

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Texas League of United Latin American §
Citizens, et al. §

Plaintiffs, §

v. §

David Whitley, in his official §
capacity as the Texas Secretary of State, §
and Ken Paxton, in his official capacity §
as Attorney General for the State of Texas, §

Defendants. §

CIVIL ACTION NO. 19-CV-00074-FB

**PROPOSED ANSWER OF INTERVENOR-DEFENDANT
PUBLIC INTEREST LEGAL FOUNDATION**

Proposed Defendant-Intervenor the Public Interest Legal Foundation (“Foundation”), by and through counsel, and without waiving any motions or defenses, hereby answers Plaintiffs’ First Amended Class Action Complaint. (Doc. 2.)

Many of the paragraphs in the Amended Class Action Complaint state conclusions of law, to which no response is required. Many other paragraphs consist of baseless hyperbole and biased narrative designed to persuade the Court into accepting Plaintiffs’ skewed paradigm. To the extent any such paragraphs contain proper factual allegations, such are outside the scope of the Foundation’s knowledge; as a result, they can neither be admitted nor denied by the Foundation and thus are deemed denied. Any other allegations not expressly admitted herein are deemed denied.

1. To the extent this introductory paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 1 are denied.

2. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 2 are denied, and, specifically Plaintiffs have not pled facts establishing even the existence of what they refer to as a “voter purge program.” It is admitted that Defendants have taken reasonable steps to ensure the accuracy and integrity of the voter registration lists in Texas.

3. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 3 are denied, and, specifically, Plaintiffs have not pled facts establishing even the existence of what they refer to as a “voter purge program.”

4. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 4 are denied, and, specifically, Plaintiffs have not pled facts establishing even the existence of what they for the first time refer to as a “voter purge scheme.”

5. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 5 are denied.

6. This paragraph contains inflammatory language not supported by any facts. To the extent this introductory paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 6 are denied.

7. This paragraph contains inflammatory language not supported by any facts. To the extent this introductory paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 7 are denied.

8. To the extent this introductory paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 8 are denied, and, specifically, Plaintiffs have not pled facts establishing even the existence of what they refer to as a “voter purge program.”

9. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted,

the allegations contained in paragraph 9 are denied, and, specifically, Plaintiffs have not pled facts establishing even the existence of what they refer to as a “voter purge program.”

10. The Foundation admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

11. To the extent this introductory paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required.

12. Admit.

13. Admit.

14. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 14 are denied.

15. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 15 are denied. Plaintiff League of United Latin American Citizens-National’s (“LULAC”) statement that it “has been recognized and accepted as an organizational plaintiff protecting Latino rights in federal courts across the country” lacks specificity and lacks relevance to the present matter.

16. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the

extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 16 are denied.

17. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 17 are denied.

18. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. Other than as admitted, the allegations contained in paragraph 18 are denied, and, specifically, Plaintiffs have not pled facts establishing even the existence of what they refer to as a “voter purge program.”

19. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 19 are denied.

20. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 20 are denied, and, specifically, Plaintiffs have not pled facts establishing even the existence of what they refer to as a “voter purge program.”

21. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted,

the allegations contained in paragraph 21 are denied, and, specifically, Plaintiffs have not pled facts establishing even the existence of what they refer to as a “voter purge program.”

22. Admit.

23. Admit.

24. Admitted that Plaintiffs’ “Exhibit A” attached to the Amended Class Action Complaint is titled “Election Advisory 2019-2,” dated January 25, 2019 and issued from the office of Keith Ingram, Director of Elections. Denied that Plaintiffs’ Exhibit A “announces a new” program in that it expressly states it is acting pursuant to Texas Transportation Code Sec. 730.005, which was enacted in 2013. *See* Acts 2013, 83rd Leg., ch. 1012 (H.B. No. 2512), *available at* <https://capitol.texas.gov/tlodocs/83R/billtext/html/HB02512F.HTM>. Denied that Plaintiffs’ Exhibit A pertains to a “voter purge program.” Plaintiffs frequently use this undefined term throughout their Amended Class Action Complaint. Plaintiffs’ Exhibit A is an advisory from the Director of Elections to the county voter registrars and election administrators regarding important voter list maintenance. Other than as admitted, the allegations contained in paragraph 24 are denied, and, specifically, Plaintiffs have not pled facts establishing even the existence of what they refer to as a “voter purge program.”

25. Denied as Plaintiffs selectively quote from Plaintiffs’ Exhibit A and add in their own unsupported, narrative language. Plaintiffs’ Exhibit A speaks for itself. Other than as admitted, the allegations contained in paragraph 25 are denied.

26. Denied as Plaintiffs selectively quote from Plaintiffs’ Exhibit A and add in their own unsupported, narrative language. Plaintiffs’ Exhibit A speaks for itself. Other than as admitted, the allegations contained in paragraph 26 are denied.

27. Denied as Plaintiffs do not quote from Plaintiffs' Exhibit A but rather provide their own unsupported narrative. Plaintiffs' Exhibit A speaks for itself. Other than as admitted, the allegations contained in paragraph 27 are denied.

28. Denied as Plaintiffs selectively quote from Plaintiffs' Exhibit A and add in their own unsupported, narrative language. Plaintiffs' Exhibit A speaks for itself. Other than as admitted, the allegations contained in paragraph 28 are denied.

29. Admitted that Plaintiffs' "Exhibit B" attached to the Amended Class Action Complaint is titled "Secretary Whitley Issues Advisory on Voter Registration List Maintenance Activity," dated January 25, 2019. Denied as Plaintiffs selectively quote from Plaintiffs' Exhibit B and add in their own unsupported, narrative language. Plaintiffs' Exhibit B speaks for itself. Other than as admitted, the allegations contained in paragraph 29 are denied.

30. Plaintiffs' Exhibit B speaks for itself. To the extent that a response is required, the Foundation denies the allegations in paragraph 30, including all material contained in the footnote.

31. Plaintiffs' Exhibit B speaks for itself. To the extent that a response is required, the Foundation denies the allegations in paragraph 31.

32. This paragraph contains mere speculation and accusation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 32 are denied.

33. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the

extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 33 are denied.

34. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 34 are denied.

35. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 35 are denied.

36. This paragraph contains mere speculation and accusation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 36, including in footnote 2, are denied.

37. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. Other than as admitted, the allegations contained in paragraph 37 are denied, and, specifically, Plaintiffs have not pled facts establishing even the existence of what they refer to as a “voter purge program.” Further, Plaintiffs’ references to actions by a “federal court” are ambiguous, misleading, and unsupported by their pleading.

38. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. Other

than as admitted, the allegations contained in paragraph 38 are denied. Plaintiffs' reliance on a federal court's denial of a motion for a temporary restraining order is misplaced.

39. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. Other than as admitted, the allegations contained in paragraph 39 are denied. Plaintiffs' reliance on a federal court's denial of a motion for a temporary restraining order is misplaced.

40. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. Other than as admitted, the allegations contained in paragraph 40, including footnote 3, are denied. Plaintiffs' reliance on a federal court's denial of a motion for a temporary restraining order is misplaced and the Foundation denies Plaintiffs' characterization of the court's holding.

41. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 41 are denied.

42. This paragraph contains Plaintiffs' unsubstantiated versions of "facts" referencing one news report. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 42 are denied.

43. This paragraph contains Plaintiffs' unsubstantiated versions of "facts" referencing one news report. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the

extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 43 are denied.

44. This paragraph contains mere speculation and accusation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 44 are denied and, specifically, Plaintiffs have not pled facts establishing even the existence of what they refer to as a “voter purge program.”

45. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. Other than as admitted, the allegations contained in paragraph 45 are denied. Plaintiffs’ reliance on a federal court’s denial of a motion for a temporary restraining order is misplaced.

46. This paragraph contains mere speculation and accusation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 46 are denied.

47. This paragraph contains mere speculation and accusation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 47 are denied.

48. This paragraph contains mere speculation and accusation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 48 are denied.

49. This paragraph contains mere speculation and accusation. Plaintiffs' contention with "a single notice with a short 30-day time limit for a response" is a contention with duly enacted Texas Election Code 16.033, which sets forth the period for "Cancellation Following Investigation by Register." To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 49 are denied.

50. This paragraph contains wild speculation and accusation with no factual foundation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 50 are denied.

51. This paragraph contains wild speculation and accusation with no factual foundation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 51 are denied.

52. This paragraph contains mere speculation and accusation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 52 are denied.

53. This paragraph contains mere speculation and accusation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 53 are denied.

54. This paragraph contains mere speculation and accusation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 54 are denied.

55. This paragraph contains mere speculation and accusation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 55 are denied and, specifically, Plaintiffs have not pled facts establishing even the existence of what they refer to as a “voter purge program.”

56. This paragraph contains mere speculation and accusation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to

form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 56 are denied.

57. This paragraph contains mere speculation and accusation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 57 are denied.

58. This paragraph contains mere speculation and accusation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 58 are denied.

59. Plaintiffs' Exhibit A speaks for itself. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 59 are denied.

60. This paragraph contains mere speculation and accusation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 60 are denied.

61. This paragraph contains mere speculation and accusation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 61 are denied.

62. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 62 are denied.

63. This paragraph contains mere speculation and accusation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 63 are denied.

64. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 64 are denied and, specifically, Plaintiffs have not pled facts establishing even the existence of what they refer to as a “voter purge program.”

65. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 65 are denied.

66. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 66 are denied.

67. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 67 are denied.

68. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 68 are denied.

69. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 69 are denied.

70. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 70 are denied.

71. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the

extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 71 are denied.

72. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 72 are denied.

73. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 73 are denied.

74. This paragraph contains mere speculation and accusation. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 74 are denied.

75. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 75 are denied and, specifically, Plaintiffs have not pled facts establishing even the existence of what they refer to as a “voter purge program.”

76. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the

extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 76 are denied.

77. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 77, including all subparts, are denied and, specifically, Plaintiffs have not pled facts establishing even the existence of what they refer to as a “voter purge program.”

78. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 78 are denied.

79. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 79 are denied.

80. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 80 are denied.

81. To the extent this paragraph states factual allegations, the Foundation lacks knowledge or information sufficient to form a basis as to the truth of these allegations. To the

extent this paragraph states a legal conclusion, no response is required. Other than as admitted, the allegations contained in paragraph 81 are denied.

82-88. The allegations in paragraphs 82-88 of the Amended Class Action Complaint are legal arguments or conclusions of law, to which no answer is required. If deemed to allege facts, the Foundation denies the allegations in paragraphs 82-88.

89-91. The allegations in paragraphs 89-91 of the Amended Class Action Complaint are legal arguments or conclusions of law, to which no answer is required. If deemed to allege facts, the Foundation denies the allegations in paragraphs 89-91.

92-98. The allegations in paragraphs 92-98 of the Amended Class Action Complaint are legal arguments or conclusions of law, to which no answer is required. If deemed to allege facts, the Foundation denies the allegations in paragraphs 92-98.

AFFIRMATIVE DEFENSES

The Foundation asserts two affirmative defenses:

First Affirmative Defense: Section 11(b) of the Voting Rights Act is Unconstitutional as Applied.

1. Section 11(b) of the Voting Rights Act of 1965, *recodified at* 52 U.S.C. § 10101, *et seq.*,¹ (“VRA”) states that:

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any persons to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e) [52 USCS § 10302(a), former 42 USCS § 1973d, 52 USCS § 10305, former 42 USCS § 1973g, 52 USCS § 10306, or § 10308(e)].

¹ The Foundation cites to the recodified sections of the VRA.

52 U.S.C.S. § 10307. The statute plainly requires intimidation, threats, or coercion. Count III of Plaintiffs' Amended Class Action Complaint seeks relief that is not supported by the plain language of Section 11(b) or by the findings of other courts. In Count III, Plaintiffs allege that Defendants' speech regarding their efforts to maintain accurate voter registration list constitutes "unlawful intimidation." Amended Class Action Complaint, ¶¶ 92-98. Count III should be rejected. If Plaintiffs' allegations were accepted, it would push Section 11(b) beyond constitutional boundaries. Accepting Plaintiffs' claims renders Section 11(b) unconstitutional as applied to these facts and circumstances.

Second Affirmative Defense: Inadequate Facts Alleged

2. Federal Rule of Civil Procedure requires a showing of entitlement to relief. Such a showing cannot be made by mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The Amended Class Action Complaint contains factual allegations that, even if true, do not entitle Plaintiffs to relief under the Constitution or the VRA. Many of these allegations bear no relevance to the claims, while others are simply conclusory. Taken together, they fail to state a plausible claim that the Defendants have violated the First and Fourteenth Amendments nor Section 11(b) of the Voting Rights Act.

Right to Add Affirmative Defenses

The Foundation reserves the right to add affirmative defenses should this case proceed to discovery and additional facts become known.

Dated: March 1, 2019

Respectfully Submitted,

/s/ Andy Taylor
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*Application for admission *pro hac vice* forthcoming

CERTIFICATE OF SERVICE

I certify that on March 1, 2019, I caused the foregoing to be filed with the United States District Court for the Western District of Texas via the Court's CM/ECF system, which will serve all registered users.

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