

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ERIC H. HOLDER, JR., in his official capacity as	)	
Attorney General of the United States,	)	
	)	
Defendant.	)	
	)	
ERIC KENNIE, <i>et al.</i> ,	)	
	)	
Defendant-Intervenors,	)	
	)	
TEXAS STATE CONFERENCE OF NAACP	)	CASE NO. 1:12-CV-00128
BRANCHES, <i>et al.</i> ,	)	(RMC-DST-RLW)
	)	Three-Judge Court
Defendant-Intervenors,	)	
	)	
TEXAS LEAGUE OF YOUNG VOTERS	)	
EDUCATION FUND, <i>et al.</i> ,	)	
	)	
Defendant-Intervenors.	)	
	)	
TEXAS LEGISLATIVE BLACK CAUCUS, <i>et</i>	)	
<i>al.</i> ,	)	
	)	
Defendant-Intervenors,	)	
	)	
VICTORIA RODRIGUEZ, <i>et al.</i> ,	)	
	)	
Defendant-Intervenors.	)	
	)	

**THE ATTORNEY GENERAL’S PROPOSED**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**TABLE OF CONTENTS**

PRELIMINARY STATEMENT ..... 1

I. The Benchmark ID Requirements Place a Minimal Burden on Voters..... 1

II. SB 14 Imposes Additional Burdens on Voters Seeking to Cast a Ballot in Person..... 2

III. SB 14 Will Have a Retrogressive Effect on Minority Voters..... 4

A. SB 14 Imposes a Substantial Burden on Voters..... 4

B. Social Science Supports Estimates that SB 14 Will Suppress Minority Turnout..... 9

C. Actual Evidence from the State of Texas Establishes a Substantial Racial Disparity in the Possession of Identification Required by SB 14..... 11

1. Hispanic and Black Voters Are Nearly Twice as Likely as Anglo Voters to Lack ID Needed to Cast a Ballot..... 11

2. Dr. Sager’s Match Fails to Identify Hundreds of Thousands of Voters Lacking State Issued PVID Under SB 14..... 14

3. Dr. Shaw’s Surveys Based on the January Match Are Critically Flawed..... 15

4. Dr. Shaw’s Surveys Based on Dr. Ansolabehere’s Study Are Also Flawed..... 18

5. Data-Matching Is a Superior Method to Identify the Effect of SB 14 on Voters in Texas..... 20

D. SB 14 Will Abridge the Right of Minority Voters to Cast a Ballot and Will Disproportionately Impact Minority Voters..... 23

IV. Texas’s Stated Purposes Cloak a Discriminatory Purpose..... 24

A. The Texas Legislature Has Advanced a Pretextual Justification Related to In-Person Voter Identification..... 24

1. There Is Almost No In-Person Voter Impersonation in Texas. ....	24
2. Registration List Maintenance Does Not Justify SB 14. ....	27
3. The Possibility of Non-Citizen Voting Does Not Justify SB 14. ....	28
4. Speculation Concerning Unobserved Fraud Does Not Justify SB 14. ....	30
B. Concerns Regarding Voter Confidence Do Not Justify SB 14. ....	31
C. Public Support Does Not Establish a Statutory Purpose. ....	32
D. SB 14 Was Enacted With Discriminatory Purpose ....	34
V. Abundant Circumstantial Evidence Establishes that Senate Bill 14 Was Enacted with a Discriminatory Purpose. ....	34
A. The 2005 and 2007 Legislative Sessions: HB 1706 and HB 218. ....	34
B. The 2009 Legislative Session: SB 362 ....	36
C. The 2011 Legislative Session: SB 14 ....	40
Proposed Conclusions of Law ....	48
I. Texas Has Failed to Prove that Senate Bill 14 Does Not Have a Retrogressive Effect. ..	49
A. The Effect Prong of Section 5 Bars All Retrogressive Voting Changes. ....	50
B. The Benchmark Permits Voters to Cast a Ballot Regardless of Whether They Possess Unexpired Photographic Identification Named in SB 14. ....	52
C. SB 14 Will Banish Hundreds of Thousands of Texans from the Voting Booth on Election Day. ....	53
D. SB 14 Will Have a Disproportionate Impact on Minority Voters. ....	55
II. Texas Has Failed to Prove that Senate Bill 14 Lacks Any Discriminatory Purpose. ....	58

A.	Section 5 Bars Voting Changes With Any Discriminatory Purpose.....	58
B.	<i>Arlington Heights</i> Guides Analysis of Discriminatory Purpose.....	60
C.	SB 14 Was Enacted with a Discriminatory Purpose. ....	63
1.	Discriminatory Impact .....	64
2.	Historical Background and Sequence of Events.....	65
3.	Procedural Deviations.....	67
4.	Substantive Deviations.....	68
5.	Contemporaneous Statements.....	69
III.	Conclusion.....	71

**TABLE OF AUTHORITIES**

**Cases**

*Anderson v. Celebrezze*, 460 U.S. 780 (1983) ..... 57

*Apache County High Sch. Dist. No. 90 v. United States*, No. 77-CV-1518 (D.D.C. Jun. 13, 1980)  
 (three-judge court) ..... 50

*Basic Inc. v. Levinson*, 485 U.S. 224, (1988)..... 51

*Beer v. United States*, 425 U.S. 130 (1976) ..... 50, 57

*Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982), *a’ffd*, 103 S. Ct. 809 (1983) ..... 63

*Chamber of Commerce v. Whiting*, 131 S. Ct. 1968 (2011) ..... 70

*City of Mobile v. Bolden*, 446 U.S. 55 (1980)..... 51

*City of Pleasant Grove v. United States*, 479 U.S. 462 (1987)..... 50, 59, 61, 62

*City of Rome v. United States*, 446 U.S. 156 (1980)..... 52

*Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1351-52 (11th Cir. 2009) ..... 11

*Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008) ..... 4, 31, 57

*Gaston County v. United States*, 395 U.S. 285 (1969) ..... 51

*Georgia v. United States*, 411 U.S. 526 (1973) ..... 50

*Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012) (en banc) ..... 30

*Guinn v. United States*, 238 U.S. 347 (1915)..... 60

*Holder v. Hall*, 512 U.S. 874 (1994)..... 50

*Hunt v. Cromartie*, 526 U.S. 541 (1999) ..... 60

*Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775 (S.D. Ind. 2006), *aff’d sub nom.*, *Crawford v. Marion County Elec. Bd.*, 553 U.S. 181 (2008)..... 57

*Jewish War Veterans of the USA, Inc. v. Gates*, 506 F. Supp. 30 (D.D.C. 2007) ..... 63

*Johnson v. California*, 543 U.S. 499 (2005)..... 62

*Kansas v. Hendricks*, 521 U.S. 346 (1997)..... 62

*Lane v. Wilson*, 307 U.S. 268..... 54

*Lopez v. Monterey County*, 525 U.S. 266 (1999)..... 52

*LULAC v. Perry*, 548 U.S. 399 (2006) ..... 52, 54, 66

*Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456 (1981) ..... 62

*Morris v. Gressette*, 432 U.S. 491 (1977)..... 24

*Myers v. Anderson*, 238 U.S. 368 (1915)..... 59

*Nw. Austin Mun. Utility Dist. No. 1 v. Holder*, 557 U.S. 193 (2009) ..... 51, 63

*Perez v. Perry*, No. 5:11-cv-360 (W.D. Tex. Mar. 19, 2012) (Doc. 690)..... 66

*Perkins v. Matthews*, 400 U.S. 379 (1971) ..... 51, 53, 55

*Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471 (1997)..... passim

*Rice v. Cayetano*, 528 U.S. 495, (2000)..... 59

*Rogers v. Lodge*, 458 U.S. 613 (1982)..... 59, 66

*Shelby County v. Holder*, 679 F.3d 848 (D.C. Cir. 2012)..... 52, 63

*Smith v. Clarkton*, 682 F.2d 1055 (4th Cir. 1982) ..... 62

*Smith v. Salt River Project*, 109 F.3d 586 (9th Cir. 1997)..... 52

*South Carolina v. Katzenbach*, 383 U.S. 301 (1966)..... 51, 53, 54

*St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502 (1993) ..... 68

*Texas v. United States*, 831 F. Supp. 2d 244 (D.D.C. 2011) (three-judge court) ..... 54

*UAW v. NLRB*, 459 F.2d 1329 (D.C. Cir. 1972)..... 70

*United States v. Brown*, 561 F.3d 420 (5th Cir. 2009)..... 58

*United States v. Brown*, 561 F.3d 420, 433 (5th Cir. 2009)..... 58

*United States v. Texas*, No. 5:85-cv-2199 (W.D. Tex. Aug. 1, 1985), *aff'd mem.*, 474 U.S. 1078 (1986)..... 51

*Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252 (1977) ..... 60, 61, 63

*White v. Regester*, 412 U.S. 755 (1973)..... 59, 66

*Zadvydas v. Davis*, 533 U.S. 678 (2001) ..... 52

**Statutes**

42 U.S.C. § 1973c..... passim

42 U.S.C. § 1973gg-6 ..... 21, 23, 27

*Allen v. State Bd. of Elec.*, 393 U.S. 544 (1969)..... 53

Ga. Code Ann § 21-2-417.1 ..... 4

Ga. Code Ann. § 21-2-417 ..... 3

Ind. Code Ann. § 3-5-2-40.5..... 3

Tex. Elec. Code § 13.002..... 2

Tex. Elec. Code § 13.071 ..... 1

Tex. Elec. Code § 13.142..... 1, 53

Tex. Elec. Code § 13.142..... 1

Tex. Elec. Code § 13.144..... 1, 53

Tex. Elec. Code § 16.001 ..... 21, 27

Tex. Elec Code § 16.032..... 23

Tex. Elec. Code § 273.001 ..... 31

Tex. Elec. Code § 63.001 ..... 25

Tex. Elec. Code § 63.0101 ..... 1, 53

Tex. Elec. Code § 63.011 .....	2
Tex. Elec. Code § 64.012.....	25
Tex. Elec. Code § 65.054.....	2
Tex. Elec. Code § 65.05411 .....	2
Tex. Trans. Code § 521.121 .....	30
Tex. Trans. Code § 521A.001 .....	5

**Regulations**

28 C.F.R. § 51.52 .....	50
28 C.F.R. § 51.54 .....	50, 58
28 C.F.R. § 51.57 .....	61
37 Tex. Admin. Code § 15.24.....	30
Texas Senate Rule 16.07.....	37
Texas Senate Rule 5.11.....	37

**Legislative History**

H.R. Rep. No. 97-226 (1982).....	58
----------------------------------	----



**GLOSSARY**

**Terms and Abbreviations**

2009 Rules	Texas State Senate Rules (2009)
2011 Rules	Texas State Senate Rules (2011)
AGFF	Attorney General's Proposed Finding of Fact
CCES	Cooperative Congressional Election Study
CL	Proposed Conclusion of Law
COTW	Texas Senate Committee of the Whole
CVAP	Citizen Voting Age Population
DA	District Attorney
DL	Driver License
DOJ	U.S. Department of Justice
DPS	Texas Department of Public Safety
ED	Elections Division, Texas Secretary of State
EIC	Election identification certificate
FF	The State of Texas's Proposed Finding of Fact
FN	First Name
HEC	Texas House Elections Committee
HB 218	House Bill 218 (2007)
HB 1706	House Bill 1706 (2005)
HJ	House Journal

ID	Identification
JA	Joint Appendix
LTC	License to carry a concealed handgun
LG	Lieutenant Governor
LN	Last Name
MALC	Mexican American Legislative Caucus of the Texas Legislature
NVRA	National Voter Registration Act of 1993
PB	Provisional Ballot
PVID	Photographic Voter Identification
RJN	Attorney General's Request for Judicial Notice (ECF 219)
State Affairs	Texas Senate State Affairs Committee
SB 14	Senate Bill 14 (2011)
SB 362	Senate Bill 362 (2009)
SB 363	Senate Bill 363 (2011)
SCVIVF	House Select Committee on Voter Identification and Voter Fraud
SSA	U.S. Social Security Administration
SSN9	Nine-digit social security number
SSVR	Spanish Surname Voter Registration
SOS	Texas Secretary of State
TA	Texas Appendix
TDL/ID	Texas Driver License or Official State Identification Card

TEAM	Texas Election Administration Management System
TBVS	Texas Bureau of Vital Statistics
OAG	Texas Office of the Attorney General
VA	U.S. Department of Veterans Affairs
VAP	Voting Age Population
VR	Voter Registration
VRA	Voting Rights Act of 1965
VRNID	Voter Registration - No ID

**Witnesses**

Abshier	James Abshier, Manager of Record Insurance at TBVS
Aliseda	Rep. Jose Aliseda
Anchia	Rep. Rafael Anchia
Ansolabehere	Dr. Stephen Ansolabehere, Expert, Defendant Attorney General Eric H. Holder Jr.
Armbrister	Ken Armbrister, legislative director for Governor Perry
Beuck	Colby Beuck, Chief of Staff to Rep. Patricia Harless (Bill Sponsor)
Bledsoe	Gary Bledsoe, NAACP
Bonnen	Rep. Dennis Bonnen
Brunson	Blaine Brunson, Chief of Staff to Lieutenant Governor David Dewhurst
Clark	Imani Clark, Intervenor
Davio	Rebecca Davio, Assistant Director, Driver License Division, Texas Department of Public Safety

D. Davis	Denise Davis, former House Parliamentarian, former Chief of Staff to Speaker Joe Straus
K. Davis	Karina Davis, Parliamentarian, Texas State Senate
W. Davis	Sen. Wendy Davis
Dewhurst	Lieutenant Governor David Dewhurst
Duncan	Sen. Robert Duncan
Eiland	Rep. Craig Eiland
Ellis	Sen. Rodney Ellis
Fowler	Meredyth Fowler, Senior Policy Advisor in Office of Joe Straus
Fraser	Sen. Troy Fraser (Bill Sponsor)
Gonzales	Rep. Larry Gonzales
Guyette	Lee Guyette, IT staff, Texas Secretary of State
Harless	Rep. Patricia Harless (Bill Sponsor)
Hebert	Brian Hebert, former staff person, Lieutenant Governor David Dewhurst
Hinojosa	Sen. Juan Hinojosa
Ingram	Keith Ingram, Director of Elections Division
Kemp	Brian Kemp, Georgia Secretary of State
Kennie	Eric Kennie, Intervenor
Kousser	Dr. J. Morgan Kousser, Expert, Defedant Attorney General Eric H. Holder, Jr.
Lucio	Sen. Eddie Lucio
LWV	League of Women Voters of Texas (Defendant-Intervenor)

Ge. Martinez	Germaine Martinez
McCoy	Janice McCoy, Chief of Staff to Sen. Troy Fraser (Bill Sponsor)
McGeehan	Ann McGeehan, Former Director of the Elections Division, Texas Secretary of State
Milyo	Jeffrey Milyo, professor at University of Missouri
Mitchell	Major Forrest Mitchell, OAG
Mycoff	Jason Mycoff, associate professor at University of Delaware
Patrick	Rep. Daniel Patrick
Pickett	Rep. Joe Pickett
Peña	Rep. Aaron Peña
Rathgeber	Julia Rathgeber, Deputy Chief of Staff and Policy Director to Lieutenant Governor David Dewhurst
Riddle	Rep. Debbie Riddle
Rokita	Former Secretary of State of Indiana
N. Rodriguez	Nicole Rodriguez, Intervenor
V. Rodriguez	Victoria Rodriguez, Intervenor
Sager	Thomas Sager, Expert, Plaintiff State of Texas
Schofield	Rep. Mike Schofield
Sepehri	John Sepehri, General Counsel, Texas Secretary of State
Shaw	Darron Shaw, Expert, Plaintiff State of Texas
Shorter	Coby Shorter, Deputy Secretary of State
Smith	Rep. Todd Smith

Straus	Rep. Joe Straus, Speaker of the Texas House of Representatives
Tailor	Wesley Tailor, Director, Elections Division, Georgia Secretary of State
TLBC	Texas Legislative Black Caucus
Uresti	Sen. Carlos Uresti
Van de Putte	Sen. Leticia Van de Putte
Veasey	Rep. Marc Veasey (Defendant-Intervenor)
West	Sen. Royce West
Whelan	Mark Whelan, Technical Lead DPS
Whitmire	Sen. John Whitmire
T. Williams	Sen. Tommy Williams

**PRELIMINARY STATEMENT**

Texas cannot meet its statutory burden to establish that its voter photo identification law (“SB 14”) neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority. Rather, the record before the Court proves that SB 14 violates both the purpose prong and the effect prong of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Accordingly, the Court should deny Texas’s claim for declaratory relief.

**RESPONSE TO TEXAS’S PROPOSED FINDINGS OF FACT**

**I. THE BENCHMARK ID REQUIREMENTS PLACE A MINIMAL BURDEN ON VOTERS.**

**1-5.** FF 1-5 are accurate but incomplete. *See infra* ¶¶ 1A-1C.

**1A.** If a VR application is approved, the county registrar mails the applicant a voter registration certificate. Tex. Elec. Code §§ 13.142, 13.144. County election officials determine whether the applicant is eligible to register, including whether the applicant has affirmed U.S. citizenship under penalty of perjury. *Id.* § 13.071.

**1B.** Voters who appear in person at the polls may present their VR certificate as proof of identity. Alternatively, a voter may present an ID, including a current or expired DL or ID issued by any state, a utility bill, bank statement, paycheck, or other government document that indicates name and address. Tex. Elec. Code § 63.0101 (2010).

**1C.** There is no fee for a VR application or certificate. Tex. Elec. Code § 13.142(a).

**1D.** Under current law, if a voter does not have required identification, the voter must vote by PB, which will be counted if the voter is entitled to vote at the precinct where the

ballot is cast. *Id.* § 63.011(a); Tex. Elec. Code § 65.054(b) (2010).

**II. SB 14 IMPOSES ADDITIONAL BURDENS ON VOTERS SEEKING TO CAST A BALLOT IN PERSON.**

**6-7.** FF 6-7 are accurate but incomplete. An EIC may be obtained from DPS free of charge, but it is not costless to obtain an EIC. *See infra* ¶¶ 18-22B.

**8.** FF 8 is accurate but incomplete. *Infra* ¶ 8A.

**8A.** SB 14's exemption of voters with disabilities from PVID requirements is limited.

Voters with disabilities must possess documentation of a finding by the SSA or VA, must re-register, and must provide a supplemental form to request an exemption from PVID requirements. Ex. 424 at 1; JA 1429; Tex. Elec. Code § 13.002.

**9-10.** FF 9-10 are accurate but incomplete. *Infra* ¶ 9A.

**9A.** Under SB 14, if a voter must vote by PB because she does not present required PVID, the ballot will not be counted unless the voter appears in person at the voter registrar's office during business hours within 6 days of the election and presents allowable PVID or affirms a religious objection to being photographed or loss of ID because of a natural disaster within the prior 45 days. Ex. 424 at 4-6, 11-13; Tex. Elec. Code §§ 65.054(b)(2)(A), 65.05411.

**11.** FF 11 is accurate but irrelevant.

**12.** FF 12 is inaccurate, misleading, and incomplete. Ex. 424; *infra* ¶ 12A.

**12A.** SB 14 constricts the types of ID allowed for in-person voting. Current law permits 8 categories of photo and non-photo ID; SB 14 permits 4 narrower categories of photo ID. Ex. 424 SB 14 changes current law to prohibit the use of an out-of-state DL or ID,



additional forms of PVID, certain U.S. citizenship certificates, birth certificates, utility bills, bank statements, government documents and official mail. *Id.* at 9-10. SB 14 also imposes restrictions on counting of PBs. *Id.* 424 at 11-12.

**13.** FF 13 is unsupported, inaccurate, and misleading. *Infra* ¶¶ 13A-13C.

**13A.** SB 14 permits fewer forms of ID for in-person voting than Georgia's PVID law.

*Compare* Ex. 424 at 9-10 with Ga. Code Ann. § 21-2-417(a); *see also, e.g.*, Williams

Dep. 198:5-13; Hebert Dep. 310:1-310:25; Smith Dep. 146:12-147:7. Unlike SB 14,

Georgia permits use of photo ID issued by any state or federal entity authorized to issue

ID, as well as a government-issued photo ID and a tribal ID. Ga. Code Ann. § 21-2-

417(a). Also unlike SB 14, Georgia also does not bar the use of expired DLs. *Id.*

**13B.** SB 14 permits fewer types of PVID for in-person voting than Indiana's PVID law.

*Compare* Ex. 424 at 9-10 with Ind. Code Ann. § 3-5-2-40.5(a); *see also, e.g.*, Williams

Dep. 196:1-11; Fowler Dep. 134:10-135:22; Hebert Dep. 311:4-311:22; Smith Dep.

146:12-147:7. Indiana permits the use of any federal or Indiana ID with an individual's

name, photograph, and an expiration date after the most recent general election. Ind.

Code Ann. § 3-5-2-40.5(a).

**13C.** Indiana's PVID law contains an indigence exception for the counting of a PB and

provides a 10-day period to validate a PB, FF 16, whereas SB 14 contains no indigence

exception and allows only a 6-day cure period. Ex. 424 at 12-13.

**14.** FF 14 is inaccurate, incomplete and misleading. *Infra* ¶ 14A-14C.

**14A.** Georgia permits use of ID issued by other states. Ga. Code Ann. § 21-2-417(a)(2).

**14B.** Unlike SB 14, Georgia’s free PVID is nearly costless. In Georgia, a free PVID can be obtained in every county. Ga. Code Ann § 21-2-417.1(a). Moreover, the documents necessary to obtain the free PVID include those that are costless. *Id.* § 21-2-417.1(e); Ex. 553 at 5-6. The “free” ID under SB 14 is not costless. *Infra* ¶¶ 19A-19P.

**14C.** Georgia provides each county with equipment, forms, supplies, and training to produce free PVID. Ga. Code Ann. § 21-2-417.1(g). SB 14 does not provide similar resources and does not provide a free PVID in every county. JA 1443-1445; *infra* ¶ 19G; *see also* 2142-43 (rejecting amendment to reimburse county costs).

**15.** FF 15 is inaccurate. The Attorney General precleared Georgia’s PVID requirement.

**16.** FF 16 is accurate.

**17.** FF 17 is incomplete and misleading. *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008), addressed a specific, facial challenge under the Equal Protection Clause of the Fourteenth Amendment. The fact that a state must comply with Section 5 does not mean that it cannot implement a voter ID law. *Supra* ¶ 15. Texas’s current voter identification law was also subject to preclearance. Ex 568.

**III. SB 14 WILL HAVE A RETROGRESSIVE EFFECT ON MINORITY VOTERS.**

**A. SB 14 Imposes a Substantial Burden on Voters.**

**18.** FF is inaccurate, incomplete, misleading, and a legal conclusion. *Infra* ¶¶ 18A-18B.

**18A.** The Carter-Baker Report noted that PVID requirements “may present a barrier to voting, particularly by traditionally marginalized groups.” JA 4640. The Commission also worried that states might not have enough locations issuing IDs. JA 4629-30.

**18B.** The limited forms of PVID under SB 14 are a mere subset of the photo ID used to establish identity. *See, e.g.*, Harless Dep. I 200:5-25; Aliseda Dep. 91:4-95:9.

**19.** FF 19 is incorrect, unsupported, and misleading. *Infra* ¶¶ 19A-19P.

**19A.**<sup>1</sup> SB 14 does not guarantee that voters may obtain an EIC without cost. Bonnen Dep. 239:16-241:14, Smith Dep. 178:25-179:12. Voters must present identification to obtain an EIC. Tex. Trans. Code § 521A.001(f). The least expensive option for a Texas-born voter without required identification is to purchase a \$22 birth certificate from TDVS. Ex. 314 at 2; Abshier Dep. 28:3-30:6; *see also* JA 2100 (rejecting amendment to bar fees for underlying documents).

**19B.** Specifically, DPS regulations require an applicant for an EIC to show one piece of primary ID, two pieces of secondary ID, or one piece of secondary ID plus two pieces of supporting ID. Ex. 262 at 7. In addition, the applicant must be fingerprinted and include information about the county, state, and country of birth as well as a father's last name and mother's maiden name. *Id.* at 8. The secondary ID required to obtain an EIC are an original or certified birth certificate; an original or certified certification of birth abroad; an original or certified court order indicating an official change of name or gender; or U.S. citizenship or naturalization papers. *Id.* at 6.

**19C.** DPS declined to expand the list of secondary ID so that "persons who cannot afford to secure certified documents for whom no birth certificate is available" may still obtain an EIC. Ex. 262 at 3. DPS stated that it would not expand the list of secondary

---

<sup>1</sup> This series of proposed findings is interstitial and is not intended to respond to FF 19.

documents to include those that “are not issued by a verifiable governmental source.” *Id.* However DPS will not routinely verify birth certificates and acknowledges that non-governmental documents are verifiable. Davio Dep. 60:16-63:14.

**19D.** The TBVS charges \$22 to provide a certified copy of a birth certificate to an individual who was born in Texas. Texas county registrars may charge \$23 to provide a certified copy of a birth certificate. Abshier Dep. 24:25-25:5.

**19E.** Processing mail applications for birth certificates takes 6 to 8 weeks unless a fee is paid for expedited service. Ashier Dep. 40:17-42:9. To obtain a birth certificate in person, one must appear at the Austin TBVS office between 8 am and 5 pm or at a local registrar’s office, each of which has varying hours of operation. *Id.* 45:9-50:10; 51:2-19.

**19F.** Manual searches are necessary for older records and when a birth certificate is not filed within a year of birth. Abshier Dep. 36:14-37:20. A person applying for a birth certificate in person may not be able to obtain his birth certificate the same day, if a manual search is required. Abshier Dep. 35:21-36:4.

**19G.** A first-time EIC applicant must travel to a DL office to apply. Davio Dep. 85:11-86:24. Currently, 81 Texas counties have no DL office, and 34 additional counties have DL offices open two days per week or less. Ex. 361.

**19H.** Some voters must travel fifty to sixty miles one way to reach a DL office. Davio Dep. 151:1-152:15; Ex. 283 at 3. No DL offices are located inside the Interstate 610 Loop in the City of Houston. JA 152.

**19I.** Some Texans who may wish to obtain an EIC may lack access to a vehicle. *See*

RJN ¶ 13.

**19J.** DL offices have varying hours, with most open weekdays between 8 am and 5 pm. None have weekend hours or hours after 6 pm. Ex. 361; Davio Dep. 146:7-148:6.

**19K.** Wait times in DL offices in metropolitan areas can be as long as three hours during busy months of the year. Ex. 10; Straus Dep. 18:8-19:17. DPS acknowledges that “the typical driver license customer complaint is about uncomfortable, long wait times before they get to the counter to be helped.” Ex. 226 at 2.

**19L.** DPS admits a “service gap” caused by additional mandates placed on the DL division combined with an increasing population. Ex. 225 at 8; Ex. 226 at 2. The EIC program is an additional mandate on the DL division. Davio Dep. 175:17-176:19.

**19M.** SB 14 does not require mandate paid leave to obtain an EIC. JA 1429-42.

**19N.** SB 14 does not provide for reimbursement of expenses incurred to acquire an EIC. JA 1429-42; *see also* JA 2139-42 (rejecting amendment to add reimbursement program).

**19O.** DPS requires that the name on the documentation be used on an EIC and that English versions of foreign names not be used, regardless of the name used on the EIC registration application or voter registration. Ex. 262 at 8; Davio Dep. 78:2-80:11.

**19P.** DPS requires that three names be used on an EIC unless an applicant does not have three full names, even though it is not unusual for married Hispanic women to have four names. Davio Dep. 81:6-82:15.

**20.** FF 20 is vague, unsupported, incomplete, and misleading. *Infra* ¶¶ 20A-20B.

**20A.** DPS has conceded that S.B. 14 “could affect wait times at DL offices, particularly

surrounding major voting times like a Presidential election.” Ex. 29 at 1.

**20B.** DPS will not provide satellite locations, such as temporary or mobile outreach programs, to provide Texans with additional opportunities to apply for an EIC. Ex. 10 at 3; Davio Dep. 115:22-117:6, 117:11-119:6, 119:22-120:6, 153:13-20.

**21.** FF 21 is incomplete and misleading. *Supra* ¶¶ 19G-19N.

**22.** FF 22 is incomplete, unsupported, and misleading. *Infra* ¶¶ 22A-22B. The State has submitted no evidence concerning when the proposed megacenters will open.

**22A.** Even though there is already a megacenter in Houston, the average wait time at two DL offices in Houston was over an hour, not including time prior to entering the relevant queue. Ex. 266 at 1; Davio Dep. 162:25-163:11; 165:9-167:11; 171:5-23.

**22B.** DPS acknowledges that its new megacenters will do little to relieve long wait times and crowded facilities in “outlying areas.” Ex. 225 at 2; Davio Dep. 182:15-184:7.

**23.** FF 23 is unsupported, inaccurate, and irrelevant in part. *Supra* ¶¶ 19A-19P. There is no burden on the Attorney General to produce lay witnesses who are affected by SB14.

**23A.** Witnesses in this case lack PVID required by SB 14 and are not eligible to vote by mail. Clark Dep. 8:20-21, 13:16-14:20; V. Rodriguez Dep. 8:25-9:3, 10:15-10:25; N. Rodriguez Dep. 8:25-9:3, 11:8-12:2; Kennie Dep. 23:6-24:16; 27:14-27:21.

**23B.** The State has conceded that “167,724 entries in Ansolabehere’s data set had no past or present state identification, were under 65, and were not on suspense status. The SSVR of this population was 31.6%, higher than the overall SSVR of the voter registration database of 22.5%.” FF 69.

**23C.** DPS allows a DL applicant to use both photo and non-photo documentation to verify identity. Davio Dep. 221-3-22; Ex. 262 at 6.

**23D.** TBVS views non-photo ID as sufficient to verify a birth certificate applicant's identity. Abshier Dep. 30:7- 31:9, 32:1-32:24.

**23E.** DPS "routinely" issues IDs without photos. Ex. 5.

**23F.** Voter registrants must affirm citizenship under penalty of perjury. Ex. 186 at 2.

**B. Social Science Supports Estimates that SB 14 Will Suppress Minority Turnout.**

**24.** FF 24 is inaccurate, incomplete, and misleading. *Infra* ¶¶ 24A-24E, 26-29.

**24A.** Social science research estimates that a strict PVID requirement depresses turnout by up to 10%, with a modal estimate among studies of 2-3%. Ex. 545 ¶¶ 66, 69.

**24B.** Social science research has found no reduction in voter fraud or increase in voter confidence following implementation of a PVID requirement. Ex. 545 ¶¶ 28, 70-71.

**24C.** Existing research does not take into account legal and socioeconomic differences between PVID implementation in Texas and in other states. Ex. 545 ¶¶ 55-56, 68.

**24D.** With that caveat, applying national data to Texas suggests that implementation of SB 14 would result in up to a 5% reduction in voter turnout. Ex. 545 ¶¶ 57-65.

**24E.** Black and Hispanic voters in Texas are more likely than Anglos to have existing voter ID laws applied strictly to them. Ex. 545 ¶ 63; TA 935.

**25.** FF 25 is incomplete and misleading. *Supra* ¶¶ 13A-13C; *infra* ¶¶ 30-33.

**26.** FF 26 is incomplete and misleading. Mycoff et al. found that PVID requirements depress individual turnout but did not find statistical significance, which may be

explained by the small group of respondents who had experienced a PVID requirement prior to the study. Ex. 549. Milyo's self-published 2007 study is an outlier within the literature and conflates correlation with causation by failing to account for other differences between 2002 and 2006 elections. Ex. 545 ¶¶ 66-67; Ex 550 at 4.

**27.** FF 27 is incomplete, misleading, and inaccurate. The 2006 and 2008 CCES included one and two states respectively with strict PVID requirements. Projections from the CCES assume similarities between Texas and other states and fail to take into account racial differences in requests for photo ID, and when completed nevertheless suggest a 1-5% reduction in turnout. *Supra* ¶ 24D. Analysis of the actual effect of SB 14 using Texas law and Texas records is a far more accurate methodology. Ex. 545 ¶¶ 53-65. The assertion that all voters can obtain PVID is entirely unsupported.

**28.** FF 28 is incomplete and misleading. It quotes a working paper for a proposition that was adjusted during the referee process, and the published article estimated that PVID requirements reduce turnout by 10%. Ex. 551 at 26-30.

**29.** FF 29 is incomplete and misleading. Black and Hispanic voters in Texas reported higher rates of being asked for ID than Anglo voters did; voters in Indiana and Georgia do not report disparate treatment. Ex. 545 ¶ 63; TA 936. In addition, despite lacking a PVID requirement, Texans reported themselves to be less likely to be allowed to vote after being asked for ID than voters from Georgia or Indiana. TA 934. 2008 CCES data for Texas also could not address strict PVID requirements prior to passage of SB 14.

**30.** FF30 is incomplete and misleading. Tailor testified that in the 254 PBs were



discarded in the 2008 presidential primary for failure to provide a PVID, and 873 were discarded in the general election. He did not testify to the number of voters who declined to cast a PB or were deterred from going to the polls. JA 6105-06. Testimony concerning turnout was limited to the landmark 2008 presidential election and did not address minority voters, JA 6102-03, 6011, and Taylor's testimony that no individual had come forward as burdened by the Georgia PVID law was false. *See Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1351-52 (11th Cir. 2009).

**31.** FF 31 is incomplete and irrelevant. Kemp testified that when he ran for state senate, many people in his district opposed a PVID requirement. JA 1557-58.

**32.** FF 32 is incomplete and misleading. The legislature also heard testimony regarding studies estimating that PVID requirements suppress turnout. JA 4214, 4054.

**33.** FF 33 is inaccurate and misleading. Rokita was the Secretary of State of Indiana, not a representative of the Brennan Center. JA 5715. Moreover, Rokita testified only that he was not aware of a study concluding that a change from a non-photo requirement to a PVID requirement would harm turnout or minority voters. JA 5757-58.

**C. Actual Evidence from the State of Texas Establishes a Substantial Racial Disparity in the Possession of Identification Required by SB 14.**

**Hispanic and Black Voters Are Nearly Twice as Likely as Anglo Voters to Lack ID Needed to Cast a Ballot.**

**33A.**<sup>2</sup> As of April 30, 2012, there were 13,065,504 non-duplicate voters in Texas. Ex. 544 ¶ 5, 19. The best estimate is that 7,835,055 (61.5%) are Anglo, 1,472,669 (11.6%)

---

<sup>2</sup> This series of proposed findings is interstitial and is not intended to respond to FF 33.

are black, and 3,003,059 (23.6%) are Hispanic. Ex. 544 ¶ 35 & tbl.1; *see also* Ex. 544 ¶ 19 n.8. 2,909,014 (22.25%) have Spanish surnames. Ex. 544 ¶ 33.

**33B.** 1,893,143 registered voters cannot be matched to a DL, ID, or LTC record. Ex. 544 ¶ 26. 508,983 (27.38%) have Spanish surnames. Ex. 544 ¶ 34. The best estimate is that 850,424 (49.0%) are Anglo, 304,931 (17.6%) are black, and 525,503 (30.3%) are Hispanic. Ex. 544 tbl.1.

**33C.** In other words, 20.7% of black voters and 17.5% of Hispanic voters cannot be matched, while only 10.9% of Anglo voters cannot be matched. In addition, 17.5% of voters with Spanish surnames cannot be matched, whereas 13.6% of voters with non-Spanish surnames cannot be matched. Ex. 544 ¶¶ 38-39, 48, 50, tbl.2.

**33D.** Even treating ambiguous status as a match leaves 1,501,977 voters who cannot be matched to a valid DL, ID, or LTC record. Ex. 544 ¶ 27. Among these voters, the best estimate is that 756,372 are Anglo (51.4%), 235,249 are black (16.0%), and 430,049 are Hispanic (29.2%). Ex. 544 ¶ 35 & tbl.1.

**33E.** In this limited universe, 16.0% of black voters and 14.3% of Hispanic voters cannot be matched, and 9.7% of Anglos cannot be matched. Ex. 544 tbl.2.

**33F.** 535,736 (35.7%) of these voters actually cast a ballot in 2008, and 260,141 (17.3%) cast a ballot in 2010. Ex. 544 ¶¶ 32, 42. They represent 7.2% of the ballots cast in 2008 and 5.5% of ballots cast in 2010. Ex. 544 tbl.3.

**33G.** Each of these voters successfully cast a ballot in one of the last two federal elections and is likely to vote again absent new impediments. Ex. 544 ¶¶ 47, 49.

**33H.** Among voters who cast a ballot in 2008, 92,319 black voters (10.4%) and 120,152 Hispanic voters (8.8%) could not be matched, along with 306,369 Anglo voters (6.0%). Similarly, among voters who cast a ballot in 2010, 38,339 black voters (7.6%) and 53,132 Hispanic voters (7.4%) could not be matched, along with 162,005 Anglo voters (4.6%). Ex. 544 ¶¶ 42-47 & tbl.3.

**33I.** These racial disparities are uniformly statistically significant to a high degree of certainty. Ex. 544 ¶¶ 16, 34-36, 38-41, 46, 50.

**33J.** Individuals who cannot be matched to a TDL/ID or LTC record are unlikely to have the state-issued ID needed to vote pursuant to SB 14. Ex. 544 ¶ 31, 48.

**33K.** Dr. Stephen Ansolabehere conducted a credible and accurate match between Texas databases using the best available data. Ex. 544 ¶¶ 19-29; Ex. 545 ¶¶ 10-12.

**33L.** Analysis of the complete data concerning voters in Texas and ID issued by DPS is a superior method of determining possession of PVID required by SB 14, in comparison to telephone surveys, particularly a survey with a low response rate. Ex. 545 ¶¶ 46-52.

**33M.** Spanish surname is a useful proxy for Hispanicity. Ex. 544 ¶¶ 8, 29.

**33N.** Estimating race using Catalist LLC and the CPM Technologies Ethnicities Prediction Algorithm is an accurate and credible methodology. Ex. 544 ¶¶ 9-14.

**33O.** Texas does not maintain complete race data in its VR or TDL/ID databases. *See* JA 815-16; *Ge. Martinez* Dep. 23:6-23:21, 29:17-29.

**33P.** Anglo voters are also more likely to have a disability – and therefore potentially exempt from the requirements of SB 14 – than Hispanic voters and are statistically no

less likely to have a disability than black voters. RJN ¶¶ 17; *see also supra* ¶ 8A.

**33Q.** Anglos in Texas are more likely than blacks or Hispanics to be veterans. RJN ¶ 16.

**Dr. Sager’s Match Fails to Identify Hundreds of Thousands of Voters Lacking State Issued PVID Under SB 14.**

**34-39.** FF 34-39 are incomplete, inaccurate, and relevant only to the extent that Texas relies on its January 2012 match in this case. Texas compares DPS data and voter registration data every day when running a “live-check” on new registrants. Guyette Dep. 88:8-25. In addition, the AG did not instruct Texas how to conduct a database match. TA 1355-58. The match did include the suffix field, FF 37; thus inconsistent use could not result in false negatives. In addition, the State has not produced a match including DPS demographic data. While the list inevitably contains false no-matches (false negatives), that number is outweighed by false matches (false positives). *Infra* ¶¶ 34A-34D. Dr. Shaw’s survey does not provide a more accurate assessment of the effect of SB 14. *Infra* ¶¶ 41-55.

**34A.** The State’s match proceeded in two steps, both of which incorrectly “matched” voters actually lacking a current, valid Texas DL or ID required by SB 14, resulting in an artificially low figure. First, the State matched voter registration to the complete DL database, which includes expired, revoked, and suspended identification. TA 855; Ex. 545 ¶¶ 13-15, 22, 31, 36 & tbl.1. Texas never removes individuals from its DL database (other than law enforcement aliases). Whelan Dep. 32:20-33:3.

**34B.** Second, the list was filtered for records with any entry for a TDL/ID number in the VR database, regardless of whether this number was correct at the time the voter

registered or has become expired, revoked, or suspended. TA 855; *cf.* Ex. 560 at 3-4.

**34C.** In sum, the May match list omits 1,111,872 false matches (false positive). 417,391 of these are individuals who hold expired licenses. Ex. 545 ¶¶ 38-39, 42 & tbl.1.

**34D.** To a lesser degree, the State's match procedure failed to match individuals who possess a valid Texas DL or ID, by not performing a SSN9 match. Ex. 545 ¶ 37. The State also failed to include the LTC database in its match procedures. Ex. 545 ¶ 18. This yielded a total of 193,263 false negatives in the May match. Ex. 545 ¶ 37 & tbl.1.

**40.** FF 40 is incomplete. After assuming ambiguities in favor of a match, Dr.

Ansolabehere concluded that 1,501,977 voters could not be matched. Ex. 544 ¶ 27.

**3. Dr. Shaw's Surveys Based on the January Match Are Critically Flawed.**

**41.** FF 41 is inaccurate and misleading. The State's January no-match list cannot be accurately described as a list of voters who lack qualifying identification. *Supra* ¶¶ 34A-34D; Ex. 545 ¶ 47. Dr. Shaw's surveys did not properly conclude that SB 14 will not have a disparate impact on Hispanic or black voters. *Infra* ¶¶ 41A-65.

**41A.** The surveys conducted concerning the State's January match are fatally flawed by the inclusion of over 100,000 false negatives, Ex. 545 ¶ 24, 47; TA 858-861, and response rates of only 2.5% (1102 of 44,584 attempts) and 2.2% (600 of 27,547 attempts). TA 967-68. Ex. 545 ¶¶ 49, 52. There is no evidence that those individuals who completed the survey are representative of the population surveyed. Ex. 545 ¶ 52.

**41B.** These surveys compare a single minority population against a general population sample that includes the selfsame minority group. TA 936-937; Ex. 545 ¶ 50. This

comparison is not informative of disparate impact. Ex. 545 ¶ 51.

**41C.** The analysis of these surveys selectively reveals subpopulation data in a manner that suggests cherry-picking and diminishes the credibility of the report. TA 936-941.

**41D.** Voters over the age of 65 are not exempt from the provisions of SB 14. JA 1429. The Legislature debated and rejected age-based exemptions. JA 2091-92, 2271-92.

**41E.** Asking if a voter has been found by the SSA or VA to be disabled does not establish an exemption. JA 964; *Supra* ¶ 8A.

**42.** FF 42 is inaccurate. The Attorney General did not instruct Texas how to conduct its match. TA 1355-58.

**43.** FF 43 is incomplete and misleading. Dr. Shaw failed to explain whether and how he appended phone numbers to all members of his sample populations. Ex. 545 ¶ 52.

**44.** FF 44 is inaccurate and misleading. Respondents were asked questions about voter fraud and PVID requirements before questions concerning document possession. The survey also primed respondents by addressing fraud before disenfranchisement. In addition, the survey asked voters only for their recollection of whether they possess valid PVID, rather than asking them to inspect their ID. TA 962-963.

**45.** FF 45 is incomplete and misleading. Weighting of the general population had an enormous effect on general sample, driving up the minority share and driving down the percentage of individuals possessing valid ID, suggesting a lower-than-average rate of ID possession among minorities in the “general” sample. No effort is made to address potential sample bias within the weighted populations. Ex. 545 ¶ 52; TA 938-939.

**46-47.** FF 46-47 are incomplete and misleading. The poll did not determine the rate of PVID possession within a sample of the State's January match. Rather, it determined the rate of self-reported possession among the 2.5% of respondents who completed the surveys. TA 967. There is no indication that this response rate did not introduce bias. Ex. 545 ¶ 52. SB 14 contains no age exemption. *Supra* ¶ 41D.

**48.** FF 48 is incomplete and misleading. There are only 210 Hispanic respondents in the sample, and there is no evidence of the number of Spanish surnamed respondents, what the Spanish surname response rate was, or the margin of error for this subsample. The use of weighting to double the effective number of Hispanic voters in the sample suggests a below-average response rate for Hispanic respondents. TA 938.

**49.** FF 49 is incomplete and misleading. The poll did not determine the rate of PVID possession within a sample of the State's January match. Rather, it determined the rate of self-reported possession among the 2.2% of respondents who completed the survey. TA 968. There is no evidence that this response rate did not introduce bias. Ex. 545 ¶ 52.

**50.** FF 50 is incomplete and misleading. The data address few respondents drawn from a flawed sample, not ID possession among Spanish surnamed individuals. *Supra* ¶¶ 41A, 49. There is no evidence concerning the Anglo response rate or the margin of error for this subsample. Any difference in passport possession is within the +/- 4% margin of error of the Spanish surnamed sample. TA 936.

**51.** FF 51 is misleading. SB 14 contains no age exemption, and merely having a disability does not exempt a voter from SB 14. *Supra* ¶¶ 8A, 41D-41E.

**51A.** Black respondents to the December match survey claimed to lack any form of ID required by SB 14 at a rate far greater than the general sample. TA 938, 941.

**52-53.** FF 52-53 are misleading. Every individual on the January no-match list is a registered voter. TA 936. Again, SB 14 contains no age exemption, and merely having a disability does not exempt a voter from SB 14. *Supra* ¶¶ 8A, 41D-41E.

**54-55.** FF 54-55 are inaccurate and misleading. Voters over the age of 65 will not be able to vote at the polls, and disabled voters would be required to re-register and present proof of disability that the respondents may not possess. *Supra* ¶¶ 8A, 41D-41E. Rather than relying on responses to the survey question concerning voting behavior, the State's selective reliance on its databases undermines the survey's credibility. TA 961.

**Dr. Shaw's Surveys Based on Dr. Ansolabehere's Study Are Also Flawed.**

**55A.** Dr. Shaw also claims to have conducted a survey based on the list of individuals who could not be matched to a valid TDL/ID or LTC record. He used as his sample the full 1.9 million person list, which includes individuals of ambiguous status as 20.6% of the sample. TA 972-973; *supra* ¶¶ 33B, 33D. A portion of this population likely constitutes false negatives and will possess valid ID. Ex. 544 ¶ 27.

**55B.** Dr. Shaw's second study suffers from many of the same flaws as his first. The response rate of his general sample was only 2.0% (1000 of 47071 attempts), and his minority samples fared only slightly better at 2.5% (600 of 24,121) and 2.1% (600 of 28,201). TA 983-985. The Hispanic sample rejected nearly as many respondents on account of a "language barrier" as it accepted as complete surveys (455 v. 600). TA 985.



Dr. Shaw makes no effort to explain or account for potential sample bias.

**55C.** Dr. Shaw made no attempt to adjust the weighting of the response to his second study, despite noting that the response to his first study was not reflective of the population at issue and receiving a similar response rate. JA 937-938.

**55D.** The study again compares minority populations against a sample of the general population that includes the minority groups. JA 975. The study does break down self-reported racial subgroups, but it does not provide margins of error. JA 974.

**55E.** Anglo respondents in the second Shaw study claim to have valid TDL/ID at a greater rate than Hispanic or black voters claim to hold a valid TDL/ID. FF 60. There are no Anglo figures for LTC possession, but 10% of the complete sample claimed to hold a valid LTC, whereas only 4% of Hispanics did. TA 975.

**55F.** Dr. Shaw's claim that the proximity of the Hispanic community to the border explains broad passport possession is not based on method or research. TA 975-976.

**55G.** Potential sample bias, individual ignorance of expired identification, and small sample sizes relative to databases establish that a survey is an ineffective instrument to determine whether individuals possess ID needed to vote in person under SB 14.

**56.** FF 56 is inaccurate and misleading. *Infra* ¶¶ 57-65. Dr. Ansolabehere established the set of voters who lack state-issued ID that would allow them to cast a ballot in person under SB 14 according to the State's own data. He did not analyze risk. Ex. 544.

**57.** FF 57 is incomplete and misleading. Dr. Shaw failed to explain whether and how he appended phone numbers to all members of his sample populations. TA 973.

**58-59.** FF 58-59 are incomplete and misleading. The Hispanic responses in Dr. Shaw's survey hewed more closely to the Catalist estimate, and Dr. Shaw does not reveal subpopulations in his general survey. TA 973. The 2.5% response rate in Dr. Shaw's black sample (600 out of 24,121 calls) may skew the response or may correlates with narrow weaknesses in the Ethnicities Prediction Algorithm. TA 984. FF 59 also estimates false positives without considering false negatives. TA 973-974.

**60-61.** FF 60-61 are incomplete and misleading because they fail to account for extraordinarily low survey response rates, respondents' false beliefs or responses, sample bias, and the failure to perform or disclose weighted results. *Supra* ¶¶ 55B-55C.

**62-63.** FF 62-63 are inaccurate and misleading because there is no age exemption to SB 14 and because the disability exemption requires a voter to re-register. *Supra* ¶¶ 41D-41E. They also compound the noted flaws in the survey results. *Supra* ¶¶ 55A-61.

**64.** FF 64 is misleading. The survey failed to notify voters of the cost of documents needed to obtain an EIC and misleadingly describes the EIC as free. TA 980; *supra* ¶¶ 19A-19N. It also reflects the methodological flaws noted above. *Supra* ¶¶ 55A-61.

**65.** FF 65 is incomplete, misleading, and inaccurate. *Supra* ¶¶ 55A-64.

**Data-Matching Is a Superior Method to Identify the Effect of SB 14 on Voters in Texas.**

**65A.** Dr. Ansolabehere's research project was to find the number of registered voters in Texas who lack state-issued identification that could be used as PVID to cast a ballot if SB 14 were implemented. This is an accurate means to assess the potential effect of SB 14 and whether SB 14 would have a disparate impact on minority voters. Ex. 544 at 1.

**65B.** Dr. Sager's critique misunderstands the nature of the inquiry by effecting a dubious purge on Texas's voter rolls. For example, there is no basis for his speculation that the holders of expired licenses may no longer be valid Texas voters; thus, he effectively purges voters simply on the basis of failing to renew a driver license. TA 888. Similarly, by claiming that holders of expired licenses could simply renew their licenses, Dr. Sager fails to remain within the existing data and the simulation of the effects of SB 14 if it had been in place on the date of the data extraction. TA 888-889. Moreover, not all DLs are eligible for online renewal, McGeehan Dep. 153:3-8, and internet access is not likely to be equally available across racial groups. RJN ¶¶ 9-15.

**65C.** There is no basis for the speculation that a substantial portion of the holders of expired DLs are over 65 years old or disabled or that some DL records with duplicate SSN9 may have different FN or LN fields, even though Dr. Sager had access to the DL database and could have determined as much. TA 888-889. Again, voters 65 or older are not exempt, and the disability exemption requires re-registration. *Supra* ¶¶ 8A, 41D-41E.

**65D.** An indication in the DL database that an individual is deceased establishes that the license does not belong to a valid voter. The fact that a voter remains in the Texas VR database indicates that the individual is a valid voter, as dead voters are removed as part of Texas's list-maintenance program. 42 U.S.C. § 1973gg-6; Tex. Elec. Code § 16.001. By contrast, no record is ever removed from the DL database. *Supra* ¶ 34A. The removal of records of deceased drivers from the DL database is an effective means to avoid false matches between a live voter and a deceased individual with the same name

and date of birth. Ex. 544 ¶¶ 20-21. Moreover, the State instructed the Attorney General that the reported deceased status is an indication that record does not denote “a valid DL or ID.” Ex. 570 at 3. In any case, records that Dr. Sager matched to dead voters constitute only 3% of the VRNID list, and there is no evidence that these records skew with regard to race. TA 886-887.

**65E.** An indication in the LTC database that a license-holder is a noncitizen is a proper basis to omit the record, for similar reasons. Dr. Sager also failed to provide evidence of matches he could perform between the VRNID list and these LTC records. TA 890.

**65F.** Even after manipulating the VRNID list, Dr. Sager found that the SSVR of his non-matched population was 31.6%, which is 9.4% higher (a 42.0% increase in share) compared to 22.25% SSVR in the database as a whole. TA 896.

**65G.** Dr. Sager recognized this difference in SSVR “could be statistically significant” but declined to perform a significance test because of conjecture – rather than evidence – concerning data quality. Dr. Sager raised concerns that he could have substantiated with data to which he had unfettered access, but he simply chose not to do so. TA 896-901.

**65H.** Dr. Sager’s attempts to find matches to entries in the VRNID list constitutes a fishing expedition, rather than a matching methodology. His attempts to find additional matches do not take into account expired or surrendered licenses. TA 900-912.

**66-67.** FF 66-67 are inaccurate and misleading. Dr. Sager matched individuals on the Jan. 2012 list to TDL/ID database records, but he did not establish whether the TDL/ID was valid, unexpired, unrevoked, and unsuspended and therefore acceptable PVID under

SB 14. *Supra* ¶ 34A. Individuals over the age of 65 are not exempt from SB 14, *supra* ¶ 41D, and voters on the “suspense” or inactive list are by law eligible voters. 42 U.S.C. § 1973gg-6; Tex. Elec. Code § 16.032.

68. FF 68 is inaccurate. There is no evidence that the VRNID list contains non-citizens or voters who have moved out of state. *See also supra* ¶¶ 65B-65E.

69. FF 69 is inaccurate, incomplete, and misleading. The possession of “past . . . state identification” does not constitute PVID needed to vote under SB 14, which requires identification that has not expired by more than six months. JA 1429-42. Removing voters over 65 and those on the suspense list removes eligible voters who will be barred from voting in person by SB 14. *Supra* ¶¶ 41D-41E, 66-67. Dr. Sager specifically declined to perform a significance test on his match and opined only that there were “reasonable bases for doubting the meaningfulness of” the difference. TA 897. This conjecture cannot compensate for the failure to perform basic statistical tests. *Supra* ¶¶ 65G-65H. Nor did Dr. Sager opine or present evidence of bias against matching Hispanic voters. He disclaimed expertise by stating that “[t]o a lay mind, it is possible to think of reasons why Spanish surnames may be more prone to data entry error.” TA 900.

70. FF 70 is inaccurate and misleading. *Supra* ¶¶ 55A-69.

**D. SB 14 Will Abridge the Right of Minority Voters to Cast a Ballot and Will Disproportionately Impact Minority Voters.**

71. FF 71 is inaccurate and is an improper conclusion of law. *Supra* ¶¶ 18-70.

71A. SB 14 imposes a significant burden on voters who currently lack a form of PVID required to vote in person at a polling place. *Supra* ¶¶ 18-23.

**71B.** Hispanic and black voters are nearly twice as likely as Anglo voters to lack PVID needed to cast a ballot in person if SB 14 is implemented. Ex. 544 tbl.3; *supra* ¶¶ 33A-33O. This conclusion is supported by available social science research. *Supra* ¶¶ 26-29.

**72.** FF 72 is misleading and inaccurate. *Supra* ¶ 23.

**73.** FF 73 is inaccurate and partially irrelevant. The Attorney General has presented substantial credible evidence of a disparate impact on both Hispanic and Black voters. *Supra* ¶¶ 33A-33N. The Attorney General's administrative determination is irrelevant to this matter. *Morris v. Gressette*, 432 U.S. 491, 505-07 & n.24 (1977).

#### **IV. TEXAS'S STATED PURPOSES CLOAK A DISCRIMINATORY PURPOSE.**

**74.** FF 74 is unsupported, incomplete, and misleading. *Infra* ¶¶ 74A-205.

**74A.** A co-sponsor of SB 14 did not know if its purpose was to promote confidence in elections, Gonzales Dep. 177:16-19, and a sponsor stated that it did not address real problems and had only "symbolic value." Peña Dep. 136:4-8, 138:6-18, 155:12-156:2.

**75.** FF 75 is unsupported, irrelevant, and demands proof withheld based on privilege.

**76.** FF 76 is inaccurate, incomplete, and misleading. Many legislators either refused to provide responsive answers or refused to answer at all on the basis of legislative privilege. Harless Dep. 98:10-99:11; Gonzales Dep. 165:23-166:21; Patrick Dep. 161:15-162:6; Riddle Dep. 236:25-237; T. Williams Dep. 260:1-12.

#### **A. The Texas Legislature Has Advanced a Pretextual Justification Related to In-Person Voter Identification.**

##### **1. There Is Almost No In-Person Voter Impersonation in Texas.**

**77.** FF 77 is unsupported and misleading, particularly as it conflates in-person voter impersonation with other, more common, election-related crimes. *Infra* ¶¶ 77A-88.

**77A.** Current Texas law requires ID at the polls. Tex. Elec. Code § 63.001. Voter impersonation is a felony. *Id.* § 64.012(a)(3), (b); JA 3200; Davis. Dep. 41:9-42:16.

**77B.** In-Person voter impersonation fraud is exceedingly rare. Ex. 505 at 1-2, JA 3181. Impersonation is the only crime that SB 14 can address. Mitchell Dep. 86:8-13.

**77C.** An investment of significant resources to investigate voter fraud yielded little documented evidence of in-person voter impersonation in Texas. Ex. 547 ¶¶ 10-15.

**78.** FF 78 is misleading. Wood testified that voter fraud in Texas is related to mail-in ballots. JA 6500. SB 14 does not address mail-in ballot fraud. *Supra* ¶ 77A.

**78A.** Legislative testimony indicated that mail-in ballot fraud is the most common election crime in Texas. JA 3154-55, 3174-78; W. Davis Depo. 39:16-41:8, 45:4-45:15.

**78B.** The OAG has prioritized in-person voter impersonation over mail-in fraud in his enforcement activities. W. Davis Dep. 39:16-41:8, 57:6-58:1.

**79.** FF 79 is incomplete. Rep. Anchia testified that PVID laws decrease minority turnout and that SB 14 has a discriminatory purpose. Anchia Dep. 40:9-41:7; 83:12-83:14.

**80.** FF 80 is incomplete, misleading, and improper insofar as it implies a conclusion concerning the appropriate legal standard in this case. *See infra* at 57-58.

**81.** FF 81 is vague and unsupported. Election crimes have occurred. *Supra* ¶ 78A.

**81A.** During the 81st Legislature, the HEC was charged with examining the prevalence of voter fraud in Texas elections. Ex. 79. The 2008 HEC interim report found that most

election fraud occurs via mail-in ballots, voter registration, and vote brokers, not in-person voter impersonation. *Id.* at 2, 7-8, 12.

**81B.** In the 82nd Legislature, the HCE interim report noted that “Texas and other states appear to have had very infrequent prosecution of in-person voter fraud.” Ex. 378 at 8.

**81C.** SB 14’s Bill Analysis and Conference Committee Report contained no analysis of evidence of voter impersonation. Straus Dep. 195:19-198:10; Ex. 2; Ex. 508; Ex. 509.

**82.** FF 82 is incomplete and misleading. Major Mitchell is unaware of cases of voter impersonation that have not been prosecuted that should have been. Mitchell Dep. 233:2-235:3. Rep. Veasey testified that a signature match is an adequate means to detect in-person voter impersonation. Veasey Dep. 126:13-18.

**83.** FF 83 is misleading and incomplete. Evidence before the legislature indicates that in-person voter fraud is rare. Ex. 378 at 8; *see also infra* ¶ 83A.

**83A.** Not all of the information relied upon by Major Mitchell during his deposition was available for consideration by the legislature during the legislative session on SB 14. Mitchell Dep. 99:15-104:23.

**84.** FF 84 is misleading. Rep. Veasey referenced a newspaper article, but he had no personal knowledge of voter impersonation in Tarrant County. Veasey Dep. 122:4-16.

**84A.** Allegations of election code violations referred to the OAG are often unsubstantiated. Mitchell Dep. 71:18-72:2, 133:13-24, 140:5-14; Ingram Dep. 86:20-23.

**85.** Oppose as misleading. The referenced testimony related anecdotal, unsupported and barely plausible accounts that went unchallenged during the hearing. JA 1682-84



(claiming that voters arriving at polls whose names had been voted “occurred regularly and frequently throughout the day”); JA 1761-62 (claiming that a man “with a distinctive facial scar” and “very limited use of one arm” voted under two names in one day).

**85A.** In a 2011 hearing before the House Select Committee a supporter of SB 14 nevertheless testified that “voter impersonation is a miniscule problem.” JA 1504.

**85B.** At a June 14, 2010 hearing before the HCE, the State Elections Director noted that out of 24 elections code violations referred to the TX OAG between January 2009 and June 2010, only two were for voter impersonation. JA 3175, 3193; *supra* ¶ 81B.

**86.** FF 86 is incomplete and misleading. *Infra* ¶¶ 86A-86B.

**86A.** A supervisor in the OAG unit that investigates voter fraud, Major Forrest Mitchell, knows of only 5 impersonation investigations. Mitchell Dep. 173:16-20.

**86B.** Mail ballot fraud is not addressed by SB 14. Mitchell Dep. 86:8-13.

**87-88.** FF 87-88 are vague, incomplete, misleading, and improper insofar as they imply a conclusion concerning the appropriate legal standard in this case, *infra* ¶ 80, and conflate in-person voter impersonation with all other election crimes, *infra* ¶¶ 82-84A.

## **2. Registration List Maintenance Does Not Justify SB 14.**

**89.** FF 89 is incomplete, misleading, and improper. *Supra* ¶ 80.

**90.** FF 90 mischaracterizes the NVRA. 42 U.S.C. § 1973gg-6(d) speaks for itself.

**91.** FF 91 is unsupported. Texas’s former ED testified that the ED removes deceased voters from the rolls based on records from the TBVS and local information. JA 3186-87; *see also* Tex. Elec. Code §§ 16.001-.036.

**92-93.** FF 92-93 are unsupported by record and constitutes argument and speculation.

**92A.** Texas's current voter ID procedures establish an individual's identity and prevent in-person voter impersonation. No facts or information indicate that the system of has failed. McGeehan Dep. 76:23-77:15.

### **3. The Possibility of Non-Citizen Voting Does Not Justify SB 14.**

**94.** FF 94 is unsupported and constitutes argument and speculation.

**94A.** The legislative record contains no evidence that non-citizens have been convicted for voting illegally in person. T. Williams Dep. 148:25-150:4.

**95-96.** FF 95-96 in unsupported by admissible evidence. Rep. Aliseda testified as to third-party representations of his unnamed former clients and made no claim to have verified the existence of the problem. Aliseda Dep. 103:17-104:16.

**95A.** Non-citizens identified by the State as having registered and cast ballots possess driver licenses, which are PVID under SB 14. Aliseda Dep. 103:7-104:9, 184:12-18.

**95B.** The House Subcommittee on Mail-In Ballot Fraud and Non-Citizen Voting 2008 Interim Report found only a small number of non-citizen registration cases. Ex. 79 at 30. In each of these cases the non-citizen mistakenly registered to vote. *Id.*

**95C.** During consideration of SB 14, the Texas legislature heard no evidence of non-citizen registration beyond unsupported and anecdotal hearsay. Ex. 548 ¶¶57-64.

**96.** FF 96 is inaccurate and misleading. Rep. Aliseda testified that he had heard of a possible prosecution but conceded that he "may be wrong." Aliseda Dep. 185:2-11.

**96A.** Speaker of the House Joe Straus testified that he was unaware of any documented

cases of noncitizens voting in Texas. Straus Dep. 100:12-101:1.

**96B.** The 2008 HEC determined “[t]hrough talking with our county election officials and other experts the committee found the chances of an illegal alien actually voting are very slim.” Ex. 451 at 8, 14.

**96C.** Legislators who support SB 14 have stated on the legislative record that there is no problem with non-citizen voting in Texas elections. JA 1507.

**96D.** During consideration of SB 14, the Texas legislature heard no evidence of non-citizen voting beyond unsupported and anecdotal hearsay. Ex. 548 ¶¶ 57-64.

**97.** FF 97 is misleading. Rep. Anchia testified that curbing non-citizen voting in isolation is not discriminatory but that supporter of SB 14 used non-citizen voting as a stand-in for Hispanic voting. Anchia Dep. 59:13-19.

**97A.** SB 14 does not regulate voter registration except with regard to registering for the disability exemption to the PVID requirement. JA 3102. SB 14 also does not require voters to present an ID that establishes citizenship. *E.g.*, Straus 22:20-23:7, Ex. 220.

**97B.** Legislators and LG Dewhurst used fears of non-citizen voting as pretext to enhance public support for PVID laws. Ex. 548 ¶¶ 57-64, 93-94; Ex. 547 ¶¶ 10-18; *see also* Ex. 109; Ex. 293; Ex. 295; Ex. 299; Ex. 302; Ex. 303; Ex. 344; Ex. 421; Ex. 479.

**98.** FF 98 is incomplete. Voter applicants must affirm citizenship and sign a statement indicating that they “understand that giving false information to procure a voter registration is perjury, and a crime under state and federal law” and that “[c]onviction of this crime may result in imprisonment up to 180 days, a fine up to \$2,000.” Ex. 186.

**99.** FF 99 is irrelevant and mischaracterizes *Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012) (en banc), which held that the NVRA preempts an Arizona statute that would have barred effective use of the National Mail Voter Registration Form.

**100.** FF 100 is inaccurate and unsupported. To obtain a TDL, an applicant need only present a document that verifies lawful presence in the United States. Davio Dep. 60:8-10; 37 Tex. Admin. Code § 15.24(D)-(G); Ex. 220.

**101.** FF 101 is inaccurate and unsupported. Noncitizen and citizen TDLs are identical. Tex. Trans. Code § 521.121(e); Harless Dep. 27:10-28:6; Straus Dep. 22:24-23:9.

**102.** FF 102 is inaccurate. 37 Tex. Admin. Code § 15.24(G) (allowing expired visas).

**103.** FF 103 is misleading and incomplete *Supra* ¶¶ 19A-19N.

**104.** FF 104 is inaccurate and speculative. *Supra* ¶¶ 102-103.

#### **4. Speculation Concerning Unobserved Fraud Does Not Justify SB 14.**

**105.** FF 105 is incomplete and misleading. The paper trail at the polls, such as a poll book, is sufficient to detect in-person voter impersonation. JA 5831-32.

**105A.** In 2008, the HCE found that with regard to past election crimes, the Texas “AG’s office was able to prosecute each case thoroughly with existing law.” Ex. 451 at 10.

**106.** FF 106 is misleading and irrelevant. Rep. Aliseda was testifying concerning unlawful voter assistance and absentee ballot fraud. Aliseda Dep. 130:20-133:16.

**107-108.** FF 107-108 are inaccurate and speculative, and FF 107 is belied by the Governor’s declaration of a legislative emergency. Ex. 106; *infra* ¶ 107A.

**107A.** Local prosecutors are required by law to investigate voter fraud allegations and to

report them to the SOS. Tex. Elec. Code § 273.001. The SOS may in turn refer the matter to the OAG. *Id.* § 31.006; Mitchell Dep. 176:15-177:8. OAG has jurisdiction to prosecute election crimes across the State. Mitchell Dep. 65:7-67:7.

**108.** FF 108 is misleading, inaccurate, and unsupported. The OAG often prosecutes voter fraud cases in conjunction with local prosecutors. JA 4058; *supra* ¶ 107A.

**B. Concerns Regarding Voter Confidence Do Not Justify SB 14.**

**109.** FF 109 is inaccurate and misleading. The quoted sentence from the Carter-Baker Report is referenced in *Crawford* but is not expressly adopted. 553 U.S. at 194.

**110.** FF 110 is improper insofar as it implies a legal standard.

**111.** FF 111 is incomplete and misleading. *Infra* ¶¶ 111A-111C.

**111A.** The Carter-Baker Report balanced integrity and access to voting, *supra* ¶ 18A, and noted “States have a responsibility to make voter registration accessible.” JA 4653.

**111B.** The Report also found that compliance with the VRA, including Section 5, is of the “utmost importance” and urged that Section 5 be “vigorously enforced.” JA 4624.

**112.** FF 112 is incomplete and misleading. Rep. Peña testified regarding constituents’ concerns over improper assistance, vote harvesting, and a patrón system, not in-person voter impersonation. Peña Dep. 65:11-66:12, 212:14-213:7.

**112A.** Texas legislators actively generated public concern about in-person voter fraud despite little verified evidence of such fraud. Ex. 547 ¶¶ 2-25.

**113.** FF 113 is unsupported by non-hearsay evidence and is therefore unsubstantiated.

**114.** FF 114 is incomplete, misleading, and irrelevant. The concerns addressed general

“election corruption,” Peña Dep. 66:13-17, fraudulent voter registration, and mail-in ballot fraud, JA 2694-95, not in-person voter impersonation. FF 114 also inaccurately implies that all supporters of SB 14 were motivated by a desire to combat corruption while citing only to two legislators’ testimony. JA 2689-95; Peña Dep. 210:9-211:8.

**115.** FF 115 is incomplete, unsupported, and misleading. *Supra* ¶¶ 30-33, 109-114.

**115A.** Texas legislators used concerns regarding public confidence in elections as a pretextual justification for SB 14. Ex. 547 ¶¶ 24-25.

### **C. Public Support Does Not Establish a Statutory Purpose.**

**116.** FF 116 is unsupported and impermissibly relies on technical evidence not introduced by a qualified expert. *Infra* ¶¶ 117-123.

**116A.** Numerous witnesses testified in public hearings in opposition to PVID requirements as a general matter and SB 14 specifically. *E.g.*, JA 1156, 1450, 1452.

**117.** FF 117 is incomplete and misleading. *Infra* ¶¶ 117A-117C.

**117A.** The summary of a Rasmussen poll presented in to the HEC in 2009 stated that “57 percent of Americans favor ID laws. 9 percent of white [and] 15 percent of African Americans.” JA 6506. These nonsensical numbers could not have been persuasive.

**117B.** The Lighthouse poll from Fall 2010 was sponsored by a partisan caucus and asked voters whether they “favor or oppose requiring a valid photo ID before a person is allowed to vote,” without reference to limits on the form of PVID, PBs, and potential disenfranchisement of minority voters. JA 1166-70. There is no evidence that this poll was shared outside of a Senate caucus.

**117C.** Public polling about PVID did not accurately capture SB 14's requirements and hence is an unreliable indicator of public support for the bill. Ex. 547 ¶¶ 26-28.

**118.** FF 118 mischaracterizes the evidence and is supported only by hearsay. *Supra* ¶¶ 114, 116, 117A-117C.

**119.** FF 119 is misleading and incomplete. *Infra* ¶ 119A. Moreover, not all legislators spoke one-on-one with constituents about SB 14. *E.g.*, Patrick Depo. at 103:7-106:7.

**119A.** Public support for legislation is not evidence of the absence of a discriminatory purpose. Ex. 547 ¶ 29.

**120.** FF 120 is misleading, incomplete, and irrelevant. *Infra* ¶¶ 120A-120C.

**120A.** No minority senators voted in favor of SB 14, and nearly all Anglo senators voted in favor of the bill. JA 1265; Ex. 548 ¶ 98.

**120B.** Representative Pickett and Representative Eiland, the only Democrats to vote for SB 14, are both Anglo, and constitute roughly 30% of the Anglo Democrats in the House. No minority Democrats voted for SB 14. *See* JA 2160-701 Ex. 548 ¶¶ 90, 97-101.

**120C.** Minority legislators who voted in favor of SB 14 either did not receive the support of minority constituencies or switched parties after the 2010 election. Ex. 548 ¶¶ 96-101 & tbls. 14 & 24. Most of these members' districts are majority-Anglo. *Id.* ¶ 97.

**121-122.** FF 121-122 are misleading. The public polling cited asked respondents about government PVID generally, not the narrow forms of PVID required by SB 14. TA 950. Question specificity impacts survey results. Ex. 547 ¶¶ 26-28. Moreover, public support for legislation does not establish the lack of any discriminatory purpose. *Supra* ¶ 119A.

Finally, Dr. Shaw's survey primed respondents regarding fraud concerns. *Supra* ¶ 44.

123. FF 123 is misleading and irrelevant. *See supra* ¶ 119A.

**D. SB 14 Was Enacted With Discriminatory Purpose**

124. FF 124 is unsupported and inaccurate. *Supra* ¶¶ 74-115; *infra* ¶¶ 130-206.

125. FF 125 is inaccurate, misleading, and incomplete. Legislators testified that SB 14 was enacted with discriminatory purpose. *E.g.*, Anchia Dep. 196:14-108:18, 140:11-141:8; Veasey Dep. 56:19-57:5, 13:8-132:1; Uresti Dep. 33:20-36:11.

126. FF 126 is accurate.

127. FF 127 is misleading and incomplete. Rep. Anchia's affidavit reflected a prior conversation with a Justice Department employee, and he reviewed it prior to signing. Anchia Dep. 10:20-14:4.

128. FF 128 is misleading and incomplete. Rep. Veseay's affidavit reflected a prior conversation with a Justice Department employee, and he reviewed it prior to signing. Veasey Dep. 33:15-19.

129. FF 129 is accurate, however to the extent that it is offered for the truth of its contents, it is inadmissible hearsay. *See also infra* ¶ 119.

**V. ABUNDANT CIRCUMSTANTIAL EVIDENCE ESTABLISHES THAT SENATE BILL 14 WAS ENACTED WITH A DISCRIMINATORY PURPOSE.**

**A. The 2005 and 2007 Legislative Sessions: HB 1706 and HB 218.**

130. The Texas Legislature's push for PVID started in 2005 with the introduction of HB 1706, which would have required voters to present either one form of photo identification



or two forms of non-photo identification in order to vote in person. HB 1706 passed the House but was not referred out of the Senate State Affairs Committee. Ex. 412 at 1. The Legislature did not investigate concerns raised about the bill's impact on minority voters.

**131.** In 2007, the House again passed a PVID bill, HB 218. Ex. 413 at 2; JA 8127.

**132.** The stated purpose of HB 218 was to prevent in-person voter fraud and ensure that only citizens vote. Ex. 299; McCoy Dep. 61:12-19. The bill's author, Rep. Brown, stated that she introduced it because of non-citizen voting. JA 7396-97, 7583

**133.** HB 218 contained similar ID requirements, including non-photo ID, as HB 1706. JA 8396; JA 7320; Duncan Dep. 81:3-8.

**134.** The legislative record reveals that members of the HCE were on notice of the costs of obtaining documents necessary to acquire forms of allowable PVID, as well as the anticipated effect on minority voters. JA 7454, 7457-58, 7654.

**135.** The Senate sponsor of HB 218, Sen. Fraser, was unaware of any analysis conducted concerning the bill's impact on minority voters. McCoy Dep. 60:7-10. Sen. Duncan stated that HB 218 was the least restrictive way to verify the identity of voters without putting election officials in the role of law enforcement officers. JA 8214-15.

**136.** Lt. Governor Dewhurst, acting as the President of the Texas Senate, sets the Senate calendar. Uresti Dep. 55:7-57:1.

**137.** During regular Senate sessions, most bills are considered out of the regular order of business, thus requiring a two-thirds vote to be heard. K. Davis Dep. 35:15-37:9; 41:20-42:15. This procedure has been in place for decades. Uresti Dep. 57:11-59:16.

**138.** The “two-thirds rule” encourages conciliation and cooperation, Hebert Dep. 156:9-22; McCoy Dep. 120:14-121:17, as well as compromise and negotiation. Brunson Dep. 104:12-105:8. The rule further ensures that Senators receive notice when a bill is to be taken out of order for consideration. K. Davis Dep. 31:11-39:22.

**139.** In 2007, senators who opposed PVID formed the minimum number necessary to block a two-thirds vote to hear bills out of order, 11 of 31. Ex. 299.

**140.** On May 15, 2007, Sen. Uresti contacted the SOS to give notice he would arrive late due to illness. Uresti Dep. 62:1-21. Sen. Uresti is Hispanic, represents a majority-Hispanic district, and opposed HB 218. *Id.* at 24:20-25:3, 62:22-25; Ex. 283 ¶ 2.

**141.** The same day, LG Dewhurst recognized Sen. Fraser to move to suspend the regular order of business to hear HB 218. Uresti Dep. 59:25- 60:7; Ex. 413 at 1; JA 8297. Sen. Hinojosa contacted Sen. Uresti, who rushed to the Senate. Uresti Dep. 63:16-64:3; Ex. 283 ¶¶ 6-9; Ex. 413 at 1. Nevertheless the vote to suspend the regular order of business to hear HB 218 passed prior to Sen. Uresti’s arrival. JA 8307-08.

**142.** Sen. Whitmire convinced LG Dewhurst to verify the vote. JA 8313. Sen. Uresti arrived just in time for the verified vote. Uresti Dep. 64:4- 67:6.

**143.** With Sen. Uresti present, the vote to suspend the regular order of business to consider HB 218 failed. JA 8315; Ex. 413 at 1. As a result, the Senate never voted on HB 218 and the bill died. Ex. 283 at 2.

#### **B. The 2009 Legislative Session: SB 362**

**144.** At the start of the 2009 session, Sen. Williams introduced a resolution to adopt

changes to the Senate's two-thirds rule solely for purposes of PVID legislation. Williams Dep. 153:11-21, 155:5-19. These changes were embodied in Rules 5.11(d) and 16.07(7) and were adopted by the Senate. Ex. 368 at 34, 115-116.

**145.** Special orders are heard ahead of other business on the Senate's calendar, K. Davis Dep. 49:8-11, and ordinarily – under Rule 5.11(a) – a bill may be set as a special order only by a two-thirds majority vote. *Id.*; Ex. 368 at 34. However, Rule 5.11(d) provides that bills “relating to voter identification requirements reported favorably from the [COTW] may be set as a special order” upon motion by a simple majority of the members. K. Davis Dep. 120:6-10.

**146.** In 2009, many Senators who generally support the two-thirds rule voted in favor of adopting Rule 5.11(d), enacting a singular exemption. Patrick Dep. 234:14-241:11.

**147.** Speaker Straus publicly stated that the adoption of Rule 5.11(d) “did nothing to help the House pass a responsible anti-voter fraud bill.” Straus Dep. 143:8-15.

**148.** Since 1981, the Senate rules have designated only two categories of legislation to be set as a special order pursuant to a majority vote: redistricting and voter ID. K. Davis Dep. 57:14-22, 59:6-17.

**149.** In 2009 PVID legislation – SB 362 – originated in the Senate rather than the House. LG Dewhurst, who was involved in this decision, remarked “[e]verybody wants to make sure that only U.S. citizens vote in our elections.” Ex. 306; Rathgeber Dep. 149:10-19.

**150.** Like HB 218, SB 362 allowed voters to use non-photo ID for in-person voting. JA 3245-46. However, SB 362 did not allow employee identification cards and did not

expressly provide for the use of student identification cards. *Id.*; JA 7322-24.

**151.** LG Dewhurst referred SB 362 to the COTW, which is “not common.” Rathgeber Dep. 192:15-192:18; Williams Dep. 165:7-16; Hebert Dep. 224:9-18; Ex 440. Referral to COTW allows for expeditious consideration and voting straight to final passage. Hebert Dep. 64:7-20. Rep. Smith, the bill’s sponsor in the House, testified that it was important to the LG politically to pass SB 362. Smith Dep. 105:15-106:1.

**152.** During consideration of the Bill, SB 362’s opponents expressed concerns about its impact on minority voters, Fraser Dep. I 198:22-199:19, 207:2-6; Williams Dep. 173:2-14; JA 3422, 3459-65, 5684-5688, but the Senate did not investigate or address those concerns. McCoy Dep. 115:6-116: 15. Senate staff were unaware of any analysis having been conducted to identify voters without allowable PVID under SB 362. McCoy Dep. 94:19-95:15; Rathgeber Dep. 153:11-154:6. Likewise, while the SOS was aware that analyzing the impact of SB 362 on minority voters was relevant to compliance with Section 5, the SOS did not undertake that analysis. Ex. 566 at 9.

**153.** Based on operation of Rule 5.11(d), the Senate moved SB 362 to the top of its calendar by majority vote. Ex. 440 at 2. SB 362 then passed the Senate by another simple majority. Hebert Dep. 223:14-18. All eight members of the Senate who are minorities voted against the bill. Ex. 566 at 9-10. It is unlikely that in the absence of Rule 5.11(d), the Senate would have voted to suspend the usual order of business to consider SB 362. Williams Dep. 163:1-8; Patrick Dep. 224:24-227:17.

**154.** Following passage in the Senate, SB 362 was referred to the HEC, where it was

immediately set for a hearing. Smith Dep. 101:7-102:5. Grassroots supporters of SB 362 continued to express concerns about non-citizen voting. Smith Dep. 102:25-104:12.

**155.** In 2009, a new legislative coalition supported by minority legislators took control of the House and appointed Speaker Straus. Ex. 548 ¶ 43. Speaker Straus's appointee to chair HEC, Rep. Todd Smith, was aware that minority voters are less likely to have PVID. Smith Dep. 154:1-156:20, 196:19-198:2. Smith also understood that allowing the use of a non-photo ID alternative would "significantly lessen any marginal additional burden" that ID requirements placed on some voters. Smith Dep. 202:1-5.

**156.** House opponents of SB 362 expressed concerned about the impact of the bill on minority voters. Smith Dep. 101:7-102:5, 116:21-117:28. McGeehan Dep. 140:3-141:6.

**157.** ED Director McGeehan never analyzed the racial composition of voters without a TDL/ID during the consideration of SB 362. McGeehan Dep. 144:7-12, 144:13-18.

**158.** Nevertheless, Rep. Smith made a "back of the envelope" calculation as to the number of registered voters he believed would not have a DL and determined roughly 700,000 Texas voters lack a DL. Smith Dep. 159:5-163:7. According to Rep. Smith, "it was a matter of common sense" that the hundreds of thousands of people without a DL would be "disproportionately poor, and therefore minority." Smith Dep. 164:8-16. Rep. Smith sought approval of his analysis Speaker Straus before presenting it publicly, and he likely discussed with other House members as well. Smith Dep. 159:5-163:13.

**159.** Rep. Smith unsuccessfully advanced an alternative to SB 362 that delayed implementation of PVID requirements and funded VR efforts. Smith Dep. 117:10-121:9.

**160.** Concurrently, the House Republican Caucus issued a statement of principles urging HEC members to pass a voter ID law that prohibited use of non-photo identification.

Smith Dep. 111:1-113:9; Ex. 499.

**161.** SB 362 never reached the House floor for a vote because of a late-session filibuster.

Smith Dep. 113:20-114:16.

**162.** After a 2010 primary election in which he was accused of thwarting the passage of SB 362, Rep. Smith made presentations to Republican Party groups in Tarrant County, which may have included his 700,000 estimate. Smith Dep. 63:12-64:12, 159:5-160:10.

**163.** During the 2010 interim legislative session, the HCE convened a hearing on voter fraud at which then-director of the ED, McGeehan, testified that the ED had referred to the OAG 24 potential violations of the election code in the prior two years, of which only two involved allegations of in person voter impersonation. JA 3175.

### **C. The 2011 Legislative Session: SB 14**

**164.** Senator Fraser began working on the bill that would become SB 14 on May 31, 2009, immediately after the failure of SB 362. Fraser Dep. 225:24-25. LG Dewhurst's staff was involved in the development and drafting of the Bill. Brunson Dep. 63:8-14; Hebert Dep. 254:17-255:14, 258:10-259:3, 264:1-12. Thus Sen. Fraser was prepared when a wave election cleared remaining procedural hurdles to passage. Ex. 548 ¶ 8.

**165.** Sen. Fraser first filed his photo identification bill as SB 178. McCoy 143:19-144:6. However he was permitted to re-file the bill as SB 14 using a low bill number reserved by LG Dewhurst for legislative priorities. Rathgeber Dep. 203:11-205:13.

**166.** SB 14 as filed required a voter to present one of only five forms of PVID in order to cast a regular ballot in person. JA 1942. When asked whether this bill was the least restrictive means to accomplish its goals, Sen. Fraser indicated that he was not sure whether that was the intent. JA 97-98.

**167.** Sen. Fraser excluded non-photo ID from SB 14 because he determined that voter ID “was working” in other states. McCoy Dep. 128:10-130:14, 174:10-175:1.

**168.** On January 19, 2011, the Senate adopted its rules for the 82nd Legislature. The 2011 rules carried over most of the rules from 2009, including Rule 5.11(d), which allowed PVID bills to be considered out of order on a simple majority vote, rather than a two-thirds supermajority. Ex. 369; K. Davis Dep. 49:1-51:6.

**169.** All Senators present who were preferred by racial and ethnic minorities voted against the rules resolution. Senator Lucio stated that Rule 5.11(d) “silences the voices of my constituents.” Ex. 567 at 6.

**170.** The Texas Constitution prohibits the passage of legislation within the first 60 days of each legislative session, unless the Governor designates a topic as an emergency. *E.g.*, Armbrister Dep. 212:8-21. Without the Governor’s suspension of this constitutional bar, the Senate would have also been prohibited from holding a hearing on SB 14 on January 25, 2011, within the first 30 days of the session. K. Davis Dep. 118:7-15, 178:18-179:6.

**171.** Legislators make requests to Governor Perry for issues to be designated as emergencies, and some are declined. Armbrister Dep. 213:4-8, 214:4-21.

**172.** LG Dewhurst’s chief of staff, Blaine Brunson, testified that he “may have

requested” that voter identification be designated an emergency because he knew the issue was “going to have to be worked on in 2011.” Brunson Dep. 64:20-65:13.

**173.** The Governor designated PVID legislation as an “emergency matter” on January 20, 2011. JA 45; Ex. 106. This designation occurred one day after the Senate adopted Rule 5.11(d) for the 2011 session. Ex. 567 at 3-7.

**174.** On January 21, 2011, LTG Dewhurst notified the Senate that the COTW would take up PVID on January 24, 2011. Ex. 416. Senators raised concerns that this was insufficient notice to prepare and secure witnesses for the hearing. Ex. 352.

**175.** During consideration of SB 14, Senators and other witnesses raised concerns about the potential impact of SB 14 on minority voters. *See, e.g.*, JA 100-01, 140, 171.

**176.** Sen. Fraser’s chief of staff, Janice McCoy, did not find testimony about SB 14’s impact on minority voters important and believed Senators testified against the bill because they felt that DOJ “could help kill” it. McCoy Dep. 202:19-204:5, 224:12-225:1.

**177.** On January 25, 2011, Sen. Davis asked McGeehan how the SOS tracks demographic information about voters, including their race, and whether the SOS would start to track that information due to SB 14. JA 815-16. McGeehan responded that the state’s voter registration database does not include the race of voters, and the only relevant information she had was a Hispanic surname list. JA 815-16.

**178.** McGeehan did not interpret Sen. Davis’s remarks to constitute a request to conduct an analysis of the racial impact of SB 14, and she took no steps to undertake such analysis. McGeehan Dep. 173:20-176:4, 177:8-178:12.



**179.** During debate, McGeehan stated that she had received a request earlier in the day from Sen. Williams to analyze the VR database and the DL database to determine who among registered voters did not have a DPS record for a TDL/ID. JA 167, 178; McGeehan Dep. 170:15-173:11. Later in the debate, Williams asked McGeehan to report on the status of the ED's analysis. JA 178.

**180.** That same day, SOS IT project manager Lee Guyette was instructed to conduct an urgent analysis of the voter registration and TDL/ID databases to determine the number of registered voters who do not match an entry in the TDL/ID database. Guyette Dep. 21:21-23:15, 33:24-34:15. Guyette conducted six rounds of analyses and found between approximately 678,560 and 844,713 registered voters did not match an entry in the TDL/ID database. Guyette Dep. 34:16-35:12.

**181.** McGeehan drafted a summary of the results in which she estimated that between 678,560 and 844,713 of the State's 12,657,884 registered voters may not have been issued a TDL/ID by DPS. Ex. 561 at 3. McGeehan indicated to Guyette that she would share the analysis with SOS general counsel John Sepehri and deputy SOS Coby Shorter to convey to the legislature. Guyette Dep. 28:25-29:13.

**182.** McGeehan did not provide this analysis to Sen. Williams, LG Dewhurst, or any legislator. McGeehan Dep. 173:12-19. McGeehan needed approval from Shorter or Sepehri to release the data. McGeehan Dep. 186:5-187:7.

**183.** McGeehan did not conduct a Spanish surname analysis of the data until DOJ requested that information during its administrative review of SB 14 pursuant to Section

5. McGeehan Dep. 189:24-190:2. This analysis was “routinely used” within the SOS’s office, *id.* at 49:16-23, and conducting such an analysis on this data would have been a “relatively easy” task, *id.* at 191:13-17.

**184.** During consideration of SB 14, Sen. Fraser repeatedly answered questions about his own bill by saying that he was not “advised” or that the Secretary of State could answer the questions. *E.g.*, JA 66, 72, 78, 79, 97, 98. When asked whether SB 14 would adversely impact minorities by prohibiting use of non-photo government documents as ID, Sen. Fraser responded by citing public opinion polls. JA 96.

**185.** Sen. Duncan, a SB 14 supporter, offered an amendment adopted by the Senate that required counting indigent voters’ PBs to “deal with” voters who “may not be able to afford or pay the fee to get the birth certificate.” JA 1352. The House, however, removed this provision. Ex. 506 at 24.

**186.** Senators proposed 37 amendments to SB14, 28 of which were tabled, and nine of which were adopted. JA\_001228-69. Many adopted amendments were removed or changed prior to SB’s 14 final passage. JA\_003102-JA\_003118. Some of the tabled amendments included provisions to: require the SOS to analyze SB 14’s impact on minorities, JA\_001337-39; require evening and weekend hours at DL offices, JA\_001337; JA\_001300-04; and allow additional forms of PVID, including a Medicare ID card, a student photo ID, or a federal or state photo ID card. JA\_001246-47.

**187.** On January 26, 2011, the Senate passed SB 14 over the unified opposition of all Senators preferred by racial and ethnic minorities present. JA\_001265.

**188.** It is unusual for legislation to pass the Senate within the legislative session’s first two weeks. Brunson Dep. 119:7-120:1; McCoy Dep. 216:18-20.

**189.** Upon Senate passage of SB 14, LG Dewhurst issued a press release stating that SB 14 will increase voter confidence “by ensuring only U.S. citizens – who are legally eligible – vote in Texas elections.” Ex. 109.

**190.** Senate bill supporters and staff are unaware of basic facts related to SB 14 including the process of obtaining allowable PVID, costs associated therewith, and availability of PVID to noncitizens. Williams Dep. 103:18- 104:21; 188:16-189:23; 190:23-191:15; Fraser Dep. 138:4-139:4; 251:15-252:8; Duncan Dep. 190:3-191:18; McCoy Dep. 148:5-150:5; Patrick Dep. 139:13-140:9; 289:4-9.

**191.** The House received SB 14 from the Senate on January 27, 2011. Ex. 410 at 6.

**192.** On February 9, 2011, Speaker Straus announced a “fast track” Select Committee on Voter Identification and Voter Fraud. Ex. 411. The SCVIVF was the only committee given “fast track” designation, *id.*; Fowler Dep. 146:10-147:1, and Speaker Straus referred SB 14 – and only SB 14 – to the SCVIVF. Ex. 409; D. Davis Dep. 141:19-142:20. Unlike the standing Elections Committee, the Speaker could hand-pick each member of the Select Committee. Straus Dep. 50:22-54:21. Speaker Straus chose Rep. Harless to serve as the bill’s House sponsor. Harless Dep. 223:4-224:11.

**193.** In 2011, PVID supporters had a “foolproof majority” in the House. Smith Dep. 168:12-18. Because of this, supporters viewed negotiations with opponents as “not relevant.” Smith Dep. 168:5-11; Kousser ¶ 49.

**194.** One legislator who supported SB 14 explained that bill supporters “had their mind made up” before the floor debate and had decided “we’re not taking any amendments.”

Peña Dep. 202:5-19; *see also* Peña Dep. 208:9-209:1.

**195.** The SCVIVF held only one hearing on SB 14 before voting it out of committee.

Ex. 410 at 6. The SCVIVF did not hold hearings or vote on any other bills. Bonnen Dep.

44:24-45:2. At the hearing, expert witnesses explained that restrictive ID requirements adversely impact minority voters, JA 1575-77, and that most voters who must present

identification at a later time for PBs do not return. JA 1578-79. The SCVIVF did not hear any expert testimony on voter fraud in Texas. JA 1575-1866.

**196.** The SCVIVF also heard testimony from constituents who claimed that PVID was necessary to stop noncitizen voting. JA 1453-1866. When pressed for supporting facts

that noncitizens were voting, one witness stated that SB 14 would “fix the problem whether it exists or not.” JA 1507.

**197.** During the House floor debate, Rep. Harless, the bill’s sponsor, stated that she was “not advised” of any data estimating the number of voters (or minority voters) who

lacked PVID. JA 1978. Rep. Harless made no mention of Sen. Williams’ request that the ED analyze the number of voters without a TDL/ID. *Id.*; *see supra* ¶¶ 179-183.

**198.** During House floor consideration of SB 14, Rep. Harless refused to provide direct answers to questions concerning the bill’s impact on minority voters. JA 1975-79.

**199.** When Rep. Harless was asked why SB 14 is more restrictive than SB 362, and whether any evidence supported the change, she responded that “[w]e’ve had two

additional years to see that photo ID is working in other states.” JA 1975-79. Rep.

Harless’s response did not acknowledge differences between SB 14 other states’ laws.

*Id.*; *see also* Bonnen Dep. 189:13-18 (SCVIVF chairman’s same lack of knowledge).

**200.** During House floor consideration, numerous legislators expressed concerns about the bill’s impact on minority voters. JA 2117-24; JA 2140-41; JA 2147-48; JA 2168-70. House members proposed 53 amendments, 35 of which were tabled, 3 of which failed, and 15 of which were adopted. JA 2099-151; Ex. 410 at 4-6. Several of the amendments that passed were removed prior to enactment. JA 3102-JA 3118. For many of the amendments that did not pass, proponents stated these amendments would mitigate the bill’s impact on minority voters, including by prohibiting DPS from charging a fee for underlying ID, JA 2099; reimbursing the costs for indigent individuals to travel to obtain compliant ID, JA 2139-40; requiring a study showing no adverse impact on minorities, JA 2421; requiring the SOS to determine whether a majority of voters who cast provisional ballots were minorities, JA 2145; requiring a study by county and ethnicity to determine access to necessary ID and analysis of impact on voters, JA 2151; and allowing county clerks to issue voter ID cards, JA 2500.

**201.** Also during the House floor debate, Rep. Harless stated that discrimination in voting no longer exists in Texas, JA 2117, and that the application of the VRA to SB 14 “is a federal issue to be decided by the federal courts,” not the Texas legislature. JA 2118. Rep. Harless refused to state specifically that SB 14 applied equally to minority and non-minority voters. JA 2118-19. Rep. Harless subsequently testified that she

“[doesn’t] know what the relevance is in 2012” of the VRA. Harless Dep. 170:20-21.

**202.** The House removed the Senate provision requiring the counting of PBs cast by indigent voters who lacked PVID. Ex. 506 at 24.

**203.** Although some Hispanic House members voted for SB 14 and spoke in its favor, none of them are likely now to be minority-preferred in their districts. *Supra* ¶ 120C; *see also* Gonzales Dep. 44:16-45:2, 59:11-14 (claiming no knowledge of demographics).

**204.** The SB 14 conference committee, which consisted of eight supporters and two opponents of SB 14, removed tribal ID as one of the allowable forms of ID, and a provision that targeted SB 14’s voter education program at low-income and minority communities. Ex. 506 at 18-19, 22.

**205.** Governor Perry signed SB 14 on May 27, 2011. JA 3102-18. The bill analysis prepared in his office included no analysis of the bill’s impact on minority voters.

Schofield Dep. 51:11-15; 146:3-7. In a contemporaneous signing statement, he equated voting with cashing a check or applying for a library card. Ex. 112; Ex. 327.

**206.** Since Congress placed Texas under Section 5 coverage, preclearance has been denied to hundreds of Texas voting changes. Ex. 554.

### **PROPOSED CONCLUSIONS OF LAW**

The State of Texas has failed to carry its burden to establish that SB 14 neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, as required by Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. In order to protect the rights of hundreds of

thousands of Hispanic and black voters who lack the forms of photographic identification prescribed by SB 14, the Attorney General requests that this Court deny Texas's request for a declaratory judgment.

SB 14 is retrogressive because Hispanic or black voters constitute a disproportionate number of the 1.5 million registered and eligible Texas voters who lack the state-issued identification that would be required to cast a ballot on Election Day. Nor is there credible evidence that these voters possess other forms of identification that would permit them to cast a ballot or would be exempt from the requirements of SB 14. The availability of an EIC does not mitigate this harm when acquiring such identification imparts a new and substantial burden.

SB 14 also has a discriminatory purpose: the disenfranchisement of Hispanic and black voters. The effect of the bill was predictable – and known to some – whereas the State had little to no actual evidence to justify the Legislature's urgent push to address in-person voter impersonation. On a background of growing Hispanic population and voting strength, and a history of racial discrimination not abandoned until federal intervention, the Texas Legislature used deviations from ordinary legislative procedure to pass a voter identification law whose restrictions exceed those imposed by any other State. While the tightly controlled script in the enactment process left no direct evidence or off-message statements from key decision-makers, circumstantial evidence precludes Texas from carrying its burden.

**I. TEXAS HAS FAILED TO PROVE THAT SENATE BILL 14 DOES NOT HAVE A RETROGRESSIVE EFFECT.**

The State of Texas has failed to carry its burden to establish that SB 14 will not have a retrogressive effect on minority voters. For the reasons that follow, this Court should deny the State's request for a declaratory judgment under the effect prong.

**A. The Effect Prong of Section 5 Bars All Retrogressive Voting Changes.**

Under Section 5, the submitting jurisdiction has the burden to prove that a submitted change lacks a discriminatory effect. *See Georgia v. United States*, 411 U.S. 526, 538 (1973); 28 C.F.R. § 51.52. The effect prong bars “voting-procedure changes . . . that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise,” *Beer v. United States*, 425 U.S. 130, 141 (1976), as “measured against the existing voting practice” – also known as the benchmark. *Holder v. Hall*, 512 U.S. 874, 883 (1994); 28 C.F.R. § 51.54(b)-(c). Facially neutral changes may nonetheless violate Section 5. *See, e.g., City of Pleasant Grove v. United States*, 479 U.S. 462 (1987) (annexation); *Apache County High Sch. Dist. No. 90 v. United States*, No. 77-CV-1518, at 13 (D.D.C. Jun. 13, 1980) (three-judge court) (polling places); *see also* 28 C.F.R. §§ 51.58-51.61 (other covered changes).<sup>3</sup>

Texas misunderstands the function of Section 5 when it claims that basic regulations of the voting process cannot constitute an abridgment of the right to vote. Tex. CL at 42-43, 47. Any new impediment to voting with a retrogressive impact may

---

<sup>3</sup> The State's assertion that the retrogression standard is limited to reapportionment, Tex. CL at 47-48, belies longstanding case-law. “[T]he purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the franchise.” *City of Pleasant Grove*, 479 U.S. at 473; *see also* 28 C.F.R. § 51.54(b).



deny or abridge the right to vote on account of race or color. *See Perkins v. Matthews*, 400 U.S. 379, 387-88 (1971). Section 5 addresses voting changes, and while continued enforcement of existing regulations such as a registration requirement do not trigger the preclearance requirement, any change to that benchmark standard, practice, or procedure does. *United States v. Texas*, No. 5:85-cv-2199 (W.D. Tex. Aug. 1, 1985), *aff'd mem.*, 474 U.S. 1078 (1986) (Ex. 559).

The State's contention that only selective enforcement of a facially neutral law can violate the effects prong, Tex. CL at 44, is incompatible with a preclearance provision and with each and every decision to have applied Section 5.<sup>4</sup> Under Texas's arguments, a literacy test could survive Section 5 review if a State argued that a minority voter's inability to vote was not on account of race but rather socioeconomic status or the failure to learn to read. *See South Carolina v. Katzenbach*, 383 U.S. 301, 333-34 (1966); *Gaston County v. United States*, 395 U.S. 285, 293 (1969). Similarly, restricting the effects prong to laws that violate the Fifteenth Amendment would render the provision a nullity, Tex. CL at 45, as a Fifteenth Amendment violation requires proof of discriminatory purpose. *See, e.g., City of Mobile v. Bolden*, 446 U.S. 55, 61-65 (1980) (plurality op.). Contrary to the State's claim, Tex. CL 45-46, *Northwest Austin Municipal Utility District No. One v. Holder*, 557 U.S. 193 (2009), did not reverse 25 years of consistent case-law or mandate that this Court effectively strike down the effects prong. While *Northwest*

---

<sup>4</sup> Congress has reauthorized Section 5 twice since *Beer*. *See Nw. Austin Mun. Utility District No. 1 v. Holder*, 557 U.S. 193, 200 (2009). "Judicial interpretation and application, legislative acquiescence, and the passage of time have removed any doubt" that the retrogression standard governs Section 5 effects analysis. *Cf. Basic Inc. v. Levinson*, 485 U.S. 224, 230-31 (1988).

*Austin* raised federalism questions regarding the reauthorization of Section 5, the Court focused on the suspension of voting changes pending preclearance and differentiation between the States. *See id.* at 202-203. The Supreme Court simply applied the constitutional avoidance canon of statutory interpretation, *see id.* at 205, under which the Court will avoid a constitutional issue if “a construction of the statute is fairly possible by which the question may be avoided,” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) (internal citations and quotation marks omitted) in interpreting the bailout requirements of the Act. The effects prong of Section 5 remains a valid exercise of Congress’s power to enforce the Fourteenth and Fifteenth Amendments.<sup>5</sup> *See Shelby County v. Holder*, 679 F.3d 848 (D.C. Cir. 2012); *see also Lopez v. Monterey County*, 525 U.S. 266, 283 (1999) (affirming that “under the Fifteenth Amendment, Congress may prohibit voting practices that have only a discriminatory effect”); *City of Rome v. United States*, 446 U.S. 156, 158, 175 (1980).<sup>6</sup>

**B. The Benchmark Permits Voters to Cast a Ballot Regardless of Whether They Possess Unexpired Photographic Identification Named in SB 14.**

Under the benchmark practice, voters who appear in person at the polls may present their voter registration card as proof of identification. The State provides this

---

<sup>5</sup> This Court has bifurcated the State’s claims and has reserved any direct constitutional challenge to Section 5. *See* Initial Scheduling Order ¶ 1 (Mar. 37, 2012) (Doc. 43).

<sup>6</sup> The State also relies on *Smith v. Salt River Project*, 109 F.3d 586 (9th Cir. 1997), for the proposition that disparate impact does not violate the effects prong. Tex. CL 44. *Salt River Project* applied a totality of the circumstances requirement rooted in the text of Section 2, *see id.* at 594-95, but even if that requirement applied to Section 5, the relevant factors are present in Texas. *See LULAC v. Perry*, 548 U.S. 399, 426, 436-42 (2006).

card without requiring presentation of other documents and delivers the card by mail to each registered voter without any additional action on the voter's part. Tex. Elec. Code §§ 13.142, 13.144. Alternatively, a voter may present a photo or non-photo identification, including a current or expired driver's license or personal identification card issued by any state, a utility bill, bank statement, paycheck, or other government document that shows the name and address of the voter. Tex. Elec. Code § 63.0101.

**C. SB 14 Will Banish Hundreds of Thousands of Texans from the Voting Booth on Election Day.**

“Congress intended [Section 5] to reach any state enactment which altered the election law of a covered State in even a minor way.” *Allen v. State Bd. of Elec.*, 393 U.S. 544, 566 (1969). The reason for this is simple. Section 5 addressed the creative means that could be used to diminish minority voters' ability to cast a ballot, and “there are an awful lot of things” that can achieve that purpose. *Id.* at 568 (quoting Hearings on H.R. 6400 before Subcomm. No. 5 of the H. Comm. on the Judiciary, 89th Cong. at 74 (1965)); *see also Katzenbach*, 383 U.S. at 309-11. Therefore the Court has imposed the preclearance requirement on changes that do not entirely foreclose the ability to cast a vote, including “a change in polling places,” “a change in the place of registration,” and even “a change from a paper ballot to a machine.” *Perkins v. Matthews*, 400 U.S. at 387-88.

Texas may not deflect responsibility for raising the burden of casting a ballot by asserting that it is a voter's choice whether or not to suffer an additional cost to vote.

Tex. CL 46-47. As the Supreme Court has noted, “the political, social, and economic

legacy of past discrimination for Latinos in Texas may well hinder their ability to participate effectively in the political process.” *LULAC v. Perry*, 548 U.S. at 440 (internal quotation marks and citations omitted). As a result, this Court recently rejected a variation on the “choice” analysis, the claim that 50.1% Hispanic registration provides an ability to elect preferred candidates of choice if Hispanic voters choose to turn out at the same rate as Anglos. *See Texas v. United States*, 831 F. Supp. 2d 244, 262-66 (D.D.C. 2011) (three-judge court). Section 5 was crafted to address precisely such “[p]rocedural hurdles” – not merely procedural bars. *Katzenbach*, 383 U.S. at 311 (citing *Lane v. Wilson*, 307 U.S. 268 (1939)); *see also Lane*, 307 U.S. at 270-72 & n.1 (striking down 12-day registration window).

Implementation of SB 14 would raise the burden of casting a ballot in person for over 1.5 million Texas voters. Of the 13,065,504 non-duplicate voters in Texas as of April 30, 2012, 1,893,143 cannot be definitively matched to a TDL/ID or LTC record valid for purposes of SB 14, and 1,501,977 are definitive non-matches. AGFF ¶¶ 33A-33B, 33D. Over half a million of these voters successfully cast a ballot in 2008, and over a quarter million cast a ballot in 2010. AGFF ¶ 33H. Although it is possible that some portion of these voters may have other forms of acceptable ID, this possibility is no more than speculation because the State has failed to produce specific evidence to establish that these voters would be able to vote in person if SB 14 were implemented. AGFF ¶ 33J.

For each of these voters, SB 14 would present a significant new hurdle to voting. Each voter lacking PVID must travel to a DL office to obtain a TDL/ID or EIC. AGFF

¶ 19C. Of Texas’s 225 counties, 81 have no DL office, and 34 have offices only with limited hours. AGFF ¶¶ 19F-19G. On a weekday before 6 p.m., a voter must travel up to 60 miles to a DL office, and many voters must leave the inner city to obtain ID. AGFF ¶ 19F. A voter must wait an average of one hour, with waits as long as three hours in metro areas. AGFF ¶¶ 19I-19K. To receive an EIC, voters must present documents that are not free, such as a birth certificate or court order. AGFF ¶ 7A. Between the costs of travel, missed work, and documents, obtaining an EIC is not costless and does not mitigate the burden of SB 14. *See Perkins v. Matthews*, 400 U.S. at 388 (describing moving polling places to “distances remote from black communities” as harm to be prevented by application of Section 5). Even disabled voters, who are ostensibly exempt from SB 14, must re-register and present documents – likely at a county office – in order for the exemption to be printed on their voter registration card. AGFF ¶ 41E.

**D. SB 14 Will Have a Disproportionate Impact on Minority Voters.**

The law would have a tremendous effect on black registered voters, in both absolute and relative terms. In absolute terms: 1 in 5 black registered voters don’t have a TDL/ID or LTC. In relative terms: black registered voters are almost twice as likely as Anglo registered voters not to have a TDL/ID or LTC (20.7% of all black registered voters, compared to 10.85% of all Anglo registered voters). AGFF ¶¶ 33C-33D.

The law would also have a tremendous effect on Hispanic registered voters, again in both absolute and relative terms. In absolute terms: close to 1 in 6 Hispanic registered voters don’t have an allowable form of state ID (17.5%). In relative terms: Hispanic

registered voters are two-thirds more likely than white registered voters not to have a TDL/ID or LTC (17.5% of all Hispanic registered voters, compared to 10.85% of whites). AGFF ¶¶ 33C-33D.

Even assuming that ambiguous records can be matched, 16.0% of black voters and 14.3% of Hispanic voters cannot be matched, while 9.7% of Anglo voters can be matched. AGFF ¶ 33E. 10.4% of black voters and 8.8% of Hispanic voters who cast a ballot in 2008 – over 200,000 voters in total – could not be matched; nor could 7.6% of black voters and 7.4% of Hispanic voters who cast a ballot in 2010. Among Anglo voters these figures are 6.0% and 4.6%. AGFF ¶ 33H. Each of these discrepancies is statistically significant. AGFF ¶ 33I.<sup>7</sup> Therefore SB 14 will severely retrogress black and Hispanic voters' effective exercise of the electoral franchise.

The lingering effects of discrimination in Texas will also exacerbate burden on minority voters created by SB 14. Blacks and Hispanics in Texas experience poverty at rates of 25.8% and 23.3%, compared to only 8.8% among Anglos, and blacks and Hispanics are far more likely than Anglos not to have completed high school, from which it may be deduced that they are more likely to work for hourly wages. RJN ¶ 10. Therefore minority voters will experience a greater relative burden as a result of the costs of traveling to a DL Office and obtaining documents needed to receive an EIC. In addition, 13.0% of blacks and 7.3% of Hispanics have no vehicle available to them, whereas only 3.8% of Anglos lack access to a vehicle. RJN ¶ 13. Because over one-third

---

<sup>7</sup> These figures do not address eligible Texans who are not presently registered, a population that is disproportionately minority. Compare RJN ¶¶ 7-8, with AGFF ¶ 33A.

of Texas counties lack a DL Office, while every county has voting precincts – minority voters without vehicle access will face a substantially greater burden to obtain an EIC than the existing burden to simply travel to a local polling place. AGFF ¶¶ 19F-19G.

The Supreme Court’s decision in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), does not bear on this analysis. *Crawford* concerned an Equal Protection challenge to Indiana’s photographic voter identification law pursuant to *Anderson v. Celebrezze*, 460 U.S. 780 (1983), a balancing analysis of a less restrictive statute in a very different state. *See Crawford*, 553 U.S. at 189-91. As set out above, the question here is not whether SB 14 addresses legitimate state interests; the test under the effect prong is whether a proposed voting change will result in retrogression. *E.g., Beer*, 425 U.S. at 141.<sup>8</sup> Each of the aggregate burdens that SB 14 will create will be experienced at a greater rate and with greater intensity by minority voters. Because minority voters in Texas are more likely than Anglos to lack the identification required by SB 14 – and because of geography and funding limitations for DPS – minority voters are more likely to be required to miss work, travel great distances, and wait in line for hours. Because minority voters in Texas are more likely to experience poverty and limited education the cost of travel and acquiring required documents will be magnified. Finally, because

---

<sup>8</sup> *Crawford* did not adjudicate a discrimination claim, and the district court had found no evidence that racial minority groups would be disproportionately impacted. *See Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 823-24 (S.D. Ind. 2006), *aff’d sub nom., Crawford v. Marion County Elec. Bd.*, 553 U.S. 181 (2008). Similarly, the Court had before it no evidence of “the number of registered voters without photo identification,” *Crawford*, 553 U.S. at 200, as well as a District Court finding that 99% of Indiana’s voting-age population possessed the necessary identification, *id.* at 188 n.6.

minority voters are more likely to lack access to vehicles – and because many major urban areas lack downtown DPS offices or widespread public transportation – the difficulty of reaching a DPS office will be exacerbated, and may be impossible for some. Texas is not Indiana, *Beer* is not *Anderson*, SB 14 is not Indiana’s SEA 483, and this litigation is not resolved by *Crawford*.

**II. TEXAS HAS FAILED TO PROVE THAT SENATE BILL 14 LACKS ANY DISCRIMINATORY PURPOSE.**

Texas has also failed to carry its burden to establish that SB 14 lacks any discriminatory purpose. For the reasons that follow, this Court should deny the State’s request for a declaratory judgment under the purpose prong of Section 5.

**A. Section 5 Bars Voting Changes With Any Discriminatory Purpose.**

A covered jurisdiction also bears the burden under Section 5 to establish that a voting change lacks any discriminatory purpose. 42 U.S.C. § 1973c(a), (c); 28 C.F.R. § 51.54(a); *cf. United States v. Brown*, 561 F.3d 420, 433 (5th Cir. 2009) (“[R]acial discrimination need only be one purpose, and not even a primary purpose, of an official act” to violate the Voting Rights Act); H.R. Rep. No. 97-226 at 30 n.101 (1982) (barring voting practices under Section 2 “if a discriminatory purpose was a motivating factor”). The purpose prong requires that a discriminatory purpose cannot have been even “a motivating factor.” *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 488 (1997); *cf. Garza*, 918 F2d. at 771 (affirming that fragmenting Hispanic population in pursuit of a non-racial objective was nevertheless purposeful discrimination).

Again Texas demands that this Court engage in a wholesale departure from the



clear mandate of the 2006 Reauthorization of the Voting Rights Act, decades of jurisprudence applying the purpose prong, and over a century of case-law under the Fifteenth Amendment. Tex. CL 37-39. Congress clarified in the 2006 Reauthorization of the Voting Rights Act that the purpose prong extends to “any discriminatory purpose,” 42 U.S.C. § 1973c(c), any of which would violate the Fifteenth Amendment, *see, e.g., Rice v. Cayetano*, 528 U.S. 495, 511-17 (2000), not merely “the purpose of violating the Fifteenth Amendment.” Tex. CL 38 (emphasis added). More critically, Section 5 has long barred implementation of voting changes with permissible purposes if such purposes are accompanied by a desire to abridge minority voters’ ability to cast a ballot. *See, e.g., City of Pleasant Grove*, 479 U.S. at 471-72 (barring an annexation “motivated, in part, by the impermissible purpose of minimizing future black voting strength.”). Similarly, although there are plainly non-discriminatory reasons that may justify the use of multimember districts, *see, e.g., White v. Regester*, 412 U.S. 755, 765 (1973), at-large elections may violate the Fifteenth Amendment even when they were “neutral in origin.” *Rogers v. Lodge*, 458 U.S. 613, 626 (1982).

The State’s restrictive reading of the Fifteenth Amendment simply has no basis in the cases on which it relies. The State’s selective quotation warps *Myers v. Anderson*, 238 U.S. 368 (1915), which concluded that

because, as there is a reason other than discrimination on account of race or color discernible upon which the standard may rest, there is no room for the conclusion that [a voting qualification] *must be assumed*, because of the impossibility of finding any other reason for its enactment, to rest alone upon a purpose to violate the 15th Amendment.

*Id.* at 379 (emphasis added). This stands in contrast to a grandfather clause, which could serve no plausible race-neutral purpose and could be assumed – with little further evidence – to rest on a discriminatory purpose. *See id.* (citing *Guinn v. United States*, 238 U.S. 347 (1915)); *see also Guinn*, 238 U.S. at 364-65. Similarly, *Guinn* sets out the circumstances in which a Court must assume a discriminatory purpose, where the Court has sought “in vain for any ground which would sustain any other interpretation but that the provision” is intended to discriminate on the basis of race. 238 U.S. at 365; *see also Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266 (1977) (citing *Guinn* as a starting point). With no basis, the State presents a sufficient condition for a violation of the Fifteenth Amendment as a necessary condition for a violation of Section 5.<sup>9</sup>

**B. *Arlington Heights* Guides Analysis of Discriminatory Purpose.**

“[A]ssessing a jurisdiction’s motivation in enacting voting changes is a complex task requiring a sensitive inquiry into such circumstantial and direct evidence as may be available.” *Bossier Parish*, 520 U.S. at 488. In Section 5 cases, the Supreme Court has directed this Court to rely on the framework set out in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), when “analyzing whether invidious discriminatory purpose was a motivating factor in a government body’s decisionmaking.” *Bossier Parish*, 520 U.S. at 488; *see also Hunt v. Cromartie*, 526 U.S. 541, 546 (1999); 28 C.F.R. § 51.54(a). Under the *Arlington Heights* rubric, the

---

<sup>9</sup> Because *Myers* and *Guinn* do not support the State’s reading of the Fifteenth Amendment or Section 5, *Northwest Austin* cannot compel this restrictive interpretation.

“important starting point” is “the impact of the official action whether it bears more heavily on one race than another.” *Bossier Parish*, 520 U.S. at 489 (citing *Arlington Heights*, 429 U.S. at 266). Other factors include: historical background, particularly if it reveals a series of decisions undertaken with discriminatory intent; the sequence of events leading up to the decision; whether the challenged decision departs from ordinary procedure; and contemporaneous statements of decision-makers. *Id.* (quoting *Arlington Heights*, 429 U.S. at 266-68); *see also* 28 C.F.R. § 51.57. This searching inquiry must assess whether a jurisdiction’s professed justification is pretextual. *See Pleasant Grove*, 479 U.S. at 470.

The State’s request for deference and blind acceptance of the public statements of the sponsors of SB 14 – neither of whom will appear at trial – has no place where racial discrimination has been alleged.

Rarely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern, or even that a particular purpose was the “dominant” or “primary” one. In fact, it is because legislators and administrators are properly concerned with balancing numerous competing considerations that courts refrain from reviewing the merits of their decisions, absent a showing of arbitrariness or irrationality. But racial discrimination is not just another competing consideration. When there is a proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified.

*Arlington Heights*, 429 U.S. at 265-66 (footnotes omitted). The Supreme Court’s use of the *Arlington Heights* standard in *Bossier Parish* establishes that circumstantial evidence must be considered under the purpose prong. *See Bossier Parish*, 520 U.S. at 488. This evidence would be of no utility if this Court were bound to accept statements that a

voting change lacks a discriminatory purpose. *Cf. Smith v. Clarkton*, 682 F.2d 1055, 1064 (4th Cir. 1982) (“Municipal officials acting in their official capacities seldom, if ever, announce on the record that they are pursuing a particular course of action because of their desire to discriminate against a racial minority.”).

As a result, the State’s reliance on a footnote in *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463 n.7 (1981), is wholly misplaced. *Clover Leaf Creamery* accepted legislators’ representations when determining what purposes could support a statutory distinction under rational basis review. Not only do considerations of race trigger a far more searching inquiry, *see, e.g., Johnson v. California*, 543 U.S. 499, 505-515 (2005), but the question in this case is not solely the validity of Texas’s stated purpose. The question is whether a discriminatory purpose provided any underlying motivation, regardless of whether valid purposes existed alongside it. A “label is not always dispositive.” *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997) (internal citation and quotation marks omitted).

Texas also argues that legislators need not have been motivated by the purported purposes, in other words claiming that pure pretext is enough to satisfy its burden under Section 5. Tex. CL 39-40. When analyzing a law under more than mere rational basis review, “a court is empowered to disregard a legislature’s statement of purpose if it considers it a pretext.” *Clover Leaf Creamery*, 449 U.S. at 476 n.2 (citing *Dean Milk Co. v. Madison*, 340 U.S. 349, 354 (1951)); *see also Pleasant Grove*, 479 U.S. at 470 (rejecting pretext under Section 5). Legislative history “may be highly relevant,

especially when there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports.” *Arlington Heights*, 429 U.S. at 268; *see also, e.g., Bossier Parish*, 420 U.S. at 489. While “there may be a difference between why an individual Member sponsored or supported a bill and what that bill was designed to accomplish,” “[t]his distinction is admittedly a fine one that may disappear in practice,” *Jewish War Veterans of the USA, Inc. v. Gates*, 506 F. Supp. 30, 60 (D.D.C. 2007). “What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it,” *United States v. O’Brien*, 391 U.S. 391, 384 (1968), but a slip of the tongue may also evince general purpose, which is why contemporaneous statements are included among circumstantial evidence. *See, e.g., Busbee v. Smith*, 549 F. Supp. 494, 500-15 (D.D.C. 1982), *aff’d*, 103 S. Ct. 809 (1983).

Again *Northwest Austin* compels no different conclusion. The inquiry described above is identical to the purpose inquiry under the Fourteenth and Fifteenth Amendment. *Northwest Austin* applied the constitutional avoidance canon of statutory interpretation to the bailout provision, *see infra* Section I.A, and no construction of the text of Section 5 could diminish the purpose prong of Section 5 to the superficial inquiry requested by the State. Rather Section 5 remains valid federal law, and it requires Texas to prove that SB 14 was enacted without a discriminatory purpose. *See Shelby County*, 679 F.3d at 854.

### **C. SB 14 Was Enacted with a Discriminatory Purpose.**

Texas has also failed to meet its burden of showing that SB 14 lacks any discriminatory purpose. On a background of anti-immigrant rhetoric, the Texas

legislature advanced increasingly restrictive and burdensome PVID bills over several sessions, culminating in the enactment of a bill whose restrictions exceed those imposed by any other State. To minimize minority participation, the legislature and governor orchestrated a series of unusual procedures, including amending Senate rules to exempt voter identification legislation from procedures traditionally applied to all other bills. While the primary stated purpose of the legislation was to ensure the integrity of elections, proponents could cite virtually no evidence that the benchmark identification procedures had failed. The State knew or should have known of the likely disparate effect on minority voters and possessed data necessary to conduct such analysis. Yet the Legislature looked to no such analysis and rejected amendments intended to mitigate the impact of SB 14 on minority voters.

### **1. Discriminatory Impact**

Under *Arlington Heights*, the “important starting point” is the discriminatory impact of the proposed plans: logically a bill can be presumed to pursue its natural consequences. *Bossier Parish*, 520 U.S. at 487. SB 14 weighs more heavily on minority voters because Hispanic and black voters are nearly twice as likely as Anglo voters to lack a TDL/ID or LTC and are far more likely to suffer socioeconomic disadvantages that will magnify the burden to obtain an EIC. *See* Section I.D, *supra*.

While the effect of SB 14 on minority voters was predictable, AGFF ¶¶ 134, 155-156, 158, Texas made no effort to analyze this effect during the first three sessions in which the legislature considered PVID legislation. AGFF ¶¶ 130, 135, 152, 157. In

January 2011, only after a bill supporter requested such information, the ED matched the VR database against the TDL/ID database and concluded that between 844,713 and 678,560 registered voters might lack a TDL/ID. AGFF ¶¶ 179-181. Although the ED routinely conducts a Spanish surname analysis of election data, AGFF ¶ 183, it made no attempt to do so, despite minority legislators' vociferous concerns regarding disparate impact. AGFF ¶¶ 175, 177, 186-187, 200. Moreover, after determining that the number of unmatched VR records could approach 850,000, the SOS embargoed its calculation. AGFF ¶¶ 182. Nevertheless, House leadership was aware that Rep. Smith had arrived at similar figures via informal calculations during the prior session. AGFF ¶ 158.

Additionally, legislators rejected amendments intended to mitigate or even investigate SB 14's discriminatory effect. The Legislature rejected numerous amendments to expand the range of permissible PVIDs, AGFF ¶ 186, and rejected amendments to alleviate the costs of transportation and underlying documents for indigent voters. AGFF ¶ 200. None of these amendments, if adopted, would have interfered with the stated purposes of SB 14. Similarly, the Legislature rejected amendments requesting that the SOS count the number of PBs cast and uncounted as a result of SB 14 and to classify those lost votes according to race. AGFF ¶ 200.

## **2. Historical Background and Sequence of Events**

Texas' history of official racial discrimination against its African-American and Hispanic citizens is longstanding and well-documented. Historically, state officials have established poll taxes, organized White-only primaries, and instituted other forms of

discrimination that have directly affected the rights of minorities to register, vote, and otherwise participate in the political process. *E.g.*, *White v. Regester*, 412 U.S. at 765. Since Congress placed Texas under Section 5 coverage, Texas has nonetheless attempted to continue this pattern. *See* AGFF ¶ 206. A district court recently found evidence that decisionmakers in the same legislative session that passed SB 14 “were impermissibly focused on race” when drawing a district for an incumbent who “wanted to get more Anglo numbers.” Opinion at 6, *Perez v. Perry*, No. 5:11-cv-360 (W.D. Tex. Mar. 19, 2012) (Doc. 690) (Ex. 558); *see also LULAC v. Perry*, 548 U.S. at 477 (invalidating 2003 redistricting). The State’s repeated attempts to prevent minority citizens from participating effectively in the political process have lingering and enduring effects that remain evident today and will amplify the harm of SB 14. *See* Section I.D, *supra*; *see also Rogers v. Lodge*, 458 U.S. at 625 (holding that past discrimination is relevant to an inference of purposeful discrimination, particularly where discriminatory practices were common, were not abandoned until federal intervention, and were replaced by facially neutral practices nonetheless intended to maintain the status quo).

The sequence of events prior to the passage of SB 14 also constitute strong circumstantial evidence of a discriminatory purpose. Over the course of four legislative sessions from 2005 through 2011, the PVID bills under serious consideration by the legislature became increasingly restrictive. AGFF ¶¶ 130, 133, 150, 166-167. Most notably, while PVID bills introduced in 2005, 2007, and 2009 allowed for the use of non-photo identification, SB 14 includes a so-called “hard photo ID” requirement that does



not allow use of non-photo identification. AGFF ¶¶ 130, 133, 150, 166-167. Moreover, SB 14 permitted fewer forms of photo ID than did any of its predecessor bills, even though the predecessor bills had also offered voters the alternative option of presenting non-photo ID. AGFF ¶¶ 130, 133, 150, 166-167.

Over the same period, notable growth of the minority community in Texas continued, along with minority political participation. RJN ¶¶ 3-8 & fig.1. The 2009 legislative session was marked by a new House leadership coalition supported by minority legislators. AGFF ¶ 155. However a landslide election in 2010 marked allowed an Anglo bloc in the Texas Senate and an Anglo-supported coalition in the House to exercise total control. AGFF ¶ 165. As one co-sponsor of SB 14 described, the majority had decided, “We’re not taking any amendments. This is what we want. We already have the votes.” AGFF ¶¶ 193-194.

### **3. Procedural Deviations**

The legislature employed numerous atypical procedural devices to enact SB 14. Most significantly, at the start of the 2009 legislative session, Sen. Williams initiated a targeted suspension of the Senate’s two-thirds rule only for legislation relating to voter ID requirements. AGFF ¶¶ 144-148. Thus, voter identification bills could be – and were – passed by a simple majority vote at the very beginning of each session over vehement opposition from minority senators. AGFF ¶¶ 145, 153. The Speaker of the House publicly stated that this maneuver “did nothing to help the House pass a responsible anti-voter fraud bill.” AGFF ¶ 147.

In January 2011, the governor designated voter identification as a legislative emergency, enabling it to be considered within the first sixty days of the legislative session. AGFF ¶¶ 170-172. The Lieutenant Governor referred SB 14 directly to the Committee of the Whole (rather than to the State Affairs Committee) with only a few days notice, again over the protests of minority senators. AGFF ¶¶ 124, 130, 174. As a result, SB 14 passed out of the Senate in only two weeks, before the House had even organized committees. AGFF ¶ 188, 191-192.

Once received by the House, the Speaker referred SB 14 to the Select Committee on Voter Identification and Voter Fraud. AGFF ¶¶ 191-192. The creation of VIVF allowed the Speaker to hand-pick an alternative to the standing Elections Committee, which had considered ID legislation in prior terms and over which the Speaker had less control. AGFF ¶ 192. The Committee received a novel “fast track” designation, and all other voter ID and fraud bills were steered away from it. AGFF ¶ 192.

#### **4. Substantive Deviations**

The passage of SB 14 also reflects numerous substantive deviations from legislative standards. The absence of empirical evidence before the legislature that SB 14 would cure any existing problems in the State evinces that the purposes advanced by the State were either pretextual or were insufficient alone to support the narrow focus and extreme urgency placed on PVID, which support a finding of discriminatory purpose. *See St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 511 (1993) (holding that “the factfinder’s disbelief of the reasons put forward . . . (particularly if disbelief is

accompanied by a suspicion of mendacity)” support a finding of discriminatory purpose). SB 14 sponsors and supporters mechanically reiterated that the bill was enacted to ensure integrity and increase confidence in elections, often quoting from shared talking points. AGFF ¶¶ 184, 197-198. When pressed for facts supporting the need for PVID, legislators could identify scant evidence of in-person voter fraud, and could only speculate about a lack of voter confidence or whether an ID requirement would cure that lack of confidence. AGFF ¶¶ 81A-81C. Moreover, SB 14 proponents demonstrated a remarkable lack of knowledge concerning the substance of the bills they carried or the connection between specific provisions of SB 14 and election integrity. AGFF ¶ 190.

Finally, bill proponents simply refused to address the concerns of legislators who sought to protect the voting rights of their minority constituents, often moving to table amendments without addressing their substance. AGFF ¶¶ 186, 200. As discussed above, many of these amendments were intended to mitigate the burden imposed by SB 14 while leaving in place its core PVID requirement. AGFF ¶ TK; *see also* Section II.C.1, *supra*.

## **5. Contemporaneous Statements**

Texas legislators and their constituents made numerous statements during the period preceding the passage of SB 14 that provide further evidence of a discriminatory purpose. To the extent that Texas has opposed the Attorney General’s attempts to cross-examine legislators’ public statements, either through deposition or at trial, the Court should draw a negative inference that questions concerning the basis for public statements would have yielded unfavorable testimony. *See UAW v. NLRB*, 459 F.2d

1329, 1336 (D.C. Cir. 1972).

Critically, SB 14 cannot, on its face, prevent noncitizen voting because there is no citizenship requirement to obtain a TDL/ID. AGFF ¶¶ 100-101.<sup>10</sup> Nevertheless, Lieutenant Governor Dewhurst and other prominent legislators argued that SB 14 and prior PVID legislation would prevent noncitizens from voting or were a form of immigration reform. AGFF ¶¶ 97B, 132, 149, 189. Encouraged by legislators and advocates, citizens in turn urged lawmakers to enact PVID requirements to prevent “illegals” from voting. AGFF ¶ 196. The absence of a nexus between SB 14 and noncitizen voting suggests that statements about “illegal aliens” served as a byword for the growing Hispanic population. *See, e.g., Chamber of Commerce v. Whiting*, 131 S. Ct. 1968, 1988-89 (2011) (discussing ties between immigration restrictions and perceptions of Hispanic-Americans) (quoting H.R. Rep. No. 99-682, at 68 (1986)). Moreover, voter applicants affirm their citizenship status when completing a voter registration application, and county election officials determine whether the applicant is eligible, including whether the applicant is a U.S. citizen. AGFF ¶¶ 1A, 23E, 98. SB 14 allows for the use of several forms of documents, including a driver license, personal identification, and LTC, which noncitizens may lawfully possess. AGFF ¶¶ 100-101. Accordingly, even assuming a noncitizen becomes registered to vote, SB 14 would not prevent the voter

---

<sup>10</sup> By way of contrast, existing federal and state law provide numerous protections against non-citizen voter registration. *See* 42 U.S.C. § 1973gg-7(b)(2) (requirement to affirm citizenship under oath); *id.* § 15483(b)(4)(A) (citizenship check-box on federal registration form); *id.* § 1973gg-10(2) (criminal penalty for fraudulent registration and voting); 18 U.S.C. § 1015(f) (criminal penalty for false claims of citizenship to register or to vote); *id.* § 611 (criminal penalty for voting by noncitizens); Tex. Elec. Code § 16.0332 (assess citizenship of disqualified jurors).

from casting a ballot. AGFF ¶ 97A, 100-101. Therefore, these statements may be understood only as linking restrictions on voting to the growing Hispanic population and building support by exploiting fear of that group. AGFF ¶ 97B.

### **III. CONCLUSION**

As set forth above, the State of Texas has failed to carry its burden under Section 5 to prove that the SB 14 neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. *See* 42 U.S.C. § 1973c. Therefore the Court should deny the State's request for a declaratory judgment permitting implementation of the SB 14.

Date: June 25, 2012

RONALD C. MACHEN, JR.  
United States Attorney  
District of Columbia

Respectfully submitted,

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

/s/ Elizabeth S. Westfall  
T. CHRISTIAN HERREN, JR.  
MEREDITH BELL-PLATTS  
ELIZABETH S. WESTFALL  
BRUCE I. GEAR  
JENNIFER L. MARANZANO  
SPENCER FISHER  
RISA BERKOWER  
DANIEL J. FREEMAN  
Attorneys  
Voting Section, Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

**CERTIFICATE OF SERVICE**

I hereby certify that on June 25, 2012, I served a true and correct copy of the foregoing via the Court's ECF system on the following counsel of record:

Jonathan Franklin Mitchell  
Adam W. Aston  
Matthew Hamilton Frederick  
Patrick Kinney Sweeten  
Office of the Attorney General of Texas  
jonathan.mitchell@oag.state.tx.us  
adam.aston@oag.state.tx.us  
matthew.frederick@oag.state.tx.us  
Patrick.sweeten@texasattorneygeneral.gov

Adam K. Mortara  
John M. Hughes  
Bartlit Beck Herman Palenchar & Scott LLP  
adam.mortara@bartlit-beck.com  
john.hughes@bartlit-beck.com

*Counsel for Plaintiff*

John Tanner  
john.k.tanner@gmail.com

Nancy G. Abudu  
M. Laughlin McDonald  
Katie O'Connor  
Arthur B. Spitzer  
American Civil Liberties Union  
nabudu@aclu.org  
lmcdonald@aclu.org  
koconnor@aclu.org  
artspitzer@gmail.com

*Counsel Texas Legislative Black Caucus  
Intervenors*

Debo P. Adegbile  
Leah C. Aden  
Elise C. Boddie  
Ryan Haygood  
Dale E. Ho  
Natasha Korgaonkar  
NAACP Legal Defense and Education Fund  
dadegbile@naacpldf.org  
laden@naacpldf.org  
eboddie@naacpldf.org  
rhaygood@naacpldf.org  
dho@naacpldf.org  
nkorgaonkar@naacpldf.org

Michael Birney de Leeuw  
Douglas H. Flaum  
Adam M. Harris  
Fried, Frank, Harris, Shriver & Jacobson  
douglas.flaum@friedfrank.com  
adam.harris@friedfrank.com  
michael.deleeuw@friedfrank.com

*Counsel for Texas League of Young Voters  
Intervenors*

Jon M. Greenbaum  
Mark A. Posner  
Lawyers' Committee for Civil Rights  
mposner@lawyerscommittee.org  
jgreenbaum@lawyerscommittee.org

Ezra David Rosenberg  
Michelle Hart Yeary  
Dechert LLP  
ezra.rosenberg@dechert.com  
michelle.yeary@dechert.com

Robert Stephen Notzon  
Robert@notzonlaw.com

Gary L. Bledsoe  
Law Office of Gary L. Bledsoe and  
Associates  
garybledsoe@sbcglobal.net

Myrna Perez  
Wendy Robin Weiser  
Ian Arthur Vandewalker  
The Brennan Center for Justice  
myrna.perez@nyu.edu  
wendy.weiser@nyu.edu  
ian.vandewalker@nyu.edu

*Counsel for NAACP Intervenors*

Nina Perales  
Amy Pederson  
Mexican American Legal Defense &  
Educational Fund, Inc.  
nperales@maldef.org  
apederson@maldef.org

*Counsel for Rodriguez Intervenors*

J. Gerald Hebert  
hebert@voterlaw.com

Chad W. Dunn  
Brazil & Dunn  
chad@brazilanddunn.com

*Counsel for Kennie Intervenors*

*s/ Daniel J. Freeman*  
\_\_\_\_\_  
DANIEL J. FREEMAN  
Attorney, Voting Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530