

**PLAINTIFF’S ORIGINAL VERIFIED PETITION AND APPLICATION FOR
TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND
PERMANENT INJUNCTION**

Plaintiff Texas Organizing Project hereby files this Original Petition and Application for Temporary Restraining Order and Temporary and Permanent Injunction. In support of same, Plaintiff respectfully shows the Court as follows.

**I.
BACKGROUND**

This Application seeks declaratory and injunctive relief to redress Defendants’ delay in opening numerous polling locations located in Harris County on Election Day, November 8, 2022. These delays have forced countless voters to leave polling places without being able to vote. *See* Ex. A. Plaintiff therefore seeks a declaration that Defendants have violated Texas Election Code Section 43.031 and seeks injunctive relief requiring Defendants to operate the delayed Harris County polling locations until 8 p.m. to ameliorate the burden its failure to timely open polling locations has imposed on Plaintiff’s members and other voters. Harris County uses the Countywide Polling Place Program. Texas Election Code Section 43.007(p), created by the Texas Legislature in 2019, requires that “[i]f a court orders any countywide polling place to remain open after 7 p.m., all countywide polling places located in that county shall remain open for the length of time required in the court order.” Thus, while Plaintiffs seek relief limited to those polling places that were excessively delayed in opening, it is the judgment of the Texas Legislature that such relief should extend countywide.

**II.
DISCOVERY CONTROL PLAN**

1. Pursuant to Texas Rule of Civil Procedure 190.1, Plaintiff intends to conduct discovery under Discovery Level 3.

III. PARTIES

2. Plaintiff Texas Organizing Project, (“TOP”) is a Texas non-profit corporation, with its principal place of business in San Antonio, Texas. TOP is a membership-based organization that empowers low and moderate-income neighborhoods to build political power and stronger communities through issue advocacy, lobbying efforts, and electoral organizing. Founded in 2009, TOP has dozens of employees and hundreds of regular volunteers working in three offices across the state, including an office in Harris County. TOP’s membership comprises thousands of low- to moderate-income people, with a particular focus on serving the needs of Black and Latino communities. As a result of these polling place opening delays, TOP members and supporters will be at worst disenfranchised and at best forced to travel further and stand in longer lines. Further, TOP, its staff, and its members have to divert resources towards having additional members and staff at polling locations to inform voters about the delays and make other plans to vote if possible, rather than spending time on their other get-out-the-voter efforts. *See Ex. A.* TOP must also divert resources towards identifying voters that left closed voting locations, to encourage them to return to vote later.
3. Defendant Harris County is a subdivision of the State of Texas.
4. Defendant Harris County Commissioners Court is the governing body of Harris County.
5. Defendant Clifford Tatum is the Elections Administrator of the Harris County Election Department and is sued in his official capacity only. The Election Administrator is the official in charge of conducting election operations in Harris County. He may be served with process by and through his counsel at the Harris County Attorney’s Office at 1019 Congress St, Houston, TX 77002.
6. Defendant Lina Hidalgo is the Harris County Judge and is sued in her official capacity only. The County Judge is the presiding officer of the Harris County Commissioners Court. She may

be served with process by and through her counsel at the Harris County Attorney's Office at 1019 Congress St, Houston, TX 77002.

7. Defendant Rodney Ellis is the Harris County Commissioner for Precinct 1 and is sued in his official capacity only. Commissioner Ellis is a voting member of the Harris County Commissioners Court, the governing body of Harris County. He may be served with process at 1001 Preston, Houston, TX 77002.
8. Defendant Adrian Garcia is the Harris County Commissioner for Precinct 2 and is sued in his official capacity only. Commissioner Garcia is a voting member of the Harris County Commissioners Court, the governing body of Harris County. He may be served with process at 1001 Preston, Houston, TX 77002.
9. Defendant Tom. S. Ramsey is the Harris County Commissioner for Precinct 3 and is sued in his official capacity only. Commissioner Ramsey is a voting member of the Harris County Commissioners Court, the governing body of Harris County. He may be served with process at 1001 Preston, Houston, TX 77002.
10. Defendant R. Jack Cagle is the Harris County Commissioner for Precinct 4 and is sued in his official capacity only. Commissioner Cagle is a voting member of the Harris County Commissioners Court, the governing body of Harris County. He may be served with process at 1001 Preston, Houston, TX 77002.
11. Defendants Harris County Judge and Harris County Commissioners created the position of Harris County Elections Administrator. Tex. Elec. Code § 31.031. Defendants County Judge and Commissioners are further responsible for setting the number of the Election Administrator's deputies and other staff, providing office space and equipment, and providing operating expenses to the Elections Administrator, *id.* § 31.039, designating Election Day polling locations based on recommendations provided by the Elections Administrator, *id.*

§§ 31.043, 43.002; appointing election-day judges and alternate judges, *id.* § 32.002 and adopting the legally required methodology for choosing election-day polling places, *id.* § 43.007.

12. At all times relevant hereto, all Defendants were and have been acting under color of statutes, ordinances, regulations, customs and usages of the State of Texas and Harris County, Texas.

IV.
JURISDICTION AND VENUE

13. Plaintiff seeks non-monetary declaratory and injunctive relief. This Court's jurisdiction to enter injunctive relief in this lawsuit is established by Texas Election Code Section 273.081 and Texas Civil Practice and Remedies Code Section 65.001, *et seq.* This Court's jurisdiction to enter declaratory relief is established by Texas Civil Practice and Remedies Code Section 37.001, *et seq.*

14. Harris County is the proper venue for this lawsuit because Defendants are Harris County residents, Defendants' principal offices are located in Harris County, and the actions of which Plaintiff complains occurred and are occurring in Harris County. *See* TEX. CIV. PRAC. & REM. CODE § 15.002. The Court further has jurisdiction over Defendants because the doctrine of governmental immunity is inapplicable to county officials sued in their official capacity for *ultra vires* actions, and Plaintiff bring *ultra vires* claims against Defendants. *See Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154 (Tex. 2016).

V.
FACTS

15. Texas law requires election officials to open polling locations no later than 7 a.m. and to ensure that such polling locations remain open for voting until 7 p.m., for a total of 12 hours of availability on Election Day. There is no exception to this requirement. These polling locations must additionally remain open even past 7 p.m., if necessary, to allow voters who are inside or

waiting to enter the polling place at that time the opportunity to vote.

16. On November 8, 2022, the following polling locations did not open at 7 a.m. as required by law; all opened more than one hour late, and, in at least one instance, for over three hours, and many of the locations have continued to experience machine malfunctions causing delays and temporary closure, including

- Neighborhood Centers Inc Ripley House Campus – Gym, 4410 Navigation Boulevard, Houston, TX 77011
- Green House International Church, 16711 Ella Blvd., Houston, TX 77090
- Bayland Park Community Center – Auditorium, 6400 Bissonnet Street, Houston, TX 77074
- Saint Timothy Lutheran Church – Adult Education Building, 14225 Hargrave Road, Houston, TX 77070
- Helms Community Learning Center – Cafeteria, 503 West 21st Street, Houston, TX 77008
- Bruce Elementary School – 510 Jensen Drive, Houston, TX 77020
- Cypresswood Elementary School – Music Room, 6901 Cypresswood Point Avenue, Humble, TX 77338
- Baker Ripley Cleveland Campus, 720 Fairmont Parkway, Pasadena, TX 77504
- Sunnyside Multi-Service Center, 9314 Cullen Boulevard, Houston, Texas 77051
- West Gray Center, 1355 W Gray Street, Houston, TX 77019
- Wainwright Elementary School, 5333 Milwee Street, Houston, Texas 77092
- Kashmere Multi-Service Center, 4802 Lockwood Drive, Houston, Texas 77026

See Exhibits A–S attached hereto (Declarations of voters and poll monitors).

17. Because these polling locations were not opened on time, voters who relied on Defendants complying with Texas law, and arrived at these locations expecting to be able to vote, were unable to do so at that time. According to several of the attached declarations, multiple voters

left the line to vote because the polls were not open on time. *See* Exs. A, B, C, F, I, K, M, N, P, Q, R.

18. Plaintiff affirms that poll officials failed to open their polls on time and affirms that it has received reports about delays in the opening of the above-listed polling locations from its poll monitors. Voters waited until well after 7 a.m. for some of the polling locations to open. Exs. A–S.

19. Because Defendants failed to open the polling locations by the required time, at 7 a.m., voters left the polling location and were not able to vote. Exs. A–S. Some voters will not be able to return to their polling location and vote by 7 p.m. because of work and/or other commitments. Ex. M. As a result, voters may effectively suffer disenfranchisement or, at the very least, are in immediate danger of suffering disenfranchisement if the above polling locations close at 7 p.m.

20. Plaintiff's staff and members have had to remain stationed at the problematic polling places, directing and assisting voters who are unable to vote, rather than engaging in other get-out-the-vote efforts such as canvassing. Plaintiff's staff are spending time trying to identify and contact voters who left polling locations because they were closed, to encourage them to vote later.

21. Because Harris County utilizes the Countywide Polling Place Program ("CWPPP"), voters may vote at any polling place on Election Day rather than exclusively at the polling place assigned to their respective election precincts. Defendants' failure to open the above-listed polling locations on time results in increased lines at other polling locations in the county, as those voters who did have time to travel to another polling place likely did so. This domino effect burdens other voters, including Plaintiff's thousands of members, in other polling locations and itself results in disenfranchisement.

22. In a telephone call, Plaintiff, through its counsel, notified Defendants that it would seek

immediate injunctive and/or mandamus relief from this Court on the grounds stated herein as soon as the matter could be heard. Because Election Day is the last day to vote in the 2022 General Election, Plaintiff has no plain and adequate remedy available other than this Court ordering Defendants to keep polling locations open until 8 p.m. This discrete extension of time until 8 p.m. for the polling locations at issue will not delay or cancel the election, interfere in the elective process, or require inquiry into the validity or invalidity of the election.

23. Texas courts, including in Harris County, can and have remedied violations of Texas Election Code Section 41.031 by ordering counties to keep polling locations open after 7 p.m. in order to offset late openings which burden voters. *See* Exs. T–V. (Orders from courts in Hidalgo County, Harris County, and Upshur County).
24. Texas Election Code Section 63.011(e) explicitly envisions courts ordering counties to have extended hours at Election Day polling locations, and requires any votes cast during court-ordered extended hours to be cast provisionally. (“A person who is permitted under a state or federal court order to cast a ballot in an election for a federal office after the time allowed by Subchapter B, Chapter 41, must cast the ballot as a provisional vote in the manner required by this section.”).
25. Texas Election Code Section 43.007(p) also explicitly envisions courts ordering counties to extend Election Day hours and requires that “[i]f a court orders any countywide polling place to remain open after 7 p.m., all countywide polling places located in that county shall remain open for the length of time required in the court order.”

VI. **CAUSE OF ACTION**

Defendants’ Actions Violation Section 41.031 of the Texas Election Code

26. The Texas Election Code provides a private cause of action for “[a] person who is being

harmed or is in danger of being harmed by a violation or threatened violation of this code” and entitles such persons “to appropriate injunctive relief to prevent the violation from continuing or occurring.” Tex. Elec. Code § 273.081.

27. Defendants’ failure to open the above-listed polling locations at 7 a.m. constitutes a violation of the Texas Election Code, which requires that “the polls shall be opened at 7 a.m. for voting and shall be closed at 7 p.m.” Tex. Elec. Code § 41.031. The Election Code further provides that “[a] voter who has not voted before the time for closing the polls is entitled to vote after that time if the voter is inside or waiting to enter the polling place at 7 p.m.” Tex. Elec. Code § 41.032.

28. Plaintiff is therefore entitled to assert a cause of action pursuant to Texas Election Code Section 273.081 because Defendants’ failure to open polling locations on time harms and is in danger of harming its members and other voters.

VII. APPLICATION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

Plaintiff re-alleges and incorporates by reference the allegations contained in all of the preceding paragraphs and for the reasons discussed below is entitled to injunctive relief both under Texas Election Code Section 273.081 and at common law.

A. Plaintiff Is Entitled to Injunctive Relief on Its Statutory Claim Because It Has Shown a Violation of a Statute That Authorizes Injunctive Relief.

Plaintiff seeks relief pursuant to Texas Election Code Section 273.081 because its members are “being harmed or [are] in danger of being harmed by a violation or threatened violation of [the Election Code],” Tex. Elec. Code § 273.081, namely the violation of Texas Election Code Section 41.031’s requirement that polling locations open at 7 a.m. for 12 hours. Section 237.0831 authorizes “appropriate injunctive relief to prevent [such] violation[s] of the Election Code] from

continuing or occurring.” *Id.*

Where “injunctive relief is provided for by a specific statute . . . the applicant need not prove the[] common law elements” of “a valid cause of action against the defendant, a probable right to relief, and imminent, irreparable injury in the interim.” *Hughs v. Dikeman*, 631 S.W.3d 362, 382–83 (Tex. App.—Houston [14th Dist.] 2020, no pet.). Numerous courts addressing Texas Election Code Section 273.081 have therefore held that Section 273.081’s “express language supersedes the common law injunctive relief elements.” See *Cook v. Tom Brown Ministries*, 385 S.W.3d 592, 599 (Tex. App.—El Paso 2012, pet. denied); *Dikeman*, 631 S.W.3d at 382–83. Plaintiff is therefore entitled to injunctive relief to remedy Defendants’ violation of Texas Election Code Section 41.031 because Plaintiff has “shown a violation of a statute that authorizes injunctive relief.” *Dikeman*, 631 S.W.3d at 383 (quoting *8100 N. Freeway Ltd. v. City of Houston*, 329 S.W.3d 858, 861 (Tex. App.—Houston [14th Dist.] 2010, no pet.)).

B. Plaintiff Is Additionally Entitled to Injunctive Relief at Common Law.

Even in the absence of an express statutory authorization, Plaintiff would be entitled to injunctive relief. At common law, “a temporary injunction should only issue if the applicant establishes (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim if the injunction is not granted.” *Camp Mystic, Inc. v. Eastland*, 399 S.W.3d 266, 273 (Tex. App.—San Antonio 2012, no pet.) (citing *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002)). Further, “[b]ecause an injunction is an equitable remedy” the court should “weigh[] the respective conveniences and hardships of the parties and balance[] the equities,” which “involves weighing the public interest against the injury to the parties from the grant or denial of injunctive relief.” *Int’l Paper Co. v. Harris Cnty.*, 445 S.W.3d 379, 395 (Tex. App.—Houston [1st Dist.] 2013, no pet.).

Plaintiff satisfies each of the three elements for temporary injunctive relief at common law

and a balancing of the equities weighs in favor of that relief.

Plaintiff has established its cause of action.

Plaintiff has established its cause of action under Texas Election Code Section 273.081 due to Defendants' failure to open the listed polling locations on time for all the reasons set out earlier in this petition. *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 17 (Tex. 2011) (recognizing that Section 273.081 sets out a private cause of action); *Walling v. Metcalfe*, 863 S.W.2d 56, 57 (Tex. 1993) (first element satisfied where applicant had pleaded a cause of action).

Plaintiff has established a probable right to the relief sought.

“Probable right to relief” is a term of art in the injunction context.” *Regal Entm't Group v. iPic-Gold Class Entm't, LLC*, 507 S.W.3d 337, 345 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (citations omitted). An applicant satisfies this element when they “plead a cause of action and present some evidence that tends to sustain it, meaning that the evidence must be sufficient to raise a bona fide issue as to [their] right to ultimate relief.” *Id.* (cleaned up); see *DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 686 (Tex. 1990) (an applicant “need not establish the correctness of his claim to obtain temporary relief, but must show only a likelihood of success on the merits.”).

Defendants' failure to open these polling locations on time is a straightforward, unambiguous violation of Texas Election Code Section 41.031. Plaintiff's members and other voters are harmed or in danger of being harmed by the failure to open polling locations on time for the reasons already discussed. Plaintiff therefore has a probable right to relief on its statutory claim.

Plaintiff has established a probable, imminent, and irreparable injury in the interim if an injunction is not granted.

Defendants' failure to open these polling locations on time will injure Plaintiff's members and other voters by burdening those individuals' rights, particularly the fundamental right to vote. Plaintiff is also injured by having to divert resources to station additional staff and membership at

the problematic polling places to direct and assist voters, as well as attempt to contact voters who previously left polling locations while they were closed. The evidence supports that these injuries are more than merely probable and imminent but are in fact ongoing. Ex. A–S.

The injuries are also irreparable. “An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard.” *Butnaru*, 84 S.W.3d at 204. Infringements on constitutional rights, such as the right to vote, are quintessentially non-compensable. *See, e.g., Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”). This is true even if the burden makes it harder to vote but does not ultimately cause disenfranchisement. *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (issuing preliminary injunction against reduction in early voting days for certain voters); *see also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (noting that “[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury” and upholding preliminary injunction of several state law practices); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (issuing preliminary injunction against rejecting student voter registration forms, even though most could presumably register at their parents’ home address).

A balancing of the equities favors Plaintiff.

As discussed above, injury to Plaintiff’s members are imminent and severe. Weighed against this are only the negligible costs to Defendants should injunctive relief be granted: the cost to operate polling locations for the time already budgeted into its expenses. It cannot be overstated that these costs *are required by Texas law*. As a result, the relief requested does not delay or cancel the election, does not interfere in the elective process, does not inquire into or declare the validity or invalidity of the election, and is timely to correct the violation. *Dallas County Democratic*

Executive Committee v. Dallas County, 2002 WL 31439451 *1 (Tex. App.—Dallas Nov. 1, 2002, no pet.). In fact, the relief requested is specifically appropriate for this type of emergency situation. *Blum v Lanier*, 997 S.W.2d 259, 263–264 (Tex. 1999) (recognizing that if the matter is one that can be judicially resolved in time to correct the violation without delaying the election, “then injunctive relief may provide a remedy that cannot be adequately obtained through an election contest.”).

Further, the Texas Legislature has already envisioned and set out the equities in such circumstances. The Legislature, after a similar suit in Harris County in 2018 (*Texas Organizing Project v. Harris County*, No. 2018-80292 (295th District Court Harris County, Nov. 6, 2018)), passed a new law requiring that, “[i]f a court orders any countywide polling place to remain open after 7 p.m., all countywide polling places located in that county shall remain open for the length of time required in the court order.” Thus the Legislature specifically foresaw these circumstances and outlined appropriate judicial relief.

Injunctive relief, even if it imposes such minor costs, is therefore in the public interest because “[i]t is beyond dispute that [an] injunction serves the public interest [when] it forces the correct and constitutional application of Texas’s duly-enacted election laws.” *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 595 (5th Cir. 2006). Moreover, it is universally agreed that the public has a “strong interest in exercising the fundamental political right to vote.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). Thus, “by definition, the public interest favors permitting as many qualified voters to vote as possible.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247–48 (4th Cir. 2014) (cleaned up); *accord Jones v. Governor of Florida*, 950 F.3d 795, 831 (11th Cir. 2020); *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016); *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012). For these reasons, permitting continued violations of the Texas Election Code that also burden the right to vote is sharply contrary

to the public interest, and Texas courts have previously recognized the propriety of the relief requested here. *See, e.g.,* Ex. T, Order, *Texas Organizing Project v. Harris County*, No. 2018- 80292 (295th District Court Harris County, Nov. 6, 2018) (finding that voters have the legal right to have twelve hours of voting on Election Day, and requiring polling locations in Harris County to stay open beyond 7 p.m. to guarantee that right); Ex. U, Order, *La Unión Del Pueblo Entero v. Hidalgo County*, No. 3842-20-F (370th District Court Hidalgo County, Nov. 3, 2020) (requiring polling locations in Hidalgo County to stay open until 8 p.m. after late openings); Ex. V, Order, *In the Interest of Upshur County Voters*, No. 514-20 (115th District Court Upshur County, Nov. 3, 2020) (same). The Texas Election Code additionally and explicitly envisions that courts may order polling locations to stay open when necessary and requires voters to cast provisional ballots when courts do so. Tex. Elec. Code § 63.011(e).

Generally, “the heaviest concentration of voters [on Election Day] will be in the early morning hours and then again after 5:00 p.m.” *National Association for Advancement of Colored People State Conference of Pennsylvania v. Cortes*, 591 F.Supp.2d 757, 760 (E.D. Penn. 2008). Thus, the best way to serve the public interest and mend the violation of voters’ rights at the polling locations during the busy morning hours of Election Day is to leave the polling locations open until 8 p.m.

C. Requested Relief

For all the foregoing reasons, Plaintiff requests that this Court grant its Application for a Temporary Restraining Order and Temporary Injunction and preliminarily order Defendants and their agents, servants, employees and all persons acting under, and in concert with, or for them to operate the earlier-listed polling locations until 8 p.m. in order to remedy the violation of Texas Election Code Section 41.031, and to continue operating those polling locations until every voter who is inside the polling location or waiting in line by 8 p.m. has had a chance to vote, as required

by Texas Election Code Section 41.032. Because Texas Election Code 43.007(p) requires it, the Court must also order the other polling locations in Harris County to be open until 8 p.m. as well. Further, Plaintiff requests that this Court to order Defendants to comply with applicable provisions of state and/or federal law requiring ballots cast after 7 p.m. to be cast provisionally, and to take reasonable efforts to make the poll hour extensions known to the public.

Dated: November 8, 2022

Respectfully submitted,

By: /s/ Christina Beeler

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CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2022, a true and correct copy of the foregoing *Plaintiff's Original Verified Petition and Application for Temporary Restraining Order and Temporary Injunction* was served upon Jonathan G.C. Fombonne, counsel for Defendants, via e-mail in accordance with the Texas Rules of Civil Procedure.

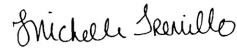
/s/ Christina Beeler

VERIFICATION

I am the Executive Director of Texas Organizing Project, which is the Plaintiff in this action. I have read the foregoing Petition and Application for Injunctive Relief and certify that its contents are true to the best of my knowledge, except as to declaration testimony from others and as to those matters which are stated upon information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on November 8, 2022



Michelle Tremillo
TOP Co-Executive Director