UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,	)	CASE NO: 2:13-CV-00193
	)	
Plaintiffs,	)	CIVIL
	)	
vs.	)	Corpus Christi, Texas
	)	
RICK PERRY, ET AL.,	)	Monday, September 22, 2014
	)	(8:28 a.m. to 10:14 a.m.)
Defendants.	)	(10:30 a.m. to 12:12 p.m.)

BENCH TRIAL - DAY 9
(CLOSING ARGUMENTS)

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
Court Recorder:	Genay Rogan
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Corpus Christi, Texas; Monday, September 22, 2014; 8:28 a.m.

(Call to Order)

THE COURT: Good morning.

(Counsel greet the Court)

THE COURT: You can have a seat.

Court calls Cause Number 213-CV-193, *Veasey, et al. versus Perry, et al.* I'm having sinus/allergy issues this morning, so it's affecting my hearing a little bit. You-all may need to speak up.

The Plaintiffs will announce?

MR. DUNN: Good morning, your Honor. Chad Dunn on behalf of the Veasey/LULAC Plaintiffs. Joined with me at counsel table is Gerry Hebert, Armand Derfner. And we'll be presenting on behalf of the Veasey/LULAC Plaintiffs. Good morning.

THE COURT: Okay.

MR. ROSENBERG: Good morning, your Honor.

THE COURT: Good morning.

MR. ROSENBERG: Ezra Rosenberg from Dechert on behalf of the Texas State Conference of NAACP Branches and MALC. And joining me at counsel table is Mark Posner from the Lawyers' Committee for Civil Rights, Myrna Perez from the Brennan Center, and I think that's it for now.

THE COURT: All right.

MR. DELLHEIM: Good morning, your Honor.

THE COURT: Good morning.

MR. DELLHEIM: Richard Dellheim for the United States. With me at counsel table is Meredith Bell-Platts, Elizabeth Westfall, Anna Baldwin -- excuse me -- and Dan Freeman.

THE COURT: Okay.

MR. DELLHEIM: Thank you.

THE COURT: Good morning.

MR. HAYGOOD: Good morning, your Honor. Ryan Haygood for the Texas League of Young Voters Education Fund. I'm joined by a host of my colleagues, including Danielle Conley, and Kelly Dunbar, Tania Faransso from Wilmer Hale, along with my LDEF colleagues, Natasha Korgaonkar, Leah Aden, and Deuel Ross.

THE COURT: Thank you.

MS. VAN DALEN: Good morning, your Honor.

THE COURT: Good morning.

MS. VAN DALEN: Marinda Van Dalen, Texas Rio Grande Legal Aid, representing the Ortiz Plaintiffs. With me in the courtroom is my colleague, Robert Doggett.

THE COURT: Okay. Is that all on the Plaintiffs? All right.

MR. DUNN: For common interest?

MR. SCOTT: Yeah, John Scott on behalf of the State Defendants. They -- Adam Ashton from our office, who's sat

through trial, will be doing the closing on our behalf.

THE COURT: Okay.

MR. DUNN: Your Honor, if I could take up a point of privilege here. We had perhaps been a little too aggressive by limiting ourselves to two hours. And if the Court would permit it, we'd like to go just a few minutes longer. I'll be the one that's last, so I'll take the punishment for it. But is that acceptable?

THE COURT: Fine with the Court, a few minutes over.

MR. SCOTT: We're going to be shorter, so we'll, we'll give him some time.

MR. DUNN: Thank you. And we may also do some rebuttal. A few of us may do that. We'll keep it to just a handful of minutes apiece.

THE COURT: Okay. There's a couple of matters that -- pending matters that, I guess, we need to address. On the last day of trial, I think the Defendants had filed the opposed request for judicial notice of the criminal complaint. I heard a little bit of argument on that, but I don't think that I actually ruled. I was going to review it.

And so, the Court will grant that; take judicial notice of the complaints only, not whether what is set forth through the contents of the affidavits, whether that is true or not.

Then there's been some pleadings filed since you-all

were here last or some objections by the Plaintiffs to some exhibits. Then on Saturday there was an amended report by Dr. Hood. So I'm just not sure where we, we are on that.

MR. FREEMAN: Your Honor, it's my understanding that the issues with regard to documents may have been resolved amongst the parties. It's my understanding, I believe, that there's only one outstanding exhibit at this point.

THE COURT: Okay. But let me ask, what was the agreement on Dr. Hood? What, what was filed? Does it change --

MR. SCOTT: There was an amended report, yet another one, where the last file, your Honor, is the report for the Court's consideration. That was the revision that addressed Dr. Ansolabehere's report that was filed the previous week.

THE COURT: Okay.

MR. SCOTT: Right. And to be clear, the penultimate report, the report that was filed on Thursday by Dr. Hood, is withdrawn. That's correct. And --

THE COURT: Okay. So what was filed on Thursday by the Defendants regarding Dr. Hood is not to be addressed by the Court, it's this Saturday --

MR. SCOTT: Yes, ma'am.

THE COURT: -- report --

MR. SCOTT: Yes, ma'am.

THE COURT: -- that was filed. That -- was that

included with your findings, what was set forth in that Saturday report?

MR. ROSENBERG: There is --

THE COURT: I haven't looked at the details to know exactly what the changes were.

MR. ROSENBERG: There is one reference, I believe, in Paragraph 104 of the State's findings of fact to the report that has been withdrawn.

MR. CLAY: Is it -- is it a --

MR. ROSENBERG: It's a quote -- it's a quote from it from Page 6 or 7 of, of the report.

MR. CLAY: From the part that we struck?

MR. ROSENBERG: Yes.

MR. CLAY: Okay. Well --

MR. ROSENBERG: Yeah.

THE COURT: Okay.

MR. CLAY: We're happy to file an amended one that --

THE COURT: You don't need to do that.

MR. CLAY: Okay.

THE COURT: I just thought we'd clear it up right now --

MR. CLAY: Sure.

THE COURT: -- so that it would take me longer than for you-all to just get to the point and let me know.

MR. DUNBAR: And, your Honor, Kelly Dunbar for the

Texas League of Young Voters. I just wanted to make clear for the record, we filed a third amended expert report of Dr. Coleman Bazelon last night per agreement with the Defendants. It was basically so that the report that we filed -- the amended report that we filed on Wednesday can be withdrawn, or the Court should be looking at what we filed last night with respect to Dr. Bazelon.

THE COURT: What does that do?

MR. DUNBAR: I'm sorry?

THE COURT: What does that amended report do?

MR. DUNBAR: What does it --

THE COURT: Well, does it change anything?

MR. DUNBAR: Oh, I'm sorry.

THE COURT: Your findings or …

MR. DUNBAR: No. There is a disagreement just about which figures we should have been using, in terms of revising the numbers and the -- we reached an agreement with the State on how to deal with that. And the report we filed last night should be the one that the Court uses.

THE COURT: Does it change your proposed findings that you submitted?

MR. DUNBAR: There may be one place where we need, need to make a tweak. We were going to take a look at that and, with your Honor's permission, file an errata or correction on that.

THE COURT: What -- I think this is the deal, at this point, I don't want a lot -- a lot of filings to occur, even if they're agreed to, because at some point I need to know where we are so that I can move forward. And even if you-all agree to certain things to be filed, it -- it's just not efficient for the Court.

So, is there an anticipation that more pleadings are going to be filed? And if so, what? And is it necessary what you filed already, I mean, to need to connect it? So where are we on that?

MR. ROSENBERG: Your Honor, if I may make a suggestion, in terms of this last issue, it might be easier because I think what Mr. Dunbar is talking about is perhaps one or two numbers being changed that aren't big, if you were just to file an errata file instead of a whole big --

THE COURT: Okay. When?

MR. ROSENBERG: -- document and perhaps the State can do the same thing on, on the other issue, and that might ease the burden on your Honor.

THE COURT: On Dr. Hood for the State?

MR. CLAY: Absolutely.

THE COURT: And then when will the Court have that?

MR. ROSENBERG: That can be done within 24 hours, I think.

THE COURT: Okay. Any other anticipated filings?

MR. ROSENBERG: No, your Honor.

MR. CLAY: Nothing from us, your Honor.

THE COURT: Okay. And at this point you do not file anything unless you seek leave from the Court, even if it's agreed to. Okay?

MR. CLAY: Thank you.

THE COURT: What -- anything else before we go --

MR. ROSENBERG: I think just to be clear, Ms. Wolf's going to be addressing, I guess, a few exhibit issues, but I think at this point all, I've forgotten what number the parties are, in terms of supplemental exhibit lists, but all of those are now admitted pursuant to all of our agreements, except for anything else that you're going to be addressing right now; is that correct?

MS. WOLF: Yes, your Honor. There, there may be a chance we need to amend a list based on how your Honor rules today, and also based on something I just told Mr. Freeman about five minutes ago, but it's only going to be one exhibit list and it will be with respect to one exhibit and however your Honor rules today.

THE COURT: Okay. So which are the exhibits that are still left to be addressed?

MS. WOLF: The first, if I can address, Defendants' 456 was an exhibit that we had discussed before we left, and that was the exhibit from Ms. Guidry's file. And I've come to

an agreement with Mr. Hebert. We've submitted certain pages that the Defendants wanted to submit, and we added some pages that the Plaintiffs asked to submit, and we've agreed that those pages are not being submitted for the truth of the matters contained therein, but the revised version of Defendants' 456 that your Honor received on the drives that were submitted last week, that's the final exhibit.

THE COURT: Okay. And that's agreed to, correct?

MR. HEBERT: Yes, your Honor. That is agreed to. Gerry Hebert for the LULAC/Veasey claim.

THE COURT: Okay.

MS. WOLF: So the remaining exhibit issue is with respect to something that was added last week, and actually which we sought to amend yesterday as well, which is Defendants' 2756. And what that is, your Honor, is a list of the currently available EIC mobile stations for 2014. And the reason the Defendants submitted -- would like to include the most recent version of that list is because, as Mr. Ingram testified, it -- we're in election season and that list is currently being added to and being negotiated as well. And he testified specifically, I believe, that they were trying to schedule EIC mobile stations between a certain date in September and, I believe, it was October 15th.

And so, so that your Honor has a complete picture of where we are with the EIC mobile stations as of this date, we'd

ask that DEF 2756, which is the list as of yesterday afternoon, be admitted into evidence.

THE COURT: Okay.

MR. FREEMAN: And, your Honor, the United States' concern is principally to find out when the close of evidence would really occur, because this was a --

THE COURT: Right now.

MR. FREEMAN: -- document that had been created --

THE COURT: That's it.

MR. FREEMAN: -- after trial. And with your Honor's earlier ruling, I think that largely resolves our concern. This is a document that was created after trial, but so long as we can say that the box is closing, I think that we can live with it.

THE COURT: All right. So then that's admitted.

(**Defendants' Exhibit Number 2756 was received in evidence)**

MS. WOLF: Thank you, your Honor.

THE COURT: Any other exhibits or anything else to address, to finalize?

MR. SCOTT: Well -- and -- this is, I guess, both addresses Hood's last report and Bazelon's last report, to make sure, and I'm assuming the rest of the reports that were filed last week, to make sure that they're all part of the exhibit list as well, is that something we're doing by agreement? Is that the -- whatever the last number --

MR. SPEAKER: We put Farr onto our exhibit list as a revised of the same exhibit number.

MR. SCOTT: Is that what --

MS. WOLF: Dr. Hood's report is on our list, so we're going to need to sub out the revised Hood report, but we'll use the same exhibit number. So we'll provide the Court with a final list within 24 hours of what we're subbing out.

MS. CONLEY: And we'll do the same for Dr. Bazelon's report.

THE COURT: All right. So those are the only matters pending then, correct?

MR. SCOTT: Yes.

THE COURT: And, and nothing more. Closing arguments. No more evidence. No more filings.

Okay. I say we go for about an hour and a half, take a break, short break, and then we'll do the remainder of the argument, or thereabouts? So we can proceed.

Good morning.

CLOSING ARGUMENT ON BEHALF OF THE UNITED STATES

BY MR. DELLHEIM: Good morning, your Honor. Richard Dellheim on behalf of the United States.

I will address the United States' claims under the results standard of Section 2. My colleague, Mr. Rosenberg, will address the discrimination purpose standard under Section 2.

Your Honor, what is most striking about this case is not that it presents novel issues uncontemplated by the Congress and the President who passed the Voting Rights Act, what is perhaps so striking about this case is how easily it fits within the line of cases over the years in which Texas courts have confronted and stopped discriminatory voting laws.

The Court has heard much about how SB 14 was a solution in search of a problem; and that, of course, is true. But the evidence, and much of it undisputed, shows that SB 14 is a serious problem in search of a solution. The problem is that it violates the Voting Rights Act. And the solution is that SB 14 should be enjoined.

The Court, of course, is well familiar with the Section 2 standards, and I won't belabor them here. In short, SB 14 denies or abridges the right to vote on the count of race, if its ID. requirements interact with the totality of the political, social, and historical conditions in Texas, so as to result in African Americans and Hispanic voters having less opportunity than the State's Anglo voters to cast an in-person ballot that counts.

And we know from the Operation Push case from the 5th Circuit that the Court is to engage in a two-part inquiry: first, is whether there's a disparate impact; and second, if a disparate impact is established, then the Court assesses the totality of the circumstances.

With respect to disparate impact, your Honor, the Court has heard abundant, consistent, and essentially, unrefuted evidence of the disparate racial and ethnic impact of SB 14. The Court heard from Dr. Stephen Ansolabehere, a distinguished professor of government at Harvard University. Dr. Ansolabehere, through painstakingly careful analysis determined that over 608,000 Texas registered voters lacked SB 14 ID. And among those voters without ID., there are stark and undeniable racial disparities.

Dr. Ansolabehere used four different well-established methodologies to reach his determinations. Each one on why persistent and statistically significant gaps in ID. possession rates by minority voters in Texas versus Anglo voters.

First, Dr. Ansolabehere used ecological regression, and that is the method, as the Court may recall, that Dr. Hood, Texas expert, said was, quote, “The most prevalent type of analysis used in the social sciences.” This long-accepted methodology using census race data estimates that African American voters lack ID. at a rate of four times that of Anglo voters. Hispanic voters are impacted at a rate nearly three times as high.

The second methodology Dr. Ansolabehere used to form his analysis was homogeneous precinct analysis, and it shows the same statistically significant racial disparities. Using this methodology, African American voters are nearly four times

as likely than Anglos to lack SB 14 ID. And, similarly, Hispanic voters are three times as likely not to possess SB 14 ID.

The third methodology used individual race estimates from catalysts. And those results are no different.

The fourth methodology, the Spanish surname analysis, which compared voters that Texas, itself, has flagged in its photo registration database as having a Spanish surname. That analysis confirms the same trends. Voters with Spanish surnames are 41 percent more likely not to possess SB 14 ID.

Your Honor, the bottom line is this, whatever generally accepted methodology is used, however the data are analyzed or sliced or diced, from whatever angle they are appraised, Dr. Ansolabehere's results demonstrate across the board that minority voters possess SB 14 ID. at statistically significant rates that lag far behind Anglos.

Of course, Dr. Ansolabehere did not stop there. The Court can be certain of the evidence of wide racial disparities because of the multiple sensitivity analysis that Dr. Ansolabehere employed. Dr. Ansolabehere specifically showed that racial disparities and ID. possession were not caused or correlated with any possible deadwood on the voter rolls. And the Court may recall the deadwood refers to those in the rolls who may be deceased or may have moved away. Dr. Ansolabehere used multiple methods of -- to identify

potentially out-of-date registrants for people likely to have moved away or passed away. And in every instance, the racial disparities remained.

The Court also heard discussion during trial about voters over 65 and the disabled. The United States and the defense disagree about how to treat those voters. The Defendants believe that voters over 65 or those eligible to apply for disability exemption are unaffected or choose not to be affected by SB 14. We disagree.

Persons over 65 who choose to vote in person have to show ID. just like everybody else. And this Court heard numerous witnesses who were over 65 testify to the fact that they profoundly desire to vote in person for, among other legitimate reasons, that include needing assistance or concerns over -- about mail -- concerns about mail, or just the desire to see the ballot go as far into the process as possible. Those concerns are legitimate, and SB 14's disfranchising affect on those voters is real.

But even if we remove those voters from the no match list, the results are the same. And moreover, your Honor, in fairness, the disability exemption appears to be illusory, at least in practice. Just 18 voters across the State of Texas have successfully applied for that exemption as of January of 2014.

The Court may also recall Dr. Webster's testimony.

Dr. Gerald Webster is the geographer from the University of Wyoming. His analysis showing how these data play out in -- on the ground in Texas is illuminating. He looked at Houston, San Antonio, and Dallas. And his geographic analysis established that predominately minority communities have higher shares of voters who lack SB 14.

And he also showed the opposite. He brought up a slide from Dallas. The top slide shows a color map of those in Dallas who lack SB 14 ID.; those are the heavily shaded areas in the southern portion of Dallas. The second slide shows the Anglo population. The two slides are mirror opposites. Race and ID. are highly correlated and statistically significant in Texas.

In short, your Honor, every last analysis demonstrates the same thing, Black and Hispanic voters in Texas stand to be disenfranchised by SB 14 at much higher statically significant rates than do Anglo voters.

And the Court may ask, what is the contrary evidence? And the answer is none. Defendants have offered virtually no evidence showing that Dr. Ansolabehere's no match list is systematically inflated, racially biased, or simply wrong. Indeed, Defendants' expert, Dr. Hood, did not identify a single error on the no match list, nor did Dr. Hood or Texas' other expert, Dr. Milyo, an economist who did not appear in court. They did not conduct any empirical analysis of the key racial

demographics at the heart of this case.

And importantly, your Honor, Dr. Hood testified he had no criticism whatsoever of Dr. Ansolabehere's ecological regression analyses or his homogeneous precinct analyses. And, of course, he agreed those methods were well established and reliable for estimating race among groups. Nor, of course, did Dr. Hood or Dr. Milyo perform any data matching, any regression analyses, any homogeneous precinct analyses, or Spanish surname analyses of their own.

To be sure, Dr. Hood speculated about potential problems with the data matching process, but he acknowledged on cross examination that his concerns were essentially baseless, given Dr. Ansolabehere's comprehensive methodology.

He also acknowledged that the results of the algorithm that he designed and had run on behalf of the Defendants essentially matched those of Dr. Ansolabehere. He did not choose to share those results in his report, but he testified to them on the stand.

The data and the racial analysis of -- demonstrating SB 14's disparate racial impact is compelling, your Honor, and it is essentially unrebutted. But, of course, the Court's inquiry does not end there. Objective evidence demonstrates that SB 14 imposes unique and onerous burdens that are borne most heavily by minority voters, burdens that go far beyond the ordinary burdens of voting itself. And part of the reason for

that are pervasive and troubling socioeconomic disparities in Texas that exist between African Americans and Hispanic voters and Anglos.

Minorities in Texas suffer significantly in comparison to Anglos with respect to socioeconomic well being. And the reason this is important, as Dr. Hood, in fact, conceded, is that socioeconomic status impacts the ability to bear the institutional cost that a voting system imposes. And it's highly correlated with turnout. The higher the costs, the less likely a voter is to turn out to vote. And in Texas, the main indicators of socioeconomic status by race are disquieting. With respect to poverty, the poverty rate for African Americans is twice that of Anglos. For Hispanics, it's about three times that of what it is for Anglos.

With respect to income, African Americans and Hispanics earn about 60 percent of what Anglos earn. With respect to vehicle access, which is so important in a state as large as Texas, Hispanics lack vehicle access at about twice the rate of Anglos, and for African Americans it's about three times the rate.

With respect to education, African Americans lack a high school degree at a little less than a two to one rate versus Anglos; Hispanics lack a high school degree at a rate of approximately -- it's about five to one.

The practical import is this, your Honor, the fees,

the documentation, the travel requirements, the information costs required to obtain SB 14 ID., including the underlying documentation fall more heavily on minorities in Texas than they do on Anglos, and the pervasive grip of poverty plays a meaningful role here.

The Court heard from Dr. Jane Henrici, a scholar with years of experience studying low income communities in Texas. She testified that low income African Americans and Hispanics who do not already possess SB 14 ID. will be disproportionately burdened in trying to obtain one; and that's because there are compounding and especially severe burdens faced by minorities in Texas trying to meet SB 14 requirements.

They include unreliable incomes, time constraints, pervasive health problems, social isolation, and the stigma associated with poverty. And even if these individuals are able to take time off from work to navigate the system, it is rarely in the form of paid leave. So taking time off from work actually costs them money. And that's before they pay money for ID. or underlying documentation necessary to obtain it.

The Court also heard a lot about the travel burdens. Dr. Webster testified that African Americans and Hispanics in Texas are disproportionately less likely to reside in a household with access to an automobile. And, of course, it makes sense that those who faces the greatest travel burdens are those who lack access to a car. And in Texas, minority-led

households have lower vehicle access rates than Anglo-led households.

And from low vehicle access tracts in Houston and San Antonio and Dallas, respective one-day bus travel time to a DPS office is respectively 66.7 minutes, 36.2 minutes, and 59.7 minutes. These are about five or six times the travel time for those who have a car or access to a car. Accordingly, your Honor, the evidence shows that African Americans and Hispanics in Texas face disproportionate travel burdens trying to obtain ID.

With respect to education, I think it's axiomatic that individuals with lower levels of education face significantly greater difficulties understanding the requirements of and navigating the bureaucratic maze for obtaining underlying necessary documentation to obtain ID.

And the Court heard a lot about the EIC program. And while Texas touts the EIC program as a free alternative to other forms of SB 14 ID., it is, in many respects, and is true in many respects, that free in this case is not really free and the program is, at best, terribly flawed.

The EIC and the burdens of obtaining the EIC make it exceedingly difficult for the very population that needs them, people who by definition don't already have a Texas driver's license or personal ID. card. And the requirements for an EIC are elaborate. But, in short, virtually all voters needing EIC

are required to present three pieces of underlying documentation, including a certified birth certificate. And in every instance, for those who don't already have one, getting a certified birth certificate imposes costs, and the costs can be significant.

A delayed birth certificate, an amended birth certificate, birth certificates ordered on line, birth certificates by mail and out-of-state birth certificates, not to mention out-of-country birth certificates, all cost money. And even the election identification birth certificate is not free, which was a concern even to Dr. Hood. The documentation required to obtain the birth certificates poses an additional substantial impediment to obtaining the birth certificate.

Moreover, the public is simply unaware that the election identification birth certificates even exist. DPS has failed to post notices, failed to post the web site until the day before this trial ended, and failed to implement procedures to inform customers of the EIBC and its availability.

And this is important, your Honor. Voters can apply for an EIBC only in person, which maximizes the burden requirement for every single voter to make at least two trips: first to a local registrar; and then to a location that accepts EIC applications, which in Texas may involve vast distances. And with fewer than 300 locations in the state where one can apply for an EIC, the burdens are maximized. And these are not

the usual burdens of voting.

For those who lack these birth certificates, it imposes punishing costs and requires Texans to make at least two trips. Given the costs, the vast distances involved, the paucity of EIC locations, the burden is far beyond what is usual to vote and, under the circumstances, unsupportable. And this is especially so given Texas' inexplicable rejection of a simpler, less burdensome alternative of a direct connection between the Department of State Health Services and DPS, to verify Texas birth records.

But there is more. The list of supporting documentation for EICs in no way accounts for those who need them. Tony Rodriguez testified to this Court that there was no consideration given to the forms of documentation listed and whether they were appropriate, things like pilot licenses, and boat titles, nor how burdensome it is for many minorities to obtain the necessary documents.

And even worse, DPS has taken a law enforcement approach for the provision of EICs. That's why they originally fingerprinted applicants. Why the regulations still state that fingerprints are required. And perhaps even more troubling is why they've asked that state troopers be present when EIC offices are open for the sole purpose of issuing EICs. It's no wonder there's a public perception, shared even among DPS personnel, that a warrant check will be run on EIC applicants.

DPS has done little outreach, has not sought any paid media or attempted to contact voters directly. And at the end of the day, your Honor, one simple gauge of the burdens of the EIC program are how easily -- and how easily those burdens have been borne is how widespread the program is and the number of EICs issued. On both counts, the evidence appalls. Seventy-eight counties lack a permanent DPS office. In another 46 counties the DPS office is not even open every business day. DPS ordinarily has no weekend hours or evening hours. And as the Court heard, wait times at DPS offices can stretch for many hours.

The 25 mobile units from which EICs can be issued were deployed for just eleven days, and with little or no notice. They yielded just 82 EICs. And the county-based program is even less effective. Multiple counties without a DPS office simply refused to participate. The counties that do participate choose their hours, which can be just a few hours a month. Other counties have never decided on hours. And still many others, not only the hours, but the basic fact of EIC availability has not been publicized at all. Just 32 EICs have been issued from county offices across the State of Texas.

And while DPS has been issuing EICs for more than a year, just 279 EICs have been issued in total. Consider that number with respect to a state like Georgia, a state far smaller, less populated than Texas. Where in half as much time

after photo ID. was first implemented there, they issued nearly 2,200 photo -- voter photo ID. cards that are genuinely free and simple to obtain.

All of this objective evidence, your Honor, together imposes an unsustainable and unjustifiable burden on Texas voters who lack ID., the majority of whom are African American and Hispanic.

I would like to mention briefly the senate factors. And the Court is well aware that that's -- in Section 2 cases courts consider what are called the senate factors as a guide when considering the challenge before them. The senate factors that we believe most pertinent to the vote denial plan or the first senate factor, which is the history of official discrimination in the jurisdiction; the second senate factor, which is the extent of racially polarized voting; and the fifth senate factor, the extent to which socioeconomic disparities hinder minority citizens' ability to participate effectively in the political process.

The senate factor list is not comprehensive nor exclusive, and there's no requirement that any particular factor be proved, or that a majority of them point one way or the other. But with respect to the most pertinent factors, again, the evidence is compelling and virtually undisputed.

With respect to the first factor, it need not be belabored here, but Texas has a lengthy and troubling history

of discriminatory voting practices that were intended to and have the effect of discriminating against minority voters. Some of those practices, including the poll tax, were justified as a means to prevent voter fraud. Dr. Davidson commented on that in his report; Dr. Burton testified to that from the stand.

The White primary, the poll tax, reregistration requirements, decades of discriminating, redistricting, have characterized Texas' history. But there are a few recent events of note, as recently as 2006, the Supreme Court of the United States in *LULAC versus Perry* emphasized the role that Texas' long and well-documented history of discrimination plays in considering the totality of circumstances in a Section 2 case. And in that case, the Supreme Court found that Texas' 2003 redistricting process bore the mark of intentional discrimination against minorities.

The same legislature that adopted SB 14 in 2011 was also found by three federal judges in Washington in a Section 5 proceeding, who have adopted discriminatory redistricting plans for the Texas Congressional delegation, Texas Senate, and Texas House, at least two of which were motivated by discriminatory purpose. And, of course, three federal judges in Washington -- different judges in Washington, also concluded two years ago that Texas could not meet its burden under Section 5 that SB 14 lacked a discriminatory effect.

Texas' history of voting-related discrimination, your Honor, including recent events, is sadly and starkly unfavorable.

With respect to the second factor, racially-polarized voting, Dr. Burden, Dr. Barry Burden testified that the last ten years of statewide general elections have been characterized by pervasive racially-polarized voting.

With respect to the fifth factor, we've talked a little bit about the socioeconomic disparities, but it is said, your Honor, that history has a heavy hand, and that is certainly true in Texas with respect to the present day effects of official discrimination. The stark socioeconomic disparities are a direct link to a much darker past.

Accordingly, minority political participation lags far behind that of Anglos. Dr. Ansolabehere testified that African Americans and Hispanic voters register and turn out for elections at rates that lag far behind Anglo voters. SB 14 is simply another burden being imposed on minority voters in Texas that have yet to achieve equal access to the political process.

And all of these factors put into context, SB 14's genesis, what it is, what it does, where it comes from, and the extraordinary burdens it imposes on minority voters in Texas, some of whom this Court heard from in live testimony.

The Court may recall the testimony of Daniel Guzman. Mr. Guzman is a member of the city council of Edcouch, a small

economically depressed city in Hidalgo County that's over 95 percent Hispanic. He testified that during the November 2013 election he witnessed numerous voters being turned away at the polls simply because they lacked SB 14 ID. He offered to carry some of those voters to the DPS office so that they could get the necessary ID. and cast a vote that counted. Of the roughly 30 to 40 voters he arranged to take to DPS, many simply couldn't get the ID.s because they lacked the necessary documentation.

The Court heard from Kristina Mora, a manager at a Dallas nonprofit that helps homeless people get, among other things, identifying documentation. She testified about the difficulties her clients have in getting documentation that include -- that involve their lack of an educational background, their lack of infrastructure, the lack of access to a computer, the lack of financial resources, and noting that getting a certified birth certificate can cost upwards of $40 and more, including bus fare. She noted that money is the equivalent of two weeks in a shelter.

The Court heard from additional witnesses that the United States called to the stand, their experiences informed of the findings of the experts regarding the burdens SB 14 imposes.

The Court may recall the testimony of Naomi Eagleton who appeared by video. The Court may recall that Naomi

Eagleton is an 83-year-old, low-income African American Houstonian that had been living without -- who has been living without SB 14 ID. for many years. Ms. Eagleton cast a vote in the November 2013 election, and because she does not have SB 14 ID., that vote did not count. Ms. Eagleton stands to be disenfranchised again. She does not have a certified original birth certificate or any of the other documents needed to obtain SB 14 ID. And to get those documents, she would have to navigate a maze of state bureaucracies and spend money she simply doesn't have.

The Court may recall that her understanding of SB 14 and the photo requirement of SB 14 caused her to go out and get a new bus pass with a photo on it. That, of course, will not work. And while Ms. Eagleton can vote by mail, under SB 14 she emphatically prefers to vote in person because she gets needed assistance at the polls.

Your Honor, the evidence is virtually undisputed, that SB 14 imposes significant costs, institutional and monetary, and because minority voters in Texas lack SB 14 at significantly lower rates than do Anglos, and because minority voters are significantly more impoverished, less educated, and have less access to transportation, the burdens SB 14 imposes place minority voters at a substantial disadvantage in the electoral process. These factors are linked to and flow from the state's history of discrimination, a history that is not

yet passed. And the EIC process does not lessen these burdens. In fact, it often intensifies them.

I'd like to mention briefly one other senate factor, and that is tenuousness. The United States is forced to agree, your Honor, that eliminating voter fraud is an important state interest. The evidence in this case demonstrates that the United States properly devotes substantial resources to investigating and prosecuting voter fraud in all its forms across this country. Yet the connection between the elimination of voter fraud and, and SB 14 is tenuous because the law targets an extraordinarily rare form of voter fraud, while ignoring mail-in balloting and other forms of fraud that the evidence in this case showed are far more common.

And while Texas relies on the *Crawford* decision to justify SB 14, that reliance is tenuous as well. As this Court is well aware, *Crawford* did not confer blanket approval over any state voter ID. law, including any past with a racially discriminatory purpose or intent. *Crawford* did not say that states can simply invoke the term "voter fraud" as a talisman to justify potentially discriminatory ID. laws.

Your Honor, we should be clear, not all voter ID. laws violate Section 2, but this one does, and it imposes significant and especially harsh burdens on Texans who lack ID., the majority of whom are African American and Hispanic, and the least able to pay SB 14's numerous institutional costs.

SB 14 simply hits hardest at those who can bear its burdens the least, and it imposes burdens demonstrably far beyond those attendant to the usual act of casting a ballot that counts.

This case implicates the fundamental right to vote, perhaps the most sacred right, the right that the Supreme Court instructs is the one that preserves all others. SB 14 interacts with Texas' unique political social and historical conditions and results in African Americans and Hispanic voters having less opportunity to participate equally and effectively in the political process. It violates Section 2's result standard. It should be enjoined.

CLOSING ARGUMENT ON BEHALF OF TEXAS NAACP AND MALC

BY MR. ROSENBERG: Good morning, your Honor.

THE COURT: Good morning.

MR. ROSENBERG: Ezra Rosenberg on behalf of Texas NAACP and MALC. If I may, for a minute before I start, thank some people. I've already thanked the Lawyers' Committee for Civil Rights Under Law and the Brennan Center, my co-counsel along with Jose Garza, Gary Bledsoe and Robert Notzon of the Texas NAACP, Victor Goode of the National NAACP, and our local counsel, Daniel Covich.

I'd also like to thank all of the Plaintiffs, their wonderful attorneys at the Department of Justice, and all of the attorneys for the private Plaintiffs, Plaintiff intervenors, who really collectively did something that I think

was harder than perhaps building the Hoover Dam. We put on 38 live witnesses, 7 witnesses by deposition, some 15 to 20 readings of deposition designations, cross-examined 5 witnesses, all in under our allotted 40 hours.

And I thank everyone for all of the cooperation that everyone showed. I also would like to acknowledge the attorneys at the Texas Attorney General's Office, Mr. Scott, Mr. Clay; all of the attorneys who acted honorably, I hope in vain on behalf of their clients.

(Laughter)

But it was a pleasure litigating against you, and I appreciate the civility and cooperation. And of course, your Honor, for holding our feet to the fire and bringing this case to the expeditious conclusion that it merits; your entire staff, Genay, Ms. Cortez, Mr. Perez, who made us feel at home. And thank you very much.

Your Honor, I'm going to address, as Mr. Dellheim mentioned, one issue; and that issue is discriminatory purpose. And to demonstrate the compelling evidence that there was a discriminatory purpose behind SB 14.

Initially, just to lay the groundwork, it's important to emphasize that Plaintiffs do not have to prove discriminatory purpose as part of their Section 2 results case. It is relevant only to the Section 2 purpose case; it's relevant to the request for relief under Sections 3(a) and 3(c)

of the Voting Rights Act; and it's relevant to the private claim to constitutional claims under the Fourteenth and Fifteenth Amendment.

The standards are set forth in *Arlington Heights*. The Plaintiffs have to prove that discriminatory intent was a motivating factor; not the sole factor; not even the prime factor behind SB 14. And in *Arlington Heights* -- if I can remember how to use this. There we go.

The United States Supreme Court set forth a series of guidelines of direct and circumstantial evidence that can prove discriminatory intent in cases like this; and the first one of which is impact. And Mr. Dellheim has ably discussed the impact of the statute on Blacks and Hispanics, and I just want to emphasize a few points kind of from a 30,000 foot level.

The first is there were several experts, Dr. Ansolahehere, Dr. Herron, Dr. Bazelon, Dr. Webster, who relied on the no match list to do an analysis of burden on Blacks and Hispanics of SB 14 in this case, and all of the data point in the same direction, generally finding any place from a 1.6 to 4 times less likely for Blacks and Hispanics to possess the SB 14 than Whites in Texas. The data is completely consistent -- are completely consistent.

Second, there is another -- another group of experts, Drs. Barreto and Sanchez, who used a completely different methodology. And this methodology of course was a survey of

Texas citizens of voting age; 2,400 of them.

And that survey -- those survey results are smack dab in the middle of the results that came from the no match analysis. So the Barreto/Sanchez survey provides strong corroborative evidence of the no match analysis and independent evidence in and of itself of the disproportionate burden on Blacks and Hispanics of SB 14.

And third, there were another set of experts; those who analyzed travel burdens. Dr. Webster, Dr. Bazelon, and Dr. Chatman. And of their results point in the same direction of a disproportionate impact on Blacks and Hispanics of the travel burden to obtain SB 14 if they don't have it as compared to Whites. The data are consistent, they are uniform in their direction, and they are consistent in their magnitude. And there is absolutely no doubt that Plaintiffs have proved a disproportionate burden on Blacks and Hispanics caused by SB 14 on their right to vote.

And as Mr. Dellheim said, it's virtually unchallenged. He talked about Dr. Hood's response to Dr. Ansolahehere, and I'll briefly talk about Dr. Hood's response to the Barreto survey.

Your Honor saw the cross examination. Dr. Hood admitted that he perhaps mischaracterized people who did not have IDs as having IDs in his attempt to replicate and in his attempt to reconstruct the Barreto survey.

Dr. Hood admitted that even though taking into account socioeconomic demographics in weighting the results of a survey to see whether the Black respondents accurately represent the Blacks in the population; the Hispanic respondents accurately represent the Hispanics in the population; and so on. He did not do that, but Dr. Barreto did.

And just in passing, I noted -- I noticed that in Plaintiffs' findings of fact that we received this weekend, I think it's in Paragraphs 103 or 104, there is a reference to Dr. Hood's criticism of Dr. Barreto as improperly weighting, and therefore Dr. Barreto's racial analysis is inaccurate. And I respectfully refer your Honor to Pages 225 and 226 of Dr. Hood's testimony where he admits that criticism has nothing to do with the comparison of race-to-race-to-race in Dr. Barreto's survey.

So, your Honor -- and one last point about Dr. Hood. He admitted that even with the possibility of his errors as to recategorization, even with the possibility that he weighted wrong, he still found statistical significance in virtually every run as between Whites and Hispanics except when he finally came down to the subsets of about 30 -- between 5 and 30 people; and no surprise, did not find statistical significance there. So Dr. Hood's entire attack on this survey, we respectfully submit, can be disregarded.

There was one other expert here. The man who wasn't there, Dr. Mylo (phonetic). And I think your Honor heard about Dr. Mylo a lot because several of the experts responded to him; Dr. Ansolahehere, Dr. Webster, Dr. Chatman, Mr. Jewell (phonetic), Dr. Bazelon. They all confronted head-on the critiques of their reports, dismissed him dispositively, and the testimony, I think, is compelling, and was not subject to redirect -- to cross examination.

And in fact, Dr. Mylo, of course, did not testify live. He was a person that the state had retained to critique 17 reports including reports of political scientists when he has no degree in political science; reports of historians when he's not a historian; report of a transportation expert when he's not a transportation expert. And to do an overall critique of the Barreto survey when Drs. Barreto and Sanchez had performed over 100 public opinion polls, but Dr. Mylo had not ever conducted or designed a single survey.

So I think if your Honor reads the deposition designations that we submitted for Dr. Mylo, it will be clear perhaps why the state was right in not putting him on the stand, and it will be clear that your Honor, I believe, will be right in rejecting his opinions in their entirety.

But the bottom line is that on impact, Plaintiffs have proved undisputedly that the burden falls disproportionately on Blacks and Hispanics. But there's more.

Even though under *Arlington Heights*, of course, impact alone in the very rare case can support a finding of discriminatory intent. We're not arguing that here because under the other *Arlington Heights* standards there is abundant evidence of discriminatory intent.

And we'll turn first to legislative history and touch upon a point that Mr. Dellheim made. He dealt with it under tenuousness, and this is the justification by the proponents of SB 14 to support the change in the voting identification law.

And this was not an easy thing for them to do because you had a voting identification law that was working. There were no problems with the voting identification law, but they had to come up with some kind of justification for what they wanted to do. So in the words of Representative Anchia, they kept shifting their rationales.

And the first rationale that they turned to was that of we have to stop noncitizens from voting. Well, there was no real proof of noncitizens voting. In fact, when one person testified in one of the hearings on one of the Voter ID Bills, he was forced to say, "Well, we want to fix that even if there isn't a problem."

And Representative Hernandez explained that it's common sense that undocumented immigrants who live in the shadows don’t even want to go t the grocery store, let alone walk into a polling place and vote illegally. And in fact,

none of the Bills that eventually led up to SB 14 dealt with noncitizens voting because they allowed for identification that noncitizens could use.

The biggest hobgoblin of the world perhaps was that voting photo ID legislation would do away with election fraud. And Mr. Dellheim pointed out, SB 14 only deals with in person voter fraud. And virtually every witness who testified in this trial agreed that it is extraordinarily rare. You heard it from national renown election fraud expert Lorraine Minnite; your Honor heard it from election expert Wood; even Dr. Hood, Plaintiffs' expert, testified he's never seen in person voter fraud.

And Major Mitchell, the man charged with -- by the state with starting up voter fraud was able to identify two instances in the last 14 years of votes; out of some 62 million votes cast in this state. And the reason is obvious; it's a really hard thing to pull off. And it's an extraordinarily ineffective way of affecting an election, and the penalties are really stiff. So just because a crime can be committed, as Major Mitchell also agreed, it doesn't mean it is being committed.

Now the third rationale for SB 14 and for the prior formulations of voter ID law was a very noble-sounding sentiment that it's meant to increase confidence in the integrity of the ballot box.

Well, from the start that concept was always wrapped up with the same concepts of noncitizen voting and of election fraud, and here's Lieutenant Governor Dewhurst who, on the day SB 14 was passed, said that it would increase public confidence in our election process ensuring only U.S. citizens were legally eligible to vote in Texas elections.

So, the two -- the concepts were always intertwined. Sometimes the supporters of SB 14 would point to polls and say, "Well, the people want this." So let's look at those polls that they pointed to.

These polls essentially beg the question; you favor or oppose requiring a valid photo ID? You agree that voters should be required to present a government-issued photo ID. If that's what we're talking about, we probably -- or we might not be here today if we were just talking about any valid photo ID or any government-issued photo ID. The question doesn't ask would you agree to this if it meant for the -- at the cost of saving two fraudulent votes out of 62 million casts in exchange for suppressing hundreds of thousands of valid votes. That question wasn't asked and these polls don't provide the support.

There was also sometimes a thought expressed, well, this will increase turnout at elections; when the support for that were the 2008 elections which the proponents of SB 14 knew were affected by what's been called the Obama effect in terms

of the increased minority turnout.

So as Mr. Dellheim said, what was going on here was a solution in search of a problem. And when you have people who are pressing the legislation, where they're dealing in overstatements and half-truths and shifting rationales, as Representative Anchia said, I respectfully submit that your Honor has the right to suspect that something else was going on.

And to talk about this, look into what that something else is, we can go to another one of the *Arlington Heights* factors which is the historical background of voter -- of racial discrimination in Texas. And again, Mr. Dellheim touched upon it. I'm not going to repeat it, but that is a -- is a long history and a sad history, and it does deal with all White primaries and reregistration, and as Mr. Dellheim said, each of those mechanisms, and this is the key point, was justified as a way of stopping election fraud.

So the lesson from that is that there's precedent in Texas' own history of legislatures using that justification to support what on their face were supposed to be neutral election law changes, and secondly, that simply mouthing some very noble sentiments such as "increasing confidence in the integrity of the ballot" or "stopping election fraud" is not sufficient to give the legislature a free pass on intentional discrimination.

Perhaps the most vivid portrayal of racial

discrimination in voting that this Court had in the trial was the testimony of Peter Johnson.

Reverend Johnson, as you know, was the man who was sent by Dr. King in the late '60's to specifically deal with voter -- racial discrimination and voter fraud in Texas and he testified not only in terms of the intimidation at the polls that he saw back then but the intimidation at the polls that he sees right now including, for example, the presence of khaki dressed election poll workers which he described as intimidating and perhaps it's connected at least in some people's minds with what -- with the use of DPS, a law enforcement agency for the implementation of SB 14. And Reverend Johnson also discussed, what he described, what he called the brutal bigotry in Texas. Whatever the motivations and situation were in the years that Reverend Johnson discussed what we also heard was additional reasons for motivation for racial discrimination that occurred in the decade leading up to SB 14.

By 2004, Texas had become a minority/majority state. In 2010 -- in the years leading up to 2010 about three quarters of the population growth in Texas was the result of mostly Hispanic and Black population increase and as Representative Anchia and Representative Hernandez and Representative Martinez-Fischer testified, that resulted in a change in what was going on in the legislature. They used words like "tense"

and "divisive" and the legislature turned its attention to a series of what was also described by these representatives as anti-immigrant and in some cases anti-Hispanic legislative initiatives including sanctuary cities, including English only legislation, including the two redistricting -- including the redistricting bills that Mr. Dellheim described that were struck down by two different federal courts as racially discriminatory. And out of this caldron voter ID emerged, the idea that we have to change our voter ID statutes. In fact, the first voter ID statute was introduced in 2005 within a year after Texas becoming a minority/majority state and from the start voter ID was intertwined with anti-immigration from the grassroots level.

This is a constituent e-mail, PL 707, talking about sanctuary cities and passing voter ID declaring English the official language of Texas, et cetera.

The legislators themselves, Senator Patrick, wrote in a memo, "In view of our discussion on voter ID and immigration several of you mentioned you thought that the two issues were one in the same."

It was in this racially charged environment that voter ID emerged and that voter ID was passed and photo ID and SB 14 is inextricably connected with this racially charged atmosphere.

Now Arlington Heights also says that some of the

factors that the Court should look at include whether or not there were substantive or procedural departures from what you would expect -- of how you would expect the legislature to act.

For example, one would think that the legislature acting in good faith and without discriminatory intent upon listening to years and there were six years of warnings from minority legislatures that photo ID -- that voter ID bills and increasingly stringent photo ID bills would have a devastating impact on the voting rights of minorities in the state of Texas. Repeatedly as Representative Anchia testified they asked for the legislature to undertake studies. What did the legislature do? It did nothing. In the six years that voter ID was pending before the Texas legislature, the legislature never undertook an analysis, never undertook any study of any kind as to the impact of increasingly strict voter ID laws on minority citizens in Texas and they failed to act. They put their head in the sand even though they knew that the Secretary of State could undertake at least an analysis comparing the team database, the voter database, with the DLS database and they knew that the Secretary of State in fact could compare the team database to the Spanish surname database. That analysis was not done.

We did learn in the Section Five litigation that an analysis was done by the Secretary of State on January 25th, 2011, the day before SB 14 was passed by the senate which

showed that some 750,000 Texas voters lacked a driver's license. That study for mysterious reasons was not shown to the legislature before SB 14 was enacted.

Now we submit that perhaps the proponents of SB 14 did not really need to see the studies because the evidence also showed that they knew the results. Back in 2009, Representative Todd Smith who was a sponsor of SB 362 which was the bill right before SB 14, two years before, that bill had non-photo ID provisions in it. At the time, he estimated that there were 700,000 Texans who lacked a driver's license, very similar to the undisclosed 750,000 result that the Secretary of State reached two years later and that commonsense dictated that they were disproportionally poor and, therefore, minority and, therefore, that non-photo ID requirements would significantly lessen any marginal additional burden.

Bryan Hebert who was at that time Deputy General Counsel to Lieutenant Governor Dewhurst wrote a memo to staff members, including Janice McCoy who was the Chief of Staff for Senator Frazier who became the sponsor of SB 14 referring to SB 362 and said "This bill improves security in election process, not as restrictive as Indiana and Georgia" -- and again, we're talking about a bill that had non-photo ID -- "There is less chance of disenfranchising elderly, poor, or minority voters."

SB 362 did not pass. Minority legislatures felt that there was again no need to change the law because again there

was no problem and there would still be an increased disparate impact on minorities. But one would think that if you were in favor of increased voter ID and you wanted to put forward another bill after your bill was defeated you would look for ways if you were a legislature acting in good faith and without discriminatory intent to negotiate, to reach a consensus, to compromise but the opposite happened in Texas. In fact, what the proponents of stricter voter ID did was to eliminate the very procedures in the Texas senate that were designed to foster negotiation, compromise, and consensus and of course I'm talking about the two-thirds rule that required a super majority before nontrivial legislation could be passed.

They passed a resolution that not only eliminated the two-thirds rule only for voter ID but also assigned only voter ID to the committee as a whole as opposed to the established committees that dealt with such issue.

Senator Williams who sponsored that resolution said it was the most substantial change in his history in the senate. Senator Wendy Davis said she had never seen any single category of legislation be consigned in that way to this combination of no two-thirds rule and assignment to the committee on the whole.

But the proponents didn't stop there. They got Governor Perry to issue an executive order declaring a legislative emergency. For what? For one thing and one thing

only, voter ID legislation. And what did that do? That meant that voter ID legislation and specifically SB 14 had to be dealt with, had to be considered within 60 days of the start of the session and it precluded what is called chubbing in Texas, essentially filibustering another procedure that ultimately could result in negotiation, and compromise, and consensus.

And then the proponents of SB 14 went further. Instead of again assigning to establish committees used to dealing with these sorts of issues, they assigned it to a select committee, a committee handpicked by Speaker Strauss and assigned one bill and one bill only, SB 14, and to deal with it on a fast track. One would also think if the legislature was operating in good faith and not with discriminatory intent that after having a bill fail like SB 362 would actually sit down and negotiate and see what provisions are bothering the minority, is there something else we could do. The opposite happened here in Texas. Instead of putting forward a bill that was less strict than SB 362 or perhaps even as strict as SB 362, SB 14 was stricter. It was stricter than SB 362 primarily and not including non-photo ID alternatives and it was stricter than the Georgia and Indiana statutes upon which the proponents of SB 14 said that they had modeled and that did not include the sort of governmental IDs that the Georgia and Indiana statutes did include.

As a result, and Dr. Lichtman testified to this in

detail, the proponents of SB 14 and the Texas legislature went ahead and made a series of choices and every time it made a choice it was a choice to discriminate as opposed to a choice not to discriminate. It made that choice when it chose to exclude non-photo IDs from SB 14. It made that choice when it -- knowing that Blacks and Hispanics are poorer than Whites in Texas and the non-photo ID alternatives were less expensive than the photo ID alternatives. It chose to exclude government employee IDs when it was known that Blacks and Hispanics make up a disproportionately larger proportion of government employees than do Whites. It chose to exclude students of -- it chose to exclude public college and university IDs when it was known that Blacks and Hispanics make up a disproportionate amount of those student populations. It chose to include license to carry when it was known that Blacks have -- or have a lower proportion of possession of licenses to carry. It chose not to address absentee ballots, undisputedly the most important contributor to election fraud in Texas, when it was known that Whites disproportionately use absentee ballots compared to minorities, and it chose to dismiss amendment after amendment that were ameliorative of SB 14, amendments that would in fact include the provisions that were in Georgia and Indiana, amendments that would waive the fees necessary to obtain the underlying documents, amendments that would monitor the effect of SB 14 on minorities. And interestingly, after

this was all done those who were major actors in this drama could offer no explanation. Brian Hebert could not explain why non-photo ID, all state and federal photo ID and employee photo ID were acceptable in 2009 but all of a sudden not acceptable in 2011. Senator Patrick acknowledged that the amendments that were proposed by the legislators could have alleviated the burden, yet he did not recall why he voted to table them. Speaker Strauss couldn't identify a single reason to exclude federal and state employee IDs from the bill and it's not up there but we cited it in our findings of fact, we deposed Representative Harliss who was a house sponsor of SB 14 and she could not explain a -- she could not give a single reason why she agreed to table amendment after amendment.

So at the end of the day, your Honor, we're left with a situation where you have a legislature that was motivated by the changing demographics to do something about the voter ID laws. You had a system that was working and did not have to be fixed but they chose to change it. You had a legislature that heard warnings from the minority senators that this would have a devastating impact on the voting rights of Blacks and Hispanics in Texas. You had a legislature that heard warning from its own staff members like Brian Hebert to the same effect but did not undertake any study, did not undertake any analysis, yet proceeded to steamroll the legislation through by making seismic parliamentary changes and hallowed rules that

were unprecedented in the history of the Texas legislature, and then proceeded to put forward stricter statutes and could not explain why they were doing so. And by the way, at the same time, this was the same legislature that had passed the redistricting rule -- bills that were found to be racially discriminatory.

So we submit, your Honor, that the proof is overwhelming of discriminatory intent and the burden at this point would shift to the state to prove that SB 14 would be passed even absent the discriminatory intent and there, your Honor, is another major gap in the state's proof in this case.

We put on six different legislators, each of whom had been in the legislature during the time SB 14 was passed. They went up to the stand. They testified and they subjected themselves to cross-examination before your Honor so your Honor could judge their credibility.

The state did not produce a single legislator who was a proponent of SB 14 in this court and subjected himself or herself to cross-examination. What we heard were some deposition designation readings to the effect that "I didn't mean to discriminate." Well, as the Fourth Circuit has said, "Even individuals acting from invidious motivations understand the unattractiveness of publicly saying that they're discriminating."

Your Honor, in lots of ways this case has been

somewhat of a humbling experience at times. I'm the son of immigrants but when they came to this country they were so lucky and I was so lucky that they never felt the pain of official discrimination and when I sit in the court and I watch Sammie Bates talking about counting out coins to help her grandmother pay the poll tax or Elizabeth Gholar argue that "I earned the right to vote in person," or witness the heroism of people like Leonard Taylor, and Floyd Carrier, and Eulalio Mendez who overcome physical obstacles and walk into this court to plead their case for the right to vote, or the dignity of Margarito Lara and Maximina Lara who bared the most private details of their finances in order to press their case for the right to vote, or listen to Christine Mora and Dawn White and their dedication to helping people find their identities or the bravery of Reverend Johnson who came to this court and explained he was here because he has friends in the graveyard for the right to vote.

I'd like to think that the good men and women of the Texas legislature would not have passed SB 14 if they saw and heard this testimony. I don't know if they saw or heard testimony like it but if so I would submit that they were blinded by an impermissible and discriminatory intent to minimize the opportunities for Blacks and Hispanics to participate in the local process of Texas and respectfully submit that that's wrong, that's illegal, and that's

unconstitutional. Thank you.

THE COURT: Thank you.

CLOSING ARGUMENT ON BEHALF OF TEXAS LEAGUE OF YOUNG VOTERS EDUCATION FUND, ET AL

BY MR. HAYGOOD: Good morning, your Honor.

THE COURT: Good morning.

MR. HAYGOOD: My name is Ryan Haygood of the NAACP Legal Defense and Educational Fund and I, along with my colleagues here in court this morning: Natasha Korgaonkar; Leah Hayden; Darrell Ross, also of the Legal Defense Fund; as well as Danielle Conley; Kelly Dunbar; and Tania Faransso of Wilmer Hale represent the plaintiff interveners, the Texas League of Young Voters Education Fund, which is a Houston based nonprofit, nonpartisan organization that seeks to engage young people of color in the political process; and Ms. Imani Clark, a registered Black voter and student at Prairie View A & M University which is one of Texas' nine historically Black colleges and universities as also referred of course as HBCUs.

Your Honor, the fundamental question before this Court is whether the State of Texas can disfranchise hundreds of thousands of voters through a racially discriminatory voting restriction that the Texas legislature enacted purportedly to address a phantom problem, mainly in person voter fraud. As the evidence in this case has made clear, your Honor, the answer to that question is a resounding no.

Section Two of the Voting Rights Act and the Fourteenth and Fifteenth Amendments as you've heard unequivocally bar Texas from enforcing SB 14's photo ID requirements. At its core, as courts have recognized, Section Two of the Voting Rights Act demands that racial discrimination not spread to the ballot box. But, your Honor, the evidence adduced at this trial has established overwhelmingly that that is precisely what has happened in Texas. SB 14 hastily enforced in the wake of the Supreme Court's ruling in Shelby County has already and will in the future in election after election disproportionately deny voters of color the right to fully participate in the political process and that, your Honor, is the precise evil that the Voting Rights Act was designed to remedy. In fact, it is the reason that Section Two of the Voting Rights Act exists. SB 14's photo ID requirement should, indeed it must, be enjoined.

As you've heard, your Honor, the evidence in this case has shown that SB 14 imposes unjustified district burdens and racially discriminatory effects on the voting rights of more than 600,000 registered voters. That number, 600,000, is nearly twice the population of all of Nueces County where we sit today. It's half of the population of the city of Dallas and two-thirds of the population of the city of Austin. Moreover, there has been an abundant amount of expert testimony in this case that shows there's a significant racial disparity

among the more than 600,000 registered voters affected by SB 14.

Dr. Stephen Ansolahehere's ecological regression analysis shows that in Texas an incredible eight percent of all Black registered voters and six percent of all Latino registered voters lack SB 14 compliant ID and thus are disfranchised by SB 14, as compared to only two percent of White registered voters. Those figures remain virtually uncontradicted by the record before this Court. But to be clear, your Honor, plaintiffs' and plaintiffs' intervener's argument does not rely on district impact alone. As Mr. Dale Harmick explained, Section Two results test require that this Court conduct a searching inquiry into whether voters of color in Texas have an equal opportunity to participate in the political process under the totality of the circumstances analysis and here, your Honor, an inquiry into those factors shows that SB 14 creates precisely the type of inequality that Section Two of the Voting Rights Act was enacted to proscribe. The testimony of Doctors Vernon Burton and Barry Burden, and Coleman Bazelon, and others demonstrates that SB 14 disproportionately impairs the ability of Black voters to elect their candidate of choice and participate fully in the political process because of their race. As Dr. Lichtman testified, SB 14 was "passed not in spite of but because of race," and all of the evidence points in that direction.

Your Honor, it is in fact because of race and in particular because of Texas' pattern of official historical and modern day racial discrimination in the areas of voting and education and employment and housing in more areas that SB 14 causes an inequality of access to the political process for Black voters and other voters of color here in Texas and the evidence at trial made clear that SB 14 is the latest iteration in a series of discriminatory voting practices and devices that were intended to suppress the votes and the voices of Black people and other people of color that stretch back more than a century. As Dr. Burton testified, for Black and other voters of color here in Texas a democratic experience historically and into the present has been contested. It has been an experience that has been characterized by periods of democratic expansion often followed swiftly by efforts to restrict and constrict the franchise for people of color. Dr. Burton testified at length in this courtroom that gains in political participation by Black people have been time and time again met with official efforts to restrict access to the franchise or to completely eliminate it, and this happens often precisely at the point when communities of color are on the verge of influencing their political will and effecting democratic outcomes. Such official efforts have included but are not limited to the all White primary elections, secret ballots, the Texas poll tax, and re-registration requirements, and voter purging, and each

of these devices was implemented by Texas as a discriminatory response to Black democratic expansion and each of these devices, your Honor, over a long century of struggle and sacrifice was ultimately invalidated either by the Voting Rights Act and/or by the Constitution. Then, your Honor, against the backdrop of Texas' substantial growth of more than four million people in the last decade, nearly ninety percent of whom are people of color, Texas once again enacted a purportedly race neutral device that in fact unnecessarily and purposefully erects barriers to the ballot box for voters of color. Like its ancestor, discriminatory voting practices, SB 14, must be struck down.

Now, for its part, Texas argues that this history is largely irrelevant. That it doesn't inform the present and that the relevant period for your Honor to consider for SB 14 is limited to 2011. But as Dr. Burton testified here in this Court, SB 14 simply cannot be properly understood apart from its historical context. As Dr. Burton testified, SB 14 functions for example very much like its poll tax ancestor, relying on social economic disparities and inequality which themselves spring from Texas' state sponsorship of racial discrimination in many areas of life. SB 14 discourages, if not outright prevents, Black voters and other voters of color from participating in the political process.

And has been said here, your Honor, the testimony has

made clear that Texas' stated rationale for the use of SB 14 boils down to protecting against in person voter fraud. This particular pretextual rationale however is familiar as Dr. Burton testified; Texas has repeatedly used that very rationale to pass laws that discriminate against voters of color.

Dr. Burton testified for example that the stated rationale for the use of all white primaries here in Texas was to help prevent voter fraud. Dr. Burton also testified that the stated rationale for the use of the secret ballot provisions here in Texas was a prevention of voter fraud. Dr. Burton testified that the stated rationale for the use of the poll tax here in Texas was also the prevention of voter fraud. And Dr. Burton testified that the stated rationale for the use of re-registration requirements and voter purges in Texas was a prevention of voter fraud.

But these laws actual purpose and what they in large measure were able to accomplish was racial exclusion. That is the prevention of voters of color from holding the balance of power in elections. But the evidence at trial made clear that in person voter fraud as has been said is vanishingly rare and is simply not a credible justification for disfranchising hundreds of thousands of registered voters, particularly given discriminatory effects of SB 14.

Now Texas has also argued that complying with SB 14

for these more than six hundred thousand registered voters is not burdensome because they can obtain a free EIC or Election Identification Certificate and this argument too, your Honor, is wholly without merit. As this Court heard from multiple witnesses, the EIC program has been an utter failure for at least two reasons. The first is that the purported ease with which disfranchised voters can obtain an EIC is belied by the testimony from affected registered voters that the EIC program has been fought with inconsistencies, with miscommunications and with mass confusion.

The Court also received testimony from DPS employees who themselves viewed the EIC program with a disappointing degree of cynicism. And the utter failure of the program is confirmed by DPS representative, Tony Rodriguez who testified that to date fewer than three hundred EIC's have been issued in all of the State of Texas.

Second, your Honor, EIC has been said is simply not free in any meaningful respect. Instead, the evidence established is that SB 14 imposes a real concrete cost on voters who must obtain an SB 14 compliant ID in order to vote in person in Texas. Specifically as Dr. Bazelon demonstrated at trial, the average cost for an affected registered voter to obtain an EIC is $36.33.

Now, as Dr. Bazelon explained, that's a conservative number and that it only reflects the cost of travel but it

doesn't include all other potential cost the voter might incur in obtaining an EIC such as fees for the underlying documentation, time spent gathering such documentation or waiting at the DPS. But even standing alone, the travel cost of obtaining an EIC imposed significant burdens on affected voters.

And as Dr. Bazelon demonstrated in his testimony to the Court the average travel cost of $36.33 represents a 140 percent of -- represents 149 percent of average hourly earnings in Texas. By comparison, your Honor, a poll tax of $1.75 which the Supreme Court found to constitute undue burden on the right to vote in 1966 represented 69 percent of the average hourly earnings at that time. More over these costs are felt most acutely by Black voters in Texas who because of Texas' long and enduring history of racial discrimination and ongoing racial discrimination are disproportional poor.

Dr. Bazelon walked us through several social economic factors showing that Black Texans have lower income. They have less household wealth. Black Texans are more likely to live in poverty and have higher unemployment rates than White Texans. The burden imposed by the cost of obtaining an EIC thus far more heavily on Black Texans who are disproportionately poorer than on White Texans.

And the economic principle here, your Honor, is straight forward. The poorer a person, the more impoverished a

person, the more a dollar is worth to that person. Indeed as Dr. Bazelon demonstrated the travel costs of obtaining an SB 14 ID alone require that Black people expend the share of their wealth that is more than four times higher than the share of wealth required for White Texans.

The testimony has also demonstrated in this case that the cost of obtaining an EIC are real and for some overwhelming. Ms. Sammie Bates testified, powerfully for example, that she literally had to choose between paying $42 to obtain her birth certificate or feeding her family. Because as Ms. Bates testified she and her family could not "eat her birth certificate" she chose to feed her family. Testimony like that from Ms. Bates perfectly crystalizes the burden of the cost to comply with SB 14 for poor Black people and other voters of color here in Texas. And for many Texans of color, like Ms. Bates, paying $42 to vote is prohibitive.

Ms. Elizabeth Gollar similarly testified that she had secured legal counsel in Louisiana to try to amend her birth certificate just so that she can vote. She does not yet know how much money in legal fees and cost she will incur in that endeavor nor your Honor does she even know whether those efforts will ultimately be successful in the end. And it’s the testimony of these affected individuals that demonstrates the palpable harm that results from SB 14. Harm that is a tragic continuation of a long and abiding history of state sponsored

efforts to silence the voices and the votes of people of color.

And, your Honor, the impact of SB 14 is about far more than dollars and cents, though those matter greatly. Ms. Gollar testimony validly illustrates that reality. Ms. Gollar who has lived in the South for most of her life testified about her experience coming of age in an era where racial discrimination was so pervasive that the births of Black people, including her own, were deemed so insignificant as not to take place in proper medical facilities or be recorded in accurate, contemptuous birth certificates.

For Ms. Gollar that historical discriminating is exacerbated now by Texas' refusal on two occasions to issue her Texas State identification. Both times pointing to her inaccurate birth certificate as the reason why she could not obtain an SB 14 required identification.

Now, Texas will argue that Ms. Gollar and other similarly situated elderly voters are not in fact disfranchised by SB 14 because as voters over the age of 65 they can vote by mail. But, your Honor, the testimony of many witnesses at trial has made resoundingly clear that this is not defense at all. Voting in person confers a unique special dignitary benefit, particularly to voters of color who recall a time in the not too distant past including right now when they could not vote at all. As the evidence has shown, it is the history of exclusion from the political process that makes voting in

person for people of color so important.

Reverend Peter Johnson explained to the Court in his testimony that understanding Black America in the South means "understanding that going to vote and standing in line is a big deal." Reverend Johnson also testified that "it is extremely important for an 80 year old Black woman to stand in line to vote because she remembers a time when she was not permitted to do so." Reverend Johnson's testimony was reinforced by the testimony of several affected voters for whom voting in person was not just preferred but for whom voting in person was essential.

Ms. Gollar, for example, testified that she has earned the right to vote in person, that that right is precious to her and that she wishes to exercise that right to vote in person in November.

Texas' argument that elderly voters of color should simply vote at home and forego the opportunity to cast their ballots in person is deeply offensive. Each of these elderly voters of color, like Ms. Gollar, testified powerfully and unequivocally that voting in person for them is a celebration, one that Texas should not be allowed to ignore or deny them.

Unfortunately, your Honor, Ms. Gollar's case is illustrative of the inevitable impact that SB 14 has had and will continue to have in election after election on the fundamental rights of the most vulnerable segments of Texas'

population.

One of those vulnerable populations is young voters in Texas, particularly young voters of color. Your Honor heard testimony from Blake Green who joins us in the courtroom this morning from the Texas League of Young Voters Education Fund. Ms. Green testified that focusing on young voters is particularly important for the Texas League because voting like many forums of civic participation is a learned behavior. Mr. Green testified the young voters of color can become agents for changing the respectful communities as he has and they can ultimately create better conditions under which people live in those communities.

But Ms. Green also testified that rather than strengthening their confidence in the democratic process here in Texas, SB 14 actually serves to discourage political participation among young voters by erecting unnecessary requirements to casting a ballot.

One of the places where the league has done some of its most important work is at Prairie A&M University, a historical Black college here in Texas. It has been a subject of a history of voter suppression efforts. Mr. Green testified that the League refers to Prairie View as "ground zero" because of the serial attempts by public officials and others to deprive Black students of their right to vote, going back more than 40 years. Mr. Green stated that through their work the

League has interacted with unregistered scores of young voters at Prairie View and at other historically Black colleges across the state who do not have SB 14 required forms of ID.

Your Honor, these young people don't need drivers licenses when they have no cars, nor do they need concealed handgun licenses when they're not armed. Nor do they need passports when they've not yet had a chance to travel abroad. These students do of course have student IDs but a student ID is one of the many forms of identification that Texas has inexplicably prohibited for use when voting in person at the polls. Even though students had been using their university and college IDs to vote at the polls for years in Texas.

On this point, Drs. Lichtman and Burden testified that the use of student IDs is acceptable in other states including both in Indiana and in Georgia and significantly, your Honor, not a single legislature who voted for SB 14. He testified before this Court about why the Texas legislature chose to diverge from States like Indiana and Georgia that allow the use of student IDs at the polls.

Senator Rodney Ellis by contrast testified that the 82nd Legislature knew that the exclusion of student IDs would be harmful to Black voters. What makes the exclusion of student IDs particularly disturbing is that this Court heard testimony from one official after another who admitted that they were not aware of a single instance of a student using a

student ID to commit voter fraud here in Texas or frankly anywhere in the United States.

One affected Black student voter is our client, Imani Clark, a student at Prairie View A&M. Ms. Clark who has voted in the past using her student ID is now disfranchised by SB 14. And Ms. Clark, a voter that has now blocked from using -- from voting by SB 14 for a substantial portion of the time that she's been registered to vote in Texas is but one student out of a generation of young Texans of color who are disfranchised by operation of SB 14.

Texas' final defense of this discriminatory voting law is based as you've heard on polls. Specifically Texas argues that polling data show the voter ID laws enjoin support here in Texas including from republicans, democrats and even from voters of color. But, your Honor, these polls are no defense to any of the claims in this case for at least two reasons. The first is that none of these polls actually addressed the law that the Texas Legislature enacted and that bears envious. Not one of the polls cited by Texas was actually about SB 14 itself.

As representative Anchia testified, the precise language used in a particular polling question often determines the responses that the pollers receive. Thus, your Honor, we can imagine a very different result that may have been obtained if the question asked were would you support a photo ID

requirement that is so strict that it will likely prevent more than six hundred thousand registered voters from voting, a disproportionate number of whom are voters of color. The fact that not one of the polls relied on by Texas actually asked about SB 14 or similar law is a critical failure of proof that wholly undermines Texas' reliance on them.

A second, your Honor, and more fundamentally, the popularity of SB 14 or of any law cannot insulate it from scrutiny under the Voting Rights Act or the Constitution any more than it could have insulated shameful laws that provided for such things as slavery, the Texas White Primary, poll taxes and racial segregation. For example, your Honor, even if defendants could show what you have not here, that the will of all Texans was to truly impose such a burden on voters of color that law would still violate the Voting Rights Act and the Constitution. Thankfully, your Honor, polls have never been a proxy for a law of constitutionality.

Just one generation ago, in a poll reported in the Victoria Advocate in 1954, an important year to be sure, an astounding 75 percent of adults in Texas disapproved of a Supreme Court ruling which would outlaw racial segregation in the public schools. Dr. Burden also testified that in 1963, a majority of Texas voters declined to remove the poll tax requirements from the State Constitution through a state wide referendum.

Your Honor, we can unfortunately imagine sitting in this Courtroom this morning, what contemporaneous polls would have shown here in Texas regarding, for example, the Chinese Exclusion Act in 1943 or the internment of Japanese Americans in 1946 or Interracial Marriage in 1967 and yet we are not bound in this Court of Law by majority impulses that isolated moments in time.

Instead, we are bound by the U.S. Constitution and those laws passed in support thereof like the Voting Rights Act. Polls purportedly showing public support for SB 14 list offer no basis whatsoever for this Court's upholding Texas' use of a racially discriminatory and unconstitutional photo ID law. And this, your Honor, is especially true when the right at stake, the right to vote, a right that the Supreme Court respects as the right that is preservative of all other fundamental rights, is itself fundamental and intersects with another fundamental right, the right to be free of racial discrimination.

Respectfully, your Honor, we submit that this Court's role in Texas' democracy is to be the bulwark here against SB 14's erosion of Plaintiffs and Plaintiff Intervener's constitutional protections.

Your Honor, the evidence at trial has established that the truth of SB 14 is as follows: in 2011, the Legislature of the State of Texas found itself at a critical

crossroads in the wake of two very important and recent developments. First, there was historic participation in the political process by voters of color in Texas in the last several election cycles. And the second that there was substantial growth of Black and Latino populations as reflected in the 2010 Census.

These voting and demographic trends foreshadowed a political landscape in which people of color in Texas would play a leading role. But, your Honor, instead of recognizing this point of inflection in Texas' demographics as an opportunity for all elected officials to respond to the needs of new voters of color and an opportunity for the State Legislative agenda to turn to the more pressing concerns of an increasingly diverse population. Those in power chose instead to resurrect the tactic they had relied on faithfully before, racial exclusion and they sought to make it more difficult for this burgeoning Black and Latino community to cast their ballots.

As Dr. Lictman testified, "you can't change the democracy of Texas but you can pass laws that place disparate burdens for voting on African American and Latino people."

Your Honor, SB 14, in a very real sense is a vivid reminder of the salience of William Faulkner's declaration years ago, "the past is never dead. Indeed, it's not even past." Through SB 14 Texas is repeating its dark past in an

effort to disfranchise hundreds of thousands of voters including a disproportionate share of voters of color allegedly to prevent a problem that simply doesn't exist. Such a cynical infringement on a fundamental right is precisely what the 14th and 15th Amendments to the U.S. Constitution and the Voting Rights Act were enacted to proscribe and on behalf of the Texas League of Young Voters and Imani Clark and the other Plaintiffs in this case, your Honor, we respectfully urge this Court to enter an Injunction against the enforcement of the Voter ID Provisions of SB 14. Thank you, your Honor, to you and your staff for your tireless work in hearing this matter.

THE COURT: Why don't we go ahead and take a 15 minute break.

THE CLERK: All rise.

(A recess was taken from 10:14 a.m. to 10:30 a.m.; parties present)

THE COURT: We'll continue then.

CLOSING ARGUMENT ON BEHALF OF LA UNION DEL PUEBLO ENTERO, ET AL..

MS. VAN DALEN: Your Honor, Marinda Van Dalen, Texas Rio Grande Legal Aid. It's a privilege to be here representing my clients La Union Del Pueblo Entero also known as LUPE, Eulalio Mendez, Lionel Estrada, Lenard Taylor, Margarito Lara, Maximina Lara and Estela Espinosa.

These are the real people who have been affected and

disenfranchised by SB 14. They are people who voted in the past who brought this lawsuit along with the other Plaintiffs to assure their right to vote in the future and who are unable to vote because of SB 14's ID requirements or will be able -- unable to vote in the very near future.

They are Mexican American and African American. They are poor living at, near or below the federal poverty guideline. They have minimal educations. They share transportation problems and they lack the type of information -- access to information that all of us enjoy and have -- and struggle with the bureaucracies and intricacies of our government's laws and regulations.

Mr. Mendez was the first of our clients to testify in your courtroom. He testified the second day of trial with a translator. He is a proud man of principle who testified to how when Texas had a poll tax, he refused to vote because he thought it was unfair. He has no SB 14 ID since his driver's license expired. He's gone twice to DPS to try to get a personal ID.

Both times the lines were too long for him to be able to wait because of his health and it's just as well that he didn't wait and that he hasn't gone back again because he would have been turned away regardless because he doesn't have a certified copy of his birth certificate which he understands he will need to pay at least $22 to obtain.

Mr. Mendez's financial situation speaks for himself. When asked to testify in this courtroom in front of so many people about it, he said, "It's something sad. I don't like to remember it or think about it but I'll do it. Each month at the last week, there's no food in the house and nothing with which to buy any, especially though for the children. Then my wife has to go to the place to ask for food at a place where they give food to poor people and they give us about three or four gallons of milk." His family lives at half the poverty level guideline. Our expert Kevin Jewell, the economist, monetized the cost that he would face to obtain an EIC at $44.93.

Defendants in their findings of fact state that Mr. Mendez hasn't been disenfranchised because he can simply vote by mail. Mr. Mendez has never voted by mail in the past and he testified that that's the case. And I quote, "Because I don't trust in that type of voting. I don't know where my vote is going to end up."

Defendants also state in their findings of fact that Mr. Mendez should get an EIC birth certificate which would cost substantially less. There are two problems with that, however. One is that he testified in this courtroom that he's unaware of such a birth certificate being available and secondly and perhaps more importantly and showingly, Mr. Mendez testified

that he doesn't want an EIC. He wants a personal identification card from DPS because he believes that the EIC is part of a scheme designed to disenfranchise minority voters in Texas.

Our next client to testify in this courtroom was Lionel Estrada, a gentleman about my age from Kenedy, Texas. He used to be a truck driver and now does odd jobs since he lost his commercial driver's license. He's been trying to get another copy -- another commercial driver's license. He applied for it but it never properly arrived in the mail and now in order for him to get a copy -- a new one, he'd have to pay substantial surcharges of $260 a year for three years which he testified to he cannot afford.

He presented to the Court the only photo ID that he now has which, in fact, is merely a Xeroxed copy of an expired temporary permit. Defendants would have Mr. Estrada relinquish his commercial driver's license in order to get an EIC. If -- were he to do that, he would lose the $60 that's he already paid towards getting a commercial driver's license and in addition, when he's ready to get his commercial driver's license, he'd have to figure out how to get another ride 30 miles to Beeville to the DPS office to get that.

And Mr. Estrada testified that he doesn't want to give up his commercial driver's license because, of course, that's his path to future financial stability. Mr. Jewell

testified that -- or put in his report that Mr. Estrada is living at 80 percent of the federal poverty guidelines and that the cost for him to obtain an EIC were he to relinquish his commercial driver's license would be $57.40 plus, of course, then he would have to pay that $60 again when he's ready to get his commercial driver's license. Mr. Estrada is ineligible to vote by mail or for any kind of disability exemption.

Mr. Taylor also testified before the Court on the third of our trial. He's the African American gentleman who came up to the witness stand with his walker with the American flags on it. He's voted in the past. Due to homelessness which he's experienced, he's lost or had stolen many of his identification documents but he does want ID and he's tried to get ID. He went, in fact, to the DPS office in Corpus to obtain a personal identification where he was told that he would -- he could not get one unless he produced his social security card, his voter registration card and his birth certificate, none of which he had at that time.

He, nonetheless, went to the Social Security Administration to try to get a copy of his social -- a new social security card to get that ID. He was told there that they would not be able to issue him a social security card without a DPS ID which, of course, he didn't have. Nonetheless, he went to the Vital Statistics office where the paid $23 to get a birth certificate in the hopes of getting a

personal ID to use.

When he testified in trial -- at trial, he still did not have a voter registration card, a social security card or, of course, an SB 14 ID. Texas would have Mr. Taylor vote by mail as a remedy to his problem. However, Mr. Taylor has never voted by mail and he testified that he doesn't trust in the process. Texas would also incorrectly state some findings of fact that Mr. Taylor now has the documents necessary to obtain an EIC or a Texas personal ID when, in fact, at trial he testified that that was not the case. Mr. Taylor's income is below the poverty -- federal poverty guidelines and he lives only on his social security payments.

The next two Plaintiffs that testified that are represented by Legal Aid are Margarito Lara and his sister Maximina Lara. They are representative of the Texans who were born in this state but whose births were never registered. These two Texans were born in a ranch in the Rio Grande Valley and though both of them testified that they had each wanted and needed a birth certificate for many decades, neither of them has one still to this date.

Margarito Lara has no SB 14 ID. For him to obtain a delayed birth certificate necessary to obtain an EIC, he would need to pay documentary costs of $69 and that assumes that Mr. Lara with his seventh grade education and -- would be able to navigate the process and complete the application to obtain

such a certificate. Correspondence received by the Department of State Health Services in response to an inquiry made by Legal Aid regarding Mr. Lara's birth contains 14 pages of instructions and information on how to obtain a delayed birth certificate. That's been identified as Plaintiffs' Exhibit 989.

At trial, Mr. Lara testified that the only thing he knows to do to try to get a birth certificate, which he wants, is to repeat what he's already done which has been unsuccessful, travel himself to government offices in the county he lives and into nearby counties and to contact Vital Statistics in Austin. The Defendants represent in the findings of fact that the local Registrar would help Mr. Lara complete the application for a delayed birth certificate. That is not contained in the letter that Vital Statistics mailed regarding Mr. Lara's birth and there's no authority cited in the findings of fact to that statement and I'm unaware of any evidence in the record supporting it.

Mr. Jewell has estimated -- has calculated the cost for Mr. Lara to obtain EIC at $94.41 and that is substantial given the testimony Mr. Lara gave about his family's finances and the fact that he and his wife live only on their social security benefits.

Mr. Lara's sister, Maximina Lara, unlike our other clients in this litigation, does have a driver's license which

would allow her to vote under SB 14. However, it will be expiring next year and she will be unable to renew it without having obtained a delayed birth certificate which, of course, she does not have. Ms. Lara does not have the underlying documentation required for an application for a delayed birth certificate.

In addition, Ms. Lara's right to vote is jeopardized by the substantially-similar-name provision in SB 14. Ms. Lara's driver's license states incorrectly that her name is Maxine. In order for her to correct the driver's license to have her -- to state her name properly, she would need a birth certificate which, of course, she does not have.

Mr. Jewell has calculated the cost for Ms. Lara to obtain an SB 14 ID when her driver's license expires to be a hundred dollars and eighty-three cents. He noted that due to a high-interest payday loan that she has with an interest rate of 90 percent that Ms. Lara, in effect, would be borrowing money in order to be able to vote.

Ms. Espinosa, who lives in Raymondville, Texas, unfortunately did not testify in court and instead portions of her deposition were read. She does not have SB 14 ID. She spent most of her life until this litigation believing that her birth had never been registered, as is the case with many of her siblings. Over the course of this litigation, Legal Aid obtained a birth certificate and discovered that her birth had,

in fact, been registered and at a cost of $23, she now has a birth certificate. However, that birth certificate contains the wrong date of birth and other inaccurate information. So it needs to be amended before she'll be able to get an SB 14 ID.

Additionally, because Ms. Espinosa uses her marriage -- her married name and her birth certificate contains her maiden name, she would need to get a copy of her marriage certificate, which she doesn't know -- does not have, at additional cost. Mr. Jewell has estimated that the cost to Ms. Espinosa of obtaining SB 14 ID would be $90.84. For Ms. Espinosa, as with the other Ortiz Plaintiffs, this would be a substantial financial burden.

In conclusion, the Ortiz Plaintiffs share a desire to have ID, whether it's a driver's license or personal ID or even a birth certificate. They also share many of the impediments with other disenfranchised voters in Texas, transportation problems, crushing poverty and despite their efforts, many of them having testified to making multiple trips to government offices from having received assistance from family members, these individuals still do not have the ID required to vote which so many of us take for granted.

These Plaintiffs have voted in the past and through this lawsuit, they hope to vote in the future. Without the relief requested from this Court, Mr. Mendez, Mr. Estrada,

Ms. Espinosa, Mr. Lara, Ms. Lara and Mr. Mendez will be unable to vote in the future.

Your Honor, it's been an honor to represent these Plaintiffs in this lawsuit. Speaking for myself and my colleague Robert Doggett, several of these people would have liked to have been in this courtroom today and I thank you very kindly for your time and attention. Thank you.

THE COURT: Okay.

CLOSING ARGUMENT ON BEHALF OF VEASEY LULAC PLAINTIFFS

BY MR. DUNN: May it please the Court and counsel. Chad Dunn on behalf of the Veasey LULAC Plaintiffs and, again, I'm joined by Mr. Derfner and Mr. Hebert. I neglected to mention earlier Joshua Bone, who has replaced Ms. Simson on our team, is also here with us and of course I had Scott Brazil and Neil Baron assisting us in this case.

I do want to take just a few seconds to thank the lawyers behind me. I, of course, started this proceeding in my opening statement before talking about duty and responsibility. I hope we've lived up to it. I hope the Court and the public believes that we have ably come here and brought this case and properly tried to prove it. I have worked with some of the greatest women and men in this case that I have ever worked with in a courtroom.

I say that on behalf of the Plaintiffs but also on behalf of the State and the State had, in my view, an

indefensible law to defend but they did it honorably and ably. Mr. Scott, Mr. Clay, Mr. Donnell, Mr. Keister, Ms. Wolf -- in fact, I'll say about Ms. Wolf, she must be the most ferocious and able litigator I've ever dealt with in my life. There were mornings I would open emails from Ms. Wolf and question my will to living. So with that, I can certainly commit that the State has done everything that it can possibly have done to defend this law.

I do want to turn for a minute and talk about the historical nature of this case. I mentioned in my opening statement that Mr. Hebert and Mr. Derfner like to tell stories about the 40-some years they fought racial discrimination, whether it's intentional discrimination in segregated schools or voting discrimination throughout the south. They tell these stories sometimes over and over again and sometimes the same way but nevertheless the point has hit home with me and I'd like to share it with this Court, that the right to vote was fought for in a court of law in the beginning because governments like Texas were denying the right to vote.

And then we improved as a society and we passed laws that merely diluted the right to vote and we recognized as a people that denying the right to vote was not permitted although some still thought abridging could be proper. And we began to whittle away at those laws as well but something has happened recently where we have returned to vote-denial cases

and that is what this one is and that is why it is so critical that this Court today put a stop to it.

Texas is proud. It's a proud state. There's probably no one in the room more proud than I to have been from Texas, to have been born here, to raise my family here and I represent some individuals who are also Texans though they didn't have a vote in the legislature. They come here with their ten-gallon hat in hand asking that the Constitution applies to them and the rights that they have that they ask for here were given to them in some measure by another great Texan.

When President Johnson announced that he would do all that was necessary to pass The Voting Rights Act, he said every American citizen was to have an equal right to vote. There is no reason which can excuse the denial of that right. There is no duty which weighs more heavily on us than the duty we have to protect this right.

I and Ms. Van Dalen and so many others who have spoken before you have described the testimony of individuals who have come into this court rather humbly describing to this Court their -- let's say it -- impoverished means in ways that most of us in this room would be unable to get past our pride but they did it because what they did was as important as what any soldier does on a battlefield. They stood up for what was wrong and they used what weapons they had at their disposal to fight evil and now they ask this Court to finish the job.

So I'm honored today to represent these voters who seek to exercise their fundamental right to vote and I'm going to do all in my power today, as I have up until now, to do what is necessary to protect their right to vote because their cause has become our cause. It has become my cause and it is not just the cause of Latinos and African Americans but it's really our cause to overcome a legacy of discrimination and injustice that his Court must find -- we beg it to find in the final matter still continues today in Texas.

Now, I've been told by co-counsel that whatever rhetorical flourishes I would be able to make today would be insufficient to show the Court what is necessary on how to rule on this case. So I prepared a Power Point and I'll tell the Court that I enjoy giving a Power Point about as much as I enjoy sitting through a Power Point but I will agree up front not to read every phrase, not to read every slide, not to use any animations but I do think it's important as -- as important as to how this Court rules and whether it issues an injunction is how it does it and how it deals with the legal -- important legal issues at issue.

My time before the Court I'm going to deal with the poll tax and the Crawford claims which have not received much attention to this point. That means nothing and the Court should not take it as Veasey/LULAC Plaintiffs not agreeing with the racial claims. We agree with them entirely. I brought

those claims and helped support them with evidence.

But if I could ask that the projector be transferred to our table. Many of the slides I will skip past because they've been discussed. I'll also just reference them in case the Court would like to reference them later or its clerks and if it's acceptable, we would file this unchanged with the Court after the proceedings.

So the first two slides result -- relate to the -- first, the Crawford claim and then the poll tax claim and really this is just the road map to where in the findings of fact and conclusions of law the Court is able to look up these issues and -- if it chooses to do so.

I want to start with Crawford and it's important that if we have been successful to convince the Court to rule in favor of the Crawford plan, how it does so is very important. So what we've suggested to the Court is a standard that it might relate in its opinion as to how Crawford and the Anderson-Burdick analysis will overlap one another and the way we treat it is a rule of necessity.

So we believe and assert and certainly understand the directors of the Crawford opinion that preventing in-person voter fraud is an important State interest which we don't argue with. The question is, does Senate Bill 14 need to be as restrictive and burdensome as it is to meet that interest. That's what we think the rule in Crawford-Burdick requires and

that's what we think we have met and exceeded in our burden of proof in this case.

So for using as for example the interest of impersonation fraud that the State has, the question is, the fact that there hasn't been any real fraud means we believe that it should have been possible for the State to protect or achieve that interest without putting so much of a burden on the people. And what is important, I think, to note about Crawford in particular in the Indiana statute is, of course, the testimony that we heard from so many legislators who supported this bill that said that they adopted this measure because it was the same as Indiana and Georgia. And that's plainly not true. We've heard about that. I won't belabor here.

But what I will point out is that as we do the Anderson-Burdick analysis, the Crawford analysis, and we look at whether it was necessary to be this burdensome in order to meet the state interests. We know it wasn't necessary in Georgia and Indiana. It met its state burden and the state's interest in stopping voter fraud but also did it in such a way that at least with respect to Georgia -- it came after some Court opinions. They did it in such a way so that individuals could still obtain the right to vote.

So we provide a slide comparing Crawford versus Veasey and I won't go through it here but I will stress that

they -- that Crawford was a facial challenge that involved cross motions for summary judgment, very little evidence, no analysis as to the number of people affected and certainly no identification of individuals who would be affected and all of that is different in this case.

This is an as-applied challenge which we'll discuss later is important in how this -- the Court crafts its individual injunction assuming we've been successful at obtaining one. So Texas' individual choices -- again, getting back to the necessity question, Texas' individual choices are what have added to the burdens. They picked it over a restricted list. We've heard about that. In order to vote by mail and claim the disability under the prior law, one merely checked a box.

Now one has to go to the government with a "Mother May I" and plead to them that they're sufficiently disabled in order to vote by mail. Then you can only obtain a reduced-cost birth certificate and not by mail. If you paid a higher fee, you can have it mailed to you. And then the birth certificate application, up until moments into this trial, showed that one had to bring a photo ID in order to get the birth certificate, creating an impossible burden.

What I think is so noteworthy about that, although I appreciate the State repairing the error, the fact that it occurred here in court after litigation has begun with no

public notice goes to show how the State's implementation of Senate Bill 14 is fatally flawed.

Senate Bill 14 for the first time made a law enforcement agency responsible for election laws in the state. We walked through various regulations as it pertains to the statute and although it's not, in my view, an entertaining thing to spend some time discussing, it's critically important in the Crawford analysis and the opinion that this Court issues that it deals with the web of the statute and the regulation as it's entered.

And what the legislature essentially did was it provided to the Department of Public Safety, a law enforcement agency, unfettered discretion, standardless discretion to decide how it would administer the EIC program. The Department of Public Safety did so in the administrative code. It came up with the process by which a person could present documents to get an ID and without walking through them today, the bottom line is one must bring a birth certificate in in order to obtain an EIC.

The supporting documentation has been listed. We've also provided it on the slide. We've also talked here today about the significant cost, the $22 for a certified copy, the 2 to $3 for the so-called EIC copy but what we've also heard from individual witnesses here is that very rarely is the 2 or $3 charge. It's not advertised. People have to know to ask for

it and in some cases, they have to beg for it.

So how does somebody get an EIC? How would a citizen out there who becomes aware that an EIC is necessary or photo ID is necessary, how do they go get one? Well, first they have to learn about it. And of course as Ms. Van Dalen pointed out during one of her examinations, there was no way to go to the website and in Spanish and find out where one might obtain an EIC. We know the Department of Public Safety is not committed to the EIC program, one of their authors referred -- officers referring to it as “Mission Creek.” And then we also know that the DPS employee who is involved in this spends little time on it and we can tell from his demeanor and his testimony take no interest in it. What documents do you have to get? Well, of course you have to get a birth certificate.

But more importantly, the regulations allow DPS to demand virtually any information they want to confirm your identity and, in fact, there is nothing in this record that prohibits in any way for the Department of Public Safety the moment judgment was entered in this case were requiring additional or other documentation which incidentally goes to show what the State is clearly trying to do with Senate Bill 14 because with its unfettered discretion, it clearly could have relieved some of these burdens in the regulatory nature and chose not to do so.

One has to visit a DPS office which are largely

inaccessible. Many counties don't have them. It's a law enforcement agency again that fingerprinted, did background checks up until the point in time that this lawsuit brought those issues to this -- to the attention. We have to convince a DPS employee accept certain documentation and in some DPS locations, one gets luckier than others. So essentially the right to vote comes down to a game of chance.

DPS exercises its discretion, as I said, on a case-by-case basis and we reference here testimony that Mr. Derfner elicited from the DPS officer and asked him what might happen in individual situations in Waco and other locations around the state. We think it's important to note Rudy Barber's store, an Anglo woman from Waco who went to the DPS with supporting documentation and was unable to obtain an EIC. She finds herself on the front page of the Waco newspaper and the Department of Public Safety contacts her and obtains an EIC for her despite the fact that she never had a birth certificate. Instead, what the DPS does is they go online and find her birth history on a website and call that good enough.

Again, Senate Bill 14 is fatally flawed in that it provides unfettered discretion to a state agency, that that state agency we know based on this record is administering in an ad hoc inconsistent manner. We know it because Floyd Carrier didn't receive the same benefit that Ms. Barber did. We know that Gordon Benjamin didn't receive it who went down to

a DPS office in San Antonio with many more documents than Ms. Barber ever had and he stands today without an EIC.

On these slides, we describe for the Court the intersection of Senate Bill 14 and its changes to the Transportation Code, not the Election Code and in its reference to Section 521.142 of the Transportation Code which is the code of law that provides the requirements to obtain a driver's license. And it goes to show that Senate Bill 14 was drafted in mind to provide the Department of Public Safety an agency designed to issue driver's license and do law enforcement. They hand out EICs and that it's chosen to do as a law enforcement and not an election assistance agency.

But the second perhaps most insidious way that the statutory language DPS standardless discretion is when it comes to all the necessary documents that a clerk can ask for and, again, we compare the examples of one individual after another who goes to DPS and different documents work in some situations and not in others. When the director of the EIC program was asked about this different treatment, he admitted it. He affirmed it. We give you the citation to the trial transcript. There is no dispute that Senate Bill 14 is being inconsistently applied across the state.

Again, because of the unfettered discretion that DPS has been given by Senate Bill 14, we have debacles like we did with the thumb-printing of applicants which Mr. Peters of DPS

testified had been done and had been stopped but goes on to state that his regulations or the rules actually still require it. So even insofar as DPS has been given discretion to administer this program, they do it in such a way where they even ignore their own regulations again on an ad hoc, inconsistent basis.

So as a result of this unfettered discretion, there has been a limited issuance of EICs. As been noted by Mr. Dellheim earlier, there are other places like Georgia that issued a great deal -- number of EICs and I think we know why. It's because Mr. Rodriguez, who no doubt knows the direction that he received from the legislature, never took it seriously to ensure these EICs were issued, saying at one point, zero is a good number for the number of EICs requested at issue and pointing out that in one of -- incidence there was a close call involving an inquiry to get an EIC but it turns out it was not issued and there was a clean sweep that day.

Your driver's license now in Texas is your ticket to vote but the State gives no consideration to what might happen to people who lose their driver's license for issues that have nothing to do with their right to vote, for example, being pulled over for a DWI. Furthermore, people decide to voluntarily turn over their driver's license when they've exceeded the years they should be behind the wheel, activities that we should encourage from a law enforcement basis but

there's nothing in SB 14 to give these folks notice that when they hand over that driver's license, they're now losing their right to vote when the State so simply could have turned around and issued an EIC.

So the State gives various explanations for why they passed this law. For one of them was so they could ensure citizens to vote. Well, we know that's not true because several of the IDs they put on the list, you don't have to be a citizen to get, a concealed handgun license or a military ID, for example. Moreover, we know the driver's license database indicates that only 4 million out of the 18 million or so applicants have actually had to show their papers like Mr. Estrada and Mr. Carrier have been asked to do. And so at least for the next four years, there will be approximately 14 million Texans who get to vote under a completely different standard than do the rest of the Texans who do not have the privilege to drive.

We heard about voter fraud but of course we know from Mr. Wood that it's irrational to change one vote, that there are no election outcomes in the evidence that have been changed with one or even a handful of in-person voter fraud. There are two cases in 14 years and there's uncontroverted testimony that in-person voter fraud is easy to discover. And, again, we know that the real problem is with mail ballots and Texas turns a blind eye to it.

Now, again, as I said earlier, it's not that we question the State's important interest. We question how the State served that important interest and I won't touch on it much except the racial motivation. Dr. Lichtman went through one change after another where the State had available to it information that would have -- that would cause Senate Bill 14 changes to benefit or disadvantage African Americans and Latinos. In every single opportunity, it took the path that would damage minority voting rights. And we have Mr. Korbel's testimony talking about redistricting which we've heard so much of here today.

We've offered another slide as to various case authorities dealing with the standard of appellate review when a Court decides issues of intent despite some of the witnesses not having testified live. Now, I have my suspicions as to why the State didn't call any of the authors of this legislation. In fact, I like to joke in our recesses that this is the most beautiful baby anybody's ever seen but it's got no mama.

But nevertheless, the State made the decision to not bring a single legislator here to testify live in favor of this statute but that should not form the basis of this Court finding intent. Those legislator's language in their testimony that was described by the earlier attorneys who have become before me is sufficient for this Court to find intent along with all of the collateral circumstantial evidence that

Arlington Heights says is sufficient.

There's been a great deal of talk by vote-by-mails. I won't belabor that point. The number of Texans who currently lack ID -- I suspect that the State will argue here as they have in their findings of fact and conclusions of law that the percentages are small but percentages hide real people in one analysis after another jelled in a basic area of 5 to 600,000 registered voters who lacked Senate Bill 14. Also Dr. Barreto and Dr. Sanchez provided a number of eligible voters of 1,130,000 Texans who are not able to vote unless they somehow meet the burdens of Senate Bill 14.

But really none of this is news to the State and it surprised me that they came in here and defended it. Ann McGeehan at the Secretary of State had already done her own match and came up with an 800,000-dollar figure you saw earlier. Representative Smith had done an analysis and came up with a 700,000 figure and to attack these scientists with the methodology that they used to reach a conclusion that everybody has reached, it seemed to me was an unnecessary herring.

But nevertheless, the Court should find that whether the number is 597,000 or 608,000 or something in between, there is an enormous number of people who are affected by this law and there is an enormous disparity between Anglos, African Americans and Hispanic, so much so that Dr. Hood found this when he began to perform his own match and then decided not to

complete such an analysis.

Again, we offer another slide describing how the percentages both in disparity and compared the citizen voting age population are significant and also legally relevant. I thought one of the turning points of the testimony in this case was Mr. Ingram. The director of elections sat on the witness stand and talked about how implementation of Senate Bill 14 was like flying an airplane while trying to build it.

Well, Senate Bill 14 was passed in the spring of 2011. It was held up by a Section 5 lawsuit that ultimately enjoined the law and then wasn't -- Section 5 wasn't listed -- lifted from the State until June of 2013 which means the State of Texas had two years to prepare its implementation of Senate Bill 14. So to the degree that the State was flying its plane while trying to build it was certainly its own decision.

But nevertheless the fact that this state admits that its implementation of the law has been rocky on top of the fact that the statute is irrevocably flawed and that it provides standardless discretion to election officers tells us that we can't merely trust the Elections Division to ameliorate some of the disadvantages that the law creates or the harm that it creates.

I think it's also important to note because it didn't come out in the testimony but it is in the depositions that Ann McGeehan who had been the Director of Elections in Texas for

some time -- she testifies as a resource witness on Senate Bill 14 and then not much longer, she's reassigned out of the Voting Department. Mr. Ingram then is brought in from the Governor's Calendars' office to implement Senate Bill 14 and under his own testimony in his deposition in the record had no election law experience, save from having worked on an election case in Arkansas for some lawyer that he worked for there.

So it's not surprising that if we were building the airplane while we were trying to fly it that we crashed it a few times. That's why we had fingerprint applications and we had background checks, websites provided misinformation -- websites are still being updated today -- no Spanish language support, mobile EIC units that nobody can find, no signage in DPS concerning EIC issuance and one issue after another. Texas only spent $400,000 of its own money to implement a voter plan that would apply to all of its residents.

It used Help American Vote Act money as we heard from Mr. Cornish but that money really just went to tell the public that they would need an ID. That's a hopeful, helpful message but there was no effort to explain to the public how to get one of these IDs. Georgia spent $700,000 and put a camera in every one of its voter registration offices in all of its hundred and fifty-nine counties. Texas, with its immense wealth and opportunity, could have done better, should have done better if it was actually interested in issuing EICs.

The other thing that came from Mr. Ingram that I found so shocking was a complete lack of interest in provisional ballots issued in this case. Now, the State is critically concerned about the two cases of in-person voter fraud it has discovered in the last 14 years but it pays no attention to the number of provisional ballots cast since Senate Bill 14 was adopted that relate to ID.

In fact, Mr. Ingram says now, I have no idea how many of IDs in Harris County were related -- or in the Senate Bill -- Senate District 28 election were related to ID but there were a hundred and twenty-seven provisional ballots in a special election of only 27,000 votes cast and the State is taking no interest and even if the State doesn't believe that Senate Bill 14 is a problem, why not try to determine who cast these provisional ballots and get an EIC in their hand?

There were a hundred and five provisional ballots in a low turnout election in Harris County, a hundred and five that were related solely to not having an ID. And Mr. Ingram said, "So, you know, we could ask them to do a lot of things" -- talking about the County -- "but you'd have to do a cost-benefit analysis as to whether or not that information that you received would be useful."

So now I turn to the poll tax claim. It's undisputed that Texas charges money for a poll tax and it's undisputed that every other law like Senate Bill 14 has been struck down

or changed by a Court to make the document itself the EIC free and underlying documents to be free. It's simply inexcusable that Texas reduced the fee but still charges a fee. The other issue that we know is that for so many the 2- to 3-dollar fee is not going to get it done. Mr. Carrier's paid $42 and he still doesn't have a correct birth certificate to get an EIC.

Texas imposes an indirectly higher fee on people born in other states or in other nations who are citizens of the United States and, again, it makes no accommodation for this. And it wasn't that it was a mistake. It was an active decision because Senator Davis and others proposed amendments to make the EIC supporting documents free or provide for reimbursement of those documents and each and every one of those amendments was defeated.

So Texas adopted the law that required people to bring a birth certificate. It knew it would cost money. It knew that 25 percent of the people in the state were born elsewhere and they would have to pay more money. It knew the U.S. Supreme Court said in 1965, "Any material requirement, any material fee imposed on the federal voter is unconstitutional."

And more importantly or at least to put a face with it, Ken Gandy came in here and testified -- a citizen here from Nueces County -- that he works on the ballot board and actually makes sure that elections are fairly administered and he can't vote in person now without paying a poll tax.

So we submit to the Court that it should decide all four of the claims submitted, the Section 2 claim, the purposeful discrimination claim, the Crawford claim and the poll tax claim. Now, the State may counsel the Court against doing this because often it's the case that Courts should avoid constitutional questions when it could resolve a case on a statutory answer. But if the Court is to find an injunction in this case and my clients have secured an injunction in this case, it is certain that the State will seek a stay of that injunction. And the Court of Appeals, given the closeness of the election, will be in the best position to determine an outcome in this case if it has adjudication of all of the claims pending before the Court.

Now I turn to remedy. Obviously we agree with the earlier Plaintiffs who have testified that if there is purposeful discrimination or a violation of Section 2, Senate Bill 14 is to be enjoined in total but we've read Crawford. We understand that the Anderson verdict analysis requires this Court to tailor a remedy that is directly crafted to solve the harm and is no broader than is necessary to deal with the constitutional violation.

So we believe that even though the Court need not reach the contours in the injunction under the Crawford and poll tax analysis that it should do so given the closeness of the election and that it should say that this Court chooses to

enjoin senate Bill 14 as it pertains to people who do not have an ID and then permit the State to come back to the Court if it chooses to do so and provide for what procedure it would like to use to identify those people who don’t have a Senate Bill 14 proposed ID. We suggest the easiest way to administer an upcoming election is to simply allow people who present their voter registration card to vote, the system that was in place successfully for decades before.

Nevertheless, the State, in its sovereignty, is entitled first to address the issue. They broke it. They bought it. They should assist the Court in fixing and repairing the problem that they created.

The same is true with the poll tax claim. We'll note that both in Georgia and Wisconsin, courts have had to find that laws such as Senate Bill 14 amount to a poll tax. And in both places remedial orders were entered in pace to make sure that the documents were free; and, in Wisconsin, so that the underlying document, the birth certificate, was free.

And, again, once the State has demonstrated it's complied with this Court's order, if it's forthcoming, to resolve the poll tax issue, then it ought -- then the State must then demonstrate to the Court that it has allowed sufficient time for people to obtain this free documentation to get an EIC before they can be demanded of same in an election.

Lastly, I want to talk -- on the legal issues, I want

to talk about the Wisconsin Seventh Circuit issue. As the Court might be aware, many of these issues are working its way through Wisconsin Federal Court, as the Seventh Circuit recently issued an opinion lifting an injunction from the Wisconsin District Court, and that opinion is strongly in favor -- both the District Court and the Circuit opinion are strongly in favor of this Court enjoining this law.

In fact, it was the Seventh Circuit that said the reason that they were lifting the injunction in that case was because the State Supreme Court had already adopted changes to the law that made it not be a poll tax -- changes that have not been permitted or made in this case.

Next, I'd like to talk about what the emergency is. One of the issues that I think the State will raise is that there's an election coming up, and that we have a number of people -- and the State ought to be able to meet its interest in this election.

But that rings hollow, since the State, as we noted earlier, has 14 million of the 18 million people in the driver's license database who have never proved any of these documents.

So one way or the other, injunction or not, this election to be held in a few weeks is going to be held with millions of Texans going to the polls without having done what Senate Bill 14 and the Legislature required them to do. That's

going to occur whether the Court chooses to enjoin the law to protect against the harms that have been described here -- and as long as that's the case, what's the rush?

Now, lastly, I want to return to the issue of race. One of the things that the State of Texas has tried to do is ferret out voter fraud in every place that it can find it. And it has spent the last decade, as the record reflects, trying to locate voter fraud.

One of the things it did was prepare a PowerPoint that it delivered to various officers around the State, district attorneys, criminal investigators, telling them how to find voter fraud. And this is how the State of Texas chooses to speak, and this is the images that the State of Texas chooses to use to cue others into what voter fraud looks like.

When the State of Texas talks about early voting in person, it uses an image of African-American folks lined up to vote.

When Texas talks about in-person -- when Texas talks about voter fraud as it relates to mail ballots, they ask regulators, they ask district attorneys, people with the power to take somebody's liberty away, to look for unique stamps, and the one they pick in their presentation is one involving testing for sickle cell anemia and an African-American mother holding her baby.

Texas, whether we call it a dog whistle or subtle

cues, has for all too long used race as an issue that has defined its politics and has too often defined its policy.

So, today, we have come here asking the Court to enjoin Senate Bill 14.

And the quest and thirst of Latino and African-American voters for justice fuse and blend into our own noble calling as lawyers, my calling to be here. And whether we are judged or served by an almighty God, our conscience, our friends, or the trustful eyes of young ones looking up to us, it is our duty at this time and at this place to call this what it is -- to what we know in our heart that it is. We have arrived at a place in time today where we must do our duty.

We ask this Court to enter judgment for the Plaintiffs. And if it does so, it will do what President Johnson said the enactment of the Voting Rights would do for all Americans, "It will be a triumph for equality and freedom, and as huge as any victory that has been won on any battlefield."

And if I and the other lawyers behind me have done what we should have done to convince this Court that an injunction should lie, we will do anything and everything that's necessary to make sure that it remains the law, because for all too often, as proud as we are as Texans, we've needed the Federal Court to be our conscience.

And, today, unfortunately, our conscience didn't get

it done, so we're asking for this Court's. Enjoin this law, please.

THE COURT: Thank you.

CLOSING ARGUMENT ON BEHALF OF STATE DEFENDANTS

BY MR. ASTON: Adam Aston for the State Defendants. Good morning, your Honor --

THE COURT: Good morning.

MR. ASTON: -- and counsel. May it please the Court.

As the Defendants noted in opening argument, this case asks whether Texas may require in-person voters to provide photo identification prior to casting a vote. The Supreme Court answered that question yes for Indiana in 2008.

The Seventh Circuit answered that question yes for Wisconsin a week ago.

And in between these two decisions, states across the country and across the political spectrum passed voter identification requirements for the purposes of deterring and detecting voter fraud and preserving voter confidence in the integrity of their elections.

Photo identification requirements remain immensely popular with Latino, African-American, and Anglo voters, both nationwide and in Texas.

Over the course of two weeks, the Court heard testimony from -- and reviewed evidence from Texas voters, civil rights leaders like Reverend Johnson, public officials,

community organizations, and 18 paid experts.

While the focus of the State's argument today will be on that evidence, a brief review of Plaintiffs' claims and the burdens that they bear will provide an appropriate context for the consideration of that evidence.

For Plaintiffs' Section 2 vote dilution, poll tax, and Fourteenth Amendment claims, Plaintiffs must prove Senate Bill 14 has the effect of substantially burdening voters. Under Section 2, Plaintiffs must show the effect of Senate Bill 14 will be the denial or abridgment of the right to vote on account of race or because of membership in a language minority group.

And under the Fourteenth Amendment claim, they must show that the substantial burdens are not justified by legitimate State interests.

To prove Senate Bill 14 was enacted with a discriminatory purpose, Plaintiffs must show it was enacted because the Legislature desired to harm minority voters. As the Supreme Court has explained:

> "'Discriminatory purpose' under the Fourteenth Amendment implies more than intent as volition or intent as awareness of consequences. It implies that the decision maker selected or reaffirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects upon

an identifiable group."

Finally, *Crawford versus Marion County* instructs that Plaintiffs' burden is a particularly heavy one, given their facial challenge to Senate Bill 14.

Keeping these principles in mind, we turn first to the effects of Senate Bill 14.

Much of the evidence presented by the Plaintiffs involved estimating the potential effects of SB 14, but the critical question for this Court is what are the actual effects Senate Bill 14 will have on actual Texas voters. Even under Plaintiffs' worst-case scenario view, at least 95.5 percent of Texans already -- Texas voters already possess an acceptable form of photo ID.

Indeed, *Crawford* finds that, for most voters, even if they do not yet have an ID, obtaining one involves no increased burden. For most voters who need them, the inconvenience of making a trip to the DMV, gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting.

Thus, *Crawford* stands for the proposition that voter ID is not unconstitutional, even as applied to voters who do not yet possess an ID.

Crawford goes on to note that a somewhat heavier burden may be placed on a limited number of persons.

Yet Texas took care to mitigate this burden. Senate Bill 14 allows the disabled to vote in person without an ID. Texas law allows the disabled and those over 65 years of old to vote by mail without a photo ID. And for an EIC, the charge for a birth certificate is 2 or $3.

The State Defendants appreciated hearing the personal testimonies from so many Texas voters. Some expressed lingering concerns over whether they will be able to vote, but the State is committed to ensuring that these Texans can vote. It's because of Texans like these that the State carefully crafted and implemented Senate Bill 14.

Indeed, as their testimony demonstrates, SB 14 will not prevent from voting a single one of the 17 voters who testified.

Ms. Ruby Barber from Bellmead, Texas, went with her son to DPS to obtain a photo ID. Although she lacked a birth certificate, Texas DPS located her in the 1940 census records and issued her an EIC. Ms. Barber and her son said that she appreciated the efforts of DPS, and Ms. Barber intends to vote in November.

Ms. Vera Trotter is a lifelong Dallas resident, who went to DPS a few days after learning that she needed to obtain a photo ID to vote in person. She has since used the EIC temporary receipt in March of 2014 and voted by mail in May of 2014. Ms. Trotter also intends to use her expired driver's

license to obtain a Texas ID card as soon as possible.

Ms. Phyllis Washington has voted using her Texas ID, and she lives near the Holland Street Baptist Church in Houston, where a mobile EIC unit was stationed for several weeks.

Mr. Floyd Carrier testified regarding his service in the United States Army as a paratrooper, and he can vote with his veteran's ID. He lives in Jefferson County, where he retired after becoming disabled.

Ms. Maximina Lara lives in Sebastian, next door to her older brother, Margarito. She has a driver's license that she has used to vote without incident in three elections following the implementation of Senate Bill 14.

Ms. Ramona Bingham has an expired driver's license, which she hopes to renew, and a valid Texas ID card.

Each of these six voters already owns an acceptable photo ID.

Mr. Ken Gandy of Corpus Christi has served his community as a precinct chairman and ballot board member for several election cycles. Mr. Gandy has voted by mail without difficulty in the three elections following the implementation of Senate Bill 14.

Ms. Gholar would prefer to obtain a Texas driver's license rather than an EIC, and she was working on obtaining her birth certificate to do so. Until she does, she's able to

vote by mail.

Mr. Margarito Lara and his wife live in Sebastian, Texas, near Mr. Lara's sister. Mr. Lara is eligible to vote by mail, and would have the necessary documentation to obtain an EIC if he obtains a delayed birth certificate, and he has all of the documentation necessary to obtain that birth certificate.

Ms. Sandy Bates is able to vote by mail. She is also interested in acquiring a Texas ID for purposes in addition to voting, and she is working towards doing so.

Ms. Naomi Eagleton is a lifelong Houstonian. Because she has a Medicare card, a voter registration card, and a bus pass, she has the necessary documents to obtain a birth certificate and then an EIC. In the meantime, she's eligible to vote by mail.

Ms. Espinoza has lived and worked -- or voted in Raymondville in Willacy County since 1970. She has the necessary documentation to obtain a birth certificate and an EIC, and she is eligible to vote by mail.

Mr. Mendez was born and raised in Willacy County, where he currently resides with his wife and family.
Mr. Mendez says he doesn't want an EIC out of principle, yet he has the documents necessary to obtain a birth certificate and an EIC.

Mr. Leonard Taylor is a retired resident of Alice,

Texas. He has voted in the past with a Texas ID card that has since been stolen or lost, but which he intends to replace. Until then, he could obtain an EIC or vote by mail.

Mr. Benjamin has lived and voted in San Antonio in the five years since he moved back to Texas from Arizona. Since 2011, he has served as a volunteer deputy voter registrar. He is eligible to vote by mail, or could obtain an EIC with the documents in his possession.

And Ms. Imani Clark is a senior at Prairie View A&M, where she has been a student since August of 2010. She has registered and voted in two elections in Texas, the 2010 city elections and the 2012 presidential election. She chose to obtain a California driver's license in January, and she has the documents necessary to obtain an EIC; but she contends that she lacks the time to do so, even during the summer, when she took a reduced class schedule.

And, finally, Mr. Lionel Estrada lives in Kenedy, Texas. He has maintained a commercial driver's license since 1997, sometimes paying as much as a hundred dollars to reinstate or maintain that license. Mr. Estrada was issued another commercial license, but in order to receive the license, he must pay no insurance surcharges and prove that he has acquired insurance. He has the documentation necessary to obtain a birth certificate and an EIC in the meantime, but he does not wish to relinquish his commercial driver's license.

Your Honor, what this evidence shows is that through Senate Bill 14 and preexisting mail-in voting provisions, the State of Texas has provided accommodations for voters who might face the somewhat heavier burden noted in *Crawford*.

This chart shows that Texas has made sure that voters like Plaintiffs and witnesses who testified here remain able to vote under Senate Bill 14. After the Department of Justice and the Plaintiffs spent three years challenging Senate Bill 14 and diligently searching for Texans who will be prevented from voting, it's quite telling that the individuals who remain able to vote are those held up as the most likely to be affected by Senate Bill 14.

And the State's efforts continue even to this day. The Legislature appropriated $63 million to improve driver's license services. The DPS has built seven mega centers, an eighth is coming to Corpus Christi, and the DPS has hired hundreds of new employees.

Mobile EIC units, in coordination with the county officials, have ensured that all 254 counties in Texas have a location that issues EICs.

We'll talk more about the no match list in a minute, but a review of the effects of Senate Bill 14 should account for the fact that more than 27,000 of the individuals on Dr. Ansolabehere's original no match list have voted in at least one election since Senate Bill 14 took -- most of those

voting in person. And these are elections in which Plaintiffs claim no one votes.

The Court should also take note of the lack of complaints or problems raised by voters in the three elections under Senate Bill 14.

Keith Ingram, of the Secretary of State's Office, testified that they get lots of calls -- thousands, in fact -- offering real-time feedback from the public, but there has been absolutely almost no phone calls, e-mails, problems related to the lack of an ID.

> "The few that we've had have primarily related to elderly folks who have been using an expired driver's license but don't drive anymore. That has been -- we've had maybe three or four of those who have been unable to have an ID; and, obviously, they can vote by mail.
>
> "But as far as a pattern of people who said, 'I don't have an ID. I don't know what to do. How can I get one?' doesn't exist. Thousands of phone calls every month. We've got a public hotline that is on the back of every voter registration card, and we get all kinds of calls. We get calls because my name doesn't match. We get calls because of a lot of reasons, but not that I don't have an ID."

Jefferson County Clerk Ms. Guidry testified, at Pages

156, Line 18, through 158, Line 19, that her county has experienced no problems with the implementation of Senate Bill 14:

"QUESTION: So that letter is the only complaint you're aware of in March for the 2014 primary related to SB 14, correct?

"ANSWER: Yes.

"QUESTION: And the gentleman who made that complaint was not complaining that he was not allowed to vote because of the photographic requirement, correct?

"ANSWER: No, he was allowed to vote. He was complaining why was he not asked for his photo ID."

Finally, it's also telling that DOJ and the Plaintiffs made no attempt to study or survey the actual voters who appear on the no match list. Worse still, DOJ instructed experts to not study actual voters. As Dr. Ansolabehere testified on Page 215, from Lines 2 through 14 of the September 2 trial transcript:

"Given that DOJ seemingly spared no expense in this litigation, one can assume that DOJ knew that the results of such a study would confirm that Texas voters remain able to vote under Senate Bill 14, and chose not to undertake that effort."

Thus, both the evidence that the Plaintiffs did present and the evidence that they were either unwilling or

unable to present point clearly toward finding that Senate Bill 14 will not have the effect or -- of denying or abridging the right to vote.

The evidence in this case confirms for Texas what Dr. Stephen Ansolabehere has observed for more than 20,000 actual voters in multi-state surveys.

"How many people were denied the right to vote as a result of voter identification requests?"

The answer is, "Very few."

The actual denials of the vote in these two surveys suggest that photo ID laws may prevent almost no one from voting. Voter ID does not appear to present a significant barrier to voting. Although the debate over this issue is often draped in the language of the civil and voting rights movements, voter ID appears to present no real barrier to access.

Unable to produce evidence of actual Texans who will not be able to vote under the provisions of SB 14, and unwilling to acknowledge that this means SB 14 will not deny or abridge the right to vote in violation of federal law, DOJ and Plaintiffs spent vast resources in an effort to estimate voters who may not yet have a photo ID. They engaged many experts in this pursuit, yet this effort likewise failed to meet Plaintiffs' substantial burden.

This effort began with Dr. Ansolabehere's attempt to

create a no match list of registered voters who do not have one of the acceptable forms of photo ID. But the people who would belong on such a list are constantly in flux; and the race of the voters on any such list is unknowable, because the database of registered voters does not contain race.

The ID disparity rate is thus unknowable.

In particular, the no match list is unreliable for six reasons, at least.

One, the SOS database lacks full social security numbers for more than 50 percent of the entries.

Two, there are inconsistencies in the data across the fields. For example, a woman might be named "Katherine" in one and "Kay" in another.

Three, in the TEAM database, over 18,000 voters have the date of birth listed as 1/1/1900.

Four, the deceased, felons, and those who have moved out of state are still on the list.

Five, Catalist was used to guess race, because the Secretary of State does not record it.

Six, Dr. Ansolabehere did not attempt to estimate false no matches, even though techniques to do so are available.

Plaintiffs compounded these errors by not removing those with a qualifying disability and by not removing those who are over the age of 65.

As the Supreme Court explained in *Crawford*:

"Even for those who would prefer to vote in person, allowing mail-in voting offers the opportunity to cast a ballot. Although it may not be a completely acceptable alternative, the elderly in Indiana are able to vote absentee without presenting photo identification."

And it's worth noting here that the Wisconsin law, which was allowed to go into effect just a week ago, their absentee provision still requires the presentation of a photo ID unless you're in the military, or a permanent oversea voter, or you're a confidential elector.

The September no match list -- that's the updated no match list -- greatly overstates those voters who could even potentially be affected. The 608,470 figure does not take into account 73,958 people with disqualifying -- with qualifying disabilities, or the 160,389 who are over the age of 65, or the 21,731 unique individuals who, on this updated no match list, have voted since SB 14 went into effect.

And the serious flaws with Catalist warrant their own brief discussion.

Catalist misclassified the race of 6 out of 22 party Plaintiffs. Comparing Catalist's race guesses to the self-reported data in DPS yields 3.15 million discrepancies, including 1.8 million discrepancies for those who have self-

reported in person since 2010.

DOJ instructed Dr. Ansolabehere to not check Catalist data against the self-reported DPS data.

The Plaintiffs' other expert studies are likewise unreliable, often because they began with Dr. Ansolabehere's flawed data. Dr. Barreto's survey is unreliable because he applied arbitrary weighting factors to account for the over-sampling of minorities in his survey. Barreto claims that his weighting factor was based on the Texas CVAP data, but his numbers do not bear that out when compared to the most recent data.

Dr. Barreto estimated that 53.52 percent were Anglo, but the data shows it's 56.31. He estimated 10.36 for African-American when the data shows it's 12.93. And he estimates 31.09 percent for Hispanic, when the data shows it's 26.49.

Dr. Barreto's weighting factor, therefore, overestimates by 4.6 points the size of the Hispanic voting-eligible population and underestimates the size of Anglo population by 2.8 points.

And as Dr. Barreto's testimony at trial demonstrated on Pages 91 through 99 of the September 4 transcript:

"Although this study suggests that more than 23,000 Harris County voters would incorrectly believe that they have an acceptable photo ID, only about 150 provisional ballots have been cast in Harris County

in the combined elections under Senate Bill 14."

Dr. Herron's block group analysis include less than 1 percent of the registered voters in Texas. And Herron, in the end, could express no opinion on whether any individual had been deprived the right to vote under Senate Bill 14.

Dr. Chatman's analysis of the potential burdens of Senate Bill 14 made assumptions designed to maximize those burdens. He arbitrarily determined that anyone living more than a mile from a bus stop had no access to transit. He calculated travel times on mass transit during rush hour, yet he used mid-afternoon for travel times by car.

Dr. Bazelon's analysis refutes the claim that Senate Bill 14 imposes a disparate impact on minority voters. Dr. Bazelon's study determined that the economic costs associated with travel to obtain an EIC were actually higher for Anglos than for African-Americans, and he did not study Hispanic voters.

The average costs for Anglos were higher both in actual dollars, $48.68 to $27.46; and also in percentage of the average daily wage, 29 person to 26 percent.

Dr. Webster also sought to study travel burdens. He studied low-access census tracts -- a term that he coined and that is not defined by the census. Webster analyzed approximately 20 percent of the census tracts in Texas, all in urban areas. He estimated travel times during rush hour, and

the areas studied represented only 2 percent of the total voters on the no match list.

Despite recognizing that Texas is rapidly growing, Dr. Webster used 2006 to 2010 ACS data, meaning that his data was between four and eight years old.

And all of these travel burden studies failed to appreciate that even in a state the size of Texas, 98.7 percent of the total population live within 25 miles of a DPS office. When you also add in the mobile EICs and the local county offices that are being used to produce an EIC, that number, of course, would go higher.

Consideration of the effects of Senate Bill 14 comes down to a review of the facts versus statistical guesses. The facial invalidation of a statute requires flesh and blood plaintiffs, with concrete and particularized injuries. Social science and statistics can be used to support claims, but they cannot be used to create hypothetical plaintiffs, yet Plaintiffs ask the Court to facially invalidate a statute that their own experts argue will pose no burden for more than 95 percent of Texas voters. And they seek that drastic remedy based upon their flawed estimates as to the remaining Texas voters and despite their inability to identify actual voters who are prevented from voting by Senate Bill 14.

It is all the more inexcusable that Plaintiffs had the data on individual voters and did nothing with that data,

considering Plaintiffs' recognition that merely knowing the number of no matches would be insufficient.

And a quote from the May 28 Status Hearing is one of many that makes this point:

> "Because just knowing that there's X number of no matches, that doesn't tell us very much. We need to know who's in there, where do they live, what is the gender, what is the race, their language, status, et cetera, so that's what it's about."

Thus, the registered Texas voters who do not currently possess and who could not readily obtain a photo ID is not known. Challengers to the Indiana law likewise failed to establish this critical fact.

The studies conducted by Plaintiffs' experts only truly seek to answer the first part of this inquiry, and the results fall far short of satisfying the burden of showing that Senate Bill 14 will have the effect of denying or abridging the right to vote for a significant number of Texans, or that it will do so on account of race or because of membership in a language minority group.

Next, we turn to the purpose claim. The Supreme Court has recognized that several state interests are unquestionably relevant to the implementation of a photo identification requirement. The first is the interest in deterring and detecting voter fraud.

"The State has a valid interest in participating in a nationwide effort to improve and modernize election procedures that have been criticized as antiquated and inefficient. The State also argues that it has a particular interest in preventing voter fraud in response to a problem that is, in part, the product of its own maladministration; namely, that Indiana's voter registration rolls include a large number of names of persons who are either deceased or no longer live in Indiana. Finally, the State relies on its interests in safeguarding voter confidence."

The Texas Legislature considered photo identification bills in four consecutive sessions -- 2005, 2007, 2009, and 2011 -- and the legislative record from the 2009 Committee of the Whole was incorporated into the Senate record in 2011. The public records for these legislative sessions, which are the best and most reliable sources for determining the purpose of any legislative enactment, consistently show that the Legislature was motived by these same principles.

First, to detect and deter voter fraud. Plaintiffs' expert, Mr. Buck Wood, testified regarding the large volume and variety of fraud in Texas. Fraud by mail is a serious problem. Fraud can decide elections, including one of his cases in Llano County, that ended in a tie. In a Bexar County election contest, Mr. Wood disqualified over 1,200 votes. And vote

harvesting is very prevalent and very hard to catch.

And Mr. Wood also testified that he has defended voter fraud cases prosecuted by the Attorney General.

"Did you look at any information from the Office of the Attorney General regarding referrals, regarding voter fraud, or prosecutions of voter fraud?"

And his answer was, "I'm familiar with some of them. I've actually defended some of them."

The Texas Legislature heard testimony that is detailed in Findings of Fact 52 through 55 that in-person fraud is both difficult to detect and a low priority to prosecute for local officials; but the Legislature and others are also aware that in-person voter fraud has occurred in Texas.

The 2011 House Committee heard testimony from individuals who had witnessed in-person fraud. Dr. Minnite testified that she was aware of in-person fraud in Texas. Major Mitchell testified regarding investigations by the Texas Attorney General as well as the difficultly in detecting in-person fraud.

Testimony of two federal witnesses sealed by the Court provides additional evidence that fraud has occurred in Texas.

The potential for in-person fraud cannot be disputed. Counsel for Plaintiffs discussed at length with witness Keith Ingram a recent report by the New York City Department of

Investigation. Pages 12 through 20 of that report detail how, in 61 of 63 attempts, 97 percent of the time city officials were able to successfully go to the polls posing as a registered voter, obtain a ballot, and cast a vote on behalf of that registered voter. This was accomplished, at least in part, because of New York's bloated voter rolls.

Keith Ingram testified that he was aware of this study.

This and other evidence cataloged in the Defendants' Findings of Fact plainly satisfy *Crawford*'s standard, which holds that, quote, "No evidence of in-person fraud within the state is required."

And the Supreme Court also explained that:

"There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters. Moreover, the interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election process. While the most effective method of preventing election fraud may well be debatable, the propriety of doing so is perfectly clear."

Second, the purpose regarding deficiency in registration rolls. As the Defendants detail in Paragraphs 38 through 46 of the Findings of Fact, the National Voter

Registration Act hinders the removal from the voter rolls those who have moved out of state.

THE COURT: I just have a real quick question. I don't mean to throw you off, but the NDRA, it only deals with voters who have moved. It doesn't deal with those who have died or have been convicted of felonies. That's done at the county level for anybody. It doesn't matter.

MR. ASTON: In --

THE COURT: I just wasn't clear on the testimony. Was the NVRA only applied to purging --

MR. ASTON: Well, the --

THE COURT: -- some requirements --

MR. ASTON: The way it's done in Texas -- and that's the next point -- is the counties across the board administer the voter registration, whether it's because of people who have moved, because of people who have died --

THE COURT: Right.

MR. ASTON: -- people who have changed their names --

THE COURT: I just wasn't sure if the NVRA only applied -- the purging requirement only addressed those who have moved -- voters who have moved. I don't know. The --

MR. DELLHEIM: Forgive me. I don't mean to --

MR. ASTON: I think so.

MR. DELLHEIM: -- interrupt. But the NVRA requires every state to initiate a uniform and nondiscriminatory system

for purging voters. So it's any voters who --

THE COURT: Any voters?

MR. DELLHEIM: Yes, ma'am.

THE COURT: Okay. And then Texas has a process regarding those who have died, those who have been convicted of felonies, those who have been declared incompetent?

MR. ASTON: Right.

THE COURT: Okay. So -- okay. I'm sorry. I didn't mean to throw your --

MR. SCOTT: And then that's effectuated --

THE COURT: -- argument off.

MR. SCOTT: -- at the county level.

MR. ASTON: Right.

MR. SCOTT: And so --

MR. ASTON: And that's what Mr. Ingram testified --

THE COURT: That's your next place --

MR. ASTON: I'm sorry, your Honor. Yeah, Mr. Ingram testified that, in Texas, it is the counties that administer the registration. They administer the adding and the subtracting of the -- to the rolls.

And as a result, Texas voter rolls contain the dead, those who have moved, and those who are ineligible to vote.

Inflated registration rolls can lead to fraudulent votes, as demonstrated by a candidate for justice of the peace in Port Lavaca, who was convicted of registering noncitizens

and then illegally voting by mail.

The Supreme Court has determined that the fact of inflated voter rolls does provide a neutral and nondiscriminatory reason supporting the State's decision to require photo identification.

And, third, ensuring voter confidence. The bipartisan Carter-Baker Commission recognized that photo ID requirements can instill voter confidence. The Texas Legislature heard concerns from voters and sought to address those concerns, as they explained in four statements in the Texas House of Representatives, and testimony in this trial. These statements are catalogued on Paragraphs 59 through 61 of the Defendants' Findings of Fact, and they demonstrate that this was one of the Legislature's purposes for enacting a photo ID requirement.

The Supreme Court has recognized that voter confidence is a concern of independent significance, because it encourages citizen participation in the democratic process.

The public records from four legislative sessions make clear that the Texas Legislature considered and enacted a photo ID bill for the same reasons Indiana had done so. The record provides no evidence of intentional discrimination on behalf of the Legislature, and that should have ended Plaintiffs' inquiry into Texas' purposes.

Instead, in the absence of this direct evidence of

discrimination, Plaintiffs contend that Texas was not responsive to voiced concerns, and that this failure constitutes intentional discrimination. That's not so.

Texas was responsive to *Crawford*. Abiding by the Supreme Court's parameters can hardly be deemed unresponsive to minority voting rights.

Texas accepted amendments from Democratic legislators -- for example, including the concealed handgun license within Senate Bill 14 was proposed by Senator Hinojosa, a Latino Democrat. And the substantially similar name amendment was offered by Senator Wendy Davis.

And Texas had good reasons for not accepting other IDs, such as a college ID, which need not contain an address, a birth date, or an expiration date.

And it's worth noting that, again, in the Wisconsin law that was just allowed to go into place, they do allow student IDs, but only if they include a date of issuance, the signature of the student, an expiration date no later than two years after the date of issuance, and the university or college ID must be accompanied by a separate document that proves continued enrollment.

Texas was responsive to overwhelming polling. Democrats and Republicans, African Americans, Latinos, and Anglos all support photo ID requirements. And the testimony shows that the Democrats who voted against this bill knew they

were going against public opinion. The Democrats now complain about the process, but both public records and documents that remain sealed by the Court demonstrate that, over the course of several Legislatures, the Democratic members of the Legislature had a plan to engage in a concerted effort to thwart the passage of the bill -- for example, killing the bill in 2009 in the House via chubbing. And they had a plan to impede the implementation of Senate Bill 14 -- for example, by coordinating with the Department of Justice, as Senator Ellis testified.

This coordinated effort continued even after Senate Bill 14 passed and was signed into law. Representative Martinez Fischer testified that he may have sent an e-mail suggesting that colleagues assert privilege if they had something to hide. And Lieutenant Governor Dewhurst explained that Democratic senators continued to add to the legislative record even after the bill was passed.

Bald assertions of discrimination were raised by some legislators, but those who testified were aware of no evidence of a discriminatory motive of any of their colleagues, and those testifying legislators include Senator Uresti, Senator Davis, Representative Anchia. Lieutenant Governor Dewhurst likewise testified that he was not aware that anyone had voted for this bill for a discriminatory purpose.

And Plaintiffs repeatedly told this Court it was

vital to dig into large quantities of privileged legislative documents, all the while insisting that their own documents must remain confidential.

The Plaintiffs said the legislative documents, which are documents that are at the heart of the United States' claim that this law was passed in part based on a discriminatory intent -- they said that evidence is going to be very, very important in this case, dealing with the intent behind Senate Bill 14 itself. And finally they wrote:

> "Defendants, the State of Texas, John Steen, and Nandita Berry, demanded that the United States issue subpoenas to obtain," quote, "'vital discovery from current and former legislators who have supported photographic photo -- photo identification legislation in Texas."

This led to much discovery. But where did that substantial intrusion into highly confidential documents get us? The documents that Plaintiffs have introduced do not make Plaintiffs' case. Indeed, DOJ and the Plaintiffs didn't even bother to show them to the experts who offered their opinions on the purposes of Senate Bill 14. And DOJ's purpose expert, Dr. Davidson, did not even testify at trial.

Instead, these purpose experts recycled arguments that they raised unsuccessfully in amicus briefs in the Supreme Court in *Shelby County* and in *Crawford*, and they asked this

Court to credit arguments they made unsuccessfully when they testified before the Texas Legislature.

The Legislature's purposes behind the passage of Senate Bill 14 are clear from the 2011 legislative record, consistent with the legislative records of 2005, 2007, and 2009, and they comply with the Supreme Court's *Crawford* decision.

Finally, we turn to the scope of relief sought. The relief Plaintiffs seek, complete invalidation of Texas' photo ID law, not to mention bail in under Section 3(c) of the Voting Rights Act, is inconsistent with *Crawford*, the need to proceed cautiously for an election that is already underway, and the severability clause of Senate Bill 14.

First, as to *Crawford*, the Supreme Court explained that:

> "Even assuming that the burden may not be justified as to a few voters, that conclusion is by no means sufficient to establish petitioner's right to the relief they seek in this litigation. Given the fact that petitioners have advanced a broad attack on the constitutionality of SEA 483, seeking relief that would invalidate the statute in all its applications, they bear a heavy burden of persuasion."
>
> The Court continued on Page 203:
>
> "Finally, we note that petitioners have not

demonstrated that the proper remedy -- even assuming an unjustified burden on some voters -- would be to invalidate the entire statute. When evaluating a neutral, nondiscriminatory regulation of voting procedure, we must keep in mind that a ruling of unconstitutionality frustrates the intent of the elected representatives of the people."

Crawford thus forecloses Plaintiffs' attempt to invalidate wholesale Texas' photo identification requirement based upon this legislative record and the evidence in this case.

Moreover, as Keith Ingram testified, preparation and training for the November 2014 general elections are already underway. They're expecting 8,000 poll locations and 25,000 poll workers to conduct this election. Training began last week and it continues this week for those workers. The training materials were prepared beginning in June of 2013. In a very real sense, the election has already begun.

Changes to the voting procedures to be used by millions of Texans at this late date would create confusion for voters and poll workers alike. The uncertainty that would follow from granting the drastic relief sought is especially unwarranted, given SB 14 and the record produced by the Plaintiffs.

And, third, Section 25 of Senate Bill 14 contains a

severability clause, expressing the intent of the Legislature that all valid provisions and applications of SB 14 should be allowed to stand by severing the invalid provisions and applications and leaving the valid ones in force.

Just a week ago, the Seventh Circuit stayed a District Court injunction quite similar to the one sought in this case. There, the District Court had held the state law invalid and enjoined its implementation based on findings that it thought showed that Wisconsin did not need this law to promote an important governmental interest, and that persons of lower income, disproportionately minorities, are less likely to have driver's licenses, other acceptable photo ID, or the birth certificates needed to obtain them, which led the court to hold that the statute violates Section 2 of the Voting Rights Act.

But as a result of the Seventh Circuit stay, Wisconsin law, which we discussed the particulars of just a moment ago, will be permitted to implement its photo -- Wisconsin will be permitted to implement that photo ID law for the November election.

The final paragraph in *Crawford versus Marion County* likewise offers the proper resolution of the attacks on Senate Bill 14:

"If a nondiscriminatory law is supported by valid neutral justifications, those justifications should not be disregarded simply because partisan interests

may have provided one motivation for the votes of individual legislators. The state interests identified as justifications for SEA 483 are both neutral and sufficiently strong to require us to reject petitioner's facial attack on the statute. The application of the statute to the vast majority of Indiana voters is amply justified by the valid interests in protecting the integrity and reliability of the electoral process."

The Court should enter judgment denying all relief sought by Plaintiffs and the Department of Justice.

Thank you.

THE COURT: Thank you.

REBUTTAL ARGUMENT ON BEHALF OF THE UNITED STATES

BY MR. DELLHEIM: Before I respond, your Honor, a bit of personal privilege, if I may?

I made an error in my presentation to the Court before, and that is I omitted to recognize Samuel Oliker-Friedland, who is also part of the Department of Justice's team, and he was our master thespian reader of deposition testimony --

THE COURT: Yeah.

MR. DELLHEIM: -- and I regret the error to the Court and to Sam.

Your Honor, it is a bit surprising that Texas would

rely so heavily on the Wisconsin opinion and what occurred in the Seventh Circuit, given that following the District Court's opinion, the Supreme Court of Wisconsin found that charging even a cent for a birth certificate or any underlying documentation to obtain an ID as a prerequisite to vote was utterly improper, and it cited *Harper*, the Supreme Court decision outlawing poll taxes.

It thus gave the Wisconsin statute -- this is the Supreme Court of Wisconsin -- it gave the Wisconsin statute a saving construction, and now Wisconsin employs a procedure whereby those applying for photo IDs are relieved of the obligation to present a birth certificate; and the obligation is, in fact, now taken on by the state to verify the applicant's birth certificate by checking with Wisconsin agencies, agencies in all other states, and with the federal government.

That situation could not be more different than what we face here in Texas.

Mr. Aston also mentioned that voters over 65 can simply vote by mail, and I don't want to -- as a former client of mine -- just say "beat a dead horse to death," but it recalls the question that Texas counsel asked of Ms. Sammi Bates, which was something like, quote, "Would you rather vote by mail or not vote at all?"

We submit that is simply not an appropriate choice

for any state to impose on a voter.

I did not expect to hear about the 2 million errors that were allegedly in the Catalist list. That number has ballooned to 3 million today, but I guess I would be remiss if I did not remind the Court that the errors that were claimed to have been found in the Catalist lists were based on a comparison of the no match list to the DPS race classifications. Those race classifications, Keith Ingram, the state election director, said were hopelessly inaccurate. It's a resource that Dr. Ansolabehere did not use, and properly so, because they were so inaccurate. And they're tied to the fact that Hispanics could not self-identify to DPS until May of 2010. That's why Dr. Ingram -- Mr. Ingram said, quote, "The number of Hispanic ID holders in Texas is exponentially higher than the DPS's raw data indicates," end quote.

And he also noted that DPS's data for, quote, "racial classifications other than Hispanic are no doubt significantly distorted," end quote.

So whether there are 2 million errors or 3 million errors, whatever that number may be, those errors are not in the Catalist list or the no match list. They are, in fact, in the DPS database, and that is the resource that Dr. Ansolabehere steadfastly avoided.

Moreover, your Honor, the Defendants argue that there can be no denial or abridgement of Section 2 because we have

not demonstrated that it's metaphysically impossible for someone to obtain -- that it's not metaphysically impossible for someone to obtain ID. That standard is simply not the law. It ignores and contravenes the *Operation PUSH* standard in which the Fifth Circuit held that a Mississippi restriction on voter registration violated Section 2, notwithstanding that the challenged law did not act as an absolute bar to anyone registering to vote and notwithstanding that it was possible with a sufficient expenditure of effort for citizens to overcome the obstacles to registration that the restriction imposed.

And that's at 932 F.2d 400, from the Fifth Circuit, 1991.

And with that, I'll conclude my presentation, unless the Court has questions.

THE COURT: No, I don't --

MR. DELLHEIM: We thank you very much.

THE COURT: -- at this time. Thank you.

REBUTTAL ARGUMENT ON BEHALF OF TEXAS NAACP AND MALC

BY MR. ROSENBERG: Thank you, your Honor. Very briefly, just a few points.

One, on the point made concerning the Barreto survey, we -- I had hoped to scare them away from dealing with that when I dealt with it in my closing.

Again, on Pages 225 and 226 of the Hood transcript,

Dr. Hood admits that that criticism, albeit a slight criticism, is -- does not apply at all to the racial comparisons made by Dr. Barreto. Dr. Barreto himself explained how he properly weighted the survey in terms of his overall conclusions as to the total amount of persons affected.

Secondly, in terms of the fraud issues, the bottom line is no matter what is said by the State, there are still only two instances of fraud of the sort that SB 14 could have been prevent -- could have prevented that have been identified.

The reliance on that New York study, quite frankly, is somewhat -- is amazing to me, because, first of all, if your Honor looks -- I don't have the exact cite of the exhibit, but I'm pretty sure it's Page 13, Footnote 25 -- where, after they talk about the sting, at the bottom, they say election fraud is rare, and then they say in-person fraud is really rare, and the reason it's really rare is because it's too easy to be caught, it's too ineffective to affect an election, and the penalties are really severe.

So reliance on a crime without -- a so-called "fraud without motive" does not prove that the fraud occurs.

In terms of the reliance on -- the reliance on the highly confidential material, in fact, your Honor saw a couple of documents today -- the Hebert memo, the Patrick memo -- it also led to depositions that were taken that were very useful, including the deposition testimony of Todd Smith, which your

Honor saw.

And, finally, on *Crawford* and its relevance to the Section 2 claims, it's not there. *Crawford* was not a claim dealing with discrimination. So the fact is there's no discussion there of what happens when you have, as we have in this case, abundant evidence of an intention to discriminate against Blacks and Hispanics in the exercise of their vote -- not at issue in *Crawford* whatsoever.

Thank you.

REBUTTAL ARGUMENT ON BEHALF OF TEXAS LEAGUE OF YOUNG VOTERS EDUCATION FUND, ET AL

BY MR. HAYGOOD: Your Honor, just a few quick points. This is Ryan Haygood from the Texas League of Young Voters.

You've heard a lot by now, your Honor, but I think it's worth repeating that this case really is about real people who are impacted by real discrimination and real efforts by Texas to erect impediments to the franchise that, for them, is a precious, fundamental right.

Texas has essentially said that the Plaintiffs and the Plaintiff Interveners here have failed to identify actual voters who have been prevented from voting because of SB 14. And what that statement reflects is an ignorance to the real lived experience of a high percentage of voters of color who are prevented from voting from SB 14.

And, more precisely, what it reflects is a proximity

or a distance from the actual harm. It impacts voters of color, Black, and Latino, and other voters of color, from voting in the state because of SB 14.

The State mentioned that Ms. Elizabeth Gholar came and said that she could vote by absentee ballot, but it is not, your Honor, an acceptable substitute to prevent voters from voting in the avenue in which they want to vote -- here, in person -- by providing an alternative to the expression of participation in the franchise that they are choosing -- indeed, that they are regarding as essential.

Your Honor, 600,000 registered voters are impacted by SB 14. A disproportionate number of those voters are people of color. You've heard from these people live. They are impacted. They exist. They are real. And their votes and their voices matter.

Dr. Bazelon, your Honor, made clear that the disparity between Whites and Blacks -- White people and Black people in travel costs was driven in large measure because of a significant disparity in wage rates between Black and White Texans.

He testified unequivocally that the burdens are substantially heavier for Black people due to their socioeconomic disparities and the ways in which they lag far behind in the areas of employment, housing, health care, and education.

Thank you.

THE COURT: Thank you.

REBUTTAL ARGUMENT ON BEHALF OF VEASEY LULAC PLAINTIFFS

BY MR. DUNN: Chad Dunn again, for the record. I just have a couple of points.

I wanted to address the Court's question on voter registration. I don't have Internet connection, but I'm pretty sure that the provision of federal law the Court might be interested in is 42 U.S.C. 1973gg-6(i). That is where the NVRA requirements -- whoever codified the NVRA, by the way, ought to be an interesting fellow.

But in any event, there are requirements there that lay out what the State is supposed to do in terms of getting felons, and deceased folks, and other ineligible people off of the --

THE COURT: But -- and I guess that's kind of where I was headed, because I think Mr. Ingram's testimony was that the counties have certain responsibilities to provide information to the State, but it's ultimately the State's responsibility to ensure that there is integrity in these voter rolls --

MR. DUNN: That's exactly what --

THE COURT: Or --

MR. DUNN: -- the statute says. It says, "The State shall adopt a system to maintain the voter roll."

THE COURT: Anyway, you can --

MR. DUNN: Okay.

THE COURT: You can move ahead. I just --

MR. DUNN: Just two other points. The -- I want to follow up on this mail vote issue, because it is an important choice, and these people ought to be able to make their own choice on whether to vote by mail or in person.

But it's not simply a choice. It is an abridgement of the right to vote. A person who has to vote early at a different time than everybody else has a less of a valuable right to vote than people who can go on election day at the end of the day on election day.

Courts enjoin all the time elections to hold polling locations open longer because of wait times or to ensure that a polling location in one place has the same hours as the other, because courts recognize that is an abridgement of the right to vote.

So although the choice is important, abridgement is what is unconstitutional here.

Next, I would add that, obviously, this is an as-applied challenge, so the paragraphs that you saw from *Crawford* were applied to a facial challenge, which will be different in this case. The Supreme Court has yet to deal with an as-applied challenge in this case.

Lastly, I will note that the State has essentially conceded that Senate Bill 14 is a poll tax. It's offered no

defense to the claim. It wasn't mentioned today in the closing argument. And every court that has looked at a law similar to this, where there are charges for underlying documents, has found it to be a poll tax, and ordered relief.

And the State simply has no defense or response to that claim.

Thank you.

THE COURT: All right. I have a quick question for the State. Anybody can respond.

But there was some reference in the testimony to deceased voters voting, some hearsay testimony in Lieutenant Governor Dewhurst's deposition, I guess, that was read about a legislator's deceased father and brother maybe voting, and then one of the legislators maybe testified also about a grandfather voting -- a deceased grandfather voting for years.

Excuse my voice. I'm having issues this morning.

But wouldn't there be evidence of that? You compare the voter rolls with the deceased list roll? You may not be able to show who did it to prosecute and investigate that person, but shouldn't you be able to tell if dead people are voting?

MR. SCOTT: And, your Honor, that is part of the process that our agency goes under in these referral investigations. So when we're notified that a dead voter has voted -- or somebody has voted on behalf of a dead voter, the

process goes to backtracking and finding out why that somebody believes that.

THE COURT: But where is the --

MR. SCOTT: Typically --

THE COURT: -- evidence of that?

MR. SCOTT: Well, and some of that is still under investigation, the --

THE COURT: But that -- if somebody has been voting --

MR. SCOTT: Some of those claims --

THE COURT: -- for 62 years --

MR. SCOTT: Yes, and --

THE COURT: -- a deceased voter --

MR. SCOTT: And I think --

THE COURT: -- wouldn't there be evidence of that?

MR. SCOTT: I think the vast majority, your Honor, is cases where someone that -- maybe a family relative signs on the wrong spot. And so when we see that, we see no intent to do a crime, and that closes that investigation.

So that's the --

THE COURT: But --

MR. SCOTT: -- vast majority of those.

THE COURT: But there could be -- if, in fact, that is happening, there could be evidence of that. I get that you may not be --

MR. SCOTT: Yes.

THE COURT: -- able to -- you might not know who did it to prosecute a particular person, but you would be able to show that --

MR. SCOTT: The Court is correct.

THE COURT: -- by comparing the voter --

MR. SCOTT: Yes, ma'am.

THE COURT: -- rolls with the dead persons --

MR. SCOTT: Yes, ma'am.

THE COURT: -- list. Yeah.

MR. SCOTT: Yes.

THE COURT: Okay. Anything else from anyone?

MR. DELLHEIM: Just one point of clarification --

THE COURT: Okay.

MR. DELLHEIM: -- your Honor.

Mr. Dunn recited what was, in fact, the accurate cite for the NVRA as of a couple of weeks ago. It has since changed, and so the new cite is 52 U.S.C. 20507. That's Section 8 of the NVRA, which codifies the states list maintenance procedures, which of course -- and nothing, of course, prevents the states from taking whatever measures are necessary to ensure that their rolls -- their voter rolls are clean and consistent with federal law.

THE COURT: Okay. Anything else from the Plaintiffs, the other Plaintiffs, the Defense?

MR. DUNN: I guess I do have one question, Judge.

THE COURT: Of course.

MR. DUNN: Do you want the presentations filed or do you want nothing to be filed?

THE COURT: You don't need to file those. They're not evidence. You can certainly provide them to the Court if you would like. I've got a couple of them, but I would not file them.

Do you have a question?

MR. SCOTT: No. Well, they both hit me --

THE COURT: Okay.

MR. SCOTT: -- Mr. Donnell and Reid. They want me to point out that we have to be notified first to be able to find that. And so I think the vast majority of those times that someone may have been referring to potential dead people voting in place of dead people, it has been historically this perception that no one ever picks up on that because there's no -- it's never brought to the forefront.

So I think that's the unknown unknown, to quote somebody. I should have just quoted --

THE COURT: Okay. All right. If nothing further, thank you very much for your attention, and you're excused.

MR. SPEAKER: Thank you, your Honor.

THE COURT: You can be excused.

(This proceeding was adjourned at 12:12 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Signed

September 23, 2014

Dated

TONI HUDSON, TRANSCRIBER