbury v. Madison*, 5 U.S. 137, 170 (1803) (dictum) ("Questions, in their nature political, or which are, by the constitution and laws, submitted to the [political branches], can never be made in this court."); *see also Luther v. Borden*, 48 U.S. 1, 42 (1849) ("[Congress's] decision [regarding the rightful, republican government of Rhode Island under the Guarantee Clause] is binding on every other department of the government, and could not be questioned in a judicial tribunal.").

The Fifth Circuit has indicated that the decision of "whether to use electronic voting machines or paper ballots" is a challenge to "the wisdom of [a state's] policy choices." *Tex. Democratic Party v. Abbott*, 961 F.3d 389, 398 (5th Cir. 2020) (comparing the justiciability of the use of a voting machines or paper ballots to whether "provisions of the Texas Election Code run afoul of the Constitution") (citing *Coal. For Good Governance v. Raffensperger*, 2020 WL 2509092 (N.D. Ga. May 14, 2020) (dismissing claims seeking to require use of paper ballots rather than touchscreen ballots for virus prevention purposes "because they present a nonjusticiable

political questions.")). As evidenced here, the Fifth Circuit views the question at hand as a political one not suited for judicial discretion.

"The dominant consideration in any political question inquiry is whether there is a 'textually demonstrable constitutional commitment of the issue to a coordinate political department.'" *Spectrum Stores, Inc. v. Citgo Petroleum Corp.*, 632 F.3d 938, 950 (5th Cir. 2011) (quoting *Saldano v. O'Connell*, 322 F.3d 365, 369 (5th Cir. 2003). In this case, election-related matters are constitutionally committed to the legislatures of the states. U.S. CONST. art. I, § 4, cl. 1 (Elections Clause) ("The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof. . . .").[1]

III. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

A. Standard of Review

To avoid dismissal for failure to state a claim under Rule 12(b)(6), a plaintiff must plead sufficient facts to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. While courts must accept all factual allegations as true, they "do not accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions." *Plotkin v. IP Axess Inc*., 407 F.3d 690, 696 (5th Cir. 2005).

[1] "Congress may at any time by Law make or alter such [state] Regulations." U.S. CONST. art. I, § 4, cl. 1. Congressional supervisory authority over the state legislatures with respect to the Elections Clause only provides yet more evidence that this issue is demonstrably committed to other political branches.

B. Arguments & Authorities

1. Plaintiffs have not stated a procedural due process claim against Dr. Roberts.

Plaintiffs do not clearly specify whether they have alleged a violation of due process under its procedural or substantive component. *See generally* Dkt. #32. To the extent Plaintiffs intend to allege procedural due process claims against Dr. Roberts for relying upon state-issued advisories and voting system certifications, they fail because procedural due process does not constrain the creation of generally applicable laws or policies. *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 445 (1915) ("Where a rule of conduct applies to more than a few people, it is impracticable that everyone should have a direct voice in its adoption."). Plaintiff Korkmas has wholly failed to allege the deprivation of any cognizable property interest resulting from Bell County's decision to rely upon election advisories and voting system certifications issued by the Secretary of State.

2. Plaintiffs have not stated a substantive due process claim against Dr. Roberts.

Plaintiffs further fail to allege a substantive-due-process violation. "Substantive due process analysis is appropriate only in cases in which government arbitrarily abuses its power to deprive individuals of constitutionally protected rights," namely a constitutionally protected liberty or property interest. *Simi Inv. Co., Inc. v. Harris Cnty.*, 236 F.3d 240, 249 (5th Cir. 2000); *Brennan v. Stewart*, 834 F.2d 1248, 1257 (5th Cir. 1988) (internal quotation marks and citations omitted). "Substantive due process analysis," the Supreme Court has cautioned, "must begin with a careful description of the asserted right." *Reno v. Flores*, 507 U.S. 292, 302 (1993). To constitute a substantive due process violation, the governmental officer's actions must be "so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Morris v. Dearborne*, 181 F.3d 657, 668 (5th Cir. 1999) (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998)); *see also Reyes v. North Texas Tollway Authority*, 861 F.3d 558, 562 (5th Cir. 2017)

Here, the Complaint is devoid of any "careful description of the asserted right" and devoid of any "egregious" conduct by Dr. Roberts. Plaintiff Korkmas, the only Bell County voter, does not allege that Dr. Roberts has taken any action that directly interferes with his right to vote. Instead, he alleges that, in relying on the Secretary of State's election advisories and system certification, Dr. Roberts has somehow violated his rights. Plaintiffs simply put forth the conclusory and unsubstantiated allegations that Bell County's reliance on the Secretary of State's election rules somehow leads to fraud, compromised ballot secrecy, and dilution of the one person/one vote standard.

Despite repeatedly claiming that their "harms are real" (Dkt. #32, ¶¶ 158, 164, 172, and 179), none of the Plaintiffs have shown that Dr. Roberts has denied any Plaintiff's right to vote, diluted the vote of any Plaintiff, disclosed any Plaintiffs vote, or otherwise disenfranchised any Plaintiff.

3. Plaintiffs have not stated an equal protection claim against Dr. Roberts.

"To state a claim for equal protection, 'the plaintiff must prove that similarly situated individuals were treated differently.'" *Hines v. Quillivan*, 982 F.3d 266, 272 (5th Cir. 2020) (quoting *Beeler v. Rounsavall*, 328 F.3d 813, 816 (5th Cir. 2003).

Plaintiffs have failed to allege facts indicating how random assignment of ballot numbers will result in a harm to Bell County's in-person voters. They allege unsubstantiated fears that non-consecutive numbering is less secure than consecutive numbering but fail to allege that any Plaintiff's vote has been denied, diluted, disclosed, or distributed. *See, e.g.,* Dkt. #32, ¶ 111 (complaining only of "potential ballot fraud"), ¶ 144 (alleging merely lack of fraud "protection" but containing no facts indicating fraud is imminent, much less explaining how fraud might be accomplished). Plaintiffs' so-called expert, as noted above, draws conclusions related only to Williamson County, making no mention of Bell County or of Dr. Robert (Dkt. #32-53).

Accordingly, Plaintiffs have failed to allege facts showing that the difference in the numbering methods for mail-in and in-person ballots causes Plaintiffs' votes to be treated differently. As such, they have failed to state an equal protection claim.

4. Plaintiffs have not stated a First Amendment claim against Dr. Roberts.

Plaintiffs make vague allusions to the First Amendment of the U.S. Constitution (Dkt. #32, ¶ 162) but fail to assert any evidence of a governmental actor abridging the First Amendment rights of any Plaintiff. Plaintiffs claim that the ballot numbering regime approved by the Secretary of State somehow chills their exercise of the right to vote. (Dkt. #32, ¶ 161) However, the allegations and declarations contain no factual assertion that a state actor has inhibited any Plaintiffs right to vote. Only Plaintiff Korkmas is registered to vote in Bell County, and his declaration contains no assertion that his right to vote was chilled, infringed or inhibited by any state actor. **Importantly, neither Dr. Roberts nor any Bell County representative was involved in administering the May 4, 2024, election at which Plaintiff Korkmas felt his rights had been "chilled" – that election was administered solely by the Belton Independent School District, a completely distinct unit of local government not named in this suit.**

5. Plaintiffs reference a grab-bag of inapplicable federal law.

Plaintiffs reference a grab-bag of federal statutes but fail to allege any facts supporting the applicability of any law they cite. Plaintiffs cite the statute prohibiting abridgement of the right to vote on account of race, but offer no facts to support its applicability. (52 USC § 10301) Similarly, they cite to the federal statute prohibiting the use of tests or devices in determining eligibility to vote, but again fail to allege how that law has been implicated by Dr. Roberts. (52 USC § 10303) Plaintiffs further allude to the federal standard governing the technical requirements of certain voting systems, but do not allege that the voting systems administered by any Defendant is

violative of those technical requirements. (52 USC §§ 21081(a)(1)(A)(i) and (ii), 52 USC § 21081 (a)(1)(C))

The Amended Complaint contains no factual assertions that would implicate any of the federal statutes referenced above.

IV. PRAYER

For all these reasons, Bell County Election Administrator Dr. Desi Roberts respectfully asks the Court to dismiss Plaintiffs' claims against him.

Dated: June 27, 2024

Respectfully submitted,

/s/ Ross Fischer

Ross Fischer
State Bar No. 24004647
ROSS FISCHER LAW, PLLC
430 Old Fitzhugh, No. 7
Dripping Springs, Texas 78620
Telephone: (512) 587-5995
Email: ross@rossfischer.law

ATTORNEY FOR DEFENDANT DESI ROBERTS, IN HIS OFFICIAL CAPACITY AS BELL COUNTY ELECTIONS ADMINISTRATOR

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2024, a true and correct copy of this document was electronically filed using the Court's CM/ECF system, which will send notification of such filing to all counsel of record in addition to the following:

Via email: LauraPressley@Proton.me
And First Class Mail
Laura Pressley, Ph.D.,
101 Oak Street, Ste. 248
Copperas Cove, TX 76522

Pro Se Litigant

/s/ Ross Fischer
Ross Fischer