

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

KENNETH ZIMMERN, A Harris County )  
Registered Voter, and WILLIAM SOMMER, A )  
Harris County Registered Voter, )

*Plaintiffs,* )

v. )

Civil Action No.

JUDGE LINA HIDALGO, in her official )  
capacity as County Judge for Harris County, Texas )

TENESHIA HUDSPETH, in her official )  
capacity as County Clerk for Harris County, Texas, )

*Defendants.* )

**Affidavit of Barry Wernick**

My name is Barry Wernick, I am over 18 years of age, of sound mind and state that the following facts are based upon my personal knowledge and are true and correct.

1. I am an attorney-mediator and arbitrator and have been a member in good standing of the State Bar of Texas since 1998, after graduating from the SMU Dedman School of Law that same year. I am a TMCA Credentialed Distinguished Mediator, and member of the Association of Attorney Mediators, Texas Association of Mediators, and Texas Bar College. I have served as the Chair of the Alternative Dispute Resolution Section of the Dallas Bar Association and have served on the State Bar of Texas ADR Council since 2021.

2. I was a candidate in the Republican Primary election of March 5, 2024 for House District 108 in Dallas County. After the Primary Election, I requested a recount which began on Tuesday April 2, 2024, at the Dallas Election Department located in Dallas County at 1520 Round Table Drive Dallas, Texas 75247.

3. Throughout the recount process, as a candidate on the ballot whose race was directly affected by the joint primary election system conducted countywide by the Dallas County Elections Department, I carefully and lawfully observed and reported on election irregularities.

4. During my observations, I witnessed a series of documents being provided by Dallas County Elections Administrator Heider Garcia and his staff being laid out on each counting table by County Supervisor Jennifer Stoddard-Hajdu's appointed recount committee chairs and assistants. These documents included: "Voter Roster" by location, a "Batch Report by Polling Location" showing how many HD 108 ballots per precinct were contained in each ballot box and the paper ballots cast at each location. All of these records were publicly available at the Dallas County Election Website (<https://www.dallascountyvotes.org/>) and the Texas Secretary of State Website (Welcome to Texas elections (<https://www.sos.state.tx.us>)).

5. Due to Dallas County's participation in the Texas Secretary of State's Countywide Polling Place Program (CWPPP) authorized by Texas Election Code §43.007, where ballots are no longer required to be cast by voters in-precinct but, by statute, must still be reported by precinct. This is true even though the ballot may be cast in another precinct within the county of the election being held.

6. The CWPPP necessitates the creation of a database showing all precincts from which a vote was cast and how many votes from each precinct were cast at each polling location. This document is referred to as the "Batch Report by Polling Location." This document is printed from the Dallas County Central Election Management Server (EMS) and is accessible by elections department staff as well as any state or private entity who requests data. All counties opting in to the CWPPP would have to make the same documents publicly available for purposes of election auditability.

7. The “Voter Roster” is a simple record of every voter who casts a ballot, the location where he casts a ballot, and his assigned voting precinct. Each county in Texas has a Voter Roster.

8. Simple visual comparisons of the Voter Roster, the Batch Report by Polling Location, and the paper ballots (the images of which are publicly available 60 days after an election) allow any person to find a voter’s ballot, resulting in a breach of voter privacy, without the voter’s prior knowledge or agreement. The creation of the “Batch Report by Polling Location” document allows for exact matches and logical deductions of which voter belongs to which ballot and vice-versa.

9. Creation of this document allows for a state or county employee or any private person to match ballots and ballot selections to voters in polling locations where a voter is the only voter from a precinct to cast a ballot at a particular polling location during a particular voting period – either during Early Voting or on election day.

10. My team of Poll Watchers and I witnessed ballot boxes from different polling locations opened and presented alongside “Batch Report by Polling Location” documents and the handwritten “Voter Roster” check-in sheets. I watched the recount committee members pull ballots that could immediately, and decisively determine many voter selections from their very ballots, being that many “Batch Reports by Polling Location” showed one, ten, and sometimes even over 30 voters who were the only voters from their precincts to vote at that specific polling location.

11. On May 17, 2024 I sent a Declaration of Truth and Petition for Redress of Grievances to the 96 CWPPP counties’ election administrators/clerks, county judges, and the Texas Secretary of State regarding the CWPPP and the modified version of it called “Early Voting” with a demand to end Countywide Voting, whether on election day or during Early Voting, because

the CWPPP and its modified version, Early Voting, violate the United States constitutional and Texas state rights to a secret ballot.

12. My Declaration of Truth and Petition for Redress of Grievances regarding the lack of voter privacy caused by Countywide Voting gave notice to both state and county election officials throughout Texas.

13. The application of the current system of Countywide Voting's violation of the constitutional right to a secret ballot is well known to *all* election officials in Texas. On June 6, 2024, the Texas Secretary of State's Director of Elections issued Election Advisory No. 2024-20. This advisory says that "if an election official receives a public information request for specific election records and/or ballot images and the county election official determines that producing the records in their original form could compromise a voter's right to a secret ballot, the official should consider additional redactions in consultation with their county or district attorney and public information coordinator."

14. The advisory from the Texas Director of Elections is an admission that the current system of countywide voting defeats a voter's right to privacy. The redaction of information from a public request may make it more difficult for the public to learn how a voter has voted, but the county election officials always have access to the unredacted identifying markers on a ballot.

15. I continue to share with the public and public officials by posting extensively on the unlawful nature of Countywide Voting on my social media account at <https://x.com/wernick4dallas>.

16. I provided public testimony to the Texas Senate Committee on State Affairs on May 29, 2024, regarding Countywide Voting and its violation of the constitutional right to ballot

secrecy and lack of audit capacity and there being no legal way to strike a balance between the two. (<https://x.com/Wernick4Dallas/status/1796300964825100439>)

17. I also provided public testimony to the Dallas County Election Commission on June 20, 2024, regarding Countywide Voting and its violation of the constitutional right to ballot secrecy and lack of audit capacity and there being no legal way to strike a balance between the two. (<https://x.com/Wernick4Dallas/status/1805110864053211209>)

18. I also provided public testimony to the Dallas County Commissioners Court on October 1, 2024, regarding Countywide Voting and its violation of the constitutional right to ballot secrecy and lack of audit capacity and there being no legal way to strike a balance between the two. (<https://x.com/Wernick4Dallas/status/1841261943178342561>)

19. I also provided public testimony to the Dallas City Council on October 20, 2024, regarding Countywide Voting and its violation of the constitutional right to ballot secrecy and lack of audit capacity and there being no legal way to strike a balance between the two. (<https://x.com/Wernick4Dallas/status/1848020907958116733>)

20. I have also shared these public testimonies on my “X” social media account where they have been viewed more than tens of thousands of times.

21. Currently there are at least 18 US States that offer or require Countywide Voting.

22. Because these records must be made available for public inspection at the request of any member of the general public to fulfill the state and federal legal requirements of election auditability, I have been able to request these documents from many of the Texas counties that offer Countywide Voting without assigning voters to specific precinct based on ballot style. As a result, I have been able to match individual voters to their ballots in each of these counties. To

date, my team and I have requested these documents from at least 15 Texas counties, including Harris County.

23. My team and I have submitted Public Information Act (PIA) requests with respect to the March 2024 Primary elections for images of ballots and/or CVRs to several counties across Texas including Harris, Dallas, Tarrant, Bexar, Travis, Collin, Grayson, Lubbock, Deaf Smith, Parmer, Swisher, Potter, Randall, Hays, Williamson, and more (including Denton County for Early Voting records because it did not opt in to the CWPPP).

24. As a result of the PIA requests, I have obtained unredacted CVR images from Harris and Deaf Smith and unredacted CVR and ballot images from Dallas, Bexar, and Parmer. Dallas and Bexar provided the unredacted images prior to the Texas Secretary of State Advisory 2024-20 which called on Election Administrators to redact information that could tie a voter to his ballot selections. Harris provided unredacted CVR images after the Advisory, as did Parmer (both CVR and ballot images) and Deaf Smith (only CVR images). All other counties redacted valuable information needed for election auditability by relying upon the Texas Secretary of State Advisory 2024-20.

25. I have been able to conclude from my research of the publicly available data of the 96 Texas counties that opted into the CWPPP based on the method of sorting and filtering precinct and polling location data that 4.54% of Republican voters and 10.58% of Democrat voters had their constitutional rights to a secret ballot violated on the March 5, 2024, primary election day.

26. I have been able to tie 17,845 Dallas County March 2024, primary voters to their actual ballots and 28,608 Harris County March 2024 Primary voters to their actual Cast Vote Record (CVR) ballot selections.

27. My research of publicly available data, shows that ballot secrecy violations on the March 5, 2024, primary election day in the 5 largest Texas counties most often affected Democrat voters at higher percentages than Republicans:

- a. Harris – Democrats: 15.3%, Republicans: 9%
- b. Dallas – Democrats: 13.4%, Republicans: 8.6%
- c. Tarrant – Democrats: 10.56%, Republicans: 5.81%
- d. Bexar – Democrats: 15.03%, Republicans: 9.28%
- e. Travis – Democrats: 8.75%, Republicans: 8.82%

28. My research also reveals that since the time the following Texas counties opted in and instituted CWPPP, there has been a major drop in voter turnout between 2018 and 2022:

- a. Harris - Down 10.2%
- b. Dallas - Down 16.6%
- c. Tarrant – Down 6.6%
- d. Travis – Down 4.8%
- e. El Paso – Down 23.3%

29. There are currently 96 Texas counties that have opted into and instituted the CWPPP (Cameron, Comanche, and Uvalde Counties recently opted in and have been approved by the Texas Secretary of State but have not administered it yet) and approximately 200 that administer a modified version of it called Early Voting.

30. I have identified 78,281 voters on election day from the 96 CWPPP counties and another 21,965 from 7 CWPPP counties (Harris, Dallas, Tarrant, Travis, Randall, Potter, and Lubbock) Early Voting period who had their constitutional right to a secret ballot violated. The numbers are substantially higher when including counties that did not opt in to the CWPPP but

administer a modified version of it by offering its voters an Early Voting period in which voters are not assigned to a specific polling location.

31. Denton County is one such county that has not opted into the CWPPP. As a result, when I tried to tie Republican Primary voters to specific ballots on election day, of the 38,000 plus voters, I could not tie one voter to his ballot. But because Denton County does offer a modified version of the CWPPP in the form of its Early Voting, I discovered that Texas Secretary of State Jane Nelson and her husband James Nelson were among the approximate 900 Denton citizens who had their constitutional rights to a secret ballot violated.

32. I was not able to obtain the data regarding the other Texas counties which offered Early Voting to its voters because the Secretary of State removed that information from its website after its 2024-20 Advisory.

33. I have looked into the Early Voting and election day voter rosters for numerous Texas counties for the November 5, 2024 General and Joint Election. The Texas Secretary of State and all other counties, except for Dallas County, have removed critical polling place location information from the rosters. However, by removing the polling place location from the voting record, those counties' elections have become unauditible and unverifiable.

34. Dallas County still provides the required information necessary to begin an audit into its election: Voter Legal Name and corresponding VUID, Precinct and Ballot Style, Time and Date of Check-In to Vote, and Polling Location (sometimes referred to as Vote Center or Site ID).

35. For the Dallas County November 5, 2024 General and Joint Election I have identified 12,119 out of 632,932 (1.9%) in-person early voters whose constitutional rights to a secret ballot were violated. I have also identified 23,863 out of 187,661 (12.7%) in-person election day voters whose constitutional rights to a secret ballot were violated.



36. An independent analyst, W. Joe Washburn, associated with the Dallas County Republican Party working in isolation wrote a python script open-source program that produces a list of compromised ballots from the Dallas County November 5, 2024 General and Joint Election that exactly matches my calculations.

37. Some of the voters whose ballots I have identified as not secret from the 2024 primary elections and the general and joint elections include:

- a. State Senators Angela Paxton, Royce West, Molly Cook, State Senate Candidate Joseph Trahan
- b. State Representatives Texas House Elections Committee Chair Reggie Smith, Venton Jones, Victoria Neave Criado, and State Representative Candidates Aimee Ramsey and myself – Barry Wernick
- c. US Congressmen and US Senate Candidate Colin Allred, US Congressional Candidate Ruth “the Truth” Torres, US Congressional Candidate Caroline Kane
- d. Court of Appeals Justices for the Fifth District: Bonnie Lee Goldstein, Erin E. Nowell, former Justice William Whitehill
- e. Dallas County Judges: Dominique Collins, Martin Hoffman, Eric Moye, Mary Brown, Nancy Purdy, Tonya Parker
- f. Former Dallas County Sheriff and 2024 Democrat Primary Candidate Guadalupe Valdez (Primary and Joint and General Early Voting)
- g. Dallas Mayors Tom Leppert, Eric Johnson (and his Security Detail)
- h. Dallas County Officials – County Judge Clay Jenkins, County Clerk John F. Warren, County Tax Assessor John R. Ames, County Democrat Party Chair Kardal Coleman, County Commissioner Dr. Elba Garcia, County Commissioner

Candidate Jason Metcalf, County Commissioner Candidate Derek Avery, District Clerk Felicia Pitre, Former City Councilwoman and County Treasurer Pauline Medrano, County Republican Party Executive Director Dee Holly

- i. Dallas City Officials: Councilman Pastor Zarin Gracey, City Attorney Patricia Medrano
- j. Dallas County Republican Party Precinct Chairs: Erica Person, Jillian Zhorne, Jennifer Lee Jenkins, Melanie Jennings, Brian Bodine, Richard Mastin, Christopher McHatton, Vernon Norris, Cory Connolly, William Underhill, Anthony Torres, Tami Brown Rodriquez, Legislative Priorities Committeewoman and DCRP Resolutions Committeewoman Preeti Malladi (Primary and Joint and General Early Voting).
- k. Dallas County November 5, 2024 General & Joint Election Early Voting Ballot Board: Alternate Judge, Patricia Clapp, Sandra Denton, Bonnie Dickinson, Michael Hall, Mathis Perkins, Jose Plata, Katherine Whitehill
- l. Harris County Officials: Commissioner Adrian Garcia, Constable Sherman Eagleton, School Board Candidate Joshua Wallenstein, Candidate for Harris County DA Dan Wayne Simons
- m. Texas Court of Appeal for the 14<sup>th</sup> District Justices: Frances Bourliot, Kenneth Price Wise
- n. Former Chief of the Texas Court of Appeals for the 1<sup>st</sup> District Justice Sherry Radack
- o. Harris County Judges: Juanita Alexandra Jackson, Michael Charles Englehart, Veronica M. Nelson, Kevin Albert Murray (Magistrate and News Anchor)

- p. Harris County Democratic Party Office and Staff: Roberto Alas, Michael Bouvier, Christian Mendiola, Alejandro Mier
- q. Harris County Republican Party Precinct Chairs: Lee Krause, James Honey, Bernardo Obando, Jr., Jesse Saldana, Jr., Gina Luther, Yolanda Andrade, Walter Zivley, Nicholas Hughes, Steven Parkhurst, David Dick, John Auman, Jr., Leslie Shatto, Clinton Thornburg, Amanda LaBrie, Rosendo Gonzalez, Jeffrey MacGeorge, John Ulrey, Andrew Chad McCartney, Christina Taylor, Prophet Mbong, James Simmons, Deborah Carr, Maria Cavazos, Roger Rangel, William Ely, Elizabeth Perez, Yvette Llorance, Rev. Thomas Herold, Stephen Smith, Elizabeth Ferrell-Thomsen, Veronica Rosas, Daniel Hudson
- r. Other Prominent Figures: SMU Computer Science Associate Professor Richard Barr, Dallas Morning News Politics Reporter Dallas Bureau Everton Bailey, Jr., Dallas Morning News Politics Reporter Austin Bureau Phillip Jankowski, Former Republican Party of Texas Chairman Matthew Rinaldi, Bexar County Precinct Chair Political Consultant Podcaster Luke Macias, Former Texas Real Estate Commissioner Weston Martinez, Ted Cruz Campaign Northern District Director Michael Flusche, D'Andra Simmons, Les Weisbrod

38. Through conversations my team and I have had with election administrators and county clerks in various counties that have opted into the CWPPP, it has been confirmed that it is possible for them and any election employee of the county, as well as the public, to match voters to their individual ballots using the aforementioned required publicly available records. The records are all in the care, custody, and control of county clerks, election administrators, their employees, and third-party vendors that are necessary to administer CWPPP.

39. On September 18, 2024, I informed Dallas County Elections Administrator Heider Garcia at the Lake Highlands Conservatives Monthly Meeting of the fact that redacting information from ballots does not preserve secrecy of the ballot when he and his elections department have and would retain access to what is legally required to be voters' private information. He agreed with my assertion. His acknowledgement can be viewed on a video at my social media account on X at <https://x.com/Wernick4Dallas/status/1836844508170076606>.

40. On September 30, 2024, a member of my team, Stuart Wernick, submitted a request for access to public records to Harris County Director of Elections in an email worded as follows: "Pursuant to Texas Election Code Section 1.012 Public Inspection of Election Records as part of TEC Code 1.002 which supersedes Government Code, Ch. 552, I am requesting the following records: Electronic copies of the Ballot and CVR Images from Election Day of the March 5th, 2024 Joint Primary Election..."

41. Aside from the fact that the redaction of this information may violate the public disclosure statute and federal laws requiring access to public records, this guidance from the Director of Elections Christina Adkins was not followed by the Elections Department Deputy Director of Compliance Du-Ha Kim Nguyen in the Office of Harris County Clerk, Teneshia Hudspeth.

42. On October 2, 2024, we received the following response in an email from Nguyen: "Per your request, please find all CVR reports from March 5, 2024 Primary Elections in Harris County on our Dropbox folder."

43. The requested CVR images were provided with none of the Secretary of State advised redactions. Because redactions are not required, it is possible for anyone who makes a public information request to receive the unredacted documents and trace a voter back to their

individual ballot, as I have done in many instances, including in my most recent request to Harris County.

44. In order to protect the secret ballot, “[p]ublic policy requires that the veil of secrecy should be impenetrable, unless the voter himself voluntarily determines to lift it[.]” *Carroll v. State*, 61 S.W.2d 1008 (Tex. Crim. App. 1933). But redacting information from the public is not the solution. The government still is able to trace voters to ballots and visa-versa. Redaction of identifying information from the public does not resolve the problem that each county clerk and the election section employees may discover each voter’s ballots.

45. Further, redaction does not allow for the ability for the public to audit elections as is required by federal and state law. Redaction of necessary identifying information creates the dilemma that elections departments are the only ones who retain the ability to audit an election

46. In terms of redaction, it is clear that regardless of how much or how little redacting of information there is, or how much or how little the Secretary of State or Attorney General rules redaction is permissible, the state and county election officials retain the ability to know a voter’s ballot. This means that the inherent flaw in Countywide Voting is that it can never provide for ballot secrecy. Whether the public can learn a person ballot or not, the government will always know.

47. *Sewell v. Chambers*, 209 S.W.2d 363 (Tex. App. 1948) is the only case law in Texas that addresses the same issue that arises in the instant situation where an actual conflict arises between ballot secrecy and election auditability. In *Sewell*, the court is explicit that “...there are public interests which outweigh the individual's right to have his ballot kept secret.”

48. For the basis of its decision, the *Sewell* court cites the 1911 Missouri Supreme Court case of *Gantt v. Brown et al.*, 238 Mo. 560, 142 S.W. 422, 425, which reasoned, “The stability of

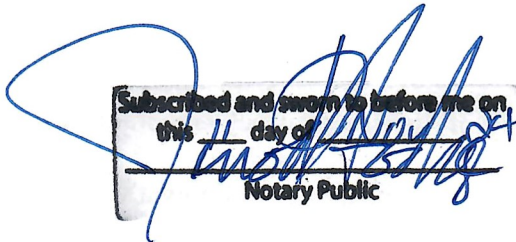
our government is dependent upon the honesty and purity of the ballot the secrecy of the ballot had better be scattered to the four winds, rather than have such secrecy shield corruption in elections, \* \* \* better a thousand times that the individual's vote should be spread upon canvas under calcium light, than that fraud should be locked up within the lids of official ballot boxes and poll books with no known legal method of exposing such fraud.””

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11 day of November 2024.

  
Barry Wernick

NOTARY SEAL

  
Subscribed and sworn to before me on  
this 11 day of November  
Notary Public

