IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, *Plaintiff*, v. ERIC H. HOLDER, JR., in his Official capacity as Attorney General of the United States, *Defendant*.	Case No. 1:12-cv-00128 (DST, RMC, RLW)

PLAINTIFF'S RESPONSE TO THE DEFENDANT-INTERVENORS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND REPLY IN SUPPORT OF PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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INTRODUCTION

Plaintiff The State of Texas hereby submits its Opposition to Defendant-Intervenors' Proposed Supplemental, Non-Duplicative Findings of Fact and Conclusions of Law (Doc. 241). Plaintiff incorporates herein its Proposed Findings of Fact and Conclusions of Law, its Response to the Attorney General's Proposed Findings of Fact and Conclusions of Law, and its Reply in Support of Plaintiff's Proposed Findings of Fact and Conclusions of Law. Plaintiff objects to Defendant-Intervenors citation to trial exhibits rather than specific pages in Defendant-Intervenors' Appendix, contrary to the Court's May 22 Order. *See* Order (Doc. 137) at 9.

OPPOSITION TO THE DEFENDANT-INTERVENORS' PROPOSED SUPPLEMENTAL, NON-DUPLICATIVE FINDINGS OF FACT AND CONCLUSIONS OF LAW

9B. This proposed finding mischaracterizes the cited authority. Ann McGeehan testified in the Committee of the Whole that "we have one of the *lower* rates among the states as to the number of provisional ballots that are counted." JA 177 (emphasis added).

9C. This proposed finding mischaracterizes the cited authority. The cited authority does not evidence witness testimony that SOS received complaints about provisional ballots being denied.

18C. Texas does not dispute the factual statements as to the first sentence in this paragraph. The remaining factual statements in this paragraph are speculative, conclusory, and not supported by admissible evidence. The declaration of Glen Bayron is inadmissible hearsay. Fed. R. Evid. 802.

18D. Texas does not dispute the factual statements as to the first sentence in this paragraph. The remaining factual statements in this paragraph are speculative, conclusory, and not supported by admissible evidence. The declaration of Lydia Camarillo is inadmissible hearsay. Fed. R. Evid. 802.

18E. This proposed finding is speculative, conclusory, and not supported by admissible evidence. The declaration of Lydia Camarillo is inadmissible hearsay. Fed. R. Evid. 802.

18F. This proposed finding is speculative, conclusory, and not supported by admissible evidence. The declaration of Lydia Camarillo is inadmissible hearsay. Fed. R. Evid. 802.

18G. The factual statements in this paragraph are not supported by the cited source. Additionally, Texas disputes the accuracy of this finding. The statements are not supported by any evidence in the record and are speculative and conclusory.

18H. The factual statements in this paragraph are not supported by the cited source. Additionally, Texas disputes the accuracy of this finding. The statements are not supported by any evidence in the record and are speculative and conclusory.

19Q. Texas does not dispute the facts in this paragraph.

19R. Texas does not dispute the facts in this paragraph.

19S. The statement mischaracterizes the cited authority. Section 15.49(b) of the Texas Administrative Code states "all original applicants for a driver license or identification certificate must present two acceptable documents verifying the applicant's residential address in Texas." 37 TEX. ADMIN. CODE § 15.49(b). However, § 15.49(c) states it is

permissive, not mandatory, for the Department of Public Safety to require two acceptable documents as proof of domicile for applicants renewing drivers license and identification certificates. *Id*. § 15.49(c).

19T. The statement mischaracterizes the cited authority. 19T leaves out two other acceptable proofs of domicile documents. Section 15.49(e) of the Texas Administrative Code also allows for a valid, unexpired Texas concealed handgun license and documents issued by the United States Citizenship and Immigration to serve as proof of domicile. 37 TEX. ADMIN. CODE § 15.49(e).

19U. Texas does not dispute the facts in this paragraph.

19V. Texas does not dispute the facts in this paragraph.

19W. Texas does not dispute the facts in this paragraph.

19X. The statement mischaracterizes the cited authority. Section 6.12 of the Texas Administrative Code, titled "Application Procedure and Required Materials," also requires an applicant to provide a signature to DPS in compliance with 37 TEX. ADMIN. CODE § 15.21. 37 TEX. ADMIN. CODE § 6.12. Section 6.12 also requires an applicant to provide proof of age through a valid Texas driver license number or Personal Identification Certificate or one issued by their state of residence for non-resident applicants. *Id*. The statement also fails to point out that section 6.12(8) requires DPS to terminate the application process if all required documents are not received by the department within 90 days of the department's request. *Id*.

19Y. The statement mischaracterizes the cited authority. Texas provides discounts for certain concealed handgun license applicants. According to the Texas DPS concealed

handgun license (CHL) fee schedule (http://www.txdps.state.tx.us/RSD/CHL/documents/CHLFeeSchedule.pdf), the State provides discounts to active and retired judicial officers, active military, active and retired Texas peace officers, retired federal officers, and Texas prosecuting attorneys. In addition, the State discounts licenses for senior citizens, veterans, and indigent individuals.

19Z. The statement mischaracterizes the cited authority. The Department of Defense requires an applicant for a military identification card to provide two forms of identification, one of which must be a photo ID issued by a state or federal agency.

19AA. Texas does not dispute the facts in this paragraph.

19BB. Texas does not dispute the facts in this paragraph.

19CC. The statement mischaracterizes the cited authority. An applicant who cannot provide documentary evidence of identity must appear with a witness who is a US Citizen, non-Citizen US national, or permanent resident alien who has known the applicant for at least 2 years. In addition, that witness must prove their identity and sign an Affidavit of Identifying Witness (Form DS-71).

19DD. Texas does not dispute the facts in this paragraph.

19EE. Texas does not dispute the facts in this paragraph.

19FF. Texas does not dispute the facts in this paragraph.

23A. The factual statements in this paragraph are not supported by admissible evidence. The declarations of Nicole and Victoria Rodriguez are inadmissible hearsay. Fed. R. Evid. 802.

23B. The factual statements in this paragraph are not supported by admissible evidence. The declarations of Nicole and Victoria Rodriguez are inadmissible hearsay. Fed. R. Evid. 802.

23C. The factual statements in this paragraph are not supported by admissible evidence. The declarations of Nicole and Victoria Rodriguez are inadmissible hearsay. Fed. R. Evid. 802.

23D. The factual statements in this paragraph are not supported by admissible evidence. The declarations of Nicole and Victoria Rodriguez are inadmissible hearsay. Fed. R. Evid. 802. Neither the proposed finding nor the cited declarations identify the "recent regulation on proof of residence to obtain a Texas EIC."

23E. The factual statements in this paragraph are not supported by admissible evidence. The declarations of Nicole and Victoria Rodriguez are inadmissible hearsay. Fed. R. Evid. 802. Neither the proposed finding nor the cited declarations provide a basis for the implied assertion that obtaining an election identification certificate would require the parents of Nicole and Victoria Rodriguez to "wait several hours while they try to obtain an EIC."

23G. The factual statements in this paragraph are not supported by admissible evidence. The declarations of Nicole and Victoria Rodriguez are inadmissible hearsay. Fed. R. Evid. 802. The factual statements in this paragraph are also speculative.

23H. The factual statement in this paragraph is not supported by the cited source or the sources cited therein. Intervenors have not identified any eligible Texas voter whose inability to obtain qualifying photo ID will prevent him or her from voting.

33. The factual statement regarding Mr. Rokita's testimony mischaracterizes the evidence. In response to a question about a specific finding by the Brennan Center, Mr. Rokita testified, "I'm not sure what they said." JA 005753. The statement about the testimony of the Brennan Center is incomplete. The Brennan Center's representative testified, "Most eligible voters we know have ID and have it handy, even photo ID. But many do not. Disproportionately elderly and minority citizens." JA 005820 (Testimony of Justin Leavitt).

41A. The factual statements in this paragraph are unfounded, speculative, irrelevant, and based on inadmissible hearsay. Dr. Shaw's surveys are scientifically valid and representative of the target population. Shaw Rebuttal 6–9 (TA 969-77); Corrected Shaw Deposition Exhibit 2 (TA 2546-48).

46A. The factual statements in this paragraph are unfounded, speculative, irrelevant, and based on inadmissible hearsay. Dr. Shaw's surveys are scientifically valid and representative of the target population. Shaw Rebuttal 6–9 (TA 969-77); Corrected Shaw Deposition Exhibit 2 (TA 2546-48).

46B. The factual statements in this paragraph are unfounded, speculative, irrelevant, and based on inadmissible hearsay. The statement in this paragraph also improperly states a legal conclusion. Dr. Shaw's surveys are scientifically valid and representative of the target population. Shaw Rebuttal 6–9 (TA 969-77); Corrected Shaw Deposition Exhibit 2 (TA 2546-48).

56C. The factual statements in this paragraph are unsupported by citation to evidence, unfounded, speculative, irrelevant, based on inadmissible hearsay, and mischaracterize

the cited evidence. The number of entries in the voter registration database without a driver's license or personal identification card number does not necessarily indicate the number of registered voters who currently lack a driver's license or personal identification card. When a person registers to vote, he is asked to provide a driver's license number, a personal identification card number, or the last four digits of his social security number. *See* Tex. Elec. Code § 13.002(c)(8). The number of voter registration database entries without a driver's license or personal identification card number merely indicates the number of persons who did not provide a driver's license or personal identification card number at the time they registered. The Secretary of State does not update this information. Thus the number of individuals who have registered to vote since January 1, 2004 without providing a driver's license or personal identification card number does not support the inference that Dr. Shaw's survey results understate the number of registered voters without a driver's license or personal identification card. There is no support for the statement that Dr. Shaw's survey results "are contradicted by Texas's own voter registration data."

60A. The factual statements in this paragraph are unsupported by citations to evidence, unfounded, speculative, irrelevant, based on inadmissible hearsay, mischaracterize the cited evidence, and mischaracterize Dr. Shaw's survey results. *See* ¶ 56C, *supra*. There is no factual basis for the statement that of voters who registered to vote since January 1, 2004, "580,225 do not have a Texas driver's license or personal identification card."

71A. The factual statements in this paragraph are unsupported by citations to evidence, unfounded, speculative, irrelevant, and mischaracterize the cited evidence. The cited

voter registration data do not support the statement that any number or percentage of registered voters do not have a driver's license or personal identification card. *See* ¶ 56C, *supra*.

71B. The factual statements in this paragraph are unsupported by citations to evidence, unfounded, speculative, irrelevant, and mischaracterize the cited evidence. The cited voter registration data do not support the statement that any number or percentage of registered voters do not have a driver's license or personal identification card. *See* ¶ 56C, *supra*.

71C. The factual statements in this paragraph are not supported by citations to specific evidence. The cited voter registration data do not support the statement that any number or percentage of registered voters do not have a driver's license or personal identification card. *See* ¶ 56C, *supra*.

71D. Texas does not dispute that the referenced Exhibit 118 says that among White persons of voting age, 19.4% are age 65 or older. Among Hispanic persons of voting age, 8.7% are age 65 or older; and among non-Hispanic Black persons of voting age, 10.6 are age 65 or older. However, the statement mischaracterizes the cited authority because whether the total universe of persons who are 65 and older (and who thus may vote absentee by mail) are "disproportionately" White (or any other race) depends on the total number of people who are 65 and older; it does not depend on the percentage of people within each individual racial group who are 65 and older. Moreover, not everyone in Texas who is over 65 is eligible to "vote absentee by mail." To vote "absentee by mail," a voter must meet the other applicable criteria for voting (and for voting by mail) under

the Texas Election Code (e.g. the person must be a United States citizen. *See* Tex. Elec. Code § 11.002 (definition of "qualified voter").

71E. This is a conclusion of law, not a finding of fact. Moreover, the factual statements in this finding are not supported by any citation to the record and are conclusory.

71G. This proposed finding mischaracterizes the cited authority because the 2006 election is noticeably absent. If the 2006 election had been included, it would have been noted that African-Americans and Latinos and Hispanics all voted at a higher rate by mail-in ballot than did Whites. DIA 965, Ex. 118, at 4 (for 2006, White Alone, not Hispanic of Latino: 3.9%; African-American Alone: 6.6%; Hispanic or Latino: 5.8%).

71H. This proposed finding is a conclusion of law, not a finding of fact. The factual statements in this finding are not supported by any citation to the record. Furthermore, the fact that S.B. 14 does not address mail-in ballots is irrelevant.

71I. This proposed finding mischaracterizes the cited authority. The questions in the cited authority pertain to how much the Secretary of State's Office planned on spending on one particular initiative. It does not take into consideration any other efforts that are, have been or will be undertaken by the Secretary of State's Office, or any other agency in Texas, with regard to voter education. Finally, the statement does not offer an explanation as to why the $3 million amount that is referenced in the above testimony is "limited."

71J. This proposed finding mischaracterizes the cited authority. With respect to whether Texas has reserved any money specifically for the photo ID requirements of S.B. 14, Ms. Salazar, who is a "program coordinator/meeting planner" for the Texas Secretary of

State's Office testified that she was not aware of any, not that there were none. Salazar Dep. 16:9-13, 14:17-19. Moreover, Mr. Ingram, in the cited authority, explains that "[a]s soon as voter ID is precleared the entire emphasis of the remaining campaign is going to be on photo ID." Ingram Dep. 237:22-24 (TA 2404). With respect to the reference that "Of the $3 million allocated for voter education, $1.2 million had already been spent almost three months ago," this statement is factually accurate; however, it also incorrectly assumes that the $3 million referenced in Mr. Parson's testimony constitutes the sole extent of Texas' efforts to educate voters in Texas. Finally, Texas does not dispute that the Secretary of State did make significant efforts to inform the electorate that the photo ID requirements of S.B. 14 had not been precleared by the United States Department of Justice and therefore were not in place for the elections in the early part of 2012.

7K (71K). The factual statements in this paragraph are not supported by the cited authority. The authority for the stated proposition is not supported by admissible evidence because it is based on hearsay. Fed. R. Evid. 802.

71L. The factual statements in this paragraph are not supported by the cited authority.

71M. Texas does not dispute the factual statements in this paragraph.

71N. The factual statements in this paragraph are not supported by the cited authority. Further, this finding mischaracterizes the cited authority. The Secretary of State's intent was to "provide continuing voter education and outreach consistent with the Help America Vote Act of 2002 ("HAVA") to educate and train *Texans*." DIA 000402 (emphasis added). The vendor was apparently chosen because of its ability to develop a "balanced campaign with paid advertising, earned media, direct outreach, social

networking and *other channels to reach all Texans,*" among other reasons. TX_00298583 (emphasis added).

71O. The factual statements in this paragraph are not supported by the cited authority. Further, this finding mischaracterizes the cited evidence. The referenced exhibit shows that the vendor in question plans to use multiple sources of media, including some that the exhibit shows Hispanics use more frequently than other groups.

71P. The proposed finding mischaracterizes the cited authority. The fact that certain recommendations were not adopted in no way means that they were necessarily "ignored."

71Q. The proposed finding mischaracterizes the cited authority. The Secretary of State's office has not been inconsistent. Mr. Ingram testified that, whether the Court issued a decision on August 15 or August 31, the Secretary of State was going to get a voter education "done." Ingram Dep. 252:8-15 (TA 2404). He further testified that, so far as the voter education program was concerned, the only difference between a decision on August 31 and a decision on August 15 was that an August 31 decision would be "16 more days down the road to the election." Ingram Dep. 252:16-24 (TA 2404). In either event, his testimony indicates that the earlier the decision from this Court, the more time the Secretary of State will have to educate voters about the requirements in S.B. 14.

71R. The proposed finding mischaracterizes the cited authority. Mr. Parsons testified that the Secretary of State's Office would do "everything in [its] ability to communicate. . .to the voters, everything in [its] ability." Parsons Dep. 75:20-21. He further conceded, not surprisingly, that the timing of a decision from this Court (something over which the

Secretary of State's Office has no control) will affect how many voters the Secretary of State's office will be able to reach. *See* Parsons Dep. 75:8-12.

77D. The statements in this paragraph are unsupported by admissible evidence because they rely entirely on statements in a report submitted by Mr. Wood, DIA 0001. Mr. Wood's opinions are not admissible because they are not the product of specialized knowledge and will not assist the trier of fact. *See* Fed. R. Evid. 702. The statements in this paragraph are conclusory and speculative and constitute inadmissible hearsay as they are not based on any identifiable underlying facts.

77E. The proposed finding constitutes inadmissible hearsay from a late disclosed and unexamined witness. Fed. R. Evid 802; *see also* Plaintiff's Motion in Limine to Preclude Testimony by the Texas League of Young Voters' Newly Disclosed Witnesses (Doc. 193) and Memorandum in Support (Doc. 193.1). Further, the statement related to S.B. 14 is conclusory and speculative and without foundation.

77F. The proposed finding constitutes inadmissible hearsay from a late disclosed and unexamined witness. Fed. R. Evid. 802; *see also* Plaintiff's Motion in Limine to Preclude Testimony by the Texas League of Young Voters' Newly Disclosed Witnesses (Doc. 193) and Memorandum in Support (Doc. 193.1). Further, the statement related to the witness' purported belief that "if voter fraud were a problem in any way in Dallas county we would know about it" is speculative, without foundation, conclusory, and constitutes hearsay.

85C. This proposed finding mischaracterizes several colloquies on the floor of the House of Representatives, is incomplete in its description of the testimony, and is conclusory.

Several Democratic representatives who opposed the bill posed questions about cases of in-person voter fraud during the debate. Representative Anchia expressed an opinion as an opponent of the bill that no documented cases of voter fraud had been found and a proponent of the bill, Representative Harless, in turn referenced "witnesses over the last couple of sessions" who "testified that voter impersonation, in which people's ID's or voter registration card have been used and a vote passed in that person's name, is not uncommon." JA 001970. The fact Representative Anchia, a staunch opponent of all voter fraud bills introduced since 2005, indicated the narrative had changed is speculative and conclusory. The quoted statement by Representative Harless ignores her reference to media accounts of voter fraud and her citation of evidence of voter fraud from other sessions. *See* JA 001973; JA 002298. The quote attributed to Representative Veasey was made during the House debate but omits the response by Representative Harless who said the intention of the bill was to restore integrity in elections. JA 002301.

85D. The referenced passages in the proposed finding represent selective misleading, and non-contextual excerpts from a thirty-five page summary of testimony. Among other omitted issues, McGeehan testified that 26 states require some form of voter ID to cast a ballot at the polls (DOJ Ex. 378 at 27 (DE 2865)), McGeehan's statement that it "would be tough to detect if voter impersonation is occurring at the polls unless the poll worker knew everyone in the precinct (DOJ Ex. 378 at 28 (DE 2866)), that her office had referred 24 Election Code violation cases over the past two years to the AG's office with two involving voter impersonation allegations (DOJ Ex. 378 at 28 (DE 2866)), and a citation to a summary of Dyer's testimony indicating the AG's office had received 267

referrals of incidences of alleged illegal voting fraud since 2002 (DOJ Ex. 378 at 27 (DE 2865)).

85E. The cited quote in this proposed finding is from a report of the House Subcommittee on Mail-in Ballot Fraud and Non-Citizen Voting chaired by a consistent opponent of voter identification bills, Democratic Representative Anchia. The selected portions of the report are selective, non-contextual excerpts that ignore the fact that whether or not S.B. 14 addresses mail-in or absentee ballot fraud is irrelevant.

85F. This proposed finding is incomplete, non-contextual, and misleading as it only includes partial excerpts from a twenty-five page report of the Senate Committee on State Affairs Interim Report to the 80th Legislature in 2006. (DOJ Ex 370 (DE 2799-2823)) A portion of the report omitted in this finding, recounts three instances of alleged voter fraud, "which may include circumstances preventable by a voter photo ID law." (DOJ. Ex 370 at 26 (DE 2819)). Additionally, the excerpted portions omit the Committee's statement that "a voter photo ID law will certainly prevent some fraud" and "at the very least would increase voter confidence." (DOJ. Ex. 370, at 28 (DE 2821)) Further, the letter cited is inadmissible hearsay. Fed. R. Evid. 802.

86B. Texas does not dispute the facts in this paragraph.

86C. This proposed finding mischaracterizes the testimony. Major Mitchell testified that of the 186 referrals OAG investigated he could clearly identify four that were charged with voter impersonation at the polling place and that he did not know the number for the other ones that were not charged. Mitchell Dep. 149:22-150:17 (TA 1174). Further, the

statement referencing the fact that "only two of which might have been prevented" is argumentative and speculative.

86D. The deposition citations regarding cases of non-citizens voting are incomplete. In particular, one of the cases cited by Mitchell involved allegations of multiple non-citizens voting and ultimately changed the result of a Justice of the Peace election. Mitchell Dep 192:9-193:17 (TA 2466-47).

130. Texas does not dispute that in 2005, the Texas House of Representatives passed HB 1706, which would have required in-person voters to present one form of photo identification or two forms of non-photo identification. *See* JA 008939–41 (engrossed version). The assertion that the Texas Legislature "did not investigate concerns raised about the bill's impact on minority voters" is conclusory and unsupported by any citation to the record.

130A. The proposed finding mischaracterizes the language of the cited statute to the extent that HB 1706 did not limit the acceptable forms of photo ID as to driver's licenses or personal identification cards to those "(not expired within the past two years)" as asserted. Rather, HB 1706 allowed for driver's licenses or personal identification cards, "*not expired or that expired no earlier than two years before date of presentation*." JA 8939-40.

130B. Texas does not dispute the factual statements in the paragraph.

133. Texas agrees that HB 1706 and HB 218 each included both photo ID and non-photo ID in the list of identification required for in-person voting. *See* JA 008132, 8135–37 (HB 218 engrossed); JA 0008936–37, 8939–41 (HB 1706 engrossed).

133A. The proposed finding mischaracterizes the purpose of HB 1706 to the extent that it describes HB 218 having "expanded HB 1706." Texas does not dispute that HB 1706 allowed the use of ID cards issued by any agency or institution of federal government or by any agency, institution or political subdivision of Texas and limited driver's licenses and identification cards to those issued by Texas. JA 8135-36.

133B. Texas does not dispute the factual statements contained in this paragraph, but does object to the characterization of the list of acceptable non-photo ID included in HB 1706 as being "extensive."

150. Texas does not dispute the facts stated in this paragraph.

150A. Texas does not dispute that S.B. 362 allowed for similar forms of non-photo IDs that were included in HB 1706 and HB 218. Nor does Texas dispute that S.B. 362 allowed for fewer forms of photo IDs then HB 1706 and HB 218. Texas does not dispute that S.B. 362 allowed for the use of ID cards issued by any agency or institution of the federal government or by any agency, institution, or political subdivisions of Texas. However, the remainder of the statement, as phrased, is convoluted, conclusory and a mischaracterization of statements of fact regarding the substance of S.B. 362.

151A. Texas does not dispute the facts stated in this paragraph.

151B. This statement is not supported by admissible evidence. The finding is inadmissible to prove either the truth of the matter asserted or to prove that Senator Patrick made the statements. Fed. R. Evid. 802.

161A. The factual statements in this paragraph are not supported by the cited authority.

166A. Texas does not dispute the proposed finding accurately lists the seven forms of acceptable photo-identification under S.B. 14. However, the characterization of S.B. 14 as "significantly more stringent" than earlier bills is a statement of opinion, not of fact. As a photo-identification bill, S.B. 14 requires an ID with a photograph.

166C. Texas does not dispute the statements in this paragraph.

174A. The first statement in this paragraph is conclusory and speculative. The proposed finding is not supported by the cited authority as there is nothing in Exhibit 3 to verify the accuracy of the finding. Texas does not dispute that Lieutenant Governor Dewhurst notified senators in writing on January 21, 2011 of his intent to recognize Senator Duncan for a motion to resolve the Senate into the committee of the whole on January 24, 2011 to consider S.B. 14. Texas does not dispute that DE 352 (DoJ Ex. 107) appears to be a letter from Senator Van de Putte to Senator Duncan expressing concerns about the consideration of S.B. 14.

174B. Texas does not dispute that DE 352 (DoJ Ex. 107) appears to be a letter from Senator Van de Putte to Senator Duncan expressing concerns about the consideration of S.B. 14.

186A. Texas does not dispute the statements in this paragraph.

187A. The proposed finding is not supported by the cited authority.

192. This statement is not supported by admissible evidence. The finding is inadmissible to prove either the truth of the matter asserted or to prove that Speaker Straus made the statements or took any actions. Fed. R. Evid. 802.

192A. This proposed finding is not supported by the cited authority. The cited authority is inadmissible hearsay and cannot be used to prove the truth of the matter asserted. Fed. R. Evid. 802.

196A. The statements in the first two sentences of this paragraph are not supported by any cited authority. Texas does not dispute that Senator Fraser responded to questions by stating that he was not advised or that resource witnesses would be available to answer specific questions. Texas denies that there is any particular significance to the phrase "I am not advised." *See* McCoy Depo. 200:20, 201:1–2 ("Typically, when a senator says that, it means they don't know.") (TA 2429-30). The statement in the third sentence of this paragraph selectively quotes and mischaracterizes the testimony of Senator Fraser. See JA 83 (Statement of Senator Fraser) ("No. My philosophy is that I do everything I can trying to keep any unfunded mandates. I'm not advised of how they would be impacted.").

196B. The statements in the first two sentences of this paragraph are not supported by any cited authority. Texas does not dispute that Senator Fraser responded to questions by stating that he was not advised or that resource witnesses would be available to answer specific questions. Texas denies that there is any particular significance to the phrase "I am not advised." *See* McCoy Depo. 200:20, 201:1–2 ("Typically, when a senator says that, it means they don't know.") (TA 2429-30).

196C. The statements in the first two sentences of this paragraph are not supported by any cited authority. Texas does not dispute that Senator Fraser responded to some questions by stating that he was not advised or that resource witnesses would be available

to answer specific questions. Texas denies that there is any particular significance to the phrase "I am not advised." *See* McCoy Depo. 200:20, 201:1–2 ("Typically, when a senator says that, it means they don't know.") (TA 2429-30). Further, the proposed finding selectively quotes and mischaracterizes the testimony of Senator Fraser. Senator Fraser responded as set forth in the proposed finding in response to the following question from Senator Van De Putte: "Current election law allows Texas voters to cast a provisional ballot. Is that correct?" JA 66.

196D. The statements in the first two sentences of this paragraph are not supported by any cited authority. Texas does not dispute that Senator Fraser responded to questions by stating that he was not advised or that resource witnesses would be available to answer specific questions. Texas denies that there is any particular significance to the phrase "I am not advised." *See* McCoy Depo. 200:20, 201:1–2 ("Typically, when a senator says that, it means they don't know.") (TA 2429-30).

196E.The proposed finding selectively quotes and mischaracterizes the testimony of Senator Fraser. In response to further questioning by Senator Hinojosa on whether evidence existed on voter fraud, Senator Fraser explained that it is "virtually impossible to detect voter fraud." JA 115.

196F. Texas does not dispute that Senator West read the rulemaking authority from the bill analysis to Senator Fraser. JA 88.

204A. Texas does not dispute the factual statements in this paragraph. Texas objects to the citation to Exhibit 65 as it is hearsay and is inadmissible to prove either the truth of the matter asserted. Fed. R. Evid. 802.

207. The statement mischaracterizes the cited authority. The cited authority does not evidence any instances of discrimination in Texas past the 1980s, let alone present-day discrimination. *See* DIA 000118 (summarizing conclusion of discrimination against Latinos in Texas up to the mid-20th century); DIA 000130 (citing specific instances from 1920s to 1960s); DIA 000148–49 (citing findings of 1975 U.S. House of Representatives report and practice of employing at-large electoral system in Texas into the 1980s).

208. The statement mischaracterizes the cited authority. The cited authority does not evidence the employment of discriminatory devices against Latinos in Texas "since the early 1900s." The cited authority instead offers specific examples of discriminatory devices employed in Texas during the 1900 to 1920 Progressive Era, DIA 000126, the use of the poll tax until 1967, DIA 000139, and restrictive covenants employed during 1970s. *See id.* (quoting unidentified study from 1977). The remaining statements in this paragraph are unsupported by any cited authority.

209. This statement is unsupported by any factual citation to the record.

210. This statement not supported by admissible evidence. The quoted statement in Andres Tijerina's report, DIA 000148, which was apparently taken from a 1975 U.S. House of Representatives Report, is not admissible to prove the truth of the matter asserted. Fed. R. Evid. 802.

211. The statement is not supported by admissible evidence. The quoted statement in Andres Tijerina's report, DIA 000150, which was apparently taken from a 1975 DOJ preclearance objection letter, is not admissible to prove the truth of the matter asserted. Fed. R. Evid. 802. Further, the statement mischaracterizes the authority as evidencing

"persistent" discrimination. The specific citation relates only to events in 1975. DIA 000150.

212. Statement is not supported by admissible evidence. The cited statements from Andres Tijerina's report, DIA 000150, which apparently summarize the findings of a 1980 Civil Rights Commission report, is not admissible to prove the truth of the matter asserted. Fed. R. Evid. 802.

213. This statement is not supported by admissible evidence. The quoted statements from Andres Tijerina's report, DIA 000148–49, which were apparently drawn from a 1975 U.S. House of Representatives Report, are not admissible to prove the truth of the matter asserted. Fed. R. Evid. 802.

214. The statements in this paragraph are unsupported by admissible evidence because they rely entirely on statements in a report submitted by Dr. Allan J. Lichtman, DIA 000159–98. Dr. Lichtman's opinions are not admissible because they are not the product of specialized knowledge and will not assist the trier of fact. *See* Fed. R. Evid. 702; *see also* Plaintiff's Motion to Exclude Testimony of Allan J. Lichtman (Doc. 194) and Memorandum in Support (Doc. 194.1).

215. The factual statements in this paragraph are unsupported by the cited authority and are irrelevant to the issues before the Court. The Engstrom Report does not demonstrate that voting patterns are determined by race as opposed to political preference or other candidate characteristics. Defendant-Intervenors fail to cite specific authority for their statement regarding Anglo voting patterns.

216. Texas does not dispute the statements in this paragraph except to note that Ms. McGeehan testified that she was "involved in" the preparation of "about a thousand" Section 5 submissions, not that she specifically prepared them herself. McGeehan Depo. 45:5–10 (TA 2433).

217. The factual statements in this paragraph are not supported by the cited testimony. Ms. McGeehan testified that she did not recall her office making an inquiry or gathering information on the impact of S.B. 362 on any group of voters in 2009 and that her office did not run a Spanish surname search on an attempted comparison of registered voters and licensed drivers. *See* McGeehan Depo. 225:16–226:5; 241:2–12 (TA 2433).

218. Texas does not dispute the characterization of Ms. McGeehan's testimony.

219. Texas does not dispute the characterization of Ms. McGeehan's testimony.

220. The factual statements in this paragraph are not supported by the cited source, DE 568, which is not and does not include a letter or any other statement by Mr. Shorter.

221. The factual statement regarding the contents of the State's preclearance submission is not supported by a citation to the record. This paragraph's statement regarding Ms. McGeehan's statements is incomplete and mischaracterizes her testimony. Ms. McGeehan did not make the quoted statement. She also testified that she did not have any facts indicating that S.B. 14 "would affect members of a racial or linguistic minority differently from the way the general public was affected," McGeehan Depo. 254:1–4 (TA 2433), or that S.B. 14 had the purpose of "diluting the voting strength of any racial or linguistic minority." *Id.* 254:12–14 (TA 2433).

222. The factual statements in this paragraph fail to cite supporting authority. The citation to "Ex. 59" does not identify a specific page in the Defendant-Intervenors' Appendix or in Defendant-Intervenors' Exhibit 59. Even if the proposed finding accurately quotes a draft of the State's preclearance submission, it is not admissible to prove the truth of the matter asserted. Fed. R. Evid. 802. In any event, the quoted statement is consistent with statements by the United States and other opponents of S.B. 14 that any potential impact of the bill would result from socioeconomic status, not membership in a racial or language minority. *See* United States' Statement in Support of its Request to Depose and Seek Documents from State Legislators and Staff (Doc. 69) at 6; W. Davis Depo. 36:21–37:18 (TA 1118-19).

223. The factual statements in this paragraph fail to cite supporting authority. The citation to "Ex. 60" and "Ex. 61" does not identify a specific page in the DIA or in the exhibits themselves. The cited exhibits do not support the statement regarding Ms. McGeehan's approval.

224. Texas does not dispute the factual statements in this paragraph.

225. Texas does not dispute the factual statements in this paragraph.

226. The factual statements in this paragraph are not supported by the cited source. The authority for the stated proposition is not supported by admissible evidence because it is based on hearsay. Exhibit 3, a report by Dr. Henry Flores, is not admissible to prove the truth of the matters asserted therein, and the statement lacks foundation. Fed. R. Evid. 802.

227. The factual statements in this paragraph are not supported by the cited source and Texas disputes the characterization of Representatives Brown's statement.

228. Texas does not dispute the factual statements in this paragraph.

229. The factual statements in this paragraph are not supported by the cited source. The authority for the stated proposition is not supported by admissible evidence because it is based on hearsay. Exhibit 3, a report by Dr. Henry Flores, is not admissible to prove the truth of the matters asserted therein, and the statement lacks foundation. Fed. R. Evid. 802.

230. Texas does not dispute that the first sentence in this paragraph accurately quotes Exhibit 27, which appears to be a page from IRCOT's website. The remaining statements in this paragraph indicating that IRCOT has been sponsored by members of the Texas Legislature are unsupported by any cited authority. The statement appears to be taken from Dr. Flores' report, Exhibit 3, and he cites no support for the vague general assertion that "IRCOT has been sponsored by members of the Texas Legislature to speak on the steps of the Capitol Building."

231. Texas does not dispute that the first sentence in this paragraph accurately quotes Exhibit 26, which appears to be an article from IRCOT's website. Texas does not dispute that the article accurately states: "once a Mexican national (or other immigrant) becomes a legal, voting resident he comes to have his fair, democratic say in the process. . . . [I]f that new voter has illegal immigrant family members, he comes to the polls with a built in prejudice against U.S. sovereignty and border control." However, the statements describing the voting patterns of Latino citizens as a "problem" and the views of Latino

voters as "alarming" is potentially misleading as they selectively omit the context in which these quoted portions are made in the exhibit.

232. The factual statements in the first sentence of this paragraph are not supported by the cited portion of the record. Texas does not dispute that IRCOT testified in favor of S.B. 362 in 2009, but the remaining factual statements in the second sentence of this paragraph are not supported by the cited authority.

233. The factual statements in this paragraph are not supported by the cited testimony.

234. This proposed finding is not supported by the cited authority and mischaracterizes the purpose of Representative Harper-Brown's bill. The quoted statement, which is taken from an article in the *Dallas Morning News*, is inadmissible to prove either the truth of the matter asserted or to prove that Representative Harper-Brown made the statement. Fed. R. Evid. 802.

235. This proposed finding is not supported by the cited authority and mischaracterizes the purpose of Representative Harper-Brown's bill. The quoted statement, which is taken from an article in the *Dallas Morning News*, is inadmissible to prove either the truth of the matter asserted or to prove that Representative Harper-Brown made the statement. Fed. R. Evid. 802.

236. This proposed finding mischaracterizes the purpose of Representative Berman's bill. The proposed finding regarding Representative Berman's bill is also not supported by the cited authority as there is nothing in Exhibit 3 to verify the accuracy of the finding. Likewise, the proposed finding mischaracterizes the nature of House Joint Resolution 32. House Joint Resolution 32 proposed a constitutional amendment to establish English as

the official language of Texas. *See* http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=HJR32. The proposed finding regarding the joint resolution is also not supported by the cited authority as there is nothing in Exhibit 3 to verify the accuracy of the finding. The cited authority is also inadmissible hearsay and cannot be used to prove the truth of the matter asserted or that Representative Bonnen made the statement. Fed. R. Evid. 802.

237. This proposed finding mischaracterizes the purpose of Representative Riddle's bill. The proposed finding is also not supported by the cited authority as there is nothing in Exhibit 3 to verify the accuracy of the finding.

238. This proposed finding is not supported by the cited authority. The quoted statement, which is taken from National Public Radio's website, is inadmissible to prove either the truth of the matter asserted or to prove that Representative Berman made the statement. Fed. R. Evid. 802.

239. This proposed finding is not supported by the cited authority. The quoted statement, which is taken from National Public Radio's website, is inadmissible to prove either the truth of the matter asserted or to prove that Representative Pena made the statement. Fed. R. Evid. 802.

240. This proposed finding is not supported by the cited authority. Additionally, the proposed finding is speculative and conclusory. The cited authority is inadmissible hearsay and cannot be used to prove the truth of the matter asserted. Fed. R. Evid. 802.

241. This proposed finding is not supported by the cited authority. Texas does not dispute the exhibits referred to in this finding reflect communications public officials received from constituents regarding the voter ID legislation.

242. This proposed finding is not supported by the cited authority. Texas does not dispute the exhibits referenced to in this finding reflect communications public officials sent to constituents regarding the voter ID legislation, but objects to the characterization of these communications as described in the proposed finding.

243. This proposed finding is not supported by the cited authority. Texas does not dispute the exhibits referenced to in this finding reflect communications public officials sent to constituents regarding the voter ID legislation, but objects to the characterization of these communications as described in the proposed finding.

244. This proposed finding is not supported by the cited authority. The cited authority is also inadmissible hearsay and cannot be used to prove the truth of the matter asserted. Fed. R. Evid. 802.

245. This proposed finding is not supported by authority in Defendant-Intervenors' Appendix or trial exhibits. Texas does not dispute the statements describing information contained on Lieutenant Governor Dewhurst's campaign website.

246. The authority for the stated proposition is not supported by admissible evidence because it is based on hearsay and cannot be used to prove either the truth of the matter asserted or to prove that Lieutenant Governor Dewhurst made the statement. Fed. R. Evid. 802.

247. The proposed finding is misleading, mischaracterizes Representative Riddle's testimony, and is not supported by the cited authority.

248. This proposed finding is not supported by the cited authority. The quoted statement is inadmissible hearsay and cannot be used to prove the truth of the matter asserted. Fed. R. Evid. 802.

249. This proposed finding is not supported by the cited authority. The quoted statement is inadmissible to prove either the truth of the matter asserted or to prove that Senator Duncan made the statement. Fed. R. Evid. 802.

250. This proposed finding is not supported by the cited authority. The quoted statement, which is taken from an article in the *Texas Tribune*, is inadmissible to prove either the truth of the matter asserted or to prove that Lieutenant Governor Dewhurst made the statement. Fed. R. Evid. 802.

251. This proposed finding is not supported by the cited authority. The quoted statement is inadmissible to prove either the truth of the matter asserted or to prove that Representative Brown made the statement. Fed. R. Evid. 802.

252. This proposed finding is not supported by the cited authority. The quoted statement is inadmissible hearsay and cannot be used to prove the truth of the matter asserted. Fed. R. Evid. 802.

253. This proposed finding is not supported by the cited authority. The quoted statement is inadmissible hearsay and cannot be used to prove the truth of the matter asserted. Fed. R. Evid. 802.

254. This proposed finding is not supported by the cited authority. The quoted statement is inadmissible to prove either the truth of the matter asserted or to prove that Representative King made the statement. Fed. R. Evid. 802.

255. This proposed finding is not supported by the cited authority. The quoted statement is inadmissible hearsay and cannot be used to prove the truth of the matter asserted. Fed. R. Evid. 802.

256. This proposed finding is not supported by the cited authority as there is nothing within Exhibit 3 to verify the accuracy of the finding. The cited authority is also inadmissible hearsay and cannot be used to prove the truth of the matter asserted or that Representative Bonnen made the statement. Fed. R. Evid. 802.

257. This proposed finding is not supported by the cited authority.

258. This proposed finding is not supported by the cited authority. The cited portion of Representative Smith's testimony only reflects that he is unaware whether a legal permanent resident could get a concealed handgun license. *See* Smith Dep. 188:16-189:7 (TA 2503). The cited authority is also inadmissible hearsay and cannot be used to prove the truth of the matter asserted or that Representative Smith made the statement. Fed. R. Evid. 802.

259. This proposed finding is not supported by the cited authority as there is nothing within Exhibit 3 to verify the accuracy of the finding. The proposed finding is also not supported by any evidence in the record and is speculative and conclusory.

260. This proposed finding mischaracterizes the cited authority and Senator Fraser's assertion of legislative privilege. This proposed finding requires an impermissible

adverse inference to be drawn against Texas for the proper invocation of legislative privilege. *See* Plaintiff's Motion in Limine to Preclude Evidence, Argument, and Testimony Suggesting an Adverse Inference Based on Texas Legislators' Assertion of Legislative Privilege (Doc. 195) and Memorandum in Support (Doc. 195.1).

261. This proposed finding is not supported by the cited authority as there is nothing within Exhibit 3 to verify the accuracy of the finding. The proposed finding is also not supported by any evidence in the record and is speculative and conclusory. The cited authority is also inadmissible hearsay and cannot be used to prove the truth of the matter asserted. Fed. R. Evid. 802.

262. This proposed finding is misleading and mischaracterizes the nature of Representative Harless' remarks. Representative Harless' statement regarding "a federal issue to be decided by the federal courts" was made in response to a question whether she believed that the Voting Rights Act is still necessary. JA 002118.

263. This proposed finding is not supported by the cited authority as there is nothing in Exhibit 3 to verify the accuracy of the finding. The proposed finding is also not supported by any evidence in the record and is speculative and conclusory. The cited authority is also inadmissible hearsay and cannot be used to prove the truth of the matter asserted. Fed. R. Evid. 802.

264. This proposed finding is not supported by the cited authority as there is nothing in Exhibit 3 to verify the accuracy of the finding. The proposed finding is also not supported by any evidence in the record and is speculative and conclusory. The cited

authority is also inadmissible hearsay and cannot be used to prove the truth of the matter asserted. Fed. R. Evid. 802.

265. This statement is not supported by any evidence in the record and is speculative and conclusory. The cited authority is also inadmissible hearsay and cannot be used to prove the truth of the matter asserted. Fed. R. Evid. 802.

266. This proposed finding is not supported by the cited authority. The quoted statements are inadmissible to prove either the truth of the matter asserted or that Senator Harris made such a statement. Fed. R. Evid. 802.

<u>REPLY IN SUPPORT OF PROPOSED FINDINGS OF FACT</u>

337. Texas hereby incorporates its Proposed Findings of Fact, its Opposition to the Attorney General's Proposed Additional Findings of Fact, and its Reply in Support of Proposed Findings of Fact.

338. Defendant-Intervenors have not identified any eligible Texas voter who is not eligible to vote by mail, who lacks the identification required by S.B. 14, and who cannot obtain such identification. Their proposed findings do not contradict the State's proposed finding to that effect. *See*, *e.g.*, Proposed Finding of Fact ¶ 16.

339. Intervenors' proposed finding regarding Mr. Galuan is unsupported by admissible evidence because Mr. Galuan's declaration (DIA 000152) is inadmissible hearsay if admitted to prove that he lacks identification. Fed. R. Evid. 802. In any event, Mr. Galuan's declaration indicates that he holds a current United States passport. Under the statement, "I do not have any of the following forms of identification," Mr. Galuan

circled every form of identification listed except for "A current United States Passport." *See* DIA 000152.

340. Defendant-Intervenors' failure to identify eligible Texas voters who cannot obtain the identification required by S.B. 14 is especially significant in light of the concerted effort by opponents of S.B. 14 to identify individuals with standing to challenge the law. MALDEF, counsel for the Rodriguez Intervenors, distributed a questionnaire seeking to "identify individuals that may be affected by a new law requiring strict photo ID requirements to vote at the polls." TA 002648. The questionnaire asked for name and contact information and included boxes for individuals to check to indicate whether they were registered to vote and whether they possessed any of the forms of ID required by S.B. 14. *Id.* The form indicates that a MALDEF representative will contact any affected individual. *Id.*

341. Defendant-Intervenors Mexican American Legislative Caucus, Texas House of Representatives (MALC) and Texas Legislative Black Caucus (TLBC) have not identified any member who lacks the photo ID required by S.B. 14. *See* Response to Proposed Findings of Fact ¶¶ 2, 4, 10–15; TA 002678.

342. Defendant-Intervenors do not dispute that two of the individuals identified as lacking photo identification are eligible to vote by mail. *See* Response to Findings of Fact ¶¶ 3, 5. This fact is relevant because it undermines any claim of injury from the implementation of S.B. 14. Any individual who is eligible to vote by mail will not have her right to vote denied or abridged by a law that requires photo ID to vote in-person.

343. Defendant-Intervenors' proposed findings of fact regarding Intervenor Anna Burns do not rebut the evidence that she will not be prevented from voting by S.B. 14's requirement of photo ID to vote in-person. Speculation that someone might not consider the names on her drivers' license and voter registration certificate to be substantially similar does not support the inference that she will be harmed by S.B. 14, particularly when there is no evidence that the discrepancy cannot be cured in time to vote.

344. Defendant-Intervenors' proposed findings of fact regarding Intervenor Eric Kennie establish that S.B. 14 will affect him, if at all, on account of indigency, not on account of race, color, or membership in a language minority group. Intervenors cannot avoid Mr. Kennie's concessions by blaming the State for "imprecise questioning." *See* Proposed Findings of Fact ¶ 11.

345. Intervenors do not contest the finding that Imani Clark is domiciled in California. This finding is sufficient to prove that Ms. Clark will not be prevented from voting by S.B. 14's requirement of photo ID.

346. Intervenors do not contest the finding that Ki'Essence Culbreath is domiciled in Arkansas. This finding is sufficient to prove that Ms. Culbreath will not be prevented from voting by S.B. 14's requirement of photo ID.

347. Intervenors do not cite any evidence to support their contention that Intervenor DeMariano Hill cannot obtain a copy of his birth certificate.

348. Intervenors do not cite any evidence to support their contention that Intervenor Dominique Monday cannot obtain a copy of his birth certificate.

349. Intervenors have not provided any evidence to rebut the evidence that S.B. 14's alleged adverse effects will fall on voters because of indigency, not on account of race, color, or membership in a language minority group.

350. Intervenors do not dispute their concession that at least some in-person voter fraud occurs in Texas. *See* Proposed Findings of Fact ¶ 23. The allegation that supporters of voter ID bills did not present evidence of voter impersonation fraud that would be prevented by a photo ID requirement during the Legislature's consideration of S.B. 14 is inaccurate and irrelevant. The Texas Legislature heard testimony by members of the public who had witnessed in-person voter fraud. JA 000184 (Testimony of Carol Kitson). Members of the public also testified to the potential for voter fraud under a system that allows voters to vote by presenting a voter registration certificate. See JA 1541–42 (Testimony of Colleen Vera) (testifying that she had witnessed voters appearing at the polling place with multiple voter registration certificates).

351. Intervenors' proposed findings regarding the purpose of S.B. 14 are unsupported, speculative, and inadmissible. None of the witnesses identified by Intervenors have personal knowledge of the purpose behind S.B. 14, and none provided any basis for their opinion that S.B. 14 was enacted with a discriminatory purpose. *See, e.g.*, Proposed Findings of Fact ¶¶ 17, 24. SWVREP's designated witness, for example, testified on behalf of the organization that every member of the Legislature who voted for S.B. 14 did so for the purpose of discriminating against minority voters. Camarillo Depo. 57:22–58:10 (TA 1091-92). SWVREP could not provide specific evidence to support its belief, however. Camarillo Depo. 33:2–14 (TA 1087).

352. Intervenors concede that Texas domicile is a necessary condition of eligibility to vote in Texas. Proposed Finding of Fact ¶ 25. To the extent individual parties have admitted that they are not Texas domiciliaries, they have conceded that they are ineligible to vote in Texas. Accordingly, S.B. 14 could not prevent them from voting. The exclusion of college identification from the list of acceptable IDs under S.B. 14 is logically related to the State's interest in preventing non-domiciliaries from voting because it is reasonable to infer that individuals likely to rely on a college identification to vote—that is, college students without Texas-issued identification—are likely not to be Texas domiciliaries.

353. The procedures used to pass SB 14 are consistent with the rules of the Texas Legislature and do not indicate that the bill was passed with the purpose of denying or abridging any person's right to vote.

354. The legislative record demonstrates that the Senate had reached a partisan impasse on the subject of voter identification. Democratic members were united against any voter identification bill in 2007, 2009, and 2011. Republican members were united in favor. That the Republican majority in the Senate took measures to ensure that the Democratic minority would not block passage of voter identification bills clearly establishes an intent to pass voter ID legislation.

355. The committee of the whole is a common parliamentary mechanism. It is not unique to the Texas Senate. K. Davis Depo. 261:19–262:3 (TA 2340-2341.)

356. The Senate typically uses the Committee of the Whole to consider legislation that it believes should be considered by all members. K. Davis Depo. 19:14–20:1 (TA 2315-2316).

356. In a Committee of the Whole, traditional rules of procedure that govern debate in the full Senate—such as the rule that a member may not speak a second time until all members have had a chance to speak once—do not apply. K. Davis Depo. 18:7–19:1 (TA 2314-2315). And all members have equal rights to propose amendments, question witnesses, and participate in debate. K. Davis Depo. 21:4–15 (TA 2314-2315).

357. When the committee of the whole is convened, other Senate committees cannot meet. K. Davis Depo. 261:14–18 (TA 2340).

358. The Rules of the Texas Senate do not require a two-thirds vote to pass a bill. K. Davis Depo. 252:24–253:2, 15–18 (TA 2333-2334). When a bill is considered out of order based on a two-thirds vote, passage of the bill requires only a majority of members present and voting. K. Davis Depo. 255:6–10 (TA 2336).

359. The Senate's custom of moving bills by suspending the regular order of business depends on the presence of a "blocker bill" at the top of the regular order of business. A blocker bill is, in essence, a bill that sits at the top of the regular order of business, thereby preventing the consideration of any other bills until it is considered and disposed of. K. Davis Depo. 255:11–256:3 (TA 2336-2337). The Senate Rules do not provide for a blocker bill, nor do they require the use of blocker bills. K. Davis Depo. 256:9–13 (TA 2337).

360. In some instances, a bill can pass the Senate without requiring a two-thirds vote for consideration even if a blocker bill is in place. On House Bill days, the order of business is reversed to give priority to House Bills. As a result, the Senate blocker bill would not require suspension of the regular order of business to consider a House bill. K. Davis Depo. 256:25–257:11 (TA 2337-2338). Further, after a bill passes the Senate, it can be amended in the House to add an entire stand-alone bill. This common legislative strategy effectively circumvents the two-thirds procedure because when the amended Senate Bill is returned to the Senate for consideration, a two-thirds vote is not required to take up the bill. K. Davis Depo. 258:7–23 (TA 2339); Anchia Depo. 121:17–122:12 (TA 2219-2220).

361. The Senate's custom of using a two-thirds vote is not intended to provide a political minority with the power to block legislation. K. Davis Depo. 267:10–13, 17–18 (TA 2345).

362. The Senate has chosen to proceed without requiring a two-thirds vote when the requirement will not yield further results. K. Davis Depo. 266:10–267:9 (TA 2344-2345). Indeed, this was the rationale for adopting a rule to consider voter identification bills by majority vote in 2009. *See* TA 001404 (Statement of Sen. Williams) ("[N]o one favors voter fraud. And yet, we continue to have a partisan divide on this issue. It seems intractable.").

363. Passing a bill without requiring a two-thirds vote to bring it to the floor is consistent with, not contrary to, the Senate Rules. K. Davis Depo. 268:4–10 (TA 2346). The Senate's passage of SB 14 without requiring a two-thirds vote to bring the bill to the floor

did not violate any rules. It followed Senate rules and procedures. K. Davis Depo. 268:11–269:5 (TA 2346-2347).

364. The regular order of business in the Senate is determined by the order in which bills are reported out of committee. In 2011, SB 14 was the first bill to be reported out of committee, K. Davis Depo. 131:11–14 (TA 2328), and therefore first in the regular order of business. *Id.* 251:13–17 (TA 2332). Accordingly, SB 14 could have been considered by the Senate without a vote of two-thirds of members present and voting.

365. Whether a bill is considered in the regular order of business, out of order by suspension of the regular order of business, or by special order, passage requires a majority vote by members present and voting. K. Davis Depo. 254:12–17; 255:6–10 (TA 2335-2335).

366. SB 14 was referred to the Select Committee on Voter Identification and Voter Fraud. The Select Committee permitted all House members to participate in committee hearings on SB 14. Anchia Depo. 103:4–104:6, (TA 2217-2218)

367. The conference committee report on SB 14 was adopted in the Texas House by a vote of 98 to 46. JA 003091–92. With the exception of two Democratic Representatives who voted in favor, the vote was split along party lines.

368. The Legislature clearly took measures to ensure that it could pass a voter identification bill. The fact that proponents of the bill attempted to pass it quickly does not demonstrate discriminatory purpose. The desire to get legislation passed quickly is not unusual, as opponents of the bill attested. Anchia Depo. 78:2-13, (TA 2217-2218) If

a bill is slowed down in the legislative process, it may not be enacted. Anchia Depo. 78:11–13, (TA 2215) particularly in a legislature that only meets for 140 days.

369. To the extent the Legislature's consideration of SB 14 departed from the typical legislative process, there is no evidence of any rule violation.

370. Without any evidence in the record that SB 14 was enacted with a discriminatory purpose, the use of established parliamentary procedures to ensure its passage does not support the inference that the bill was motivated, even in part, by a discriminatory purpose.

REPLY IN SUPPORT OF CONCLUSIONS OF LAW

Texas hereby incorporates its Proposed Conclusions of Law relating to the United States, its Proposed Conclusions of Law relating to the Defendant Intervenors, and its Reply in Support of Proposed Conclusions of Law relating to the United States.

Intervenors MALC, TLBC, the League of Women Voters of Texas have not established standing under Article III because they have not provided evidence that any of their members will be injured by the implementation of S.B. 14. These organizations bear the burden of demonstrating an injury in fact. *See Bennett v. Spear*, 520 U.S. 154, 162 (1997). The State's specific challenge to these intervenors' standing does not constitute an admission that any other intervenor has standing. To the contrary, none of the intervenors have established Article III standing because none have provided evidence that they or their members will be injured by S.B. 14.

The allegation that S.B. 14 "would have a disenfranchising impact on minority voters," *see* Proposed Conclusions of Law (Doc. 240) ¶ 35, does not prove that MALC or

TLBC will suffer a legally cognizable injury if S.B. 14 goes into effect because their membership does not comprise "minority voters." MALC and TLBC's membership consists exclusively of elected members of the Texas Legislature. Neither contends that any of their members lack the identification required by S.B. 14. Any injury suffered by non-member voters is not germane to the purpose of either organization and therefore does not constitute a legally cognizable injury. *See Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977). Neither group has established that it is in imminent danger of harm by S.B. 14, and neither has been granted intervention as of right in this case. Accordingly, they are not excused from meeting Article III's standing requirement. *Cf. Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) (holding that the United States had standing as a defendant-intervenor because it had shown the imminent injury necessary for intervention as of right under Rule 24(a)).

CONCLUSION

S.B. 14 neither has the purpose, nor will have the effect, or denying or abridging the right to vote on account of race or color, or because of membership in a language minority group. Texas is entitled to prompt preclearance of S.B. 14.

Dated: July 1, 2012

Respectfully submitted.

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