IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 14-41127

MARC VEASEY; *et al.*,

Plaintiffs-Appellees,

v.

GREG ABBOTT, in his Official Capacity as Governor of Texas; *et al.*,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

THE VEASEY-LULAC APPELLEES' OPPOSITION TO THE PETITION FOR REHEARING EN BANC

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CERTIFICATE OF INTERESTED PERSONS

CASE NO. 14-41127

The case number is 14-41127. The case is styled as *Veasey v. Abbott.*

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

Plaintiffs-Appellees	Former or Present Counsel
- Marc Veasey - Jane Hamilton - Sergio DeLeon - Floyd Carrier - Anna Burns - Michael Montez - Penny Pope - Oscar Ortiz - Koby Ozias - John Mellor-Crummey - League of United Latin American Citizens	- Neil G. Baron - Brazil & Dunn - Joshua James Bone - K. Scott Brazil - Campaign Legal Center - Armand Derfner - Chad W. Dunn - J. Gerald Hebert - Luis Roberto Vera, Jr.
- United States of America	- Anna Baldwin - Meredith Bell-Platts - Robert S. Berman - Richard Dellheim - Daniel J. Freeman - Bruce I. Gear - Bradley E. Heard - Jennifer L. Maranzano - Avner Michael Shapiro - John Alert Smith, III - U.S. Department of Justice - Elizabeth S. Westfall
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- Lionel Estrada
- La Union Del Pueblo Entero, Inc.
- Margarito Martinez Lara
- Maximina Martinez Lara
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- Michelle Yeary
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- Texas League of Young Voters Education Fund
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Defendants-Appellants	Former or Present Counsel
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- Third party legislators - Texas Health and Human Services Commission	- Arthur C. D'Andrea - Office of the Attorney General - John B. Scott

Third-Party Movants	Former or Present Counsel
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- U.S. House of Representatives

Interested Third Parties

- Robert M. Allensworth
- C. Richard Quade

Appearing Pro se

- Robert M. Allensworth, pro se
- C. Richard Quade, pro se

Respectfully submitted,

/s/ Chad W. Dunn
Chad W. Dunn

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ARGUMENT AND AUTHORITIES

Fully subscribing to the views of the United States, these Appellees add as follows:

Contrary to appellants' attempted portrayal, SB 14 was no ordinary Voter ID law. Rather than accepting, for example, all government IDs or all state or federal IDs, SB 14 was a conscious picking and choosing of qualifying and non-qualifying IDs by which the State systematically removed 600,000 registered voters' eligibility. ROA.27076–ROA.27078; ROA.43260; ROA.44626.

The evidence is undisputed that these 600,000 carefully de-selected voters were very disproportionately minority voters. Some significant disproportionality was assured when the legislature chose Texas driver licenses as SB 14's prime ID; extensive lay and expert evidence showed that minority persons in Texas, who bear the effects of historic official discrimination, disproportionately lack driver licenses. ROA.27078–ROA.27082; ROA.43260–ROA.43268; ROA.44599–ROA.44610; ROA.27082; ROA.26832–ROA.26839. However, the legislature aggravated that disproportionality in the specific bill that became SB 14.

The picking and choosing was no mere happenstance. The legislative ID choices uniformly disadvantaged minority voters or assisted Anglo voters, as shown by undisputed facts about each of the following choices:

- Excluding federal government employee IDs other than military IDs;
- Excluding Texas state employee IDs;
- Excluding Texas county or local government employee IDs;
- Excluding student IDs, even from state colleges and universities;
- Including concealed handgun permits; and
- Exempting mail-in ballots.

ROA.27073–74; ROA.45116-ROA.45128; ROA.45120–ROA.45125. Dr. Allan Lichtman, one of plaintiffs' experts, further testified, without contradiction, that Government employees in Texas (the first three excluded categories above) are disproportionately minority, as are citizen college students (the fourth excluded category). ROA.45120–ROA.45125. Thus, by excluding these categories, the legislature magnified the proportion of minority *registered* voters affected by SB14. By contrast, those who possess concealed handgun permits and those who vote by mail are disproportionately Anglo. ROA.45117–20; ROA.45145–47.

These inclusions and exclusions were not mere oversight, since the racial and ethnic composition of each category of ID-holders was well-known public information and each of the issues was addressed several times: first, in drafting the bill, once more when amendments were offered in the Senate, and still again when similar amendments were offered in the House. Members of both houses offered amendments that they explained would limit the racially discriminatory impact of the bill but these amendments were systematically rejected. ROA.27060; ROA.27169–

ROA.27172. Bill proponents had little or no explanation or justification for differentiating between acceptable and unacceptable IDs. ROA.27169.

The evidence also shows that state officials knew the magnitude of affected and also knew that voters who lacked SB 14-acceptable IDs would be disproportionately composed of poor and minority voters. The Texas Secretary of State, before SB14's enactment, estimated that 800,000 registered voters lacked DPS-issued ID. ROA.27057; ROA.100282:288:6–ROA.100283:289:22. Rep. Todd Smith, former Chair of the House Elections Committee, summed up the obvious: "it was 'common sense'" that minorities would be disproportionately affected by S.B. 14—"he did not need a study to confirm" it. ROA.27157. Bryan Hebert, Counsel to the Lt. Governor, unsuccessfully urged the legislature to expand the permissible IDs because the discriminatory impact of the bill would likely doom it in court. ROA.27158.

Legal Consequences

Discriminatory purpose finding. The foregoing facts were just a small part of what the district court relied on in finding that SB 14 had a discriminatory purpose. See *Veasey v. Perry*, 71 F. Supp. 3d 627, 641-645, 664-676 (S.D. Tex. 2014) The panel did not in any way question that such evidence can significantly contribute to a finding of discriminatory purpose. Because of this evidence and other evidence in

the record tending to show a discriminatory purpose for SB 14, the ordinary rule of *Pullman-Standard v. Swint,* 456 U.S. 273, 292-93 (1982), applies, requiring a remand to the district court to reconsider its finding in light of the panel's guidance as to other elements of the proof of purpose. Appellants seek to apply the rare exception to the *Swint* rule, which allows an appellate court to render a verdict if the evidence plainly allows only one finding. Appellants say, with no support, that somehow the evidence in this case completely forecloses a finding of discriminatory purpose, but that assertion is hardly serious.

Discriminatory result finding. The evidence of discriminatory choices is highly relevant with regard to discriminatory result, and magnifies the probative value of the matters presented by the United States in its Opposition to Rehearing En Banc. Whereas "discriminatory purpose" requires that an act have been done "because of," not "in spite of" its adverse effect on minority voters, *see Personnel Adm'r v. Feeney*, 442 U.S. 256 (1979), "discriminatory result" requires no such showing. Whatever the legislature's reason for making the choices it did, and thus enacting a law whose underlying policies were correctly found to be tenuous, the fact is that those choices, in combination with the evidence cited in the panel decision

and in the United States' Opposition to Rehearing En Banc, *resulted* in SB 14's discriminatory effect on African-American and Hispanic voters[1]

CONCLUSION

The Petition for Rehearing should be denied.[2]

Respectfully submitted,

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[1] Appellants also engage in defective case analysis, as well shown by the United States. One point worth emphasizing is their misuse of *LULAC v. Clements,* 999 F.2d 831 (5th Cir. 1993)(en banc). The misquoted portion of *Clements* actually says there must be proof of reduced minority registration or turn-out "or any other factor tending to show that past discrimination has affected their ability to participate in the political process." Appellants simply leave out the last 20 words, without even a ". . ."

In any event, Texas's quest for a reduction in registration is mistaken. Because SB 14 is a 600,000 reduction in the number of registered voters who are eligible to vote -(disproportionately minority), it hardly matters what happens to registration totals because the ID requirement makes registration a futile (necessary but not sufficient) step – just as the poll tax used to do.

[2] Because it struck down SB 14 on statutory grounds, the panel did not address the constitutional claim based on the 1st-14th amendment "right to vote," but if a court were to uphold SB 14 against the Section 2 statutory claims, it would have to decide the constitutional right to vote claim.

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CERTIFICATE OF COMPLIANCE

The foregoing brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(B) because the brief contains 1.033 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii) and Circuit Rule 32.2.

The foregoing brief complies with FED. R. APP. P. 32(a)(5)'s type-face requirements and FED. R. APP. P. 32(a)(6)'s type style requirements because the brief has been prepared in a proportionally spaced type-face using Microsoft Word 2007 in Baskerville Old Face 14-point font.

/s/ Chad W. Dunn
Chad W. Dunn

CERTIFICATE OF SERVICE

I certify that on September 10, 2015, I electronically filed the foregoing OPPOSITION with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. All participants in this case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that on September 10, 2015, I served a copy of the foregoing OPPOSITION on the following counsel by certified U.S. mail, postage prepaid.

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