

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

STATE OF TEXAS,

Plaintiff,

v.

ERIC H. HOLDER, JR.,  
ATTORNEY GENERAL OF THE  
UNITED STATES, *et. al.*

Defendant

Case No. 1:12-cv-00128  
RMC-DST-RLW

**DEFENDANT-INTERVENORS'<sup>1</sup> PROPOSED SUPPLEMENTAL,  
NON-DUPLICATIVE FINDINGS OF FACT AND CONCLUSIONS OF LAW**

---

<sup>1</sup> This brief is submitted on behalf of all Defendant-Intervenors, specifically, the Texas State Conference of NAACP Branches and the Mexican American Legislative Caucus of the Texas House of Representatives; the Texas League of Young Voters Education Fund, Imani Clark, KiEssence Culbreath, Demariano Hill, and Dominique Monday; the Kennie Intervenors (Eric Kennie, Anna Burns, Michael Montez, Penny Pope, Marc Veasey, Jane Hamilton, David De La Fuente, Lorraine Birabil, Daniel Clayton, and Sergio Deleon); the Texas Legislative Black Caucus, the League of Women Voters of Texas, the Justice Seekers, Peter Johnson, Ronald Wright, and Donald Wright; Southwest Workers Union, La Union Del Pueblo Entero; Victoria Rodriguez, Nicole Rodriguez, Southwest Voter Registration Education Project, and Mi Familia Vota Education Fund.

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
TABLE OF AUTHORITIES.....	ii
INTRODUCTION .....	1
RESPONSE TO TEXAS’S PROPOSED FINDINGS OF FACT AND INTERVENORS’ PROPOSED ADDITIONAL FINDINGS OF FACT.....	1
INTERVENORS’ PROPOSED ADDITIONAL FINDINGS TO SECTION V (CIRCUMSTANTIAL EVIDENCE OF DISCRIMINATORY PURPOSE).....	23
D.    SB 14 Was Enacted Against A Background of Racial Discrimination .....	23
E.    SB 14 Was Prepared For Preclearance In Disregard Of Any Impact On Minorities .....	26
VI.    THERE IS SUBSTANTIAL DIRECT EVIDENCE OF A DISCRIMINATORY PURPOSE BEHIND SB 14.....	28
PROPOSED CONCLUSIONS OF LAW .....	40
C.    SB 14 Was Enacted with a Discriminatory Purpose.....	40

**TABLE OF AUTHORITIES**

**CASES**

*Beare v. Smith*,  
321 F.Supp. 1100 (W.D. Tex. 1971) *aff'd sub nom Beare v. Briscoe*, 498 F.2d  
244 (5<sup>th</sup> Cir. 1974)..... 24

*United States v. State of Texas*,  
252 F.Supp. 234 (W.D. Tex. 1966) *aff'd Texas v. U.S.*, 384 U.S. 155 (1966) ..... 24

**STATUTES**

Texas Election Code § 13.002(c)(8)..... 10

**OTHER AUTHORITIES**

37 Tex. Admin. Code § 15.49 ..... 4

Senate Bill 14..... 27

Amendment 55 to SB14 ..... 21

## INTRODUCTION

Pursuant to the Court's June 13, 2012 Order, Defendant-Intervenors hereby submit their Findings of Fact and Conclusions of Law, which are supplemental to and non-duplicative of, those filed by Defendant Attorney General Holder ("DOJ").<sup>2</sup> Defendant-Intervenors incorporate herein and rely on their Responses to Texas's Proposed Findings Of Fact and Conclusions Of Law Relating To The Defendant Intervenors.

### **RESPONSE TO TEXAS'S PROPOSED FINDINGS OF FACT AND INTERVENORS' PROPOSED ADDITIONAL FINDINGS OF FACT**

#### **Additional findings on provisional ballots:**

**9B.** Texas has one of the lowest rates of provisional ballots being counted as compared to other states. JA 177.

**9C.** SOS has received complaints regarding voters denied the right to cast a provisional ballot when questions arose regarding either their eligibility to vote or their correct voting precinct. Ex. 57 at p. 55-56; Ex. 49.

#### **Additional findings on impact of SB 14:**

**18C.** Mi Familia Vota, a non-profit and non-partisan organization, seeks to empower Latinos and other minorities by increasing their participation in the political process. Ex.

---

<sup>2</sup> Defendant-Intervenors specifically incorporate and agree with all DOJ's Proposed Findings of Fact and Conclusions of Law [Dkt 223], and its objections and responses to those of Texas. In supplementing DOJ's responses to Texas' FF and DOJ's new FF, and also in providing our own additional FF, we use the same numbering system employed by DOJ. In addition, Intervenors rely on DOJ's glossary, at pp. ix-xi of DOJ's FF.

12 ¶ 4. SB 14 will cause Mi Familia Vota to assist fewer voters by diverting its resources into additional voter education efforts. Ex. 12 ¶¶ 6, 8.

**18D.** Southwest Voter Registration Education Project (“SVREP”), a non-profit and non-partisan organization, similarly seeks to improve political participation in Latino and other minority communities. Ex. 9 ¶ 4. SB 14’s voter ID requirements will cause SVREP to assist fewer voters by forcing SVREP to divert its resources to educate voters on voter ID and assist them in obtaining ID. Ex. 9 ¶ 6.

**18E.** Lydia Camarillo testified that, based on over 30 years of experience working in voter registration and mobilization in the Latino community, Latinos are interested in voting but have difficulty overcoming barriers to voting. Latinos are often among the working poor and are relatively younger than the general population. For working class Latinos, it is difficult to obtain ID at DPS because DPS offices are open during regular business hours and these Latinos’ work hours often are not flexible. Further, Latinos struggling to afford groceries, rent, and child care may not be able to afford the gas money to travel to a DPS office or to order a birth certificate needed to get a voter ID. Relatively lower income, younger age and lower education levels also are obstacles to voting. Ex. 9 ¶ 12.

**18F.** Ms. Camarillo also testified that Latinos are still striving to overcome a history of exclusion in voting and may not have a history of civic participation as a family tradition. Current discrimination also forms a backdrop for Latinos considering what steps need to be taken to vote. Latinos who feel their vote is not valued are less likely to

take the necessary steps to overcome additional obstacles such as obtaining voter ID under SB 14. Ex. 9 ¶ 13.

**18G.** The mission of the Texas State Conference of NAACP Branches is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination. Ex. 110.

SB 14 will impair the ability of Texas NAACP to undertake activities in furtherance of its mission by forcing it to divert resources into educating voters about the new photo ID requirements and into assisting voters obtain the required identification. Banks Dep. 160:19-161:3.

**18H.** Christina Sanders testified that, based on her experience registering students to vote at historically black colleges, “a lot of people who may not have the documents [required to obtain an ID under SB 14] or feel like they don't have the resources to get the documents might not register.” TLYV Dep. 19:23-20:06; 39:09-19; 45:11-46:17. Ms. Sanders further testified that exists 14 does not provide for a truly “free” voter ID, because, “[f]or folks that don't have the other documents needed in order to get the free ID, they'd have to pay for those. If they don't have an income, if they don't have transportation to go, many folks don't, those things become a barrier.” *Id.* at 38:07-38:15; 39:05-19. Ms. Sanders also testified that it is difficult for “persons who would have to take off of work to be able to go and get the required documents” to obtain an ID and then obtain the ID itself. *Id.* 39:05-39:19.

**Additional findings on documentation needed to meet requirements of SB 14:**

**19Q.** The fee for an original Texas Driver's License is \$25.00 for ages 18 and up and \$9 for ages 85 and up. The fee for a Driver's License Renewal is \$25.00 ages 18 and above and \$9.00 for ages 85 and up. There is a fee exemption for disabled veterans for both original and renewal licenses. Driver's Licenses are generally valid for 6 years. Ex. 22.

**19R.** The fee for an Original or Renewal Texas Personal Identification Card is \$16.00 and \$6.00 for ages 60 and above. A duplicate ID to replace a lost or stolen ID or change the address or name is \$11.00. Personal identification cards generally expire in 6 years. Ex. 22.

**19S.** On April 19, 2011, the DPS adopted 37 Tex. Admin. Code § 15.49 requiring proof of domicile for applicants for Texas "original, renewal, duplicate identification certificates." Ex. 34. This requires applicants to provide two documents, which contain the applicant's name and residential address, from the acceptable proof of domicile list. Ex. 34.

**19T.** Acceptable proof of domicile documents are mortgage or lease documents; Texas voter registration card; Texas motor vehicle registration or title; boat registration or title; recent utility bill; Selective Service card; medical or health card; car or home insurance bill; Texas high school, college, or university report card or transcript for the current school year; recent income tax, bank statement or government mail; current automobile payment booklet; recent pay stub; military document; and document from the Texas Department of Criminal Justice indicating the applicant's recent release or parole. Each of the two required documents must be from a different source. Ex. 34.

**19U.** If the individual cannot provide two documents from the acceptable proof of domicile list, the individual may submit a Texas residency affidavit submitted by an individual who resides at the same residence address as the applicant. For related individuals over age 18, the affiant must appear at DPS in person and the applicant must present a document acceptable to the department indicating a family relationship to the affiant and present two acceptable proof of domicile documents with the name of the affiant. Acceptable documents demonstrating family relationship may include, but are not limited to: (i) a marriage license; (ii) military dependent identification card; (iii) birth certificate; and (iv) adoption records. For unrelated individuals, the affiant must accompany the applicant, present a valid Texas driver license or identification card, and present two acceptable proof of domicile documents from the acceptable proof of domicile list. Ex. 34.

**19V.** DPS has the discretion to reject or require additional evidence to verify domicile. Ex. 34.

**19W.** The SOS office reviewed DPS's draft regulations for obtaining an EIC. Ann McGeehan, the Director of the ED at the time SB 14 was enacted, testified that DPS followed its process for obtaining a personal identification card in drafting these regulations, including the list of acceptable supporting documents. McGeehan Dep. 291:17-293:9.

**19X.** Texas Concealed Handgun License applicants (LTC) must provide a valid Texas driver license number or Personal Identification Certificate or one issued by their state of



residence for non-resident applicants. Applicants must also demonstrate evidence of proficiency, submit to fingerprints, provide photographs, submit a social security number, and be of age. Ex. 19.

**19Y.** The standard fee for a LTC is \$140, and for renewal, \$70. Ex. 18.

**19Z.** In order to obtain a military identification card, an applicant must provide two forms of identification from the following: DoD Identification Card (DoD Sponsor or DoD Family Member card issued to you); Driver's License; U.S. Passport; Photo ID Card issued by federal, state, or local government; Foreign Passport; Foreign National ID with photo; INS Forms to include Form N-560, N-561, N-550, N-570, I-151, I-551, I-688, I-688A, I-327 I-571, I-688B. Ex. 31.

**19AA.** In order to obtain a US Passport, an applicant must submit proof of U.S. Citizenship, proof of identity, a recent color photograph, and fees. Ex. 16.

**19BB.** Proof of identity for a US Passport includes items that contain the applicant's signature and photograph such as a previous US passport book, previous or current US passport card, driver's license, Certificate of Naturalization, Certificate of Citizenship, military identification, or government employee identification card. The State Department may ask for additional evidence to establish identity. Ex. 16.

**19CC.** If the applicant is unable to provide documentary evidence of identity, the applicant must appear with a witness who is a US Citizen, non-Citizen US national, or permanent resident alien who has known the applicant for at least 2 years. Ex. 16.

**19DD.** The total cost of obtaining a passport for an applicant over 16 years old is \$135 for a passport book, \$55 for a passport card, and \$165 for both a book and card. The renewal fee is \$110 for a passport book, \$30 for a passport card, and \$140 for both a book and card. Ex. 32.

**19EE.** The Certificate of Citizenship allows an individual to document U.S. citizenship status based on citizen parentage. The fee to obtain a Certificate of Citizenship is \$600 (\$550 for an adopted child) and is waived only for members of the U.S. military. See Ex. 47.

**19FF.** A Naturalization Certificate(Form N400) and a Certificate of Citizenship (Form N600) are distinct documents issued by the U.S. Department of Homeland Security Citizenship and Immigration Services. Ex. 48.

**Additional findings on impact on minorities' voting rights:**

**23A.** Intervenors Nicole and Victoria Rodriguez are Mexican American and registered to vote in Bexar County. They plan to vote in the next election and subsequent elections. Ex. 10 ¶¶ 2, 10; Ex. 11 ¶¶ 2, 10.

**23B.** Nicole and Victoria Rodriguez do not have voter ID required by SB 14. They are also not eligible to vote by mail in Texas. Ex. 10 ¶¶ 12, 19; Ex. 11 ¶¶ 12, 19.

**23C.** Neither Nicole nor Victoria knows how to drive and their family lacks the financial means to pay the higher rates for car insurance if Nicole and Victoria are included as drivers in the family's car insurance policy. Neither one has taken public transportation

in over a year and neither one is familiar with the bus routes in their area of San Antonio.

Ex. 10 ¶ 4; Ex. 11 ¶ 4

**23D.** If DPS applies its recent regulation on proof of residence to obtain a Texas EIC, both Nicole and Victoria Rodriguez lack the documents necessary to obtain an election identification certificate. Ex. 10 ¶ 14; Ex. 11 ¶ 14.

**23E.** The parents of Nicole and Victoria Rodriguez do not have the time to take them to the DPS office and wait several hours while they try to obtain an EIC. Ex. 10 ¶ 16; Ex. 11 ¶ 16.

**23G.** If SB 14 goes into effect, neither Nicole nor Victoria Rodriguez will have the necessary identification to vote and will not be able to vote. Ex. 10 ¶ 20; Ex. 11 ¶ 20.

**23H.** Intervenors have identified other Texas minority citizens, whose voting rights will be adversely affected by SB 14. *See* Intervenors' Responses To Proposed Findings of Fact and Conclusions of Law Relating To The Defendant Intervenors, ¶¶ 2, 11-15.

**33.** Rokita testified that he did not know what the Brennan Center had reported on the issue. JA 5753. A Brennan Center representative testified to the Committee that day that the many voters who do not have photo ID are “[d]isproportionately elderly and minority citizens.” JA 5820.

**Additional findings relating to Dr. Shaw's surveys:**

**41A.** Dr. Shaw's report provides only a partial, and potentially biased, view of errors in the Secretary of State's matching regime because he evaluated only the potential “false negatives,” i.e., false failures to match; he did not evaluate the potential “false positives,”

i.e., false matches, which can be expected in any matching process. Ex. 6 at 2-3. A false positive match rate in the range of 2 to 5 percent, would lead to the conclusion that an additional 240,000 to 645,000 persons were improperly matched as having Texas IDs, as compared to Dr. Shaw's asserted "upper bound" of 46,245 without IDs. Ex. 6 at 3.

**46A.** It is standard practice, where surveys are used to support governmental policy decisions, such as surveys approved by the U.S. Office of Management & Budget, to require a substantially higher response rate than 2%, in order to protect against the situation where non-respondents and respondents differ as to their answers to the survey questions, notwithstanding those corrections that may be obtained through weighting. Ex. 6 at 4.

**46B.** The low response rate in Dr. Shaw's survey severely limits its utility as a basis of inferring any evidence that SB 14 would not have a discriminatory effect and will be given no weight by the Court. Ex. 6 at 5.

**56C.** Dr. Shaw's survey further indicates numbers of registered voters in Texas without a Texas driver's license or identification card that are contradicted by Texas's own voter registration data. According to his survey, either 6% (based on his unweighted sample) or 8% (based on his weighted sample) of Texas's no-match population of 795,555 registered voters do not have a Texas driver's license or personal identification card, *i.e.*, Dr. Shaw asserts that either 47,733 registered voters do not have a license or identification card or 63,644. But, among all persons who are recorded in the Texas registration file dated May 10, 2012 (provided to Intervenors by Texas) who registered to

vote since January 1, 2004 -- when Texas began requiring that all voter registration applicants include on their registration application “the applicant's Texas driver's license number or the number of a personal identification card issued by the Department of Public Safety”(if the applicant has been issued either of these numbers) Texas Election Code § 13.002(c)(8), amended by Acts 2003, 78th Leg., ch. 1315 (H.B. 1549), § 1, effective January 1, 2004 – 580,225 do not have either a driver’s license number or a personal identification card number listed in their voter registration record. Persons registered since January 1, 2004 represent 56% of all persons eligible to vote listed in the Texas May 10, 2012 registration file. Ex. 118. Thus, Dr. Shaw’s survey, in combination with the Texas no-match list, substantially understates the number of registered voters in Texas who do not have a Texas driver’s license or personal identification card.

**60A.** As with his survey based on Texas’ no-match list of 795,555 registered voters without a Texas driver’s license or personal identification card, Dr. Shaw’s survey based on Dr. Ansolabehere’s “no match” list of 1.9 million individuals also indicates numbers of registered voters in Texas without a Texas driver’s license or identification card that are contradicted by Texas’ own voter registration data. According to this survey, 27% of Dr. Ansolabehere’s no-match population of registered voters do not have a Texas driver’s license or personal identification card, *i.e.*, 513,000 registered voters do not have a license or identification card. But, as previously indicated (*see supra* ¶ 56C), among all persons who are recorded in the Texas registration file dated May 10, 2012 who

registered to vote just since January 1, 2004 (56% of all registered voters), 580,225 do not have a Texas driver's license or personal identification card.

**Additional findings relating to the impact of SB 14 on minorities voting:**

**71A.** Among the 7,278,714 eligible voters who are recorded in the May 10, 2012 registration data file as having registered on or after January 1, 2004 – when Texas began requiring that all registration applicants report their Texas driver's license number or identification card number (if they have such a number), *see supra* ¶ 56C – the file indicates that 1,549,105 (21.3%) have a Spanish surname according to the voter registration database. Among those who registered on or after January 1, 2004 who do not have a driver's license or identification number in their registration record, 25.9% have a Spanish surname. Ex. 118.

**71B.** Among the eligible voters who registered on or after January 1, 2004 (according to the May 10, 2012 registration file), 9.7% of those identified as having a Spanish surname (according to the voter registration database) do not have Texas driver's license or personal identification card (*i.e.*, 150,493 Spanish surname persons without a license or identification card number in their registration record divided by a total of 1,549,105 total Spanish-surnamed persons who registered since that date). Ex. 118.

**71C.** Among the eligible voters who registered on or after January 1, 2004 (according to the May 10, 2012 registration file), 7.5% of those identified as *not* having a Spanish surname (according to the voter registration database) do not have a Texas driver's

license or personal identification card (*i.e.*, 429,732 persons without a Spanish-surname and without a license or identification card number in their registration record divided by 5,729,609 total persons without a Spanish-surname who registered since that date). Ex. 118.

**Additional findings relating to absentee ballots:**

**71D.** According to the 2010 Census, persons of voting age who are 65 and older (and thus may vote absentee by mail) are disproportionately White: among White persons of voting age 19.4% are age 65 or older. Among Hispanic persons of voting age, 8.7% are age 65 or older; and among non-Hispanic Black persons of voting age, 10.6% are age 65 or older. Ex. 118.

**71E.** Accordingly, the State's claim that mail-in balloting for persons age 65 or older mitigates SB 14's disproportionate impact on minorities is misplaced.

**71G.** In 2004, 2008 and 2010 elections in Texas, non-Hispanic whites voted at a higher rate by mail-in ballot than did either African Americans or Hispanics. Ex. 118.

**71H.** Indeed, that the requirements for a voting method disproportionately used by non-Hispanic Anglos were not affected by SB 14 is further evidence of SB 14's disproportionate effect on minority voters.

**Additional findings relating to voter education and implementation of SB 14:**

**71I.** Texas has allocated only limited funding for voter education in 2012. Parsons Dep. 15:9-23.

**71J.** SOS has not reserved any money for voter education specifically concerning photo ID requirements if SB14 is precleared. Ingram Dep. 237:15-238:6; Salazar Dep. 16:9-13. Of the \$3 million allocated for voter education, \$1.2 million had already been spent almost three months ago, Parsons Dep. 16:12-17:8; Ex. 54, some of it on SOS's efforts to inform voters that they did *not* need to bring photo ID to the polls during the primary election. Parsons Dep. 65:22-25.

**7K.** Ann McGeehan admitted to hearing stories of poll workers requiring voters to present photo ID even though SB 14 is not in effect. Ex. 51 at p. 6.

**71L.** Other states with PVID laws spend far more per capita to educate voters about the requirements than Texas plans to do. JA 1734-36.

**71M.** An amendment to SB 14, adopted in the House, included language that the statewide public education program should target low-income and minority voters. The amendment was subsequently stripped from the bill in conference committee. Ex. 52; JA 1976-78; DoJ Ex. 2.

**71N.** Texas's voter education plan does not include targeted outreach to black communities. Neither the request for proposals from vendors to conduct the voter education plan nor SOS's list of reasons for choosing the successful vendor mentions outreach to black Texans. Ex. 50 (RFP for voter education campaign; targeting African American communities is not mentioned); Ex. 55 at p. 3 (Vendor Selection Report showing reasons vendor was chosen; minority outreach not mentioned).



**71O.** Although the vendor has stated its plans to reach Hispanic communities, its plan depends on media that its own research shows Hispanics use less frequently than other groups. Parsons Dep. 53:18-54:24; Ex. 53 at p. 19.

**71P.** The Senate Committee of the Whole ignored suggestions from community members regarding the need to include mobile units as part of the State's voter outreach program, especially for disabled voters and those living in rural areas. JA 1688-90.

**71Q.** SOS has been inconsistent about how much time is needed to create and implement a voter education plan. ED Director Ingram once attested that even a "basic" voter education plan would be impossible if Texas did not receive a preclearance decision by August 15. Ex. 56 ¶ 7. After the Court's Order of May 7 indicating a decision might not come until August 31, Ingram abandoned that claim, but acknowledged that a later preclearance date would mean the education plan would reach fewer voters. Ingram Dep. 251:17-253:2.

**71R.** SOS has made impossible claims about how fast a voter education plan can be created and implemented and still be effective. For example, the SOS Communications Director claimed that content could be drafted, reviewed by lawyers, and translated into Spanish in ten minutes, and that SOS can conduct a "successful" education campaign even if preclearance is not granted until the day before Election Day. Parsons Dep. 44:6-21; 37:23-38:15; 75:8-76:7.

**Additional findings relating to allegations of voter fraud:**

**77D.** Buck Wood has been handling election contests in Texas for forty years and has seen numerous allegations of in-person voter fraud but none have turned out to have actually occurred. Mr. Wood testified that in-person voter fraud in Texas is extremely rare and unlikely to ever affect the outcome of an election, and that in-person voter fraud is not difficult to find or detect. *See* Ex. 1.

**77E.** Dana DeBeauvoir, the chief elections official for over 25 years in Travis County, where Austin is located, is “not aware of any problem of in-person voter impersonation in Travis County.” Ms. DeBeauvoir has never received any complaint of systemic or intentional voter impersonation. Rather, she believes that “S.B. 14 ... is a law in search of a crime.” *See* Ex. 8.

**77F.** Antoinette Pippins-Poole, the Elections Administrator for Dallas County, with over 24 years of experience in election administration, has “never received or heard a complaint that someone had impersonated a voter” even though “[i]f voter impersonation were a problem in any way in Dallas County, we would know about it.” *See* Ex. 13.

**85C.** During the floor debates on SB 14, several representatives raised the issue of the absence of proof of voter fraud in general and voter impersonation at the polls in particular. Rep. Rafael Anchia recounted the previous investigations by the House that found no documented cases of voter impersonation. JA1965-78. Rep. Marc Veasey stated no proof of voter impersonation existed despite the stories that had been told, and asked SB 14’s sponsor, Rep. Patricia Harless, a sponsor of SB 14, “Why should we pass such a stringent bill and stringent law based on rumor and innuendo?” JA 002299. Rep.

Anchia asserted to Rep. Harless, that Rep. Harless's "narrative" had changed from one about voter impersonation to one about "election integrity" because of an inability to find actual cases of such impersonation. JA 1971. Rep. Harless acknowledged that "I have no cases [of voter impersonation fraud] that we're going to discuss on the house floor." JA 1974.

**85D.** In an interim report submitted to the 2011 House of Representatives, the Elections Committee noted that only "very infrequent prosecutions of in-person voter fraud" had occurred. The committee summarized testimony from Ann McGeehan, stating only two of the SOS's twenty-four referrals to the OAG over the previous two years had involved voter impersonation, and also summarized testimony from Jay Dyer at the OAG, who stated that additional research into local prosecutions of voter fraud would be necessary to understand the complete picture of voter fraud in Texas. DoJ Ex. 378.

**85E.** In an interim report submitted to the 2008 House of Representatives, the Elections Committee stated that "most election fraud happening in Texas occurs within the absentee or mail-in ballot system" and that "the committee found the chances of an illegal alien actually voting are very slim." DoJ Ex. 79.

**85F.** In an interim report submitted to the 2007 Senate, the Committee on State Affairs provided data to show "the highest concentration of voter fraud is in the vote-by-mail process." The committee concluded, "It is unknown whether the current level of voter fraud will decrease, but a voter photo ID law will certainly prevent some fraud." In a subsequent letter to the committee members, Sen. Rodney Ellis cited this sentence to

point out that the report implied that voter ID would “serve little practical purpose with respect to decreasing instances of voter fraud.” DoJ Ex. 370.

**86B.** In general, primary and special constitutional elections in Texas between 2002 and 2011, a total of 46,717,619 votes were cast. Ex. 41.

**86C.** Major Mitchell testified that of those election law violation cases referred by the OAG’s office since 2002 there were only 4 separate alleged instances of voter impersonation at the polls, Mitchell Dep. 149: 22-150:16, 163:11-165:14, 173: 16-20, only two of which might have been prevented by a photo ID requirement. *Id.* 213:7-214:6; 214:7-215:11.

**86D.** When asked specifically about non-citizen voter fraud, Mitchell stated that the number of noncitizen voting allegations in the 320 referrals the OAG received is “small.” He could recall only three incidents of non-citizen voting. Mitchell Dep. 182:15-25, 196:6-16.

**Additional facts relating to prior attempts at voter ID legislation:**

**130.** Additional citation: JA 8936 – 37.

**130A.** Acceptable forms of photo ID under HB 1706 included driver’s licenses or personal identification cards issued by DPS or the equivalent agency of another state (not expired within the past two years), military IDs, employee IDs, United States citizen certificates with a person’s photograph, United States passports, student IDs from public and private schools, concealed handgun licenses, ID issued by a state agency, and ID issued by a county elections administrator or a county clerk. JA 8939-40.

**130B.** HB 1706 required at least two forms of non-photo ID, including utility bills, bank statements, government checks, paychecks, government documents with name and address, official mail addressed to the voter from a governmental entity, certified copies of birth certificates, United States citizenship papers, original or certified copies of marriage licenses or divorce decrees, court records of adoption, name change, or sex change, ID cards for veteran's benefits, Medicaid, or Medicare, temporary driving permits, pilot's licenses, library cards, and hunting or fishing licenses. JA 8940-41.

**133.** Additional citation: JA 8132.

**133A.** HB 218 expanded HB 1706's list of acceptable photo ID by allowing the use of ID cards issued by any agency or institution of the federal government or by any agency, institution, or political subdivisions of Texas in addition to the acceptable forms of photo ID previously listed in HB 1706, but limited driver's licenses and identification cards to those issued by Texas. JA 8135-36; JA 8940-41.

**133B.** HB 218 also allowed for two forms of non-photo ID and included the same extensive list of acceptable non-photo ID that was included in HB 1706. JA 8136-37; JA 8940-41.

**150.** Additional citation: JA 3244-45; JA 8135-36; JA 8940-41.

**150A.** SB 362 still allowed the use of the same list of acceptable non-photo ID that was included in HB 1706 and HB 218. While it allowed for fewer photo IDs than the previous bills, it continued to include as a valid photo ID the use of ID cards issued by any agency or institution of the federal government or by any agency, institution, or

political subdivisions of Texas in addition to the acceptable forms of photo ID, not allowed by SB 14. JA 3245-46; JA 8136-37; JA 8940-41.

**Additional facts relating to irregular procedural irregularities:**

**151A.** The Senate Parliamentarian testified that, since she became Parliamentarian in 2004, other than for voter ID legislation, the Committee of the Whole process has only been used for one other piece of legislation, related to school finance. K. Davis Dep. 20:02-16.

**151B.** During consideration of SB 362 in the 2009 legislative session, Sen. Dan Patrick communicated to his constituents via his public website information that the voter ID legislation passed out of Senate committee “nearly 24 hours after” beginning debate on the bill. Ex. 62.

**161A.** At the third reading of SB 362 in 2009, all eight minority Senators – Ellis, West, Gallegos, Hinojosa, Lucio, Uresti, Van de Putte, and Zaffirini – submitted a joint statement regarding their votes. The statement noted that no ethnic minority had voted in favor of SB 362 at any stage of its passage, nor in favor of the motions amending the Senate rules to allow the bill to be considered as a special order. Ex. 57 at pp. 9-10.

**166A.** SB 14 places significantly more stringent requirements on acceptable forms of ID than HB 1706, HB 218, and SB 362, prohibiting *any* form of non-photo ID. The only acceptable forms of photo ID under SB 14 include Texas driver’s licenses, election identification certificates, personal ID cards issued by DPS, United States citizenship certificates, United States passports, military IDs, and concealed handgun licenses.

Employee IDs, student IDs, and other forms of photo ID issued by state or federal agencies and institutions are not accepted. JA 3106, 3110-11; JA 3244-45; JA 8135-36; JA 8940-41.

**166C.** Expired driver's licenses would have been acceptable under HB 1706, HB 218, and SB 362 so long as they had expired within the past two years and these bills do not place any restriction on the use of expired versions of any of their other acceptable forms of photo ID. JA 3244-45; JA 8135-36; JA 8940-41. In contrast, SB 14 does not accept driver's licenses, EICs, personal ID cards issued by DPS, US passports, and concealed handgun licenses as acceptable forms of photo ID if they expired more than 60 days prior to their presentation. JA 3110-11.

**174A.** The procedural irregularities of previous sessions were escalated in 2011. Ex. 3 at p. 28. During the 2009 legislative session, Senators knew a month or more in advance that a full hearing on voter I.D. legislation, SB 362, would take place. DoJ Ex. 107. The Lt. Governor notified Senators on Thursday, January 20th, 2011 that the Senate would convene a Committee of the Whole on the following Monday, January 24th, 2011 in order to take up SB 14. The Senate had unanimously passed a resolution the previous day on Wednesday, January 19th, 2011 authorizing all Senators to be absent from the Capitol until Monday afternoon. *Id.*

**174B.** In a letter to Sen. Robert Duncan on January 21, 2011, Sen. Leticia Van de Putte noted several problems in the procedures related to SB 14, including the timing of the

hearing, inadequate notice of the hearing, and the suspension of the two-thirds rule. DoJ Ex. 107.

**186A.** Proposed Amendment 55 to SB14 was tabled by a majority vote. It would have required the SOS to determine whether throughout the state a majority of the persons required to cast a provisional ballot for lack of photo ID were members of a racial or ethnic minority protected by Section 5 of the VRA. JA 2146-48.

**187A.** In an e-mail dated January 25, 2011, updating recipients on SB 14, Sen. Dan Patrick stated, “Good thing we set aside the blocker bill, 21 vote rule to bring a bill to the floor, for this bill, or we would not be able to get it passed.” DoJ Ex. 107.

**192.** Additional Citation: Ex. 106.

**192A.** HB 16, HB 112, HB 186, HB 248, HB 401, and HB 1005 were all bills that increased voter identification requirements at the polls in the 2011 Legislative session. All of these bills were referred to the House Elections Committee and not the SCVIVF. HB 112, which was introduced by Rep. Harless, the House author of SB 14, did not accompany SB 14 to the SCVIVF. Ex. 44.

**196A.** In response to questions about the bill from their colleagues during the Senate’s consideration of SB 14, Sen. Fraser and other bill authors responded 36 times that they were “not advised” and thus could not answer the questions about SB 14. The degree to which co-authors of SB 14 refused to answer questions about the bill provoked comments of incredulity by other Senators. For example, when Sen. Royce West asked Sen. Fraser whether the objective of the voter ID bill was to avoid unfunded mandates, and Sen.



Fraser answered that he was “not advised,” Sen. West responded: “You're not advised as to what your objective is?” JA 83.

**196B.** Other examples of Sen. Fraser refusing to answer questions about SB 14 included the following exchange with Senator West: “Sen West: Do you agree that African Americans and Hispanics are disproportionately affected by poverty in the state of Texas? Sen. Fraser: Not advised.” JA 98.

**196C.** During the Senate’s consideration of SB 14, Sen. Leticia Van De Putte asked Sen. Fraser if he believed that the State of Texas has a greater minority population than the State of Indiana. Sen. Fraser responded “I'm sorry. That is another question I think you should ask the Secretary of State. It is my belief that, but I'm sorry, I don't want to answer that. You can, if you don't mind, ask the Secretary of State.” JA 66.

**196D.** During the Senate’s consideration of SB 14, Sen. Kirk Watson asked Senator Fraser a basic question about how SB 14 would fund voter education and provide funds to DPS for issuing new documents needed to vote under SB 14. Sen. Fraser claimed he was “not advised” about the budget or budget cuts for either. JA 69.

**196E.** During the Senate’s consideration of SB 14, Sen. Juan Hinojosa asked Senator Fraser whether any of the voters who voted in the last election were arrested or prosecuted or indicted for trying to use somebody else's voter registration card. Sen. Fraser responded: “I'm sorry, not -- no, I do not have that number.” JA 115.

**196F.** During the Senate’s consideration of SB 14, Sen. West asked Sen. Fraser a basic question about the bill analysis which had been prepared for SB 14. Sen. Fraser claimed

that he did not have a copy of his own bill analysis, thus forcing Sen. West to read the rulemaking authority from the bill analysis to Sen. Fraser, the bill's author. JA 88.

**204A.** The second and third readings of SB14 were listed on the Emergency Calendar of the Daily House Calendar for Wednesday, March 23rd, 2011, and Thursday, March 24th, 2011 respectively. Ex. 63; Ex. 64. SB 14 passed on March 24<sup>th</sup>, 2011. JA 2758; Ex. 65.

**INTERVENORS' PROPOSED ADDITIONAL FINDINGS TO SECTION V**  
**(CIRCUMSTANTIAL EVIDENCE OF DISCRIMINATORY PURPOSE)**

**D. SB 14 Was Enacted Against A Background of Racial Discrimination**

**207.** Discrimination against Latinos in Texas has been pervasive and continuous since the 1840s in the areas of education, housing, employment, politics, voting and others. Ex. 4 at pp. 3, 15, 33-34.

**208.** Since the early 1900s, various devices were used to restrict, suppress or otherwise adversely affect Latino voting, including poll taxes, gerrymandering, conditioning work on votes, limiting interpreters at the polls. Ex. 4 at pp.11 - 13, 24. Another device used to limit minorities voting was the White Man's Primary, established in 1914. When the Texas White Primary Law was struck down by the courts in 1926, the Texas Legislature responded by passing a law that authorized state political parties to set their own voter credentials. The state Democratic party then ruled that only whites could vote in the primary, and that practice was struck down in 1923. The Democratic Party immediately restricted party membership to whites only, which was struck down in 1944. These party exclusions were followed up by the poll tax until it was struck down.

**209.** The Texas poll tax remained in effect until it was invalidated in 1966. *United States v. State of Texas*, 252 F.Supp. 234 (W.D. Tex. 1966) *aff'd Texas v. U.S.*, 384 U.S. 155 (1966). In response the Texas Legislature immediately enacted an annual voter registration requirement which was not removed until 1971. *Beare v. Smith*, 321 F.Supp. 1100 (W.D. Tex. 1971) *aff'd sub nom Beare v. Briscoe*, 498 F.2d 244 (5<sup>th</sup> Cir. 1974).

**210.** A U.S. House of Representatives Report on the extension of the VRA to the southwest in 1975 noted that "Texas has a long history of discriminating" against minorities using "myriad forms of discrimination . . . The cultural and language impediment conjoined with the poll tax and the most restrictive voter registration procedures in the nation have operated to effectively deny Mexican Americans access to the political processes in Texas even longer than the Blacks were formally denied access by the white primary." Ex. 4 at p. 33.

**211.** Another example of the persistent exclusionary tactics aimed at Texas minority voters was the statewide "voter purge" in 1975. The DOJ letter of objection observed that the purge could have a discriminatory effect on minority voting rights "on the heels of registration difficulties in the past." The letter found that the purge could confuse a substantial number of minority voters and leave them unable to comply with the statutory registration requirements in the new Texas law. Ex. 4 at pp. 34-35.

**212.** A 1980 study by the U.S. Commission on Civil Rights documented a case study of electoral practices used to disenfranchise Mexican American citizens in Ozona, Texas, where, among other practices, exclusively-Anglo Crockett County officials color coded

the ballots to distinguish the Mexican American ballots. At the end of the election day, the wife of the Anglo candidate and the Anglo County Clerk went to the Mexican American polls to collect the color-coded ballots and discarded the Mexican American ballots. The County Clerk did not hesitate to reveal the system to federal investigators, or to admit that she systematically challenged only the Mexican American voters who came in to vote legally in their own district. Ex. 4 at p. 35.

**213.** The lower rate of voter registration, voting, and running for elective office of Texas Latinos is directly related to the past discrimination of Latinos in Texas. Ex. 4 at pp.33-34.

**214.** Testimony by Dr. Allan Lichtman establishes that SB 14 was enacted with a racially discriminatory purpose and will have a discriminatory effect on racial and ethnic minorities. Ex. 5 at p. 1. Dr. Lichtman reviewed reports submitted by all of the expert witnesses for the United States and the State of Texas. He also reviewed records of the DOJ, as well as other historical and contemporary evidence regarding minority voter suppression in Texas. Ex. 5 at p. 3. He concluded that SB 14 is highly likely to have a discriminatory effect on minorities in Texas. With regard to the issue of discriminatory purpose, Dr. Lichtman testified that SB 14 was intended to discriminate against minority voters in Texas. Citing the expert report of Dr. Kousser, the context in which SB 14 was adopted in 2011, deposition testimony of one of SB 14's sponsors, and other discriminatory actions taken against minority voters contemporaneously with the

adoption of SB 14, Dr. Lichtman found that the evidence indicates that SB 14 is intentionally discriminatory. Ex. 5 at p. 1.

**215.** There is racially polarized voting in the major urban areas of Texas as well as South Texas. Ex. 2 at pp. 5-23. Latino voters have been very cohesive in their preferences for Latino candidates, across different offices, in general and Democratic primary elections during the last three election cycles (2006, 2008, and 2010). Anglo voters usually cast the majority of their votes for the opponents of the Latino preferred candidate in both primary and general elections. Ex. 2 at pp. 2, 24.

**E. SB 14 Was Prepared For Preclearance In Disregard Of Any Impact On Minorities**

**216.** Ann McGeehan was the Director of the ED at the time SB 14 was enacted and submitted for preclearance. McGeehan Dep. 19:22-23. McGeehan prepared about a thousand Section 5 submissions during her twenty-three years at the ED. McGeehan Dep. 14:7-21:3, 45:5-10

**217.** McGeehan testified that her office did not make any inquiry or generate any information on the potential adverse impact of voter ID legislation on minority voters for its preclearance submission of SB 14 until after Texas had submitted its request for preclearance and the DOJ requested additional information. McGeehan Dep. 225:16-226:5, 237:6-15, 241:2-12.

**218.** When questioned as to why the ED did not identify Spanish surnamed voters on a list of voters without DPS ID that had been generated by the ED, McGeehan responded

that they did not identify Spanish surnamed voters because “nobody asked” them to do that. McGeehan Dep. 181:8-13.

**219.** McGeehan further testified that it “did not occur” to her to run a Spanish surname voter analysis, and also did not recall it occurring to her that the DOJ would ask for that information. McGeehan Dep. 241:15-20.

**220.** The SOS was aware at least two years earlier that meeting the State’s burden in the preclearance process would require showing the impact of voter ID by race. In a letter dated March 11, 2009, Deputy SOS Coby Shorter, in response to a question by Sen. Van de Putte asking how the SOS would be able to prove that SB 362 did not have an adverse impact on minority voters when the state submits the bill for preclearance, Shorter responded: “For instance, the Texas Legislative Council assisted with the compilation of data on race and ethnicity for redistricting bills. A similar effort to obtain such demographics may be required for a voter identification bill.” DoJ Ex. 568 at 9.

**221.** In the Section 5 submission to the DOJ, Texas stated, “The Act does not have the intent and will not have the effect of diluting the voting strength or any racial or linguistic minority.” McGeehan testified that she included this statement in the submission without having “any facts one way or the other with respect to the effect of Senate Bill 14 on racial and linguistic minorities.” McGeehan Dep. 252:17-254:19.

**222.** An earlier draft of the Section 5 submission on SB 14 addressed the possibility of a disparate impact on minority voters. It stated: “Lastly, to the extent persons belonging to racial or linguistic minorities disproportionately suffer from poverty and thereby

currently lack photo identification, the Act creates an entirely new identification document . . .” Ex. 59.

**223.** This sentence was removed by Texas before the preclearance submission was sent to DOJ. McGeehan approved its deletion by the OAG. Ex. 60; Ex. 61.

**VI. THERE IS SUBSTANTIAL DIRECT EVIDENCE OF A DISCRIMINATORY PURPOSE BEHIND SB 14**

**224.** The 2010 Census count for Texas shows that 60% of the total intercensal increase in Texas’s population was comprised of Hispanics. While the total population of Texas increased by 20.59%, the Hispanic population increased by 41.85% and the Anglo population by only 4%. According to the Census, in 2010, 49% of babies born in Texas were Hispanic. In 2010, 45% of all persons in Texas turning age 18 (the age of eligibility to vote) were Hispanic. Ex. 3 at p. 6. The Latino population growth between 2000 and 2010 is likely to continue given the young age structure of the Latino population relative to its Anglo counterpart. Over the past decade, the white non-Hispanic (“Anglo”) population increased in number but its proportion of the total population has decreased. Ex. 3 at pp. 6-7.

**225.** In 2008, the Texas Comptroller issued a report stating that by 2020, the Texas Hispanic population is expected to outnumber the white population, doubling in size in rural areas and tripling in size in urban areas between 2020 and 2040. Ex. 3 at p. 8.

**226.** At the beginning of the 2011 legislative session, Texas newspapers and television outlets reported widely that the Latino population in Texas was booming and promised increased political strength for the Latino community. Ex. 3 at pp. 7-8.

**227.** On February 16, 2005, during a hearing on her bill to require documentary proof of U.S. citizenship for voter registration, Rep. Betty Brown specifically referred to changing demographics in Texas as the reason for her bill. Following questioning by Rep. Rafael Anchia regarding the rising numbers of Latinos in various State House districts, Rep. Brown stated: “Representative Anchia, I hope I said it right, has brought up some things about population trends and I think that just reinforces the need for it to happen now and not later because our population is growing very rapidly and we need to put these safeguards into place while this happening.” Ex. 3 at pp. 11-12.

**228.** In Texas, 80% of immigrants who are not yet U.S. citizens are Latino. Ex. 3 at p. 9.

**229.** During the legislative sessions in which voter ID was considered (2005-2011), there were also heated debates over legislation aimed at undocumented immigrants and the rhetoric often spread into negative statements about Latinos or Spanish-speakers regardless of citizenship status. Ex. 3 at p. 9.

**230.** The Immigration Reform Coalition of Texas (IRCOT) is an organization that describes itself as “demand[ing] a well defined and secure border, the enforcement of our current immigration laws, and an end to Sanctuary Cities and other magnets that draw



illegal aliens to our State.” IRCOT has been sponsored by members of the Texas Legislature to speak on the steps of the Capitol Building. Ex. 27; Ex. 3 at p. 25.

**231.** In 2008, IRCOT posted an article on the news section of its Web site entitled “Stop Illegal Immigration NOW Or Immigrants Will Soon Out Vote You.” The article characterized the voting patterns of Latino *citizens* as a “problem:” “once a Mexican national (or other immigrant) becomes a legal, voting resident he comes to have his fair, democratic say in the process. . . . [I]f that new voter has illegal immigrant family members, he comes to the polls with a built in prejudice against U.S. sovereignty and border control,” describing as “alarming” certain views of Latino registered voters. Ex. 26.

**232.** IRCOT made voter ID a centerpiece of its immigration reform agenda. IRCOT testified in favor of voter ID legislation in 2007 and 2009, and included SB 14 on its list of priority legislation in 2011. JA 006920; JA 008158; Ex. 25.

**233.** During the legislative sessions in which voter ID was considered (2005-2011), legislators introduced a number of “immigration bills” whose effects would be felt most strongly by Texas Latinos, regardless of citizenship status. Ex. 3 at p. 10.

**234.** In 2007, Rep. Linda Harper-Brown filed a bill to eliminate bilingual education. Ex. 3 at p. 10. The previous year, Rep. Harper Brown stated in a public speech: “Our children must either share their schools with scores of illegal aliens – most not English-speaking – or parents must take on the double burden of sending their children to private school.” Ex. 20.

**235.** In 2011, Rep. Leo Berman spoke in support of a bill filed by Rep. Tim Kleinschmidt requiring that all driver's license tests be conducted in English claiming that "if you can't read English, you shouldn't be able to drive in Texas." Ex. 24.

**236.** In 2009, Rep. Berman filed a bill imposing a state tax on money wired abroad, but limited the tax to money wired to Mexico, Central America, and South America for personal, family, or household purposes. Also in 2009, a number of legislators collaborated to co-sponsor an English-only House Joint Resolution (HJR 32). Ex. 3 at p. 10.

**237.** Also in 2011, Rep. Riddle introduced a bill that would require public schools to identify to the Texas Comptroller all students in bilingual education classes. Rep. Riddle filed her voter ID bill (HB 16) simultaneously with her immigration bills. Ex. 3 at p. 10.

**238.** In 2011, at least three bills sought to make English the official language of Texas. Ex. 3 at p. 10. When Rep. Berman introduced an immigration bill that would make English the official language of Texas, he explained, "That will shut off the state printing anything in any language but English and that's going to save millions of dollars right there." When asked whether recent bills focused on immigration would alienate Latino voters in general, Rep. Berman implicitly agreed, responding: "Most Hispanics right now do vote Democrat; there's no question about it. So what vote are we going after? We're going after a vote that doesn't vote Republican anyway." Ex. 3 at pp. 10-11.

**239.** During the 2011 legislative session, Hispanic Republican State Rep. Aaron Pena publicly expressed concern that the tone of the immigration debate was aimed at Latinos,

stating, “The tone of the debate is basically saying, ‘We don’t want you... This is a war over our culture. These people bring diseases into our country.’” He further described his efforts behind the scenes as a Latino Republican to reduce the racial nature of the debate. Ex. 3 at p. 11.

**240.** Debates in the 2005, 2007, and 2009 sessions on the issue of voter ID often turned on claims that voter ID was needed to stop voter fraud by non-U.S. citizens. The public rationale for SB 14 was to prevent voter fraud by non-citizens and persons inside the United States illegally. Ex. 3 at p. 11.

**241.** During the year of and before the passage of SB 14, elected public officials in the State of Texas—including Texas State Senators and Representatives, the Secretary of State, the Lieutenant Governor, and the Governor—received a substantial number of letters and emails from constituents that characterized voter ID legislation as legislation regarding illegal immigration, often urging them to enact voter ID legislation to stop illegal immigrants from voting, and often using inflammatory references to “criminal aliens,” “wetbacks,” and similar derogatory phrases and racial epithets to refer to unqualified voters who needed to be stopped by voter ID from casting ballots. *See generally* Exs. 83 – 104.<sup>3</sup>

**242.** In responding to constituents, elected officials acknowledged the concerns raised about non-citizen voting and affirmed the connection between voter ID and immigration.

---

<sup>3</sup> Texas Legislators, the Governor’s Office, and the Lt. Governor’s Office received thousands of constituent emails. Nearly 3,000 representative emails will be provided on a CD supplementing Defendant-Intervenors’ appendix.

Ex. 107. In one letter, Governor Rick Perry stated his belief that voter fraud perpetrated by undocumented immigrants exists. Ex. 108.

**243.** On June 21, 2007, Rep. Dennis Bonnen, who later served as the Chair of the SCVIVF in the 2011 session, wrote to a constituent regarding the bills to require voter identification (HB 218) and proof of citizenship for voter registration (HB626) – both of which were defeated in the 2007 session – stating, “I am just as frustrated as you are at the outcome of these bills” and went on to describe his efforts to secure passage of immigration-related bills. Ex. 3 at pp. 14-15.

**244.** In February 2009, Rep. Patricia Harless, who later carried SB 14 in the House, received an email from a member of the public, which stated, “Letting these illegals come into our country and register under several names and then vote is not doing your job.” In response, Rep. Harless wrote: “Securing integrity in the election system is very important to me, and this session I will support legislation establishing honest and secure voter I.D.” Harless Dep. 335:14–338:13; Ex. 3 at p. 16.

**245.** On February 8, 2011, Lt. Gov. Dewhurst wrote to a constituent regarding photo ID, stating, “Voter ID will help stamp out voter fraud and increase public confidence in our election process by ensuring that only U.S citizens -- who are legally eligible -- vote in Texas elections.” Ex. 3 at p. 16. Currently, on David Dewhurst’s U.S. Senate campaign website, Lt. Gov. Dewhurst lists his support of voter ID legislation under the heading: “David Dewhurst Opposes Illegal Immigration.” Under this topic of illegal immigration, which includes news articles on strengthening the U.S. Border and

increasing the size of the Border Patrol, Lt. Gov. Dewhurst posts news articles describing his “push for the voter ID law for two sessions” and quotes himself as saying: “At the end of the day, there’s nothing more important than protecting the sanctity of everyone’s right to vote.” Ex. 3 at p. 17.

**246.** Julia Rathgeber testified that she has heard Lt. Gov. Dewhurst “say things about the growth in the Hispanic population being the future of Texas. That where goes the Hispanic population, there goes the State of Texas.” Rathgeber Dep. 335:01-05

**247.** In her testimony in this case, Rep. Riddle, when asked about specific incidents of voter fraud, described one incident in which a Hispanic, Spanish-speaking woman appeared at a polling place to vote but needed assistance because she was unable to communicate in English and was unfamiliar with the process. Rep. Riddle offered this incident as an example of voter fraud despite the fact that she also testified that she had no knowledge of whether the voter was a citizen or not, only that she was Hispanic and Spanish-speaking. Riddle Dep. 45:14–52:15; Ex. 3 at p. 17.

**248.** In its December 2006 report “Porous Borders, Porous Elections: The Imperative to Verify Voters’ Citizenship,” the Texas Conservative Coalition Research Institute (“TCCRI”) concluded: “With over 1.6 million illegal immigrants in the state, Texas cannot afford to leave its election system susceptible to their fraudulent votes. Voting is the most paramount right of our representative democracy, and must be reserved strictly for citizens of the United States. Whatever efforts are made to prevent illegal aliens from penetrating our borders, the state should amend its election law and practices so that

illegal aliens are prevented from registering to vote or entering the voting booth.” Ex. 3 at p. 12.

**249.** In October 2006, the TCCRI released a report titled, “State Approaches to Illegal Immigration,” which urged the adoption of a policy requiring, “Voters to Present a Driver’s License or Texas Identification Card at their Polling Place.” The report explained that the recommendations were the “result of many months of research and discussion on the part of the task force members, their legislative staffs, and the TCCRI,” and specifically credited the task force Chairman, Rep. Linda Harper-Brown, as well as the other members of the task force, Rep. Brian Hughes, Rep. Bill Keffer, Rep. Debbie Riddle, Rep. Larry Taylor, and Rep. Corbin Van Arsdale for their work in creating the recommendations. Ex. 3 at p. 12-13. During a 2006 interim hearing held by the Senate State Affairs Committee, Sen. Robert Duncan explicitly tied the need for voter ID to the specter of non-citizen voting, stating, in part, “The issue here today in this country today is how do we control illegal immigration into this state. Certainly there are those out there who would claim that one reason we need to be tighter on voter identification for voter fraud is the fact that we do have a lot of folks coming into this country from other countries....” Sen. Duncan conceded however that there has never been any evidence in Texas that anyone was organizing undocumented immigrants to vote. (Duncan: “Is there any evidence that that is occurring? ..I'm just talking in hypotheticals, because those are the issues surrounding the reasons for voter ID, right?”) Ex. 3 at pp. 13-14.

**250.** In 2007, Lt. Gov. Dewhurst issued a public statement following the defeat of the voter ID bill in the Senate stating, in part, that with 8 to 10 million illegal aliens “currently living in the U.S., the basic principle for one person, one vote is in danger.” In discussing the need for HB 218 (voter ID) in the same 2007 legislative session, Lt. Gov. Dewhurst stated, “Why isn't it necessary to prove that you're a U.S. citizen to vote in U.S. elections?” Ex. 3 at p. 14.

**251.** Also during the 2007 session, Rep. Betty Brown indicated that her voter identification proposal, approved by the House on April 23, 2007, was “designed to keep illegal aliens, noncitizens and people otherwise not qualified” from voting. Ex. 3 at p. 14.

**252.** The Legislature was well aware, based on criticism from within the Republican Party, that the expressed purpose for the voter ID law was racially inflammatory and that it would likely have a disparate racial impact. Royal Masset, former Political Director of the Texas Republican Party and a well-known GOP consultant and political commentator, stated in a 2007 article in the Quorum Report, a news service read by most legislators and staff: “HB 218 will lower voter turnout. There is no evidence on the record that non-American citizens have voted in past Texas elections in a manner that would have been stopped by HB 218.” Mr. Masset concluded, “HB 218 is a direct descendent of poll taxes, and of allowing only white male property owners to vote. In its effect it is racist, barbaric, anti-democratic and contrary to everything that made America great.” Ex. 3 at pp. 17-18.

**253.** Royal Masset also criticized the racially-charged justifications for voter ID in comments to the press, stating “They’re just basically using sheer racism to pump their own political points. They’re trying to exploit the public fear of illegal aliens.” Masset continued that voter ID bills are an “extremely popular vote on the grassroots level.” But the idea that illegal immigrants vote “is one of those urban myths that just has caught on and everyone assumes is true.” Ex. 3 at p. 18.

**254.** Other leading Republicans frankly admitted that there was no evidence of non-citizen voting to justify additional laws. Ex. 3 at p. 18. In the 2007 legislative session, even Rep. Phil King, who sponsored a proof of citizenship voter registration bill, acknowledged that “there is no evidence of extensive fraud in Texas elections or of multiple voting,” but it claimed non-citizen voting could occur. Ex. 3 at p. 19.

**255.** In 2009, Royal Masset commented that voter ID would be “another last straw” for Latinos, who would be forced to spend time and money obtaining additional IDs because of an alleged threat of fraudulent voting. He explained, “One way to get Latinos upset is to start criminalizing them, to imply they are criminals,” he said. “And Hispanics should take this personally, because it is aimed at them.” Ex. 3 at p. 19.

**256.** Despite the repeated claims that voter ID was required to stop non-citizen election fraud, the voter ID bills being crafted in the Legislature revolved around limited and difficult-to-obtain photo identification, as opposed to documents that require U.S. citizenship. Ex. 3 at p. 20.



**257.** Rep. Dennis Bonnen, who served as the Chairman of the SCVIVF in the 2011 session, testified that he did not know whether non-U.S. citizens could obtain a Texas drivers' license, a concealed handgun license or a military identification card – all forms of ID required by SB 14. Bonnen Dep. 95:9-96:19; Ex. 3 at pp. 20-21.

**258.** Rep. Todd Smith, who chaired the House Elections Committee in the 2009 session, testified similarly that he did not know whether non-U.S. citizens could obtain a Texas drivers' license, a concealed handgun license or a military identification card. Smith Dep. 188:16-189:7; Ex. 3 at p. 21.

**259.** In the 2011 legislative session, the legislators supporting SB 14 took pains not to refer to Latinos in their deliberations and avoided attempts to engage on whether the voter ID bill complied with the VRA. Ex. 3 at p. 21.

**260.** In his recent deposition, Sen. Fraser invoked privilege in response to every question regarding the possible connection between voter ID and non-citizen voting despite being confronted with multiple emails from constituents identifying voter ID as legislation aimed at non-citizens. Second Fraser Dep. 92:7-96:15; Ex. 3 at pp. 22-23.

**261.** The legislative record indicates multiple instances in which Latino and African American legislators attempted to engage the voter ID supporters to explain whether the voter ID bill complied with the VRA. In every one of these instances the discussion was cut short and the particular amendment being considered at that moment was voted on. Ex. 3 at p. 21.

**262.** During the March 23, 2011 debate Rep. Patricia Harless refused to agree that SB 14 had to comply with the VRA and refused to discuss the purpose behind the bill or discuss the VRA, stating, “As I’ve said before, this is a federal issue to be decided by the federal courts.” Ex. 3 at p. 22.

**263.** A similar attempt to engage the Senate Committee of the Whole in a discussion about whether SB 14 would violate the VRA was ignored. Ex. 3. at p. 22.

**264.** The legislative record of 2011, understood in the context of the heated debate that session around immigrants and Latinos, the contemporaneous effort to enact redistricting plans to limit Latino political strength, and the past discussion of voter ID in the 2005-2009 legislative sessions, indicates that Texas legislators were conscious of issues of race in voter ID and understood that Texas would have to comply with the VRA. Ex. 3 at p. 24.

**265.** Dr. Henry Flores concludes that the SB 14 was passed and signed into law not to prevent voter fraud but for the purpose of limiting the number of Latino voters. Ex. 3 at p. 25.

**266.** SB 14 was enacted during a legislative session filled with racial strife as demonstrated by comments made by Rebecca Forest, founder of the Immigration Reform Coalition of Texas, during a June 11, 2011 rally on the Texas Capitol steps where she stated, “If you want to know why we can’t pass legislation in Texas it’s because we have 37, no 36, Hispanics in the Legislature... So that’s part of the problem and we need to do something about that....” Ex. 3 at p. 25. Also in June 2011, during a hearing of the

Senate Transportation Committee in the special legislative session, Sen. Chris Harris, a co-sponsor of SB 14, responded to a witness speaking in Spanish, stating, “Did I understand him correctly, that he has been here since 1988? Why isn’t he speaking in English, then? It is insulting to us, it is very insulting.” Ex. 3 at p. 26.

### **PROPOSED CONCLUSIONS OF LAW**

Intervenors rely and incorporate herein DOJ’s proposed conclusions of law, adding to DOJ’s points as follows:

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

In addition to the overwhelming evidence of the discriminatory purpose behind SB 14 as to both African-Americans and Hispanics, detailed above and in DOJ’s papers, the facts that the Legislature was focusing on non-citizens as fraudulent voters and proposing “anti-immigrant” measures that affected Latinos in general, and the failure of SB 14’s authors to relate the additional required voter ID in the bill to documents held only by U.S. citizens, support a finding of intentional discriminatory purpose.

Dated: June 27, 2012

/s/ Ezra D. Rosenberg

Ezra D. Rosenberg (D.C. Bar No. 360927)  
Michelle Hart Yeary (*Pro Hac Vice*)  
Dechert LLP  
902 Carnegie Center, Suite 500  
Princeton, NJ 08540-6531

(609) 955 3222 (phone)  
Email: Ezra.rosenberg@dechert.com  
Email: Michelle.yeary@dechert.com

Jon Greenbaum (D.C. Bar No. 489887)  
Mark A. Posner (D.C. Bar No. 457833)  
Robert A. Kengle  
Lawyers' Committee for Civil Rights Under  
Law  
1401 New York Ave., NW, Suite 400  
Washington, D.C. 20005  
(202) 662-8389 (phone)  
Email: bkengle@lawyerscommittee.org  
Email: mposner@lawyerscommittee.org

Wendy Weiser (*Pro Hac Vice*)  
Myrna Pérez (*Pro Hac Vice*)  
Ian Vandewalker (*Pro Hac Vice*)  
The Brennan Center for Justice at NYU Law  
School  
161 Avenue of the Americas, Floor 12  
New York, NY 10013-1205  
Email: Wendy.weiser@nyu.edu  
Email: Myrna.perez@nyu.edu  
Email: Ian.vandewalker@nyu.edu

Gary Bledsoe  
Law Office of Gary L. Bledsoe & Associates  
316 West 12th St., Suite 307  
Austin, TX 78701  
(512) 322-992 (phone)  
Email: garybledsoe@sbcglobal.net

Victor L. Goode  
NAACP National Headquarters  
4805 Mt. Hope Dr.  
Baltimore, MD 21215-3297  
(410) 580-5120 (phone)  
Email: vgoode@naacpnet.org

Robert S. Notzon (D.C. Bar No. TX0020)

The Law Office of Robert Notzon  
1507 Nueces St.  
Austin, TX 78701  
(512) 474 7563 (phone)  
Email: Robert@notzonlaw.com

Jose Garza  
Law Office of Jose Garza  
7414 Robin Rest Dr.  
San Antonio, TX 98209  
(210) 392-2856 (phone)  
Email: garzapalm@aol.com

*Counsel for Defendant-Intervenors  
Texas State Conference of NAACP Branches  
and  
the Mexican American Legislative Caucus of  
Texas House Representatives*

Ryan Haygood  
Natasha M. Korgaonkar  
Leah C. Aden  
Dale E. Ho  
Debo P. Adegbile  
Elise C. Boddie  
NAACP Legal Defense and Educational Fund,  
Inc.  
99 Hudson Street, Suite 1600  
New York, NY 10013  
(212) 965-2200/Fax: (212) 226-7592  
Email: rhaygood@naacpldf.org  
Email: nkorgaonkar@naacpldf.org  
Email: laden@naacpldf.org  
Email: dadegbile@naacpldf.org  
Email: dho@naacpldf.org  
Email: eboddie@naacpldf.org

FRIED, FRANK, HARRIS  
SHRIVER & JACOBSON LLP  
Douglas H. Flaum  
Michael B. de Leeuw

Adam Harris  
One New York Plaza  
New York, NY 10004-1980  
(212) 859-8000

*Counsel for Texas League of Young Voters  
Education Fund, Imani Clark, KiEssence  
Culbreath, Demariano Hill, Dominique  
Monday, and Felicia Johnson*

J. Gerald Hebert  
D.C. Bar No. 447676  
Attorney at Law  
191 Somerville Street, #405  
Alexandria, VA 22304  
Telephone: 703-628-4673  
Email: hebert@voterlaw.com

Chad W. Dunn  
D.C. Bar No. 987454  
Texas Bar No. 24036507  
Brazil & Dunn LLP  
4201 Cypress Creek Pkwy., Suite 530  
Houston, Texas 77068  
Telephone: (281) 580-6310  
Facsimile: (281) 580-6362  
Email: chad@brazilanddunn.com

*Counsel for Kennie Defendant-Intervenors*

John Kent Tanner  
3743 Military Road, N.W.  
Washington, DC 20015  
(202) 503-7696  
Email: john.k.tanner@gmail.com

Nancy Abudu  
Katie O'Connor  
Moffatt Laughlin McDonald  
American Civil Liberties Union Foundation Inc.

230 Peachtree Street NW, Suite 1440  
Atlanta, GA 30303  
(404) 523-2721/Fax: (404) 653-0331  
Email: nabudu@aclu.org  
Email: koconnor@aclu.org  
Email: lmcdonald@aclu.org

Lisa Graybill  
Rebecca Robertson  
American Civil Liberties Union Foundation of  
Texas  
1500 McGowan Street  
Houston, Texas 77004  
(713) 942-8146  
Email: lgraybill@aclutx.org  
Email: rrobertson@aclutx.org

Kumiki Gibson  
Advancement Project  
1220 L Street, NW, Suite 850  
Washington, DC 20005  
(202) 728-9557  
Email: kgibson@advancementproject.org

*Counsel for Justice Seekers, League of Women  
Voters of Texas, Texas Legislature Black  
Caucus, Donald Wright, Peter Johnson, Ronald  
Wright, Southwest Workers Union and La  
Union Del Pueblo Entero*

Nina Perales  
Mexican American Legal Defense &  
Educational Fund, Inc.  
110 Broadway, Suite 300  
San Antonio, TX 78205  
(210) 224-5476/Fax: 210-224-5382  
Email: nperales@maldef.org

*Counsel for Mi Familia Vota Education Fund,  
Southwest Voter Registration Education  
Project, Nicole Rodriguez, Victoria Rodriguez*



**CERTIFICATE OF SERVICE**

I certify that on June 27, 2012, the foregoing was filed with the Clerk of the Court using the CM/ECF system which will electronically serve all counsel of record.

/s/ Ezra D. Rosenberg  
Ezra D. Rosenberg