

CAUSE NO. _____

HON. GEORGE RISNER;	§	IN THE DISTRICT COURT
RICHARD VEGA; AND	§	
BIANCA GRACIA	§	
<i>Petitioner,</i>	§	
	§	
V.	§	_____ JUDICIAL DISTRICT
	§	
ISABEL LONGORIA, IN HER	§	
CAPACITY AS HARRIS COUNTY	§	
ELECTION ADMINISTRATOR	§	
<i>Respondent.</i>	§	HARRIS COUNTY, TEXAS

**BI-PARTISAN ORIGINAL PETITION FOR INJUNCTIVE RELIEF
PURUSANT TO TEX. ELEC. CODE §273.081**

TO THE HONORABLE JUDGE:

The Honorable George Risner, Paster Richard Vega, and Bianca Gracia files this *‘Bi-Partisan Original Petition for Injunctive Relief Pursuant to Tex. Elec. Code §273.081’* and shows in support the following:

SUMMARY OF CASE

This case is a bi-partisan petition aimed at addressing the constitutional and statutory violations of the Harris County Elections Administrator (“Administrator”). The Administrator’s unlawful acts include intentionally, willfully, and knowingly failing to adequately allocate equipment, paper ballots that are capable of preserving the voters’ intent, and failing to operate voting centers during the posted hours. These actions have violated and will continue to violate Petitioners statutory right to a safe, accurate, and efficient election, to produce records that allow an accurate audit. TEX. ELEC. CODE §122.001; §§211.001. Additionally, the Administrator violated

Petitioners Texas Constitutional guarantees of equal protection, purity of the ballot box, and the right of suffrage. *See* TEX. CONST. ART. I, § 3, art. VI, § 2(c), art. VI, § 4.

This suit seeks a permanent injunction to protect Petitioners' rights and to restore the sanctity of the votes in every political party in Harris County, Texas.

DISCOVERY

Discovery in this case shall be governed by level 3. Petitioners request an expedited period of discovery due to the sensitive nature of the claims and future elections.

CLAIM FOR RELIEF

The Petitioners seek only non-monetary relief. Tex. R. Civ. P. 47 (c)(5)

PARTIES AND SERVICE

1. Petitioner, Honorable Judge George Risner ("Risner") is a natural person, a democrat candidate for Harris County Commissioner Precinct 2, and voter.
2. Petitioner, Pastor Richard Vega ("Vega") is a natural person, a republican candidate for Harris County Commissioner Precinct 2, and voter.
3. Petitioner, Bianca Gracia ("Gracia") is a natural person, a republican candidate for Texas Senate Seat 11, and voter.
4. Respondent is Isabel Longoria ("Longoria" and/or "Administrator") sued in her official capacity as Harris County Election Administrator. Longoria may be served through personal service at 1001 Preston St, Houston, Texas 77002, or wherever she may be found.

JURISDICTION AND VENUE

5. This Court has jurisdiction to issue a permanent and temporary injunction. TEX. CIV. PRAC. REM. CODE §65.021; TEX. CONST. ART. V §8. Venue is proper in this Court because Respondent is being sued in her capacity as an election officer of Harris County, Texas and/or because the acts or omissions complained of herein occurred and are occurring in Harris County, Texas. TEX. CIV. PRAC. REM. CODE § 15.02.

STANDING

6. It is well established that having once granted the right to vote on equal terms, the [county] may not, by later arbitrary and disparate treatment, value one person's vote over that of another. *Bush v. Gore*, 531 U.S. 98, 104-05 (2000). Petitioners assert that other counties in Texas are not forced to vote in an election with the egregious errors the administrator has subjected Petitioners to during the early voting process and the March 1, 2022, primary election. These actions include but are not limited to: (1) failing to provide adequate polling equipment; (2) failure to provide ballot paper capable of preserving the record for accurate counting/auditing; (3) polling locations opening late and closing early; (4) failing to adequately document the chain of custody of ballots; and (5) failure to adequately educate poll workers on how to handle machine errors.

7. These conditions promulgated by the Administrator created a disparity between voters of Harris County and contiguous counties which violates the Petitioners' statutory and Texas Constitutional rights. TEX. CONST. ART. I, § 3, art. VI, § 2(c), art. VI § 4; TEX. ELEC. CODE §122.001; §§211.001. Due to the

Administrator's failures, conduct, and disparate treatment of Petitioners, standing is established in accordance with the holding in *Andrade v. NAACP of Austin*, 345 S.W.3d 1, 11 (Tex. 2011).

BACKGROUND AND FACTS

Historical Background and Responsibilities of the HCEAO and Administrator

8. Established in 2020, the Harris County Elections Administrator's Office ("HCEAO") was created to bring all elections-related responsibilities into one office. A board comprising of the Harris County Judge, County Clerk, Tax Assessor, and the chairperson of each party engaged in a nationwide search to fulfill the position of Elections Administrator. The list of finalists for the position was narrowed to a field of seven citizens. The board, in a 3-2 vote, selected Isabel Longoria.

9. Longoria's responsibilities range from overseeing voter registration, tabulating ballots, and the daily operation of various departments of the Elections Administrator's Office. The departments of the office work together to implement the many tasks required to ensure that all eligible individuals have full access to register to vote and to cast a confidential ballot.

10. Prior to each election, the Elections Administrator's Office considers historical and expected turnout to determine staff needs for each vote center. While the number of workers may vary slightly, each vote center has the same obligations to ensure an accessible, safe, and accurate election.

11. Relevant to this suit, the voting process is broken into two categories. Early voting (February 14, 2022 to February 25, 2022) and primary election day on March 1, 2022. The county posted hours of operation for early voting were as follows:

Monday, Feb. 14 - Saturday, Feb. 19	7 a.m. - 7 p.m.
Sunday, Feb. 20	12 p.m. - 7 p.m.
Monday, Feb. 21	No Voting
Tuesday, Feb. 22 - Wednesday, Feb. 23	7 a.m. - 7 p.m.
Thursday, Feb. 24	7 a.m. - 10 p.m.
Friday, Feb. 25	7 a.m. - 7 p.m.

12. During early voting, the law requires an assignment of an Early Voting Clerk. The Early Voting Clerk is ultimately responsible for everything that happens in vote centers across the county during Early Voting.¹ The Presiding Judge, Alternate Judge, and all clerks follow directions from the Early Voting Clerk. In Harris County, this role is filled by the Elections Administrator, Isabel Longoria.

13. According to the poll workers training manual, the responsibility for most activities at individual vote centers has been delegated by the Early Voting Clerk to the Presiding Judge of that location. The Presiding Judge is ultimately responsible for everything that happens on Election Day in a vote center. All clerks and the Alternate Judge follow directions from the Presiding Judge.

14. The critical responsibilities of the Presiding Judge are to (1) arrange a set-up time; (2) acquire contact information for on-site personnel (at least two contacts who will be available to open the vote center location); and (3) ensure that the location is ready for voters by 7:00 a.m. Additional responsibilities of the Presiding Judge

¹ Tex. Elec.Code §83.001

include ensuring the vote center is properly staffed, all polling equipment is functioning, each vote center has sufficient amount of ballots, resolve issues with voting equipment, and securing the ballots along with the equipment each night. In short, the delegated responsibilities of Early Voting Clerk are to ensure a safe, accurate and efficient election per the election code.

Early Voting Statutory and Constitutional Violations

15. The HCEAO failed to properly provide equipment and ballots for each voting center. The Presiding Judge's voter centers are to receive a full line. A "Line" is defined as full line of equipment which includes one ePollBook, one Controller, and up to 12 Duos. The voter centers received "Lines" that were missing key components to properly establish the voting center. The missing items included missing barcode readers, Duo's, and ATI controllers to assist citizens with disabilities.

16. Many locations failed to have thermal ballot paper which resulted in smearing and unintelligible ballots. When ballot paper was provided it was issued in two different sizes. (8 ½" x 11" and 8 ½" x 14"). The different sizes resulted in paper jams due to the machines not being calibrated for the change in paper size.

17. Several Presiding Judges or supervisors reported that they were issued equipment, supplies, Lines, and/or ballot paper without having to sign a chain of custody.

18. Various voting centers throughout the Precincts opened later than 7:00 a.m. Other centers would close earlier than 7:00 p.m. or 10:00 p.m. in violation of the

schedule. At least one location, Kent Tice Elementary (voting center 0354) was locked and did not have proper personnel (a greeter) to open doors for candidates.

19. Both Democratic and Republican Presiding Judges, Alternate Judges, and Clerks were not adequately trained in resolving errors with checking in voters, equipment malfunctions, and guiding voters to insert their paper ballot in the ballot box for counting. This resulted in the citizens vote not being counted.

March 1, 2022 Primary Election Statutory and Constitutional Violations

20. The previous allegations set forth in paragraphs 15-17 are incorporated herein as if set forth in their entirety.

21. Armand Bayou Elementary (voting center 0092) was closed to democratic voters. The Administrator requested the Republicans to setup and manage the Democrat Primary, but they were either unable or rightfully refused.

22. The administrator loaded the wrong precinct information for voters or posted conflicting information regarding the precinct code. On information and belief, Ted Heaps precinct was coded to precinct 0400 and should have been in precinct 0522. The voter registration cards indicate precinct 0522 but the information provided online indicate precinct 0400.

23. Countless locations had malfunctioning equipment. Equipment was delivered to wrong locations resulting in at least 17 locations receiving no equipment. Upon the completion of the election empty ballot boxes were not returned to the HCEAO.

24. The Elections Administrator failed to adequately staff Central Count to assist in counting damaged, mutilated, or unscannable ballots. The parties then produced

additional personnel to assist in the process of determining voter intent.² These individuals were sworn in by an unknown official. It is unclear if the swearing officer had the lawful authority to perform such an act.

Explanation of Damaged Ballots

25. The normal process for handling damaged ballots is as follows:

- a. When a ballot is unscannable or unable to process it is sent to a two-member team for review. Each party had two designated members.
- b. If the ballots were smeared and unreadable the two-member team would review the ballot and, if necessary, determine the voter's intent. Once the intent was determined a duplicate ballot was created based on the serial number.
- c. The duplicate ballot is sent to the staff of the Central Count Team who will then print and scan the ballot thus casting the voter's ballot.

26. In most cases in this election, the first page was not damaged; however, the second page was affected by smearing or crinkling due to the printer jamming. Fortunately, most of the first pages were undamaged or mutilated which allowed Central Count to utilize the serial number from page one to recreate page two.

27. The reason for the damage is due to the Administrator failing to ensure all machines were properly calibrated prior to being dispatched by the HCEAO.

² On information and belief, the Republicans provided 18 workers and the Democrats provided 5. Due to the Democrats being short staffed the HCEAO provided staff to assist in their determination of voter intent. This disparity in assistance hindered democratic voters from being treated equal.

HCEAO Public Comments

28. On or near March 2, 2022, Isabel Longoria hosted a press conference to update the general public on the progress of the election count.³ During this interview the following occurred:

Unknown Reporter= UR

Isabel Longoria= IL

Mario Diaz= MD

Beginning of Excerpt:

“UR: Any idea of how many damage ballots there are

IL: Damage ballots is your words not mine.

UR: But still that is a word damage ballots...

IL: if you're asking me damage ballots there's no damage ballots...

IL: If you are asking me how many ballots are coming in tonight we've got about a hundred and something thousand voters who voted today so we'll know at the end of election night how many ballots we have.

MD: Are there any issues with Ballots?

IL: Sure. Got paper jams... you got smudges on your ballots... very typical stuff...”

29. Moments later the Administrator went to say the following:

“I'll be honest election night gets stressful. You've got Democrats and Republicans fighting with each other. Again, they are stealing each other's ballot boxes. They're playing pranks on each other.”

30. When confronted by reporters about stealing ballot boxes Isabela Longoria shifts and says that the parties were hiding each other's highlighters and papers.⁴

31. On March 3, 2022, an unknown official hosted a press conference at approximately 11:00 a.m.⁵ This official indicated that the process by which they are

³ <https://www.youtube.com/watch?v=K0eWE6K3jIo>

⁴ Apparently, she believes the voting centers are the appropriate place to act like Ashton Kutcher in the show 'Punk'd'. This alleged behavior is unacceptable. Undersigned believes this was an attempt to shift blame from her actions and to place it on the parties.

⁵ <https://www.youtube.com/watch?v=NOPWQGb2xTM>

processing ballots is a “B+”. The official also contradicted Longoria’s previous statement of damaged ballots and indicated that 2,500 ballots needed to be reviewed.

March 5, 2022 HCEAO Press Release

32. At approximately 11:00 p.m. the HCEAO released a written statement indicating that it found 10,000 mail-in ballots that had not been counted. This action is in direct violation of the agreement to comply the Harris County District Court’s order under cause number 2022-13009. This is evidence of her willful disregard for the law or a lawful order.

33. This suit follows.

CONSTITUTIONAL AND STATUTORY VIOLATIONS

34. The previous allegations set forth in paragraphs 8-32 are incorporated herein as if set forth in the entirety and are applied to each Petitioner’s claim for relief.

35. Petitioners assert that their Texas Constitutional right to equal protection was violated by the Administrator due to her intentional and willful mismanagement coupled with her pattern of reckless disregard for statutory provisions aimed at promoting a safe, accurate, and efficient election.

36. The Texas Constitution guarantees that all free citizens have equal rights under the law. TEX. CONST. ART. I, § 3. In effort to protect this constitutional right to equal protection, Art. VI §2 mandates that the right to vote shall be protected by laws regulating elections and prohibiting undue influence caused by tumult or other improper practice. TEX. CONST. ART. VI §2 (emphasis added). In all elections by the

people, the vote shall be by ballot, and the Legislature shall provide various regulations to preserve the purity of the ballots box. Tex. Const. Art. VI §4.

37. The Texas Legislature has continually followed the constitutional mandate in Art. VI section 4 by passing various laws and amendments to the Texas Election Code.⁶ Under section 122.001, the Legislature prescribed that a voting system may not be used in an election unless the system:

- a. Operates safely, efficiently, and accurately and complies with the voting system standards adopted by the Election Assistance Commission;
- b. Permits voting on all offices and measures to be voted on at the election;
- c. and is capable of providing records from which the operation of the voting system may be audited.

TEX. ELEC. CODE §122.001 (a)(3)(5) and (10).

38. The Administrator intentionally, willfully, and knowingly established operating procedures that failed to comply with section 122.001. This failure created a disparate treatment to Petitioners in comparison to voters in other precincts and counties. The Administrator's conduct violated Petitioners' constitutional rights to equal protection, privilege of suffrage, and purity at the ballot.

Statutory Violation-Failure to Open and Close Voter Center Lawfully

39. Texas Election Code section 61.002 requires:

⁶ The Legislature provided additional safeguards to the ballot in 2021 by passing Senate Bill 1. The administrator has publicly stated that the laws are mundane and outdated. These statements support the assertion that she is intentionally, willfully, and knowingly refusing to follow the law because of a deeply rooted bias against the prescribe the laws.

- a. Immediately before opening the polls for voting on the first day of early voting and on election day, the presiding election judge or alternate election judge shall confirm that each voting machine has any public counter reset to zero and shall print the tape that shows the counter was set to zero for each candidate or measure on the ballot.
- b. At the official time for opening the polls for voting, an election officer shall open the polling place entrance and admit the voters.
- c. Immediately after closing the polls for voting on election day, the presiding election judge or alternate election judge shall print the tape to show the number of votes cast for each candidate or ballot measure for each voting machine.
- d. Each election judge or alternate election judge present shall sign a tape printed under this section.

40. The Administrator intentionally, willfully, and knowingly failed to ensure voter centers were open in accordance with the law and scheduled periods. Therefore, created a disparate treatment to Petitioners in comparison to voters in other precincts and counties. This action violated Petitioners' constitutional rights to equal protection, privilege of suffrage, and purity at the ballot.

Statutory Violation-Tallying The Votes

41. Texas Election Code section 65.005 (b) and (c) states:

- a. The counting team shall compare the tally lists periodically to determine whether discrepancies exist among them. If a discrepancy is discovered,

the ballots shall be recounted and the necessary corrections shall be made on the lists.

- b. On completing the count, each member of the counting team assigned to tally votes shall compute the total number of votes tallied on the list the member has kept, and enter the totals on the tally list. After verifying that the three lists are in agreement, each counting officer shall sign the list that the officer has kept.

TEX. ELEC. CODE § 65.005

42. At the time of this filing, the election administrator “found” approximately 10,000 ballots (i.e 6,000 Democrat; 4,000 Republican). Petitioners assert that the Administrator intentionally, willfully, and knowingly failed to ensure all votes were counted. The “discovery” of these ballots comes after she gave a Harris County District Court assurance all ballots would be counted prior to the deadline. This allowed the administrator to evade the impoundment of the ballots and continue her intentional and willful conduct.

43. Thereby, creating a disparate treatment to Petitioners in comparison to voters in other precincts and counties. This violated Petitioners constitutional rights to equal protection, privilege of suffrage, and purity at the ballot.

Statutory Violation-Failing to Ensure Records are Protected for Potential Recount

44. Texas Election Code section 211.001 requires records to be recorded so a recount can be performed. TEX. ELEC. CODE § 211.001. The administration utilized at

least two different sizes for ballot paper and failed to provide the proper thermal paper required for recording.

45. The Administrator intentionally, willfully, and knowingly failed to ensure voter centers were provided the proper thermal paper which resulted in improper recording of the ballot. These actions created a disparate treatment between Petitioners and voters in other precincts and counties. This violated Petitioners constitutional rights to equal protection, privilege of suffrage, and purity at the ballot.

REQUEST FOR PERMENANT INJUNCTION

46. Petitioners request the Court to set their request for a permanent injunction for a full trial on the merits and, after trial issue a permanent injunction against Respondent Isabel Longoria in her official capacity as Harris County Election Administrator.

47. Petitioners request that Respondent, Isabel Longoria, in her official capacity be permanently enjoined from:

- a. Engaging in any official conduct, action, or decision that violates Petitioners' Texas Constitutional right to equal protection, right to suffrage, and purity at the ballot box.
- b. Operating or overseeing an election in violation of the Texas Constitution and Texas Election Code.
- c. Operating voter centers that are incapable of remaining open during the schedule voting periods.

- d. Utilizing ballot paper that is subject to smearing, smudging, or ink-bleed that prevents an accurate record for ballot count and/or recount.
- e. Dispatching, issuing, assigning, or allocating voting “Lines” that contain missing, broken, inoperable, or damage voting equipment. This includes but is not limited to controllers, duo’s, barcode scanners, and ATI devices.
- f. Dispatching, issuing, assigning, or allocating voting “Lines” that are not in compliance with the Americans with Disabilities Act or missing an ATI devices or any similar device that is used to record a citizens vote that needs special assistance due to disability.
- g. Utilizing voting equipment that has not been properly calibrated, tested, and secured to record the vote.
- h. Submitting result in violation of Section 65.005 (b) and (c) of the Texas Election Code.

CONCLUSION

48. A wise man once said that “incompetence is the perfect camouflage for malfeasance.” The volume of egregious constitutional and statutory violations indicates that Elections Administrator Isabel Longoria crossed the line of incompetence and ventured into the forest of malfeasance. The sole power to terminate Ms. Longoria’s tenure is a prerogative of the County Commissioners. However, if there was a legal vehicle by which to terminate her tenure such action would have been filed.

49. As such, Petitioners only remedy lies in the principles of equity. Therefore, Petitioners assert that Elections Administrator, Isabel Longoria, in her official capacity willfully, knowingly, and intentionally failed to abide by these constitutional and code provisions as outlined above. As a result, violating each Petitioners' constitutional and statutory rights to participate in an election and have their vote treated equally in accordance with the Texas Constitution.

PRAYER

50. Petitioners pray that a permanent injunction issue after final trial as requested above.

51. Petitioners pray for all other relief it may be entitled to at law and/or equity.

52. Petitioners pray for attorney fees.

53. Petitioners pray for general relief.

Respectfully submitted,

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