

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SEP 21 2006
DAVID J. MALAND, CLERK
BY
DEPUTY _____

WILLIE RAY, JAMILLAH JOHNSON,)
GLORIA MEEKS, REBECCA)
MINNEWEATHER, PARTHENIA)
McDONALD, WALTER HINOJOSA,)
and THE TEXAS DEMOCRATIC PARTY,)

Plaintiffs,)

v.)

Civil Action No. 2 - 0 6 C V - 3 8 5

STATE OF TEXAS, a State of)
the United States; GREG ABBOTT,)
Attorney General of the State of Texas;)
and ROGER WILLIAMS, Secretary of)
State for the State of Texas,)

Defendants.)

ORIGINAL COMPLAINT

INTRODUCTION

This action challenges several unprecedented provisions of the Texas Election Code, largely enacted in 2003, and the intentionally discriminatory manner in which Texas officials are enforcing those provisions, including in advance of the 2006 election.¹ The challenged provisions authorize a variety of sweeping criminal penalties on individuals and organizations who simply seek to aid voters who vote by mail. For example, under newly enacted Section 86.006(f) of the Texas Election Code, individuals—including Plaintiffs—are now subject to criminal prosecution in Texas merely for *possessing* another's completed and sealed mail-in

¹ As detailed in the Counts below, the provisions of the Texas Election Code expressly challenged by Plaintiffs are Sections 64.036(a)(4), 84.003(b), 84.004, 86.0051, and 86.006 (the "challenged provisions").

ballot for the purpose of depositing that ballot in the mail.² These provisions are plainly targeted at the longstanding, widespread and legitimate activities of Plaintiffs and other individuals, organizations and political parties in facilitating voter participation and assisting voters who vote by mail. Notably, those targeted by the enforcement of these provisions so far have been overwhelmingly and disproportionately African-American, Hispanic, and Democratic. Although purportedly enacted to prevent voter fraud, the challenged provisions do nothing of the sort. Rather, the plain intent and effect of these provisions, and of their enforcement by Texas officials, is to suppress voting by disfavored groups and to squelch completely legitimate, non-fraudulent activities of civic organizations, including political parties.

The challenged provisions, as enforced by Texas officials, including Defendants Attorney General GREG ABBOTT and Secretary of State ROGER WILLIAMS (“Defendants”), violate the United States Constitution and other provisions of federal law. These provisions gravely harm Plaintiffs and other similarly situated individuals and organizations by, among other things: substantially burdening the fundamental voting, expression and association rights recognized under the First and Fourteenth Amendments; infringing the associational rights of political parties and their members (such as Plaintiffs) who wish to aid voters in casting mail-in ballots; infringing voters’ federally-protected right to assistance in casting a ballot; violating the Voting Rights Act and the Fifteenth Amendment; denying equal protection of the laws because the Defendants’ enforcement of the challenged provisions (in particular, Section 86.006(f)) targets minority communities and minority voters in Texas; and denying due process because the challenged provisions are vague, confusing, overbroad, and inconsistently interpreted and

² Although several affirmative defenses—many quite narrow and confusing in scope—are set forth in Section 86.006(f)(1)-(6), these defenses are neither bars to prosecution nor exemptions. Thus, under Section 86.006(f), the State is free to prosecute anyone who knowingly helps an elderly, disabled, illiterate, or homebound voter in mailing an official ballot, and thereafter, to require that person to prove that they satisfy one of the affirmative defenses.

enforced, thereby failing to provide adequate notice to voters, political party activists, and political parties that longstanding legitimate political, grassroots voter activity may now be prosecuted as criminal conduct. In addition, the Defendant Attorney General, through his recent efforts at "enforcing" the challenged provisions, has violated Plaintiffs' statutory and constitutional rights by engaging in a deliberate campaign to suppress the minority vote and discriminate against minority voters.

ALLEGATIONS

Plaintiffs allege that:

1. This is an action for declaratory and injunctive relief pursuant to 42 U.S.C. § 1971, 42 U.S.C. § 1973, Section 208 of Title II the Voting Rights Act of 1965 as amended, 42 U.S.C. § 1973aa-6, and 42 U.S.C. § 1983, to enforce rights guaranteed under the First, Fourteenth, and Fifteenth Amendments to the United States Constitution. This action is brought to prevent deprivation under color of state law of the rights, privileges and immunities secured to Plaintiffs by the aforementioned federal statutes and constitutional provisions.

PARTIES

2. Plaintiff WILLIE RAY resides at 1617 Gattling Street, Texarkana, Texas. Plaintiff RAY is an African-American female, a registered voter in Bowie County, a publicly elected official on the Texarkana City Council, and is affiliated with the Democratic Party. Plaintiff JAMILLAH JOHNSON resides at 7407 W 77th Street, Texarkana, Texas. Plaintiff JOHNSON is an African-American female, a registered voter in Bowie County, and is affiliated with the Democratic Party

3. Plaintiffs RAY and JOHNSON are political activists associated with both the Texas Democratic Party and the Bowie County Democratic Party. Plaintiffs RAY and

JOHNSON have provided lawful assistance to registered voters in Texas in the past with regard to the casting of mail-in ballots, and wish to provide lawful assistance to voters in the future.

4. Plaintiffs RAY and JOHNSON were indicted by the Defendant State of Texas in 2005 because they allegedly possessed and mailed ballots for voters who needed or requested assistance with their mail-in ballots. Both RAY and JOHNSON recently pled guilty to violating Section 86.006 of the Texas Election Code for the mere possession of ballots of other voters.

5. Plaintiff GLORIA MEEKS resides at 2408 Rodeo Street, Fort Worth, Texas. Plaintiff MEEKS is an African-American female, a registered voter in Tarrant County, and is affiliated with the Democratic Party. On information and belief, Plaintiff MEEKS believes she is the subject of an investigation by the Defendants for allegedly possessing and mailing ballots of other voters in Tarrant County and for providing assistance to voters in casting their ballots. Plaintiff MEEKS is a political activist associated with both the Texas Democratic Party and the Tarrant County Democratic Party. Plaintiff MEEKS has lawfully assisted registered voters in Texas (particularly elderly and disabled voters) in casting their mail-in ballots, and she wishes to provide such lawful assistance to Texas voters in the future.

6. Plaintiff REBECCA MINNEWEATHER resides at 5808 Macao Lane, Fort Worth, Texas. Plaintiff MINNEWEATHER is an African-American female, a registered voter in Tarrant County, and is affiliated with the Democratic Party. On information and belief, Plaintiff MINNEWEATHER believes she is the subject of an investigation by the Defendants for allegedly possessing and mailing ballots of other voters in Tarrant County and for providing assistance to voters in casting their ballots. Plaintiff MINNEWEATHER is a political activist associated with both the Texas Democratic Party and the Tarrant County Democratic Party. Plaintiff MINNEWEATHER has lawfully assisted registered voters in Texas (particularly elderly

and disabled voters) in casting their mail-in ballots, and she wishes to provide such lawful assistance to Texas voters in the future.

7. Plaintiff PARTHENIA McDONALD resides at 2458 Elizabeth Court, Fort Worth, Texas. Plaintiff McDONALD is an African-American female, a registered voter in Tarrant County, and is affiliated with the Democratic Party. Plaintiff McDONALD was recently questioned by investigators from the office of the Defendant ABBOTT. Plaintiff McDONALD is severely physically handicapped and uses a wheel chair. She is a homebound individual who is 78 years old and she requires assistance in voting. Plaintiff McDONALD requires the assistance of another person in order to vote, and she depends on trusted friends to assist her in applying for a mail-in ballot and in casting her mail-in ballot. The assistance that Plaintiff McDONALD requires in order to cast her ballot includes the actual mailing of her ballot.

8. Plaintiff WALTER HINOJOSA resides at 7801 Lowdes Drive, Austin, Texas. Plaintiff HINOJOSA is an Hispanic male, a registered voter in Travis County, and is affiliated with the Democratic Party. Plaintiff HINOJOSA is a political activist associated with both the Texas Democratic Party and the Travis County Democratic Party. Plaintiff HINOJOSA has lawfully assisted registered voters in Texas (particularly elderly and disabled voters) in casting their mail-in ballots in the past, and he wishes to provide such lawful assistance to Texas voters in the future.

9. Plaintiff TEXAS DEMOCRATIC PARTY is a political party organized and existing under the laws of the State of Texas. The TEXAS DEMOCRATIC PARTY has for many years encouraged its party activists to engage in efforts to maximize voter turnout, particularly among the elderly and disabled. As part of implementing this voter turnout effort, party activists such as Plaintiffs RAY, JOHNSON, MEEKS and HINOJOSA have been

contacted frequently by friends and acquaintances requesting assistance in applying for and casting mail-in ballots. Such voter turnout efforts are commonplace throughout Texas and are utilized by, among others, political activists associated with both major political parties in the state.

10. Defendant STATE OF TEXAS is a state of the United States of America.

11. Defendant GREG ABBOTT is the Attorney General of the State of Texas. As Attorney General, Defendant ABBOTT is responsible for enforcing state laws in Texas, including criminal provisions of the Texas Election Code. As Attorney General, Defendant ABBOTT has stated that his office investigates and prosecutes alleged violations of the Texas Elections Code, including the statutory provisions challenged in this lawsuit. Defendant ABBOTT is sued in his official capacity.

12. Defendant ROGER WILLIAMS is the Secretary of State for the State of Texas. The Secretary of State is the Chief Election Officer for Texas, and it is his responsibility to assist local election officials and to ensure that election laws in Texas receive uniform application and interpretation. Defendant WILLIAMS is also responsible for processing and resolving complaints about the election process. Defendant WILLIAMS is sued in his official capacity.

JURISDICTION AND VENUE

13. The Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1343(3) & (4), 28 U.S.C. § 1367(a), 42 U.S.C. §§ 1971(d), 1973j(f) and 1983.

14. Venue is proper in this district under 28 U.S.C. §1391(b)(2) in that a substantial part of the events or omissions giving rise to these claims occurred in this district.

FACTUAL BACKGROUND

15. For many years, it has been common practice by individuals, political parties, and other organizations in certain communities in Texas--including the Texarkana community where Plaintiffs RAY and JOHNSON reside; in Fort Worth, where Plaintiffs MEEKS, MINNEWEATHER, and McDONALD reside; and in the Austin area, where plaintiff HINOJOSA resides--to maximize voter turnout by assisting voters in casting their mail-in ballots. Such assistance has particularly benefited voters who are homebound and physically handicapped, such as Plaintiff McDONALD, and has also benefited elderly voters, or those who are illiterate. This political and civic activity has been widely used by both of the major political parties in Texas, and also by the political activists within the Plaintiff Texas Democratic Party, the Bowie County Democratic Party, the Tarrant County Democratic Party, and the Travis County Democratic Party. Plaintiff McDONALD wishes to receive assistance in the future in obtaining a mail-in ballot and in having her ballot mailed for her by trusted friends with whom she does not reside or with whom she is unrelated.

16. The well-established and common practice in Texas of providing mail-in ballot assistance has taken many forms, including: providing assistance to voters in completing an application for a mail-in ballot, including mailing "pre-filled" applications to voters, who then need only sign and return the application; helping voters who have received mail-in ballots with marking their ballots (particularly for voters who are blind or who cannot read or write); and physically placing sealed ballots in the mail for voters using mail-in ballots.

17. Plaintiffs have engaged in the legitimate political activity described in paragraphs 14 and 15 above in the past and wish to continue exercising their federally protected right to engage in such activity in the future.

THE CHALLENGED PROVISIONS AND PRACTICES

18. Texas law provides a statutory right to cast a ballot by mail for any qualified voter who is 65 years or older on Election Day, who will be absent from the county of residence on election day, or who is disabled or ill. Tex. Election Code §§ 82.001-82.003.

19. Texas law has long provided for criminal and other penalties to combat voter fraud. In provisions broadly applicable to both in-person and mail-in voting, Texas criminalizes both “illegal voting”—*i.e.*, voting by ineligible individuals, multiple voting, and voting while impersonating another—*see* Tex. Election Code § 64.012, and providing “unlawful assistance” to voters—*i.e.*, by assisting ineligible voters, by acting against the will of the voter, or by suggesting to the voter how to vote, *see id.* §§ 64.036(1)-(3). Texas law similarly criminalizes the provision of false information on an application for a mail-in ballot. *See id.* § 84.0041.

20. Despite these broad prohibitions already empowering Texas officials to combat actual voter fraud, the Texas Legislature amended the Texas Election Code in 2003 to create a series of novel, vague, and broad additional prohibitions related to mail-in voting. *See* House Bill 54, 2003 Tex. Gen. Laws 393 (78th Legislature 2003). The 2003 legislation has the purpose and effect of suppressing legitimate and constitutionally protected voting activity, particularly in minority communities, as well as suppressing the legitimate, non-fraudulent expression, organization and activism of political parties and their members.

21. At the time that the State of Texas enacted the challenged amendments to the Texas Election Code in 2003, Defendants had knowledge, or should have known, of the widespread, non-fraudulent practice of assisting voters with mail-in balloting, identified in paragraphs 13-14 above. Further, Defendants knew, or should have known, that this practice was particularly utilized in many minority communities in Texas, including Texarkana and Fort

Worth, to maximize voter turnout, and that this practice was utilized by political parties, including individuals and organizations affiliated with the Democratic Party. These techniques were used because in Texarkana and Fort Worth, as in many other communities in Texas, voter turnout among the minority population is typically lower than in Anglo communities, due in large part to the long history of voting discrimination by the Defendant State of Texas. Special voter turnout efforts have thus been used to increase voter turnout in minority communities, including the black and Hispanic communities in Texarkana and Fort Worth.

22. With respect to Chapter 64 of the Texas Election Code, which covers general "Voting Procedures" not specific to mail-in or in-person voting, the 2003 legislation added a new category of "unlawful assistance." Texas law now provides for criminal penalties if an individual "provides assistance to a voter who has not requested assistance or selected the person to assist the voter." Tex. Election Code § 64.036(a)(4).

23. The 2003 amendments provided for broad criminal penalties related to aiding a voter in submitting an application for a mail-in ballot. Texas law had already provided that a mail-in ballot signed for the applicant by a witness, rather than by the applicant, must indicate the applicant's relationship to the witness, *see* Tex. Election Code § 84.003(a), subject to the general rules applicable to the signing of election-related documents by a witness, *see id.* § 1.011(a). Further, Texas law had already contained criminal penalties for individuals who served as a witness for more than one mail-in ballot application in the same election (a provision that also burdens the ability of party activists and others to provide assistance to those who need assistance obtaining absentee ballots). *See id.* § 84.004. Despite these preexisting rules, in 2003, the Texas Legislature established criminal penalties for witnesses who fail to follow the general rules for witnessing, *see id.* § 84.003(b).

24. Moreover, and as challenged in this lawsuit, Texas law now contains overly broad, vague restrictions on providing *any* assistance to voters with respect to their applications for mail-in ballots:

A person who in the presence of the applicant otherwise assists an applicant in completing an early voting ballot application commits an offense if the person knowingly fails to comply with Section 1.011(d) in the same manner as a witness.

Tex. Election Code § 84.003(b).³ Notably, the specific definition of “assisting a voter” provided for by the 2003 legislation, *see id.* § 64.0321, does *not* apply to Section 84.003(b). *See id.* Thus, Section 84.003(b) may be read to criminalize a wide range of aid long provided to voters applying for mail-in ballots, including, but not limited to, the types of “assistance” delineated in Section 64.0321 of the Election Code.

25. The 2003 amendments also provided for broad, unprecedented criminal penalties for assisting voters in completing and mailing their mail-in ballots. First, the Legislature added Texas Election Code § 86.0051, which establishes criminal penalties related to mailing a voter’s “carrier envelope,” which is the mailing envelope that holds the mail-in ballot:

**CARRIER ENVELOPE ACTION BY PERSON OTHER THAN VOTER;
OFFENSES.**

(a) A person commits an offense if the person acts as a witness for a voter in signing the certificate on the carrier envelope and knowingly fails to comply with Section 1.011.

(b) A person other than the voter who deposits the carrier envelope in the mail or with a common or contract carrier must provide the person's signature, printed name, and residence address on the reverse side of the envelope.

(c) A person commits an offense if the person knowingly violates Subsection (b). It is not a defense to an offense under this subsection that the voter voluntarily gave another person possession of the voter's carrier envelope.

(d) An offense under this section is a Class B misdemeanor, unless the person is convicted of an offense under Section 64.036 for providing unlawful assistance to

³ Section 1.011(d) requires that a witness affix the witness's signature, name and address on the document at issue.

the same voter in connection with the same ballot, in which event the offense is a state jail felony.

(e) Subsections (a) and (c) do not apply if the person is related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, or is registered to vote at the same address as the applicant.

26. In addition to broadly criminalizing activities related to witnessing and mailing a carrier envelope via Section 86.0051, the 2003 legislation went further still, criminalizing the mere *possession* of another's mail-in ballot or carrier envelope. In particular, Sections 86.006(f) and (g) were added to the Texas Election Code, providing that:

(f) A person commits an offense if the person knowingly possesses an official ballot or official carrier envelope provided under this code to another. Unless the person possessed the ballot or carrier envelope with intent to defraud the voter or the election authority, it is an affirmative defense to prosecution under this subsection that the person, on the date of the offense, was:

(1) related to the voter within the second degree of affinity or the third degree of consanguinity, as determined under Subsection B, chapter 573, Government Code;

(2) registered to vote at the same address as the voter;

(3) an early voting clerk or a deputy early voting clerk;

(4) a person who possesses the carrier envelope in order to deposit the envelope in the mail or with a common or contract carrier and who provides the information required by Section 86.0051(b) in accordance with that section;

(5) an employee of the United States Postal Service working in the normal course of the employee's authorized duties; or

(6) a common or contract carrier working in the normal course of the carrier's authorized duties if the official ballot is sealed in an official carrier envelope that is accompanied by an individual delivery receipt for that particular carrier envelope.

(g) An offense under subsection (f) is:

(1) a Class B misdemeanor if the person possesses at least one but fewer than 10 ballots or carrier envelopes unless the person possesses the ballots or carrier envelopes without the consent of the voters, in which event the offense is a state jail felony;

(2) a class A misdemeanor if the person possesses at least 10 but fewer than 20 ballots or carrier envelopes unless the person possesses the ballots or carrier envelopes without the consent of the voters, in which event the offense is a felony of the third degree; or

(3) a state jail felony if the person possesses 20 or more ballots or carrier envelopes unless the person possesses the ballots or carrier envelopes without the consent of the voters, in which event the offense is a felony of the second degree.

27. Thus, Section 86.006(f) and (g) provide that it is a class B misdemeanor to possess even just one mail-in, absentee ballot of another voter. A person possessing such a ballot may escape liability only if he or she can meet the burden of proving at trial that he or she meets one of the six affirmative defenses provided by Section 86.006(f).

28. The 2003 amendments included additional provisions directed at suppressing legitimate assistance to mail-in voters and the longstanding activities of political parties and other organizations. Prior to these amendments, Texas law already substantially restricted political parties' ability to return carrier envelopes on behalf of voters, prohibiting carrier envelopes delivered by common or contract carrier if such envelopes were sent from a political party or candidate headquarters, from a candidate, or from a political committee involved in the election. *See* 86.006(d)(1)-(3). Section 86.006(e) of the Texas Election Code now imposes an additional, unjustified burden on voter turnout efforts by political parties and other organizations: "Carrier envelopes may not be collected and stored at another location for subsequent delivery to the early voting clerk." And, pursuant to Section 86.006(a), a carrier envelope may now *only* be transported and delivered by mail or common carrier—as opposed to any other method of delivery to elections officials.

29. Finally, and critically, Texas law establishes that ballots returned in violation of Section 86.006 "*may not be counted.*" Tex. Election Code § 86.006(h) (emphasis added). Thus, even in situations involving no fraudulent activity whatsoever, voters will be disenfranchised if Texas election officials deem those voters' ballots or carrier envelopes to have been illegally possessed or mailed under the broad and vague prohibitions of Section 86.006.

30. On information and belief, Defendant ABBOTT has prosecuted approximately eight people since 2003 for violating Section 86.006. All but one of the eight persons who have been indicted by Defendant ABBOTT for violating Section 86.006 since 2003 have been African-American or Hispanic, and all eight have been persons affiliated with the Democratic party or with a history of voting in the Democratic primary. On further information and belief, defendant ABBOTT has prosecuted thirteen persons for violating provisions of the Texas Election Code since 2003 and all but one has been black or Hispanic. Moreover, all thirteen persons indicted by Defendant ABBOTT have been persons affiliated with the Democratic Party or with a history of voting in the Democratic primary, and many have been politically active within the Texas Democratic Party or their local county Democratic committee. On information and belief, Defendant ABBOTT and others are presently investigating alleged violations of Section 86.006 and other provisions added to the Texas Election Code in 2003, with a focus on minorities and Democrats, in conjunction with the 2006 election cycle.

31. The discriminatory application and enforcement of the 2003 amendments to the Texas Election Code, including Section 86.006, is evidenced by materials prepared by State officials regarding voter fraud in Texas. These materials make the unfounded suggestion that a correlation or relationship exists between membership in a minority group and engaging in voter fraud, as well as between being a political party activist and perpetuating voter fraud.

32. Particularly egregious is a PowerPoint presentation prepared sometime after June 3, 2005 by the Defendant Attorney General's office entitled "Investigating Election Code Violations". This PowerPoint presentation was evidently used to train Texas officials in investigating and prosecuting voter fraud. As an introduction to a section of the PowerPoint involving "Poll Place Violations," a slide depicts a photograph of African-American voters apparently standing in line to vote. Notably, the 71-slide presentation contains no similar photographs of white or Anglo voters casting ballots. The PowerPoint presentation thus communicates the message that minority voters should be the focus of election fraud investigations and prosecutions, particularly under the new 2003 criminal prohibitions.

33. Another slide in the same PowerPoint presentation, in a section involving tactics for investigating purported voter fraud, is entitled "Examine Documents For Fraud." That slide states that investigators should look for "Unique Stamps" and shows a prominent picture of a postage stamp known as the "sickle cell stamp," which depicts an African-American woman and her infant. Thus, this slide communicates Attorney General ABBOTT's apparent view that the use of the sickle cell stamp is an indication of voter fraud.

34. Sickle cell disease is a group of inherited red blood cell disorders known to particularly affect African-Americans. The disease is inherited at birth by individuals born with sickle cell hemoglobin, and if so, the disease is present for life. It is widely known that the "sickle cell stamp" is used extensively by African-American consumers—largely for mailing everyday items, such as correspondence, bills and cards, but also for the infrequent task of mailing absentee ballots. Despite the fact that there is no basis whatsoever for linking the sickle-cell stamp to voter fraud, the State's "Examine Documents for Fraud" slide shows that the State and the Attorney General regard the use of a sickle cell stamp as a sign of mail-in voting fraud,

thereby cueing state and local prosecutors to focus their investigations on users of the stamp—
i.e., members of the African-American community.

35. Defendant ABBOTT's cues have had their intended discriminatory effect. For example, while investigating Plaintiffs RAY and JOHNSON, Sergeant Jennifer Bloodworth, an employee of the Defendant Office of the Attorney General, inquired of voters specifically about the use of a sickle cell stamp allegedly found on the ballots of two African-American voters to whom Plaintiffs RAY and JOHNSON had allegedly provided assistance.

36. There have also been reports that investigators from Defendant ABBOTT's office have used outrageous investigatory tactics with respect to Section 86.006 and related provisions of the Texas Election Code. For example, on or about August 10, 2006, Plaintiff GLORIA MEEKS was in her bathroom at her Fort Worth residence taking a bath one morning. While disrobed and upon stepping out of her bath, she looked up and saw two men peeping at her through her bathroom window. She later learned that these two persons were investigators with the Office of the Defendant Attorney General ABBOTT.

37. The State has failed to provide adequate guidance, clarity or notice to members of the general public as to the requirements and criminal liabilities created by the above-described provisions added to the Texas Election Code in 2003, including Section 86.006(f).

38. To begin with, the 2003 amendments challenged in this lawsuit, including Section 86.006(f), contain vague, confusing, and overbroad language. For example, Section 64.036(a) now forbids the provision of assistance to a voter "who has not requested assistance or selected the person to assist the voter." Among other things, that provision leaves completely ambiguous whether a person who is at first unknown to the voter may ultimately serve as an assistant after speaking to the voter and receiving the voter's consent. Similarly unclear are the contours of the

extremely broad “possession” ban in Section 86.006(f), which does not specify whether a ballot or carrier envelope must be *marked* for its possession to be illegal. Thus, the statute can be read to criminalize not only possessing the *marked* mail-in ballot of another, but even another’s *unmarked* ballot, creating potential liability for an individual who, for example, merely possesses a neighbor’s mail containing a mail-in ballot. Also unclear is the precise nature of the activities banned by Section 84.003(b), which forbids undefined other “assistance” in the completion of voters’ applications for mail-in ballots. The vagueness and overbreadth of these and other challenged provisions will have a chilling effect on protected activity because voters and individuals who seek to provide assistance to voters will fail to act in ways that might expose them to criminal sanction or uncounted votes. The broad nature of these provisions also invites selective and discriminatory enforcement, which, unsurprisingly, has already occurred.

39. In addition, there is no printed notice on the official ballot or the official carrier envelope disclosing the broad criminal penalties created by the 2003 amendments. For example, neither the ballot nor the envelope indicate that any person who assists an elderly, disabled, illiterate, or homebound voter may be subject to criminal prosecution if that person simply possesses or mails the ballot at the request of a voter.

40. Indeed, the State’s own limited educational materials—which are supposed to inform voters about how to obtain assistance in voting—fail to properly explain the new statutory framework, and, if anything, offer misleading and biased “advice” that is likely to deter voters from seeking assistance and deter willing assistants from offering help. For example, despite a longstanding practice by political parties and other organizations of “pre-filling” applications for mail-in ballots—a practice not expressly outlawed by the 2003 amendments and expressly condoned by the Attorney General’s recent PowerPoint presentation—the Secretary of

State's website warns that voters should "ask someone you trust" if "you need help filing out the [application] form," but that "you must write the assistant's name and address" on the application and that the helper "must also sign the application."

See <http://www.sos.state.tx.us/elections/pamphlets/earlyvote.shtml> (visited September 6, 2006)). Moreover, upon information and belief, investigators from the Attorney General's office have incorrectly told individuals, including Plaintiff MINNEWEATHER, that it is a misdemeanor for a person to assist a voter who desires to cast a mail-in ballot by filling out (but not signing) a mail-in ballot application. These actions of state officials call into question the legitimacy of the well-established practice of pre-filling mail-in ballot applications, and they have had the effect and apparent intent of suppressing minority voters' activity in the political process, including voting.

41. The Secretary of State's website also fails to make clear that those who assist voters may be subject to criminal prosecution for failing to comply with the requirements of Section 86.006 and related provisions concerning assistance in completing and mailing mail-in ballots. Moreover, that website offers unnecessary and erroneous "advice" to voters in order to deter political parties and other organizations from providing assistance to voters in completing and mailing mail-in ballots. In particular, the Secretary of State "recommend[s]" that voters decline help if a "stranger" "'show[s] up' on your doorstep offering to help you with your ballot soon after you've received it in the mail." *Id.* As none of the 2003 amendments expressly bar such assistance, the Secretary of State is apparently taking advantage of the vagueness of the new provisions to chill legitimate efforts to increase voter turnout.

Count I

The Challenged Provisions Burden The Fundamental Right To Vote In Violation Of The First And Fourteenth Amendments

42. Plaintiffs re-allege Paragraphs 1 through 41 of this Complaint.

43. Sections 64.036(a)(4), 84.003(b), 84.004, 86.0051, and 86.006 of the Texas Election Code (“challenged provisions”), separately and together, burden the fundamental right to vote, in violation of the First and Fourteenth Amendments to the United States Constitution.

44. The challenged provisions severely restrict individuals’ First and Fourteenth Amendment rights, and they do so with discriminatory intent and effect. These provisions do not serve a compelling governmental interest, let alone in a narrowly tailored manner. Nor do these provisions serve any important state regulatory interest. Rather, the State has no legitimate governmental interest in, for example, criminalizing the mere possession of another’s mail-in ballot. *See* Tex. Election Code § 86.006(f).

45. Most plainly, the challenged provisions violate the right of voters, including elderly, disabled, illiterate, or homebound voters, to obtain and cast a mail-in ballot. This right is denied most plainly in the case of Section 86.006 violations. Pursuant to Section 86.006(h), a ballot returned in violation of any of the restrictions of Section 86.006 “*may not be counted*,” thereby expressly disenfranchising voters who have received assistance allegedly in violation of Section 86.006. Section 86.006(f) allows the State to prosecute *anyone* who knowingly possesses a mail-in ballot, regardless of the circumstances. *See* Tex. Election Code § 86.006(f) (“A person commits an offense if the person knowingly possesses an official ballot or official carrier envelope provided under this code to another.”). Although Section 86.006 sets forth affirmative defenses, *see id.* §§ 86.006(f)(1)-(6), these defenses are neither bars to prosecution, nor exemptions from the law. Thus, the State is free to prosecute anyone who knowingly helps

an elderly, disabled, illiterate, or homebound voter in mailing an official ballot. This threat of prosecution chills the fundamental First Amendment rights of voters who *require* the assistance of others to cast their vote because few people, if any, will want to provide assistance if aiding such voters may result in prosecution. This chilling effect will touch even those cases where the person rendering assistance may satisfy one of the affirmative defenses, because such a person may still be charged with violating Section 86.006, and thereafter bears the real and substantial burden of asserting and proving the affirmative defense.

46. The other challenged provisions similarly create an unwarranted restriction on the right to vote, both by making it difficult or impossible for voters to receive needed assistance and by chilling efforts to provide such voters with needed assistance, for fear of criminal penalty.

47. Even if the purpose of Section 86.006 of the Texas Election Code were to combat voter fraud, there is no evidence that Section 86.006 accomplishes this purpose or that existing laws in Texas do not adequately protect this interest without burdening Plaintiffs' constitutional rights. The State has no evidence of fraud, let alone of a substantial or widespread nature, by individuals who merely assist voters by helping them apply for, complete, and mail their mail-in ballots. Indeed, Plaintiffs RAY and JOHNSON were indicted and convicted under Section 86.006(f) for merely *possessing* mail-in ballots of others absent any allegation that Plaintiffs RAY or JOHNSON mismarked those ballots or otherwise committed any fraudulent act.

48. Myriad other statutory provisions predating the 2003 amendments—such as the ban on “illegal voting,” Tex. Election Code § 64.012, the ban on providing “unlawful assistance” to voters, *see id.* §§ 64.036(1)-(3), and the ban on providing false information on an application for a mail-in ballot, *see id.* § 84.0041—provide Defendants with a means of effectively combating actual voter fraud. There is no evidence that the pre-2003 legal framework was

insufficient to deter and combat actual voter fraud. Indeed, as the Secretary of State explains on his website, the best way to combat voter fraud likely is to ensure that Texas voters are well-informed about possible fraudulent activities related to voting.

49. Not only do the challenged provisions of the Texas Election Code fail to combat actual voter fraud, but—by increasing the difficulty of voting by mail—they serve only to suppress voting by the poor, the elderly, the infirm, and African-American and other racial and ethnic minorities.

Count II

The Challenged Provisions Violate The First Amendment And Are Substantially Overbroad

50. Plaintiffs re-allege Paragraphs 1 through 41 of this Complaint.

51. Sections 64.036(a)(4), 84.003(b), 84.004, 86.0051, and 86.006 of the Texas Election Code, separately and together, are facially unconstitutional because they prohibit speech and expression fully protected by the First and Fourteenth Amendments of the United States Constitution, including the right of political parties and their members to organize and engage in legitimate election-related political activity.

52. The challenged provisions' legitimate applications—if any—are miniscule in comparison to their substantial overbreadth.

53. The challenged provisions violate the First Amendment rights of voters and members of political parties and other organizations who assist elderly, disabled, illiterate or homebound voters in mailing their official ballot by threatening such individuals with criminal prosecution, which could result in large fines, jail time, or both. These provisions impose a real and substantial burden upon the willingness of a political party and its members to engage in lawful efforts to assist party members who are unable to cast their official mail-in ballots without

assistance. The broad and harsh restrictions contained in the challenged provisions will cause party leaders to choose not to engage in such protected activities, knowing that they may be subject to prosecution as accomplices if they organize volunteers to help party members and voters cast mail-in ballots. Because the challenged provisions, including Section 86.006, disrupt a political party's right to associate with voters, these provisions violate the First Amendment.

54. Existing provisions of Texas law serve any legitimate interests that the State has in protecting the integrity of the ballot and guarding against voter fraud.

55. To the extent that the challenged provisions have any constitutional applications (which Plaintiffs do not concede), those applications are substantially outweighed by the provisions' unconstitutional applications and chilling effect. For instance, Defendants have enforced Section 86.006 not only in a racially discriminatory manner, but in a way that chills the expressive and organizational activities of veteran political activists, such as Plaintiffs, who merely seek to assist voters in casting mail-in ballots and do not engage in any fraudulent activity concerning such ballots. As evidenced by the Defendants' application and enforcement of Section 86.006, that statute is substantially overbroad and thus in violation of the First and Fourteenth Amendments to the United States Constitution.

Count III

The Challenged Provisions Are Unconstitutionally Vague

56. Plaintiffs re-allege Paragraphs 1 through 41 of this Complaint.

57. Sections 64.036(a)(4), 84.003(b), 84.004, 86.0051, and 86.006 of the Texas Election Code, separately and together, are unconstitutionally vague on their face because they fail to provide reasonable notice of what conduct is prohibited.

58. For example, Section 64.036(a) forbids the provision of assistance to a voter “who has not requested assistance or selected the person to assist the voter,” leaving unclear whether a person who is at first unknown to the voter may ultimately serve as an assistant after speaking to the voter and receiving the voter’s consent. Similarly ambiguous is Section 86.006(f)’s broad ban on “possession” of mail-in ballots and carrier envelopes, which does not specify whether a ballot or carrier envelope must be *marked* for its possession to be illegal, thus calling into question whether the statute criminalizes the mere possession of another’s *unmarked* ballot. Section 84.003(b) does not make clear the scope of the banned activities, as it merely forbids individuals from “otherwise assist[ing]” voters in an undefined manner. And the meaning of Section 86.006(e) is entirely unclear, barring the “collect[ion]” or “stor[age]” of carrier envelopes at “another location for subsequent delivery”—broad, undefined terms that could be read, for example, to prohibit an individual from collecting mail-in ballots in the course of a day of providing individual assistance to voters.

59. The natural and actual consequence of the vagueness of the challenged provisions is to chill individuals’ exercise of their protected federal rights, including but not limited to their right to vote and their freedom of association. In addition, the provisions’ vagueness invites and has in fact caused discriminatory enforcement against disfavored individuals and groups. Because of the challenged provisions’ vagueness, individuals, including Plaintiffs, have and will continue to suffer irreparable harm to their constitutionally guaranteed rights

Count IV

The Challenged Provisions Violate Section 208 Of The Voting Rights Act

60. Plaintiffs re-allege paragraphs 1 through 41 of the complaint.

61. Section 208 of the Voting Rights Act of 1965, as amended, 42 U.S.C § 1973aa-6, provides that “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.”

62. Voter assistance under Section 208 includes all actions necessary to make the vote effective, including assisting voters in marking their ballots and mailing ballots on behalf of voters. Assisting a voter by mailing his or her ballot is not only a lawful form of protected assistance under Section 208 of the Voting Rights Act, but also is an activity that ensures a voter’s ballot will be validly cast, counted, and made effective.

63. Sections 64.036(a)(4), 84.003(b), 84.004, 86.0051, and 86.006 of the Texas Election Code, separately and together, violate Section 208 of the Voting Rights Act. For example, Section 86.006 denies voters the protections afforded them by Section 208 because it provides that any ballot that has been possessed by another person in violation of Section 86.006(f) “may not be counted.” Tex. Election Code § 86.006(h).

64. The challenged provisions burden individuals’ right to provide assistance to voters, including individuals who, like Plaintiffs, have provided lawful assistance to voters upon request in elections and who wish to continue to provide such assistance in the future.

65. Because the challenged provisions of the Texas Election Code burden and interfere with voters’ receipt of assistance from persons of their choice by criminalizing voter assistance activity that would otherwise result in such voters casting valid mail-in ballots, Section 86.006 violates Section 208 of the Voting Rights Act.

Count V

**The Challenged Provisions Violate Section 2 Of The Voting Rights Act
And The Fourteenth and Fifteenth Amendments**

66. Plaintiffs re-allege paragraphs 1 through 41 of the complaint.

67. Sections 64.036(a)(4), 84.003(b), 84.004, 86.0051, and 86.006 of the Texas Election Code, separately and together, burden and harm the rights of Plaintiffs and other African-American and Latino voters to exercise their right to vote and participate effectively in the political process.

68. The enactment of the challenged provisions was intentionally discriminatory, as is Defendants' interpretation, application, and enforcement thereof. Moreover, the challenged provisions and their enforcement by Defendants result in discrimination against Plaintiffs and minority voters. As such, the challenged provisions violate Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, 42 U.S.C. § 1971, and the Fourteenth and Fifteenth Amendments to the United States Constitution.

Count VI

**Defendants' Enforcement Of The Challenged Provisions Is Targeted At Minority Voters In
Violation Of The Voting Rights Act And The United States Constitution**

69. Plaintiffs re-allege paragraphs 1 through 41 of the complaint.

70. On information and belief, Defendants have engaged in racially selective implementation, investigation, enforcement, and prosecution under the challenged provisions since their enactment. In particular, a vastly disproportionate number and percentage of those targeted for investigation and prosecution by Defendants under Section 86.006 have been minority persons, namely African-Americans or Latinos.

71. As discussed in paragraphs 31-34, *supra*, Defendants, including officials in the Attorney General's Office, have prepared and disseminated training materials on voter fraud in Texas that make the invalid claim that a relationship exists between membership in a minority group and engaging in voter fraud activity. In particular, the PowerPoint presentation prepared by the Attorney General's office, sends a clear and unambiguous message: minority voters are more likely to commit voter fraud than whites or Anglos, and such voters (and individuals assisting such voters) should be the focus of voter fraud enforcement efforts. The Attorney General's racial cues are not only inaccurate, but are totally unnecessary for disseminating accurate information about voter fraud activity because African-Americans and Latinos are no more likely to commit voter fraud than Anglos.

72. The Defendant Attorney General's enforcement practices further illustrate his improper and unsubstantiated view that voter fraud is a problem centered in minority communities. In particular, in implementing Section 86.006, the Attorney General has exercised his prosecutorial discretion upon minorities in an astoundingly disproportionate manner: minority individuals have been the target of seven of the Attorney General's eight prosecutions to date, despite the fact that these are certainly not the only known alleged violations of Section 86.006 (as broadly interpreted by State officials). In fact, on information and belief, Plaintiffs allege that there are numerous instances in the Anglo community of individuals routinely mailing ballots for other voters, including non-relatives and non-residents, and the Attorney General has not prosecuted any of these persons for violating Section 86.006.

73. In addition to discriminatory prosecution, State officials have investigated alleged violations of the challenged provisions by inappropriately targeting the African-American and Latino communities. For example, as described above, *see* ¶ 35, *supra*, during her investigation

of Plaintiffs RAY and JOHNSON, Sgt. Bloodworth expressly inquired of voters about whether the sickle cell stamp associated with African-American individuals was used to mail the ballots. Defendants' racially inspired campaign against minority activists and voters for alleged fraud suppresses minority voter turnout, particularly of elderly African-American and Latino voters.

74. Defendants' targeting of minority voters and dissemination of racially charged materials in conjunction with Sections 64.036(a)(4), 84.003(b), 84.004, 86.0051, and 86.006 of the Texas Election Code, separately and together, is discrimination in violation of 42 U.S.C. § 1971, Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973, the Equal Protection clause of the Fourteenth Amendment to the United States Constitution, and the Fifteenth Amendment.

Count VII

The Challenged Provisions And Their Enforcement By Defendants Violate Due Process

75. Plaintiffs re-allege paragraphs 1 through 41 of the complaint.

76. When the Texas Legislature amended the Texas Election Code in 2003, legislators knew or should have known that it was common practice in minority communities in Texas, and a form of legitimate political activity for activists such as Plaintiffs RAY, JOHNSON, MEEKS, and MINNEWEATHER, as well as other members of the Plaintiff TEXAS DEMOCRATIC PARTY, to facilitate the exercise of voters' rights by assisting voters in applying for and casting mail-in ballots. The Legislature also knew or should have known that such legitimate voter assistance would cause activists such as Plaintiffs to be in possession of other voters' ballots, even in cases involving no fraudulent activity whatsoever.

77. Despite the fact that the 2003 amendments to the Texas Election Code criminalized political activity that was previously lawful and legitimate, the Defendants made no

reasonable or sufficient effort to notify voters, political party activists, including Plaintiffs, or political party officials, of the change in the law occasioned by the amendments. For example, no notice is provided on carrier envelopes that possessing a mail-in ballot or carrier envelope for another constitutes a criminal offense, and the State has not published any such notice to political parties or other organizations involved in providing assistance to voters.

78. Rather than provide fair and clear notice of the significant change in state law and its enforcement, the State has engaged in the fundamentally unfair practice of misinforming the public about the scope of the activities criminalized under the challenged provisions. For example, as discussed above in paragraphs 15-16 and 38-41, *supra*, despite a longstanding practice of “pre-filling” applications for mail-in ballots and mailing them to voters—a practice not expressly outlawed by the 2003 amendments and expressly condoned by the Attorney General—the Secretary of State has warned voters that anyone assisting voters must identify themselves on the application form and sign that form. In further conflict with the guidance from the Defendant ABBOTT and Defendant WILLIAMS, investigators from Defendant ABBOTT’s office have incorrectly told individuals that it is a criminal offense to assist a voter by filling out (but not signing) a voter’s mail-in ballot application. Defendant WILLIAMS’ office also has offered misleading “advice” to voters that will deter legitimate voter assistance not expressly barred by the 2003 amendments, “recommend[ing]” that voters decline help if a “stranger” “‘show[s] up’ on your doorstep offering to help you with your ballot soon after you’ve received it in the mail.”

79. It is fundamentally unfair for voters to be prosecuted under Section 86.006 and other challenged provisions by the Defendant ABBOTT while Defendant ABBOTT and Defendant WILLIAMS are providing official guidance that is incorrect, confusing, and internally

inconsistent. Moreover, the arbitrary and racially selective and discriminatory enforcement of Section 86.006 and the other challenged provisions by Defendants violates Plaintiffs' due process rights.

Count VIII

The Challenged Provisions Violate 42 U.S.C. § 1983

80. Plaintiffs re-allege paragraphs 1 through 41 of the complaint.

81. Defendants have prosecuted misdemeanor criminal actions under Section 86.006 against Plaintiffs RAY and JOHNSON in state court in Bowie County, Texas, and, on information and belief, are currently investigating Plaintiffs MEEKS and MINNEWEATHER for violations of the challenged provisions.

82. Notably, the prosecutions of RAY and JOHNSON did not allege that any actions taken by them were fraudulent in any way. For example, there was no claim made that Plaintiff RAY or Plaintiff JOHNSON engaged in duplicate or fraudulent voting, or erroneously marked or tampered with any ballots, or provided unlawful assistance to voters in marking their ballots. Rather, Plaintiffs RAY and JOHNSON were charged with simply possessing the mail-in ballot or carrier envelope of another voter, even though the assisted voters requested such assistance and needed such assistance in order to cast their ballots. Every voter listed in the indictment for whom Plaintiffs RAY and JOHNSON allegedly possessed a ballot was either disabled or over 65 years of age.

83. Under 42 U.S.C. §1983, any person "who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and

laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]”

84. In levying criminal enforcement against Plaintiffs RAY and JOHNSON under Section 86.006, the Defendants acted under color of state law, and subjected these Plaintiffs, or caused them to be subjected, to a deprivation of their rights, privileges, and immunities under the United States Constitution. In conducting an investigation into the activities of Plaintiffs MEEKS and MINNEWEATHER, and threatening to levy criminal enforcement against those Plaintiffs under Section 86.006 and other challenged provisions, the Defendants are acting under color of state law, and subjecting Plaintiffs MEEKS and JOHNSON, or causing them to be subjected, to a deprivation of their rights, privileges, and immunities under the United States Constitution.

PRAYER FOR RELIEF

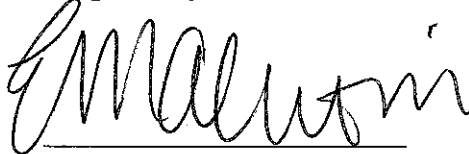
WHEREFORE, Plaintiffs respectfully pray that:

- a) the Court enter a declaratory judgment declaring Sections 64.036(a)(4), 84.003(b), 84.004, 86.0051, and 86.006 of the Texas Election Code violative of the federal Constitution;
- b) the Court enter a declaratory judgment declaring Sections 64.036(a)(4), 84.003(b), 84.004, 86.0051, and 86.006 of the Texas Election Code violative of Sections 2 and 208 of the Voting Rights Act;
- c) the Court enter a preliminary and a permanent injunction pursuant to Federal Rule of Civil Procedure 65 restraining and enjoining Defendants, individually and in their official capacities, from enforcing or applying Sections 64.036(a)(4), 84.003(b), 84.004, 86.0051, and 86.006 of the Texas Election Code to deny Plaintiffs or any

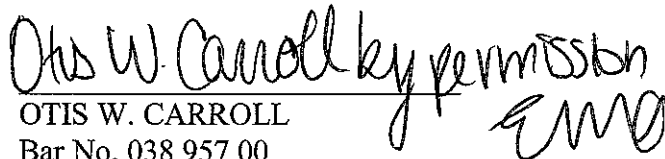
qualified voter in Texas the right to vote by mail, the right to receive lawful assistance in voting, or the right to provide lawful assistance to voters, including the possession or mailing of an application for a mail-in ballot, a mail-in ballot, or a carrier envelope for voters;

- d) Plaintiffs recover their reasonable attorneys' fees and costs; and
- e) Plaintiffs obtain such other and further relief as may be just and equitable.

Respectfully Submitted,



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