

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STATE OF TEXAS,

Plaintiff,

v.

ERIC H. HOLDER, JR., in his
Official capacity as Attorney General of
the United States,

Defendant.

Case No. 1:12-cv-00128
(DST, RMC, RLW)

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
RELATING TO THE DEFENDANT INTERVENORS

TABLE OF CONTENTS

I. Proposed Findings of Fact1

 A. Intervenors Have Not Produced Evidence That SB 14 Will Have The Effect Of Denying Or Abridging The Right To Vote On Account Of Race, Color, Or Membership In a Language Minority Group.....**Error! Bookmark not defined.**

 B. Intervenors Have Not Produced Evidence That SB 14 Was Enacted For the Purpose Of Denying Or Abridging The Right To Vote On Account Of Race, Color, Or Membership In a Language Minority Group.....7

 C. Senate Bill 14 Prevents Non Domicilliaries From Voting In Texas.....8

II. Proposed Conclusions of Law.....10

TABLE OF AUTHORITIES

Cases

Bennett v. Spear
520 U.S. 154 (1997).....10

Harris v. McRae,
448 U.S. 297 (1980).....11

Hunt v. Wash. State Apple Adver. Comm’n,
432 U.S. 333, 343 (1977).....10

Lujan v. Defenders of Wildlife,
504 U.S. 555, 560–61 (1992).....10

Statutes

Tex. Election Code § 1.015(a)8

Tex. Election Code § 1.015(d)8

Tex. Election Code § 11.001(a)8

I. PROPOSED FINDINGS OF FACT

A. Intervenor Have Not Produced Evidence that SB 14 Will Have the Effect of Denying or Abridging the Right to Vote on Account of Race, Color, or Membership in a Language Minority Group.

1. Texas hereby incorporates the findings of facts relating to the United States.
2. Defendant-Intervenors have not identified a single Texas registered voter whom SB 14's identification requirement is likely to prevent from casting a ballot.
3. The NAACP Intervenors have identified one individual who claims not to have at least one of the forms of ID required by SB 14. That individual, Dorothy Tate, is identified as a 92 year old "Black/Hispanic/Asian citizen of the United States." Tate Declaration (May 3, 2012) at 1, NAACP_00006021. Because Ms. Tate is over 65, she would remain eligible to cast a mail-in ballot; therefore, SB 14 will not prevent her from voting.
4. The Texas Legislative Black Caucus is an organization made up of African-American members of the Texas House of Representatives. Giddings Depo. (TA_001143). TLBC does not contend that any of its members do not have at least one of the forms of identification required by SB 14 or that SB 14 will prevent any of its members from voting. Giddings Depo. 19:14-20:12, 21:15-22 (TA_001143).
5. Intervenor La Union del Pueblo Entero (LUPE) identified one individual who does not have at least one of the forms of ID required by SB 14. Because that individual is over 65, she would remain eligible to cast a mail-in ballot; therefore,

SB 14 will not prevent her from voting. Valdez-Cox Depo. (TA_001307). LUPE has not identified any individual member who is registered to vote but does not have at least one of the forms of identification required by SB 14. Valdez-Cox Depo. (TA_001307).

6. Glenn Bayron testified on behalf of Intervenor Mi Familia Vota Educational Fund that he was not aware of any employees or staff who did not have at least one of the forms of ID required by SB 14. Bayron Depo 21:13–17, 20–23, 21:25–22:2 (TA_001047). Mr. Bayron testified that Mi Familia could not identify any Texas registered voter who does not have at least one of the forms of ID required by SB 14. Bayron Depo 39:2–5 (TA_001047).

7. Intervenors Nicole and Victoria Rodriguez state that they do not have a Texas driver's license, a state-issued photo ID, or a passport. N. Rodriguez Depo. 11:8–15 (TA_001239); V. Rodriguez Depo 10:24–25 (TA_001252). Both believe that they would qualify for an election identification certificate under SB 14. N. Rodriguez Depo. 20:11–23 (TA_001239); V. Rodriguez Depo. at 22:4–6 (TA_001252). Both have birth certificates. N. Rodriguez Depo. 9:8–10 (TA_001239); V. Rodriguez Depo. at 9:7–9 (TA_001252). Both testified that they could not obtain an election identification certificate, but they did not identify any impediment other than the inconvenience of going to the DPS. N. Rodriguez Depo. 12:3–16, 21:17–22:10 (TA_001239); V. Rodriguez Depo. 12:5–19, 23:23–24:1, 24:5–19 (TA_001252).

8. Nicole and Victoria Rodriguez could not identify another Texas registered voter who did not have at least one of the forms of ID required by SB 14. N. Rodriguez Depo. 24:24–25:12 (TA_001239); V. Rodriguez Depo. 26:23–27:7 (TA_001252).

9. Southwest Voter Registration Education Project is a 501(c)(3) corporation that currently has ten employees. Camarillo Depo. 15:7–15 (TA_001080). SWVREP does not have individual members, and it does not contend that any of its employees lack the ID required by SB 14. Other than the Rodriguez intervenors, SWVREP could not identify any individual registered voters who did not have at least one form of identification required by SB 14. Camarillo Depo. 23:24–24:14, 36:5–15, 43:25–44:9 (TA_001080).

10. Intervenor Anna Maria Bargas Burns is a registered voter who has a driver's license and a copy of her birth certificate. Burns Depo. 11:16–19 (TA_001063). Ms. Burns contends that SB 14 may prevent her from voting because there is a slight discrepancy between the name that appears on her driver's license, Anna Maria Bargas Burns, Burns Depo. 4:8–12, 52:11–25 (TA_001063), and the name under which she is registered to vote, Anna Maria Burns, Burns Depo. 15:4–8 (TA_001063). Ms. Burns acknowledged that this discrepancy has existed for about 19 years. Burns Depo. 13:13–24; 15:17–23 (TA_001063). Ms. Burns testified that she usually shows her driver's license when she votes, and the discrepancy in the name on her driver's license and on the voter rolls has never prevented her from voting. Burns Depo. 27:1–10 (TA_001063). Ms. Burns

believes that the names on her driver's license and voter registration are substantially similar. Burns Depo. 38:3-5 (TA_001063). Nevertheless, she is concerned that under SB 14, personal animosity might lead a poll worker to prevent her from voting or force her to cast a provisional ballot because of the discrepancy in the name on her driver's license and the voting rolls. Burns Depo. 33:22-34:9 (TA_001063). Ms. Burns testified that she is not aware of how she might correct this discrepancy, although she admitted that she has not inquired. Burns Depo. 25:25-26:11 (TA_001063).

11. Eric Kennie does not have a form of identification acceptable for voting under SB 14. The only identification that Mr. Kennie currently possesses is an expired state-issued ID and a Social Security card. Kennie Depo. 24:4-5, 24:13-25:9. Mr. Kennie has chosen not to renew his identification because of the cost, even though he has sufficient money and resources to purchase tobacco products on a weekly basis. Kennie Depo 25:18-26:11. Mr. Kennie testified that he supports SB 14. Kennie Depo. 44:1-22 ("Q. Let me rephrase that. I'm sorry. Do you support the new voter ID bill or not? A. Yeah, I do."). Mr. Kennie testified that he does not contend that SB 14 was adopted with a racially discriminatory intent. Kennie Depo. 47:24-48:7.

12. Intervenor Imani Clark is a registered voter who is domiciled in California. Clark Depo. 9:1-21. She possesses an official ID card issued by the State of California plus and expired United States passport. Clark Depo. 13:16-14:20. She also possesses a copy of her birth certificate. Clark Depo. 8:22-24. The only

inconvenience that the Voter ID law imposes on Ms. Clark is that it will require her to travel to the DPS office in Hempstead, Texas, to obtain a free Texas ID. Clark Depo. 31:8-24. Ms. Clark has access to her roommate's car. Clark Depo. 32:15-22. She testified that there was no time her day to travel 5.7 miles by car to Hempstead. Clark Depo. 32:23-33:3. She also testified that after classes ended at Prairie View A&M on May 9, 2012, she traveled to Houston, Texas to stay with a friend until May 20, 2012. Clark Depo. 34:6-34:19. She was not working during this time. Clark Depo. 33:10-12. She never attempted to get a Texas ID. Clark Depo. 35:5-8. Her summer job did not begin until June 20, 2012. Clark Depo. 33:10-12. She testified that will quit her summer job and return to Prairie View A&M one month before schools starts, but still will not have time to get a Texas ID. Clark Depo. 35:9-23.

13. Intervenor Ki'Essence Culbreath is a registered voter who is domiciled in Arkansas. Culbreath Depo. 8:23-9:4. She attends Texas Southern University in Houston, Texas. Culbreath Depo. 10:11-12. She has a birth certificate, a social security card, and a driver's license issued by the State of Arkansas. Culbreath Depo. 8:18-20; 12:22-23; 13:3-8. While in Texas, she has access to a car. Culbreath Depo. 25:15-16. The only obstacle that the Voter ID law places between Ms. Culbreath and voting is that it requires her to travel to the DPS station and obtain a free ID. Culbreath Depo. 24:20-25:5. Her summer work schedule sometimes give her the mornings off, during which she has free time to run errands. Culbreath Depo. 26:4-28:21; Culbreath Depo. 28:19-21 ("Q: What

kind of stuff do you typically do then? A: I mean, I have appointments I have to make, just stuff I need to do day-to-day.”).

14. Intervenor DeMariano Hill is a registered voter from California who attends Texas Southern University in Houston, Texas. Hill Depo. 8:18-9:23. He has a valid California driver’s license. Hill Depo. 12:15-19. He does not possess a copy of his birth certificate, but he does not know whether his father has a copy because he has never asked. Hill. Depo.8:21-9:1; Hill Depo.21:10-25. The two obstacles that the Voter ID law places between Mr Hill and voting is that it requires him to (1) get a copy of his birth certificate from the State of California or his family and (2) to travel to the DPS station and obtain a free ID. Hill Depo. 18:2-20:8. Mr. Hill has access to a car in Houston. Hill Depo. 20:9-10. He drives to work. Hill Depo. 11:17-19. He agreed that his summer work schedule is “flexible.” Hill Depo. 20:11-16; see also Hill Depo. 11:20-24 (“Q: And what are your hours typically like there? A: Usually between – it’s not actually set. It’s not like specific hours but mainly through midday.”).

15. Intervenor Dominique Monday is a registered voter who was born in Tulsa, Oklahoma. Monday Depo. 8:2-18. He attends Texas Southern University in Houston. Monday Depo. 9:5-6. He has an Oklahoma driver’s license. Monday Depo. 12:21-24. He does not possess a copy of his birth certificate, but he has never asked his family if they have a copy. Monday Depo. 21:16-25. The only obstacle that the Voter ID law places between Mr. Monday and voting is that it

requires him to get a copy of his birth certificate from the State of Oklahoma or his family. Monday Depo. 21:12-22:23.

16. In the Select Committee on Voter Identification and Voter Fraud, a witness appearing for the NAACP testified that he did not have any data on the number of African American or Hispanic voters did not have or could not obtain the identification required by SB 14. March 1, 2011 Hearing Vol. I 82:8–15 (JA_001453).

17. Intervenors' testimony suggests that any burden imposed by SB 14 will fall on indigent voters and voters who live in rural areas of the State. Giddings Depo. 73:13–75:21 (TA_001143).

18. Intervenors contend that minority voters will be disproportionately affected by SB 14 because they are disproportionately indigent. Wendy Davis Depo. (TA_001116).

19. Indigency is not an immutable characteristic. Nor is indigency an inherent characteristic of any racial or language minority group.

B. Intervenors Have Not Produced Evidence that SB 14 Was Enacted For the Purpose of Denying or Abridging the Right to Vote on Account of Race, Color, or Membership in a Language Minority Group.

20. Many Intervenors testified directly that they were not aware of any evidence that SB 14 was enacted for the purpose of discriminating against minority voters. *See* Burns Depo. 45:10–12 (TA_001063).

21. Linda Krefting of Intervenor League of Women Voters of Texas stated in an August 25, 2011 e-mail that when a DOJ representative asked if the LWVT

“had any evidence of discriminatory intent in the legislation, I said not really. I indicated our concern was discriminatory effects (certainly that’s the argument we were making).” TLBC_00000211. Ms. Krefting and each of the recipients of this e-mail were listed by the Texas Legislative Black Caucus Intervenors as witnesses “likely to have discoverable information regarding the legislative history, discriminatory purpose, and/or retrogressive effect of Senate Bill 14.” TLBC Intervenors’ Initial Disclosures at 2–3 (identifying Karen Nicholson, Anita Privett, Julie Lowenberg, and Julie Oliver).

22. Christina Sanders testified on behalf of Intervenor Texas League of Young Voters that she was not aware of any statement by any member of the Texas Legislature indicating that SB 14 was enacted for the purpose of harming minority voters. *See* TLYV Deposition at 37:16–20.

23. Intervenors concede that at least some in-person voter fraud occurs in Texas. *See* Giddings Depo. 47:5–8 (TA_001143).

24. Tanya Garduno testified on behalf of Intervenor Southwest Workers Union that the purpose of SB 14 is to prevent voter fraud. Garduno Depo. 80:5–9 (TA_001137).

C. Senate Bill 14 Prevents Non-Domiciliaries from Voting in Texas

25. Texas law allows persons to vote in Texas only if they are domiciled in Texas. *See* Tex. Election Code § 11.001(a) (“Except as otherwise provided by law, to be eligible to vote in an election in this state, a person must . . . (2) be a resident of the territory covered by the election for the office or measure on which

the person desires to vote.”); Tex. Election Code § 1.015(a) (“In this code, ‘residence’ means domicile, that is, one's home and fixed place of habitation to which one intends to return after any temporary absence.”); Tex. Election Code § 1.015(d) (“A person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home.”).

26. Temporary residence in Texas does not establish legal residence or domicile. A person is not a legal resident (or domiciliary) of Texas unless his residence in Texas is permanent or indefinite.

27. The Texas voter-registration rolls include the names of persons who have registered to vote in Texas but who are not eligible to vote in Texas because they are not legal residents of Texas—even though they may be able to list an address in Texas.

28. College students from out-of-state who reside in Texas during the academic year, but have no intent of remaining in Texas beyond their college years are not legal residents or domiciliaries of Texas and are not eligible to vote in Texas.

29. Because many college students in Texas are domiciled in other States and ineligible to vote in Texas, the mere possession of a college identification card does not indicate that one is domiciled in Texas or is eligible for vote in Texas.

30. The decision to obtain a Texas driver's license or a Texas concealed handgun license is highly correlated with an intention to remain permanently or indefinitely in Texas.

31. The decision not to obtain a Texas driver's license or to retain an out-of-state driver's license when attending college in Texas is highly correlated with an intention not to remain permanently or indefinitely in Texas.

32. SB 14's refusal to treat college identification cards as acceptable identification at the polls advances the State's interest in discouraging non-domiciliaries from illegally voting in Texas.

II. PROPOSED CONCLUSIONS OF LAW

34. Texas hereby incorporates the conclusions of law relating to the United States.

35. To establish constitutional standing under Article III, § 2 of the United States Constitution, a plaintiff must "demonstrate that he has suffered 'injury in fact,' that the injury is 'fairly traceable' to the actions of the defendant, and that the injury will likely be redressed by a favorable decision." *Bennett v. Spear*, 520 U.S. 154, 162 (1997) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). Plaintiffs alleging associational standing must demonstrate that: (1) the association's members each independently meet the Article III standing requirements; (2) the interests that the association seeks to protect are germane to the purpose of the organization; and (3) neither the claim asserted nor the relief

requested require individual members' participation in the lawsuit. *See Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977).

36. MALC, TLBC, and the League of Women Voters of Texas, have not proven that any of its members will suffer a legally cognizable injury if SB 14 goes into effect, and therefore these organizations lack Article III standing.

37. If SB 14 imposes a burden on minority voters because minority voters are disproportionately indigent, SB 14 would not deny or abridge the right to vote *on account of* race, color, or membership in a language minority group. Poverty is not a protected classification under the Constitution, *see Harris v. McRae*, 448 U.S. 297, 323 & n.26 (1980), or the Voting Rights Act.

Respectfully submitted.

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JONATHAN F. MITCHELL
Solicitor General

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN
Assistant Attorney General
ADAM W. ASTON
Principal Deputy Solicitor General
ARTHUR C. D'ANDREA
Assistant Solicitor General
MATTHEW H. FREDERICK
Assistant Attorney General

209 West 14th Street

P.O. Box 12548
Austin, Texas 70711-2548
(512) 936-1695

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document is being served by CM/ECF on June 20, 2012, on the following:

Elizabeth Stewart Westfall
Jennifer Lynn Maranzano
Daniel J. Freeman
Bruce I. Gear
Meredith E.B. Bell-Platts
U.S. DEPARTMENT OF JUSTICE
Civil Rights Division, Voting Section
950 Pennsylvania Avenue, NW
NWB-Room 7202
Washington, DC 20530
(202) 305-7766/Fax: (202) 307-3961
Email: elizabeth.westfall@usdoj.gov
Email: daniel.freeman@usdoj.gov
Email: bruce.gear@usdoj.gov
Email: jennifer.maranzano@usdoj.gov
Email: Meredith.Bell-Platts@usdoj.gov
Counsel for the United States

Chad W. Dunn
BRAZIL & DUNN
4201 FM 1960 West, Suite 530
Houston, TX 77068
(281) 580-6310
Email: chad@brazilanddunn.com

J. Gerald Hebert
Attorney at Law
191 Somerville Street, #405
Alexandria, VA 22304
Telephone: 703-628-4673
hebert@voterlaw.com

Counsel for Eric Kennie, Anna Burns, Michael Montez, Penny Pope, Marc Veasey, Jane Hamilton, David De La Fuente, Lorraine Birabil, Daniel Clayton, and Sergio Deleon

Ezra D. Rosenberg
Michelle Hart Yeary
DECHERT LLP
902 Carnegie Center, Suite 500
Princeton, NJ 08540
(609) 955-3200/Fax: (609) 955-3259
Email: ezra.rosenberg@dechert.com
Email: michelle.yeary@dechert.com

Jon M. Greenbaum
Mark A. Posner
Robert A. Kengle
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1401 New York Avenue, NW, Suite 400
Washington, DC 20005
(202) 662-8325
Email: jgreenbaum@lawyerscommittee.org
Email: mposner@lawyerscommittee.org
Email: bkengle@lawyerscommittee.org

Myrna Perez
Ian Arthur Vandewalker
Wendy Robin Weiser
THE BRENNAN CENTER FOR JUSTICE AT NYU LAW SCHOOL
161 Avenue of the Americas, Floor 12
New York, NY 10013-1205
(646) 292-8329/Fax: (212)463-7308
Email: myrna.perez@nyu.edu
Email: ian.vandewalker@nyu.edu
Email: wendy.weiser@nyu.edu

Robert Stephen Notzon
1507 Nueces Street
Austin, TX 78701-1501
(512) 474-7563
Fax: (512) 852-4788
Email: robert@notzonlaw.com

Victor L. Goode
NAACP National Headquarters
4805 Mt. Hope Dr.
Baltimore, Maryland 21215-3297
(410) 580-5120

Email: vgoode@naacpnet.org
Jose Garza
Law Office of Jose Garza
7414 Robin Rest Dr.
San Antonio, Texas 98209
(210) 392-2856 (phone)
Email: garzpalm@aol.com

Gary L Bledsoe
Law Office of Gary L. Bledsoe and Associates
316 West 12th Street, Suite 307
Austin, Texas 78701
(512) 322-9992
Email: garybledsoe@sbcglobal.net
*Counsel for Texas State Conference of NAACP Branches, Mexican American
Legislative Caucus of the Texas House of Representatives*

Douglas H. Flaum
Michael B. de Leeuw
Adam Harris
FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP
One New York Plaza
New York, New York 10004-1980
(212) 859-8000
Email: douglas.flaum@friedfrank.com
Email: michael.deleeuw@friedfrank.com
Email: adam.harris@friedfrank.com

Ryan Haygood
Natasha M. Korgaonkar
Leah C. Aden
Dale E. Ho
Debo P. Adegbile
Elise C. Boddie
NAACP Legal Defense and Educational Fund, Inc.
99 Hudson Street, Suite 1600
New York, New York 10013
(212) 965-2200
(212) 226-7592
Email: rhaygood@naacpldf.org
Email: nkorgaonkar@naacpldf.org
Email: laden@naacpldf.org
Email: dadegbile@naacpldf.org

Email: dho@naacpldf.org

Email: eboddie@naacpldf.org

*Counsel for Texas League of Young Voters Education Fund, Imani Clark,
KiEssence Culbreath, Demariano Hill, Felicia Johnson, Dominique Monday, and
Brianna Williams*

John Kent Tanner

3743 Military Road, NW

Washington, DC 20015

(202) 503-7696

Email: john.k.tanner@gmail.com

Nancy Abudu

Katie O'Connor

Laughlin McDonald

AMERICAN CIVIL LIBERTIES UNION FOUNDATION INC

230 Peachtree Street NW, Suite 1440

Atlanta, GA 30303

(404) 523-2721

Email: nabudu@aclu.org

Email: koconnor@aclu.org

Email: lmcDonald@aclu.org

Arthur B. Spitzer

American Civil Liberties Union of the Nation's Capital

4301 Connecticut Avenue, N.W., Suite 434

Washington, D.C. 20008

(202) 457-0800

Email: artspitzer@gmail.com

Lisa Graybill

Rebecca Robertson

American Civil Liberties Union Foundation of Texas

1500 McGowan Street

Houston, Texas 77004

(713) 942-8146

Email: lgraybill@aclutx.org

Email: rrobertson@aclutx.org

Penda Hair
Kumiki Gibson
Advancement Project
1220 L Street, NW, Suite 850
Washington, DC 20005
(202) 728-9557
Email: phair@advancementproject.org
Email: kgibson@advancementproject.org
*Counsel for Justice Seekers, League of Women Voters of Texas, Texas Legislature
Black Caucus, Donald Wright, Peter Johnson, Ronald Wright, Southwest Workers
Union and La Union Del Pueblo Entero*

Nina Perales
Amy Pedersen
MEXICAN AMERICAN LEGAL DEFENSE & EDUCATIONAL FUND, INC.
110 Broadway, Suite 300
San Antonio, TX 78205
(210) 224-5476
Email: nperales@maldef.org
Email: apedersen@maldef.org
*Counsel for Mi Familia Vota Education Fund, Southwest Voter Registration
Education Project, Nicole Rodriguez, Victoria Rodriguez*

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN
Assistant Attorney General