UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

VOTE.ORG, *Plaintiff*,	§	
v.	§	CIVIL ACTION NO. 5:21-cv-00649
JACUELYN CALLANEN, in her official capacity as the Bexar County Elections Administrator; BRUCE ELFANT, in his official capacity as the Travis County Tax Assessor-Collector; REMI GARZA, in his official capacity as the Cameron County Elections Administrator; MICHAEL SCARPELLO, in his official capacity as the Dallas County Elections Administrator, *Defendants,*	§	
And	§	
KEN PAXTON, in his official capacity as the Attorney General of Texas, LUPE C. TORRES, in his official capacity as Medina County Elections Administrator, and TERRIE PENDLEY, in her official capacity as Real County Tax Assessor-Collector, *Intervenor-Defendants.*	§	

DEFENDANT-INTERVENORS KEN PAXTON, LUPE TORRES, TERRIE PENDLEY, AND DEFENDANT REMI GARZA'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN COWLES
Deputy Attorney General for Civil Litigation

CHRISTOPHER D. HILTON
Chief for General Litigation Division

CORY SCANLON
Assistant Attorney General
State Bar No. 24104599
cory.scanlon@oag.texas.gov
KATHLEEN T. HUNKER*
Special Counsel
STATE BAR NO. 24118415
kathleen.hunker@oag.texas.gov
JOHNATHAN STONE
Assistant Attorney General
STATE BAR NO. 24071779
johnathan.stone@oag.texas.gov
MICHAEL R. ABRAMS
Assistant Solicitor General
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone (512) 463-2120

ATTORNEYS FOR DEFENDANT-INTERVENOR KEN PAXTON

Robert Henneke
Texas Bar No. 24046058
Rhenneke@Texaspolicy.Com
Chance Weldon
Texas Bar No. 24076767
Cweldon@Texaspolicy.Com
Munera Al-Fuhaid
Texas Bar No. 24094501
Mal-Fuhaid@Texaspolicy.Com
Texas Public Policy Foundation
901 Congress Avenue
Austin, Texas 78701
Telephone: (512) 472-2700
Facsimile: (512) 472-2728

ATTORNEYS FOR INTERVENOR-DEFENDANTS LUPE TORRES AND TERRIE PENDLEY

Daniel N. Lopez
Associate Counsel
Texas State Bar No. 24086699
Email: daniel.n.lopez@co.cameron.tx.us
Juan A. Gonzalez
Attorney in Charge
Texas State Bar No. 08129310
Email: juan.gonzalez@co.cameron.tx.us
Commissioners Court –
Civil Legal Division
1100 East Monroe Street
Brownsville, Texas 78520
Telephone: (956) 550-1345
Facsimile (956) 550-1348

ATTORNEYS FOR DEFENDANT REMI GARZA

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Defendant-Intervenors Ken Paxton, Lupe Torres, Terrie Pendley, and Defendant Remi Garza (collectively, Defendants) jointly file this Response in Opposition to Plaintiff's Motion for Summary Judgment, and will respectfully show the Court as follows:

STATEMENT OF GROUNDS AND UNDISPUTED FACTS[1]

I. Plaintiff's Statement of Undisputed Facts is inaccurate or incorrect in many respects.

Pursuant to this Court's Standing Order in Civil Cases,[2] Defendants admit that Plaintiff's Statement of Undisputed Facts are undisputed and material except in the following instances:

9. Defendants deny that the registrant creates an electronic signature when registering at the Department of Public Safety (DPS). Instead, the registrant provides a physical signature on an electronic pad and DPS creates the electronic signature. Ingram Dep. at 59:15–60:15, 81:12–22, 171:2–172:11, ECF 108-1 pp. 390, 396, 418. Further, the Secretary of State's use of signatures is not material to any claim or defense in this case. *See Tex. Democratic Party v. Hughs* (*TDP*), 860 F. App'x 874, 879 (5th Cir. 2021) (the Secretary does not enforce the statute in question).

10. Whether the electronic signatures created by DPS serve any certain purpose "during the registration process" is not material to any claim or defense in this case because this procedure is not being challenged. The only sense in which the DPS procedure is material to assessing the burden on the voter is that it is one method among many others allowing Texans to register to vote. *See* Def.'s Mot. for Summ. J., ECF 108 pp. 1–2, ¶¶ 1–3.

11. Defendants deny that the DPS procedure, personal delivery, mail, and fax are the only options by which to register to vote. Texans may also register through volunteer deputy registrars

[1] To abide by this Court's Standing Order in Civil Cases, and for the sake of efficiency and avoiding redundancy, Defendants refer the Court to Defendants Paxton and Garza's Statement of Grounds and Undisputed Facts in their Motion for Summary Judgment for a statement of other material facts that are necessary to rule on Plaintiff's Motion. ECF 108 at pp. 1–9.

[2] Defendants will use the citation convention "Resp. Appx. [page number]" if citing to the Appendix in support of this response and will refer to the Electronic Court Filing (ECF) docket number if citing to the Appendix in support of Paxton and Garza's earlier filed Motion for Summary Judgment, i.e., "ECF 108-1 p. [page or paragraph number]."

in their community or any other agency designated as a voter registration agency, which includes six state agencies and local public libraries. *See* Tex. Elec. Code §§ 13.038, 13.041, 20.001, 20.031, 20.035; Elfant Dep. 414:14–21, 421:20–21, 424:3–22, ECF 108-1 pp. 326, 328; Callanen Dep. at 217:2–233:8, ECF 108-1 pp. 199–203.

12–16. Defendants deny that these statements are material to any claim or defense in this suit because the Secretary does not enforce the statute in question. *See TDP*, 860 F. App'x at 879.

17. Defendants deny that the County Defendants[3] do not use signatures to confirm identity or eligibility to vote during the registration process. A physical signature guarantees that registrants attest to meeting the qualifications to vote. ECF 108-1 pp. 415, 418–20, 159:7–160:11, 172:12–173:7, 176:8–177:6. The counties are unable to finalize registration applications without a signature because they cannot confirm that a voter is eligible when there is no signature showing that the person has confirmed the eligibility information is true and correct. Ex. C, Voter Registration App. from Cameron County, ECF 108-1 p. 4; ECF 108-1 p. 512, 114:8–17; ECF 108-1 p. 71–72, 68:4–71:19, ECF 108-1 p. 98, 174:20–175:6; ECF 108-1 p. 262–63, 160:2–161:21; ECF 108-1 p. 370, 142:4–14; ECF 108-1 p. 497, 56:16–20; ECF 108-1 p. 498, 58:15–60:8; ECF 108-1 p. 512, 113:22–114:7. Ex. C, Apps. Signed with Imaged Signature, Resp. Appx. 11–45.

18. Defendants deny that there are only three uses for physical signatures on registration applications. In addition to the uses identified by the Secretary, registration files at the county may be seized by Texas authorities investigating election-related offenses involving signature misappropriation. ECF 108-1 p. 175–76, 124:21–125:9; ECF 108-1 p. 430, 219:6–220:18; Ex. G, OAG Public Filings & Indictments at pp. 6, 10, ECF 108-1 p. 20, 24.

[3] For the sake of brevity, this term will refer collectively to County Defendants Jacquelyn Callanen, in her official capacity as the Bexar County Elections Administrator; Bruce Elfant, in his official capacity as the Travis County Tax Assessor-Collector; Remi Garza, in his official capacity as the Cameron County Elections Administrator; and Michael Scarpello, in his official capacity as the Dallas County Elections Administrator.

20. Defendants dispute that this statement is material to the claims or defenses in this case.

22. Defendants deny that Keith Ingram is speaking on behalf of an intervenor or any defendant. ECF 108-1 p. 380, 20:7–13. Plaintiff cites no County Defendant who testified as to their awareness of using digital signatures fraudulently.

27. Defendants deny that Hailey's testimony establishes that users were aware that Vote.org sent user applications to third parties. Hailey Dep. at 49:11–50:13, ECF 108-1 pp. 66–67.

29. Defendants deny that it is within the Secretary's power to instruct Defendants on whether to accept or deny registration applications and the cited testimony does not support Plaintiff's assertion in this paragraph. ECF 108-1 p. 431, 224:11–14. In fact, Defendant Elfant testified that he would not follow any directive of the Secretary unless the Secretary could "get [him] restrained." Elfant Dep. at 397:22–398:1, Pl.'s App. at 104. The Secretary did not instruct any Defendant to reject applications and Plaintiff's statement in this paragraph mischaracterizes testimony. *See* ECF 108-1 pp. 426, 202:13–203:1, 431, 224:11–14; ECF 108-1 p. 206, 248:3–7; ECF 108-1 p. 514–15, 124:17–125:7. Further, Defendants deny that these statements are material to any claim or defense, as the Secretary does not enforce the statute in question. *See TDP*, 860 F. App'x at 879.

34. Plaintiff mischaracterizes the testimony—the deponent was not asked whether he could "distinguish between voter registration applications signed with a wet-ink or original signature and applications signed using imaged signatures." ECF 108-1 p. 431, 224:5–10. Further, Defendants deny that these statements are material to any claim or defense, as the Secretary does not enforce the statute in question. *See TDP*, 860 F. App'x at 879.

35–36. The Secretary's motivations are not material to deciding any claim or defense in this suit and the Secretary did not unilaterally draft "the Wet Signature Rule"—the rule has existed since at least 1985. Act of May 13, 1985, 69th Leg., R.S., ch. 211, Sec. 1, § 13.002(b), 1985 Tex. Gen. Laws 802, 815 ("A registration application must be in writing and signed by the applicant."). The Texas

Legislature passed HB 3107 by a vote of 177-0. H.J. of Tex., 87th Leg., R.S. 4799 (2021), Resp. Appx. 59; S.J. of Tex., 87th Leg., R.S. 2153 (2021), Resp. Appx. 61. The Secretary's testimony is no evidence of legislative intent— he is appointed by the Governor and is not a member of the Legislature. Tex. Const. art. IV, § 21.

41–43, 45–47. Plaintiff includes improper argument and conclusory expert opinion in its Statement of Undisputed Facts. Defendants deny all of Dr. Bryant's conclusions, as stated in the Motion to Exclude Expert Testimony, because they are unreliable and unfounded under Rule 702. ECF 102. For a proper statement of the undisputed facts regarding the burdens on those seeking to register to vote, Defendants refer the Court to Defendant Paxton and Garza's Motion for Summary Judgment. ECF 108 pp. 1–3, 8 ¶¶ 1–6, 17.

44. Plaintiff misstates the burden on voters. Defendants deny that a voter is required to use a printer to register to vote as explained in Paragraphs 1–3 of Defendants Paxton and Garza's Statement of Undisputed Facts and as acknowledged by Plaintiff and Plaintiff's expert. *See* ECF 108 pp. 1–3; ECF 108-1 p. 138, 335:5–18; 336:7–337:5; Bryant Dep. at 114:1–11, 142:19–143:15, ECF 108-1 pp. 466, 473.

INTRODUCTION

Plaintiff has not established that it is entitled to summary judgment. As a threshold matter, there is insufficient evidence of Plaintiff's standing to bring suit because it has not suffered an injury in fact that is caused by Defendants—the true injury was caused by Plaintiffs and involves parties not before the Court. Further, even if Plaintiff has standing, its claims fail on the merits because the challenged law violates neither Section 1971 of the Civil Rights Act or the Constitution. The requirement that a registrant physically sign the registration application is material to determining the qualifications of voters and no voter is denied the right to vote based on a defect in signature. Plaintiff itself suffers no burden on its right to vote because it is not a U.S. citizen with voting

rights—it is an artificial entity. Even if the Court entertains the merits of its voting-rights claim in the absence of evidence showing any voter is actually burdened, the burden is minimal and substantially outweighed by Texas's interests in preserving the integrity of its electoral system.

STATEMENT OF THE ISSUES

Defendants refer the Court to pages 9–10 of Defendants Paxton and Garza's Motion for Summary Judgment for an accurate statement of the issues. ECF 108 pp. 9–10.

ARGUMENT & AUTHORITIES

I. Plaintiff lacks standing because it has suffered no concrete and particularized injuries that are fairly traceable to Defendants' conduct.

An "organization can establish standing in its own name" by demonstrating (1) it suffered (or will suffer) an injury in fact; (2) that is fairly traceable to the challenged conduct of the defendant (causation); and (3) that is likely to be redressed by a favorable judicial decision (redressability). *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *OCA-Greater Hous. v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017). The injury must be "particularized" in that it "affect[s] the plaintiff in a personal and individual way." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). The injury must also be "concrete" in that "it must actually exist." *Id.* at 340.

A. Clarifying the "wet signature rule."

The "wet signature rule" is the requirement that all voter registration applications be signed with an original, wet signature, unless otherwise specified by law. ECF 1 ¶ 2. In 2013, SB 910 was passed to allow fax transmissions, and registrars were deemed to have received an application on the day it was faxed to them, provided that the application was also mailed within four business days. Act of May 27, 2013, 83rd Leg., R.S., ch. 1178 (S.B. 910), § 3, 2013 Tex. Gen. Laws 2923, 2923–24. HB 3107 clarified that a wet signature was still required on applications personally delivered or mailed, even if a copy has been previously sent by fax. Tex. Elec. Code § 13.143(d-2).

Plaintiff's goal is "providing access to paperless voter registration to all, and eliminating the wet signature requirement in every state." Def.'s Ex. D, Vote.org Electronic Signature Project, Resp. Appx. 56. "Vote.org's Plan for Nationwide Access to Electronic Voter Registration" includes both technical and legal elements. Resp. Appx. 57. On the technical side, Plaintiff built an e-sign tool for nationwide use on national voter registration applications. *Id.* On the legal side, Plaintiff embarked "on a comprehensive campaign to amend the laws in every state to eliminate the wet signature requirement and to challenge those states that hang on to it[.]" Resp. Appx. 58. To that end, it launched and operated a broken e-sign tool for 11-days in 2018. *See* ECF 108-1 p. 72, 71:20–72:8 (Plaintiff's CEO admitting their engineering will need to "fix" the issues with imaged signatures before their web application can be used again). Plaintiff asks this Court to rule that Texas cannot require original, wet signatures on any form of voter registration application. ECF 1 at 13 (asking the Court to declare that "[HB 3107] and any other provisions requiring a voter to sign an application form with an original, wet signature in order to register to vote" violate the Civil Rights Act and U.S. Constitution).

B. Plaintiff has not suffered a concrete and particularized injury because it has not shown a diversion of resources to counteract the wet signature rule.

An organization can show that it meets the "injury in fact" element of standing "by showing it diverted significant resources to **counteract** the defendant's conduct; hence, the defendant's conduct significantly and 'perceptibly impaired' the organization's ability to provide its 'activities—with the consequent drain on the organization's resources . . . .'" *N.A.A.C.P. v. City of Kyle*, 626 F.3d 233, 238 (5th Cir. 2010) (emphasis added) (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982)). Such injury must be "concrete and demonstrable." *Id.* "The fact that the added cost has not been estimated and may be slight does not affect standing, which requires only a minimal showing of injury." *Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007).

This Court previously ruled that "Plaintiff's complaint sufficiently **alleges** its injury in fact

is the additional time, effort, and money expended to redesign its Texas voter registration programs." ECF 49 at 3 (emphasis added) (quoting ECF 1 at ¶ 20). Specifically, Plaintiff was allegedly "forced to divert resources from its general, nationwide operations—as well as its specific programs in other states—to redesign its Texas voter registration and [get out the vote] programs and utilize more expensive (and less effective) means of achieving its voter registration goals in the State." *Id.* at 3–4. This "included redeveloping its strategic plan and operations within Texas and having to deploy more expensive alternatives to ensure that voters are able to register to vote in accordance with the Wet Signature Rule." *Id.* at 4 (citing ECF 41 at p. 8 n.1). At the summary-judgment stage, mere **allegations** of injury are insufficient to establish standing; instead, a plaintiff has the burden to establish evidence of "specific facts" as to all elements of standing. *Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 329 (1999) (citing *Lujan v. Nat'l Wildlife Federation*, 497 U.S. 871, 884 (1990)).

1. There is no evidence Plaintiff diverted resources to counteract the wet signature rule.

In *El Paso County v. Trump*, the Fifth Circuit held that Border Network for Human Rights' (BNHR) lacked standing to challenge federal expenditures on construction of a border wall where there was insufficient evidence that it diverted resources to counteract the challenged activity. 982 F.3d 332, 343 (5th Cir. 2020), *cert. denied sub nom. El Paso County v. Biden*, 141 S. Ct. 2885 (2021), *reh'g denied*, 142 S. Ct. 51 (2021). BNHR's mission was "to organize border communities through human rights education" and "mobilize [its] members to advocate for positive change in policies [affecting] the immigrant community." *Id.* at 344. The sole source of evidence for BNHR's contention that the construction of the wall forced BNHR to divert resources away from advocacy work and toward counseling and helping immigrants was a declaration from its Executive Director. *Id.*

BNHR claimed it diverted "approximately 70 to 80% of its time and resources to opposing the illegal construction and helping its members deal with the harmful impacts they experienced

from it," but the only concrete diversion of resources identified by BNHR was that it gave additional "Know Your Rights" presentations in the community. *Id.* (cleaned up). BNHR, however, gave those presentations due to fear caused by the President's proclamation declaring a national emergency on the southern border and not because of the expenditure of funds to build a wall. *Id.* The court determined that BNHR's "single vague, conclusory assertion that it had to divert resources was insufficient to establish the wall construction has 'perceptibly impaired' its ability to carry out its mission." *Id.* (cleaned up).

Conversely, in *OCA-Greater Houston v. Texas*, the Fifth Circuit explained that an organization that "went out of its way to **counteract** the effect of Texas's allegedly unlawful voter-interpreter restriction" had organizational standing. 867 F.3d at 610 (emphasis added). OCA was a nonprofit whose primary mission was voter outreach and civic education, particularly "getting out the vote" among its members. *Id.* at 609–10. In response to a community member being turned away from polls in 2014 due to an interpreter law, OCA diverted resources away from registering and turning out voters. *Id.* at 610. Specifically, OCA workers carefully explained to members, in their native language, that interpreters accompanying the members must be identified as an "assistor" and not as an "interpreter" to avoid being turned away, and as a result of "these in-depth conversations, . . . OCA reach[ed] fewer people in the same amount of time[.]" *Id.* The court concluded that this diversion of resources in response to the law, and away from OCA's "get out the vote" efforts, was sufficient to establish organizational standing. *Id.* at 612.

The three examples cited by Plaintiff do not show that it diverted resources to counteract the wet signature rule. Plaintiff's Summary Judgment Appendix includes 297-pages of pleadings, expert materials, deposition transcripts, and written discovery responses. ECF 111-2. Yet, its motion relies **solely** on three instances of testimony from the CEO to show it diverted resources to counteract the wet signature rule. ECF 111 p. 12. No evidence was provided showing any other

diversion of resources to counteract the wet signature rule. *See* ECF 111-2.

The first example from the deposition testimony of its CEO cited in Plaintiff's Motion for Summary Judgment has absolutely nothing to do with it diverting resources to **counteract** the wet signature rule:

> I think that the biggest injury is that we can't carry forth our mission of serving the voters the most streamlined way possible… Yeah, I think, you know, the time, energy, resources it takes our team, especially a small team, to go ahead and build a full work flow for Texas, to build a tool that we then can't use, the time and energy, you know, that was spent that we had to develop it and spend time on the ground to -- the fact that we can't like now use this technology to serve voters in the state… One of the big things for us is constantly -- again, like I said before, we're a small team internally so that means that we have to spend a pretty large amount of time discussing Texas and trying to figure out what we, you know, what we -- what ways we can serve the voters in Texas. When we can't use the e-sign tool then we have to try to think of -- our mission doesn"t really change, we still have to, you know, do our best to – to just be innovative and think about other ways that we can serve the voters and get them from the process, you know, from start-to-finish, you know, through the -- through the voting process. So I would say that the biggest thing for us is the time of staff, energy of staff, resourcing of -- of, you know, having to have these conversations, having to take on extra expenses to make sure that our work flows are, you know, compliant with Texas, then developing technology that ultimately can't be used, and then trying to come back to it on a pretty consistent basis to figure out if there are other things that we can engage in that will -- that we can scale that will serve voters.

ECF 111-2 pp. 127–28, 108:12–15, 109:3–110:13. This example discusses the resources Plaintiff invested in developing its broken e-sign tool before it was even aware of the wet signature rule, not a diversion of resources taken to counteract the wet signature rule. *See id.* The second example from the deposition testimony of its CEO, which it failed to include in its appendix, does not identify any **action** taken to counteract the wet signature rule—only that it is "constantly having to rethink" its processes. ECF 108-1 at pp. 88–89, 138:5–23, 140:19–141:6.

The most generous reading of this testimony is that Plaintiff contends that it **thought** about the wet signature rule; however, no concrete and particularized **actions** are identified. *See id.* If thoughts alone are sufficient to show a diversion of resources to counteract a challenged law, the injury in fact element is meaningless because any organization could conjure standing to challenge

any law by merely thinking. In *OCA*, organizational standing was shown where OCA did more than simply think about the challenged law—it clearly articulated that it engaged in in-depth conversations with its members explaining how interpreters should identify themselves at polling locations in a language they could understand. *See* 867 F.3d 604, 610 (5th Cir. 2017).[4] The Court should find that Plaintiff has not identified an injury in fact from the testimony of its current CEO that it spent time thinking about the wet signature rule. *See El Paso County*, 982 F.3d at 343.

Finally, the third example cited in Plaintiff's Motion refers to partnering with the NextDoor app to connect its users with their neighbors who have printers. ECF 111-2 pp. 135–36. Plaintiff's Complaint and written discovery responses do not mention NextDoor. ECF 1 ¶¶ 19–20; ECF 93-10 p. 5. Intervenor Paxton asked Plaintiff to "[p]lease produce all documents, including but not limited to, invoices, receipts, email communications, vendor statements, accounting statements, or tax returns reflecting Plaintiff's diversion of resources and expenditure of funds in response to the supposed 'Wet Signature Rule' and/or HB3107." ECF 93-3 p. 4. Plaintiff produced no documents referencing NextDoor during discovery and its reliance on its partnership with NextDoor when it failed to disclose that it considered this a diversion of resources to counteract the wet signature

[4] None of the other cases cited by this Court as having similar injuries to those alleged here involved mere **thoughts** about the activity or laws those organizations sought to challenge. ECF 49 at 4-5; *Scott v. Schedler*, 771 F.3d 831, 837 (5th Cir. 2014) (organization's head of voter registration held six voter registration drives outside benefits offices in Louisiana.); *Mi Familia Vota v. Abbott*, 497 F. Supp. 3d 195, 209 (W.D. Tex. 2020) (citing to a declaration describing the organization's lobbying efforts, including writing the Secretary and contacting the county elections department and commissioner's court "to ask them to provide and require voters and poll workers with PPE" and "fielding many more calls from voters in the communities that we serve"); *Richardson v. Tex. Sec'y of State*, 485 F. Supp. 3d 744, 762 (W.D. Tex. 2020), *rev'd in part, vacated in part sub nom. in Richardson v. Flores*, 28 F.4th 649 (5th Cir. 2022) (describing, *inter alia*, organization's resources spent producing video training and social media posts to mitigate the effects of the challenged signature-comparison procedures); *Frederick v. Lawson*, 481 F. Supp. 3d 774, 790 (S.D. Ind. 2020) (the organization "devoted time and resources that it would not otherwise have expended to notifying its members of the risks of mailing in an absentee ballot" and the considerable time it would spend updating its curriculum and presentation materials for training sessions about the challenged law.); *Lewis v. Hughs*, No. 5:20-CV-00577-OLG, 2020 WL 4344432, at *10-12 (W.D. Tex. July 28, 2020), *aff'd.*, No. 20-50654, 2020 WL 5511881, at *1 (5th Cir. Sept. 4, 2020), *order withdrawn*, No. 20-50654, 2020 WL 6066178 (5th Cir. Oct. 2, 2020), *rev'd sub nom.*, *Lewis v. Scott*, 28 F.4th 659, 664 (5th Cir. 2022); *Common Cause Indiana v. Lawson*, 937 F.3d 944, 952 (7th Cir. 2019) (the organization, *inter alia*, created a poster, added new resources on its website for voters to check their registration status, conducted training sessions aimed at educating voters and community activist about the increased risk of erroneous voter registration cancellations, and updated its curriculum.).

materially prejudices Defendants and should be rejected by the Court. In any event, the NextDoor partnership was only contemplated as a response to COVID-19, was not specific to Texas, and was not intended to counteract the wet signature rule. Vote.org, NextDoor and Vote.org Team Up to Help Neighbors Get the Vote Out, *NextDoor* (Aug. 25, 2020), https://blog.nextdoor.com/2020/08/25/nextdoor-and-vote-org-team-up-to-help-neighbors-get-the-vote-out/. Plaintiff cannot credibly contend that a nationwide program to counteract the COVID-19 pandemic was instead intended to counteract the wet signature rule in Texas.

2. Plaintiff cannot manufacture an injury from its ignorance of the wet signature rule.

In *Fair Elections v. Husted*, the Sixth Circuit found that an organization, AMOS, lacked organizational standing to challenge a law disenfranchising late jailed voters. 770 F.3d 456, 458–59 (6th Cir. 2014). The organization argued that it learned "late in the game" of the law and did not have enough time to modify its voting rights placards or print new supplemental material. *Id.* at 459. It had to, instead, use its small staff to teach election volunteers that a pre-election arrest could result in the loss of a chance to vote. *Id.* The court held "[t]hat AMOS's placards and supplemental materials failed to contain a full and accurate description of the years-old late jailed electors issue is not an Article III injury, and even if it were, it is not fairly traceable to the State, only to AMOS's ignorance of the law." *Id.* at 459.

Conversely, the Sixth Circuit found that the Northeast Ohio Coalition for the Homeless (NEOCH) had standing because "[u]nlike the plaintiff organization in *Fair Elections* that challenged then-existing voting law, NEOCH takes issue with newly enacted provisions. That distinction is not just academic. Whereas the *Fair Elections* plaintiff merely exhausted 'efforts and expense [in] advis[ing] others how to comport with' existing law, NEOCH has immediate plans to mobilize its limited resources to revise its voter-education and get-out-the-vote programs on account of [the change in law]." *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 624 (6th Cir. 2016) (quoting

Fair Elections, 770 F.3d at 460). NEOCH had previously focused on helping the homeless with mail-in voting, but, as a result of a newly passed law, diverted resources to driving the homeless to the polls. *Id.* The court concluded "[t]hat this is not simply the 'effort and expense' associated with advising voters how to 'comport' with the law, but an overhaul of the get-out-the-vote strategy of an organization that uses its limited resources helping homeless voters cast ballots." *Id.*

Here, it isn't even clear that Plaintiff updated its website after learning of the wet signature rule. There is no information on its Texas page about the wet signature rule. https://www.vote.org/state/texas/ (accessed Apr. 22, 2022). Even if it did update its program material after learning of the wet signature rule, it would still not have standing. Plaintiff already provides voter registration information, but was negligent in its failure to ensure that its information was accurate with respect to the decades-old wet signature rule. This mistake was far worse than the plaintiff's in *Fair Elections*, which simply failed to include information about the challenged law. *See* 770 F.3d at 459. *NEOCH* is distinguishable, since there the organization diverted resources to counteract a new law. *See* 837 F.3d at 624. Here, Plaintiff actively provided the **wrong** information about the law to users. ECF 108-1 p. 99, 180:11–181:14. When it subsequently provided the correct information to users, like all its other purported injuries from 2018, it was correcting its own mistakes, not "counteracting" the wet signature rule.

Alternatively, even if the Court agrees with Plaintiff's contention that HB 3107 "codified" the wet signature rule, Plaintiff's 2018 diversion of resources is like *El Paso County* where both alleged diversions of resources were in response an official proclamation occurring prior to the challenged activity. In *El Paso County*, the Fifth Circuit found that BNHR lacked standing where the only concrete examples of diverted resources were made in response to a proclamation about border security–not the subsequent expenditure of funds to build the wall. *El Paso County,* 982 F.3d 344. If Plaintiff's purported diversion occurred when the Secretary issued a press release on

October 4, 2018; not in 2021 when HB 3107 was passed, ECF 1 at ¶¶ 19–20; then like the organization in *El Paso County*, Plaintiff cannot provide concrete examples of resources it diverted *after* the passage of HB 3107 intended "counteract" the law. ECF 93-10 p. 5.

C. Plaintiff's purported injuries were self-inflicted—not caused by Defendants.

Plaintiff's purported injuries were self-inflicted by its negligence because, had Plaintiff contacted the Secretary before developing and launching its e-sign tool, it would have been told that a wet signature was required. Article III standing requires a causal connection between a plaintiff's injury and the defendant's challenged conduct, it doesn't require a showing of proximate cause or that "the defendant's actions are the very last step in the chain of causation." *Bennett v. Spear*, 520 U.S. 154, 169 (1997). Causation, for example, exists when the defendant's actions produce a "determinative or coercive effect upon the action of someone else," resulting in injury; however, it does not exist when the Plaintiff's injuries are "the result of the independent action of some third party not before the court." *Id.* at 167. The asserted injury cannot be "self-inflicted." *Ass'n of Cmty. Orgs. for Reform Now v. Fowler*, 178 F.3d 350, 358 (5th Cir. 1999).

On January 29, 2018, an anonymous organization with the same e-signature idea as Plaintiff contacted the Secretary to determine whether it could use electronic signatures. Ex. A, Tex. Sec'y of State Email, Resp. Appx. 3–4. The Secretary advised them, approximately 240 days before Plaintiff launched its e-sign tool in Texas, of the following:

> As you point out, the Texas Election Code section 13.002(b) requires a voter registration application to be in writing and signed. Our office interprets this provision to require an actual wet signature on a piece of paper. Texas Election Code Sections 20.066 and 101.052(a-1) are the only exceptions to this requirement. In reading and interpreting the Texas Election Code, generally something has to be specifically allowed otherwise it is prohibited. The Texas Business and Commerce Code provision you cite does not apply. Therefore, capturing the signature on the VR application electronically is not allowed. However, the voter can print the application, sign it physically and then mail it to the voter registrar. Resp. Appx. 2.

Plaintiff's failure to check with the Secretary before launching its e-sign tool was negligent.

It was entirely foreseeable that launching the e-sign tool without discussing its legality with the Secretary could cause confusion if it was later determined to be unlawful. Plaintiff knew this and seemingly proceeded anyway–possibly to manufacture standing as part of its goal of "eliminating the wet signature requirement in every state." Resp. Appx. 56. In its 2018 Electronic Signature Project Memo, Plaintiff wrote "**[y]et every state in the nation insists that manually applied wet signatures are the only signatures that are valid in the context of voter registration**."[5] *Id.* Plaintiff seemingly knew this before it even developed the e-sign tool. *Id.*[6] Thus, to the extent Plaintiff diverted resources to correct its failure to comply with the wet signature rule, the Court should find that it lacks standing because there is no causal connection to Defendants when the injuries were self-inflicted by its own negligence. *See Fair Elections*, 770 F.3d at 458–59.

II. The wet signature rule helps Texas establish whether an individual is eligible to vote and therefore complies with the Civil Rights Act.

Intervenor-Defendants have already articulated to this Court in previous briefing why Plaintiff's Section 1971 claim fails on its face. Not only did Congress fail to confer on Plaintiff a private cause of action, *see, e.g.*, *McKay v. Thompson*, 226 F.3d 752, 756 (6th Cir. 2000),[7] but Plaintiff also failed to plead and develop facts that Texas's decades-old wet signature rule[8] was enacted for

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[5] While undated, the Memo talks about 2018 in the present tense and states that it *will* develop an e-sign tool in nine weeks. So, presumably, the Memo predates the development of the e-sign tool.

[6] By valuing "expediency over almost everything else," Plaintiff caused its own injuries. https://www.vote.org/values/ ("We have a shared sense of urgency at Vote.org, and this causes us to value expediency over almost everything else."). This was not the first time Plaintiff has valued expediency over almost everything else. *See e.g.*, Giacomo Bologna, *Mississippi billboards encouraged people to vote—on the wrong day*, CLARION LEDGER (Oct. 21, 2019), https://www.clarionledger.com/story/news/politics/2019/10/21/mississippi-billboard-election-day-error-wrong-day/4052589002/ (Vote.org posting billboards encouraging voters in Mississippi to vote on the wrong election day); *See also* Kathleen Gray, *Billboard along I-75 in Detroit urges people to vote—but includes wrong election date*, DETROIT FREE PRESS (Oct. 21, 2109), https://www.freep.com/story/news/politics/elections/2019/10/21/vote-detroit-billboard-wrong-date-election/4056295002/ (Same, but in Detroit).

[7] *But see Schwier v. Cox*, 340 F.3d 1284 (11th Cir. 2003). *Schwier* should not control the outcome in this case because it is wrongly decided under the Supreme Court cases of *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1855–56 (2017), and *Alexander v. Sandoval*, 532 U.S. 275, 287 (2001), as explained in OAG's Motion to Dismiss and County-Intervenors' Motion for Summary Judgment. ECF 53 p. 10, 13–14; ECF 63 at p. 9; ECF 109 pp. 6–7.

[8] Act of May 13, 1985, 69th Leg., R.S., ch. 211, Sec. 1, § 13.002(b), 1985 Tex. Gen. Laws 802, 815.

the purpose of racial discrimination. Indeed, even if this Court were to confine its analysis to HB 3107, Plaintiff has alleged no facts establishing a racial motivation behind the legislation, which garnered unanimous, bipartisan support from both the Texas House and Senate. H.J. of Tex., 87th Leg., R.S. 4799 (2021); S.J. of Tex., 87th Leg., R.S. 2153 (2021); Resp. Appx. 59–61. Plaintiff therefore has fallen shy of its prima facie burden, as Section 1971 was enacted pursuant to the Fifteenth Amendment and thus only protects against racially motivated deprivations of rights. *See, e.g.*, *Broyles v. Texas*, 618 F. Supp. 2d 661, 697 (S.D. Tex. 2009). Rather than restating those arguments here, for the purpose of judicial economy, Defendants incorporate by reference the relevant sections of OAG's Motion to Dismiss and Reply, ECF 53 pp. 10–14, ECF 63 pp. 7–10, and Defendants Paxton and Garza's Motion for Summary Judgment, ECF 108 pp. 24–25, as well as the County Intervenors' Motion for Summary Judgment, which OAG joined in full, ECF 109 at pp. 2–13. This Response will center instead on the substantive deficiencies of Plaintiff's claim.

A. Requiring a signature is material to determining the eligibility of voters.

Plaintiff's claim does not tread new ground. Numerous courts have considered signature requirements in the context of Section 1971(a)(2)(B). *United States v. Ward*, 345 F.2d 857, 862 (5th Cir. 1965); *Org. for Black Struggle v. Ashcroft*, No. 2:20-CV-04184-BCW, 2021 WL 1318011, at *5 (W.D. Mo. March 9, 2021) (signature is not immaterial to voter qualification); *Howlette v. City of Richmond*, 485 F. Supp. 17, 22–23 (E.D. Va. 1978), *aff'd*, 580 F.2d 704 (4th Cir. 1978) (signature-before-notary requirement impresses upon the signatory the importance of voting for referendum). And time and again, these courts have deemed signature requirements material to ascertaining the voter's qualifications. *See id.* Plaintiff in fact does not challenge in its Complaint the appropriateness of Texas requiring that applicants sign their voter registration forms. Plaintiff instead takes issue with a narrow application of a decades-old rule that happens to have the effect of precluding Texans from utilizing Plaintiff's preferred voter registration technology. The argument fails because Section

1971 is only meant to guard against arbitrary deprivations of the right to vote, such as by having voters follow needlessly technical instructions. *Diaz v. Cobb*, 435 F. Supp. 2d 1206, 1213 (S.D. Fla. 2006). It does not impose upon the State an obligation to adopt specific methods of voter registration, even if some voters may find the methods more convenient. In arguing otherwise, Plaintiff misapprehends the case law surrounding Section 1971, as well as the purpose that the wet signature rule serves in Texas's voter registration regime.

By having voters physically sign the registration form, Texas achieves two immediate objectives material to determining applicants' eligibility to vote: first, applicants attest to meeting the qualifications necessary to vote under state law, and second, the requirement impresses on applicants the severity of providing false information. This is because the voter registration form, by law, contains three statements next to the signature field that "track the statutory eligibility requirements for voting in" Texas. *Cobb*, 435 F. Supp. 2d at 1212. Namely,

- I am a resident of this county and a U.S. Citizen;
- I have not been finally convicted of a felony, or if a felon, I have completed all of my punishment including any term of incarceration, parole, supervision, period of probation, or I have been pardoned; and
- I have not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote.

Tex. Elec. Code § 13.002(c)(3)-(6); ECF 108-1 p. 1. The official form, designed by the Secretary of State, includes the additional statement, "I understand that giving false information to procure a voter registration is perjury and a crime under state and federal law." Tex. Elec. Code § 13.122(a)(1); ECF 108-1 p. 1. The Secretary of State's Director of Elections Keith Ingram testified that when voters sign the application form, they are not just affirming the accuracy of the information in boxes 1 through 9; voters are attesting to their eligibility as stipulated on the form as well as their knowledge that dishonesty could result in criminal penalties. ECF 108-1 at p. 415, 159:7–13, 160:5–22. The requirement, in other words, has both educational and deterrent functions by alerting

applicants of specific requirements and communicating "the seriousness of the act," thereby deterring misrepresentations. *See Howlette*, 485 F. Supp. at 23.

Allowing applicants to submit an electronic or digital signature undermines the effectiveness of these safeguards. When an applicant physically signs the registration form, the State has assurance that the applicant is the person attesting to the information on the form and has done so in the context of the three statements. ECF 108-1 pp. 415–17, 159:1–165:5. If the registration form is accompanied by an electronic or digital signature, then there is no guarantee that the signature was not affixed to the form by a third-party or was perhaps affixed by the voter, but not in the context of the three statements. These two concerns are particularly acute with respect to registration forms submitted via a web application, such as the program set up by Plaintiff, since applicants input their information in embedded fields remotely and upload a free-floating signature that is only attached to a completed registration form later. ECF 108-1 pp. 66–67, 72–73, 47:11–48:15, 53:13–22, 72:11–74:4. The web application then auto-populates the application. *Id.*; Resp. Appx. 46-48 (workflow), 51-54 (populated registration application). There is no guarantee that applicants read or even had the opportunity to review Texas's eligibility requirements.[9] In contrast, Director Ingram explains that mail-in registration forms always have the three statements "right above the signature box," so there is no doubt to what the applicant is attesting, even if some possibility of fraud remains. ECF 108-1 p. 419, 176:17–177:6.

As courts have recognized, "Plaintiffs cannot claim with certainty that the persons who [signed the registration form] were in fact qualified voters." *Howlette*, 485 F. Supp. at 22. "The most that advocates of plaintiffs' position can fairly contend is that" the information entered on the registration form imitated the necessary requisites, barring the lack of an original, wet signature. *Id.*

[9] Vote.org's voter registration tool has a single box that users must check that states, "I am a U.S. citizen, and I am eligible to register to vote in Texas." Resp. Appx. 47. An asterisk indicates that users must check the box to complete the application. *Id.*

For this reason, Section 1971(a)(2)(B) permits states to stipulate reasonable procedures that help certify applicants' eligibility. To offer an analogous example, in *Diaz v. Cobb*, the district court upheld a Florida law that instructed registrars to reject any voter registration form that did not have three checked boxes affirming the applicants' eligibility to vote. 435 F. Supp. 2d at 1212–13. The district court noted that although Florida already required applicants to swear an oath attesting to their eligibility, "the oath contains a general affirmation of eligibility," whereas "the check-boxes contain specific affirmations of specific qualifications." *Id.* at 1212. The questions posed by the check-boxes were therefore material "as a matter of law" since they tracked Florida's voting qualifications and uniquely aided the state in determining whether the applicants met the statutory standard. *Id.* at 1213. The same is true here, as the wet signature rule helps Texas ensure that applicants satisfy each particular qualification.

Plaintiff attempts to diminish this obvious benefit by pointing to the registration process conducted by the Department of Public Safety (DPS), where the State captures applicants' signature electronically by means of a note pad. However, as Director Ingram explains, the use of term "digital or "imaged" signature in this instance is a misnomer. ECF 108-1 p. 391, 61:19–62:12. When voters register through DPS, they appear before state personnel with identification documents in hand. ECF 108-1 p. 466, 114:4–11. The state official then reads to them the three eligibility statements required by law and after the voters attest to the information, has them physically sign an electronic note pad, which captures the signature for transmittal. ECF 108-1 at p. 418, 172:3–11. Texas therefore has the same, if not greater, assurance that voters are notified of the eligibility requirements and understand the consequences of tendering false information, as applicants would be attesting to their eligibility with the personification of the law staring at them. ECF 108-1 at p. 466, 114:1–11. And this is not taking into account the fact that the State has the opportunity to confirm the applicants' identity prior to initiating the registration process.

Plaintiff's reliance on the *Schwier* line of cases is of no help to it. The district court in *Schwier v. Cox* held that Georgia could not require voters' social security numbers in the registration application process because mandated disclosure violates the Privacy Act. 412 F. Supp. 2d 1266, 1276–77 (N.D. Ga. 2005), *aff'd*, 439 F.3d 1285 (11th Cir. 2006). Here, on the other hand, Texas is not asking for any extra information that is immaterial to voter qualification—it is requiring the act of signing a paper affirming the voter's qualifications. Schwier is therefore distinguishable on both the facts and the law because no federal law prohibits the State from requiring signatures. *See id.*

The last argument Plaintiff makes is that since neither the county registrar nor the Secretary references an applicant's signature during the verification process, then requiring an original, wet signature is superfluous. *See* ECF 111 p. 10–11. Intervenor-Defendants do not agree with Plaintiff's description of the verification process, but Plaintiff's point is irrelevant in any event. Not only would Plaintiff's reasoning apply to all signature requirements—not just the narrow application at issue here—but it assumes, without citation or authority, that the only utility incumbent to a wet signature is to match it against another signature provided by the voter. As explained in prior briefing, Texas does rely on signature matching when certifying the authenticity of mail-in ballots. And having a clear, wet signature at registration helps in this regard. But that is an added benefit of the wet signature rule. The primary interest is that the wet signature rule ensures that applicants know of and comply with Texas's eligibility requirements. *See Cobb*, 435 F. Supp. 2d at 1212–13.

B. No voter is "den[ied] the right . . . to vote in any election" because of an error in or omission of the registrant's signature.

When a prospective voter submits the registration application with an imaged signature, which has never been a permissible procedure under the Texas Election Code, the prospective voter is sent a notice of incomplete and is permitted to resubmit the application with a valid signature and become properly registered. Tex. Elec. Code § 13.073; ECF 108-1 p. 426, 202:13–203:1; Defs.'s Ex. F, Vote.org Email to Users, ECF 108-1 p. 11. Plaintiff acknowledged this

procedure in its notice to those who had used its e-sign tool to attempt registration, and it told the users "Vote.org is truly, deeply, sorry for this inconvenience," which Plaintiff caused by misrepresenting election procedures to users. ECF 108-1 at 11; ECF 108-1 at p. 137, 330:17–22, 332:10–333:20. Further, as stated previously, because Plaintiff is an artificial entity that does not possess a right to vote in any election, there can be no denial of a right that does not exist. *See Nat'l Federation of the Blind of Tex., Inc. v. Abbott*, 647 F.3d 202, 209 (5th Cir. 2011).

Moreover, the Fifth Circuit, in a case under Section 1971 in which a finding of racial discrimination was upheld, held that the voter registrar may nevertheless require a signature of the applicant and allow the signature to be corrected if it contains some defect, but that the registrar is entitled to reject an application if the applicant refuses to sign. *Ward*, 345 F.2d at 862. To the extent a prospective voter would refuse to make the registration application susceptible to Texas's common-sense, fraud-prevention mechanism for signature matching, the person is not qualified under state law to cast a ballot. *See id.* For these reasons, Plaintiff fails to carry its burden at the summary judgment stage with evidence demonstrating a violation of Section 1971.

III. HB 3107 is constitutional under *Anderson-Burdick*.

Putting aside the fact that Plaintiff has no personal voting rights of its own to assert, the Constitution does not confer a right to facsimile voter registration or online voter registration. First, the Court must analyze the burden on Texas voters globally and not the burden the law creates on a discrete subset of voters who utilize Plaintiff's technology. *See Richardson v. Tex. Sec'y of State*, 978 F.3d 220, 235–36 (citing *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197 (2008)). Second, Plaintiff asks the Court to skip the step of *Anderson-Burdick* analysis[10] requiring it to

[10] In deciding whether an election regulation is constitutional, courts must balance "the character and magnitude of the asserted injury" to the rights the plaintiff seeks to vindicate against "the precise interests put forward by the State as justifications" for the challenged rule, all while taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights." *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebreeze*, 460 U.S. 780, 789 (1983)). If the law imposes only "reasonable, nondiscriminatory restrictions" upon the First and

establish a burden on the right to vote that it must weigh against the state's interest and proceed directly to the question of whether the State has sufficient justification for the statute, which is the wrong question for all the reasons explained in Defendants Paxton and Garza's Summary Judgment Motion. *See* ECF 108 pp. 17–19. In any event, Texas is not required to assert a weighty state interest against an entity that is devoid of any concrete right to register to vote or cast a ballot. *See McDonald v. Bd. of Election Comm'rs of Chi.*, 394 U.S. 802, 807 (1969) (the "claimed right to receive absentee ballots" is not subject to constitutional protection when analyzing burdens on "the right to vote"). Even if the Court were inclined to weigh the respective burdens on the right to vote against Texas's interests, those interests far outweigh the exceedingly slight burden posed by allowance for fax transmission of voter registration applications for all the reasons stated in Defendants Paxton and Garza's Motion. *See* ECF 108 pp. 16–23. Plaintiff's arguments regarding the constitutional burden, however, should be rejected for the following reasons.

A. Plaintiff has no credible summary judgment evidence of a burden on voters.

Instead of providing evidence that any particular voter is harmed by the requirement of an original signature, Plaintiff asserts the conclusory and unfounded opinion testimony of its expert to suggest that voters face an indeterminable number of "logistical hurdles" in registering to vote. ECF 111 p. 14. But Plaintiff's own expert testified that it is easier to locate a printer than it is to locate a fax machine for any given voter. Bryant Dep. at 151:7–11, ECF 108-1 p. 475. And she admits that her methodology in the report did not take into account any costs or burdens associated with locating or using a fax machine to register to vote, even though this case is centered around a statute regulating the counties' receipt of applications by fax. ECF 108-1 p. 459–61, 89:22–90:20,

Fourteenth Amendment rights of voters, "the state's important regulatory interests are generally sufficient to justify" the restrictions. *Anderson*, 460 U.S. at 788. This framework eschews a mechanical application of strict scrutiny for "ordinary and widespread burdens like these" and restrains courts from "rewrit[ing] state electoral codes" in favor of allowing the "States to run efficient and equitable elections[.]" *See Richardson v. Tex. Sec'y of State*, 978 F.3d 220, 234 (5th Cir. 2020) (cleaned up) (quoting *Clingman v. Beaver*, 544 U.S. 581, 593 (2005)).

96:23–97:6, 468, 124:19–125:13; *see* ECF 111 at 1 (defining "Wet Signature Rule" as Tex. Elec. Code § 13.143(d-2), which requires the original application with the original signature to be delivered to a county registrar within four days of fax transmission).

Dr. Bryant's conclusions were not meant to establish a causal relationship between the wet signature rule and any voter's particular burden in registering to vote because she only utilized descriptive statistics, which is a statistical methodology involving pulling data points and describing what they may mean without using any experimental methodology. ECF 108-1 p. 449, 47:23–48:12, 466, 115:5–15, 116:14–25. In other words, none of Plaintiff's expert materials connect the wet signature rule to any concrete harm suffered by actual voters in Texas. The conclusions that renters, minorities, young people, or lower-income people[11] are disproportionately affected by this requirement because they are smartphone dependent or less likely to have printers are not credible summary-judgment evidence because these conclusions are based on assumptions, national data that is not representative of Texas, or simply the expert's whole-cloth supposition. ECF 108-1 at pp. 457, 78:9–21, 464, 109:7–10, 474–76, 146:18–147:4, 149:10–21, 153:17–154:6, 162:11–15; Bryant Expert Report at 13; *see also Lebron v. Sec'y of Fla. Dep't of Child. & Fams.*, 772 F.3d 1352, 1368–69 (11th Cir. 2014) (citing *Increase Minority Participation by Affirmative Change Today of Nw. Fla., Inc. v. Firestone*, 893 F.2d 1189, 1192, 1195 (11th Cir. 1990)) (a political scientist was correctly excluded from testifying as an expert in statistics). To the extent Dr. Bryant utilized any Texas-focused data, that data showed that citizens in County Defendants' jurisdictions own computers and printers (and are not as likely to be smartphone dependent) at a greater rate than most other counties in Texas, which undercuts the conclusion that these citizens suffer any particularized harm.

[11] The Complaint includes no allegation of disparate treatment as to these categories of voters. *See generally* ECF 1. The only group of people Plaintiff has identified as uniquely harmed by HB 3107 are individuals lacking a printer. *Id.* ¶ 36. Because the Federal Rules require notice pleading, Plaintiff is barred from making these arguments. *See Cutrera v. Bd. of Supervisors*, 429 F.3d 108, 113 (5th Cir. 2005) (explaining that a claim raised for the first time in a response to a motion for summary judgment is not properly before the court).

Pl.'s App. 51. The conclusion that people who move a lot have trouble registering to vote relies only on data from Travis County, in which 97% of the voting-age population is registered to vote. *Compare* ECF 108-1 at p. 457, 79:18–80:8 *with* ECF 108-1 at p. 329, 425:16–427:9. Plaintiff cannot meet its summary-judgment burden with this evidence. *See Crawford*, 553 U.S. at 197.

B. Texas's allowance for electronic signatures at DPS does not burden voters.

Plaintiff asks the State to demonstrate "why it can accept imaged signatures from hundreds of thousands of voters—specifically, voters who register through DPS—while demanding wet signatures from others." ECF 111 at 15. Plaintiff can look no further than its own expert for the answer to this question. Dr. Bryant acknowledged that the method of registering in-person at a state facility by signing an electronic keypad before a state official is more secure than accepting illegible pictures of signatures uploaded through a third-party website. ECF 108-1 p. 466, 114:1–11. The Secretary explained to Plaintiff that DPS captures physical signatures and creates an electronic signature via this in-person interaction in contrast to Plaintiff's faceless interaction with its online users, which Plaintiff can't even bring itself to characterize as "assisting voters." ECF 108-1 at 390, 59:15–60:15, 396, 81:12–22, 418, 171:2–172:11; ECF 108-1 at pp. 131, 309:18–25.

Plaintiff is effectively asserting the preposterous notion that the Constitution requires Plaintiff be given preferential status equivalent to a state agency of Texas, even when its broken technology is demonstrably unsuited to the task. ECF 108-1 at p. 4; ECF 108-1 at p. 512, 114:8–17; ECF 108-1 at p. 71–72, 68:4–71:19, ECF 108-1 at p. 98, 174:20–175:6; ECF 108-1 at p. 262–63, 160:2–161:21; ECF 108-1 at p. 370, 142:4–14; ECF 108-1 at p. 497, 56:16–20; ECF 108-1 at p. 498, 58:15–60:8; ECF 108-1 at p. 512, 113:22–114:7; Resp. Appx. 11–45. This argument does not entitle Plaintiff to judgment as a matter of law and should be soundly rejected. *See, e.g.*, *Steen*, 732 F.3d at 394 (observing that Texas has considerable power "to engage in 'substantial regulation of elections" to ensure that elections are well run.") (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974))

C. That Texans enjoy numerous voter registration avenues is germane to the burden they face under *Anderson-Burdick*.

Plaintiff attempts to downplay the fact that the burdens faced in registering to vote are alleviated by the many avenues for registration. Texas does not violate the Constitution simply by choosing, through its elected leaders, a registration method different from those states in which online voter registration is permitted. *See Tex. Democratic Party v. Abbott*, 961 F.3d 389, 405 (5th Cir. 2020) ("The Constitution is not 'offended simply because some' groups 'find voting more convenient than' do the plaintiffs") (quoting *McDonald*, 394 U.S. at 810).

Yet Plaintiff cites to *Mi Familia Vota v. Abbott* for the proposition that an allowance for alternate registration methods would not alleviate the burden faced by certain plaintiffs. ECF 111 at 16 (citing 497 F. Supp. 3d 195, 219 (W.D. Tex. 2020)). This is a distortion of the holding in that case because there the Court did not address the burden on first-time registration but the actual inability of plaintiffs to cast a ballot, stating that plaintiffs had suffered the loss of their opportunity to vote. *Mi Familia Vota*, 497 F. Supp. 3d at 219. Those circumstances are not present here and Plaintiff has failed to point to evidence that any voter was unable to register to vote. Instead, the Court should *balance* the actual burdens faced by actual voters against what the State seeks to accomplish by requiring signatures at the registration phase before ruling that burden unconstitutional. *Tex. LULAC v. Hughs*, 978 F.3d 136, 144 (5th Cir. 2020) ("Indeed, one strains to see how [the proclamation] burdens voting at all" seeing how it "is part of the Governor's expansion of opportunities to cast an absentee ballot in Texas well beyond the stricter confines of the Election Code."). Against a burden of **zero** on Plaintiff's right to vote (since Plaintiff is an artificial entity), the Court need not proceed further. *See id.* But even if the Court were to assume Plaintiff had met its burden to show a particularized harm as to any Texas voter, the state interests undergirding the original signature requirement vastly outweigh this slight, hypothetical burden.

D. Texas's compelling interests easily outweigh the de minimis burden of HB 3107.

Defendants reassert and incorporate its arguments that Texas's interests in preventing election fraud, preserving the integrity of the electoral process, maintaining accurate voting rolls, and preserving voter confidence are more than enough to outweigh the slight burden on voters, if any, caused by HB 3107. ECF 108-1 at pp. 22–24; *e.g.*, *Richardson*, 978 F.3d at 239 (finding plaintiffs failed to demonstrate signature comparison statute is unconstitutional under *Anderson-Burdick*). Further, as explained above regarding materiality, the wet signature rule is sufficiently tailored to these interests under *Anderson-Burdick* because without it, the State is deprived of the tools necessary to ensure a registrant is who they purport to be, and an injunction mandating use of Plaintiff's e-sign platform has already demonstrated disastrous results for thousands of Texas voters attempting to register. Resp. Appx. 11–45; ECF 108-1 at p. 4–5; ECF 108-1 at p. 262-3, 160:2–161:21; ECF 108-1 at p. 184, 160:17–161:21; ECF 108-1 at p. 497, 56:16–20; ECF 108-1 at p. 498, 58:15–60:8; ECF 108-1 at p. 512, 113:22–114:7; ECF 108-1 at p. 370, 142:4–14.

Further, although Plaintiff may not consider voting to be a distinctly solemn enough event to warrant a physical signature, which seems likely given how easily it disregarded the voting rights of its users, the Legislature held the right in high enough regard to pass the challenged measure by a 177-0 vote. H.J. of Tex., 87th Leg., R.S. 4799 (2021); S.J. of Tex., 87th Leg., R.S. 2153 (2021); Resp. Appx. 59–61; *see also* ECF 53 at 19–20 (asserting the State's interest in maintaining the solemnity of voting). On these facts, Plaintiff cannot carry its burden to demonstrate that the State's interests in preventing the proliferation of fraudulent signatures in voter registration is not served by HB 3107. *See Crawford*, 553 U.S. at 202–03 (citing *Burdick*, 504 U.S. at 439).

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiff's Motion for Summary Judgment.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN COWLES
Deputy Attorney General for Civil Litigation

CHRISTOPHER D. HILTON
Chief, General Litigation Division

/s/ Cory Scanlon
CORY A. SCANLON
State Bar No. 24104599
cory.scanlon@oag.texas.gov
Assistant Attorney General
KATHLEEN T. HUNKER*
State Bar No. 24118415
kathleen.hunker@oag.texas.gov
Special Counsel

JOHNATHAN STONE
State Bar No. 24071779
johnathan.stone@oag.texas.gov
Assistant Attorney General
MICHAEL R. ABRAMS
State Bar No. 24087072
michael.abrams@oag.texas.gov
Assistant Solicitor General

*Admitted *pro hac vice*
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone (512) 463-2120
Facsimile: (512) 320-0667

Counsel for Intervenor-Defendant Ken Paxton, in his official capacity as Attorney General of Texas

/s/ Munera Al-Fuhaid
ROBERT HENNEKE
TEXAS BAR NO. 24046058
RHENNEKE@TEXASPOLICY.COM
CHANCE WELDON
TEXAS BAR NO. 24076767
CWELDON@TEXASPOLICY.COM
MUNERA AL-FUHAID
TEXAS BAR NO. 24094501
MAL-FUHAID@TEXASPOLICY.COM
TEXAS PUBLIC POLICY FOUNDATION
901 CONGRESS AVENUE
AUSTIN, TEXAS 78701
TELEPHONE: (512) 472-2700
FACSIMILE: (512) 472-2728

ATTORNEYS FOR INTERVENOR-DEFENDANTS LUPE TORRES AND TERRIE PENDLEY

/s/ Daniel N. Lopez
DANIEL N. LOPEZ
ASSOCIATE COUNSEL
TEXAS STATE BAR NO. 24086699
EMAIL: DANIEL.N.LOPEZ@CO.CAMERON.TX.US
JUAN A. GONZALEZ
ATTORNEY IN CHARGE
TEXAS STATE BAR NO. 08129310
EMAIL: JUAN.GONZALEZ@CO.CAMERON.TX.US
COMMISSIONERS COURT –
CIVIL LEGAL DIVISION
1100 EAST MONROE STREET
BROWNSVILLE, TEXAS 78520
TELEPHONE: (956) 550-1345
FACSIMILE (956) 550-1348

ATTORNEYS FOR DEFENDANT REMI GARZA

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2022 a true and correct copy of the foregoing document has been sent by electronic notification to all counsel of record through ECF by the United States District Court, Western District of Texas, San Antonio Division.

/s/ Cory Scanlon
CORY A. SCANLON
Assistant Attorney General