No. 14-41127

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; DALLAS COUNTY, TEXAS, *Plaintiffs-Appellees,*

TEXAS ASS'N OF HISPANIC CTY. JUDGES & CTY. COMM'RS, *Intervenor Plaintiff-Appellee,*

v.

GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS; TEXAS SEC'Y OF STATE; STATE OF TEXAS; STEVE MCGRAW, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE TEXAS DEP'T OF PUBLIC SAFETY, *Defendants-Appellants.*

TEXAS STATE CONF. OF NAACP BRANCHES; MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES, *Plaintiffs-Appellees,*

v.

TEXAS SEC'Y OF STATE; STEVE MCGRAW, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE TEXAS DEP'T OF PUBLIC SAFETY, *Defendants-Appellants.*

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*

TEXAS LEAGUE OF YOUNG VOTERS EDUC. FUND; IMANI CLARK, *Intervenor Plaintiffs-Appellees,*

v.

STATE OF TEXAS; TEXAS SEC'Y OF STATE; STEVE MCGRAW, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE TEXAS DEP'T OF PUBLIC SAFETY, *Defendants-Appellants.*

LENARD TAYLOR; EULALIO MENDEZ, JR.; LIONEL ESTRADA; ESTELA GARCIA ESPINOSA; MARGARITO MARTINEZ LARA; MAXIMINA MARTINEZ LARA; LA UNION DEL PUEBLO ENTERO, INC., *Plaintiffs-Appellees,*

v.

TEXAS SEC'Y OF STATE; STEVE MCGRAW, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE TEXAS DEP'T OF PUBLIC SAFETY, *Defendants-Appellants.*

On Appeal from the U.S. District Court for the Southern District of Texas, Corpus Christi Division, Nos. 2:13-cv-193, 2:13-cv-263, 2:13-cv-291 & 2:13-cv-348

BRIEF FOR *AMICUS CURIAE* EAGLE FORUM EDUCATION & LEGAL DEFENSE FUND IN SUPPORT OF DEFENDANTS-APPELLANTS IN SUPPORT OF REVERSAL

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CERTIFICATE OF INTERESTED PERSONS

The case number is 14-41127. The case is styled as *Veasey v. Abbott.* Pursuant to the fourth sentence of Circuit Rule 28.2.1, the undersigned counsel of record certifies that the parties' list of persons and entities having an interest in the outcome of this case is complete, to the best of the undersigned counsel's knowledge. The undersigned counsel also certifies that *amicus curiae* Eagle Forum Education & Legal Defense Fund is a nonprofit corporation with no parent corporation, and that no publicly held corporation owns ten percent or more of its stock. These presentations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Dated: February 5, 2015

Respectfully submitted,

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IDENTITY, INTEREST AND AUTHORITY TO FILE

Amicus curiae Eagle Forum Education & Legal Defense Fund ("Eagle Forum"), a nonprofit Illinois corporation, files this brief with the consent of all parties.[1] In the context of the elections on which the Nation has based its political community, Eagle Forum has supported efforts both to reduce voter fraud and to maximize voter confidence in the electoral process. For these reasons, Eagle Forum has a direct and vital interest in the issues raised here.

STATEMENT OF THE CASE

In these consolidated cases, various private groups and individuals (collectively, "Plaintiffs") and the United States either filed suit or intervened against the State of Texas and three of its executive officers (collectively, "Texas") to enjoin Texas Senate Bill 14, Act of May 16, 2011, 82d Leg., R.S., ch. 123, 2011 Tex. Gen. Laws 619 ("SB14"), which requires – with certain exceptions – that in-person voters present acceptable forms of identification in order to participate in state and federal elections. Plaintiffs challenge SB14 under §2 of the Voting Rights Act ("VRA"), the First Amendment and the Equal Protection Clause, and the Twenty-Fourth Amendment, 52 U.S.C. §10302; U.S. CONST. amend. I, XIV, §1, cl. 4, XXIV. With the exception of one Plaintiff whose claims were dismissed for lack

[1] Pursuant to FED. R. APP. P. 29(c)(5), the undersigned counsel certifies that: counsel for *amicus* authored this brief in whole; no counsel for a party authored this brief in any respect; and no person or entity – other than *amicus* and its counsel – contributed monetarily to this brief's preparation or submission.

of standing, Plaintiffs prevailed in district court on their statutory and constitutional claims. *Amicus* Eagle Forum adopts the facts as stated in Texas's brief. Appellants' Br. at 3-8.

SUMMARY OF ARGUMENT

As the Supreme Court recognized in *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 189 (2008), voter-identification protections not only help detect and deter voter fraud but also inspire voter confidence in the integrity of our elections. For that reason, Plaintiffs' First-Amendment and Equal-Protection claims – the same claims rejected in *Crawford* – are foreclosed by binding Supreme Court precedent. Similarly, although race correlates with income and SB14's nominal costs fall disproportionately on low-income voters, a disparate race-correlated effect on the part of SB14's nominal economic burdens is by no means "race-based discrimination" under either the Equal Protection Clause or VRA §2. With respect to the Constitution, the disparate impact does not result *because of* race, but merely *in spite of* a race-correlated effect. With respect to VRA §2, bare statistical disparities such as those shown by Plaintiffs here is insufficient to violate the VRA without a causal connection between SB14 and the alleged discrimination. With respect to poll taxes under the Twenty-Fourth Amendment, disproportionately heavy non-tax burdens such as those alleged here simply do not qualify as "poll taxes."

Even if this Court finds that SB14 discriminates, the district court's enjoining all applications of SB14 would constitute the type of facial invalidity that *Crawford* rejected. Supreme Court and Circuit precedents require, instead, a more-tailored remedy. Finally, institutional Plaintiffs who claim injury from their own voluntary expenditures to counteract SB14 lack standing for their claims because such "self-inflicted" injuries do not create a case or controversy under Article III.

ARGUMENT

I. TEXAS HAS VALID INTERESTS THAT JUSTIFY REQUIRING VOTER IDENTIFICATION

Voting without proper identification enables voter fraud. *Crawford* cites to numerous instances of voter fraud, with not only examples such as the 19th century Tammany Hall political machine but also occasional examples in recent years. *Crawford*, 553 U.S. at 195. Even more recently, City investigators in New York were able to vote successfully 61 times out of 63 attempts when identifying themselves as an ineligible voter on the rolls. ROSE GILL HEARN, COMMISSIONER, NEW YORK CITY DEP'T OF INVESTIGATION, REPORT ON THE NEW YORK CITY BOARD OF ELECTIONS' EMPLOYMENT PRACTICES, OPERATIONS, AND ELECTION ADMINISTRATION, at 13 (December 2013).[2] In short, voter fraud remains an issue against which governments must protect our elections.

[2] To avoid biasing elections, the investigators wrote in the fictitious candidate John Test. *Id.* The report is available at http://www.nyc.gov/html/doi/downloads/pdf/2013/dec%2013/BOE%20Unit%20Report12-30-2013.pdf.

Accordingly, Texas has obvious and indisputable interests in preventing voter fraud and ensuring voter confidence in the integrity of the ballot. *Crawford*, 553 U.S. at 189. "Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). For good reason then, *Crawford* recognized the merit in states' requiring voter identification: "even assuming that the burden may not be justified as to a few voters, that conclusion is by no means sufficient to establish petitioners' right to the relief they seek in this litigation" of "enjoining [the law's] enforcement." *Crawford*, 553 U.S. at 199-200 (footnote omitted).

II. SB14 DOES NOT VIOLATE THE VRA OR THE CONSTITUTION

Having identified important government interests that SB14 serves, Section I, *supra*, *amicus* Eagle Forum now connects those interests with the analysis and level of scrutiny applicable to those interests. As shown in this section, Texas's interests suffice to establish that its laws do not violate either the VRA or the Constitution.

A. SB14 Does Not Violate the First and Fourteenth Amendments

The district court's finding of racial discrimination rests on SB14's nominal costs – which are imposed on all Texas voters – being more significant to low-income Texans, who – for reasons having nothing to do with SB14 or Texas – are disproportionately African-American and Latinos. Any suggestion that SB14 is

responsible for discrimination confuses correlation with causation. Insofar as the Supreme Court's *Crawford* decision already has approved voter-identification laws that necessarily impose nominal burdens disproportionately on low-income citizens, *Crawford* forecloses the conclusion that SB14 violates the Equal Protection Clause.[3]

The Equal Protection Clause does not prohibit disparate impacts. *Pers. Adm'r v. Feeney*, 442 U.S. 256, 279 (1979). Simply put, it prohibits discrimination *because of* race or other protected status through purposeful discrimination and disparate treatment, not disparate impacts. In other words, it prohibits actions taken *because* of the protected status, not those taken merely *in spite of* that status. *Alexander v. Sandoval*, 532 U.S. 275, 282-83 & n.2 (2001); *Feeney*, 442 U.S. at 279. Here, SB14 imposes race-neutral requirements that are defensible legislative choices in their own right. When action based on neutral criteria disparately impacts a protected group, without being "actually motivated by bias against [the]

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[3] With respect to some Plaintiffs particularly and African-Americans generally, the district court invokes the First Amendment as distinct from the Equal Protection Clause. Slip Op. at 85. *Crawford* addressed both provisions, with the following question presented: "Whether an Indiana statute mandating that those seeking to vote in-person produce a government-issued photo identification violates the First and Fourteenth Amendments to the United States Constitution." *Crawford v. Marion County Election Bd.*, No. 07-21 (U.S. Sept. 25, 2007) (available at http://www.supremecourt.gov/qp/07-00021qp.pdf); *see also Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (*quoting Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)) (considering "'the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate'").

protected group," that action "is never disparate treatment," "even where there is a strong correlation between the protected classification and the neutral criteria used to grant or deny the benefit." *Univ. of Texas Southwestern Med. Ctr v. Nassar,* 133 S.Ct. 2517, 2529 (2013) (interior quotations omitted). At worst, Plaintiffs perhaps could accuse Texas of willful indifference to SB14's disparate impact on African-Americans and Latinos, due to their elevated presence among low-income Texans.

Significantly, the issue here is not correlation so close that the facial neutrality is merely pretextual and thus a proxy for a plaintiff's protected status: "A tax on wearing yarmulkes is a tax on Jews." *Bray v. Alexandria Women's Health Clinic,* 506 U.S. 263, 270 (1993); *accord Village of Arlington Heights v. Metro. Hous. Dev. Corp.,* 429 U.S. 252, 266 (1977) (collecting cases). Cases like that, however, are as "easy" as they are "rare." *Id.* Instead, the issue here is what to do when a regulatory impact correlates with a protected status (*e.g.*, income and race), without having been caused by that status.

But mere correlation with race does not establish discrimination *based on race.* One famous statistical study showed that birthrates in seventeen countries correlate heavily with those countries' stork populations. Robert Matthews, *Storks Deliver Babies (ρ = 0.008),* 22:2 TEACHING STATISTICS: AN INT'L JOURNAL FOR TEACHERS, at 36 (2000). The statistical inference that storks deliver babies clearly "mistakes correlation for causation." *Woodford v. Ngo,* 548 U.S. 81, 94 n.4 (2006);

Matthews, *Storks Deliver Babies,* 22:2 TEACHING STATISTICS, at 36-37. The same type of mistake underlies the district court's reasoning from disparate impacts by race to intentional racial discrimination. The district court failed "to recognize the limited probative value of disproportionate impact" because it did not sufficiently "acknowledge the heterogeneity of the Nation's population." *Arlington Heights,* 429 U.S. at 266 n.15 (internal quotations omitted). Indeed, where race correlates with income status and a law imposes nominal costs on everyone, that law would obviously weigh more heavily on the races correlated with lower incomes, not because of discriminatory intent but because of low income.

Although Plaintiffs make much of the greater evidentiary record that they have assembled, vis-à-vis the *Crawford* plaintiffs, the Supreme Court in *Crawford* considered not only evidence, but also the "facts of which [courts] may take judicial notice":

> Both evidence in the record and facts of which we may take judicial notice, however, indicate that a somewhat heavier burden may be placed on a limited number of persons. They include elderly persons born out of State, who may have difficulty obtaining a birth certificate; persons who because of economic or other personal limitations may find it difficult either to secure a copy of their birth certificate or to assemble the other required documentation to obtain a state-issued identification; homeless persons; and persons with a religious objection to being photographed. If we assume, as the evidence suggests, that some members of these classes were registered voters when [the law] was enacted, the new

> identification requirement may have imposed a special burden on their right to vote.

Crawford, 553 U.S. at 199 (footnote omitted); *see also id.* at 221 n.25 (discussing disparate impacts on racial minorities) (Souter, J., dissenting). As indicated, the disparate impacts here not only are judicially noticeable and obvious, but also are nondiscriminatory.

B. SB14 Does Not Violate VRA §2

In holding that SB14 violates the "results test" of VRA §2, the district court failed to find the required causal nexus between the challenged law and the perceived disparate result. Because the district court did not find a permissible *results*-based violation and – given SB14's constitutionality under the Fourteenth Amendment – obviously could not find an *intent*-based violation, SB14 complies with VRA §2.

Statistical disparities – standing alone – are insufficient to establish violation of VRA §2. *See* Appellants' Br. at 30; *see also Smith v. Salt River Project Agric. Improvement & Power Dist.*, 109 F.3d 586, 595 (9th Cir. 1997) ("bare statistical showing of disproportionate *impact* on a racial minority" cannot establish a VRA §2 violation) (emphasis in original); *Ortiz v. City of Philadelphia Office of City Comm'rs Voter Registration Div.*, 28 F.3d 306, 310 (3d Cir. 1994) ("there must be some causal connection between the challenged electoral practice and the alleged discrimination that results in a denial or abridgement of the right to vote"); *Wesley*

v. Collins, 791 F.2d 1255, 1260-61 (6th Cir. 1986) ("a showing of disproportionate racial impact alone does not establish a *per se* violation of the Voting Rights Act"). "Instead, 'section 2 plaintiffs must show a causal connection between the challenged voting practice and [a] prohibited discriminatory result.'" *Salt River*, 109 F.3d at 595 (*quoting Ortiz,* 28 F.3d at 312). Neither Plaintiffs nor the district court establish that causal connection.

As Texas explains, the district court reached its results by importing factors for vote-dilution claims under *Thornburg v. Gingles*, 478 U.S. 30 (1986), into this voter-qualification litigation, notwithstanding that the Fourth, Sixth, and Seventh Circuits "found *Gingles* unhelpful in voter-qualification cases." Appellants' Br. at 31-32 (*quoting Frank v. Walker*, 768 F.3d 744, 754 (7th Cir. 2014)). *Amicus* Eagle Forum respectfully submits that this Court should reject the use of vote-dilution analysis in challenging voter-qualification issues. Significantly, the Supreme Court's discussion of this particular voter-qualification issue in *Crawford* did not import vote-dilution analysis to resolve the lawfulness of voter-identification requirements. This Court should follow the Supreme Court and its sister circuits in not borrowing from a doctrinally discrete area when deciding whether election officials can – like federal courts across the country – require picture identification.

C. SB14 Does Not Violate the Twenty-Fourth Amendment

The district court's finding SB14 to constitute a "poll tax or other tax" under

the Twenty-Fourth Amendment is difficult to square with the plain language of that Amendment. Quite simply, SB14 does not impose a "tax."

If it imposes anything constitutionally untoward, SB14 imposes a burden felt disproportionately by groups such as the indigent. Such disproportionately heavy burdens may violate the Equal Protection Clause, but they are not poll taxes. *Compare Williams v. Rhodes*, 393 U.S. 23, 29-31 (1968) (distinguishing poll taxes from disproportionately heavy burdens) *with id.* at 50 (Stewart, J., dissenting) (same). The three-justice *Crawford* plurality opined that "[i]f [partisan, Republican-versus-Democrat] considerations had provided the only justification for a photo identification requirement," the Indiana voter-identification law presumably "would suffer the same fate as the poll tax at issue in *Harper*." *Crawford*, 553 U.S. at 203. Significantly, because *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666 (1966), concerned poll taxes in state elections not covered by the Twenty-Fourth Amendment, the *Harper* "fate" was to have been stricken down as a violation of the Equal Protection Clause: "a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard." *Id.* In reaching that conclusion, however, the *Harper* majority based its holding on the fact that favoring affluent voters was "invidious" discrimination because it had *nothing* to do with voting, ballots, or elections. *Id.* at 665-66. Here, *Crawford* already has held

that a voter-identification requirement is not "invidious" and indeed qualifies as a "nondiscriminatory law … supported by valid neutral justifications." *Crawford*, 553 U.S. at 204. It is therefore significant that the Indiana law challenged in *Crawford* under the Fourteenth Amendment was not invalid as a poll tax.[4] This Court should find the same for SB14.

D. Even If SB14 Violated Federal Law or the Constitution As Applied to Plaintiffs, the District Court's Facial Remedy Would Be Excessive

Plaintiffs and the district court seek to evade *Crawford* as a mere facial challenge, as distinct from Plaintiffs' as-applied challenge. Although *amicus* Eagle Forum respectfully submits that that is a distinction without a difference on the circumstances of this case, the fact remains that the district court imposed a *facial* remedy, and indeed seeks to re-impose the type of preclearance requirement struck down in *Shelby County v. Holder*, 133 S.Ct. 2612 (2013). Accordingly, this Court should vacate the district court's excessive remedy, even if this Court finds SB14 to violate the VRA or the Fourteenth Amendment.

As distinct from facial challenges, it is true that "as-applied challenges are the basic building blocks of constitutional adjudication," *Gonzales v. Carhart*, 550 U.S. 124, 168 (2007) (interior and alterations omitted), but a corollary to that

[4] An actual poll tax would be facially unconstitutional as applied *to anyone*, not based only on one's inability to pay.

truism is that as-applied relief should not be reflexively facial. *Whitcomb v. Chavis,* 403 U.S. 124, 160-61 (1971).[5] *Whitcomb* vacated the district court's facial remedy – noting that the "remedial powers of an equity court must be adequate to the task, but they are not unlimited" – and required the district court on remand to consider whether a more targeted remedy would cure any "unconstitutional discrimination against poor [minority] inhabitants" without "intrud[ing] upon state policy any more than necessary to ensure representation of [their] interests." *Id.; accord Perry v. Perez,* 132 S.Ct. 934, 941 (2012). As this Court has explained, "the nature of the violation determines the scope of the remedy." *Mississippi State Chapter, Operation Push v. Mabus*, 932 F.2d 400, 406 (5th Cir. 1991). Therefore, even it were to find that SB14 discriminates against *some* Texas voters, this Court should vacate the district court's overbroad remedy and remand with instructions to narrow the remedy to relieving the specific "unconstitutional discrimination" this Court identifies (*e.g.,* waiving fees, requiring Texas to publicize alternatives).

III. THE INSTITUTIONAL PLAINTIFFS LACK STANDING FOR THEIR CLAIMS BASED ON ALLEGED INJURIES FROM INCREASED EXPENDITURES TO COUNTERACT SB14

The six institutional plaintiffs lack standing to assert the self-inflicted injury of their voluntarily responding to SB14 by expending additional time, effort, and

[5] *Whitcomb* is an example of the results-test analyses that the Supreme Court indicated Congress intended the 1982 VRA amendments to re-establish over the intent-test. *See Chisom v. Roemer*, 501 U.S. 380, 394 n.21 (1991).

funding to educate the public about SB 14. Without significant analysis, the district court dismissed the claims of one plaintiff – Congressman Veasey's chief of staff and campaign manager – as lacking standing to claim that SB14 made her job more difficult, but upheld the standing of all other plaintiffs. *See* Slip Op. 87-89. Although a single plaintiff with standing is enough to support federal-court jurisdiction over that claim, multiple plaintiffs in the multiple actions as well as intervenors must have standing for their separate claims. *LULAC v. City of Boerne,* 659 F.3d 421, 428 (5th Cir. 2011). Because the institutional plaintiffs' self-inflicted injuries do not qualify as Article III cases or controversies, this Court should dismiss their separate claims.

The types of increased-spending claims that the institutional Plaintiffs raise and that the district court accepted rely on the Supreme Court's decision in *Havens Realty Corp. v. Coleman,* 455 U.S. 363, 372-73 (1982), to find standing for organizational plaintiffs that divert their resources to combat a statute:

> *Havens* held that an organization has standing to sue on its own behalf if the defendant's illegal acts impair its ability to engage in its projects by forcing the organization to divert resources to counteract those illegal acts.

Fla. State Conf. of the NAACP v. Browning, 522 F.3d 1153, 1165 (11th Cir. 2008) (*citing Havens Realty*, 455 U.S. at 379). Given that diverted resources are typically a "self-inflicted injury" that does not manufacture an Article III case or

controversy, *Clapper v. Amnesty Int'l USA*, 133 S.Ct. 1138, 1152-53 (2013); *Pennsylvania v. New Jersey*, 426 U.S. 660, 664 (1976); *Petro-Chem Processing, Inc. v. EPA*, 866 F.2d 433, 438 (D.C. Cir. 1989), that analysis clearly overstates the standing found in *Havens Realty*.

Havens Realty concerned an organizational plaintiff's statutory standing to sue under §812 of Fair Housing Act ("FHA"), which creates a right – applicable to individuals *and associations* – to truthful, non-discriminatory information about housing:

> [§804(d)] states that it is unlawful for an individual or firm covered by the Act "[t]o represent to *any person* because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available," a prohibition made enforceable through the creation of an explicit cause of action in [§812(a)] of the Act. Congress has thus conferred on all "persons" a legal right to truthful information about available housing.

Havens Realty, 455 U.S. at 373 (emphasis in original, citations omitted). Moreover, because FHA extends "standing under § 812 … to the full limits of Art. III," "courts accordingly lack the authority to create prudential barriers to standing in suits brought under that section," *Havens Realty*, 455 U.S. at 372, thereby collapsing the standing inquiry into the question of whether the alleged injuries met the Article III minimum of injury in fact. *Id.* The typical organizational plaintiff and typical statute lack several critical criteria from *Havens Realty*.

First, the *Havens Realty* organization had a statutory right (backed by a statutory cause of action) to truthful information that the defendants denied to it. Because "Congress may create a statutory right … the alleged deprivation of [those rights] can confer standing." *Warth v. Seldin*, 422 U.S. 490, 514 (1975). Under a typical statute or the Constitution, a typical organizational plaintiff has no claim to any rights related to its diverted resources for educating third-party members of the public.

Second, and related to the first issue, the injury that an organizational plaintiff claims must align with the other components of its standing, *Mountain States Legal Found. v. Glickman,* 92 F.3d 1228, 1232 (D.C. Cir. 1996), including the allegedly cognizable right. In *Havens Realty,* the statutorily protected right to truthful housing information aligned with the alleged injury (costs to counteract false information, in violation of the statute). By contrast, with a typical statute and organizational plaintiff, there will be no rights even *remotely* related to a private organization's spending.

Third, the FHA statutorily eliminates prudential standing. *Havens Realty,* 455 U.S. at 372. When a plaintiff – whether individual or organizational – sues under a statute that does not eliminate prudential standing, that plaintiff cannot bypass prudential limits on standing. Typically, it would be fanciful to suggest that

a statute has private, third-party spending in its zone of interests.[6]

Outside the unique facts of *Havens Realty* and the FHA's cause of action and elimination of prudential standing, organizational plaintiffs' diverted resources are simply self-inflicted injuries, which cannot manufacture a case or controversy. *Clapper,* 133 S.Ct. at 1152-53; *Petro-Chem Processing,* 866 F.2d at 438. If mere spending could manufacture standing, any private advocacy or welfare organization could establish standing against any government action, which clearly is not the law. *Sierra Club v. Morton,* 405 U.S. 727, 739 (1972) (organizations lack standing to defend "abstract social interests"). For *Havens Realty* to apply, Plaintiffs need – and here do not have – a statute that confers rights and a cause of action on them. Because the organizational Plaintiffs lack standing for their voluntary – and thus self-inflicted – injuries of spending resources to counteract SB14, this Court should dismiss their separate claims, actions, and interventions.

CONCLUSION

The district court's judgment should be reversed.

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[6] Under *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S.Ct. 1377 (2014), questions of statutory standing go to the merits, not jurisdiction, in Lanham Act litigation. Where a statute creates the right in question, *Warth,* 422 U.S. at 514, the issue is whether the plaintiff has a judicially cognizable injury, which is a jurisdictional issue. Similarly, "[i]n order to seek redress through §1983, ... a plaintiff must assert the violation of a federal *right,* not merely a violation of federal *law.*" *Blessing v. Freestone,* 520 U.S. 337, 340 (1997) (emphasis in original). Thus, even if the institutional Plaintiffs have standing, their claims cannot proceed under 42 U.S.C. §1983.

Dated: February 5, 2015

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CERTIFICATE OF COMPLIANCE

No. 14-41127, *Veasey v. Abbott.*

1. The foregoing complies with FED. R. APP. P. 32(a)(7)(B)'s type-volume limitation because the brief contains 3,785 words excluding the parts of the brief that FED. R. APP. P. 32(a)(7)(B)(iii) exempts.

2. The foregoing complies with FED. R. APP. P. 32(a)(5)'s type-face requirements and FED. R. APP. P. 32(a)(6)'s type style requirements because the brief has been prepared in a proportionally spaced type-face using Microsoft Word 2010 in Times New Roman 14-point font.

Dated: February 5, 2015

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CERTIFICATE OF SERVICE

No. 14-41127, *Veasey v. Abbott.*

I hereby certify that, on February 5, 2015, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Fifth Circuit by using the Appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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