

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

JARROD STRINGER, ET AL.,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	No. 5:16-cv-00257
	§	
ROLANDO PABLOS, ¹ IN HIS OFFICIAL CAPACITY	§	
AS THE TEXAS SECRETARY OF STATE AND	§	
STEVEN C. MCCRAW, IN HIS OFFICIAL CAPACITY	§	
AS THE DIRECTOR OF THE TEXAS DEPARTMENT OF	§	
PUBLIC SAFETY,	§	
<i>Defendants.</i>	§	

DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

Defendants, Rolando Pablos, in his official capacity as Texas Secretary of State (“SOS”), and Steven C. McCraw, in his official capacity as Director of the Texas Department of Public Safety (“DPS”), (“Defendants”), hereby move the Court for summary judgment in their favor on all of Plaintiffs’ claims.

INTRODUCTION

This case concerns the application of the National Voter Registration Act (“NVRA”), 52 U.S.C. §§20501-20511, to Texas’s online service offerings for licensed drivers in the State. Plaintiffs are three Texas residents who allege that Defendants did not “simultaneously” update their voter registration information in connection with an online change of address each Plaintiff made to his Texas driver license. Plaintiffs allege that Defendants have violated the NVRA and

¹ When this lawsuit was filed, Carlos H. Cascos was Texas’s Secretary of State. On January 5, 2017, Rolando Pablos took over this position. Secretary Pablos is therefore now listed as the Defendant in this cause. *See* FED. R. CIV. P. 25(d), “[a]n action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer’s successor is automatically substituted as a party. Later proceedings should be in the substituted party’s name[.]”

the Equal Protection Clause of the United States Constitution. They make this claim despite the fact that no Plaintiff provided a written, signed request to update his voter registration information—as Texas law requires—in connection with his online changes of address.

Notably, this is not a case of first impression. NVRA claims related to alleged voter registration delays occurring in the context of online driver license change of address applications have previously been considered and dismissed by Judge Lee Rosenthal and the Fifth Circuit for incurably failing to state a claim on which relief could be granted. *Broyles v. Texas*, 618 F. Supp. 2d 661, 690 (S.D. Tex. 2009) (dismissing plaintiffs’ claim against the State because they did not provide notice and the alleged voter registration delays did not affect votes in a federal election) *aff’d* 381 F. App’x 370 (5th Cir. 2010). The same analysis compels the dismissal of the Plaintiffs’ claims here because they have not complied with the NVRA’s mandatory notice provision. Moreover, and any conceivable, non-mooted injury is insufficient to support an actionable NVRA claim because it is undisputed that each Plaintiff is currently registered to vote in upcoming federal elections at his current residence.

As discussed below, Plaintiffs’ claims fail as a matter of law for a variety of independent reasons. First, Plaintiffs lack statutory standing because it is undisputed that—following their purported “notice” letters² to the State—Defendants offered their assistance in confirming each Plaintiffs’ voter registration and assisting any Plaintiff that wanted to update his information. Second, Plaintiffs also lack Article III standing because they cannot establish that their claims are traceable to Defendants’ conduct or redressable. In particular, it is undisputed that all of the Plaintiffs have had their voter registration information updated, and each testified that they intend

² Mr. Hernandez was individually identified in a May 27, 2015 letter purporting to provide notice. *See* Doc. 1, Ex. C at pp. 2-17 Mr. Stringer and Dr. Woods were not individually identified until Plaintiffs sent additional letters on October 23, 2015, and November 18, 2015, respectively. *Id.* at pp. 171-72; 195-96 . The Original Complaint was filed on March 14, 2016.

to submit the written, signed request required by State law, should he wish to update his voter registration information in the future. Accordingly, Plaintiffs' claims are moot, and are not subject to the capable-of-repetition, but evading review exception to mootness. Third, Plaintiffs claims also fail on their merits as the NVRA expressly incorporates state law into the provisions under which Plaintiffs assert their claims. And relevant Texas law—which Plaintiffs do not challenge—requires individuals who wish to update their voter registration information to submit a written, signed request to do so. The only exception to this requirement exists in the context of online changes of address for voter registration purposes *within a single county*, and this exception is expressly provided for by State law. TEX. ELEC. CODE §15.021(d). Plaintiffs' claims also fail to the extent any non-mooted injury is not related to voting in a federal election. Finally, the equal protection claims fail because Plaintiffs have not—and cannot—identify any similarly-situated comparator who was treated differently when completing the same online change of address transaction. For these reasons, judgment as a matter of law in favor of Defendants is warranted on all of Plaintiffs' claims.

STATEMENT OF RELEVANT UNDISPUTED FACTS

I. The Elections Clause of the Constitution Provides the State Authority to Prescribe the Time, Places, and Manner in Conducting Federal Elections.

The Elections Clause of the United States Constitution provides, “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators.” U.S. CONST. art. I, §4 cl. 1. “The Elections Clause has two functions. Upon the States it imposes the duty (‘shall be prescribed’) to prescribe the time, place, and manner of electing Representatives and Senators; upon Congress it

confers the power to alter those regulations or supplant them altogether.” *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247, 2253 (2013) (citation omitted).

This yields States significant latitude, absent specific Congressional directive. Indeed, “[t]he Clause’s substantive scope is broad. ‘Times, Places, and Manner,’ [the Supreme Court has] written, are ‘comprehensive words,’ which ‘embrace authority to provide a complete code for congressional elections,’ including[,]” as relevant here, “regulations relating to ‘registration.’” *Id.* at 2253 (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932)) (citing *Roudebush v. Hartke*, 405 U.S. 15, 24–25, (1972) (recounts); *United States v. Classic*, 313 U.S. 299, 320 (1941) (primaries)).

II. Voter Registration in Texas

The Defendants each play a part in implementing the NVRA in Texas. TEX. ELEC. CODE §31.001(a) (SOS is chief election officer); *id.* §§20.061 *et seq.* (DPS is a voter registration agency).³ Voter registration in Texas is, and has historically been, a county-based system. TEX. ELEC. CODE §12.001 (“The county tax assessor-collector is the voter registrar for the county unless the position of county elections administrator is created or the county clerk is designated as the voter registrar.”). DPS and SOS work within this county-based system to implement the NVRA’s requirement that each State “establish procedures to register to vote in elections for Federal office by application made simultaneously with an application for a motor vehicle driver’s license pursuant to [§]20504 of this title.” 52 U.S.C. §20503(a)(1).

Plaintiffs contend that there are two types of motor vehicle driver license transactions at issue in this case: changes of address and renewals; however, it is undisputed that no Plaintiff is

³ SOS also works with other designated voter registration agencies. *See* TEX. ELEC. CODE Ch. 20. Those agencies are not addressed here because they are not named in this case.

asserting they were injured due to a renewal transaction. Doc. 1, ¶¶ 5, 46, 47, 49. With respect to renewals, the NVRA provides that

[e]ach State motor vehicle driver’s license application (including any renewal application) submitted to the appropriate State motor vehicle authority *under State law* shall serve as an application for voter registration with respect to elections for Federal office *unless the applicant fails to sign the voter registration application*.

52 U.S.C. §20504(a)(1) (emphasis supplied).

With respect to changes of address, the NVRA further provides that

any change of address form *submitted in accordance with State law* for purposes of a State motor vehicle driver’s license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved *unless the registrant states on the form that the change of address is not for voter registration purposes*.

Id. §20504(d) (emphasis supplied). It is undisputed that under the NVRA in order to be registered to vote or submit a change of address, the person must “sign the registration form or attest[] that the change-of-address information is not for voter registration purposes.” *See* Doc. 1, ¶ 24.

The NVRA also specifies certain “forms and procedures” for voter registration applications subject to the Act. Such applications in connection with DPS transactions may require the “minimum amount of information necessary to prevent duplicate voter registrations and enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” *Id.* §20504(c)(2)(B). These applications further “shall include a statement that—(i) states each eligibility requirement (including citizenship); (ii) contains an attestation that the applicant meets each such requirement; and (iii) requires the signature of the applicant, under penalty of perjury.” *Id.* §20504(c)(2)(C)(iii). They may also require a “second signature.” *Id.* §20504(c)(2)(A).

Completed applications “shall be made available (as submitted by the applicant, or in machine readable or other format) to the appropriate State election official as provided by State

law.” *Id.* §20504(c)(2)(E). Information collected in connection with both changes of address and online renewals “shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.” *Id.* §20504(e)(1).

The Texas Legislature has provided for NVRA implementation at DPS through in person or by mail transactions as follows:

The Department of Public Safety shall provide to each person who applies in person at the department’s offices for an original or renewal of a driver’s license, a personal identification card, or a duplicate or corrected license or card an opportunity to complete a voter registration application form.

When the department processes a license or card for renewal by mail, the department shall deliver to the applicant by mail a voter registration application form.

A change of address that relates to a license or card and that is submitted to the department in person or by mail serves as a change of address for voter registration unless the licensee or cardholder indicates that the change is not for voter registration purposes.

TEX. ELEC. CODE §20.063(a)-(c).

Texas law further provides, as to in person and by mail transactions only:

At the end of each day a [DPS] office is regularly open for business, the manager of the office shall deliver by mail or in person to the voter registrar of the county in which the office is located each completed voter registration application and applicable change of address submitted to a department employee.

Each weekday the department is regularly open for business, the department shall electronically transfer to the secretary of state the name of each person who completes a voter registration application submitted to the department. The secretary shall prescribe procedures necessary to implement this subsection.

On the weekday the [SOS] is regularly open for business following the date the secretary receives information under Subsection (b), the secretary shall inform the appropriate voter registrar of the name of each person who completes a voter registration application submitted to the department. The registrar may verify that the registrar has received each application as indicated by the information provided by the secretary under this subsection.

Id. §20.065(a)-(c). Finally, Texas law further provides, as to by mail and in person DPS transactions only

If a person completes a voter registration application as provided by Section 20.063, the Department of Public Safety shall: (1) input the information provided on the application into the department's electronic data system; and (2) *inform the applicant that the applicant's electronic signature provided to the department will be used for submitting the applicant's voter registration application.*

Id. §20.066(a) (emphasis supplied).

Thus, in the context of by person and by mail types of applications through DPS, and these types of applications only, Texas law provides for the applicant to consent to use of an electronic signature in submitting a voter registration application. *See* TEX. ELEC. CODE § 20.066. Section 13.002 of the Texas Election Code, however, still applies to these applications. It provides, among other things, in (b), that “[a] registration application must be in writing and signed by the applicant.” *See also* Ingram Depo. 97:4-98:5; Schonhoff II Depo. 49:10-14 (“It has to do with 13.002, which the NVRA grants states the right to come up with procedures for implementing the NVRA in its totality. And that 13.002 is the signature component that [Dr. Hersh] disregards in its entirety.”). For in-person or mail driver license’s applications, an applicant physically signs a document. Ingram Depo. 99:7-99:24; Schonhoff Depo. 123:24-124:5 (“Q. When an individual changes their address by mail at DPS, does the form they mail in to request that change have to be signed? A. Yes. Under 20.063, if it’s not signed it’s not eligible for registration. Under 20.066, if it’s not signed, then it doesn’t get – then they are not eligible to have the signature transmitted.”); Schonhoff Depo. 119:19-120:15 (“Q. So I just want to be very clear on the record about what happens in a DPS office in the context of how Mr. Herse is characterizing it in Paragraph 17 here. When an individual is in the DPS office and they respond affirmatively to the voter registration question, how many signatures do they provide and how do they provide those signatures? A.

Okay. So it's my understanding that they will provide one signature on the DPS application that also serves as a voter registration application. That is under 13.002. 20.063 allows for that application to be completed in person with the form – combined form for DPS. The requirements are 13.002, which means written and signed at the time that they're trying to register to vote. When they turn that form over, then the DPS agent will enter the information on the form provided and have the person sign the keypad or the signature capture pad to provide the physical signature, which is electronically captured. Q. So there are two signatures provided in the DPS office under such circumstances? A. That's correct.”)

While some licensees may renew their license or change their address online, there is no specific statutory provision which directly addresses online transactions at DPS and voter registration, but like all voter registrations in Texas (including those in person and by mail at DPS), Section 13.002 of the Texas Election Code also applies, and thus in writing, signature requirements apply.⁴ Similarly, for change of address forms, the Texas Election Code is very specific that a signature must be provided, with one exception not relevant to any of the Plaintiffs here. Section 15.021 of the Texas Election Code provides, in relevant part:

(a) If a voter discovers incorrect information on the voter's registration certificate or if any of the information becomes incorrect because of a change in circumstances, the voter shall promptly submit to the registrar *a written, signed notice* of the incorrect information and the corresponding correction.

...

(d) A voter *who continues to reside in the county in which the voter is registered* may correct information under this section by digital transmission of the information under a program administered by the secretary of state and the Department of Information Resources.

(e) The secretary of state shall adopt rules to: (1) approve technologies for submitting changes of registration information by digital transmission under this section; and (2)

⁴ As an example, an applicant for voter registration may fax his or her application for registration under 13.002 and 13.143 (d-2) of the Texas Election Code, but the original must follow by mail, thereby maintaining the requirement that there be a physical signature. *See* TEX. ELEC. CODE §§ 13.002; 13.143(d-2); Schonhoff Depo. 53:4-6 (“There’s a fax option, but the original has to come by mail, which leads to an original signature.”)

prescribe additional procedures as necessary to implement a system for the digital transmission of changes in registration information.

(emphasis supplied). Therefore, Texas law only permits in county changes of address, which do not relate to any allegation by the Plaintiffs, to be transmitted without a signature; out of county changes of address like those alleged by the Plaintiffs must be in writing and signed.

Online renewal and changes of address with DPS are permitted if, among other things, the applicant is a U.S. Citizen with a Social Security number on file who most recently renewed in person. Importantly, it is undisputed that there is no physical signature provided by the individual at the time the voter completes an online change of address or renewal transaction with DPS, unlike as there is for in person or by mail transactions with DPS. Moreover, there is no such language in the Texas Election Code relating to consent to use of an electronic signature for transactions conducted online with DPS, unlike as there is for in person or by mail transactions with DPS. Ingram Depo. 99:25-100:3 (“In an online transaction, there is no physical signature made, electronically captured or otherwise.”). Because Texas.gov’s online interface does not capture an image of a voter’s signature, those who utilize it receive a link to a voter registration application they must print, sign and mail in order to update their voter registration. *Compare* Doc. 1, Ex. A at p. 2 (“Selecting ‘yes’ **does not** register you to vote. A link to the [SOS] voter website (where a voter application may be downloaded or requested) will be available on your receipt page.”) (emphasis original) *with id.*, Ex. D. at p. 25 (voter registration application requiring signature). *See also, e.g.*, TEX. ELEC. CODE §§ 13.002; 15.021; 52 U.S.C. §20504(c)(2)(C)(iii) (voter registration applications must be signed); *id.* §20504(c)(2)(A) (applications may require second signature); *id.* §20504(a)(1) (renewal is not for voter registration purposes if applicant “fails to sign the voter registration application” or does not meet other State requirements). The primary purpose of these signatures is to comply with requirements for registration, although physical signatures may be

used in the context of verifying signatures on absentee ballots. *See* Schonhoff Depo. 101:3 – 15; 102:20-21 (“The primary purpose of the signature is registration.”)

III. Plaintiffs’ Allegations

A. Plaintiffs can present no evidence that they completed the steps that Texas law requires of any individual who wishes to update voter registration information.

Plaintiffs are three Texas residents who allege that they completed online transactions in 2014 or 2015 on Texas.gov to change the address on their driver licenses. Doc. 1, ¶¶ 46-47, 49. At that time, the Texas.gov interface contained a box asking the driver license holder whether they wanted to register to vote or update their voter registration information. Doc. 1, Ex. A at p. 2. The Texas.gov interface further made clear that “[s]electing ‘yes’ **does not** register you to vote. A link to the [SOS] voter website (where a voter application may be downloaded or requested) will be available on your receipt page.” *Id.* No Plaintiff has alleged or provided evidence that he completed the SOS voter application. *See, e.g.*, Doc. 1, ¶¶ 46-49; Hernandez Depo. 28:16-28:19; Stringer Depo. 32:2-32:19; Woods Depo. 55:14-55:16.

B. Plaintiff Woods has not been denied the ability to cast a vote in a federal election, each Plaintiff is registered to vote at his desired address, and no Plaintiff was denied the opportunity to cast ballot in the 2016 federal general election.

Plaintiffs bring this action based on particular driver license changes of address made through Texas.gov, each in connection with a particular move. Hernandez moved in 2013 from Ector to Dallas County. Hernandez Depo. 28:16-22. Stringer moved from Tarrant to Bexar County in August 2014. Stringer Depo. 31:1-31:8. In 2015, Woods moved from West Virginia to Houston, Texas and changed his driver’s license address from an old address in Austin to his new address in Houston. Woods Depo. 62:11-63:9. None of the Plaintiffs renewed his driver license in connection with these moves. *See* Hernandez Depo. 28:16-28:19; Stringer Depo. 32:2-32:19; Woods Depo. 55:14-55:16.

Hernandez alleges that he was forced to cast a provisional ballot in a 2014 election. Doc. 1, ¶46. Likewise, Stringer alleges that he could only vote for state and local ballot questions in a 2014 election. *Id.* On the other hand, Woods only brings this cause of action based upon a non-federal 2015 election. *Id.* at ¶ 49; *see also* Ex. C (Answer to Request for Admission # 15).

Plaintiffs purported to provide the State with pre-suit “notice” of their alleged claims. Defendants offered assistance to each Plaintiff (and any other individual with voter registration questions of whom Plaintiffs or their counsel was aware)—including to confirming voter registration status, assisting with updating voter registration information, and answering any other questions about the voter registration process. *See* Exs. A, B, C (Answers to Requests for Admission #9). *See also, e.g.*, Doc. 1 Ex. C at 27-28; 45. Today, as was the case prior to the end of the “notice period, each Plaintiff is registered to vote at the address where he wishes to be registered, and each was able to cast a ballot in the 2016 federal general election. *See* Stringer Depo. 48:2-7; Woods depo. 72:22-74:11; Hernandez depo. 39:4-9; Ex. I (Hernandez TEAM Record, showing an Effective Date of Registration of December 14, 2014 and voting history for March and November 2016; Stringer TEAM Record, showing an Effective Date of Registration of May 23, 2015 and voting history for March and November 2016, and Woods TEAM Record, showing an Effective Date of Registration of December 3, 2015 and voting history for March and November 2016).

Further, no Plaintiff alleges that, should he move in the future, he will fail to submit a written, signed request to update his voter registration information, should he wish to update it. *See* Hernandez Depo. 39:10-15; Stringer Depo. 49:1-49:9; Woods Depo. 74:12-75:7.

EXHIBITS

In support of this motion, Defendants rely on the evidence identified and contained in the attached appendix, all of which is incorporated herein by reference as if set forth in full.

Exhibit	Description
A	Plaintiff Hernandez's Responses to Defendants' First Set of Discovery
B	Plaintiff Stringer's Responses to Defendants' First Set of Discovery
C	Plaintiff Woods's Responses to Defendants' First Set of Discovery
D	Plaintiff Hernandez's Deposition Excerpts ("Hernandez Depo.")
E	Plaintiff Stringer's Deposition Excerpts ("Stringer Depo.")
F	Plaintiff Woods's Deposition Excerpts ("Woods Depo.")
G	Keith Ingram's Rule 30(b)(6) Deposition Excerpts ("Ingram Depo.")
H	Betsy Schonhoff Expert Deposition Excerpts ("Schonhoff Depo.")
I	Plaintiffs' TEAM Records (filed separately under seal)

ARGUMENT

I. Legal Standard for Summary Judgment

Summary judgment is appropriate if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). For this analysis, the evidence is examined in the light most favorable to the nonmovant. *Colson v. Grohman*, 174 F.3d 498, 506 (5th Cir. 1999). But "[w]here critical evidence is so weak or tenuous on an essential fact that it could not support a judgment in favor of the nonmovant, or where it is so overwhelming that it mandates judgment in favor of the movant, summary judgment is appropriate." *Alton v. Texas A&M Univ.*, 168 F.3d 196, 199 (5th Cir. 1999). "If the record as a whole could not lead a rational jury to find for the nonmoving party, there is no genuine issue for trial and summary judgment is warranted." *Wheeler v. Miller*, 168 F.3d 241, 247 (5th Cir. 1999).

II. Plaintiffs Have Not Established Standing for Any of Their Claims.

A. Plaintiffs lack statutory standing, because Defendants addressed all of their voter registration concerns once aware of them.

As an initial matter, Plaintiffs lack standing because it is undisputed that, during the notice period, Defendants took action to correct any alleged voter registration issue each Plaintiff had.

Congress's abrogation of Defendants' immunity is conditioned on a plaintiff's compliance with the NVRA's notice provision. 52 U.S.C. §20510(b)(1)-(2). The statute provides, in relevant part, that before a plaintiff can file suit, he or she must "provide written notice of the violation to the chief election official of the State involved." *Id.* "[T]he purpose of the notice requirement was to 'provide states...an opportunity to attempt compliance before facing litigation.'" *Scott v. Schedler*, 771 F.3d 831, 835-36 (5th Cir. 2014) (quoting *ACORN v. Miller*, 129 F.3d 833, 838 (6th Cir.1997)) (alterations in *Scott*). A state then has 90 days to attempt to correct the violation. 52 U.S.C. §20510(b)(1)-(2).⁵ Critically, a plaintiff does not have standing to sue if the alleged violation is corrected during the notice period. *Id.*; *Scott*, 771 F.3d at 836.

In determining what action a state can take to correct an alleged violation, the Fifth Circuit's decision in *Scott* is instructive. There, the NCAAP and an individual plaintiff (*Scott*) alleged that Louisiana public assistance offices were committing systemic and continuing violations of NVRA in handling responses to the voter registration question on applications for public benefits. *Scott*, 771 F.3d at 833. Prior to suit, the NCAAP provided notice of the alleged violations, but *Scott*'s name was not included in the notice. *Id.* at 835. As a result, the Fifth Circuit ruled that *Scott* could not piggyback on the NCAAP's notice and establish standing in his own right. *Id.* at 836. Critically, in finding that *Scott* lacked standing, the Court noted that when Louisiana was provided notice of *Scott*'s allegation, it "attempted to provide *Scott* with voter registration forms" and that this attempt was "exactly" what the "pre-litigation notice was meant to encourage." *Id.* (quoting *Ga. State Conf. of NAACP v. Kemp*, 841 F.Supp.2d 1320, 1336 (N.D.

⁵ A shorter notice period of 20 days applies where a plaintiff alleges that a violation that took place within 120 days of a federal election. 52 U.S.C. § 20510(b)(2).

Ga. 2012)). Ultimately, the Fifth Circuit held that due to his failure to comply with the NVRA's notice provision he lacked standing to seek relief for himself or "for others, either." *Id.*

The same rationale defeats Plaintiffs' standing here. They lack standing for the simple fact that each Plaintiffs' alleged voter registration issues⁶ were corrected prior to the end of the notice period. *See* Ex. I (Hernandez TEAM Record, showing an Effective Date of Registration of December 14, 2014; Stringer TEAM Record, showing an Effective Date of Registration of May 23, 2015, and Woods TEAM Record, showing an Effective Date of Registration of December 3, 2015). Indeed, this fact is undisputed—each Plaintiff admits that Defendants offered to confirm his voter registration status, and assist in updating his voter registration information. *See* Exs. A, B, C (at Requests for Admission #9); *see also* Doc. 1, Ex. C. Further, each Plaintiff is currently registered to vote at his desired location and was able to vote in the 2016 federal general election. *See* Exs. A (Request for Admission #17), B Request for Admission #17), C (Request for Admission #16); Stringer Depo. 48:2-7; Woods Depo. 72:22-74:11; Hernandez Depo. 39:4-9; Ex. I. As multiple courts have held, this type of voter registration assistance is "exactly" what the NVRA "pre-litigation notice was meant to encourage." *Scott*, 771 F.3d at 836 (citation omitted).

Plaintiffs concede that Defendants attempted to verify the voter registration status and update the voter registration information of each Plaintiff. *See* Exs. A, B, C (Requests for Admission #9). Yet, Plaintiffs continue to claim standing based on the allegation that the parties have a larger disagreement about what the NVRA requires, which Plaintiffs claim affects thousands of non-parties. Doc. 9, p. 20. But this argument conflicts with Fifth Circuit's analysis in *Scott*, where the state's issuance of a voter registration form in response to an individual's purported claim was exactly the type of action that would correct a violation under the notice

⁶ Although for the reasons explained herein, those issues were not the result of violations of the NVRA in any event.

provision, despite the fact that it arose in the context of a larger dispute about the NVRA's requirements. 771 F.3d at 836. And Plaintiffs have not brought this suit through an organization that has standing to assert claims on behalf of others. As a result, under *Scott*, Plaintiffs' contention that other voters will be affected by the State's interpretation of the NVRA under State law is insufficient to confer statutory standing. If an individual plaintiff does not have standing under the notice provision to seek relief for himself, "he is not entitled to seek relief for others, either." *Id.*

Accordingly, Plaintiffs' claims lack standing under the NVRA's notice provision.

B. Plaintiffs lack Article III standing.

Plaintiffs also cannot establish the Court's subject-matter jurisdiction because they cannot establish standing under Article III of the United States Constitution. To establish Article III standing, a plaintiff must show: (1) an injury-in-fact; (2) that is traceable to the defendant's challenged conduct (causation); and (3) that is likely to be redressed by a favorable decision in the district court (redressability). *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 180–81 (2000); *see also Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 585–86 (5th Cir. 2006). These elements are "an indispensable part of the plaintiff's case." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). The party seeking to invoke federal jurisdiction bears the burden of establishing all three elements. *Id.* If a party lacks standing to bring a claim, the court lacks subject-matter jurisdiction over that claim. *See Crane v. Johnson*, 783 F.3d 244, 251 (5th Cir. 2015). Here, the Plaintiffs lack standing because they have established neither causation nor redressability.

1. Plaintiffs' injuries are not fairly traceable to any Defendant's conduct, but are instead the result of their own behavior.

Here it is undisputed that no Plaintiff submitted a written, signed request to update his voter registration information when changing the address on his Texas driver license using Texas.gov, as asserted in the Complaint. As a result, the alleged injuries related to their voter registration status

or their rights under the NVRA—which requires covered voter registration applications to conform to applicable state law—is traceable not to Defendants’ conduct, but rather to their own inaction. As a result, Plaintiffs’ alleged injuries do not satisfy the causation element necessary to establish Article III standing. *See Lujan*, 504 U.S. at 560 (for an injury-in-fact to be fairly traceable to the challenged action of the defendant, “there must be a causal connection between the injury and the conduct complained of.”); *Westfall v. Miller*, 77 F.3d 868, 871-73 (5th Cir. 1996) (injury stemming from plaintiff’s own inaction severs causal link between that injury and any conduct of defendant).

2. Plaintiffs’ claims are moot.

Further, Plaintiffs claims are moot. Mootness is “the doctrine of standing in a time frame.” *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 661 (5th Cir. 2006). If the controversy between a plaintiff and defendant has been “resolved to the point that they no longer qualify as adverse parties with sufficient legal interests to maintain the litigation,” a court lacks jurisdiction. *Stauffer v. Gearhart*, 741 F.3d 574, 582 (5th Cir. 2014). That is, “[t]he requisite personal interest that must exist at the commencement of litigation (standing) must continue throughout its existence (mootness).” *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 397 (1980). Federal courts “have no power under Article III to decide the merits of a case that is moot when it comes before” them. *Goldin v. Bartholow*, 166 F.3d 710, 718 (5th Cir. 1999). A “controversy becomes moot where, as a result of intervening circumstances, there are no longer adverse parties with sufficient legal interests to maintain the litigation.” *Perschall v. Louisiana*, 174 F.3d 197 (5th Cir. 1999) (citation omitted).

Here, it is undisputed that Plaintiffs are currently registered to vote at their desired addresses, and intend to make future updates to their voter registration in accordance with Texas law. As a result, their claims are moot and not capable of repetition.

i. There is no current controversy with any Plaintiff, because it is undisputed that each is currently registered to vote at his desired address.

Plaintiffs' deposition testimony establishes that each is currently registered to vote at his desired address. Further, while Plaintiffs contend that their voter registration status has affected their ability to vote in previous elections, those elections have passed. *Dep't of Tex., Veterans of Foreign Wars v. Tex. Lottery Comm'n*, 760 F.3d 427, 432 (5th Cir. 2014) (For an injury to be redressable, a plaintiff must show that a favorable decision would likely remedy it). In addition, in response to Plaintiffs' pre-suit notice, Defendants offered assistance to Plaintiffs and worked to provide information to allow for the correction the alleged violations as to the specific parties and Plaintiffs were able to, and in fact did, cast a ballot in the 2016 federal election. *See* Exs. A, B, C, I. In fact, each Plaintiff was registered at his desired address during or prior to the notice period. Stringer Depo. 48:2-7; Woods Depo. 72:22-74:11; Hernandez Depo. 39:4-9; Ex. I. As a result, Plaintiffs lack the personal interest in this suit required to establish a case or controversy.

ii. Because there is no competent evidence these Plaintiffs' alleged injury will recur, the capable-of-repetition exception to mootness is inapplicable.

A moot case may still be justiciable, if the underlying dispute is "capable of repetition, yet evading review." *Spencer v. Kemna*, 523 U.S. 1, 17-18 (1998) (citations omitted). This exception applies "only in exceptional situations." *Id.* In the absence of a class action, a controversy is capable of repetition, yet evading review where both of the following two requirements are met: "(1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subjected to the same action again." *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975) (per curiam).

Here, there is no reasonable expectation that any Plaintiff will suffer any injury alleged here in the future. Indeed, each Plaintiff testified that in the future, if he had to change addresses,

he planned to update his voter registration by submitting a signed, written request to do so. Hernandez Depo. 39:10-15; Stringer Depo. 49:1-9; Woods Depo. 74:12-75:7. And this is precisely what Texas law requires. *See, e.g.*, Tex. Elec. Code § 13.002(b); Tex. Elec. Code § 20.066; Tex. Elec. Code §15.021.

Accordingly, whether Plaintiffs' claims fall under the capable-of-repetition exception to mootness depends upon how the Court applies the "same complaining party" requirement. Defendants note that this issue presents the Court with a cluttered canvas.⁷ In election cases, the Fifth Circuit has required that the same complaining party have a reasonable expectation that they will face the same injury again. *See Smith v. Winter*, 782 F.2d 508, 510 (5th Cir. 1986) (election law challenge held moot because elected officials prevailed in recall election at ballot box). In certain circumstances it has expanded the complaining party requirement to encompass likely injuries to non-parties. *See Ctr. For Individual Freedom v. Carmouche*, 449 F.3d 655, 662 (5th Cir. 2006); *Kucinich v. Tex. Democratic Party*, 563 F.3d 161, 164 (5th Cir. 2009). That said, *Winter*, as the earliest of the cited Fifth Circuit decisions, controls and requires the dismissal of Plaintiffs' suit on standing grounds. *See, e.g., Rios v. City of Del Rio, Tex.*, 444 F.3d 417, 425 n.8 (5th Cir. 2006) (stating rule of orderliness).

⁷ Like the Fifth Circuit, other courts have also struggled to reconcile the Supreme Court's capable-of-repetition instructions in election cases. For example, the Second Circuit in *Van Wie v. Pataki*, 267 F.3d 109, 114 (2d Cir. 2001), noted the "tension" in Supreme Court election cases applying the second prong of the capable-of-repetition exception. 267 F.3d 109, 114 (2d Cir. 2001) (comparing *Norman v. Reed*, 502 U.S. 279, 288 (1992) (examining whether the "same parties" would face similar, future injury); *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 187-88 (1979); with *Storer v. Brown*, 415 U.S. 724, 737 n.8 (1974) (finding that the case was not moot post-election challenge to state law regarding candidate eligibility was not moot because challenged law's "effects on independent candidacies[] will persist as [they] are applied in future elections."); *Rosario v. Rockefeller*, 410 U.S. 752, 756 n.5 (1973); *Dunn v. Blumstein*, 405 U.S. 330, 333 n.2 (1972)).

Ultimately, the Second Circuit "adopted" approach of the Supreme Court's election cases that hold "that, in the absence of a class action, there must be a reasonable expectation that the *same* complaining party would encounter the challenged action in the future." *Van Wie*, 267 F.3d at 114 (emphasis in original). In light of the same cases, and the Fifth Circuit's decision in *Smith v. Winter*, 782 F.2d 508, 510 (5th Cir. 1986), Defendants would urge the Court to adopt the same approach here and focus the second prong solely the likelihood of the same injury on the *same* complaining parties.

In *Winter*, the plaintiffs were elected officials who were subjected to recall elections under Mississippi law. 782 F.2d at 509. They alleged the defendants' actions and a state statute violated the Voting Rights Act and their constitutional rights. *Id.* The plaintiffs ultimately prevailed in their elections before the case was decided. *Id.* at 510. As a result, the court found that their claims were properly dismissed as moot. *Id.* In examining whether plaintiffs met the second prong of the capable-of-repetition exception to mootness, the Fifth Circuit focused solely on whether the *same plaintiffs* established whether they would be subjected to the same action again, and held that the "second prong does not apply because there is no allegation or showing otherwise that [the plaintiffs] will be subjected to another recall petition." *Id.* To the extent *Winter* conflicts with any subsequent panel's decision, *Winter's* analysis should control under Fifth Circuit precedent, and requires dismissal of Plaintiffs' claims in this case for lack of Article III standing.

III. Plaintiffs' Claims Fail on the Merits.

Plaintiffs' NVRA and equal protection claims also fail on their merits, as they ignore or misunderstand key provisions of both federal and state law. First, the NVRA provisions at issue incorporate Texas law by requiring that driver license applications and changes of address covered under the Act must also comply with applicable state law. 52 U.S.C. §§20504(a)(1), 20504(d) the NVRA further requires that such applications be signed. *Id.* §20504(c)(2)(C)(iii). Texas law also requires a voter registration application to be signed. TEX. ELEC. CODE §13.002(b), and only provides for the transmission of an electronic signature when there is also an accompanying physical signature, and in the case of DPS, only for in-person or by mail applications. *See* TEX. ELEC. CODE §§ 20.063; 20.066. Texas law also requires out-of-county changes of address to be in writing and signed. TEX. ELEC. CODE § 15.021. But, driver license's renewal or change of address transactions done online are not physically signed. As a result, in an online transaction, Texas law

that requires a driver license applicant who also wishes to register to vote sign and submit a voter registration application.

Since the relevant section of the NVRA requires the application to be completed in accordance with state law, compliance with Texas law is part and parcel of the NVRA. Further, to the extent that any Plaintiff's NVRA claim is based on an injury in a non-federal election, it fails a matter of law because the NVRA is limited to challenges by voters harmed in the context of a federal election. Finally, Plaintiffs' equal protection claim also fails because they have not—and cannot—identify any Texas residents who filled out a driver's license change of address application online, and were treated differently by the State.

A. Plaintiffs' NVRA claims fail as a matter of law.

1. Plaintiffs' cannot establish a violation of the NVRA because the signature requirement at issue is within the State's prerogative under the Election Clause and do not violate the NVRA.

As explained above, Texas law requires that voter registration applications “must be in writing and signed by the applicant.” TEX. ELEC. CODE § 13.002(b); Schonhoff Depo. 102:20-21. The same is true of out of county address changes. TEX. ELEC. CODE §15.021. In compliance with the NVRA, Texas provides a voter registration application as part of an application for a motor vehicle driver's license when a voter indicates that he or she wishes to register to vote. For in-person or mail driver license applications, an applicant physically signs the application. Ingram Depo. 99:7-99:24; Schonhoff Depo. 123:24-124:5; 119:19-120:15.

In the context of these types of applications, and these types of applications only, Texas law provides that the applicant may consent to the use of his electronic signature for purposes of submitting a voter registration application. *See* TEX. ELEC. CODE §§ 20.063, 20.066. But, unlike an in-person or by mail driver license application, an online applicant does not physically—or

electronically—sign a renewal or change of address driver license application. Ingram Depo. 99:25-100:3; *see also* TEX. ELEC. CODE §§ 20.063; 20.066 (applying only to in person and by mail transactions, and referring to consent that an electronic signature be transmitted); Ingram Depo. 97:4-98:5; Schonhoff Depo. 49:10-14.

As a result, to comply with §§13.002 and 15.021 of the Texas Election Code, online driver license transactions in which an applicant wants to register to vote are linked to a voter registration application that the applicant has the opportunity to sign and submit. These procedures are consistent both with the relevant State statutes, and the NVRA. *See* 52 U.S.C. §§20504(c)(2)(B) (State’s voter registration application may include information needed to “enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.); 20504(c)(2)(C)(iii) (application must require the signature of the applicant, under penalty of perjury); 20504(c)(2)(A) (applications may require a “second signature”); TEX. ELEC. CODE §§13.002, 15.021, 20.063, 20.066.

Nevertheless, Plaintiffs claim that the NVRA required Texas to update their voter registration information “simultaneously” with their online requests to change the addresses on their driver licenses, and further claim that Texas violated the law by requiring them to submit a physical signature when requesting a change to their voter registration information. Doc. 1, ¶¶2, 26, 39.⁸ Plaintiffs erroneously claim that “the exact same information is submitted online” as is submitted by an individual updating or renewing their driver license in person, notwithstanding the clear difference that an individual updating or renewing in person (or for that matter, by mail)

⁸ Notably, no Plaintiff has claimed he attempted to *renew* a Texas driver license online in connection with the allegations in this case. *See* Doc. 1, ¶¶46-49. Thus, Defendants re-urge and incorporate by reference the arguments raised in their Motion to Dismiss, that the Court lacks jurisdiction to consider online driver license renewals under the NVRA. Doc. 7.

is providing a physical signature at that time. *See* Doc. 1 ¶ 43. And they make this claim despite the fact that §20504 explicitly does *not* apply if the “applicant fails to sign the voter registration application” as is undisputedly the case here. 52 U.S.C. §20504(a)(1).

Plaintiffs would further have states treat *all* “driver’s license change-of-address transactions as updates for voter registration purposes,” even where the applicant “states on the form that the change of address is not for voter registration purposes.” *Compare* Doc. 1, Count III (capitalization altered) *with* 52 U.S.C. §20504(d). The NVRA imposes no such requirement. *Scott*, 771 F.3d at 831-40 (Louisiana did not violate the NVRA by informing applicant in NVRA-covered transaction that, if they answered “no” to voter registration question, they would not be registered to vote, even where Louisiana did not provide voter registration application to applicants who answered “no”).

Accordingly, judgment as a matter of law is warranted on Plaintiffs’ NVRA claim.

2. Plaintiffs’ claims fail to the extent they do not establish an injury connected to a federal election.

Plaintiffs’ NVRA claims should also be dismissed to the extent they are not premised on violations made in the context of a federal election. In particular, Woods should be dismissed from the suit because he has not suffered the type of injury that can maintain a claim under the NVRA. Rather, the NVRA by its own “terms applies to voters registrations for ‘elections for *Federal* office.’” 52 U.S.C. §20504(a)(1)(emphasis added). Conversely, the federal statute does not apply to state or local elections as the authority to regulate federal elections “does not give Congress the power to directly regulate state voter registration procedures in state elections or state ballot issues.” *Dobrovolny v. Nebraska*, 100 F. Supp. 2d 1012, 1028 (D. Neb. 2000). Here, Woods’s claims fail as a matter of law because he cannot show that the alleged violation impacted his participation in a federal election.

Notably, this is not the first time a court has dismissed allegations that online driver license transactions in Texas violate 52 U.S.C. §20504. Both Judge Rosenthal and the Fifth Circuit considered this issue in *Broyles*. There, the plaintiffs alleged the State violated the NVRA when one of the plaintiffs “changed his driver’s license and updated his voter registration on the DPS website” in 2007 but did not receive an updated voter registration card and therefore was not eligible to vote in a 2008 local election. *Broyles*, 618 F. Supp. 2d at 678. Judge Rosenthal noted that the NVRA claim failed because plaintiffs did not timely provide pre-suit notice, divesting them of standing to maintain a private right of action. *Id.* at 691 (“If notice was optional, the 90-day cure period would be superfluous.”). The court also held that the NVRA is limited to the context of a federal election. *Id.* And, because the alleged delay and failure to update the *Broyles* voter’s registration information was only alleged to have affected a local election, there was no viable “cause of action under the NVRA.” *Id.* This was so despite the allegation that the voter registration information was not updated at the same time the voter completed changed his driver license information online. *Id.* The Fifth Circuit affirmed, and specifically held the district court was correct to conclude that the plaintiffs did not state a claim under the NVRA. *Broyles*, 381 Fed. App’x at 373.

At minimum, *Broyles* compels dismissal of Woods’s claims. Woods’ entire case rests on an alleged attempt to vote on “Election Day 2015,” after he moved from West Virginia to Houston a few months earlier. Doc. 1, ¶ 49. But Woods admits that he did not attempt to cast a ballot in a 2015 federal election. Ex. C (Request for Admission # 15). Thus, the NVRA is not implicated.

To the extent Hernandez or Stringer alleges a non-mooted NVRA claim based—not on their voting registration status—but an alleged statutory right to “simultaneous” voter registration, *Broyles* makes clear that this is insufficient to maintain a claim under the NVRA, absent connection

to a federal election. Here, it is undisputed that each Plaintiff was able to cast a ballot in the 2016 federal general election, and is currently registered at his current address.

As a result, judgment as a matter of law is warranted on all of Plaintiffs' NVRA claims.

B. Plaintiffs' equal protection claim fails as a matter of law.

Plaintiffs' equal protection claims have no more merit than those under the NVRA. Critically, to establish an equal protection claim, a plaintiff must establish that a similarly-situated comparator was treated differently. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). In this circuit, the term "similarly-situated" is a "stringent standard" that is defined narrowly and requires the comparator to be treated more favorably in "nearly identical" circumstances. *Hockman v. Westward Comm., LLC*, 282 F.Supp.2d 512, 527–28 (E.D. Tex. 2003); *Wheeler v. BL Dev. Corp.*, 415 F.3d 399, 405 (5th Cir. 2005).

Plaintiffs are Texas voters who changed the addresses on their Texas driver licenses online, but did not complete the portion of the application that would update their voter registration information. Plaintiffs' constitutional claims fail as a matter of law because there is no allegation—much less admissible evidence—that other voters who completed the same online transaction were treated differently by Defendants. *See Baranowski v. Hart*, 486 F.3d 112, 123 (5th Cir. 2007) (As a prerequisite to an equal protection claim, "the plaintiff must prove that similarly situated individuals were treated differently."). Instead, the law at issue is facially neutral to all similarly-situated applicants. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264–66 (1977) (holding that an equal protection claim premised on an outwardly neutral law requires proof of both a discriminatory effect and a discriminatory purpose). These undisputed facts defeat Plaintiffs' equal protection claims as a matter of law.

Conclusion

The Court should dismiss all of Plaintiffs' claims with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this the 30th day of June, 2017 a true and correct copy of the foregoing was filed electronically with the Court and delivered via the CM/ECF system to all counsel of record.

/s/Esteban San Miguel Soto
Assistant Attorney General

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

JARROD STRINGER, ET AL.,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	No. 5:16-cv-00257
	§	
ROLANDO PABLOS, IN HIS OFFICIAL CAPACITY	§	
AS THE TEXAS SECRETARY OF STATE AND	§	
STEVEN C. MCCRAW, IN HIS OFFICIAL CAPACITY	§	
AS THE DIRECTOR OF THE TEXAS DEPARTMENT OF	§	
PUBLIC SAFETY,	§	
<i>Defendants.</i>	§	

APPENDIX

Exhibit A	Hernandez's April 24, 2017, Objections & Response to Ds' Rogs, RFP and RFA
Exhibit B	Stringer's April 17, 2017, Objections & Response to Ds' Rogs, RFP and RFA
Exhibit C	Wood's April 17, 2017, Objections & Response to Ds' Rogs, RFP and RFA
Exhibit D	Excerpts from May 18, 2017, Deposition of Benjamin Hernandez
Exhibit E	Excerpts from May 3, 2017, Deposition of Jarrod Stringer
Exhibit F	Excerpts from May 5, 2017, Deposition of John Woods
Exhibit G	Excerpts from March 22, 2017, Deposition of Brian Keith Ingram
Exhibit H	Excerpts from May 30, 2017, Deposition of Betsy Schonhoff
Exhibit I	Plaintiffs' TEAM Records (filed under seal with separate motion)

EXHIBIT
A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JARROD STRINGER, et al.,	§	
	Plaintiffs,	§
		§
v.		§ C.A. 5:16-cv-00257-OLG
		§
ROLANDO PABLOS, IN HIS OFFICIAL	§	
CAPACITY AS THE TEXAS SECRETARY	§	
OF STATE and STEVEN C. McCRAW, IN	§	
HIS OFFICIAL CAPACITY AS THE	§	
DIRECTOR OF THE TEXAS	§	
DEPARTMENT OF PUBLIC SAFETY,	§	
	Defendants.	§

**PLAINTIFF BENJAMIN HERNANDEZ’S OBJECTIONS AND RESPONSES TO
DEFENDANTS’ FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION,
AND REQUESTS FOR ADMISSION**

TO: Defendants, by and through their attorneys of record, Anna Mackin and Esteban Soto, Office of the Attorney General, 300 West 15th Street, Austin, Texas 78701.

Pursuant to Federal Rules of Civil Procedure 33, 34, and 36, Plaintiff Benjamin Hernandez hereby serves the following Objections and Responses to Defendants’ First Set of Interrogatories, Requests for Production, and Requests for Admission.

Dated: April 24, 2017

Respectfully submitted,

By: /s/ Rebecca Harrison Stevens

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April, 2017, a true and correct copy of the foregoing *Plaintiffs Benjamin Hernandez's Objections and Responses to Defendants' First Set of Interrogatories, Requests for Production, and Requests for Admission*, was served upon counsel of record via email.

/s/ Rebecca Harrison Stevens

RESERVATION OF RIGHTS

Plaintiff has responded to these requests for admission, requests for production, and interrogatories based on the information currently available to him. Discovery, however, is not yet complete. Additional discovery and investigation may lead to additions to, changes in, or modification of these Responses. Plaintiff therefore reserves his right to supplement, amend, revise, correct, modify, or clarify these Responses as additional information becomes available.

Plaintiff makes his objections and responses in accordance with his interpretation and understanding of Defendants' First Set of Interrogatories, Requests for Production, and Requests for Admission and in accordance with his current knowledge, understanding, and belief as to the facts and information available to him at the time of serving these Responses. If Defendants subsequently provide an interpretation of any of its Requests that differs from Plaintiffs' understanding of the same, Plaintiff reserves his right to complete the discovery of facts in this case and rely at trial or in any other proceeding on documents and information in addition to the information provided herein, regardless of whether such information is newly discovered or newly in existence. He also reserves the right to amend, revise, correct, modify, or clarify his Responses to properly respond to any interpretation Defendants may give these Requests.

Plaintiff reserves his right to object on any grounds, at any time, to the admission or use of any Response on any ground.

PLAINTIFF BENJAMIN HERNANDEZ'S OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST SET OF REQUESTS FOR ADMISSION

1. Admit that, when you moved to Dallas County from Ector County in February 2013 and updated your address online, as alleged in paragraph 46 of your Original Complaint, you did not submit a change of address that relates to a Texas driver license *in person*.

RESPONSE: Admit.

2. Admit that, when you moved to Dallas County from Ector County in February 2013 and updated your address online, as alleged in paragraph 46 of your Original Complaint, you did not submit a change of address that relates to a Texas driver license *by mail*.

RESPONSE: Admit.

3. Admit that, when you moved to Dallas County from Ector County in February 2013, as alleged in paragraph 46 of your Original Complaint, you checked “yes” in response to the following message “[s]electing ‘yes’ **does not** register you to vote. A link to the Secretary of State Voter website (where a voter application may be downloaded or requested) will be available on your receipt page.)” (emphasis original).

RESPONSE: Mr. Hernandez admits checking “yes” in response to the statement “I want to register to vote.” Mr. Hernandez does not recall seeing the message, “[s]electing ‘yes’ **does not** register you to vote. A link to the Secretary of State Voter website (where a voter application may be downloaded or requested) will be available on your receipt page.)”

4. Admit that, when you moved to Dallas County from Ector County in February 2013 and updated your address online, as alleged in paragraph 46 of your Original Complaint, you were provided a link to the voter registration application proscribed by the Secretary of State.

RESPONSE: Mr. Hernandez has made reasonable inquiry and the information he knows or can readily obtain is insufficient to enable him to admit or deny. Mr. Hernandez would have no knowledge about whether a voter registration application was proscribed by the Secretary of State. Mr. Hernandez does not recall being provided a link to a voter registration application when he visited DPS’s website to update his address online after moving from Dallas County from Ector County in February 2013.

5. Admit that, when you moved to Dallas County from Ector County in February 2013 and updated your address online, as alleged in paragraph 46 of your Original Complaint, you did not complete the voter registration application proscribed by the Secretary of State.

RESPONSE: Mr. Hernandez admits that he did not complete a voter registration application on the Secretary of State’s website. Mr. Hernandez would have no knowledge about whether a voter registration application was proscribed by the Secretary of State. Mr. Hernandez does not recall being provided with a separate voter registration application when he visited DPS’s website to update his address after he moved to Dallas County from Ector County in February 2013.

6. Admit that you did not submit a written, signed request to change your voter registration information when you moved to Dallas County from Ector County in February 2013 and changed your address online, as alleged in paragraph 46 of your Original Complaint.

RESPONSE: Mr. Hernandez denies not submitting a written request to change his voter registration information. Mr. Hernandez denies not submitting a signed request to change his voter registration information. Based upon receipt of an updated driver license containing his electronic signature, Mr. Hernandez believes his online change of address transaction after he moved to Dallas County from Ector County in February 2013 caused his electronic signature to be reused by DPS.

7. Admit that, when you moved to Dallas County from Ector County in February 2013 and updated your address online, as alleged in 46 of your Original Complaint, you did not submit a handwritten signature or digitized image thereof.

RESPONSE: Mr. Hernandez only to not submitting a handwritten signature. Based upon receipt of an updated driver license containing his electronic signature, Mr. Hernandez believes his online change of address transaction after he moved to Dallas County from Ector County in February 2013 caused his electronic signature to be reused by DPS.

8. Admit that, when you moved to Dallas County from Ector County in February 2013 and updated your address online, as alleged in 46 of your Original Complaint, you did not attest that you are a US citizen.

RESPONSE: Mr. Hernandez has made reasonable inquiry and the information he knows or can readily obtain is insufficient to enable him to admit or deny. Mr. Hernandez is unable to admit or deny because he does not recall whether he attested that he was a United States citizen and does not currently have access to the application he submitted online after he moved from Ector County to Dallas County in February 2013.

9. Admit that Defendants offered, through your attorneys, to confirm your voter registration status, and to assist you in updating your voter registration information, if you desired.

RESPONSE: Mr. Hernandez admits that he was offered, through his attorneys, to confirm his voter registration status and assistance in updating his voter registration information if he desired.

10. Admit that, when you moved to Dallas County from Ector County in February 2013 and updated your address online, as alleged in 46 of your Original Complaint, as alleged in paragraph 46 of your Original Complaint, you did not attempt to *renew* your Texas driver license online.

RESPONSE: Admit.

11. Admit that, when you moved to Dallas County from Ector County in February 2013 and updated your address online, as alleged in 46 of your Original Complaint, as alleged in paragraph 46 of your Original Complaint, you did not do so by telephone.

RESPONSE: Admit

12. Admit that you are currently registered to vote in the county where, when providing Defendants notice of the NVRA violations you allege, you indicated you wished to be registered.

RESPONSE: Admit.

13. Admit that you were able to cast a ballot in the 2012 general election. If you deny that you were able to cast a ballot in the 2012 general election, admit that you did not attempt to cast a ballot in the same.

RESPONSE: Mr. Hernandez admits that he was able to cast a ballot.

14. Admit that you were able to cast a ballot in the 2013 federal general election. If you deny that you were able to cast a ballot in the 2013 general election, admit that you did not attempt to cast a ballot in the same.

RESPONSE: Mr. Hernandez denies this request because there was no federal general election in Texas in 2013.

15. Admit that you were able to cast a ballot in the 2014 federal general election. If you deny that you were able to cast a ballot in the 2014 general election, admit that you did not attempt to cast a ballot in the same.

RESPONSE: Mr. Hernandez denies that he was able to cast a ballot. Hernandez denies not attempting to cast a ballot.

16. Admit that you were able to cast a ballot in the 2015 federal general election. If you deny that you were able to cast a ballot in the 2015 general election, admit that you did not attempt to cast a ballot in the same.

RESPONSE: Mr. Hernandez denies this request because there was no federal general election in Texas in 2015.

17. Admit that you were able to cast a ballot in the 2016 federal general election. If you deny that you were able to cast a ballot in the 2016 general election, admit that you did not attempt to cast a ballot in the same.

RESPONSE: Mr. Hernandez admits casting a ballot.

DEFENDANT ROLANDO PABLOS'S FIRST INTERROGATORIES TO BENJAMIN HERNANDEZ

1. Identify each individual you intend to present as a witness in this case, including name, address, and phone number.

RESPONSE: Plaintiff objects to this interrogatory as premature, and as overbroad and unduly burdensome, as Plaintiff has already produced his Initial Disclosures and will produce his First Amended Disclosures concurrently with this Response. Subject to and without waiving the foregoing, Plaintiff responds that discovery is ongoing, and he has not yet—and cannot yet—identify his trial witnesses at this point in time. Plaintiff will file and serve his trial witness list when and as required by Rule CV-16(e) of the Local Rules of the United States District Court for the Western District of Texas. Plaintiffs' Initial and First Amended Disclosures contain lists of individuals who may have information that Plaintiffs may use to support their claims.

2. Do you contend that before filing suit you provided Defendants notice of the NRVA violations you claim have injured you, and the necessary information that would allow Defendants to correct those alleged violations? If so, please describe in detail 1) the specific types of personal information you provided to Defendants; 2) the date you provided this information to Defendants; 3) the manner in which you provided this information to Defendants.

RESPONSE: Plaintiff objects to this interrogatory to the extent that it calls for a legal conclusion, and on the ground that “in detail” is vague and undefined. Subject to and without waiving this objection, Plaintiff responds that on May 27, 2015, Plaintiff notified Defendants, in writing and through counsel, as follows:

Benjamin Hernandez: Mr. Hernandez moved to Dallas County from Ector County in February 2013. That month, he changed his address and attempted to update his voter registration online through DPS’ website. Mr. Hernandez received a new driver’s license in the mail, but did not receive a voter registration card. On Election Day 2014, Mr. Hernandez attempted to vote in Dallas County, but was told that his name was not on the rolls. He cast a provisional ballot, but later received notice that his vote was not counted.

...

Critically, none of these voters were informed that completing DPS’ online change-of-address form could remove their names from the rolls in their former county of residence. Instead, each believed that he or she was properly registered because he or she completed an online transaction with DPS. These voters only learned of DPS’ failure to register them to vote or to update their voter registration files when they arrived at the polls.

The Elections Division has received more than 1,800 reports from individuals who completed an online transaction with DPS and mistakenly believed that the voter rolls were updated too. These voters complained to election officials when they attempted to vote but none of their votes were ultimately counted.⁴¹ Plus, for the reasons outlined above, these 1,800 voters represent just a fraction of the total voters statewide who were disenfranchised on these grounds.

Furthermore, although the Elections Division and DPS have been aware of “the confusion” caused by the online policies since at least 2012,⁴² no significant reforms have been made. Emails between the Election Division and DPS acknowledge widespread confusion among voters in 2012, but — rather than credit online transactions as required by the NVRA or, at the very least, clarify the notice given on the DPS website — officials chose simply to link “directly to the voter application page instead of the general SOS page” when a voter completes an online renewal or change-of-address transaction.⁴³ Clearly, this “solution” has been woefully inadequate.

See Exhibit C to Plaintiffs Original Complaint (Dkt. 1-4) at pp. 14-15; see also Mar. 31, 2017 Order Denying Defendants’ Motion to Dismiss (Dkt. 52) at pp. 7-9.

3. Do you contend that you are still being harmed by Defendants’ alleged conduct? If so, please describe in detail the basis for this contention.

RESPONSE: Plaintiff objects to this interrogatory to the extent that it calls for a legal conclusion, and on the ground that “in detail” is vague and undefined. Subject to and without waiving this objection, Plaintiff responds as follows: Yes. Defendants’ continue to violate Plaintiff’s rights under the NVRA by failing to provide to online customers a “[s]imultaneous application for voter registration and...driver’s license[;]” a voter registration application portion of a driver’s license application that does not require any information that duplicates the driver’s license portion of the form; and a change of address form submitted in accordance with state law for purposes of state motor vehicle driver’s license that serves as a notification of change of address for voter registration with respect to elections for Federal office, unless the registrant states on the form that the change of address is not for voter registration purposes.

4. Do you contend that “countless eligible Texas residents have been denied the right to voter registration” as alleged in paragraph 54 of your Original Complaint? If so, please describe in detail the basis for this contention.

RESPONSE: Plaintiff objects to this interrogatory to the extent that it calls for a legal conclusion, and on the ground that “in detail” is vague and undefined. Subject to and without waiving this objection, Plaintiff responds as follows: Yes. Documents produced by Defendants and TEXAS NICUSA, LLC confirm that millions of Texans renew or change their driver license addresses online each year, and Defendants admit that they have and continue to fail to accept voter registration applications and updates to voter registration files during these NVRA-covered driver license transactions. *See* Sheri Gipson’s 30(b)(6) p 141, line 12; Exhibit 3Y to Sheri Gipson’s 30(b)(6) deposition; NIC 00481; and Defendant Steve C. McCraw’s First Supplemental Responses to Plaintiff’s First Set of Requests for Admissions, #s 10, 11, 12, and 13.

5. Do you contend that the NVRA requires “simultaneous voter registration” as alleged in paragraph 39 of your Original Complaint? If so, describe in detail the basis for this contention, including whether you contend that the NVRA requires an instantaneous update in county voter registration rolls when an individual completes an NVRA-covered transaction. If you do not contend that the NVRA requires an instantaneous update in county voter registration rolls, state the specific timeframe (in seconds, minutes, hours, and/or days) in which you contend the NVRA requires county voter registration rolls must be updated.

RESPONSE: Plaintiff objects to this interrogatory on the ground that it calls for a legal conclusion.

6. In paragraph 57 of your Original Complaint, you allege that state officials have been aware of “significant and widespread confusion caused by the State’s treatment of online DPS transactions since at least 2012.” Please describe in detail the basis for this contention.

RESPONSE: Plaintiff objects on the ground that “in detail” is vague and undefined. Plaintiff responds that many voters complained about and were surprised to discover that they were not registered to vote in the county to which they moved and updated or renewed their address through DPS’ online application. *See* Exhibit B to Complaint; Exhibit D pp. 7-8; Exhibit D at p. 17; Exhibit D at pp. 22-23; Exhibit D at p. 27; Exhibit D at p. 32.

7. In paragraph 50 of your Original Complaint, you allege that you believed you were “properly registered [to vote] because [you] completed an online transaction with DPS, attempted to update [your] registration records, and later received an updated driver’s license in the mail.”

Do you contend that other potential Texas voters, who are not party to this lawsuit, are similarly confused by the same process? If so, please describe in detail the basis for this contention.

RESPONSE: Plaintiff objects on the ground that “in detail” is vague and undefined. Plaintiff objects to the characterization that Plaintiff was “confused” by the online process.

8. What do you believe the statement “Selecting ‘yes’ does not register you to vote” signifies?

RESPONSE: Mr. Hernandez believes this statement is confusing as it is counterintuitive, since the website asked “do you want to register to vote?” Also, he does not recall seeing this language when he updated his address online after he moved to Dallas County from Ector County in February 2013.

9. Do you contend that you are entitled to recover attorney’s fees, costs, and expenses for multiple attorneys’ attendance and/or participate in depositions in this case? If so, please describe in detail the basis for this contention, including, but not limited to: 1) identifying any case law supporting this contention; 2) describing in detail each attorney’s participation in the case thus far, including necessity of attendance at depositions; 3) identifying the hourly rate sought by each attorney.

RESPONSE: Plaintiff objects to this interrogatory on the ground that it calls for a legal conclusion. Plaintiff further objects to this request on the ground that it requests information that is not relevant to Plaintiff’s claims and is therefore outside the scope of discovery, and to the extent that it requests information protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Plaintiff has not yet filed a claim for attorney’s fees, and will do so when and as required by Local Rule CV-7(j).

10. Identify by URL or website address any Social Media Sites in your name.

RESPONSE: Mr. Hernandez has no social media accounts

11. Do you contend that the State of Texas is similarly situated to the State of Alabama for purposes of the NVRA? If so, please describe in detail the basis for this contention.

RESPONSE: Plaintiff objects to this interrogatory on the ground that it calls for a legal conclusion.

12. Please state the date and county of your first registration to vote in Texas, and list all of the subsequent changes you have made to your voter registration, including the substance of the change, approximate date, and how you made the change.

RESPONSE: Plaintiff objects to this interrogatory as Defendants have equal or greater access to this information because Defendants have access to Mr. Hernandez’s voter registration records. Subject to that objection, Mr. Hernandez does not remember all the times he registered to vote. Based on information, belief, and recollection, Mr. Hernandez first registered to vote in Ector County in 1982. He recalls updating his address online with DPS in 2013 after he moved from Ector County to Dallas County and believed he was registered to vote. He then received a voter registration card in the mail in 2014, presumably as a result of the provisional ballot he filled out in November 2014.

DEFENDANTS' REQUESTS FOR PRODUCTION TO BENJAMIN HERNANDEZ

1. All documents related to the categories of documents, electronically stored information, and tangible things that Plaintiffs' listed in Plaintiffs' Initial Disclosures and any subsequent amended disclosures.

RESPONSE: Plaintiff objects to this request as overly broad, unduly vague, and ambiguous, and to the extent it requests documents that are protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Subject to and without waiver of the foregoing objections, Plaintiff will produce copies of the documents listed in Plaintiffs' Initial and Amended Disclosures, except to the extent they are already in Defendants' possession, custody, or control.

2. All documents reflecting your assertion that you "updated [your] driver's license address online" in February 2013, as alleged in paragraph 46 of your Original Complaint.

RESPONSE: Plaintiff will produce copies of all non-privileged, responsive documents in his possession, custody, or control. Any additional responsive documents are, upon information and belief, in Defendants' possession, custody, or control

3. All documents reflecting that you moved to Dallas County from Ector County in February 2013, as alleged in paragraph 46 of your Original Complaint.

RESPONSE: Plaintiff objects to this request as overbroad, vague, and ambiguous to the extent that, as worded, it seeks any documents tangentially related to Plaintiff's move from Ector County to Dallas County. Subject to and without waiver of the foregoing, Plaintiff will produce copies of all non-privileged, responsive documents in his possession, custody, or control documenting his move from Ector County to Dallas County in June 2013. Any additional responsive documents are, upon information and belief, in Defendants' possession, custody, or control, or publicly available and outside of Plaintiff's own possession, custody, or control.

4. All documents reflecting your assertion that, on Election Day 2014, you "attempted to vote in Dallas County, but w[ere] told that [your] name was not on the rolls in Dallas County," as alleged in paragraph 46 of your Original Complaint."

RESPONSE: Plaintiff will produce copies of all non-privileged, responsive documents in his possession, custody, or control. Any additional responsive documents are, upon information and belief, in Defendants' possession, custody, or control.

5. All documents reflecting the "total number" of Texas voters you contend were injured by Defendants' conduct as alleged in paragraph 9 of your Original Complaint.

RESPONSE: Plaintiff will produce copies of all non-privileged, responsive documents in his possession, custody, or control. Any additional responsive documents are, upon information and belief, in Defendants' possession, custody, or control.

6. All documents related to your allegation that you provided detailed notice of Defendant's

alleged violations as alleged in paragraph 12 of your Original Complaint.

RESPONSE: Plaintiff objects to this request to the extent that it requests documents that are protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Plaintiff further objects that this request is unduly burdensome to the extent it seeks from Plaintiffs documents already in Defendants' custody, possession, and control. Plaintiff responds that Defendants are in possession of all non-privileged documents responsive to this request.

7. All documents related to your allegation that Defendants failed to correct alleged NVRA violations within 90 days of receiving notice as alleged in paragraph 12 of your Original Complaint.

RESPONSE: Plaintiff objects to this request to the extent that it requests documents that are protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Plaintiff further objects that this request is unduly burdensome to the extent it requests Plaintiff to produce documents already in Defendants' custody, possession, and control. Plaintiff responds that Defendants are in possession of all non-privileged documents responsive to this request.

8. All documents containing your writing including notes, diary entries, emails, letters, or any other writing that includes comments regarding the issues in this suit.

RESPONSE: Plaintiff objects to this request to the extent that it requests documents that are protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Plaintiff objects to the phrase "issues in this suit" as overly broad, unduly vague, and ambiguous. Subject to and without waiving the foregoing, Plaintiff responds that after a reasonable search of his records, Plaintiff has not found any non-privileged documents responsive to this request in his possession, custody, or control, nor are any currently available to him.

9. All documents reflecting your allegation that "countless eligible Texas residents have been denied the fight to voter registration" as alleged in paragraph 54 of your Original Complaint.

RESPONSE: Plaintiff objects that this request is unduly burdensome to the extent it requests Plaintiff to produce documents already in Defendants' custody, possession, and control. Plaintiff will produce copies of all non-privileged, responsive documents that are in his possession, custody, or control and that have not already been provided by or to Defendants in the course of this litigation. Any additional responsive documents are in Defendants' possession, custody, or control.

10. All documents reflecting communications between any attorney for Plaintiffs and any person serving as a testifying expert witness for Plaintiffs that: (i) relate to compensation for the expert's study or testimony; (ii) identify facts or data that Plaintiffs' attorneys provided and that the expert considered in forming the opinions to be expressed; and/or (iii) identify assumptions that Plaintiffs' attorneys provided and that the expert relied on in forming the opinions to be expressed. This request explicitly does not seek attorney work product or attorney-client communications.

RESPONSE: Plaintiff will produce copies of all non-privileged, responsive documents that are in his possession, custody, or control.

11. A copy of each expert report, declaration, affidavit, deposition transcript, and/or trial transcript reflecting or containing the testimony of each testifying expert witness for Plaintiffs during the previous five years.

RESPONSE: Plaintiff objects to the extent this request seeks confidential and sensitive information not subject to disclosure without a court order. Subject to and without waiver of the foregoing, Plaintiff will produce copies of all non-privileged, responsive documents that are in his possession, custody, or control.

12. All documents constituting, memorializing, reflecting or relating to fee agreements, billing statement, time records, and expenses related to your request for fees and expenses in this suit.

RESPONSE: Plaintiff objects to this request on the ground that it requests documents that are not relevant to Plaintiff's claims and are therefore outside the scope of discovery. Plaintiff further objects to the extent that it requests information protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Plaintiff has not yet filed a claim for attorney's fees and expenses, and will do so when and as required by Local Rule CV-7(j). Plaintiffs and defendants are working together informally to agree to the amount of attorneys' fees and costs owed to Plaintiffs pursuant to the Court's order of sanctions against Defendants.

13. All documents reflecting the hourly rate of each of your attorneys.

RESPONSE: Plaintiff objects to this request on the ground that it requests documents that are not relevant to Plaintiff's claims and are therefore outside the scope of discovery. Plaintiff further objects to the extent that it requests information protected by the attorney-client privilege or exempt from discovery under the work-product doctrine.

14. All documents received in response to any subpoena served on any nonparty in connection with this case.

RESPONSE: Plaintiff objects that this request is unduly burdensome to the extent it requests that Plaintiff produce documents already in Defendants' custody, possession, and control. Upon information and belief, and based on TexasNICUSA, LLC's March 21, 2017 email to counsel for both Plaintiffs and Defendants—as well as Defense counsel's statements to Plaintiffs' counsel during the March 31, 2017 deposition of TexasNICUSA, LLC—Defendants possess all documents produced in response to Plaintiffs' subpoena served on any nonparties in connection with this case.

15. All documents or communications with non-parties, including but not limited to, Texas NICUSA, LLC, d/b/a Texas NIC, about this suit or the issues in this suit.

RESPONSE: Plaintiff objects to this request as overbroad and unduly vague as to "the issues in this suit." Plaintiff further objects that this request is unreasonably burdensome and not proportional to the needs of the case, and to the extent that it requests documents or communications protected by the work-product doctrine. Subject to and without waiving the foregoing, Plaintiff will produce copies of all communications with Texas NICUSA, LLC, d/b/a Texas NIC, responsive documents that are in his possession, custody, or control.

16. All documents that you intend to use as evidence to support your claims in this case.

RESPONSE: Plaintiff objects to this request as duplicative of Request No. 1. Plaintiff further objects to this request as overbroad and unduly burdensome to the extent it demands Plaintiffs produce documents to Defendants that are already in Defendants' custody, possession, and control, including those that Defendants produced to Plaintiffs. Plaintiff further objects to this request to the extent that it requires the identification and production of Plaintiff's exhibits prior to the time specified in Rule CV-16(e) of the Local Rules of the United States District Court for the Western District of Texas. Subject to and without waiving the foregoing, Plaintiff responds that discovery is not complete, and that he therefore has not and cannot yet identify the documents he intends to use as evidence. Plaintiff will file and serve his list of all documents he intends to use as evidence to support his claims in this case when and as required by Rule CV-16(e).

VERIFICATION

STATE OF TEXAS

COUNTY OF

Dallas

§
§
§

BEFORE ME, the undersigned authority, on this day personally appeared Benjamin Hernandez, known to me to be the person whose name is subscribed to the foregoing PLAINTIFF BENJAMIN HERNANDEZ'S OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST SET OF INTERROGATORIES, and after having been duly sworn state on her oath:

"I read PLAINTIFF BENJAMIN HERNANDEZ'S OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST SET OF INTERROGATORIES and the facts stated in it are within my personal knowledge and are true and correct."

Benjamin Hernandez
Benjamin Hernandez

Sworn to and subscribed before me by Benjamin Hernandez on APRIL 24, 2017.



Fatima Mohamed
Notary Public in and for the State of TEXAS
My Commission Expires: 01/21/2018

EXHIBIT
B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JARROD STRINGER, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	C.A. 5:16-cv-00257-OLG
	§	
ROLANDO PABLOS, IN HIS OFFICIAL	§	
CAPACITY AS THE TEXAS SECRETARY	§	
OF STATE and STEVEN C. McCRAW, IN	§	
HIS OFFICIAL CAPACITY AS THE	§	
DIRECTOR OF THE TEXAS	§	
DEPARTMENT OF PUBLIC SAFETY,	§	
Defendants.	§	

**PLAINTIFF JARROD STRINGER’S OBJECTIONS AND RESPONSES TO
DEFENDANTS’ FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION,
AND REQUESTS FOR ADMISSION**

TO: Defendants, by and through their attorneys of record, Anna Mackin and Esteban Soto, Office of the Attorney General, 300 West 15th Street, Austin, Texas 78701.

Pursuant to Federal Rules of Civil Procedure 33, 34, and 36, Plaintiff Jarrod Stringer hereby serves the following Objections and Responses to Defendants’ First Set of Interrogatories, Requests for Production, and Requests for Admission.

Dated: April 17, 2017

Respectfully submitted,

By: /s/ Rebecca Harrison Stevens

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of April, 2017, a true and correct copy of the foregoing *Plaintiffs Jarrod Stringer's Objections and Responses to Defendants' First Set of Interrogatories, Requests for Production, and Requests for Admission*, was served upon counsel of record via email.

/s/ Rebecca Harrison Stevens

RESERVATION OF RIGHTS

Plaintiff has responded to these requests for admission, requests for production, and interrogatories based on the information currently available to him. Discovery, however, is not yet complete. Additional discovery and investigation may lead to additions to, changes in, or modification of these Responses. Plaintiff therefore reserves his right to supplement, amend, revise, correct, modify, or clarify these Responses as additional information becomes available.

Plaintiff makes his objections and responses in accordance with his interpretation and understanding of Defendants' First Set of Interrogatories, Requests for Production, and Requests for Admission and in accordance with his current knowledge, understanding, and belief as to the facts and information available to him at the time of serving these Responses. If Defendants subsequently provide an interpretation of any of its Requests that differs from Plaintiffs' understanding of the same, Plaintiff reserves his right to complete the discovery of facts in this case and rely at trial or in any other proceeding on documents and information in addition to the information provided herein, regardless of whether such information is newly discovered or newly in existence. He also reserves the right to amend, revise, correct, modify, or clarify his Responses to properly respond to any interpretation Defendants may give these Requests.

Plaintiff reserves his right to object on any grounds, at any time, to the admission or use of any Response on any ground.

PLAINTIFF JARROD STRINGER'S OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST SET OF REQUESTS FOR ADMISSION

1. Admit that, when you visited DPS' website to update your address the week of August 1, 2014 after moving from Arlington, Texas to San Antonio, Texas, as alleged in paragraph 47 of your Original Complaint, you did not submit a change of address that relates to a Texas driver license *in person*.

RESPONSE: Admit

2. Admit that, when you visited DPS' website to update your address the week of August 1, 2014 after moving from Arlington, Texas to San Antonio, Texas, you did not submit a change of address that relates to a Texas driver license *by mail*.

RESPONSE: Admit

3. Admit that, when you visited DPS' website to update your address the week of August 1, 2014 after moving from Arlington, Texas to San Antonio, Texas, as alleged in paragraph 47 of your Original Complaint, you checked "yes" in response to the following message "[s]electing 'yes' **does not** register you to vote. A link to the Secretary of State Voter website (where a voter application may be downloaded or requested) will be available on your receipt page.)" (emphasis original).

RESPONSE: Mr. Stringer admits checking "yes" in response to the statement "I want to register to vote." Mr. Stringer denies checking "yes" in response to the message, "[s]electing 'yes' **does not** register you to vote. A link to the Secretary of State Voter website (where a voter application may be downloaded or requested) will be available on your receipt page.)"

4. Admit that, when you visited DPS' website to update your address the week of August 1, 2014 after moving from Arlington, Texas to San Antonio, Texas, as alleged in paragraph 47 of your Original Complaint, you were provided a link to the voter registration application proscribed by the Secretary of State.

RESPONSE: Mr. Stringer has made reasonable inquiry and the information he knows or can readily obtain is insufficient to enable him to admit or deny. Mr. Stringer would have no knowledge about whether a voter registration application was proscribed by the Secretary of State. Mr. Stringer does not recall being provided a link to a voter registration application when he visited DPS's website to update his address during the week of August 1, 2014.

5. Admit that, when you visited DPS' website to update your address the week of August 1, 2014 after moving from Arlington, Texas to San Antonio, Texas, as alleged in paragraph 47 of your Original Complaint, you did not complete the voter registration application proscribed by the Secretary of State.

RESPONSE: Mr. Stringer admits that he did not complete a voter registration application on the Secretary of State's website. Mr. Stringer would have no knowledge about whether a voter registration application was proscribed by the Secretary of State. Mr. Stringer does not recall being provided with a separate voter registration application when he visited DPS's website to update his address during the week of August 1, 2014.

6. Admit that, when you visited DPS' website to update your address the week of August 1, 2014 after moving from Arlington, Texas to San Antonio, Texas, as alleged in paragraph 47 of your Original Complaint, you did not submit a written, signed request to change your voter registration information.

RESPONSE: Mr. Stringer denies not submitting a written request to change his voter registration information. Mr. Stringer denies not submitting a signed request to change his voter registration information. Based upon receipt of an updated driver license containing his electronic signature, Mr. Stringer believes his online change of address transaction during the week of August 1, 2014 caused his electronic signature to be reused by DPS.

7. Admit that, when you visited DPS' website to update your address the week of August 1, 2014 after moving from Arlington, Texas to San Antonio, Texas, as alleged in paragraph 47 of your Original Complaint, you did not submit a handwritten signature or a digitized image thereof.

RESPONSE: Mr. Stringer admits only to not submitting a handwritten signature. Based upon receipt of an updated driver license containing his electronic signature, Mr. Stringer believes his online change of address transaction during the week of August 1, 2014 caused his electronic signature to be reused by DPS.

8. Admit that, when you visited DPS' website to update your address the week of August 1, 2014 after moving from Arlington, Texas to San Antonio, Texas, as alleged in paragraph 47 of your Original Complaint, you did not attest that you are a United States citizen.

RESPONSE: Mr. Stringer has made reasonable inquiry and the information he knows or can readily obtain is insufficient to enable him to admit or deny. Mr. Stringer is unable to admit or deny because he does not recall whether he attested that he was a United States citizen and does not currently have access to the application he submitted on August 1, 2014.

9. Admit that Defendants offered, through your attorneys, to confirm your voter registration status, and to assist you in updating your voter registration information, if you desired.

RESPONSE: Mr. Stringer admits that he was offered, through his attorneys, to confirm his voter registration status and assistance in updating his voter registration information if he desired. Mr. Stringer denies he was offered services personally and directly from Defendants.

10. Admit that you did not attempt to *renew* your Texas driver license online when you visited DPS' website to update your address the week of August 1, 2014 after moving from Arlington, Texas to San Antonio, Texas, as alleged in paragraph 47 of your Original Complaint.

RESPONSE: Admit.

11. Admit that, when you visited DPS' website to update your address the week of August 1, 2014 after moving from Arlington, Texas to San Antonio, Texas, as alleged in paragraph 47 of your Original Complaint, you did not do so by telephone.

RESPONSE: Admit.

12. Admit that you are currently registered to vote in the county where, when providing Defendants notice of the NVRA violations you allege, you indicated you wished to be registered.

RESPONSE: Admit.

13. Admit that you were able to cast a ballot in the 2012 general election. If you deny that you were able to cast a ballot in the 2012 general election, admit that you did not attempt to cast a ballot in the same.

RESPONSE: Mr. Stringer admits that he did not attempt to cast a ballot in the 2012 general election.

14. Admit that you were able to cast a ballot in the 2013 federal general election. If you deny that you were able to cast a ballot in the 2013 general election, admit that you did not attempt to cast a ballot in the same.

RESPONSE: Mr. Stringer denies this request because there was no federal general election in Texas in 2013.

15. Admit that you were able to cast a ballot in the 2014 federal general election. If you deny that you were able to cast a ballot in the 2014 general election, admit that you did not attempt to cast a ballot in the same.

RESPONSE: Mr. Stringer denies that he was able to cast a ballot. Mr. Stringer admits that he attempted to vote. Mr. Stringer attempted to vote during early voting, but was told he could only vote in the statewide elections and could only vote on Election Day at the courthouse.

16. Admit that you were able to cast a ballot in the 2015 federal general election. If you deny that you were able to cast a ballot in the 2015 general election, admit that you did not attempt to cast a ballot in the same.

RESPONSE: Mr. Stringer denies this request because there was no federal general election in Texas in 2015.

17. Admit that you were able to cast a ballot in the 2016 federal general election. If you deny that you were able to cast a ballot in the 2016 general election, admit that you did not attempt to cast a ballot in the same.

RESPONSE: Mr. Stringer admits casting a ballot.

**PLAINTIFF JARROD STRINGER'S OBJECTIONS AND RESPONSES
TO ROLANDO PABLOS'S FIRST SET OF INTERROGATORIES**

1. Identify each individual you intend to present as a witness in this case, including name, address, and phone number.

RESPONSE: Plaintiff objects to this interrogatory as premature, and as overbroad and unduly burdensome, as Plaintiff has already produced his Initial Disclosures and will produce his First Amended Disclosures concurrently with this Response. Subject to and without waiving the foregoing, Plaintiff responds that discovery is ongoing, and he has not yet—and cannot yet— identify his trial witnesses at this point in time. Plaintiff will file and serve his trial witness list when and as required by Rule CV-16(e) of the Local Rules of the United States District Court for the Western District of Texas. Plaintiffs' Initial and First Amended Disclosures contain lists of individuals who may have information that Plaintiffs may use to support their claims.

2. Do you contend that before filing suit you provided Defendants notice of the NRVA violations you claim have injured you, and the necessary information that would allow Defendants to correct those alleged violations? If so, please describe in detail 1) the specific types of personal information you

provided to Defendants; 2) the date you provided this information to Defendants; 3) the manner in which you provided this information to Defendants.

RESPONSE: Plaintiff objects to this interrogatory to the extent that it calls for a legal conclusion, and on the ground that “in detail” is vague and undefined. Subject to and without waiving this objection, Plaintiff responds that on October 23, 2015, Plaintiff notified Defendants, in writing and through counsel, as follows:

I write to supplement our May 27th Notice Letter (attached and incorporated herein by reference) with the name of another Texas voter who attempted to update his voter registration information when changing his address online at www.txdps.state.tx.us. This letter provides formal notice to the State of NVRA violations under 52 U.S.C. § 20510(b) on behalf of Jarrod Stringer and others similarly situated.

Mr. Stringer moved from Arlington, Texas to San Antonio, Texas on August 1, 2014. Mr. Stringer visited DPS’ website to update his address within the same week, and recalls checking “yes” when asked whether he wished to update his voter registration. Mr. Stringer attempted to vote early in the November 2014 election, but was told by poll workers at the University of Texas at San Antonio that his name was not on the rolls. Mr. Stringer then called Bexar County, and was told that he was not registered in Bexar, and that as a result, he could only vote in the state-wide election there. When he explained that he had changed his address for voter registration purposes online through DPS’ website, the county employee with whom he was speaking told him that the county was aware of “problems at DPS.”

As set out in our original Notice Letter, every time an eligible resident renews or updates his or her driver’s license with DPS, the NVRA requires that DPS simultaneously register that person to vote or update that person’s voter registration file, unless the applicant fails to sign the form or indicates that he or she does not wish to update his or her information for voter registration purposes. Unfortunately, the State is not complying with the NVRA’s mandates.

We are willing to meet or speak with you to discuss this Supplemental Notice. In any event, please advise as to whether the State maintains the positions articulated in your June 23rd and September 10th letters.

See Exhibit C to Plaintiffs Original Complaint (Dkt. 1-4) at pp. 195-196; see also Mar. 31, 2017 Order Denying Defendants’ Motion to Dismiss (Dkt. 52) at pp. 7-9.

3. Do you contend that you are still being harmed by Defendants’ alleged conduct? If so, please describe in detail the basis for this contention.

RESPONSE: Plaintiff objects to this interrogatory to the extent that it calls for a legal conclusion, and on the ground that “in detail” is vague and undefined. Subject to and without waiving this objection, Plaintiff responds as follows: Yes. Defendants’ continue to violate Plaintiff’s rights under the NVRA by failing to provide to online customers a “[s]imultaneous application for voter registration and...driver’s license[;]” a voter registration application portion of a driver’s license application that does not require any information that duplicates the driver’s license portion of the form; and a change of address form submitted in accordance with state law for purposes of state motor vehicle driver’s license that serves as a notification of change of address for voter registration with respect to elections for Federal office, unless the registrant states on the form that the change of address is not for voter registration purposes.

4. Do you contend that “countless eligible Texas residents have been denied the right to voter registration” as alleged in paragraph 54 of your Original Complaint? If so, please describe in detail the basis for this contention.

RESPONSE: Plaintiff objects to this interrogatory to the extent that it calls for a legal conclusion, and on the ground that “in detail” is vague and undefined. Subject to and without waiving this objection, Plaintiff responds as follows: Yes. Documents produced by Defendants and TEXAS NICUSA, LLC confirm that millions of Texans renew or change their driver license addresses online each year, and Defendants admit that they have and continue to fail to accept voter registration applications and updates to voter registration files during these NVRA-covered driver license transactions. *See* Sheri Gipson’s 30(b)(6) p 141, line 12; Exhibit 3Y to Sheri Gipson’s 30(b)(6) deposition; NIC 00481; and Defendant Steve C. McCraw’s First Supplemental Responses to Plaintiff’s First Set of Requests for Admissions, #s 10, 11, 12, and 13.

5. Do you contend that the NVRA requires “simultaneous voter registration” as alleged in paragraph 39 of your Original Complaint? If so, describe in detail the basis for this contention, including whether you contend that the NVRA requires an instantaneous update in county voter registration rolls when an individual completes an NVRA-covered transaction. If you do not contend that the NVRA requires an instantaneous update in county voter registration rolls, state the specific timeframe (in seconds, minutes, hours, and/or days) in which you contend the NVRA requires county voter registration rolls must be updated.

RESPONSE: Plaintiff objects to this interrogatory on the ground that it calls for a legal conclusion.

6. In paragraph 57 of your Original Complaint, you allege that state officials have been aware of “significant and widespread confusion caused by the State’s treatment of online DPS transactions since at least 2012.” Please describe in detail the basis for this contention.

RESPONSE: Plaintiff objects on the ground that “in detail” is vague and undefined. Plaintiff responds that many voters complained about and were surprised to discover that they were not registered to vote in the county to which they moved and updated or renewed their address through DPS’ online application. *See* Exhibit B to Complaint; Exhibit D pp. 7-8; Exhibit D at p. 17; Exhibit D at pp. 22-23; Exhibit D at p. 27; Exhibit D at p. 32.

7. In paragraph 50 of your Original Complaint, you allege that you believed you were “properly registered [to vote] because [you] completed an online transaction with DPS, attempted to update [your] registration records, and later received an updated driver’s license in the mail.” Do you contend that other potential Texas voters, who are not party to this lawsuit, are similarly confused by the same process? If so, please describe in detail the basis for this contention.

RESPONSE: Plaintiff objects on the ground that “in detail” is vague and undefined. Plaintiff objects to the characterization that Plaintiff was “confused” by the online process.

8. What do you believe the statement “Selecting ‘yes’ does not register you to vote” signifies?

RESPONSE: Mr. Stringer does not recall whether the language “Selecting ‘yes’ does not register you to vote” was included in his application.

9. Do you contend that you are entitled to recover attorney's fees, costs, and expenses for multiple attorneys' attendance and/or participate in depositions in this case? If so, please describe in detail the basis for this contention, including, but not limited to: 1) identifying any case law supporting this contention; 2) describing in detail each attorney's participation in the case thus far, including necessity of attendance at depositions; 3) identifying the hourly rate sought by each attorney.

RESPONSE: Plaintiff objects to this interrogatory on the ground that it calls for a legal conclusion. Plaintiff further objects to this request on the ground that it requests information that is not relevant to Plaintiff's claims and is therefore outside the scope of discovery, and to the extent that it requests information protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Plaintiff has not yet filed a claim for attorney's fees, and will do so when and as required by Local Rule CV-7(j).

10. Identify by URL or website address any Social Media Sites in your name.

RESPONSE: Mr. Stringer has the following social media sites:

Facebook: www.facebook.com/stringerjarrod

Twitter: <https://www.twitter.com/stringerjarrod>.

Instagram: www.instagram.com/stringerjarrod/

Snapchat: Mr. Stringer had a snapchat account at one point, but cannot find it anymore.

11. Do you contend that the State of Texas is similarly situated to the State of Alabama for purposes of the NVRA? If so, please describe in detail the basis for this contention.

RESPONSE: Plaintiff objects to this interrogatory on the ground that it calls for a legal conclusion.

12. Please state the date and county of your first registration to vote in Texas, and list all of the subsequent changes you have made to your voter registration, including the substance of the change, approximate date, and how you made the change.

RESPONSE: Plaintiff objects to this interrogatory as Defendants have equal or greater access to this information because Defendants have access to Mr. Stringer's voter registration records. Subject to that objection, Mr. Stringer does not remember all the times he registered to vote. Mr. Stringer believes he voted for the first time in 1992 in Grayson County, although he does not recall when or where he first registered to vote. Mr. Stringer voted in 2000, but has no recollection of when he registered to vote before voting in the 2000 election. Mr. Stringer registered to vote in Spring of 2015 in Bexar County at a college. He registered to vote because he found out in 2014 that he was not registered to vote.

PLAINTIFF JARROD STRINGER'S OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST SET OF REQUESTS FOR PRODUCTION

1. All documents related to the categories of documents, electronically stored information, and tangible things that Plaintiffs' listed in Plaintiffs' Initial Disclosures and any subsequent amended disclosures.

RESPONSE: Plaintiff objects to this request as overly broad, unduly vague, and ambiguous, and to the extent it requests documents that are protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Subject to and without waiver of the foregoing objections,

Plaintiff will produce copies of the documents listed in Plaintiffs' Initial and Amended Disclosures, except to the extent they are already in Defendants' possession, custody, or control.

2. All documents reflecting your assertion that you "updated your driver's license address online" in 2014 as alleged in paragraph 47 of your Original Complaint.

RESPONSE: Plaintiff will produce copies of all non-privileged, responsive documents in his possession, custody, or control. Any additional responsive documents are, upon information and belief, in Defendants' possession, custody, or control.

3. All documents reflecting that you moved from Tarrant County to Bexar County in 2014.

RESPONSE: Plaintiff objects to this request as overbroad, vague, and ambiguous to the extent that, as worded, it seeks any documents tangentially related to Plaintiff's move from Tarrant County to Bexar County. Subject to and without waiver of the foregoing, Plaintiff will produce copies of all non-privileged, responsive documents in his possession, custody, or control documenting his move from Tarrant County to Bexar County in 2014. Any additional responsive documents are, upon information and belief, in Defendants' possession, custody, or control, or publicly available and outside of Plaintiff's own possession, custody, or control.

4. All documents reflecting the "total number" of Texas voters you contend were injured by Defendants' conduct as alleged in paragraph 9 of your Original Complaint.

RESPONSE: Plaintiff will produce copies of all non-privileged, responsive documents in his possession, custody, or control. Any additional responsive documents are, upon information and belief, in Defendants' possession, custody, or control.

5. All documents related to your allegation that you provided detailed notice of Defendant's alleged violations as alleged in paragraph 12 of your Original Complaint.

RESPONSE: Plaintiff objects to this request to the extent that it requests documents that are protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Plaintiff further objects that this request is unduly burdensome to the extent it seeks from Plaintiffs documents already in Defendants' custody, possession, and control. Plaintiff responds that Defendants are in possession of all non-privileged documents responsive to this request.

6. All documents related to your allegation that Defendants failed to correct alleged NVRA violations within 90 days of receiving notice as alleged in paragraph 12 of your Original Complaint.

RESPONSE: Plaintiff objects to this request to the extent that it requests documents that are protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Plaintiff further objects that this request is unduly burdensome to the extent it requests Plaintiff to produce documents already in Defendants' custody, possession, and control. Plaintiff responds that Defendants are in possession of all non-privileged documents responsive to this request.

7. All documents containing your writing including notes, diary entries, emails, letters, or any other writing that includes comments regarding the issues in this suit.

RESPONSE: Plaintiff objects to this request to the extent that it requests documents that are protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Plaintiff objects to the phrase “issues in this suit” as overly broad, unduly vague, and ambiguous. Subject to and without waiving the foregoing, Plaintiff responds that after a reasonable search of his records, Plaintiff has not found any non-privileged documents responsive to this request in his possession, custody, or control, nor are any currently available to him.

8. All documents reflecting your allegation that you “attempted to vote early in the 2014 general election, but was told that [your] name was not on the rolls in Bexar County” as alleged in paragraph 47 of your Original Complaint.

RESPONSE: Plaintiff will produce copies of all non-privileged, responsive documents that are in his possession, custody, or control. Any additional responsive documents are, upon information and belief, in Defendants’ possession, custody, or control.

9. All documents reflecting your allegation that an election official in Bexar County was “aware of ‘problems at DPS’” as alleged in paragraph 47 of your Original Complaint.

RESPONSE: Plaintiff responds that after a reasonable search of his records, Plaintiff has not found any non-privileged documents responsive to this request in his possession, custody, or control, nor are any currently available to him. Any responsive documents—should they exist—are, upon information and belief, in Defendants’ and/or Bexar County’s possession, custody, or control.

10. All documents reflecting your allegation that “countless eligible Texas residents have been denied the fight [sic] to voter registration” as alleged in paragraph 54 of your Original Complaint.

RESPONSE: Plaintiff objects that this request is unduly burdensome to the extent it requests Plaintiff to produce documents already in Defendants’ custody, possession, and control. Plaintiff will produce copies of all non-privileged, responsive documents that are in his possession, custody, or control and that have not already been provided by or to Defendants in the course of this litigation. Any additional responsive documents are in Defendants’ possession, custody, or control.

11. All documents reflecting communications between any attorney for Plaintiffs and any person serving as a testifying expert witness for Plaintiffs that: (i) relate to compensation for the expert’s study or testimony; (ii) identify facts or data that Plaintiffs’ attorneys provided and that the expert considered in forming the opinions to be expressed; and/or (iii) identify assumptions that Plaintiffs’ attorneys provided and that the expert relied on in forming the opinions to be expressed. This request explicitly does not seek attorney work product or attorney-client communications.

RESPONSE: Plaintiff will produce copies of all non-privileged, responsive documents that are in his possession, custody, or control.

12. A copy of each expert report, declaration, affidavit, deposition transcript, and/or trial transcript reflecting or containing the testimony of each testifying expert witness for Plaintiffs during the previous five years.

RESPONSE: Plaintiff objects to the extent this request seeks confidential and sensitive information not subject to disclosure without a court order. Subject to and without waiver of the foregoing, Plaintiff will

produce copies of all non-privileged, responsive documents that are in his possession, custody, or control.

13. All documents constituting, memorializing, reflecting or relating to all fee agreements, billing statement, time records, and expenses related to your request for fees and expenses in this suit.

RESPONSE: Plaintiff objects to this request on the ground that it requests documents that are not relevant to Plaintiff's claims and are therefore outside the scope of discovery. Plaintiff further objects to the extent that it requests information protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Plaintiff has not yet filed a claim for attorney's fees and expenses, and will do so when and as required by Local Rule CV-7(j). Plaintiffs and defendants are working together informally to agree to the amount of attorneys' fees and costs owed to Plaintiffs pursuant to the Court's order of sanctions against Defendants.

14. All documents reflecting the hourly rate of each of your attorneys.

RESPONSE: Plaintiff objects to this request on the ground that it requests documents that are not relevant to Plaintiff's claims and are therefore outside the scope of discovery. Plaintiff further objects to the extent that it requests information protected by the attorney-client privilege or exempt from discovery under the work-product doctrine.

15. All documents received in response to any subpoena served on any nonparty in connection with this case.

RESPONSE: Plaintiff objects that this request is unduly burdensome to the extent it requests that Plaintiff produce documents already in Defendants' custody, possession, and control. Upon information and belief, and based on TexasNICUSA, LLC's March 21, 2017 email to counsel for both Plaintiffs and Defendants—as well as Defense counsel's statements to Plaintiffs' counsel during the March 31, 2017 deposition of TexasNICUSA, LLC—Defendants possess all documents produced in response to Plaintiffs' subpoena served on any nonparties in connection with this case.

16. All documents or communications with non-parties, including but not limited to, Texas NICUSA, LLC, d/b/a Texas NIC, about this suit or the issues in this suit.

RESPONSE: Plaintiff objects to this request as overbroad and unduly vague as to "the issues in this suit." Plaintiff further objects that this request is unreasonably burdensome and not proportional to the needs of the case, and to the extent that it requests documents or communications protected by the work-product doctrine. Subject to and without waiving the foregoing, Plaintiff will produce copies of all communications with Texas NICUSA, LLC, d/b/a Texas NIC that are in his possession, custody, or control.

17. All documents that you intend to use as evidence to support your claims in this case.

RESPONSE: Plaintiff objects to this request as duplicative of Request No. 1. Plaintiff further objects to this request as overbroad and unduly burdensome to the extent it demands Plaintiffs produce documents to Defendants that are already in Defendants' custody, possession, and control, including those that Defendants produced to Plaintiffs. Plaintiff further objects to this request to the extent that it requires the identification and production of Plaintiff's exhibits prior to the time specified in Rule CV-16(e) of the Local Rules of the United States District Court for the Western District of Texas. Subject to

and without waiving the foregoing, Plaintiff responds that discovery is not complete, and that he therefore has not and cannot yet identify the documents he intends to use as evidence. Plaintiff will file and serve his list of all documents he intends to use as evidence to support his claims in this case when and as required by Rule CV-16(e).

EXHIBIT
C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JARROD STRINGER, et al.,	§	
	Plaintiffs,	§
		§
v.		§ C.A. 5:16-cv-00257-OLG
		§
ROLANDO PABLOS, IN HIS OFFICIAL	§	
CAPACITY AS THE TEXAS SECRETARY	§	
OF STATE and STEVEN C. McCRAW, IN	§	
HIS OFFICIAL CAPACITY AS THE	§	
DIRECTOR OF THE TEXAS	§	
DEPARTMENT OF PUBLIC SAFETY,	§	
	Defendants.	§

**PLAINTIFF JOHN WOODS’ OBJECTIONS AND RESPONSES TO DEFENDANTS’
FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION, AND
REQUESTS FOR ADMISSION**

TO: Defendants, by and through their attorneys of record, Anna Mackin and Esteban Soto, Office of the Attorney General, 300 West 15th Street, Austin, Texas 78701.

Pursuant to Federal Rules of Civil Procedure 33, 34, and 36, Plaintiff John Woods hereby serves the following Objections and Responses to Defendants’ First Set of Interrogatories, Requests for Production, and Requests for Admission.

Dated: April 17, 2017

Respectfully submitted,

By: /s/ Rebecca Harrison Stevens

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of April, 2017, a true and correct copy of the foregoing *Plaintiffs John Woods' Objections and Responses to Defendants' First Set of Interrogatories, Requests for Production, and Requests for Admission*, was served upon counsel of record via email.

/s/ Rebecca Harrison Stevens

RESERVATION OF RIGHTS

Plaintiff has responded to these requests for admission, requests for production, and interrogatories based on the information currently available to him. Discovery, however, is not yet complete. Additional discovery and investigation may lead to additions to, changes in, or modification of these Responses. Plaintiff therefore reserves his right to supplement, amend, revise, correct, modify, or clarify these Responses as additional information becomes available.

Plaintiff makes his objections and responses in accordance with his interpretation and understanding of Defendants' First Set of Interrogatories, Requests for Production, and Requests for Admission and in accordance with his current knowledge, understanding, and belief as to the facts and information available to him at the time of serving these Responses. If Defendants subsequently provide an interpretation of any of its Requests that differs from Plaintiffs' understanding of the same, Plaintiff reserves his right to complete the discovery of facts in this case and rely at trial or in any other proceeding on documents and information in addition to the information provided herein, regardless of whether such information is newly discovered or newly in existence. He also reserves the right to amend, revise, correct, modify, or clarify his Responses to properly respond to any interpretation Defendants may give these Requests.

Plaintiff reserves his right to object on any grounds, at any time, to the admission or use of any Response on any ground.

PLAINTIFF JOHN WOODS' OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST SET OF REQUESTS FOR ADMISSION

1. Admit that, when you changed your driver license address online in September 2015, after moving from Travis County to Harris County in June 2015, as alleged in paragraph 49 of your Original Complaint, you did not submit a change of address that relates to a Texas driver license *in person*.

RESPONSE: Admit.

2. Admit that, when you changed your driver license address online in September 2015, after moving from Travis County to Harris County in June 2015, as alleged in paragraph 49 of your Original Complaint, you did not submit a change of address that relates to a Texas driver license *by mail*.

RESPONSE: Admit.

3. Admit that, when you changed your driver license address online in September 2015, after moving from Travis County to Harris County in June 2015, as alleged in paragraph 49 of your Original Complaint, you checked “yes” in response to the following message “[s]electing ‘yes’ **does not** register you to vote. A link to the Secretary of State Voter website (where a voter application may be downloaded or requested) will be available on your receipt page.)” (emphasis original).

RESPONSE: Dr. Woods admits checking “yes” in response to the statement “I want to register to vote.” Dr. Woods does not recall seeing the message, “[s]electing ‘yes’ **does not** register you to vote. A link to the Secretary of State Voter website (where a voter application may be downloaded or requested) will be available on your receipt page.)”

4. Admit that, when you changed your driver license address online in September 2015, after moving from Travis County to Harris County in June 2015, as alleged in paragraph 49 of your Original Complaint, you were provided a link to the voter registration application proscribed by the Secretary of State.

RESPONSE: Dr. Woods has made reasonable inquiry and the information he knows or can readily obtain is insufficient to enable him to admit or deny. Dr. Woods would have no knowledge about whether a voter registration application was proscribed by the Secretary of State. Dr. Woods does not recall being provided a link to a voter registration application when he visited DPS’s website to update his address in September, 2015.

5. Admit that, when you changed your driver license address online in September 2015, after moving from Travis County to Harris County in June 2015, as alleged in paragraph 49 of your Original Complaint, you did not complete the voter registration application proscribed by the Secretary of State.

RESPONSE: Dr. Woods admits that he did not complete a voter registration application on the Secretary of State’s website. Dr. Woods would have no knowledge about whether a voter registration application was proscribed by the Secretary of State. Dr. Woods does not recall being provided with a separate voter registration application when he visited DPS’s website to update his address in September, 2015.

6. Admit that you did not submit a written, signed request to change your voter registration information when you changed your driver license address online in September 2015, after moving from Travis County to Harris County in June 2015, as alleged in paragraph 49 of your Original Complaint.

RESPONSE: Dr. Woods denies not submitting a written request to change his voter registration information. Dr. Woods denies not submitting a signed request to change his voter registration information. Based upon receipt of an updated driver license containing his electronic signature, Dr. Woods believes his online change of address transaction in September, 2015 caused his electronic signature to be reused by DPS.

7. Admit that, when you changed your driver license address online in September 2015, after moving from Travis County to Harris County in June 2015, as alleged in paragraph 49 of your Original Complaint, you did not submit a handwritten signature or a digitized image thereof.

RESPONSE: Dr. Woods admits only to not submitting a handwritten signature. Based upon receipt of an updated driver license containing his electronic signature, Dr. Woods believes his online change of address transaction in September, 2015 caused his electronic signature to be reused by DPS.

8. Admit that, when you changed your driver license address online in September 2015, after moving from Travis County to Harris County in June 2015, as alleged in paragraph 49 of your Original Complaint, you did not attest that you are a US citizen.

RESPONSE: Dr. Woods has made reasonable inquiry and the information he knows or can readily obtain is insufficient to enable him to admit or deny. Dr. Woods is unable to admit or deny because he does not recall whether he attested that he was a United States citizen and does not currently have access to the application he submitted in September, 2015.

9. Admit that Defendants offered, through your attorneys, to confirm your voter registration status, and to assist you in updating your voter registration information, if you desired.

RESPONSE: Dr. Woods admits that he was offered, through his attorneys, to confirm his voter registration status and assistance in updating his voter registration information if he desired.

10. Admit that, when you changed your driver license address online in September 2015, after moving from Travis County to Harris County in June 2015, as alleged in paragraph 49 of your Original Complaint, you did not attempt to *renew* your Texas driver license online.

RESPONSE: Admit.

11. Admit that you are currently registered to vote in the county where, when providing Defendants notice of the NVRA violations you allege, you indicated you wished to be registered.

RESPONSE: Admit.

12. Admit that you were able to cast a ballot in the 2012 general election. If you deny that you were able to cast a ballot in the 2012 general election, admit that you did not attempt to cast a ballot in the same.

RESPONSE: Dr. Woods admits that he was able to cast a ballot.

13. Admit that you were able to cast a ballot in the 2013 federal general election. If you deny that you were able to cast a ballot in the 2013 general election, admit that you did not attempt to cast a ballot in the same.

RESPONSE: Dr. Woods denies this request because there was no federal general election in Texas in 2013.

14. Admit that you were able to cast a ballot in the 2014 federal general election. If you deny that you were able to cast a ballot in the 2014 general election, admit that you did not attempt to cast a ballot in the same.

RESPONSE: Dr. Woods denies that he was able to cast a ballot. Dr. Wood denies not attempting to cast a ballot.

15. Admit that you were able to cast a ballot in the 2015 federal general election. If you deny that you were able to cast a ballot in the 2015 general election, admit that you did not attempt to cast a ballot in the same.

RESPONSE: Dr. Woods denies this request because there was no federal general election in Texas in 2015.

16. Admit that you were able to cast a ballot in the 2016 federal general election. If you deny that you were able to cast a ballot in the 2016 general election, admit that you did not attempt to cast a ballot in the same.

RESPONSE: Dr. Woods admits casting a ballot.

17. Admit that, when you changed your driver license address online in September 2015, after moving from Travis County to Harris County in June 2015, as alleged in paragraph 49 of your Original Complaint, you did not do so by telephone.

RESPONSE: Admit.

DEFENDANT ROLANDO PABLOS'S FIRST INTERROGATORIES TO JOHN WOODS

1. Identify each individual you intend to present as a witness in this case, including name, address, and phone number.

RESPONSE: Plaintiff objects to this interrogatory as premature, and as overbroad and unduly burdensome, as Plaintiff has already produced his Initial Disclosures and will produce his First Amended Disclosures concurrently with this Response. Subject to and without waiving the foregoing,

Plaintiff responds that discovery is ongoing, and he has not yet—and cannot yet— identify his trial witnesses at this point in time. Plaintiff will file and serve his trial witness list when and as required by Rule CV-16(e) of the Local Rules of the United States District Court for the Western District of Texas. Plaintiffs' Initial and First Amended Disclosures contain lists of individuals who may have information that Plaintiffs may use to support their claims.

2. Do you contend that before filing suit you provided Defendants notice of the NRVA violations you claim have injured you, and the necessary information that would allow Defendants to correct those alleged violations? If so, please describe in detail 1) the specific types of personal information you provided to Defendants; 2) the date you provided this information to Defendants; 3) the manner in which you provided this information to Defendants.

RESPONSE: Plaintiff objects to this interrogatory to the extent that it calls for a legal conclusion, and on the ground that “in detail” is vague and undefined. Subject to and without waiving this objection, Plaintiff responds that on November 18, 2015, Plaintiff notified Defendants, in writing and through counsel, as follows:

I write to again supplement our May 27th Notice Letter (attached and incorporated herein by reference) with the name of another Texas voter who attempted to update his voter registration information when changing his address online at www.txdps.state.tx.us. This letter provides formal notice to the State of NVRA violations under 52 U.S.C. § 20510(b) on behalf of John Woods and others similarly situated.

Mr. Woods moved from Travis County to Harris County in June 2015. In September 2015, Mr. Woods changed his driver's license address online, and believed that his voter registration records were updated as well. Shortly thereafter, Mr. Woods went to a local library, where he was offered an opportunity to register to vote. He declined that opportunity, however, because he believed that his voter registration records had already been updated. Mr. Woods called Harris County on Election Day 2015, trying to identify his polling location. Mr. Woods was informed that he was not registered in Harris County, but was still registered in Travis County, and that any provisional ballot cast in Harris County would likely not be counted. Nonetheless, Mr. Woods went to his local polling location and cast a provisional ballot. On November 17, Mr. Woods was informed by the county clerk that his provision ballot was not counted.

As set out in our Original and First Supplemental Notice Letter, every time an eligible resident renews or updates his or her driver's license with DPS, the NVRA requires that DPS simultaneously register that person to vote or update that person's voter registration file, unless the applicant fails to sign the form or indicates that he or she does not wish to update his or her information for voter registration purposes. Unfortunately, the State is not complying with the NVRA's mandates.

We remain willing to meet or speak with you to discuss our First Supplemental Notice Letter, as well as this Second Supplemental Notice Letter and the state of Alabama's recent agreement to address NVRA violations, including online-transaction violations. In any event, please advise as to whether the State maintains the positions articulated in your June 23rd and September 10th letters.

See Exhibit C to Plaintiffs Original Complaint (Dkt. 1-4) at pp. 171-72; see also Mar. 31, 2017 Order Denying Defendants' Motion to Dismiss (Dkt. 52) at pp. 7-9.

3. Do you contend that you are still being harmed by Defendants' alleged conduct? If so, please describe in detail the basis for this contention.

RESPONSE: Plaintiff objects to this interrogatory to the extent that it calls for a legal conclusion, and on the ground that "in detail" is vague and undefined. Subject to and without waiving this objection, Plaintiff responds as follows: Yes. Defendants' continue to violate Plaintiff's rights under the NVRA by failing to provide to online customers a "[s]imultaneous application for voter registration and...driver's license[;]" a voter registration application portion of a driver's license application that does not require any information that duplicates the driver's license portion of the form; and a change of address form submitted in accordance with state law for purposes of state motor vehicle driver's license that serves as a notification of change of address for voter registration with respect to elections for Federal office, unless the registrant states on the form that the change of address is not for voter registration purposes.

4. Do you contend that "countless eligible Texas residents have been denied the right to voter registration" as alleged in paragraph 54 of your Original Complaint? If so, please describe in detail the basis for this contention.

RESPONSE: Plaintiff objects to this interrogatory to the extent that it calls for a legal conclusion, and on the ground that "in detail" is vague and undefined. Subject to and without waiving this objection, Plaintiff responds as follows: Yes. Documents produced by Defendants and TEXAS NICUSA, LLC confirm that millions of Texans renew or change their driver license addresses online each year, and Defendants admit that they have and continue to fail to accept voter registration applications and updates to voter registration files during these NVRA-covered driver license transactions. See Sheri Gipson's 30(b)(6) p 141, line 12; Exhibit 3Y to Sheri Gipson's 30(b)(6) deposition; NIC 00481; and Defendant Steve C. McCraw's First Supplemental Responses to Plaintiff's First Set of Requests for Admissions, #s 10, 11, 12, and 13.

5. Do you contend that the NVRA requires "simultaneous voter registration" as alleged in paragraph 39 of your Original Complaint? If so, describe in detail the basis for this contention, including whether you contend that the NVRA requires an instantaneous update in county voter registration rolls when an individual completes an NVRA-covered transaction. If you do not contend that the NVRA requires an instantaneous update in county voter registration rolls, state the specific timeframe (in seconds, minutes, hours, and/or days) in which you contend the NVRA requires county voter registration rolls must be updated.

RESPONSE: Plaintiff objects to this interrogatory on the ground that it calls for a legal conclusion.

6. In paragraph 57 of your Original Complaint, you allege that state officials have been aware of "significant and widespread confusion caused by the State's treatment of online DPS transactions since at least 2012." Please describe in detail the basis for this contention.

RESPONSE: Plaintiff objects on the ground that "in detail" is vague and undefined. Plaintiff responds

that many voters complained about and were surprised to discover that they were not registered to vote in the county to which they moved and updated or renewed their address through DPS' online application. *See* Exhibit B to Complaint; Exhibit D pp. 7-8; Exhibit D at p. 17; Exhibit D at pp. 22-23; Exhibit D at p. 27; Exhibit D at p. 32.

7. In paragraph 50 of your Original Complaint, you allege that you believed you were "properly registered [to vote] because [you] completed an online transaction with DPS, attempted to update [your] registration records, and later received an updated driver's license in the mail." Do you contend that other potential Texas voters, who are not party to this lawsuit, are similarly confused by the same process? If so, please describe in detail the basis for this contention.

RESPONSE: Plaintiff objects on the ground that "in detail" is vague and undefined. Plaintiff objects to the characterization that Plaintiff was "confused" by the online process.

8. What do you believe the statement "Selecting 'yes' does not register you to vote" signifies?

RESPONSE: Because he was previously registered to vote and going online to update his voter registration, Dr. Woods thought that language did not apply to him. He believes the language only applies to those who are registering to vote, not updating their voter registration.

9. Do you contend that you are entitled to recover attorney's fees, costs, and expenses for multiple attorneys' attendance and/or participate in depositions in this case? If so, please describe in detail the basis for this contention, including, but not limited to: 1) identifying any case law supporting this contention; 2) describing in detail each attorney's participation in the case thus far, including necessity of attendance at depositions; 3) identifying the hourly rate sought by each attorney.

RESPONSE: Plaintiff objects to this interrogatory on the ground that it calls for a legal conclusion. Plaintiff further objects to this request on the ground that it requests information that is not relevant to Plaintiff's claims and is therefore outside the scope of discovery, and to the extent that it requests information protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Plaintiff has not yet filed a claim for attorney's fees, and will do so when and as required by Local Rule CV-7(j).

10. Identify by URL or website address any Social Media Sites in your name.

RESPONSE:

facebook.com/mohawkjohn
twitter.com/mohawkjohn
instagram.com/mohawkjohn
github.com/mohawkjohn
plus.google.com/+JohnWoodsDances
mohawk-john.tumblr.com
reddit.com/u/mohawkjohn
www.pof.com/member35176171.htm
aciel.livejournal.com/
www.linkedin.com/in/johnwoods/
www.huffingtonpost.com/author/john-woods

www.pinterest.com/mohawkjohn/
stackoverflow.com/users/170300/dr-johnny-mohawk

11. Do you contend that the State of Texas is similarly situated to the State of Alabama for purposes of the NVRA? If so, please describe in detail the basis for this contention.

RESPONSE: Plaintiff objects to this interrogatory on the ground that it calls for a legal conclusion.

12. Please state the date and county of your first registration to vote in Texas, and list all of the subsequent changes you have made to your voter registration, including the substance of the change, approximate date, and how you made the change.

RESPONSE: Plaintiff objects to this interrogatory as Defendants have equal or greater access to this information because Defendants have access to Dr. Woods' voter registration records. Subject to that objection, Dr. Woods does not remember all the times he registered to vote. Based on information, belief, and recollection, Dr. Woods attempted the following changes: A change of address in Travis County after May 31, 2007; and a change of address in Travis County after July 31, 2012.

DEFENDANTS' REQUESTS FOR PRODUCTION TO JOHN WOODS

1. All documents related to the categories of documents, electronically stored information, and tangible things that Plaintiffs' listed in Plaintiffs' Initial Disclosures and any subsequent amended disclosures.

RESPONSE: Plaintiff objects to this request as overly broad, unduly vague, and ambiguous, and to the extent it requests documents that are protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Subject to and without waiver of the foregoing objections, Plaintiff will produce copies of the documents listed in Plaintiffs' Initial and Amended Disclosures, except to the extent they are already in Defendants' possession, custody, or control.

2. All documents reflecting your assertion that you "moved from Travis County to Harris County in June 2015", as alleged in paragraph 49 of your Original Complaint.

RESPONSE: Plaintiff objects to this request as overbroad, vague, and ambiguous to the extent that, as worded, it seeks any documents tangentially related to Plaintiff's move from Travis County to Harris County. Subject to and without waiver of the foregoing, Plaintiff will produce copies of all non-privileged, responsive documents in his possession, custody, or control documenting his move from Travis County to Harris County in June 2015. Any additional responsive documents are, upon information and belief, in Defendants' possession, custody, or control, or publicly available and outside of Plaintiff's own possession, custody, or control.

3. All documents reflecting that, in September 2015, you "changed [your] driver's license address online," as alleged in paragraph 49 of your Original Complaint.

RESPONSE: Plaintiff will produce copies of all non-privileged, responsive documents in his possession, custody, or control. Any additional responsive documents are, upon information and belief, in Defendants' possession, custody, or control.

4. All documents reflecting your assertion that, “shortly” after you changed the address on your driver license online, you “when to a local library, where [you] w[ere] offered an opportunity to register to vote” and you “declined that opportunity [] because [you] believed that [your] voter registration records had already been updated,” as alleged in paragraph 49 of your Original Complaint.

RESPONSE: Plaintiff will produce copies of all non-privileged, responsive documents in his possession, custody, or control.

5. All documents reflecting your assertion that you “called Harris County on Election Day 2015, trying to identify [your] polling location” and were “informed that [you] w[ere] not registered in Harris County, but w[ere] still registered in Travis County, and that any provisional ballot cast in Harris County would likely not be counted”, as alleged in paragraph 49 of your Original Complaint.

RESPONSE: Plaintiff will produce copies of all non-privileged, responsive documents in his possession, custody, or control. Any additional responsive documents are, upon information and belief, in Defendants’ possession, custody, or control.

6. All documents reflecting the “total number” of Texas voters you contend were injured by Defendants’ conduct as alleged in paragraph 9 of your Original Complaint.

RESPONSE: Plaintiff will produce copies of all non-privileged, responsive documents in his possession, custody, or control. Any additional responsive documents are, upon information and belief, in Defendants’ possession, custody, or control.

7. All documents related to your allegation that you provided detailed notice of Defendant’s alleged violations as alleged in paragraph 12 of your Original Complaint.

RESPONSE: Plaintiff objects to this request to the extent that it requests documents that are protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Plaintiff further objects that this request is unduly burdensome to the extent it seeks from Plaintiffs documents already in Defendants’ custody, possession, and control. Plaintiff responds that Defendants are in possession of all non-privileged documents responsive to this request.

8. All documents related to your allegation that Defendants failed to correct alleged NVRA violations within 90 days of receiving notice as alleged in paragraph 12 of your Original Complaint.

RESPONSE: Plaintiff objects to this request to the extent that it requests documents that are protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Plaintiff further objects that this request is unduly burdensome to the extent it requests Plaintiff to produce documents already in Defendants’ custody, possession, and control. Plaintiff responds that Defendants are in possession of all non-privileged documents responsive to this request.

9. All documents containing your writing including notes, diary entries, emails, letters, or any

other writing that includes comments regarding the issues in this suit.

RESPONSE: Plaintiff objects to this request to the extent that it requests documents that are protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Plaintiff objects to the phrase “issues in this suit” as overly broad, unduly vague, and ambiguous. Subject to and without waiving the foregoing, Plaintiff will produce copies of all non-privileged, responsive documents in his possession, custody, or control.

10. All documents reflecting your allegation that “countless eligible Texas residents have been denied the fight to voter registration” as alleged in paragraph 54 of your Original Complaint.

RESPONSE: Plaintiff objects that this request is unduly burdensome to the extent it requests Plaintiff to produce documents already in Defendants’ custody, possession, and control. Plaintiff will produce copies of all non-privileged, responsive documents that are in his possession, custody, or control and that have not already been provided by or to Defendants in the course of this litigation. Any additional responsive documents are in Defendants’ possession, custody, or control.

11. All documents reflecting communications between any attorney for Plaintiffs and any person serving as a testifying expert witness for Plaintiffs that: (i) relate to compensation for the expert’s study or testimony; (ii) identify facts or data that Plaintiffs’ attorneys provided and that the expert considered in forming the opinions to be expressed; and/or (iii) identify assumptions that Plaintiffs’ attorneys provided and that the expert relied on in forming the opinions to be expressed. This request explicitly does not seek attorney work product or attorney-client communications.

RESPONSE: Plaintiff will produce copies of all non-privileged, responsive documents that are in his possession, custody, or control.

12. A copy of each expert report, declaration, affidavit, deposition transcript, and/or trial transcript reflecting or containing the testimony of each testifying expert witness for Plaintiffs during the previous five years.

RESPONSE: Plaintiff objects to the extent this request seeks confidential and sensitive information not subject to disclosure without a court order. Subject to and without waiver of the foregoing, Plaintiff will produce copies of all non-privileged, responsive documents that are in his possession, custody, or control.

13. All documents constituting, memorializing, reflecting or relating to fee agreements, billing statement, time records, and expenses related to your request for fees and expenses in this suit.

RESPONSE: Plaintiff objects to this request on the ground that it requests documents that are not relevant to Plaintiff’s claims and are therefore outside the scope of discovery. Plaintiff further objects to the extent that it requests information protected by the attorney-client privilege or exempt from discovery under the work-product doctrine. Plaintiff has not yet filed a claim for attorney’s fees and expenses, and will do so when and as required by Local Rule CV-7(j). Plaintiffs and defendants are working together informally to agree to the amount of attorneys’ fees and costs owed to Plaintiffs pursuant to the Court’s order of sanctions against Defendants.

14. All documents reflecting the hourly rate of each of your attorneys.

RESPONSE: Plaintiff objects to this request on the ground that it requests documents that are not relevant to Plaintiff's claims and are therefore outside the scope of discovery. Plaintiff further objects to the extent that it requests information protected by the attorney-client privilege or exempt from discovery under the work-product doctrine.

15. All documents received in response to any subpoena served on any nonparty in connection with this case.

RESPONSE: Plaintiff objects that this request is unduly burdensome to the extent it requests that Plaintiff produce documents already in Defendants' custody, possession, and control. Upon information and belief, and based on TexasNICUSA, LLC's March 21, 2017 email to counsel for both Plaintiffs and Defendants—as well as Defense counsel's statements to Plaintiffs' counsel during the March 31, 2017 deposition of TexasNICUSA, LLC—Defendants possess all documents produced in response to Plaintiffs' subpoena served on any nonparties in connection with this case.

16. All documents or communications with non-parties, including but not limited to, Texas NICUSA, LLC, d/b/a Texas NIC, about this suit or the issues in this suit.

RESPONSE: Plaintiff objects to this request as overbroad and unduly vague as to “the issues in this suit.” Plaintiff further objects that this request is unreasonably burdensome and not proportional to the needs of the case, and to the extent that it requests documents or communications protected by the work-product doctrine. Subject to and without waiving the foregoing, Plaintiff will produce copies of all communications with Texas NICUSA, LLC, d/b/a Texas NIC, responsive documents that are in his possession, custody, or control.

17. All documents that you intend to use as evidence to support your claims in this case.

RESPONSE: Plaintiff objects to this request as duplicative of Request No. 1. Plaintiff further objects to this request as overbroad and unduly burdensome to the extent it demands Plaintiffs produce documents to Defendants that are already in Defendants' custody, possession, and control, including those that Defendants produced to Plaintiffs. Plaintiff further objects to this request to the extent that it requires the identification and production of Plaintiff's exhibits prior to the time specified in Rule CV-16(e) of the Local Rules of the United States District Court for the Western District of Texas. Subject to and without waiving the foregoing, Plaintiff responds that discovery is not complete, and that he therefore has not and cannot yet identify the documents he intends to use as evidence. Plaintiff will file and serve his list of all documents he intends to use as evidence to support his claims in this case when and as required by Rule CV-16(e).

**EXHIBIT
D**

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

JARROD STRINGER, ET AL.,)	
)	
Plaintiffs,)	
)	
VS.)	
)	
ROLANDO PABLOS, IN HIS)	Civil No. 5:16-CV-00257
OFFICIAL CAPACITY AS THE)	
TEXAS SECRETARY OF STATE AND)	
STEVEN C. MCCRAW, IN HIS)	
OFFICIAL CAPACITY AS THE)	
DIRECTOR OF THE Texas)	
Department of Public Safety,)	
)	
Defendants.)	

ORAL AND VIDEOTAPED DEPOSITION OF

BENJAMIN HERNANDEZ

MAY 18, 2017

VOLUME 1

ORAL AND VIDEOTAPED DEPOSITION OF BENJAMIN HERNANDEZ,
produced as a witness at the instance of the DEFENDANT, and
duly sworn, was taken in the above-styled and numbered cause on
May 18, 2017, from 10:28 a.m. to 11:54 a.m., before Arden
Bolak, CSR in and for the State of Texas, reported by machine
shorthand, at the law offices of Waters & Kraus, LLP, 3141 Hood
Street, Suite 700, Dallas, Texas 75219, pursuant to the Texas
Rules of Civil Procedure and the provisions stated on the
record or attached hereto.

1 Q. (BY MS. MACKIN) In 2013, after you moved.

2 A. I just got online and decided change my address
3 online, because I knew I had to.

4 Q. Why did you choose to do it online rather than going
5 into a DPS office?

6 A. Convenience.

7 Q. Yeah. And so we touched on this briefly a little
8 while ago, but you mentioned seeing some mention of voter
9 registration when you were online; is that right?

10 A. Yes.

11 Q. What do you recall seeing?

12 A. There was a portion where I remember seeing if I --
13 or asking the question if I wanted to register to vote. And I
14 knew I need to register to vote in Dallas County, because of my
15 move.

16 Q. When you went online in 2013 and changed your address
17 from Ector County to Dallas County, did you sign anything?

18 A. I typed my name into the computer, basically. If
19 that counts as a signature.

20 Q. So you didn't write anything down, it was all -- so
21 it was all on the computer; is that right?

22 A. Yes.

23 Q. Okay. You've stated in your responses to some
24 written discovery in this lawsuit that you believed that this
25 online change of address updated your voter registration info,

1 don't -- there's no way I can point to numbers. But if it can
2 happen to me it could happen to somebody else. Of course,
3 that's reasonable thinking.

4 **Q. (BY MS. MACKIN) Mr. Hernandez, are you currently**
5 **registered to vote at the address where you reside?**

6 **A. Yes.**

7 **Q. How do you know?**

8 **A. I have my voter registration card now. And I was**
9 **able to vote last November.**

10 **Q. If you move in the future, how do you think you would**
11 **update your voter registration information?**

12 **A. Manually.**

13 **Q. What do you mean by manually?**

14 **A. I can go to the post office, the courthouse, or**
15 **wherever you go, write it down.**

16 **Q. All right. Just a couple more questions to wrap up.**
17 **How did you meet your lawyers in this case? I'm not asking for**
18 **any legal advice or anything like that. Any legal strategy.**
19 **Just, how you met them?**

20 **A. What I recall, I received a letter in the mail -- I'm**
21 **not sure how they got my name, and they -- the letter stated**
22 **something they were aware of the situation. And I just called**
23 **somebody.**

24 **Q. Do you remember who you called?**

25 **A. I can't remember exactly who it was that I talked to**

EXHIBIT
E

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

JARROD STRINGER, et al.,)
)
Plaintiffs,)
)
vs.) CIVIL NO. 5:16-cv-00257
)
ROLANDO PABLOS, IN HIS)
OFFICIAL CAPACITY AS THE)
TEXAS SECRETARY OF STATE,)
AND STEVEN C. McCRAW, IN)
HIS OFFICIAL CAPACITY AS)
THE DIRECTOR OF THE TEXAS)
DEPARTMENT OF PUBLIC)
SAFETY,)
)
Defendants.)

ORAL VIDEOTAPED DEPOSITION

JARROD STRINGER

May 3, 2017

ORAL VIDEOTAPED DEPOSITION OF JARROD STRINGER,
produced as a witness at the instance of the Defendants
and duly sworn, was taken in the above-styled and
numbered cause on the 3rd day of May, 2017, from
10:33 a.m. to 11:48 a.m., before April Balcombe,
Certified Shorthand Reporter and Certified Realtime
Reporter, in and for the State of Texas, reported by
computerized stenotype machine at the offices of the
Office of the Attorney General Consumer Protection

1 Q. Okay. Now I want to talk about the voter
2 registration issue that you sued my clients about when
3 you moved from Arlington to San Antonio.

4 Q. Why did you move?

5 A. My wife got into law school at St. Mary's.

6 Q. And do you remember the approximate date that
7 you moved?

8 A. We moved on August the 1st.

9 Q. And at that point you decided to update the
10 address on your driver license?

11 A. Yes.

12 Q. Okay. Tell me about that.

13 A. Well, we moved here in Austin, and shortly
14 thereafter, I -- as you can see from my history, I've
15 moved several times. I am getting more accustomed to
16 trying to do that more quickly. So I -- we had to get
17 wi-fi first. But I forgot wi-fi now, so I went online
18 in my office and filled out the form.

19 Q. Is there a reason you chose to do it online?

20 A. Convenience.

21 Q. Do you recall anything about voter
22 registration?

23 A. I remember there being a box I could check if I
24 wanted to get registered.

25 Q. Do you recall anything else?

1 A. No.

2 Q. That day that you went online to change your
3 address, did you sign anything?

4 A. No.

5 Q. Did you write anything down?

6 A. Can you --

7 Q. Sure.

8 In connection with the change that you
9 made to your address --

10 A. Uh-huh.

11 Q. -- did you write anything down?

12 A. Write anything down where?

13 Q. Anywhere.

14 A. I am not sure I understand.

15 Q. When you asked -- well, you didn't ask.

16 When you told DPS that you had moved using
17 the online interface, did you write anything down, or
18 was it all done by computer?

19 A. It was all online.

20 Q. And then you said that you believed this
21 updated your voter registration information as well?

22 A. Correct.

23 Q. And you believed that because -- well, I don't
24 want to testify for you. Why did you believe that?

25 A. It asked me if I would like to register to

1 A. No.

2 **Q. Mr. Stringer, what is your current address?**

3 **A. 623 Donaldson Avenue, Apartment 8, San Antonio,**
4 **Texas 78201.**

5 **Q. And is that where you are currently registered**
6 **to vote?**

7 **A. Yes.**

8 **Q. Next time you move, how will you change your**
9 **address?**

10 MS. STEVENS: Objection. Form.

11 A. How will I change my address?

12 **Q. (BY MS. MACKIN) Uh-huh, with DPS.**

13 A. Oh.

14 **Q. Sorry.**

15 A. By moving.

16 [Laughter].

17 **Q. By not living there anymore.**

18 [Laughter].

19 A. Become a hobo, and then I won't have to worry
20 about it.

21 **Q. Actually, you don't need to -- you just need a**
22 **street corner to register to vote.**

23 A. Oh, really?

24 **Q. I am serious.**

25 A. The -- well, I would -- I would do it online.

1 Q. Okay. If you saw the screen that we just
2 looked at in Exhibit 5 --

3 A. Uh-huh.

4 Q. -- on page 2 --

5 A. Uh-huh.

6 Q. -- would you download, complete, and mail in
7 the form?

8 MS. STEVENS: Objection. Form.

9 A. Yes.

10 Q. (BY MS. MACKIN) Okay. Just a couple of more
11 things.

12 Why did you decide to join this lawsuit?

13 A. When I was not able to vote that day, I was
14 upset. The mere idea that I would not be able to vote
15 kind of violated my sense of being an American citizen,
16 honestly. I was upset.

17 Q. It's understandable.

18 Have you spoken to any reporters about
19 events related to this lawsuit?

20 A. No.

21 Q. Have you made any postings on the Internet
22 about this lawsuit?

23 A. No.

24 Q. [REDACTED]

25 [REDACTED]

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

JARROD STRINGER, ET AL.,)
Plaintiffs,)
)
vs.) CIVIL NO. 5:16-cv-00257
)
ROLANDO PABLOS, IN HIS)
OFFICIAL CAPACITY AS THE)
TEXAS SECRETARY OF STATE)
AND STEVEN C. MCCRAW, IN)
HIS OFFICIAL CAPACITY AS)
THE DIRECTOR OF THE TEXAS)
DEPARTMENT OF PUBLIC)
SAFETY,)
Defendants.)

"CONFIDENTIAL"
ORAL VIDEOTAPED DEPOSITION
JOHN WOODS
MAY 5, 2017

ORAL VIDEOTAPED DEPOSITION OF JOHN WOODS, produced as a witness at the instance of the Defendants and duly sworn, was taken in the above-styled and numbered cause on the 5th day of May, 2017, from 10:26 a.m. to 12:54 p.m., before Dana Richardson, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the Office of Attorney General Consumer Protection Division Houston Regional Office, 808 Travis, Suite 1520, Houston, Texas 77002-1702, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

1 when I signed the pad at DPS or when I had signed on
2 paper.

3 **Q. Did you sign a paper that day?**

4 MS. STEVENS: Objection, form.

5 A. For this application?

6 **Q. (BY MS. MACKIN) The day that you went**

7 **online --**

8 A. Yes.

9 **Q. -- to update the address from Austin to**
10 **Houston, did you sign a piece of paper?**

11 A. The question is -- confuses me --

12 **Q. Or was it all on the computer?**

13 A. Yes.

14 **Q. Okay. So you didn't do anything in**
15 **handwriting?**

16 **A. No.**

17 **Q. Okay. And you mentioned a moment ago that you**
18 **believed -- you said something about you thought you**
19 **were providing a signature?**

20 A. Uh-huh.

21 **Q. Okay. Tell me about that.**

22 A. Well, it seems like if you're filling out an
23 official form for the State, you probably have to sign
24 it. And if the state allows you to fill out forms
25 electronically on your own computer where you don't have

1 when changing his address online at
2 www.txdps.state.tx.us.

3 That attempt to update voter registration
4 information, what is that referring to?

5 A. To update my voter address from Travis County
6 to Harris County.

7 Q. Okay. And the next paragraph, I just want to
8 go through this bit by bit to get a little bit more
9 information about the -- the facts in here.

10 A. Okay.

11 Q. So the first sentence: "Mr. Woods moved from
12 Travis County to Harris County in June 2015."

13 That's actually, though, referring to --
14 you physically moved from Morgantown, but you -- your
15 address registered on your driver license was from
16 Travis to Harris, even though your person was from West
17 Virginia to Harris; is that right?

18 A. Yes.

19 Q. Okay.

20 A. I mean, I spent a lot of time in Austin --

21 Q. Yeah. And I'm not --

22 A. -- even when I was in Morgantown.

23 Q. I'm not saying that you were, like, lying or
24 trying to trick anybody. I just want it to be clear in
25 the record because I was a little bit confused when I

1 saw the letter to you in West Virginia and about just
2 where everything was. So not a problem.

3 The second sentence: "In September 2015,
4 Mr. Woods changed his driver's license address online,
5 and believed that his voter registration records were
6 updated as well."

7 Is that referring to the transaction that
8 we've spent a lot of today talking about?

9 A. Yes.

10 Q. Okay. And then it says: "Shortly thereafter,
11 Mr. Woods went to a local library, where he was offered
12 an opportunity to register to vote. He declined that
13 opportunity, however, because he believed that his voter
14 registration records had already been updated."

15 Can you tell me a little bit more about
16 your visit to the library that's referenced in this
17 sentence?

18 A. Sure. I went with my friend Deb. She was, I
19 think, dropping some -- she's also my roommate. She was
20 dropping some stuff off, picking some stuff up. I think
21 I checked out a book. In the process of checking out a
22 book, the librarian said, "Would you like to register to
23 vote?"

24 And I said, "No, I did it when I changed
25 my driver's license address."

1 this letter is addressed to you at 1005 Charles Avenue,
2 Morgantown, West Virginia --

3 A. Yes.

4 Q. -- 26505.

5 A. Uh-huh.

6 Q. And beneath that is an e-mail address, which I
7 presume is your e-mail address as well?

8 A. Yes.

9 Q. So did you receive this offer letter in the
10 mail or via e-mail?

11 A. Via e-mail.

12 Q. Okay. And this -- why was this offer letter
13 addressed to you in West Virginia?

14 A. Because I was doing my postdoc there.

15 Q. So you were living in West Virginia when you
16 received this letter?

17 A. Yes.

18 Q. But you -- you still had your Texas driver
19 license?

20 A. Yes.

21 Q. Okay. Thank you. That's all on that.

22 I'd like to go -- what is your current
23 address?

24 A. 2716 Arbor Street, A-r-b-o-r, Apartment 2,
25 Houston, Texas 77004.

1 Q. And is that where you are currently registered
2 to vote?

3 A. I am no longer sure.

4 Q. Okay.

5 A. I think so because I would have voted with the
6 driver's license with that address on it, and that
7 probably would have caused my address to be updated to
8 my current one.

9 Q. Do you recall whether you've ever received a
10 voter registration card with your current address on it?

11 A. No.

12 Q. No, you haven't; or, no, you don't recall?

13 A. I don't recall.

14 Q. Do you currently have roommates?

15 A. Yes.

16 Q. How many?

17 A. On the lease, two, but there's only one.

18 Q. Okay. Not 19?

19 A. Not currently.

20 Q. That's all I wanted.

21 A. Yeah.

22 Q. And you just mentioned that you are no longer
23 sure that you're registered at your current address?

24 A. Yes.

25 Q. Why not?

1 A. Because every time I've voted, I've done early
2 voting and you can go to any polling place in Harris
3 County and so it might not have come up that my voter
4 registration address is incorrect. I think in one case,
5 I went to my actual polling place. So I might be
6 misrecollecting that. And that polling place would be
7 the same because my two addresses, past and current, are
8 pretty close together, like, eight, ten blocks.

9 Q. This is Arbor Street, and the previous one was
10 Ruth Street?

11 A. Yes.

12 Q. Okay. Next time you move, how will you update
13 your voter registration information?

14 MS. STEVENS: Objection, form.

15 A. I will use the form prescribed by the Secretary
16 of State.

17 Q. (BY MS. MACKIN) What do you mean by "the form
18 prescribed by the Secretary of State"?

19 A. I have learned in the process of -- of this
20 process that it is not certain that changing my driver's
21 license address will update my voter registration and
22 that there is a form that the Secretary of State
23 prescribes for doing so. And I think I will be extra
24 certain and I will take every opportunity I can to
25 reregister myself to vote, even if I believe that I'm

1 already registered at my current address. So I'll fill
2 out the form. I'll do it at the library. I'll do it
3 there. If I know somebody's a deputy voter registrar, I
4 will get them to do it. I will take as many possible
5 opportunities that I can to avoid missing an election
6 because it's really important to me that I vote in every
7 election.

8 **Q. Okay. You said earlier that you received a new**
9 **driver license after you moved -- at your address on**
10 **Ruth street after you moved to Houston; is that right?**

11 A. Uh-huh.

12 **Q. And that it had an image of your signature on**
13 **it?**

14 A. Uh-huh.

15 **Q. Do you know how DPS got that signature?**

16 A. If it was the same way that they got it in
17 January, it was from the electronic keypad that you
18 sign. And I was looking at my driver's license
19 yesterday, and I noticed that it looks like the type of
20 handwriting that you get from signing one of those so --

21 **Q. In the office?**

22 A. Yeah.

23 **Q. I know it's so frustrating. My signature**
24 **always looks so ugly on those pads. My handwriting is**
25 **ugly enough as it is.**

1 MS. MACKIN: Objection; form.

2 A. No. There's a physical signature on the -- on
3 the address change application.

4 Q. (By Ms. Stevens) Right. But the information
5 that gets sent on to the voter registrars through the
6 Secretary of State's Office is the data that's pulled
7 from that form and then the electronic signature that
8 was previously provided by the customer in person at a
9 DPS office?

10 A. That's my understanding, yes.

11 Q. Well, is that the Secretary of State's
12 understanding?

13 A. That is the Secretary of State's
14 understanding. You bet.

15 Q. So in that same way, the online transaction
16 could utilize the previously provided electronic
17 signature that was provided in person by the customer
18 for the voter registration application form that gets to
19 the voter registrar in the same way that the change of
20 address mail-in occurs?

21 A. It could if the law allowed it, but the law
22 doesn't allow it, so it can't.

23 Q. What portion of the law doesn't allow it?

24 A. 13.002(b).

25 THE REPORTER: As in boy?

1 THE WITNESS: As in boy.

2 THE REPORTER: Thank you.

3 Q. (By Ms. Stevens) Which says what?

4 A. "A registration application must be in writing
5 and signed by the applicant."

6 Q. But to your point earlier that the voter
7 registration form that is in writing and signed by the
8 applicant is the form that is generated by the voter
9 registrars and that they get either in a printout form
10 or a PDF, that same procedure could occur for the online
11 transactions. Correct?

12 A. No.

13 Q. Why not?

14 A. Because they're not signing anything.

15 Q. Well, the -- the signature that you're
16 confirming complies with Texas Election Code for
17 in-person DPS transactions is the electronic signature
18 as referenced in those in-person forms. Correct?

19 A. A physical signature that the voter made on a
20 signature capture device when they wanted to register to
21 vote.

22 Q. Okay. For the change of address forms that
23 are mailed in --

24 A. I --

25 Q. Let me get the question out. For the change

1 of address forms when they're mailed in, there's the
2 electronic signature that accompanies those voter
3 registration -- the voter registration data that goes to
4 voter registrars, that signature was not provided at the
5 same time as the change of address mail-in form.

6 Correct?

7 A. The voter signed the change of address form.

8 Q. Well, but hold on. Answer my question, and
9 you can --

10 A. And so if --

11 Q. You can qualify it, but --

12 A. If --

13 Q. -- answer my question, please.

14 A. I'm answering your question. The voter signed
15 the change of address form. There was a physical
16 signature made.

17 If, for some reason, when DPS transmits
18 that data to us, the electronic signature from the
19 previous DPS transaction doesn't come through, then we
20 can go back to a physical signature on the change of
21 address application, just like we can go back to a
22 physical signature on the DL application. There was a
23 physical signature made, which complies with the Texas
24 Election Code.

25 In an online transaction, there is no

1 physical signature made, electronically captured or
2 otherwise. There is no physical signature. It does not
3 comply with 13.002(b).

4 Q. Okay. But to your point --

5 A. It's not my point.

6 Q. Just -- just by --

7 A. It's your point. And I wish you wouldn't say
8 that it is my point, because it is not my point.

9 Q. I'll try to rephrase, then.

10 The question was: For the mail-in
11 transactions -- excuse me -- the mail-in change of
12 address transactions with DPS, and the customer checks
13 they want to register to vote, the electronic signature
14 that is used on the voter registration application form
15 that eventually gets to the voter registrar is not
16 provided at the time that they check that box saying
17 they want to register to vote? Yes or no.

18 A. No. It was before.

19 Q. Okay. It was provided at the last in-person
20 transaction. Is that correct?

21 A. That's right.

22 Q. Okay. The -- under the scenario we're talking
23 about on the change of address forms, the prior
24 in-person transaction, the individual customer could
25 have checked the no box on the voter registration

1 question, but they're still required to provide their
2 electronic signature to DPS for the driver's license.

3 Correct?

4 A. Right.

5 Q. And then that same person could provide a
6 change of address form to the Department of Public
7 Safety and mail it in and check the yes box on the voter
8 registration question, and their prior provided
9 electronic signature is what will be used on the voter
10 registration form that goes to the voter registrar.

11 Correct?

12 A. Yeah, I'll get to you in a minute.

13 20.065(b) provides for electronic --
14 electronic transfer of voter registration information.
15 So the law already allows for this particular
16 transaction to occur. And whether or not the voter,
17 when they originally had their signature captured by the
18 electronic capture device -- whether or not they wanted
19 to register to vote at that time doesn't matter.

20 Because whenever they signed the change of address form,
21 they're physically signing it, so they're providing a
22 signature.

23 And this says that the Secretary shall
24 prescribe procedures necessary to implement the
25 subsection. So this procedure that's in place for going

1 and getting the electronic version makes it to where
2 this can happen. Right? Otherwise, we would end up
3 with voter registrars having a change of address form
4 from the driver's license division in their file along
5 with the rest of the information, and that's not very --
6 that's not very efficient.

7 So we could do it that way, but that's
8 not the procedure that we've prescribed. The procedure
9 that we've prescribed is DPS can go get the other
10 signature. And it doesn't matter if that signature was
11 made in connection with voter registration or not
12 because they signed the change of address form.
13 That's -- this is specifically allowed for in the
14 Election Code.

15 And so what you're suggesting, taking an
16 online transaction and -- with no signature whatsoever
17 associated with it and applying a signature from before
18 does not comply with 13.002 and it does not comply with
19 20.065(b). It's a completely new thing that's not
20 allowed.

21 So it could happen conceivably,
22 technically, if there was enough money, but it's not
23 allowed by law. There would have to be a law change for
24 us to do that.

25 Q. Okay. I'm trying to be patient --

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

1		
2		
3	JARROD STRINGER, et al.,)
4	Plaintiffs,)
5	VS.) C.A. No.
6) 5:16-cv-00257-OLG
7	ROLANDO PABLOS, IN HIS)
8	OFFICIAL CAPACITY AS THE)
9	TEXAS SECRETARY OF STATE)
10	and STEVEN MCCRAW, IN HIS)
11	OFFICIAL CAPACITY AS THE)
12	DIRECTOR OF THE TEXAS)
13	DEPARTMENT OF PUBLIC)
14	SAFETY,)
15	Defendants.)



 ORAL AND VIDEOTAPED DEPOSITION OF
 BETSY SCHONHOFF
 MAY 30, 2017

ORAL AND VIDEOTAPED DEPOSITION OF BETSY SCHONHOFF,
 produced as a witness at the instance of the
 Plaintiffs, and duly sworn, was taken in the
 above-styled and numbered cause on May 30, 2017, from
 12:06 p.m. to 3:54 p.m., before Donna Wright, CSR in
 and for the State of Texas, reported by machine
 shorthand, at the OFFICE OF THE ATTORNEY GENERAL,
 300 West 15th Street , Austin, Texas, pursuant to the
 Federal Rules of Civil Procedure and the provisions
 stated on the record or attached hereto.



1 they've treated.

2 And so that's, I think, the
3 fundamental disagreement with the document as written,
4 is, he focuses a lot on the technology, the exchange of
5 data, which some of that is not entirely correct. But
6 his -- his premise is, "Well, it should be this way
7 because Texas is able to do it from a technological
8 standpoint and from a cost standpoint." But that's not
9 really what the discrepancy is.

10 It has to do with 13.002, which the NVRA
11 grants states the right to come up with procedures for
12 implementing the NVRA in its totality. And that 13.002
13 is the signature component that he disregards in its
14 entirety.

15 So my -- the problem with this paragraph
16 is he seems to indicate that authentication can replace
17 the signature. And unless either a court of law
18 dictates that or the Legislature dictates that, there's
19 no policy that's being made. There's no interpretation
20 that we can make that's different from what the law
21 says.

22 Q. (BY MS. STEVENS) And you summed that up very,
23 very well. I think that, you know, what you're saying
24 is the -- the -- a crux of the issue here. But you'll
25 agree with me -- I mean, the plaintiffs have

1 done the way that we've talked about for this whole
2 case and that it's currently not in compliance.

3 That's -- that's the argument, right?

4 MS. MACKIN: Objection, form.

5 Q. (BY MS. STEVENS) You understand that?

6 MS. MACKIN: Objection, form.

7 THE WITNESS: I understand that's the
8 plaintiffs' view, yes.

9 Q. (BY MS. STEVENS) Okay. Okay. So
10 Paragraph 11, is it fair to characterize your opinion
11 here is, you think it's unfair for Dr. Hersh to have
12 equated the Truth in Mileage Act to -- to use as a
13 reference point in making the argument that Texas
14 should be doing online -- the updated voter
15 registration when folks change their address or renew
16 on -- on DPS' website?

17 MS. MACKIN: Objection, form.

18 THE WITNESS: My problem with the use of
19 the Truth in Mileage Act is in lieu of the signature
20 because there's another law that is very specific.

21 Q. (BY MS. STEVENS) And that's Texas law, right?

22 A. That's correct. And I'm not an attorney by
23 any stretch of the imagination, so you can correct me
24 if I'm wrong. But the way I understand the law is if
25 there is nothing on a subject, you can use other

1 portions of the law to help drive or direct answers to
2 specifics, like the signature, is it required or not.
3 But where there is something on the subject that is
4 very specific, that would supersede any other broadly
5 used portion of code because it's specific to that
6 issue. And so that's where I'm coming from on my
7 interpretation of how the law works.

8 **Q. And from where or from whom did you obtain**
9 **that understanding?**

10 A. After multiple conversations with our
11 attorneys over the years. If there's -- you know, for
12 instance, we were trying to find on certifying official
13 lists of registered voters, does it have to have a
14 signature, what does certification mean? The election
15 code is not specific. So we went and looked at the
16 rest of law in its totality to try to figure out what
17 is actually required and what could be used as more of
18 a guideline for them instead of saying, "This is how it
19 needs to be."

20 **Q. That Texas law you were referring to about**
21 **requiring a signature, it doesn't -- it doesn't say ink**
22 **signature or physical -- there's no -- there's no**
23 **qualifying word in front of "signature"; is that right?**

24 MS. MACKIN: Objection, form.

25 THE WITNESS: So, again, I'm not an

1 attorney, but 13.002 says the application has to be
2 written and signed. It also indicates that the only
3 methods for transmittal of the application to the voter
4 registrar are by mail and in person. There's a fax
5 option, but the original has to come by mail, which
6 leads to an original signature.

7 20.066 of the election code is what
8 authorizes DPS to transfer the physical signature
9 electronically captured in lieu of the original
10 signature, but only if DPS has received a completed
11 voter registration application combined form under
12 20.063, election code. The way that the combined form
13 is presented in that portion of the code as well is by
14 mail and in person.

15 Where there is another option, like
16 e-mail or something like that or delivery does not
17 matter, then election code defaults to Chapter 1 -- I
18 think it's 1.007 that talks about methods of
19 transmission for things like an absentee ballot by mail
20 can be transmitted electronically, a/k/a e-mail.

21 Otherwise, it's -- if there's a specific
22 method of transmission, that's -- that's the default.
23 So I'm going back to the general version down to the
24 specific, right? The Chapter 13 -- I mean,
25 applications are mentioned all throughout election code

1 that are not in Chapter 13. Provisional ballots,
2 limited ballots, agency applications all are under
3 Chapter 20. DPS applications have their own subchapter
4 under Chapter 20. Notices of address confirmation. It
5 doesn't really matter where they're referenced. They
6 all end up under the 13.002 category, which is by mail
7 and in person, which seems to indicate there's a
8 physical signature included on the application
9 somewhere. And DPS is the only one authorized to
10 transmit something other than the physical signature.

11 Q. (BY MS. STEVENS) And for those specific
12 transactions you've identified the DPS -- excuse me.
13 It's the -- I think you said physically --
14 electronically captured physical signature, something
15 like that. It's that signature that goes for the voter
16 registration purposes out to the voter registrars; is
17 that correct?

18 A. That -- the physical signature electronically
19 captured --

20 Q. However you phrased it.

21 A. -- yes. It's that signature that goes upon
22 DPS receiving a completed application by mail or in
23 person.

24 Q. And -- and that's a separate document, the
25 application?

1 in than just -- just a blanket this sentence, this
2 sentence, this sentence. So I'll just read the whole
3 thing and explain the nuance discrepancy, I guess.

4 Q. Well, let's go sentence by sentence. Read the
5 sentence and then explain the nuance discrepancy for
6 that sentence, and then we'll go through there. I want
7 it to be really clear on the record --

8 A. Okay.

9 Q. -- your rebuttal opinion as to something
10 specific he has said.

11 A. Okay. "The county can use the signature, if
12 it is deemed necessary, to compare with the voter's
13 signature obtained at the polls."

14 So --

15 Q. Wait, wait, wait. Where are you starting?

16 A. Sorry. This is the third sentence in, I
17 believe.

18 Q. Oh, okay. Thank you. Go ahead.

19 A. So the -- the comparison for use at the polls
20 wouldn't be done by the county. That would be done if
21 there's some sort of litigation surrounding a specific
22 individual. When he's talking about polls, I believe
23 he's talking about the ballot board verification
24 committee, which can -- is used for processing absentee
25 ballots by mail. And, yes, they process provisional

1 ballots as well, but not to the extent, I believe, of
2 signature verification.

3 The signature verification is for
4 absentee ballots, and voter registration applications
5 can be used to help determine if there's -- if the
6 signature is of the same person from the application to
7 the ballot that's returned, if needed, to help the
8 voter -- not to harm the voter, but to help, and they
9 can go back to any signature on file at the registrar's
10 office, including voter registration applications, for
11 a specified period of time, whatever that is.

12 So I think there's some confusion
13 surrounding the use of the signature. It's really not
14 primarily used for the polls. It's used to register
15 the voter.

16 Q. And so here the -- the entity that would be
17 comparing the signatures for absentee ballots that you
18 identified, is that on the county level, though?

19 A. Yes, but it's not county election officials.

20 Q. Okay.

21 A. The signature verification committee is
22 comprised of judges that are appointed to that
23 position, like during the primaries and things like
24 that. Then the parties appoint them. So different
25 rules to apply to who determines those individuals that

1 compare the signatures. And their job is to say, "Was
2 this absentee ballot application and the ballot
3 returned in the jacket envelope? Are those signatures
4 the same?"

5 And if there seems to be some sort of
6 great discrepancy between the jacket envelope and the
7 application, then they can go back and look at
8 previously obtained signatures to see if, you know, the
9 ballot can be counted at that point.

10 Q. And that includes a voter registration
11 signature?

12 A. That's correct.

13 Q. Okay. So that's for Sentence 3, I think you
14 said; is that right?

15 A. Yes. And I think that also brings a little
16 bit more clarity to Judge Garcia's note, you know. He
17 basically says it's unclear why an additional signature
18 is needed, and it's really because it's not about the
19 voter -- it's not about use at the polls. That's not
20 its primary purpose. The primary purpose of the
21 signature is registration.

22 Q. Okay. And then there's one final sentence.
23 Do you have a rebuttal opinion with respect to that
24 sentence?

25 A. Other -- no, other than the same thing, is

1 specifically Texas.

2 Q. Okay. Let's jump to Paragraph 17, please,
3 which is -- begins on Page 7 and concludes on Page 8.
4 So there were a couple of points that you discussed
5 when Ms. Stevens was asking you questions about some
6 rebuttal that you had to Paragraph 17.

7 What I would like to focus on -- I know
8 that you mentioned DPS requiring an individual to
9 complete and sign a form in the DPS field office. Do
10 you recall testifying about that?

11 A. Yes.

12 Q. Okay. And then you also mentioned taking
13 issue with the last sentence which says, "No further
14 action is required by registrant"?

15 A. Yes.

16 Q. Okay. And you indicated that this paragraph
17 leaves out the signature?

18 A. Correct. The signature is -- is required.

19 Q. So I just want to be very clear on the record
20 about what happens in a DPS office in the context of
21 how Mr. Hersh is characterizing it in Paragraph 17
22 here. When an individual is in the DPS office and they
23 respond affirmatively to the voter registration
24 question, how many signatures do they provide and how
25 do they provide those signatures?

1 A. Okay. So it's my understanding that they will
2 provide one signature on the DPS application that also
3 serves as a voter registration application. That is
4 under 13.002. 20.063 allows for that application to be
5 completed in person with the form -- combined form for
6 DPS. The requirements are 13.002, which means written
7 and signed at the time that they're trying to register
8 to vote. When they turn that form over, then the DPS
9 agent will enter the information on the form provided
10 and have the person sign the keypad or the signature
11 capture pad to provide the physical signature, which is
12 electronically captured.

13 Q. So there are two signatures provided in the
14 DPS office under such circumstances?

15 A. That's correct.

16 Q. Okay. Let's back up a little bit because I
17 want to be really clear. That first signature that's
18 on the DPS application form, why is that signature
19 required?

20 A. Because it is the requirement for any voter
21 application for any agency, entity, coming from any
22 source to be complete and signed at the time that they
23 are registering to vote.

24 Q. And, in your understanding, what's the basis
25 for that requirement in Texas law?

1 You -- you mentioned a moment ago that a request to
2 register or update registration information has to be
3 in writing and signed by the applicant under Texas law,
4 right?

5 A. Correct.

6 Q. Is it possible through Texas.gov, the DPS
7 portion of it, to make a written signed request to
8 change voter registration information?

9 MS. STEVENS: Objection, form.

10 THE WITNESS: Under the current process
11 it will take you to the Secretary of State's website.
12 If they implement some sort of electronic submission,
13 then no, it would not -- you would not be signing it at
14 the time that you are submitting it.

15 Q. (BY MS. MACKIN) Okay. How about --
16 Paragraph 27 on Page 12 talks about when an individual
17 changes their address by mail. And Dr. Hersh says that
18 DPS transmits the old electronic signature on file.
19 He's presumably referring to DPS sending the Secretary
20 of State's office the physical signature electronically
21 captured. Was that your understanding of this sentence
22 when you reviewed this report?

23 A. Yes.

24 Q. When an individual changes their address by
25 mail at DPS, does the form that they mail in to request

1 that change have to be signed?

2 A. Yes. Under 20.063, if it's not signed it's
3 not eligible for registration. Under 20.066, if it's
4 not signed, then it doesn't get -- then they are not
5 eligible to have the signature transmitted.

6 Q. And does DPS maintain that mail-in form on
7 file?

8 A. It's my understanding, yes, they maintain it
9 as part of their permanent records, just like voter
10 registrars maintain all applications as part of their
11 permanent records.

12 Q. So a voter registrar would be able to contact
13 DPS if they were trying to verify the signature for one
14 of the purposes that has already been discussed and
15 DPS, presumably, would be able to pull up that form
16 and -- and verify that the signature was provided?

17 A. So the only time they would go back and get
18 the original form is if something in the transmission
19 of the electronic went wrong.

20 Q. Okay.

21 A. And then they need to go get the physical
22 version to transmit. They can -- there's one of
23 two ways. Either they can get the -- DPS can resend
24 the electronic version or they can get the physical
25 version. But the signature that's -- that's used for