

No. 14-41127

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*In the United States Court of Appeals for the Fifth Circuit*

MARC VEASEY; JANE HAMILTON; SERGIO DELEON; FLOYD CARRIER; ANNA BURNS;  
MICHAEL MONTEZ; PENNY POPE; OSCAR ORTIZ; KOBY OZIAS; LEAGUE OF UNITED  
LATIN AMERICAN CITIZENS; JOHN MELLOR-CRUMLEY; KEN GANDY; GORDON  
BENJAMIN; EVELYN BRICKNER, *Plaintiffs-Appellees*,

TEXAS ASSOCIATION OF HISPANIC COUNTY JUDGES AND COUNTY COMMISSIONERS,  
*Intervenor Plaintiffs-Appellees*,

v.

GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS; CARLOS  
CASCO, IN HIS OFFICIAL CAPACITY AS TEXAS SECRETARY OF STATE; STATE OF  
TEXAS; STEVE MCCRAW, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE TEXAS  
DEPARTMENT OF PUBLIC SAFETY, *Defendants-Appellant*.

*(caption continued on inside cover)*

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

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**EN BANC BRIEF OF LATINOJUSTICE PRLDEF, NATIONAL  
ASSOCIATION OF LATINO ELECTED AND APPOINTED OFFICIALS  
EDUCATIONAL FUND, HISPANIC FEDERATION, HISPANIC  
NATIONAL BAR ASSOCIATION, MI FAMILIA VOTA EDUCATION  
FUND, AND VOTO LATINO AS AMICI CURIAE IN SUPPORT OF  
APPELLEES AND AFFIRMANCE**

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UNITED STATES OF AMERICA, *Plaintiff-Appellee*,  
TEXAS LEAGUE OF YOUNG VOTERS EDUCATION FUND; IMANI CLARK,  
*Intervenor Plaintiffs-Appellees*,

v.

STATE OF TEXAS; CARLOS CASCOS, IN HIS OFFICIAL CAPACITY AS TEXAS  
SECRETARY OF STATE; STEVE McCRAW, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF  
THE TEXAS DEPARTMENT OF PUBLIC SAFETY,  
*Defendants-Appellants*.

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

v.

STATE OF TEXAS; CARLOS CASCOS, IN HIS OFFICIAL CAPACITY AS TEXAS  
SECRETARY OF STATE; STEVE McCRAW, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF  
THE TEXAS DEPARTMENT OF PUBLIC SAFETY,  
*Defendants-Appellants*.

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ESPINOSA; MARGARITO MARTINEZ LARA; MAXIMINA MARTINEZ LARA; LA  
UNION DEL PUEBLO ENTERO, INC.,  
*Plaintiffs-Appellees*,

v.

STATE OF TEXAS; CARLOS CASCOS, IN HIS OFFICIAL CAPACITY AS TEXAS  
SECRETARY OF STATE; STEVE McCRAW, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF  
THE TEXAS DEPARTMENT OF PUBLIC SAFETY,  
*Defendants-Appellants*.

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**SUPPLEMENTAL STATEMENT OF INTERESTED PERSONS<sup>1</sup>**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Fifth Circuit Rule 29.2, *amici curiae* provide this supplemental statement of interested persons to fully disclose all those with an interest in this brief. The undersigned counsel of record certifies that the following supplemental list of persons and entities 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.

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*Amici curiae* certify that they are 501(c)(3) nonprofit corporations. None of the *amici* has a corporate parent or is owned in whole or in part by any publicly held corporation.

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<sup>1</sup> Counsel of record for all parties received timely notice of *amici* LatinoJustice PRLDEF and NALEO Educational Fund’s intent to file this brief, and all parties consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amici curiae*, their members, or their counsel made a monetary contribution intended to fund its preparation or submission.

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## **IDENTITY AND INTEREST OF *AMICI CURIAE***

*Amici* include six of the nation's most prominent Latino nonprofit organizations. Individually, and collectively, *amici* advocate for equal civil rights and equal treatment for all Latinos through a combination of public policy analysis, civic engagement, professional development initiatives, and legal advocacy. *Amici* are particularly concerned with ensuring that Latino voters have an equal opportunity to participate in the democratic process, and all work to remove impediments to Latino voting rights. Guided by their respective missions, *amici* are opposed to restrictive voting laws, like SB14, that impose burdens on Latino voters, including Latino voters with immigrant origins. *Amici* regularly advocate for the interests of their members in federal and state courts throughout the country in cases of national concern. This is such a case.

## INTRODUCTION AND SUMMARY OF ARGUMENT

In a detailed opinion, based on extensive factual findings, the district court declared Texas’s voter-identification (“ID”) law, Senate Bill 14 (“SB14”), to be a violation of Section 2 of the Voting Rights Act (the “VRA”), 52 U.S.C. § 10301. *Veasey v. Perry*, 71 F. Supp. 3d 627, 633-36 (S.D. Tex. 2014). On appeal, a unanimous panel of this Court also ruled that SB14 violated Section 2’s “effects” test because it has a discriminatory effect on the ability of minority voters to participate equally in Texas’s elections. *Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015). These decisions are sound and should not be disturbed. SB14 threatens to entrench Texas’s well-documented history, long recognized by Congress and the courts, of state-sponsored discrimination against minorities seeking to exercise their fundamental right to vote. Moreover, SB14 contravenes the VRA’s broad remedial purpose, designed to combat all forms of racial discrimination in voting.

Texas’s legacy of discrimination has disenfranchised minorities generally, and has targeted Latinos<sup>2</sup> and Mexican-Americans specifically, even as the Latino population has grown to become the second-largest and fastest-growing demographic group in Texas. As voters, minorities in Texas have faced violence,

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<sup>2</sup> As used herein, the terms “Hispanic” and “Latino” are used interchangeably as defined by the U.S. Census Bureau and “refer[] to a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.” Karen R. Humes et al., *Overview of Race and Hispanic Origin: 2010*, 2010 Census Briefs, 1, 2 (Mar. 2011), <http://tinyurl.com/Census-HispanicOrigin>.

intimidation, and outright exclusion, among other legal obstacles, designed to suppress their access to political participation. Many older minority voters, having once lived through white primaries, literacy tests, “secret ballot” restrictions, and poll taxes in Texas, are now confronted with a modern iteration of voting discrimination. Indeed, “[r]acial discrimination in elections in Texas is no mere historical artifact.” *Veasey v. Perry*, 135 S. Ct. 9, 12 (2014) (Ginsburg, J., dissenting); *see also Shelby Cty. v. Holder*, 133 S. Ct. 2612, 2619 (2013) (“[V]oting discrimination still exists; no one doubts that.”) (Roberts, C.J., delivering opinion of the Court). The district court recounted how racially-charged rhetoric and intimidation tactics, purportedly aimed at preventing in-person “voter fraud,” permeate Texas’s elections today. *Veasey*, 71 F. Supp. 3d at 633-39.

Section 2 of the VRA is designed to combat inequalities in voting opportunities. In 1982, Congress amended Section 2 to clarify that its focus was not only to combat purposeful discrimination, but also to combat the *effects* a voting law has on the opportunities of historically disenfranchised minority voters to participate in elections. In clarifying Section 2’s focus, Congress recognized that facially neutral voting laws can have discriminatory effects as a result of social and historical conditions, particularly in light of past racial segregation and discrimination. Congress was especially concerned about how political inequality can arise from socioeconomic disparities among racial groups. Thus, a law

violates Section 2 if (1) it has a racially disparate effect and (2) the disparate effect results from the law's "interaction" with "social and historical conditions." *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986).

The requirements and administration of SB14 disproportionately burden Latino voters' access to the polls. SB14 requires registered voters to present one of the following forms of photo ID in order to vote in person: a driver's license or a personal ID card issued by the Department of Public Safety ("DPS"), a license to carry a concealed handgun, a U.S. military photo ID card, a U.S. citizenship certificate containing a photo, a U.S. passport, or an Election Identification Certificate ("EIC") issued by DPS. TEX. ELEC. CODE § 63.0101. Latino voters in Texas, however, are less likely than their white counterparts to possess, and also less able to obtain, SB14-compliant ID. SB14 creates financial barriers to obtaining SB14-compliant ID, which present greater hardship for minority voters as a result of the lingering effects of past and present discrimination. Areas with higher rates of poverty and larger minority populations also have less access to DPS offices. Moreover, recent empirical studies confirm that strict voter-ID laws, including SB14, disproportionately discouraged voter participation among Latinos and other minority groups during the last two election cycles.

Legislative efforts like SB14 have sprung up to stymie Latino voters' access to representation as fears of Latino political influence have grown. Although the

Latino population is rapidly growing, since the passage of SB14, the white-Latino voter participation gap has widened significantly, and the growing constituency of Latino voters has been disenfranchised.

If not halted by affirmance of the holdings that it violates Section 2 of the VRA, SB14 will reinforce and perpetuate Texas’s legacy of voting discrimination, and in so doing, continue to contravene the VRA’s express purpose.

## ARGUMENT

### **I. SECTION 2 OF THE VRA REQUIRES THAT THE COURT REVIEW THE IMPACT OF SB14 IN THE CONTEXT OF THE DISTINCT HISTORICAL LEGACY AND LINGERING SOCIO-POLITICAL EFFECTS OF DISCRIMINATION IN TEXAS.**

#### **A. Section 2 Proscribes Voting Laws That Result In Less Opportunity For Historically Disenfranchised Minorities To Participate In The Political Process.**

The VRA prohibits a state from imposing any voting qualification, prerequisite, standard, practice, or procedure that “*results* in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color, or [language minority status].” 52 U.S.C. § 10301(a) (emphasis added). Section 2 is violated if “the political processes leading to nomination or election in the State . . . are not equally open to participation by members of a [protected] class . . . in that its members have *less opportunity* than other members of the electorate to participate in the political process.” *Id.* § 10301(b) (emphasis added). Congress amended the VRA in 1982 “to make clear that a violation [of Section 2] could be

proved by showing *discriminatory effect alone*[, rather than having to show a discriminatory purpose,] and to establish as the relevant legal standard the ‘results test’[.]” *Gingles*, 478 U.S. at 35 (emphasis added).

The shift in focus from purposeful discrimination to effects stemmed from Senate Committee findings that the intent standard placed too great a burden on plaintiffs, and that discriminatory voting laws work together with a state’s historical record of purposeful discrimination to perpetuate disenfranchisement. *See id.* at 44-45. “[A]s Congress recognized when it amended section 2 in 1982, [the concept of intent] obscures a very real threat to voting rights: facially neutral laws that purport to extend equal suffrage in theory but deny it in practice.” Franita Tolson, *What is Abridgement?: A Critique of Two Section Twos*, 67 ALA. L. REV. 433, 450 (2015). After it was amended, the inquiry under Section 2 became

whether “as a result of the challenged practice or structure plaintiffs do not have an *equal opportunity* to participate in the political processes and to elect candidates of their choice.” . . . In order to answer this question, a court must assess the impact of the contested structure or practice on *minority electoral opportunities* “on the basis of objective factors.”

*Gingles*, 478 U.S. at 44 (quoting S. REP. NO. 97–417, at 28 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 206) (emphasis added).

**B. Assessing SB14’s Effects As Somehow Divorced From Texas’s Legacy Of Discrimination Would Be Contrary To The Unequivocal Purpose And Focus Of Section 2.**

Section 2 expressly aims to correct disparities in voter participation arising from the interaction between a purportedly neutral law like SB14 and the historical and socio-political context in which it is enacted. *See id.* at 47 (“The essence of a Section 2 claim is that a certain electoral law, practice, or structure *interacts with social and historical conditions* to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.”) (emphasis added); *id.* at 44 n.9 (purpose of VRA was to “correct an active history of discrimination”) (internal quotation marks omitted). Only a searching evaluation of practical factors bearing on voting opportunities serves the VRA’s “broad remedial purpose” of eliminating racial discrimination in voting. *Chisom v. Roemer*, 501 U.S. 380, 403 (1991) (the VRA “should be interpreted in a manner that provides the broadest possible scope in combating racial discrimination”) (internal quotation marks omitted).

Voting, moreover, does not happen in a vacuum—voting inequalities are rooted in socio-political factors that are byproducts of past and present forms and systems of disenfranchisement and oppression. Congress very clearly intended a Section 2 analysis to engage in a searching review of the factors affecting voting

opportunities, such as income and resource disparities.<sup>3</sup> *See, e.g., Ohio State Conf. of the NAACP v. Husted*, 768 F.3d 524, 555 (6th Cir. 2014) (emphasizing history of discrimination and affirming district court finding that state’s voting law disproportionately burdened African-Americans due to, *inter alia*, their lower socioeconomic status in Ohio), *vacated on other grounds*, No. 14-3877, 2014 WL 10384647 (6th Cir. Oct. 1, 2014); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 241, 245-46 (4th Cir. 2014) (stating that “[c]ourts must undertake a searching practical evaluation of the past and present reality, with a functional view of the political process[,]” and emphasizing discrimination against African-Americans in education and employment as well as in the electoral process) (internal quotation marks omitted).

## **II. TEXAS HAS A LONG, WELL-DOCUMENTED HISTORY OF ENACTING DISCRIMINATORY VOTING LAWS THAT CONTINUES TODAY.**

### **A. Congress And The Courts Have Long Recognized Texas’s Tortured History Of Discrimination Aimed At Minority Voters, Particularly Mexican-Americans.**

“Texas has a long, well-documented history of discrimination that has touched upon the rights of African Americans and Hispanics to register, to vote, or

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<sup>3</sup> Congress was particularly concerned about how political inequalities can arise from socioeconomic disparities among racial groups. *See* S. REP. NO. 97-417, at 29 n.114 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 206-07 (“[D]isproportionate educational[,] employment, income level and living conditions arising from past discrimination tend to depress minority political participation. Where these conditions are shown, and where the level of black participation . . . is depressed, plaintiffs need not prove any further causal nexus between their disparate socioeconomic status and the depressed . . . participation.” (citations omitted)).

to participate otherwise in the electoral process.” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 439 (2006) (hereinafter “*LULAC*”) (internal quotation marks omitted). “Devices such as the poll tax, an all-white primary system, and restrictive voter registration time periods are an unfortunate part of [Texas’s] minority voting rights history.” *Vera v. Richards*, 861 F. Supp. 1304, 1317 (S.D. Tex. 1994) (internal quotation marks and footnote omitted), *aff’d sub nom. Bush v. Vera*, 517 U.S. 952 (1996); *see also Veasey*, 71 F. Supp. 3d at 633-36 (discussing challenges historically faced by Latinos in accessing polls in Texas).

Voting discrimination in Texas has specifically targeted the State’s Mexican-American population. In the first half of the twentieth century, Mexican-Americans in Texas were subject to a “reign of terror and exclusion . . . from Texas’s political spheres that included vigilante mobs, poll taxes, white primaries, intimidation at the polls[,] . . . denial of interpreters[,] . . . lynchings, burning houses, executions in front of family members and murder.” Juan Cartagena, *Latinos and Section 5 of the Voting Rights Act: Beyond Black and White*, 18 NAT’L BLACK L.J. 201, 212 (2004). Scholars and organization leaders have attributed a disaffected Mexican-American electorate to these historical events in Corpus Christi, Duval County, Nueces County, and elsewhere. *Id.* at 212-13. Indeed, “Mexican Americans in Texas faced numerous obstacles to the exercise of their

full citizenship rights emanating from full scale, de jure discrimination for decades, leading to the passage of the VRA.” *Id.* at 212.

The Supreme Court recognized the effects of discrimination aimed at Texas’s Mexican-American population in *White v. Regester*, observing that Mexican-Americans in Texas “ha[ve] long suffered from, and continue[] to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics and others.” 412 U.S. 755, 768 (1973) (internal quotation marks omitted). The “totality of the circumstances,” the Court concluded, operated to “invidiously exclude[] Mexican-Americans from effective participation in political life.” *Id.* at 769.

**B. Latino Voters in Texas Continue To Face A Battery Of Legal Challenges Aimed At Muting Their Political Voices.**

Texas’s history of discrimination continues to affect Latino voters’ opportunities to participate in the political process today. *See* MALDEF Plaintiffs’ Qualitative Expert Report by Dr. Andres Tijerina, Ph.D., Doc. 149, Ex. 6, 1, Aug. 8, 2011, *Perez v. Perry*, (W.D. Texas) (No. 5:11-cv-360) (concluding that Mexican-Americans “in Texas today bear the effects of” a “legacy of exploitation and abuse by Anglo-Americans” which “hinders their ability to participate effectively in the democratic process”). Indeed, as a result of the continuing effects of Texas’s “history of official discrimination,” the 1975 amendments to VRA Section 5 required Texas, among other “minority language” jurisdictions, to

obtain prior approval, or “preclearance,” of any changes to voting laws. *Vera*, 861 F. Supp. at 1317; S. REP. NO. 94-295, at 25-35 (1975), *reprinted in* 1975 U.S.C.C.A.N. 774, 791-802. But even that did not stem the tide of discriminatory voting laws passed in Texas. “Texas has been found in violation of the [VRA] in every redistricting cycle from and after 1970.” *Veasey*, 135 S. Ct. at 12 (Ginsburg, J., dissenting).

While the South has seen improvements in minority political participation under the VRA, *Shelby Cty.*, 133 S. Ct. at 2624-29, the VRA’s broad remedial purpose of combatting racial discrimination in voting remains unfulfilled in Texas. The district court’s opinion detailed how elections in Texas today are plagued by racially-polarized voting and racist campaign mailers, as well as racial appeals and intimidation practiced at polling places that are ostensibly aimed at combatting voter fraud but are carried out by means of racially-charged language and tactics. *Veasey*, 71 F. Supp. 3d at 637-39. The persistence of such anti-democratic and insidious<sup>4</sup> measures demands robust scrutiny under Section 2, particularly in light of *Shelby County*’s elimination of preclearance review for Texas. 133 S. Ct. at

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<sup>4</sup> See, e.g., U.S. Post-Trial Br. at 12, docket no. 1279, *Perez v. Perry*, (W.D. Tex. Oct. 30, 2014) (No. 5:11-cv-360) (citing a 2011 email from a member of House Speaker Joe Straus’s staff discussing a plan to draw districts that would appear to be Latino opportunity districts because they met a demographic benchmark, but that would not allow for the election of the Hispanic candidate of choice).

2631.<sup>5</sup> SB14 threatens to reverse the recent progress in Texas made under the VRA and perpetuate Texas’s legacy of minority voting discrimination.

**III. SB14—PREMISED ON SPECIOUS CONCERNS OF “VOTER FRAUD”—STIGMATIZES LATINO VOTERS AND ALIENATES THEM FROM THE POLITICAL PROCESS.**

**A. Erroneous Assumptions About Alleged “Voter Fraud” Interact With Texas’s Legacy Of Discrimination To Stigmatize Latino Voters And Chill Their Political Participation.**

SB14’s proponents tout it as a means of combatting alleged in-person voter fraud—a feigned occurrence with negligible evidentiary support. *Veasey*, 71 F. Supp. 3d at 641. Public proponents of remedying alleged voter fraud routinely associate it with undocumented immigration. *See id.* at 653-54 (“[P]roponents of the photo ID bill . . . conflate voter fraud with concern over illegal immigration.”). For example, Texas Lieutenant Governor David Dewhurst wrote in 2007, in support of a Texas “voter-ID” proposal: “I want people to consider that with eight to twelve million illegal aliens currently living in the U.S., the basic American principle of one person, one vote, is in danger.” NALEO EDUCATIONAL FUND, *LATINO VOTERS AT RISK: THE IMPACT OF RESTRICTIVE VOTING AND REGISTRATION MEASURES ON THE NATION’S FASTEST GROWING ELECTORATE* 44 (2012) (hereinafter “*LATINO VOTERS AT RISK*”) (internal citation omitted). “Targeting the undocumented,” however, “is usually a pretext for anti-Latino motives[.]”

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<sup>5</sup> *See generally* Christopher S. Elmendorf & Douglas M. Spencer, *Administering Section 2 of the Voting Rights Act After Shelby County*, 115 COLUM. L. REV. 2143 (2015).

Christina Iturralde, *Public Interest Practice Section: Rhetoric and Violence: Understanding Incidents of Hate Against Latinos*, 12 N.Y. CITY L. REV. 417, 419 (2009); *see generally*, Kevin R. Johnson & Joanna E. Cuevas Ingram, *Anatomy of a Modern-Day Lynching: The Relationship Between Hate Crimes Against Latina/os and the Debate Over Immigration Reform*, 91 N.C. L. REV. 1613 (2013).

Implicit in the rhetoric surrounding voter-ID laws is the intimation that Latino-Americans are somehow “less American,” or deserving of some level of suspicion that justifies voter-ID laws, based on a grossly conflated misconception that any voter with a “Latino” or “Mexican” appearance may somehow have undocumented immigration status, rendering them ineligible to vote. *See* Rachael V. Cobb et al., *Can Voter ID Laws Be Administered in a Race-Neutral Manner? Evidence from the City of Boston in 2008*, 7 Q. J. POL. SCI. 1, 21 (2012) (finding that voters whose primary language spoken at home was not English were more likely to be asked for ID at polling places). Latino-Americans, both naturalized and native-born, are, therefore, unfairly persecuted by misguided voter-ID laws like SB14. Although it purports to protect voting integrity, the likely impact of SB14’s racialized crusade will be to chill the participation of Latino voters. *See* LATINO VOTERS AT RISK at 4 (“[M]embers of the electorate who have not decided whether to vote are likely to be discouraged by the aura of suspicion and mistrust that advocacy of restrictive [voting] laws fosters.”).

**B. The Effects Of Restrictive Voting Laws Like SB14 Will Impair An Ever-Expanding Population Of Latino Voters Nationally, But Especially In Texas.**

The environment of stigmatization fueled by restrictive voter-ID laws is all the more concerning in light of the fact that, far from reacting to an uptick in purported voter fraud, the enactment of restrictive voter-ID laws has accelerated as Latino voters have exerted increasingly recognizable influence on electoral outcomes. *See id.* at 3; *see also* Jim Rutenberg, *The New Attack on Hispanic Voting Rights*, N.Y. TIMES (Dec. 17, 2015), <http://nyti.ms/1O8la4D> (noting that Rep. Louie Gohmert (R-TX) has advocated for voter-ID laws to prevent undocumented immigrants from voting).

Nationally, the number of voter-eligible Latinos is growing rapidly and is projected to be 40% higher in 2016 than in 2008. Jens Manuel Krogstad et al., *Looking Forward to 2016: The Changing Latino Electorate*, PEW RESEARCH CENTER (Jan. 19, 2016), <http://tinyurl.com/PEW-Electorate-2016>. In Texas, five million Latinos are projected to be eligible to vote in the 2016 election. *Id.* Latinos are 39% of Texas's entire population, and Texas has the second largest Latino eligible voter population nationally. Gustavo Lopez & Renee Stepler, *Latinos in the 2016 Election: Texas*, PEW RESEARCH CENTER (Jan. 19, 2016), <http://tinyurl.com/PEW-Tx-FactSheet>. Latinos make up 28% of Texas's electorate and 23% of its registration rolls. NALEO Educational Fund, *2016 Primary*

*Election Profile*, <http://tinyurl.com/NALEO-2016primary> (last visited May 12, 2016).

Against this political and demographic backdrop, the environment of stigmatization surrounding restrictive voter-ID laws like SB14 reflects a “troubling blend of politics and race” that threatens Latinos’ access to participation in the political process. *LULAC*, 548 U.S. at 442.

#### **IV. SB14 DISPROPORTIONATELY BURDENS LATINOS’ POLITICAL FRANCHISE.**

As a result of Texas’s legacy of racial segregation and discrimination, Texas’s growing Latino population has less access than the white population to the resources needed to obtain SB14-compliant ID. A history of discrimination in housing, employment, education, and voting has made it far more difficult for Latinos in Texas to overcome socioeconomic barriers to voting. JESSICA A. GONZÁLEZ, CONGRESSIONAL HISPANIC CAUCUS INSTITUTE, *NEW STATE VOTING LAWS: A BARRIER TO THE LATINO VOTE?* 5 (Apr. 2012).

##### **A. Minority Voters In Texas, Latinos Included, Are Less Likely To Possess Forms Of SB14 ID And More Likely To Need An EIC.**

As the district court below found, Texas’s legacy of discriminatory policies has systematically confined many Latinos in Texas to a lower socioeconomic status, leaving them disproportionately burdened by poverty, and with far less access to well-paying and secure jobs, than their white counterparts. *Veasey*, 71 F.

Supp. 3d at 664-67. The unequal treatment of Latinos is perpetuated by continued discriminatory practices in Texas. *See id.* at 666 (“[W]ithin the last twelve years, the Texas Department of Health, the Texas Department of Family and Protective Services, the City of El Paso, and the City of Houston have all entered into consent decrees or settlement agreements to redress claims of racial discrimination in employment.”).

Because Latinos disproportionately occupy a lower position in the economy—a byproduct of historical discrimination—they are less likely than white voters to have the types of ID that SB14 requires. For example, employment in low-wage jobs means Latinos are less able to access traditional banking services, which might require them to obtain a photo-ID that complies with SB14. *Veasey*, 71 F. Supp. 3d at 664. Similarly, impoverished Latinos are less likely to own a reliable vehicle for which they would need a valid driver’s license, one form of SB14-compliant ID. *Id.* at 665; *see also* González, *supra*, at 5. Far more than for white voters, SB14 necessitates that Latino voters obtain an ID they will need only for voting.

If an eligible voter in Texas does not have an SB14 ID but wishes to vote, under SB14 she or he can obtain a free EIC issued by the DPS “upon presentation of proof of identity” at a DPS office, mobile EIC unit, or EIC-issuing county office. *Veasey*, 71 F. Supp. 3d at 641, 672. Because Latino voters are less likely to

already possess other forms of SB14-approved ID, they are more likely to need an EIC.

**B. As a Result Of The Legacy Of Racial Segregation In Texas, Latino Voters Generally Have Less Access To Reliable Transportation And Consequently Face Disproportionately Greater Burdens In Obtaining An EIC.**

The process for obtaining an EIC is onerous, particularly for Latinos, who face disproportionately greater financial and transportation obstacles for three reasons discussed below: (1) Latinos are more likely to live farther away from an ID-issuing office, (2) the nearest ID-issuing office for Latinos is more likely to have limited hours, and (3) Latinos face greater difficulty traveling to an ID-issuing office.

**1. Texas has only a few ID-issuing office locations, and they are less likely to be located in areas with relatively larger Latino populations.** Seventy-eight of the 254 counties in Texas do not have a permanent DPS office. *Veasey*, 71 F. Supp. 3d at 672. Over 737,000 voting-age citizens must travel at least ninety minutes round-trip to visit an EIC-issuing office; over 596,000 must travel two hours or more; and over 418,000 must travel three hours or more. *Id.* The average travel cost for voters is \$36.23. *Id.* at 705 n.570.

The travel burden associated with obtaining an EIC falls disproportionately on Latinos and African-Americans. *Id.* at 672-73. Latinos are twice as likely as others to live in areas without DPS offices, according to the U.S. Department of

Justice. González, *supra*, at 6. For example, rural areas along the border with Mexico—which have high concentrations of eligible Latino voters—have few or no ID-issuing offices.<sup>6</sup> KEESHA GASKINS & SUNDEEP IYER, BRENNAN CENTER FOR JUSTICE, THE CHALLENGE OF OBTAINING VOTER IDENTIFICATION 9 (2012). In the thirty-two counties in these rural border areas, 61% of about 134,000 voting-age citizens are Latino—twice the proportion of Latinos in the rest of the state—yet only eleven ID-issuing offices are located there. *Id.* For some individuals near the border, the closest permanent DPS office is 100 to 125 miles away. *Veasey*, 71 F. Supp. 3d at 672. This is especially problematic considering that the poverty rate of Latinos in the border area is 30% higher than in the rest of the state, intensifying the need for access to free IDs. Gaskins, *supra*, at 9.

**2. ID-issuing offices have limited hours, particularly in areas with large minority and poverty-stricken populations.** The limited hours for ID-issuing offices substantially burden Latino voters who, because of past and ongoing employment discrimination, disproportionately hold low-paying jobs, which often “do not include paid sick leave or other paid leave” so “taking off from work means lost income.” *Veasey*, 71 F. Supp. 3d at 664 (quoting the testimony of Dr. Jane Henrici).

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<sup>6</sup> Texas ID-issuing office information is current as of March 26, 2012.

Forty ID-issuing offices are open three days or less a week. Gaskins, *supra* at 6. The ID-issuing offices in Texas with limited business hours are often located in rural areas with the highest concentrations of minority populations. *Id.* 1,936,097 voting-age citizens in Texas—12.7% of the total voting-age population—live more than 10 miles from the nearest ID-issuing office that is open more than two days a week. *Id.* at 3. Of the eleven ID-issuing offices in the thirty-two counties in the border area, nine are open only part-time, once or twice a week. *Id.* at 9. In Cotulla, Texas, for example, some eligible voters live about an hour away from the nearest office, and that office is open only once a week during normal work hours. Texas Dep’t of Public Safety, *Driver License Offices*, <http://tinyurl.com/TX-DPS-dl>.

**3. The limited locations and hours of ID-issuing offices further strain Latinos because they are less likely to have access to a vehicle and are more dependent on Texas’s inadequate public transportation system.** An estimated 831,652 voting-age citizens in Texas—5.4% of its total voting-age population—lack access to a vehicle. Gaskins, *supra*, at 4. Further, an estimated 59,740 of those citizens without access to a vehicle live more than 10 miles from an ID-issuing office that is open more than two days a week. *Id.* And while only 3.8% of white households do not have access to a vehicle, 7.3% of Latino households do

not. U.S. Dep't of Justice, Civil Rights Div., *Voting Determination Letter* (Mar. 12, 2012), <http://tinyurl.com/USDOJ-CRT-VOTltr34>.

Latinos are, therefore, more likely to depend on public transportation to access an ID-issuing office. González, *supra*, at 5. However, eligible voters lack sufficient access to public transportation in Texas. Gaskins, *supra*, at 5. The per capita investment in public transportation in Texas is a paltry \$1.16. *Id.* By comparison, other states with restrictive voter-ID laws spend far more on public transportation, with Pennsylvania spending \$94.77 per capita, Wisconsin spending \$22.31, and Indiana spending \$8.63. *Id.* These difficulties are only compounded by the additional trips (and related costs) EIC applicants face to obtain the required underlying documentation. *See Veasey*, 71 F. Supp. 3d at 675 (individuals generally must make two trips to get the necessary EIC documents).

**C. Texas's "Free" EIC Imposes Significant Costs And Financial Burdens On Latino Voters.**

Although an EIC is purportedly available at no charge, the process of actually obtaining an EIC can be costly, creating disproportionate burdens for Latinos. To get a "free" state-issued EIC, one must provide supporting documentation, such as a birth certificate, naturalization certificate, or passport. Texas Dep't of Public Safety, *Election Identification Certificates (EIC) – Documentation Requirements*, <http://tinyurl.com/TX-DPS-EIC> (last visited May 11, 2016). While a birth certificate from Texas can be obtained specifically for an

EIC for \$2, this information has not been widely disseminated, *Veasey*, 71 F. Supp. 3d at 645, and an official copy of a birth certificate from other states costs between \$15 and \$30, Gaskins, *supra*, at 14. A new passport or passport renewal costs between \$110 and \$140; a replacement naturalization certificate is \$345; and a certificate of citizenship is \$600. U.S. Dep't of State, *Passport Fees*, <https://travel.state.gov/content/passports/en/passports/information/fees.html> (last visited May 12, 2016); U.S. Citizenship and Immigration Services, *N-565, Application for Replacement Naturalization/Citizenship Document*, <https://www.uscis.gov/n-565> (last visited May 12, 2016); U.S. Citizenship and Immigration Services, *N-600, Application for Certificate of Citizenship*, <https://www.uscis.gov/n-600> (last visited May 11, 2016).

Further, Latinos born in the United States could face greater challenges to obtaining a birth certificate as supporting documentation for an EIC because they are more likely to be born at home or otherwise not have their birth registered with the state. See ROBERT D. GROVE, STUDIES IN THE COMPLETENESS OF BIRTH REGISTRATION; PART I, COMPLETENESS OF BIRTH REGISTRATION IN THE UNITED STATES, DECEMBER 1, 1939, TO MARCH 31, 1940, 17 VITAL STATISTICS SPECIAL REPORTS 224, 284 (Apr. 20, 1943); S. Shapiro, *Development of Birth Registration*

*and Birth Statistics in the United States*, 4:1 POPULATION STUDIES: A JOURNAL OF DEMOGRAPHY 86, 98-99 (1950).<sup>7</sup>

Additionally, Latinos not born in the United States who become naturalized citizens face greater costs in obtaining supporting documentation for an EIC. Latinos born outside the United States cannot simply get a birth certificate; they must obtain a \$345 naturalization certificate. While most Latino voters in Texas were born in the United States, Latinos are nearly twice as likely as the general voting population in Texas to be naturalized citizens. López & Stepler, *supra* (16.3% of Latino/Hispanic eligible voters in Texas are naturalized U.S. citizens, compared to 8.8% of all eligible voters in Texas).

As a result of SB14's obstacles and problematic administration, EICs have not been widely distributed in Texas: only 371 EICs have been issued in all of Texas, even though 1.2 million Texans lack an SB14-compliant ID. Carson Whitelemons, *Voting 2014: Stories from Texas*, BRENNAN CENTER FOR JUSTICE (Nov. 19, 2014), <http://tinyurl.com/Brennan-VotingStories>. Reports cast doubt on Texas's commitment to providing EICs as a means of ensuring widespread access

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<sup>7</sup> See also Alice Hetzel, U.S. Dep't of Health and Human Services, *U.S. Vital Statistics System Major Activities and Developments, 1950-95* 59 (1997), available at <http://tinyurl.com/CDC-USVSS> (documenting that states with large Spanish-speaking and Native-American populations were many of the last jurisdictions to enter the Census Bureau's birth registration area). Additionally, there have been reports of Texas officials denying birth certificates to children born in Texas to undocumented parents. See Aaron Nelsen, *Undocumented Immigrant Parents Refused Birth Certificates for Citizen Children, Suit Alleges Immigrants' Kids Sue Texas*, SAN ANTONIO EXPRESS NEWS (May 27, 2015), <http://tinyurl.com/SanAntonioExpress-BirthCert>.

to the polls. *See, e.g., Zachary Roth, Texas Stopped Issuing Voter IDs While Pushing to Reinstate Law*, MSNBC (Oct. 15, 2014, 11:46 AM), <http://tinyurl.com/MSNBC-EIC> (Texas refused to issue EICs during the injunction); Matt Woolbright, *DPS Official's Emails Questioned In Voter ID Trial*, CALLER TIMES (Sept. 10, 2014), <http://tinyurl.com/Caller-DPS> (describing statements made by a DPS official, in relation to the number of EICs issued by a DPS office, that “Zero’s a good number”).

\* \* \*

Texas cannot disclaim the lingering effects of a long-entrenched and ongoing legacy of state-sponsored discrimination. Nor can it divorce SB14 from the context in which it is enforced. For many prospective Latino voters, the financial and socially-stigmatizing costs of securing even a “free” voting ID—which may be subject to a re-examination at the polls with a discriminatory cast—amount to a poll tax by another name. *See* BRENNAN CENTER FOR JUSTICE, *Voter ID Law Turns Away Texans* (Nov. 3, 2014), <http://tinyurl.com/Brennan-TXIDLaw> (recounting experiences of minority, low-income, and elderly voters—some of whom suffered under poll taxes and literacy tests in the South—attempting, unsuccessfully, to secure an SB14-compliant ID as a result of the law’s onerous requirements); *see also* Whitelemons, *supra* (reciting numerous stories from Texans who were disenfranchised by SB14 in the November 2014 election).

**V. EMPIRICAL STUDIES OF STRICT VOTER-ID LAWS, INCLUDING SB14, DEMONSTRATE THAT THEY REDUCE VOTER PARTICIPATION RATES FOR LATINOS AND OTHER MINORITY VOTERS.**

New empirical research confirms that in states with strict voter-ID laws, “racial and ethnic minorities are less apt to vote.” ZOLTAN HAJNAL ET AL., VOTER IDENTIFICATION AND THE SUPPRESSION OF MINORITY VOTES 25-26 (2016) (under review). In these states, “[t]he voices of Latinos, Blacks, and multi-racial Americans all become more muted and the relative[] influence of white Americans grows. An already significant racial skew in American democracy becomes all the more pronounced.” *Id.* at 26.

**A. Strict Voter-ID Laws Suppress Minority Voting, Widening The Participation Gap Between White And Latino Voters.**

After the first wave of voter-ID laws was enacted between 2000 and 2006, political scientists attempted an empirical assessment of how this new kind of voting regulation would impact voter participation. Many of these early studies concluded that voter-ID laws had zero effect.<sup>8</sup> These early studies, however, do not accurately reflect the experiences of minority voters in an era of new and more restrictive ID laws like SB14. *Id.* at 9. Because these restrictive ID laws have

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<sup>8</sup> The Project on Fair Representation, as *amicus curiae*, cites these outdated studies in their brief in support of appellants and reversal. *See* Brief of The Project on Fair Representation as Amicus Curiae In Support of Defendants-Appellants at 28-29, *Veasey v. Abbott*, 796 F.3d 487 (2015) (No. 14-41127).

materially impacted the legal landscape, studies focusing on “anything but the last election cycle or two will miss most of the effects of these laws.” *Id.*

Moreover, a faithful assessment of the effects of strict voter-ID laws must account for the fact that much of the early empirical analysis “focuse[d] on self-reported rather than validated turnout.” *Id.* at 10 (noting that self-reported turnout is, on average, 25% higher than actual turnout and minorities are more prone to over-report). Accordingly, studies that use self-reported turnout data, without correcting for this trend, likely overstate minority participation, discrediting their findings that voter-ID laws have no effect on minority participation. *Id.*

A recent study conducted by political scientists at the University of California, San Diego, has corrected for these flaws by checking each voter-respondent “against actual state voter files,” thus eliminating the over-reporting problem. Hajnal et al., *supra*, at 11 (hereinafter the “Hajnal Study”). The research findings demonstrate a strong link between strict photo-ID laws and depressed voter participation among minority voters. *Id.* at 16; *see also* JON C. ROGOWSKI & CATHY J. COHEN, BLACK YOUTH PROJECT, BLACK AND LATINO YOUTH DISPROPORTIONATELY AFFECTED BY VOTER IDENTIFICATION LAWS IN THE 2012 ELECTION 1, 2 (Mar. 2013) (noting that African-American and Latino youth voters “reported that the lack of required identification prevented them from voting” at higher rates than did young white voters).

Holding all else equal, in general elections between 2008 and 2012, “Latino turnout was 10.3 points lower in states with photo-ID laws than in states without strict photo ID regulations.” Hajnal et al., *supra*, at 16. The impact was similar in primary elections, where Latino turnout in strict photo-ID states was reduced by a “politically meaningful” 6.3 percentage points. *Id.* To be sure, depressed Latino turnout in strict photo-ID states, like Texas, is a deeply troubling indication of a problematic and discriminatory voting policy. But the white-minority participation gap is an even stronger indicator of discriminatory effect. *Id.* In general elections between 2008 and 2012, the participation gap between white and non-white voters was twice as high in states with strict photo-ID laws, which has an 11.9-percentage point participation difference, compared to non-voter-ID states, which had a 5.3-percentage point difference. In primary elections during this time, the Latino-white participation gap was three times higher in states with strict photo-ID laws, where there was a 13.3-percentage point difference, compared to a 5.0-percentage point difference in non-voter-ID states. *Id.*

Moreover, an election regulation need not rise to the level of a strict photo-ID law, like SB14, to depress minority voter participation and give white voters “an outsized voice in American democracy.” *Id.* at 22. In states with strict *non-photo* ID laws, Latino voter participation still lags behind white voter participation

by 13.3 percentage points in a general election, and 14.2 percentage points in a primary election. *Id.*

The Hajnal Study confirms what opponents of these stringent voting regulations have long understood: as a result of strict photo ID laws, “racial and ethnic minorities [are] falling further and further behind [white voters] and increasingly losing their place in the democratic process.” *Id.* at 17.

**B. SB14 Has Dissuaded Minority Voters In Texas, Latinos Included, From Voting: Texas’s 23rd Congressional District As A Case Study.**

The Hajnal Study findings ring especially true in Texas, where SB14 has had an observable and detrimental impact on the opportunities of minority voters, and Latino voters in particular, to participate in Texas’s elections. In a survey of 400 registered voters in Texas’s 23rd Congressional District (“CD-23”) who did not vote in the November 2014 election (the “CD-23 Study”), 5.8% of respondents stated that “the principal reason” they did not vote was “because they did not possess any of the seven forms of photo identification required by the state to cast a vote in person.” MARK JONES ET AL., THE TEXAS VOTER ID LAW AND THE 2014 ELECTION: A STUDY OF TEXAS’S 23RD CONGRESSIONAL DISTRICT 1 (2015).<sup>9</sup> An

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<sup>9</sup> The CD-23 Study was a collaborative effort between researchers from the University of Houston’s Hobby Center for Public Policy and Rice University’s Baker Institute for Public Policy to better understand SB14’s impact on Texas voters. Mark P. Jones et al., *supra*, at 1. CD-23 is a majority-minority district, where Latinos comprise 65.8% of the voting age population in the district, and 58.5% of registered voters. *Id.* at 9.

even larger percentage of respondents (12.8%) stated that lack of a qualifying form of ID was at least part of their reason for not voting. *Id.*; *see also* Jonathan Brater, *Texas Photo ID Law Blocks Legitimate Voters*, BRENNAN CENTER FOR JUSTICE (Apr. 16, 2015), <http://tinyurl.com/Brennan-LegitVoters> (collecting stories of Texas voters who, despite extraordinary efforts to present various forms of photo ID, including a military survivor's ID, were denied an opportunity to vote because they lacked the precise ID required by SB14).

The CD-23 Study revealed that many respondents did possess a qualifying form of ID, but were unaware of that fact, and so did not vote in Texas's November 2014 election. Jones et al., *supra*, at 1. Thus, a significant impact of SB14 has been "to discourage turnout among registered voters who did indeed possess an approved form of photo ID, but through some combination of misunderstanding, doubt or lack of knowledge, believed that they did not possess the necessary photo identification." *Id.*

This doubt and uncertainty caused by SB14 also hit Texas voters along racial lines. *Id.* at 9. That fact is unsurprising, given Texas's legacy of discriminating against and intimidating Latino voters. *See Veasey*, 71 F. Supp. 3d at 633-36 (thoroughly documenting Texas's "penchant for discrimination . . . with respect to voting"); *see also* Jose Roberto Juarez, Jr., *Recovering Texas History: Tejanos, Jim Crow, Lynchings & The University of Texas School of Law*, 52 S.

TEX. L. REV. 85, 88-93 (2010) (documenting the “ignominious history of lynchings and other violence against” Mexican-Americans in Texas); Richard Delgado, *The Law of the Noose: A History of Latino Lynching*, 44 HARV. C.R.-C.L. L. REV. 297, 300 (2009) (discussing the historical use of lynching as a tool of terror and oppression against Latinos, including by “the Texas Rangers, some of whom seemed to harbor a special animus toward persons of Mexican descent”).

The lingering stigma of historical oppression interacts with the discriminatory and byzantine requirements of SB14 to send a chilling—but familiar—message to Texas’s Latino voters: “Stay home—this election is not for you.” See discussion, *supra*, Part III.A.; see also Zachary Roth, *Texas Sees Surge of Disenfranchised Voters*, MSNBC (Nov. 4, 2014, 9:58 AM), <http://tinyurl.com/MSNBC-TXVoters> (describing one minority woman’s experience being turned away by a poll worker for not having a qualifying ID, which she said “reminded her of voting in her native Mississippi under Jim Crow”).

The CD-23 Study uncovered evidence that, holding all other factors constant, “Latinos were more likely than Anglos to be non-voters” in the election, and that “Latinos were also more likely to agree that their lack of photo identification was a reason that they did not vote and that they did not (in reality) possess one of the required forms of photo identification.” Jones et al., *supra*, at 9.

Finally, “Latino non-voters were significantly more likely than Anglo non-voters to strongly agree or agree that a lack of photo ID was a reason that they did not cast a ballot in the November 4 contest.” *Id.* This drop-off in Latino participation is not trivial. In the 2014 election, it likely cost the Latino majority in CD-23 the chance to elect their preferred candidate. *Id.* at 12.<sup>10</sup>

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These empirical studies show that strict voter-ID laws like SB14 have the compounding effect, akin to their predecessors the poll tax and the white primary, of skewing access to the polls and electoral results in favor of white voters. SB14 thus diminishes equal access to equal electoral opportunity, which should be open to all voters, Latinos included.

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<sup>10</sup> Will Hurd defeated incumbent Pete Gallego by just over 2,000 votes. Kimberly Railey, *In TX, Will Hurd Defeats Pete Gallego; Other Texans In U.S. House Win Re-election*, TRAIL BLAZERS BLOG, DALLAS MORNING NEWS (Nov. 5, 2014, 1:30 a.m.), <http://tinyurl.com/DMN-CD23>. Survey results showed that far more non-voters who gave their lack of a qualifying ID as a reason, or as the principle reason, that they did not vote, supported Gallego over Hurd. Jones et al., *supra*, at 12.

## CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted.

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## CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(d) because it contains 6,919 words, not counting those sections exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and Circuit Rule 32.2. This brief complies with the typeface and style requirements of Fed. R. App. P. 32(a)(5) and Circuit Rule 32.1 because it was prepared in Microsoft Word using 14-point Times New Roman font, with footnotes in 12-point Times New Roman font.

Dated: May 16, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 16, 2016, the foregoing brief was filed with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit via the CM/ECF system, which caused all registered users to be notified and served by the CM/ECF system.

Dated: May 16, 2016

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