

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

JOLT INITIATIVE, INC.,

Plaintiff,

v.

KEN PAXTON, in his official capacity as
Attorney General of Texas,

Defendant.

Case No.: _____

COMPLAINT

1. This case is brought to halt a campaign of unconstitutional intimidation targeting Plaintiff Jolt Initiative, Inc. (Jolt), a nonprofit organization that works to increase the civic participation of young Latinos in Texas, for exercising its freedom of speech and association.

2. Through an intrusive and groundless document demand known as a Request to Examine (RTE), made without judicial process or probable cause, Defendant Attorney General Ken Paxton has demanded that Jolt disclose confidential information, including the identities of its volunteers and other associates. Defendant contends that failure to provide him with this information by September 19, 2024, could lead to the termination of Jolt's registration and ability to carry out business in the State of Texas.

3. Providing the information that Defendant seeks would expose Jolt, its Volunteer Deputy Registrars (VDRs), and the Texas voters with whom they engage, among other associates, to further intimidation and threats, and would chill their exercise of fundamental expressive freedoms.

4. Defendant's demand also constitutes impermissible intimidation under § 11(b) of the Voting Rights Act, which protects Plaintiff's right to "urg[e] or aid[] any person to vote or attempt to vote." 52 U.S.C. § 10307(b).

5. Plaintiff therefore asks the Court to protect its First Amendment freedoms of speech and association, its Fourth Amendment right to be free from unreasonable searches, and its rights under the VRA.

JURISDICTION AND VENUE

6. Plaintiff's claims are brought under 42 U.S.C. § 1983 and the First, Fourth, and Fourteenth Amendments to the United States Constitution, and under 52 U.S.C. § 10307(b).

7. This Court has jurisdiction to hear Plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1343, and 52 U.S.C. § 10308(f). The Court also has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

8. Venue is proper in the United States District Court for the Western District of Texas under 28 U.S.C. § 1391(b)(2) because a substantial part of the acts that gave rise to this lawsuit have occurred or will occur in this judicial district. This

District is also an appropriate venue under 28 U.S.C. § 1391(b)(1) because Defendant resides in this judicial district.

PARTIES

9. Jolt Initiative, Inc., is a nonprofit organization that is incorporated in Texas and exempt from taxes under § 501(c)(3) of the Internal Revenue Code. Jolt engages in a wide range of expressive and associative acts encouraging Texans to vote.

10. Defendant Ken Paxton is the Attorney General of the State of Texas.

FACTS

A. Jolt Initiative

11. Jolt Initiative, and its sister organization Jolt Action, Inc., were founded to increase the civic participation of Latinos in Texas in order to build a stronger democracy and ensure that everyone's voice is heard. Jolt Initiative and Jolt Action are separate organizations, with distinct boards of directors and separate bank accounts.

12. Jolt recognizes that young Latinos are the future of Texas, and it is focused on mobilizing young Latino voters (those aged 18 to 32) in particular.

13. In addition to voter registration drives, Jolt uses public education campaigns, leadership programming, and other measures to encourage eligible Latinos to vote.

14. Jolt and Jolt Action also speak out on matters of importance to Latinos in Texas, and Jolt Action is often critical of government institutions and politicians,

including the Attorney General. For example, Jolt Action has criticized the spread of false information about immigrants and attempts to persecute members of the Latino LGBTQ community.

B. Voter Registration Drives

15. A key part of Jolt’s effort is registering eligible Texans to vote. Jolt strives to encourage as many eligible Latinos in Texas to vote as possible.

16. Jolt conducts voter registration drives at various locations throughout the state. Because of Jolt’s efforts, several thousand Texans have been added to the voter rolls just this year.

17. Further, Jolt builds the capacity of young Latinos to increase their civic engagement by training community members to conduct nonpartisan voter registration in accordance with state law.

18. To carry out its voter registration drives, Jolt uses and trains Volunteer Deputy Registrars (VDRs).

19. VDRs are individuals who are appointed by county registrars and are “empowered to receive and deliver completed voter registration applications.” *Voting for Am., Inc. v. Steen*, 732 F.3d 382, 385 (5th Cir. 2013).

20. Texas created VDRs “[t]o encourage voter registration.” Tex. Elec. Code § 13.031(a); see Brief of Former Governor Mark White et al. as Amicus Curiae in Support of Appellee at 14–15, *Voting for America*, 732 F.3d 382, 2012 WL 5996185 (“The intent of the voter registration system was to open the doors as wide as possible

to every single, eligible qualified voter and not exclude anybody under any circumstance.” (internal quotation marks and alteration omitted)).

21. Any person who is 18 years old and eligible to vote in Texas—and not disqualified by virtue of certain criminal convictions—is entitled to become a VDR upon applying to do so in each county in which they wish to register voters. Tex. Elec. Code §§ 13.031(d), 13.032. Each VDR receives a Certificate of Appointment that contains the VDR’s voter registration number and residential address. *Id.* § 13.033.

22. VDRs may provide blank voter registration forms to potential voters and must deliver completed forms to the county registrar within five days. *See* Tex. Elec. Code § 13.042. VDRs review the information on registration forms for completeness, but they have no power to determine whether an applicant is actually eligible to vote. Tex. Elec. Code § 13.039; *Volunteer Deputy Registrars*, Tex. Sec’y State, <https://perma.cc/38F6-CED5?type=image>. A VDR is legally required to submit every completed voter registration form to the county registrar within five days. Tex. Elec. Code §§ 13.042, 13.043. The county registrar then makes the determination whether the applicant is eligible to be added to the voter rolls. *Id.* § 13.072.

23. Upon receipt of a completed application, the VDR provides the applicant with a receipt. State law provides that a duplicate of the receipt should be provided to the registrar, along with the applicant’s voter registration form, unless an alternative system is prescribed. Tex. Elec. Code § 13.040.

24. Jolt VDRs are always properly appointed in the county in which they

register voters.

25. A typical Jolt voter registration drive involves a Jolt VDR being located in a place with high foot traffic. The VDR typically will have written materials about voting and registering to vote, as well as blank registration forms. If a person wants to register to vote, a VDR will explain the eligibility requirements, answer any questions, and walk the person through the process of filling out a voter registration form.

26. Jolt also has a presence on college campuses, working to register college students. Jolt's on-campus student chapters are led by student coordinators who register as VDRs so that they can help their classmates register to vote.

27. Jolt VDRs comply with all applicable laws. Jolt undertakes rigorous training, supervision, and quality control protocols to ensure compliance with Texas's VDR scheme and to minimize error.

C. Defendant's Baseless Investigation into Voter Registration Groups

28. On August 18, 2024, a television personality with a history of promoting conspiracy theories posted on X that people who were ineligible to vote were being registered at locations in and around Fort Worth. *See* Maria Bartiromo (@MariaBartiromo), X (Aug. 18, 2024, 9:56 AM), <https://perma.cc/B7MD-PRKC>; *see* Berenice Garcia, *A Fox News Host's Debunked Election Conspiracy Appears to Have Prompted a State Investigation*, Tex. Trib. (Aug. 26, 2024), <https://perma.cc/9PM6-H9YS>.

29. Both the Parker County Republican chair and election administrator said there was no evidence to support the charge. *See Garcia, supra*; Brady Gray (@Brady_Gray), X (Aug. 19, 2024, 10:12 PM), https://x.com/Brady_Gray/status/1825717561054376102.

30. Two days later, a self-described “citizen journalist” and “Alpha MAGA Male” posted a video on X in which he purported to confront a Jolt VDR outside of a Texas Department of Public Safety office. *See hernando arce (@hernandoarce)*, X (Aug. 20, 2024, 1:53 PM), <https://x.com/hernandoarce/status/1825954284858417608>. The post said, “we have Marxist non profit organizations like @JoltAction infiltrating Texas @TxDPS locations in San Antonio,” and it tagged @KenPaxtonTx, among others. *Id.*

31. The video depicts no illegal activity or evidence of wrongdoing.

32. After the video was posted, people on social media made violent and threatening posts about Jolt and its VDRs.

33. For example, in a reply to the video depicting a Jolt VDR, one X user posted: “TARGET PRACTICE.” Coonass69 (@coonass70), X (Aug. 22, 2024, 8:16 AM), <https://perma.cc/6ELX-5DY7>.



34. In response to a post from an activist saying he is “continu[ing] my hunt for Marxist Anti American organizations like @JoltAction,” an X user replied: I too want to go hunting these scum.” Mr. Super Angry (@1AlphaOmega66), X (Sept. 5, 2024, 9:08 AM), <https://perma.cc/2F9L-2XR6>. Another person replied to post the name and LinkedIn profile of a Jolt Action board member. See Robert Johnson (@jdata17), X (Sept. 4, 2024, 9:48 PM), <https://perma.cc/4DDH-X5R3>.



35. On August 20, 2024, the Attorney General’s office executed a series of raids on the homes of people associated with the League of United Latin American Citizens (LULAC), another Latino-focused organization that encourages eligible Texans to register to vote. See Fin Gómez & Nidia Cavazos, *Texas Attorney General Ken Paxton Raids Latino Democrats’ Homes, Including Those of LULAC Members*, CBS News (Aug. 27, 2024), <https://perma.cc/M7BL-W4Y7>; Roman Palomares, *LULAC*

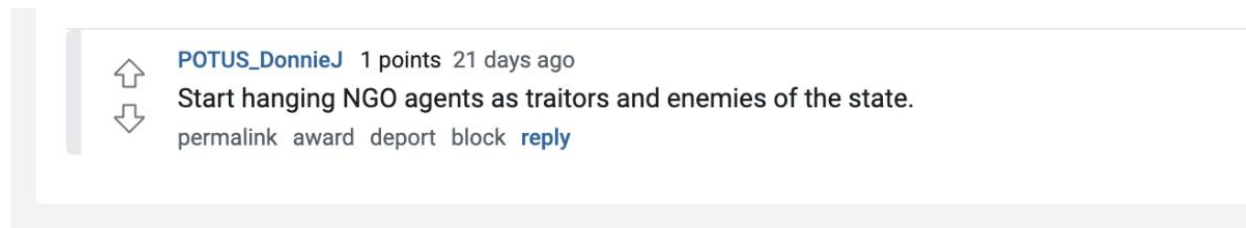
Fights Back: How We're Standing up to Texas's Voter Suppression,

https://lulac.org/texas_raids/ (“Paxton has been aggressively targeting and harassing Latino-led organizations, . . . as well as individual citizens.”).

36. One of the people targeted was Lidia Martinez, an 87-year-old retired educator in San Antonio who is a member of LULAC. *See* Edgar Sandoval, *Latino Civil Rights Group Demands Inquiry Into Texas Voter Fraud Raids*, N.Y. Times (Aug. 25, 2024), <https://www.nytimes.com/2024/08/25/us/texas-latinos-democrats-raids-paxton.html>. Armed agents swept through her house before 6 a.m., rifling through her clothes, seizing her electronics, and questioning her for three hours. *Id.* The event “scared’ Martinez, who “still felt shaken” days later. *Id.*

37. The following day, Defendant put out a press release announcing that he had “opened an investigation into reports that organizations operating in Texas may be unlawfully registering noncitizens to vote in violation of state and federal law.” Press Release, Tex. Office of Att’y Gen., *Attorney General Ken Paxton Launches Investigation into Reports That Organizations May Be Illegally Registering Noncitizens to Vote* (Aug. 21, 2024), <https://perma.cc/EF4H-E6PP>. The press release cites the existence of voter registration efforts taking place outside Texas Department of Public Safety offices, speculating that “there is no obvious need to assist citizens to register to vote outside DPS offices,” and “calling into question the motives of the nonprofit groups.” *Id.* The press release promises that “[a]ny wrongdoing will be punished to the fullest extent of the law.” *Id.*

38. The Attorney General's actions triggered additional violent commentary on social media, with people publicly calling for the execution of those involved with the nonprofits being investigated. For example, on Patriots.Win, a user demanded that people "[s]tart hanging NGO agents as traitors and enemies of the state" in response to a post about Defendant investigating organizations doing voter registration drives. *See* @POTUS_DonnieJ, Patriots.Win (Aug 21, 2024, 6:04 PM), <https://patriots.win/p/17txtLGjt0/-texas-attorney-general-ken-paxt/c/4ZDtR7R5dVn>.



In response to a similar post, another user called for "a public hanging in the public square." @sixfingerdildo, Patriots.Win (Aug. 21, 2024, 9:11 PM), <https://patriots.win/p/17txtLHZAM/texas-ag-paxton-opens-undercover/c/4ZDtR7Vc7CJ>. Another called for a "[f]iring squad for treasonous NGOs." @bringbackthe80s, Patriot.Win (Aug. 21, 2024, 7:56 PM), <https://patriots.win/p/17txtLHZAM/texas-ag-paxton-opens-undercover/c/4ZDtR7UScHQ>.

39. Other comments were even more specific. For example, one commentator praising the Attorney General's raid on LULAC members' homes wrote that he wanted to see LULAC members "get gunned the fuck down for everyone to see. Just twitch motherfucker just fucking breathe wrong and be on the receiving end

of a mag dump. Time for these assholes to live in fear.” @Datamancer, Patriots.Win (Aug. 29, 2024, 5:56 PM), <https://patriots.win/p/17ty2krkCO/texas-ag-ken-paxton-launches-ele/c/4ZDtkvrJn7Z>.



Datamancer 26 points 14 days ago

Light them the fuck up. I so fucking want one of these dems to resist and get gunned the fuck down for everyone to see. Just twitch motherfucker just fucking breathe wrong and be on the receiving end of a mag dump.

Time for these assholes to live in fear.

[permalink](#) [award](#) [deport](#) [block](#) [reply](#)

40. These supporters of Defendant’s actions understood that the goal was intimidation. “The process is the punishment. Destroy their lives.” @Cuck_Slayer24, Patriots.Win (Aug. 30, 2024, 7:14 AM), <https://patriots.win/p/17ty2krkCO/texas-ag-ken-paxton-launches-ele/c/4ZDtl0XzIIX>.

Cuck_Slayer24 1 points 13 days ago

Finally fucking someone somewhere starts putting the screws to these commie fucks. The process is the punishment. Destroy their lives.

[permalink](#) [award](#) [deport](#) [block](#) [reply](#)

41. Notwithstanding Defendant’s pretextual reasons for the investigation into voter registration drives, “[e]very legitimate study ever done on the question shows that voting by noncitizens in state and federal elections is vanishingly rare.” Sean Morales-Doyle, *Noncitizens Are Not Voting in Federal or State Elections—Here’s Why*, Brennan Ctr. for Just. (Apr. 12, 2024), <https://perma.cc/WCX3-YKVC>. One recent study, which looked at 42 jurisdictions in the 2016 general election, found 30 incidents of suspected noncitizen voting among 23.5 million votes—a rate of 0.0001%.

See id.

42. Jolt and its associates reacted to news of Defendant’s investigation with alarm.

43. On August 23, 2024, Jolt Action sent out an email blast to thousands of supporters titled: “URGENT: Paxton Investigation Disrupts Jolt Organizers’ Important Work.” In this email, Jolt Action accused the Attorney General of “suppress[ing] voter registration” and “attack[ing] Texans once again.”

44. Also on August 23, Jolt Action publicly criticized the Attorney General on its Facebook page, writing that “we won’t stay quiet, and we are prepared to make our voices heard to ensure voting rights aren’t infringed upon.” An image included with the post stated: “AG Investigation Disrupts Jolt Organizers’ Important Work.”

D. Defendant’s RTE to Jolt Initiative

45. Despite having no evidence (or even suspicion) of wrongdoing, the Attorney General promptly targeted Jolt.

46. On August 31, 2024, Jolt Initiative received a Request to Examine (RTE) from the Office of the Attorney General. A true and accurate copy of the RTE is attached as Exhibit A.

47. The RTE instructed Jolt Initiative to provide, by September 19, 2024, four categories of documents:

1. Each of Your volunteer deputy registrars’ certificates of appointment.
2. All Documents Jolt provides to your volunteer deputy registrars Concerning the voter registration application process.

3. All Documents Jolt provides to your volunteer deputy registrars Concerning Your role in the voter registration application process.

4. Each of the completed registration receipts created pursuant to Texas Election Code § 13.040 and maintained by You.

48. Defendant did not identify any reason why he needed the documents. He did not accuse Jolt of any wrongdoing. And he did not obtain permission or authority from a court to obtain these documents.

49. Defendant purported to issue the RTE pursuant to Texas Business Organizations Code § 12.151, which allows the Attorney General to inspect corporate records “as the attorney general considers necessary in the performance of a power or duty of the attorney general, of any record of the entity.”

50. The RTE further threatened that if Jolt did not comply, the Attorney General could take action under Texas Business Organizations Code § 12.155, which provides that failure or refusal to permit the Attorney General to inspect records “forfeits the right of the entity to do business in this state, and the entity’s registration or certificate of formation shall be revoked or terminated.”

51. It is also Class B misdemeanor to fail to or refuse to provide records requested by the Attorney General. *See* Tex. Bus. Orgs. Code § 12.156.

52. In response to Defendant’s attempt earlier this year to use an RTE to harass a nonprofit serving migrants, a Texas state court declared §§ 12.151 and 12.152 facially unconstitutional. *See Annunciation House, Inc. v. Paxton*, No. 2024DCV0616 (Tex. Dist. Ct. July 1, 2024).

53. Upon information and belief, the Attorney General has previously tried

to make public the confidential records he received in response to an RTE. For example, he recently tried to make public bank account numbers and other highly confidential records produced in response to an RTE, and he would have succeeded if a judge had not prevented it.

E. Disclosing the Information Sought by the RTE Would Irreparably Harm Jolt and Its Associates

54. The RTE demands confidential information, and Jolt cannot disclose it without irreparably harming its mission, its associates, and its constitutionally protected efforts.

55. After being served with the RTE, Jolt leadership promptly discussed it with board members, who were shaken, upset, and frustrated that Jolt was being unfairly targeted with this unreasonable demand.

56. The board concluded that it could not comply with the RTE without jeopardizing the safety of its VDRs or the confidences of its partners and the Latino community. If Jolt were to provide the documents requested, it would make it more difficult for Jolt to fulfill its mission of encouraging Latinos to become more politically active.

57. Latinos in Texas have particular reason to fear the Attorney General, given his open efforts to intimidate groups and people with whom he disagrees. No one wants to be the next person the Attorney General attacks with a frivolous threat of prosecution or unjustified law enforcement raid.

58. Some Latinos in Texas have friends or family members who are

undocumented, and they fear that if they draw attention to themselves, they may place their friends or family at risk. Other Latinos may be going through the process of becoming citizens, and they may worry that if they criticize the government or are associated with a controversial stand, they will jeopardize their immigration status.

59. Jolt is particularly concerned about public disclosure of personal identifying information of its VDRs and the voters they help register. Such disclosure may subject VDRs and voters to threats and harassing communications, and may even place them at risk of violence from extremists who believe the Attorney General's false accusations that organizations like Jolt are helping ineligible people register to vote. Jolt's concern for their safety is particularly acute given the numerous violent and threatening comments on social media targeting Jolt and other voter registration groups.

60. Already, Jolt has felt the effects of the Attorney General's intimidation campaign. Some of Jolt's partners have been less willing to collaborate with Jolt publicly. And the number of voters registered by Jolt's VDRs has declined since the announcement of the Attorney General's investigation.

61. If Jolt were forced to disclose confidential information to the Attorney General, it would be considered a betrayal of the trust that Jolt has earned from the Texas Latino community. It would make it more difficult for Jolt to associate with others and carry out its mission effectively, and it would likely put Jolt employees and others associated with the organization in danger.

CAUSES OF ACTION

Count I

Fourth Amendment (42 U.S.C. § 1983)

62. Plaintiff incorporates by reference every allegation in the preceding paragraphs as if set forth fully herein.

63. The Fourth Amendment, which applies to the States through the Fourteenth Amendment, provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,” and that “no Warrants shall issue, but upon probable cause.” U.S. Const. amend. IV.

64. “Based on this constitutional text,” the Supreme Court “has repeatedly held that searches conducted outside the judicial process, without prior approval by a judge or a magistrate judge, are *per se* unreasonable subject only to a few specifically established and well-delineated exceptions.” *City of Los Angeles v. Patel*, 576 U.S. 409, 419 (2015) (internal quotation marks and alterations omitted).

65. The Attorney General’s demand for documents was not made pursuant to a judicial warrant backed by probable cause. In fact, Defendant’s demand for documents has not been ratified by any court.

66. Nor does Defendant’s demand for documents constitute a permissible administrative search, which must be conducted pursuant to some “‘special need’ other than conducting criminal investigations.” *Id.* at 420. The Attorney General has identified no such special need for these documents, and none is apparent.

67. Moreover, even if there were a special need, an administrative search must provide for pre-disclosure judicial review. And such review must permit the target to challenge the reasonableness of the inquiry, including its scope, relevance, and burden. Although the RTE states that Jolt “may *attempt* to obtain judicial review of the RTE before September 19, 2024,” Ex. A (emphasis added), it does not guarantee that Jolt will actually *obtain* that review before it is required to produce documents. And even if Jolt does obtain review, there is no guarantee that it will be the kind of reasonableness review that the law requires.

68. For these reasons, the RTE violates the Fourth Amendment.

Count II

Freedom of Association (42 U.S.C. § 1983)

69. Plaintiff incorporates by reference every allegation in the preceding paragraphs as if set forth fully herein.

70. The First Amendment’s protection of the freedom of association, which applies to the states through the Fourteenth Amendment, provides “protection to collective effort on behalf of shared goals.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). As the Supreme Court has noted, “[p]rotected association furthers a wide variety of political, social, economic, educational, religious, and cultural ends, and is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority.” *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 606 (2021) (*AFP*) (internal quotation marks omitted).

71. Freedom of association protects not only “advocacy groups,” but also *any* group that “engage[s] in some form of expression, whether it be public or private.” *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000).

72. Plaintiff engages in a wide variety of protected expression, including by uplifting the power of young Latino voters, mobilizing young Latino voters with the goal of forging a democracy that works for everyone, seeking to register young Latinos to vote, and advocating for the nearly 11 million Latinos in Texas.

73. Jolt’s association with others is critical to its exercise of its expressive rights. In order to further its goal of increasing civic participation, Jolt builds the leadership capacity of millennial Latinos to mobilize their peers to action, and it trains community members to conduct nonpartisan voter registration. If Jolt’s relationships with these community members were impaired, Jolt’s ability to effectively communicate its message would be significantly impaired.

74. Plaintiff and its VDRs engage in “core protected speech” when they encourage citizens to register at Jolt voter registration drives. *Voting for Am., Inc. v. Steen*, 732 F.3d 382, 390 (2013). This speech includes, but is not limited to, “urging citizens to register; distributing voter registration forms; helping voters to fill out their forms; and asking for information to verify that registrations were processed successfully.” *Id.* at 389 (internal quotation marks omitted).

75. VDRs’ association with Jolt and others is critical to their exercise of expressive rights. VDRs work with Jolt because they believe in furthering Jolt’s goal

of increasing civic participation among Latinos in Texas, and they wish to engage in advocacy in furtherance of that goal by encouraging and helping people to register at Jolt voter registration drives. Voters, in turn, rely on Jolt for election-related information and support with their voter registration.

76. Disrupting Jolt’s association with its VDRs would significantly impair Jolt’s and its VDRs’ ability to conduct voter registration drives and effectively communicate their message.

77. The Supreme Court has recognized for decades that “compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action.” *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958). That is because disclosure can subject organizations and individuals to threats of harassment, reprisals, and “other manifestations of public hostility.” *Id.*

78. Harassment need not be certain to occur for a plaintiff to state an association claim. The Supreme Court has emphasized instead that the First Amendment is implicated “by ‘state action which *may* have the effect of curtailing the freedom to associate,’ and by the ‘*possible* deterrent effect’ of disclosure.” *AFP*, 594 U.S. at 616 (emphasis in original) (quoting *NAACP*, 357 U.S. at 460–61).

79. The disclosure need not be made public in order to infringe on associational rights. Rather, “disclosure requirements can chill association ‘[e]ven if

there [is] no disclosure to the general public.” *Id.* (quoting *Shelton v. Tucker*, 364 U.S. 479, 485 (1960)).

80. Where a threatened disclosure burdens a plaintiff’s association rights, courts apply at least “exacting scrutiny.” *See id.* at 607 (plurality opinion). That standard “requires that there be a substantial relation between the disclosure requirement and a sufficiently important governmental interest, and that the disclosure requirement be narrowly tailored to the interest it promotes.” *Id.* at 611 (majority opinion) (internal quotation marks and citation omitted). It is Defendant’s burden to show that this standard has been met.

81. Jolt and those who affiliate with it have many reasons to fear retaliation or harassment should Jolt provide Defendant with their identities.

82. Upon information and belief, Defendant is currently undertaking a groundless campaign of intimidation against organizations and individuals involved in registering Latino citizens to vote. Associates of Jolt have every reason to fear that they will be targeted if Defendant learns of their relationship.

83. Associates of Jolt also have reason to fear threats of violence, harassment, or other repercussions should their identities and association with Jolt become public.

84. Defendant’s demand for documents fails exacting scrutiny because it is not made for any lawful purpose, let alone a sufficiently important one. It is a baseless attempt to intimidate organizations and individuals engaged in

constitutionally protected activity. And even if the RTE were made for a sufficiently important interest, it is neither related nor tailored to that interest.

85. Therefore, Defendant's demand for Jolt's records violates the First Amendment.

Count III

Freedom of Speech – Retaliation (42 U.S.C. § 1983)

86. Plaintiff incorporates by reference every allegation in the preceding paragraphs as if set forth fully herein.

87. The Constitution prohibits the government from taking adverse action against a person for the exercise of their First Amendment rights. *E.g., Nieves v. Bartlett*, 587 U.S. 391, 398 (2019).

88. To state a claim for retaliation, plaintiffs “must show that (1) they were engaged in constitutionally protected activity, (2) the defendants’ actions caused them to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity, and (3) the defendants’ adverse actions were substantially motivated against the plaintiffs’ exercise of constitutionally protected conduct.” *Keenan v. Tejeda*, 290 F.3d 252, 258 (5th Cir. 2002).

89. Jolt engages in a large amount of constitutionally protected expression and association, including by conducting voter registration drives, urging Texans to vote, and speaking out on issues of importance to Latinos in Texas.

90. The targeting of Jolt with the RTE has an objective chilling effect. *See Whole Woman's Health v. Smith*, 896 F.3d 362, 373 (5th Cir. 2018) (en banc) (describing as “self-evident” the chilling effect that forced document production can have). As described above, Defendant is engaged in an intimidation campaign against individuals and organizations—like Jolt—that seek to promote civic involvement among Latinos in Texas. A person of ordinary firmness would be discouraged from promoting voter registration and civic engagement under these circumstances.

91. The RTE was substantially motivated by Plaintiff's First Amendment activities, particularly the organization of Latino community members and encouragement of voter registration.

92. Indeed, it appears that Defendant targeted Jolt precisely because Jolt encourages people to register and has repeatedly spoken out about issues related to civic engagement in Texas.

93. Defendant initiated his baseless investigation into noncitizen voting one day after a far-right “citizen journalist” accused Jolt of “infiltrating Texas [DPS] locations” and tagged Defendant's X account.

94. Jolt Action subsequently criticized Defendant for his attempts to intimidate those involved in registering people to vote.

95. One week after Jolt Action's criticism of Defendant, Defendant sent Jolt the RTE.

96. Therefore, Defendant's RTE unconstitutionally retaliates against Plaintiff for its constitutionally protected expression and association.

Count IV

Voting Rights Act – Intimidation (52 U.S.C. § 10307(b))

97. Plaintiff incorporates by reference every allegation in the preceding paragraphs as if set forth fully herein.

98. Section 11(b) of the Voting Rights Act provides that “[n]o 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 person to vote or attempt to vote.” 52 U.S.C. § 10307(b).

99. Section 11(b) protects those “assisting . . . others in registering to vote” from “official acts of harassment.” *Whatley v. City of Vidalia*, 399 F.2d 521, 526 (5th Cir. 1968).

100. Through its voter registration drives and voter education campaigns, Jolt “urg[es]” and “aid[s]” eligible Texans to vote.

101. Defendant's RTE targets Jolt and its associates as a result of their civic engagement and voter registration efforts.

102. The RTE has the purpose and effect of intimidating, or attempting to intimidate, Jolt and its associates from engaging in these federally protected activities.

103. Therefore, the RTE violates Section 11(b) of the Voting Rights Act.

REQUEST FOR RELIEF

Plaintiff respectfully requests that this Court enter judgment in its favor and:

- 1) Declare that the Attorney General's Request to Examine is unconstitutional, violates federal law, and is invalid and unenforceable.
- 2) Issue a preliminary and permanent injunction enjoining the Attorney General—including his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of the injunction—from taking any action to enforce or otherwise implement the Request to Examine.
- 3) Award Plaintiff reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and other applicable laws; and
- 4) Grant Plaintiff such other relief the Court deems just and proper.

Respectfully submitted this September 13th, 2024,

/s/ Mimi Marziani

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**Application for admission pro hac vice forthcoming*

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

JOLT INITIATIVE, INC.,

Plaintiff,

v.

KEN PAXTON, in his official capacity as
Attorney General of Texas,

Defendant.

Case No.: 1:24-cv-01089

**PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Plaintiff Jolt Initiative, Inc. (Jolt), by and through its undersigned counsel, hereby moves the Court pursuant to Rule 65 of the Federal Rules of Civil Procedure for a temporary restraining order and preliminary injunction enjoining the enforcement of Defendant Attorney General Ken Paxton's request to examine (RTE), issued on August 30, 2024. Jolt respectfully requests that this Court issue a TRO or PI prior to September 19, 2024, the deadline to comply with the RTE.

INTRODUCTION

This case is about Defendant's latest efforts to intimidate Latino voting rights organizations. Following the circulation on social media of conspiracy theories about noncitizen voting, Defendant launched an investigation into nonprofits like

Jolt that register Texans to vote. Shortly thereafter, Defendant served Jolt with an RTE demanding confidential information, including the names of Volunteer Deputy Registrars (VDRs) who work with Jolt and voters registered by them. Defendant has threatened to revoke Jolt's ability to operate in Texas if it does not comply.

The RTE violates Jolt's Fourth Amendment rights because it provides no opportunity to obtain precompliance review. It also violates Jolt's freedom of association and retaliates against Jolt for protected expression. And it violates the Voting Rights Act because it intimidates Jolt for helping voters register. This Court should enjoin Defendant from enforcing the RTE before the September 19 deadline.

BACKGROUND

Jolt Initiative, Inc. is a 501(c)(3) nonprofit organization, incorporated in Texas, that seeks to "increase the civic participation of Latinos in Texas to build a stronger democracy." Bastard Decl. ¶ 6. Founded in 2016, Jolt "conduct[s] voter registration drives throughout the state," *id.* ¶ 11, "train[s] community members to conduct nonpartisan voter registration," *id.* ¶ 10, and "encourages Latinos in Texas to vote through public education campaigns, leadership programming, and other measures," *id.* ¶ 19. Jolt also "speak[s] out on issues that matter to Latinos in Texas." *Id.* ¶ 22.

Many of Jolt's employees and volunteers are VDRs who are authorized under state law to handle voter registration forms. *See id.* ¶ 12. At Jolt registration drives, VDRs speak with people who are interested in registering, "explain the

eligibility requirements, answer any questions, and walk them through the process of filling out a voter registration form.” *Id.* ¶ 16. VDRs then deposit completed voter registration forms with the county registrar. *Id.*

On August 20, 2024, a far-right activist posted a video on X in which he purported to confront a Jolt VDR outside of a Texas Department of Public Safety office. *See* hernando arce (@hernandoarce), X (Aug. 20, 2024, 1:53 PM), <https://x.com/hernandoarce/status/1825954284858417608>. The post said, “we have Marxist non profit organizations like @JoltAction infiltrating Texas @TxDPS locations in San Antonio,” and it tagged Defendant’s X account (@KenPaxtonTx), among others. *Id.* The post came two days after a different social media post by a television personality with a history of promoting conspiracy theories, which falsely claimed that people who were ineligible to vote were being registered at locations in and around Fort Worth. *See* Maria Bartiromo (@MariaBartiromo), X (Aug. 18, 2024, 9:56 AM), <https://perma.cc/B7MD-PRKC>; Berenice Garcia, *A Fox News Host’s Debunked Election Conspiracy Appears to Have Prompted a State Investigation*, Tex. Trib. (Aug. 26, 2024), <https://perma.cc/9PM6-H9YS>.

The day after he was tagged by the far-right activist, Defendant announced that he was launching “an investigation into reports that organizations operating in Texas may be unlawfully registering noncitizens to vote in violation of state and federal law.” Press Release, Tex. Office of Att’y Gen., *Attorney General Ken Paxton Launches Investigation into Reports That Organizations May Be Illegally*

Registering Noncitizens to Vote (Aug. 21, 2024), <https://perma.cc/EF4H-E6PP>.

Defendant specifically “call[ed] into question the motives of the nonprofit groups” that register voters outside of DPS offices. *See id.* Jolt’s sister organization, Jolt Action, Inc., issued a statement days later criticizing Defendant for “suppress[ing] voter registration” and “attack[ing] Texans once again.” Bastard Decl., Ex. A.

Although noncitizen voting is basically nonexistent, Defendant’s decision to investigate comes as no surprise. Rather, it is just another example of the State’s reliance on baseless claims of voting irregularities as a pretext to engage in voter suppression. In 2011, for example, when Texas passed the original version of its strict photo ID law, the legislation was purportedly motivated by concerns of in-person fraud and noncitizen voting. But a federal district court found that the policy underlying the law was “tenuous,” particularly given “the rarity of in-person voter impersonation fraud and non-citizen voting,” *see Veasey v. Perry*, 71 F. Supp. 3d 627, 698 (S.D. Tex. 2014), and the en banc Fifth Circuit affirmed that decision in relevant part, *see Veasey v. Abbott*, 830 F.3d 216, 262–65 (5th Cir. 2016). Likewise, in 2019, then-Secretary of State David Whitley issued an election advisory calling for the purge of almost 100,000 people from Texas’s voter rolls based on allegations that the individuals were noncitizens. *See Secretary Whitley Issues Advisory on Voter Registration List Maintenance Activity*, Tex. Sec. of State (Jan. 25, 2019), <https://perma.cc/35LL-SDPL>. The claims were immediately debunked, and after three lawsuits and a congressional investigation ensued, Whitley resigned. *See*

Alexa Ura, *Texas Secretary of State David Whitley Departs as Legislative Session Ends*, Tex. Trib. (May 27, 2019), <https://perma.cc/XXF5-AAKC>.

Defendant's investigation is also unsurprising given his recent abuse of consumer protection and business laws to target groups he disfavors. *See, e.g.*, Vianna Davila, *Ken Paxton Has Used Consumer Protection Law to Target These Organizations*, ProPublica (May 30, 2024), <https://perma.cc/ZQN8-U8F4>. In particular, over the past nine months, Defendant has turned his attention to groups that organize around and support Latinos in Texas. This includes **Annunciation House**, *see* Alejandro Serrano et al., *Judge Denies Texas Attorney General's Efforts to Use Consumer Protection Law to Shut Down a Migrant Shelter*, ProPublica (July 3, 2024), <https://perma.cc/53CF-3KBF>; **Catholic Charities of the Rio Grande Valley**, *see* Berenice Garcia, *Texas Attorney General Can't Question Catholic Charities Director over Migrant Services, Court Says*, Tex. Trib. (July 24, 2024), <https://perma.cc/QVA6-89RG>; **FIEL**, *see* Alejandro Serrano, *Judge Rejects Attorney General Ken Paxton's Attempt to Shut Down Houston Immigrant Rights Group*, Tex. Trib. (Aug. 23, 2024), <https://perma.cc/G5KD-YYFB>; and **Team Brownsville**, *see* Luis Montoya, *Judge Blocks Paxton from Deposing Team Brownsville Leader*, Rio Grande Guardian (Aug. 31, 2024), <https://perma.cc/WGN7-EN4G>.

Sadly, it was therefore unsurprising that Jolt would be next, given its exclusive focus on Latino voters. On August 30, 2024, Defendant issued the RTE. *See* Bastard Decl., Ex. B. The RTE demands four categories of documents: (1)

certificates of appointment for Jolt’s VDRs; (2) documents that Jolt provides to its VDRs concerning voter registration; (3) documents that Jolt provides to its VDRs concerning Jolt’s role in voter registration; and (4) receipts for completed registration applications. *Id.* at 6. The deadline to comply is September 19, 2024, and although Jolt “may *attempt* to obtain judicial review of the RTE before” that date, *id.* at 2 (emphasis added), the RTE makes no guarantee that Jolt will actually obtain review before compliance is due. If Jolt fails to comply, the RTE threatens “legal action for [Jolt’s] ‘registration or certificate of formation’ to ‘be revoked or terminated.’” *Id.* (quoting Tex. Bus. Org. Code § 12.155).

STANDARD OF REVIEW

A plaintiff moving for a preliminary injunction or temporary restraining order must show “(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.” *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011) (internal quotation marks omitted); *see Turner v. Epps*, 460 F. App’x 322, 325 n.3 (5th Cir. 2012) (per curiam). The first factor, likelihood of success, is “arguably the most important.” *Netflix, Inc. v. Babin*, 88 F.4th 1080, 1099 (5th Cir. 2023).

ARGUMENT

I. Jolt Is Likely to Succeed on the Merits

A. The Fourth Amendment Requires an Opportunity to Obtain Precompliance Review of the RTE

The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,” and that “no Warrants shall issue, but upon probable cause.” U.S. Const. amend. IV. “Based on this constitutional text,” the Supreme Court “has repeatedly held that searches conducted outside the judicial process, without prior approval by a judge or a magistrate judge, are *per se* unreasonable subject only to a few specifically established and well-delineated exceptions.” *City of Los Angeles v. Patel*, 576 U.S. 409, 419 (2015) (internal quotation marks and alterations omitted). As relevant here, the Court has held that “administrative searches”—which are conducted pursuant to some “special need other than conducting criminal investigations”—are constitutional if “the subject of the search [is] afforded an opportunity to obtain precompliance review before a neutral decisionmaker.” *Id.* at 420 (internal quotation marks omitted).

Although the RTE does not reveal the purpose of the search, it appears to be part of Defendant’s investigation into noncitizen voting. *See* Press Release, *supra*. If the RTE is part of a criminal investigation, the administrative search exception to the warrant requirement does not apply at all. *See Patel*, 576 U.S. at 419–20. But even assuming the RTE was issued pursuant to some “special need,” Jolt cannot be required to comply before having an opportunity to obtain review of the RTE.

The Supreme Court has not specified the exact form that precompliance review must take, but it has approved of administrative subpoenas, which provide the recipient with an opportunity to challenge a subpoena's reasonableness. *See id.* at 420. Specifically, "when an administrative agency subpoenas corporate books or records, the Fourth Amendment requires that the subpoena be sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." *See v. City of Seattle*, 387 U.S. 541, 544 (1967). Here, Defendant has denied Jolt the opportunity to object to the scope, relevance, and specificity of the RTE. Although the RTE states that Jolt "may *attempt* to obtain judicial review of the RTE before September 19, 2024," Bastard Decl., Ex. B (emphasis added), it does not guarantee that Jolt will actually *obtain* review before it is required to produce documents. And the state law provisions on which Defendant relies do not provide for any precompliance review, *see* Tex. Bus. Org. Code §§ 12.151, 12.152, let alone the kind of reasonableness review contemplated by the Supreme Court's cases. For this reason, at least one court has declared these provisions facially unconstitutional. *See Annunciation House, Inc. v. Paxton*, No. 2024DCV0616 (Tex. Dist. Ct. July 1, 2024). Because the RTE does not provide for precompliance review, this Court should enjoin Defendant from enforcing it.

B. The RTE Violates Jolt's Freedom of Association

"The First Amendment prohibits government from 'abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to

petition the Government for a redress of grievances.” *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 605–06 (2021) (*AFP*). In addition, the Supreme Court has “long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984).

As discussed in Section I.C, there can be no question that Jolt is engaged in quintessential protected expression, both individually and in association with others. *See Boy Scouts of Am. v. Dale*, 530 U.S. 640, 655 (2000) (“An association must merely engage in expressive activity that could be impaired in order to be entitled to protection.”). Jolt is an organization dedicated to “increas[ing] the civic participation of Latinos in Texas to build a stronger democracy and ensure that everyone’s voice is heard.” Bastard Decl. ¶ 6. In furtherance of that goal, “Jolt mobilizes young Latino voters, particularly those between the ages of 18 and 32.” *Id.* And a critical part of achieving Jolt’s mission is “training community members to conduct nonpartisan voter registration.” *Id.* ¶ 10. The Fifth Circuit has described this sort of voter outreach as “core protected speech.” *Voting for Am., Inc. v. Steen*, 732 F.3d 382, 390 (2013) (internal quotation marks omitted).

There can also be no question that disclosing the identities of Jolt’s VDRs and registered voters would chill Jolt’s expressive association. The Supreme Court has recognized for decades that “compelled disclosure of affiliation with groups engaged

in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action.” *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958). That is because disclosure can subject organizations and individuals to threats of harassment, reprisals, and “other manifestations of public hostility.” *Id.* Backlash following disclosure, moreover, need not be guaranteed for Jolt to show a burden on its association rights. To the contrary, the First Amendment is implicated “by ‘state action which *may* have the effect of curtailing the freedom to associate,’ and by the ‘*possible* deterrent effect’ of disclosure.” *AFP*, 594 U.S. at 616 (emphasis in original) (quoting *NAACP*, 357 U.S. at 460–61).

And the threats in this case are “neither theoretical nor groundless.” *Shelton v. Tucker*, 364 U.S. 479, 486 (1960). The record makes clear that Defendant is currently engaged in a pervasive intimidation campaign. The most recent targets of that campaign appear to be individuals and organizations that promote civic engagement in Texas, particularly among Latinos. See Roman Palomares, *LULAC Fights Back: How We’re Standing up to Texas’s Voter Suppression*, https://lulac.org/texas_raids/ (“Paxton has been aggressively targeting and harassing Latino-led organizations, . . . as well as individual citizens.”); Edgar Sandoval, *Latino Civil Rights Group Demands Inquiry Into Texas Voter Fraud Raids*, N.Y. Times (Aug. 25, 2024), <https://www.nytimes.com/2024/08/25/us/texas-latino-democrats-raids-paxton.html> (describing the “series of raids conducted on Latino voting activists and political operatives as part of a sprawling voter fraud

inquiry by” Defendant); *see also Nadler, Escobar, Scanlon Demand Answers on Texas AG Paxton’s Efforts to Intimidate Latino Voting Rights Advocates, Elected Leaders, and Candidates* (Sept. 6, 2024), <https://perma.cc/K7YA-SHK5>. Against this backdrop, the VDRs and voters associated with Jolt have ample “reason to remain anonymous,” *AFP*, 594 U.S. at 617; indeed, they have a firm basis to believe that if their affiliation with Jolt is revealed, Defendant will subject them to his heavy-handed investigation tactics. *See Sandoval, supra* (describing 6 a.m. armed raid of 87-year-old LULAC member’s house).

Where a threatened disclosure burdens a plaintiff’s association rights, courts apply at least “exacting scrutiny.” *See AFP*, 594 U.S. at 607 (plurality opinion). That standard “requires that there be a substantial relation between the disclosure requirement and a sufficiently important governmental interest, and that the disclosure requirement be narrowly tailored to the interest it promotes.” *Id.* at 611 (majority opinion) (internal quotation marks and citation omitted). It is Defendant’s burden to prove this standard has been met. *See Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004). And where a plaintiff seeks a TRO or preliminary injunction, it “must be deemed likely to prevail unless the Government has shown that” the challenged practice is constitutional. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006) (internal quotation marks omitted).

On the current record, Defendant fails exacting scrutiny at each step. He has revealed no purpose for issuing the RTE and demanding identifying information of

people associated with Jolt, let alone a sufficiently important interest to which the RTE bears a substantial relation and is narrowly tailored. As noted above, the RTE appears to be part of Defendant’s investigation into noncitizen voting, which is so rare as to be almost nonexistent. *See, e.g.,* Sean Morales-Doyle, *Noncitizens Are Not Voting in Federal or State Elections—Here’s Why*, Brennan Ctr. for Just. (Apr. 12, 2024), <https://perma.cc/WCX3-YKVC> (explaining that “[e]very legitimate study ever done on the question shows that voting by noncitizens in state and federal elections is vanishingly rare”); *see also* Carrie Levine, *How Unfounded GOP Claims About Noncitizen Voting Could Cost Some Eligible Voters Their Rights*, Votebeat (Sept. 11, 2024), <https://perma.cc/BS73-6TAE>. But even if noncitizen voting were a sufficiently important interest—a premise that Defendant has done nothing to support—the RTE’s demand for Jolt’s confidential records is neither related nor tailored to that interest. Defendant has made no showing that Jolt registers noncitizens to vote or that the records sought by the RTE are necessary to evaluate such a baseless suspicion. *See ACLU*, 542 U.S. at 666 (government must show narrow tailoring). At best, the RTE is a fishing expedition. At worst, it is a pretext to dissuade Jolt from registering voters and to further a national political narrative about noncitizen voting. Either way, it does not satisfy exacting scrutiny.

C. The RTE Retaliates Against Protected Expression

The RTE also violates the First Amendment because it retaliates against Jolt for engaging in protected expression. *See Colson v. Grohman*, 174 F.3d 498, 508

(5th Cir. 1999) (“[T]he First Amendment prohibits not only direct limitations on speech but also adverse government action against an individual because of her exercise of First Amendment freedoms.”). Retaliation claims have three elements: plaintiffs “must show that (1) they were engaged in constitutionally protected activity, (2) the defendants’ actions caused them to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity, and (3) the defendants’ adverse actions were substantially motivated against the plaintiffs’ exercise of constitutionally protected conduct.” *Keenan v. Tejeda*, 290 F.3d 252, 258 (5th Cir. 2002). Each of these elements is satisfied here.

1. Jolt Is Engaged in Protected Activity

Jolt is engaged in classic First Amendment expression. It is an “an organization centered around uplifting the power of young Latino voters.” *Bastard Decl.* ¶ 6. It mobilizes community members with “the goal of forging a democracy that works for everyone.” *Id.* And it “speak[s] out on issues that matter to Latinos in Texas.” *Id.* ¶ 22. The Supreme Court has described this sort of advocacy as “core political speech.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 168 (2014).

In the context of voter registration specifically, “Jolt exists to support the Latino community and to encourage our communities to get out and vote in record numbers.” *Bastard Decl.* ¶ 10. The Fifth Circuit has made clear that these activities, too, are protected expression. In *Voting for America, Inc. v. Steen*, 732 F.3d 382 (5th Cir. 2013), the court addressed the constitutionality of several

provisions of Texas’s VDR law. Although the court upheld the law, it described several components of registration—including “urging citizens to register; distributing voter registration forms; helping voters to fill out their forms; and asking for information to verify that registrations were processed successfully”—as “constitutionally protected speech.” *Id.* at 389 (internal quotation marks omitted); *see id.* at 390 (“voter registration drives involve core protected speech”).

2. The RTE Would Chill a Person of Ordinary Firmness

Although the Fifth Circuit does not recognize retaliatory investigation claims, *see Villarreal v. City of Laredo*, 94 F.4th 374, 398 (5th Cir. 2024) (en banc), it has described as “self-evident” the chilling effect that forced document production can have, *Whole Woman’s Health v. Smith*, 896 F.3d 362, 373 (5th Cir. 2018) (en banc). As described above, Defendant is engaged in an intimidation campaign against individuals and organizations—like Jolt—that seek to promote civic involvement among Latinos in Texas. And Jolt has every reason to believe that its expressive activities will be impaired by this campaign if it is forced to identify its voters and VDRs, and the materials that it provides to those VDRs.

A person of ordinary firmness would be discouraged from promoting voter registration and civic engagement under these circumstances. Indeed, the experiences of those already swept up in Defendant’s dragnet could hardly be more harrowing. Eighty-seven-year-old Lidia Martinez described feeling “scared” and “harassed” after an early-morning raid of her home, and she was still “shaken” days

later. *See* Sandoval, *supra* (internal quotation marks omitted). Faced with the risk of similar treatment, Jolt has been unequivocal that compliance with the RTE “would make it more difficult for Jolt to fulfill its mission of encouraging Latinos to become more politically active.” Bastard Decl. ¶ 35.

Jolt also faces the prospect of private retaliation. As discussed further below, Jolt and its VDRs have been targeted by far-right activists who have falsely accused them of misconduct. And these accusations have led to threatening comments. *See, e.g.,* hernando arce (@hernandoarce), X (Sept. 4, 2024, 4:41 PM), <https://perma.cc/VF48-SGXB> (“I continue my hunt for Marxist Anti American organizations like @JoltAction”); Mr. Super Angry (@1AlphaOmega66), X (Sept. 5, 2024, 9:08 AM), <https://perma.cc/2F9L-2XR6> (“I too want to go hunting these scum.”). These threats, moreover, occur within the broader context of increasingly common political violence in Texas. *See, e.g.,* Kate McGee, *After Four Years, Wendy Davis’ Lawsuit Against “Trump Train” Goes to Trial*, Tex. Trib. (Sept. 6, 2024), <https://perma.cc/H6GR-5SM3>. Against this backdrop, the risk of chill is obvious.

3. The RTE Was Motivated by Jolt’s Expression

Finally, the RTE was substantially motivated by Jolt’s First Amendment activities, particularly the organization of Latino community members and the encouragement of voter registration. Defendant has made clear his hostility toward voter registration—particularly Latino voter registration—through his recent investigation into noncitizen voting. As discussed, noncitizen voting is vanishingly

rare, and it appears that Defendant's investigation was sparked not by any evidence, but rather by an unsubstantiated social media post that has since been debunked by local election officials. *See Garcia, supra*. Although the post underlying Defendant's investigation was discredited, Defendant has used it as a pretense to target organizations that encourage people to register. Even after the claims that prompted Defendant's investigation were debunked, the Department of Public Safety announced that it was disallowing registration outside of its offices, thus targeting voter registration organizations like Jolt. *See id.*

Indeed, it appears that Defendant targeted Jolt precisely because Jolt encourages people to register. Two days after the debunked post just discussed, a self-described "citizen journalist" and "Alpha MAGA Male" posted a video on X in which he purported to confront a Jolt VDR outside of a Texas Department of Public Safety office. *See* hernando arce (@hernandoarce), X (Aug. 20, 2024, 1:53 PM), <https://x.com/hernandoarce/status/1825954284858417608>. The post said, "we have Marxist non profit organizations like @JoltAction infiltrating Texas @TxDPS locations in San Antonio," and it tagged @KenPaxtonTx, among others. *Id.* Defendant announced his investigation the next day, *see* Press Release, *supra*, and two days later, Jolt's sister organization—Jolt Action, Inc.—issued a statement criticizing Defendant for "suppress[ing] voter registration" and "attack[ing] Texans once again." Bastard Decl., Ex. A. The following week, Jolt received the RTE. At the TRO stage, that is sufficient to show substantial motivation.

D. The RTE Violates Section 11(b) of the Voting Rights Act

Section 11(b) of the Voting Rights Act provides that “[n]o 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 person to vote or attempt to vote.” 52 U.S.C. § 10307(b). By its terms, the statute prohibits not only intimidation of voters, but also intimidation of organizations and individuals that conduct voter registration. *See Whatley v. City of Vidalia*, 399 F.2d 521, 526 (5th Cir. 1968) (explaining that § 11(b) protects those “assisting . . . others in registering to vote” from “official acts of harassment”). And the statute does not require proof of intent to intimidate, unlike § 131 of the Civil Rights Act of 1957, which prohibits intimidation of another “for the purpose of interfering with the right of such other person to vote.” 52 U.S.C. § 10101(b); *see* H.R. Rep. No. 89-439, at 30 (1965), *as reprinted in* 1965 U.S.C.C.A.N. 2462 (“[U]nlike [§ 131] (which requires proof of a ‘purpose’ to interfere with the right to vote) no subjective purpose or intent need be shown.”).

Although the case law interpreting § 11(b) is sparse, courts applying the provision have construed it broadly. One court recently held, for example, that the provision does not prohibit only threats of “violence or bodily harm,” but that “threats of economic harm, legal action, dissemination of personal information, and surveillance can qualify depending on the circumstances.” *Nat’l Coal. on Black*

Civic Participation v. Wohl, 498 F. Supp. 3d 457, 477 (S.D.N.Y. 2020). And another found intimidation where the defendants “linked Plaintiffs’ names and personal information to a report condemning felonious voter registration in a clear effort to subject the named individuals to public opprobrium.” *LULAC v. Pub. Int. Legal Found.*, No. 1:18-CV-00423, 2018 WL 3848404, at *4 (E.D. Va. Aug. 13, 2018); *cf. United States v. Tan Duc Nguyen*, 673 F.3d 1259, 1265 (9th Cir. 2012) (finding probable cause of voter intimidation under California law where “letter targeted immigrant voters with threats that their personal information would be provided to anti-immigration groups”). These interpretations are consistent with § 11(b)’s purpose, which was to strengthen the “existing prohibitions on voter intimidation.” Ben Cady & Tom Glazer, *Voters Strike Back: Litigating Against Modern Voter Intimidation*, 39 N.Y.U. Rev. L. & Soc. Change 173, 177 (2015); *see Voting Rights Act of 1965: Hearings on H.R. 6400 Before the H. Comm. on the Judiciary*, 89th Cong. 12 (1965) (statement of Nicholas deB. Katzenbach, Att’y Gen. of the United States) (noting “inadequacies of present statutes prohibiting voter intimidation”).

For substantially the reasons discussed in Sections I.B and I.C.2, Jolt has shown a likelihood of intimidation within the meaning of § 11(b). Defendant’s demands for the personal information of voters and VDRs, and for the materials that Jolt provides to VDRs, are classic examples of the kinds of “official acts of harassment” that § 11(b) prohibits. *See Whatley*, 399 F.2d at 526. If Jolt complies with the RTE, it risks exposing itself and its associates to raids and other abuses of

Defendant's law enforcement authority. And if Jolt refuses to comply, it faces the prospect of an action to terminate its charter. *See* Bastard Decl., Ex. B (threatening to "initiat[e] a legal action for [Jolt's] 'registration or certificate of formation' to 'be revoked or terminated'" (quoting Tex. Bus. Org. Code § 12.155)). Section 11(b) of the Voting Rights Act prohibits Defendant from putting Jolt to that choice.

II. The Remaining Factors Weigh in Favor of a TRO/PI

The other factors also weigh in Jolt's favor. Given its likelihood of success on its First Amendment claims, Jolt has also shown a likelihood of irreparable harm. *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (*OLC*) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." (internal quotation marks omitted)). And the threatened injury here is irreparable for another reason: Once Jolt turns over confidential information revealing its protected associations, the chilling effect of that disclosure cannot be undone. *Cf. FMC Corp. v. Varco Int'l, Inc.*, 677 F.2d 500, 504 (5th Cir. 1982); *see also Daily Instruments Corp. v. Heidt*, 998 F. Supp. 2d 553, 570 (S.D. Tex. 2014) ("[D]isclosure of confidential information satisfies the irreparable injury prong for purposes of a preliminary injunction." (internal quotation marks omitted)).

Likewise, with respect to the balance of equities, Jolt has "an obvious interest in the continued exercise of its First Amendment rights, and the State has no legitimate interest in" retaliating against Jolt and infringing its freedom of

association. *Netflix, Inc. v. Babin*, 88 F.4th 1080, 1100 (5th Cir. 2023). For that reason, “[i]njunctive relief protecting First Amendment freedoms are always in the public interest.” *OLC*, 697 F.3d at 298 (internal quotation marks and alteration omitted); see *Nken v. Holder*, 556 U.S. 418, 435 (2009) (the balance of equities and public interest factors “merge when the Government is the opposing party”).

Although the government generally has an interest in investigating violations of law, it is clear here that Defendant has no legitimate investigative purpose for the RTE. County registrars already have information on who is certified to act as a VDR and who is registered to vote, so the state government can oversee voter registration efforts without intimidating Jolt. In addition, although Defendant claims to be investigating whether organizations like Jolt are registering noncitizens to vote, Texas law permits a VDR to review a voter application only for completeness and not to determine if the applicant is actually qualified to register. See Tex. Elec. Code § 13.039; *Volunteer Deputy Registrars*, Tex. Sec. of State, <https://perma.cc/38F6-CED5>. Defendant thus appears to be “investigating” VDRs associated with Jolt for merely doing what Texas law requires of them. This baseless intimidation campaign is not in the public interest.

CONCLUSION

This Court should grant Jolt’s motion for a temporary restraining order and preliminary injunction.

Respectfully submitted this September 13th, 2024,

/s/ Mimi Marziani

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**Application for admission pro hac vice forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that, on September 13, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. There is currently no Counsel of Record for Defendant. I certify that I will serve the foregoing on Defendant along with the Complaint.

/s/ Mimi Marziani
Mimi Marziani