

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

LEAGUE OF UNITED LATIN AMERICAN )  
CITIZENS (LULAC), a nonprofit Latino civil )  
rights organization; HERLINDA S. GARCIA, )  
6611 Sylvan Road, Houston, Texas, 77023; JUAN )  
GARCIA, 6611 Sylvan Road, Houston, Texas, )  
77023; AGUSTIN PINEDA, 7838 Battlecreek Dr., )  
Houston, Texas, 77040; BERTA URTEAGA, )  
2938 Ashford Dr., Houston, Texas, 77082; )  
JOHNNY N. MATA, 2121 Fountain View Dr., )  
Houston, Texas, 77057; TERRA WIGGERFALL, )  
8154 Richland Dr., Houston, Texas, 77028; and )  
WADE B. HUGHES, 5702 Beldart St., Houston, )  
Texas, 77033, )

Plaintiffs, )

v. )

HARRIS COUNTY, Texas, a County in the State )  
of Texas; DON SUMNERS, in his official capacity )  
as Harris County Tax Assessor-Collector and Harris )  
County Voter Registrar, )

Defendants. )

CIVIL ACTION NO.

COMPLAINT

Plaintiffs allege that:

1. This action is brought pursuant to 42 U.S.C. § 1973gg-9(b) and 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by federal statute and the

Constitution of the United States. Plaintiffs also bring this action pursuant to Sections 2, 5, 11(b), and 12(d) of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§1973, 1973c, and 1973j(d), to enforce rights guaranteed by the United States Constitution.

### JURISDICTION

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §§1973c, 1973j(d), and 1973j(f). This Court also has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, as a case arising under the laws of the United States; and under 28 U.S.C. § 1343(a)(4), as a case seeking equitable and other relief pursuant to an act of Congress providing for the protection of the right to vote. This Court also has authority to issue a declaratory judgment and provide for further relief pursuant to 28 U.S.C. §§ 2201 and 2202.

### PARTIES

3. Plaintiff LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) is the oldest and largest national Latino civil rights organization. LULAC is a nonprofit organization, incorporated under the laws of the State of Texas, with presence in most of the fifty states and Puerto Rico. LULAC has chapters in most Texas counties, including Harris County, and has individual members who reside and vote in Harris County. LULAC has long been active in representing Latinos and other minority interests in all regions of the State, including Harris County. LULAC conducts voter registration activities in Harris County (and throughout Texas), and exercises its rights under the Constitution to engage in voter registration activities and to

engage in full and effective political participation for Latinos and minority voters. Since 1971, LULAC has filed well over a hundred lawsuits on behalf of Latino voters throughout Texas, and has been successful in many of them.

4. LULAC individual plaintiffs and representatives for this complaint are: HERLINDA S. GARCIA, 6611 Sylvan Rd., Houston, Texas 77023; JUAN GARCIA, 6611 Sylvan Rd., Houston, Texas 77023; AGUSTIN PINEDA, 7838 Battlecreek Dr., Houston, Texas 77040; BERTA URTEAGA, 2938 Ashford Dr., Houston, Texas 77082; and JOHNNY N. MATA, 2121 Fountain View Dr., Houston, Texas 77057. Each of the foregoing plaintiffs is a LULAC member, voter, and resident of Harris County, and each is affected by the discriminatory conduct alleged in this complaint.

5. Plaintiff TERRA WIGGERFALL is a resident and citizen of Harris County, Texas who resides at 8154 Richland Dr., Houston, Texas 77028. Plaintiff WIGGERFALL is affected by the discriminatory conduct alleged in this complaint.

6. Plaintiff WADE B. HUGHES is a resident and citizen of Harris County, Texas who resides at 5702 Beldart St., Houston, Texas 77033. Plaintiff HUGHES is affected by the discriminatory conduct alleged in this complaint.

7. Defendant HARRIS COUNTY, TEXAS, is a political subdivision of the State of Texas.

Defendant DON SUMNERS is the duly elected Tax Assessor-Collector for Harris County, Texas, and is being sued in his official capacity. Defendant SUMNERS is a statutory

member of the Harris County Election Commission and is currently the Registrar of Voters in Harris County.

### ALLEGATIONS

9. As a political subdivision of the State of Texas, Harris County is subject to the provisions of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c (“Section 5”).

10. The State of Texas and Harris County have a long history of racial discrimination and discrimination against members of language minority groups. The aforementioned history of discrimination has been specifically aimed at denying or abridging the right to vote.

11. Section 5 of the Voting Rights Act provides that any “voting qualification, or prerequisite to voting, or standard, practice or procedure with respect to voting” different from that in force or effect in the State of Texas or its subdivisions on November 1, 1972, may not be lawfully implemented unless such change has been submitted to the Attorney General of the United States, and the Attorney General has not interposed an objection within sixty days, or the jurisdiction obtains a declaratory judgment from the United States District Court for the District of Columbia that the change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. 42 U.S.C. § 1973c.

12. On November 10, 2008, the Texas Democratic Party and the Harris County Democratic Party filed suit against Defendants in order to remedy violations of federal and state law regarding the administration of the voter registration office in Harris County, including, but not limited to, the improper denial of approximately 65,000 voter registration applications. *See Texas Democratic Party, et al. v. Leo Vasquez*, Civil Action H-08-3332 for Harris County, Texas.

13. On October 22-23, 2009, Plaintiffs and Defendants *Texas Democratic Party, et al. v. Leo Vasquez* reached a settlement of Plaintiffs' claims. ("Resolution Agreement").

14. The voting changes occasioned by the Resolution Agreement were submitted to the Department of Justice ("DOJ") for pre-clearance in compliance with paragraph 9 of the Resolution Agreement and pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

15. The DOJ granted pre-clearance to the voting changes set forth in the Resolution Agreement on January 21, 2010.

16. The Resolution Agreement specifically prohibits the Harris County Tax Assessor-Collector from failing to register a voter for the sole reason that the alleged residential address of an applicant may be a commercial address. Resolution Agreement ¶ 7(c). Despite this provision, Defendant Harris County Tax Assessor-Collector SUMNERS has refused to register voters and rejected the applications, including the application of Plaintiff HUGHES, based on the allegation

that a voter's residential address is either listed as a commercial address or some other reason related to residency. In rejecting these applications, the reason provided on the Defendant County's website was "STX" which, according to Harris County, is the code given when "[t]he Voter Registration Application submitted does not contain a valid residence address and we are unable to assign a precinct number from the information received." Despite provisions in the precleared Resolution Agreement to the contrary, Defendant SUMNERS failed to register many voters based solely on residency, or because the address on their voter registration application was deemed by Defendants to be a commercial address. In doing so, Defendants implemented a change in the procedures for registering voters different from the precleared procedures set forth in the Resolution Agreement.

17. Between 2009 and to the present, the Harris County Tax Assessor-Collector's Office received thousands of applications from persons seeking to register to vote. The Resolution Agreement requires that the Voter Registrar's Office must submit to the Secretary of State any application for registration that "legibly provides" certain basic information. Resolution Agreement ¶ 8(c). From 2009 to the present, the Harris County Tax Assessor-Collector's Office rejected hundreds of voter registration applications because such applications allegedly failed to contain "all the required information." Many of the rejected applications for registration "legibly provid[ed]" the Defendant Tax Assessor-Collector with certain basic information, including the application of Plaintiff WIGGERFALL, and should have been submitted by Defendant SUMNERS to the Texas Secretary of State for approval. As a result of the actions taken by Defendant SUMNERS, Plaintiff WIGGERFALL is not a registered voter in Harris County today,

despite the fact that she submitted a voter registration application that legibly contained all of the required information.

18. Texas law requires that those persons whose applications are rejected be given notice of the “reason for the rejection.” Tex. Elec. Code § 13.073. Defendants’ alleged “reason” for rejecting the aforementioned voter applications—failure to contain “all the required information”—is vague, fails to provide adequate reason for the rejection, is contrary to the precleared procedures set forth in the Resolution Agreement, and is contrary to the Texas Election Code.

19. In 2010, Defendant SUMNERS changed procedures with respect to voter registration for new citizens at Houston Area Naturalization Ceremonies. Prior to 2010, at a typical naturalization ceremony, approximately 1500 persons would become U.S. citizens, and of this number, around 80% would register to vote on-site, within minutes of taking their citizenship oath. Groups like the League of Women Voters facilitated these registration procedures of new citizens. In December 2010, upon being elected to the office of Tax Assessor-Collector, Defendant SUMNERS issued directives that made changes in these voter registration procedures. Prior to 2010, the office of Tax Assessor-Collector had dispatched personnel from that office to take immediate custody of completed voter registration applications, which waived the duty of the League of Women Voters to provide each aspiring voter with a receipt. In December 2010, Defendant SUMNERS decided not to send Tax Assessor-Collector personnel to

the naturalization ceremonies in the future and thus changed the voter registration procedures that had been employed there prior to 2010.

### FIRST CAUSE OF ACTION

#### Defendants Have Violated Section 5 of the Voting Rights Act

20. Plaintiffs hereby allege and incorporate by reference paragraphs 1 through 19 above.

21. The actions by the Harris County Tax Assessor-Collector detailed in paragraphs 1 through 19, above, are “standards, practices and procedures” subject to the preclearance requirements of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c.

22. The changes in voting procedures cited in paragraphs 16 to 19, above, have not been precleared by the United States Department of Justice or by the United States District Court for the District of Columbia under Section 5 of the Voting Rights Act, as amended, 42 U.S.C. § 1973c.

### SECOND CAUSE OF ACTION

#### Defendants Have Violated Sections 2 and 11 of the Voting Rights Act

23. Plaintiffs hereby allege and incorporate by reference paragraphs 1 through 19, above.



24. From 2009 to 2012, tens of thousands of persons submitted voter registration applications to the Harris County Tax Assessor-Collector's Office. On information and belief, Defendants reject a substantially higher rate of applications than any other Texas county. Furthermore, the rejection rate for applicants in Harris County has a racially disparate impact and adversely impacts persons who are members of a protected language minority group. For example, the rejection rate for Latino applicants during the period 2009 through 2012 was higher than the rejection rates for Anglo applicants. Applicants from majority Latino zip codes in Harris County have a higher rejection rate than those from non-Latino, non-black zip codes. The rejection rate for black voter registration applicants from 2009 to 2012 was also higher than the rejection rates for Anglo applicants. Applicants from majority black zip codes in Harris County have a higher rejection rate than those applicants from non-Latino, Anglo zip codes.

25. Defendants' actions, rejecting a disproportionately higher percentage of voter registration applications from minority citizens than from Anglo citizens, as described in paragraph 24, above, result in discrimination against African-Americans and Latino citizens in violation of Section 2 of the Voting Rights act of 1965, as amended, 42 U.S.C. § 1973.

26. There is also a history of the Harris County Tax Assessor-Collector Office's failure to process voter registration applications in a timely manner. In 2008, for example, the Harris County Tax Assessor-Collector's Office failed to process voter registration applications in a timely manner, which left many persons unable to vote on Election Day. On information and belief, in 2012, the Defendant Tax Assessor-Collector has once again failed to process voter

registration applications in a timely manner. On information and belief, Plaintiffs believe this application backlog is disproportionately African-American and/or Latino. On Election Day in 2012, a person who applied for voter registration before the registration deadline and whose voter registration application was not timely processed will not appear on the books at the polls and will likely be forced to vote a provisional ballot, if permitted to vote at all.

27. On information and belief, on or about September 5, 2012, Defendant SUMNERS sent approximately 9018 letters to Harris County registered voters asking if they were deceased. The letters advised that voters would be removed from the voter registration rolls after thirty (30) days if no response was received from the voter indicating they were alive. Plaintiff JUAN GARCIA received such a letter and he is alive. The file used for the mailing was developed by the Texas Secretary of State by comparing the statewide voter roll to the Social Security Administration's Death Master File. Following the mailing, Defendant SUMNERS' office received numerous confirmations and complaints from recipients of the letters that they were still alive. Defendant SUMNERS has admitted the list of allegedly dead voters was flawed due to the weak[ness]... of the "database matching criteria[.]" In response to numerous Harris County voters' confirmations that they are alive and the weakness of the matches in the allegedly deceased voter file, and following a public uproar over the incident, Defendant SUMNERS decided that persons not responding to the challenge letter will remain on the voter rolls until after the November 6 election. Despite Defendant SUMNERS' announced decision not to remove any of the 9018 voters from the rolls who failed to respond to the letters, Defendant SUMNERS has failed to notify any of the 9018 voters by any mailing or correspondence that

they will not be removed for the 2012 election. Voters who received the letter and who are alive but have not confirmed that fact to Defendant SUMNERS' office may not vote in the general election because they mistakenly believe that they have been removed from the voter registration rolls, as Defendant SUMNERS' letter advised them. On information and belief, the 9018 letters sent by Defendant SUMNERS disproportionately targeted African-American and Latino voters in Harris County.

28. Defendants' actions, disproportionately targeting voter registration challenges to African-American and Latino voters, as described in paragraph 27, above, result in discrimination against African-Americans and Latino citizens in violation of Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973.

29. Defendants' actions, disproportionately targeting voter registration challenges to African-American and Latino voters in Harris County, "intimidate[s], threaten[s], or coerce[s], or attempt[s] to intimidate, threaten, or coerce" African-American and Latino citizens for voting or attempting to vote in violation of Section 11(b) of the Voting Rights Act, 42 U.S.C. § 1973i(b).

### THIRD CAUSE OF ACTION

#### Defendants Have Violated the National Voter Registration Act (NVRA)

30. Plaintiffs hereby allege and incorporate by reference paragraphs 1 through 29, above.

31. Plaintiffs are seeking a judicial declaration that Defendant SUMNERS voter purge program based on faulty death matches is in violation of Section 8(b)(1) of the National Voter Registration Act of 1993 (“NVRA”), 42 U.S.C. § 1973gg-6(b)(I), which provides that any state or local program or activity designed to ensure the maintenance of accurate and current voter registration rolls “shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965[.]” The House Report on the NVRA provides that the term “nondiscriminatory” is intended to mean that the procedure complies with the requirements of the VRA. House Report No. 103-9, H.R. REP. 103-9, 15-16, 1993 U.S.C.C.A.N. 105, 119-20. The voter purge program instituted by Defendant SUMNERS was inaccurate and unreliable, and therefore violates Section 8(b)(1) of the NVRA.

#### FOURTH CAUSE OF ACTION

##### Defendants Have Violated the Fourteenth Amendment to the United States Constitution

32. Plaintiffs hereby allege and incorporate by reference paragraphs 1 through 31, above.

33. Defendants’ actions, as described in paragraphs 16 through 29, above, were undertaken with a racially discriminatory intent to deny or abridge the right to vote of African-American persons in violation of the Fourteenth Amendment to the United States Constitution.

34. Defendants' actions, as described in paragraphs 16 through 29, above, were undertaken with a discriminatory intent to deny or abridge the right to vote of Latino persons in violation of the Fourteenth Amendment to the United States Constitution.

### FIFTH CAUSE OF ACTION

#### Defendants Have Violated the First Amendment Rights of Plaintiffs

35. Plaintiffs hereby allege and incorporate by reference paragraphs 1 through 34, above.

36. Voting is a fundamental right under the United States Constitution and is core speech under the First Amendment.

37. The First Amendment prohibits laws and actions taken that deny or abridge freedom of speech, including the right to vote. Deprivation of the right to vote is the type of harm that the First Amendment was intended in part to protect. In general, the government may not restrict expression because of its message, ideas, subject matter, or content. Inherently expressive acts involving political speech are protected by the First Amendment. Although state and local governments may enact reasonable and not unduly burdensome time, place, and manner regulations related to the electoral process, state and local governments may not enact election laws that discriminate on the basis of content or the viewpoint expressed by election activities or that are not narrowly tailored to a compelling state interest.

38. Defendant SUMNERS has instituted practices and policies that deny or abridge the right of plaintiffs to exercise their First Amendment right to vote. With respect to Plaintiff WIGGERFALL, Defendant SUMNERS rejected her voter registration application even though her application legibly provided all of the basic information necessary to register to vote in Texas. With respect to Plaintiff HUGHES, Defendant SUMNERS rejected his voter registration application even though his application legibly provided all of the basic information necessary to register to vote in Texas. With respect to Plaintiff JUAN GARCIA, Defendant SUMNERS advised him that he would be removed from the voter registration rolls after thirty days unless he confirmed that he was not deceased, burdening his First Amendment right to vote in comparison to other voters in Harris County who were not required to confirm that they were alive. Insofar as Defendant SUMNERS violated the voting rights of Plaintiffs and other minority citizens in Harris County, Defendant SUMNERS violated the First Amendment rights of those persons.

39. Defendant SUMNERS' actions deprived Plaintiffs WIGGERFALL and HUGHES of their First Amendment right to free speech by denying them the right to become registered voters and vote in the upcoming 2012 general election.

#### PRAYERS FOR RELIEF

WHEREFORE, plaintiffs pray that a court of three judges be convened pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 2284, and thereafter issue a judgment:

(1) Declaring that the changes to voter registration requirements and procedures made by Defendants identified in paragraphs 16, 17, 18, and 19, above, constitute changes affecting voting

within the meaning of Section 5 of the Voting Rights Act, as amended, 42 U.S.C. § 1973c, and are legally unenforceable unless and until such changes have received the requisite Section 5 preclearance;

(2) Granting Plaintiffs a preliminary and permanent injunction against Defendants, their officers, agents, servants, employees, and attorneys and those persons acting in concert or participation with them, from implementing the unprecleared voting changes, unless and until Section 5 preclearance of such changes is obtained;

and that a single judge of this Court enter a judgment:

(3) Declaring that voter registration requirements and procedures administered by Defendants, including those identified in paragraphs 24-29, above, violate Section 2 and 11 of the Voting Rights Act, as amended, 42 U.S.C. §1973.

(4) Declaring Defendants' actions as described in this complaint violate the National Voter Registration Act;

(5) Declaring Defendants' actions as described in this complaint violate the First and Fourteenth Amendments to the United States Constitution.

(6) Granting Plaintiffs a preliminary and permanent injunction under Section 2 of the Voting Rights Act and the United States Constitution against Defendants, their officers, agents, servants, employees, and attorneys, and those persons acting in concert or participation with them, from continued implementation of the procedures and policies identified in this complaint;

(7) Awarding Plaintiffs all costs and disbursements in maintaining this action, and all reasonable attorneys' fees, pursuant to 42 U.S.C. 19731(e) and 42 U.S.C. 1988 and 42 U.S.C. § 1973gg-9(c); and

(8) Granting such further relief as the interests of justice may require.

Respectfully submitted,

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