

2. Plaintiff, the Texas State Conference of the National Association for the Advancement of Colored People (the "NAACP"), is a nonpartisan, nonprofit organization chartered in 1940, whose primary place of business is in Travis County, Texas.

3. Plaintiff, Ruthann Geer is an instructor of government at Tarrant County College and a resident of Burleson, Texas. She serves as chair of the Statewide Nominating Committee of the League of Women Voters of Texas in a volunteer capacity, and formerly served as president.

4. Defendant Rolando Pablos is the Secretary of State for the State of Texas, and may be served with process by Certified U.S. Mail, return receipt requested, at Texas Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887.

5. Defendant Keith Ingram is the Director of the Elections Division of the Secretary of State, and may be served with process by Certified U.S. Mail, return receipt requested, at Elections Division, Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action and the requested relief sought under Tex. Civ. Prac. & Rem. Code §§ 37.003 and 65.011.

7. Venue in this Court is proper under Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) and (a)(3) in as much as a substantial part of the events or omissions

giving rise to the claim occurred in Travis County and the Defendants' principal office is in Travis County.

DISCOVERY

8. Discovery is intended to be conducted under a Level 2 Discovery Control Plan, as set forth in Rule 190.3 of the Texas Rules of Civil Procedure.

INTRODUCTION

9. This lawsuit seeks to prevent the Texas Secretary of State and Texas Elections Division from producing information from the State's computerized voter registration files to the Presidential Advisory Commission on Election Integrity (the "PACEI" or "Commission"), or any member or officer thereof, in a manner that does not comply with State law and that can harm millions of registered Texas voters.

10. In the aftermath of his unsubstantiated claim that "millions of people . . . voted illegally" in the 2016 presidential election¹, President Donald Trump signed Executive Order No. 13,799, which established the Commission. The Commission's stated mission is to "study the registration and voting processes used in Federal elections," and to issue a report that addresses, *inter alia*, (i) "those laws, rules, policies, activities, strategies, and practices" that either "enhance" or "undermine the American people's confidence in the integrity of the voting

¹ Donald Trump (@realDonaldTrump), Twitter (Nov. 27, 2016, 12:30 PM), <https://twitter.com/realdonaldtrump/status/802972944532209664?lang=en>

processes used in Federal elections;” and (ii) “vulnerabilities in voting systems and practices used for Federal elections that could lead to improper voter registrations and improper voting, including fraudulent voter registrations and fraudulent voting.” Exec. Order No. 13,799, 82 Fed. Reg. 22,389 (May 16, 2017).

11. On June 28, 2017, the Commission sent letters to all 50 states (and the District of Columbia), including Texas, seeking a wide range of information pertaining to each state’s voters, including name, address, demographic information, partial social security numbers, party affiliations, criminal felony convictions, registration and voting histories, and more. In doing so, the Commission clearly stated that any information sent to it would become public. The Commission initially requested that Texas and the other states respond by July 14, 2017.

12. The information sought by the Commission is not widely available in Texas, but instead may be released only under certain circumstances and conditions imposed by Texas’s voting laws. Tex. Elec. Code § 18.066. Individuals and entities, like the Commission, seeking large-scale voter information are only permitted to access certain data contained in Texas’s computerized voter registration files and only upon certain conditions. Tex. Elec. Code § 18.066(b).

13. Specifically, requesting individuals or entities may obtain the limited, requested information from the voter files only after (i) they pay a fee and (ii) they execute a notarized affidavit with the Elections Division of the Secretary of State’s

Office (“Elections Division”) stating that they will not use the data in certain enumerated, proscribed ways. *See* Tex. Elec. Code § 18.066. In particular, the affidavit from the requesting party must state “that the person will not use the information obtained in connection with advertising or promoting commercial products or services.” Tex. Elec. Code § 18.066(d).

14. On June 30, 2017, Texas Secretary of State Kolando Pablos (the “Secretary of State” or “Secretary”) issued a statement regarding the Commission’s request, stating:

The Secretary of State’s office will provide the Election Integrity Commission with public information and will protect the private information of Texas citizens while working to maintain the security and integrity of our state’s elections system.²

In doing so, the Secretary indicated that he will provide the Commission with the computerized voter file fields, including the full names of all registrants (including middle names or initials), addresses of most registrants, dates of birth, voting history from 2006 onward, active/inactive status and whether a voter’s registration has been canceled, voting method (absentee, provisional, early), the party primaries that the voter participated in, and the registration effective date.

² *See* Lauren McGaughy, *Texas Won’t Release Private Voter Info to Trump Administration*, Dallas News, June 30, 2017, <https://www.dallasnews.com/news/elections/2017/06/30/texas-will-releasevoters-private-info-trump-election-commission>.

15. On July 26, 2017, the Commission sent a second letter to all fifty states and the District of Columbia seeking voter data.

16. On information and belief, this second letter (“Second Letter”) was sent to Defendant Pablos. In the Second Letter, the Commission purported to protect “any personally identifiable information” from the data it received.

17. On September 7, 2017, the Commission submitted to Defendants a request for voter data using the Secretary of State’s official form. The request seeks data for the entire state, including “active,” “suspense,” and “cancelled” voters.

18. On information and belief, Defendants intend to respond to the Commission’s request and provide Texas voters’ data by September 22, 2017.

19. The Defendants’ provision of the data requested by the Commission, even if cabined to information generally available to candidates or other organizations who are entitled to request voter information under Texas law, would undermine, and run afoul of, the State’s carefully-crafted regulation of the use of voter data.

20. *First*, either the Commission’s stated intention of publishing otherwise private voter data or the disclosure of the data under federal transparency requirements would enable widespread abuse of that information to the detriment of Texas citizens. While the Commission has submitted an affidavit providing that it will not use the information obtained in connection with advertising or promoting

commercial products or services”, neither the Commission nor the Defendants can possibly provide assurances as to the voter data’s use once it is made public

21. *Second*, with specific regard to the Commission’s request for voter birth dates, the Commission’s request (and the Defendants’ compliance) threatens the privacy interests of Plaintiffs and other Texas voters. As Texas courts have acknowledged, a citizen has an inherent privacy interest in his or her birth date, given that such date, in combination with other information that the Defendants intend to make available, can result in identity theft. It is for that reason that Texas courts have held that the disclosure of birth date information constituted a “clearly unwarranted invasion of personal privacy.”

22. Providing the requested information to the Commission would make an end-run around Texas’s important restrictions on any secondary dissemination of received voter information. Once the information requested by the Commission is made publicly available (which the Commission has represented that it will do, and may otherwise be compelled by federal transparency requirements), the genie cannot be put back in the bottle.

23. As a result, Plaintiffs request that the Court enter declaratory and injunctive relief preventing the Defendants from releasing the voter registration information sought by the Commission absent a guarantee that the information will

not be further disseminated in violation of Texas law, and remittance of the applicable fees and deposits to which all other individuals and/or entities are subject.

24. As Plaintiffs anticipate the release of voter registration information to the Commission on or by September 22, 2017, Plaintiffs also request that the Court issue temporary injunctive relief to maintain the status quo, pending the resolution of this dispute.

STANDING OF THE PARTIES

25. Plaintiff, the League of Women Voters of Texas (the “League”), is a nonpartisan, nonprofit organization founded in 1919 and based in Austin, Texas. The vast majority of the over 2,000 members of the League are residents of Texas who are registered to vote in Texas and whose information is contained in Texas’s Computerized Voter Registration List (the “Voter List”) which will be released by the Defendants to the Commission.

26. The League has standing to challenge the Defendants’ release of the Voter List on behalf of its members. The League has members who will be directly impacted and harmed by the release of the Voter List information to the Commission. The Voter List contains personal information regarding Texas voters’ identities which may be used to solicit, harass, or otherwise infringe upon the privacy of Texas voters, including the League’s members.

27. The League also has standing to challenge the Defendants' release of the Voter List on its own behalf. By producing information to the Commission—which has indicated that it will make any documents that are submitted to the Commission available to the public, which may be compelled under Federal Law in any event—the Defendants will impair the privacy of the League's members, including members that the League assisted in registering to vote. It will also make it substantially more difficult for the League to engage in voter-registration and get-out-the-vote activities, which they regularly perform in support of their civic-engagement mission. Voters and prospective voters will be more reluctant to participate in elections or register to vote in the future if they understand that the Defendants are willing to provide information on the Voter List to entities who openly admit that they intend to make such information public. The public disclosure of such personal information will chill League members' as well as other voters' and prospective voters' exercise of First Amendment rights including the right to vote and freedom of association.

28. Last year, the League, through its twenty-five local chapters, conducted at least two hundred voter registration drives. The League also encouraged and assisted individuals in voting and conducted other activities to boost civic engagement, which has been essential to its mission since its founding. If the Defendants provide the Commission with the Voter List, some portion of the

League's funds that would have gone to voter registration, get-out-the-vote, and civic engagement will be redirected to ameliorating the consequences of the Defendants' action, including educating voters regarding the Commission and the State's privacy laws. Furthermore, additional expenses may be incurred by the League as it responds to fallout from the release of Texans' personal information, including (but not limited to) voter education efforts, political activism, and litigation. Thus, the League will be forced to divert time, money, and resources from their other activities in order to expend more time and attention educating and assisting Texas citizens with regard to the protection (or, in this case, non-protection) of their personal information.

29. Plaintiff, the Texas State Conference of the National Association for the Advancement of Colored People (the "NAACP"), is a nonpartisan, nonprofit organization chartered in 1936 and currently based in Austin, Texas. The majority of the over 10,000 members of the NAACP are residents of Texas who are registered to vote in Texas and whose information is contained in the Voter List which will be released by the Defendants to the Commission.

30. The NAACP has standing to challenge the Defendants' release of the Voter List on behalf of its members. The NAACP has members who will be directly impacted and harmed by the release of the Voter List information to the Commission. The Voter List contains personal information regarding Texas voters'

identities, which may be used to solicit, harass, or otherwise infringe upon the privacy of Texas voters, including the NAACP's members.

31. The NAACP also has standing to challenge the Secretary's release of the Voter List on its own behalf. By producing information to the Commission—which has publicly stated it will make any documents that are submitted to the Commission available to the public—the Secretary will impair the privacy of the NAACP's members, including members that the NAACP assisted in registering to vote. It will also make it substantially more difficult for the NAACP to engage in voter-registration and get-out-the-vote activities, which they regularly perform in support of their civic-engagement mission. Voters and prospective voters will be more reluctant to participate in elections or register to vote in the future if they understand that the Secretary is willing to provide information on the Voter List to entities who openly admit that they intend to make such information public. The public disclosure of such personal information will chill NAACP members' as well as other voters' and prospective voters' exercise of First Amendment rights including the right to vote and freedom of association.

32. Last year, the NAACP, through its more than eighty local branches and college chapters, conducted numerous voter registration drives. Following the voter registration deadline, the NAACP helped get voters to the polls, including by providing rides to voting locations. If the Defendants provides Voter List

information to the Commission, some portion of the NAACP's funds that would have gone to voter registration, get-out-the-vote, and civic engagement will be redirected to ameliorating the consequences of the Secretary's action. Furthermore, additional expenses may be incurred by the NAACP as it responds to fallout from the release of Texans' personal information, including (but not limited to) voter education efforts, political activism, and litigation. Thus, the NAACP will be forced to divert time, money, and resources from their other activities in order to expend more time and attention educating and assisting Texas citizens with regard to the protection (or, in this case, non-protection) of their personal information.

33. Plaintiff Ruthann Geer is an instructor of government at Tarrant County College and a resident of Burleson, Texas. She serves as chair of the Statewide Nominating Committee of the League of Women Voters of Texas in a volunteer capacity, and formerly served as president. Ms. Geer is active in voter registration efforts. She is a registered voter and has consistently participated in Texas elections. On information and belief, Ms. Geer's name and information appears in Texas's Voter List. As such, her personal information will be released by the Defendant, to the Commission. The release of such personal information will infringe on Ms. Geer's privacy rights. Furthermore, the public disclosure of such personal information could expose Ms. Geer to intimidation or harassment for merely exercising her right to vote, and may chill her exercise of First Amendment

rights including the right to vote and freedom of association. Ms. Geer believes that her unique name and address make her particularly easy to identify and thus susceptible to such harassment, even with the release of limited information. Additionally, Ms. Geer believes that the release of this information will make her students, who already fear disclosure of who they vote for, even more reluctant to register and vote. As a result, Ms. Geer has standing to bring this action individually.

34. Defendant Rolando Pablos is the duly appointed Secretary of State of Texas. He is sued only in his official capacity, and not personally. As Secretary of State, Secretary Pablos has responsibilities over a number of areas, including oversight of elections and the maintenance of state records—including more than 14 million voter registration records. *See Constitutional Duties*, Texas Secretary of State, <https://www.sos.state.tx.us/about/duties.shtml> (last visited July 17, 2017). With regard to elections, Secretary Pablos is Texas’s Chief Elections official and is responsible for maintaining and overseeing appropriate requests for access to the Voter List. Tex. Elec. Code §§ 18.061, 18.066, and 31.001; *see* <https://www.sos.state.tx.us/about/duties.shtml>.

35. Defendant Keith Ingram is the Director of the Texas Elections Division, appointed by the Governor of Texas. He is sued only in his official capacity, and not personally. With regard to elections, Defendant Ingram oversees the Elections

Division which is responsible for maintaining and overseeing appropriate requests for access to the Voter List. Tex. Elec. Code §§ 18.061, 18.066, and 31.001.

PLAINTIFFS' CLAIM

36. Plaintiffs reallege and incorporate all prior paragraphs of this Complaint.

The Commission and Its Request

37. The Presidential Advisory Commission on Election Integrity was established on May 11, 2017 by Executive Order (“Commission Order”). *See* Exec. Order. No. 13,799, 82 Fed. Reg. 22,389 (May 16, 2017).

38. Although the Commission has the stated task of “study[ing] the registration and voting processes used in federal elections,” *see id.*, the Commission does not have any authority to subpoena records, to undertake investigations, or to demand the production of state voter records from state election officials, including in Texas or anywhere else.

39. Nonetheless, on June 28, 2017, the Vice Chair of the Commission, Kansas Secretary of State Kris Kobach, sent a letter to all fifty states and the District of Columbia seeking detailed voter data from each jurisdiction. *See* Office of the Vice President, Readout of the Vice President’s Call with the Presidential Advisory Commission on Election Integrity (June 28, 2017),

<https://www.whitehouse.gov/the-press-office/2017/06/28/readout-vice-presidents->

call-presidential-advisory-commission-election (“Vice Chair of the Commission and Kansas Secretary of State Kris Kobach told members a letter will be sent today to the 50 states and District of Columbia on behalf of the Commission requesting publicly-available data from state voter rolls and feedback on how to improve election integrity.”).

40. On information and belief, one of the Commission’s letters was sent to Defendant Pablos (the “Letter”). The Letter sought, *inter alia*, the following data from the Voter List:

[T]he full first and last names of all [Texas voter] registrants, middle names or initials if available, addresses, dates of birth, political party (if recorded in your state), last four digits of social security number if available, voter history (election voted in) from 2006 onward, active/inactive status, cancelled status, information regarding any felony convictions, information regarding voter registration in another state, information regarding military status, and overseas citizen information.

The Letter also asked Secretary Pablos to provide “evidence or information . . . regarding instances of voter fraud or registration fraud” and information on in-state “convictions for election-related crimes . . . since the November 2000 federal election.”

41. The Letter stated that “any documents that are submitted to the full Commission will also be made available to the public.”

42. By the plain terms of the Letter, the Commission requested that the Secretary provide the aforementioned Texas data by July 14, 2017.

43. On information and belief, in connection with a separate lawsuit pending in the U.S. District Court for the District of Columbia, on July 10, a federal officer working on behalf of the Commission notified election officials on behalf of the Commission, and requested a temporary hold on submitting data to the Commission. Plaintiffs are unaware of whether Defendants or any entity in Texas received this message.

44. On July 26, 2017, the Commission sent the Second Letter to all states and the District Columbia, including, on information and belief, Secretary Pablos.

45. The Commission submitted its request form on September 7, 2017.

Texas's Voter List and Distribution of Voter Data

46. Texas requires citizens to register to vote in order to participate in state and federal elections within the state. Tex. Elec. Code § 11.002(a)(6).

47. The Texas voter registration form instructs prospective voters to provide at least the following information: name; residence and postal address; any previous voter registration address in Texas; Texas county of residence; date of birth; previous name (if applicable); driver's license number (if applicant possesses one) or last four digits of social security number (if no driver's license); and date of application for registration. Other information, including a voter's gender and telephone number, is requested on the form, but is optional. Furthermore, the application requires applicants to affirm that they: reside in the stated county and are

a citizen of the United States; have not been finally convicted of a felony, or if a felon, have completed all punishment; and have not been determined by a court to be mentally incapacitated. The state's voter registration application can be located through a link on the Secretary's website. *See Voter Registration Application*, Texas Secretary of State, <http://www.sos.state.tx.us/elections/forms/vr-with-receipt.pdf> (last visited July 17, 2017).

48. The Director of the Elections Division, at the direction of the Secretary, is charged with implementing and maintaining "a statewide computerized voter registration list that serves as the single system for storing and managing the official list of registered voters in the state." Tex. Elec. Code § 18.061.

49. Under Texas and federal law "[t]he statewide computerized voter registration list must: (1) contain the name and registration information of each voter registered in the state; (2) assign a unique identifier to each registered voter; and (3) be available to any election official in the state through immediate electronic access." Tex. Elec. Code § 18.061(b).

50. Texas further provides that the local voter registrar must electronically submit to the Secretary each voter participating in an election within thirty days of the election. This data "must include a notation of whether the voter voted on election day, voted early by personal appearance, [or] voted early by mail." Tex. Elec. Code § 18.069.

51. Information on registered voters is not openly posted on the Internet and is generally not made available absent a specific request by an individual or entity. In the case of such a request, however, the Secretary is required to “furnish information in the statewide computerized voter registration list to any person on request not later than the 15th day after the date the request is received.” Tex. Elec. Code § 18.066(a).

52. Such request, however, is limited to certain information and must meet specific requirements.

53. *First*, the Secretary may not furnish (i) any voter’s social security number; or (ii) certain residential addresses. Tex. Elec. Code § 18.066(b).

54. *Second*, any request for voter information must be accompanied by “an affidavit to the secretary stating that the person will not use the information obtained in connection with advertising or promoting commercial products or services.” Tex. Elec. Code § 18.066(d). No data is to be furnished unless the affidavit is submitted to the Secretary.

55. The Director of the Elections Division requires the affidavit to be signed before a notary public. *See Voter Registration Public Information Request Form*, Texas Secretary of State, <https://www.sos.state.tx.us/elections/forms/pi.pdf> (last visited July 17, 2017).

56. In addition, use of the Voter List “in connection with advertising or promoting commercial products or services” is a Class A misdemeanor. Tex. Elec. Code § 18.067.

57. *Third*, Texas law authorizes the Secretary to collect fees when furnishing the Voter List. Tex. Elec. Code § 18.066(e). On information and belief, the Elections Division charges a minimum of \$93.75 for a CD-ROM containing the Voter List, and over \$1,000 for a list of the size of Texas’s registered voter population. *See Voter Registration Public Information Request Form*, Texas Secretary of State, <https://www.sos.state.tx.us/elections/forms/pi.pdf> (last visited July 17, 2017).

58. In addition, on information and belief, the Secretary requires that a \$75.00 deposit accompany each request for the Voter List information. *See Voter Registration Public Information Request Form*, Texas Secretary of State, <https://www.sos.state.tx.us/elections/forms/pi.pdf> (last visited July 17, 2017).

59. *Fourth*, Texas courts have recognized a “nontrivial privacy interest” in birth dates. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App. May 22, 2015) (concluding that “public citizens have a privacy interest in their birth dates”), *review denied* (Sept. 4, 2015); *Tex. Comptroller of Pub. Accounts v. Att’y Gen. of Tex.*, 354 S.W.3d 336, 346-48 (Tex. 2010) (holding that disclosure of state employee birth dates constituted a “clearly unwarranted invasion

of personal privacy”); *see also* Tex. Att’y Gen. Op. OR2017-06026 (2017) (“Based on *Texas Comptroller*, the court of appeals [in *City of Dallas*] concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens’ dates of birth are also protected by common-law privacy . . .”). In doing so, courts have recognized the derivative harm arising from the release of information, including the threat that the disclosure of birth dates, along with other information, could be used for identity theft. Specifically, the Texas Supreme Court acknowledged in *Texas Comptroller* that the disclosure of “[birth] dates, when combined with name and place of birth, can reveal social security numbers.” 354 S.W.3d at 345.

Texas’s Provision of Data to the Commission

60. On information and belief, the Commission submitted a voter information request form to Defendants on September 7, 2017.

61. On information and belief, neither the Commission nor any of its members has explained to the Defendants, let alone offered any assurances or agreement, regarding how it will prevent third parties from using the Voter List information for advertising or promoting commercial products or services once the Voter List information is in the hands of the Commission.

62. On information and belief, the Secretary has acknowledged it will provide certain information to the Commission including voter names, addresses,

dates of birth and registration, voting methods, voter status, and the elections (including primaries) in which specific voters have participated.

63. On information and belief, the Secretary has not yet released the Voter List (or any other data) to the Commission, but intends to do so in response to the Commission's request by September 22, 2017. Unless restrained by this Court's injunction, the Defendants will imminently release the Voter List (or a subset of information contained in the Voter List) to the Commission.

64. The disclosure of birth dates included in the Voter List would violate Texas law and the rights of Texas citizens.

65. Additionally, the Commission's intended use of the Voter List, as confirmed in the Commission's Letter itself, would violate Texas law and the rights of Texas citizens.

66. Provision of the Voter List information to the Commission would multiply the number of individuals and entities with access to the information.

67. The Commission's Letter stated that "any documents that are submitted to the full Commission will also be made available to the public." The Commission therefore apparently intends to make information received from the Texas Voter List fully available to the public.

68. In a July 5 filing in a case in the District of Columbia, Mr. Kobach, the Vice Chair of the Commission, reaffirmed that there would be a "public release of

documents,” but asserted, without any explanation, that the voter roll data would be “de-identif[ied].” This assertion did not indicate which information from Texas’s (or any other states’) voter rolls would be made available to the public and which would not. Nonetheless, Mr. Kobach proffered, with no further explanation, that the “voter rolls themselves will not be released to the public by the Commission.” Decl. of Kris W. Kobach at 3, *Elec. Privacy Info. Ctr. v. Presidential Advisory Comm’n on Election Integrity*, No. 1:17-cv-01320-CKK (D.D.C. July 5, 2017), ECF No. 8-1.

69. On information and belief, the Commission has not issued a formal communication to Texas state officials (or to the officials in any other state) resolving the discrepancy between the express language in the June 28 letter that the Voter List information received in response to that request would later be made public, and the representation in the Second Letter that information would be protected in some manner.

70. Moreover, even if the Commission itself intended to keep the voter information private, it is not clear that the Commission, which is an advisory committee covered under the Federal Advisory Committee Act (FACA), has the authority to prevent the dissemination of information provided to it. Rather, FACA requires advisory committees like the Commission to make available for public inspection all “the records, reports, . . . or other documents which were made available” to it unless those records fall within one of the enumerated exceptions.

5 U.S.C. App. 2 § 10(b). There is thus still a serious risk that, even if the Commission indicated that it did not intend to make any information provided to it public, the Voter List will still be made available, irrespective of any post-hoc assertions from Mr. Kobach.

71. The public dissemination of information contained in the Voter List by the Commission, without regard for the requirements of Texas law, will undermine Texas's use restrictions and harm Texas voters.

72. The Commission's intended (or compelled) publication of the information provided by Texas (and other states) would eviscerate the requirements set forth in Tex. Elec. Code § 18.066, including its requirement that a party submit an affidavit promising not to "use the information . . . in connection with advertising or promoting commercial products or services" before the Voter List is furnished.

73. In fact, the affidavit that requesting parties must execute specifically states "I do solemnly swear that the information obtained from the copy of the State Master Voter File will not be used to advertise or promote commercial products or services." See *Voter Registration Public Information Request Form*, Texas Secretary of State, <https://www.sos.state.tx.us/elections/forms/pi.pdf> (last visited July 17, 2017). Once Texas's Voter List is made public by the Commission, neither the Commission nor the Defendants can effectively monitor or police the use of the Voter List. Hence, it is impossible to guarantee the promise will be upheld when the

information is publicly dispersed. In particular, neither the Defendants nor the Commission can guarantee that individuals or entities who seek or receive the Voter List information from the Commission will be subject to the use limitations imposed by Texas law.

74. Thus, by turning the Voter List or its information over to the Commission, the Defendants would be sanctioning the disclosure of information regarding millions of Texans to private firms, who could use such data without limitation and to the detriment of the privacy and associational rights of Texas voters, including Plaintiffs and their members.

COUNT I:
Violation of Tex. Elec Code § 18.066 *et seq.*

75. Plaintiffs reallege and incorporate all prior paragraphs of this Complaint.

76. The Defendants' release of the birth dates included in the Voter List violates Texas law.

77. Furthermore, the Defendants' release of the Voter List or information from the Voter List without adhering to the requirements and protections of the Texas Election Code, Tex. Elec. Code § 18.066 *et seq.*, violates Texas law.

78. Neither the Secretary nor members of the Elections Division are permitted to simply release the information to the Commission. The Defendants

must follow the procedures outlined in Tex. Elec. Code § 18.066 in order to release the Voter List or information from the Voter List.

79. Specifically, the Defendants cannot distribute social security numbers or any part thereof pursuant to Tex. Elec. Code § 18.066(b).

80. Moreover, before being entitled to receive even the limited information permitted under Tex. Elec. Code § 18.066, the Commission and/or its members must first sign a notarized affidavit stating that the information the Commission and/or its members receive from the Voter File “will not be used to advertise or promote commercial products or services.” *See Voter Registration Public Information Request Form*, Texas Secretary of State, <https://www.sos.state.tx.us/elections/forms/pi.pdf> (last visited July 17, 2017).

81. The Defendants cannot sidestep Texas law simply because the Commission has requested the data. Rather, the Defendants must treat the Commission like every other entity requesting the Voter List—that is, requiring a notarized affidavit and the remittance of a fee. Otherwise, Texas election law, which limits the use of the Voter List and information contained in it, can be easily circumvented once the Commission releases the Voter List to the general public.

82. These statutory protections are especially important in this case, as the Commission has stated that the information it receives will be shared with the public. Moreover, even if the Commission states its intention not to share the Voter List

information, its publication may be required by federal law. This dissemination could lead to Texas voters' information being used by others for commercial purposes in violation of Tex. Elec. Code § 18.067. And the dissemination of voters' identifying information in combination with their physical addresses, mailing addresses, and voting history creates a further risk of harassment and intimidation.

83. If the Commission follows through on its stated plan to disseminate the information it receives to the public, then the Commission necessarily cannot guarantee that it will not be used "in connection with advertising or promoting commercial products or services" as required by the affidavit under Tex. Elec. Code § 18.066(d). Once voters' information becomes publicly available, the uses and purposes other entities have for it will be beyond the control of both the Defendants and the Commission.

84. Unless enjoined by this Court, Plaintiffs will suffer irreparable harm from the exposure of personal voter information, with no alternative adequate remedy at law.

85. Given the clear limitations imposed on the Defendants under Texas law and the rights of Texas voters, the irreparable nature of the harm that would follow from the release of the Voter List or information from the Voter List, and the fact that other remedies would not prevent a failure of justice, injunctive relief should be granted.

COUNT II:
Violation of Tex. Gov't Code § 552.101

86. Plaintiffs reallege and incorporate all prior paragraphs of this Complaint.

87. On information and belief, the Secretary has indicated that birthdates are among the information that he intends to provide to the Commission.

88. The Defendants' release of the birth dates included in the Voter List violates Texas law.

89. Texas courts have held, and the Attorney General of Texas has acknowledged, that public citizens' dates of birth are protected by common-law privacy pursuant to Tex. Gov't Code § 552.101.

90. The provision of birth dates, in connection with the other information that the Commission has requested, can and will lead to identify theft and other invasions of privacy.

91. Accordingly, the Defendants cannot distribute voters' birth dates consistent with Texas law.

92. Unless enjoined by this Court, Plaintiffs will suffer irreparable harm from the exposure of their birth dates, with no alternative adequate remedy at law.

93. Given the clear limitations imposed on the Defendants under Texas law and the rights of Texas voters, the irreparable nature of the harm that would follow

of the release of birth dates, and the fact that other remedies would not prevent a failure of justice, injunctive relief should be granted.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs request the following relief and judgment:

- A. a judgment in favor of Plaintiffs and against the Defendants, and under the authority of Tex. Civ. Prac. & Rem. Code § 35.011, entry of a temporary injunction, and after trial, a permanent injunction enjoining the Defendants, Secretary of State Rolando Flores, and Keith Ingram, Director, Texas Elections Division, from providing the Voter List or any part thereof to the Commission.
- B. a declaratory judgment in favor of the Plaintiffs pursuant to Tex. Civ. Prac. & Rem. Code § 37.003, finding and determining that as announced:
 - 1. the release of birth dates as part of the Voter List would violate Tex. Gov't Code § 552.101 and Texas law generally;
 - 2. Defendants' release of the Voter List or any part thereof to the Commission must comply with all aspects of Tex. Elec. Code § 18.066 *et seq.*, including but not limited to the submission of a proper request, payment of a fee, and guarantees and assurances as to the use and publication of the Voter List information;
 - 3. Plaintiffs' rights will be irreparably harmed without injunctive or declaratory relief from this Court; and
 - 4. the Defendants are under no obligation to provide the Voter List or any part thereof to the Commission in response to its June 28, 2017 request, or any other similar request.
- C. An order and judgment that Plaintiffs recover the costs of this action.
- D. Such other and further relief as the Court deems just in the premises.

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this instrument was delivered to the following party on this 20th day of September, 2017, in accordance with the Texas Rules of Civil Procedure:

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