No. 17-40884

In the United States Court of Appeals for the Fifth Circuit

Marc Veasey; Jane Hamilton; Sergio DeLeon; Floyd Carrier; Anna Burns; Michael Montez; Penny Pope; Oscar Ortiz; Koby Ozias; League of United Latin American Citizens; John Mellor-Crumley; Ken Gandy; Gordon Benjamin; Evelyn Brickner; Dallas County, Plaintiffs-Appellees,
Texas Association of Hispanic County Judges and County Commissioners, Intervenor Plaintiffs-Appellees,

v.

Greg Abbott, in his official capacity as Governor of Texas; Rolando B. Pablos, in his official capacity as Texas Secretary of State; State of Texas; Steve McCraw, in his official capacity as Director of the Texas Department of Public Safety, Defendants-Appellants.

United States of America, Plaintiff-Appellee, Imani Clark, Intervenor Plaintiff-Appellee,

v.

State of Texas; Rolando B. Pablos, in his official capacity as Texas Secretary of State; Steve McCraw in his official capacity as Director of the Texas Department of Public Safety, Defendants-Appellants.

Texas State Conference of NAACP Branches; Mexican American Legislative Caucus, Texas House of Representatives, Plaintiffs-Appellees,

v.

Rolando B. Pablos, in his official capacity as Texas Secretary of State; Steve McCraw, in his official capacity as Director of the Texas Department of Public Safety,
Defendants-Appellants.

Lenard Taylor; Eulalio Mendez, Jr., Lionel Estrada; Estela Garcia Espinoza; Maximina Martinez Lara; La Union Del Pueblo Entero, Incorporated, Plaintiffs-Appellees,

v.

State of Texas; Rolando B. Pablos, in his official capacity as Texas Secretary of State; Steve McCraw in his official capacity as Director of the Texas Department of Public Safety,
Defendants-Appellants.

On Appeal from the United States District Court for the Southern District of Texas, Corpus Christi Division, Civ. No. 2:13-cv-00193

PRIVATE APPELLEES' PETITION FOR INITIAL HEARING *EN BANC* AND REHEARING *EN BANC* OF MOTIONS PANEL'S STAY DECISION

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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STATEMENT REGARDING INITIAL HEARING *EN BANC* AND REHEARING *EN BANC* OF MOTIONS PANEL'S STAY DECISION

1. The Court should initially hear this appeal *en banc* because it raises questions of exceptional importance regarding the appropriate judicial response to remedial legislation that fails to eliminate discriminatory features of a law. Likewise, *en banc* review is needed to guide future legislatures so they can simultaneously protect their federalism interests *and* protect individuals' federal constitutional rights when enacting remedial legislation. Equally important, initial *en banc* review will ensure fidelity to this Court's prior *en banc* opinion in this case and facilitate speedy final resolution to ensure the fundamental right to vote is not unlawfully restricted for another election cycle.

2. This Court should rehear *en banc* the 2-1 decision of the motions panel granting a stay of the district court's permanent injunction of SB14 and SB5 pending appeal in order to maintain uniformity of this Circuit's precedent and compliance with Supreme Court precedent. The panel's decision conflicts with this Court's decisions in (1) *Mississippi Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618 (5th Cir. 1985), regarding the appropriate standard and depth of analysis for determining likelihood of success on the merits, and (2) this Court's *en banc* decision in this case, *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016), regarding the district court's mandate and discretion to remedy findings of intentional discrimination. The motions panel's decision also conflicts with the Supreme

Court's decision in *City of Richmond v. United States*, 422 U.S. 358 (1975), regarding the appropriate remedy for intentional discrimination.

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STATEMENT OF ISSUES SUPPORTING HEARING *EN BANC*

Appellees respectfully request that the Court grant initial hearing *en banc* on the merits and grant rehearing *en banc* of the motions panel's divided decision to grant Texas's emergency motion for a stay.[1] *See* Fed. R. App. P. 35.

The merits of this appeal raise questions of exceptional importance regarding the determination of unlawful discriminatory intent, review of intent findings, and the appropriate remedy where a state amends an intentionally discriminatory law but maintains its core discriminatory features and continues to impose burdens on the targets of its discrimination. The outcome of this case will affect hundreds of thousands of Texans, disproportionately Black and Latino, who have waited years despite repeated success in the district court and this Court, to exercise their fundamental right to vote free from unlawful racial discrimination and intimidation.

The decision granting Texas's stay should be reheard *en banc*. First, the panel engages in no meaningful review of Texas's likelihood of success on the merits, devoting three sentences to the question, with no discussion of the district court's fact finding or the governing law.

[1] This Court should follow the default rule that granting a petition for rehearing *en banc* vacates the panel decision, lifting the stay on the district court's order. 5th Cir. R. 41.3.

Second, the panel's cursory merits review fails. As the district court found, SB5 perpetuates SB14's discriminatory purpose and results by continuing the discriminatory picking and choosing of acceptable IDs under SB14 and subjecting those "who lack SB14 photo ID . . . to separate voting obstacles and procedures," including the threat of criminal prosecution. App. 23. Thus, the panel's decision directly contradicts precedent of the Supreme Court, this Court, and other circuits that intentional discrimination must be eliminated root and branch and remedies for intentional discrimination must place victims of discrimination "in the position they would have occupied in the absence of discrimination." *United States v. Virginia*, 518 U.S. 515, 547 (1996) (quotations omitted).

Third, the panel's interpretation of the *en banc* Court's mandate is wrong. Fourth, the panel's holding that the state automatically satisfies its burden to show irreparable harm whenever a state statute is enjoined is misguided and erroneous. And fifth, the panel improperly endorses Texas's strategy to label nearly every day of the calendar an "emergency" "deadline," which would warrant perpetual stays of judgments affecting election laws.

The last time that a motions panel of this Court granted a stay in this case, Texas voters endured two years of elections conducted pursuant to a law that this Court ultimately concluded was unlawful and racially discriminatory. If this stay is not lifted, Texas voters will once again be forced to attempt to exercise a

fundamental right within a racially discriminatory voting scheme until this case is resolved. Oral argument is scheduled for December.[2] As such, the stay threatens the possibility of a complete remedy before the 2018 statewide primaries.

Plaintiffs-Appellees therefore respectfully request that this Court grant an initial hearing *en banc* on the merits of this appeal and rehear the panel's stay decision.[3]

STATEMENT OF THE PROCEEDINGS

Just over a year ago, this Court, sitting *en banc*, issued a 9-6 decision affirming the district court's holding that Texas's strict voter photo ID law, SB14, had discriminatory results in violation of Section 2 of the Voting Rights Act and remanding the issue of discriminatory intent. *Veasey v. Abbott* ("*Veasey II*"), 830 F.3d 216 (5th Cir. 2016). While the *en banc* opinion held that there were legal errors in the district court's initial intent analysis, it stressed that there was sufficient record evidence to support a finding of discriminatory intent on remand. *Veasey II*, 830 F.3d at 241 ("[T]here remains evidence to support a finding that the cloak of ballot

[2] This case was initially set for oral argument for November 2017. The clerk later informed the parties that, after conferring with counsel for Texas only, the oral argument was postponed to December based on counsel for Texas's representation that additional time was needed to transcribe hearings and files. Despite Plaintiffs-Appellees' clarification that all transcripts have been transcribed and most, if not all, were already filed with the Court, the argument remains delayed. Plaintiffs-Appellees ask that this case be set for argument during the first available *en banc* panel.

[3] Regardless of this Court's determination on Plaintiffs-Appellees' petition for initial hearing *en banc*, Plaintiffs-Appellees urge the *en banc* court to rehear the panel's stay decision.

integrity could be hiding a more invidious purpose."). The *en banc* court cited, as some of the evidence of intent: the Legislature's awareness of the disproportionate impact of SB14;[4] the rejection of ameliorative amendments without explanation;[5] SB14's tenuous relation to preventing voter fraud and Texas's shifting rationales for SB14;[6] Texas's history of using "ballot integrity" to justify voter suppression;[7] and the radical procedural departures that the Legislature took to address the "almost nonexistent problem" of in-person voter fraud.[8] Texas's petition for certiorari was denied.

On remand, pursuant to this Court's instructions, the district court entered an interim remedy for the Section 2 *results* violations only, ECF No. 895, allowing voters without one of the limited forms of SB14 ID to vote a regular ballot only after signing a "declaration of reasonable impediment" ("DRI") indicating their obstacle to obtaining the ID. *Id.* This remedy was a "stop-gap measure" for the impending presidential election and formulated to address only the results violation. App.26.

Concurrently, the district court proceeded on remand of the discriminatory intent claim. After briefing and oral argument, the district court reweighed the evidence and, carefully tracking this Court's guidance, found that SB14 has a

[4] *Veasey II*, 830 F.3d at 236.
[5] *Id.* at 237, 239, 241.
[6] *Id.* at 237, 240-41.
[7] *Id.* at 237.
[8] *Id.* at 239.

discriminatory purpose. App.40. The district court assigned no weight to the intent evidence that the *en banc* majority viewed as problematic. App.44, 47-48. Based on the same evidence that the *en banc* court held *could* support a discriminatory purpose finding, the district court found discriminatory intent.

On June 1, 2017, the Legislature passed SB5. SB5 did not repeal SB14 or remove its core discriminatory elements. It maintained the limited and discriminatory categories of SB14 ID and subjected those without it—who, by design, are disproportionately Black and Latino voters—to additional obstacles. SB5 added a DRI process for those who lack SB14 ID but made that process more burdensome than the interim remedy. SB5 *eliminated* the "other" category, which gave voters without SB14 ID an opportunity to identify their basis for lacking the ID in their own words, *increased* the criminal penalties for perjury on DRIs, and required those penalties to be listed on the DRI form. App.27-28.

On August 23, the district court issued an order holding that SB5 was an insufficient remedy for both SB14's intentional discrimination and discriminatory results. App.32. It found that SB5 failed to "meaningfully expand the types of photo IDs that can qualify," did not meaningfully expand access to SB14 ID, and failed to provide for *any* additional voter education programming or funding. App.23-25, 32-33. The district court noted that the DRI process in the interim order was never considered an appropriate intent remedy and that SB5's changes to the interim order

worked in tandem to impose additional burdens on minority voters: "Listing a limited number of reasons for lack of SB14 is problematic because persons untrained in the law and who are subjecting themselves to penalties of perjury may take a restrictive view of the listed reasons." App.28. The district court noted that there was no record support for "[r]equiring a voter to address more issues than necessary," including a voter's specific impediment to SB14 ID, "under penalty of perjury and enhancing that threat by making the crime a state jail felony appears to be efforts at voter intimidation." App.30.

As such, the district court found that SB5 unlawfully continued burdens on the minority voters targeted by SB14, trading "one obstacle to voting with another," replacing the disenfranchisement of SB14 with "an overreaching affidavit threatening severe penalties for perjury." App.32. Therefore, the district court held that "the only appropriate remedy for SB14's discriminatory purpose or discriminatory result is an injunction against the enforcement of that law and SB5, which perpetuates SB14's discriminat[ion]." App.34.

Texas immediately appealed the district court's remedial order and filed a stay motion with the district court. The next day, Texas filed an "emergency" motion for a stay with this Court, alleging an "emergency" related to a vendor printing schedule that it had not presented to the district court. On September 5, a divided motions panel granted that emergency stay.

ARGUMENT

I. The Merits Appeal Raises Exceptionally Important Questions Regarding Discriminatory Intent Standards and Remedies.

Initial hearing *en banc* is authorized in cases of exceptional importance. *See* Fed. R. App. P. 35(a) (providing that a case may be "heard or reheard by the court of appeals en banc"). This rule has been invoked to hear important cases *en banc* in the first instance. *See Int'l Refugee Assistance Project v. Trump*, No. 17-1351 (4th Cir. April 10, 2017) (*sua sponte* ordering initial hearing *en banc* in challenge to executive order banning entry from predominantly Muslim nations); *West Virginia v. EPA*, No. 15-1363 (D.C. Cir. May 1, 2016) (*sua sponte* ordering initial hearing *en banc* in challenge to presidential Clean Power Plan); *Hobby Lobby Stores, Inc. v. Sebelius,* 723 F.3d 1114, 1125 (10th Cir. 2013) (initial hearing *en banc*, on motion, of challenge to contraceptive-coverage requirement under ACA); *Gratz v. Bollinger*, 277 F.3d 803 (6th Cir. 2001) (granting petition for initial hearing *en banc* in affirmative action challenge).

This case challenges the strictest voter ID law in the nation, affecting hundreds of thousands of Texas voters. This Court already took this case *en banc* last year, generating an 86-page majority decision. Given the exceptional importance of this case and the need to ensure proper application of the *en banc* opinion, this Court should hear this appeal *en banc* now and answer all the important questions, however misguided, that Texas intends to raise on appeal.

First, Texas's stay motion indicates that it intends to ask this Court to ignore Rule 52 and this Court's *en banc* opinion on the deference due the district court's fact-findings on discriminatory intent. Texas argues that the district court failed to give SB14 the requisite "strong presumption of validity" that is due to "[f]acially neutral laws." Stay Mot. at 9. This is just a rephrasing of Texas's previously rejected "clearest proof" standard for discriminatory intent. *Veasey II*, 830 F.3d at 230 n.12. Similarly, Texas rehashes its argument, also rejected by this Court's *en banc* opinion, that the absolute number of minority and non-minority voters affected is the appropriate standard. Stay Mot. at 10; *Veasey II*, 830 F.3d at 252 n.45. Texas also intends to ask this Court to reweigh the evidence in Texas's favor, in violation of Rule 52, and find that the record evidence could not support a finding of discriminatory intent, a holding directly contrary to this Court's *en banc* opinion. Stay Mot. at 12-18; *Veasey II*, 830 F.3d at 241. Initial *en banc* review will ensure conformity with this Court's *en banc* opinion.

With respect to SB5, this appeal raises at least two important questions. First, Texas apparently intends to raise the merits argument that the district court was *required* to find that the Legislature's passage of SB5 cancelled out any discriminatory purpose underlying SB14. Stay Mot. at 11. Second, the motions panel held, as a matter of remedy, that the district court was not entitled to enjoin SB5 to

ensure a complete remedy for SB14's discriminatory purpose. App.3-4. Both of these positions should be rejected by the *en banc* Court.

First, subsequent legislation passed in response to a finding of discriminating intent does not erase a prior law's discriminatory purpose. Second, the district court's broad discretion to remedy intentional discrimination cannot be circumvented by intervening legislation that maintains and perpetuates the original law's discriminatory features. To hold otherwise would also require plaintiffs to start new litigation to uproot discrimination at great time and expense to receive full and complete relief. This well-worn strategy is what prompted a bipartisan Congress to require preclearance under the Voting Rights Act in the first place. *Shelby County v. Holder*, 133 S. Ct. 2612, 2619 (2013). It is important that the Court resolve this extraordinary issue *en banc* because of its wide-reaching impact on intentional discrimination jurisprudence.

Further, Texas argues—and the stay panel held—that SB5 remedies SB14's *intentional* discrimination simply because it no longer *results* in the complete disenfranchisement of victims of discrimination. This is not the law and should by corrected by this Court. In its *en banc* opinion, this Court noted that remedies for discriminatory intent differ from those for discriminatory results only. *Veasey* II, 830 F.3d at 230 n. 11 (quoting *City of Richmond v. United States*, 422 U.S. 358, 378 (1975) ("An official action ... taken for the purpose of discriminating ... on account

of ... race has no legitimacy at all.")); *see also id.* at 242. The Supreme Court has held that intentional discrimination must be eliminated "root and branch," *Green v. County School Board,* 391 U.S. 430, 438 (1968), and the victims of intentional discrimination must be placed "in the position they would have occupied in the absence of discrimination." *Virginia*, 518 U.S. at 547 (quotations omitted). This Court should hold *en banc* that SB5 fails that stringent standard.

II. The Motions Panel's Stay Decision Should Be Reheard *En Banc* and Vacated.

The motions panel's decision staying the injunction of SB14 and SB5 pending appeal should be reheard *en banc* for at least five reasons.

First, the panel's "assessment" of Texas's likelihood of success—which spans *three sentences*—is woefully inconsistent with this Court's requirement that "[t]o evaluate [a party's] likelihood of success we determine what is the proper standard to be applied in evaluating plaintiff's claims, and then we apply that standard to the facts presented in the record." *Mississippi Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 622 (5th Cir. 1985).

The district court issued a carefully considered 27-page opinion, expanding on and incorporating parts of its prior 147-page opinion, in which it concluded that "the provisions of SB5 fall far short of mitigating the discriminatory provisions of SB14," explaining that "SB5 on its face embodies some of the indicia of discriminatory purpose—particularly with respect to the enhancement of the threat

of prosecution for perjury regarding a crime unrelated to the state purpose of preventing in-person voter impersonation fraud." App.15. To reach that conclusion, the district court analyzed the proper legal standard, *see* App.15-20, and then discussed each of the five discriminatory features of SB14 in turn, analyzing how—if at all—SB5 affected those features, App.21-33. The court then explored the governing case law on fashioning an appropriate remedy, and concluded—within its sound discretion—that SB14 and SB5 must be enjoined, App.33-38.

In sharp contrast, the motions panel concluded that Texas made a "strong showing that it is likely to succeed on the merits" because

> SB5 allows voters without qualifying photo ID to cast regular ballots by executing a declaration that they face a reasonable impediment to obtaining qualifying photo ID. This declaration is made under penalty of perjury. As the State explains, each of the 27 voters identified—whose testimony the plaintiffs used to support their discriminatory-effect claim—can vote without impediment under SB5.

App.4. There was no citation to the governing case law, no analysis under clear error review—or even *mention* of the district court's fact-findings regarding SB14's discriminatory purpose—no analysis of the provisions of SB5 and how they remove or continue SB14's discriminatory features, and no discussion of the district court's discretion to fashion remedies or the applicable abuse of discretion standard.

The "likelihood of success" consideration is "[t]he most important factor" in a stay decision. *Woodfox v. Cain*, 789 F.3d 565, 569 (5th Cir. 2015). Such a threadbare analysis cannot support staying a district court's considered judgment.

The panel's merits analysis cannot be permitted to stand as precedent for an appropriate level of inquiry into the merits of a case on a stay motion.

Second, the panel's cursory merits review fails as a matter of law. The decision rests on a conclusory sentence about discriminatory *effects*, despite the district court's conclusion that SB5 also failed to remedy SB14's discriminatory *purpose*. As Judge Graves explained in dissent, the failure of the panel to confront the discriminatory purpose finding puts the panel's decision in conflict with the Fourth Circuit's decision in *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016), *cert. denied*, 137 S. Ct. 1399 (2017), in which an amendment providing for a reasonable impediment procedure was found to be insufficient to remedy the statute's discriminatory purpose.

The panel failed to consider that SB5 is built on the precise elements of SB14 that had been found to be intentionally discriminatory. As the district court found, SB5 perpetuates the discriminatory picking and choosing of acceptable IDs under SB14, fails to expand access to those IDs for minority voters, lacks funding for vital voter education, and continues to burden those who are the victims of the discriminatory *intent* with a process that includes the threat of criminal prosecution for checking the wrong "impediment" box. App.22-33. Thus, SB5 does not eliminate the intentional discrimination of SB14 "root and branch," *Green*, 391 U.S. at 438, or place the victims of discrimination "in the position they would have occupied in

the absence of discrimination." *Virginia*, 518 U.S. at 547 (quotations omitted), and thus conflicts with well-established precedent. *See, e.g.*, *City of Richmond v. United States*, 422 U.S. 358, 378 (1975) (holding that "[a]n official action . . . taken for the purpose of discriminating . . . on account of . . . race has no legitimacy at all"); *McCrory*, 831 F.3d at 241 ("On its face, this amendment does not fully eliminate the burden imposed by the photo ID requirement. . . [I]t requires voters to take affirmative steps to justify to the state why they failed to comply with a provision that we have declared was enacted with racially discriminatory intent.").

The district court's decision to enjoin SB5 was within its broad equitable powers. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) ("[T]he scope of a district court's equitable powers to remedy past wrongs is broad."). Courts have the power to "enjoin the defendant from renewing [an unlawful] practice." *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982). Here, the district court concluded that an injunction of SB5 was necessary because "SB5's methodology remains discriminatory because it imposes burdens disproportionately on Black and Latinos." App.23. It found that the elimination of the "Other" category on the DRI, coupled with its increased criminal penalties, would "caus[e] qualified voters to forfeit the franchise out of fear, misunderstanding, or both." App.29. This chilling effect would fall disproportionately on Black and Latino Texans, because SB5 "does not meaningfully expand the types of photo IDs

that can qualify." App.23. The court's formulation of the remedy, subject to review under the abuse of discretion standard (incorporating the clear error rule), was entitled to deference by the panel, which was not given, and therefore warrants *en banc* review.

Third, the panel's decision conflicts with this Court's prior *en banc* decision by holding that the district court exceeded its mandate on remand by enjoining SB5. App.3-4. This Court instructed that, on remand, "if the district court concludes that SB14 was passed with a discriminatory intent, the district court should fashion an appropriate remedy in accord with its findings," *Veasey II*, 830 F.3d at 243, and that it should "bear[] in mind the effect any interim legislative action taken with respect to SB14 may have," *id.* at 272. The district court did just that, reviewing SB5's provisions and, "bearing in mind the effect" SB5 had "with respect to SB14," *Veasey II*, 830 F.3d at 272, concluded that SB5 perpetuates SB14's discriminatory purpose because SB5's "features do not function without the discriminatory features it perpetuates," App.36.

The panel rested its contrary conclusion on a single sentence from this Court's opinion: "Any concerns about a new bill would be the subject of a new appeal for another day." *Veasey II*, 830 F.3d at 271; *see* App.3-4. That statement was preceded by this: "[n]either our ruling here nor any ruling of the district court on remand should prevent the Legislature from acting to ameliorate the issues raised in this

opinion." *Veasey II*, 830 F.3d at 271. These statements do not limit the district court's power to enjoin SB5, they support it. The Legislature was not *prevented* from acting—rather, its actions raised significant concerns, which are now "the subject of a new appeal." *Id.* The panel's decision to grant the stay rests on an improper interpretation of this Court's mandate, and should be reviewed *en banc*.

Fourth, the panel's decision directly conflicts with other circuits' precedent, and is inconsistent with recent Supreme Court precedent, by presuming that, any time a state statute is enjoined, the irreparable harm factors weighs in favor of a stay. App.4-5. The single-Justice opinion on which the panel relies, *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers), does not support this conclusion, as Judge Graves explains in dissent, App.10. As the *en banc* Fourth Circuit has held, "the Government is in no way harmed by issuance of a preliminary injunction which prevents [it] from enforcing restrictions likely to be found unconstitutional." *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 603 (4th Cir. 2017) (*en banc*) (quotations omitted). Although the Supreme Court granted *certiorari* in *Refugee Assistance*, *see* 137 S. Ct. 2080 (2017) (*per curiam*), the Court issued an opinion granting a stay of the injunction *in part*, *id.* at 2089. In considering the potential for irreparable harm to the Government, the Supreme Court never suggested that the Government, *because* it was the Government, was necessarily irreparably harmed by the injunction against the Executive Order.

Fifth, the panel's decision warrants *en banc* review because it allows Texas to declare an "emergency" in voting cases every year, all year. App.5. SB5 does not take effect until January 2018. The primary elections are in March 2018. The statewide general election is in November 2018. Texas's "emergency," endorsed by the panel, is that it needs to coordinate with third-party printing vendors by September 18, 2017 for elections happening in March 2018. App.3. If this constitutes an emergency warranting a stay, then the word "emergency" is meaningless. It cannot be that *any* "deadline" related to Texas's elections precludes an injunction. Nor can impending local elections—which happen throughout the year—continually support implementation of an intentionally discriminatory law. Under the panel's reasoning, stays pending appeal will be granted in *all circumstances*, rather than only in "extraordinary" ones. *Graves v. Barnes*, 405 U.S. 1201, 1203 (1972) (Powell, J., in chambers). "A stay is not a matter of right, even if irreparable injury might otherwise result." *Indiana State Police Pension Trust v. Chrysler LLC*, 556 US. 960, 861 (2009) (quotations omitted). E*n banc* review should be ordered.

CONCLUSION

Plaintiffs-Appellees ask this Court to grant initial hearing *en banc* of this appeal and grant rehearing *en banc* of the motions panel's stay decision.

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Dated: September 8, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

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CERTIFICATE OF ELECTRONIC COMPLIANCE

Counsel certifies that: (1) required privacy redactions have been made, 5th Cir. R. 25.2.13; (2) electronic submission is an exact copy of the paper document, 5th Cir. R. 25.2.1; and (3) the document has been scanned with the most recent version of a commercial virus scanning program and is free of viruses.

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CERTIFICATE OF COMPLIANCE

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Dated: September 8, 2017

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APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED
September 5, 2017

Lyle W. Cayce
Clerk

No. 17-40884

MARC VEASEY; JANE HAMILTON; SERGIO DELEON; FLOYD CARRIER; ANNA BURNS; MICHAEL MONTEZ; PENNY POPE; OSCAR ORTIZ; KOBY OZIAS; LEAGUE OF UNITED LATIN AMERICAN CITIZENS; JOHN MELLOR-CRUMMEY; DALLAS COUNTY, TEXAS; GORDON BENJAMIN; KEN GANDY; EVELYN BRICKNER,

Plaintiffs - Appellees

v.

GREG ABBOTT, in his Official Capacity as Governor of Texas; ROLANDO PABLOS, in his Official Capacity as Texas Secretary of State; STATE OF TEXAS; STEVE MCCRAW, in his Official Capacity as Director of the Texas Department of Public Safety,

Defendants - Appellants

UNITED STATES OF AMERICA,

Plaintiff - Appellee

TEXAS LEAGUE OF YOUNG VOTERS EDUCATION FUND; IMANI CLARK,

Intervenor Plaintiffs - Appellees

v.

STATE OF TEXAS; ROLANDO PABLOS, in his Official Capacity as Texas Secretary of State; STEVE MCCRAW, in his Official Capacity as Director of the Texas Department of Public Safety,

Defendants - Appellants

No. 17-40884

TEXAS STATE CONFERENCE OF NAACP BRANCHES; MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES,

Plaintiffs - Appellees

v.

ROLANDO PABLOS, in his Official Capacity as Texas Secretary of State; STEVE MCCRAW, in his Official Capacity as Director of the Texas Department of Public Safety,

Defendants - Appellants

LENARD TAYLOR; EULALIO MENDEZ, JR.; LIONEL ESTRADA; ESTELA GARCIA ESPINOSA; MAXIMINA MARTINEZ LARA; LA UNION DEL PUEBLO ENTERO, INCORPORATED,

Plaintiffs - Appellees

v.

STATE OF TEXAS; ROLANDO PABLOS, in his Official Capacity as Texas Secretary of State; STEVE MCCRAW, in his Official Capacity as Director of the Texas Department of Public Safety,

Defendants - Appellants

Appeal from the United States District Court
for the Southern District of Texas, Corpus Christi

Before SMITH, ELROD, and GRAVES, Circuit Judges.

PER CURIAM:

On August 23, 2017, the district court granted permanent injunctions against the enforcement of Sections 1 through 15 and Sections 17 through 22 of Senate Bill 14 (SB 14) and against the enforcement of Senate Bill 5 (SB 5). The State filed an emergency motion to stay these injunctions. The United States filed a response in our court, consenting to a stay pending appeal. The appellees opposed the State's motion.

The district court enjoined the enforcement of SB 14 and SB 5 seven days before the Texas Secretary of State's internal deadline to finalize voter-registration certificates. These certificates must go to the printer by September 18. This deadline ensures that county registrars can issue voter-registration certificates as required by statutory deadlines before scheduled elections. To ensure that all necessary appellate review can be concluded in time for impending local elections, the State seeks a ruling of this court by September 7.

In its August 30 order, the district court granted a limited stay only to allow specific cities and school districts to proceed with, and conclude, their already ongoing elections. However, the district court ordered that no other elections can be conducted under the August 10, 2016 Order Regarding Agreed Interim Plan for Elections (Interim Order) because this August 23, 2017 order superseded its Interim Order.[1]

The Texas Legislature enacted SB 5 in 2016 to cure any statutory and constitutional violations related to SB 14 after *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc).[2] SB 5 allows voters without qualifying photo ID to

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[1] The Interim Order approved specific voting procedures in light of *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc). There, the district court ordered that the procedures remain in place "until further order of this Court."

[2] When this court remanded the case to the district court, the scope of the mandate only included the discretion to consider "any interim legislative action with respect to SB 14" in fashioning an "interim remedy for SB 14's discriminatory effect." *Veasey*, 830 F.3d at 272 (en banc). We explicitly stated that should the legislature again address the issue of voter identification, "[a]ny concerns about a new bill would be the subject of a new appeal for

cast a regular ballot after selecting, under the penalty of perjury, the reason they do not have qualifying photo ID.

We consider four factors in deciding whether to grant a stay pending appeal: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 425—26 (2009).

The State has made a strong showing that it is likely to succeed on the merits. SB 5 allows voters without qualifying photo ID to cast regular ballots by executing a declaration that they face a reasonable impediment to obtaining qualifying photo ID. This declaration is made under the penalty of perjury. As the State explains, each of the 27 voters identified—whose testimony the plaintiffs used to support their discriminatory-effect claim—can vote without impediment under SB 5.

The State has made a strong showing that this reasonable-impediment procedure remedies plaintiffs' alleged harm and thus forecloses plaintiffs' injunctive relief.

The State has also made an adequate showing as to the other factors considered in determining a stay pending appeal. When a statute is enjoined,

---

another day." *Id.* at 271. By enjoining SB 5 from taking effect on January 1, 2018, the district court went beyond the scope of the mandate on remand. *See Gen. Universal Sys., Inc. v. HAL, Inc.*, 500 F.3d 444, 453 (5th Cir. 2007) (stating "the mandate rule requires a district court on remand to effect our mandate and to do nothing else" and that the district court "must implement both the letter and the spirit of the appellate court's mandate"). Puzzlingly, the district court itself noted that it was only considering SB 5 in relation to any remedial effect the bill had on SB 14 and that "[i]t would be premature to try to evaluate SB 5 as the existing voter ID law in Texas because there is no pending claim to that effect before the Court," *Veasey v. Abbott*, 2017 WL 3620639, at *5 n.9 (S.D. Tex. Aug. 23, 2017), but then proceeded to enjoin the enforcement of SB 5. Simply put, whether SB 5 should be enjoined—as opposed to whether it remedies SB 14's ills—was not an issue before the district court on remand.

the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws. *Maryland v. King*, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers); *see also Walters v. Nat'l Ass'n of Radiation Survivors* 468 U.S. 1323, 1324 (1984) (Rehnquist, J., in chambers). Because the State is the appealing party, its interest and harm merge with that of the public. *Nken*, 556 U.S. at 435.

The State has already spent $2.5 million in 2016 to educate voters about the availability of the SB 5 reasonable-impediment procedures, which were used in the November 2016 general election and local elections this year. A temporary stay here, while the court can consider argument on the merits, will minimize confusion among both voters and trained election officials. The dissent's position that we should "carefully consider the importance of preserving the status quo on the eve of an election" only when that election is nationwide or statewide is without support and arguably in tension with our statement in *Veasey* that the impact of a late-issued injunction in "some isolated precincts" raised significant concern. *Veasey v. Perry*, 769 F.3d 890, 894 (5th Cir. 2014).

A temporary stay here is also consistent with our earlier decision to grant a motion to stay the implementation of SB 14 "based primarily on the extremely fast-approaching election date." *Veasey*, 769 F.3d at 892. As the United States explains in its brief, a stay will "retain procedures endorsed by the parties and the district court."

Pursuant to this Order, the district court's Interim Order and its reasonable-impediment procedures will remain in effect for elections in 2017. The parties agreed to these procedures, and the district court approved them. In fact, the dissenting opinion itself appears to agree that the continued use of the parties' agreed-upon remedy, the Interim Order, is the relevant *status quo ante*. Because again we face impending elections, a temporary stay is

appropriate to "suspend[] judicial alteration of the status quo." *Nken*, 556 U.S. at 429.

Given the district court's broad orders permanently enjoining the enforcement of relevant sections of SB 14 and SB 5 and also enjoining upcoming elections pursuant to the Interim Order, a temporary stay will allow this court to hear oral arguments and rule on the merits while preserving the status quo.

We have addressed only the issues necessary to rule on the motion to stay pending appeal, and our determinations are for that purpose and do not bind the merits panel. *See generally Mattern v. Eastman Kodak Co.*, 104 F.3d 702, 704—05 (5th Cir. 1997), *abrogated on other grounds by Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53 (2006).

IT IS ORDERED that Appellants' opposed motion for stay pending appeal is GRANTED, the district court's injunction orders are STAYED, until the final disposition of this appeal, in accordance with this opinion, and all proceedings in the district court are STAYED.

The Clerk of the Court is directed to issue an expedited briefing schedule and to calendar this matter for oral argument before a merits panel on the court's next available oral argument docket.

JAMES E. GRAVES, JR., Circuit Judge, dissenting:

I dissent from the majority's decision granting the motion to stay. I would deny the motion in its entirety.

I

The majority's stated goal is preservation of the status quo because "we face impending elections." I agree that preserving the status quo is "an important consideration in granting a stay." *Barber v. Bryant*, 833 F.3d 510, 511 (5th Cir. 2016) (quoting *Dayton Bd. of Educ. v. Brinkman*, 439 U.S. 1358, 1359 (1978)). But the stay that the majority imposes does not meet its goal.

Status quo ante means "[t]he situation that existed before something else (being discussed) occurred." *Status Quo Ante*, Black's Law Dictionary (10th ed. 2014). The "something else (being discussed)" in this appeal is actually ***two*** things: the district court's final order and the pending implementation of S.B. 5, which is set to take effect on January 1, 2018.

If the *status quo ante* is defined by what ***was***, then it certainly cannot be defined by what ***has never been***, *i.e.*, S.B. 5. The *status quo ante* cannot truly be preserved unless the implementation of S.B. 5 is stayed until this court has had a chance to review the merits of the district court's ruling on that iteration of Texas's voter ID law. *See Whole Woman's Health v. Lakey*, 769 F.3d 285, 308 (5th Cir.) (Higginson, J., concurring in part and dissenting in part) (emphasizing the importance of "preserv[ing] th[e] status quo pending our court's ultimate decision on the correctness of the district court's ruling" in consideration of motion to stay pending appeal), *stay vacated in part*, 135 S. Ct. 399 (2014).

The relevant *status quo ante* should be defined as only the continued use of the parties' agreed-upon interim remedy (the Declaration of Reasonable Impediment) that was implemented in advance of the 2016 presidential election and remained in effect until the district court's August 23rd order—which is now being stayed. Constructing the stay in this manner would maintain the

status quo ante in Texas as it existed *ante* the district court's order ***and*** *ante* the Legislature's passage and implementation of S.B. 5. *See Barber*, 833 F.3d at 512. Neither side would be irreparably harmed by continuing to operate under the same election procedures they have been operating under for more than a year.

If a stay is granted at all, then it should be comprehensive. In other words, the correct approach would be to stay both the district court's order and the new legislation.

II

Turning now to the substance of the State's motion, four factors govern consideration: (1) whether the State has made a strong showing that it is likely to succeed on the merits; (2) whether the State will be irreparably injured absent a stay; (3) the balance of hardships; and (4) where the public interest lies. *Nken v. Holder*, 556 U.S. 418, 434 (2009). In my view, the State has failed to satisfy any of these factors.

First, the State has not made a sufficiently strong showing that it is likely to succeed on the merits. The Fourth Circuit's decision in *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016), *cert. denied*, 581 U.S. —, 137 S. Ct. 1399 (2017), is instructive. There, the court invalidated North Carolina's voter ID law after finding that the North Carolina legislature unconstitutionally enacted the law with a racially discriminatory intent. The legislature later amended one of the law's provisions to add a reasonable impediment exception. The court refused to consider this amendment and enjoined the entire law because of the law's underlying discriminatory purpose:

> [E]ven if the State were able to demonstrate that the amendment lessens the discriminatory effect of the photo ID requirement, it would not relieve us of our obligation to grant a complete remedy in this case. That remedy must reflect our finding that the challenged

> provisions were motivated by an impermissible discriminatory intent and must ensure that those provisions do not impose any lingering burden on African American voters. . . .
>
> While remedies short of invalidation may be appropriate if a provision violates the Voting Rights Act only because of its discriminatory effect, laws passed with discriminatory intent inflict a broader injury and cannot stand.

Id. at 240 (citing *Veasey v. Abbott*, 830 F.3d 216, 268 & n.66 (5th Cir. 2016) (en banc), *cert. denied*, 580 U.S. —, 137 S. Ct. 612 (2017)). In other words, because the North Carolina voter ID law was passed with a discriminatory intent, it had to be "eliminated root and branch," and the proposed remediation was squashed. *Green v. Cty. Sch. Bd.*, 391 U.S. 430, 438 (1968). In light of the Fourth Circuit's decision, and considering the similarity of the circumstances underlying the decision and those we face here *vis-à-vis* S.B. 14 and S.B. 5, I am unconvinced that the State is likely to succeed on the merits.

Second, the State has not shown that it will suffer an irreparable injury in the absence of a stay. Both the State and the majority rely on *Maryland v. King*, 567 U.S. —, 133 S. Ct. 1 (2012) (Roberts, C.J., in chambers), in which Chief Justice Roberts, in his capacity as Circuit Justice, explained that "any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Id.* at 3 (quoting *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)). *King* is distinguishable. There, the applicants sought to stay a judgment that would have enjoined a Maryland law regarding the collection of defendants' DNA prior to being convicted. Chief Justice Roberts noted that, in the absence of a stay, Maryland would suffer "an ongoing and concrete harm to [its] law enforcement and public safety interests." *Id.* There are no such additional interests at play here. The State argues that a stay would

cause it irreparable harm by, in essence, preventing it from enforcing a law that this court has already found ***at a minimum*** has a discriminatory effect on African American and Latino voters, *see Veasey*, 830 F.3d at 264–65, and that the district court has found was enacted with a discriminatory purpose, *see Veasey v. Abbott*, — F. Supp. 3d —, 2017 WL 1315593 (S.D. Tex. Apr. 10, 2017). It cannot be that the single statement from *King* has the result that a state automatically suffers an irreparable injury when a court blocks any law it has enacted—regardless of the content of the law or the circumstances of its passing. Indeed, because these laws affect—or threaten to affect—the plaintiffs' right to vote, it is the ***plaintiffs*** who have shown they will suffer an irreparable injury should the stay be implemented. *See Mich. State A. Philip Randolph Inst. v. Johnson*, 833 F.3d 656, 669 (6th Cir. 2016) ("When constitutional rights are threatened or impaired, irreparable injury is presumed. A restriction on the fundamental right to vote therefore constitutes irreparable injury." (citation omitted)).

And finally, the State has not shown that either the balance of hardships or the public interest weighs in its favor. Because the state government of Texas is a litigant in this case, these factors are considered in tandem. *See Nken*, 556 U.S. at 435. The State is correct that the "presumption of constitutionality which attaches to" a state's law is "an equity to be considered in favor of applicants in balancing hardships." *Walters v. Nat'l Ass'n of Radiation Survivors*, 468 U.S. 1323, 1324 (1984) (Rehnquist, J., in chambers). But this statement, like the statement in *King*, does not provide the State an automatic check in its column under balance of hardships. Any hardship purportedly suffered by a state is significantly lessened when that state passes and seeks to enforce a law that impermissibly impinges on "one of the most fundamental rights of our citizens: the right to vote," *Nw. Aus. Mun. Util. Dist. No. 1 v. Holder*, 557 U.S. 193, 202 (2009) (quoting *Bartlett v. Strickland*, 556 U.S. 1, 10 (2009) (plurality op.)), the

protection of which is unequivocally in the public interest. *See Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005) ("[T]he injunction's cautious protection of the [Appellants]' franchise-related rights is without question in the public interest."); *cf. Hobby Lobby Stores, Inc. v. Sibelius*, 723 F.3d 1114, 1145 (10th Cir. 2013) ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights." (quoting *Awad v. Ziriax*, 670 F.3d 1111, 1131–32 (10th Cir. 2012))), *aff'd sub nom. Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. —, 134 S. Ct. 2751 (2014).

* * *

For the foregoing reasons, the motion to stay should be denied. Because the majority has decided otherwise, I respectfully dissent.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 2:13-CV-193
	§	
GREG ABBOTT, *et al*,	§	
	§	
Defendants.	§	

ORDER GRANTING SECTION 2 REMEDIES
AND TERMINATING INTERIM ORDER

In its Opinion of October 9, 2014 (D.E. 628), this Court held that Texas Senate Bill 14 (SB 14)[1] had an impermissible discriminatory effect against Hispanics and African-Americans and was passed with a discriminatory purpose in violation of Section 2 of the Voting Rights Act (VRA) and the 14th and 15th Amendments to the United States Constitution. *Veasey v. Perry*, 71 F. Supp. 3d 627 (S.D. Tex. 2014) (*Veasey I*). On appeal, the Fifth Circuit, sitting en banc, affirmed the discriminatory effect claim and remanded the discriminatory purpose claim for reconsideration. *Veasey v. Abbott*, 830 F.3d 216, 241 (5th Cir. 2016) (en banc) (*Veasey II*).[2]

In the meantime, the Fifth Circuit instructed this Court to issue an interim remedy to eliminate—or at least reduce—the discriminatory effects of SB 14 for the 2016 general

[1] Texas Senate Bill 14, Act of May 16, 2011, 82d Leg., R.S., ch. 123, 2011 Tex. Gen. Laws 619.

[2] In *Veasey I*, this Court also found in favor of Plaintiffs with respect to two constitutional claims. The claim that SB 14 constituted an unconstitutional burden on the right to vote under the 1st and 14th Amendments was vacated and dismissed under the principle that the VRA provided a remedy and thus those constitutional claims need not be reached. The claim that SB 14 constituted a poll tax under the 14th and 24th Amendments was vacated and rendered on the merits.

election and any other elections to take place before final disposition. As part of its mandate, the Fifth Circuit directed that this Court fashion the interim remedy so as to give effect, if possible, to the Texas legislature's stated interest in securing the integrity of its election process. In that regard, the interim remedy was to include a requirement that those in possession of qualifying SB 14 ID produce it before voting in person. *Veasey II*, at 271.

With the Fifth Circuit's parameters in mind, the parties conferred and presented the Court with an agreed interim order. It required those with SB 14 ID to show it and it instituted a Declaration of Reasonable Impediment (DRI) process for those who did not. Any qualified voter who did not have SB 14 ID was required, under penalty of perjury, to state that he or she did not have qualified ID and was then required to check a box to indicate the reason, including a box for "other," with a line for the "other" explanation. Upon completing the DRI, the individual was permitted to vote a regular ballot. The voter's reason could not be questioned.

The Court approved the interim order, which was a stop-gap measure instituted with a general election, including a United States presidential contest, less than three months away. The remedy was formulated in conformity with the powers and parameters of a VRA Section 2 discriminatory "results" claim. Because of the procedural posture of the case, it did not purport to provide any remedy for the still-pending Section 2/Fourteenth and Fifteenth Amendment discriminatory "purpose" claim.

On remand, this Court again found that SB 14 was passed with a discriminatory purpose. D.E. 1023. Thus Plaintiffs are now entitled to a remedy under VRA Section 2

for both the discriminatory effect and discriminatory purpose of SB 14. To determine the necessary injunctive relief, the Court offered the parties an evidentiary hearing, which they all declined. Instead, they agreed to rely on simultaneously-filed opening and responsive briefing and the existing record. *See* D.E. 1039-41, 1044. Before the Court are the parties' briefs. D.E. 1048, 1049, 1051, 1052, 1056, 1058, 1059, 1060.[3] Also before the Court are Defendants' Motion for Reconsideration of Discriminatory Purpose Ruling in Light of SB 5's[4] Enactment (D.E. 1050) and Private Plaintiffs' Response (D.E. 1066).[5]

For the reasons set out below, the Court DENIES Defendants' motion for reconsideration (D.E. 1050), and GRANTS declaratory and injunctive relief for the Section 2 violations, superseding and terminating the Order Regarding Agreed Interim Plan for Elections (D.E. 895).

MOTION FOR RECONSIDERATION OF DISCRIMINATORY PURPOSE

The Fifth Circuit, noting that the record included sufficient evidence to find that SB 14 was passed with a discriminatory purpose, mandated that this Court reconsider its initial purpose finding in light of the appellate critique of the probative value of certain

[3] In competing advisories, Private Plaintiffs and the United States have sparred over whether the United States may be heard on issues related to the discriminatory purpose claim. D.E. 1064, 1065. The United States withdrew its discriminatory purpose claim and now supports the State Defendants in that regard and takes positions inconsistent with positions previously taken in this case. The Court recognizes that the United States remains a party and has a right to be heard on every issue in this case.

[4] Texas Senate Bill 5, Act of June 1, 2017, 85th Leg., R.S., 2017 Tex. Sess. Laws. ch. 410 (SB 5).

[5] Defendants filed their Motion to Issue Second Interim Remedy or to Clarify First Interim Remedy (D.E. 1047), to which the other parties responded (D.E. 1057, 1061, and 1062). Defendants have since withdrawn that motion. D.E. 1063.

evidence. Defendants now present their third request[6] that this Court defer to the Texas Legislature and treat SB 5 as retroactively purging SB 14 of its discriminatory purpose.

As previously found, the Texas Legislature's subsequent action in passing SB 5—after years of litigation to defend SB 14—does not govern a finding of intent with respect to the previous enactment. Even if such a turning back of the clock were possible, the provisions of SB 5 fall far short of mitigating the discriminatory provisions of SB 14, as detailed more fully below. Along with continued provisions that contribute to the discriminatory effects of the photo ID law, SB 5 on its face embodies some of the indicia of discriminatory purpose—particularly with respect to the enhancement of the threat of prosecution for perjury regarding a crime unrelated to the stated purpose of preventing in-person voter impersonation fraud.

SB 5 does not negate SB 14's discriminatory purpose. The Court DENIES the request (D.E. 1050) to reconsider the discriminatory purpose finding.

SECTION 2 REMEDIES

Among the Private Plaintiffs' requested remedies are (1) a declaratory judgment that SB 14 was passed with a discriminatory purpose and engendered a discriminatory result in violation of the Voting Rights Act and the United States Constitution; (2) injunctive relief in the form of a prohibition against the enforcement of SB 14 and SB 5;

[6] Before the 2017 Texas legislative session convened, Defendants' Proposed Briefing Schedule (D.E. 916) argued that this Court should delay reconsideration of the purpose finding until after that legislative session. The Court rejected that argument when setting the briefing schedule. D.E. 922. During the 2017 legislative session, Defendants and the United States filed their "Joint Motion to Continue February 28, 2017 Hearing on Plaintiffs' Discriminatory Purpose Claims" (D.E. 995). In that motion, they argued that SB 5, then pending, would alter or moot any disposition of the discriminatory purpose claim if and when it was passed into law. The Court denied that motion. D.E. 997. Now that the 2017 legislative session has ended and SB 5 has been enacted and signed into law, Defendants reiterate their argument that the new law purges the old law of its unconstitutionally discriminatory purpose.

and (3) retention of jurisdiction. The United States and the State Defendants request that this Court deny injunctive relief on the basis that SB 5 constitutes an adequate remedy for any violation of law that SB 14 presents. They further oppose retention of jurisdiction on the basis that there is nothing further for this Court to monitor or review. The issue of Section 3 remedies has been reserved for later briefing and decision.

A. Declaratory Relief

The request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 is a natural result of the disposition of the claims made. *See also*, Fed. R. Civ. P. 57. It is further an appropriate foundation for the consideration of Section 3 relief. The Court's Opinion of October 9, 2014 (D.E. 628) and Order on Claim of Discriminatory Purpose of April 10, 2017 (D.E. 1023) effectively grant that request for declaratory relief, which will be included in the Court's final judgment. The Court GRANTS declaratory relief and holds that SB 14 violates Section 2 of the Voting Rights Act and the 14th and 15th Amendments to the United States Constitution.

B. Injunctive Relief

1. Manner of Evaluating Injunctive Relief

Private Plaintiffs seek an injunction completely barring implementation and enforcement of SB 14, Sections 1 through 15 and Sections 17 through 22,[7] as well as SB 5 in order to eliminate the discriminatory law "root and branch." D.E. 1051, p. 4. Defendants and the United States contend that this Court's hands are tied because the

[7] SB 14, § 16, which Private Plaintiffs would leave intact, increased the penalty for voting when ineligible, voting more than once in an election, knowingly impersonating another person so as to vote as that person, and marking another voter's ballot without that person's consent to a second degree felony. *See generally*, Tex. Elec. Code § 64.012(a).

remedies imposed by SB 5 are sufficient to ameliorate SB 14's ills and the Court is bound to defer to that state remedy. Thus the Court's first task is to determine to what extent, if any, the Court must defer to the state's choice of remedy and how, if at all, the Court's jurisdiction extends to interference with SB 5, which was enacted after this Court's determination of the voting rights liability issues on their merits.

Federal courts have broad equitable powers to remedy voting rights violations that implicate constitutional rights. *See Swann v. Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1, 15-16 (1971). The Court must fashion its remedy, taking into account "obvious" considerations such as "the severity and nature of the particular constitutional violation, the extent of the likely disruption to the ordinary processes of governance, . . . what is necessary, what is fair, and what is workable." *North Carolina v. Covington*, 137 S. Ct. 1624, 1625 (2017) (quoting *New York v. Cathedral Academy*, 434 U.S. 125, 129 (1977)). Additionally, the Court must act with proper restraint when intruding on state sovereignty. *Covington, supra* at 1626.

What constitutes proper restraint from intrusion is not clear. In *Operation Push*, the Fifth Circuit noted that proper deference to the state meant giving the government the first opportunity to institute its own cure for the VRA § 2 violation. *Mississippi State Chapter, Operation Push, Inc. v. Mabus*, 932 F.2d 400, 405–06 (5th Cir. 1991). In the prior appeal of this case (*Veasey II*), after discussing the need to fashion an interim remedy, the Fifth Circuit wrote:

> [S]hould a later Legislature again address the issue of voter identification, any new law would present a new circumstance not addressed here. Such a new law may cure the

> deficiencies addressed in this opinion. Neither our ruling here nor any ruling of the district court on remand should prevent the Legislature from acting to ameliorate the issues raised in this opinion.

Veasey II, 830 F.3d at 271. Consistent with these holdings, this Court delayed its remedies decision until after the Texas Legislature's 2017 General Session to give the legislature an opportunity to act. Texas passed SB 5 and it is now this Court's job to determine whether SB 5 cured the unconstitutional discrimination in SB 14.

Nothing further is required in the nature of deference to legislative choices when this Court reviews the substance of SB 5.

> [I]t 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.

Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265–66 (1977). Even if some measure of deference were required (for instance, if relief were being considered only for the discriminatory results claim), that deference yields if SB 5 is not a full cure of the terms that render SB 14 discriminatory.

> "The federal district court is precluded from substituting even what it considers to be an objectively superior plan for an otherwise ***constitutionally and legally valid plan*** that has been proposed and enacted by the appropriate state governmental unit." The district court must accept a plan offered by the local government ***if it does not violate statutory provisions or the Constitution.***

Operation Push, 932 F.2d at 406–07 (a voter registration case, quoting *Seastrunk v. Burns*, 772 F.2d 143, 151 (5th Cir. 1985) (a reapportionment case) and citing *Wright v. City of Houston, Miss.*, 806 F.2d 634, 635 (5th Cir. 1986) (a redistricting case)) (emphasis added).[8]

"It is clear that any proposal to remedy a Section 2 violation must itself conform with Section 2." *Dillard v. Crenshaw Cty., Ala.*, 831 F.2d 246, 249 (11th Cir. 1987) (citing *Edge v. Sumter Cty. Sch. Dist.*, 775 F.2d 1509, 1510 (11th Cir. 1985)). The *Dillard* court stated that an element of an election proposal that "will not with certitude *completely* remedy the Section 2 violation" cannot be authorized. *Dillard, supra* at 252. This is consistent with the Fifth Circuit's holding, referencing Supreme Court jurisprudence, that no VRA remedy is permitted if it would allow the perpetuation of an existent denial of VRA rights. *Kirksey v. Bd. of Sup'rs of Hinds Cty., Miss.*, 554 F.2d 139, 143 (5th Cir. 1977).

While there appears to be no dispute that the remedy must pass constitutional muster, each side of this action places the burden of proof on the other. Private Plaintiffs state that "Texas cannot meet its burden to demonstrate that SB 5 fully remedies the discriminatory results of SB 14." D.E. 1051, p. 3. State Defendants and the United

[8] The United States is mistaken when it argues that *Operation Push* placed the burden of proof on those challenging the state's preferred remedy. D.E. 1060, p. 5 (citing *Operation Push*, 932 F.2d at 407). *Operation Push* addressed the state's new statute on two levels: as a remedy for the ills of the old statute and as an imposition of new measures that went beyond remedial concerns. As a remedy, the burden was on the state as the proponent of the measure. That burden was easily met by compliance with the trial court's directives after making findings of discrimination. Because the state's new law went beyond what the trial court had required and because plaintiffs wanted to raise complaints not previously addressed in the liability phase, any such challenge was premature—without proof directed at the consequences of the law's new features. The language the United States relies upon was extracted from the portion of the opinion addressing the placement of the burden with respect to the new (premature) claims.

States rely on the rule of deference to legislative action (addressed above) and the implication that Private Plaintiffs have not satisfied their burden to allege and prove that SB 5 imposes a burden on minority voters. D.E. 1049; 1052, pp. 2-3; 1058, pp. 6, 8 n.3, 14; 1060, pp. 3, 5.

Because Private Plaintiffs have already demonstrated that they are entitled to a remedy that eliminates SB 14's VRA violations, and because the remedy must comply with the requirements of VRA § 2, the burden of proof is on the proponents of SB 5 to show that SB 5 is an appropriate remedy in this case.[9] *United States v. Virginia*, 518 U.S. 515, 547 (1996); *Green v. Cty. Sch. Bd. of New Kent Cty., Va.*, 391 U.S. 430, 439 (1968) ("The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now."); *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 240 (4th Cir. 2016), *cert. denied sub nom., North Carolina v. North Carolina State Conference of NAACP*, 137 S. Ct. 1399 (2017). If SB 5 does not cure the Section 2 violations, then this Court may enjoin the enforcement of SB 14 and SB 5 pursuant to the Court's equitable power to protect Private Plaintiffs' rights.

SB 5—as a proposed remedy—is "in part measured by the historical record, in part measured by difference from the old system, and in part measured by prediction." *Dillard*, 831 F.2d at 250. Thus the Court's decision is based on the evidence already of

[9] It would be premature to try to evaluate SB 5 as the existing voter ID law in Texas because there is no pending claim to that effect before the Court, which claim would place the burden of proof elsewhere—on the claimant. Consideration of SB 5 in the context of a remedy for SB 14's ills places the burden on SB 5's proponents. *See Operation Push*, 932 F.2d at 407 (declining to evaluate the remedial statute as raising new VRA claims). To require the Private Plaintiffs to bear the burden on every legislative remedy that might be passed would present Plaintiffs with a "moving target," preventing any final resolution of this case.

record in this case,[10] an evaluation of the parties' respective arguments as to the curative nature of SB 5 as compared to SB 14, and the Court's prospective conceptualization of the impact of SB 5's requirements. This inquiry has been facilitated by the legislature's choice to build on the existing SB 14 framework rather than begin anew with an entirely different structure.

State Defendants and the United States rely heavily on a comparison between SB 5 and the interim remedy. However, the Court notes that, because of the agreed, interim nature of that remedy and the parties' waiver of an evidentiary hearing on the full and permanent remedy to be imposed, the record holds no evidence regarding the impact of the interim Declaration of Reasonable Impediment (DRI), either in theory or as applied. So while the Court acknowledges that Private Plaintiffs were willing to accept a DRI remedy on an interim basis as a partial remedy, the Court does not treat that temporary compromise as a binding determination that a DRI will cure the Section 2 violations.

2. SB 5 Does Not Render SB 14 a Constitutional and Legally Valid Plan

Pursuant to the scope and standard of review set out above, the Court revisits SB 14's failings and then compares them to SB 5's terms. The Court's Section 2 findings are based on several features of SB 14, which alone or in combination unconstitutionally discriminate against African-Americans and Hispanics with respect to the right to vote.

[10] As Private Plaintiffs have observed, SB 5 is built upon the "architecture" of SB 14. SB 5 brings forward many of SB 14's terms, such that the existing record addresses much of the Section 2 analysis that must be applied to SB 5.

While detailed more fully in the Court's previous Orders,[11] those features may be categorized as:

a. **Type of ID**: The limited number and type of photo IDs that can be used to vote, along with the prohibition on the use of photo IDs that have been expired more than 60 days prior to the election;

b. **Obstacles to Obtaining ID**: The financial, geographic, and institutional obstacles to obtaining qualifying photo ID or the underlying documentation necessary to obtain qualifying photo ID;

c. **Exemptions:** The limitations on the sources that may be used to support an exemption for a disability;

d. **Alternative Proof**: The onerous provisional ballot process, requiring that the voter cure the ID issue within six days of voting before the vote may be counted; and

e. **Education**: Educational provisions that (1) fail to provide voters with timely notice of what is required and instructions regarding how to obtain qualified SB 14 ID, if possible, and (2) fail to train poll workers so that they do not deny the right to vote to qualified voters.

Veasey I, 71 F. Supp. 3d at 641-42. The Court evaluates SB 5's provisions with respect to each of these troubling features, below:

a. **Type of ID**:

- Under SB 5, "United States passport" is amended to state "United States passport book or card."

- SB 5 enlarges the amount of time a qualifying ID may be expired from 60 days to 4 years. Voters over 70 years of age do not have a limit on the amount of time their ID may be expired.

[11] The Court made extensive fact findings on these issues in its initial decision, which findings are incorporated into this Order by reference.

The clarification that both passport books and cards are accepted does not necessarily expand the reach of qualifying IDs because (a) there is no evidence that only passport books were permitted under SB 14, which permitted the use of "passports," and (b) the requirements for obtaining either form of passport include underlying documents of the type likely to exclude minorities, along with the requirement of the payment of a substantial fee.[12] This feature remains discriminatory because SB 5 perpetuates the selection of types of ID most likely to be possessed by Anglo voters and, disproportionately, not possessed by Hispanics and African-Americans. Those findings were set out in the Court's prior Opinion.

SB 5 does not meaningfully expand the types of photo IDs that can qualify, even though the Court was clearly critical of Texas having the most restrictive list in the country. *Veasey I*, 71 F. Supp. 3d at 642-43. For instance, Texas still does not permit federal or Texas state government photo IDs—even those it issues to its own employees. SB 5 permits the use of the free voter registration card mailed to each registered voter and other forms of non-photo ID, but only through the use of a Declaration of Reasonable Impediment (DRI) more fully addressed below. Because those who lack SB 14 photo ID are subjected to separate voting obstacles and procedures, SB 5's methodology remains discriminatory because it imposes burdens disproportionately on Blacks and Latinos.

SB 5's expansion of the amount of time a prescribed form of identification may be used—from sixty (60) days to four (4) years before the date of the election—is one way

[12] *See*, https://travel.state.gov/content/passports/en/passports/information/fees.html (passport cards, the less expensive of the two forms of passport, carry a $30 application fee and a $25 execution fee).

to reduce the draconian aspect of the photo ID requirement. However, there is no evidence that it appreciably reduces the comparative discriminatory effect of the law. Instead, the provision may actually exacerbate the discrimination. The greatest benefit from SB 5's liberalized requirements is conferred on voters over the age of 70, for whom there is no limit to the use of expired (but still qualified types of) photo ID. According to the evidence at trial, that class of voters is disproportionately white. Lichtman, PX 772, pp. 64-65.

The Court concludes that SB 5's limited provisions addressing the types of photo IDs that may be used for voting and their expiration dates do not ameliorate the discriminatory effects or the discriminatory purpose of SB 14 with respect to the limited forms of qualified SB 14 ID.

b. **Obstacles to Obtaining ID**:

- SB 5 provides for free mobile units that can travel the state and issue Election ID Certificates (EICs) upon request by constituent groups or at special events.

- Any request for a mobile unit can be denied if required security or other "necessary elements of the program" cannot be ensured. The Secretary of State is empowered to adopt rules to implement the mobile unit program.

Mobile EIC units were originally offered with SB 14. However, the evidence at trial was that they were too few and far-between to make a difference in the rates of qualifying voters. Their mobile nature made notice and duration major factors in their effectiveness. *See Veasey I*, 71 F. Supp. 3d at 679 & n.398, 687. Yet nothing in SB 5 addresses the type of advance notice that would be given in order to allow voters to

assemble the necessary documentation they might need in time to make use of the units. And the idea that the units be made available at "special events" or upon request of "constituent groups" (undefined terms) implies a limited duration appearance at limited types of events.

Moreover, SB 5 contains no provisions regarding the number of mobile EIC units to be furnished or the funding to make them available. Requests for them can be denied for undefined, subjective reasons, placing too much control in the discretion of individuals. The Court concludes that the provision for mobile EIC units does not appreciably ameliorate the discriminatory effects or purpose of SB 14 with respect to the obstacles to obtaining qualified photo ID.

c. **Exemptions**:

- SB 5's reasonable impediment declaration provision allows listing a disability or illness as a reason to vote without qualifying ID.

This provision eliminates the objection regarding the limited sources needed to support a disability exemption from the strict requirements of SB 14. However, its amelioration is dependent upon the DRI procedure, which has its own limitations, as addressed below.

d. **Alternative Proof**:

- SB 5 allows the use of a Declaration of Reasonable Impediment (DRI) that supplants the provisional ballot procedure for those who are registered, but do not have qualified SB 14 photo ID.

- SB 5 requires that any DRI include a threat of criminal penalties for perjury and it increases those penalties with respect to a DRI to a state jail felony.

SB 5 uses the DRI procedure in place of the SB 14 provisional ballot/cure procedure. Defendants and the United States argue that the DRI procedure should eliminate the complaints of discrimination because it offers voters a way to vote a regular ballot if they do not have and cannot reasonably obtain SB 14 photo ID for one or more of six reasons: lack of transportation; lack of birth certificate or other documents needed to obtain the prescribed identification; work schedule; lost or stolen ID; disability or illness; family responsibilities; and the ID has been applied for, but not received. They further argue that the DRI's acceptability should not be questioned because it was the procedure the Private Plaintiffs agreed to as the interim remedy previously imposed by this Court. However, the interim remedy was never intended to be the final remedy and it did not address the discriminatory purpose finding. Additionally, SB 5 imposes some material departures from the interim remedy.

The interim DRI remedy was a negotiated stop-gap measure addressing a quickly-advancing general election, pending the final resolution of additional issues in this case. It was formulated as a counterpart to the Fifth Circuit's directive that those who had SB 14 photo ID be required to produce it in order to vote. The DRI was negotiated as, and intended to be, only a partial, temporary remedy. Its use under those circumstances does not pretermit the question whether it is appropriate full and final relief in this case—or that it was the choice the Court would have imposed had the parties not agreed.

Because of the posture of the case, the interim DRI remedy was limited to addressing the discriminatory results claim. This Court is now considering a remedy for both the results and the discriminatory purpose claim. The breadth of relief available to redress a discriminatory purpose claim is greater than that for a discriminatory results claim. *See Veasey II*, 830 F.3d at 268 & n.66 (citing *City of Richmond v. United States*, 422 U.S. 358, 378 (1975) and *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 465–66, 471, 487 (1982) for the proposition that the discriminatory purpose finding, as opposed to the results finding, supports enjoining the entire offending statute).

Moreover, SB 5's DRI differs materially from the interim DRI. Initially, Private Plaintiffs complain that SB 5 allows the use of only a "domestic" birth certificate, eliminating the ability of naturalized citizens—disproportionately Hispanics—to use their foreign birth certificates to prove identity. D.E. 1051, p. 15. Private Plaintiffs do not cite to any evidence upon which they base their representation that Hispanics in Texas are disproportionately impacted by this provision. While very likely true, the Court's decision must be supported by the record, which the parties declined to expand for this remedy phase. The Court has not been directed to any evidence regarding the proportion of naturalized citizens who are Hispanic and does not recall any such evidence. The Court's decision does not rest on this assertion or this particular complaint.

The most concerning difference between the interim DRI and the SB 5 DRI is the elimination of the "other" category as the basis for the voter's lack of SB 14 ID. Defendants complain that this open alternative permitted 19 voters who used the DRI

procedure to simply protest SB 14. D.E. 1049, p. 16, D.E. 1049-2.[13] However, it was also used for reasonable excuses related to the issues supporting Private Plaintiffs' challenge to SB 14, including financial hardship and the misunderstanding or misapplication of SB 14 or the prerequisites for obtaining SB 14 photo ID.[14]

Giving registered voters an opportunity to explain their impediment in their own words reduces the chance that a misunderstanding of the law or its requirements will deprive them of their franchise. And there is no evidence in this record that any of the persons using the "other" category were not the registered voters they said they were. Eliminating this alternative is a material change to the interim DRI remedy. It does not necessarily advance the state's interest in secure elections. And the change takes on added meaning because of the increased penalties for perjury instituted by SB 5.

Listing a limited number of reasons for lack of SB 14 is problematic because persons untrained in the law and who are subjecting themselves to penalties of perjury may take a restrictive view of the listed reasons. Because of ignorance, a lack of confidence, or poor literacy, they may be unable to claim an impediment to which they are entitled for fear that their opinion on the matter would not comport with a trained prosecutor's legal opinion. Consequently, the failure to offer an "other" option will have

[13] As previously noted, the parties declined an evidentiary hearing in connection with the remedies phase of this case. Nonetheless, no party has objected to the submission of these DRIs. In fairness, the Court considers these DRIs as well as those offered by the Private Plaintiffs in connection with motion briefing.

[14] In connection with motion briefing, Private Plaintiffs submitted DRIs that listed the following reasonable impediments: just moved to Texas; just became resident of Texas and don't drive in Texas; just moved to Texas, haven't gotten license yet; financial hardship; unable to afford Texas Driver's License; lack of funds; out of state college student; and attempted to get Texas EIC but they wanted a long form birth certificate. D.E. 1061-1.

a chilling effect, causing qualified voters to forfeit the franchise out of fear, misunderstanding, or both.[15]

The State Defendants claim that a DRI insulates a voter photo ID law from complaints of discrimination. D.E. 1049, p. 13 (citing *South Carolina v. United States*, 898 F. Supp. 2d 30 (D.D.C. 2012) (mem. op.) (preclearance decision). However, the court in *South Carolina* repeatedly emphasized the fact that the DRI procedure offered there included a voter's ability to claim any reason whatsoever—as long as it was true—in order for his or her vote to be counted.[16]

The State Defendants suggest that the loss of the "other" option under SB 5 is a fair trade-off for the fact that Texas does not have a mechanism for rejecting votes tendered by a voter using a DRI for identification. D.E. 1049, p. 15. Defendants have offered no evidence to support this assertion. Neither have they offered evidence that the reason a voter has no qualified ID makes any difference in identifying a voter so as to prevent fraud. In the *South Carolina* case, the state was to follow up with voters who did not have qualified ID to assist in getting ID so there was a logical reason to identify the impediment. Texas has offered no reason to identify a voter's reasonable impediment. Without evidence to justify the trade-off, this Court will not allow defects in Texas's

[15] The Court is sympathetic to the state's frustration with voters who used the "other" box to list questionable reasons or to protest SB 14. However, elimination of all other conceivable explanations for a lack of qualified ID, thus relegating voters to cryptic explanations that may or may not be properly understood, is a harsh response that does not necessarily make elections more secure.

[16] It should also be noted that the South Carolina voter photo ID law expanded the types of IDs that could be used, made getting the IDs much easier than had been the case prior to the law's enactment, included a wide-open DRI process, and contained detailed provisions for educating voters and poll workers regarding all new requirements.

election system to justify disproportionate burdens on Hispanic and African-American voters.

The prescribed form of the DRI addresses two separate issues, only one of which relates to the stated purpose of the statutes: to prevent in-person voter impersonation fraud. When a person signs the DRI prescribed by SB 5, that person first attests to being a particular registered voter on the Secretary of State's list. The DRI then inquires into why that registered voter does not have one of the limited forms of photo ID the state is willing to accept. Nothing in the record explains why the state needs to know that a person suffers a particular impediment to obtaining one of the qualified IDs. The impediments do not address whether the persons are who they say they are and the impediments are not being used to assist in obtaining qualified ID. There is no legitimate reason in the record to require voters to state such impediments under penalty of perjury and no authority for accepting this as a way to render an unconstitutional requirement constitutional.

Requiring a voter to address more issues than necessary under penalty of perjury and enhancing that threat by making the crime a state jail felony appear to be efforts at voter intimidation. SB 5, § 3. The record reflects historical evidence of the use of many kinds of threats and intimidation against minorities at the polls—particularly having to do with threats of law enforcement and criminal penalties. *Veasey I*, 71 F. Supp. 3d at 636-37, 675.

Thus the DRI procedure does not represent a remedy that puts victims of discrimination in the position they would have occupied absent discrimination.

> A remedial decree, [the Supreme] Court has said, must closely fit the constitutional violation; it must be shaped to place persons unconstitutionally denied an opportunity or advantage in "the position they would have occupied in the absence of [discrimination]." *See Milliken v. Bradley*, 433 U.S. 267, 280, 97 S.Ct. 2749, 2757, 53 L.Ed.2d 745 (1977) (internal quotation marks omitted). . . . A proper remedy for an unconstitutional exclusion, we have explained, aims to "eliminate [so far as possible] the discriminatory effects of the past" and to "bar like discrimination in the future." *Louisiana v. United States*, 380 U.S. 145, 154, 85 S.Ct. 817, 822, 13 L.Ed.2d 709 (1965).

United States v. Virginia, 518 U.S. 515, 547 (1996).

As to the severity of the penalty of perjury, the United States argues that the increase to a state jail felony cannot be discriminatory because that penalty is less than the maximum penalty permitted for perjury in connection with registering or voting in a federal election under federal law, citing 52 U.S.C. §§ 10307(c) and 20507(a)(5)(B). But the falsity punished by § 10307(c) about which the voter must be notified under § 20507(a)(5)(B) is "information as to his name, address or period of residence in the voting district." These are clear, objective facts. There is no federal penalty associated with any tangential issue, such as mistakenly claiming a particular impediment to possession of qualified ID—information that is subjective, may not always fit into the State's categories, and could easily arise from misinformation or a lack of information from the State itself as to what is required.

The United States further argues that there is no evidence that there have been prosecutions for perjury under the interim DRI or that the process has had a chilling effect. Yet current restraint does not preclude future prosecutions or intimidation.

The Court has found that SB 14 was enacted with discriminatory intent—knowingly placing additional burdens on a disproportionate number of Hispanic and African-American voters. The DRI procedure trades one obstacle to voting with another—replacing the lack of qualified photo ID with an overreaching affidavit threatening severe penalties for perjury. While the DRI requires only a signature and other presumably available means of identification, the history of voter intimidation counsels against accepting SB 5's solution as an appropriate or complete remedy to the purposeful discrimination SB 14 represents. *See McCrory*, 831 F.3d at 240-41 (refusing to accept the obstacles represented by a DRI procedure as a remedy for another set of obstacles created by a voter photo ID law; instead, the offending law was enjoined).

The Court concludes that SB 5 is insufficient to remedy the discriminatory purpose and effects of SB 14's alternative proof requirements.

e. **Education**:

- SB 5 is silent on the type or extent of any necessary educational or training programs.
- SB 5 provides no funding or budget for any such programs.

In its prior Opinion, the Court noted that SB 14's sea change in the requirements for voting could not be accomplished in a fair and effective manner without widespread education for voters and training for poll workers. *See Veasey I*, 71 F. Supp. 3d at 642, 649. And the Fifth Circuit recognized that educational efforts were necessary to ensure that any change to the voting rights is effective as to both voters and poll workers. *Veasey II*, 830 F.3d at 271-72. Yet SB 5 does not address this issue at all.

Texas claims that it has publicly stipulated to a four million dollar education and training program, but this stipulation is not part of SB 5 or any other statute.[17] And there is no evidence that the legislature has budgeted the funds, earmarked for that purpose. The Court concludes that the terms of SB 5 do not create an effective remedy for the discriminatory features of SB 14 regarding education and training.

Not one of the discriminatory features of SB 14 is fully ameliorated by the terms of SB 5. The SB 5 DRI process is superior to the provisional ballot process of SB 14 in addressing those who have impediments to obtaining the necessary photo ID. But it leaves out an important feature of the interim DRI. And even the interim DRI was not a full remedy for either the discriminatory effects or discriminatory purpose of SB 14 to be remedied under VRA Section 2. The Court rejects SB 5 as an adequate remedy for the findings of discriminatory purpose and discriminatory effect in SB 14.

3. Injunctive Relief is Appropriate as to Both SB 14 and SB 5

Defendants and the United States have failed to sustain their burden of proof that SB 5 fully ameliorates the discriminatory purpose or result of SB 14. They have not shown that SB 5, together with SB 14, constitutes a constitutional and legally valid plan. Therefore, the question becomes whether the Court can and should craft and institute a different voter photo ID plan in an attempt to salvage some of the intent of the photo ID effort. In contrast, the Court can permanently enjoin the enforcement of SB 14 and SB 5,

[17] *See* D.E. 1039, 1051, 1058, p. 18. The Court does not credit this unsworn suggestion on this record, in which all parties eschewed the opportunity to present additional evidence.

returning Texas to the law that preceded the 2011 enactment. The Texas legislature can then address anew any voter ID measures it may feel are required.

Counseling against this Court's formulation of its own voter ID plan are several issues. First, the Court's finding of discriminatory intent strongly favors a wholesale injunction against the enforcement of any vestige of the voter photo ID law. Second, the lack of evidence of in-person voter impersonation fraud in Texas belies any urgency for an independently-fashioned remedy from this Court at this time.[18] There is no apparent harm in the delay attendant to allowing the Texas legislature to go through its ordinary processes to address the issues in due legislative course. Third, making informed choices regarding the expansion of the types of IDs or the nature of any DRI would require additional fact-findings on issues not currently before the Court. These matters, regarding reliable accuracy in photo ID systems, are better left to the legislature.

Consequently, the only appropriate remedy for SB 14's discriminatory purpose or discriminatory result is an injunction against enforcement of that law and SB 5, which perpetuates SB 14's discriminatory features. With respect to the VRA § 2 discriminatory purpose finding, elimination of SB 14 "root and branch" is required, as the law has no legitimacy. *E.g., City of Richmond, Virginia v. United States*, 422 U.S. 358, 378-79

[18] The State Defendants submitted their Advisory Regarding Record Evidence on Voter Fraud in response to the Court's inquiry regarding record evidence of actual fraud. D.E. 1011. That Advisory is replete with accounts of allegations and investigations, but not of any findings or convictions for in-person voter impersonation fraud. As this Court previously found, there were only two votes cast that resulted in fraud convictions in the ten years prior to passage of SB 14 and the rate of referrals, investigations, and convictions (detection and deterrence) did not increase during the time SB 14 was in place. *Veasey I*, 71 F. Supp. 3d at 639.

(1975); *Green v. Cty. Sch. Bd. of New Kent Cty., Va.*, 391 U.S. 430, 437-38 (1968).[19] This is consistent with the result in *McCrory*, 831 F.3d at 239-41. There, the Fourth Circuit found that the voter photo ID law had been passed with a discriminatory purpose. While different in details, the North Carolina law was faulted, in part, for its discriminatory selection of qualified IDs. The North Carolina DRI—different in its details—was held to simply trade one set of obstacles for another and was not considered sufficient to offset the discriminatory purpose of the law. Neither did it place those who were impacted by the law back in the place they occupied prior to its enactment. "[T]he proper remedy for a legal provision enacted with discriminatory intent is invalidation." *McCrory*, 831 F.3d at 239. This remedy prevents any lingering burden on African-Americans and Hispanics. *Id*. at 240.

That is not to say that invalidation is always required. The parties have identified some cases in which the remedy accepted some part of the discriminatory law. For instance, *City of Port Arthur v. United States*, 459 U.S. 159, 168 (1982), involved a new election plan for a city council, necessitated by the city's annexations that expanded its boundaries. Practically speaking, then, there was no status quo ante to return to.

The *City of Port Arthur* trial court had been presented with a series of plans regarding at-large and single member districts. By the time the third evolution of the plan was proposed, the Court had identified a single remaining flaw: the majority rule, which required that the successful candidate in a multi-candidate contest receive more than fifty

[19] The parties disagree on whether an ongoing federal violation must be demonstrated in order to issue injunctive relief. Because the Court has found that a continuing violation exists despite the enactment of SB 5, this argument is moot.

percent of the vote. The trial court eliminated that feature in order to make the plan comply with Section 2 and the Constitution. On appeal, the Court held that the decision was within the trial court's equitable discretion.

The Supreme Court delayed the implementation of a new election provision in *Louisiana v. United States*, 380 U.S. 145, 154 n.17 (1965), so that all previously registered voters would be on the same page when the new provision went into effect. Delay of SB 5 would do nothing here to make the Texas plan less discriminatory. SB 5 is an improvement over SB 14, but it does not eliminate the discrimination in the choice of photo IDs, which disproportionately continues to impose undue burdens on Hispanics and African-Americans.

Operation Push, 932 F.2d 400, also cited as a case taking a hands-off approach to new legislation, is distinguishable. Insofar as the new legislation was evaluated as a remedy for violations previously found, it succeeded and was accepted. Insofar as it instituted new provisions that had not previously been challenged, there was no jurisdictional basis upon which to take action. In contrast, SB 5 fails to cure certain SB 14 discriminatory features that have been adjudicated. Consequently, as a remedy, it does not ameliorate SB 14's violations. Its new features do not function without the discriminatory features it perpetuates. Therefore, the remedy of the SB 14 issues necessarily invalidates SB 5 for all purposes.

Defendants argue that the discriminatory taint of SB 14 can no longer control the remedy because SB 5 stripped SB 14 of its discriminatory purpose, citing *Cotton v. Fordice*, 157 F.3d 388, 391 (5th Cir. 1998). In *Cotton*, the issue was the

disenfranchisement of convicted criminals. In 1890, the measure was passed as a way to suppress the Black vote. The crimes that triggered disenfranchisement were only those crimes thought to be committed primarily by Blacks. In that respect, it originally omitted murder and rape. In 1950 and 1968, the statute was amended to first remove burglary and then include murder and rape. Cotton, convicted of armed robbery, sued on the basis that the statute was discriminatory, based on the original motivation in 1890.

The Fifth Circuit held that the original taint of discrimination had subsided over the hundred years the statute had been in place—amended in ways that validated its facial neutrality and eliminated some discriminatory terms. The same dissipation of discrimination cannot be said to have occurred here, where only six years have passed, SB 5 was passed only after SB 14 was held to be unconstitutionally discriminatory and while the remedies phase of this case remained pending, and a large part of what makes SB 14 discriminatory—placing a disproportionate burden on Hispanics and African-Americans through the selection of qualified photo IDs—remains essentially unchanged in SB 5.

The Court's injunctive power extends to SB 5, consistent with the Court's power to prevent repetition of unlawful conduct. *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 & n.10 (1982). The Court has found that the SB 5 DRI process does not fully relieve minorities of the burden of discriminatory features of the law. Thus the Court has the power to enjoin SB 5 as a continuing violation of the law as determined in this case. The Court thus issues injunctive relief to prevent ongoing violations of federal law and the recurrence of illegal behavior. *Id.*

C. Retention of Jurisdiction

Because the permanent injunction against enforcement of SB 14 and SB 5 does not require any continued monitoring, the Court DENIES the request that it retain jurisdiction over this matter. *See generally*, *McCrory*, 831 F.3d at 241. The need, if any, for continued supervision of Texas election laws under the preclearance provisions of the Voting Rights Act is reserved for, and will be considered in, the Court's consideration of Section 3(c) relief.

CONCLUSION

For the reasons set out above, the Court

- DENIES the request (D.E. 1050) to reconsider the discriminatory purpose finding;
- GRANTS declaratory relief and holds that SB 14 violates Section 2 of the Voting Rights Act and the 14th and 15th Amendments to the United States Constitution;
- GRANTS a permanent injunction against enforcement of SB 14, Sections 1 through 15 and Sections 17 through 22;
- GRANTS a permanent injunction against enforcement of SB 5;
- DENIES the request for continuing post-judgment jurisdiction as to relief under VRA Section 2;
- ORDERS the parties to confer and file on or before August 31, 2017, memoranda—not to exceed 7 pages—stating whether an evidentiary hearing is requested for the consideration of VRA § 3(c) relief and the preferred briefing schedule for same.

ORDERED this 23rd day of August, 2017.

Nelva Gonzales Ramos
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 2:13-CV-193
	§	
GREG ABBOTT, *et al*,	§	
	§	
Defendants.	§	

ORDER ON CLAIM OF DISCRIMINATORY PURPOSE

After en banc review of the record in this case, the Fifth Circuit majority held that there was sufficient evidence to sustain a conclusion that the Texas voter photo identification bill, SB 14,[1] was passed with a discriminatory purpose, despite its proponents' assertions that it was necessary to combat voter fraud. *Veasey v. Abbott*, 830 F.3d 216, 241 (5th Cir. 2016) (*Veasey II*). At the same time, the Fifth Circuit held that certain evidence outlined in this Court's prior opinion[2] was not probative of discriminatory intent and posited that this Court may have been unduly swayed by that evidence in making its determination of this issue.

To test that theory, and because "it is not an appellate court's place to weigh evidence,"[3] the Court remanded the matter to this Court. This Court is thus charged with reexamining the probative evidence underlying Plaintiffs' discriminatory purpose claims weighed against the contrary evidence, in accord with the appropriate legal standards the

[1] Texas Senate Bill 14, Act of May 16, 2011, 82d Leg., R.S., ch. 123, 2011 Tex. Gen. Laws 619.

[2] *Veasey v. Perry*, 71 F.Supp.3d 627, 633 (S.D. Tex. 2014).

[3] *Veasey II*, at 241 (citing *Price v. Austin Indep. Sch. Dist.*, 945 F.2d 1307, 1317 (5th Cir. 1991)).

Fifth Circuit has described. *Veasey II*, at 242. The Fifth Circuit instructed that this Court was not to reopen the evidence, but to rely on the record developed at the bench trial of this case, held in September 2014. *Veasey II*, at 242.

Consistent with those instructions, the Court permitted the parties to propose new findings of fact and conclusions of law and re-brief the issue. *See* D.E. 960, 961, 962, 963, 965, 966, 975, 976, 977, 979, 980. On February 28, 2017, the Court heard oral argument. After appropriate reconsideration and review of the record, and for the reasons set out below, the Court holds that Plaintiffs have sustained their burden of proof to show that SB 14 was passed, at least in part, with a discriminatory intent in violation of the Voting Rights Act of 1965 § 2, 52 U.S.C. § 10301(a).

STANDARD OF REVIEW

The rubric for the question—whether SB 14 was passed with a discriminatory purpose—was set out in the Supreme Court's decision, *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-68 (1977). *Veasey II*, at 230. Under *Arlington Heights*, discriminatory intent is shown when racial discrimination was a motivating factor in the governing body's decision. Discriminatory purpose "implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,'. . . its adverse effects upon an identifiable group." *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979) (internal citations and footnotes omitted). Racial discrimination need not be the primary purpose as long as it is one purpose. *Velasquez v. City of Abilene*, 725 F.2d 1017, 1022 (5th Cir. 1984).

Rather than attempt to discern the motivations of particular legislators, the Court considers all available direct and circumstantial evidence of intent, "including the normal inferences to be drawn from the foreseeability of defendant's actions." *United States v. Brown*, 561 F.3d 420, 433 (5th Cir. 2009) (internal quotation marks and citations omitted). The Supreme Court in *Arlington Heights* considered the following factors as informing the intent decision:

(1) The disparate impact of the legislation;

(2) Whether there is a clear pattern, unexplainable on grounds other than race, which emerges from the effect of the state action even when the governing legislation appears neutral on its face;

(3) The historical background of the decision;

(4) Whether the decision departs from normal procedural practices;

(5) Whether the decision departs from normal substantive concerns of the legislature, such as whether the policy justifications line up with the terms of the law or where that policy-law relationship is tenuous; and

(6) Contemporaneous statements by the decisionmakers and in meeting minutes and reports.[4]

Arlington Heights, supra at 266 (paraphrased). If Plaintiffs' evidence establishes that discriminatory purpose was at least one of the substantial or motivating factors behind passage of SB 14, "the burden shifts to the law's defenders to demonstrate that the law

[4] This includes the legislative drafting history, which can offer interpretive insight when the legislative body rejected language or provisions that would have achieved the results sought in Plaintiffs' interest. *See Hamdan v. Rumsfeld*, 548 U.S. 557, 579-80 (2006).

would have been enacted without this factor." *Hunter v. Underwood*, 471 U.S. 222, 228 (1985).

DISCUSSION

1. Disparate Impact

This Court found that SB 14 had a discriminatory impact, supporting Plaintiffs' results claim under Section 2. *Veasey v. Perry*, 71 F. Supp. 3d 627, 659-79 (S.D. Tex. 2014) (*Veasey I*). With one exception,[5] the related findings in part IV(B) and conclusions in part VI(B)(1) were undisturbed on appeal and the Fifth Circuit affirmed the discriminatory result claim. *Veasey II*, at 264-65. Without setting forth the associated findings at length, this Court adopts its prior findings and conclusions, with the exception of those related to the potential effect of racial appeals in political campaigns. Plaintiffs have satisfied the disparate impact factor of the discriminatory purpose analysis.

2. Pattern Unexplainable on Non-Racial Grounds

In parts IV(A)(4) and (5) of this Court's prior opinion, it detailed a number of efforts, which the Texas legislature rejected, that would have softened the racial impact of SB 14. *Veasey I*, at 651-53 & Appendix. For instance, amendments were proposed to allow additional types of photo identification, a more liberal policy on expired documents, easier voter registration procedures, reduced costs for obtaining necessary ID, and more voter education regarding the requirements. At the same time, there was no substance to the justifications offered for the draconian terms of SB 14, noted in part

[5] The Fifth Circuit did not overturn the fact finding, but held that anecdotal evidence of racial campaign appeals did not necessarily show that SB 14 abridged the right to vote. *Veasey II*, at 261. On remand, this Court assigns no weight to that anecdotal evidence.

IV(A)(6) of the opinion. *Veasey I*, at 653-59. This Court then concluded, in part VI(B) of the opinion, that these efforts revealed a pattern of conduct unexplainable on non-racial grounds, to suppress minority voting. *Veasey I*, at 694-703.

In connection with the discriminatory purpose analysis, the Fifth Circuit wrote, approving of this evidence:

> The record shows that drafters and proponents of SB 14 were aware of the likely disproportionate effect of the law on minorities, and that they nonetheless passed the bill without adopting a number of proposed ameliorative measures that might have lessened this impact. For instance, the Legislature was advised of the likely discriminatory impact by the Deputy General Counsel to the Lieutenant Governor and by many legislators, and such impact was acknowledged to be "common sense" by one of the chief proponents of the legislation.

Veasey II, at 236. This is some evidence of a pattern, unexplainable on grounds other than race, which emerges from the effect of the state action even when the governing legislation appears neutral on its face. Again, without setting forth the associated findings at length, this Court adopts its prior findings and conclusions with respect to the pattern of conduct unexplainable on grounds other than race factor.

3. Historical Background

In discussing SB 14's historical background for purposes of the discriminatory intent analysis, this Court included a prefatory sentence referencing Texas's long history of discriminatory practices, which was set out in a separate section of the opinion. *Veasey I*, at 700. The Court's reference was for context only. Treated as only providing

perspective, the Court did not, and does not, assign distant history any weight in the discriminatory purpose analysis.

With respect to the question at hand, the Fifth Circuit held that historical evidence, to be relevant, must be "reasonably contemporaneous." *Veasey II*, at 232 (citing *McCleskey v. Kemp*, 481 U.S. 279, 298 n.20 (1987) and *Shelby Cty. v. Holder*, ___ U.S. ___, 133 S.Ct. 2612, 2618-19 (2013). The evidence upon which the Court previously relied dated from 2000 forward. *Veasey I*, at 700 (part VI(B)(2)(Historical Background)). Included was the contemporary seismic demographic shift by which Texas had become a majority-minority state and polarized voting patterns allowing the suppression of the overwhelmingly Democratic votes of African–Americans and Latinos to provide an Anglo partisan advantage. The Fifth Circuit found no fault with this evidence and this Court adopts these findings anew.

The Fifth Circuit also credited other historical events from the 1970s forward.

> [A]s late as 1975, Texas attempted to suppress minority voting through purging the voter rolls, after its former poll tax and re-registration requirements were ruled unconstitutional. It is notable as well that "[i]n every redistricting cycle since 1970, Texas has been found to have violated the [Voting Rights Act] with racially gerrymandered districts." Furthermore, record evidence establishes that the Department of Justice objected to at least one of Texas's statewide redistricting plans for each period between 1980 and the present, while Texas was covered by Section 5 of the Voting Rights Act. Texas "is the only state with this consistent record of objections to such statewide plans." Finally, the same Legislature that passed SB 14 also passed two laws found to be passed with discriminatory purpose.

Veasey II, at 239-40 (citations and footnotes omitted). The Court recognizes that the Fifth Circuit credits this evidence in the discriminatory purpose calculus whereas this Court had not previously done so. While this Court now also credits this evidence, the weight assigned to it is not outcome-determinative here.

Consistent with the Fifth Circuit opinion, in re-weighing this issue, the Court confirms that it does not rely on the evidence of Waller County officials' efforts to suppress minority votes and the redistricting cases for the discriminatory purpose analysis. The Court finds that reasonably contemporaneous history supports a discriminatory purpose finding.

4. Departures From Normal Practices

In part IV(A) of its prior opinion, this Court detailed the extraordinary procedural tactics used to rush SB 14 through the legislative process without the usual committee analysis, debate, and substantive consideration of amendments. *Veasey I*, at 645-53. The Fifth Circuit agreed that the Court can credit these "virtually unprecedented" radical departures from normal practices. *Veasey II*, at 238. Without setting forth the associated findings at length, this Court adopts its prior findings and conclusions with respect to the factor addressing departures from normal practices.

5. Legislative Drafting History

Proponents touted SB 14 as a remedy for voter fraud, consistent with efforts of other states. As previously demonstrated, the evidence shows a tenuous relationship between those rationales and the actual terms of the bill. "[T]he evidence before the Legislature was that in-person voting, the only concern addressed by SB 14, yielded only

two convictions for in-person voter impersonation fraud out of 20 million votes cast in the decade leading up to SB 14's passage." *Veasey II*, at 240. The evidentiary support for SB 14 offered at trial was no better. And the bill did nothing to address mail-in balloting, which is much more vulnerable to fraud. *See generally*, *Veasey I*, at 641, 653-55.

Furthermore, the terms of the bill were unduly strict. Many categories of acceptable photo IDs permitted by other states were omitted from the Texas bill. The period of time for which IDs could be expired was shorter in SB 14. Fewer exceptions were made available. And the burdens imposed for taking advantage of an exception were heavier with SB 14. The State did not demonstrate that these features of SB 14 were necessarily consistent with its alleged interest in preventing voter fraud or increasing confidence in the electoral system. These and other similar issues were detailed by this Court in parts III(B) and IV(A)(4) of its previous opinion, along with the Appendix. *Veasey I*, at 642-45, 651-52 & Appendix.

Also evidencing the disconnect between the legislature's stated purposes and the terms of SB 14 were the constantly shifting rationales, revealed as pretext and detailed at part IV(A)(6) of the opinion. *Veasey I*, at 653-59. SB 14 was pushed through in a manner contrary to the legislature's stated prohibition against bills accompanied by a fiscal note. *Veasey I*, at 649 (part IV(A)(2)(Questionable Fiscal Note)), 651 (part IV(A)(3)(Fiscal Note, Impact Study, and Emergency)). This was due to a $27 million budget shortfall—a crisis the legislature needed to address. SB 14 added $2 million to the budget shortfall. And other pressing problems facing the legislature did not get the

procedural push that SB 14 received. So not only did SB 14 not accomplish what it was supposed to, it did accomplish that which it was not supposed to do.

The Fifth Circuit approved of the consideration of the tenuousness of the relationship between the legislature's policies and SB 14's terms. It also found the fiscal note issue relevant. And the Court is permitted to credit evidence of pretext. *Veasey II*, at 237-41. The Court thus adopts its previous findings and conclusions with respect to the legislative drafting history. *Veasey I*, at 701-02.

6. Contemporaneous statements

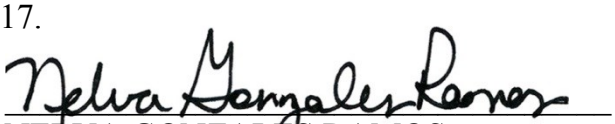
In part VI(B)(2)(Contemporaneous Statements), this Court discussed the evidence offered regarding legislator observations of the political and legislative environment at the time SB 14 was passed. *Veasey I*, at 702. The Fifth Circuit found much of this undisputed and unchallenged evidence to be infirm as speculative, not statistically significant, or not probative of legislator sentiment. *Veasey II*, at 233-34. Thus this Court assigns no weight to the evidence previously discussed, except for Senator Fraser, an author of SB 14, stating that the Voting Rights Act had outlived its useful life and the fact that the legislature failed to adopt ameliorative measures without explanation, which was shown to be out of character with sponsors of major bills. *See Veasey II*, at 236-37 (approving of the consideration of this evidence). While crediting this evidence, the Court assigns it little weight.

CONCLUSION

Because the Fifth Circuit found that some of the evidence in this case was not probative of a discriminatory purpose in the Texas Legislature's enactment of SB 14, this

Court was tasked with re-examining its conclusion on the discriminatory purpose issue. Upon reconsideration and a re-weighing of the evidence in conformity with the Fifth Circuit's opinion, the Court holds that the evidence found "infirm" did not tip the scales. Plaintiffs' probative evidence—that which was left intact after the Fifth Circuit's review—establishes that a discriminatory purpose was at least one of the substantial or motivating factors behind passage of SB 14. Consequently, the burden shifted to the State to demonstrate that the law would have been enacted without its discriminatory purpose. *Hunter*, 471 U.S. at 228. The State has not met its burden. Therefore, this Court holds, again, that SB 14 was passed with a discriminatory purpose in violation of Section 2 of the Voting Rights Act.

ORDERED this 10th day of April, 2017.



NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE