

No. 01-25-00301-CV

IN THE COURT OF APPEALS
FOR THE FIRST JUDICIAL DISTRICT OF TEXAS
IN HOUSTON

ANNETTE RAMIREZ, IN HER OFFICIAL CAPACITY
Appellant,

v.

STEVEN HOTZE, M.D., ET AL.
Appellees.

On Appeal from the 157th Judicial District Court
Harris County, Texas Cause No. 2024-72883-CV
Honorable Tanya Garrison, Judge Presiding

BRIEF OF APPELLEES

Jared R. Woodfill
Woodfill Law Firm, P.C.
3 Riverway, Suite 750
Houston, Texas 77056
Telephone:(713) 751-3080
Facsimile:(713)751-3058
woodfillservice@gmail.com

Counsel for Appellees
Steven Hotze, M.D.
Joseph L. Trahan
Caroline Kane
Honorable Sid Miller

ORAL ARGUMENT CONDITIONALLY REQUESTED

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REGISTERED VOTERS WHO SHOULD NO LONGER BE REGISTERED TO VOTE IN HARRIS COUNTY ELECTIONS ARE NOT QUALIFIED VOTERS UNDER THE LAW.

RESPONSE POINT NUMBER THREE

THE TRIAL CORRECTLY DENIED APPELLANT’S PLEA TO THE JURISDICTION BECAUSE EACH APPELLEE ESTABLISHED BOTH INDIVIDUAL AND TAXPAYER STANDING.

RESPONSE POINT NUMBER FOUR

THE TRIAL CORRECTLY DENIED APPELLANT’S PLEA TO THE JURISDICTION BECAUSE THE APPELLEES’/PLAINTIFFS’ CLAIMS ARE NOT BARRED BY GOVERNMENTAL IMMUNITY.

RESPONSE POINT NUMBER FIVE

SHOULD THIS COURT DISAGREE WITH THE TRIAL COURT’S DENIAL OF THE APPELLANT’S PLEA TO THE JURISDICTION, THEN THIS COURT SHOULD REMAND TO THE TRIAL COURT AND GRANT THE APPELLEES AN OPPORTUNITY TO REPLEAD.

RESPONSE POINT NUMBER SIX

APPELLANT’S MERITS ARGUMENTS ARE NOT RELEVANT TO WHETHER SUBJECT MATTER JURISDICTION EXISTS, NOR IS THEIR INTERPRETATION OF SECTION 15.022 CORRECT IN ANY EVENT.

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APPELLEES' RESPONSE TO ISSUES PRESENTED BY
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THEIR INTERPRETATION OF SECTION 15.022 CORRECT IN ANY EVENT.

STATEMENT REGARDING ORAL ARGUMENT

Appellees believe the record and briefing in this case is more than sufficient to justify this Court's affirmance of the Trial Court's denial of the Appellant's Plea to the Jurisdiction without the benefit of oral argument. However, should the Court determine that oral argument would be beneficial, then Appellees' counsel requests the opportunity to participate and present oral argument.

SUMMARY OF THE ARGUMENT

Although Appellant tries to lure this Court into a merits review of the statute in question, the sole question for this appeal is whether the Trial Court correctly determined that it had subject matter jurisdiction to hear an ultra vires claim brought against Harris County's Voter Registrar, Annette Ramirez. Under the standard of review applicable to a Trial Court's ruling on a plea to the jurisdiction, all facts of the non-movant are taken as true.

By Order dated April 10, 2025, Judge Tanya Garrison denied Appellant's Plea to the Jurisdiction as to Defendant Ramirez but granted said Plea with respect to Defendant Harris County. 1 CR 164. Appellants do not challenge the dismissal of Harris County, but they absolutely defend the Trial Court's denial of Appellant Ramirez's Plea.

The Trial Court correctly denied the Appellant's/Defendant's Plea for two (2) reasons. First, the Appellees'/Plaintiffs' live pleading, which is their First Amended Original Petition (see 1 CR 119-1630), demonstrates that each Appellee/Plaintiff has standing: (i) Section 273.081 of the Texas Election Code authorizes any person to seek injunctive relief to prevent a violation of the Texas Election Code from continuing or occurring; (ii) each Appellee/Plaintiff has alleged a unique injury sufficient to confer standing; and (iii) each Appellee/Plaintiff has plead a sufficient basis to invoke taxpayer standing. Second, Appellees sufficiently plead a case for ultra vires, which triggers an exception to doctrine of governmental immunity.

Further, governmental immunity does not bar Appellees'/Plaintiffs' claims, as the ultra vires claims herein do not trigger immunity, the declaratory judgment claims involve a statutory waiver of immunity, and the election code provision creating a right to injunctive relief likewise constitutes a waiver of immunity.

Accordingly, this civil lawsuit seeking declaratory and prospective-only injunctive relief by three (3) registered voters and two (2) candidates for office within Harris County and one (1) statewide elected official, is warranted. To hold otherwise would be to create an unconstitutional "as applied" impact on each Appellee/Plaintiff, as the Texas constitutional open

courts provision and both state and federal substantive and due process guarantees would be violated.

In the unlikely event this Court finds subject matter jurisdiction to be lacking as to Appellant Ramirez, then this Court should remand this case to provide the Appellees/Plaintiffs with an opportunity to amend their live pleading to cure whatever deficiencies are perceived to exist.

Finally, even though the merits are not relevant at this juncture of the lawsuit, it is important to point out that the Appellant/Defendant is wrong in her attempt to interpret Section 15.022 to exclude any duty to examine the National Change of Address (“NCOA”) database on a monthly basis. Falsely contending that a voter’s change of address and a voter’s address reclassification are mutually exclusive, Appellant ignores the fact that a voter’s change of address can trigger an address reclassification. For example, a voter who fills out a change of address form may have done so because: (i) they have moved out of state; or (ii) they have moved from one political voting district to another within the state; or (iii) they have moved from one political district to another within the county. In each instance, that voter no longer retains the right to vote in a particular Harris County election, and allowing a vote to be cast and counted injects illegality and vote dilution into an election. The only way to ameliorate this risk is for the

Voter Registrar to place voters on the suspense list who have filled out change of address forms that could potentially terminate their right to vote in Harris County. In so doing, it is important to recognize that placing a voter will not, in and of itself, cause that voter to lose the right to vote. To the contrary, it simply sets up a situation where that voter needs to fill out a statement of residence to confirm that their voter registration status has or has not changed. Once that voter shows up to vote, a statement of residence form can be filled out to determine whether voting is still permitted in Harris County or not. Only then can the public be confident that election outcomes are determined by legal voting rather than illegal votes.

Appellant's reliance on legislative history is likewise improper where, as here, Appellant failed to plead and prove that the text contained in Section 15.022 of the Texas Election Code is ambiguous. Even a cursory review of that statute gives rise to an easy construction of both subsection (a) and (b) in which both sections peacefully co-exist. The phrase "address reclassification" is nowhere defined in the Texas Election Code, and a reviewing Court has an obligation to interpret a statute in such a way that harmonizes all of its provisions and does not render any portion meaningless or unenforceable. Where, as here, the Texas Legislature has mandated that a county voter registrar review "any available information" from the United

States Postal Service on a monthly basis, and where, as here, the NCOA data is a subset of “any available information,” and where, as here, a county voter registrar has the obligation to implement changes to a voter’s registration status which may be triggered by an address reclassification, it is easy to construe the entirety of that statute to obligate the county voter registrar to compare the monthly NCOA data with the current voter registration roll and make changes when and as needed.

This Court should not countenance Harris County’s insistence that the Voter Registrar need not need do her job. Maintenance of the integrity of voter registration roll is a core obligation in order to ensure election integrity and to give the public confidence in reported electoral outcomes.

STANDARD OF REVIEW

A plea to the jurisdiction is a dilatory plea that is intended to defeat a cause of action for lack of subject-matter jurisdiction regardless of whether the claims asserted have merit. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). Subject-matter jurisdiction is essential to the authority of a court to decide a case and is never presumed. *Tex. Ass’n of Bus. V. Texas Air Control Bd.*, 852 S.W.2d 440, 443–44. The plaintiff has the burden to allege facts affirmatively demonstrating that the trial court has subject-matter jurisdiction. *Id.* at 446. The existence of subject-matter

jurisdiction is a question of law. *State Dep't. of Hwys. & Pub. Transp. v. Gonzalez*, 82 S.W.3d 322, 327 (Tex. 2002).

When a plea to the jurisdiction challenges the existence of jurisdictional facts, the trial court must consider relevant evidence submitted by the parties. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W. 3d 217, 227 (Tex. 2004). The plea to the jurisdiction standard mirrors that of a traditional motion for summary judgment. *Id.* at 228; *City of Fort Worth v. Robinson*, 300 S.W.3d 892, 895 (Tex. App.—Fort Worth 2009, no pet.). The governmental unit must meet the summary judgment standard of proof for its assertion that the trial court lacks jurisdiction. *Miranda*, 133 S.W.3d at 228; *Robinson*, 300 S.W.3d at 895. Once the governmental unit meets its burden, the plaintiff must show that there is a disputed material fact regarding the jurisdictional issue. *Miranda*, 133 S.W.3d at 228; *Robinson*, 300 S.W.3d at 895.

The Court must take as true all evidence favorable to the nonmovant and indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Id.* If the evidence creates a fact question regarding jurisdiction, the trial court cannot grant the plea to the jurisdiction, and the fact issue will be resolved by the factfinder; however, if the relevant evidence is undisputed or fails to raise a fact question on the jurisdictional

issue, the trial court rules on the plea as a matter of law. *Miranda*, 133 S.W.3d at 227-28. In deciding a plea to the jurisdiction, a court may not consider the merits of the case, but only the plaintiff's pleadings and the evidence pertinent to the jurisdictional inquiry. *County of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex. 2002).

Accordingly, under the standard of review applicable to a subject matter jurisdictional challenge, this Court must take all of the allegations of fact and law in the Appellees'/Plaintiffs' live pleading as true. Because the facts and legal assertions contained with the live pleading demonstrate that Appellant/Defendant Bennett (and now her successor, Ramirez) engaged in ultra vires conduct, jurisdiction has been established over her.

In the alternative, and in the unlikely event this Court does not believe subject matter jurisdiction exists under the current state of the Plaintiffs' pleading, then the Court should afford the Appellees/Plaintiffs an opportunity to replead. Texas courts allow parties to replead unless their pleadings demonstrate incurable defects. See *Tex. Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 623 (Tex. 2011) ("When this Court upholds a plea to the jurisdiction on sovereign immunity grounds, we allow the plaintiff the opportunity to replead if the defect can be cured."); *City of Waco v. Kirwan*, 298 S.W.3d 618, 622 (Tex. 2009) ("The allegations found in the pleadings

may either affirmatively demonstrate or negate the court's jurisdiction. If the pleadings do neither, it is an issue of pleading sufficiency, and the plaintiff should be given an opportunity to amend the pleadings." (citations omitted)); Miranda, 133 S.W.3d at 226–27 ("If the pleadings do not contain sufficient facts to affirmatively demonstrate the trial court[']s jurisdiction but do not affirmatively demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency and the plaintiffs should be afforded the opportunity to amend.")). In that event, Plaintiffs ask for the opportunity to replead.

SUMMARY OF THE GOVERNMENT'S ARGUMENT

In their Plea to the Jurisdiction, the Appellant's/Defendant's position in this case is very simple. It goes something like this:

"You can't prove we are not maintaining the integrity of the Harris County voting role, but, even if you could, you are not entitled to any relief. None of the plaintiffs have a remedy. None of the defendants have any duty or responsibility. You guys are bad actors, who are engaged in collusion with each other. Go away."

Simply put, the government's attitude--as expressed in their Plea--is one of sarcasm and avoidance. Indeed, in an effort to avoid being held accountable, the Appellant/Defendant first tries to manufacture fake facts which are not true, and which cannot be properly considered in a ruling on the

Appellant/Defendant's Plea¹. Next, the Appellant/Defendant tries to impugn the integrity of the Appellees/Plaintiffs². Then they threaten sanctions³. Bottom line, the government is telling the public that there is no remedy to be given.

Not so. The law abhors an outcome where there is no remedy for the commission of a wrong. *Burge v. Dallas Retail Merchants Ass'n*, 257 S.W.2d 733, 736 (Tex. App. Dallas 1953, no writ)(“no wrong shall be without a remedy”). Under the Texas Uniform Declaratory Judgments Act, “[a] court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”

TEX. CIV. PRAC. & REM. CODE ANN. § 37.003(a) (Vernon 1997). The

¹ Under the heading of “BACKGROUND,” the Appellant/Defendant states that “...the weekend before the election started, Plaintiffs colluded to sue Harris County, presumably hoping to cause havoc.” See Defendants’ Plea at 2. 1 CR 42, 43. This accusation is false. Nor does it constitute evidence, as the Appellant/Defendant fails to cite to anything in support of this hyperbole.

² For example, citation is made to newspaper articles. See Appellant’s/Defendant’s Plea at 2, n. 6. 1 CR 42, 43. Newspaper articles are not evidence. Appellees/Plaintiffs objected to this information being considered. But this Court knows better than to be swayed by such efforts to assassinate the character of the Appellees/Plaintiffs. Indeed, where, as here, the question before the Court is whether subject matter jurisdiction exists, that decision is made solely based upon the Appellees’/Plaintiffs’ pleadings, which must be taken as true, as well as any evidence introduced into the record which pertains to jurisdictional facts which have been disputed by the Appellant/Defendants. *See County of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex. 2002)([i]n deciding a plea to the jurisdiction, a court may not consider the merits of the case, but only the plaintiff’s pleadings and the evidence pertinent to the jurisdictional inquiry).

³See Appellant’s/Defendant’s Plea at 1-2, n.3. 1 CR 42, 43. Despite their saber-rattling, Appellees’/Plaintiffs’ lawsuit is far from frivolous, but will inevitably unveil a massive amount of potential voter fraud being created by the government’s failure to do its job.

purpose of the declaratory judgments act is to "settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." Id. § 37.002(b). The act permits interested persons to have a court determine any question of construction or validity arising under a statute and to obtain a declaration of the rights, status, or other legal relations thereunder. Id. § 37.004(a).

FACTS OF THE CASE⁴

The Texas Election Code requires the Harris County Voter Registrar to maintain the integrity of Harris County's voter registration roll. Because Defendant Bennett (and now Appellant Ramirez)⁵ has chosen not to fulfill her statutory duties, the Harris County voter registration roll contains hundreds of thousands of names of persons who should not remain on that role, such as voters who have moved out of Harris County, voters who have died, voters who are felons, voters who have registered at post office or

⁴ These facts come directly from Appellees'/Plaintiffs' First Amended Original Petition. 1 CR 119-154. Under the applicable standard of review explained previously in this Brief, the Trial Court, and indeed, this Court, must accept all factual assertions made as true, especially where, as here, none of these allegations were conclusively proven to be untrue. Indeed, Appellant/Defendant did not even attempt to dispute these facts with evidence. To the contrary, they rested their entire case on the argument that Section 15.022 of the Texas Election Code should be interpreted differently than what it actually and unambiguously says.

⁵ During the oral argument on the Appellant's/Defendant's Plea to the Jurisdiction, the Trial Court queried counsel for the Appellant/Defendant as to whether the new Harris County Voter Registrar, who is Annette Ramirez, was or was not doing the same thing as was her predecessor, Ms. Bennett. Counsel for the new Registrar ultimately conceded that Ms. Ramirez is not doing a monthly review of NCOA data either. Thus, this issue is not moot. 1 RR 29/24 to 31/3.

private mail boxes with commercial mail receiving agencies (“CMRAs”), scores of voters who are not related to each other but have registered at the same address, voters who have registered at a commercial address and do not reside there, and voters who claim to live on vacant property with no structure, utilities, or other indicia of actual residency. Permitting voters to cast ballots when they are not entitled to vote is a frontal assault on democracy and a constitutional republic.

This lawsuit seeks: (i) to force the Harris County Voter Registrar to monitor and maintain the accuracy and integrity of Harris County’s voter registration roll; (ii) to remove those listed on the voter registration role who are not eligible to remain listed; (iii) to review the National Change of Address database on a monthly basis, and, when necessary, investigate specific instances where a voter’s registration status in Harris County should be reasonably questioned; (iv) to promptly review and determine challenges to the registration status of a voter; (v) to promptly initiate confirmation notices to voters who registration status has or may have come into question; (vi) to ensure that voters are placed on a suspense list so that their current residency credentials may be determined through a statement of residence form required to be filled out as a prerequisite to voting; and (vii) all other

actions necessary to force compliance with the voter registration roll in order to stop her ultra vires conduct.

ARGUMENT AND AUTHORITIES

RESPONSE POINT NUMBER ONE

FAILURE TO MAINTAIN THE INTEGRITY OF HARRIS COUNTY’S VOTER REGISTRATION ROLL ALLOWS FOR THE CASTING AND COUNTING OF ILLEGAL VOTES IN HARRIS COUNTY ELECTIONS.

A. ELIGIBILITY REQUIREMENTS FOR VOTING IN TEXAS

In order to be eligible to vote in Texas, a person must: (1) be a qualified voter under Tex. Elec. Code § 11.002; (2) be a resident of the territory covered by the election for the office on which the person desires to vote; and (3) satisfy all other requirements for voting prescribed by law for the particular election. Tex. Elec. Code § 11.001. A “qualified voter” is someone who is at least 18 years of age, a citizen of the United States, a Texas resident, and a registered voter. Tex. Elec. Code § 11.002. Thus, a vote that is cast by a voter *who does not reside in the county of the election is an illegal vote* that cannot be counted. *Gonzalez v. Villarreal*, 251 S.W.3d 763, 776 (Tex. App.—Corpus Christi 2008, pet. dismiss’d w.o.j.); *Alvarez v. Espinoza*, 844 S.W.2d 238, 247 (Tex. App.—San Antonio 1992, writ dismiss’d w.o.j.).

In order to register to vote in Texas a person must fill out an application to register to vote. The registration must be in writing and must be signed by the applicant. Among several items, the application must include the following: the applicant's full name, applicants date of birth, a statement that the applicant is a United States citizen, the applicant's resident address or if the residence does not have an address, the address at which the applicant receives mail and a concise description of the location of the applicant's residence; and the voter's Texas driver's license number or the number of a personal identification card issued by the Department of Public Safety, the last four digits of their social security card or a statement that they do not have one of the three forms of identification. Tex. Elec. Code § 13.002. Both federal and state law contemplates that the voter registrar will keep the list of registered voters up to date by removing ineligible or deceased voters. Both the federal and Texas law mention using the National Change of Address database as a means to maintain the voter roll. In *Husted, Ohio Secretary of State v. Phillip Randolph Institute et al*, the concern was over the Ohio law that keeps the voter roll up to date by removing names of those who have moved out of the district where they are registered. 201 L. Ed. 141 (2018). Voters who have not voted for two years are identified as potential voters who have moved. These voters are sent

confirmation cards and if they fail to return the card and fail to vote for four years, they are removed from the voter roll. In its discussion of the voter roll maintenance, the Court discusses the use of the U.S. Postal Service's change of address database as a tool to identify voters who moved and sending notice to the voters as "undisputedly lawful". *Husted v. Phillip Randolph*, 201 L. Ed. 141, 151 (2018) (citing 52 U.S.C. § 20507 (c)(1)).

Voters are required to be registered where they reside. For a variety of reasons, a voter registrar may have placed a voter on the suspense list. The pertinent statutory materials regarding suspense lists are listed below:

Sec. 15.081. SUSPENSE LIST.

(a) The registrar shall maintain a suspense list containing the name of each voter:

(1) who fails to submit a response to the registrar in accordance with Section 15.053;

(2) whose renewal certificate is returned to the registrar in accordance with Subchapter B, Chapter 14; or

(3) who appears on the list of nonresidents of the county provided to the registrar under Section 62.114, Government Code.

(b) The list shall be arranged alphabetically by voter name and for each voter must contain the voter's name, residence address, date of birth, registration number, and date the name is entered on the list. The names shall be grouped according to county election precincts.

(c) The secretary of state may prescribe an alternative form or procedure for maintaining the list.

(d) Notwithstanding Subsection (b), the suspense list may not contain the residence address of a voter whose residence address is confidential under Section 13.004.

Sec. 15.111. NOTATION ON LIST OF REGISTERED VOTERS.

(a) The registrar shall enter the notation "S", or a similar notation approved by the secretary of state, on the list of registered voters beside each voter's name that also appears on the suspense list.

(b) The registrar shall delete the notation from the list if the voter's name is deleted from the suspense list.

Sec. 15.112. AUTHORIZATION TO VOTE ON STATEMENT.

In an election held on or after the date the voter's name is entered on the suspense list and before November 30 following the second general election for state and county officers that occurs after the beginning of the period, a voter whose name appears on a precinct list of registered voters with the notation "S", or a similar notation, may vote in the election precinct in which the list is used if the voter satisfies the residence requirements prescribed by Section 63.0011 and submits a statement of residence in accordance with that section.

Every voter on the suspense list is required to fill out a Statement of Residence (“SOR”) in order to vote. In addition, every single voter is asked by the election officials whether their voter registration address is current. If a voter relays information that they have moved, then that voter is required to fill out a SOR. Tex. Elec. Code § 63.0011. See Harris County Election Manual 2022-2023, p. 89 & 175 and Secretary of State’s Handbook for Election Judges and Clerks – Qualifying Voters on Election Day 2022, p. 31. Statements of Residence may also be required for mail ballots. Tex. Elec.

Code § 87.041. The pertinent forms and statutory material are summarized below:

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Instructions for Voting by Mail on Back
(Al Dorso: Instrucciones si vota por correo)

Prescribed by
Secretary of State

For persons whose residence address does not match voter registration address.

Para personas cuya dirección no coincide con la que aparece en la lista oficial de votantes inscritos.

Last Name Include suffix if any Apellido incluir sufijo si lo hay (Jr., Sr., III)		First Name Nombre de pila		Middle Name (if any) Segundo nombre (si aplica)		Former Name Apellido anterior	
Residence Address: Street Address and Apartment Number, City, State, and Zip. If none, describe where you live. (Do not include P.O. Box, Rural Route, or Business Address) Domicilio residencial: Número y calle, y número de apartamento, Ciudad, Estado, y Código postal. Si no existe un domicilio, describa donde vive (no incluya apartados postales, rutas rurales o dirección del trabajo).						Gender (Optional) Sexo (Opcional) ☐ Male Masculino ☐ Female Femenino	
Mailing Address: Address, City, State, and Zip: if mail cannot be delivered to your residence address. Dirección postal: Número y calle, y número de apartamento, Ciudad, Estado, y Código postal (si no se puede entregar correo en su domicilio residencial).				Date of Birth: month, day, year Fecha de Nacimiento: mes, día, año / /			
City and County of Former Residence in Texas Ciudad y condado de residencia anterior en Texas		City and County of Current Residence in Texas Ciudad y condado de residencia actual en Texas		Telephone Number (Optional) Include Area Code Teléfono (Opcional) – Incluya código de área			
Texas Driver's License No. or Texas Personal I.D. No. (Issued by the Department of Public Safety) No. de licencia de conducir de Texas o no. de identificación personal de Texas (Expedido por el Departamento de Seguridad Pública) 				If no Texas Driver's License or Personal Identification, give last 4 digits of your Social Security Number. Si no tiene licencia de conducir de Texas o no. de identificación personal, proporcione los 4 últimos dígitos de su número de Seguro Social.			
☐ I have not been issued a Texas Driver's License/Personal Identification Number or Social Security Number. Yo no tengo una Licencia de conducir de Texas/Cédula de identidad personal de Texas o Número de Seguro Social.							
I understand that giving false information to procure a voter registration is perjury, and a crime under state and federal law. Conviction of this crime may result in imprisonment up to one year in jail, a fine up to \$4,000, or both. Please read all three statements to affirm before signing. Entiendo que el dar información falsa para obtener una tarjeta de registro electoral constituye un delito de perjurio bajo las leyes estatales y federales. La condena por este delito puede resultar en encarcelamiento de hasta un año de cárcel, una multa de hasta \$4,000, o ambas cosas. Por favor lea cada una de las tres declaraciones antes de firmar. I am a resident of this county and a U.S. citizen; and I have not been finally convicted of a felony, or if a felon, I have completed all of my punishment including any term of incarceration, parole, supervision, period of probation, or I have been pardoned; and I have not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote. soy residente de este condado y ciudadano de los Estados Unidos; y no he sido finalmente condenado por un delito grave, o si soy un delincuente, he purgado mi pena por completo, incluyendo cualquier plazo de encarcelamiento, libertad condicional, supervisión, período de libertad condicional, o he sido indultado; y no he sido determinado por un fallo final de un tribunal que ejerce la jurisdicción testamentaria que estoy totalmente incapacitado mentalmente o parcialmente incapacitado mentalmente sin derecho a voto							
X				Date / /			
Signature of Applicant or Agent and Relationship to Applicant or Printed Name of Applicant if Signed by Witness and Date. Firma del solicitante o su agente (apoderado) y relación de éste con el solicitante, o nombre en letra del molde del solicitante si la firma es la de un testigo, y fecha.							
				Print Reset			

- D. Ask the Voter, "Do you currently live at (street name)?" Voters prefer that you only read the street name and apartment number (if there is one) from the ePollBook screen for their privacy.

The address on the ID provided by the Voter does NOT have to match the Voter Registration address.

1. If the Voter answers "Yes", check the "Yes" box.
2. If the Voter answers "No", check the "No" box, instructions on the screen will direct you to have the Voter fill out an SOR.
3. Tell the Voter to return to the front of the line to submit their completed SOR and be re-checked in to vote. The clerk must check the SOR to confirm the Voter still lives in Harris County.
 - A. If the Voter has **moved within** Harris County, the Voter would vote using the same address shown on the ePollbook, as long as they still reside in the same political subdivision holding the election.
 - B. If the Voter has **moved outside** Harris County, refer the Voter to the Judge who can only offer them a Provisional Ballot.
 - C. If the Voter has **moved into** Harris County from another Texas county, but their registration is not yet effective, they may vote a Limited Ballot by mail or in person at 1001 Preston Street, 4th floor, during the Early Voting period only.



If giving the Voter an SOR, choose "OK" and return to the Home Screen so that the next Voter can be processed. When the Voter returns with their completed SOR, place it in the Judges' SOR Envelope, and process the Voter regularly.

INSTRUCTIONS FOR STATEMENT OF RESIDENCE (SOR)

Statement of Residence (SOR) Instructions

If the voter needs to update their address, they will fill out this Statement of Residence form.

This form is completed by the voter before they are checked in on the ePollBook.

Step 1 – Voter fills in their name and address on the form.

STATEMENT OF RESIDENCE			
For persons whose residence address does not match voter registration address.			
Last Name (include suffix if any (Jr., Sr., III))	First Name	Middle Name (if any)	Former Name
<i>Name</i>	<i>Voter</i>	<i>Middle</i>	
Residence Address: Street Address and Apartment Number, City, State, and Zip If new, describe where you live. Do not include P.O. Box or Rural Route.			Telephone Number (Optional) Include Area Code

Step 2 – Voter fills in the Date of Birth, TDL or Personal ID or the last 4 numbers of their Social Security Number.

Date of Birth: (month, day, year) <i>02/22/1926</i>	Texas Driver's License No. or Texas Personal I.D. No. (Issued by the Department of Public Safety)	If no Texas Driver's License or Personal Identification, give last 4 digits of your Social Security Number
Gender (Optional) ☐ Male ☒ Female	<i>01234567</i>	XXX-XX- <i>0222</i>
☒ I have not been issued a Texas Driver's License/Personal Identification Number or Social Security Number. I understand that giving false information to procure a voter registration is perjury and a crime under state and federal law. Conviction of this crime		

If the voter has not been issued ID have them check this box

Make sure Voter fills in the "City and County of Former Residence in Texas" and the "City and County of Current Residence in Texas"

Step 3 – Voter Signs and dates form.

I understand that giving false information to procure a voter registration is perjury and a crime under state and federal law. Conviction of this crime may result in imprisonment up to 180 days, a fine up to \$2,000, or both. Please read all true statements below to affirm before signing.	
- I am a resident of this county and a U.S. citizen; and - I have not been finally convicted of a felony, or if a felon, I have completed all of my punishment including any term of incarceration, parole, supervision, period of probation, or have been pardoned; and - I have not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote.	
☒ <i>Voter Name</i> Signature of Applicant or Agent and Relationship to Applicant or Printed Name of Applicant if Signed by Witness and Date.	Date <i>02/01/2022</i>

Step 4 –

- Voter gives filled out form to Qualifying Clerk and is checked in on the ePollBook.
- Qualifying Clerk **MUST** look at form and confirm that the voter still lives in Harris County
- If the Voter has moved out of Harris County, the Qualifying Clerk needs to send the Voter to speak to the Judge and cannot check them in to vote.

NOTE: The Statement of Residence form can be used by a voter for other situations.

For voter registration the Voter fills out the form and the Judge writes "Registration" on the top.

For a name change the Voter will fill out the form with their new name and the Judge will write

"Name Change" at the top.

The forms are filed in the Statement of Residence Envelope along with all other filled out SOR forms.

Rev: 08/2022

After verifying the identity of the voter, follow these steps:

1. Ask the voter if the voter's residence address on the precinct list of registered voters is current and whether the voter has changed residence within the county; if changed, have voter complete a statement of residence form. [Sec. 63.0011]

NOTE: Some voters may not have their addresses on the list of registered voters due to their participation in an address confidentiality program. Nevertheless, election judges should continue to ask whether or not the voter has moved from the address at which the voter is registered to vote. If the voter's registration address is omitted due to participation in an address confidentiality program, you must ask the voter if the residence address listed on the voter's acceptable form of photo ID or, if applicable, the acceptable form of supporting identification, is current and whether the voter has changed residence within the county.

Sec. 63.0011. STATEMENT OF RESIDENCE REQUIRED.

(a) Before a voter may be accepted for voting, an election officer shall ask the voter if the voter's residence address on the precinct list of registered voters is current and whether the voter has changed residence within the county. If the voter's address is omitted from the precinct list under Section 18.005(c), the officer shall ask the voter if the voter's residence, if listed, on identification presented by the voter under Section 63.001(b) is current and whether the voter has changed residence within the county.

(b) If the voter's residence address is not current because the voter has changed residence within the county, the voter may vote, if otherwise eligible, in the election precinct in which the voter is registered if the voter resides in the county in which the voter is registered and, if applicable:

- (1) resides in the political subdivision served by the authority ordering the election if the political subdivision is other than the county; or
- (2) resides in the territory covered by the election in a less-than-countywide election ordered by the governor or a county authority.

(c) Before being accepted for voting, the voter must execute and submit to an election officer a statement including:

(1) a statement that the voter satisfies the applicable residence requirements prescribed by Subsection (b);

(2) all of the information that a person must include in an application to register to vote under Section 13.002; and

(3) the date the statement is submitted to the election officer.

(c-1) The statement described by Subsection (c) must include a field for the voter to enter the voter's current county of residence.

(d) The voter registrar shall provide to the general custodian of election records a sufficient number of statements of residence for use in each election.

(e) The voter registrar shall retain each statement of residence on file with the voter's voter registration application.

(f) Information included on a statement of residence under Subsection (c)(2) is subject to Section 13.004(c).

Sec. 87.041. ACCEPTING VOTER.

(a) The early voting ballot board shall open each jacket envelope for an early voting ballot voted by mail and determine whether to accept the voter's ballot.

(b) A ballot may be accepted only if:

(1) the carrier envelope certificate is properly executed;

(2) neither the voter's signature on the ballot application nor the signature on the carrier envelope certificate is determined to have been executed by a person other than the voter, unless signed by a witness;

(3) the voter's ballot application states a legal ground for early voting by mail;

(4) the voter is registered to vote, if registration is required by law;

(5) the address to which the ballot was mailed to the voter, as indicated by the application, was outside the voter's county of residence, if the ground for early voting is absence from the county of residence;

(6) for a voter to whom a statement of residence form was required to be sent under Section 86.002(a), the statement of residence is returned in the carrier envelope and indicates that the voter satisfies the residence requirements prescribed by Section 63.0011;

(7) the address to which the ballot was mailed to the voter is an address that is otherwise required by Sections 84.002 and 86.003; and

(8) the information required under Section 86.002(g) provided by the voter identifies the same voter identified on the voter's application for voter registration under Section 13.002(c)(8).

To be eligible to vote in an election, a person "must be a qualified voter on the day the person offers to vote; be a resident of the territory covered by the election; and satisfy all other requirements for voting prescribed by law." *Slusher v. Streater*, 896 S.W.2d 239, 247 (Tex. App. — Houston [1st Dist.] 1995, no writ)(citing TEX. ELEC. CODE ANN. § 11.001 (Vernon 1986)).

The Texas Election Code defines a “qualified voter” as "one who is 18 years of age or older; is a United States citizen; has not been determined mentally incompetent; has not been finally convicted of a felony, except under certain circumstances; is a resident of this state; and is a registered voter." *Id.* (citing TEX. ELEC. CODE ANN. § 11.002 (Vernon 1986)).

An "illegal vote" is one that "is not legally countable." TEX. ELEC. CODE ANN. § 221.003(b) (Vernon 2003). For example, a vote cast in a precinct by a person who does not reside in the county of the election is an illegal vote that cannot be counted. *Alvarez v. Espinoza*, 844 S.W.2d 238, 247 (Tex. App.-San Antonio 1992, writ dismissed w.o.j.).

Under Texas Election Code § 1.015, a person may not establish a residence for the purpose of influencing the outcome of an election. The statute's plain language would enable a person of common intelligence to understand the following: (1) to become a legally registered voter, he must both maintain a domicile in the territory in which he seeks to vote and intend to return to that domicile after any temporary absence; and (2) when seeking to establish a residence, it is insufficient to go to a place within the territory for a temporary purpose and without any intent of making that place his home. *Id.* § 1.015(a), (d).

The Texas Legislature has provided a statutory injunction to any person who is being harmed or is in danger of being harmed by a violation or threatened violation of the Election Code to prevent the violation from continuing. Tex. Elec. Code § 273.081.

RESPONSE POINT NUMBER TWO

REGISTERED VOTERS WHO SHOULD NO LONGER BE REGISTERED TO VOTE IN HARRIS COUNTY ELECTIONS ARE NOT QUALIFIED VOTERS UNDER THE LAW.

To be an eligible voter, a person must "be a resident of the territory covered by the election for the office or measure on which the person desires to vote[.]" Tex. Elec. Code Ann. § 11.001(a)(2) (West 2010). The term "residence" means "domicile," i.e., a person's home and fixed place of habitation to which he intends to return. Id. § 1.015(a). The person does not lose his residence by leaving his home to go to another place for temporary purposes only. Id. § 1.015(c). Nor does the person "acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home." Id. § 1.015(d).

Generally, an individual must vote in the election precinct in which he resides. Tex. Elec. Code § 11.003. The Election Code defines residence as "domicile," or "one's home and fixed place of habitation to which one intends to return after any temporary absence." Id. § 1.015(a). It further defines the parameters of residency as follows:

(b) A person may not establish residence for the purpose of influencing the outcome of a certain election.

(c) A person does not lose the person's residence by leaving the person's home to go to another place for temporary purposes

only.

(d) A person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home.

....

(f) A person may not establish a residence at any place the person has not inhabited. A person may not designate a previous residence as a home and fixed place of habitation unless the person inhabits the place at the time of designation and intends to remain.

Tex. Elec. Code Ann. § 1.015.

The statute's plain language would enable a person of common intelligence to understand the following: (1) to become a legally registered voter, he must both maintain a domicile in the territory in which he seeks to vote and intend to return to that domicile after any temporary absence; and (2) when seeking to establish a residence, it is insufficient to go to a place within the territory for a temporary purpose and without any intent of making that place his home. *Id.* § 1.015(a), (d). The statute is neither ambiguous nor subject to absurd results. See *Tapps*, 294 S.W.3d at 177; see also *Williams*, 253 S.W.3d at 677.

These are not mere technicalities that Plaintiffs are raising in this lawsuit. Indeed, it is a very serious situation where a citizen⁶ attempts to vote illegally to not only influence, but, in some circumstances of a very

⁶ Lackluster maintenance of voter rolls can also permit non-citizens to vote in certain circumstances.

close political race, actually determine, the outcome of an election. To allow this to occur without serious judicial scrutiny is an act of disenfranchisement to all other validly registered and otherwise qualified voters.

"The right to vote is fundamental, as it preserves all other rights." Andrade, 345 S.W.3d at 12 (citing *Yick Wo v. Hopkins*, 118 U.S. 356, 370, 6 S. Ct. 1064, 30 L. Ed. 220 (1886)); see also Tex. Const. Art. I, § 3 (providing equal rights). Courts have zealously protected the right to vote. See *Reynolds v. Sims*, 377 U.S. 533, 555, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964) ("The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."); *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964) ("No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."); *Stewart v. Blackwell*, 444 F.3d 843, 862 (6th Cir. 2006) ("Few rights have been so extensively and vigorously protected as the right to vote. Its fundamental nature and the vigilance of its defense, both from the courts, Congress, and through the constitutional amendment process, stem from the recognition that our democratic structure and the preservation of our rights depends to a

great extent on the franchise."); see also *United States v. Mosley*, 238 U.S. 383, 386, 35 S. Ct. 904, 59 L. Ed. 1355 (1915) ("We regard it as equally unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box."); *Avery v. Midland County*, 406 S.W.2d 422, 425 (Tex. 1966) ("Petitioner as a voter in the county has a justiciable interest in matters affecting the equality of his voting and political rights."); Thomas Paine, *Dissertation on the Principles of Government*, 1795 ("The right of voting . . . is the primary right by which all other rights are protected.").

RESPONSE POINT NUMBER THREE

THE TRIAL CORRECTLY DENIED APPELLANT'S PLEA TO THE JURISDICTION BECAUSE EACH APPELLEE ESTABLISHED BOTH INDIVIDUAL AND TAXPAYER STANDING.

Each Plaintiff has standing to sue⁷. "The standing requirement stems from two limitations on subject matter jurisdiction": the interpretation of our constitutional separation-of-powers provision "to prohibit courts from issuing advisory opinions"; and the limitation of our constitutional guarantee of "open courts . . . [to] those litigants suffering an injury." *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443–44 (Tex. 1993). Generally, to establish standing, "a plaintiff must demonstrate that he or she

⁷ The Trial Court conducted a hearing in which standing was vigorously debated. 1 RR 1-33/22.

possesses an interest in a conflict distinct from that of the general public, such that the defendant's actions have caused the plaintiff some particular injury.” *Williams v. Lara*, 52 S.W.3d 171, 178 (Tex. 2001). Citizens do not ordinarily have a right to bring suit challenging governmental decision-making because “[g]overnments cannot operate if every citizen who concludes that a public official has abused his discretion is granted the right to come into court and bring such official’s public acts under judicial review.” *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000) (citing *Osborne v. Keith*, 177 S.W.2d 198, 200 (1944)); see also *Andrade v. Venable*, 372 S.W.3d 134, 136 (Tex. 2012).

Each Plaintiff in this case asserts that they have a unique injury sufficient to confer standing. As for Plaintiff Hotze, his constitutionally protected right to vote in the past election was diluted by the presence of votes which were cast but should not have been counted. As for the other three Plaintiffs, they had a right to be candidates in a political election which was free from illegal voting.

To the extent that the Appellant/Defendant contends before this court that these issues are moot—and that each Appellee’s/Plaintiff’s standing is gone because the election has already passed, that is not true. Although it is true that the current election has come and gone, it is not true that this moots

this lawsuit. Indeed, many lawsuits take years to be finally resolved, and some even take a decade. Interim elections held prior to a judicial declaration of illegality or unconstitutionality are enforced, while future elections must be implemented under a court judgment that requires the government to comply with all requisite legal and constitutional requirements. As such, this case meets a well-established exception to the mootness doctrine. The ‘capable of repetition yet evading review’ exception is applied where the challenged act is of such short duration that the appellant cannot obtain review before the issue becomes moot." *General Land Office v. OXY U.S.A., Inc.*, 789 S.W.2d 569, 571 (Tex.1990); see also *Spring Branch Indep. Sch. Dist. v. Reynolds*, 764 S.W.2d 16, 18 (Tex. App.—Houston [1st Dist.] 1988, no writ). There must also be a reasonable expectation that the same action will occur again if the issue is not considered.⁸ *Weinstein v. Bradford*, 423 U.S. 147, 96 S. Ct. 347, 46 L.Ed.2d 350 (1975). This doctrine has been applied to election matters. See, e.g., *Blum v. Lanier*, 997 S. W. 2d 259 (Tex. 1999); see also *Bejarano v. Hunter*, 899 S.W.2d 346, 351 (Tex. App.-El Paso 1995, orig. proceeding). Absent

⁸ That requirement has been met, as the attorney for the Appellant/Defendant conceded in open court that the current Voter Registrar does not and will not review all available NCOA data on a monthly basis. Thus, this failure will continue in future elections.

court intervention, this illegal activity and constitutional deprivation will continue to occur and negatively impact all future Harris County elections.

Both the courts and the Legislature have created exceptions to this general rule, however. One such court-created exception is for taxpayer standing applies here. Texas courts long ago recognized that taxpayers may sue to enjoin the illegal collection of funds by government, which is consistent with the general standing rule because the actual or threatened loss of the taxpayer's own funds is a particular injury. See *Davis v. Burnett*, 13 S.W. 613 (Tex. 1890); *Morris v. Cummings*, 45 S.W. 383, 385 (Tex. 1898); *George v. Dean*, 47 Tex. 73, 84 (1877); *Blessing v. City of Galveston*, 42 Tex. 641, 654 (1875). But Texas courts also hold that taxpayers have standing to enjoin the future illegal expenditure of state or local funds without demonstrating a particular injury. See *Venable*, 372 S.W.3d at 137; *Williams*, 52 S.W.3d at 179; *Calvert v. Hull*, 475 S.W.2d 907, 908 (Tex. 1972); *Osborne*, 177 S.W.2d at 200; *Hoffman v. Davis*, 100 S.W.2d 94, 95 (Tex. 1937) (“When a taxpayer brings an action to restrain the illegal expenditure . . . of tax money he sues for himself, and it is held that his interest in the subject-matter is sufficient to support the action”); *Terrell v. Middleton*, 187 S.W. 367, 369 (Tex. Civ. App.—San Antonio 1916), writ ref’d, 191 S.W. 1138 (Tex. 1917) (per curiam); *City of Austin v.*

McCall, 68 S.W. 791, 794 (Tex. 1902); *Hendee v. Dewhurst*, 228 S.W.3d 354, 378–79 (Tex. App.—Austin 2007, pet. denied).

The taxpayer standing exception recognized by Texas courts mirrors the doctrine of municipal taxpayer standing used in federal courts. *Williams*, 52 S.W.3d at 181; see also *DaimlerChrysler v. Cuno*, 547 U.S. 332, 349 (2006). Federal courts recognize a narrower standing exception for taxpayers who contend that federal or state expenditures violate the Federal Constitution, requiring them to “establish a logical nexus between being a taxpayer and the type of action challenged, and demonstrate a link between their taxpayer status and the precise nature of the constitutional violation alleged.” *Williams*, 52 S.W.3d at 181. This test has been met only with respect to Establishment Clause violations, as the Federal Constitution lacks detailed fiscal regulations of the sort that often appear in state constitutions and laws and in municipal charters and ordinances. The Texas courts’ approach to taxpayer standing promotes the rule of law by making such legal limits on taxing and spending power enforceable. This exception is founded on the rule of law: it “provides important protection to the public from the illegal expenditure of public funds without hampering too severely the workings of the government.” *Bland Indep. Sch. Dist.*, 34 S.W.3d at 556.

Standing is a constitutional prerequisite to maintaining suit. See *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444, (Tex. 1993); *Hunt v. Bass*, 664 S.W.2d 323, 324, (Tex. 1984). Standing to raise a constitutional challenge requires the claimant to demonstrate an interest distinct from that of the general public--such that the actions complained of have caused a particular injury. See *Williams v. Lara*, 52 S.W.3d 171, 178-79, (Tex. 2001); see also *Hunt*, 664 S.W.2d at 324 ("Standing consists of some interest peculiar to persons individually and not as members of the general public."). The "particularized injury" requirement "inheres in the nature of standing [which] 'stems from two limitations on subject matter jurisdiction: the separation of powers doctrine and, in Texas, the open courts provision.'" *Brown v. Todd*, 53 S.W.3d 297, 302, (Tex. 2001) (quoting *Tex. Ass'n of Bus.*, 852 S.W.2d at 443). These provisions require an actual grievance, not one that is merely hypothetical or generalized. *Id.*

Because the Plaintiffs seek only declaratory and injunctive relief, and because each Plaintiff seeks the same relief, only one plaintiff with standing is required (even though all three Plaintiffs here have standing). See *Barshop v. Medina Cnty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 627 (Tex. 1996).

Each Plaintiff meets the test of standing, because each are residents and qualified voter and taxpayer of Harris County. As a taxpayer, each plaintiff asserts standing to complain and to enjoin the Defendants from failing to maintain the integrity of the voter registration roll of Harris County. By permitting illegal voting, and by paying government employees to assist in illegal voting by not doing what is required to be done to prevent illegal voting, monetary expenditures are being spent illegally, and the source of these illegal expenditures are derived from local, municipal, county, state and federal tax dollars, a portion of which have been paid and will continue to be paid by each Plaintiff.

RESPONSE POINT NUMBER FOUR

THE TRIAL CORRECTLY DENIED APPELLANT'S PLEA TO THE JURISDICTION BECAUSE THE APPELLEES'/PLAINTIFFS' CLAIMS ARE NOT BARRED BY GOVERNMENTAL IMMUNITY.

The doctrine of governmental immunity does not bar Plaintiffs' suit. "Sovereign immunity requires the state's consent before it can be sued." *Hall v. McRaven*, 508 S.W.3d 232, 238 (Tex. 2017). Cities and other political subdivisions of the state share in this immunity—referred to as "governmental immunity"—when they are performing governmental functions. *Gates v. City of Dallas*, 704 S.W.2d 737, 738–39 (Tex. 1986).

The doctrine of immunity, which does not appear in our Constitution, has its origins in the common law and the feudal fiction that “the King can do no wrong.” *Brown & Gay Eng’g, Inc. v. Olivares*, 461 S.W.3d 117, 121 (Tex. 2015); see *Tooke v. City of Mexia*, 197 S.W.3d 325, 331 (Tex. 2006); *Hosner v. DeYoung*, 1 Tex. 764, 769 (1847). The reasons given for the doctrine “have evolved over the centuries,” and its modern “purpose is pragmatic: to shield the public from the costs and consequences of improvident actions of their governments.” *Tooke*, 197 S.W.3d at 331–32. Immunity also “preserves separation-of-powers principles by preventing the judiciary from interfering with the Legislature’s prerogative to allocate tax dollars.” *Brown & Gay Eng’g*, 461 S.W.3d at 121.

As with standing, both the courts and the Legislature have recognized exceptions to immunity. The common-law exceptions likewise have deep historical roots, tracing their heritage to courts’ issuance of writs of habeas corpus, mandamus, and injunction against government officials to check acts in excess of lawful authority or compel the performance of a clear legal duty. In explaining why mandamus was the correct remedy for a government official’s refusal to carry out his ministerial duty to deliver a commission, Chief Justice Marshall in *Marbury v. Madison* looked to the rule of law: “The government of the United States has been emphatically termed a

government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.” 5 U.S. (1 Cranch) 137, 163 (1803). The Supreme Court of the United States rejected the argument that “the heads of departments are not amenable to the laws of their country,” quoting Blackstone’s Commentaries to show that the common law furnished methods of detecting errors and misconduct by government agents that injured private property rights. *Id.* at 164–65. The Court adopted the legal fiction that when a government official’s “powers are limited by statute, his actions beyond those limitations [that affect the plaintiff’s property] are considered individual and not sovereign actions,” and thus immunity does not bar a suit against him for specific relief. *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 689, 701–02 (1949).

Texas courts also recognize an ultra vires exception, which allows a plaintiff to sue a government official who “acted without legal authority or failed to perform a purely ministerial act.” *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). An official acts without legal authority “if he exceeds the bounds of his granted authority or if his acts conflict with the law itself.” *Houston Belt & Terminal Ry. v. City of Houston*, 487 S.W.3d 154, 158 (Tex. 2016). Because an official’s unauthorized acts “should not be

considered acts of the state at all,” a citizen’s suit to protect his property against such acts is not barred by immunity. Hall, 508 S.W.3d at 238; see also Heinrich, 284 S.W.3d at 370.

The Supreme Court of Texas has explained that “ultra vires suits do not attempt to exert control over the state—they attempt to reassert the control of the state” over one of its officials. Heinrich, 284 S.W.3d at 372. “Stated another way, these suits do not seek to alter government policy but rather to enforce existing policy.” Id. While acknowledging the modern fiscal rationale for immunity, the supreme court concluded that it does not apply to ultra vires suits: “extending immunity to officials using state resources in violation of the law would not be an efficient way of ensuring those resources are spent as intended.” Id.

Aside from these deeply rooted common-law exceptions, Texas courts have been reluctant to recognize other types of suits to which immunity does not apply, preferring to defer to the Legislature to determine when immunity should be waived. Brown & Gay Eng’g, 461 S.W.3d at 121. The Legislature has been active in waiving immunity, concluding that governmental activities should be subordinate to the law in many areas where courts have not found an exception.

One such waiver appears in the Uniform Declaratory Judgments Act.

Under the Texas Uniform Declaratory Judgments Act, "[a] court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." TEX. CIV. PRAC. & REM. CODE ANN. § 37.003(a) (Vernon 1997). The purpose of the declaratory judgments act is to "settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." Id. § 37.002(b). The act permits interested persons to have a court determine any question of construction or validity arising under a statute and to obtain a declaration of the rights, status, or other legal relations thereunder. Id. § 37.004(a). This requirement to make the municipality a party is a waiver of its immunity from suit. Heinrich, 284 S.W.3d at 373 n.6. Where, as here, validly registered Harris County voters are casting ballots while improperly registered voters are also casting illegal ballots, those legal voters are entitled to seek a declaration of who is eligible to remain on a roll of registered voters in Harris County.

Private parties may seek declaratory relief against government officials who act without legal or statutory authority. Texas Natural Res. Conservation Comm'n v. IT-Davy, 74 S.W.3d 849, 855 (Tex. 2002). Section 273.081 of the Texas Election Code further provides that a person "who is being harmed or is in danger of being harmed by a violation or threatened

violation of this code is entitled to appropriate injunctive relief to prevent the violation from continuing or occurring." Tex. Elec. Code Ann. § 273.081 (West 2003). For cases within a court's jurisdiction, courts may determine the statutory and constitutional rights of parties pursuant to the Texas Uniform Declaratory Judgment Act when a controversy has arisen but before any wrong has been committed. See Tex. Civ. Prac. & Rem. Code Ann. § 37.004 (West 2008) ("A person . . . whose rights . . . are affected by a statute . . . may have determined any question of construction or validity arising under . . . the statute."); *Barshop v. Medina County Underground Water Conservation Dist.*, 925 S.W.2d 618, 626 (Tex. 1996) (in facial constitutional challenge to statute, plaintiff must have suffered "some actual or threatened injury" under the statute and must contend "the statute unconstitutionally restricts the plaintiff's own rights"); Tex. Ass'n of Bus., 852 S.W.2d at 444 (UDJA "procedural device for deciding cases already within a court's jurisdiction"); *Bexar Metro. Water Dist. v. City of Bulverde*, 156 S.W.3d 79, 88 (Tex. App.--Austin 2004, pet. denied) (UDJA provides means for court to make determination "before any wrong has actually been committed," that is "preventative in nature"); *Democracy Coalition v. City of Austin*, 141 S.W.3d 282, 296-97 (Tex. App.--Austin 2004, no pet.) (UDJA may be used to "clarify constitutional imperatives").

Plaintiffs assert that no immunity exists for a claim brought under the “ultra vires” exception to governmental immunity. As explained in *City of El Paso v. Heinrich*, 284 S.W.3d 366, 369-76 (Tex. 2009), the ultra vires exception allows a plaintiff to sue a local official in an official capacity, thereby binding the governmental body, through its agent, for injunctive and/or declaratory relief to restrain the official from violating statutory or constitutional provisions. Governmental immunity does not bar such a suit because, in concept, acts of local officials that are not lawfully authorized are not considered to be acts of the local government. Thus, the remedy of compelling such officials to comply with the law, while binding on the local governmental body, does not attempt to exert control over the governmental body, but instead attempts to reassert the control of the local governmental body.

In addition, the Texas Declaratory Judgments Act contains a waiver of immunity from suit for governmental bodies whose presence is necessary to effectuate and bind them to a judicial declaration. Plaintiffs assert claims under the Texas Declaratory Judgments Act against Defendant Bennett and her successor.

In order to bind the governmental body which would be affected by such a judicial declaration, Plaintiffs are required to join Harris County as a

necessary party. Accordingly, governmental immunity does not preclude equitable remedies in official-capacity suits against government actors who have violated statutory and constitutional provisions, by acting without legal authority, or by failing to perform a purely ministerial act. *Heinrich*, 284 S.W.3d at 372-73. Of significance, suits to require government officials to comply with the law and the constitution are not prohibited even if a declaration to that effect compels the payment of money. Thus, to the extent this Court rules in favor of the Plaintiffs, governmental immunity does not bar that requested declaratory and injunctive relief.

RESPONSE POINT NUMBER FIVE

SHOULD THIS COURT DISAGREE WITH THE TRIAL COURT'S DENIAL OF THE APPELLANT'S PLEA TO THE JURISDICTION, THEN THIS COURT SHOULD REMAND TO THE TRIAL COURT AND GRANT THE APPELLEES AN OPPORTUNITY TO REPLEAD.

Texas courts allow parties to replead unless their pleadings demonstrate incurable defects. See *Tex. Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 623 (Tex. 2011) ("When this Court upholds a plea to the jurisdiction on sovereign immunity grounds, we allow the plaintiff the opportunity to replead if the defect can be cured."); *City of Waco v. Kirwan*, 298 S.W.3d 618, 622 (Tex. 2009) ("The allegations found in the pleadings may either affirmatively demonstrate or negate the court's jurisdiction. If the pleadings do neither, it is an issue of pleading sufficiency, and the plaintiff

should be given an opportunity to amend the pleadings.” (citations omitted)); Miranda, 133 S.W.3d at 226–27 (“If the pleadings do not contain sufficient facts to affirmatively demonstrate the trial court[']s jurisdiction but do not affirmatively demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency and the plaintiffs should be afforded the opportunity to amend.”). In that event, Plaintiffs ask for the opportunity to replead.

RESPONSE POINT NUMBER SIX

APPELLANT’S MERITS ARGUMENTS ARE NOT RELEVANT TO WHETHER SUBJECT MATTER JURISDICTION EXISTS, NOR IS THEIR INTERPRETATION OF SECTION 15.022 CORRECT IN ANY EVENT.

The Appellant’s/Defendant’s attempt to seduce this Court into wading into the merits of this case, even though the sole question for this appeal is whether subject matter jurisdiction exists or not. Not only is a merits discussion improper, but the manner in which the Appellant/Defendant arrives at a merits conclusion is fatally flawed. Indeed, Ramirez attempts to avoid the clear and unambiguous language of Section 15.022 of the Texas Election Code, choosing instead to rely on legislative history to content that a change of address is not the same thing as an address reclassification.

This reasoning is flawed on multiple levels. First, a change of address and an address reclassification are not mutually exclusive events, but can intersect and overlap with one another. Indeed, and to the contrary, a change

in a voter's address may very well be the result of a move out of state or a move out of county or a move within the county, which could trigger an address reclassification. The clear and unambiguous language of Section 15.022(b) mandates the Voter Registrar, on a monthly basis, to request "any available information" from the United States Postal Service "indicating address reclassifications." This broad and inclusive language, e.g., any available information," obviously captures NCOA change of address information, as that information is "available" to the United States Postal Service. Because this appellate record makes clear that the Appellant/Defendant is not doing that, presumably on a flawed statutory interpretation that a change of address can never indicate the need for an address reclassification. That is dead wrong.

Second, the Appellant/Defendant is wrong in her claim that she can deviate from the clear words of the statute and somehow imbue an interpretation based upon legislative history. Not so. Where, as here, the statute in question is clear and unambiguous, resorting to extrinsic evidence is improper and erroneous.

The Houston Courts of Appeal have further developed what statutory interpretation principles must be applied by this Court, as follows:

- **Start with the statutory text:** "To determine whether the Act serves as an independent basis for recovering attorney and expert

fees in an action arising from a construction defect, we begin with the Act’s text.” *Mitchell v. D. R. Horton-Emerald, Ltd.*, 579 S.W.3d 135, 138 (Tex. App.—Houston [1st Dist.] 2019, pet. denied); see *Tex. S. Univ. v. Kirksey Architects, Inc.*, 577 S.W.3d 570, 575 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (“We presume that the legislature deliberately and purposefully selects words and phrases it enacts, as well as deliberately and purposefully omits words and phrases it does not enact.”).

- **The ordinary meaning of a word is typically used:** “When a statute contains a term that is undefined . . . the term is typically given its ordinary meaning.” *Nguyen v. Watts*, No. 01-18-00421-CV, 2020 WL 2786841, at *10 (Tex. App.—Houston [1st Dist.] May 28, 2020, no pet. history); see *Williams v. State*, 582 S.W.3d 692, 702 (Tex. App.—Houston [1st Dist.] 2019, pet. ref’d).
- **Courts can reference dictionaries:** “Courts may consult standard dictionaries in determining the fair, objective meaning of undefined statutory terms.” *Williams v. State*, 582 S.W.3d 692, 702 (Tex. App.—Houston [1st Dist.] 2019, pet. ref’d).
- **Grammar and common usage should be used:** “We read the text of the statute in context, construing it according to the rules of grammar and common usage.” *Williams v. State*, 582 S.W.3d 692, 700 (Tex. App.—Houston [1st Dist.] 2019, pet. ref’d).
- **Look to context to determine a specific word’s meaning:** “However, we will not give an undefined term a meaning that is out of harmony or inconsistent with other terms in the statute. If a different, more limited, or precise definition is apparent from the term’s use in the context of the statute, we apply that meaning.” *In re Hall*, 286 S.W.3d 925, 929 (Tex. 2009); see *Nguyen v. Watts*, No. 01-18-00421-CV, 2020 WL 2786841, at *10-11 (Tex. App.—Houston [1st Dist.] May 28, 2020, no pet. history) (the “the ordinary meaning assigned by the legal profession”); see also *Morris v. Ponce*, 584 S.W.3d 922, 925–26 (Tex. App.—Houston [14th Dist.] 2019, pet. denied) (“The meaning must be in harmony and consistent with other statutory terms and if a different, more limited, or precise definition is apparent from the term’s use in the context of the statute, we

apply that meaning If an undefined term has multiple common meanings, it is not necessarily ambiguous; rather, we will apply the definition most consistent with the context of the statutory scheme.”).

- **Consider the statute as a whole:** “We are required to consider both the specific statutory language at issue and the statute as a whole We endeavor to read the statute contextually, giving effect to every word, clause, and sentence.” *Gaskamp v. WSP USA, Inc.*, 596 S.W.3d 457, 470 (Tex. App.—Houston [1st Dist.] 2020, pet. filed).
- **Legislature is presumed to act with knowledge of judicial decisions:** “Once appellate courts construe a statute and the legislature re-enacts or codifies that statute without substantial change, we presume the legislature has adopted the judicial interpretation.” *Morris v. Ponce*, 584 S.W.3d 922, 926 (Tex. App.—Houston [14th Dist.] 2019, pet. denied); see *Jiminez v. State*, No. 01-18-00123-CR, 2019 WL 1442098, at *3 (Tex. App.—Houston [1st Dist.] Apr. 2, 2019, pet. ref’d) (“[T]he doctrine of stare decisis has its greatest force in matters of statutory interpretation because the Legislature can rectify a mistaken judicial interpretation, and if it does not do so, there is little reason for courts to reconsider a prior statutory construction.”).
- **Presumption against surplusage:** “We give effect to all the statute’s words and, if possible, do not treat any statutory language as mere surplusage. We presume there is a purpose for every word and clause used” *Nguyen v. Watts*, No. 01-18-00421-CV, 2020 WL 2786841, at *9 (Tex. App.—Houston [1st Dist.] May 28, 2020, no pet. history).
- **Broad Language means expansive application:** “As the Supreme Court of Texas has observed, the TMLA’s broad language evidences legislative intent for the statute to have expansive application.” *Univ. of Tex. Med. Branch at Galveston v. Jackson*, No. 14-18-00887-CV, 2020 WL 1480166 (Tex. App.—Houston [14th Dist.] Mar. 26, 2020, pet. denied).

- **Exclusive remedy provisions should be express:** “[W]hen the Legislature seeks to make a remedy exclusive, it does so expressly.” *Harris County v. S.K. & Bros., Inc.*, No. 14-17-00984-CV, 2019 WL 5704244, at *4 (Tex. App.—Houston [14th Dist.] Nov. 5, 2019, pet. denied).
- **Agency deference:** “If there is vagueness, ambiguity, or room for policy determinations in a statute, we normally defer to the agency’s interpretation so long as the construction is reasonable and does not conflict with the statute’s language. But we defer only to the extent that the agency’s interpretation is reasonable, and no deference is due where an agency’s interpretation fails to follow the clear, unambiguous language of its own regulations.” *G&A Outsourcing, Inc. v. Tex. Workforce Comm’n*, No. 14-18-00627-CV, 2019 WL 3432226, at *2-3 (Tex. App.—Houston [14th Dist.] July 30, 2019, no pet.).
- **Consider the legislative purpose:** “Our construction does no violence to the statutory edict that courts liberally construe the civil barratry statute to accomplish its purpose to protect those in need of legal services against unethical, unlawful solicitation.” *Nguyen v. Watts*, No. 01-18-00421-CV, 2020 WL 2786841, at *10 (Tex. App.—Houston [1st Dist.] May 28, 2020, no pet. history) (but also noting that “[l]iberal construction does not authorize a court to disregard the statute’s plain language”); *G&A Outsourcing, Inc. v. Tex. Workforce Comm’n*, No. 14-18-00627-CV, 2019 WL 3432226, at *3–4 (Tex. App.—Houston [14th Dist.] July 30, 2019, no pet.) (“Guided by the statutes’ plain language and their interplay, as well as the overall aims of TUCA, we reject Appellants’ interpretation Moreover, Appellants’ interpretation is not supported by the policies underlying TUCA.”).
- **Consider the consequences from a particular interpretation:** “We consider the entire act, its nature and object, and the consequences that would follow from each construction.” *G&A Outsourcing, Inc. v. Tex. Workforce Comm’n*, No. 14-18-00627-CV, 2019 WL 3432226, at *2–3 (Tex. App.—Houston [14th Dist.] July 30, 2019, no pet.)

- **Presumption that the Legislature intended a just result:** “We further presume that the legislature intended a just and reasonable result.” *Morris v. Ponce*, 584 S.W.3d 922, 926 (Tex. App.—Houston [14th Dist.] 2019, pet. denied).
- **Harmonize with other relevant laws:** “Further, we are to construe statutes so as to harmonize them with other relevant laws, if possible.” *Harris County v. S.K. & Bros., Inc.*, No. 14-17-00984-CV, 2019 WL 5704244, at *4 (Tex. App.—Houston [14th Dist.] Nov. 5, 2019, pet. denied).
- **When statutes are ambiguous or irreconcilable, the more specific statute controls:** “We turn first to the statutory construction argument that a specific statute always controls over a more general one. Far from being a universal rule of statutory construction, this principle applies only when the statutes at issue are ambiguous or irreconcilable.” *Harris County v. S.K. & Bros., Inc.*, No. 14-17-00984-CV, 2019 WL 5704244, at *4 (Tex. App.—Houston [14th Dist.] Nov. 5, 2019, pet. denied).
- **Ambiguous language:** “Whether statutory language is ambiguous is a matter of law for courts to decide. Statutory language is ambiguous only if the words yield more than one reasonable interpretation We only resort to extrinsic aids when a statute’s words are ambiguous.” *Morris v. Ponce*, 584 S.W.3d 922, 925–26 (Tex. App.—Houston [14th Dist.] 2019, pet. denied).
- **Interpret laws without second-guessing Legislative policies:** “Our task in construing statutes is to effectuate the Legislature’s expressed intent, not to second-guess the policy choices it made, or to weigh the effectiveness of their results.” *Harris County v. S.K. & Bros., Inc.*, No. 14-17-00984-CV, 2019 WL 5704244, at *2 (Tex. App.—Houston [14th Dist.] Nov. 5, 2019, pet. denied).

Applying all the above-referenced statutory and caselaw authorities, this Court can easily determine that harmony exists between the statutory

mandate to request NCOA data with the mandatory duty to maintain voter registration rolls by addressing any address reclassification that may arise from such change of address information. In those instances, each affected voter should be placed on a suspense list, not for the purpose of disenfranchising that voter, but for the purpose of seeking confirmation from that voter of their continued registration status, so that the other voters are not disenfranchised and diluted by illegal voting.

Accordingly, even though the merits are not relevant at this juncture of the lawsuit, it is important to point out that the Appellant/Defendant is wrong in her attempt to interpret Section 15.022 to exclude any duty to examine the National Change of Address database on a monthly basis. Falsely contending that a voter's change of address and a voter's address reclassification are mutually exclusive, Appellant ignores the fact that a voter's change of address can trigger an address reclassification. For example, a voter who fills out a change of address form may have done so because: (i) they have moved out of state; or (ii) they have moved from one political voting district to another within the state; or (iii) they have moved from one political district to another within the county. In each instance, that voter no longer retains the right to vote in a particular Harris County election, and allowing a vote to be cast and counted injects illegality and

vote dilution into an election. The only way to ameliorate this risk is for the Voter Registrar to place voters on the suspense list who have filled out change of address forms that could potentially terminate their right to vote in Harris County. In so doing, it is important to recognize that placing a voter will not, in and of itself, cause that voter to lose the right to vote. To the contrary, it simply sets up a situation where that voter needs to fill out a statement of residence to confirm that their voter registration status has or has not changed. Once that voter shows up to vote, a statement of residence form can be filled out to determine whether voting is still permitted in Harris County or not. Only then can the public be confident that election outcomes are determined by legal voting rather than illegal votes.

Appellant's reliance on legislative history is likewise improper where, as here, Appellant failed to plead and prove that the text contained in Section 15.022 of the Texas Election Code is ambiguous. Even a cursory review of that statute gives rise to an easy construction of both subsection (a) and (b) in which both sections peacefully co-exist. The phrase "address reclassification" is nowhere defined in the Texas Election Code, and a reviewing Court has an obligation to interpret a statute in such a way that harmonizes all of its provisions and does not render any portion meaningless or unenforceable. Where, as here, the Texas Legislature has mandated that a

county voter registrar review “any available information” from the United States Postal Service on a monthly basis, and where, as here, the NCOA data is a subset of “any available information,” and where, as here, a county voter registrar has the obligation to implement changes to a voter’s registration status which may be triggered by an address reclassification, it is easy to construe the entirety of that statute to obligate the county voter registrar to compare the monthly NCOA data with the current voter registration roll and make changes when and as needed.

This Court should not countenance Harris County’s insistence that the Voter Registrar need not need do her job. Maintenance of the integrity of voter registration roll is a core obligation in order to ensure election integrity and to give the public confidence in reported electoral outcomes.

PRAYER

Appellees Steven Hotze, MD, Joseph L. Trahan, Caroline Kane and the Honorable Sid Miller ask this Court to reject the arguments in Appellant’s Brief, to affirm the Trial Court’s Order dated April 10, 2025 insofar as it denied Appellant’s Plea to the Jurisdiction, to remand this case for a trial on the merits, and for such other and further relief to which Appellees may show themselves to be justly entitled.

Respectfully Submitted,

/s/ Jared R. Woodfill

Jared R. Woodfill

Woodfill Law Firm, P.C.

3 Riverway, Suite 750

Houston, Texas 77056

Telephone:(713) 751-3080

Facsimile:(713)751-3058

woodfillservice@gmail.com

Counsel for Appellees

Steven Hotze, M.D.

Joseph L. Trahan

Caroline Kane

Honorable Sid Miller

CERTIFICATE OF SERVICE

By affixing my signature above, I hereby certify that a true and correct copy of Appellees' Brief has been delivered via the electronic filing system to the parties below on the 11th day of August, 2025.

/s/ Jared R. Woodfill

Jared R. Woodfill

CERTIFICATE OF COMPLIANCE

In accordance with TEX. R. APP. P. 9.4(i)(3), I certify that this Brief complies with the type-volume restrictions of TEX. R. APP. P. 9.4(e), (i)(2)(B). Inclusive of the portions exempted by Rule 9.4(i)(1), this Brief contains 11,991 words and is in Times New Roman, 14 point type for text and 12 point type for footnotes.

/s/ Jared R. Woodfill

Jared R. Woodfill