**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 MOTION TO DISMISS**

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

DAVID C. MATTAX
Deputy Attorney General for Defense Litigation

ROBERT O'KEEFE
General Litigation, Division Chief

KATHLYN C. WILSON
Texas Bar No. 21702630
Southern District ID No. 10763
Assistant Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120
(512) 320-0667 FAX

**TABLE OF CONTENTS**

## TABLE OF AUTHORITIES

### CASES

**STATUTES**

**RULES**

**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 MOTION TO DISMISS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant Hope Andrade and files this her Motion to Dismiss in the above-referenced cause of action. In support thereof, Defendant would respectfully show the Court the following:

## I.
## INTRODUCTION

The act of receiving a voter registration application for inclusion on the list of qualified voters is an obligation that the State of Texas takes seriously. It is an obligation to preserve Texas citizen's fundamental constitutional right to vote and to preserve the personal information that the state requires its citizens to supply when applying to register. A voter registration application is valuable in many ways to many people. It represents voters' exercise of their fundamental right as citizens to choose their own government. That fact alone is sufficient to regulate and protect the

delivery of the completed application to the proper state authority. The application also has value to opposing parties and candidates, some of whom would benefit if the delivery of the application were not completed. Additionally, the personal information on the application may be valuable to individuals who have little or no respect for the rights of others.

Not surprisingly, Texas regulates the delivery of a completed voter registration form to the proper voting authority. An examination of the statutory scheme shows that the state has implemented a system requiring that the delivery must be from the voter or his agent directly to the government or its agent. The only entity other than these two that may participate in the process is the United States Postal Service, and that, only when the voter chooses.

The Texas Election Code provides that a voter registration application "must be submitted by personal delivery or by mail." TEX. ELEC. CODE §13.002(a).[1] An applicant may appoint an agent to submit the application on his behalf. TEX. ELEC. CODE § 13.003(a)(1). The only people who are allowed to serve as the applicant's agent are a spouse, parent, or child. TEX. ELEC. CODE § 13.003(b)(1).

With respect to those who are authorized to receive the voter registration application, the state's regulation is precise. The Election Code provides that there are only three officials who may serve as voter registrar: the county tax assessor–collector, the county clerk, or the county elections administrator if the county has established the position. TEX. ELEC. CODE § 12.001. Regarding this office, the Code goes so far as to regulate the hours that it is open. Section 12.004 requires that the registrar conduct registration activities at all times during regular hours, that the office maintain

[1] The full text of each of the challenged statutes is attached as an Appendix.

irregular hours, and that in some circumstances, on weekends during early voting. TEX. ELEC. CODE § 12.004.

The county's voter registrar may appoint regular deputy registrars to assist with voter registration. TEX. ELEC. CODE § 12.006(a). A regular deputy registrar has the same authority as the registrar, subject to his supervision, except that a regular deputy registrar may not hear or determine challenges. TEX. ELEC. CODE § 12.006(c)(d). The Code also provides that, in order to encourage voter registration, persons who volunteer to serve shall be appointed as volunteer deputy registrars (VDRs). TEX. ELEC. CODE § 13.031. VDRs serve for a term, must be 18 years old, must have fully discharged a sentence or been pardoned or otherwise released from the voting disability of a felony conviction, and must meet the requirements of a qualified voter. TEX. ELEC. CODE § 13.031(d)(1)(2)(3)*. A conviction for fraudulent use of personal identifying information will also disqualify a person from serving as a VDR, and discharge or pardon will not restore his ability to serve. TEX. ELEC. CODE § 13.031(d)(3)*.[2] Both regular and volunteer deputy registrars must complete training. TEX. ELEC. CODE §§ 12.006(e); 13.031(e).

The powers of a VDR are as follows: "A volunteer deputy registrar may distribute voter registration application forms throughout the county and receive registration applications submitted to the deputy in person." TEX. ELEC. CODE § 13.038. VDRs are required to review a voter registration application for completeness in the presence of the applicant, and if it does not contain all of the information that is required, the VDR must return it to the applicant. TEX. ELEC. CODE §

[2] The designations of two separate Election Code provisions (disqualifying those with convictions for identity fraud and meeting the requirements of a qualified voter) were both added during 2011 Regular Session of the Texas Legislature and were both inadvertently designated as Section 13.031(d)(3)*. The duplicate designations should be corrected during the next session.

13.039. If the application is complete, then the VDR must prepare a receipt in duplicate and give the original to the applicant and the duplicate to the registrar along with the application. TEX. ELEC. CODE § 13.040(a)(c)(d). The receipt must include the applicant's name and, if applicable, the applicant's agent, the date the application was submitted to the VDR, and it must be signed by the VDR in the applicant's presence. TEX. ELEC. CODE § 13.040(b)(c). The date of submission to the VDR is considered to be the date of submission to the registrar. TEX. ELEC. CODE § 13.041.

A VDR, unlike an agent of the voter, is not permitted to mail the application to the registrar. The application must be delivered in person by the VDR who accepted the application for delivery or through another VDR. TEX. ELEC. CODE § 13.042(a). It must be delivered to the registrar no later than 5 p.m. on the fifth day after it was submitted to the volunteer deputy. TEX. ELEC. CODE § 13.042(b). That time may be shortened when an election will take place soon. TEX. ELEC. CODE § 13.042(c). Negligent failure to deliver the application is a Class C misdemeanor, and intentional failure to deliver is a Class A misdemeanor. TEX. ELEC. CODE § 13.043.

The state has therefore devised a system by which the voter registration authority is empowered to track a completed voter registration form from the voter or his agent to the voter registrar. It makes third parties who handle the completed application accountable, both to the voter and to the state. The protection of the application is paramount. Under this system, a person who receives a completed voter registration form promising that he will see that it is properly delivered cannot do so anonymously, and he is held accountable to his promise.

Plaintiffs have challenged eight provisions of the Texas Election Code as being violative of the National Voter Registration Act and the First Amendment. Under the NVRA, they challenge the completeness requirement of Section 13.039, the requirement that anyone other than the voter or his

agent must personally deliver the completed application in Section 13.042, the requirement that a VDR be trained in filling out a voter registration form in Section 13.031, and the limitation in Section 13.038 that a VDR may accept and deliver only those completed applications in counties where the VDR has been properly certified. Plaintiffs also challenge the state's interpretation of the powers granted to a VDR under Section 13.038 as prohibiting the VDR from photocopying the completed applications in his possession.

Under the First Amendment, Plaintiffs have challenged all of the laws listed above except for the completeness requirement, and they have added challenges to the state's right to require appointment of a VDR under Section 13.031; the Section 13.033 requirement that the VDR must present his certification, on request, to the applicant who is entrusting his completed voter registration form to the VDR's safekeeping; the prohibition against compensation for a VDR being based on the number of voters registered (Section 13.008); and the requirement that a VDR be eligible to vote in Texas (Section 11.002).

Plaintiffs also complain that certain records are being withheld in violation of the NVRA. Although they clearly plead that they requested the records from the Harris County voter registrar, and that the records are being withheld by the registrar, who is claiming an exemption to disclosure under the Texas Public Information Act, Plaintiffs also plead that the Secretary of State has failed to produce these records to them.

Finally, as against the Secretary of State, Plaintiffs allege that the prohibition against compensation per voter registered (Section 13.008), and that Texas provisions for removing a VDR who fails to adequately review a voter registration form for completeness (Sections 13.036 and 13.039) are unconstitutionally overbroad and vague.

The remaining three causes of action in Plaintiffs' Complaint are apparently brought solely against Cheryl E. Johnson, the Galveston County Tax Assessor/Collector who serves as the voter registrar in Galveston County.

## II.
## NATURE AND STAGE OF THE PROCEEDING

The nature of this proceeding is a challenge to Texas laws governing the appointment of volunteer deputy registrars. Plaintiffs claim that these statutes conflict with the National Voter Registration Act and that they violate Plaintiffs' rights under the First Amendment. The proceeding is at the Answer stage. Defendant has filed her Answer currently with this Motion to Dismiss. She seeks to dismiss Plaintiff's claims under Rule 12(b)(2) and (6). As this motion presents only questions of law as to whether specific statutes conflict with federal law or violate the U. S. Constitution, these are proper matters for a Rule 12(b) motion.

## III.
## ISSUES TO BE RULED ON WITH STANDARD OF REVIEW

The issues to be ruled upon are: 1) whether the Complaint against the Secretary of State presents a case or controversy; 2) whether Sections 13.008 (compensation for VDRs), 13.031 (appointment and training of VDRs), 13.039 (requirement that VDR must review an application for completeness), and 13.042 (requiring personal delivery by VDR of applications entrusted to their care) conflict with the National Voter Registration Act; and 3) whether Sections 13.031 (appointment of volunteer deputies), 13.008 (prohibition of compensation per voter registered), 11.002 (volunteer deputy must be eligible as Texas voter), 13.042 (VDR must personally deliver applications), 13.031 (training), 13.038 (VDR limited to collecting applications in county where

deputized), and 13.033 (volunteer deputy must display certificate of appointment to voter who requests to see it) are violative of Plaintiffs' First Amendment rights.

Each of these issues presents a question of law. The standard of review of a question of law is *de novo*. *Center for Individual Freedom v. Carmouche*, 449 F.3d 655, 662 (5th Cir. 2006).

## IV.
## SUMMARY OF THE ARGUMENT

For any claim to present a case or controversy, there must be an injury in fact, a causal connection between the injury and a defendant's conduct, and the injury must be capable of being redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 2136 (1992). The powers of the Texas Secretary of State do not include the appointment and supervision of volunteer deputy registrars. That task falls to the registrars themselves. While the Secretary may disseminate her interpretation of Texas election laws, her enforcement power over these county officials extends only to filing a lawsuit through the Texas Attorney General, and that, only when she determines that an election official is functioning in a manner that impedes a citizen's voting rights. TEX. ELEC. CODE § 31.005. There is therefore no case or controversy because there is no causation, and because any order by this court for the Secretary of State to alter her conduct cannot redress the injuries Plaintiffs claim, since the Secretary of State is not engaging in the conduct that Plaintiffs' challenge.

With respect to the causes of action that Plaintiffs bring, there is no conflict with the National Voter Registration Act. These VDR statutes regulate the handling and delivery of completed voter registration applications, and these applications represent the constitutional right of the applicant to

vote. None of the NVRA's provisions, including the provision that a state accept applications by mail, conflict with the state's decision to regulate a third party's possession of a voter's application.

There likewise is no First Amendment violation. Election regulations are analyzed by the burden that they place on constitutional rights. Regulations that severely burden those rights must pass a strict scrutiny test, and will be upheld only if they are narrowly tailored to serve a compelling state interest. *Clingman v. Beaver,* 544 U.S. 581, 586, 125 S.Ct. 2029 (2005). When a statute imposes slight burdens, "the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions." *Anderson v. Celebrezze*, 460 U.S. 780, 788, 103 S.Ct. 1564, 1570 (1983). Reasonable, neutral regulation are generally upheld. *Burdick v. Takushi*, 504 U.S. 428, 438, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992).

These Texas VDR statutes do not regulate speech. Plaintiffs are free to advocate for voter registration unimpeded by any of the laws they challenge. What the VDR statutes regulate is the act of registering citizens to vote, which both Plaintiffs and Defendants agree is a governmental function. Therefore, there is no burden at all on Plaintiffs' constitutional rights.

To the extent that Plaintiffs claim that the act of registration is a part of their mission and is therefore political speech, and to the extent that the court assumes a burden, that burden is slight. It requires that third parties who are entrusted with voter applications must, among other requirements, be deputized, have training in helping the citizen fill out the application, and that these third parties must comply with delivery requirements that include personal delivery within specified time periods. None of the burdens affect advocacy, and all of them are designed to protect the voter's application from the time it leaves the voter's hands. Even if any of these regulations were found to be severe, the state has a compelling interest in preventing voter fraud, and these regulations

are narrowly drawn in that they take effect only when a volunteer accepts a completed application to see that it gets filed in the registrar's office.

## V.
## ARTICLE III CASE OR CONTROVERSY

The Secretary of State moves under Rule 12(b)(1) to dismiss the causes of action against her because there is no case or controversy. Secretary Andrade has no enforcement powers with respect to the statutes of which Plaintiffs complain, and any alleged injury on the part of the Plaintiffs as a result of these statutes lacks both a causal connection to the Secretary and redressability.

A bedrock requirement for jurisdiction under Article III of the Constitution is that the claim between the plaintiff and defendant must present a case or controversy. *Okpalobi v. Foster*, 244 F. 3d 405, 425 (5th Cir. 2001) citing *Raines v. Byrd*, 521 U.S. 811, 818, 117 S.Ct. 2312, 2317 (1997). There are three criteria that a plaintiff must satisfy in order to establish a case or controversy. *Lujan v. Defenders of Wildlife* at 560, 112 S.Ct. at 2136. "First, they must show that they have suffered, or are about to suffer, an 'injury in fact.' Second, 'there must be a causal connection between the injury and the conduct complained of.' Third, 'it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.'" *Okpalobi v. Foster,* 244 F.3d at 425, quoting *Lujan v. Defenders of Wildlife* at 560-61, 112 S.Ct. at 2136.

In Texas, the Secretary of State is the chief election officer. TEX. ELEC. CODE § 31.001. Her mandate with regard to the election laws is to "obtain and maintain uniformity in the application, operation, and interpretation of this code and of the election laws outside this code." TEX. ELEC. CODE § 31.003. In performing this duty, the secretary shall prepare detailed and comprehensive written directives and instructions relating to and based on this code and the election laws outside

this code. The secretary shall distribute these materials to the appropriate state and local authorities having duties in the administration of these laws." *Id*. She is also mandated to "assist and advise all election authorities with regard to the application, operation, and interpretation of this code and of the election laws outside this code." TEX. ELEC. CODE § 31.004(a). If she determines that a person who is performing official election functions is doing so in a manner that impedes a citizen's voting rights, she may order the offending conduct to be corrected, and may seek enforcement of her order through the courts by means of an action filed by the attorney general. TEX. ELEC. CODE § 31.005.

Ultimately, the Secretary of State has no enforcement authority over the various election officials who administer the state's election laws. She may give directives and instructions on how she has determined the election laws are to be executed, and she can make known her interpretation of the election laws. She has no power, however, to force other state officials to interpret and execute the elections laws in the manner that the Secretary believes is correct. It is only when she determines that official election functions are being performed in a manner that impedes the free exercise of a person's voting rights that she can act, and then she can order the conduct to be corrected. If it is not corrected, she cannot terminate or otherwise discipline the state official who refuses her order. Her only recourse is to pursue a lawsuit filed by the state's attorney general. None of these powers give the Secretary of State the duty or authority to engage in the conduct about which Plaintiffs complain.

The conduct complained of revolves around the appointment of volunteer deputy registrars. This appointment authority is given to each county's registrar of voters. The other requirements about which Plaintiffs complain are also enforced by registrars of voters. For example, the registrar must require that persons appointed as VDRs be eligible to vote, must ensure that they personally

deliver all completed voter registration forms that are entrusted to a volunteer, and the registrar must refuse to accept or register a voter whose application is delivered by a person who is not appointed in the registrar's county. With respect to training and completeness of the application, the registrar is responsible for delivering the training and reviewing the VDR's ability to comply with the completeness requirement regarding the voter applications that each VDR delivers. If a VDR fails to produce his certification to a voter who asks to see it, the county voter registrar would be responsible for addressing the omission, as the VDR serves under the power of the registrar.

With respect to their claims concerning the prohibition against photocopying of a completed voter registration application, Plaintiffs complain that the Secretary of State has interpreted Section13.038 of the Election Code regarding the volunteer deputy's limited powers in conjunction with Section 13.040, which charges the registrar with keeping certain personal information on the application confidential, as prohibiting the photocopying of a voter's completed application. (See Plaintiffs' Complaint, Doc. 1-1, p. 6.) This interpretation is in execution of the Secretary's duty to interpret the election laws. The fact that she has concluded that photocopying the completed application is contrary to Texas law does not give her the power to enforce the prohibition.

Plaintiffs also complain that the "Requested Records" they sought from the voter registrar in Harris County have not been produced by the Secretary of State, and that she is enforcing a state law exempting the records from disclosure under the Public Information Act. The Secretary does not have the records that Plaintiffs requested from another state official who is not even party to this suit She did not claim any exemption as a reason for withholding them, and she is not the state official who administers the Public Information Act. There is therefore no basis for these claims against the Secretary of State.

The Secretary of State is simply not the state official who carries out the laws that Plaintiffs claim are injuring them. The second causation criteria of a case or controversy is not met, nor consequently is the third. An order from this court against the Secretary of State would require her to halt conduct that she is not engaging in. A case or controversy requires that the defendant have the power to address the asserted injuries. *Okpalobi v. Foster*, 244 F. 3d at 427. This Defendant does not.

It should also be noted that in Plaintiffs' Request for Relief, they see a declaration "that *Defendant* is in violation of the NVRA by refusing to grant access for inspection and photocopying of the Requested Records." See Plaintiffs' Complaint, p. 35, Section A. (Emphasis added.) Plaintiffs do not specify which Defendant–either the Secretary of State or the Galveston County Clerk–that they mean for the declaration to run against. They also request that the court "Permanently enjoin *Defendant* from refusing to permit access to any requesting party for copy and/or inspection of voter registration applications and related records, as sought by Voting for America in this matter." See Plaintiffs' Complaint, p. 34, Section C. (Emphasis added.) Plaintiffs have not alleged that they sought the records from the Secretary of State–in fact they plead that they were requested from the Harris County clerk–yet they seek to order the Secretary of State to produce records that have not been requested of her, that she does not have, and for which she has never claimed an exemption under Texas Public Information Act. In such a case, the requested relief, running against the Secretary of State, does not redress Plaintiffs' alleged injury.

Plaintiffs have also requested that the court "Require Defendants to send notice as required by state law before implementing any impediment to these or other voter registration records and before placing registered voter on a suspension list." See Plaintiffs' Complaint, pp. 35-36, Section

K. Here, they request relief running against the Secretary of State for alleged actions by the Galveston County Tax Assessor/Collector, yet they make no allegations that the Secretary of State has taken any action with respect to the inclusion of any voters on a suspension list. Again, an order against the Secretary of State will not address the Plaintiffs' alleged injuries.

Finally, with respect to their fifth causes of action, claiming that the statute providing for removal of a volunteer deputy is vague, Plaintiffs have not alleged an injury in fact. They have not alleged that either they or any of their members or staff has ever been removed from being a volunteer deputy under this law. Without an injury in fact, there is no jurisdiction.

As the Secretary of State has no enforcement power over these statutes, and as the relief sought is for the alleged actions of others, there is no case or controversy, no jurisdiction; therefore, these causes of action against the Secretary of State should be dismissed on that basis.

## VI.
## CAUSES OF ACTION

Defendant Andrade further moves for dismissal of all claims against her under Rule 12(b)(6) for failure to state a claim upon relief can be granted. For the reasons shown below, Plaintiffs have failed to allege violations of either the National Voter Registration Act or the United States Constitution.

### A. NATIONAL VOTER REGISTRATION ACT

Plaintiffs bring suit under the Supremacy Clause, asserting that Congress's passing of the National Voter Registration Act preempts various provisions of the Texas Election Code. The proper legal analysis, however, is not of preemption under the Supremacy Clause, but under the Elections Clause. As pointed out by the Ninth Circuit, the analysis under the two clauses is different. *Gonzalez*

*v. Arizona*, 624 F.3d 1162, 1174 (9th Cir. 2010). That court also noted, "our survey of Supreme Court opinion deciding issues under the Elections Clause reveals no case where the Court relied on or even discussed Supremacy Clause issues." *Id.* at 1175.

Plaintiffs challenge Sections 13.038, 13.031, 13.039, and 13.042 of the Texas Elections Code, and claim that they are violative of the NVRA. Defendant Andrade will show below that none of these provisions conflict with the NVRA.

**1. Section 13.038–Photocopying**

Plaintiffs cite Section 13.038 for what they term "The Photocopying Prohibition." The statute defines the powers of the volunteer deputy registrar as distributing voter registration forms throughout the county and receiving applications submitted to the deputy in person. TEX. ELEC. CODE § 13.038. This section, in conjunction with Section 13.004(c), which provides that specified items on the completed voter registration form must be kept confidential, has been interpreted by the Secretary of State as prohibiting the photocopying by volunteers of voters' completed applications.

Plaintiffs claim that this provision of Texas law conflicts with the NVRA's requirement that states maintain for public inspection and photocopying "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...." 42 U.S.C. § 1973gg(6)(a)(4).

Completed voter registration applications are not "records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters." 42 U.S.C. § 1973gg-6(i). The words "programs and activities" are used elsewhere in the statute, and specifically with respect to this particular section. Section 1973gg-6 requires states to "conduct a general program that makes a reasonable effort to remove the names

of ineligible voters from the official lists of eligible voters...." 42 U.S.C. § 1973gg(6)(a)(4). The following section sets requirements for "[a]ny State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office...." 42 U.S.C. § 1973gg-6(b). The next section is entitled "Voter removal programs." 42 U.S.C. § 1973gg-6(c).

The section containing the requirement to provide "records concerning the implementation of programs and activities conducted for ensuring the accuracy and currency of official lists of eligible voters...." follows these three references to programs and activities of the states. The words "programs and activities" refer to the states' responsibility to maintain voter lists, not to the maintenance of completed voter registration forms. Thus the requirement of the NVRA is for the state to maintain records of programs and activities that it developed in order to implement the Act's requirement for accurate and current voter rolls.

Completed voter registration forms, containing confidential personal information, is not a record concerning the implementation of a program or activity having to do with the accuracy and currency of voter lists. They are the means by which a voter is included on the voting rolls. Had Congress wished to make the completed application public, it could have done so by referring to them specifically. The plain meaning of "records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters," is that those records pertain to official lists of voters, not to the individual applications of voters themselves. Maintaining accurate and current voter registration rolls is one of the four purposes of the NVRA. 42 U.S.C. § 1973gg(b)(4). This provision is designed to serve that goal.

Congress did refer specifically to records concerning applications and registrations in 42 U.S.C. § 1974, which reads in relevant part,

> Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election....

42 U.S.C. § 1974. The records referenced in the NVRA are to be kept for two years. Records relating to an application or registration are to be kept for 22 months. The NVRA and Section 1974 cannot be referring to the same records.

Further evidence that Congress did not intend to require the states to allow photocopying of completed registration forms is found in both the Military and Overseas Voter Empowerment Act (MOVE Act) and the Help America Vote Act (HAVA). The MOVE Act requires states to establish procedures for military and overseas voters to request voter registration and absentee ballots by mail and electronically, to deliver the requested forms by mail and electronically, and to allow the voter to designate a choice of mail or electronic delivery. 42 U.S.C. § 1973ff-(a)(6). Significantly, the MOVE Act also requires

> To the greatest extent practicable, the procedures established under subsection (a)(6) shall ensure the privacy of the identity and other personal data of an absent uniformed services voter or overseas voter who requests or is sent a voter registration application or absentee ballot application under such subsection is protected throughout the process of making such request or being sent such application.

42 U.S.C. § 1973ff(e)(6)(B).

It would make no sense under the MOVE Act to require the states to protect personal data regarding a blank voter registration form and then under the NVRA to require disclosure and

photocopying of the same form once the voter has filled in the blanks with the voter's personal data. This provision in the MOVE Act undermines Plaintiffs' theory that "records concerning the implementation of programs and activities" includes completed voter registration forms with all their personal data.

Further evidence against Plaintiffs' theory is found in HAVA. There, Congress required states to provide provisional voting for voters who declare that they are eligible, but whose names do not appear on the list of eligible voters. 42 U.S.C. § 15482(302a). HAVA requires that such voters be provided with a free access system by which to learn whether their votes were counted, and if not, the reason for not counting the vote. 42 U.S.C. § 15482(302a5B). Section 302 continues: "The appropriate State or local official shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system established under paragraph (5)(B)." 42 U.S.C. § 15482(302a). Under Plaintiffs' theory, however, this security given to the personal information of provisional voters is for naught, since all the personal information on the voter registration cards would be readily available.

In addition to conflicting with both the MOVE Act and HAVA, Plaintiffs' interpretation also conflicts with one of the major purposes behind the NVRA–to increase the number of eligible voters and enhance their participation in the electoral process. 42 U.S.C. § 1973gg(b)(1)(2). Eligible voters who know that filling out a voter registration card automatically makes that personal information available to anyone who requests it will be less likely to register to vote.

Considering that the personal information for every voter includes name, any former name, address, former address, driver's license or personal identification number (or last four digits of

one's social security number in the absence of either driver's license or personal identification card), and date of birth, this in itself is enough to give one pause. In an age of identity theft, any prospective voter would seek to keep this information private. Additionally, for some applicants, the voter registration form contains information on felony convictions and mental capacity. TEX. ELEC. CODE § 13.002. The knowledge that this private information is made public by virtue of registering to vote does nothing to expand the voter rolls.

The Texas legislature has demonstrated that it is aware of the potential for theft of personal information from voter registration cards. As noted in Section I herein, convicted felons who have discharged their sentences or who have been pardoned or otherwise released from the disability to vote, may serve as volunteer deputy registrars. TEX. ELEC. CODE § 13.031(d)(2)(A)(B). The only convicted felons who cannot resurrect their ability to serve as a VDR are those who are convicted under Section 32.51 of the Penal Code: fraudulent use or possession of identifying information, including name, date of birth, and government issued identification number.

The legislature has also passed legislation to protect the personal information on the voter registration card. Registrars are prohibited from recording a telephone number furnished on an application, and may only record a social security number in maintaining the accuracy of the records. Additionally, they are charged with ensuring that social security numbers, Texas driver's license numbers, and personal identification numbers issued by the Texas Department of Public Safety. The residence address of judges and their spouses are also excluded from disclosure under the Texas Public Information Act. Furthermore, registrars are prohibited from posting this information on a website. TEX. ELEC. CODE § 13.004.

For Congress to assure that, despite the state's best efforts, all of this personal information must be made public, is simply not the way to encourage people that registering to vote is in their best interest. Photocopying of a voter registration application provides a disincentive to register to vote, and it is a disincentive that conflicts directly with the purpose of Congress in passing the Act. While it no doubt may make it easier for organizations that undertake voter registration drives to track the voter registrations its workers have facilitated, photocopying of this information may ultimately make it harder to convince citizens to register.

Plaintiffs claim that photocopies allow them to track the progress of submitted applications and that Texas prohibits their attempts to verify the fairness of the application process. Contrary to Plaintiffs' assertion, the photocopying of completed applications is not necessary to the task of tracking applications. Plaintiffs can make a list of the voters for whom they submit applications. Plaintiffs are free to copy the receipt that they or their VDRs provide to the voter and the registrar. They may also request copies of voter registration applications that were rejected. These are subject to the Texas Public Information Act, with the exception of the information listed in Section 13.004. Under Texas law, copies of the applications are supplied with the excepted information redacted. Thus, the state already provides for the information that Plaintiffs claim they need, and at the same time provides protection for the personal information contained on those records.

Plaintiffs also complain that without access to these records, the public cannot ascertain whether individuals who should be on the rolls are actually on the rolls. See Plaintiffs' Complaint, ¶ 24. This is not true, as rejected applications are subject to disclosure, with exceptions, under Texas law.

Plaintiffs cannot rely on 42 U.S.C. § 1973gg-6(i) to claim that they are entitled to photocopy a completed voter registration application. The plain meaning of that statute, the plain meaning of 42 U.S.C. § 1974, the provisions for security of personal information in both the MOVE Act and HAVA, and the common sense conclusion that the mandated release of this personal information can lead to theft of the voter's identity and thus suppress the very voter registration that Congress was attempting to foster–all lead to the solid conclusion that the NVRA does not mandate photocopying of completed voter registration applications.

To the extent that Plaintiffs also attempt to overthrow the law enforcement exception to the Public Information Act, these same arguments apply with equal force. Plaintiffs have no right to photocopy the completed application. Secretary Andrade would also state that with respect to this exception, she has never raised it because she has never been asked for the records and does not have the records requested. Thus, Plaintiffs' complaint that she is withholding records pursuant to the law enforcement exception has no basis in fact, as well as no basis in law.

The Texas prohibition against photocopying completed voter registration applications does not in any way conflict with the NVRA. It is therefore not superseded by federal law, and it should be allowed to stand.

**2. Section 13.039–Completeness of Applications**

Plaintiffs complain that the requirement in Section 13.039 that a volunteer deputy registrar must review completed applications and return incomplete ones to the voter conflicts with the NVRA in two ways: first, it conflicts with the NVRA's requirement that states make applications available to prospective voters, and second, it shifts the burden of reviewing voter registration forms from state officials to VDR's. See Plaintiffs' Complaint, ¶¶ 84-85.

The issue upon which Plaintiffs and Secretary Andrade agree is that receiving and reviewing a completed application is a governmental function. The fact that blank forms must be made available, however, says nothing as to the condition that the application must be in when it has been completed and submitted for registration. Plaintiffs' claims that the NVRA's provision for the availability of blank forms does not mean, as Plaintiffs conclude, that the NVRA therefore "regulates the manner of submission for application forms...." See Plaintiffs Complaint, ¶ 84. This conclusion leads to the absurdity that the NVRA, which was passed to encourage voter registration and participation, restricts states from ensuring that the completed forms they receive are sufficient to place the applicant on the voter rolls. It would allow a volunteer to accept and deliver voter applications that will not qualify the applicants to vote, which is a result that both the NVRA, the state of Texas, and presumably, an organization that promotes voter registration, would oppose.

Plaintiffs' second complaint, that the requirement of review by a VDR shifts the burden of reviewing an application from state officials to VDRs, mistakes the nature of the appointment of volunteers to accept voter registration forms for the registrar. A volunteer deputy registrar acts in the place of the voter registrar in accepting completed application forms for inclusion on the voter rolls. This is a government act. In order to perform it, a person must have authority from the government, which is granted by means of the appointment provision of Section 13.031. By means of this section, the volunteer is deputized–he becomes a government official for the specific purpose of accepting completed voter applications in the place of the registrar.

There is nothing in the state's requirement that a VDR must review a voter's application for completeness that conflicts with the NVRA. Specifically, Plaintiffs complain that it conflicts with the NVRA's provision that the appropriate state official "send notice to each applicant of the

disposition of the application." 42 U.S.C. § 1973gg-6(a)(2). The notice of disposition requirement directs an action on the part of the state after the completed application has been received and a determination as to its sufficiency has been made by the voter registrar. Section 13.039 directs what happens before the application is received by the registrar, and it promotes successful voter registration by correcting errors in the application at the front end. Once again, this is a provision that promotes the purposes of the NVRA by insuring that persons who volunteer to deliver completed voter applications are delivering applications that will successfully effect the registration of the voter. Without it, the voter's registration may be rejected because of an easily correctable error, and the voter could be denied the right to vote.

The requirements of Section 13.039 do not shift the burden of a government function. It provides a means by which a volunteer may perform a government function. Volunteers who are not a spouse, child, or parent of the voter have no right to accept the application for delivery to registrar. Texas law provides a means for him to do so. The delivery of the application is an obligation, and if a volunteer chooses to accept that obligation, he must do so under the rules that the state has passed to protect the completed application. There is nothing in these statutes that conflicts with the NVRA's requirement that a state official send notice of the application's disposition to the voter after it has been received and processed.

Plaintiffs also complain that there are "significant criminal penalties of VDRs who fail to comply with the Completeness requirement." See Plaintiffs' Complaint, ¶ 86. This is simply not the case. Section 13.041 requires, "A volunteer deputy registrar shall deliver in person, or by personal delivery through another designated volunteer deputy, to the registrar each completed voter registration application submitted to the deputy...." TEX. ELEC. CODE § 13.041. Section 13.042

provides: "A volunteer deputy registrar commits an offense if the deputy fails to comply with Section 13. 042," and makes the offense a Class C misdemeanor. TEX. ELEC. CODE § 13.042. Nothing in the Election or Penal Codes of Texas criminalizes delivering an application on which there is an omission. A VDR is penalized only for failing in his commitment to the voter and to the registrar to see that the completed forms he has collected actually get to the registrar so that the voter may be included on the voter rolls.

These provisions of the Texas Election Code promote the registration of voters first by helping to ensure that the application process will be successful, and second by punishing people who undertake the obligation to deliver a voter's application for him and then fail or refuse to do so. Plaintiffs allege, "It is unreasonable and a violation of federal law for Texas to punish VDRs for failing to perform duties delegated to state registrars under federal law." See Plaintiffs' Complaint, ¶ 86. The only duty they cite as delegated to state registrars under the NVRA, however, is the duty to give notice to a voter of the disposition of his application. The challenged Texas laws regulate the acceptance of a completed voter application, not the determination of whether the applicant is to be included on the voter rolls. There is nothing in any of these laws that conflict with the NVRA, and in fact, they promote its purpose by increasing the likelihood that an application will be successful. Congress has not superseded any of these state laws by passing the NVRA.

**3. Section 13.042–Personal Delivery**

As noted above, Section 13.042 requires a volunteer deputy registrar to deliver in person to the registrar, or by personal delivery through another VDR, each completed voter registration application that has been submitted to the deputy. TEX. ELEC. CODE § 13.042. Plaintiffs claim that this statute conflicts with the NVRA's requirement that the states must accept completed

applications submitted by mail. Their theory is apparently that by requiring acceptance of mailed applications, the NVRA thus regulates the method of delivery by all persons, both voters and those whom the voter chooses to deliver the application for him.

Texas law complies with the NVRA. It allows a voter or his agent, who must be a parent, spouse, or child, to mail the completed voter registration application. What Texas law regulates is who, other than the applicant or his authorized agent, may accept a completed voter registration application for delivery to the registrar. These completed applications represent the voter's intent to exercise his constitutional right to vote. The state of Texas has a compelling interest in protecting that right from being taken from him by voter fraud. *Purcell v. Gonzalez*, 549 U.S. 1, 4, 127 S.Ct. 5, 7 (2006). A person who handles the application is entrusted with the voter's constitutional right, and there is nothing in the NVRA that prevents a state from regulating the manner in which volunteers handle that right.

When a volunteer, who is sometimes a stranger to the prospective voter, accepts a completed application, the state has the right to pass regulations to ensure that this stranger does what he has promised the voter he will do. While organizations such as Voting for America have both laudable and altruistic goals, not all persons and organizations involved in voting registration share those values. Unscrupulous campaign workers can collect voter registration forms and then deliver only those from voters who have articulated a preference for the campaign worker's candidate. In such a case, the excuse that all of the forms were placed in the mail is an easy one and is almost impossible to contradict.

The state of Texas has determined that steps will be taken to ensure that a person who promises a voter to deliver the voter's application keeps his promise. The state thus requires that

such a person be deputized to receive the applications, that he be trained in how to complete them, that he provide a receipt both to the voter and to the deputy for all applications he has accepted, and that he deliver the applications in person. These steps make him personally accountable both to the voter and to the state, as he owes obligations to both to see that the completed applications are delivered safely.

Nothing in the NVRA prevents the state from passing a regulation that limits voter fraud in the form of lost registration applications.[3] Texas complies with the NVRA by accepting applications sent by mail. The requirement of personal delivery by VDRs does not conflict with the NVRA.

**4. Section 13.031–Training**

Plaintiffs complain that Texas' requirement that a volunteer deputy registrar undergo training violates the NVRA because the statute does not provide for frequency or scope of training. They claim that without these elements, "VDRs face an ambiguous barrier to delivering the applications of prospective voters." See Plaintiffs' Complaint, ¶ 89.

With respect to the scope of training, this issue is squarely addressed in Section 13.047. There, the Secretary of State is charged with adopting standards of training regarding the registration of voters, developing a curriculum, and distributing materials to each county registrar. TEX. ELEC.

[3] Defendant is aware that the Eleventh Circuit has ruled that the NVRA's requirement of acceptance of mailed applications supersedes state provisions against bundling of applications for mailing by a third party registration organization. *Charles H. Wesley Education Foundation, Inc. v. Cox*, 408 F. 3d 1439, 1354 (2005). In that case, however, the state did not dispute the fact that the NVRA does not prohibit third-party submission of individual forms. *Id.* at 1355. Furthermore, the question in that case centered around the issue of bundling applications versus mailing them individually, and the court noted that the question of bundling does not present a greater protection against fraud "so long as third party handling of any kind is allowed...." *Id.* The present case differs because Texas does dispute the issue of whether the NVRA outlaws prohibitions against third party handling, and the elements of the Texas laws at issue do provide protection from fraud. While the NVRA impliedly encourages private registration drives, *id.* at 1353 citing 42 U.S.C. 1973gg(4)(b), Secretary Andrade argues that it does not do so at the expense of a state regulation that protects the voter's application against potential fraud.

CODE § 13.047(a)(1)(2)(3). This statute was precleared by the Justice Department on March 9, 2012. The charge that state law does not provide for standards or scope of training are simply incorrect. For that reason alone, this claim must be dismissed for failure to state a claim. Additionally, it may dismissed on jurisdictional grounds because it is not ripe.

Plaintiffs also complain that state law does not provide for frequency of training. This is true, but as the law has yet to be implemented, it is difficult to see how a lack of frequency of training injures Plaintiffs. For that reason, at this point, there is no case or controversy, and there is a ripeness question. This claim can also be dismissed on jurisdictional grounds.

To the extent that Plaintiffs are complaining that the law does not state how frequently the course is to be available in each county, there is no reason for the statute to be this precise, and its inclusion might actually be detrimental. Texas has both densely and sparsely populated counties. A schedule of training that provides sufficient training in the Davis Mountains would presumably not be sufficient for Harris or Bexar Counties. Texas law has left to the counties the issue of how often training will be offered, and Plaintiffs have shown no conflict between this statute and the NVRA on the basis that the statute does not mandate how often the training will be offered.

**5. Section 13.038–Limitation of VDR to County Where Deputized**

Section 13.038 defines the powers of a volunteer deputy registrar, which are to distribute voter applications throughout the county and to receive completed applications. TEX. ELEC. CODE § 13.038. Plaintiffs complain that this statute conflicts with the NVRA's requirement of delivery of voter registration applications by mail. As shown above, the requirement of personal delivery does not conflict with the NVRA.

Volunteer deputies are given a governmental power–that of receiving a voter's application to register to vote. That power resides in the county registrar, who may deputize volunteers. A county's registrar can only extend the power that he has. His power does not cross county lines. Plaintiffs argue that the result of the county limitation is that a VDR in Dallas is restricted from serving citizens in adjoining counties. See Plaintiffs' Complaint, ¶ 90. However, there is no limitation in Texas law to the number of counties in which a volunteer may be deputized.

With respect to the county requirement, Plaintiffs also allege that, in conjunction with the requirements for training and personal delivery, these three elements of Texas law offend the purposes of the NVRA to "enhance the participation of eligible citizens as voters in elections for Federal office." 42 U.S.C. § 1973gg(b)(2). They claim that these requirements "restrain this participation by limiting the means a volunteer registrar may use to convey a prospective voter's desire to participate in federal elections." See Plaintiffs' Complaint, ¶ 91. Texas's requirements regulate third party delivery of a completed application. That application is the means by which eligible citizens participate in elections. Texas's decision to protect it promotes, rather than offends, the purposes of the NVRA.

Section 13.038 does not conflict with the NVRA, either alone or in conjunction with other sections of the Election Code. Plaintiffs have failed to state a claim of a violation of the National Voters Registration Act, and Defendant Andrade is entitled to dismissal.

**B. FIRST AMENDMENT: FACIAL AND AS–APPLIED CHALLENGES**

Plaintiffs bring both a facial and an as–applied challenge to Sections (appointment of volunteer deputies), 13.008 (prohibition of compensation per voter registered), 11.002 (volunteer deputy must be eligible as Texas voter), 13.042 (VDR must personally deliver applications), 13.031

(training), 13.038 (VDR limited to collecting applications in county where deputized), and 13.033 (volunteer deputy must display certificate of appointment to voter who requests to see it). They claim in Count II of their Causes of Action that these statutes burden their political speech directed toward persuading non-voters to complete voter registration forms, and they do so by "making voter registration activities administratively and economically impractical and inefficient, effectively limiting the amount of voter registration speech that groups like Voting for America can engage in and the size of the audience that the speech can reach." See Plaintiffs' Complaint, ¶ 94.

Facial challenges are disfavored. *Washington State Grange v. Washington State Republican Party,* 552 U.S. 442, 450, 128 S.Ct. 1184, 1191 (2008). They often rest on speculation, they run contrary to judicial restraint in avoiding a constitutional question, and they frustrate the will of the people as expressed by their elected representatives. *Id.* at 450–451, 128 S.Ct. at 1191. The court in *Washington State Grange v. Washington State Republican Party* noted that the states possess a broad power under the Elections Clause to prescribe the times, places, and manner of elections for federal offices, *Id.* at 451, 128 S.Ct at 1191, citing *Clingman v. Beaver,* at 586, 125 S.Ct. at 2029 (quoting *Tashjian v. Republican Part of Connecticut*, 479 U.S. 208, 217, 107 S.Ct. 544, 550 (1986). That power, however, is "subject to the limitation that [it] may not be exercised in a way that violates ... specific provisions of the Constitution." *Williams v. Rhodes,* 393 U.S. 23, 29, 89 S.Ct. 5, 21 (1968). This includes freedom of political association. *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 222, 109 S.Ct. 1013 (1989) (quoting *Tashjian*, at 217, 107 S.Ct. 544). The court went on to explain:

> Election regulations that impose a severe burden on associational rights are subject to strict scrutiny, and we uphold them only if they are "narrowly tailored to serve a compelling state interest." *Clingman*, supra, at 586, 125 S.Ct. 2029; see also *Rhodes*,

> supra, at 31, 89 S.Ct. 5 ("'only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms'" (quoting *NAACP v. Button*, 371 U.S. 415, 438, 83 S.Ct. 328 (1963))). If a statute imposes only modest burdens, however, then "the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions" on election procedures. *Anderson v. Celebrezze*, 460 U.S. 780, 788, 103 S.Ct. 1564 (1983). "Accordingly, we have repeatedly upheld reasonable, politically neutral regulations that have the effect of channeling expressive activity at the polls." *Burdick v. Takushi*, 504 U.S. 428, 438, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992).

*Id.* at 452, 128 S.Ct. at 1192.

The question then, is the extent of the burden that these election statutes place on Plaintiffs' exercise of their constitutional rights to advocate for voter registration. The answer is none. Plaintiffs' constitutional right is to speak freely in encouraging citizens to register and to vote. None of the statutes regulate that speech in any way. What the statutes regulate is actually registering citizens to vote, which Plaintiffs themselves have pled is a governmental function. The challenged statutes govern the handling and delivery by third parties of completed voter registration applications. The First Amendment does not give Plaintiffs a right to handle and deliver other people's applications.

Plaintiffs are free to canvass neighborhoods, strike up conversations, identify unregistered voters, encourage them to vote, provide them with blank applications, provide them with stamped envelopes where needed, and walk with them to a mailbox. None of the statutes governing VDRs even touch on any of these functions. Actually registering to vote, however, is a constitutional right that belongs to the voter, and receiving and processing the application is a governmental obligation. When the worker accepts a completed application for delivery, he is no longer expressing his own First Amendment rights, but those of the prospective voter.

With respect to a facial challenge, the challenged laws do not regulate speech on the basis of content or viewpoint. Indeed, they do not regulate speech at all, but activity involved in the governmental process of registering other people to vote. The laws governing VDRs in Texas are reasonable in that they draw the line between advocacy and registering to vote at the point where a voter gives control and possession of his completed application to a third party. They are designed to protect the voter's application from the time it leaves his hand, unless he has chosen to mail it himself or through an authorized representative, until the time that it reaches the voter registrar. The laws are politically neutral in that they apply equally to everyone. They do not discriminate based on the content of one's political message. Campaign workers for both parties, independents, and groups that advocate voter registration for its own sake are all subject to the same regulations.

Although it would be difficult for Plaintiffs to argue that the act of registering voters is anything other than a government function, it appears that they are claiming limitation on speech caused by these statutes that regulate the act of registering to vote. That claim assumes some degree of a right to register others. They may therefore be arguing that their mission to advocate for registration includes assisting voters, and that accepting an application for delivery is the completion of that task.

Even assuming for the sake of argument that this act of registering voters is found to be speech, the burdens placed on that speech by the challenged statutes are not severe. They require that a person who wishes to register other people to vote take steps that identify him both to the voter and to the local registration authority, and that allow the voter and the voter registrar to track the applications that the volunteer accepts. As noted, these steps are reasonable and nondiscriminatory, and the state's important interests in regulating elections are sufficient to uphold them.

Even if this court were to find that the burdens are severe, the statutes would still be valid. In this case, the state must show a "compelling state interest in the regulation of a subject within the State's constitutional power to regulate." *Rhodes* at 31, 89 S.Ct. at 5, quoting *NAACP v. Button*, 371 U.S. at 438, 83 S.Ct. at 341. It is well settled that preventing voter fraud is a compelling interest. *Purcell v. Gonzalez*, at 4 127 S.Ct. at 7 (2006). There is also no question that the Elections Clause gives states the power to regulate elections. Furthermore, these statutes are narrowly drawn. They begin to regulate at the precise point where a volunteer accepts an application for delivery to the registrar–where the voter loses possession and control of the application–which is the point at which voter fraud in the form of failing to deliver the application may happen without the knowledge of either the voter or the registrar.

Plaintiffs have not shown with respect to any of these statutes that they are violative of First Amendment, either facially or as they are applied to Plaintiffs. The statutes do not burden First Amendment rights of these Plaintiffs or of other citizens, and to the extent that Plaintiffs make an argument of such a burden, that burden is not severe, the statutes are reasonable and nondiscriminatory, and in any case, they are narrowly tailored to serve a compelling government interest.

With these principles in mind, Secretary Andrade will show that each of the Election Code sections challenged by Plaintiffs do not violate First Amendment rights, either facially or as applied to these Plaintiffs.

**1. Section 13.031–Appointment**

The requirement that a volunteer be appointed as a deputy registrar does not burden rights guaranteed by the First Amendment. As noted, there is no right for a citizen to register other people to vote. As there is no infringement of constitutional rights, this statute must be upheld.

Plaintiffs alleged that this statute is content and viewpoint based because it restricts their speech by mandating that no one may engage in voter registration activities without being deputized by the state. See Plaintiffs' Complaint, ¶ 97. This is not the case. Anyone may engage in voter registration activities and advocate registration without interference from this statute. It is when the advocate assumes the role of the state in accepting an application for filing with the registrar that the state's regulation begins. There is thus no severe burden on First Amendment activities.

Even assuming, however, that one's constitutional right to advocate registering to vote includes the right to assist prospective voters to the point of taking control of their application, the appointment requirement is not a severe burden on either a person or an organization. The appointment is requested in person or by mail, and a certificate is issued. TEX. ELEC. CODE § 13.031. A person who is eligible to be appointed may not be refused. TEX. ELEC. CODE § 13.032. An organization can simply require its volunteers to request appointment in the county or counties where the volunteer is registering voters. These are not severe burdens in order to be authorized to take charge of another person's application to register to vote. They are reasonable and nondiscriminatory in that they apply equally to everyone. The state's regulatory power is sufficient to uphold the state's power to appoint volunteer deputy registrars.

Even if these were severe burdens, however, they would still survive strict scrutiny. VDR regulations serve the compelling state interest of preventing voter fraud by protecting the application

of a prospective voter to ensure that it actually is delivered to the proper authority. It takes effect only at the point where the application leaves the voter's control, and it is designed to track the application until it gets to the registrar. The statute is thus narrowly drawn in that it applies only to actions involving possession and delivery of the application that belongs to another, and not to advocacy or other assistance such as providing a stamp, pre-addressed envelope for the voter to mail himself.

There is also a redressability issue regarding this statute. Striking it down would destroy the only means in Texas by which a third party may handle and deliver the voter registration application of another, since only the voter or his agent, who must be a spouse, parent, or child, may deliver the application without being appointed a deputy registrar. Plaintiffs would then go from having a lawful means to take possession of the applications of others to having no means to do so. It is doubtful that this is the result they wish to accomplish. The relief they request will not redress their alleged injury; therefore, this claim may also be dismissed for lack of subject matter jurisdiction as there is no case or controversy.

**2. Section 13.008–Prohibition on Compensation per Voter Registered**

Plaintiffs claim that this statute targets speech by groups like Voting for America and that it "imposes criminal penalties on effective speech that persuades non-voters to become eligible to vote." See Plaintiffs' Complaint, ¶ 95. They claim that these criminal penalties "may arise from the mere act of talking to citizens about the electoral system, the historical importance of voting, Texas election law, and Voting for America's mission, or transporting applicants to registrar's offices to deliver applications personally, providing applicants with pens to complete applications, or answering question about how to complete an application." *Id.* They also claim that this prohibition

denies Voting for America the ability to manage staff by preventing them from using commonly accepted business practices such as performance evaluation, performance-based pay, and requiring performance as a condition of employment. ¶ 96.

Plaintiffs' problem with Section 13.008 apparently stems from the fact that it prohibits compensation "based on the number of voter registrations that the other person successfully facilitates," and "present[ing] another person with a quota of voter registrations to facilitate as a condition of payment or employment." TEX. ELEC. CODE § 13.008(a)(1)(2). Violating the statute is a Class A misdemeanor. The statute does not prohibit the speech; it just prohibits paying an employee based on how many successful registrations he facilitates. None of the activities that Plaintiffs list, including providing pens, is sanctioned by this statute, and no common business practices are outlawed. The statute merely prohibits paying someone else per successful registration and conditioning payment on a specified number of registrations.

Additionally, none of the business practices listed are prohibited. Plaintiffs may still engage in evaluating their employees, requiring performance, and providing performance-based pay. The pay, however, cannot be per successfully registered voter, and it cannot be based on a quota of successfully registered voters.

Plaintiffs claim that the statute chills and restricts speech about voter registration. None of the types of speech they list, however, is in any way affected by the statute. They apparently surmise that the lack of per voter registration compensation reduces the amount of speech they and their workers engage in. Facial challenges, however, are disfavored because they rest on speculation such as this. *Washington State Grange v. Washington State Republican Party*, 552 U.S. at 450, 128 S.Ct at 1191. The statute does not affect paying employees of organizations like Voting for America for

their speech, however. Rather, it affects paying them for a government function–delivering completed registrations from eligible voters. The statute does not burden constitutional rights.

Even if the statute were burdensome, however, it is still constitutional. It is reasonable and nondiscriminatory in that it targets a known voter fraud practice and it applies to anyone who pays others to collect completed voter registration applications. Additionally, it passes a strict scrutiny test because it serves the compelling government interest of preventing voter fraud. This statute disincentivises the practice of simply finding names in a phone book and filling out registration applications for them. This practice not only simply registers people without their consent, it may easily lead to a voter who has moved from a previous residence being registered in two different counties or even two different states. The statute is narrowly drawn because it is focused specifically on the practice from which the abuse of the registration process springs. Thus, even assuming there is a burden and assuming that the burden is severe, this statute is constitutional.

This statute does not, as Plaintiffs claim, target just the speech of groups that advocate for voting registration. It applies as well to political parties and to campaign workers in individual campaigns. It is content and viewpoint neutral as it focuses only on compensation. It does not in any way restrict or punish free speech or association, and claims that it does so should be dismissed

**3. Section 13.042–Requirement of Personal Delivery of Applications by VDR**

The Election Code's provision that a volunteer deputy registrar must deliver the applications he has gathered either personally or through another deputized volunteer does not affect free speech or free association rights. This statute does not prohibit any advocacy on Plaintiffs' part, and therefore does not burden their First Amendment rights because the First Amendment does not encompass the freedom to register others to vote.

Evaluating the statute under a facial challenge, however, and assuming there is a slight burden on constitutional rights, the statute is reasonable and nondiscriminatory. It applies to all people who wish to handle the applications of prospective voters, and it prevents them from failing to mail all or a selected few of the applications they have gathered. It thus eliminates the excuse that an application must have been lost in the mail. Because it is reasonable and nondiscriminatory, the state's regulatory power over elections is sufficient to sustain it.

This statute can also pass a strict scrutiny test. It serves the compelling interest of preventing voter fraud by requiring those who collect completed applications to actually see that they are delivered to the registrar. If prevents employees from delivering those applications from voters who expressed a preference for the worker's candidate or party and discarding the rest to claim that they were lost in the mail.[4] The statute is also narrowly drawn, as it targets the application itself and requires the volunteer to account for it while in his possession. The state protects the constitutional rights of those who are attempting to exercise their right to register to vote.

Plaintiffs claim that it is a severe burden to them to have to personally deliver the applications that they gather by causing them to incur administrative costs. They give the example of a canvasser who accepts an application in Dallas County from an El Paso resident and must drive to El Paso to deliver the application. The fact is, however, that there is no actual limitation on speech itself imposed by the statute. While there may be administrative costs and at times, choices

[4] It should be noted that, to an extent, these statutes work together. If, for example, the prohibition against photocopying were struck down along with this statute and the compensation statute, a worker could photocopy completed applications, turn them in to his employee to be paid for them, and then discard the ones from voters who expressed a preference against the worker's political choices. By claiming that they were all mailed, the worker could engage in almost undetectable voter fraud and be paid for it.

based on those costs, such as giving the El Paso voter a stamped envelope addressed to his county registrar and walking with him to a mail box, the statute does nothing to limit Plaintiffs' message. Even if there were a severe burden, this statute passes constitutional scrutiny, and the court should uphold it.

**4. Section 11.002–Requirement That VDR Be Eligible Texas Voter**

Plaintiffs complain that restricting the ability to become a volunteer deputy registrar "restricts the amount and range of Voting for America's speech by preventing out-of-state individuals from becoming VDRs." See Plaintiffs' Complaint, ¶ 99. The statute does not, however, restrict out-of-state individuals from coming to the state and engaging in free speech and free association designed to encourage Texas citizens to register to vote. The First Amendment rights of Voting for America are not burdened by the Texas statute since Voting for America has no right to register people to vote. There is no First Amendment violation.

Even assuming a constitutional right, any burden is slight. Voting for America has not alleged that its voter registration campaigns consist only of out-of-state residents so that the statute prevent it from delivering other people's applications to the registrar. There is likewise no allegation of the amount of the burden–just the conclusive allegation that there is a severe one. Plaintiffs have therefore not alleged a severe burden to Voting for America's right to register people to vote, assuming that the right exists. The statute is reasonable in that it requires one who serves as a Texas state official to be a Texan, and it defines that status on the basis of being eligible to vote. While it does discriminate against non-Texans, that is not a suspect class. The state's regulatory interests are sufficient to uphold the statute.

**5. Section 13.031–Training**

Plaintiffs object to the training requirement because they claim that it encumbers the ability of a volunteer deputy registrar to handle and deliver applications, and they conclude that it therefore limits their speech and registration activities; therefore, it "restricts Voting for America's ability to further its goal of enfranchisement." See Plaintiffs' Complaint, ¶ 100. To the extent that Voting for America furthers its goal of enfranchisement by advocating for voter registration, this statute has absolutely no effect on them. To the extent that this organization desires to participate in actually registering people to vote, the statute requires that its workers be trained in filling out the application form. This is the same training requirement that applies to regular deputy registrars, and it reflects Texas's belief that if people who assist prospective voters knew how to fill out the application, then fewer applications might be rejected.

The requirement of training does nothing to halt or hinder Voting for America's advocacy for voter registration. With respect to its participation in registering citizens to vote, if the court finds that Voting for America has such a constitutional right, the burden that this statute represents cannot at this time be evaluated. This is a new law that was precleared on March 6, 2012, after this lawsuit was filed. The course has not yet been developed by the Secretary of State. Plaintiffs can therefore not claim any sort of burden, and certainly not a severe one.

Assuming a slight burden, the statute is reasonable in that it makes a very simple assumption that if a voter registrar instructs someone on how to fill out the form, then the person instructed would know how to fill out the form. It is nondiscriminatory in that it applies to anyone who seeks to be a VDR. Thus, the state's regulatory powers are sufficient to uphold the statute. Even if there were a severe burden, however, the statute serves a compelling interest in ensuring that the rights of

a prospective voter are exercised by increasing the possibility that a voter's application will be successfully processed. The statute is narrowly drawn to meet that goal by applying the training requirement only to those persons who wish to be deputized, and not to all person who wish to assist voters in filling out their applications.

**6. Section 13.038–Power in County Where Deputized**

Plaintiffs complain of the grant of powers to a VDR in Section 13.038 because it only grants power for the VDR to act in one county. This, they claim, forces Voting for America either to downsize its voter registration drives or to develop infrastructure to deliver applications from all over the state, which makes a state-wide drive impractical and reduces the number of canvassers employed to interact with citizens. The statute therefore limits the size of Voting for America's audience.

All of these results allegedly stem from the fact that a county's voter registrar can only deputize people to work in his county. As with other of their claims, Plaintiffs have failed to demonstrate that this statute affects their constitutional rights, as they have no constitutional right to act for any voter registrar. That right is derived entirely from state law. Without it, Voting for America's employees have no right at all to handle and deliver completed registrations.

To the extent that the court assumes a constitutional right to possess another's voter registration application, any burden imposed by this statute is slight. It is reasonable in that, rather than limiting a volunteer, it actually provides a means by which a third party may possess for delivery the application of another voter, and it is reasonable because it allows the local voter registrar to be aware of the volunteers in his county, thus making tracking of the completed applications easier. Even if there were a severe burden, this statute is constitutional because it serves

the compelling government interest of preventing voter fraud. It is narrowly drawn because the power to be a VDR is derived from the only voter registration authorities in Texas, who are county officials.

With respect to this statute, there is an issue of redressability. If the court were to strike down the Texas statute that defines the powers of a volunteer deputy, then VDRs will have no powers at all. The statute that allows only a spouse, child, or parent to serve as an agent for a voter would still be enforced, because it has not been challenged here, and Plaintiffs would be left without any power to handle and deliver voter registration applications for other voters. Thus, striking down this statute does not give a VDR power all over the state; instead, it takes away the power in the only county that the VDR was authorized to act. Therefore, if the merits of this claim are found to be in Plaintiffs' favor, striking down this statute will not give them the statewide powers they seem to be seeking.

**7. Section 13.033(d)–Identification of VDR to Applicant**

Section 13.033(d) provides: "A volunteer deputy shall present the certificate [of appointment] as identification to an applicant for registration, on request, when receiving the application for delivery to the registrar." TEX. ELEC. CODE § 13.003(d). Plaintiffs complain that this statute "deters voter registration speech by compelling personal–rather than professional–identification of canvassers engaged in face-to-face interactions with citizens about political and social change."

Plaintiffs do not explain exactly what speech is deterred by this statute. Apparently, Plaintiffs feel that having to show their certification compels personal identification, although to Defendant, it would seem that showing the identification actually identifies one professionally. It seems that Plaintiffs prefer a professional approach to engaging other citizens in conversations about political and social change. The statute does nothing to deter them from doing so. It requires the certificate

to be presented only at one time–when receiving a completed application for delivery–and only upon the request of the voter. Other than this one exchange, the canvassers' conversations concerning political and social change may be under any sort of identification that the parties to the conversation choose.

There is no violation of any free speech right imposed by this statute. Indeed, there is no interference at all with whatever approach a canvasser wishes to take when engaging citizens in dialogue concerning voter registration. At the point where the canvasser accepts a voter's application, however, this statute allows the voter to decide how he wishes to interact with the canvasser, which is the voter's free speech right.

All this statute does is provide that the canvasser, when receiving an application, show his authority to do so, and he only must do that when the voter asks. There is no constitutional right to identify oneself professionally as opposed to personally when the person to whom one is speaking wishes to engage on a different level. This claim borders on the frivolous, and it should be dismissed.

**C. FIRST AMENDMENT: SEVERE BURDEN**

Plaintiffs have also alleged a cause of action under the First Amendment in which they claim that the requirements of appointment, personal delivery, identification, the prohibition against compensation, and the limitation of a volunteer's authority to the county or counties in which he is appointed, "make registration drives economically and administratively impractical, effectively limiting the amount of Voting for America's speech and restricting the size of the audience that Voting for America can persuade with its message." See Plaintiffs' Complaint, ¶ 108.

Plaintiffs have, to varying degrees, alleged with respect to each of these Texas statutes that they limit Plaintiffs' efforts with respect to their attempts to reach voters, presumably through voting drives. In the preceding analysis, each of these statutes was presumed to be a severe burden, and was shown to be constitutional. This cause of action apparently claims that the combination of these five statutes on voting registration drives is severe, as opposed to the application of each individual statute on Plaintiffs' constitutional rights.

As noted throughout, these statutes, individually or in concert with each other, limit only the right to physically control and possess the voter application of a Texas citizen. Voting for America has the right to engage in political speech. To the extent that Plaintiff claims that the act of handling and delivering other people's voting registrations, and to the extent that this court may assume that the constitution protects this conduct, Plaintiffs have not shown any kind of burden. They have asserted conclusory allegations that a burden exists, but have alleged no facts to show what that burden might be.

Even so, assuming that there is a burden, be it slight or severe, these statutes can pass constitutional muster because they serve the compelling governmental purpose of preventing voter fraud, and they are narrowly drawn to take effect only at the point where the voter loses control of his application to exercise his own constitutional right. To whatever extent this cause of action alleges a cause that is different from Plaintiffs' facial and as–applied First Amendment challenge, this claim must also be dismissed.

**D. SECTION 13.008: OVERBROAD AND VAGUE**

Section 13.008 prohibits compensation based on 1) "the number of voter registrations that the other person successfully facilitates; 2) present[ing] another person with a quota of voter

registrations to facilitate as a condition of payment or employment; and 3) engag[ing] in another practice that causes another person's compensation from or employment status with the person to be dependent on the number of voter registrations that the other person facilitates...." TEX. ELEC. CODE § 13.008(a)(1)(2)(3). Plaintiffs complain that the word "facilitates" is vague and that it creates criminal liability for engaging in free speech such as engaging in conversations concerning voter registration.

"Striking down [a law] as facially void for vagueness is a disfavored judicial exercise." *Schleifer v. City of Charlottesville*, 159 F.3d 843, 853 (4th Cir. 1998). Overbreadth and vagueness are related but distinct concepts. *J&B Entm't, Inc. v City of Jackson*, 152 F.3d 362, 366 (5th Cir. 1998). In a suit asserting both the overbreadth and the vagueness of a statute, the Court should first consider whether the statute is overbroad, and, if it is not, then whether it is unconstitutionally vague. *Fairchild v. Liberty Indep. Sch. Dist*., 597 F.3d 747, 755-56 (5th Cir. 2010).

"The First Amendment doctrine of overbreadth is an exception to our normal rule regarding the standards for facial challenges." *Virginia v. Hicks*, 539 U.S. 113, 118 (2003). But the exception is narrow. *Sabri v. U.S.*, 541 U.S. 600, 609-10 (2004) (overbreadth challenges "are especially to be discouraged," so that "we have recognized the validity of facial attacks alleging overbreadth . . . in relatively few settings, and, generally, on the strength of specific reasons weighty enough to overcome our well-founded reticence").

"Even though the challenge be based on the First Amendment, the overbreadth doctrine is not casually employed." *Los Angeles Police Dept. v. United Reporting Publ'g Corp*., 528 U.S. 32, 39 (1999). Because a holding that a statute is facially "overbroad" means "that any enforcement ... is totally forbidden," such a ruling is "manifestly strong medicine," which must be "employed by [a]

Court sparingly and only as a last resort." *Broadrick*, 413 U.S. at 611. Consequently, "where there are a substantial number of situations to which a statute may validly be applied, we eschew reliance on the overbreadth doctrine." *U. S. v. Wallington*, 889 F.2d 573, 576 (5th Cir. 1989); accord *Sec'y of State of Md. v. Joseph H. Munson Co., Inc*., 467 U.S. 947, 964-65 (1984). Thus, "a statute need not fall in toto merely because it is capable of some unconstitutional applications." *CISPES v. F.B.I.*, 770 F.2d 468, 472 (5th Cir. 1985) (citing *Broadrick*, 413 U.S. at 614).

> There must be a "significant imbalance between the protected speech the statute should not punish and the unprotected speech it legitimately reaches." The party challenging the statute must demonstrate "'a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the court' before a statute will be struck down as facially overbroad." . . . . The fact that a court can hypothesize situations in which the statute will impact protected speech is not alone sufficient. . . . Invalidating a law that is perfectly constitutional in some applications has "obvious harmful effects."

*Hersh v. U.S. ex rel. Mukasey*, 553 F.3d 743, 762-63 (5th Cir. 2008) (citations and brackets omitted).

In a due process vagueness challenge, the plaintiff has the burden to show that each challenged law and rule "is impermissibly vague in all its applications[,] requiring a demonstration that there are 'no set of circumstances under which the [rule] would be valid . . .'" *Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 551 (5th Cir. 2008) (emphasis added); accord *U.S. v. Clinical Leasing Serv., Inc*., 930 F.2d 394, 395 (5th Cir. 1991).

Every statute, whether civil or criminal, raises questions of interpretation. The fact that a statute fails to define its precise boundaries in every conceivable situation does not invalidate the statute. *Clinical Leasing Serv.*, 930 F.2d at 395. While "[w]ords inevitably contain germs of uncertainty and . . . there may be disputes over the meaning of . . . terms," that does not render a

statute unconstitutionally vague. *Broadrick v. Okla*., 413 U.S. 601, 608 (1973). "[T]here are limitations in the English language with respect to

being both specific and manageably brief . . ." Id. Thus, a law is not unconstitutionally vague if "it requires a person to conform his conduct to an imprecise but comprehensible normative standard." *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 n. 7 (1982).

> Yet clarity even in a criminal code can be a receding mirage. Thus the vagueness doctrine cannot "convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited."

*Schleifer*, 159 F.3d at 853 (quoting *Colten v. Kentucky*, 407 U.S. 104, 110 (1972)).

Plaintiffs allege that Section 13.008 is overbroad because it creates criminal liability for engaging in protected speech concerning voting rights, explanation of the voter registration process, and conversations concerning the importance of expanding the voting base. This is all due, Plaintiffs claim, to the vagueness of the term "facilitates." See Plaintiffs' Complaint, ¶ 110.

Even a cursory look at the statute shows that it does not create criminal liability for any of the conduct that Plaintiffs name. The statute is not about speech. It is about methods of compensating people who collect and deliver completed voter registration applications. The statute does under any stretch of interpretation criminalize or outlaw the speech that Plaintiffs allege. The statute is not overbroad.

Moreover, the term "facilitate" is not vague. The Texas legislature creates an offense for paying another person based on the number of voter registrations that the person "successfully facilitates." Facilitates has a common meaning, which is to assist or aid. Successfully facilitates

means that one's assistance has resulted in a successful registration. Furthermore, the only conduct that is criminalized is payment per voter registration.

The legislature omitted the word "successful" with respect to the next two sections. There, whether the facilitation is successful or not, payment may not be based on a quota of registrations aided or conditions payment on a quota of registrations aided. There is nothing in the statute that is vague.

Plaintiffs extreme allegations about what might or might not be covered notwithstanding, this statute is sufficiently specific to give Plaintiffs and others fair warning not to base compensation of their employees by counting the voter registrations attributable to each worker.

**E. SECTION 13.036(b): VAGUENESS**

Plaintiffs also challenge Section 13.036 as overbroad and vague. That provision reads as follows: "The registrar may terminate the appointment of a volunteer deputy registrar on a determination by the registrar that the volunteer deputy failed to adequately review a registration application as required by Section 13.039." TEX. ELEC. CODE § 13.036(b). No criminal liability is involved.

Plaintiffs complain that "failed to adequately review" and "completeness" render this statute unconstitutionally vague. They claim that workers are left to guess what they must do to comply with the law.

The Election Code dictates what information is required for a voter registration application. It is a relatively simple thing to read an application and fill in the blanks. The statute means that a VDR is responsible for ensuring that the voter filled in all of the necessary blanks. (For the court's convenience, a copy of an application from Galveston County is attached as Appendix B.) In the

event that workers do not understand how to help citizens fill in the blanks, the legislature has passed the law providing training to VDRs, but as is made evident in their Complaint, Plaintiffs do not want to be required to take it. This statute provides for removal from serving as a VDR when a volunteer submits an application on behalf of a voter, and that application, because of a deficiency, prevents the voter from being included on the voter rolls. Indeed, a person whose service as a VDR cost a citizen his right to vote should not be allowed to continue to help other prospective voters.

This statute is not vague. It does not require a person to conform to an incomprehensible standard of conduct. The description of reviewing an application to see if it is complete is straightforward and precise. Plaintiffs have failed to demonstrate that this law is vague in any respect.

Plaintiffs further allege that the law invites arbitrary, discriminatory, and inconsistent enforcement throughout the 254 Texas counties. They do not, however, allege any act by any registrar anywhere in Texas that is arbitrary, discriminatory, or inconsistent. They have alleged only the potential for arbitrariness, discrimination, and inconsistency. Such "potential" does not invalidate the law on the basis of vagueness.

## CONCLUSION

Plaintiffs have made a comprehensive attack on the Texas Election Code's provision for volunteer deputy registrars. They have failed, however, to demonstrate an infirmity with any of the statutory provisions they have attacked. This court should dismiss this action insofar as it lies against the Texas Secretary of State, and grant the Secretary all relief to which she shows herself justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

DAVID C. MATTAX
Deputy Attorney General for Defense Litigation

ROBERT O'KEEFE
General Litigation, Division Chief

/s/ Kathlyn C. Wilson
KATHLYN C. WILSON
Texas Bar No. 21702630
Southern District ID No. 10763
Assistant Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120
(512) 320-0667 FAX

*Attorneys for Defendant Hope Andrade*

**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:

Chad W. Dunn
K. Scott Brazil
Brazil & Dunn, L.L.P.
4201 Cypress Creek Parkway, Suite 530
Houston, Texas 77068
Facsimile: (281) 580-6362

Ryan Malone
Ropes & Gray, LLP
700 12th St. NW Suite 900
Washington, DC 20005
Facsimile: (202) 383-8322

Dicky Grigg
Spivey & Grigg, L.L.P.
48 East Avenue
Austin, Texas 78701
Facsimile: (512) 474-8035

Brian Mellor
Michelle Rupp
Project Vote
1350 Eye Street NW
Washington, DC 20005
Facsimile: (202) 629-3754

/s/ Kathlyn C. Wilson
Kathlyn C. Wilson
Assistant Attorney General