

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

LETICIA GARZA GALVAN and
MARTIE GARCIA VELA,

Plaintiffs,

V.

ROLANDO PABLOS, in his official capacity as Texas Secretary of State, and ARMANDINA MARTINEZ, ALMA GARCIA, ALICIA DOUGHERTY NO. 1, ALICIA COUGHERTY NO. 2, YOLANDA MARTINEZ,

Defendants

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**DEFENDANTS MARTINEZ, GARCIA, DOUGHERTY NO. 1, DOUGHERTY NO. 2 AND
MARTINEZ' MOTION TO DISMISS AND MEMORANDUM IN SUPPORT**

Defendants Armandina Martinez, Alma Garcia, Alicia Dougherty No. 1, Alicia Dougherty No. 2, and Yolanda Martinez file this Motion to Dismiss for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

I. Facts and Background

1. This action was initially filed in the 381st District Court of Starr County, Texas on April 11, 2018. The plaintiffs alleged that Texas statutes regulating the manner of counting votes in primary elections in Texas, violated their federal constitutional rights and sought redress pursuant to 42 U.S.C. § 1983.

2. Plaintiffs generally, challenge Texas election statutes regarding the manner for counting, accepting and rejecting mail in ballots, alleging these statutes do not provide sufficient protections against violations of federal constitutional rights. In addition, with regard to Defendants A. Martinez, Garcia, A. Dougherty Nos. 1 and 2, and Y. Martinez, the Plaintiffs' allegations reference

their actions as the Starr County Early Voting Ballot Board (EVBB). As to these individual Defendants, Plaintiffs only argue that the manner in which the EVBB undertook review of the mail-in ballots violated state law (Ps' Original Complaint, par. 54), provided varied standards of review for such ballots, and the EVBB's review of the mail ballots violated Plaintiffs' equal protection rights.(Plaintiffs' Original Petition, paragraphs 53-56).

II. ARGUMENT AND AUTHORITIES

3. None of the averred facts as to Defendants Armandina Martinez, Alma Garcia, Alicia Dougherty No. 1, Alicia Dougherty No. 2, and Yolanda Martinez "EVBB defendants" create the particularized injury necessary to confer jurisdiction on this Court. In addition, the EVBB defendants are entitled to qualified immunity.

4. The United States Constitution limits the jurisdiction of the federal courts to "cases" or "controversies." U.S. CONST., Art. III, § 2; *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (quoting U.S. CONST., Art. III, §§ 1, 2). Standing to sue, a doctrine rooted in the traditional understanding of a case or controversy, serves to "confine[] the federal courts to a properly judicial role." *Id.* "As the part[y] invoking jurisdiction," Plaintiffs bear the "burden of establishing standing." *Texas v. U.S.*, 809 F.3d 134, 154-5 (5th Cir. 2015), *as revised* (Nov. 25, 2015), *cert. granted*, 136 S. Ct. 906 (2016).

5. Plaintiffs must establish "(1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) and a likelihood that the injury will be redressed by a favorable decision." *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018). (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016)). As described by the Court, "[F]oremost among these requirements is injury in fact—a plaintiff's pleading and proof that he has suffered the 'invasion of a legally protected interest' that is 'concrete and particularized,' *i.e.*, which

‘affect [s] the plaintiff in a personal and individual way.’” *Id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 560 (1992)).

6. In the voting rights arena for example, the United States Supreme Court has determined that a voter alleging a constitutional violation of racial gerrymandering must reside in racially gerrymandered district. *United States v. Hays* 515 U. S. 737, 744-745 (1995). Similarly, a voter alleging vote dilution in violation of the “one person, one vote” constitutional requirement must reside in an over populated district (underrepresented district) in order to establish standing. *Fairley v. Patterson*, 493 F. 2d 598, 603 (5th Cir. 1974) (holding that “injury results only to those persons domiciled in the under-represented voting districts.”). The courts have long recognized that a person’s right to vote is “individual and personal in nature.” *Reynolds v. Simms*, 377 U. S. 533, 561 (1964).

7. Here the Plaintiffs have alleged that they suffered injury because of the way mail ballot voters were treated by the State’s laws and rules and by Starr County’s EVBB’s application of those laws and rules. (Plaintiffs’ Original Petition, paragraphs 43-56). Nowhere in their pleadings do Plaintiffs allege that Plaintiffs’ mail-in ballots were rejected. Nor could they, because the Plaintiffs in fact did not vote by mail. *See* Attachments 1-2 (Depositions of Galvan pp. 8-9 and Vela, p.6). As voters, Plaintiffs cannot claim an injury.

8. Nor can Plaintiffs claim injury as losing candidates for public office in Starr County. *See e.g. Roberts v. Wamser*, 883 F. 2d 617, 621-2 (8th Cir. 1989) (“We conclude that an unsuccessful candidate attempting to challenge election results does not have standing under the Voting Rights Act.”)

9. The essence of Plaintiffs’ claims are that certain ballot casting, handling, and counting procedures required by the State and utilized by the EVBB resulted in the improper

failure to count some ballots.

10. As a result, Plaintiffs have requested a federal district court to determine the validity of ballots cast in a local primary. However, the issue of the validity or invalidity of a ballot or ballot procedures is a question of state law. *See Hubbard v. Ammerman*, 465 F. 2d 1169 (5th Cir. 1972), *cert. denied*, 410 U.S. 910 (1973); *Partido Nuevo Progressita v. Perez* 639 F. 2d 825 (1st Cir. 1980) *cert. denied* 451 U.S. 985 (1981). The “power to control the disposition of contests over elections to ... state and local offices” is conferred by the Constitution on the states. *Ammerman*, 465 F. 2d at 1176. The proper tribunal to answer the questions raised by Plaintiffs is a state court election challenge.

11. Plaintiffs simply cannot meet the standing requirements to maintain an action as to the EVBB Defendants.

None of the EVBB Defendants have injured Plaintiffs

12. Plaintiffs do not point to any conduct by the EVBB Defendants that would form the basis of a cognizable claim under current federal or state law. A plaintiff must present “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also In re Southern Scrap Material Co., LLC*, 541 F.3d 584, 587 (5th Cir. 2008) (citing *Bell Atl. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

13. The injury alleged by the Plaintiffs is that the EVBB defendants have a policy of counting mail ballots that is inconsistent with state laws, regarding the manner of reviewing and accepting or rejecting mail ballots. Plaintiff’s Original Petition, ¶¶ 53-56. Yet, on this State law issue the Texas’ Fourth Court of Appeals has determined in the Plaintiffs’ state court election challenge that the “procedure used by the board [EVBB] did not invalidate the board’s decision.”

Galvan v. Vera, 2018 WL 4096383, at 5 (CA 04-18-00309, Court of Appeals, San Antonio, Texas, August 29, 2018). (Attachment No 3). Moreover, Plaintiffs have no standing nor ability to seek a remedy for these alleged violations, as none of the Plaintiffs have alleged or have, in fact, attempted to or have cast a mail-in ballot in Starr County elections. In fact, none of the Plaintiffs' stated causes of actions ask this Court to force the defendants to the rejection of Plaintiffs ballots; nor could they because Plaintiffs actually voted and those votes were counted.

14. Although, Plaintiffs allege several federal constitutional provisions as the basis for its suit, they have failed to allege any conduct by the EVBB Defendants that violates the particularized rights of the Plaintiffs. Plaintiffs' Original Petition, ¶¶ 43-59.

15. If the injury alleged by Plaintiffs is not actual, then it must be impending or there must be "a sufficiently high degree of likelihood" that the injury will occur. *Pharmacy Buying Ass'n, Inc. v. Sebelius*, 906 F. Supp. 2d 604, 614 (W.D. Tex. 2012) (Sparks, J.) (finding lack of standing when plaintiffs had not "identified a single example" of harm in the complaint, so their allegations were "conjectural or hypothetical"). The Plaintiffs have not pled an injury or any factual allegations that EVBB Defendants' actions regarding mail-in ballot voters is impending or has a "high likelihood" of occurring. However, even if Plaintiffs have properly alleged an injury, then the injury it has pled is not a judicially sanctioned injury. The State's mandatory requirements for EVBB to comply and process mail-in ballots is not an injury in fact. *See Delta Commercial Fisheries Ass'n v. Gulf of Mex. Fishery Mgmt. Council*, 364 F.3d 269, 273 (5th Cir. 2004) (holding that plaintiff's interest in statutory compliance is not by itself an injury in fact for purposes of standing); *Coastal Habitat All. v. Patterson*, 601 F. Supp. 2d 868, 881 (W.D. Tex. 2008) (holding that desire for defendant to follow the law, alone, "is not an injury sufficient to confer standing"). If the injury alleged is not an injury recognized by federal courts, then

Plaintiffs have no standing to file this suit.

Nor do Plaintiffs have standing to seek a Declaratory Relief

16. Plaintiffs ask for a declaratory judgment that “the statutes and regulations as challenged herein violate the right to vote, due process of law and equal protection of the law” (Plaintiff’s Original Petition, p. 16, ¶ 2). In order to secure a declaratory judgment, Plaintiffs must still establish a valid claim as to the EVBB Defendants. Plaintiffs do not have statutory standing under the Declaratory Judgment Act, which requires a plaintiff to show a substantial and continuing controversy between the adverse parties. *Schedeler v. Wells Fargo, N.A.*, No. 13-CA-875-SS, 2013 WL 12133969, at *3 (W.D. Tex. Dec. 20, 2013) (Sparks, J.). A district court does not have subject matter jurisdiction to issue a declaratory judgment when no controversy exists between the plaintiff and defendant. *State of Tex. v. West Publ’g Co.*, 882 F.2d 171, 175 (5th Cir. 1989). To establish standing in an action seeking a declaratory judgment in federal court, the plaintiff confronts the same burden of establishing the same three elements necessary for Article III standing. *Arnett v. Strayhorn*, 515 F. Supp. 2d. 699, 703 (W.D. Tex. 2006) (Sparks, J.) (citing *Lawson v. Callahan*, 111 F.3d 403, 405 (5th Cir. 1997)). Therefore, Plaintiffs’ failure to establish Article III standing, described above, also means that it cannot establish standing under the Declaratory Judgment Act. *Marketing On Hold, Inc. v. Jefferson*, No. A-10-CA-104-SS, 2010 WL 2900492, at *7 (W.D. Tex. July 19, 2010) (Sparks, J.).

17. Even in the unlikely event that Plaintiffs have sufficiently plead injury for a declaratory action, this Court has the discretion to dismiss this suit and should exercise that discretion. A court may properly consider the existence of an adequate alternate remedy when dismissing a declaratory judgment claim for lack of jurisdiction. *Granite State Ins. Co. v. Tandy Corp.*, 986 F.2d 94, 95-96, fn. 3 (5th Cir. 1992). In this case, Plaintiffs have also challenged the

same EVBB conduct, alleged here, in a state court election challenge. *See Galvan v. Vera* No. 04-18-00309, at 5 (4th Court of Appeals, Texas, August 29, 2018) (Attachment No. 3).

Qualified Immunity

18. The EVBB defendants, *in their individual capacities*, assert that they are entitled to qualified immunity on all of Plaintiff's § 1983 claims against them in their individual capacities and, as such, move this Honorable Court to dismiss Plaintiffs' § 1983 claim against them on the ground that they are entitled to qualified immunity.

19. The doctrine of qualified immunity protects government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). It is the plaintiffs' burden to overcome a defendants' assertion of qualified immunity. *Saldana v. Garza*, 684 F.2d 1159, 1163 (5th Cir.1982), *cert. denied*, 460 U.S. 1012, 103 S.Ct. 1253, 75 L.Ed.2d 481 (1983). In determining whether an official is entitled to qualified immunity, two separate inquiries are conducted. The first is whether the facts alleged show that the defendant's conduct violated a constitutional right. *Saucier v. Katz*, 533 U.S. 194, 201, (2001), *overruled in part by Pearson v. Callahan*, 555 U.S. 223, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009). Importantly, a plaintiff must satisfy a heightened pleading standard to state a claim against a defendant sued in his individual capacity,. *Oliver v. Scott*, 276 F.3d 736, 742 (5th Cir. 2002). The next inquiry is whether the right violated was clearly established at the time. *Id.* at 815–16.

18. In addition, an official's acts only violate clearly established law if "at the time of the challenged conduct, the contours of a right are sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Ashcroft v. Al-Kidd*, 563 U.S.

731 (2011) (internal quotation marks and brackets omitted). Conversely, if a reasonable government official in a defendant's position would have believed that his conduct conformed to the constitutional standard in light of the information available to him and the clearly established law, then that Defendant is entitled to qualified immunity. *Freeman v. Gore*, 483 F.3d 404, 415 (5th Cir. 2007).

18. Claims of qualified immunity may be raised in a Rule 12(b)(6) motion to dismiss. *Morales v. State of Louisiana*, 74 F.3d 1236 (5th Cir. 1995). When evaluating a defendant's qualified immunity defense within the context of a Rule 12(b)(6) motion, a district court must first find "that the plaintiff's pleadings assert facts which, if true, would overcome the defense of qualified immunity." *Backe v. LeBlanc*, 691 F.3d 645, 648 (5th Cir.2012). Specifically, Plaintiff must plead specific facts: (1) to allow the court to draw the reasonable inference the defendant is liable for the harm alleged; and (2) which would defeat a qualified immunity defense. *Id.* Furthermore, a plaintiff's Section 1983 claim must establish that the alleged constitutional deprivation was intentional or due to deliberate indifference and not merely the result of negligence. *Farmer v. Brennan*, 511 U.S. 825, 828-29 (1994).

19. Nothing in Plaintiffs' petition establishes that the Defendants' conduct violated a clearly established constitutional right, much less that at the time of the challenged conduct, the contours of a right are sufficiently clear that every reasonable official would have understood that what he or she was doing violated that right.

20. The notion that individual members of the EVBB reviewed ballots independently as alleged, was raised in the state court election challenge and reviewed by the Texas 4th Court of Appeals. *Galvan v. Vera*, 2018 WL 4096383, at 5 (CA 04-18-00309, Court of Appeals, San Antonio, Texas, August 29, 2018), (Attachement No 3). On the

allegation of the Plaintiffs with regard to the EVBB, the State appellate court determined:

“Finally, Galvan and Vela contend the trial court erred in failing to find the early voting ballot board’s failure to review the ballots as a board invalidates their decisions. Section 87.041(a) of the Election Code provides, “The early voting ballot board shall open each jacket envelope for an early voting ballot voted by mail and determine whether to accept the voter’s ballot.” TEX. ELEC. CODE ANN. § 87.041(a) (Supp. 2017). Section 87.041 (b) lists the seven requirements that must be met in order to accept a ballot, and section 87.041(d) provides a ballot must be rejected if any requirement prescribed by subsection (b) is not satisfied. *Id.* §§ 87.041(b), 87.041(d). Nothing in the statute, however, dictates the procedures the board is required to follow in making its determination. In this case, individual board members reviewed the ballots for compliance with the requirements and consulted other board members with questions. Because the statute does not dictate a procedure the board must follow in making its decision to accept or reject a ballot, we hold the procedure used by the board did not invalidate the board’s decisions.”

Thus, under the laws of Texas, not only would a reasonable government official, like a member of the Starr County EVBB, would have believed that her conduct conformed to the constitutional standard in light of the information available to her and the clearly established law. Further, no intentional constitutional injury could have been contemplated by the EVBB Defendants under the circumstances alleged by the Plaintiffs. The EVBB Defendants are entitled to qualified immunity

CONCLUSION & PRAYER

21. Plaintiffs have failed to establish an injury in fact. Plaintiffs do not have standing to seek the remedies they seek. The causes of action sought cannot apply to any alleged activity of the EVBB defendants. And, even if the Court, finds that Plaintiffs have plead adequate injury, it still should decline this attempt at a declaratory action because Plaintiffs have multiple other remedies at law. Finally, the EVBB Defendants are entitled to qualified immunity and this cause should be dismissed for that reason as well.

22. The EVBB Defendants requests that this Court grant their motion to dismiss.

DATED: November 30, 2018

Respectfully,

By: /s/ Jose Garza

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CERTIFICATE OF SERVICE

I certify that, on November 30, 2018, I filed the foregoing EVBB Defendants' Motion to Dismiss with the Court's ECF/CM system, which will serve a copy on all counsel of record.

/s/ Jose Garza

Jose Garza

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

LETICIA GARZA GALVAN AND)	(
MARTIE GARCIA VELA)	(
Plaintiffs)	(
)	(
VS.)	(CASE NO. 7:18-cv-113
)	(
ROLANDO PABLOS, IN HIS)	(
OFFICIAL CAPACITY AS)	(
TEXAS SECRETARY OF)	(
STATE, AND ARMANDINA)	(
MARTINEZ, ALMA GARCIA,)	(
ALICIA DOUGHERTY NO. 1,)	(
ALICIA DOUGHERTY NO. 2,)	(
YOLANDA MARTINEZ)	(
Defendants)	(

ORAL AND VIDEOTAPED DEPOSITION OF
LETICIA GARZA GALVAN
SEPTEMBER 13, 2018

<p>1 ORAL AND VIDEOTAPED DEPOSITION OF LETICIA GARZA</p> <p>2 GALVAN, produced as a witness at the instance of the</p> <p>3 DEFENDANTS, taken in the above styled and numbered</p> <p>4 cause on September 13, 2018, between the hours of 2:04</p> <p>5 p.m. and 2:41 p.m., reported stenographically by JOHN</p> <p>6 W. FELLOWS, Certified Court Reporter No. 3335, in and</p> <p>7 for the State of Texas, at the offices of GARCIA LAW</p> <p>8 OFFICES, 509 North San Antonio, Rio Grande City, Texas,</p> <p>9 pursuant to the Federal Rules of Civil Procedure and</p> <p>10 any provisions stated on the record or attached</p> <p>11 therein.</p> <p>12 APPEARANCES</p> <p>13 COUNSEL FOR PLAINTIFFS:</p> <p>14 JERAD WAYNE NAJVAR</p> <p>15 NAJVAR LAW FIRM, PLLC</p> <p>16 2180 North Loop West, Suite 255</p> <p>17 Houston, Texas</p> <p>18 COUNSEL FOR DEFENDANTS:</p> <p>19 ERIC A. HUDSON</p> <p>20 OFFICE OF THE ATTORNEY GENERAL-019</p> <p>21 Post Office Box 12548, Capitol Station</p> <p>22 Austin, Texas</p> <p>23 COUNSEL FOR DEFENDANTS:</p> <p>24 JOSE GARZA</p> <p>25 LAW OFFICE OF JOSE GARZA</p> <p>26 2414 Robin Reut Drive</p> <p>27 San Antonio, Texas</p> <p>28 ALSO PRESENT:</p> <p>29 RENE ORTIZ, Videographer</p>	<p>4</p> <p>1 THE VIDEOGRAPHER: Today's September 13,</p> <p>2 2018. This is the deposition of Leticia Garza Galvan.</p> <p>3 It is 2:04 p.m. We're on the record.</p> <p>4 LETICIA GARZA GALVAN,</p> <p>5 having been duly sworn, testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. HUDSON:</p> <p>8 Q. How do you do?</p> <p>9 A. How do -- I'm good. I'm good.</p> <p>10 Q. Good. My name is Eric Hudson. I'm with the</p> <p>11 Office of the Attorney General. I represent Rolando</p> <p>12 Pablos in the lawsuit that you have filed against the</p> <p>13 Secretary of State and against Starr County.</p> <p>14 A. Okay.</p> <p>15 Q. I -- well, let me ask, have we ever met before?</p> <p>16 A. I don't know. Your name sounds familiar. I</p> <p>17 don't know if I've just seen it in all the E-mails or</p> <p>18 something, but your name sounds familiar.</p> <p>19 Q. I got you. Well, I'll represent to you I don't</p> <p>20 believe we've met before. But, you know, if you recall</p> <p>21 a circumstance, please let me know.</p> <p>22 A. Okay.</p> <p>23 Q. So we're here to ask a few questions today</p> <p>24 about your lawsuit. Have you ever been deposed before?</p> <p>25 A. No. I don't think so.</p>
<p>3</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3 Appearances..... 2</p> <p>4 LETICIA GARZA GALVAN</p> <p>5 Examination by Mr. Hudson..... 4</p> <p>6 Examination by Mr. Garza..... 25</p> <p>7 Examination by Mr. Najvar..... 37</p> <p>8 Changes and Signature..... 39</p> <p>9 Reporter's Certificate..... 41</p> <p>10 Attached to the end of the transcript: Stipulations</p> <p>11</p> <p>12 EXHIBITS</p> <p>13 (No exhibits marked)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>5</p> <p>1 Q. Well, just a few things I want to go over, just</p> <p>2 a little bit of deposition etiquette. The first one</p> <p>3 is, I'm going to be asking a series of questions.</p> <p>4 Obviously, that's why we're here.</p> <p>5 So one of the things that will put off our</p> <p>6 court reporter is, if I ask a question and while I'm in</p> <p>7 the middle of asking the question, you start</p> <p>8 responding. So during the course of this deposition,</p> <p>9 can we agree that you'll let me finish my question and</p> <p>10 I'll extend you the same courtesy?</p> <p>11 A. I'm going to try my best.</p> <p>12 Q. Okay. If we start talking --</p> <p>13 A. Because I don't catch myself doing it.</p> <p>14 Q. If we start talking over one another, then I</p> <p>15 think -- I think we can probably catch it, so that the</p> <p>16 court reporter's not losing his mind over there. The</p> <p>17 second thing that I want to ask is, that during the</p> <p>18 course of the questioning if I ask you a question and</p> <p>19 you don't understand, I need you to let me know.</p> <p>20 And the reason for that's very simple. If</p> <p>21 you -- if I ask you a question and you give me an</p> <p>22 answer, I'm going to presume you understood it. And</p> <p>23 what I would hate to see happen is, that at the end of</p> <p>24 the deposition you come back and say, Well, I didn't</p> <p>25 understand or I don't, you know, know what you meant by</p>

<p>6</p> <p>1 that. So can we agree that today, when I ask you a 2 question, if you don't understand or -- or don't 3 comprehend the question, you're going to let me know? 4 A. Yes, sir. 5 Q. You're also doing a very good job of it. What 6 you're doing a good job of is, when I ask a question 7 you're answering verbally. This is not so much a 8 question, but just a request that when I ask you a 9 question, if you can respond verbally. We do have a 10 camera here, we're going to catch it, but the court 11 reporter's transcript isn't going to capture head nods 12 and nonverbal answers; make sense? 13 A. Yes, sir. 14 Q. Okay. So where do you live? 15 A. Roma, Texas. 16 Q. How long have you lived here? 17 A. All my life. Thirty-seven, so 37 years. 18 Q. So long time resident. Could you introduce 19 yourself to the jury? 20 A. Yes. My name is Leticia Garza Galvan. And I 21 live in Roma, Texas, and I've lived there for 37 years. 22 Q. You're going to have to forgive me. There's 23 not going to be a jury in this. It's just force of 24 habit -- 25 A. Okay.</p>	<p>8</p> <p>1 Q. What was the result of the election contest? 2 A. The -- I believe the Judge ruled that the 3 results were as is. 4 Q. Well, let's talk a little bit about the lawsuit 5 you filed against the Texas Secretary of State. Why 6 did you sue Rolando Pablos? 7 A. Rolando Pablos. And who -- 8 MR. NAJVAR: Objection. Calls for a legal 9 conclusion. 10 Q. So during -- during the course of the 11 deposition, he -- you may hear objections. Unless your 12 attorney looks at you and tells you not to answer a 13 question, you can go ahead and answer it; if you know 14 the answer. 15 A. Okay. And I'm sorry, Pablos is? 16 Q. Rolando Pablos is the Texas Secretary of State. 17 A. Okay. I do not know the answer. 18 Q. Okay. Did you vote by mail in the 2018 19 Democratic Primary? 20 A. No, sir. 21 Q. Are you planning on voting in the general 22 election in November of this year? 23 A. Definitely, yes. 24 Q. Are you planning on voting absentee? 25 A. Absentee? I usually wait for election day. I</p>
<p>7</p> <p>1 Q. -- so -- what's your current position? 2 A. I am -- as in my occupation or as in political 3 position? 4 Q. Let's start with your occupation. 5 A. Okay. I'm a speech language pathologist, and 6 I've been a speech language pathologist since 2004. 7 December 2004. I was an assistant before that for a 8 year-and-a-half, and I started working as speech 9 language pathologist in January of 2005. 10 Q. What's your political position? 11 A. I am currently on the Roma ISD School Board of 12 Trustees. 13 Q. Okay. How long have you held that spot? 14 A. Since December 2011. I was appointed and I won 15 my first election in November 2013. 16 Q. And, obviously, you ran for the Democratic 17 Primary in 2018? 18 A. Yes. 19 Q. What position was that? 20 A. For the Starr County Judge position. 21 Q. Did you win that election? 22 A. No, I did not. 23 Q. So now you filed an election contest from what 24 I understand, right? 25 A. We filed an election contest, yes, sir.</p>	<p>9</p> <p>1 don't think I vote absentee. 2 Q. So in other words, you're not going to vote by 3 mail in November? 4 A. No, sir. 5 Q. Have you ever worked for the Texas Secretary of 6 State? 7 A. No. 8 Q. Have you talked to anybody from the Texas 9 Secretary of State's office about the election results 10 in the Democratic Primary in Spring of this year? 11 A. I believe I did; just regarding some issues 12 with unsigned ballots. 13 Q. Who did you talk to? 14 A. I don't recall. I don't recall the person that 15 I spoke to. It was just a concern, because when we 16 were doing the recount, there was a lot of ballots that 17 were unsigned by an election Judge. And I think that 18 they agreed that those ballots should not count, but 19 that it needed to be addressed in an election contest. 20 Q. Who -- who is they? 21 A. Whoever answered in the Secretary of State. 22 Q. Well, let me ask you this: Did you just -- how 23 did you get a number to call the Secretary of State's 24 office? 25 A. I asked Judy Solis, the Democratic Chair.</p>

<p>10</p> <p>1 Q. And so you don't recall who you actually spoke</p> <p>2 to?</p> <p>3 A. I don't. All they told us was, you need to get</p> <p>4 an attorney and an election contest needs to be filed</p> <p>5 if you want to contest those ballots that were</p> <p>6 unsigned.</p> <p>7 Q. Were you trying to get some assistance from the</p> <p>8 Secretary of State's office in how to handle those</p> <p>9 ballots?</p> <p>10 A. No. We had the recount, and there was a lot of</p> <p>11 controversy, whether they were going to count or not</p> <p>12 during the recount. They gave us a policy and that,</p> <p>13 specifically, said that those ballots should not count.</p> <p>14 But during the recount, they couldn't do</p> <p>15 that. They had to do it in election contest. But the</p> <p>16 only way that they would address it would be in an</p> <p>17 election contest.</p> <p>18 Q. When you say they?</p> <p>19 A. The Secretary of State, whoever answered. I</p> <p>20 don't -- I don't recall, sir.</p> <p>21 Q. Well, when you say they would address it,</p> <p>22 are -- where did you file your election contest?</p> <p>23 A. Oh, with Starr County, I guess.</p> <p>24 Q. That was here in Starr County, right?</p> <p>25 A. Yes.</p>	<p>12</p> <p>1 Q. They being?</p> <p>2 A. The -- the counters at the election, the</p> <p>3 election judges. During the recount.</p> <p>4 Q. Well, so let me ask you this: If the</p> <p>5 Democratic Chair told you that the Secretary of State's</p> <p>6 office was the organization that decides whether</p> <p>7 mail-in ballots were counted, did you ever get the</p> <p>8 Secretary of State's office to decide whether any of</p> <p>9 the mail-in ballots counted?</p> <p>10 A. I think that would've been better than having a</p> <p>11 board chosen here locally decide, to tell you the</p> <p>12 truth.</p> <p>13 Q. Right. But what I'm asking is, is are you</p> <p>14 aware of the Secretary of State's office being involved</p> <p>15 in any way in the vote counting?</p> <p>16 A. I think what she wanted to say was, they'd be</p> <p>17 the ones to know the law, or to know whether or not</p> <p>18 there's a policy or something with elections. That's,</p> <p>19 pretty much, what it is.</p> <p>20 And the Secretary of State was very clear</p> <p>21 as you have to file an election contest, so that means</p> <p>22 that the Judge would, ultimately, decide. But they're</p> <p>23 the ones that gave us the advice as, You need to file a</p> <p>24 contest if you want to question those ballots.</p> <p>25 Q. So in other words, Secretary of State's office</p>
<p>11</p> <p>1 Q. So in other words, you didn't have an election</p> <p>2 contest at the Secretary of State's office?</p> <p>3 A. No.</p> <p>4 Q. So they're not the ones who came down and</p> <p>5 decided whether the votes were or were not properly</p> <p>6 counted?</p> <p>7 A. No. No. Our Democratic Chair told us that</p> <p>8 they would be ones to make the ultimate decision.</p> <p>9 Q. They being?</p> <p>10 A. The Secretary of State. I believe she called a</p> <p>11 Jim Boynton. That's who she contacted for -- for that</p> <p>12 information.</p> <p>13 Q. Jim who?</p> <p>14 A. Boynton. Boynton or Boynton. I don't remember</p> <p>15 exactly, the -- the last name. I don't know how to</p> <p>16 spell it. They kept mentioning him a lot. But I did</p> <p>17 not speak directly to him.</p> <p>18 Q. So the Democratic Chair told you that the</p> <p>19 Secretary of State's office would be the one who would</p> <p>20 decide which votes counted?</p> <p>21 A. In a recount, yes.</p> <p>22 Q. What was the Democratic Chair's name again?</p> <p>23 A. Judy Solis. In fact, during the recount they</p> <p>24 counted them and then they uncounted them and then they</p> <p>25 counted them again. There was that much controversy.</p>	<p>13</p> <p>1 told you if you want relief you had to go to court?</p> <p>2 A. Exactly.</p> <p>3 Q. Okay.</p> <p>4 A. Uh-huh.</p> <p>5 Q. So you would agree with me, then, the Secretary</p> <p>6 of State's office never evaluated whether mail-in</p> <p>7 ballots were or were not properly counted?</p> <p>8 A. In regards to mail-in, I'm not sure. This was</p> <p>9 a recount of just the regular ballots.</p> <p>10 Q. Okay. Are you aware of the Secretary of</p> <p>11 State's office actually counting any ballots in your</p> <p>12 election?</p> <p>13 A. No. But, again, that would've been great.</p> <p>14 Q. Have you ever actually seen any kind of</p> <p>15 guidance from the Secretary of State's office to Starr</p> <p>16 County about how to count mail-in ballots?</p> <p>17 A. I don't know if that directly. I've seen a lot</p> <p>18 of E-mails, just responses to E-mails about complaints</p> <p>19 that have been filed, and, you know, just guidance as</p> <p>20 to what to do or how to proceed with that.</p> <p>21 Q. Well, tell me about the E-mails that you've</p> <p>22 seen.</p> <p>23 A. There was another candidate running for County</p> <p>24 Commissioner, Clarissa Gonzalez. She submitted several</p> <p>25 complaints to the Secretary of State, and they</p>

<p>14</p> <p>1 responded. I believe she sent me a few. I didn't read 2 them in it's entirety. We had filed the lawsuit by 3 then, so it wasn't something that, you know, I really 4 needed or that I could use on my behalf. 5 And then there was another candidate who 6 also filed a complaint against his opponent, because he 7 didn't live within the precinct. So it's just my 8 understanding that the Secretary of State would be the 9 ones who would possibly -- I don't want to say enforce 10 the law, but maybe -- I guess, maybe state the policy 11 or what's in place, you know, when it comes to 12 elections. 13 Q. What makes you believe that? 14 A. Because if it says file a complaint, you file 15 it to the Secretary of State. 16 Q. What kind of complaints get filed with the 17 Secretary of State's office? 18 A. I would assume any complaints regarding the 19 elections. There's an -- there's actually an elections 20 department with the Secretary of State. 21 Q. Well, I guess let me ask you this: Here's what 22 I'm trying to figure out. Have you ever filed a 23 complaint with the Secretary of State's office? 24 A. I was going to and then I was notified that 25 Clarissa Gonzalez had done it, so I did not.</p>	<p>16</p> <p>1 Q. Okay. And so that'll be something that you'll 2 be turning over, then, with the discovery requests? 3 A. If you need it, that's fine. I didn't know. 4 Like I say, it's -- it's not an E-mail that was mine or 5 that I sent to the Secretary of State. Clarissa 6 Gonzalez was the candidate for Commissioner, submitted 7 the complaint and she just sent the reply. 8 Q. Okay. Now, you understand you have two 9 different lawsuits here: One's an election contest 10 that you file in State Court. This case is actually 11 pending in Federal Court. Are you aware of that? 12 A. Yes, sir. 13 Q. Are you aware of the distinction between the 14 two venues? 15 A. Yes. 16 Q. Okay. So let me ask you this: The lawsuit 17 that's in the Federal Courthouse, what are you asking 18 the Judge to direct the Secretary of State's office to 19 do? 20 A. I think that -- 21 MR. NAJVAR: Objection. Calls for a legal 22 conclusion. 23 A. Okay. It just -- it needs to be -- the process 24 in which the -- the ballots are revised, I think there 25 has to be a better way to do it. You know, the -- the</p>
<p>15</p> <p>1 Q. So you never actually filed anything with the 2 Secretary of State's office challenging the election 3 results in Spring of 2018 in the Democratic Primary? 4 A. No. Because I was told that we needed to file 5 an election contest. 6 Q. By? 7 A. Whoever answered on the other end -- the other 8 line. I'm sorry, I -- I didn't -- I didn't keep it. 9 Q. Okay. 10 A. Yeah. Someone -- someone that answered in the 11 Secretary of State and I know it was the elections 12 hotline or department. I can Google and I can give you 13 the number I called, because that's what I did. 14 Q. Well, let's put a pin in that for right now. 15 A. Uh-huh. 16 Q. These E-mails that you say show the Secretary 17 of State's office given some sort of guidance. Did you 18 preserve those? 19 A. Yes. I believe I have them in my E-mail. I 20 need to make sure, but I might have them. 21 Q. Okay. So you understand that you've received a 22 set of discovery requests in this case, right? 23 A. That I received a what? 24 Q. Set of discovery requests in this case. 25 A. I believe our attorney received that.</p>	<p>17</p> <p>1 board that's chosen is usually chosen by the majority 2 of a school board or the majority of a city, you know, 3 entity. 4 In this case it was, supposedly, Judy 5 Solis was the Democratic Chair, which she testified 6 that she didn't want to have any problems with the 7 County Judge, and she allowed them to choose a few. 8 So, you know, I always feel that whoever's 9 on the ballot board could kind of weigh their decision 10 on what to accept and what not to accept to the way 11 that, you know, they're trying to get their party to 12 win. It's -- I -- I think it happened to us. I really 13 do. 14 When we got the list of all the mail-ins 15 that were returned, I can tell you that I feel that 75 16 to 80 percent of those were -- were ours. Several of 17 mine, I think just because my name on there -- was on 18 there were not accepted. 19 I think there was a woman who testified as 20 well, and she said I send it. I signed it. I have two 21 different signatures, which is, you know, that's 22 another thing. You can't compare it just on one 23 signature. 24 You know, we all sign different. If I 25 signed three different papers, they may look different.</p>

<p>18</p> <p>1 It depends what pen I'm using. It depends, you know, 2 if I'm actually on a desk, if I'm using a -- a book or 3 something to write on. So I think that, you know, 4 everybody has a right to vote and that their vote 5 should count.</p> <p>6 Q. So I thought I heard two things there, so let's 7 see if I can make sure I understand what you're saying. 8 It sounds like the first problem you have is, that you 9 want the Secretary of State's office to play a role in 10 who actually gets picked to be on the early voting 11 ballot board?</p> <p>12 A. That would be great, too, you know, just 13 or -- or some type of a court the way that they do jury 14 selection, you know, or something like that, but not 15 someone who's a public official who's going to be able 16 to side with certain politicians and say, You know 17 what? I have the advantage, because now I was able to 18 choose the ballot board.</p> <p>19 And this ballot board knows, you know, who 20 is with her and who is there, who's not and who 21 possibly was assisting or, you know, just -- we -- we 22 live in a very small town, I guess I can say, and 23 everybody knows everybody. So, you know, there's 24 posters up. Everybody knows where you stand mostly 25 during election time.</p>	<p>20</p> <p>1 attest to it. What do I need to do so my vote counts? 2 So I mean, once you hear people that actually go out 3 and vote, or -- or vote for me and knowing that I plan 4 to run, you know, for another position later on, and 5 knowing how close the race was, you know, it can come 6 down to those 149 votes, 159 votes that were thrown 7 out. It can really overturn an election.</p> <p>8 I think Martie, you know, one of the 9 candidates was down, maybe about 30 votes. So I'm 10 pretty sure that she would've taken the election if 11 those 149 ballots would've counted, or if they 12 would've at least verified; send a letter, You know 13 what? We -- they receive them a month before or they 14 have them a month before to send them; send a letter, 15 You know what? We're questioning your ballot. You 16 have five days to answer, 10 days to answer.</p> <p>17 And it's just something I think about, 18 obviously. You have five days to answers or 10 days to 19 answer. And if you don't answer, then your ballot 20 won't count. But at least give them a chance to, you 21 know, make up or -- or show that it was them that 22 submitted the ballot.</p> <p>23 Q. Did you have the chance to bring this up in the 24 election contest?</p> <p>25 A. We brought up a lot of stuff; unfortunately,</p>
<p>19</p> <p>1 Q. And so the second thing I thought I heard you 2 say was, that you don't like the way that people have 3 discretion to evaluate the signatures?</p> <p>4 A. Exactly.</p> <p>5 Q. So those are the two things that you're 6 challenging with regard to the Secretary of State?</p> <p>7 MR. NAJVAR: Objection. Calls for legal 8 conclusion.</p> <p>9 A. I just think those two things are important. 10 Like I say, if people took the time to send a 11 request -- it's not easy, you know. I mean, you have 12 to send the request, get -- you know, get your stamps, 13 get everything together, wait for your ballot, then go 14 back and send the ballot the way that it is set, you 15 know, on the -- on the instruction sheet.</p> <p>16 It's terrible to see, you know, that 150 17 people didn't get to vote. I got calls from at least 18 30 people telling me, you know, I'm very upset. What 19 can we do? Who do we talk to, and you say, You need to 20 call elections office.</p> <p>21 I have my signature. It was the same 22 signature. One of the ladies told me, You know what? 23 I had a broken arm. I was in the hospital or she had 24 the IV or something.</p> <p>25 She said, But it's my signature and I can</p>	<p>21</p> <p>1 the Judge, I think, didn't consider a lot of those 2 issues. It -- you know, an election contest isn't 3 easy, especially when you have an elections department 4 that's not willing to give you information.</p> <p>5 So we were getting information, I think, 6 three days into the trial. And still, the last day of 7 trial, after we had already, you know, finished with 8 our part, we received the last portion.</p> <p>9 So it's -- it's -- the time frame is very, 10 very short. You know, they don't grant extensions 11 usually for all that. I think that if we would've had 12 a little bit more time, we would've been able to prove 13 a few more votes that would've overturned the -- the 14 election.</p> <p>15 I think we proved about 70 -- about 75 16 votes. So my 159 margin came down almost half. So 17 when you see 149 ballots thrown out, because the 18 signatures, then you have four, five people testifying 19 that they did submit, you know, their -- their ballot 20 and that they signed for it, it's kind of 21 disappointing.</p> <p>22 Q. So those are the -- the two things that I -- I 23 thought I heard you say. I think I've got confirmation 24 of that. Aside from the -- the two issues, the -- who 25 sits on the board and how to evaluate the signatures,</p>

<p>22</p> <p>1 are there any other issues that you're -- you're 2 contesting in this -- in this claim? 3 A. One of the other issues that I saw, at least 4 this election, I had never seen it before, never done 5 it before, usually they gave -- I think they send out 6 the ballots maybe about six weeks before, a little bit 7 more. 8 And for some reason these were sent 9 out like 29, 28 days before. By the time it went 10 to -- here, locally, what they do, and just so there's 11 no problems with the Post Office, I'm sorry, they send 12 the ballots to McAllen, and the request -- they send 13 everything to McAllen, and then back to the -- to the 14 city here, Roma, Rio Grande, whatever. 15 So it was really a very short time frame 16 before they were able to turn in their ballots. I 17 think there was about 6- or 700 ballots that were not 18 returned. So that's one of the other things I think 19 that maybe the time frame for -- for them to send out 20 the ballots, and make sure that they're keeping correct 21 documentation. 22 I think that when we asked selections 23 office for the information, they told us they mailed 24 out the ballots on January the 5th, or that's what's on 25 all their forms. They didn't even get the ballots 'til</p>	<p>24</p> <p>1 A. No. Well, if they have a role, they didn't do 2 it here. That's all I can tell you. So I mean, 3 obviously, there's no role, because they were not here. 4 Q. And then the -- the last piece, the timing of 5 when things are actually sent out, do you know what 6 role, if any, the Secretary of State's office plays in 7 deciding when to send out earlier ballots? 8 A. I'm not sure. Like I said, I did review an 9 election code. I don't know who enforces that or who 10 looks into that. I'm not -- I'm not sure how that 11 works. You asked me about the roles, and I think 12 that's important because I think that they should play 13 a bigger role. I think that's why we're here. You 14 can't leave it just to the local all the time, because 15 there's always a chance for something to go wrong. 16 Q. Let me ask you this: We've been at this now 17 for about 30 minutes. I know it doesn't feel like it, 18 right? 19 A. No. 20 Q. Is there anything I haven't asked you that you 21 want to tell me about today? Now's your chance. 22 A. In regards to mail-ins? 23 Q. In regards to anything. 24 A. In regards to anything? No. 25 MR. HUDSON: Tender the witness.</p>
<p>23</p> <p>1 January 29th. So how could you mail-out a ballot on 2 January the 5th? It didn't make sense. But there is 3 some policies, I believe, I think it's 30 days. I just 4 don't know who enforces them, because I know that they 5 did not send them 30 days before. 6 Q. So other than those three issues, are -- is 7 there anything else? 8 A. That I can think of, probably just the -- the 9 signature verification; the time that they take to send 10 them. In regards to mail-ins in general, like what 11 else I think might be an issue or -- 12 Q. Well, no. I'm just talking about in terms of 13 the lawsuit. 14 A. Okay. Yeah, I think so, pretty much. 15 Q. All right. So let's go back over those. The 16 first one was the way that people are actually picked 17 to sit on the earlier voting ballot board. Do you know 18 what relationship the Secretary of State's office has 19 with regard to picking people to sit on the early 20 voting ballot board? 21 A. No. Well, obviously, they don't have any. 22 Yeah. 23 Q. What about with comparing signatures? Do you 24 know what the Secretary of State's office role is in 25 deciding whether signatures match?</p>	<p>25</p> <p>1 EXAMINATION 2 BY MR. GARZA: 3 Q. My name's Jose Garza, and -- 4 THE VIDEOGRAPHER: Mr. Garza. 5 MR. GARZA: Thanks. 6 Q. And I represent Armandina Martinez and Alma 7 Garcia -- 8 A. Uh-huh. 9 Q. -- and Alicia Dougherty and Alicia Dougherty 10 Number 2. 11 A. Yes. The daughter. 12 Q. And Yolanda Martinez. 13 A. Okay. 14 Q. You've sued all five of these ladies, correct? 15 A. Yes. 16 Q. Okay. And they were all members of the early 17 vote ballot board, right? 18 A. Yes. 19 Q. Okay. 20 A. That's my understanding. 21 Q. Do you know how Yolanda Martinez was selected 22 for the board? 23 A. I believe the elections administrator, John 24 Rodriguez, requested that she be on there, because 25 she's done it before.</p>

<p style="text-align: right;">26</p> <p>1 Q. Who did he request that -- who did he make that</p> <p>2 question to?</p> <p>3 A. Judy Solis. She testified in court.</p> <p>4 Q. And Judy Solis is the --</p> <p>5 A. Democratic Chair.</p> <p>6 Q. So Martinez was put on the board by Ms. Solis?</p> <p>7 A. I believe so, based on the recommendations of</p> <p>8 John Rodriguez.</p> <p>9 Q. Okay. And Alicia Dougherty Number 2, do you</p> <p>10 know how she was selected to the -- to the board?</p> <p>11 A. I believe Judy Solis chose her.</p> <p>12 Q. Okay. And Alicia Dougherty Number 1, do you</p> <p>13 know how she was elected?</p> <p>14 A. Judy Solis.</p> <p>15 Q. Okay. And Alma Garcia, do you know how she was</p> <p>16 selected --</p> <p>17 A. John Rodriguez recommended as well.</p> <p>18 Q. Did John Rodriguez put her on the board?</p> <p>19 A. He recommended to Judy that he wanted those</p> <p>20 three people, the three that had the majority.</p> <p>21 Q. So, again, Solis made the determination to put</p> <p>22 her on the board?</p> <p>23 A. I believe Judy Solis put in the request, but</p> <p>24 the recommendation came from John Rodriguez.</p> <p>25 Q. And Armandina Martinez, do you know how she was</p>	<p style="text-align: right;">28</p> <p>1 elections that were being conducted in Starr County?</p> <p>2 A. No, sir.</p> <p>3 Q. And Alicia Dougherty Number 1, do you have any</p> <p>4 information about whether she was engaged in any of the</p> <p>5 campaigns?</p> <p>6 A. No.</p> <p>7 Q. And Alma Garcia, do you know if she was a</p> <p>8 campaign worker on any of the campaigns that were going</p> <p>9 on in that primary?</p> <p>10 A. No.</p> <p>11 Q. And Armandina Martinez, do you know if she had</p> <p>12 any active role, was a campaign worker in any of the</p> <p>13 elections that were going on in -- in -- in that</p> <p>14 primary?</p> <p>15 A. No.</p> <p>16 Q. I'm going to ask you a few questions about your</p> <p>17 campaign. Did you have a campaign chairman?</p> <p>18 A. No. Well, my sister helps me out, but no.</p> <p>19 Like -- like an official chairman, no.</p> <p>20 Q. Did you run the campaign yourself then?</p> <p>21 A. Pretty much.</p> <p>22 Q. You --</p> <p>23 A. Me and my sister.</p> <p>24 Q. Your sister?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">27</p> <p>1 selected to the board?</p> <p>2 A. Yes. John Rodriguez as well.</p> <p>3 Q. And John Rodriguez is the Starr County</p> <p>4 Elections Administrator?</p> <p>5 A. Yes. He just took on that role. He worked</p> <p>6 with the elections office for a few years, but I</p> <p>7 believe he's been a election administrator for one or</p> <p>8 two years.</p> <p>9 Q. Okay. Do you have any information that Yolanda</p> <p>10 Martinez participated in any of the campaigns that were</p> <p>11 being run in Starr County in that election?</p> <p>12 A. I don't know her well. I just know that she</p> <p>13 works and is under the official -- or that she is under</p> <p>14 the supervision of Judge Eloy Vera.</p> <p>15 Q. So that wasn't my question. My question is, do</p> <p>16 you know if she had any active role in any of the</p> <p>17 campaigns in Starr County?</p> <p>18 A. I don't know her well. Like I said, I wouldn't</p> <p>19 be able to tell you if she participated or not. I</p> <p>20 don't -- I don't, I guess, associate with her.</p> <p>21 Q. So the answer is no, you don't have any</p> <p>22 information?</p> <p>23 A. That I know of, no.</p> <p>24 Q. Okay. And Alicia Dougherty, do you have any</p> <p>25 information that she participated in any of the</p>	<p style="text-align: right;">29</p> <p>1 Q. Did you have volunteers in your campaign?</p> <p>2 A. Several.</p> <p>3 Q. Okay. Did you -- what kinds of activities did</p> <p>4 you participate in your campaign?</p> <p>5 A. Well, we had different events. We had a</p> <p>6 teacher's forum. We had a debate. We had several</p> <p>7 burger drives. We had several meet the candidates. We</p> <p>8 did block walks. Just all sorts of event, you know,</p> <p>9 just to get our name out there.</p> <p>10 Q. Okay. So how many volunteers would you</p> <p>11 estimate you had in your campaign?</p> <p>12 A. Several. About a hundred.</p> <p>13 Q. About a hundred volunteers?</p> <p>14 A. Yes.</p> <p>15 Q. Did you have volunteers on election day that</p> <p>16 worked for you?</p> <p>17 A. On election day? Yes. And then we also had</p> <p>18 some pole watchers.</p> <p>19 Q. Okay. Did anybody in your campaign -- was</p> <p>20 anybody in your campaign involved in encouraging voters</p> <p>21 to vote by mail?</p> <p>22 A. I'm sure, yes. It's just get out the vote. So</p> <p>23 whether it's through mail or in person election day,</p> <p>24 yeah. It's important --</p> <p>25 Q. Can you describe some of the activities that</p>

<p>30</p> <p>1 your campaign engaged in in turning out mail-in vote?</p> <p>2 A. In the mail-in vote? Usually they request it.</p> <p>3 Usually it's the elderly that'll request that they</p> <p>4 won't be able to go. The other big group of -- of</p> <p>5 people that I know supported me or wanted to work with</p> <p>6 the mail-ins is the youth, the people that are in</p> <p>7 college.</p> <p>8 Q. Uh-huh.</p> <p>9 A. All those students that were in college wanted</p> <p>10 to make sure they got their ballot on time and</p> <p>11 submitted it. I think my nephew, in fact, is in</p> <p>12 medical school in Arizona, and he never received his</p> <p>13 ballot, so he wasn't able to vote for me and he turned</p> <p>14 everything in within, I think, 45 days before.</p> <p>15 But, pretty much, it was just, you know,</p> <p>16 encouraging them to vote. And if they said, You know</p> <p>17 what? We're not going to be here or I'm going to have</p> <p>18 surgery or whatever it is, you know, the elderly that</p> <p>19 couldn't get out, they submitted a request for a</p> <p>20 mail-in.</p> <p>21 Q. And how did you identify the people that were</p> <p>22 going to need mail-in ballots?</p> <p>23 A. Usually when we're doing the block walks, they</p> <p>24 mentioned it to us.</p> <p>25 Q. Okay. And so you kept a record of the folks</p>	<p>32</p> <p>1 that usually need help.</p> <p>2 Q. Yeah. I'm talking about your -- your campaign</p> <p>3 volunteers.</p> <p>4 A. You want me to give you names of people that</p> <p>5 actually did it?</p> <p>6 Q. Yeah. Yes.</p> <p>7 A. Oh, there was several. You know, I -- I</p> <p>8 wouldn't be able to give all the names.</p> <p>9 Q. Did you keep track of the number of -- of</p> <p>10 people that your campaign assisted --</p> <p>11 A. No.</p> <p>12 Q. -- with mail-in ballots?</p> <p>13 A. No. No. We can't do that. Like keep track of</p> <p>14 every single one that was submitting a mail-in?</p> <p>15 Q. Uh-huh. Yes.</p> <p>16 A. No.</p> <p>17 Q. No?</p> <p>18 A. No, sir.</p> <p>19 Q. But you suspect that the majority of mail-in</p> <p>20 ballots were cast for you?</p> <p>21 A. I suspect that what?</p> <p>22 Q. That a majority of the mail-in ballots that</p> <p>23 were submitted were actually votes for -- for you?</p> <p>24 A. I believe I said that the ones that were</p> <p>25 rejected. And I have a reason for that, why I said</p>
<p>31</p> <p>1 that you felt were going to need mail-in ballots? How</p> <p>2 did you ensure that -- or how did you know whether they</p> <p>3 received their ballot or not?</p> <p>4 A. They called us. Yeah. I had -- I know I</p> <p>5 assisted about 10 for sure. So when they got the</p> <p>6 ballot, they called me, What do we do? You know, it's</p> <p>7 a long process. It's showing me -- telling me here</p> <p>8 what to do. How do I do it? Can you come help me? So</p> <p>9 whoever I assisted, I made sure that I signed and --</p> <p>10 Q. Okay.</p> <p>11 A. -- and helped them. But they called me. Like</p> <p>12 I wasn't calling them and asking them, Did you get</p> <p>13 your ballot? No.</p> <p>14 Q. Okay. So you actually visited with some of the</p> <p>15 voters that voted by mail?</p> <p>16 A. Oh, yes. Definitely.</p> <p>17 Q. Okay. And on each of those you signed</p> <p>18 the -- the -- the envelope identifying your assistance?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Did anybody else in your campaign visit</p> <p>21 with voters who voted by mail?</p> <p>22 A. I'm sure they did.</p> <p>23 Q. Can you give me some examples of folks that</p> <p>24 would've done it?</p> <p>25 A. The same, you know, the elderly are the ones</p>	<p>33</p> <p>1 that. When the election results were coming up,</p> <p>2 there was a lot of talk within the -- at least three of</p> <p>3 the -- of the people that -- in the ballot board.</p> <p>4 And they said, Okay. Wait. That -- that</p> <p>5 person was helping this person, and that person was</p> <p>6 helping this person, and they would just throw it out</p> <p>7 or look at that name, look who assisted and they were</p> <p>8 throwing them out. So we had three pole watchers that,</p> <p>9 pretty much, observed the same thing.</p> <p>10 Q. So you had three pole watchers inside</p> <p>11 the -- inside the building that -- where the early vote</p> <p>12 ballot board was doing their business?</p> <p>13 A. I had one and then Martie Vela had another one.</p> <p>14 And then one of the other candidates, Fernando, had</p> <p>15 another one.</p> <p>16 Q. Okay.</p> <p>17 A. So after -- after we met with them when the</p> <p>18 results came out, that's one of the things that they</p> <p>19 discussed.</p> <p>20 Q. So while they were inside the -- the -- while</p> <p>21 they were observing the ballots being counted or</p> <p>22 rejected or placed in one stack or another, did any of</p> <p>23 your campaign volunteers object to a particular ballot</p> <p>24 going one way or the other?</p> <p>25 A. They tried to; especially, in one of them where</p>

<p>34</p> <p>1 one of them -- I believe it was Armendina. She -- she</p> <p>2 was throwing out a ballot, because she said, There's no</p> <p>3 way there -- they can have two disabled voters in their</p> <p>4 house. So she threw out one of them. I don't know</p> <p>5 which one it was -- I don't know how she decided which</p> <p>6 disabled to throw out, but she threw out one of the</p> <p>7 disabled voters.</p> <p>8 And when one of our pole watchers tried</p> <p>9 to -- to make the comment they said, You're here to</p> <p>10 observe. You can't contest to anything. You can't say</p> <p>11 anything. You're going to be observing here or we're</p> <p>12 going to take you out.</p> <p>13 Q. Did any of your campaign workers lodge a</p> <p>14 complaint with the party chairman on that day?</p> <p>15 A. Yes.</p> <p>16 Q. And were they written complaints?</p> <p>17 A. No. I don't think so. I'm not sure. I didn't</p> <p>18 make the complaint, so I'm not sure. And for the</p> <p>19 record, those two disabled, they really are disabled.</p> <p>20 Both legally blind, live in the same home; a very close</p> <p>21 friends of mine. So when they said the name right</p> <p>22 away, they knew who it was. And that's why they</p> <p>23 questioned it.</p> <p>24 Q. Okay. And who was that voter?</p> <p>25 A. Last name is Salinas. I can't give you the</p>	<p>36</p> <p>1 A. I don't intend to do it. But if I were to have</p> <p>2 to do it, then, obviously, I would. I've voted in</p> <p>3 every election, I think, since I could vote.</p> <p>4 Q. And in every election that you have voted in,</p> <p>5 in any of those instances did you vote by mail?</p> <p>6 A. Until today, no.</p> <p>7 Q. No.</p> <p>8 A. I think I submitted a request once, because I</p> <p>9 was pregnant and I was supposed to -- I think I was due</p> <p>10 during the time that the election was going to go on.</p> <p>11 But no, I was able to make it.</p> <p>12 Q. Okay. So you've never voted by mail?</p> <p>13 A. No.</p> <p>14 Q. And you've -- but you've asked for a mail-in</p> <p>15 ballot one time?</p> <p>16 A. I believe I did. I'm trying to remember, but I</p> <p>17 believe I requested a bail -- a ballot once, when I had</p> <p>18 my youngest.</p> <p>19 Q. Okay. Do you know if anybody on the early vote</p> <p>20 ballot board had anything to do with when mail ballots</p> <p>21 were sent out to applicants for them?</p> <p>22 A. The ones on the ballot board, I don't know. I</p> <p>23 don't think so.</p> <p>24 Q. Okay. And you've not sued the elections</p> <p>25 administrator or the party chairman in your lawsuit,</p>
<p>35</p> <p>1 first names.</p> <p>2 Q. And was it a man or a woman?</p> <p>3 A. They were two gentlemen.</p> <p>4 Q. So Mr. Salinas' ballot was rejected?</p> <p>5 A. One -- there were two, one of them was</p> <p>6 rejected.</p> <p>7 Q. One --</p> <p>8 A. Because there could not be two disabled voters</p> <p>9 in the same house.</p> <p>10 Q. And the Salinases were related?</p> <p>11 A. No. They're not related, just good friends of</p> <p>12 ours.</p> <p>13 Q. They were related to each other?</p> <p>14 A. Oh, yes. Brothers.</p> <p>15 Q. Brothers.</p> <p>16 A. Uh-huh.</p> <p>17 Q. So two disabled brothers that live together,</p> <p>18 one was counted, one was not?</p> <p>19 A. Exactly.</p> <p>20 Q. Okay. You were asked earlier if you voted by</p> <p>21 mail and you did not, correct?</p> <p>22 A. No, I did not.</p> <p>23 Q. And you were asked if you intended to vote by</p> <p>24 mail in a future election, and your answer was that you</p> <p>25 did not, correct?</p>	<p>37</p> <p>1 correct?</p> <p>2 A. I'm not sure.</p> <p>3 MR. GARZA: Pass the witness.</p> <p>4 EXAMINATION</p> <p>5 BY MR. NAJVAR:</p> <p>6 Q. Just a quick couple of questions, Ms. Galvan.</p> <p>7 You said earlier, I think your -- what is your</p> <p>8 position -- your political position right now?</p> <p>9 A. I'm on the Roma ISD School Board of Trustees.</p> <p>10 Q. Okay. And when is your next election for this</p> <p>11 position?</p> <p>12 A. November 2020.</p> <p>13 Q. Do you intend to run for re-election?</p> <p>14 A. Yes.</p> <p>15 Q. Have -- well, this -- this past -- this year in</p> <p>16 2018, you ran for a different office, right? For</p> <p>17 County Judge?</p> <p>18 A. Yes.</p> <p>19 Q. Do you intend to run for that position again?</p> <p>20 A. If the opportunity arises, yes. Definitely.</p> <p>21 Q. Okay. So can you just describe</p> <p>22 how -- it -- it -- like how are you going to</p> <p>23 decide -- well, let me ask you this: When is the next</p> <p>24 election for County Judge?</p> <p>25 A. 2022. 2022.</p>

<p>38</p> <p>1 Q. Okay.</p> <p>2 A. March. Well, the -- the primaries will be in</p> <p>3 March of 2022.</p> <p>4 Q. Okay.</p> <p>5 MR. NAJVAR: No further questions. At</p> <p>6 this time, we'll reserve the remainder of questions for</p> <p>7 trial.</p> <p>8 MR. HUDSON: That's it for me. You're all</p> <p>9 done. Thank you.</p> <p>10 THE WITNESS: Thank you.</p> <p>11 THE VIDEOGRAPHER: We're off the record.</p> <p>12 MR. HUDSON: Requesting a read and sign.</p> <p>13 Now, we're done.</p> <p>14 THE VIDEOGRAPHER: We're off the record.</p> <p>15 (Deposition concluded)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>40</p> <p>1 I, LETICIA GARZA GALVAN, have read the</p> <p>2 foregoing transcript and hereby affix my signature that</p> <p>3 same is true and correct, except as noted above.</p> <p>4</p> <p>5 _____</p> <p>6 LETICIA GARZA GALVAN</p> <p>7 THE STATE OF TEXAS)(</p> <p>8 COUNTY OF _____)(</p> <p>9 Before me, _____,</p> <p>10 on this day personally appeared LETICIA GARZA GALVAN,</p> <p>11 known to me (or proved to me under oath or through</p> <p>12 _____) (description of identity</p> <p>13 card or other document) to be the person whose name is</p> <p>14 subscribed to the foregoing instrument and acknowledged</p> <p>15 to me that they executed the same for the purposes and</p> <p>16 consideration therein expressed.</p> <p>17</p> <p>18 Given under my hand and seal of office</p> <p>19 this _____ day of _____, 2018.</p> <p>20</p> <p>21 _____</p> <p>22 Notary Public in and for</p> <p>23 The State of Texas</p> <p>24</p> <p>25</p>																																																																																								
<p>39</p> <p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: LETICIA GARZA GALVAN</p> <p>3 DATE OF DEPOSITION: SEPTEMBER 13, 2018</p> <p>4</p> <table border="1"> <thead> <tr> <th>PAGE</th> <th>LINE</th> <th>CHANGE</th> <th>REASON</th> </tr> </thead> <tbody> <tr><td>5</td><td>_____</td><td></td><td></td></tr> <tr><td>6</td><td>_____</td><td></td><td></td></tr> <tr><td>7</td><td>_____</td><td></td><td></td></tr> <tr><td>8</td><td>_____</td><td></td><td></td></tr> <tr><td>9</td><td>_____</td><td></td><td></td></tr> <tr><td>10</td><td>_____</td><td></td><td></td></tr> <tr><td>11</td><td>_____</td><td></td><td></td></tr> <tr><td>12</td><td>_____</td><td></td><td></td></tr> <tr><td>13</td><td>_____</td><td></td><td></td></tr> <tr><td>14</td><td>_____</td><td></td><td></td></tr> <tr><td>15</td><td>_____</td><td></td><td></td></tr> <tr><td>16</td><td>_____</td><td></td><td></td></tr> <tr><td>17</td><td>_____</td><td></td><td></td></tr> <tr><td>18</td><td>_____</td><td></td><td></td></tr> <tr><td>19</td><td>_____</td><td></td><td></td></tr> <tr><td>20</td><td>_____</td><td></td><td></td></tr> <tr><td>21</td><td>_____</td><td></td><td></td></tr> <tr><td>22</td><td>_____</td><td></td><td></td></tr> <tr><td>23</td><td>_____</td><td></td><td></td></tr> <tr><td>24</td><td>_____</td><td></td><td></td></tr> <tr><td>25</td><td>_____</td><td></td><td></td></tr> </tbody> </table>	PAGE	LINE	CHANGE	REASON	5	_____			6	_____			7	_____			8	_____			9	_____			10	_____			11	_____			12	_____			13	_____			14	_____			15	_____			16	_____			17	_____			18	_____			19	_____			20	_____			21	_____			22	_____			23	_____			24	_____			25	_____			<p>41</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 SOUTHERN DISTRICT OF TEXAS</p> <p>3 MCALLEN DIVISION</p> <p>4 LETICIA GARZA GALVAN AND)(</p> <p>5 MARTIE GARCIA VELA)(</p> <p>6 Plaintiffs)(</p> <p>7 VS.)(CASE NO. 7:18-cv-113</p> <p>8)(</p> <p>9 ROLANDO PABLOS, IN HIS)(</p> <p>10 OFFICIAL CAPACITY AS)(</p> <p>11 TEXAS SECRETARY OF)(</p> <p>12 STATE, AND ARMANDINA)(</p> <p>13 MARTINEZ, ALMA GARCIA,)(</p> <p>14 ALICIA DOUGHERTY NO. 1,)(</p> <p>15 ALICIA DOUGHERTY NO. 2,)(</p> <p>16 YOLANDA MARTINEZ)(</p> <p>17 Defendants)(</p> <p>18</p> <p>19 REPORTER'S CERTIFICATION</p> <p>20 ORAL AND VIDEOTAPED DEPOSITION OF</p> <p>21 LETICIA GARZA GALVAN</p> <p>22 SEPTEMBER 13, 2018</p> <p>23 I, JOHN W. FELLOWS, Certified Court</p> <p>24 Reporter, certify that the witness, LETICIA GARZA</p> <p>25 GALVAN, was duly sworn by me, and that the transcript</p> <p>is a true and correct record of the testimony given by</p> <p>the witness on September 13, 2018; that the deposition</p> <p>was reported by me in stenograph and was subsequently</p> <p>transcribed under my supervision;</p> <p>Pursuant to Federal Rule 30(5)(e)(2), a review</p> <p>of the transcript was requested.</p> <p>I FURTHER CERTIFY that I am not a relative,</p> <p>employee, attorney or counsel of any of the parties,</p> <p>nor a relative or employee of such attorney or counsel,</p> <p>nor am I financially interested in the action.</p> <p>WITNESS MY HAND on this the _____ day of</p> <p>_____, 2018.</p> <p>_____</p> <p>JOHN W. FELLOWS, Texas CSR 3335</p> <p>Expiration Date: 12-31-18</p> <p>Integrity Legal Support, CRN No. 528</p> <p>3100 W. Slaughter Ln., #101</p> <p>Austin, Texas 78748</p> <p>(512) 320-8690</p>
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

LETICIA GARZA GALVAN AND)	(
MARTIE GARCIA VELA)	(
Plaintiffs)	(
)	(
VS.)	(CASE NO. 7:18-cv-113
)	(
ROLANDO PABLOS, IN HIS)	(
OFFICIAL CAPACITY AS)	(
TEXAS SECRETARY OF)	(
STATE, AND ARMANDINA)	(
MARTINEZ, ALMA GARCIA,)	(
ALICIA DOUGHERTY NO. 1,)	(
ALICIA DOUGHERTY NO. 2,)	(
YOLANDA MARTINEZ)	(
Defendants)	(

ORAL AND VIDEOTAPED DEPOSITION OF
MARTIE GARCIA VELA
SEPTEMBER 13, 2018

<p>2</p> <p>1 ORAL AND VIDEOTAPED DEPOSITION OF MARTIE GARCIA 2 VELA, produced as a witness at the instance of the 3 DEFENDANT, taken in the above styled and numbered cause 4 on September 13, 2018, between the hours of 2:42 p.m. 5 and 3:34 p.m., reported stenographically by JOHN W. 6 FELLOWS, Certified Court Reporter No. 3335, in and for 7 the State of Texas, at the offices of GARCIA LAW 8 OFFICES, 509 North San Antonio, Rio Grande City, Texas, 9 pursuant to the Federal Rules of Civil Procedure and 10 any provisions stated on the record or attached 11 therein. 12</p> <p>13 APPEARANCES</p> <p>14 COUNSEL FOR PLAINTIFFS:</p> <p>15 JERAD WAYNE NAJVAR 16 NAJVAR LAW FIRM, PLLC 2180 North Loop West, Suite 255 Houston, Texas</p> <p>17 COUNSEL FOR DEFENDANTS: 18 ERIC A. HUDSON OFFICE OF THE ATTORNEY GENERAL-019 Post Office Box 12548, Capitol Station Austin, Texas</p> <p>19 COUNSEL FOR DEFENDANTS:</p> <p>20 JOSE GARZA 21 LAW OFFICE OF JOSE GARZA 2414 Robin Reut Drive San Antonio, Texas</p> <p>22 ALSO PRESENT: 23 RENE ORTIZ, Videographer 24 25</p>	<p>4</p> <p>1 THE VIDEOGRAPHER: Today is September 13, 2 2018. This is the deposition of Martie Garcia Vela. 3 It is 2:44 p.m. We're on the record. 4 MARTIE GARCIA VELA, 5 having been duly sworn, testified as follows: 6 EXAMINATION 7 BY MR. HUDSON: 8 Q. Good afternoon, Mrs. Vela. 9 A. Good afternoon. 10 Q. My name is Eric Hudson. I'm with the Office of 11 the Attorney General. I represent Rolando Pablos in 12 the case that you filed against him in Federal Court. 13 Have we ever met before? 14 A. I don't think so. 15 Q. I don't think so either, but I figured I'd ask. 16 Thank you for joining here -- joining us here this 17 afternoon. I've got a few questions to go over with 18 you. Before we get started, though, have you ever been 19 deposed before? 20 A. No. 21 Q. But I understand you're a Judge, right? 22 A. No. 23 Q. No. What -- wanted to be a Judge? 24 A. Right. 25 Q. Okay. So you -- I'm assuming you've been in</p>
<p>3</p> <p>1 INDEX 2 PAGE 3 Appearances..... 2 4 MARTIE GARCIA VELA 5 Examination by Mr. Hudson..... 4 Examination by Mr. Garza..... 15 6 Examination by Mr. Najvar..... 21 Further Examination by Mr. Hudson..... 24 7 Further Examination by Mr. Garza..... 25 Further Examination by Mr. Najvar..... 38 8 Further Examination by Mr. Hudson..... 39 Further Examination by Mr. Najvar..... 40 9 Changes and Signature..... 44 10 Reporter's Certificate..... 46 11 Attached to the end of the transcript: Stipulations 12</p> <p>13 EXHIBITS 14 (No exhibits marked) 15 16 17 18 19 20 21 22 23 24 25</p>	<p>5</p> <p>1 court a time or two? 2 A. Yes, sir. 3 Q. All right. So the way the question will go 4 here -- have you ever taken a deposition before? 5 A. Yes, sir. 6 Q. All right. So you know the -- the run-down? 7 A. Yes. 8 Q. All right. Well, let's talk just a little bit 9 about etiquette to make sure we're all on the same 10 page. The first thing I'll say, you know, and please 11 don't take this as condescension. I just want to make 12 sure I've got on the record a few agreements. 13 The first one is, I'm going to be asking 14 questions, and what I'm going to ask for you to do this 15 afternoon is, wait until I finished the question and 16 I'll extend you the same courtesy. That way we're not 17 stepping on each other for the court reporter. He'd 18 appreciate that very much. Do you think we can agree 19 to do that this afternoon? 20 A. Yes, sir. 21 Q. And you're already doing it now, but I'll go 22 ahead and mention it. Please make sure that you answer 23 verbally. I don't think we'll have an issue with that 24 this afternoon, but can we agree that you'll do that? 25 A. Yes, sir.</p>

<p>6</p> <p>1 Q. Let's talk a little bit about the lawsuit.</p> <p>2 So -- well, actually you know what? Let's talk about</p> <p>3 your background just a little bit. What's your -- your</p> <p>4 current occupation?</p> <p>5 A. I'm an attorney.</p> <p>6 Q. Where do you work?</p> <p>7 A. I work for my law office, Law Office of Martie</p> <p>8 Garcia Vela, P.C.</p> <p>9 Q. Is that a solo practice?</p> <p>10 A. Yes.</p> <p>11 Q. Do you hold any political position?</p> <p>12 A. No.</p> <p>13 Q. Did you vote by mail in the Democratic Primary</p> <p>14 in 2018?</p> <p>15 A. No.</p> <p>16 Q. Are you planning on voting in the general</p> <p>17 election this here?</p> <p>18 A. Yes.</p> <p>19 Q. Are you intending to vote by mail in the</p> <p>20 general election?</p> <p>21 A. Not the general election, no.</p> <p>22 Q. Is there some other election where you're</p> <p>23 intending to vote by mail?</p> <p>24 A. Well, I've voted by mail in the past I -- when</p> <p>25 I lived in Houston when I was in law school, I voted by</p>	<p>8</p> <p>1 in front of Judge Hinojosa here in McAllen. Are you</p> <p>2 familiar with the two separate lawsuits?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Well, let's talk a little bit about the -- the</p> <p>5 federal lawsuit, which, obviously, is the one that I'm</p> <p>6 on, the one that interests me. Why have you sued</p> <p>7 Rolando Pablos?</p> <p>8 A. Well --</p> <p>9 MR. NAJVAR: Objection. Calls for a legal</p> <p>10 conclusion.</p> <p>11 A. I believe that after this election, a lot of</p> <p>12 supporters reached out and advised me that they had</p> <p>13 intended to vote by mail. They had signed, they had</p> <p>14 sent their ballot, and their vote was rejected.</p> <p>15 So I think that a lot of supporters were</p> <p>16 disenfranchised and I believe in accountability. So I,</p> <p>17 along with my attorney and Letty, decided to follow</p> <p>18 through and see if we could get some remedies for the</p> <p>19 people that weren't -- weren't -- their vote wasn't</p> <p>20 counted.</p> <p>21 Q. To your mind, where does Rolando Pablos fit</p> <p>22 into that?</p> <p>23 MR. NAJVAR: Objection. Calls for legal</p> <p>24 conclusion.</p> <p>25 A. Well, I believe he's the head of the department</p>
<p>7</p> <p>1 mail. And my husband's currently finishing his last</p> <p>2 year in college, and he's planning to attend law</p> <p>3 school. So we would move and -- if that happens, I</p> <p>4 would probably vote by mail in the future.</p> <p>5 Q. But not this year?</p> <p>6 A. Not this year.</p> <p>7 Q. Potentially in the future?</p> <p>8 A. Potentially next year.</p> <p>9 Q. Are you planning on running for office again?</p> <p>10 A. Maybe.</p> <p>11 Q. Here in the Valley?</p> <p>12 A. Yes.</p> <p>13 Q. I'm assuming after your husband graduates, then</p> <p>14 you'll be moving back?</p> <p>15 A. Right.</p> <p>16 Q. You don't want to just send him wherever by</p> <p>17 himself?</p> <p>18 A. No. I know what happens in those libraries.</p> <p>19 Q. Fair enough. Let's talk a little bit about</p> <p>20 the -- the lawsuit itself. You understand, obviously,</p> <p>21 there are two separate tracks here. There's an</p> <p>22 election contest in the State Court.</p> <p>23 I'm not involved in that one, and neither</p> <p>24 is Rolando Pablos, I don't believe. But we are</p> <p>25 involved in the federal lawsuit that you have pending</p>	<p>9</p> <p>1 that oversees elections in our state, so I think it's</p> <p>2 important that he be involved in the process.</p> <p>3 Q. Well, let's talk a little bit about the</p> <p>4 process. So, obviously, you filed an election</p> <p>5 challenge to the early voting ballot board's decision</p> <p>6 not to count certain mail-in ballots, right?</p> <p>7 A. Right.</p> <p>8 Q. Do you know what role the Secretary of State's</p> <p>9 office plays in deciding which mail-in ballots to</p> <p>10 accept and which mail-in ballots to reject?</p> <p>11 A. I don't.</p> <p>12 Q. Aside from the acceptance and rejection of</p> <p>13 mail-in ballots, are there other areas of the election</p> <p>14 that you're challenging that you believe Rolando Pablos</p> <p>15 has authority as Secretary of State to control?</p> <p>16 A. I believe those were all enumerated in the</p> <p>17 Petition.</p> <p>18 Q. Well, but what I'm trying to figure out is, is</p> <p>19 what exactly is it that happened that you're</p> <p>20 challenging that you want Rolando Pablos to fix?</p> <p>21 MR. NAJVAR: Objection. Calls for legal</p> <p>22 conclusion.</p> <p>23 A. I would like for him to fix the process of when</p> <p>24 somebody mails in their ballot and signs it, that it is</p> <p>25 counted.</p>

<p>10</p> <p>1 Q. Okay. Is there any other part of the election</p> <p>2 that you believe Rolando Pablos -- well, let me see if</p> <p>3 I can ask it like this: So you filed the lawsuit and</p> <p>4 you're asking for injunctive relief, right?</p> <p>5 A. Right.</p> <p>6 Q. What, in your mind, does an injunction look</p> <p>7 like?</p> <p>8 A. It's a remedy to stop or allow something to</p> <p>9 happen.</p> <p>10 Q. Right. So what do you want Rolando Pablos to</p> <p>11 stop doing?</p> <p>12 MR. NAJVAR: Objection, legal conclusion.</p> <p>13 A. I don't necessarily want him to stop doing</p> <p>14 anything, but I do feel that all of those voters are</p> <p>15 entitled to due process, and I would like him to</p> <p>16 address the issue.</p> <p>17 Q. Okay. So what, exactly -- what, exactly, are</p> <p>18 you looking for Rolando Pablos to do if you win this</p> <p>19 lawsuit?</p> <p>20 MR. NAJVAR: Objection, legal conclusion.</p> <p>21 A. I would like for him to fix the problem.</p> <p>22 Q. Okay. Tell me the problems. That's where I'm</p> <p>23 trying to get.</p> <p>24 A. People want to vote and they're not allowed to</p> <p>25 vote, and there's no remedy, so there's no way for them</p>	<p>12</p> <p>1 office had a hand in actually counting any ballots in</p> <p>2 Starr County in the Democratic Primary in 2018?</p> <p>3 A. I don't know.</p> <p>4 Q. What about the decision to reject ballots? Do</p> <p>5 you know whether the Secretary of State's office played</p> <p>6 any role in rejecting ballots in the 2018 Democratic</p> <p>7 Primary?</p> <p>8 A. I don't know.</p> <p>9 Q. What role do you -- if any, do you believe the</p> <p>10 Secretary of State's office played in the 2018</p> <p>11 Democratic Primary in Starr County?</p> <p>12 A. What role, if any? Maybe answering questions</p> <p>13 for election Judges or the elections administrative,</p> <p>14 the county. So mine was district, and I ran in Jim</p> <p>15 Hogg, Duval, and Starr County. They may have reached</p> <p>16 out to the Secretary of State. I don't know.</p> <p>17 Q. As you sit here today, do you know one way or</p> <p>18 the other whether anybody from any of those counties</p> <p>19 reached out to Secretary of State about any voting</p> <p>20 issues and --</p> <p>21 A. I believe --</p> <p>22 Q. -- the 2018 Democratic Primary?</p> <p>23 A. I believe there is testimony by Monica Pena</p> <p>24 and -- and E-mails that she provided during our</p> <p>25 election contest to and from the Secretary of State. I</p>
<p>11</p> <p>1 to be heard, you know. And if this is a reoccurring</p> <p>2 issue, I want it addressed because there are 142, from</p> <p>3 my recollection, ballots that were rejected by the</p> <p>4 ballot board. My race was a margin 106. There's no</p> <p>5 way for us to tell whether that would've made a</p> <p>6 difference, but I think it's important to address it</p> <p>7 now for future elections.</p> <p>8 Q. Do you know who picks people to sit on the</p> <p>9 early voting ballot board?</p> <p>10 A. I do now.</p> <p>11 Q. Who?</p> <p>12 A. The Democratic Chair.</p> <p>13 Q. And who is that?</p> <p>14 A. Judy Solis.</p> <p>15 Q. Do you know if the Democratic Chair works for</p> <p>16 the Secretary of State's office?</p> <p>17 A. I don't believe so.</p> <p>18 Q. Do you know who actually sat on the early</p> <p>19 voting ballot board?</p> <p>20 A. I do now.</p> <p>21 Q. Without going through each of the names, are</p> <p>22 you aware of whether any of them work for the Texas</p> <p>23 Secretary of State's office?</p> <p>24 A. I don't believe they do.</p> <p>25 Q. Do you know if the Texas Secretary of State's</p>	<p>13</p> <p>1 believe that John Rodriguez also testified that he</p> <p>2 reached out to the Secretary of State at least during</p> <p>3 the recount. Other than that, I don't have any</p> <p>4 knowledge of who else.</p> <p>5 Q. Do you know why either one of them did that?</p> <p>6 A. Monica Pena was a pole watcher. Her</p> <p>7 father-in-law was a candidate, and she had very serious</p> <p>8 concerns about the curb voting procedures. The voters</p> <p>9 were not asking for assistance as required.</p> <p>10 And, basically, her testimony was that</p> <p>11 whoever was assisting was voting for the voter. So she</p> <p>12 exchanged some E-mails with the Secretary of State and</p> <p>13 brought them to court when she testified.</p> <p>14 Q. Do you know whether she reached out to the</p> <p>15 Secretary of State's office about deciding which early</p> <p>16 mail-in ballots to accept or reject?</p> <p>17 A. I don't know.</p> <p>18 Q. What about John Rodriguez? Do you know why he</p> <p>19 reached out to Secretary of State's office?</p> <p>20 A. There were unsigned ballots in sequential order</p> <p>21 in several ballot boxes, and the question arose whether</p> <p>22 or not those ballots should be counted at the recount.</p> <p>23 And I believe he reached out to the Secretary of State</p> <p>24 and got some guidance from them.</p> <p>25 Q. Do you know what the guidance was?</p>

<p>14</p> <p>1 A. I believe it was to count them, but to set them 2 aside and that it would be an election contest issue. 3 Q. Do you know if guidance from the Secretary of 4 State's office is binding on the county? 5 A. I don't know. 6 Q. And by binding, just so we're clear, what I'm 7 asking you is, is if John Rodriguez had called the 8 Secretary of State's office and gotten advice that he 9 didn't like, do you know whether the Secretary of 10 State's office would have the ability to make him 11 follow their guidance? 12 A. I don't know the answer. 13 Q. Are you familiar with any particular Secretary 14 of State policies or guidance documents related to 15 early voting? 16 A. No. 17 Q. Do you know whether Starr County adheres to any 18 guidance from the Secretary of State's office about 19 early voting? 20 A. From what I could tell, no, but I don't know. 21 Q. As you sit here today, are you aware of anybody 22 from the Secretary of State's office who actually 23 played a direct role in counting any vote with regard 24 to your election? 25 A. I don't know.</p>	<p>16</p> <p>1 Q. Okay. And you campaigned yourself, you 2 were -- you did grass roots campaigning, correct? 3 A. Yes, sir. 4 Q. Did you see or do you know of Ms. Martinez 5 being involved in any of the campaigns that were going 6 on at that time? 7 A. I don't know. 8 Q. Do you know Alma Garcia? 9 A. Yes. 10 Q. And did you see or are you aware of whether 11 Ms. Garcia was involved with any of the campaigns -- 12 A. I don't know. 13 Q. Okay. Do you know Alicia Dougherty, the 14 daughter? 15 A. No. 16 Q. You don't know her. Do you know Alicia 17 Dougherty, the -- the mother of the daughter? 18 A. No. 19 Q. No? Do you know Yolanda Martinez? 20 A. Yes. 21 Q. And in your activity in the campaign, did you 22 ever see Ms. Martinez working for or campaigning or 23 being active in any of the campaigns that were going 24 on? 25 A. I don't know.</p>
<p>15</p> <p>1 MR. HUDSON: I tender the witness. 2 EXAMINATION 3 BY MR. GARZA: 4 Q. Good afternoon, Mrs. Vela. 5 A. Good afternoon. 6 Q. My name's Jose Garza, and I represent the five 7 members of the early vote counting board. Do you know 8 Armandina Martinez? 9 A. I do know her, not very personally, just I 10 worked for the county for almost 10 years, so I've had 11 dealings with her. 12 Q. Okay. In -- in the -- so you ran for District 13 Judge? 14 A. Yes, sir. 15 Q. In the last primary -- in the Democratic 16 Primary? 17 A. Yes, sir. 18 Q. And you had a campaign? 19 A. Yes, sir. 20 Q. You had campaign workers? 21 A. Yes, sir. 22 Q. Volunteers? 23 A. Yes, sir. 24 Q. Did you have a campaign manager? 25 A. No.</p>	<p>17</p> <p>1 Q. Okay. You mentioned that you had an active 2 campaign for District Judge -- 3 A. Yes. 4 Q. -- correct? And the District Judge position 5 that you ran for is a multi-county position? 6 A. Yes, sir. 7 Q. Okay. And do you know if there were mail-in 8 ballots that were cast in the other counties? 9 A. Yes, sir. 10 Q. And do you know what their mail ballots that 11 were cast in the other counties were -- some were 12 accepted and some were rejected? 13 A. I believe so. 14 Q. Okay. You didn't sue any of the early 15 vote -- early vote ballot board members in the other 16 counties, correct? 17 A. No. 18 Q. Okay. Did you have campaign workers present 19 when the early vote ballot board met to review the 20 mail-in ballots? 21 A. I don't believe so. 22 Q. Okay. You don't remember? 23 A. I don't remember. 24 Q. You don't think so? 25 A. I don't think so.</p>

<p>18</p> <p>1 Q. Okay. Are you aware of what sorts of things</p> <p>2 the earlier vote ballot board was looking for when they</p> <p>3 were examining the ballots?</p> <p>4 A. May I answer the last question? I remembered.</p> <p>5 Q. You do remember now?</p> <p>6 A. Yes. There was one individual.</p> <p>7 Q. So you did have a volunteer, somebody</p> <p>8 affiliated with your campaign?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And -- and do you know the sort of things that</p> <p>11 the ballot board was doing to -- in evaluating the</p> <p>12 ballots, the early -- the mail-in ballots?</p> <p>13 A. I understood from him and his notes that they</p> <p>14 set up stations.</p> <p>15 Q. Uh-huh.</p> <p>16 A. And each member of the ballot board had a stack</p> <p>17 of ballots that they were individually looking at and</p> <p>18 deciding whether or not they were going to accept or</p> <p>19 reject. And on several occasions they would discuss a</p> <p>20 certain ballot and talk about politiqueras on the -- I</p> <p>21 guess the ballots.</p> <p>22 Q. That had signed the -- the envelope?</p> <p>23 A. Right.</p> <p>24 Q. That they had assisted the voter?</p> <p>25 A. Right.</p>	<p>20</p> <p>1 A. I assume. I -- I don't know.</p> <p>2 Q. Okay. So you also mentioned that you had a</p> <p>3 campaign. Did you have a mail-in ballot component to</p> <p>4 your campaign?</p> <p>5 A. Just relatives that, you know, we know or out</p> <p>6 of town or working. But as far as a mail-in ballot</p> <p>7 component, no.</p> <p>8 Q. You didn't hire anyone to assist with mail-in</p> <p>9 ballots --</p> <p>10 A. No.</p> <p>11 Q. -- specifically?</p> <p>12 A. No.</p> <p>13 Q. Did you assist anyone with a mail-in ballot?</p> <p>14 A. With a mail-in ballot, no.</p> <p>15 Q. Okay. Do you know if anybody in your campaign</p> <p>16 assisted with mail-in ballot?</p> <p>17 A. I'm sure somebody did, but I don't know offhand</p> <p>18 who assisted who or -- maybe my mom assisted my Great</p> <p>19 Aunt Maria Bocanegra.</p> <p>20 Q. But you don't have any specific knowledge of</p> <p>21 anybody assisting a voter?</p> <p>22 A. No.</p> <p>23 Q. Did you hand out stamps for mail-in ballots?</p> <p>24 A. No.</p> <p>25 Q. Did anybody in your campaign hand out stamps</p>
<p>19</p> <p>1 Q. Okay. At -- one of the things that they were</p> <p>2 looking for, is to see whether the signature on the</p> <p>3 application for mail-in ballot matched the signature on</p> <p>4 the envelope, correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And do you know why they did that?</p> <p>7 A. Probably to verify that the signature matched.</p> <p>8 Q. But do you know whether state law requires that</p> <p>9 they actually review and see if they match?</p> <p>10 A. I believe it does.</p> <p>11 Q. You believe it does. Do you know if any of the</p> <p>12 ballots were opened to see how they -- votes were cast</p> <p>13 before decision was made to either accept or reject a</p> <p>14 ballot?</p> <p>15 A. I don't know.</p> <p>16 Q. Did the -- your volunteer report to you that</p> <p>17 anybody examined the ballots that opened the -- the</p> <p>18 envelope where the ballot was contained before a</p> <p>19 decision was made to accept or reject the ballot?</p> <p>20 A. I know he discussed somebody coming in and</p> <p>21 taking two ballots away, but I don't remember him</p> <p>22 saying that any of them were opened.</p> <p>23 Q. Okay. So whatever decisions were made on</p> <p>24 whether to accept or reject a ballot, it was without</p> <p>25 knowing how those ballots were cast, correct?</p>	<p>21</p> <p>1 for mail-in ballots?</p> <p>2 A. Not that I'm aware of.</p> <p>3 Q. Okay.</p> <p>4 MR. GARZA: Pass the witness.</p> <p>5 EXAMINATION</p> <p>6 BY MR. NAJVAR:</p> <p>7 Q. Ms. Garcia Vela, just a couple of questions to</p> <p>8 follow-up on -- on some of the questions you were just</p> <p>9 asked. First, I want to talk about -- you used the</p> <p>10 word politiquera earlier. Can you just explain what</p> <p>11 you mean by that?</p> <p>12 A. Usually a politiquera, it's a person -- a term</p> <p>13 used here when a person works elections. They're hired</p> <p>14 by candidates to bring in votes or block walk or</p> <p>15 mail-in ballots. It's a slang term that's used around</p> <p>16 here to describe people that work elections.</p> <p>17 Q. Okay. So what is the politiqueras do, to your</p> <p>18 understanding, with regard to mail-in ballots?</p> <p>19 A. They will go and assist voters at their homes</p> <p>20 with the ballots, pick them up. At some point, put</p> <p>21 stamps on them for the voters and take them to the mail</p> <p>22 for the voters to ensure that they are sent off.</p> <p>23 Q. Okay. And what is your understanding of -- you</p> <p>24 discussed, I think, with -- with Mr. Palmer earlier the</p> <p>25 assistance of being identified on some of these</p>

<p style="text-align: right;">22</p> <p>1 documents that the ballot board is looking at?</p> <p>2 The -- where is the assistant identified?</p> <p>3 A. There is a line on the -- I've never actually,</p> <p>4 like -- I've voted by mail, but I haven't ever assisted</p> <p>5 anybody. But I -- I know that there's a line on the</p> <p>6 ballot somewhere.</p> <p>7 I don't know if it's on the carrier</p> <p>8 envelope or on the -- I think it's on the carrier</p> <p>9 envelope -- where it's required by law that the person</p> <p>10 assisting identify themselves as having handled the</p> <p>11 ballot itself.</p> <p>12 And -- so there were two camps in our</p> <p>13 election: It was their camp and our camp, and</p> <p>14 everybody knows who's helping who. So it was -- if the</p> <p>15 person's name was on there, it was going to be common</p> <p>16 knowledge who --</p> <p>17 Q. So --</p> <p>18 A. -- supporting who.</p> <p>19 Q. Make sure I understand. So are you -- are you</p> <p>20 saying that when a ballot board member is looking at</p> <p>21 these -- the carrier envelope and they -- if an</p> <p>22 assistance information is on the envelope, what -- what</p> <p>23 does that -- what are you saying that that means to a</p> <p>24 ballot board member?</p> <p>25 A. That they helped the voter or handled the</p>	<p style="text-align: right;">24</p> <p>1 or use forms provided for free on the Secretary of</p> <p>2 State's website.</p> <p>3 MR. NAJVAR: I'll reserve the remainder of</p> <p>4 questions for trial.</p> <p>5 FURTHER EXAMINATION</p> <p>6 BY MR. HUDSON:</p> <p>7 Q. Just a couple follow-ups. First, you talking</p> <p>8 about politiqueras, P-O-L-I-T-I-Q-U-E-R-A-S, is that</p> <p>9 how you spell that?</p> <p>10 A. Yes, sir.</p> <p>11 Q. That's for the benefit of the court reporter.</p> <p>12 Let me ask, I thought I just heard you tell your lawyer</p> <p>13 people in the early voting ballot board identified</p> <p>14 politiqueras, and that they were then able to determine</p> <p>15 who a vote was for; is that your understanding?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Did you use politiqueras?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Who did you hire?</p> <p>20 A. I believe the main ones were in Jim Hogg and</p> <p>21 Duval. I would need to look at my finance report and</p> <p>22 tell you, because I don't want to misrepresent, you</p> <p>23 know, the list of who it was that I hired.</p> <p>24 Q. So it was people that you hired that you listed</p> <p>25 on your finance report. Is that a finance report that</p>
<p style="text-align: right;">23</p> <p>1 ballot.</p> <p>2 Q. Well, does it -- does that tell the ballot</p> <p>3 board member -- can they tell which campaign that</p> <p>4 person might be helping votes for?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Mr. Hudson asked you a question</p> <p>7 earlier about whether Starr County or -- or John</p> <p>8 Rodriguez, to your knowledge, follows guidance from the</p> <p>9 SOS and -- and with regard to earlier voting; do you</p> <p>10 remember that question?</p> <p>11 A. Yes.</p> <p>12 Q. And you kind of laughed at -- at that question?</p> <p>13 A. Yes.</p> <p>14 Q. Can you just explain why you laughed at the</p> <p>15 question?</p> <p>16 A. During the trial of the election contest, and</p> <p>17 even the recount itself, there's just so many flaws</p> <p>18 identified. There is so many forms that you asked John</p> <p>19 if he had come complied with the Secretary of State's</p> <p>20 forms and he would just brazenly brush them off like</p> <p>21 they're just -- they're not necessary.</p> <p>22 Ballot boxes with no seal numbers, no</p> <p>23 record of seal numbers, there was a lot of different</p> <p>24 factors identified that he was just completely reckless</p> <p>25 and not following the law. No need to follow procedure</p>	<p style="text-align: right;">25</p> <p>1 went to the Secretary of State's office?</p> <p>2 A. Ethics.</p> <p>3 Q. To the ethics commission?</p> <p>4 A. Yes.</p> <p>5 Q. How would the early voting ballot board know</p> <p>6 which politiqueras worked for who?</p> <p>7 A. Well, it's a small community. I mean, I think</p> <p>8 that with social media and with, you know, it -- it</p> <p>9 doesn't take a whole lot to determine who supports who</p> <p>10 around here. And there is only, really, two teams, if</p> <p>11 you want to call it that, and it was a lot of</p> <p>12 candidates on both sides.</p> <p>13 MR. HUDSON: Tender the witness.</p> <p>14 FURTHER EXAMINATION</p> <p>15 BY MR. GARZA:</p> <p>16 Q. Who are the politiqueras in Starr County?</p> <p>17 A. I would need to look. It was -- I had a lot of</p> <p>18 volunteers, but the ones that I actually hired I would</p> <p>19 need to look at my report and -- and tender that to</p> <p>20 you, because I --</p> <p>21 Q. Yes.</p> <p>22 A. -- can't remember.</p> <p>23 Q. I understand. But you said that everybody</p> <p>24 knows politiquera A works for one team, politiquera B</p> <p>25 works for another team. Who are those politiqueras?</p>

<p>26</p> <p>1 A. There's a lot. You want me to list all of</p> <p>2 them?</p> <p>3 Q. Yeah.</p> <p>4 A. Okay. Bebita Rocha.</p> <p>5 Q. Who? Which team does she work for?</p> <p>6 A. I believe ours.</p> <p>7 MR. HUDSON: I don't mean to step on you,</p> <p>8 can you have her spell it?</p> <p>9 Q. Sure. And what was her first name again?</p> <p>10 A. B-E-B-I-T-A.</p> <p>11 Q. And her last name was Rocha?</p> <p>12 A. Rocha.</p> <p>13 Q. R-O-C-H-A?</p> <p>14 A. Yes.</p> <p>15 Q. And she worked on your team?</p> <p>16 A. Yes.</p> <p>17 Q. Were there a number of candidates on your team?</p> <p>18 A. There was a lot.</p> <p>19 Q. There were a lot of candidates that were on</p> <p>20 your team.</p> <p>21 A. There were -- do you want me to kind of list --</p> <p>22 Q. Yeah.</p> <p>23 A. -- how many?</p> <p>24 Q. Sure.</p> <p>25 A. So it was County Judge, District Judge, County</p>	<p>28</p> <p>1 Q. Yours as well?</p> <p>2 A. Uh-huh.</p> <p>3 Q. And would it be the same candidates that you</p> <p>4 identified earlier, the same positions that you</p> <p>5 identified earlier?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. And were any of those candidates</p> <p>8 incumbents, by the way?</p> <p>9 A. Yes.</p> <p>10 Q. Some of them were?</p> <p>11 A. Most of them.</p> <p>12 Q. Most of them were incumbent. And did all of</p> <p>13 those candidates lose?</p> <p>14 A. No.</p> <p>15 Q. And do you know if ballots that</p> <p>16 were -- did -- does Ernestina Barron make it a habit of</p> <p>17 harvesting mail-in ballots?</p> <p>18 A. I don't know if she makes it a habit. I don't</p> <p>19 know.</p> <p>20 Q. Is that part of her strategy?</p> <p>21 A. Well, I know she's a nurse, and she has a lot</p> <p>22 of people that call her to assist.</p> <p>23 Q. Okay. But you don't know if she has -- if</p> <p>24 that's part of her strategy in terms of how she helps</p> <p>25 candidates that hire her?</p>
<p>27</p> <p>1 Court at Law, District Clerk, County Clerk, a few of</p> <p>2 the precincts, chair positions.</p> <p>3 Q. Uh-huh.</p> <p>4 A. Treasurer -- county treasurer. I know there is</p> <p>5 seven county wide for sure, and then a few precinct.</p> <p>6 Q. Okay. And all of those candidates lost?</p> <p>7 A. No.</p> <p>8 Q. Some of them won?</p> <p>9 A. Yes.</p> <p>10 Q. Was it your impression that -- that if in the</p> <p>11 early vote if Ms. Rocha's name appeared as an</p> <p>12 assistant, that that vote was rejected?</p> <p>13 A. I don't know.</p> <p>14 Q. You don't know?</p> <p>15 A. I don't know.</p> <p>16 Q. If we -- if we looked at the mail-in votes,</p> <p>17 would you expect that the Rocha assisted mail-in votes</p> <p>18 would be in the reject pile or in the accepted pile?</p> <p>19 A. I don't know.</p> <p>20 Q. You don't know. Who else?</p> <p>21 A. Ernestina Barron, E-R-N-E-S-T-I-N-A</p> <p>22 B-A-R-R-O-N.</p> <p>23 Q. Thank you. And which team did Ms. Barron work</p> <p>24 for?</p> <p>25 A. Ours.</p>	<p>29</p> <p>1 A. I don't know.</p> <p>2 Q. Okay. Do you know if -- if -- if there were</p> <p>3 any ballots that Ms. Barron assisted with on mail-in</p> <p>4 ballots that were rejected?</p> <p>5 A. I don't know.</p> <p>6 Q. You don't know. Okay. Can -- is there a third</p> <p>7 Starr County politiquera that was used in the --</p> <p>8 A. Frances Mendoza.</p> <p>9 Q. And which team was she in?</p> <p>10 A. Theirs.</p> <p>11 Q. When you say theirs, what does that mean?</p> <p>12 A. The opposing slate.</p> <p>13 Q. Okay.</p> <p>14 A. My opponent.</p> <p>15 Q. Okay. The opposing slate that included</p> <p>16 your -- your opponent?</p> <p>17 A. Right.</p> <p>18 Q. For the district bench?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. And what other positions are associated</p> <p>21 with that slate?</p> <p>22 A. County Judge -- the same ones.</p> <p>23 Q. Okay. And did all of those candidates win?</p> <p>24 A. No.</p> <p>25 Q. Some won and some lost?</p>

<p>30</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay. And -- but is it your testimony that</p> <p>3 Alicia Dougherty Number 1 knew who Frances Mendoza was</p> <p>4 and which slate she was working for?</p> <p>5 A. Well, Frances didn't put her name on any of the</p> <p>6 ones she assisted.</p> <p>7 Q. Okay. So there's no way of knowing which</p> <p>8 candidates -- which ballots were submitted were</p> <p>9 assisted by Frances Mendoza in the mail-in ballots?</p> <p>10 A. She -- I testified that she assisted at least</p> <p>11 50 without putting her name on.</p> <p>12 Q. Okay. But there's no way for the ballot board</p> <p>13 to know which those were?</p> <p>14 A. I don't know. I don't assume they would,</p> <p>15 because there's no signature.</p> <p>16 Q. Right. So you don't have any information that</p> <p>17 anybody on the ballot board could identify mail-in</p> <p>18 ballots that were assisted by Frances Mendoza?</p> <p>19 A. No.</p> <p>20 Q. Because she didn't put her name on any of them?</p> <p>21 A. Right.</p> <p>22 Q. Okay. So any ballots that -- strike that.</p> <p>23 Who else? Anybody else that you can think</p> <p>24 of?</p> <p>25 A. I know there's more. I just can't think of</p>	<p>32</p> <p>1 her name on the ballot the way the law requires?</p> <p>2 A. I believe so.</p> <p>3 Q. Okay. And do you know if Alma Garcia would've</p> <p>4 known that Yvonne Vera was an politiquera affiliated</p> <p>5 with your slate of candidates?</p> <p>6 A. I believe she might.</p> <p>7 Q. How would show she know that?</p> <p>8 A. Well, I know that Yvonne's husband worked at</p> <p>9 the city, and usually when you work for the city or the</p> <p>10 county, you usually run in circles where you know who</p> <p>11 supports who.</p> <p>12 Q. And what is Alma Garcia's affiliation with any</p> <p>13 of those connections?</p> <p>14 A. I mean, she lives here. She works at HR.</p> <p>15 Q. That's the only information that you have that</p> <p>16 would link Alma Garcia to Yvonne Vera?</p> <p>17 A. That's the only information I have.</p> <p>18 Q. What about Yolanda Martinez?</p> <p>19 A. Same. I don't know.</p> <p>20 Q. You don't know?</p> <p>21 A. I don't know.</p> <p>22 Q. And Armandina Martinez, does she have any</p> <p>23 connection or knowledge of Yvonne Vera and the work</p> <p>24 that she does?</p> <p>25 A. I don't know.</p>
<p>31</p> <p>1 names right now.</p> <p>2 Q. Well, that's all right. Whatever -- whatever</p> <p>3 you can think of today.</p> <p>4 A. Yvonne Vera. Y-V-O-N-N-E V-E-R-A.</p> <p>5 Q. Okay. And which camp did she work for?</p> <p>6 A. Ours.</p> <p>7 Q. So she was a paid politiquera --</p> <p>8 A. I believe so.</p> <p>9 Q. -- in the campaign? Did your campaign</p> <p>10 contribute to the fund that paid Ms. Vera?</p> <p>11 A. I'm not sure.</p> <p>12 Q. Might have?</p> <p>13 A. Might have.</p> <p>14 Q. But other members associated with your informal</p> <p>15 slate --</p> <p>16 A. Right.</p> <p>17 Q. -- would've paid for her?</p> <p>18 A. (No audible response).</p> <p>19 Q. Do you know if either of the Alicia Dougherty's</p> <p>20 knew that Yvonne Vera was working for your slate?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you know if Ms. Vera assisted mail-in</p> <p>23 ballot --</p> <p>24 A. I believe she does.</p> <p>25 Q. You believe she did. Do you know if she listed</p>	<p>33</p> <p>1 Q. Okay. Anybody else that you can think of</p> <p>2 today?</p> <p>3 A. Amalia Gonzalez. Amalia, A-M-A-L-I-A,</p> <p>4 Gonzalez, G-O-N-Z-A-L-E-Z.</p> <p>5 Q. Okay. And which slate did she -- did</p> <p>6 Ms. Gonzalez work for?</p> <p>7 A. Ours.</p> <p>8 Q. And so she was paid by one or more of the</p> <p>9 candidates that you've identified?</p> <p>10 A. I don't know if she was paid. I'm not sure.</p> <p>11 Q. She may have just been a volunteer?</p> <p>12 A. Right.</p> <p>13 Q. But she also probably assisted with the mail-in</p> <p>14 ballots?</p> <p>15 A. Probably.</p> <p>16 Q. Probably. And would she have identified</p> <p>17 herself on --</p> <p>18 A. Yes.</p> <p>19 Q. -- the envelope?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Do you know how many mail-in ballots she</p> <p>22 would've been affiliated with?</p> <p>23 A. I don't know.</p> <p>24 Q. Okay. Do you know anything about her</p> <p>25 background or her work in that arena that would've</p>

<p>34</p> <p>1 identified her to any member of the ballot board?</p> <p>2 A. No, sir.</p> <p>3 Q. Okay. Anybody else?</p> <p>4 A. I know there's a lady named Denise, and she</p> <p>5 works with another -- she works with a partner. They</p> <p>6 both work for Commissioner -- oh, that was another</p> <p>7 campaign that I forgot to mention, was the County</p> <p>8 Commissioners. Commissioner Ruben Saenz, Precinct 4,</p> <p>9 Denise and Ester. I don't know their last names.</p> <p>10 Q. Okay. Denise and Ester are politiqueras?</p> <p>11 A. Yes, sir.</p> <p>12 Q. That are affiliated with Commissioner Saenz?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Are they affiliated with anybody else's</p> <p>15 campaign?</p> <p>16 A. With Eloy Vera, Balde Garza, all of the slate.</p> <p>17 Q. So the slate that was opposing the slate that</p> <p>18 you identified as yours?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. Now, these were not formal slates, or</p> <p>21 were they?</p> <p>22 A. Not formal, but everything on social media</p> <p>23 involved all of them and all of us. So, I mean, I</p> <p>24 don't know the definition of formal, but everybody</p> <p>25 knew.</p>	<p>36</p> <p>1 but I know that they've been politiqueras for a long</p> <p>2 time, so --</p> <p>3 Q. Right.</p> <p>4 A. -- it would be common knowledge.</p> <p>5 Q. Right. But you know that -- the members of the</p> <p>6 ballot board were not involved in any of the campaigns?</p> <p>7 A. I don't know if they were involved.</p> <p>8 Q. You don't have any information that they were?</p> <p>9 A. I do not.</p> <p>10 Q. Okay. Anybody else?</p> <p>11 A. I know there was some in Roma, but I don't</p> <p>12 recall names. Again, I'd need to refresh my memory on</p> <p>13 that, because they're some volunteers; some people that</p> <p>14 testified, but I can't remember their names.</p> <p>15 Q. Okay. And were any of the Roma politiqueras</p> <p>16 affiliated with your slate?</p> <p>17 A. Yes.</p> <p>18 Q. Do you -- without -- do you know how many?</p> <p>19 A. I know Erica Pelayo is from Roma. E-R-I-C-A --</p> <p>20 Q. Uh-huh.</p> <p>21 A. -- I think. P-E-L-A-Y-O.</p> <p>22 Q. And she's affiliated with your camp?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Do you know anybody else in Roma?</p> <p>25 A. Belinda, B-E-L-I-N-D-A, Garcia, G-A-R-C-I-A.</p>
<p>35</p> <p>1 Q. They were coordinating their campaigns?</p> <p>2 A. Right. Everybody would pitch in something to</p> <p>3 help the group.</p> <p>4 Q. Okay. Were there meetings of these slates?</p> <p>5 A. I mean, we'd meet up to block walk and stuff</p> <p>6 like that, but --</p> <p>7 Q. Uh-huh.</p> <p>8 A. -- as far as like formal meetings, not really.</p> <p>9 Q. Uh-huh. And so Denise and Ester you would</p> <p>10 characterize as politiqueras on the other side?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. And do you know anything that in</p> <p>13 Denise and Ester's background or their activity that</p> <p>14 would've -- that would've crossed paths with any member</p> <p>15 of the ballot board, so that they would've been able to</p> <p>16 identify?</p> <p>17 A. Yes.</p> <p>18 Q. And what is that?</p> <p>19 A. They both work for the county. So any HR</p> <p>20 issue, they would have to deal with Alma, Armandina,</p> <p>21 and the other lady.</p> <p>22 Q. And what about that tells Armandina and, et</p> <p>23 cetera, that they were involved as politiqueras for</p> <p>24 that slate?</p> <p>25 A. I don't know what about that would tell them,</p>	<p>37</p> <p>1 Q. Uh-huh. And he's a politiquera from Roma?</p> <p>2 A. Yes.</p> <p>3 Q. Which camp was she affiliated with?</p> <p>4 A. Ours.</p> <p>5 Q. Anybody else?</p> <p>6 A. That's all I can remember. I don't remember</p> <p>7 other names.</p> <p>8 Q. And do you know if Erica and Belinda, as part</p> <p>9 of their assistance to the campaigns, that they were</p> <p>10 hired on assisted voters with mail-in ballots?</p> <p>11 A. I believe so.</p> <p>12 Q. Okay. And is it your testimony that in each of</p> <p>13 those instances, Ms. Pelayo and -- and Belinda would</p> <p>14 sign on the carrier envelope?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. And what in their background or their</p> <p>17 activity would have alerted any member of the ballot</p> <p>18 board that they were politiqueras for your camp?</p> <p>19 A. I don't know.</p> <p>20 Q. Okay. Anybody else?</p> <p>21 A. That's all I can recall.</p> <p>22 Q. So there were about 140 mail-in ballots that</p> <p>23 were rejected?</p> <p>24 A. I think 142.</p> <p>25 Q. 142. Did all of those rejected ballots come</p>

<p>38</p> <p>1 from either Ms. Pelayo or Belinda -- what was her last 2 name again? 3 A. Garcia. 4 Q. Garcia. Can't read my writing. 5 A. Garcia. 6 Q. Or Amalia Gonzalez or Yvonne Vera or Ernestina 7 Barron? 8 A. I haven't had the stomach to check. I don't 9 know. 10 Q. You don't know? 11 A. (No audible response). 12 Q. Okay. 13 MR. GARZA: Pass the witness. 14 FURTHER EXAMINATION 15 BY MR. NAJVAR: 16 Q. Ms. -- I don't know whether to call you -- 17 A. Vela's fine. 18 Q. -- but I don't know if I call you Garcia Vela 19 or Vela or Garcia? 20 A. Vela's fine. Shorter. 21 Q. Ms. Vela. So are Erica -- Erica Pelayo and 22 Belinda Garcia, is it -- you mentioned earlier that 23 with regard to Denise and Ester who work for 24 Commissioner Saenz, that it was common knowledge, you 25 said, that they were politiqueras or did this kind of</p>	<p>40</p> <p>1 MR. HUDSON: We'll reserve. 2 FURTHER EXAMINATION 3 BY MR. NAJVAR: 4 Q. Well, is that -- I don't -- I don't want to go 5 deep into, but I do -- since we're on the record here, 6 maybe it helps clarify for everybody. If you know, why 7 were those three individuals arrested? 8 A. I believe in Erica's case, she allegedly put a 9 date on an application for a mail ballot after the 10 person had deceased. I think that those were the facts 11 on her. On Ernestina, I -- 12 Q. Well, you've -- I know you said you don't -- 13 MR. HUDSON: Well, let her finish her 14 answer, Counsel. 15 Q. Sure. 16 A. I don't know the facts on Ernestina, but it 17 also had to do with mail-in ballots and same for 18 Belinda. 19 Q. Okay. What agency arrested them? 20 A. The D.A.'s Office. Starr County D.A.'s Office. 21 Q. Who is that? 22 A. Omar Escobar. 23 Q. Okay. Why do you -- if -- if you know, why do 24 you think -- or why did Omar Escobar arrest those three 25 individuals?</p>
<p>39</p> <p>1 campaign work, right? 2 A. Right. 3 Q. Would you -- would you characterize Erica 4 and -- and Belinda as in that same kind of category 5 as -- do people know that they do campaign work and, 6 you know, recurring elections? 7 A. Yes. In the middle of the election, Erica, 8 Belinda, and Ernestina were arrested. 9 Q. Okay. Well, I'm not -- you told me -- I 10 don't know if -- if we want to get into all this. Are 11 you -- are you -- you're an attorney, right? 12 A. Yes. 13 Q. Are you representing any one of them? 14 A. No. 15 Q. Were you previously? 16 A. No. 17 Q. Okay. 18 A. Jay Pena was representing one of them. 19 MR. NAJVAR: Well, I'll reserve the 20 remainder of questions for trial. 21 FURTHER EXAMINATION 22 BY MR. HUDSON: 23 Q. I can't leave without knowing. Why were they 24 arrested? 25 A. They were charged with voter fraud.</p>	<p>41</p> <p>1 MR. HUDSON: Objection, form. Foundation. 2 Q. As opposed to all the other politiqueras active 3 in the election? 4 MR. HUDSON: Objection, form. Foundation. 5 A. Because they were helping us. 6 MR. NAJVAR: Okay. And just for the 7 record, I prefaced the question by saying if you know, 8 okay, Eric? 9 Q. So why do you believe that it was because they 10 were helping you? 11 A. Because nobody else was arrested before or 12 after when testimony under oath, one politiquera on 13 their side admitted to at least 50 felonies and she 14 hasn't been arrested. 15 But yet these people were targeted, I 16 believe, because they were supporting us, helping us. 17 And arrested before the primary, it made the news 18 everywhere. Again, it's a small community. People 19 knew that they were helping our side, so it -- it sent 20 a very chilling effect. Women, mothers, no criminal 21 history. 22 Q. Do you have any reason to believe that any of 23 the politiqueras working for the opposing slate were 24 breaking any laws? 25 A. Yes.</p>

42	<p>1 Q. What?</p> <p>2 A. Not identifying themselves on mail-in ballots</p> <p>3 that they handled, that they took from the voter, took</p> <p>4 home, and then put in the mail the next day. And so if</p> <p>5 a name's not on there, how is anybody on the ballot</p> <p>6 board going -- or maybe that was their strategy. I</p> <p>7 don't know.</p> <p>8 Q. Well, if -- when were these -- these three</p> <p>9 arrests made; if you recall?</p> <p>10 A. I believe in January.</p> <p>11 Q. January of 2018?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay.</p> <p>14 A. Maybe February.</p> <p>15 Q. After the testimony in our cause in the</p> <p>16 election contest in -- in Starr County District Court,</p> <p>17 did you get any inquiries from the District Attorney's</p> <p>18 Office looking into any of the facts from the case?</p> <p>19 A. None.</p> <p>20 Q. Do you know people at the District Attorney's</p> <p>21 Office?</p> <p>22 A. Yes. I used to work there.</p> <p>23 Q. Okay.</p> <p>24 MR. NAJVAR: No further questions at this</p> <p>25 time.</p>	44																																																																																													
43	<p>1 MR. HUDSON: Nothing from me.</p> <p>2 MR. GARZA: I don't have anything else.</p> <p>3 MR. NAJVAR: Thank you.</p> <p>4 THE WITNESS: Thank you.</p> <p>5 MR. HUDSON: Read and sign. I'm</p> <p>6 requesting one.</p> <p>7 THE VIDEOGRAPHER: Off the record.</p> <p>8 (Deposition concluded)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: MARTIE GARCIA VELA</p> <p>3 DATE OF DEPOSITION: SEPTEMBER 13, 2018</p> <table><tr><th>PAGE</th><th>LINE</th><th>CHANGE</th><th>REASON</th></tr><tr><td>4</td><td></td><td></td><td></td></tr><tr><td>5</td><td></td><td></td><td></td></tr><tr><td>6</td><td></td><td></td><td></td></tr><tr><td>7</td><td></td><td></td><td></td></tr><tr><td>8</td><td></td><td></td><td></td></tr><tr><td>9</td><td></td><td></td><td></td></tr><tr><td>10</td><td></td><td></td><td></td></tr><tr><td>11</td><td></td><td></td><td></td></tr><tr><td>12</td><td></td><td></td><td></td></tr><tr><td>13</td><td></td><td></td><td></td></tr><tr><td>14</td><td></td><td></td><td></td></tr><tr><td>15</td><td></td><td></td><td></td></tr><tr><td>16</td><td></td><td></td><td></td></tr><tr><td>17</td><td></td><td></td><td></td></tr><tr><td>18</td><td></td><td></td><td></td></tr><tr><td>19</td><td></td><td></td><td></td></tr><tr><td>20</td><td></td><td></td><td></td></tr><tr><td>21</td><td></td><td></td><td></td></tr><tr><td>22</td><td></td><td></td><td></td></tr><tr><td>23</td><td></td><td></td><td></td></tr><tr><td>24</td><td></td><td></td><td></td></tr><tr><td>25</td><td></td><td></td><td></td></tr></table> <p>1 I, MARTIE GARCIA VELA, have read the foregoing</p> <p>2 transcript and hereby affix my signature that same is</p> <p>3 true and correct, except as noted above.</p> <p>4</p> <p>5 _____</p> <p>6 MARTIE GARCIA VELA</p> <p>7</p> <p>8 THE STATE OF TEXAS)(</p> <p>9 COUNTY OF _____)(</p> <p>10 Before me, _____,</p> <p>11 on this day personally appeared MARTIE GARCIA VELA,</p> <p>12 known to me (or proved to me under oath or through</p> <p>13 _____) (description of identity</p> <p>14 card or other document) to be the person whose name is</p> <p>15 subscribed to the foregoing instrument and acknowledged</p> <p>16 to me that they executed the same for the purposes and</p> <p>17 consideration therein expressed.</p> <p>18</p> <p>19 Given under my hand and seal of office</p> <p>20 this _____ day of _____, 2018.</p> <p>21</p> <p>22 _____</p> <p>23 Notary Public in and for</p> <p>24 The State of Texas</p> <p>25</p>	PAGE	LINE	CHANGE	REASON	4				5				6				7				8				9				10				11				12				13				14				15				16				17				18				19				20				21				22				23				24				25				45
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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 MCALLEN DIVISION
4 LETICIA GARZA GALVAN AND)(
5 MARTIE GARCIA VELA)(
6 Plaintiffs)(
7 VS.)(CASE NO. 7:18-cv-113
8)(
9 ROLANDO PABLOS, IN HIS)(
10 OFFICIAL CAPACITY AS)(
11 TEXAS SECRETARY OF)(
12 STATE, AND ARMANDINA)(
13 MARTINEZ, ALMA GARCIA,)(
14 ALICIA DOUGHERTY NO. 1,)(
15 ALICIA DOUGHERTY NO. 2,)(
16 YOLANDA MARTINEZ)(
17 Defendants)(
18 REPORTER'S CERTIFICATION
19 ORAL AND VIDEOTAPED DEPOSITION OF
20 MARTIE GARCIA VELA
21 SEPTEMBER 13, 2018
22 I, JOHN W. FELLOWS, Certified Court
23 Reporter, certify that the witness, MARTIE GARCIA VELA,
24 was duly sworn by me, and that the transcript is a true
25 and correct record of the testimony given by the
witness on September 13, 2018; that the deposition was
reported by me in stenograph and was subsequently
transcribed under my supervision;
Pursuant to Federal Rule 30(5)(e)(2), a
review of the transcript was requested.
I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties,
nor a relative or employee of such attorney or counsel,
nor am I financially interested in the action.
WITNESS MY HAND on this the ____ day of
_____, 2018.

JOHN W. FELLOWS, Texas CSR 3335
Expiration Date: 12-31-18
Integrity Legal Support, CRN No. 528
3100 W. Slaughter Ln., #101
Austin, Texas
(512) 320-8690

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2018 WL 4096383

Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR DESIGNATION
AND SIGNING OF OPINIONS.**Court of Appeals of Texas**, San Antonio.Leticia Garza **GALVAN** and Martie Garcia Vela,
Appellants

v.

Eloy **VERA** and Baldemar Garza, Appellees

No.

04

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-CV

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Delivered and Filed: **August 29, 2018**From the 229th Judicial District Court, Starr County,
Texas, Trial Court No. DC-18-186, The Honorable **Joel B. Johnson**, Judge Presiding**Attorneys and Law Firms**APPELLANT ATTORNEY: **Jerad Najvar**, Najvar Law
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78501-4005, **James F. McKibben Jr.**, McKibben Martinez
Jarvis & Wood LLP, 555 N Carancahua St, Ste 1100,
Corpus Christi, TX 78401-0841.Sitting: **Sandee Bryan Marion**, Chief Justice, **Karen Angelini**, Justice, **Irene Rios**, Justice**MEMORANDUM OPINION**Opinion by: **Sandee Bryan Marion**, Chief Justice

*1 This is an appeal from a judgment in an election contest. In the underlying lawsuit, Leticia Garza **Galvan** and Martie Garcia Vela filed the contest challenging the outcome of the March **2018** Starr County Democratic primary election as it related to the nominees for Starr County Judge and Judge of the 229th Judicial District Court. After a bench trial,¹ the trial court found the final canvass of the vote in both races was the true outcome of the election. **Galvan** and Vela present seven issues on appeal challenging the trial court's findings as they relate to: (1) voter assistance at the polls; (2) ballot box security; (3) the early voting ballot board; and (4) mail-in ballots. We affirm the trial court's judgment.

BACKGROUND

In the March **2018** Starr County Democratic primary, **Galvan** challenged incumbent Eloy **Vera** for the nomination for Starr County Judge, and Vela challenged Baldemar Garza for the nomination to the open seat for Judge of the 229th Judicial District Court. After a recount, **Galvan** lost by 159 votes, and Vela lost by 106 votes.

Galvan and Vela filed the underlying lawsuit on April 6, **2018**. Pertinent to the issues raised on appeal, **Galvan** and Vela alleged: (1) election officers did not enter the name and address of people providing assistance to voters at the polls on the poll lists beside the voters' names and the people providing assistance suggested how the voters should vote; (2) the ballot boxes were not properly sealed and some of the ballots were not signed by the presiding judge and were in sequential order; (3) ineligible people served on the early voting ballot board and the board did not decide whether to accept or reject ballots as a group; and (4) one person who assisted voters with mail-in ballots did not provide the person's signature, printed name, and residence address on the carrier envelope.

After a five-day bench trial, the trial court entered findings of fact and conclusions of law. The trial court noted the evidence included "basically all records of the election" and testimony from "[e]lection judges, poll watchers, candidates, voters, election administrators and volunteers for the candidates."

With regard to assistance at the polls, the trial court found Starr County has a procedure which allows voters to travel to the polls in a vehicle and then request assistance with voting. The voter may request the assistance of a

person other than the election official and that person must take an oath before assisting the voter. The trial court also found no record was made of which voters were assisted or the name of the person who provided the assistance; however, a record is made of the number of signatures on the oath sheets. The total number of signatures on the oath sheets was about 1200. The trial court concluded the Starr County election officials did not follow every protocol specified in the **Texas** Election Code regarding the provision of assistance to voters at the polls; however, those failures did not invalidate the ballots.

*2 With regard to the ballot boxes, the trial court found the ballot boxes were secured with locks and seals, and the voting machines were secured with seals. Although the **Texas** Election Code requires the authority responsible for distributing election supplies to record the serial numbers of the seals used on the ballot boxes, the trial court found the election officials relied on poll watchers to record the seal numbers placed on the ballot boxes when they were first sealed, and no record of those first seal numbers were recorded by the election officials at the beginning of voting. The trial court further found **Galvan** and Vela presented “no direct evidence that any of these machine topped voting box seals were tampered with or replaced.” Although the trial court found there were ballot irregularities inside the ballot boxes, including the absence of the signatures of the election judges on multiple ballots and some ballots being in sequential order, the trial court concluded the “[c]ontestants’ claim of lack of ballot box security and actual ballot box stuffing is simply not supported by the great weight of evidence presented in this case,” and “[t]he recount verified the original total number of votes.” Finally, the trial court concluded, “[t]he election while not perfect was conducted within a zone of reasonable certainty.”

With regard to the composition of the early voting ballot board, the trial court found no objection was made to the board’s composition until after the election. Therefore, the trial court concluded any complaint regarding its composition was waived. The trial court also found the contestants raised a challenge to the procedure used by the board and stated, “A higher Court may consider the issue, this Court declines.”

Finally, with regard to the mail-in ballots, the trial court found “not all mail in ballots have the name of the person who assisted a voter” but concluded the “assister’s” failure to sign the ballot did not invalidate the vote. Instead, the trial court concluded that failure subjects the “assister” to criminal sanctions.

After addressing each of the alleged improprieties, the trial court generally concluded, “While many steps could be taken by the local Democratic Party and the County’s Election Department to better comply with the protocols of the election code, no clear evidence of systemic fraud or error producing protocols was shown.” Therefore, “[t]he election should be declared valid.” The trial court’s judgment declares **Vera** and Garza the “true winners” of their respective races for the March **2018** Democratic primary nomination. **Galvan** and Vela appeal.

SCOPE OF INQUIRY AND STANDARD OF REVIEW

In an election contest, the trial court must “attempt to ascertain whether the outcome of the contested election, as shown by the final canvass, is not the true outcome.” **TEX. ELEC. CODE ANN. § 221.003(a)** (West 2010). “An election contestant’s burden is a heavy one, and the declared results will be upheld in all cases except when there is clear and convincing evidence of an erroneous result.” *Flores v. Cuellar*, 269 S.W.3d 657, 660 (**Tex. App.—San Antonio** 2008, no pet.). “To overturn an election, the contestant must prove by clear and convincing evidence that voting irregularities materially affected the election results.” *Id.* A contestant can establish the outcome was materially affected by showing: (1) illegal votes were counted or an election official failed to count legal votes or engaged in other fraud, illegal conduct, or mistake; and (2) a different result would have been reached. *Id.*; **TEX. ELEC. CODE ANN. § 221.003(a)**.

In reviewing a judgment in an election contest, we must determine if the trial court abused its discretion. *Flores*, 269 S.W.3d at 660. A trial court abuses its discretion when it acts “without reference to any guiding rules and principles.” *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (**Tex.** 1985). “The sufficiency of evidence supporting a trial court’s finding of fact may be a relevant factor in determining whether the court abused its discretion.” *Jones v. Morales*, 318 S.W.3d 419, 423 (**Tex. App.—Amarillo** 2010, pet. denied).

In reviewing the legal sufficiency of the evidence under a clear and convincing standard, we look at all the evidence, in the light most favorable to the judgment, to determine if the trier of fact could reasonably have formed a firm belief or conviction that its finding was true. *In re J.F.C.*, 96 S.W.3d 256, 266 (**Tex.** 2002). We

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presume that the trier of fact resolved disputed facts in favor of its findings if a reasonable trier of fact could do so. *Id.* We disregard any contrary evidence if a reasonable trier of fact could do so, but we do not disregard undisputed facts. *Id.*

*3 In conducting a factual sufficiency review under a clear and convincing standard, we “must give due consideration to evidence that the factfinder could reasonably have found to be clear and convincing.” *Id.* The evidence is only factually insufficient if “the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction.” *Id.*

“[D]espite the heightened [clear and convincing] standard of review,” we “must nevertheless still provide due deference to the decisions of the factfinder, who, having full opportunity to observe witness testimony first-hand, is the sole arbiter when assessing the credibility and demeanor of the witnesses.” *In re A.B.*, 437 S.W.3d 498, 503 (Tex. 2014). We are required to detail the evidence in reversing a judgment for insufficient evidence but not when we affirm. *Id.*

ASSISTING VOTERS AT POLLS

In their first two issues, **Galvan** and Vela contend the trial court erred in failing to find the final canvass was not the true outcome of the election based on the evidence presented regarding the assistance provided to voters at the polls and the failure to record the names and addresses of the people providing assistance beside the voter’s names.

A. Failure to Record Name and Address of People Providing Assistance

Section 64.032 of the **Texas Election Code** allows a voter to be assisted by any person selected by the voter with a few exceptions that are not relevant to this case. **TEX. ELEC. CODE ANN. § 64.032** (West 2010). “If assistance is provided by a person of the voter’s choice, an election officer shall enter the person’s name and address on the poll list beside the voter’s name.” *Id.* § 64.032(d).

It is undisputed that voters were assisted at the polls in the Starr County Democratic primary, but the names and addresses of the people providing assistance were not entered on the poll list beside the names of the voters who were assisted. The trial court, however, concluded that the failure to follow this protocol did not invalidate the ballots of the voters who were assisted.

In addressing this issue, the trial court found “[n]o evidence was presented establishing any particular voter who was not eligible for assistance was in fact assisted in voting.” The **Texas** Legislature has addressed when a voter’s ballot may not be counted in this context. Section 64.037 of the **Texas Election Code** provides, “If assistance is provided to a voter who is not eligible for assistance, the voter’s ballot may not be counted.” *Id.* § 64.037. The **Texas** Legislature did not, however, provide that a voter’s ballot may not be counted if the name and address of the person assisting the voter is not entered beside the voter’s name on the poll list. Therefore, “[t]he legislature expressly has provided that some actions require a voter’s ballot to be excluded.” *Jones v. Morales*, 318 S.W.3d 419, 426 (Tex. App.—Amarillo 2010, pet. denied). Because the legislature does not require a ballot not be counted for the failure to enter the name and address of the person providing assistance on the poll list, we “decline to add to the legislature’s expressed list.” *Id.*

B. Nature of Assistance Provided

*4 **Galvan** and Vela also assert the evidence established that people assisting voters at the polls completed ballots without direction from the voter or suggested how the voter should vote. **Vera** and Garza respond that the trial court could have disbelieved the testimony supporting such a finding. For example, one of the poll watchers who testified assistants were completing the ballots for the voters admitted she did not examine those voters’ ballots and could not, as a poll watcher, speak to the voter or be present when the voter was voting. Accordingly, she had no personal knowledge of the manner in which any particular ballot was completed. Another poll watcher testified voters were being assisted in their vehicles but admitted she could not see inside the vehicles. **Vera** and Garza further respond the trial court could have believed the witnesses who testified they did not observe any irregularities. These witnesses included another poll watcher and one of the presiding judges at a precinct. Because we defer to the trial court’s assessment of the credibility of the witnesses, we hold the trial court did not abuse its discretion in implicitly finding improper assistance was not provided.

MAIL-IN BALLOTS

In their final issue, **Galvan** and Vela contend the trial court erred in failing to find the ballots returned by Francisca Mendoza, who assisted voters with mail-in ballots, were invalid because she failed to provide her information as the assistant on the carrier envelopes. As previously noted, [section 86.010\(d\) of the Election Code](#) was amended in 2017 to provide, “If a voter is assisted in violation of this section, the voter’s ballot may not be counted,” and a subsection was added to [section 86.010\(e\)](#) requiring a person assisting a voter with a mail-in ballot to sign and print their name and include their address on the carrier envelope. [TEX. ELEC. CODE ANN. § 86.010\(d\)-\(e\)](#). Therefore, the trial court erred in concluding Mendoza’s failure to record the requisite information on the carrier envelopes did not invalidate the votes. *Id.*

As previously noted, however, **Galvan** and Vela are required to establish by clear and convincing evidence that a different result would have been reached if the invalid votes had not been counted. [Flores, 269 S.W.3d at 660; TEX. ELEC. CODE ANN. § 221.003\(a\)](#). The evidence established Mendoza only assisted fifty voters. Because **Vera** and Garza won their elections by 159 and 106 votes, respectively, **Galvan** and Vela could not establish the fifty invalid votes materially affected the outcome of the election. [Flores, 269 S.W.3d at 660; TEX. ELEC. CODE ANN. § 221.003\(a\)](#).

BALLOT BOXES

In their third issue, **Galvan** and Vela contend the trial court erred in failing to find fraud with respect to the precinct counters and ballot boxes “as evidenced by the undisputed facts related to the unsigned, sequentially ordered ballots ‘stuck together’ in various boxes.” In their brief, **Galvan** and Vela also make reference to the ballot boxes not being properly sealed.

[Section 62.008 of the Election Code](#) requires the presiding judge’s signature to be placed on the back of each ballot to be used at the polling place and provides that an unsigned ballot may not be made available for

selection by the voters. [TEX. ELEC. CODE ANN. § 62.008 \(West 2010\)](#). Section 62.009 also requires an election officer to “disarrange a supply of the ballots so that they are in random numerical order.” *Id.* § 62.009. Although **Galvan** and Vela refer to “various boxes” containing unsigned, sequentially ordered ballots, the evidence established only 23 ballots that were unsigned and sequentially ordered. Because **Vera** and Garza won their elections by 159 and 106 votes, respectively, even if we assumed those ballots and the 50 mail-in ballots of the voters assisted by Mendoza should not have been counted, **Galvan** and Vela could not establish those ballots materially affected the outcome by showing a different result would have been reached. [Flores, 269 S.W.3d at 660; TEX. ELEC. CODE ANN. § 221.003\(a\)](#).

In their brief, **Galvan** and Vela generally complain about the seals on the voting machines and specifically complain about the failure to record the serial number of the seals at the time the ballot boxes were initially locked and sealed. [Section 127.064 of the Election Code](#) does require the authority responsible for distributing election supplies to the polling places to prepare a record of the serial numbers of the seals and preserve the record. [TEX. ELEC. CODE ANN. § 127.064\(c\) \(West 2010\)](#). Although the evidence established and the trial court found no record of the first seal numbers was made, such a mistake would not invalidate an election unless the evidence showed how the mistake affected the true outcome of the election. [TEX. ELEC. CODE ANN. § 221.003\(a\)](#). In this case, the evidence did not establish that the failure to record the seal numbers affected the outcome. In addition, the elections administrator testified to the procedures used to secure the ballot boxes and testified none of the boxes were tampered with or manipulated. Therefore, **Galvan** and Vela did not meet their heavy burden to establish an erroneous result by clear and convincing evidence. [Flores, 269 S.W.3d at 660](#).

EARLY VOTING BALLOT BOARD

*5 In their **fourth**, fifth, and sixth issues, **Galvan** and Vela contend the trial court erred in concluding they waived their challenge to the composition of the early voting ballot board because the majority of the board was statutorily disqualified. They also contend the board’s rejection of a ballot based on a single board member’s review of the ballot, as opposed to a review by all members of the board, invalidates those decisions.

With regard to the composition of the board, this court has held that allowing an ineligible person to serve on an election board does not vitiate the entire election where no complaint is made until after the election is held and the evidence does not establish the election was not fairly held. *Stafford v. Stegle*, 271 S.W.2d 833, 835 (Tex. Civ. App.—San Antonio 1954, no writ). In this case, it is undisputed that no complaint regarding the composition of the board was made until after the election. Accordingly, the trial court did not abuse its discretion in concluding the complaint regarding the composition of the board was waived.

Finally, Galvan and Vela contend the trial court erred in failing to find the early voting ballot board's failure to review the ballots as a board invalidates their decisions. Section 87.041(a) of the Election Code provides, "The early voting ballot board shall open each jacket envelope for an early voting ballot voted by mail and determine whether to accept the voter's ballot." TEX. ELEC. CODE ANN. § 87.041(a) (Supp. 2017). Section 87.041(b) lists the seven requirements that must be met in order to accept a ballot, and section 87.041(d) provides a ballot must be rejected if any requirement prescribed by subsection (b) is not satisfied. *Id.* §§ 87.041(b), 87.041(d). Nothing in the statute, however, dictates the procedures the board is required to follow in making its determination. In this case, individual board members reviewed the ballots for compliance with the requirements and consulted other board members with questions. Because the statute does not dictate a procedure the board must follow in making its decision to accept or reject a ballot, we hold the procedure used by the board did not invalidate the board's decisions.

GLOBAL CHALLENGE

In their seventh issue, Galvan and Vela assert "[t]he trial court erred in failing to find that, even if no particular violation identified at trial would alone require a new election, when all taken together in the same election, the failure to follow basic provisions protecting the dignity of assisted voters, security of the ballot boxes and election media, and Early Voting Ballot Board composition and processes are so pervasive and so compromise public confidence in the election process and results, that the court cannot let the election stand." We disagree. As this court has stated, "While those charged with conducting elections should use every precaution possible to see that elections are conducted strictly in accordance with the provisions of the Election Code, nevertheless, after an election has been held and it appears that it has been fairly conducted and the result correctly declared, and there were no charges of fraud, misconduct or illegality, the entire election will not be set aside for irregularities in the manner of conducting the election, unless the statutes governing such matters state that the election must be vitiated." *Stafford*, 271 S.W.2d at 835.

CONCLUSION

The trial court's judgment is affirmed.

All Citations

Not Reported in S.W. Rptr., 2018 WL 4096383

Footnotes

- 1 Jury trials are not allowed in an election contest. See TEX. ELEC. CODE ANN. § 231.005 (West 2010) ("The district judge shall decide the issues of fact in an election contest without a jury.").
- 2 Although this court has addressed whether mail-in ballots should be counted if the person providing assistance fails to sign the carrier envelope, mail-in ballots, which are not completed in the presence of an election official, are distinguishable from ballots completed with assistance at the polls because they are completed in the presence of an election official. *Tiller v. Martinez*, 974 S.W.2d 769 (Tex. App.—San Antonio 1998, pet. dismissed w.o.j.). In addition, none of the sections of the Election Code cited in *Tiller* provided that a ballot could not be counted if the person assisting the voter failed to sign the carrier envelope. *Id.* at 775; Act of May 26, 1997, 75th Leg., ch. 1381, § 16, 1997 Tex. Gen. Laws 5179, 5182; Act of May 24, 1991, 72nd Leg., ch. 554, § 1, 1991 Tex. Gen. Laws 1927, 1943. Furthermore, section 86.010 of the Election Code, which governs mail-in ballots, was amended in 2017 to broadly provide, "If a voter is assisted in violation of this section, the voter's ballot may not be counted," and a subsection was added to section 86.010 requiring the person assisting a voter with a mail-in ballot to sign and print their name and include their address on the carrier envelope. TEX. ELEC. CODE ANN. §§ 86.010(d), 86.010(e) (West Supp. 2017). Therefore, the Texas Legislature has now provided that the failure of a person assisting a voter with a mail-in ballot to sign and print their name and address on the carrier envelope precludes the voter's ballot from being counted. No similar amendment was

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made with regard to assistance provided at the polls. Finally, prior to the 2017 amendments, the Amarillo court noted its disagreement with this court's holding in *Tiller*, asserting:

After review of the cited sections of the Election Code, including the 2003 amendments to those sections, we find ourselves in disagreement on this point with our sister court. Neither in the cited sections nor elsewhere in the Election Code can we see a legislative determination that a failure of a voter's assistant to complete the required information on the carrier envelope requires rejection of the voter's ballot. As noted, [the] statute expressly provides that the ballot of a voter who is assisted in violation of [subsections \(a\) or \(b\) of § 86.010](#) may not be counted, but the legislature has not disqualified the ballot of a person whose assistant fails to sign the oath, or provide his name and address, on the carrier envelope.

[Jones, 318 S.W.3d at 426.](#)

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**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

LETICIA GARZA GALVAN and	§	
MARTIE GARCIA VELA,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	
	§	
ROLANDO PABLOS, in his official	§	
capacity as Texas Secretary of State, and	§	
ARMANDINA MARTINEZ, ALMA	§	
GARCIA, ALICIA DOUGHERTY NO. 1,	§	
ALICIA COUGHERTY NO. 2, YOLANDA	§	
MARTINEZ,	§	
<i>Defendants</i>	§	

**ORDER GRANDING DEFENDANTS MARTINEZ, GARCIA, DOUGHERTY NO. 1,
DOUGHERTY NO. 2 AND MARTINEZ' MOTION TO DISMISS**

This Court has reviewed the Motion to Dismiss submitted by Defendants A. Martinez, Garcia, Dougherty No. 1, Dougherty No. 2, and Y. Martinez. (EVBB Defendants). After review of the motion, the response of the Plaintiff and other filings in this cause, this Court finds that said Motion to Dismiss should and is HEREBY GRANTED.

It is therefore, hereby ORDERED that all claims in this cause against Defendants A. Martinez, Garcia, Dougherty No. 1, Dougherty No. 2, and Y. Martinez are DISMISSED.

SO ORDERED THIS ____ DAY OF DECEMBER, 2018.

United States District Judge