

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

VOTING FOR AMERICA, INC., §
BRAD RICHEY, and §
PENELOPE McFADDEN, §

Plaintiffs, §

v. §

CIVIL ACTION NO. 3:12-CV-00044

HOPE ANDRADE, in her Official §
Capacity as Texas Secretary of State, and §
CHERYL E. JOHNSON, in her Official §
Capacity as Galveston County Assessor §
And Collector of Taxes and Voter §
Registrar, §

Defendants. §

**DEFENDANT HOPE ANDRADE’S ORIGINAL ANSWER
TO PLAINTIFFS’ COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant Hope Andrade by and through her attorneys of record, Greg Abbott, Attorney General of Texas, and Kathlyn C. Wilson, Assistant Attorney General, and files this her Original Answer to Plaintiffs’ Complaint in the above-referenced cause of action. In support thereof, Defendant would respectfully show the Court as follows:

**I.
ORIGINAL ANSWER**

Pursuant to FED. R. CIV. P. 8(b), Defendants deny each and every allegation contained in Plaintiffs’ Original Complaint except for those expressly admitted herein. With the exception of Plaintiffs’ Introduction, these numbered paragraphs and titles correspond to the paragraphs within the Plaintiffs’ Original Complaint. Plaintiffs’ Introduction does not contained numbered

paragraphs as required by FED. R. CIV. P. 10(b). For ease of reference herein, Defendant refers to each sentence within those paragraphs as numbers 1.1 through 1.26.

1. Introduction

- 1.1 Defendant denies that state voter registration practices and provisions endanger the rights of Texas voters in violation of the Constitution, the National Voter Registration Act (NVRA), or state law. Defendant admits that population growth in Texas exceeds that of most other states.
- 1.2 Defendant denies that voter registration rolls throughout the state remain stagnant.
- 1.3 Defendant denies that voter registration policies enacted or supported by the Texas Secretary of State have contributed to a decline in the percentage of registered voters. Defendant further denies any implication that she has authority to enact policies.
- 1.4 Defendant denies that voter registration provisions prevent racial minorities from becoming registered voters.
- 1.5 Defendant neither admits nor denies that rejection levels of new voter registration applications are at record highs. Defendant at this time is without knowledge or information sufficient to form a belief as to the quantity of voter registration application rejections.
- 1.6 Defendant denies adopting strategies to block the public from viewing registration records or shield the registration process and the activities of registrars from public scrutiny.
- 1.7 Defendant denies that voter registration drives are under attack.
- 1.8 Defendant denies implementing discriminatory election practices.

- 1.9 Defendant denies that Texas voter registration policies contradict the standards for fair and efficient voter registration policies set by Congress.
- 1.10 Defendant admits that Plaintiffs filed an Original Complaint in this cause.
- 1.11 Defendant denies that she has denied Voting for America's requests to inspect and copy the completed voter registration records of prospective registrations in 2010 whose applications were rejected by the Harris County Registrar's Office. Defendant further denies that she has such records.
- 1.12 Defendant denies that Voting for America and other members of the public have the right under the NVRA to inspect and copy voter registration records.
- 1.13 Defendant denies refusing to permit access to public records in violation of federal law.
- 1.14 Defendant denies that she has impermissibly used Election Code provisions to construct a state voter registration system that subverts the tenets of the NVRA or violates the Constitution; however, Defendant admits that criminal penalties are included in some provisions of the Texas Election Code.
- 1.15 Defendant admits that Texas law prohibits photocopying of applications before they are delivered to the proper voting authority, requires the submission of completed applications, and imposes a variety of restrictions on volunteer deputy registrars (VDRs).
- 1.16 Defendant denies that the State imposes onerous restrictions on VDRs; however, Defendant admits to the remainder of this sentence.
- 1.17 Upon information and belief, Defendant denies that Galveston County enforced a state bill requiring voters to present photo identification.
- 1.18 Defendant denies the legal conclusion that federal law prevents the application of the State's regulations.

- 1.19 Defendant denies that the public interest weighs in favor of granting Voting for America's access to the records at issue or invalidating provisions of the Texas Election Code.
- 1.20 Defendant denies that Voting for America cannot fulfill its mission of voter advocacy without access to rejected voter applications.
- 1.21 Defendant denies refusing to turn over said records and denies that either of these Defendants were asked for the Harris County Records. Defendant also denies that such a refusal prevents Voting for America or the public from determining if the applications were lawfully rejected or whether there are any systemic election administration problems in the state.
- 1.22 Defendant denies that an analysis of rejected applications from 2010 is essential to indentifying and correcting any election administration problems in advance of the 2012 elections or ensuring that future voter registration drives will be successful.
- 1.23 Defendant denies that the requirements of the Texas Election Code have prevented or will prevent Voting for America from successfully carrying out voter registration drives. Defendant also denies that the requirements are burdensome.
- 1.24 Defendant denies that Texas voters will be unaware of their importance in the electoral process or unable to exercise their right to vote without the participation of Voting for America or other parties.
- 1.25 Defendant denies denying Voting for America's access to registration records or imposing a complicated web of regulations on the federal voting scheme; Defendant further denies any implication that she has the authority to impose such regulations. Defendant also denies that she is subverting the NVRA's purpose, denying Voting for

America's rights under the NVRA or the Constitution, or inhibiting Voting for America's efforts to carry out its voter protection and election administration reform programs and activities. Defendant further denies that she has denied access to requested registration records.

- 1.26 Defendant neither admits nor denies that a contemporaneous analysis of rejected applications submitted in the future will allow Voting for America to address issues as they arise.

2. Jurisdiction and Venue

- 2.1 Defendant denies that Plaintiffs have any causes of action under the statutes identified.
- 2.2 Defendant denies that this court has jurisdiction.
- 2.3 Defendant denies that venue appropriately lies in this District and Division.
- 2.4 Defendant denies that an actual and justiciable controversy exists.

3. Parties

- 3.5 Defendant admits the statements in this paragraph.
- 3.6 Defendant can neither admit nor deny the statements in this paragraph.
- 3.7 Defendant can neither admit nor deny the statements in this paragraph.
- 3.8 This paragraph names the parties and needs no admission or denial; however, Defendant admits the statements in this paragraph.
- 3.9 This paragraph names the parties and needs no admission or denial; however, Defendant admits the statements in this paragraph.

4. Federal Statutory Background

- 4.10 Defendant admits the allegations in this paragraph.
- 4.11 Defendant admits the allegations in this paragraph.

- 4.12 Defendant admits the allegations in this paragraph.
- 4.13 Defendant admits the allegations in this paragraph.
- 4.14 Defendant denies that the NVRA requires states to make all voter registration records available for copying, but admits to the limiting content of 42 U.S.C. § 1973gg-(6)(i)(1) as written. Defendant neither admits nor denies the last sentence of this paragraph.
- 4.15 Defendant denies any implication that any Election Code provision is unnecessary, and admits the remaining allegations of this paragraph.
- 4.16 Defendant admits the allegations in this paragraph.
- 4.17 Defendant admits the allegations in this paragraph.
- 4.18 Defendant admits the allegations in this paragraph.

5. Texas Regulatory Background

- 5.19 Defendant admits that the Texas Election Code includes criminal penalties and denies the remainder of the allegations in this paragraph.
- 5.20 Defendant denies the allegations in this paragraph.
- 5.21 Defendant admits the allegations in this paragraph.
- 5.22 Defendant denies the allegations in this paragraph.
- 5.23 Defendant denies that the public has the right to unfettered access to voting records and admits that some of its regulations apply to canvassers who become VDRs. Defendant denies the second sentence of this paragraph.
- 5.24 Defendant denies the allegations in this paragraph.
- 5.25 Defendant denies that Texas limits public access to a greater degree than permitted by the NVRA, and denies that the Public Disclosure Provision mandates that all records *concerning the accuracy and currency of voter rolls* be made available for public

inspection and/or copying, and clarifies that it mandates “all records *concerning the implementation of programs and activities* conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters...”

- 5.26 Defendant denies the allegations in this paragraph.
- 5.27 Defendant admits the allegations in this paragraph.
- 5.28 Defendant admits the allegations in this paragraph.
- 5.29 Defendant admits the allegations in this paragraph, but clarifies that the certificate must be produced to a prospective voter, upon request, when receiving the voter’s application.
- 5.30 Defendant admits the allegations in the first sentence, and denies the second sentence.
- 5.31 Defendant admits the allegations in this paragraph.
- 5.32 Defendant admits the allegations in this paragraph, but clarifies that anyone handling a *completed* voter’s application must be a volunteer registrar or registrar.
- 5.33 Defendant admits the allegations in this paragraph.
- 5.34 Defendant denies the allegations in this paragraph.
- 5.35 Defendant admits the allegations in this paragraph.
- 5.36 Defendant denies the allegations in this paragraph.
- 5.37 Defendant denies the allegations in this paragraph.
- 5.38 Defendant denies the allegations in this paragraph.
- 5.39 Defendant admits the allegations in this paragraph.
- 5.40 Defendant admits that Section 5 of the Voting Rights Act prohibits states from enforcing procedures without obtaining pre-clearance from the federal government. However, upon information and belief, Defendant denies that Galveston County enforces the Voter-ID requirement.

5.41 Defendant admits the allegations in this paragraph.

5.42 Upon information and belief, Defendant denies the allegations in this paragraph.

6. Factual Allegations

6.43 Defendant can neither admit nor deny the allegations in this paragraph.

6.44 Defendant can neither admit nor deny the allegations in this paragraph.

6.45 Defendant can neither admit nor deny the allegations in this paragraph.

6.46 Defendant can neither admit nor deny the allegations in this paragraph.

6.47 Defendant can neither admit nor deny the allegations in this paragraph.

6.48 Defendant can neither admit nor deny the allegations in this paragraph.

6.49 Defendant can neither admit nor deny the allegations in this paragraph.

6.50 Defendant can neither admit nor deny the allegations in this paragraph.

6.51 Defendant denies the allegations in this paragraph.

6.52 Defendant denies the allegations in this paragraph.

6.53 Defendant denies the allegations in this paragraph.

6.54 Defendant denies the allegations in this paragraph.

6.55 Defendant denies the allegations in this paragraph.

6.56 Defendant denies the allegations in this paragraph.

6.57 Defendant can neither admit nor deny the allegations in this paragraph.

6.58 Defendant can neither admit nor deny the allegations in this paragraph.

6.59 Defendant can neither admit nor deny the allegations in this paragraph.

6.60 Defendant can neither admit nor deny the allegations in this paragraph.

6.61 Defendant can neither admit nor deny the allegations in this paragraph.

6.62 Defendant admits to receiving the letter, but denies the remainder of this paragraph.

- 6.63 Defendant admits the letter makes this allegation, but denies the alleged requirements of the law.
- 6.64 Defendant admits the letter contained such statements; however, Defendant denies the truth of those statements.
- 6.65 Defendant admits that an offer was made; however, Defendant denies that state election code provisions conflict with federal law.
- 6.66 Defendant denies that Voting for America made a request for records to Defendant, and further denies having possession of such records. Defendant admits that she has not repealed or amended any sections of the Texas Election Code, but denies any implication that she has authority to do so. Defendant also denies interfering with Voting for America's voter registration activities or mission or violating any rights under the NVRA or the Constitution, and denies "stonewalling" or failing to produce records that she does not have.
- 6.67 Admit to the NVRA provisions, but deny any violation of the NVRA. Defendant further denies having the authority to take the requested remedial action.
- 6.68 Defendant admits only that Plaintiffs filed this suit, and denies the remainder of this paragraph.
- 6.69 Defendant denies the allegations in this paragraph.
- 6.70 Defendant can neither admit nor deny the allegations in this paragraph.
- 6.71 Defendant can neither admit nor deny the allegations in this paragraph.
- 6.72 Defendant can neither admit nor deny the allegations in this paragraph; however, Defendant denies that requirements are onerous.
- 6.73 Defendant can neither admit nor deny the allegations in this paragraph.

6.74 Defendant can neither admit nor deny the allegations in this paragraph.

6.75 Defendant can neither admit nor deny the allegations in this paragraph.

7. Causes of Action

Count I: Violation of the NVRA, 42. U.S.C. § 1973gg-1973gg-10

7.76 This sentence needs no admission or denial; however, Defendant admits and denies as set forth above.

7.77 Defendant admits the allegations in this paragraph.

7.78 Defendant admits the allegations in this paragraph.

7.79 Defendant denies the allegations in this paragraph.

7.80 Defendant denies the allegations in this paragraph.

7.81 Defendant denies making this assertion. Defendant further denies that (1) records were requested of Defendant, (2) Defendant has possession of such records, and (3) Defendant has any obligation to offer evidence for withholding said records.

7.82 Defendant denies the allegations in this paragraph.

7.83 Defendant admits the first sentence, but denies the remaining allegations in this paragraph.

7.84 Defendant denies the allegations in this paragraph.

7.85 Defendant denies the allegations in this paragraph.

7.86 Defendant denies the allegations in this paragraph.

7.87 Defendant denies the allegations in this paragraph.

7.88 Defendant denies the allegations in this paragraph.

7.89 Defendant denies the allegations in this paragraph.

7.90 Defendant denies the allegations in this paragraph.

7.91 Defendant denies the allegations in this paragraph.

Count II: Texas Law Governing VDRs Restricts Speech and Association Based on Content and Viewpoint in Violation of the First Amendment, Facially and as Applied to Voting for America, and in violation of 42 U.S.C. § 1983

7.92 This sentence needs no admission or denial; however, Defendant admits and denies as set forth above.

7.93 Defendant neither admits nor denies this legal conclusion.

7.94 Defendant denies the allegations in this paragraph.

7.95 Defendant denies the allegations in this paragraph.

7.96 Defendant denies the allegations in this paragraph.

7.97 Defendant denies the allegations in this paragraph.

7.98 Defendant denies the allegations in this paragraph.

7.99 Defendant denies the allegations in this paragraph.

7.100 Defendant denies the allegations in this paragraph.

7.101 Defendant denies the allegations in this paragraph.

7.102 Defendant denies the allegations in this paragraph.

7.103 Defendant denies the allegations in this paragraph.

7.104 Defendant admits that Texas requires a receipt when a VDR accepts an application, but denies the remainder of this paragraph.

7.105 Defendant denies the allegations in this paragraph.

Count III: Texas Law Governing VDRs Severely Burdens Voter Registration Speech and Political Association in Violation of the First Amendment and 42 U.S.C. §1983

7.106 This sentence needs no admission or denial; however, Defendant admits and denies as set forth above.

7.107 Defendant denies the allegations in this paragraph.

7.108 Defendant denies the allegations in this paragraph.

Count IV: Section §13.008 of the Texas Election Code is Unconstitutionally Overbroad and Vague in Violation of the First and Fourteenth Amendments and 42 U.S.C. §1983

7.109 This sentence needs no admission or denial; however, Defendant admits and denies as set forth above.

7.110 Defendant denies the allegations in this paragraph.

7.111 Defendant denies the allegations in this paragraph.

Count V: Sections 13.036 and 13.039 of Texas Election Code are Unconstitutionally Vague in Violation of the Fourteenth Amendment and 42 U.S.C. § 1983

7.112 This sentence needs no admission or denial; however, Defendant admits and denies as set forth above.

7.113 Defendant denies the allegations in this paragraph.

Count VI: The Galveston County Registrar's Enforcement of Senate Bill 14 Violates the Equal Protection Clause of the Fourteenth Amendment

7.114 This sentence needs no admission or denial; however, Defendant admits and denies as set forth above.

7.115 Defendant admits the allegations in this paragraph.

7.116 Defendant admits the allegations in this paragraph.

7.117 Defendant admits that Texas voters are not subject to Senate Bill 14 as of this writing; however, Defendant can neither admit nor deny as to the remainder of this paragraph.

7.118 Defendant denies the allegations in this paragraph, and denies that Defendant has placed unequal and arbitrary burdens on Texas voters.

7.119 Defendant denies the allegations in this paragraph.

7.120 Defendant denies the allegations in this paragraph.

Count VII: Violation of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c, and 42 U.S.C. §1973gg-6(b)

7.121 This sentence needs no admission or denial; however, Defendant admits and denies as set forth above.

7.122 Defendant admits the allegations in this paragraph.

7.123 Defendant admits the allegations in this paragraph.

7.124 Defendant can neither admit nor deny the allegations in this paragraph.

7.125 Upon information and belief, Defendant denies the allegations in this paragraph.

Count VIII: Violation of Tex. Elec. Code §§ 15.051-053

7.126 This sentence needs no admission or denial; however, Defendant admits and denies as set forth above.

7.127 Defendant admits the allegations in this paragraph.

7.128 Defendant can neither admit nor deny the allegations in this paragraph.

7.129 Defendant can neither admit nor deny the allegations in this paragraph.

**II.
PRAYER**

The remainder of Plaintiffs' Complaint consists of a Prayer for Relief and needs no admission or denial; however, Defendant denies that Plaintiffs are entitled to any relief they seek.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that:

1. Plaintiffs take nothing by their action; and
2. Defendant recovers all costs, including attorney's fees, and such other and further relief to which she is entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been filed with the Clerk of the Court and served using the CM/ECF system on this the 27th day of March 2012, to:

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