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COURT OF CRIMINAL APPEALS
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Court of Criminal Appeals
Austin, Texas

ZUL MOHAMED

APPELLANT

V

THE STATE OF TEXAS

APPELLEE

PETITION FOR DISCRETIONARY REVIEW

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TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Statement Regarding Oral Argument

This case raises an important question regarding Fourth Amendment protections in the area of voter fraud. Additionally, the case raises two distinct constitutional challenges, one involving the constitutionality of the amended version Article 18B's authorization for GPS trackers independent of the Fourth Amendment's warrant requirement, the other involving the First Amendment rights of probationers ordered to not engage in political speech. The issue relating to Article 18B is one of first impression, and while the other issues do not involve novel legal argument, the law's application in the context of voter fraud investigation is one not addressed by this or any other court in Texas. Oral arguments would assist in reaching the correct result.

Statement of the Case

This is a novel case involving voter fraud. Four of the five grounds presented for review involve the sting operation used to discover Appellant's identity, his fraudulent activities, and to support the issuance of a search warrant at Appellant's home. Specifically, officers developed a probable cause theory that depended on the hypothetical involvement in criminal activity by an unknown courier to whom they delivered fraudulently requested ballots. Using a GPS tracker obtained pursuant to an unconstitutional Article 18B judicial order, officers followed this courier to Appellant's home and then

obtained a warrant to search the residence. The application and warrant botched the description of the place to be searched in numerous ways and authorized search and seizure of hypothetical evidence.

Separately, Appellant raises a First Amendment challenge to the conditions of his probation prohibiting various kinds of election-related communication.

Statement of Procedural History

The State charged Zul Mohamed in two indictments, one alleging unlawful submission of applications for ballot by mail and one charging unlawful possession of a voter ballots, both initially filed on May 11, 2021. CR 6 (F-21-1205-462); CR 6 (F-21-1206-462). Those indictments were amended before trial. Ultimately, the State prosecuted Mohamed under Cause F21-1205-462 for 84 counts of unlawfully submitting applications for ballot by mail. CR 116 (F-21-1205-462). The State prosecuted Mohamed under Cause F21-1206-462 for 25 counts of unlawful possession of a voter ballot. CR 109 (F-21-1206-462). On November 15, 2022, Mohamed filed a motion to suppress in both cases. CR 44 (F21-1205-462); CR 33 (F21-1206-462). After a hearing held on January 23, 2023, the trial court denied relief on both of Mohamed's motions. II RR 1; CR 72 (F21-1205-462); CR 68 (F21-1206-462). In both cases, Mohamed waived his right to a jury trial on guilt, plead guilty, and a trial before a jury was held on punishment on December 9, 2024. CR 113 (F-21-1205-462); CR 124 (F-21-1206-462). The jury

returned a verdict of probation in Cause Number F-21-1205-462 and the trial court sentenced Mohamed accordingly, assessed conditions, and set a ten year period of supervision. CR 181, 190 (F-21-1205-462). The jury returned a verdict of four years' incarceration in Cause Number F-21-1206-462 and the trial court sentenced Mohamed accordingly. CR 154, 159 (F-21-1206-462). Mohamed appealed his conviction, conditions of probation, and the trial court's denial of his motion to suppress in Cause F-21-1205-462 under the 7th Court of Appeals Cause Number 07-25-00124-CR. CR 209 (F-21-1205-462). Mohamed appealed his conviction and the trial court's denial of his motion to suppress in Cause F-21-1206-462 under the 7th Court of Appeals Cause Number 07-25-00125-CR. CR 177 (F-21-1206-462). On May 26, 2026, The Seventh Court of Appeals affirmed Mohamed's convictions and the trial court's denial of his motions to suppress in both cause numbers and modified the trial court's prohibition on political activities. *Mohamed v. State*, No. 07-25-00124-CR (Tex. App.—Amarillo, May 26, 2026); *Mohamed v. State*, No. 07-25-00125-CR (Tex. App.—Amarillo, May 26, 2026). No motion for rehearing was filed. This Court granted an extension of time to file a petition for discretionary review until July 27, 2026.

Grounds for Review

Ground for Review 1 (flawed theory of probable cause):

In a sting operation designed to manufacture probable cause by providing an unknown person an item that is derivative contraband (an item ordinarily legal to possess), does probable cause require some articulation that the unknown person has knowledge of circumstances that make the item contraband?

Ground for review 2 (fishing expedition for evidence):

Relying on the possibility that an unknown courier would lead investigators to a place where evidence of a crime might be found, can investigators obtain a warrant to search and seize evidence they theorize might exist which they were admittedly "fishing" for?

Ground for Review 3 (constitutionality of Article 18B GPS tracker statute):

In 2015 this Court determined Article 18B's GPS tracker order provision unconstitutional. In 2019, the Legislature's amended. The statute now authorizes such orders upon an affidavit showing the tracker is "likely to produce" "information" "material to an ongoing criminal investigation." Does the newly amended statute still violate the Fourth Amendment because it authorizes an oathless search on a standard less rigorous than what is required by the Constitution and of people and places with no nexus to criminal activity?

Ground for review 4 (botched descriptions of the place to be searched):

Does a search warrant thwart Fourth Amendment protections when the warrant and its application describe the place to be searched in a manner equally descriptive of three houses on the same street and its execution was without any assurance the search would be conducted at the correct location?

Ground for review 5 (constitutionality of a prohibition on political activity):

Does a condition of probation that prohibits a probationer from various election-related communication, including poll watching, poll greeting, and working or volunteering for any political campaign violate the First Amendment?

Argument

This is a novel case involving voter fraud and the Fourth Amendment procedures used to investigate it. Appellant is convicted of various offenses generally involving his fraudulent application for vote-by-mail applications. The thrust of this petition raises problems with the sting operation by which members of the Denton County Sheriff's Office, Lewisville Police Department, Texas Rangers, and the Attorney General's Office discovered Appellant's identity and criminal conduct. It was a shoddy retrofit of a classic tactic used to investigate drug traffickers and it failed to produce details needed to support the ultimate search warrant executed at Appellant's home. The sting operation worked as follows:

- The Denton County Elections office and investigators discovered several fraudulent applications for vote-by-mail ballots. IV RR 7. The associated mail-to address identified a PO box at a virtual mailbox store obtained with a fraudulent identity and several fraudulent documents. IV RR 8.

- Unable to identify the fraud suspect, investigators devised a sting operation whereby they would notify someone that a parcel is ready for pickup. IV RR 8. Investigators placed in the parcel the requested ballots and a GPS tracker obtained under Article 18B of the Code of Criminal Procedure. IV RR 8-9, 66.

- Two days after leaving a message with the fraudulent account phone number, an unknown person came to collect (the "courier"). IV RR 8-9. An undercover officer working as an employee of the virtual mailbox store hand-delivered the sting parcel to the courier at the virtual mailbox location.

- According to the subsequent search warrant, investigators seemingly used the GPS monitor to track the courier's location back to Zul Mohamed's home. IV RR 9. Off site, the lead investigator completed a warrant application to search Zul Mohamed's home for information in the form of documents and electronic data that might tie a suspect to the virtual mailbox, fraudulent ballot applications, ballots, and documents identifying secondary locations where contraband might be found. IV RR 5.

- The resulting search warrant and its application misdescribed the place to be searched. Between the two: six descriptors matched Appellant's home, five matched the home next door, and four matched the home across the street. IV RR 5-11, 28-30 72-78, 81; II RR 28-44, 67-74, 80. Only one descriptor uniquely identified the place where officers ultimately executed their warrant. That place was also misdescribed in other ways: the warrant incorrectly identified the residence as an apartment, the affidavit incorrectly identified the residence as located in Dallas County, and both incorrectly identified the owner as Zulirza Mohamed. IV RR 5-11.

The flawed premise behind the investigators' theories of probable cause, the use of an unconstitutional GPS tracker order, guessing at what evidence would be discovered, and the botched descriptions of the place to be searched are presented to this court for review. Separately, Mohamed raises the constitutionality of a probation condition prohibiting political activities.

Ground for Review 1:

In a sting operation designed to manufacture probable cause by providing an unknown person an item that is derivative contraband (an item ordinarily legal to possess), does probable cause require some articulation suggesting that the unknown person has knowledge of circumstances that make the item contraband?

An item that is not inherently unlawful to possess is derivative contraband. Unlike per se contraband, derivative contraband acquires its illegality or contraband status based on circumstances surrounding a person's possession. *Cooper v. Greenwood*, 904 F.2d 302, 304-05 (5th Cir. 1990). Narcotics, prohibited weapons, and child pornography are examples of per se contraband; they are "objects which are intrinsically illegal in character" and their possession, "without more, constitutes a crime." *Id*. Stolen property is an example of derivative contraband. A person can possess stolen property because they stole it, or they can possess it innocently. Law enforcement cannot obtain a warrant to search a person's house because he possesses a

stolen lawnmower he purchased at a garage sale without some indication that the person knew it was stolen.

The issuance of a search warrant depends on an articulation of probable cause. Illinois *v. Gates*, 462 U.S. 213, 238 (1983); *Diaz v. State*, 632 S.W.3d 889, 892 (Tex. Crim. App. 2021). Probable cause exists when the totality of circumstances indicates a fair probability that: (1) a crime has been or is being committed, and (2) specific evidence of that crime will be discovered by searching a designated place. *State v. McLain*, 337 S.W.3d 268, 272 (Tex. Crim. App. 2011). Unlike reasonable suspicion—grounded in articulable *unusual activity*—probable cause finds footing in articulable *elemental* facts. For probable cause to exist, there must be evidence supporting a probability for each element of a crime. *Donahue v. Wihongi*, 948 F.3d 1177, 1188 n. 14 (10th Cir. 2020); *Williams v. City of Alexander, Ark.*, 772 F.3d 1307, 1312 (8th Cir., 2014); *Wesby v. District of Columbia*, 765 F.3d 13, 20 (D.C. Cir. 2014); *United States v. Joseph*, 730 F.3d 336, 342 (3rd Cir. 2003); *Thacker v. City of Columbus*, 328 F.3d 244, 256 (6th Cir. 2003).

When the theory of probable cause involves possession of derivative contraband, law enforcement must articulate more than mere possession. In the example of the stolen lawnmower above, an indication that the purchaser was told the lawnmower was stolen would support probable cause to search the place where the purchaser stores it.

Here, law enforcement obtained a search warrant based on facts learned during a sting operation designed to identify and catch a suspect who

had fraudulently requested vote by mail ballots. Law enforcement injected themselves into the scheme by intercepting the ballot requests and commandeering the delivery process at the mailbox store identified as the fraudster's mail-to location. Because the identified mailbox was leased using a fake ID and fraudulent information, law enforcement knew nothing about the identity of an individual involved in the crime they were investigating. Under the sting operation, a sheriff's deputy fronted as a store employee and left a message at the number associated with the fraudulent mailbox account. Days later, when a courier showed up to collect, officers handed him a sealed cardboard box and followed him to Zul Mohamed's home. Nobody told the courier anything about the box and no evidence indicated anything suggestive of its contents. Without evidence, the lead investigator guessed that the courier was the suspect or a person involved in the fraudulent ballot scheme (the "fraudster") and articulated his hope as a conclusion in his application for a search warrant of Zul Mohamed's home.

This was a classic sting operation used to identify criminals involved in narcotics distribution, but the circumstances shared few if any characteristics. Generally, this tactic is preceded by communications with a known narcotics distributor and officers arrange for a controlled buy with the distributor or a known associate. It is marked by observations of suspicious activity during the controlled buy and often followed by surveillance of the location where the contraband is ultimately delivered so that officers can firm up their theories about the person with whom they surveilled after the controlled buy.

These pre and post observations allow officers to articulate something about their suspect's involvement in the crime. But these observations were not made here. Officers called and left a message with a phone number they plucked from an account fraught with misinformation. Two days later *someone*—a "courier"—showed up, but who dispatched that person and under what circumstances were unknown. Officers did not know if this person was the fraudster or someone who was merely sent to collect his cardboard box. Nor did they have any reason to conclude that the courier would immediately deliver the box to a place of evidentiary interest. The assumption that the courier *was* the fraudster who *would* lead investigators to a trove of evidence lacked a competent evidentiary basis in the same way that the assumption he was sent unwittingly does. They are both equal guesses at best.

Because a cardboard box—even one containing ballots—is not per se contraband more information was needed. Most intuitively, that information could have been something showing—at least circumstantially—that the box courier had some knowledge of or involvement in the fraudster's scheme. Instead, the lead investigator articulated a hunch about the identity of the courier and obtained his search warrant. The issuance was improper and violated Zul Mohamed's Fourth Amendment right against unlawful search and seizure.

Error by the court of appeals: the court of appeals' analysis focused on whether a crime had been committed without analysis of the nexus between the crime, the individual, and the place to be searched

The court of appeals upheld the trial court's denial of Appellant's motion to suppress. In doing so, the court sanctioned the substitution of mere possibilities for articulable fact. The court explained that "[Appellant] cites no authority that the characterization of the ballots affects the probable-cause analysis, nor does he explain why an unwitting courier could not still lead investigators to evidence of the offense." Opinion at 11 (Appendix).

Because this aspect of the case is a matter of first impression, Appellant did not cite authority about the nature of ballots. Indeed, it was shown at trial in this case that ballot fraud is exceedingly rare. But Appellant can *and did* articulate the distinction between per se contraband and derivative contraband. Appellant analyzed why the latter, involved here, required more than the bald conclusion that a person who possesses a cardboard box handed to him in a sting operation is a suspect in the crime associated with its contents. Further, Appellant did not explain "why an unwitting courier could not still lead investigators to evidence of the offense" because this is not a consideration in the analysis of probable cause. Indeed, an unwitting courier could lead investigators to evidence of the offense. Searches of random houses might produce evidence of a crime, and detentions of people on a whim might produce an arrest. But a basic premise of probable cause—the one that Appellant argued and now presents to this Court—is that something which might occur is neither evidence nor a proper basis to conduct a search. To express this in common legal metaphor, that a fish might be caught on a

fishing expedition does not make it less of a fishing expedition. The judgment of the court of appeals should be reversed based on this error.

Ground for review 2:

Relying on the possibility that an unknown courier would lead investigators to a place where evidence of a crime might be found, can investigators obtain a warrant to search and seize evidence they theorize might exist which they were admittedly "fishing" for?

A search warrant must be supported by an articulation sufficient to support a fair probability determination that the items sought are located at or on the particular person, place or thing to be searched. TEX. CODE CRIM. PROC. art. 18.01(c); *Parker v. State*, 663 S.W.3d 766, 771 (Tex. Crim. App. 2022); *Swearingen v. State*, 143 S.W.3d 808, 810 (Tex. Crim. App. 2004). This requirement serves as a protection against an officer eager to conduct a "fishing expedition in the hope that something [will] turn up." *Utah v. Strieff*, 579 U.S. 232, 242 (2016).

Here, the lead investigator and warrant applicant sought permission to search and seize a slew of evidence, including PO box documentation, voter ballots and applications, fake ballots, computers used to obtain fraudulent ballots, information about storage units, information about the ownership of the suspect residence, and information about the identification of [fake persona used by the suspect]. IV RR 4-5. The State's investigator admitted he had no factual basis to believe any of the things he sought would be found in Mohamed's home. Counsel asked the investigator this question in a line of questioning that culminated in the following exchange:

Q. You're *fishing* for information that could be in that house that helps you solve the crime?

A. Correct.

II RR at 29.

The affiant officer's assertion of what evidence could be found in Zul Mohamed's home was reflective of his guess that he had found the hub of the criminal activity he was investigating. But at this point in the investigation, the affiant officer had only followed a courier to the first location he went with the box law enforcement gave him. And, without probable cause supporting the conclusion that the courier was somehow wittingly involved in the offense under investigation there could be no support for the conclusion that these items of mere evidence with a tenuous-at-best nexus to the offense would be located inside the location searched.

Error by the court of appeals: the court of appeals did not address this issue

Without explanation, the court of appeals did not address the issue of a warrant authorizing search and seizure of theoretical evidence in the course of a fishing expedition. The judgment of the court of appeals should be reversed based on this error.

Ground for Review 3:

In 2015 this Court determined Article 18B's GPS tracker order provision unconstitutional. In 2019, the Legislature's amended. The statute now authorizes such orders upon an affidavit showing the tracker is "likely to produce" "information" "material to an ongoing criminal investigation." Does the newly amended statute still violate the Fourth Amendment because it authorizes an oathless search on a standard less rigorous than what is

required by the Constitution and of people and places with no nexus to criminal activity?

The installation of a GPS device and subsequent use of the device to monitor movements constitutes a search under the Fourth Amendment. *United States v. Jones*, 565 U.S. 400, 404 (2012). Article 18B of the Code of Criminal Procedure purports to authorize such a search by judicial order if, among other things, an officer submits a "written, signed, and sworn" application establishing: "(A) criminal activity has been, is, or *will be committed*; and (B) the [search] is *likely* to produce information that is *material* to an ongoing criminal investigation of that criminal activity. TEX. CODE CRIM. PROC. art 18B.202 (emphasis added). By comparison, the Fourth Amendment requires the solemnity of attestation, *Wheeler v. State*, 616 S.W.3d 858, 863-864 (Tex. Crim. App. 2021), and a showing of probable cause that: (1) a crime *has been or is being* committed, and (2) *specific evidence* of that crime will be discovered by searching a designated place. *State v. McLain*, 337 S.W.3d 268, 272 (Tex. Crim. App. 2011)(emphasis added). The two requirements differ broadly but do so most distinctly in the following ways: (1) a sworn request does not necessitate the formal attestation under *Smith*, supra, and its progeny. See *Clay v. State*, 391 S.W.3d 94, 99-103 (Tex. Crim. App. 2013)("The difference between an affidavit and an oath is that an affidavit consists of a statement of fact, which is sworn to as the truth, while an oath is a pledge."). (2) The phrase "likely to produce" is distinct from "probable cause" in that the latter invokes the history and tradition of Fourth

Amendment jurisprudence. (3) The phrase "material to an ongoing investigation" broadens what evidence may be obtained pursuant to probable cause and a search warrant by allowing the acquisition of information that has any having a logical connection to a consequential fact *See Watkins v. State*, 619 S.W.3d 265, 290 (Tex. Crim. App. 2021). (4) The phrase "will be committed" authorizes an improper anticipatory search warrant in cases of mere evidence. *See Parker v. State*, 663 S.W.3d 766, 771 (Tex. Crim. App. 2022)(indicating anticipatory search warrants for mere evidence are likely impermissible). And (5), the statute authorizes a search without regard to the person tracked and his or her involvement in criminal activity. *See Jones,* 565 U.S. at 404 (use of a GPS tracker constitutes a physical intrusion into the property of the person tracked). Article 18B's attempt to authorize a GPS tracker remains unconstitutionally deficient. Beyond what the clear text of the statute provides, the fact that Article 18B would be merely superfluous to the requirements of the Fourth Amendment if it truly required the same thing is telling about its purpose. It is designed to require less. *Boykin v. State,* 818 S.W.2d 782, 785 (Tex. Crim. App. 1991)("it would be illogical to presume that the Legislature intended a part of a statute to be superfluous.").

Here, officers obtained a GPS tracker pursuant to Article 18B to acquire information that would allow them to track the location of the courier and to track the box of ballots the officers provided to him. Then they used it to confirm an item of interest remained at the location they wished to search.

This constituted a search, and it was conducted without a warrant and in violation of the Fourth Amendment.

Error by the court of appeals: the court of appeals determined that officers were able to establish probable cause without use of the GPS tracker and that the courier who unwittingly held the tracker had no privacy interest

The court of appeals' top line analysis expressed a belief that officers were able to conduct their investigation without reference to the GPS tracker, thus establishing an independent source for the information that the GPS tracker provided. The record is not as clear as the court suggested. Contextually, the subsequent warrant to search Zul Mohamed's home indicated that officers used the GPS tracker to follow the courier and identify Zul Mohamed's home as the place to execute their search warrant. IV RR 9. But more troubling is the court's later reference to the information conveyed by the purportedly irrelevant GPS tracker when rejecting Mohamed's claim that an interloper observed coming to the house and leaving with a package diminished or defeated probable cause. This person's activity admittedly raised probable cause concerns by the affiant officer, despite "continuous eyes on the residence." Despite declaring the GPS tracker warrant a non-issue in this case, the court of appeals injected it back into the analysis by determining that "real-time GPS monitoring corroborated [the] conclusion" that the evidence never left the location. Opinion at 9 (Appendix).

Separately, the court of appeals determined that a "person has no privacy interest in mail or packages addressed to another." Opinion at 9

(Appendix). This even-if analysis misapplied constitutional law in cases involving government tracking of mailed packages. *Compare United States v. Pierce*, 959 F.2d 1297, 1303 (5th Cir. 1992)(discussing nuances in privacy interests held by senders, addressed recipients, and intended recipients) *with United States v. Karo*, 468 U.S. 705, 714-15 (1984)(monitoring of a tracker inside of a residence is violative of a person's privacy interests) *and with King v. State,* 670 S.W.3d 653, 655 (Tex. Crim. App. 2023)(privacy interest in possessed property owned by another) *and with Jones*, 565 U.S. at 404-05 (causing GPS tracking of a vehicle violates the privacy interest of the driver).

The court of appeals opinion should be reversed on these bases.

Ground for review 4:

Does a search warrant thwart Fourth Amendment protections when the warrant and its application describe the place to be searched in a manner equally descriptive of three houses on the same street and its execution was without any assurance the search would be conducted at the correct location?

The Fourth Amendment requires an officer to describe with particularity the place to be searched. *Gates*, 462 U.S. at 238; *Bonds v. State*, 403 S.W.3d 867, 875 (Tex. Crim. App. 2013). The requirement of particularity is met when a warrant enables the officer to locate the place to be searched and distinguish it from other places in the community. *Patterson v. State*, 663 S.W.3d 155, 158 (Tex. Crim. App. 2022).

Here, both the warrant application and the resulting search warrant were botched. Between the two, six descriptors matched Appellant's home, five matched the home next door, and four matched the home across the

street. IV RR 5-11, 28-30 72-78, 81; II RR 28-44, 67-74, 80. The resulting mishmash produced only one descriptor unique to the place officers ultimately searched. These misdescriptions did not adequately distinguish the place to be searched from other places in the community, did not "ensur[e] that officers searche[d] the right place, did not confirm that probable cause "is in fact established for the place described in the warrant," did not "limit[] the officer's discretion for the place described in the warrant," did not "minimize the danger of mistakenly searching the person or property of an innocent bystander or property owner," and did not "inform[] the owner of the officer's authority to search th[e] specific location." *Bonds*, 403 S.W.3d at 875.

Error by the court of appeals: the court of appeals improperly focused on what the warrant and affidavit got right about the location ultimately searched

The court of appeals held that "the descriptions were within reason." Opinion at 10 (Appendix). In so concluding, the court of appeals focused on what the warrant and application got right about Zul Mohamed's home: the side of the street, style of the home, the direction it faces, and the appearance of the mailbox. Opinion at 10-11 (Appendix). The court of appeals also disregarded inaccurate description of the residence as an apartment and described this as a "stray reference." Opinion at 11 (Appendix). This myopic approach disregarded the various descriptions attributable to other houses on the same street, many of which did not describe the place where the search warrant was ultimately executed. An example bears out the flaw in the

analysis: if told to guess a letter of the alphabet after the letter C and before the letter E a person can correctly solve the puzzle. But expanding the range of options to letters before F and adding an incorrect clue, such as the letter is a vowel when it is truly a consonant, the wrong letter will be guessed despite otherwise appearing in the correct sequence of letters. Erroneous clues matter. The court's analysis should have been concerned with the impact of the incorrect information contained in the warrant and its application. The court of appeals error in focusing solely on the correct descriptors should be reversed.

Ground for review 5:

Does a condition of probation that prohibits a probationer from various election-related communication, including poll watching, poll greeting, and working or volunteering for any political campaign violate the First Amendment?

The First Amendment affords special protection for individuals engaged in political speech and associated activities. Speech is an "essential mechanism of democracy, for it is the means to hold officials accountable to the people." U.S. CONST. amend. I; *Ex parte Stafford*, 726 S.W.3d 231, 236 (Tex. Crim. App. 2024). Burdens placed on political speech are subject to strict scrutiny, which requires the Government to show that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest." *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011). When the burden on speech exists as a condition of compliance with probation, the restriction is a prior restraint on speech—

strongly disfavored and upheld only in exceptional cases. *Ex parte Retzlaff*, No. 03-05-00277-CR, 2007 Tex. App. LEXIS 3852, at *9 (Tex. App.—Austin May 15, 2007, pet. ref'd)(not designated for publication).

Special importance under the First Amendment is given to the exchange of ideas within the quintessential "public square." *Packingham v. North Carolina*, 582 U.S. 98, 99 (2017). A person retains some First Amendment rights despite their probationer status. *United States v. Bolin*, 976 F.3d 202, 214 (2d Cir. 2020). Probation conditions that implicate a fundamental liberty interest must be "reasonably related" to the goals of probation and "involve no greater deprivation of liberty than is necessary" to achieve them. *Id*.

Here, in Cause F21-1205-462 the jury sentenced Appellant to probation to be served concurrent with his sentence of imprisonment in Cause F21-1206-562. As a condition of probation that probation trial court ordered that Appellant:

> shall not engage or participate in any election-related activities, to include but not limited to: registering voters, accessing or requesting voter data, assisting any voter to complete a ballot or ballot application, poll watching or poll greeting, working or volunteering for any political campaign, and campaigning or electioneering of any kind.

Opinion at 12. The court of appeals modified this condition on First Amendment grounds to read:

> Appellant shall not engage in registering voters, accessing or requesting voter data, assisting any voter

> to complete a ballot or ballot application, poll watching or poll greeting, or working or volunteering for any political campaign.

Opinion at 15. This modification remains constitutionally infirm.

Error by the court of appeals: the court of appeals' modified probation condition prohibits more than is reasonably related to achieving the goals of Appellant's probation

Appellant is convicted of fraudulently submitting vote-by-mail applications and of unlawful possession of ballots. The circumstances surrounding this conduct are not part of the record on appeal because Appellant appealed only the denial of his motion to suppress and the hearing and ruling on the imposition of his sentence. The court of appeals grounded the appropriateness of modification in the nature of the statutes underlying Appellant's conviction. The record does reveal some deductions regarding Appellant's specific conduct—that he caused ballots belonging to other voters to be sent to himself. Even with a correct assumption that he did this to fraudulently cast ballots in his own election, several of the modified conditions or probations still go too far. Registering voters and accessing or requesting voter data, albeit tangential to Appellant's conduct, have no bearing on the legitimate goal of incapacitating Appellant from casting fraudulent votes. Even beyond tangential are the conditions prohibiting poll watching, poll greeting, or working or volunteering for any political campaign. These conditions step further into the heart of protected speech; they restrict Appellant in traditional public squares and prevent his free

exchange of ideas in the most protected areas of speech. The court of appeals relied in part on the case of *United States v. Tonry* in which the Fifth Circuit upheld a probation condition prohibiting a defendant from running for office or engaging in political activity. 605 F.2d 144 (5th Cir. 1979). But *Tonry* presents distinctions in the nature of Tonry's conduct and in his criminal convictions that the court of appeals failed to make. "Tonry was convicted not only of accepting an illegal campaign contribution but also of promising benefits in return for contributions." *Id*. At 147. Tonry corrupted the office for which he was running—the U.S. House of Representatives—through his conduct in campaigning. Tonry used the guise of protected political speech to commit his offense. Appellant is convicted for acts that are largely administrative in nature. He is not convicted because of his thoughts, beliefs, and ideas.

The modified condition of the court of appeals continues to violate Appellant's First Amendment rights as a probation and should be reversed or further modified.

Prayer

Based on the foregoing arguments, Appellant requests this court grant his request for discretionary review to review the errors committed by the court of appeal in affirming the trial court's denial of motion to suppress and the judgment and conviction against him.

Respectfully submitted,

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/S/: Kyle Therrian
Kyle Therrian

Certificate of Service

This is to certify that on July 27, 2026, this Petition for Discretionary Review was served electronically on the Representative for the State of Texas as follows: State on the State Prosecuting Attorney at information@spa.gov. Denton County District Attorney at lara.tomlin@dentoncounty.gov. Courtesy copies were also mailed to each of these offices at

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/s/ Kyle Therrian
Kyle Therrian

Appendix

In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-25-00124-CR
No. 07-25-00125-CR

ZUL MOHAMED, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 462nd District Court
Denton County, Texas[1]
Trial Court No. F21-1205-462, F21-1206-462, Honorable Lee Ann Breading, Presiding

May 26, 2026

MEMORANDUM OPINION

Before PARKER, C.J., and DOSS and YARBROUGH, JJ.

Appellant, Zul Mohamed, appeals from the convictions rendered against him in two cases. In the first, he was convicted on eighty-one counts of fraudulent use of an application for ballot by mail.[2] In the second, he was convicted on twenty-five counts of

[1] This case was transferred from the Second Court of Appeals in Fort Worth pursuant to a docket equalization order from the Supreme Court of Texas. *See* TEX. GOV'T CODE § 73.001. We apply that court's precedent to the extent it conflicts with our own. TEX. R. APP. P. 41.3.

[2] TEX. ELEC. CODE § 84.0041(a), (d)(3). This offense is a third-degree felony.

knowingly possessing another voter's official ballot or official carrier envelope.[3] Before trial, Appellant moved to suppress evidence obtained through a GPS tracking order and a subsequent search warrant. The trial court denied the motion. Appellant then pleaded guilty, and a jury assessed punishment. On the ballot-application counts, the jury assessed ten years of confinement, probated for ten years. On the ballot-possession counts, the jury assessed four years of confinement.

Appellant raises six issues. By the first five, he challenges the suppression ruling. The sixth challenges a condition of probation that restricts election-related activity. We modify the judgment to strike two provisions of the probation conditions, and we affirm the judgment as modified.

BACKGROUND

At the suppression hearing Captain Edward Barrett of the Denton County Sheriff's Office testified that he applied for and obtained both the GPS tracking order and the search warrant. The investigation began when the local election office reported suspicious mail-in ballot requests. More than eighty applications listed the same address, a private mailbox at a pack-and-ship store. That mailbox was registered to "Aly Karmi," a fictitious person. The application to open the box used false identification, false insurance information, and a false notary acknowledgment.

Barrett devised a plan to place a GPS tracker inside a box containing ballots and, through the device together with continuous visual surveillance, to identify the person who

[3] TEX. ELEC. CODE § 86.006(f), (g), (g-1). This offense is a second-degree felony.

retrieved the package. Officers sent twenty-five ballots to the mailbox under the names listed on the fraudulent applications, with the tracker placed in the same box. Three days later the registered owner of the box was notified that a package awaited pickup. A man later identified as Appellant arrived, claimed ownership of the box, took the package, and placed it in his car. Officers followed the vehicle to a residence at 1616 Bennington Drive in Dallas County. Another officer observed the vehicle pull through the alley and into the attached garage. Throughout the surveillance the team maintained visual contact with the vehicle.

While Barrett drafted the probable-cause affidavit, a woman in a tan vehicle arrived at the residence. She approached the front door, returned to her vehicle with an item, placed the item in her trunk, and drove away. Officers followed and stopped her. They determined that she had not removed any evidence from the house. The GPS tracker remained inside the residence the entire time. Investigators knew of this event before they submitted the warrant application, yet Barrett's affidavit did not mention it.

Appellant also points to several discrepancies between the descriptions of the residence that appear in the affidavit, the warrant, and the testimony at the hearing. The affidavit referred to the address as 1616 Bennington Drive in both Denton and Dallas Counties. The warrant placed the address solely in Dallas County. The affidavit and testimony described the dwelling as a single-story home; the warrant described it both as a single-story house and as an apartment residence. The affidavit described the brick as brown; the warrant described it as red; and Barrett testified that the brick appeared pink or reddish brown depending on the viewer. The affidavit stated that the property was controlled by "Zulirza Mohamed." The warrant identified the controlling party only as a

suspect resident. Evidence at the hearing established that Appellant's parents own the home.

Barrett explained that the brick could reasonably be described as red, reddish brown, or brown. The home sits approximately 150 yards inside Dallas County, just across the line from Denton County, where Barrett primarily worked. That circumstance accounted for the affidavit's reference to Denton County. Barrett conceded that the warrant's description of the property as an apartment residence was an error. He confirmed that he drafted the affidavit while parked about a block from the home and that he later executed the warrant at the same residence he had kept under surveillance. Sherbanoo Mohamed testified that she and her husband own the home and that no one named Zulirza Mohamed has ever owned or controlled it.

ANALYSIS

A. Constitutionality of Article 18B and Probable Cause for the Search

By his first and second issues Appellant challenges the legal foundation for the GPS tracking order and the search warrant that followed. He contends that probable cause did not support either order because Barrett's affidavits rested on speculation that the person who collected the ballots was the fraudster and would transport them to a location containing further evidence. He further contends that the statutory scheme authorizing the GPS order, Article 18B of the Code of Criminal Procedure, violates the Fourth Amendment by supplanting the probable-cause standard with a lower threshold, by failing to require a judicial finding of probable cause, and by authorizing anticipatory tracking for mere evidence. We overrule both issues.

We review the trial court's ruling on a motion to suppress under a bifurcated standard. We afford almost total deference to the trial court's determination of historical facts supported by the record, and we review de novo the application of law to those facts, including questions of constitutional law. *Brodnex v. State*, 485 S.W.3d 432, 436 (Tex. Crim. App. 2016); *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997).

We need not reach the constitutionality of Article 18B. The record establishes that Barrett did not rely on the GPS tracker alone to develop probable cause for the search of the residence. Barrett testified that the vehicle was under constant visual surveillance from the moment Appellant collected the package at the pack-and-ship store until it arrived at 1616 Bennington Drive. Asked whether officers had eyes on the same vehicle the entire time, independent of the GPS tracker, Barrett answered yes. While he drafted the probable-cause affidavit from about a block away, he received real-time radio updates from the multi-agency surveillance team that kept continuous visual contact with the vehicle.

Under the independent source doctrine, evidence derived from a source separate from any allegedly unlawful conduct is not subject to suppression. *Wehrenberg v. State*, 416 S.W.3d 458, 465–70 (Tex. Crim. App. 2013); *see also Johnson v. State*, 871 S.W.2d 744, 750–51 (Tex. Crim. App. 1994). Even if the GPS tracking order rested on an unconstitutional statute, the warrant remained valid on the strength of the independent visual surveillance that placed the vehicle at the residence. The validity of the search therefore does not depend on the constitutionality of Article 18B.

This conclusion finds support in *United States v. Estrada*, 683 F. App'x 308 (5th Cir. 2017) (per curiam). In *Estrada*, the Fifth Circuit assumed that the installation of a mobile tracking device under the former version of Texas's mobile tracking statute violated the Fourth Amendment because it was authorized only upon reasonable suspicion. *Id.* at 310. Nevertheless, the court held that evidence seized from the defendant's stash house remained admissible under the independent source doctrine. Officers had conducted extensive physical surveillance unaided by the tracking device, and the lead investigator testified that he would have continued the investigation through physical surveillance if the tracking order had been denied. *Id.* at 311–12. The court emphasized that the search warrant affidavit did not reference any information gleaned from the tracking device and that the officers' decision to conduct a knock-and-talk was motivated by the physical surveillance and the defendant's own admissions. *Id.*

Estrada reveals important parallels to the present case. Captain Barrett testified that he would have continued surveillance through other means if the GPS order had not been granted, and the record establishes that officers maintained constant visual surveillance of the vehicle independent of the GPS tracker. As in *Estrada*, the search warrant affidavit here did not rely on any information derived from the GPS device. *See id.* Accordingly, we hold that the independent source doctrine applies and that the constitutionality of Article 18B does not affect the validity of the search warrant. *See Wehrenberg*, 416 S.W.3d at 465–70.

Appellant's probable-cause challenge fares no better on its own terms. The application for the GPS tracking order established that more than eighty mail-in ballot applications had been directed to the same private mailbox, many duplicating applications

already on file. Officers had confirmed with several of the listed voters that they had not submitted the requests. The mailbox was registered to a fictitious person under a false identification. On these facts the magistrate could reasonably conclude that whoever collected the package, whether or not aware of its contents, would lead investigators to the person who had fraudulently requested the ballots. *See State v. Jordan*, 342 S.W.3d 565, 569 (Tex. Crim. App. 2011) (directing courts to uphold the magistrate's probable cause determination if it had a substantial basis to conclude that probable cause existed to issue the warrant); *Parker v. State*, 206 S.W.3d 593, 597 (Tex. Crim. App. 2006) ("Probable cause to search exists when reasonably trustworthy facts and circumstances within the knowledge of the officer on the scene would lead a man of reasonable prudence to believe that the instrumentality of a crime or evidence of a crime will be found."); *see also State v. Duarte*, 389 S.W.3d 349, 354 (Tex. Crim. App. 2012) (describing the probable cause standard as "flexible" and "nondemanding").

To the extent Appellant argues that the ballots constitute derivative contraband rather than contraband per se, and that this distinction defeats probable cause, the contention is waived for inadequate briefing. He cites no authority that the characterization of the ballots affects the probable-cause analysis, nor does he explain why an unwitting courier could not still lead investigators to evidence of the offense. *See* TEX. R. APP. P. 38.1(i); *Bohannan v. State*, 546 S.W.3d 166, 180 (Tex. Crim. App. 2017) (declining to address appellant's due process argument as inadequately briefed, holding, "We will not make novel legal arguments for him.").

A separate ground likewise defeats Appellant's challenge to the GPS order. A person has no privacy interest in mail or packages addressed to another. *Galindo v.*

State, No. 02-03-00039-CR, 2004 Tex. App. LEXIS 8834, at *4 (Tex. App.—Fort Worth Sept. 30, 2004, pet. ref'd). Without a privacy interest, a defendant has no standing to contest the search of the item. *Kothe v. State*, 152 S.W.3d 54, 59 (Tex. Crim. App. 2004). The package was not addressed to Appellant. His position thus depends on two propositions that cannot stand together: that the package was not addressed to him, and that he nonetheless retained a privacy interest sufficient to challenge the GPS tracker placed inside it.

We overrule Appellant's first and second issues.

B. Alleged Material Omissions Supporting Probable Cause Affidavit

In his third issue, Appellant contends that Barrett made material omissions in the search warrant affidavit by failing to disclose that an unidentified woman briefly approached the residence while Barrett was drafting the affidavit, picked up an item, placed it in her trunk, and left. Appellant argues that this omission "breached the integrity of [Barrett's] operation in a way that diminished the probable cause conclusion." We disagree.

In *Franks v. Delaware*, the Supreme Court held that a warrant is invalid if the affiant makes an affirmative misrepresentation that is material to probable cause. 438 U.S. 154, 155–56 (1978). The Texas Court of Criminal Appeals has assumed without deciding that *Franks* applies to material omissions as well. *Diaz v. State*, 632 S.W.3d 889, 892 (Tex. Crim. App. 2021); *see also Vardeman v. State*, No. 02-19-00387-CR, 2021 Tex. App. LEXIS 8368, at *21 (Tex. App.—Fort Worth Oct. 14, 2021, no pet.) (mem. op., not designated for publication). To prevail on a *Franks* claim based on an alleged omission,

the defendant must establish by a preponderance of the evidence that the omission was made knowingly, intentionally, or with reckless disregard for the truth in an attempt to mislead the magistrate, and that the omitted information was material to the probable cause determination. *Martin v. State*, No. 02-08-00128-CR, 2009 Tex. App. LEXIS 6141, at *9–10 (Tex. App.—Fort Worth Aug. 6, 2009, no pet.) (mem. op., not designated for publication); *Vardeman*, 2021 Tex. App. LEXIS 8368, at *21.

The record refutes Appellant's claim. Barrett testified that the woman never entered the residence. After officers stopped and identified her, investigators concluded she was not involved in the ballot scheme. Barrett testified that, based on the identification and questioning, the officers did not believe she had any of the evidence they were looking for. The surveillance team's continuous visual contact with the residence confirmed that nothing changed during the woman's brief visit, and real-time GPS monitoring corroborated that conclusion.

Even if Barrett had included these facts in the affidavit, they would not have defeated probable cause. The possibility that the woman might have removed evidence does not undermine probable cause where the surveillance team kept continuous eyes on the residence, confirmed she never entered, and determined through investigation that she was not involved. Appellant has not shown that the omitted information was material or that Barrett withheld it to mislead the magistrate.

We overrule Appellant's third issue.

C. Sufficiency of the Search Warrant's Description

In his fourth issue, Appellant challenges the search warrant's description of the home, urging that the warrant inaccurately described the brick and, in one place, described the property as an apartment residence.

The Fourth Amendment requires that a warrant describe with sufficient particularity the place to be searched. *Bonds v. State*, 403 S.W.3d 867, 874–75 (Tex. Crim. App. 2013).

> The constitutional objectives of requiring a "particular" description of the place to be searched include: (1) ensuring that the officer searches the right place; (2) confirming that probable cause is, in fact, established for the place described in the warrant; (3) limiting the officer's discretion and narrowing the scope of his search; (4) minimizing the danger of mistakenly searching the person or property of an innocent bystander or property owner; and (5) informing the owner of the officer's authority to search that specific location.

Id. at 875.

The Constitution does not require a perfect description, though a facially insufficient one may invalidate the warrant. *Id.* The Court of Criminal Appeals has recognized that an officer's familiarity with the property can ameliorate inaccuracies in the description. *Id.* at 876–77 & n.30.

The variation in the description of the brick, which appeared in the affidavit as brown, in the warrant as red, and in the testimony as pink, does not invalidate the warrant. The descriptions were within reason; Barrett testified that the brick could be described as red, reddish brown, or brown depending on the viewer. Beyond color, the warrant correctly identified the address, the style of home, the side of the street on which it sits,

the appearance of the mailbox, and the direction the home faces. Those descriptors enabled the officers to locate the property and distinguish it from others in the community. *See Id.*

That leaves only the single reference to the property as an apartment residence, set against the warrant's other descriptions of it as a single-story house. The stray reference is best read as describing the surrounding area rather than the home itself, and it follows the warrant's identification of the property as a single-story house. The affidavit is not challenged for its statements that the suspect vehicle was followed to 1616 Bennington Drive, and that the vehicle containing the box of ballots entered an attached garage there. This, as well as Barrett's other unchallenged statements, resolve any ambiguity created by the descriptive errors and render the warrant sufficiently particular.

We overrule Appellant's fourth issue.

D. Challenge to Requirement for a Neutral and Detached Magistrate

By his fifth issue, Appellant urges that the trial court should have suppressed the search results because the judge who signed the warrant failed to act as a neutral and detached magistrate. *See United States v. Leon*, 468 U.S. 897, 914–15 (1984). According to Appellant, the variations between the affidavit and the warrant are so severe that they demonstrate the magistrate merely rubber-stamped the warrant.

Appellant cites no authority for the standard of review on this question, and none for the proposition that descriptive variations between an affidavit and a warrant suffice to show that a magistrate has abdicated her role. The case Appellant cites, *United States v. Decker*, involved circumstances of a different order. There, Eighth Circuit affirmed the

decision of the trial court, which found a warrant glaringly omitted the items to be seized and lacked a prosecutor's signature required by Missouri law, as well as the magistrate's testimony that he did not read the warrant but relied on what the officer told him. 956 F.2d 773, 777 (8th Cir. 1992).

The affidavit and warrant here suffer from no comparable defects. The warrant lists the items to be seized, and the only variations are minor descriptive differences in the property to be searched. *Decker* is inapposite, and nothing else in the record suggests that the magistrate failed to act as a neutral and detached magistrate.

We overrule Appellant's fifth issue.

E. Conditions of Probation

By his sixth issue, Appellant urges that the probation condition prohibiting him from engaging in election-related activities violates the First Amendment. Among the conditions of probation, the trial court ordered that Appellant:

> shall not engage or participate in any election-related activities, to include but not limited to: registering voters, accessing or requesting voter data, assisting any voter to complete a ballot or ballot application, poll watching or poll greeting, working or volunteering for any political campaign, and campaigning or electioneering of any kind.

Appellant objects to the condition as a blanket prohibition on political speech. He proposes instead that he be required to report activities such as registering a post office box or making a campaign declaration or donation, so that his conduct could be monitored. The trial court overruled the objection.

Article 42A.051 of the Code of Criminal Procedure authorizes the trial court to grant community supervision and impose conditions. TEX. CODE CRIM. PROC. art. 42A.051(a)(2), (3). The trial court's discretion is broad but not unfettered. *Butler v. State*, 189 S.W.3d 299, 303 (Tex. Crim. App. 2006). A condition must bear a reasonable relationship to the treatment of the accused and the protection of the public. *Simpson v. State*, 772 S.W.2d 276, 280–81 (Tex. App.—Amarillo 1989, no pet.). A condition is invalid if it has no relationship to the offense, addresses conduct that is not in itself criminal, and forbids conduct unrelated to future criminality or the statutory ends of community supervision. *Id.* That a condition affects a constitutional right does not by itself render it invalid. *Cochran v. State*, 563 S.W.3d 374, 379 (Tex. App.—Texarkana 2018, no pet.). When a condition is invalid, the proper remedy is reformation by deletion of the offending language. *Belt v. State*, 127 S.W.3d 277, 281 (Tex. App.—Fort Worth 2004, no pet.).

A prior restraint is an administrative or judicial order forbidding certain communications before they occur. *Tex. Mut. Ins. Co. v. Sur. Bank, N.A.*, 156 S.W.3d 125, 128 (Tex. App.—Fort Worth 2005, no pet.) (quoting *Alexander v. United States,* 509 U.S. 544, 550 (1993)). Courts have nonetheless upheld probation terms that limit speech or association in ways tied to the offense. *See, e.g.*, *United States v. Halverson*, 897 F.3d 645, 657–58 (5th Cir. 2018) (banning social-media use for an offender convicted of possessing child pornography); *Tyra v. State*, 644 S.W.2d 865, 868 (Tex. App.—Amarillo 1982, no pet.) (prohibiting association with persons of disreputable character); *United States v. Tonry*, 605 F.2d 144, 150–52 (5th Cir. 1979) (prohibiting a probationer convicted of election-law violations from running for office or engaging in political activity).

In *Tonry*, the Fifth Circuit considered a probation term barring a defendant convicted of federal election-law violations from running for political office or engaging in political activity during probation. 605 F.2d at 146, 150–52. The court recognized that political activity is protected expression but sustained the condition as tied to the purposes of the election statutes and of probation: rehabilitation of the probationer and protection of the public. *Id.* at 150–51. The court explained that such a condition "assures that the defendant, while free to return to community life and earn his livelihood, will not be tempted to engage in illicit electoral activity during his probation, thus serving the purpose of protection." *Id.* at 151.

The same reasoning applies here. Appellant was convicted of statutes addressing fraudulent solicitation of mail-in ballots and unlawful possession of other voters' ballots. The enumerated activities in the trial court's condition, registering voters, accessing or requesting voter data, assisting any voter to complete a ballot or ballot application, poll watching or poll greeting, and working or volunteering for any political campaign, each bear a direct and reasonable relationship to the conduct of conviction. They place Appellant outside positions in which he could repeat or facilitate the offense, while leaving him free to vote, to speak about elections in his personal capacity, and to engage in the broader civic life of the community. *See Simpson*, 772 S.W.2d at 280–81. The enumerated restrictions therefore stand.

Some parts of the condition, however, are not so tailored. The phrase "to include but not limited to" leaves Appellant subject to enforcement for an unspecified universe of conduct that may have no connection to ballot fraud, and "campaigning or electioneering of any kind" reaches campaigns for non-political offices and other matters far afield from

the conduct of conviction. Each operates as a vague or overbroad restraint on protected speech. *See id.* The same is true of the umbrella phrase "any election-related activities," which standing alone provides no notice of what conduct is forbidden. With the open-ended language stricken and the enumerated list left in place, the condition gives Appellant clear notice of the prohibited conduct and remains tied to the purposes of probation.

Appellant's proposed alternative would seek to limit the restriction to receiving mail at addresses other than his home. He cites no authority, and we are aware of none, requiring that a probation condition be confined to the precise method of the offense. The conditions Appellant prefers would not foreclose unlawful access to voter or campaign information; they would only redirect where such material is delivered. We therefore reject Appellant's proposed substitute.

We sustain Appellant's sixth issue in part and overrule it in part. We modify condition (ff) of the order of community supervision to delete the phrases "any election-related activities," "to include but not limited to," and "campaigning or electioneering of any kind." As modified, the condition reads: Appellant "shall not engage in registering voters, accessing or requesting voter data, assisting any voter to complete a ballot or ballot application, poll watching or poll greeting, or working or volunteering for any political campaign."

CONCLUSION

We modify condition (ff) of Appellant's order of community supervision to delete the phrases "any election-related activities," "to include but not limited to," and

"campaigning or electioneering of any kind." The remaining enumerated restrictions stand.

As modified, the trial court's judgment is affirmed.

Lawrence M. Doss
Justice

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