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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 22-50690

[Filed October 26, 2022]

TEXAS STATE LULAC; VOTO LATINO,
Plaintiffs—Appellees,

versus

BRUCE ELFANT, *et al.*,
Defendants,

versus

LUPE C. TORRES, *in her Official Capacity as the Medina County Elections Administrator*; TERRIE PENDLEY, *in her Official Capacity as the Real County Tax Assessor-Collector*; KEN PAXTON, *Texas Attorney General*,
Intervenor Defendants—Appellants.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:21-CV-546

Before CLEMENT, DUNCAN, and WILSON, *Circuit Judges*.

STUART KYLE DUNCAN, *Circuit Judge*:

Plaintiffs are two voter registration organizations who challenged Texas's recently revised requirements for voter residency. The district court concluded Plaintiffs had organizational standing because the new laws caused them to divert resources from other projects and also chilled their ability to advise and register voters. On the merits, the district court ruled that the challenged laws, in large part, impermissibly burdened the right to vote. Texas appealed.

We agree with Texas that Plaintiffs lack organizational standing. So, without reaching the merits, we reverse the district court's judgment and render judgment dismissing Plaintiffs' claims.

I.

During its 2021 regular session, the Texas Legislature enacted over a dozen laws related to election integrity.[1] Among them was S.B. 1111, which became effective on September 1, 2021. *See* Act of

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[1] *See generally* Keith Ingram, *Election Advisory No. 2021-09*, Tex. Sec'y of State (July 30, 2021), https://www.sos.state.tx.us/elections/laws/advisory2021-09.shtml; *see also, e.g.*, Act of June 4, 2021, 87th Leg., R.S., ch. 241, 2021 Tex. Sess. Law Serv. (H.B. 1264) (requiring registrars to send monthly abstract of death certificates of voting-age decedents to voter registrars and Secretary of State); Act of June 14, 2021, 87th Leg., R.S., ch. 573, 2021 Tex. Sess. Law Serv. (S.B. 598) (requiring a risk-limiting audit of certain statewide elections within twenty-four hours of the ballots being counted).

May 27, 2021, 87th Leg., R.S., ch. 869, 2021 Tex. Sess. Law Serv. 2142. S.B. 1111 made three relevant changes to the Texas Election Code's residency provisions. *First*, voters whose address on their registration form does not correspond to a physical residence, such as a commercial post-office box, must provide the registrar with documentation of a residential address. *See* TEX. ELEC. CODE §§ 15.051(a), 15.052(a), 15.054 ("P.O. Box Provision"). *Second*, voters are prohibited from establishing or maintaining a residence "for the purpose of influencing the outcome of a certain election." *Id.* § 1.015(b) ("Residence Provision"). *Third*, voters may not "establish a residence at any place the person has not inhabited" or "designate a previous residence as a home and fixed place of habitation unless the person inhabits the place at the time of designation and intends to remain." *Id.* § 1.015(f) ("Temporary Relocation Provision"). What links these provisions, according to Texas, is the "fundamental state policy . . . that people should vote where they live."

Months before S.B. 1111 took effect, two voter registration organizations, LULAC and Voto Latino ("Plaintiffs"), sued various county election officials in federal court, seeking to enjoin enforcement of the three provisions. They alleged that (1) the Residence Provision violates the First Amendment by chilling political speech, and (2) all three provisions violate the First, Fourteenth, and Twenty-Sixth Amendments by unduly burdening the right to vote. Texas Attorney General Ken Paxton and other county officials (collectively, "Texas") intervened to defend S.B. 1111.

Following discovery, the parties cross-moved for summary judgment. The district court ruled largely for the Plaintiffs. Addressing standing first, the court ruled Plaintiffs had organizational standing because S.B. 1111 both chilled their speech and caused them to divert resources to counteract the law's effects on their voter registration activities. The court also ruled Plaintiffs had statutory standing under 42 U.S.C. § 1983 given the direct injuries to their pocketbooks and First Amendment rights.

The court then turned to the merits. Addressing the P.O. Box Provision first, the court concluded that the measure "help[ed] the State prevent voter-registration fraud" and that requiring voters to sign and mail a prepaid, preaddressed form confirming a residential address scarcely burdened their right to vote. It therefore upheld the provision, but "with one exception." The court invalidated the provision to the extent it required voters who confirmed a residential address also to include a photocopy of their identification. In such instances, the court thought the prepaid form should serve as a change of address with no further proof of residence needed.

Turning to the Residence Provision, the court found it unconstitutionally vague and overbroad. The court rejected the narrowing interpretation proffered by the Texas Secretary of State and concluded that the provision facially prohibited establishing a residence for "obviously permitted purposes such as voting, volunteering with a political campaign, or running for an elected office." Accordingly, the court held the

provision severely burdened the right to vote and "fail[ed] any degree of constitutional scrutiny."

Finally, the court also found the Temporary Relocation Provision unconstitutional. The court believed the provision "creates a 'man without a country,'" meaning someone unable to establish residence anywhere in order to vote. For instance, the court read the provision to bar college students from registering either in their college town (because they do not intend to remain there) or in their hometowns (because they are not physically present there). The court thus ruled the provision impermissibly burdened the right to vote.

As a result, the court permanently enjoined enforcement of the Residence Provision and the Temporary Relocation Provision in full, and enforcement of the P.O. Box Provision in part. Texas appealed and we granted its motion for a temporary administrative stay. We now reverse. As explained below, the district court erred in concluding the Plaintiffs have organizational standing to challenge S.B. 1111.

II.

We review summary judgments *de novo*, applying the same standards as the district court. *Guerrero v. Occidental Petroleum Corp.*, 33 F.4th 730, 732 (5th Cir. 2022); FED. R. CIV. P. 56(a). We also review standing *de novo*. *Students for Fair Admissions, Inc. v. Univ. of Tex. at Austin*, 37 F.4th 1078, 1083 (5th Cir. 2022).

III.

Texas argues that Plaintiffs lack organizational standing and, alternatively, that the challenged parts of S.B. 1111 do not unconstitutionally burden the right to vote. Because we agree that Plaintiffs lack organizational standing, we do not address the merits.

"An individual has standing to sue if his injury is traceable to the defendant and a ruling would likely redress it." *Students for Fair Admissions*, 37 F.4th at 1084 n.5 (citing U.S. CONST. art. III, § 2; *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). An association may have standing either by showing it can sue on behalf of its members ("associational" standing) or sue in its own right ("organizational" standing). *See id.* at 1084 & n.6; *Tenth St. Residential Ass'n v. City of Dallas*, 968 F.3d 492, 500 (5th Cir. 2020). The district court found Plaintiffs lack associational standing because they failed to identify any members affected by the challenged provisions. However, it found Plaintiffs have organizational standing based on two theories—diversion of resources and chilled speech. We address each in turn.

A.

"The Supreme Court has recognized that when an organization's ability to pursue its mission is 'perceptibly impaired' because it has 'diverted significant resources to counteract the defendant's conduct,' it has suffered an injury under Article III." *Tenth St. Residential Ass'n*, 968 F.3d at 500 (quoting *NAACP v. City of Kyle*, 626 F.3d 233, 238 (5th Cir. 2010)); *see Havens Realty Corp. v. Coleman*, 455 U.S.

363, 379 (1982). Such an injury must be "concrete and demonstrable." *City of Kyle*, 626 F.3d at 238 (quoting *Havens Realty*, 455 U.S. at 379). An organization can show standing via diversionary injury by identifying "specific projects that [it] had to put on hold or otherwise curtail in order to respond to the [challenged laws]." *Ibid*. (citing *La. ACORN Fair Hous. v. LeBlanc*, 211 F.3d 298, 305 (5th Cir. 2000)).

According to the district court, Plaintiffs identified "specific projects" curtailed due to Plaintiffs' spending money to counteract S.B. 1111: namely, certain of LULAC's scholarship and law-reform programs, as well as Voto Latino's voter-registration efforts outside Texas. The court noted that 2022 was "the first year since 2010 that Voto Latino will be unable to run a voter-registration drive in Colorado." The court also observed that "LULAC is, for the first time, 'spending over maybe $1 million to $2 million in Texas' to counteract election laws like S.B. 1111." Texas responds that the evidence fails to link Plaintiffs' claimed diversion of resources to S.B. 1111. We agree with Texas.

Testimony from LULAC and Voto Latino representatives consistently attributed their diversion of resources, not to S.B. 1111 specifically, but to a broader group of election-related laws enacted in Texas and other states. Emblematic is this exchange between Texas's counsel and a Voto Latino representative. When asked "[h]ow is Voto Latino injured by SB 1111," the response was, in relevant part:

> *As a result of SB 1111 and all the other laws that came into effect post-January*, we had to

> reallocate our funding and lower our goals to concentrate on voter education.
>
> And so we lowered our goals in voter registration roughly about 25 percent and for voter outreach roughly at one point for 1.3 million to 500,000 so that's roughly about 62 percent—60 percent. And then we also had *because there—the laws that were passed in the state of Texas and others, we actually had to shut down our Colorado program*.
>
> It'll be the very first time that we are not doing voter registration and education in Colorado since 2010. And because of the things that I think we can all appreciate is that there is not infinite amount of money or time. And so I've also—we've also had to retool and teach our volunteers, educate them, *provide information around primaries specifically to SB 1111 and the other—the other laws as well*, and spent time on my counsel filing this lawsuit and the list goes on.[2]

ROA.1258–59 (emphases added). Similarly, LULAC's representative was asked whether the organization had to divert funds from immigration and criminal justice reform projects "on account of SB 1111 specifically."

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[2] To the extent Plaintiffs rely on the assertion that they "spent time on . . . counsel filing this lawsuit," our precedents squarely reject the notion that a diversionary injury can be shown by "the mere fact that an organization redirects some of its resources to litigation and legal counseling." *La. ACORN*, 211 F.3d at 305 (cleaned up).

The witness avoided giving a definite answer. Instead, he responded: "We're going to reduce those efforts, and it's not only SB 1111, but SB 1, it's both."[3]

Even assuming this evidence adequately shows a diversionary injury under Article III, it fails to link any diversion of resources specifically to S.B. 1111. It is not enough merely to claim the organizations have spent money to counteract "S.B. 1111 and all the other [election] laws" passed in Texas and in other states around the same time. An organizational plaintiff must show it diverted resources "as a direct result of" the challenged law—not as a result of the challenged law and others like it. *Ass'n of Cmty. Orgs. for Reform Now v. Fowler*, 178 F.3d 350, 360 (5th Cir. 1999) ["*ACORN*"]; *see also City of Kyle*, 626 F.3d at 238 (explaining the diversion of resources must be made "in order to respond to the [challenged law]"). Plaintiffs have not done so here. Therefore, they fail to satisfy the traceability and redressability prongs of Article III standing. *See, e.g.*, *Inclusive Cmtys. Project, Inc. v. Dep't of Treasury*, 946 F.3d 649, 655 (5th Cir. 2019) ("'Th[at] triad of injury-in-fact, causation, and redressability constitutes the core of Article III's case-or-controversy requirement[.]'" (first alteration in

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[3] S.B. 1 is a wide-ranging election integrity law recently enacted in Texas. Among other things, it imposes criminal penalties for certain forms of intentional voter fraud and requires the Secretary of State to carry out periodic, randomized audits of election results. *See* Texas Election Integrity Act of 2021, 87th Leg., 2d C.S., ch. 1, 2021 Tex. Sess. Law Serv. 3783. LULAC has separately challenged parts of S.B. 1. *See La Union del Pueblo Entero v. Abbott*, No. 5:21-CV-844 (W.D. Tex.).

original) (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103–04 (1988))).

Contrast Plaintiffs' meager showing on this point with the concrete showing our court required to prove organizational standing in *ACORN*. There, the organizational plaintiff challenged Louisiana's alleged lack of compliance with the National Voter Registration Act ("NVRA"), which required the state to facilitate voter registration at public aid offices. *ACORN*, 178 F.3d at 360. The organization presented specific evidence that it regularly conducted voter registration drives in Louisiana, registering people at "welfare waiting rooms, unemployment offices, and on Food Stamp lines," and concentrating its efforts in areas where households receiving food stamps had low rates of voter registration. *Id.* at 361. We found that this detailed showing was sufficient evidence that the organization had "expended resources registering voters in low registration areas who would have already been registered if [Louisiana] had complied with the [public aid] requirement under the NVRA[.]" *Ibid.* In other words, concrete evidence showed the organization's diversion of resources was a direct response to the defendant's challenged actions and, as such, satisfied the injury, traceability, and redressability prongs of Article III standing. Here, by contrast, Plaintiffs have merely made vague assertions that they diverted resources in response to "S.B. 1111 and all the other laws," both inside and outside Texas.[4]

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[4] While "general factual allegations of injury resulting from the defendant's conduct may suffice" at the pleadings stage, more is required to survive summary judgment, as here. *ACORN*, 178 F.3d

We therefore cannot agree with the district court that Plaintiffs showed they curtailed "specific projects" in order to counteract S.B. 1111. For instance, the district court noted that "[t]his is the first year since 2010 that Voto Latino will be unable to run a voter-registration drive in Colorado." But the evidence did not show that the Colorado program was suspended because of money Voto Latino had to spend on S.B. 1111. Rather, the testimony was that "because [of] . . . *the laws that were passed in the state of Texas and others*, we actually had to shut down our Colorado program." ROA.1259 (emphasis added).[5] The court also observed that LULAC was spending "$1 million to $2 million in Texas, to counteract election laws *like S.B. 1111*." ROA.1914 (emphasis added). Again, this is not sufficient. Plaintiffs sued to enjoin S.B. 1111—not "laws like S.B. 1111."

In sum, Plaintiffs failed to demonstrate their own standing to challenge S.B. 1111 based on diversion of

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at 354 (citation omitted). To demonstrate standing at this stage, Plaintiffs "must point to specific summary judgment evidence showing that it was 'directly affected' by [Texas's] alleged . . . violations." *Ibid.* (citation omitted).

[5] Later in her deposition, the same witness suggested that "shutting down the Colorado program" was "specifically" due to S.B. 1111. But the witness did not try to explain why spending money on S.B. 1111, in contrast to all the other election laws in Texas and elsewhere, caused suspension of the Colorado program. More specificity is needed to show that resources were diverted "as a direct result" of the challenged law. *ACORN*, 178 F.3d at 360. In any event, a few pages earlier, the same witness attributed suspension of the Colorado program, not specifically to S.B. 1111, but to "the laws that were passed in the state of Texas and others."

resources. We can assume without deciding that Plaintiffs' testimony about diverted funding adequately shows an injury-in-fact. *See Inclusive Cmtys. Project*, 946 F.3d at 656 n.9 (assuming injury-in-fact). Even so, Plaintiffs did not show that the diversion was a direct response to S.B. 1111 specifically, as opposed to an undifferentiated group of recent election laws in Texas and elsewhere. Plaintiffs thus failed to show that their claimed injury was traceable to S.B. 1111. *See Bennett v. Spear*, 520 U.S. 154, 162 (1997) (standing requires injury to be "fairly traceable to the challenged actions of the defendant"); *ACORN*, 178 F.3d at 359 (holding diversion of resources must be "fairly traceable" to the "conduct . . . that [plaintiff] claims in its complaint is illegal"). For similar reasons, Plaintiffs also failed to show redressability. *See Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982) (redressability requires that "a favorable decision will relieve a *discrete* injury to [the plaintiff]") (emphasis added). If Plaintiffs' injury arose from various election laws in Texas and elsewhere, as the testimony at most suggests, enjoining S.B. 1111 would not likely redress the drain on their resources. *See Leal v. Becerra*, No. 21-10302, 2022 WL 2981427, at *2 (5th Cir. July 27, 2022) (unpublished) ("Redressability is also a problem when declaring one law unenforceable may not provide relief because a different law independently causes the same injury.").

In sum, the district court erred in concluding Plaintiffs had standing based on a diversion-of-resources theory.

B.

We turn to Plaintiffs' second theory of organizational standing, namely that the threatened enforcement of S.B. 1111 chills their speech. A plaintiff suffers an Article III injury if the credible threat of a law's enforcement chills his speech or causes self-censorship. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158–59 (2014); *Barilla v. City of Houston*, 13 F.4th 427, 431 (5th Cir. 2021). The chilling effect must have an objective basis; "[a]llegations of a subjective 'chill' are not an adequate substitute . . . ." *Laird v. Tatum*, 408 U.S. 1, 13–14 (1972). To assess standing on this basis, we ask (1) whether the plaintiff intends to engage in a course of conduct arguably affected with a constitutional interest; (2) whether that conduct is arguably proscribed by the challenged policy; and (3) whether the threat of future enforcement is substantial. *Barilla*, 13 F.4th at 431–432 (citing *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020)).

The district court held that Texas's threatened enforcement of S.B. 1111 objectively chills Plaintiffs' First Amendment right to conduct voter registration drives and engage with prospective voters. It credited Plaintiffs' fear of being prosecuted if they gave advice to voters that conflicted with S.B. 1111. This fear was credible, the court reasoned, because helping someone commit voter fraud is a crime and because of Texas's avowed priority of combatting voter fraud. We disagree.

Plaintiffs fail prongs two and three of the governing test. While Plaintiffs may have a constitutional interest in conducting voter registration drives, they have not shown under prong two that this conduct is "arguably

proscribed" by S.B. 1111. *Barilla*, 13 F.4th at 431 (quoting *Speech First*, 979 F.3d at 330) (cleaned up). Plaintiffs must "establish a serious intention to engage in conduct proscribed by law," *Zimmerman v. City of Austin*, 881 F.3d 378, 389 (5th Cir. 2018), but neither S.B. 1111 nor any other law cited by Plaintiffs arguably prohibits Plaintiffs' activities.

Plaintiffs argue that it is "a crime under Texas law to help someone to register to vote in violation of [S.B. 1111's] confusing new requirements." But Texas law does not criminalize giving good faith but mistaken advice to prospective voters. Rather, the statute on which Plaintiffs rely applies only "if the person *knowingly or intentionally*" "requests, commands, coerces, or attempts to induce another person to make a false statement on a [voter] registration application." TEX. ELEC. CODE § 13.007(a) (emphasis added). *See also* TEX. PENAL CODE §7.02(a)(2) (making a party criminally liable for another's offense only if he "act[s] with intent to promote or assist the commission of the offense"). Plaintiffs do not assert that they plan to "knowingly or intentionally" encourage people to register who are ineligible under S.B. 1111. Plaintiffs' argument turns on the "confusion and uncertainty" S.B. 1111 supposedly injects into their voter outreach efforts. Uncertainty is not the same as intent, however. Accordingly, Plaintiffs have not shown a serious intention to engage in protected activity arguably proscribed by the challenged law.

Plaintiffs also lack standing under prong three because there is no credible threat they will be prosecuted. *Barilla*, 13 F.4th at 432. The fanciful

notion that Plaintiffs will be charged under S.B. 1111 depends on a "highly attenuated chain of possibilities." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013). Consider all the dominoes that would have to fall:

1. Plaintiffs "knowingly or intentionally" encourage or induce someone to vote or register to vote in violation of S.B. 1111.

2. That person intentionally votes illegally or intentionally submits a false registration form.

3. The voter registrar discovers the violation and refers it to a prosecutor.

4. The prosecutor unearths the initial connection between the offender and Plaintiffs.

5. The prosecutor determines Plaintiffs intentionally violated S.B. 1111.

6. The prosecutor exercises his discretion to bring charges against Plaintiffs.

This does not add up to a credible threat of Plaintiffs' being prosecuted for inducing a prospective voter to violate S.B. 1111. *See Zimmerman*, 881 F.3d at 390 (no credible risk of enforcement where the circumstances leading to prosecution were "speculative and depend[ed] in large part on the action of third-part[ies]").

In response, citing our *Barilla* decision, Plaintiffs argue that we must presume a credible threat of prosecution because this is a pre-enforcement

challenge. *See Barilla*, 13 F.4th at 432. They are mistaken. The presumption Plaintiffs rely on applies to "pre-enforcement challenges to recently enacted (or, at least, non-moribund) statutes that facially restrict expressive activity by the class to which the plaintiff belongs." *Ibid.* (quoting *Speech First*, 979 F.3d at 335). But S.B. 1111 does not facially restrict any of Plaintiffs' expressive activities. S.B. 1111 applies to voters, not organizations like Plaintiffs who advise and register voters. S.B. 1111 therefore does not facially restrict Plaintiffs' ability to engage in their expressive conduct, and the presumption of a credible threat of prosecution does not apply.[6]

In sum, the district court erred in concluding Plaintiffs had organizational standing based on a chilled-speech theory.

IV.

Because Plaintiffs lack standing, the district court lacked subject matter jurisdiction. We therefore REVERSE the district court's judgment and RENDER judgment dismissing Plaintiffs' claims.

REVERSED and RENDERED.

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[6] Even if the presumption applied, it can be rebutted by "compelling contrary evidence." *See Barilla*, 13 F.4th at 432 (noting that "courts will assume a credible threat of prosecution in the absence of compelling contrary evidence") (citing *Speech First*, 979 F.3d at 335). Such evidence abounds here, given the number of stars that would have to align before Plaintiffs could be prosecuted for violating S.B. 1111. *See supra.*

APPENDIX B

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

CAUSE NO. 1:21-CV-546-LY

[Filed September 21, 2022]

TEXAS STATE LULAC; VOTO LATINO, PLAINTIFFS,	)
V.	)
BRUCE ELFANT, IN HIS OFFICIAL CAPACITY AS TRAVIS COUNTY TAX ASSESSOR-COLLECTOR; JACQUELYN CALLANEN, IN HER OFFICIAL CAPACITY AS BEXAR COUNTY ELECTIONS ADMINISTRATOR; ISABEL LONGORIA, IN HER OFFICIAL CAPACITY AS HARRIS COUNTY ELECTIONS ADMINISTRATOR; YVONNE RAMON, IN HER OFFICIAL CAPACITY AS HIDALGO COUNTY ELECTIONS ADMINISTRATOR; MICHAEL SCARPELLO, IN HIS OFFICIAL CAPACITY AS DALLAS COUNTY ELECTIONS ADMINISTRATOR; LISA WISE, IN HER OFFICIAL CAPACITY AS EL PASO COUNTY ELECTIONS	)

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

AMENDED[1] ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

In the 87th Regular Session, the Texas Legislature enacted Senate Bill 1111 ("S.B. 1111"), amending certain provisions of the Texas Election Code. 87th Leg., Reg. Sess. (Tex. 2021). This is a Section 1983 case brought by Texas State LULAC and Voto Latino (collectively, "Plaintiffs") to enjoin election officials in Travis, Bexar, Harris, Hidalgo, Dallas, and El Paso

[1] Defendants Lisa Wise, Michael Scarpello, and Clifford Tatum timely moved for reconsideration or clarification of the court's August 2, 2022 Order on Cross-Motions for Summary Judgment on August 30, 2022 (Doc. #184). The court will grant the motion for reconsideration and render this amended order pursuant to Federal Rule of Civil Procedure 59(e).

Counties (collectively, "Defendants" or the "Counties") from applying S.B. 1111.[2]

Before the court are cross-motions for summary judgment by the Plaintiffs (Doc. 140) and State (Doc. 138) as well as their respective reply briefs (Doc. 165, 168). The court has also reviewed Plaintiffs' appendices (Doc. 141, 157), response brief (Doc. 156), and several response briefs from other parties, which either take a position (Doc. 151,[3] 153,[4] 155[5]) or "take[] no position on the competing claims and positions advanced in the

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[2] Texas Attorney General Ken Paxton intervened, asserting the interests of the State of Texas. As Paxton is acting on behalf of the State of Texas and their interests do not diverge, for simplicity the court will refer to Paxton as the "State." Election officials from Medina and Real Counties intervened as well.

[3] Defendant Yvonne Ramon argues that Plaintiffs fail to state a Section 1983 claim because Plaintiffs fail to satisfy *Monell v. New York City Department of Social Services.* 436 U.S. 658, 694 (1978). The *Monell* Court held that a municipal government is not liable under Section 1983 for an injury inflicted by a municipal employee, unless the employee was executing the "government's policy or custom, whether made by its lawmakers or by [a final policymaker]." *Id.*

[4] Defendant Lisa Wise asks the court to resolve "[Texas Election Code Section 1.015(b)]'s lack of clarity[, which] has real impact on voters' ability to register and vote, as well as on Ms. Wise's (and other election officials') role overseeing voter registration."

[5] Intervenor-Defendants Lupe Torres and Terrie Pendley argue Plaintiffs lack standing to sue and then, with respect to the merits, flag relevant statutes for the court. *See* Tex. Elec. Code. § 15.054(b), (d)(2), (f).

pending summary[-]judgment motions" (Doc. 146–148, 152).

Plaintiffs challenge the provisions of S.B. 1111 contained in Texas Election Code Sections 1.015(b), 1.015(f), 15.051(a), 15.052(b), 15.053(a), and 15.054(a). Three of S.B. 1111's provisions in particular are at issue. The first contested provision states, "[a] person may not establish residence for the purpose of influencing the outcome of a certain election" (the "Residence Provision"). Tex. Elec. Code § 1.015(b). The second contested provision states, "[a] person may not designate a previous residence as a home and fixed place of habitation unless the person inhabits the place at the time of designation and intends to remain" (the "Temporary-Relocation Provision"). *Id.* § 1.015(f). Both of these rules elaborate on the definition of "residence" contained in Section 1.015 of the Texas Election Code. *Id.* § 1.015(b), (f); *see also id.* § 1.015(a) ("In this code, 'residence' means domicile, that is, one's home and fixed place of habitation to which one intends to return after any temporary absence."). Third and finally, S.B. 1111 adds that "[i]f the voter's residence address is a commercial post office box or similar location that does not correspond to a residence, [the voter shall submit to the registrar] evidence of the voter's residence as required by Section 15.054 or an indication that the voter is exempt from those requirements" (the "PO Box Provision"). *Id.* § 15.053(a). This last rule change to Section 15.053(a) corresponds with similar changes to Sections 15.051(a), 15.052(b), and 15.054(a). *Id.* §§ 150.051–15.054.

STANDARD

Summary judgment shall be rendered when the evidence shows that "there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56 ("Rule 56"); *Celotex Corp. v. Catrett,* 477 U.S. 317, 323–325 (1986); *Ragas v. Tennessee Gas Pipeline Co.,* 136 F.3d 455,458 (5th Cir. 1998).

The party moving for summary judgment bears the initial burden of "informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp.,* 477 U.S. at 323. The burden then shifts to the nonmoving party to establish the existence of a genuine issue for trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574, 585–587 (1986); *Wise v. E.1 Dupont de Nemours & Co.,* 58 F.3d 193, 195 (5th Cir. 1995). The parties may satisfy their respective burdens by tendering depositions, affidavits, and other admissible evidence. *Estate of Smith v. United States,* 391 F.3d 621,625 (5th Cir. 2004).

On cross-motions for summary judgment, the court reviews each party's motion independently, viewing the evidence and inferences in the light most favorable to the nonmoving party and determining for each side whether judgment may be rendered in accordance with Rule 56. *Amerisure Ins. Co. v. Navigators Ins. Co.,* 611 F.3d 299, 304 (5th Cir. 2010); *Shaw Constr. v. ICF Kaiser Engrs., Inc.,* 395 F.3d 533 n. 8–9 (5th Cir. 2004). Ultimately, "if no reasonable juror could find for the nonmovant, summary judgment will be granted."

Mississippi River Basin Alliance v. Westphal, 230 F.3d 170, 174 (5th Cir. 2000).

ANALYSIS

Plaintiffs contend that the Residence Provision, Temporary-Relocation Provision, and PO Box Provision of S.B. 1111 unconstitutionally burden the right to vote. In addition to disputing this contention, Defendants challenge Plaintiffs' standing to sue altogether. The court begins with standing, which is jurisdictional.

I. STANDING

A federal court's jurisdiction extends only to "Cases" and "Controversies." U.S. CONST. art. III, § 2. Standing doctrine satisfies the case-or-controversy requirement by insisting a federal plaintiff suffer a concrete and particularized "injury"—such as an "organizational" or "associational" injury—that is "traceable" to the defendant and "redressable" by the court. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560–561 (1992); *In re Deepwater Horizon,* 739 F.3d 790, 799 (5th Cir. 2014); *NAACP v. City of Kyle,* 626 F.3d 233, 237–238 (5th Cir. 2010) (hereinafter *"NAACP").* Statutory standing, in turn, is a prudential limit on a plaintiff that goes to whether the plaintiff has a cause of action. *Vote.org v. Callanen,* No. 22-50536, 2022 WL 2389566, *4 (5th Cir. July 2, 2022).

Plaintiffs are organizations committed to educating and registering voters in Texas. The State asserts that Plaintiff Texas State LULAC, a nonprofit-membership organization "protecting the civil rights, including voting rights" of its more than 8,000 members across

Texas, and Plaintiff Voto Latino, a 501(c)(4) nonprofit-social-welfare organization "working to ensure that Latino voters are enfranchised," lack both constitutional and statutory standing. The State says Plaintiffs lack constitutional standing because Plaintiffs have not articulated a cognizable injury. And Plaintiffs lack statutory standing, the argument goes, because Section 1983 generally confers a cause of action on an organization whose rights have been violated, not on one attempting to vindicate a third party's rights. One county official raises the question whether a county official is a proper Section 1983 defendant in a suit challenging state law.

A. Constitutional Standing

A plaintiff organization can establish an "injury" with evidence showing one of its members has been concretely affected by defendant's conduct (often referred to as "associational" standing) or evidence showing the organization itself has been concretely affected by defendant's conduct (often referred to as "organizational" standing). *NAACP,* 626 F.3d at 237–238 (holding nonprofit lacked both associational and organizational standing).

1. Plaintiffs Lack Associational Standing

For an associational-standing claim, the general rule is that a plaintiff must show that "a specific member" within its organization has been affected by a defendant. *Id.* at 237. But Plaintiffs do not. Instead, Plaintiffs invoke an exception to this straightforward requirement, which applies where *"all* the members of the organization are affected by the challenged

conduct." (citing *Summers v. Earth Island Inst.,* 555 U.S. 488, 498–499 (2009) ("This requirement of naming the affected members has never been dispensed with in light of statistical probabilities, but only where *all* the members of the organization are affected by the challenged conduct.")). For example, everyone in an organization is affected by release of the organization's membership list. *See NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449, 459 (1958).

Logic will not permit the court to conclude that all of Plaintiffs' members may register to vote with "a previous residence" or "a commercial post office box," nor that they may establish a residence "for the purpose of influencing an election." *But see* Tex. Elec. Code §§ 1.015, 15.051, 15.053, 15.054. In theory, Plaintiffs' members may freely move from one residence to another. But "[w]hile it is certainly possible—perhaps even likely—that one individual will meet all of these criteria, that speculation does not suffice." *Summers,* 555 U.S. at 499. Standing is not "an ingenious academic exercise of the conceivable;" it requires "a factual showing of perceptible harm." *Id.* A statistical probability, even a statistical "likel[ihood]" of harm, is insufficient to support standing under current precedent. For instance, an organization lacked standing where it failed to identify a member with more than "a chance" of visiting a particular parcel of the national forest, despite the statistical likelihood that at least one member would visit said parcel. *Summers,* 555 U.S. at 499. *Id.* ("Accepting an intention to visit the national forests as adequate to confer standing to challenge any Government action affecting any portion of those forests would be tantamount to

eliminating the requirement of concrete, particularized injury in fact."). Likewise here, all of Plaintiffs' members may generally be interested in the meaning of S.B. 1111 in an academic sense, but they are not all affected by it in a categorical way. Unless "all" members are affected by a challenged law, Plaintiffs must identify one member who is. That is "surely not a difficult task here, when so many thousands are alleged to have been harmed." *Id.*

The court concludes that Plaintiffs lack an associational injury.

2. Plaintiffs Have Organizational Standing

Plaintiffs assert two organizational injuries: Plaintiffs have had to "divert resources" from their usual activities to circumvent Defendants' conduct, and Defendants' conduct has had a "chilling effect" on Plaintiffs' speech. The theories appear to be in tension—as Plaintiffs argue both that S.B. 1111 has compelled Plaintiffs to pour money into voter education and that S.B. 1111 has deterred Plaintiffs from educating voters—but the theories are not mutually exclusive.

i. Based on Diverted Resources

To establish an Article III injury from a diversion of resources, an organization may not merely recite its "abstract" social interests in voter enfranchisement or civic justice. *Havens Realty Corp. v. Coleman,* 455 U.S. 363, 379 (1982). Instead, the organization must show a "perceptible" harm to such social interests. *Id.* ("Such ... [a] drain on the organization's resources [] constitutes far more than simply a setback to the

organization's abstract social interests."). This showing could be made by identifying "specific projects" the organization has had to put on hold. *NAACP,* 626 F.3d at 238–239 ("Plaintiffs have not identified any specific projects that the [organization] had to put on hold or otherwise curtail in order to respond to the revised [law]."); *see also Florida State Conf of NAACP v. Browning,* 522 F.3d 1153, 1166 (11th Cir. 2008) (distinguishing between harm to "abstract social interests" and to "actual ability to conduct specific projects during a specific period of time"). To be sure, though, identifying specific projects is "not a heightening of the *Lujan* standard, but an example of how to satisfy it[.]" *OCA-Greater Houston v. Texas,* 867 F.3d 604, 612 (5th Cir. 2017) (citing *Lujan,* 504 U.S. at 555).

Plaintiffs have adequately identified such "specific projects" here: LULAC has declined to fund federal-immigration-reform and criminal-justice-reform programs this year and also diverted funding away from its annual scholarship programs in order to educate members about S.B. 1111 's requirements. And Voto Latino has funded in-state voter-registration efforts at the expense of out-of-state efforts. This is the first year since 2010 that Voto Latino will be unable to run a voter-registration drive in Colorado. The State, nevertheless, employs *NAACP* to argue that Plaintiffs have failed to "divert[] significant resources to counteract" S.B. 1111. 626 F.3d at 238. The court disagrees. In addition to withholding money from three separate programs, LULAC is, for the first time, "spending over maybe $1 million to $2 million in Texas" to counteract election laws like S.B. 1111. Far less has

been upheld as an Article III injury. *See, e.g., Habitat Educ. Ctr. v. United States Forest Serv.,* 607 F.3d 453, 457 (7th Cir. 2020) (regarding withholding of $10,000). Likewise, Voto Latino has not only reduced voter-registration efforts in other states, but has also *closed* its voter-registration program in Colorado altogether. This is neither "routine" nor "conjecture[]." *Id.* at 238–239 (citing *Association for Retarded Citizens of Dallas v. Dallas Cty. Mental Health & Mental Retardation Ctr. Bd,* 19 F.3d 241, 243 (1999)). Plaintiffs' have devoted significant resources—both in a qualitative and quantitative sense—to mitigate Defendants' conduct.

Furthermore, Plaintiffs' diversion of resources is traceable to Defendants, a consortium of election officials who have "the responsibility of reviewing voter registration applications" for conformity with election laws such as S.B. 1111. *See Texas Democratic Party v. Hughs,* 860 F. App'x 874, 876, 878 (5th Cir. 2021) (holding Secretary of State was improper defendant, despite her "significant" role in elections, when "county registrars are the ones who review voter registration applications for compliance with the Election Code" (citing Tex. Elec. Code §§ 31.003, 31.004(a), 31.005, 13.002(b), 13.071, 13.072)). It is no matter that the officials are "only implementing the consequences of others' actions—that is, [those actions] by the legislature;" the causal nexus demanded by traceability is not broken because a legislative enactment was a preceding, but-for cause. *See Durham v. Martin,* 905 F.3d 432, 434 (6th Cir. 2018) ("Even if it is true that the legislature's [action] was the ultimate reason why [plaintiff] lost his benefits, it was still the [defendants] who denied those benefits to [plaintiff]. That they

denied the benefits because of [plaintiffs preceding] expulsion does not change the fact that they were the state actors whose conduct resulted in the injury—denial of benefits—alleged in the complaint."). Lastly, the court can fashion relief for Plaintiffs by enjoining Defendants from processing voter-registration applications in accordance with S.B. 1111. *Id*. Plaintiffs therefore satisfy all three elements of constitutional standing with an organizational theory of harm.

The court concludes that Plaintiffs have organizational standing.

ii. Based on Chilling Effect

Alternatively, Plaintiffs assert an organizational injury based on the fact that Defendants are "chilling" Plaintiffs' speech, particularly at voter-registration drives. For example, Voto Latino President Maria Teresa Kumar noted that over a quarter million "Latino youth alone are going to tum 18 by the midterm" election and stated that Voto Latino is doing their best "trying to explain" S.B. 1111 to these youth but cannot "communicate freely with certitude that the[se youth] will not be in violation" of the law. Similarly, LULAC President Domingo Garcia not only explained that S.B. 1111 has a chilling effect on members—who "become deputy voter registrars," "do voter registration drives," and "train" prospective voters—but also expressed concern that there are criminal penalties associated with registration violations.

Plaintiffs further note that voter-registration drives explicitly involve not just "speech," but "core political

speech" such as "urging" citizens to register, "distributing" voter-registration forms," and "helping" voters complete their forms. *Voting for Am., Inc. v. Steen,* 732 F.3d 382, 390 (5th Cir. 2013) ("Soliciting, urging, and persuading the citizen to vote are the forms of the canvasser's speech, but only the voter decides to 'speak' by registering."). Cases involving "core political speech" are so central to First-Amendment protections that they are generally "subject to exacting scrutiny." *Meyer v. Grant,* 486 U.S. 414, 420 (1988).

A chilling "effect" is objective, not "subjective." *Clapper v. Amnesty Int'l USA,* 568 U.S. 398, 418 (2013). Plaintiffs must have a reasonable basis for being afraid to speak up, such as a "credible threat of prosecution." *Babbit v. Farm Workers,* 442 U.S. 289, 298 (1979). A plaintiff's feeling could otherwise have the perverse effect of chilling a defendant's speech. That said, the Texas Election Code does make certain voting-related offenses a crime. *See, e.g.,* Tex. Elec. Code § 64.012 ("A person commits an offense if the person knowingly or intentionally: (1) votes or attempts to vote in an election in which the person knows the person is not eligible to vote ...."); 276.012 ("A person commits an offense if, with the intent to deceive, the person knowingly or intentionally makes a false statement or swears to the truth of a false statement ... on a voter registration application ...."); *Health v. Texas,* No. 14-CR-532, 2016 WL 2743192, at *1–2 (Tex. App.—Houston [14th Dist.] May 10, 2016) (affirming conviction where voter registered to vote and voted at address that did not qualify as residence under Texas Election Code). And helping someone commit a crime is a crime. *See, e.g., United States v. Collins,* 774 F.3d

256, 260, 263 (5th Cir. 2008) (identifying elements of aiding and abetting fraud as well as conspiracy to commit fraud). The threat of prosecution is particularly fraught where, as here, the State has publicly declared one of its key priorities to be "to investigate and prosecute the increasing allegations of voter fraud to ensure election integrity within Texas."[6] So far, 534 fraud offenses against 155 individuals have been "[s]uccessfully prosecuted," with 510 additional offenses "currently pending prosecution" and 386 under "active election fraud investigations." By helping Texans register to vote, Plaintiffs therefore not only have exposure, but also risk exposing these Texans to liability. *Clapper,* 568 U.S. at 417 (acknowledging cases where unconstitutional chilling effect arose from "regulations that f[e]ll short of a *direct* prohibition against the exercise of First Amendment rights" (emphasis added)).

Moreover, the chilling effect experienced by Plaintiffs is "traceable" to Defendants and "redressable" by the court, as required by Article III of any alleged "injury." *Lujan,* 504 U.S. at 560. To support this, Plaintiffs rely on a case where defendants were likewise county election officials. *Susan B. Anthony*

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[6] Attorney General of Texas, *Election Integrity,* OFFICE OF THE ATTORNEY GENERAL (last visited July 28, 2022), https://www.texasattorneygeneral.gov/initiatives/election-integrity. The court may take judicial notice of a government website and may consider matters of which it takes judicial notice on a motion for summary judgment. *Coleman v. Dretke,* 409 F.3d 665, 667 (5th Cir. 2005) (per curiam) (taking judicial notice of Texas agency's website); *see also* Fed. R. Evid. 201 (b) (court may judicially notice fact that is "generally known" or "readily determin[able]").

List v. Driehaus, 573 U.S. 149, 153, 164 (2014). There, the named defendants were officials who could subpoena witnesses, compel document production, hold hearings, issue reprimands, and refer matters—"punishable by up to six months of imprisonment, a fine up to $5,000, or both"—to the county prosecutor. *Id.* Although the county election officials here lack the express power to propound discovery beyond the Federal Rules of Civil Procedure, the officials are entrusted with determining who has violated an election law and with notifying state or county prosecutors of the violation. Tex. Elec. Code § 15.028 ("If the registrar determines that a person who is not eligible to vote registered to vote or voted in an election, the registrar shall, within 72 hours not including weekends after making the determination, execute and deliver to the attorney general, the secretary of state, and the county or district attorney having jurisdiction in the territory covered by the election an affidavit stating the relevant facts."). Defendants play an important role in S.B. 1111 's election-fraud-enforcement scheme, and the court can enjoin aspects of this role.

In sum, Plaintiffs have articulated two distinct harms that satisfy all three irreducible elements of constitutional standing, based not only on Plaintiffs' "diverted resources" away from specific projects, but also Defendants' "chilling effect" on Plaintiffs' core political speech.

B. Statutory Standing

Section 1983 creates a cause of action for "[e]very person who, under color of any statute, ordinance,

regulation, custom, or usage, of any State of Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws[.]" 42 U.S.C. § 1983. In short, Section 1983 is a procedural mechanism for asserting federal rights against state and local actors.

A plaintiff organization can demonstrate standing to bring a Section 1983 claim in two ways. The first is by showing a direct violation of the plaintiffs rights under the statute. "There is no question that an association may have standing in its own right to seek judicial relief from injury to itself." *Warth v. Seldin,* 422 U.S. 490, 511 (1975). The second is by having third-party standing, which is an exception to "the general prohibition on raising the rights of third parties." *Berry v. Jefferson Parish,* No. 08-30614, 326 Fed. App'x 748, 750 (5th Cir. May 5, 2009) ("[Plaintiff] must also satisfy prudential standing requirements, including the general prohibition on raising the rights of third parties." (citing *Warth,* 422 U.S. at 499)). Plaintiffs attempt both approaches.

1. Plaintiffs Lack Third-Party Standing

"[E]ven in the absence of injury to itself," a plaintiff organization can have statutory standing to bring a Section 1983 claim on behalf of its members. But the Court has "not looked favorably upon third-party standing," instead (a) asking the party asserting the right to have a "close" relationship with the person who possesses the right and (b) considering whether there

is a "hindrance" to the possessor's ability to protect his own interests. *Kowlaski v. Tesmer,* 543 U.S. 125, 130 (2004) (citing *Powers v. Ohio,* 499 U.S. 400, 411 (1991) (holding "the litigant must have a close relation to the third party and there must exist some hindrance to the third party's ability to protect his or her own interests")). There is no evidence that Plaintiffs' members lack the ability to challenge S.B. 1111. *See id.* Plaintiffs do not identify a member who has been harmed by S.B. 1111, let alone identify a member who cannot "protect" themselves from this alleged harm. For instance, when asked to describe a constituent who had been burdened by S.B. 1111, LULAC replied "[t]he bills just passed this last session so it's too early," and Voto Latino replied "I think that's part of the challenge that we don't know who we turned away as a result of S.B. 1111." Plaintiffs instead rely upon non-binding precedent to argue it is "rather obvious" that minors are hindered in their ability to protect their own interests. *See Payne-Barahona v. Gonzales,* 474 F.3d 1, 2 (1st Cir. 2007); *Hutchins by Owens v. District of Columbia,* 188 F.3d 531 (D.C. Cir. 1999).

The court concludes that Plaintiffs lack statutory standing to assert a Section 1983 claim on behalf of third parties.

2. Plaintiffs Have Suffered Direct Harm

Plaintiffs also, however, argue their organizational injury implicates their own constitutional rights, enforceable under Section 1983. Precedent and prudence support this argument. *See Lewis v. Hughs,* 475 F. Supp. 3d 597, 613 n.2 (W.D. Tex. 2020) (holding nonprofit plaintiffs had statutory standing because

they had "direct" organizational and associational claims), *rev'd on other grounds sub nom. Lewis v. Scott,* 28 F.4th 659 (5th Cir. 2022); *Association of Am. Physicians & Surgeons v. Texas Med. Bd.,* 627 F.3d 547, 551 (5th Cir. 2010) (holding nonprofit plaintiff with associational injury had standing to assert Section 1983 claim); *Georgia Coal. People's Agenda, Inc. v. Kemp,* 347 F. Supp. 3d 1251, 1258 (N.D. Ga. 2018) (holding nonprofit plaintiffs with organizational injury based on diversion of resources had standing to bring Section 1983 claim). Of course, having a cognizable injury under Article III is required of all federal actions and is not the same as having a constitutional injury to one's own civil rights. But subsumed in Plaintiffs' cause here are two direct harms, not only to Plaintiffs' pocketbooks, but also to Plaintiffs' First-Amendment right to advise voters without threat of prosecution.

The court therefore concludes that Plaintiffs have personally suffered a direct harm that is redressable under Section 1983.

3. Plaintiffs Sue Proper Defendants

One county official argues that because Plaintiffs' claims do not challenge an official "policy or custom" made by the Counties, Defendants cannot constitute proper Section 1983 defendants. *See Monell v. Dep't of Soc. Servs. of City of New York,* 436 U.S. 658,694 (1978) (Local governments may be sued under Section 1983 for official "policy or custom," not "an injury inflicted solely by its employees or agents."). Indeed, Plaintiffs challenge S.B. 1111—a state law—not any county-specific policy. However, Plaintiffs properly seek relief from the county officials in their official capacities

because the officials ultimately enforce the allegedly unconstitutional state law. *See Ex parte Young,* 209 U.S. 123, 157 (1908) (authorizing suit against state official in official capacity when plaintiff seeks prospective injunctive relief and official has "some connection with the enforcement of the act"). The Texas Election Code tasks Defendants with enforcing the three provisions at issue, and therefore Plaintiffs may seek prospective injunctive relief from Defendants under *Ex parte Young*. *See Texas Democratic Party v. Abbott,* 978 F.3d 168, 179 (5th Cir. 2020) ("[T]he official must have the requisite connection to the enforcement of the particular statutory provision that is the subject of the litigation"); *Hughs,* 860 F. App'x at 878 (holding Texas Secretary of State was improper *Ex parte Young* defendant in suit challenging registration rule "when county registrars are the ones who review voter registration applications.").

Plaintiffs have statutory standing under Section 1983 and seek relief from the proper defendants. The court turns to the merits.

II. S.B. 1111

Those rights identified as "fundamental" under the Equal Protection Clause are entitled to strict scrutiny. *Harper v. Virginia State Bd. of Elections,* 383 U.S. 663, 670 (1966) ("We have long been mindful that where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined. Those principles apply here. For to repeat, wealth or fee paying has, in our view, no relation to voting qualifications; the right

to vote is too precious, too fundamental to be so burdened or conditioned."). That is, only a compelling state interest can justify abridgment of a fundamental right, such as the right to vote. *Id.* However, not all voting-related legislation necessarily bears on the fundamental right to vote, and by extension, not all such legislation demands more than a rational-basis review. *McDonald v. Board of Election Comm'rs of Chicago,* 394 U.S. 802, 807–809 ("[T]here is nothing in the record to indicate that the Illinois statutory scheme has an impact on appellants' ability to exercise the fundamental right to vote. It is thus not the right to vote that is at stake here but a claimed right to receive absentee ballots. . . . We are then left with the most traditional standards for evaluating appellant's equal protection claims. . . . The distinctions drawn by a challenged statute must bear some rational relationship to a legitimate state end and will be set aside as violative of the Equal Protection Clause only if based on reasons totally unrelated to the pursuit of that goal."). Consistent with this is the common-sense recognition that "States retain the power to regulate their own elections." *Burdick v. Takushi,* 504 U.S. 428, 433 (1992). To *protect* voting rights, to *protect* election integrity, and to conduct elections "as a practical matter, there must be a substantial regulation of elections," which are not self-contained. *Id.*

Thus, a court evaluating a state-election law applies "a more flexible standard" of review. *Id.* at 434. That is, the court weighs "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by

the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiffs rights." *Id.* Under this standard, "the rigorousness" of the court's inquiry into the propriety of a state-election law depends upon "the extent to which" the challenged law burdens the right to vote. *Id.* When the right to vote is subject to "severe restrictions," then strict scrutiny is appropriate. *Id.* But when the State imposes only "reasonable, nondiscriminatory restrictions" upon the right to vote, then "the State's important regulatory interests are generally sufficient to justify" the restrictions. *Id.*

A. PO Box Provision

The PO Box Provision amends Section 15.053 of the Texas Election Code. Tex. Elec. Code § 15.053(a). Generally, the PO Box Provision requires voters whose residence address is a PO box to submit to the registrar "evidence of the voter's residence address." *Id.*

Beginning with the text, the PO Box Provision states: "if the voter's residence address is a commercial post office box or similar location that does not correspond to a residence, evidence of the voter's residence address as required by Section 15.054 or an indication that the voter is exempt from those requirements" shall be submitted by the voter to the registrar. *Id.* By way of definitions, a voter's "residence address" is the street address "that correspond[s] to a person's residence," and a voter's "residence" is their "domicile." *Id.* §§ 1.005(17), 1.015(a).

Context is important. Section 15.053(a)(3) is part of Title 2 ("Voter Qualifications and Registration") Chapter 15 ("General Administration of Registration"), and Subchapter C ("Confirmation of Residence") of the Texas Election Code. Subchapter C contains four sections.[7] Section 15.051 starts, "[i]f the registrar has reason to believe ... that the voter's residence address is a commercial post office box or similar location that does not correspond to a residence, the registrar shall deliver to the voter a written confirmation notice requesting confirmation of the voter's current residence." *Id.* § 15.051 (a). With the confirmation notice, "[t]he registrar shall include an official confirmation notice response form." *Id.* § 15.051(b). Both the notice and response form must carefully conform to Section 15.052, containing *inter alia* "a warning that the voter's registration is subject to cancellation if the voter fails to confirm the voter's current residence address" as well as "spaces for the voter to include all of the information that a person must include in an application to register to vote" and even being "postage prepaid and preaddressed for delivery to the registrar." *Id.* § 15.052(a)–(b).

After the registrar has done its part, the voter does theirs. Voters who have listed a PO Box as their residence address must essentially resubmit their voter-registration application, submitting "all of the

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[7] These are: Section 15.051 entitled "Confirmation Notice," 15.052 entitled "Official Confirmation Notice and Confirmation Notice Response Forms," 15.053 entitled "Response to Confirmation Notice," and 15.054 entitled "Documentation of Residence for Purposes of Confirmation Notice Response." *Id.* §§ 15.051–15.054.

information that a person must include in an application to register to vote," plus a "sworn affirmation of the voter's current residence" and "evidence of the voter's residence address"—absent a qualifying "exempt[ion]." *Id.* § 15.053(a)(3). Relevant documentary "evidence" and statutory "exempt[ions]" are described in Section 15.054. For example, the voter may provide a photocopy of a driver's license or personal identification card "that corresponds to the voter's residence," or "if the voter has notified the [D]epartment [of Public Safety] of a change of address ... [, then] an affidavit from the voter stating the new address." *Id.* § 15.054(a)(1). Alternatively, "[a] voter whose residence in this state has no address may document residence under this section by executing an affidavit stating that the voter's residence in this state has no address." *Id.* § 15.053(d). In short, the voter may respond to the registrar with documentation showing that their residence address is indeed a residence (by verifying their listed address or changing their listed address) or by swearing that they are exempt from the requirement to provide such documentation. *Id.* § 15.054(a) (requiring evidence), (b) (permitting affidavit for voters with no residence), (d) (exempting certain voters, such as members of armed forces).

Before S.B. 1111, the Texas Election Code empowered the registrar to confirm a voter's address, but only if the registrar had "reason to believe that a voter's current residence is different from that indicated on the registration records." *Id.* § 15.051(a). If so, the registrar would send a notice and response form, and the voter would resubmit "all of the information that a person must include in an

application to register to vote." *Id.* Now, the registrar can also confirm a voter's address if the registrar has "reason to believe ... that the voter's residence address is a [PO] box or similar location that does not correspond to a residence." And if so, the voter must provide not only all of the information that a person must include in an application to register to vote, but also a sworn affirmation and "a photocopy of the first document ... that corresponds to the voter's residence under Section 1.015." *Id.* §§ 15.053(a)(2)–(3), 15.054(a), 1.015.

Plaintiffs complain that asking voters to "photocopy a form of identification" and "sign the [response] form with a wet signature" is a "new and burdensome" process that "applies only to those voters" whose residence address appears to be a PO Box. Particularly voters, that is, who may not have the privilege of staying at one residence for all too long. But Plaintiffs have put forth no evidence suggesting that *signing* a response form—a form that has been printed and provided by the registrar to the voter with a prepaid and preaddressed envelope—is any more burdensome than locating a pen and a post-office collection box. And this signature is no more burdensome than the one that may already be required to register to vote. *See Vote.org,* 2022 WL 2389566, at *4. Instead, the key question is whether requiring voter identification in this narrow circumstance is sufficiently burdensome on the voter to overcome the interests of the State.

Underlying the PO Box Provision is the ideal that Texans vote where they live. Confirming a voter's residence address when that address appears to be a

PO Box not only helps voters "get the right ballots," but also helps the State prevent voter-registration fraud. Voter-registration fraud is at risk where voters improperly use a PO Box as their residence address; voters may have a PO Box from the United States Postal Service at many post-office locations in Texas, even if the voters' home or business is elsewhere. Some can even manage their PO Box online. Furthermore, Defendants are not bluntly purging voters who use a PO Box from voter-registration rolls. Defendants are enabling citizens to provide documentation to confirm or cure their voter-registration applications, which prohibits use of a PO Box. This is especially "reasonable" where, as here, a voter can submit an affidavit in lieu of identification when the voter is awaiting identification from the Department of Public Safety or the voter has no residence address at all. *See Burdick,* 504 U.S. at 434 (most "rigorous[]" standard of review reserved for law imposing "severe" restriction on right to vote, as opposed to "reasonable, nondiscriminatory restriction[]"); Tex. Elec. Code § 15.054(a)(l) (voter may provide "a driver's license issued to the voter by the Department of Public Safety that has not expired or, if the voter has notified the department of a change of address ... an affidavit from the voter"), (b) ("voter whose residence in this state has no address may document residence under this section by executing an affidavit").

When the burden imposed by a state-election law is reasonable and nondiscriminatory, as opposed to severe, "the State's important regulatory interests are generally sufficient to justify" that burden. *Burdick,* 504 U.S. at 434. Texans cannot register to vote with a

PO Box, and the States' interests here justify requiring identification from Texans who do—with one exception. The State offers no justification for requiring identification from Texans who *change* their address. Whether or not such a justification exists, the State provides none. The Secretary of State's designee, Keith Ingram, agreed a voter-identification requirement is unnecessary in such circumstances:

> If the [voter] put[s] a different address on [their response form] and they don't supply a copy of their driver's license or anything else on that list [setting out proper documentation], then they would still go on the suspense list .... [But] if it's a different address that is actually a residence, then I don't know why we can't use this [response form] as a change of address form. If they're not still claiming to live at the impossible address, then I think we should maybe use this as a change of address form, and they – they're putting their driver's license on it."

That is, the Secretary's designee explained that a voter who fails to include a photocopy of identification with their response form will be placed on the State's "suspense list"—unable to vote. But this result is needlessly disenfranchising where the voter cures their voter-registration application by using a different residence address than a PO Box. In such cases, the court agrees the response form "should" simply function as a change-of-address form. Such a form does not require identification, perhaps because the State's voter-registration application already requires a

publicly verifiable driver's license number, personal identification number, or social security number.

The State's interests therefore "justify" the PO Box Provision, except with respect to any voter who is "not still claiming to live at" the PO Box. Because in such instances, neither the Secretary of State nor the court can discern any such interest. *See Common Cause/ New York v. Brehm,* 432 F. Sup. 3d 385, 314 (S.D.N.Y. 2020) (where state provided "no legitimate interest to justify" burden imposed by law, law could not "withstand *any* level of scrutiny").

B. Residence Provision

The Residence Provision warns: "A person may not establish residence for the purpose of influencing the outcome of a certain election." Tex. Elec. Code § 1.015(b).

To understand the Residence Provision, the court examines the text as a whole. Chapter 1 of the Texas Election Code contains "General Provisions," such as the ubiquitous "Definitions" section. Tex. Elec. Code § 1.005. Section 1.015 containing the Residence Provision codifies the meaning of "Residence."[8]

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[8] Section 1.015 of the Texas Election Code provides:

> (a) In this code, "residence" means domicile, that is, one's home and fixed place of habitation to which one intends to return after any temporary absence.
>
> (b) A person may not establish residence for the purpose of influencing the outcome of a certain election.

Subsection (a) defines residence as a person's "domicile, that is, one's home and fixed place of habitation to which one intends to return after any temporary absence." *Id.* § 1.015(a). Subsections (b) through (f) further clarify and qualify this definition. For example, a person does not lose a residence by leaving for "temporary purposes only," nor do they acquire a residence by coming for "temporary purposes only." *Id.* § 1.015(c)–(d). Additionally, a person may not designate a residence "unless the person inhabits the place at the time of designation and intends to remain," nor may they, to reiterate, establish a residence "for the purpose of influencing the outcome of a certain election." *Id.* § 1.015(b), (f).

By its plain meaning, whether read alone or in context, subsection (b) prohibiting a person from "establish[ing] residence for the purpose of influencing the outcome of a certain election" is vague and overbroad. Section 1.015 defines "residence" without defining "establish" or "influencing." The rule therefore

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> (c) A person does not lose the person's residence by leaving the person's home to go to another place for temporary purposes only.
>
> (d) A person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home ....
>
> (f) A person may not establish a residence at any place the person has not inhabited. A person may not designate a previous residence as a home and fixed place of habitation unless the person inhabits the place at the time of designation and intends to remain.

bars prospective voters from establishing a "home and fixed place of habitation" (*id.* § 1.015(a)) for obviously permitted purposes such as voting, volunteering with a political campaign, or running for an elected office. Harris County Election Administrator Isabel Longoria and several others agreed that the Residence Provision, "depending on the situation or context, could have multiple meanings or interpretations" like this.

Although the State insists that the provision merely intends to "restrict[] a person from establishing a residence that is not where the person is domiciled," that is not what the Residence Provision says. If the Texas Legislature wanted to restrict a person from establishing a residence "at a place that is not their residence for the purpose of influencing the outcome of a certain election," then, as the Secretary's designee conceded, "[t]he[Legislature] could have" done so. And this order does not necessarily abridge the right to enact legislation to that effect. But the State cannot lean into the word establish, suggesting that "establishing" a residence means something to the effect of "fabricating" a residence, when the two words are not interchangeable. It cannot use "residence" in reference to a place someone actually inhabits in subsection (a), but then use "residence" in reference to a place someone does *not* actually inhabit in subsection (b), while claiming that such diametrically opposed usage is obvious.

Of course, a civil law may be vague or overbroad without being unconstitutional, where the law does not infringe on a fundamental right. *Grayned v. City of Rockefeller,* 408 U.S. 104, 109 (1972) (explaining vague

laws may "trap the innocent by not providing fair-warning, "delegate[] basic policy matters ... on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application," or "inhibit the exercise of [basic First Amendment] freedoms"). However, as worded, this law restricts a person's ability to move and to vote, if the person moves "for the purpose" of voting or of otherwise "influencing" the outcome of an election. It likewise hinders Plaintiffs' ability to advise prospective voters about these rights and liabilities.

Although a state's "reasonable, nondiscriminatory" election laws will generally give way to the state's "important regulatory interests," the Residence Provision is not reasonable. *See Burdick,* 504 U.S. at 434. It restricts establishing "residence"—that is, establishing "one's home and fixed place of habitation"—anywhere in Texas if for the purpose of influencing an election. Tex. Elec. Code § 1.0 15(a) (defining residence), (b) "A person may not establish residence for the purpose of influencing the outcome of a certain election."). The State has an interest in "making sure that people vote where they live." The State likewise has an interest in "preventing fraud." But the State's laws must further some—nay, any—of these important interests. Instead, this law prevents people from voting where they live, depending on what "purpose" they have for living there.

Some Defendants, like El Paso County Elections Administrator Lisa Wise, concede that the "lack of clarity about the meaning and sweep of the Residence Provision hinders [the County's] ability to advise

voters" in their County and ask the court to intervene. For instance, Ms. Wise testified that she did not feel prepared to respond to voters' questions, because S.B. 1111's "definitions ... are vague" and "mean different things to different people." The court agrees. The Residence Provision is unconstitutionally vague and overbroad, barring conduct that is squarely protected by the First Amendment. Such a "severe" restriction on the right to vote must be "narrowly drawn to advance a state interest of compelling importance." *See id.; see also Stewart v. Blackwell,* 444 F.3d 843, 869 (6th Cir. 2006) (laws that effectively disenfranchise voters constitute "severe" burdens requiring strict scrutiny). The Residence Provision is not so narrowly drawn, and there is no way to construe the provision in a way that avoids constitutional scrutiny without making unwarranted assumptions about its intended scope.

The court concludes that the Residence Provision fails any degree of constitutional scrutiny.

C. Temporary-Relocation Provision

Turning one final time to the text as a whole, Section 1.015 indicates that a person does not lose a residence by leaving for "temporary purposes only," nor do they acquire a residence by coming for "temporary purposes only." Tex. Elec. Code § 1.015(c)–(d). All is fair, as otherwise, how would United States Senators for Texas vote in their home state? However, the Temporary-Relocation Provision contained in subsection (f) adds that a person may not designate a residence "unless the person *inhabits* the place at the time of designation and intends to remain." *Id.* § 1.015(f) (emphasis added).

The issue is this creates a "man without a country." Not just for the senators. More broadly, a college student cannot acquire a residence in the college town where they will study only "temporar[il]y," nor can the student designate as a residence the home town they have stopped "inhabit[ing]," albeit temporarily. *Id.* § 1.015(d), (f). Although Intervenor-Defendants Lupe Torres and Terrie Pendley point the court to Section 15.054, this provision obviously does not lessen a voter's burden. Section 15.054 allows a college student to use a campus PO Box for their registration address, without providing documentation confirming this address, "[n]otwithstanding the other provisions of this section." First, the reference to "this section" does not exempt students from the definition of residence contained in a separate chapter of the code, Section 1.015. Section 1.015 explains where a voter's residence is, while Section 15.054 creates rules regarding how to verify that residence. Section 1.015 says a college student does not gain residence somewhere they go for "temporary" purposes only, and Section 15.054 does not confer residence; rather, it explains that a college student's identification need not match the campus PO Box.

Second, even assuming *arguendo* that Section 15.054 did help confer residence, Section 15.054 still only excuses "a full-time student who lives on campus at an institution of higher education." This disenfranchises, at minimum, the part-time and off-campus college student. The part-time and off-campus college students are undeniably disenfranchised because they are unable to register to vote both where they have moved and where they have moved from. The

burden imposed is "severe," if not insurmountable. Such an insurmountable burden is not easily overcome. Certainly not by Texas's stated interest in ensuring Texans only have *one* residence. Instead, the law renders some Texans without *any* residence. Many Counties are in agreement, unable to explain where college students should register. Dallas County Election Administrator Michael Scarpello stated he was "not entirely clear on how to answer the questions posed to [Dallas County] by some student voters," which has generated "a sense of frustration from the voter and sometimes confusion." And El Paso County Election Administrator Lisa Wise stated she was not "able to really give [students] the information that they would need" to determine where to register. The court is likewise unable to discern where college students should register as the Temporary-Relocation Provision is written. And the possible repercussions are not just complete disenfranchisement, but also criminal liability.

The Temporary-Relocation Provision does not overcome any degree of constitutional scrutiny.

CONCLUSION

IT IS ORDERED that the parties' cross-motions for summary judgment are **GRANTED IN PART AND DENIED IN PART** as described herein, and the cross-motions are **DISMISSED** (Doc. 138, 140). Plaintiffs' Motion for Protective Order regarding discovery requests is also **DISMISSED** (Doc. 87).

IT IS FURTHER ORDERED that Defendants are permanently enjoined from enforcing Texas Election Code Sections 1.015(b) and (f).

IT IS FURTHER ORDERED that Defendants are permanently enjoined from enforcing Texas Election Code Section 15.053(a) to the extent it requires "evidence of the voter's residence address as required by Section 15.054" even when the registrar *no longer* has reason to believe "the voter's residence address is a commercial post office box or similar location that does not correspond to a residence."

IT IS FINALLY ORDERED that Defendants Lisa Wise, Michael Scarpello, and Clifford Tatum's Motion for Reconsideration and/or Clarification of the Court's August 2, 2022 Order and Judgment (Doc. #546) is **GRANTED** to the extent reflected in this Amended Order.

SIGNED this 21st day of September, 2022.

/s/ Lee Yeakel
LEE YEAKEL
UNITED STATES DISTRICT JUDGE

APPENDIX C

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

CAUSE NO. 1:21-CV-546-LY

[Filed August 2, 2022]

TEXAS STATE LULAC; VOTO LATINO, PLAINTIFFS,	)
	)
V.	)
	)
BRUCE ELFANT, IN HIS OFFICIAL CAPACITY AS TRAVIS COUNTY TAX ASSESSOR-COLLECTOR; JACQUELYN CALLANEN, IN HER OFFICIAL CAPACITY AS BEXAR COUNTY ELECTIONS ADMINISTRATOR; ISABEL LONGORIA, IN HER OFFICIAL CAPACITY AS HARRIS COUNTY ELECTIONS ADMINISTRATOR; YVONNE RAMON, IN HER OFFICIAL CAPACITY AS HIDALGO COUNTY ELECTIONS ADMINISTRATOR; MICHAEL SCARPELLO, IN HIS OFFICIAL CAPACITY AS DALLAS COUNTY ELECTIONS ADMINISTRATOR; LISA WISE, IN HER OFFICIAL CAPACITY AS EL PASO COUNTY ELECTIONS	)

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

FINAL JUDGMENT

Before the court is the above-styled and numbered cause. On this date by separate order the court rendered summary judgment as to all claims alleged by Plaintiffs Texas State LULAC and Voto Latino. As nothing remains for resolution in the cause, the court renders the following Final Judgment pursuant to Federal Rule of Civil Procedure 58.

IT IS ORDERED that all parties bear their own costs of court.

IT IS FINALLY ORDERED that the cause is hereby **CLOSED**.

SIGNED this 2nd day of August, 2022.

/s/ Lee Yeakel
LEE YEAKEL
UNITED STATES DISTRICT JUDGE

APPENDIX D

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I

Amendment I. Establishment of Religion; Free Exercise of Religion; Freedom of Speech and the Press; Peaceful Assembly; Petition for Redress of Grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. Amend. XIV

Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Appointment of Representation; Disqualification of Officers; Public Debt; Enforcement

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

42 U.S.C. § 1983

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Tex. Elec. Code § 1.015

§ 1.015. Residence

(a) In this code, "residence" means domicile, that is, one's home and fixed place of habitation to which one intends to return after any temporary absence.

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

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

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

(e) A person who is an inmate in a penal institution or who is an involuntary inmate in a hospital or eleemosynary institution does not, while an inmate, acquire residence at the place where the institution is located.

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

Tex. Elec. Code § 13.007(a)

§ 13.007. False Statement on Application

(a) A person commits an offense if the person knowingly or intentionally:

(1) makes a false statement; or

(2) requests, commands, coerces, or attempts to induce another person to make a false statement on a registration application.

* * *

Tex. Elec. Code § 15.028

§ 15.028. Notice of Unlawful Voting or Registration

If the registrar determines that a person who is not eligible to vote registered to vote or voted in an election, the registrar shall, within 72 hours not including weekends after making the determination, execute and deliver to the attorney general, the secretary of state, and the county or district attorney having jurisdiction in the territory covered by the election an affidavit stating the relevant facts.

Tex. Elec. Code §§ 15.051(a), 15.052(a) and (b), 15.053(a), 15.054

§ 15.051. Confirmation Notice

(a) If the registrar has reason to believe that a voter's current residence is different from that indicated on the registration records, or that the voter's residence address is a commercial post office box or similar location that does not correspond to a residence, the registrar shall deliver to the voter a written confirmation notice requesting confirmation of the voter's current residence.

* * *

§ 15.052. Official Confirmation Notice and Confirmation Notice Response Forms

(a) The officially prescribed form for a confirmation notice must include:

(1) a statement that, if the voter fails to submit to the registrar a written, signed response confirming the voter's current residence on or before the 30th day after the date the confirmation notice is mailed:

(A) the voter is subject to submission of a statement of residence before the voter may be accepted for voting in an election held after that deadline; or

(B) for a notice delivered under Section 14.023, the voter will remain subject to submission of a statement of residence before the voter may be accepted for voting in an election;

(2) a warning that the voter's registration is subject to cancellation if the voter fails to confirm the voter's current residence either by notifying the registrar in writing or voting on a statement of residence before November 30 following the second general election for state and county officers that occurs after the date the confirmation notice is mailed; and

(3) a statement that the voter must include all of the required information on the official confirmation notice response form.

(b) The official confirmation notice response form must:

(1) provide spaces for the voter to include all of the information that a person must include in an application to register to vote under Section 13.002;

(2) describe the requirements of Section 15.054, provide a space for the voter to indicate if the voter is exempt from those requirements, and provide a space to indicate the reason for an exemption, if any;

(3) provide the definition of residence under Section 1.015; and

(4) be postage prepaid and preaddressed for delivery to the registrar.

* * *

§ 15.053. Response to Confirmation Notice

(a) The voter shall submit to the registrar a written, signed response to the notice that confirms the voter's current residence. The response must contain:

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

(2) a sworn affirmation of the voter's current residence as defined by Section 1.015; and

(3) if the voter's residence address is a commercial post office box or similar location that does not correspond to a residence, evidence of the voter's residence address as required by Section 15.054 or an indication that the voter is exempt from those requirements.

* * *

§ 15.054. Documentation of Residence for Purposes of Confirmation Notice Response

(a) For purposes of Section 15.053, a voter's residence may be documented by providing a photocopy of the first document, beginning with Subdivision (1) and continuing through Subdivision (6), in the following list that corresponds to the voter's residence under Section 1.015:

(1) a driver's license issued to the voter by the Department of Public Safety that has not expired or, if the voter has notified the department of a change of address under Section 521.054, Transportation Code, an affidavit from the voter

stating the new address contained in the notification;

(2) a personal identification card issued to the voter by the Department of Public Safety that has not expired or, if the voter has notified the department of a change of address under Section 521.054, Transportation Code, an affidavit from the voter stating the new address contained in the notification;

(3) a license to carry a concealed handgun issued to the voter by the Department of Public Safety that has not expired or, if the voter has notified the department of a change of address under Section 411.181, Government Code, an affidavit from the voter stating the new address contained in the notification;

(4) an appraisal district document showing the address the voter claims as a homestead in this state;

(5) a utility bill addressed to the voter's residence address; or

(6) an official tax document or Texas Department of Motor Vehicles document showing the registration address of a vehicle the voter owns.

(b) A voter whose residence in this state has no address may document residence under this section by executing an affidavit stating that the voter's residence in this state has no address, providing a concise description of the location of the voter's residence, and

delivering the affidavit to the registrar with the voter's response to the confirmation notice.

(c) The address described by Subsection (a)(4) may not be a commercial post office box or similar location that does not correspond to a residence.

(d) This section does not apply to:

(1) a voter who is a member of the armed forces of the United States or the spouse or a dependent of a member;

(2) a voter enrolled as a full-time student who lives on campus at an institution of higher education;

(3) a voter whose address is confidential under Subchapter C, Chapter 56, Code of Criminal Procedure;

(4) a federal judge, state judge, or spouse of a federal or state judge whose driver's license includes the street address of a courthouse under Section 521.121, Transportation Code; or

(5) a peace officer whose driver's license omits the officer's actual residence address under Section 521.1211, Transportation Code.

(e) Subsection (a)(1) does not apply to a voter who holds a commercial driver's license under Subchapter C, Chapter 522, Transportation Code.

(f) Notwithstanding the other provisions of this section, a voter enrolled as a full-time student who lives on campus at an institution of higher education may use the address of a post office box located on the campus

of the institution or in a dormitory owned or operated by the institution to confirm the voter's residence.

(g) The secretary of state shall adopt rules as necessary to implement this section.