

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, <i>et al.</i> ,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 2:13-CV-00193
	§	
GREG ABBOTT, <i>et al.</i> ,	§	
	§	
Defendants.	§	

**JOINT MOTION TO CONTINUE FEBRUARY 28, 2017 HEARING
ON PLAINTIFFS’ DISCRIMINATORY PURPOSE CLAIMS**

The State Defendants and Plaintiff the United States jointly move for this Court to continue the hearing scheduled for February 28, 2017 regarding the issue of discriminatory purpose.

On August 25, 2016, the Court entered an order establishing a briefing schedule on the issue of the discriminatory purpose, if any, of S.B. 14 and setting a hearing on January 24, 2017. *See* ECF No. 922. On January 20, 2017, the United States filed a motion to continue the hearing because of the federal government’s change in administration. *See* ECF No. 984. The Court granted the motion and continued the hearing until February 28, 2017.

The State Defendants and the United States seek a continuance of the February 28, 2017 hearing because the Texas Legislature has introduced voter identification legislation that, if enacted, will affect the remaining proceedings in this case. On February 21, 2017, the Texas Senate introduced S.B. 5, with twenty joint authors. Exhibit A. S.B. 5 would amend Section 63.0101 of the Texas Election Code

by incorporating many of the elements of the Court's interim remedial order. Among other things, S.B. 5 would allow individuals to vote a regular ballot if they appear on the official list of registered voters; and present a valid registration certificate, a certified birth certificate, a current utility bill, a bank statement, a government check, a paycheck, or any other government document that displays the voter's name and address; and sign a reasonable impediment declaration. *Id.* The proposed legislation also would allow voters over the age of 70 to cast a ballot using expired identification.

Both the Fifth Circuit and this Court have encouraged the Texas Legislature to enact new voter ID legislation. *See Veasey v. Abbott*, 830 F.3d 216, 272 (5th Cir. 2016) (en banc); Order Regarding Agreed Interim Plan For Elections ¶ 14, ECF No. 895. When the Fifth Circuit reversed and remanded this Court's finding of discriminatory purpose, it stated that "[t]he district court will need to reexamine the discriminatory purpose claim in accordance with the proper legal standards we have described, *bearing in mind the effect any interim legislative action taken with respect to SB 14 may have.*" *Veasey*, 830 F.3d at 272 (emphasis added). The Fifth Circuit's instructions reflect the principle that legislatures should have the first chance to address issues under the Voting Rights Act whenever possible: The Fifth Circuit has consistently recognized that under ordinary circumstances, "courts clearly defer to the legislature in the first instance to undertake remedies for violations of § 2." *Miss. State Chapter, Operation Push, Inc. v. Mabus*, 932 F.2d 400, 406 (5th Cir. 1991); *see also Westwego Citizens for Better Gov't v. City of Westwego*, 946 F.2d 1109, 1124 (5th Cir. 1991) ("This Court has repeatedly held that it is appropriate to give affected

political subdivisions at all levels of government the first opportunity to devise remedies for violations of the Voting Rights Act.”).

It is thus appropriate for this Court to continue the hearing until the Texas Legislature has had an opportunity to act. The Texas Legislature generally meets for 140 days every two years, and the latest legislative session started only one month ago. The Texas Legislature will end its regular session no later than May 29, 2017, and the Governor has until June 18, 2017 to sign a bill into law or veto legislation. As a result, the State Defendants and the United States request that the hearing on the issue of discriminatory purpose be continued until after June 18, 2017.

A continuance of the February 28, 2017 hearing until after June 18, 2017 would serve judicial economy and efficiency because if new Texas state voter identification legislation is enacted into law, it will significantly affect the remainder of this litigation. At a minimum, the State Defendants and the United States anticipate that the parties would file a new round of briefing and present a new round of oral argument on the discriminatory purpose claim if Texas enacts new voter ID legislation. Thus, there is no reason for the Court or the parties to devote additional time and resources to arguing the discriminatory purpose claim on the current briefing and record now, before the Texas Legislature has had a chance to act on the new proposed legislation.

Moreover, no party will suffer prejudice by a continuance of the hearing because the interim remedial order—which was in place for last November’s general

election—remains in effect. *See* ECF No. 895. Any election that occurs between now and June 18, 2017 will be governed by the terms of the interim remedial order.

Federal Rule of Civil Procedure 6(b)(1)(a) provides that the Court may extend filing deadlines in its discretion. FED. R. CIV. P. 6(b)(1)(A). The State Defendants and the United States seek this extension of time for good cause shown and in the interest of justice, not for delay. The Private Plaintiffs are opposed to the relief requested in this motion.

The State Defendants and the United States therefore respectfully request that the Court enter an order continuing the hearing scheduled for February 28, 2017 until after June 18, 2017.

Date: February 22, 2017

Respectfully submitted.

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CERTIFICATE OF CONFERENCE

I hereby certify that counsel for the State Defendants and the United States conferred with the Private Plaintiffs via email on February 22, 2017 regarding the relief requested in this Motion. Counsel for the Private Plaintiffs indicated that they are opposed the relief sought in this Motion.

/s/ Angela V. Colmenero

ANGELA V. COLMENERO

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2017, a true and correct copy of the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Angela V. Colmenero

ANGELA V. COLMENERO

EXHIBIT A

By: Huffman, et al.

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A BILL TO BE ENTITLED

1

AN ACT

2 relating to requiring a voter to present proof of identification;
3 providing a criminal penalty.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter A, Chapter 31, Election Code, is
6 amended by adding Section 31.013 to read as follows:

7 Sec. 31.013. MOBILE LOCATIONS FOR OBTAINING
8 IDENTIFICATION. (a) The secretary of state shall establish a
9 program using mobile units to provide election identification
10 certificates to voters for the purpose of satisfying the
11 requirements of Section 63.001(b). A mobile unit may be used at
12 special events or at the request of a constituent group.

13 (b) In establishing the program, the secretary of state
14 shall consult with the Department of Public Safety on the creation
15 of the program, security relating to the issuance of an election
16 identification certificate, best practices in issuing an election
17 identification certificate, and equipment required to issue an
18 election identification certificate.

19 (c) The secretary of state may not charge a fee to a group
20 that requests a mobile unit established under this section.

21 (d) If the secretary of state cannot ensure the required
22 security or other necessary elements of the program, the secretary
23 of state may deny a request for a mobile unit established under this
24 section.

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1 (e) The secretary of state shall adopt rules necessary for
2 the implementation of this section.

3 SECTION 2. Section 63.001, Election Code, is amended by
4 amending Subsections (b) and (d) and adding Subsection (i) to read
5 as follows:

6 (b) Except as provided by Subsection (h), on offering to
7 vote, a voter must present to an election officer at the polling
8 place:

9 (1) one form of photo identification listed in
10 [described by] Section 63.0101(a); or

11 (2) one form of identification listed in Section
12 63.0101(b) accompanied by the declaration described by Subsection
13 (i) [63.0101].

14 (d) If, as determined under Subsection (c), the voter's name
15 is on the precinct list of registered voters and the voter's
16 identity can be verified from the documentation presented under
17 Subsection (b), the voter shall be accepted for voting. An election
18 officer may not question the reasonableness of an impediment sworn
19 to by a voter in a declaration described by Subsection (i).

20 (i) If the requirement for identification prescribed by
21 Subsection (b)(1) is not met, an election officer shall notify the
22 voter that the voter may be accepted for voting if the voter meets
23 the requirement for identification prescribed by Subsection (b)(2)
24 and executes a declaration declaring the voter has a reasonable
25 impediment to meeting the requirement for identification
26 prescribed by Subsection (b)(1). A person is subject to
27 prosecution for perjury under Chapter 37, Penal Code, or Section

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1 63.0013 for a false statement or false information on the
2 declaration. The secretary of state shall prescribe the form of the
3 declaration. The form shall include:

4 (1) a notice that a person is subject to prosecution
5 for perjury under Chapter 37, Penal Code, or Section 63.0013 for a
6 false statement or false information on the declaration;

7 (2) a statement that the voter swears or affirms that
8 the information contained in the declaration is true, that the
9 person described in the declaration is the same person appearing at
10 the polling place to sign the declaration, and that the voter faces
11 a reasonable impediment to procuring the identification prescribed
12 by Subsection (b)(1);

13 (3) a place for the voter to indicate one of the
14 following impediments:

15 (A) lack of transportation;

16 (B) lack of birth certificate or other documents
17 needed to obtain the identification prescribed by Subsection
18 (b)(1);

19 (C) work schedule;

20 (D) lost or stolen identification;

21 (E) disability or illness;

22 (F) family responsibilities; and

23 (G) the identification prescribed by Subsection
24 (b)(1) has been applied for but not received;

25 (4) a place for the voter to sign and date the
26 declaration;

27 (5) a place for the election judge to sign and date the

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1 declaration;

2 (6) a place to note the polling place at which the
3 declaration is signed; and

4 (7) a place for the election judge to note which form
5 of identification prescribed by Subsection (b)(2) the voter
6 presented.

7 SECTION 3. Chapter 63, Election Code, is amended by adding
8 Section 63.0013 to read as follows:

9 Sec. 63.0013. FALSE STATEMENT ON DECLARATION OF REASONABLE
10 IMPEDIMENT. (a) A person commits an offense if the person
11 knowingly makes a false statement or provides false information on
12 a declaration executed under Section 63.001(i).

13 (b) An offense under this section is a felony of the third
14 degree.

15 SECTION 4. Section 63.0101, Election Code, is amended to
16 read as follows:

17 Sec. 63.0101. DOCUMENTATION OF PROOF OF IDENTIFICATION.

18 (a) The following documentation is an acceptable form of photo
19 identification under this chapter:

20 (1) a driver's license, election identification
21 certificate, or personal identification card issued to the person
22 by the Department of Public Safety that has not expired or that
23 expired no earlier than 60 days before the date of presentation;

24 (2) a United States military identification card that
25 contains the person's photograph that has not expired or that
26 expired no earlier than 60 days before the date of presentation;

27 (3) a United States citizenship certificate issued to

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1 the person that contains the person's photograph;

2 (4) a United States passport issued to the person that
3 has not expired or that expired no earlier than 60 days before the
4 date of presentation; or

5 (5) a license to carry a handgun issued to the person
6 by the Department of Public Safety that has not expired or that
7 expired no earlier than 60 days before the date of presentation.

8 (b) The following documentation is acceptable as proof of
9 identification under this chapter:

10 (1) a government document that shows the name and
11 address of the voter, including the voter's voter registration
12 certificate;

13 (2) one of the following documents that shows the name
14 and address of the voter:

15 (A) a copy of a current utility bill;

16 (B) a bank statement;

17 (C) a government check; or

18 (D) a paycheck; or

19 (3) a certified copy of a domestic birth certificate
20 or other document confirming birth that is admissible in a court of
21 law and establishes the person's identity.

22 (c) A person 70 years of age or older may use a form of
23 identification listed in Subsection (a) that has expired for the
24 purposes of voting if the identification is otherwise valid.

25 SECTION 5. Section 272.011(b), Election Code, is amended to
26 read as follows:

27 (b) The secretary of state shall prepare the translation for

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1 election materials required to be provided in a language other than
2 English or Spanish for the following state prescribed voter forms:

3 (1) voter registration application form required by
4 Section 13.002;

5 (2) the confirmation form required by Section 15.051;

6 (3) the voting instruction poster required by Section
7 62.011;

8 (4) the reasonable impediment declaration required by
9 Section 63.001(b);

10 (5) the statement of residence form required by
11 Section 63.0011;

12 (6) [~~5~~] the provisional ballot affidavit required
13 by Section 63.011;

14 (7) [~~6~~] the application for a ballot by mail
15 required by Section 84.011;

16 (8) [~~7~~] the carrier envelope and voting
17 instructions required by Section 86.013; and

18 (9) [~~8~~] any other voter forms that the secretary of
19 state identifies as frequently used and for which state resources
20 are otherwise available.

21 SECTION 6. Section 521A.001(a), Transportation Code, is
22 amended to read as follows:

23 (a) The department shall issue an election identification
24 certificate to a person who states that the person is obtaining the
25 certificate for the purpose of satisfying Section 63.001(b),
26 Election Code, and does not have another form of identification
27 described by Section 63.0101(a) [~~63.0101~~], Election Code, and:

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1 (1) who is a registered voter in this state and
2 presents a valid voter registration certificate; or

3 (2) who is eligible for registration under Section
4 [13.001](#), Election Code, and submits a registration application to
5 the department.

6 SECTION 7. This Act takes effect January 1, 2018.

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ORDER GRANTING JOINT MOTION TO CONTINUE
FEBRUARY 28, 2017 HEARING

Before the court is the Joint Motion to Continue the February 28, 2017 hearing on Plaintiffs' Discriminatory Purpose claims. Having considered the Motion, the Court is of the opinion that Motion should be GRANTED.

IT IS THEREFORE ORDERED that the Joint Motion to Continue the February 28, 2017 hearing on Plaintiffs' Discriminatory Purpose claims is hereby GRANTED.

The hearing is reset to _____, 2017.

SIGNED this _____ day of February, 2017.

HON. NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE