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-CRUMMEY; DALLAS COUNTY, TEXAS; GORDON BENJAMIN; KEN GANDY; EVELYN BRICKNER,

Plaintiffs-Appellees

v.

GREG ABBOTT, in his Official Capacity as Governor of Texas; ROLANDO PABLOS, 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-Appellants

UNITED STATES OF AMERICA,

Plaintiff-Appellee

TEXAS LEAGUE OF YOUNG VOTERS EDUCATION FUND; IMANI CLARK,

Intervenor Plaintiffs – Appellees

v.

STATE OF TEXAS; ROLANDO PABLOS, 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

TEXAS STATE CONFERENCE OF NAACP BRANCHES; MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES,

Plaintiffs-Appellees

v.

ROLANDO PABLOS, 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

(*See inside cover for continuation of caption*)

(*Continuation of caption*)

LENARD TAYLOR; EULALIO MENDEZ, JR.; LIONEL ESTRADA; ESTELA GARCIA ESPINOSA; MAXIMINA MARTINEZ LARA; LA UNION DEL PUEBLO ENTERO, INCORPORATED,

Plaintiffs-Appellees

v.

STATE OF TEXAS; ROLANDO PABLOS, 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

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

BRIEF FOR THE UNITED STATES AS APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT

Oral argument is appropriate in this case. The United States respectfully requests that oral argument remain scheduled for the week of December 4, 2017.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-40884

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

BRIEF FOR THE UNITED STATES AS APPELLEE

JURISDICTIONAL STATEMENT

Texas Senate Bill 14 (S.B. 14), as amended by Senate Bill 5 (S.B. 5), sets forth Texas's photo-identification (photo ID) requirements for in-person voting. This case involves challenges to S.B. 14 under Section 2 of the Voting Rights Act (VRA), 52 U.S.C. 10301, and the United States Constitution. The district court exercised jurisdiction under 28 U.S.C. 1331, 1345, and 52 U.S.C. 10308(f).

In July 2016, this Court, sitting en banc, affirmed the district court's finding that S.B. 14's photo-ID requirements had a discriminatory result on African-

American and Hispanic voters in violation of Section 2 of the VRA, reversed the finding that S.B. 14 was enacted for a discriminatory purpose, and remanded the case for further proceedings consistent with this Court's opinion and for entry of an interim remedy eliminating S.B. 14's discriminatory result before the 2016 general election. See *Veasey* v. *Abbott*, 830 F.3d 216, 272 (5th Cir. 2016) (en banc), cert. denied, 137 S. Ct. 612 (2017).

In August 2016, the district court entered interim relief agreed upon by all parties. ROA.67876-67882. In April 2017, while the Texas Legislature considered amendments to S.B. 14, including S.B. 5's codification of a reasonable-impediment exception to producing photo ID that largely tracked the agreed-upon interim remedy, the court revisited the purpose claim and again found that S.B. 14 had been enacted with discriminatory intent. ROA.69764-69773. The Texas Legislature enacted S.B. 5 shortly thereafter. ROA.69801-69820. After the legislative session ended in May 2017, the court turned to the issue of the appropriate remedy and found that S.B. 5 was insufficient to cure the S.B. 14-related violations. ROA.70430-70456. Upon so finding, the court permanently enjoined S.B. 14, permanently enjoined S.B. 5, vacated the interim remedy, reinstated Texas's pre-S.B. 14 non-photo voter ID law, and ordered further proceedings on private plaintiffs' request for relief under Section 3(c) of the VRA, 52 U.S.C. 10302(c). ROA.70456.

Texas timely appealed. ROA.70457-70459. This Court issued a stay on September 5, 2017. This Court has jurisdiction under 28 U.S.C. 1292(a)(1).

STATEMENT OF THE ISSUES

The United States will address the following issues:

1. Whether the district court erred when it permanently enjoined Texas's new photo-ID law—which the Texas Legislature, consistent with this Court's en banc decision, amended through S.B. 5 to cure any S.B. 14-related violations—in the absence of any determination that the new law has a discriminatory result or purpose.

2. Whether the district court abused its discretion in permanently enjoining Texas from enforcing its amended photo-ID law and in reinstating Texas's pre-S.B. 14 non-photo voter ID law, which did not require any voter to present photo ID to cast a regular ballot.

STATEMENT OF THE CASE

1. In May 2011, Texas enacted S.B. 14[1], which replaced Texas's non-photo voter ID practices with new requirements for in-person voting. S.B. 14 required in-person voters to present one of five forms of preexisting photo ID and also created a new form of photo ID—the election identification certificate (EIC)—

[1] Act of May 16, 2011, 82d Leg., R.S., ch. 123, 2011 Tex. Gen. Laws 619. The text of S.B. 14 is set forth in the Addendum.

available to voters who lacked qualifying ID. S.B. 14, § 14. Under S.B. 14, in-person voters who did not present acceptable ID could cast a provisional ballot that would be counted if the voter, within six days of the election, appeared before the county registrar and presented S.B. 14 ID or executed an affidavit attesting to a religious objection to being photographed or to the loss of S.B. 14 ID in a recent natural disaster. S.B. 14, §§ 17-18. As enacted, S.B. 14 included no mechanism by which an in-person voter who lacked S.B. 14 ID could cast a regular ballot at the polls or a provisional ballot that necessarily would be counted.

2. As relevant here, the United States and private plaintiffs filed separate lawsuits alleging that S.B. 14's photo-ID requirements violated Section 2 of the Voting Rights Act (VRA), 52 U.S.C. 10301, both because they were intentionally discriminatory and because they had a discriminatory result. See *Veasey* v. *Perry*, 71 F. Supp. 3d 627, 632, 694 n.502, 698 n.524 (S.D. Tex. 2014).

After trial, the district court determined that S.B. 14 had a discriminatory result in violation of Section 2 of the VRA because it provided African-American and Hispanic voters less opportunity relative to Anglo voters to participate in the political process and to elect their candidates of choice. The court also found that the Texas Legislature had enacted S.B. 14 at least in part because of its adverse effect on minority voters and that Texas had not shown that the Legislature would have enacted S.B. 14 absent that discriminatory purpose. As a remedy, the court

enjoined S.B. 14's photo-ID provisions and reinstated Texas's preexisting voter-ID law, which generally required only that in-person voters either (a) present their voter registration certificate, or (b) execute an eligibility affidavit and produce another form of state-specified ID that included non-photo ID. See *Veasey*, 71 F. Supp. 3d at 694-703, 707.

Texas sought an emergency stay pending appeal, which this Court granted, *Veasey* v. *Perry*, 769 F.3d 890 (5th Cir. 2014), and the Supreme Court declined to vacate, 135 S. Ct. 9 (2014). Accordingly, Texas applied S.B. 14 in federal, state, and local elections pending appeal to this Court.

3.a. A panel of this Court affirmed the district court's finding that S.B. 14 violated Section 2 of the VRA based on its discriminatory result but vacated the finding that S.B. 14 was enacted at least in part for a discriminatory purpose. The panel remanded for further proceedings and for consideration of a remedy. See *Veasey* v. *Abbott*, 796 F.3d 487, 493, 498-513, 517-520 (5th Cir. 2015).

b. After granting rehearing en banc, this Court issued an opinion that affirmed the finding that S.B. 14 had a prohibited discriminatory result. See *Veasey* v. *Abbott*, 830 F.3d 216, 243-265 (5th Cir. 2016) (en banc). After identifying legal errors that rendered some of the district court's findings infirm, this Court reversed the district court's judgment that S.B. 14 was passed with a

racially discriminatory purpose and remanded for further consideration of that claim. See *id.* at 229-243, 272.

Given the impending November 2016 election, this Court placed on the district court the "unwelcome obligation" of devising a remedy "pending later legislative action." *Veasey*, 830 F.3d at 270 (citations omitted). This Court directed the district court to "take special care" to honor the State's policy preferences to implement a photo-ID system. *Id.* at 269. "[T]hose who have SB 14 ID must show it to vote"; thus, any remedy "must be tailored to rectify only the discriminatory effect on those voters who do not have SB 14 ID or are unable to reasonably obtain such identification." *Id.* at 271. The Court summarized that "the district court's immediate responsibility is to ensure the implementation of an interim remedy for SB 14's discriminatory effect that disrupts voter identification rules for the 2016 election season as little as possible, yet eliminates the Section 2 discriminatory effect violation." *Id.* at 272.

This Court invited Texas to enact a legislative remedy to S.B. 14. See *Veasey*, 830 F.3d at 269-270. The Court noted that "[b]ased on suggestions in oral argument, appropriate amendments might include a reasonable impediment or indigency exception." *Id.* at 270. It further explained that, given the Legislature's legitimate goal of "strengthening the forms of identification presented for voting," a remedy that "[s]imply revert[ed] to the system in place before SB 14's passage

would not fully respect these policy choices." *Id.* at 271. The Court made clear that "should a later Legislature again address the issue of voter identification, any new law would present a new circumstance not addressed here" and "concerns about a new bill would be the subject of a new appeal for another day." *Id.* at 271. As for further liability proceedings, the district court was to "reexamine the discriminatory purpose claim * * * , bearing in mind the effect any interim legislative action taken with respect to SB 14 may have." *Id.* at 272.

Texas sought certiorari review, which the Supreme Court denied with a statement from the Chief Justice. See 137 S. Ct. 612 (2017).

4.a. On remand, the parties worked together to develop an interim remedy. ROA.67754-67766, ROA.67863-67874. Under that remedy, in-person voters who lacked S.B. 14 ID and could not reasonably obtain such ID could cast a regular ballot upon completing a reasonable-impediment declaration and presenting a specified form of ID such as their voter registration certificate, current utility bill, or paycheck. ROA.67873-67874. The reasonable-impediment declaration informed the voter that "[t]he reasonableness of your impediment or difficulty cannot be questioned" and that the voter signed the declaration "upon penalty of perjury." ROA.67873; see also ROA.67881.

In conjunction with these procedures, Texas developed a detailed voter education plan that included at least $2.5 million in funds. ROA.67757. The State

also committed to educating voters and election officials in subsequent elections regarding S.B. 14's photo-ID requirements and the opportunity for voters who could not reasonably obtain S.B. 14 ID to cast a regular ballot at the polls. ROA.67757.

The district court entered the agreed-upon interim remedy as a court order (ROA.67876-67882) and acknowledged later that it "was formulated in conformity with the powers and parameters of a VRA Section 2 discriminatory 'results' claim" (ROA.70431). The interim remedy was used for the November 2016 general election and remained in place pending further order of the district court. ROA.67876-67879. Aware that the Texas Legislature might act to cure any S.B. 14-related violations, the district court stated that "[n]othing in [its] order shall prevent any party from seeking relief based on future events, including but not limited to legislative action." ROA.67879.

b. When the Texas Legislature convened in January 2017 for its regular session, it accepted this Court's invitation to consider a legislative remedy to cure any S.B. 14-related violations. Despite that action and the joint request of Texas and the United States to postpone further liability proceedings until the end of the 2017 legislative session (ROA.69310-69322), the district court proceeded to reweigh the evidence of discriminatory intent (ROA.69764-69773). In response to the court's refusal to await anticipated legislative action (ROA.69337) and in

recognition of the Legislature's primary responsibility to remedy S.B. 14's alleged infirmities, the United States moved to voluntarily dismiss its purpose claim without prejudice pending Texas's consideration of what this Court called an "appropriate amendment[]," such as "a reasonable impediment or indigency exception." ROA.69341 (quoting *Veasey*, 830 F.3d at 270); see also ROA.69342.

In April 2017, the district court issued an opinion incorporating many of its prior findings of fact and conclusions of law and again determining that S.B. 14 was enacted, at least in part, for a discriminatory purpose. ROA.69764-69773. The court, however, declined to consider any judicial remedies for the statutory and constitutional violations until after the close of the legislative session. ROA.69851-69852.

c. The Texas Legislature shortly thereafter adopted S.B. 5 as a legislative remedy to cure any S.B. 14-related violations. In addition to making EIC-issuing locations more readily available, S.B. 5[2] codifies a reasonable-impediment procedure that largely tracks the parties' agreed-upon interim remedy that the district court judge had entered as an order of the court. S.B. 5, §§ 1-2. In particular, the amended law ensures that voters who do not have and cannot reasonably obtain a form of S.B. 14 ID for the broad reasons outlined under S.B. 5

[2] Act of May 28, 2017, 85th Leg., R.S., 2017 Tex. Sess. Law Serv., ch. 410. The text of S.B. 5 is set forth in the Addendum.

can cast a regular ballot at the polls. S.B. 5, § 2. These reasons include: lack of transportation; lack of birth certificate or other documents needed to obtain the requisite identification; work schedule; lost or stolen identification; disability or illness; family responsibilities; and identification that has been applied for but not yet received. S.B. 5, § 2.

S.B. 5 requires election officials to notify voters who lack S.B. 14 ID that they will be accepted for voting if they present an alternate form of state-specified ID and execute a reasonable-impediment declaration. S.B. 5, § 2. Acceptable proof of identification includes a government document that shows the name and address of the voter, such as the voter's voter registration certificate; a copy of a current utility bill; a bank statement; a government check; a paycheck; or a certified copy of a domestic birth certificate or other document confirming the person's birth that is legally admissible and establishes the person's identity. S.B. 5, § 5. Election officials may not refuse to accept this documentation solely because the address on the documentation presented does not match the address on the voter roll. S.B. 5, § 2.

The election official may not question the reasonableness of the impediment or impediments that the voter swears to in a reasonable-impediment declaration. S.B. 5, § 2. Should a voter intentionally make a false statement or provide false

information on the reasonable-impediment declaration, such conduct is punishable as a state jail felony. S.B. 5, § 3.

To educate voters about the State's photo-ID requirements and the opportunity to claim a reasonable impediment to presenting photo ID, Texas publicly committed, among other things, to providing written notice of the new requirements to all active registered voters by the end of 2017, to training its election officials on the S.B. 5 procedure, and to spending $4 million over two years on voter information and outreach efforts. ROA.69825-69827, ROA.70206-70207.

d. Following the enactment of S.B. 5, the district court turned to the remedial phase. The district court expressly invited the parties to submit evidence regarding S.B. 5, but private plaintiffs declined that invitation. ROA.70432. Private plaintiffs also never sought leave to amend their complaint to add claims challenging S.B. 5. They therefore never adduced any evidence that Texas's new photo-ID law, as amended by S.B. 5, has a discriminatory result or fails to cure any discriminatory purpose. Rather, private plaintiffs asked for additional remedies principally based on the district court's finding that S.B. 14 "was passed with discriminatory purpose." ROA.69975.

The district court recognized that "there is no pending claim" challenging S.B. 5 and that it was therefore "premature to try to evaluate SB 5 as the existing

voter ID law in Texas." ROA.70438 n.9. Focusing on whether S.B. 5 was a "remedy for SB 14's ills" (ROA.70438 n.9), the court never adjudicated whether Texas's photo-ID law, as amended by S.B. 5, violates Section 2 of the VRA or the Constitution.

Nonetheless, on August 23, 2017, the court entered a remedial order enjoining S.B. 14, enjoining S.B. 5, vacating the interim remedy, and returning Texas to its pre-S.B. 14 non-photo voter ID law, which generally required only that in-person voters present a valid voter registration certificate. ROA.70430-70456. Rather than defer to the State's chosen remedy absent any showing that S.B. 5 violated Section 2 of the VRA or the Constitution, the court, solely on the basis of the S.B. 14-related violations, stated that "[n]othing further is required in the nature of deference to legislative choices when this [c]ourt reviews the substance of SB 5." ROA.70436. The court then placed the burden on the State to show that S.B. 5 adequately cured the S.B. 14-related statutory and constitutional violations (ROA.70437-70438) and proceeded to compare the terms of S.B. 14, S.B. 5, and, to a lesser extent, the interim remedy (ROA.70439-70451).

Even though S.B. 5 largely tracked the agreed-upon interim remedy by creating a reasonable-impediment exception, the court concluded that Texas failed to show that S.B. 5 "fully ameliorates the discriminatory purpose or result of SB 14." ROA.70451. Significantly, the court did not determine that S.B. 5 violated

Section 2 of the VRA or the Constitution. Indeed, the court expressly disavowed undertaking any such inquiry. ROA.70438 n.9. Nevertheless, the court entered sweeping injunctive relief. ROA.70456.

SUMMARY OF ARGUMENT

The district court legally erred and abused its discretion when it permanently enjoined Texas's amended photo-ID law. In response to the en banc Court's invitation to adopt a remedy, Texas enacted S.B. 5 to create a broad exception that permits in-person voters who do not possess and cannot reasonably obtain S.B. 14 ID to cast a regular ballot upon claiming a reasonable impediment to presenting such ID, completing an accompanying declaration, and producing non-photo ID. Under binding precedent, the district court should have deferred to the Legislature's chosen remedy absent any showing that the remedy violated Section 2 of the VRA or the Constitution.

Had the court undertaken the requisite inquiry, it necessarily would have concluded that Texas's photo-ID requirements, as amended by S.B. 5, are valid, nondiscriminatory legislation. The Legislature's incorporation of a reasonable-impediment exception—the same type of remedy that the district court approved in 2016 and the broader of two remedies that this Court suggested might be appropriate to cure S.B. 14's alleged infirmities—ensures that Texas's photo-ID law no longer imposes a discriminatory burden on minority voters that could give

rise to a Section 2 results violation or has a disproportionate impact that could give rise to a finding of any discriminatory purpose. Accordingly, the district court should have permitted Texas's amended photo-ID procedures to take effect, as scheduled, on January 1, 2018.

In finding S.B. 5 inadequate to cure the S.B. 14-related statutory and constitutional violations, the district court largely disregarded the fact that the Legislature (a) acted at the express invitation of this Court, sitting en banc, to enact a remedy for the harms imposed by S.B. 14, (b) adopted the broader of two remedies that this Court suggested might be appropriate to cure S.B. 14's harms (*i.e.*, a reasonable-impediment exception as opposed to an affidavit of indigence), and (c) largely tracked the parties' agreed upon interim remedy, which the district court entered to eliminate S.B. 14's discriminatory effect. The district court did not identify any evidence that Texas's new voter-ID law has a discriminatory result or purpose, and even incorrectly placed the burden on the State to prove the adequacy of the chosen remedy, rather than on private plaintiffs to show that the remedy was legally invalid. But irrespective of which party carried the burden and what remedial standard applied, it would be clearly erroneous to find, as the district court did here, that S.B. 5 did not fully remedy the S.B. 14-related harms.

Finally, the district court abused its discretion when, after finding S.B. 5 inadequate, it rejected Texas's legitimate policy preference for a photo-ID law and

reinstated Texas's preexisting voter ID law, which generally permitted voters to cast a regular ballot upon presenting their voter registration certificate. Ordering Texas to revert to a voter-ID system in which the overwhelming majority of voters does not have to produce a form of photo ID impermissibly intrudes on the State's permissible choice to strengthen the forms of ID presented for in-person voting.

ARGUMENT

THE DISTRICT COURT SHOULD HAVE DEFERRED TO THE STATE LEGISLATURE'S CHOSEN REMEDY ABSENT ANY DETERMINATION THAT THE REMEDY VIOLATED SECTION 2 OF THE VRA OR THE CONSTITUTION

A. Standard Of Review

This Court reviews the issuance of a permanent injunction to remedy violations of Section 2 of the VRA for abuse of discretion. See *United States* v. *Brown*, 561 F.3d 420, 435 (5th Cir. 2009). An abuse of discretion occurs when the district court relies on clearly erroneous factual findings or erroneous conclusions of law when deciding to grant a permanent injunction, or misapplies the factual or legal conclusions when fashioning injunctive relief. See *Ball* v. *LeBlanc*, 792 F.3d 584, 598 (5th Cir. 2015).

Although an order granting a permanent injunction will be reversed only upon a showing that the district court abused its discretion, "legal determinations are subject to plenary review on appeal." *Martin's Herend Imports, Inc.* v.

Diamond & Gem Trading United States of Am. Co., 195 F.3d 765, 772 (5th Cir. 1999) (citation omitted).

B. Absent Any Determination That Texas's Photo-ID Procedures, As Amended By S.B. 5, Were Legally Invalid, The District Court Should Have Deferred To The Legislature's Chosen Remedy

The district court legally erred and abused its discretion when it supplanted Texas's duly-enacted amended photo-ID procedures with the broad injunctive relief sought by private plaintiffs. The court justified its sweeping order based primarily on its finding that S.B. 14 was enacted, at least in part, for a discriminatory purpose. But absent a determination that Texas's amended photo-ID procedures violated Section 2 of the VRA or the Constitution or were otherwise invalid—which the record here would not support—the court should have treated S.B. 5's incorporation of a broad reasonable-impediment exception into S.B. 14 as an intervening act and sufficient remedy that cured any S.B. 14-related infirmities.

"[C]ourts clearly defer to the legislature in the first instance to undertake remedies for violations of [Section 2]." *Mississippi State Chapter, Operation PUSH, Inc.* v. *Mabus*, 932 F.2d 400, 406 & n.5 (5th Cir. 1991). Thus, a court "must accept a plan offered by the [defendant jurisdiction] if it does not violate statutory provisions or the Constitution." *Id.* at 407; see *Westwego Citizens for Better Gov't* v. *City of Westwego*, 946 F.2d 1109, 1123-1124 (5th Cir. 1991). The Supreme Court, in the reapportionment context, likewise has stated that a

legislative remedy "will then be the governing law unless it, too, *is challenged and found to violate* the Constitution." *Wise* v. *Lipscomb*, 437 U.S. 535, 540 (1978) (emphasis added).

This rule of federal judicial deference to state legislative remedies applies with particular force here, where the en banc Court explicitly and specifically invited the Legislature to enact a "legislative fix" to "cure the deficiencies" and "ameliorate the issues" identified in its opinion. *Veasey*, 830 F.3d at 271. The en banc Court even noted that "[b]ased on suggestions in oral argument, appropriate amendments might include a reasonable impediment or indigency exception." *Id.* at 270. And it further made clear that "should a later Legislature again address the issue of voter identification, any new law would present a new circumstance not addressed here" and "concerns about a new bill would be the subject of a new appeal for another day." *Id.* at 271.

The district court recognized that it was required to defer to the legislative remedy "***if it does not violate statutory provisions or the Constitution.***" ROA.70436 (quotation marks and citation omitted; emphasis in original). Thus, by its own acknowledgement, the district court should have considered whether Texas's amended photo-ID law, which permits in-person voters to cast a regular ballot upon claiming a reasonable impediment to presenting S.B. 14 ID, violated Section 2 of the VRA or the Constitution. See *Operation PUSH*, 932 F.2d at 406-

407; *Westwego Citizens for Better Gov't*, 946 F.2d at 1123-1124. To do so, the court needed to determine whether Texas's amended photo-ID procedures either (a) impose disproportionate and material burdens on minority voters that could give rise to an independent Section 2 results violation, see *Veasey*, 830 F.3d at 243-245, or (b) were enacted, at least in part, for a discriminatory purpose, see *id.* at 230-231.

But the district court never performed that inquiry, and that ended the matter. Texas's new voter-ID law is "the governing law unless" and until "it, too, *is challenged and found to violate* the Constitution" or the VRA. *Wise*, 437 U.S. at 540 (emphasis added); *Operation PUSH*, 932 F.2d at 406-407 & n.5; *Westwego Citizens*, 946 F.2d at 1123-1124; *Veasey*, 830 F.3d at 270-271; see ROA.70436.

Moreover, had the district court undertaken the correct analysis, it would have concluded that Texas's new voter-ID law is valid, nondiscriminatory legislation that does not have a discriminatory result or purpose.

1. As the en banc Court explained, to have a discriminatory result, the challenged voting practice must impose a "discriminatory burden" on members of a protected class. *Veasey*, 830 F.3d at 244. But there was nothing in the pre-S.B. 5 record—and private plaintiffs adduced no evidence following S.B. 5—to suggest that Texas's new voter-ID law imposes such a burden upon anyone. In fact, all of the evidence points to precisely the opposite conclusion.

At the threshold, "the vast majority" of in-person voters in Texas, regardless of race, already possess a form of S.B. 14 ID and face no impediment to presenting photo ID at the polls. See *Veasey*, 830 F.3d at 250, 271 (crediting the district court's finding that over 95% of registered Texas voters possess a form of S.B. 14 ID). As the en banc Court held, "those who have SB 14 ID must show it to vote" in person and do not face a discriminatory burden under S.B. 14. *Id.* at 271. Thus, the question is whether S.B. 5's reasonable-impediment procedure imposes a discriminatory burden on the minority voters within the subset of Texas voters who do not already possess S.B. 14 ID. The record evidence establishes that it does not.

First, the district court's interim remedy "eliminate[d] the Section 2 discriminatory effect" that this Court concluded S.B. 14 imposed on minority voters who lack S.B. 14 ID. *Veasey*, 830 F.3d at 272. Indeed, private plaintiffs agreed to that remedy as an interim remedy for the results violation found by the en banc Court (ROA.67876) and have never argued that the interim remedy was inadequate to cure that violation (ROA.69973-69996). Moreover, there is no evidence in the record that the interim remedy imposed any "discriminatory burden" on any voter, *Veasey*, 830 F.3d at 244, when it was used in the 2016 presidential election in which nearly nine million Texans voted, see Office of Texas Secretary of State, 2016 General Election Results, available at http://elections.sos.state.tx.us/elchist319_state.htm.

The reasonable-impediment exception adopted by the Texas Legislature in S.B. 5 largely tracks—and, in some instances, improves upon—the interim remedy's reasonable-impediment procedure. In particular, S.B. 5:

- Extends the cut-off period for acceptable photo ID to the same "four years" past the expiration date that the interim remedy adopted. Compare S.B. 5, § 5, with ROA.67876.

- Allows voters over the age of 70 to use any form of acceptable photo ID regardless of expiration date, while the interim remedy subjected these older voters to the four-year cut-off period. Compare S.B. 5, § 5, with ROA.67876.

- Creates a reasonable-impediment procedure. Compare S.B. 5, §§ 1-2, with ROA.67876-67878.

- Permits Texas voters utilizing the reasonable impediment procedure to present the same general categories of non-photo ID as the interim remedy. Compare S.B. 5, § 5, with ROA.67882.

- Recognizes the same seven predetermined impediments to trigger the reasonable-impediment procedure as the interim remedy. Compare S.B. 5, § 2, with ROA.67881.

Thus, like the interim remedy, S.B. 5's reasonable-impediment procedure allows in-person voters to cast a regular ballot at the polls even though they lack S.B. 14 ID, so long as they assert that they cannot reasonably obtain such ID for one of the broad categories of reasons enumerated in the declaration. That procedure consists of two steps, both of which track the interim remedy and neither of which imposes any "significant and disparate burdens on the right to vote," *Veasey*, 830 F.3d at 256.

At the first step, S.B. 5, like the interim remedy, requires a voter to execute a declaration stating that the voter has a reasonable impediment to meeting the requirement to present an acceptable photographic identification. S.B. 5, § 2; ROA.67876-67877. S.B. 5 codifies the same seven predetermined impediments identified in the interim remedy: lack of transportation; lack of birth certificate or other documents needed to obtain the requisite photo ID; work schedule; lost or stolen identification; disability or illness; family responsibilities; and identification that has been applied for but not yet received. S.B. 5, § 2; ROA.67881.[3]

At the second step, S.B. 5, like the interim remedy, requires a voter to present an acceptable form of non-photographic identification. S.B. 5, § 5; ROA.67882. Such identification includes the voter registration certificate mailed to all Texas voters free of charge upon their initial registration, replaced at no cost where necessary, and reissued by law every two years. See S.B. 5, § 2; ROA.67882; see also Tex. Elec. Code Ann. §§ 13.142, 13.144, 14.001-14.002, 15.001-15.005 (West 2017).

[3] As the district court recognized, the ability of an in-person voter to claim a disability or illness as a reasonable impediment obviates the need for individuals with a disability to acquire a permanent exemption to S.B. 14's photo-ID requirements. ROA.70443; see *Veasey*, 71 F. Supp. 3d at 641, 674.

Thus, like the interim remedy upon which it is modelled, Texas's new voter-ID law "eliminates the Section 2 discriminatory effect violation" that the Court found in S.B. 14. *Veasey*, 830 F.3d at 272.

Second, by enacting this reasonable-impediment procedure, the Texas Legislature adopted the broader of the two remedies suggested by the en banc Court. See *Veasey*, 830 F.3d at 270. The other potential remedy suggested by the Court—an indigency affidavit like the one used in Indiana, see *ibid.*—permits a voter to cast only a provisional ballot at the polls and requires the voter to travel to the county registrar's office to execute the affidavit. See, *e.g.*, *Crawford* v. *Marion Cty. Elec. Bd.*, 553 U.S. 181, 185 (2008). S.B. 5's reasonable-impediment procedure, by contrast, allows in-person voters to cast a regular ballot at the polls and excuses the lack of S.B. 14 ID on bases other than indigency. See S.B. 5, § 2.

Third, the State has shown that every one of the 27 individual voters who testified at trial faces no discriminatory burden, and can vote in person, under the new voter-ID law. See Appellants' Br. 19-23. Thus, there is no evidence that Texas's new voter-ID law imposes any material burden on any voter, let alone a disproportionate burden on minority voters. See *Veasey*, 830 F.3d at 244. For this reason as well, there was no basis for the district court to find that the new photo-ID law causes a discriminatory result. See *ibid.*

2. Because S.B. 5's reasonable-impediment procedure does not have a disproportionate impact on minority voters, it cannot have been enacted with an unlawful discriminatory purpose. A discriminatory-purpose claim under the Constitution or Section 2 of the VRA requires a showing of both discriminatory intent and discriminatory effect. See, *e.g.*, *Hunter* v. *Underwood*, 471 U.S. 222, 233 (1985) (State law prohibiting exercise of the right to vote held invalid where "its original enactment was motivated by a desire to discriminate * * * and the section continues to this day to have that effect"); *Cotton* v. *Fordice*, 157 F.3d 388, 391-392 & n.9 (5th Cir. 1998) (discriminatory-purpose claim requires "effects as well as motive"). "[T]he impact of the official action" and whether it "bears more heavily on one race than another" is an "important starting point" in evaluating whether a law was motivated by a discriminatory purpose. *Village of Arlington Heights* v. *Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). Where a law produces no disparate impact, it cannot have been enacted "*because of*" that impact. *Veasey*, 830 F.3d at 231; see also, *e.g.*, *Lewis* v. *Ascension Parish Sch. Bd.*, 806 F.3d 344, 359, 362 (5th Cir. 2015), cert. denied, 136 S. Ct. 1662 (2016).

Even apart from the lack of any disparate impact under the amended photo-ID procedures, the other *Arlington Heights* factors do not support an inference of discriminatory intent where the Legislature, in its first regular session following the issuance of this Court's en banc opinion, amended S.B. 14 by adopting what

this Court suggested might be an "appropriate amendment[]" to cure S.B. 14's infirmities. *Veasey*, 830 F.3d at 270. Again, absent any finding that S.B. 5 was enacted for a discriminatory purpose, there was no basis for the district court to supplant Texas's chosen remedy with sweeping injunctive relief. The Court should reverse.

C. The District Court Offered No Valid Basis For Its Failure To Defer To The Texas Legislature's Chosen Remedy

The district court offered four primary rationales for overriding the Texas Legislature's preferred remedy in the absence of a determination that that remedy has a discriminatory result or purpose. At every turn, the court compounded its reversible error in failing to defer to Texas's new voter-ID law.

1. The district court never found that S.B. 5 has a discriminatory result or purpose. Rather, the court principally reasoned that its sweeping remedial order was proper due to its finding "that *SB 14* was passed with a discriminatory purpose." ROA.70431 (emphasis added). Thus, the district court bootstrapped a permanent injunction against Texas's *new* voter-ID law upon its finding that Texas's *prior superseded* law was defective. ROA.70431. The court cited no authority allowing a prospective injunction against a new law based on a defect in the old law. ROA.70431. Nor could it have done so: "[t]he purpose of an injunction is to prevent future violations" of law, not to provide redress for past violations. *United States* v. *W.T. Grant & Co.*, 345 U.S. 629, 633 (1953).

Instead, the district court reasoned that "[n]othing further is required in the nature of deference to legislative choices" with respect to S.B. 5 because, according to the court, S.B. 14 was enacted with discriminatory intent. ROA.70436. But that analysis turns this Court's precedent on its head—there never would be reason to "defer to the legislature in the first instance," *Operation PUSH*, 932 F.2d at 406, if the underlying violation served as a basis to withhold deference to the subsequent legislative effort to cure that violation.

In all events, the district court's myopic focus on the legislative intent behind S.B. 14 erroneously carried over its finding of discriminatory intent to Texas's new statute. In remanding this case to the district court, the en banc Court specifically directed the district court to "reexamine the discriminatory purpose claim * * * , bearing in mind the effect any interim legislative action taken with respect to SB 14 may have." *Veasey*, 830 F.3d at 272. Indeed, this Court has previously cautioned that, because intervening legislation "with meaningful alterations may render the current law valid" despite any "discriminatory intent of the original drafter," "the state of mind of the [subsequent legislative] body must also be considered." *Chen* v. *City of Houst.*, 206 F.3d 502, 521 (5th Cir. 2000). This follows from this Court's precedent holding that subsequent legislative amendments can remove the discriminatory taint of an original enactment. See *Cotton*, 157 F.3d at 391-392 & nn.7-9; see also *Hunter*, 471 U.S. at 233

(recognizing that a law's original discriminatory purpose might be overcome through later ameliorative changes but finding that the provision at issue was motivated by a desire to discriminate and continued to have a discriminatory effect); *Johnson* v. *Governor of Fla.*, 405 F.3d 1214, 1220-1226 (11th Cir.) (en banc) (holding that a challenged felon disenfranchisement provision was not intentionally racially discriminatory in spite of its original enactment where the state legislature altered and reenacted the provision for race-neutral reasons), cert. denied, 546 U.S. 1015 (2005). Thus, it is unsurprising that private plaintiffs initially conceded that the district court could not determine the proper judicial remedies without first determining whether any remedial legislation was enacted with discriminatory intent. ROA.69701 n.13 ("[I]n the remedy proceedings, it will be the task of this Court to determine whether, should the Legislature adopt remedial legislation, there is any remaining discriminatory intent behind that action."); ROA.69703 ("Private Plaintiffs' claim is that SB 14 was passed in 2011 with discriminatory intent, not that SB 5 will be passed in 2017 with discriminatory intent (although that question will need to be resolved at the remedy phase * * *).").

The district court, however, effectively ignored the current Legislature's intent in enacting S.B. 5, declining to make any finding regarding whether S.B. 5 has a discriminatory result or purpose. ROA.70430-70456. The court instead

invoked the rule that "[t]he breadth of relief available to redress a discriminatory purpose claim is greater than that for a discriminatory results claim." ROA.70445, ROA.70452-70453 (citing, *e.g.*, *Washington* v. *Seattle Sch. Dist. No. 1*, 458 U.S. 457 (1982), *City of Richmond* v. *United States*, 422 U.S. 358 (1975), and *Green* v. *County Sch. Bd. of New Kent Cty., Va.*, 391 U.S. 430 (1968)). But the fact that the law recognizes certain forms of relief for discriminatory-purpose claims does not mean that the record supports any such relief in a particular case.

Indeed, none of the cases that the district court cited holds that a court is permitted, much less *required*, to override a valid legislative remedy and permanently enjoin a new law based upon a finding of a defect in the law that it superseded. In fact, none involved a legislative amendment to the challenged state law, let alone an amendment whose "meaningful alterations" cured the alleged violations. *Chen*, 206 F.3d at 521; see, *e.g.*, *City of Richmond*, 422 U.S. at 378 (involving violation of Section 5 of the VRA) (cited at ROA.70445); *Washington*, 458 U.S. at 470 (law tainted by discriminatory intent that "imposes unique and substantial burdens on racial minorities") (cited at ROA.70445). Instead, each involved an ongoing violation of federal law that had not been cured by legislation.

See *City of Richmond*, 422 U.S. at 378; *Hunter*, 471 U.S. at 233; *Washington*, 458 U.S. at 470.[4]

To be sure, an official action taken for the purpose of discriminating on account of race "has no legitimacy at all under our Constitution or under the [VRA]." *City of Richmond*, 422 U.S. at 378. But, here, the Legislature no longer sought to enforce S.B. 14 once this Court issued its en banc opinion. Rather, it acted to materially alter the law by agreeing to the interim remedy and enacting S.B. 5. Rather than presuming a failure on the part of the Legislature based on its "choice to build on the existing SB14 framework" (ROA.70439), the court should have examined whether Texas's new voter-ID law has a discriminatory result or purpose that warrants a permanent injunction, *Wise*, 437 U.S. at 540; *Operation PUSH*, 932 F.2d at 406-407 & n.5; *Westwego Citizens*, 946 F.2d at 1123-1124; *Veasey*, 830 F.3d at 270-271; see also ROA.70436. Had it done so, the court would have had no choice but to conclude that Texas's new voter-ID law is valid and non-discriminatory because the Legislature (a) acted at the express invitation

[4] The court's reliance on *City of Richmond* (ROA.70452) was further misplaced because that case addressed denial of preclearance under the retrogressive-purpose prong of Section 5 of the VRA, which did not require a showing of discriminatory effect. See *City of Richmond*, 422 U.S. at 378; see also *City of Pleasant Grove* v. *United States*, 479 U.S. 462, 471 n.11 (1987) (discussing *City of Richmond*). That case therefore does not support the court's sweeping injunction in this case brought under Section 2 of the VRA and the Constitution, which do require a showing of discriminatory effect. See Part B, *supra*.

of this Court, sitting en banc, to remedy the violation that this Court affirmed on appeal, (b) enacted the broader of two remedies that this Court suggested might be appropriate, and (c) largely tracked an interim remedy to which all parties had agreed and which the district court had imposed precisely to eliminate S.B. 14's discriminatory effect. See Part B, *supra*.

2. The district court next reasoned that, on the merits, S.B. 5 is not an adequate remedy because it "does not render SB 14 a constitutional and legally valid plan." ROA.70439. But as explained, the court *never* engaged in the proper inquiry into whether Texas's new photo-ID law, as amended by S.B. 5, has a discriminatory result or purpose. See Part B, *supra*. Thus, the court's criticisms of S.B. 5 rest on reversible legal errors and improperly seek to substitute the court's policy preferences for the Legislature's judgment. See, *e.g.*, *Operation PUSH*, 932 F.2d at 406-407, 409.

a. The district court first identified two areas in which, in its view, S.B. 5's reasonable-impediment procedure "differs materially" from the interim remedy. ROA.70445. But, of course, the only differences of any moment are those that establish that S.B. 5 has a discriminatory result or purpose. Neither of the differences identified by the district court does so.

First, the district court noted that S.B. 5's reasonable-impediment declaration eliminates the write-in "Other" category that had been part of the

interim remedy. ROA.70445-70448. But the district court never found that elimination of the "Other" category has a discriminatory result or purpose—and there is no evidence to support such a finding. ROA.70445-70448. Nor could there have been: the reasonable impediments retained in S.B. 5 fully respond to the district court's findings regarding the nature and types of burdens that S.B. 14 imposed on minority voters—findings that this Court credited before advising the district court that a reasonable-impediment exception might be an appropriate amendment to cure the S.B. 14-related violations. See *Veasey*, 830 F.3d at 254 (citing difficulty obtaining EICs, the cost of underlying documents, difficulties and errors with birth certifications, travel issues getting to DPS offices, and burdensome absentee voting requirements).

Moreover, there is no evidence regarding the race of voters who used the "Other" category in the interim remedy, much less any evidence that minority voters used that category more frequently than other voters. ROA.70445-70448. There also is no evidence that voters who used the "Other" category would not have selected another impediment in the absence of that category. ROA.70445-70448. And the State presented evidence that voters had "used the 'other' box to list questionable reasons or to protest SB 14." ROA.70447 n.15.

The district court's critique of the Legislature's removal of the "Other" category revolved around its view that the removal was "a harsh response" to

misuse of that category. ROA.70447 n.15. The court reasoned—without any citation to evidence—that the removal "does not necessarily advance the state's interest in secure elections" and may "have a chilling effect, causing qualified voters to forfeit the franchise out of fear, misunderstanding, or both." ROA.70446-70447.

But none of those criticisms, even if supported by the record, suggests that the removal of the "Other" category has a discriminatory result or purpose against minority voters who lack S.B. 14 ID. Rather, they signal the district court's preference for a different voter-ID law than the one the Texas Legislature adopted. Such policy disagreements provide no basis for permanently enjoining Texas's duly-enacted law: in voting-rights cases where federal courts owe deference to state legislatures, a "[r]easonable choice" between available remedies belongs to "the legislature not the courts." *Operation PUSH*, 932 F.2d at 409. Thus, even in the case of an "objectively superior" judicial remedy, courts may not "substitut[e]" their judgment for an "otherwise constitutionally and legally valid" remedy "enacted by the appropriate state governmental unit." *Id.* at 406-407.

Second, the district court also took issue with the fact that S.B. 5 attaches an "increased penalty of perjury" to intentionally making false statements or providing false information on a reasonable-impediment declaration. ROA.70446-70448. But the interim remedy *also* imposed the "penalty of perjury" upon

intentional falsehoods in a reasonable-impediment declaration. ROA.67881. There is no evidence of any prosecutions for perjury under that remedy, or that the possibility of such criminal penalties had a discriminatory result or purpose. ROA.70446-70448.

Moreover, the district court misapprehended S.B. 5's intent standard. The court voiced concern that voters might face criminal liability for "mistakenly claiming a particular impediment to possession of qualified ID" (ROA.70449)—but such a mistake does not amount to *intentionally* making a false statement or providing false information, the only conduct punishable under the law. Compare ROA.70449, with S.B. 5, § 3. Thus, the court's assertion that S.B. 5's criminal-penalties provision will have a "chilling effect" is unfounded and unsupported by any record evidence.

Finally—on a record devoid of any evidence—the district court audaciously suggested that S.B. 5's criminal penalties "appear to be efforts of voter intimidation" (ROA.70448). Of course, the court pointed to precisely nothing in the record to support that suggestion. ROA.70448. Rather, the court pointed to three pages from its original 2014 opinion that the en banc Court vacated. ROA.70448 (citing *Veasey*, 71 F. Supp. 3d at 636-637, 675). One of those pages is irrelevant because it discusses charitable efforts among homeless individuals who lack photo IDs, not voter intimidation. See *Veasey*, 71 F. Supp. 3d at 675. The

other two pages discuss "historical evidence" of voter intimidation, *id.* at 636-637, that the en banc Court declared was too "long-ago" and "infirm" to support a finding of discriminatory purpose in S.B. 14, see *Veasey*, 830 F.3d at 230-234. That history therefore also could not form the basis for drawing inferences regarding the later—and currently unchallenged—S.B. 5. See *ibid.*

b. The district court next took aim at the fact that "SB 5 is built upon the 'architecture' of SB 14." ROA.70439 n.10. The district court recounted what it viewed as S.B. 14's "troubling features"—including the types of photo ID accepted, the obstacles to obtaining S.B. 14 ID, the documentation required to claim a disability exemption, the provisional ballot process, and the alleged failure to adequately educate voters and train election officials—and concluded that S.B. 5 did not sufficiently "ameliorate" those features. ROA.70439-70440.

Of course, there is nothing inherently problematic in the Legislature's decision to retain the "architecture" of S.B. 14 and adopt amendments to bring it into compliance with the VRA and the Constitution. Indeed, even in the redistricting context where legislatures typically preserve district cores and otherwise retain the "architecture" of the prior plan, any legislative remedy "will then be the governing law unless it, too, is challenged and found to violate the Constitution." *Wise*, 437 U.S. at 540.

More importantly, the district court failed to appreciate the cross-cutting significance of S.B. 5's reasonable-impediment exception. Indeed, the Legislature's chosen remedy sweeps across all of the features in S.B. 14 that "troubl[ed]" the district court: S.B. 5's reasonable-impediment procedure excuses the requirement to possess a certain type of ID, obviates the obstacles to obtaining ID, provides a disability exemption, uses a regular ballot process at the poll, and is supported by the State's commitment to engage in a widespread public-education campaign. See S.B. 5.[5] By fixating on the more marginal changes that S.B. 5 made to S.B. 14—for example, enlarging the ID expiration period from 60 days to 4 years and increasing the availability of mobile EIC units (ROA.70439-70440)—rather than the fact that the law now includes a broad mechanism by which all S.B. 14-affected voters can cast a regular ballot at the polls, the court and private plaintiffs lost the forest for the trees.

To be sure, the Legislature could have enacted a different remedy than S.B. 5 and expanded the acceptable forms of photo ID, made such ID more readily

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[5] There is no authority—and the district court identifies none—for the court's apparent belief that a commitment to fund and perform voter education and training programs must be reduced to statute. ROA.70451-70452. The State has publicly committed, among other things, to providing written notice of the new requirements to all active registered voters by the end of 2017 and at least every two years thereafter, to training election officials on the S.B. 5 procedure, and to spending $4 million over two years on voter information and outreach efforts. ROA.69825-69827, ROA.70206-70207; see also Tex. Elec. Code Ann. §§ 13.142, 13.144, 14.001-14.002, 15.001-15.005 (West 2017).

available, or mandated more targeted outreach to affected voters. But even had the Texas Legislature expanded the types of photo ID accepted under S.B. 14 to include, for example, student ID or ID from a government employer, numerous voters undoubtedly would continue to lack a form of acceptable photo ID. Thus, under the en banc Court's ruling, Texas likely would still have been required to provide some safe harbor provision to remedy the harm imposed on voters who lacked even the expanded forms of photo ID.

In all events, regardless of the possibility of different remedies, the court was not permitted to "substitut[e]" its order for the "otherwise constitutionally and legally valid" S.B. 5 simply because it could hypothesize a remedy that it viewed as "objectively superior." *Operation PUSH*, 932 F.2d at 406-407 (citation omitted). The permissible choice to amend S.B. 14 to incorporate a single provision that broadly reached all affected voters belonged to the Legislature. The court erred in supplanting the State's legally valid policy choices with those of private plaintiffs.

3. Given differences in the geography, demographics, election procedures, and voter-ID requirements of each State, different state laws must be judged independently from one another. Nonetheless, the district court attempted to bolster its conclusion that S.B. 5 is not an adequate remedy by citing the Fourth Circuit's panel decision in *North Carolina State Conference of NAACP* v.

McCrory, 831 F.3d 204, 240-241 (4th Cir. 2016), cert. denied, 137 S. Ct. 1399 (2017) (cited at ROA.70450). That case involved a challenge to North Carolina's omnibus legislation that, among other things, imposed new photo-ID requirements, eliminated same-day voter registration and out-of-precinct provisional ballots, and reduced early voting. See 831 F.3d at 216-218. Before trial, the state legislature amended the photo-ID requirement to include a reasonable-impediment exception that allowed a voter to cast a provisional ballot. See *id.* at 219. The Fourth Circuit determined that the challenged provisions of the law, when taken together, evinced a discriminatory purpose and enjoined them in their entirety. See *id.* at 231-233, 239.

As relevant here, the panel split 2-1 on whether it should remand the case to the district court to determine whether the reasonable-impediment exception rendered an injunction of the photo-ID provision unnecessary. See *McCrory*, 831 F.3d at 240. The majority found, over a strong dissent, that the exception imposed a lingering burden on African-American voters, in part because it permitted voters to cast only a provisional ballot subject to challenge by any registered voter in the county. See *id.* at 240-241.

The panel's split decision in *McCrory* does not warrant overriding the Legislature's choice to adopt S.B. 5 as the appropriate remedy here. In the first place, private plaintiffs cannot be heard to suggest that a reasonable-impediment

procedure like the one created in S.B. 5 creates a discriminatory burden on Texas's voters. After all, private plaintiffs agreed that the reasonable-impediment procedure created in the interim remedy was an appropriate fix for the discriminatory effect found by the en banc Court, have never argued that the interim remedy was inadequate to cure that violation, and did not seek any additional remedies on their results claim after the 2016 election or S.B. 5's enactment.

Moreover, S.B. 5, unlike the reasonable-impediment procedure at issue in *McCrory*, does not require voters to cast a provisional ballot subject to challenge. See *McCrory*, 831 F.3d at 240-241. Instead, S.B. 5 creates a procedure for voters to cast a regular ballot that is not subject to challenge by another voter. See S.B. 5.

If more were needed, the panel majority in *McCrory* asserted that "the burden rests on the State to prove that its proposed remedy completely cures the harm in this case," 831 F.3d at 240, and that statement contradicts this Court's precedent holding that the burden rests with the party challenging the legislative remedy, see pp. 40-45, *infra*. And, of course, one judge dissented from the *McCrory* panel majority's reasoning because "a superseding statute" can remedy "an unconstitutional law" and foreclose any additional "judicial remedy." *McCrory*, 831 F.3d at 242 (Motz, J., dissenting). That is precisely what the en banc Court thought here when it invited Texas to adopt a legislative remedy and

indicated that a "reasonable impediment" procedure might be such an "appropriate amendment[]" to S.B. 14. *Veasey*, 830 F.3d at 269.

The district court also gave short shrift to the three-judge district court's decision in *South Carolina* v. *United States*, 898 F. Supp. 2d 30 (D.D.C. 2012) (three-judge court) (cited at ROA.70447). That decision shows that a broad reasonable-impediment exception generally will not impose a discriminatory burden on minority voters. Although the case was brought under Section 5 of the VRA, 52 U.S.C. 10304, it is highly relevant here because the court concluded that South Carolina's reasonable-impediment procedure would not disproportionately and materially burden the rights of minority voters. See 898 F. Supp. 2d at 34, 38-43.

In particular, South Carolina's photo-ID law requires voters to present a passport, military ID, photo voter registration card, driver's license, or DMV photo ID card in order to vote. See *South Carolina*, 898 F. Supp. 2d at 32. It also makes the photo voter registration card available free of charge. See *ibid.* And it creates a reasonable-impediment procedure that allows a voter to claim any impediment, but limits the voter to casting a provisional ballot that county election officials may reject if they believe it "is false." *Id.* at 34. The three-judge court held that these procedures "will not have a discriminatory retrogressive effect on racial minorities." *Id.* at 43.

The district court attempted to distinguish *South Carolina* on two primary bases, neither of which withstands scrutiny. The court found it significant that the South Carolina law had "expanded the types of IDs that could be used" while S.B. 5 did not. ROA.70447 n.16. The court thus overlooked that S.B. 14 *already* allowed voters to use all of the types of IDs that the South Carolina law allows voters to use, including a free election identification certificate (EIC) comparable to South Carolina's free photo voter registration card—and that S.B. 5 makes EICs more readily available. See, *e.g.*, S.B. 5, § 2. The court also thought it significant that South Carolina's reasonable-impediment declaration allowed a voter "to claim any reason whatsoever" for not having a valid form of photo ID. ROA.70447. But the South Carolina law limited reasonable-impediment declarants to a provisional ballot, while S.B. 5 permits such voters to cast a regular ballot at the polls. See S.B. 5, § 2. Thus, if anything, Texas's amended photo-ID procedures are actually broader than the procedures upheld as non-discriminatory in *South Carolina*. In light of *South Carolina*, the court should have concluded that the broad ability of S.B. 14-affected voters to claim a reasonable impediment to presenting photo ID and vote a regular ballot counseled against any finding that Texas's amended photo-ID procedures impose a disproportionate and material burden on minority voters.

4. Apart from failing to determine whether Texas's photo-ID law, as amended by S.B. 5, was legally valid, the district court incorrectly placed the burden on the State to show that S.B. 5 was an adequate remedy. ROA.70437-70438. Under this Court's precedent and the circumstances of this case, the district court should have required private plaintiffs to establish that the legislative amendment to S.B. 14 was inadequate.

This Court has stated that the burden lies with the law's challengers to "offer objective proof" that a legislative remedy fails to cure the underlying discrimination and therefore results in an ongoing violation of law. *Operation PUSH*, 932 F.2d at 407; see *id.* at 401-404 (demonstrating that the court below placed the burden on plaintiffs to show the remedial legislation was inadequate); *id.* at 407-408 (stating that the plaintiffs also had the burden to show that the legislative remedy "gr[ew] out of a discriminatory intent" and "itself is racially motivated"); see also *Wise*, 437 U.S. at 540. Placing the burden on private plaintiffs to show that Texas's legislative remedy is invalid is particularly appropriate here, where the legislative fix (a) was enacted at the express invitation of this Court, (b) adopted the broader of two remedies that this Court suggested might be appropriate, and (c) largely tracked an interim remedy to which all parties had agreed and which the district court had imposed to eliminate S.B. 14's discriminatory effect.

This Court's decision in *Operation PUSH* is instructive. There, the challengers established that Mississippi's dual voter registration system and prohibition on satellite registration violated Section 2 of the VRA. See 932 F.2d at 401. The district court gave the state legislature the first opportunity to cure the violation. See *id.* at 401-402, 404. During the next legislative session, the legislature "enacted a statute responsive to the district court's order." *Id.* at 408-409. The plaintiffs nonetheless claimed that the legislative changes did not fully remedy the Section 2 violation. The district court held an evidentiary hearing at which the plaintiffs adduced expert testimony "that the new legislation would not eliminate the disparity in black and white voter registration." *Id.* at 407.

The district court in *Operation PUSH* ultimately rejected the plaintiffs' request for additional relief, explaining that their challenge of the enactment as ineffective was "premature," "purely speculative," and lacking in "objective proof." 932 F.2d at 407. When the plaintiffs further claimed that the legislation was discriminatory in purpose because it failed to adopt more desirable voter registration procedures, the court concluded that they failed to establish that the legislature's decision not to adopt more generous legislation evinced a discriminatory purpose. See *id.* at 408-409; see also *Mississippi State Chapter, Operation PUSH* v. *Mabus*, 717 F. Supp. 1189, 1192-1193 (N.D. Miss. 1989). This Court affirmed the district court's determinations, which had placed the

burden on the plaintiffs throughout the remedial proceedings to show that the remedy was inadequate. See *Operation PUSH*, 932 F.2d at 407, 409.

Here, had the district court properly applied the burden, it would have concluded that private plaintiffs failed to show that S.B. 5 violates Section 2 of the VRA or the Constitution. Private plaintiffs specifically chose not to introduce any new evidence during the remedial proceedings. ROA.70432. Nor did they use the preexisting trial record to establish either that S.B. 5 imposes a discriminatory burden that could give rise to a Section 2 results violation, or that it has a disparate impact on minority voters that could give rise to finding of a discriminatory purpose. The complete absence of a record on which to enjoin Texas's amended photo-ID procedures only highlights the court's error.

In placing the burden on the State as opposed to the challengers, the district court relied primarily on *United States* v. *Virginia*, 518 U.S. 515 (1996), and *Green* v. *County School Board of New Kent County*, *Virginia*, 391 U.S. 430 (1968). ROA.70438. But neither case dictates the conclusion the district court reached.

In *Virginia*, the Commonwealth proposed creating a separate, parallel program for women at another state-sponsored college after failing, under the Equal Protection Clause, to justify its exclusion of women from its citizen-soldier program at Virginia Military Institute (VMI). 518 U.S. at 524-527. Because the chosen remedy—creating a parallel single-sex program for women—was, on its

face, a sex-based classification and thus presumptively unconstitutional, the governing Fourteenth Amendment jurisprudence already placed the burden on the Commonwealth to demonstrate an exceedingly persuasive justification for that action, which it was unable to do. See *id.* at 531-534, 547-551, 555-556. Invoking school desegregation cases, the Court also questioned whether the remedy placed female students in "the position they would have occupied in the absence of [discrimination]." *Id.* at 554 (citing *Milliken* v. *Bradley*, 433 U.S. 267, 280 (1977)); see *Milliken*, 433 U.S. at 282 (explaining that a remedy must be tailored "to cure the condition that offends the Constitution" (citation and internal quotation marks omitted)). After examining the Commonwealth's two programs, the Court stated that the Commonwealth "ha[d] failed to provide any comparable single-gender women's institution" to VMI and thus had denied women the position they would have occupied absent the sex-based discrimination. *Virginia*, 518 U.S. at 551-554.

Here, unlike in *Virginia*, no facial classification supports placing the burden on the State. Moreover, Texas's facially neutral, amended photo-ID procedures ensure that minority voters (indeed, all S.B. 14-affected voters) can cast a regular ballot at the polls and thus places them in the position they would have occupied absent S.B. 14's discriminatory photo-ID requirements. See also pp. 45-47, *infra*.

Thus, *Virginia* is distinguishable both as to why the State bore the burden and whether that burden was satisfied.

Green also is inapposite. That case addressed the issue of entrenched racial segregation in local schools, a unique context not presented here. See *Johnson*, 405 F.3d at 1226 (noting that "school desegregation jurisprudence is unique and difficult to apply in other contexts"). Significantly, the courts in *Green* initially deferred to the defendant school board's "freedom-of-choice" plan, which later proved ineffective at dismantling the dual education system. 391 U.S. at 433-435, 441-442. Only after "deliberate perpetuation of the unconstitutional dual system" by local school boards did the Supreme Court place the burden on school officials "to come forward with a plan [for unitary status] that promises realistically to work, and promises realistically to work now." *Id.* at 438-439.

Again, the context in which *Green* was decided does not govern the circumstances here, in which the Texas Legislature, at this Court's express invitation, swiftly amended S.B. 14 to include a reasonable-impediment exception that ensured that any in-person voter who lacked S.B. 14 ID and could not reasonably obtain such ID for the broad reasons enumerated under S.B. 5 would be able to cast a regular ballot. Even in the school desegregation context, in which the Supreme Court imposed a heightened standard on local school boards, the Court stated that "[w]here the court finds the board to be acting in good faith and the

proposed plan to have real prospects for dismantling the state-imposed dual system 'at the earliest practicable date,' then the plan may be said to provide effective relief." *Green*, 391 U.S. at 439. Here, Texas's amended photo-ID procedures, enacted in good faith, provide realistic and effective relief for the harms S.B. 14 imposed. See pp. 45-47, *infra*.

5. Irrespective of which party carried the burden at the remedial stage and what remedial standard applied, it would be clearly erroneous to find here that Texas's amended photo-ID procedures impose any disproportionate and material burden on minority voters that could give rise to a prohibited discriminatory result or have a disparate impact that could give rise to a finding of any discriminatory purpose. Simply stated, if the State bore the burden here, it amply satisfied that burden with a legislative fix that (a) was enacted at the express invitation of this Court, (b) adopted the broader of two remedies that this Court suggested might be appropriate, and (c) largely tracked an interim remedy to which all parties had agreed and which the district court had imposed to eliminate S.B. 14's discriminatory effect. See Part B, *supra*.

Although the district court disavowed making any legal determinations regarding S.B. 5 (ROA.70438 n.9), even if the court had undertaken any such inquiry, it could not have found on this record that S.B. 5 violated Section 2 of the VRA or the Constitution. Nor could the court find without committing clear error,

as it did here, that S.B. 5 does not fully remedy the alleged S.B. 14-related harms. Because the record (or lack thereof) permits only one resolution of this issue, this Court should reverse the grant of injunctive relief rather than remand the case once again to the district court for further proceedings. See *Pullman-Standard* v. *Swint*, 456 U.S. 273, 292 (1982); see also *Veasey*, 830 F.3d at 229-230 (citing *Meche* v. *Doucet*, 777 F.3d 237, 246-247 (5th Cir.), cert. denied, 136 S. Ct. 111 (2015)).

Here, the district court ultimately found that S.B. 5 does not fully ameliorate the discriminatory purpose or result of S.B. 14. ROA.70451. In particular, the court found that "[b]ecause those who lack SB 14 photo ID are subjected to separate voting obstacles and procedures, SB 5's methodology remains discriminatory because it imposes burdens disproportionately on Blacks and Latinos." ROA.70441. The court thus again missed the point that Texas's new photo-ID law acts as a whole: voters who use the reasonable-impediment procedure bear the burdens of that procedure but are excused from the different—and, on the record of this case, *higher*—burdens of obtaining an S.B. 14 ID that the "vast majority" of Texas voters already possess. *Veasey*, 830 F.3d at 250, 270. Accordingly, voters using S.B. 5's reasonable-impediment procedure face a *lesser* burden than other voters, not a discriminatory burden. See *id.* at 271-272.

In all events, for the reasons already explained, see Part B, *supra*, any finding that S.B. 5 has a discriminatory result or purpose is clearly erroneous.

Texas's new voter-ID law does not impose disproportionate and material burdens on minority voters, who occupy the position they would have occupied absent S.B. 14 (*i.e.*, they retain the ability to cast a regular ballot at the polls). Without a factual basis to find a racially discriminatory burden or a disparate racial impact—and, thus, any ongoing Section 2 or constitutional violation—the district court clearly erred in concluding that S.B. 5 was inadequate to remedy the S.B. 14-related violations.

D. Apart From Its Legal Errors, The District Court Abused Its Discretion By Disregarding The State's Policy Preference For A Photo ID Law

To be sure, permanent injunctive relief should be calculated to correct the Section 2 violation and sufficiently tailored to the circumstances giving rise to the violation. See *Brown*, 561 F.3d at 435. Texas's amended photo-ID procedures accomplished those goals, and no further relief was warranted. Yet the district court, based solely on its findings regarding S.B. 14, permanently enjoined Texas not only from enforcing Sections 1 through 15 and 17 through 22 of S.B. 14[6], but also from enforcing the amended photo-ID procedures scheduled to take effect as of January 1, 2018. That action constituted an abuse of discretion.

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[6] Giving effect to S.B. 14's severability clause, the court left in place Sections 16 and 23 through 26, which increase criminal penalties for certain election-related offenses, authorize the use of state voter registration funds for additional purposes, and set forth S.B. 14's severability clause and effective date. See S.B. 14.

As explained in Part B, *supra*, the district court should have deferred to the Legislature's chosen remedy for the subset of Texas voters who lack S.B. 14 ID, see *Veasey*, 830 F.3d at 250, 270, and allowed Texas to enforce its amended photo-ID procedures in future elections. Instead, the court compounded its legal error and committed an abuse of discretion by ordering Texas to reinstate its preexisting voter-ID law, which generally required only that in-person voters present a valid voter registration certificate. ROA.70451-70452. Indeed, rather than modify what it perceived to be S.B. 5's offending provisions, the court, out of a claimed respect for pursuits better left to the Legislature, returned Texas to a non-photo-ID regime under which *no voter* must present photo ID at the polls. ROA.70452.

This Court already has indicated that the Legislature's policy choices "should be respected," to the extent possible, "even when some aspect of the underlying law is unenforceable." *Veasey*, 830 F.3d at 269 (citing *Perez* v. *Perry*, 565 U.S. 388, 132 S. Ct. 941 (2012)). And the Court likewise had made clear that, given the Legislature's legitimate goal in "strengthening the forms of identification presented for voting," a remedy that "[s]imply revert[s] to the system in place before S.B. 14's passage would not fully respect these policy choices." *Veasey*, 830 F.3d at 271. Thus, even apart from its misguided analysis, the district court abused its discretion when it failed to honor Texas's overarching preference for a photo-ID law and instead returned the State to a non-photo-ID regime.

ROA.70451-70452, ROA.70456. In so doing, the court disregarded Texas's legitimate "policy objectives," *Veasey*, 830 F.3d at 269, in moving to a photo-ID system.

This Court has explained in the malapportionment and redistricting context that a district court may intrude into legislative judgment no more than necessary to address any statutory or constitutional flaws. See *Cook* v. *Luckett*, 735 F.2d 912, 917 (5th Cir. 1984); see also *Perez*, 565 U.S. at 393, 396. This is so because the "appropriate reconciliation" of constitutional requirements and legislative goals "can only be achieved if the [lower court's] modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect." *Cook*, 735 F.2d at 918 (quoting *Upham* v. *Seamon*, 456 U.S. 37, 43 (1982) (per curiam)). Thus, where a court is presented with a legislative remedy "whose constitutional or statutory flaws are capable of correction by minor adjustments," binding precedent requires the court "to minimize violence to those legislative policies embodied in the [chosen remedy] by changing it only to the extent necessary to cure its cognizable flaws." *Ibid.* (citing *Upham*, 456 U.S. at 41-43). Because the "least representative branch of government must take care when it reforms the most representative branch," a court may reject a legislative remedy "only to the extent necessary to correct the specific deficiency found by the district court to exist." *Id.* at 919 (citation omitted).

Here, the district court's wholesale elimination of any requirement that in-person voters present a valid form of government-issued photo ID disregards the "give-and-take" of the legislative process, *Cook*, 735 F.2d at 918-919, and Texas's legitimate "policy objectives" for a photo-ID law, *Veasey*, 830 F.3d at 269. Accordingly, the district court abused its discretion when it entered sweeping injunctive relief that upended the Legislature's legitimate decision to strengthen its preexisting voter ID law by imposing a photo-ID requirement for in-person voting. Regardless of whether Texas could enforce S.B. 14 as enacted or as amended in future elections, the district court abused its discretion in ordering the State to revert to a non-photo-ID system for all in-person voting. This is especially so where the overwhelming majority of Texas voters already possess S.B. 14 ID and face no impediment to presenting it at the polls. See *Veasey*, 830 F.3d at 250.

CONCLUSION

This Court should reverse the district court's permanent injunction dated August 23, 2017, reinstate the interim remedy for any remaining elections in 2017, and permit Texas's amended photo-ID procedures to take effect, as scheduled, on January 1, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 27, 2017, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE 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 October 27, 2017, I served a copy of the foregoing brief on the following counsel by certified U.S. mail, postage prepaid:

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CERTIFICATE OF COMPLIANCE

I certify that the attached BRIEF FOR THE UNITED STATES AS APPELLEE:

(1) complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 11,690 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f); and

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s/ Thomas E. Chandler
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Attorney

Date: October 27, 2017

ADDENDUM

AN ACT

relating to requirements to vote, including presenting proof of identification; providing criminal penalties.

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

SECTION 1. Section 13.002, Election Code, is amended by adding Subsection (i) to read as follows:

(i) An applicant who wishes to receive an exemption from the requirements of Section 63.001(b) on the basis of disability must include with the person's application:

(1) written documentation:

(A) from the United States Social Security Administration evidencing the applicant has been determined to have a disability; or

(B) from the United States Department of Veterans Affairs evidencing the applicant has a disability rating of at least 50 percent; and

(2) a statement in a form prescribed by the secretary of state that the applicant does not have a form of identification acceptable under Section 63.0101.

SECTION 2. Section 15.001, Election Code, is amended by adding Subsection (c) to read as follows:

(c) A certificate issued to a voter who meets the certification requirements of Section 13.002(i) must contain an indication that the voter is exempt from the requirement to present

identification other than the registration certificate before being accepted for voting.

SECTION 3. Effective September 1, 2011, Subchapter A, Chapter 15, Election Code, is amended by adding Section 15.005 to read as follows:

Sec. 15.005. NOTICE OF IDENTIFICATION REQUIREMENTS. (a) The voter registrar of each county shall provide notice of the identification requirements for voting prescribed by Chapter 63 and a detailed description of those requirements with each voter registration certificate issued under Section 13.142 or renewal registration certificate issued under Section 14.001.

(b) The secretary of state shall prescribe the wording of the notice to be included on the certificate under this section.

SECTION 4. Subsection (a), Section 15.022, Election Code, is amended to read as follows:

(a) The registrar shall make the appropriate corrections in the registration records, including, if necessary, deleting a voter's name from the suspense list:

(1) after receipt of a notice of a change in registration information under Section 15.021;

(2) after receipt of a voter's reply to a notice of investigation given under Section 16.033;

(3) after receipt of a registration omissions list and any affidavits executed under Section 63.006 [~~63.007~~], following an election;

(4) after receipt of a voter's statement of residence executed under Section 63.0011;

(5) before the effective date of the abolishment of a county election precinct or a change in its boundary;

(6) after receipt of United States Postal Service information indicating an address reclassification;

(7) after receipt of a voter's response under Section 15.053; or

(8) after receipt of a registration application or change of address under Chapter 20.

SECTION 5. Effective September 1, 2011, Subchapter A, Chapter 31, Election Code, is amended by adding Section 31.012 to read as follows:

Sec. 31.012. VOTER IDENTIFICATION EDUCATION. (a) The secretary of state and the voter registrar of each county that maintains a website shall provide notice of the identification requirements for voting prescribed by Chapter 63 on each entity's respective website in each language in which voter registration materials are available. The secretary of state shall prescribe the wording of the notice to be included on the websites.

(b) The secretary of state shall conduct a statewide effort to educate voters regarding the identification requirements for voting prescribed by Chapter 63.

(c) The county clerk of each county shall post in a prominent location at the clerk's office a physical copy of the notice prescribed under Subsection (a) in each language in which voter registration materials are available.

SECTION 6. Effective September 1, 2011, Section 32.111, Election Code, is amended by adding Subsection (c) to read as

follows:

(c) The training standards adopted under Subsection (a) must include provisions on the acceptance and handling of the identification presented by a voter to an election officer under Section 63.001.

SECTION 7. Effective September 1, 2011, Subsection (a), Section 32.114, Election Code, is amended to read as follows:

(a) The county clerk shall provide one or more sessions of training using the standardized training program and materials developed and provided by the secretary of state under Section 32.111 for the election judges and clerks appointed to serve in elections ordered by the governor or a county authority. Each election judge shall complete the training program. Each election clerk shall complete the part of the training program relating to the acceptance and handling of the identification presented by a voter to an election officer under Section 63.001.

SECTION 8. Chapter 62, Election Code, is amended by adding Section 62.016 to read as follows:

Sec. 62.016. NOTICE OF ACCEPTABLE IDENTIFICATION OUTSIDE POLLING PLACES. The presiding judge shall post in a prominent place on the outside of each polling location a list of the acceptable forms of identification. The list must be printed using a font that is at least 24-point. The notice required under this section must be posted separately from any other notice required by state or federal law.

SECTION 9. Section 63.001, Election Code, is amended by amending Subsections (b), (c), (d), and (f) and adding Subsections

(g) and (h) to read as follows:

(b) Except as provided by Subsection (h), on [~~On~~] offering to vote, a voter must present to an election officer at the polling place one form of identification described by Section 63.0101 [~~the voter's voter registration certificate to an election officer at the polling place~~].

(c) On presentation of the documentation required under Subsection (b) [~~a registration certificate~~], an election officer shall determine whether the voter's name on the documentation [~~registration certificate~~] is on the list of registered voters for the precinct. If in making a determination under this subsection the election officer determines under standards adopted by the secretary of state that the voter's name on the documentation is substantially similar to but does not match exactly with the name on the list, the voter shall be accepted for voting under Subsection (d) if the voter submits an affidavit stating that the voter is the person on the list of registered voters.

(d) If, as determined under Subsection (c), the voter's name is on the precinct list of registered voters and the voter's identity can be verified from the documentation presented under Subsection (b), the voter shall be accepted for voting.

(f) After determining whether to accept a voter, an election officer shall return the voter's documentation [~~registration certificate~~] to the voter.

(g) If the requirements for identification prescribed by Subsection (b) are not met, the voter may be accepted for provisional voting only under Section 63.011. For a voter who is

not accepted for voting under this section, an election officer shall:

(1) inform the voter of the voter's right to cast a provisional ballot under Section 63.011; and

(2) provide the voter with written information, in a form prescribed by the secretary of state, that:

(A) lists the requirements for identification;

(B) states the procedure for presenting identification under Section 65.0541;

(C) includes a map showing the location where identification must be presented; and

(D) includes notice that if all procedures are followed and the voter is found to be eligible to vote and is voting in the correct precinct, the voter's provisional ballot will be accepted.

(h) The requirements for identification prescribed by Subsection (b) do not apply to a voter who is disabled and presents the voter's voter registration certificate containing the indication described by Section 15.001(c) on offering to vote.

SECTION 10. Subsection (a), Section 63.0011, Election Code, is amended to read as follows:

(a) Before a voter may be accepted for voting, an election officer shall ask the voter if the voter's residence address on the precinct list of registered voters is current and whether the voter has changed residence within the county. If the voter's address is omitted from the precinct list under Section 18.005(c), the officer shall ask the voter if the voter's residence, if [~~as~~] listed, on

identification presented by the voter under Section 63.001(b) [~~the voter's voter registration certificate~~] is current and whether the voter has changed residence within the county.

SECTION 11. Effective September 1, 2011, Chapter 63, Election Code, is amended by adding Section 63.0012 to read as follows:

Sec. 63.0012. NOTICE OF IDENTIFICATION REQUIREMENTS TO CERTAIN VOTERS. (a) An election officer shall distribute written notice of the identification that will be required for voting beginning with elections held after January 1, 2012, and information on obtaining identification without a fee under Chapter 521A, Transportation Code, to each voter who, when offering to vote, presents a form of identification that will not be sufficient for acceptance as a voter under this chapter beginning with those elections.

(b) The secretary of state shall prescribe the wording of the notice and establish guidelines for distributing the notice.

(c) This section expires September 1, 2017.

SECTION 12. Section 63.006, Election Code, is amended to read as follows:

Sec. 63.006. VOTER WITH REQUIRED DOCUMENTATION [~~CORRECT CERTIFICATE~~] WHO IS NOT ON LIST. (a) A voter who, when offering to vote, presents the documentation required under Section 63.001(b) [~~a voter registration certificate indicating that the voter is currently registered in the precinct in which the voter is offering to vote,~~] but whose name is not on the precinct list of registered voters[~~,~~] shall be accepted for voting if the voter also presents a

voter registration certificate indicating that the voter is currently registered:

(1) in the precinct in which the voter is offering to vote; or

(2) in a different precinct in the same county as the precinct in which the voter is offering to vote and the voter executes an affidavit stating that the voter:

(A) is a resident of the precinct in which the voter is offering to vote or is otherwise entitled by law to vote in that precinct;

(B) was a resident of the precinct in which the voter is offering to vote at the time the information on the voter's residence address was last provided to the voter registrar;

(C) did not deliberately provide false information to secure registration in a precinct in which the voter does not reside; and

(D) is voting only once in the election.

(b) After the voter is accepted, an election officer shall:

(1) indicate beside the voter's name on the poll list that the voter was accepted under this section; and

(2) enter the voter's name on the registration omissions list.

SECTION 13. Section 63.009, Election Code, is amended to read as follows:

Sec. 63.009. VOTER WITHOUT CERTIFICATE WHO IS NOT ON LIST. A [~~(a) Except as provided by Subsection (b), a~~] voter who does not present a voter registration certificate when offering to vote, and

whose name is not on the list of registered voters for the precinct in which the voter is offering to vote, shall be accepted for provisional voting if the voter executes an affidavit in accordance with Section 63.011.

[~~(b) If an election officer can determine from the voter registrar that the person is a registered voter of the county and the person presents proof of identification, the affidavits required by Sections 63.007 and 63.008 are substituted for the affidavit required by Section 63.011 in complying with that section. After the voter is accepted under this subsection, an election officer shall also indicate beside the voter's name on the poll list that the voter was accepted under this section.~~]

SECTION 14. Section 63.0101, Election Code, is amended to read as follows:

Sec. 63.0101. DOCUMENTATION OF PROOF OF IDENTIFICATION. The following documentation is an acceptable form [~~as proof~~] of photo identification under this chapter:

(1) a driver's license, election identification certificate, or personal identification card issued to the person by the Department of Public Safety that has not [~~or a similar document issued to the person by an agency of another state, regardless of whether the license or card has~~] expired or that expired no earlier than 60 days before the date of presentation;

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

[~~form of identification containing the person's photograph that~~

~~establishes the person's identity~~];

(3) a [~~birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity;~~

[~~(4)~~] United States citizenship certificate [~~papers~~] issued to the person that contains the person's photograph;

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

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

[~~(6) official mail addressed to the person by name from a governmental entity;~~

[~~(7) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or~~

[~~(8) any other form of identification prescribed by the secretary of state~~].

SECTION 15. Section 63.011, Election Code, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

(a) A person to whom Section 63.001(g) [~~63.008(b)~~] or 63.009 [~~63.009(a)~~] applies may cast a provisional ballot if the person executes an affidavit stating that the person:

(1) is a registered voter in the precinct in which the

person seeks to vote; and

(2) is eligible to vote in the election.

(b) A form for an affidavit required by this section must [~~shall~~] be printed on an envelope in which the provisional ballot voted by the person may be placed and must include:

(1) a space for entering the identification number of the provisional ballot voted by the person; and

(2) a space for an election officer to indicate whether the person presented a form of identification described by Section 63.0101.

(b-1) The affidavit form may include space for disclosure of any necessary information to enable the person to register to vote under Chapter 13. The secretary of state shall prescribe the form of the affidavit under this section.

SECTION 16. Subsection (b), Section 64.012, Election Code, is amended to read as follows:

(b) An offense under this section is a felony of the second [~~third~~] degree unless the person is convicted of an attempt. In that case, the offense is a state jail felony [~~Class A misdemeanor~~].

SECTION 17. Subsection (b), Section 65.054, Election Code, is amended to read as follows:

(b) A provisional ballot shall [~~may~~] be accepted [~~only~~] if the board determines that:

(1) [~~,~~] from the information in the affidavit or contained in public records, the person is eligible to vote in the election and has not previously voted in that election;

(2) the person:

(A) meets the identification requirements of Section 63.001(b) at the time the ballot was cast or in the period prescribed under Section 65.0541;

(B) notwithstanding Chapter 110, Civil Practice and Remedies Code, executes an affidavit under penalty of perjury that states the voter has a religious objection to being photographed and the voter has consistently refused to be photographed for any governmental purpose from the time the voter has held this belief; or

(C) executes an affidavit under penalty of perjury that states the voter does not have any identification meeting the requirements of Section 63.001(b) as a result of a natural disaster that was declared by the president of the United States or the governor, occurred not earlier than 45 days before the date the ballot was cast, and caused the destruction of or inability to access the voter's identification; and

(3) the voter has not been challenged and voted a provisional ballot solely because the voter did not meet the requirements for identification prescribed by Section 63.001(b).

SECTION 18. Subchapter B, Chapter 65, Election Code, is amended by adding Section 65.0541 to read as follows:

Sec. 65.0541. PRESENTATION OF IDENTIFICATION FOR CERTAIN PROVISIONAL BALLOTS. (a) A voter who is accepted for provisional voting under Section 63.011 because the voter does not meet the identification requirements of Section 63.001(b) may, not later than the sixth day after the date of the election:

(1) present a form of identification described by

Section 63.0101 to the voter registrar for examination; or

(2) execute an affidavit described by Section 65.054(b)(2)(B) or (C) in the presence of the voter registrar.

(b) The secretary of state shall prescribe procedures as necessary to implement this section.

SECTION 19. Section 66.0241, Election Code, is amended to read as follows:

Sec. 66.0241. CONTENTS OF ENVELOPE NO. 4. Envelope no. 4 must contain:

(1) the precinct list of registered voters;

(2) the registration correction list;

(3) the registration omissions list;

(4) any statements of residence executed under Section 63.0011; and

(5) any affidavits executed under Section 63.006 [~~63.007~~] or 63.011.

SECTION 20. Subtitle B, Title 7, Transportation Code, is amended by adding Chapter 521A to read as follows:

CHAPTER 521A. ELECTION IDENTIFICATION CERTIFICATE

Sec. 521A.001. ELECTION IDENTIFICATION CERTIFICATE. (a) The department shall issue an election identification certificate to a person who states that the person is obtaining the certificate for the purpose of satisfying Section 63.001(b), Election Code, and does not have another form of identification described by Section 63.0101, Election Code, and:

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

(2) who is eligible for registration under Section 13.001, Election Code, and submits a registration application to the department.

(b) The department may not collect a fee for an election identification certificate or a duplicate election identification certificate issued under this section.

(c) An election identification certificate may not be used or accepted as a personal identification certificate.

(d) An election officer may not deny the holder of an election identification certificate the ability to vote because the holder has an election identification certificate rather than a driver's license or personal identification certificate issued under this subtitle.

(e) An election identification certificate must be similar in form to, but distinguishable in color from, a driver's license and a personal identification certificate. The department may cooperate with the secretary of state in developing the form and appearance of an election identification certificate.

(f) The department may require each applicant for an original or renewal election identification certificate to furnish to the department the information required by Section 521.142.

(g) The department may cancel and require surrender of an election identification certificate after determining that the holder was not entitled to the certificate or gave incorrect or incomplete information in the application for the certificate.

(h) A certificate expires on a date specified by the department, except that a certificate issued to a person 70 years of

age or older does not expire.

SECTION 21. Sections 63.007 and 63.008, Election Code, are repealed.

SECTION 22. Effective September 1, 2011:

(1) as soon as practicable, the secretary of state shall adopt the training standards and develop the training materials required to implement the change in law made by this Act to Section 32.111, Election Code; and

(2) as soon as practicable, the county clerk of each county shall provide a session of training under Section 32.114, Election Code, using the standards adopted and materials developed to implement the change in law made by this Act to Section 32.111, Election Code.

SECTION 23. The change in law made by this Act in amending Subsection (b), Section 64.012, Election Code, applies only to an offense committed on or after January 1, 2012. An offense committed before January 1, 2012, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before January 1, 2012, if any element of the offense occurs before that date.

SECTION 24. Effective September 1, 2011, state funds disbursed under Chapter 19, Election Code, for the purpose of defraying expenses of the voter registrar's office in connection with voter registration may also be used for additional expenses related to coordinating voter registration drives or other activities designed to expand voter registration. This section

expires January 1, 2013.

SECTION 25. Every provision in this Act and every application of the provisions in this Act are severable from each other. If any application of any provision in this Act to any person or group of persons or circumstances is found by a court to be invalid, the remainder of this Act and the application of the Act's provisions to all other persons and circumstances may not be affected. All constitutionally valid applications of this Act shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this Act invalid in a large or substantial fraction of relevant cases, the remaining valid applications shall be severed and allowed to remain in force.

SECTION 26. Except as otherwise provided by this Act, this Act takes effect January 1, 2012.

S.B. No. 14

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 14 passed the Senate on January 26, 2011, by the following vote: Yeas 19, Nays 11; April 5, 2011, Senate refused to concur in House amendments and requested appointment of Conference Committee; April 11, 2011, House granted request of the Senate; May 9, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 19, Nays 12.

Secretary of the Senate

I hereby certify that S.B. No. 14 passed the House, with amendments, on March 24, 2011, by the following vote: Yeas 101, Nays 48, one present not voting; April 11, 2011, House granted request of the Senate for appointment of Conference Committee; May 16, 2011, House adopted Conference Committee Report by the following vote: Yeas 98, Nays 46, one present not voting.

Chief Clerk of the House

Approved:

27 MAY '11

Date

RICK PERRY

Governor

FILED IN THE OFFICE OF THE SECRETARY OF STATE
7:00PM O'CLOCK
MAY 27 2011
Secretary of State

Chapter 410

S.B. No. 5

AN ACT

relating to requiring a voter to present proof of identification; providing a criminal penalty and increasing a criminal penalty.

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

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

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

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

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

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

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

SECTION 2. Section 63.001, Election Code, is amended by amending Subsections (b), (d), and (e) and adding Subsections (c-1) and (i) to read as follows:

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

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

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

(c-1) An election officer may not refuse to accept documentation presented to meet the requirements of Subsection (b) solely because the address on the documentation does not match the address on the list of registered voters.

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

(e) On accepting a voter, an election officer shall indicate beside the voter's name on the list of registered voters that the voter is accepted for voting. If the voter executes a declaration of reasonable impediment to meet the requirement for identification

under Subsection (b), the election officer must affix the voter's voter registration number to the declaration either in numeric or bar code form.

(i) If the requirement for identification prescribed by Subsection (b)(1) is not met, an election officer shall notify the voter that the voter may be accepted for voting if the voter meets the requirement for identification prescribed by Subsection (b)(2) and executes a declaration declaring the voter has a reasonable impediment to meeting the requirement for identification prescribed by Subsection (b)(1). A person is subject to prosecution for perjury under Chapter 37, Penal Code, or Section 63.0013 for a false statement or false information on the declaration. The secretary of state shall prescribe the form of the declaration. The form shall include:

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

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

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

(A) lack of transportation;

(B) lack of birth certificate or other documents

needed to obtain the identification prescribed by Subsection (b)(1);

(C) work schedule;

(D) lost or stolen identification;

(E) disability or illness;

(F) family responsibilities; and

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

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

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

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

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

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

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

(b) An offense under this section is a state jail felony.

SECTION 4. Section 63.004(a), Election Code, is amended to read as follows:

(a) The secretary of state may prescribe forms that combine

the poll list, the signature roster, or any other form used in connection with the acceptance of voters at polling places with each other or with the list of registered voters. The secretary shall prescribe any special instructions necessary for using the combination forms. The combination forms must include space for an election officer to indicate whether a voter executed a declaration of reasonable impediment under Section 63.001(i).

SECTION 5. Section 63.0101, Election Code, is amended to read as follows:

Sec. 63.0101. DOCUMENTATION OF PROOF OF IDENTIFICATION. (a) The following documentation is an acceptable form of photo identification under this chapter:

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

(2) a United States military identification card that contains the person's photograph that has not expired or that expired no earlier than four years [~~60 days~~] before the date of presentation;

(3) a United States citizenship certificate issued to the person that contains the person's photograph;

(4) a United States passport book or card issued to the person that has not expired or that expired no earlier than four years [~~60 days~~] before the date of presentation; or

(5) a license to carry a handgun issued to the person

by the Department of Public Safety that has not expired or that expired no earlier than four years [~~60 days~~] before the date of presentation.

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

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

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

(A) a copy of a current utility bill;

(B) a bank statement;

(C) a government check; or

(D) a paycheck; or

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

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

SECTION 6. Section 63.012(b), Election Code, is amended to read as follows:

(b) An offense under this section is a Class A [~~B~~] misdemeanor.

SECTION 7. Section 272.011(b), Election Code, is amended to read as follows:

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

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

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

(2) the confirmation form required by Section 15.051;

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

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

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

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

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

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

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

SECTION 8. Section 521A.001(a), Transportation Code, is amended to read as follows:

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

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

(2) who is eligible for registration under Section 13.001, Election Code, and submits a registration application to the department.

SECTION 9. This Act takes effect January 1, 2018.

S.B. No. 5

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 5 passed the Senate on March 28, 2017, by the following vote: Yeas 21, Nays 10; May 25, 2017, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 26, 2017, House granted request of the Senate; May 27, 2017, Senate adopted Conference Committee Report by the following vote: Yeas 21, Nays 10.

Secretary of the Senate

I hereby certify that S.B. No. 5 passed the House, with amendments, on May 24, 2017, by the following vote: Yeas 93, Nays 55, two present not voting; May 26, 2017, House granted request of the Senate for appointment of Conference Committee; May 28, 2017, House adopted Conference Committee Report by the following vote: Yeas 92, Nays 56, one present not voting.

Chief Clerk of the House

Approved:

5-31-2017

Date

Governor

FILED IN THE OFFICE OF THE SECRETARY OF STATE
2 PM O'CLOCK
JUN 01 2017

Secretary of State

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 27, 2017

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **SB5** by Huffman (Relating to requiring a voter to present proof of identification; providing a criminal penalty and increasing a criminal penalty.), **Conference Committee Report**

No significant fiscal implication to the State is anticipated.

The bill would amend the Election Code and the Transportation Code relating to requiring a voter to present proof of identification.

This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional agencies. The Secretary of State and the Department of Public Safety assume any additional work associated with implementing the provisions of the bill could be absorbed using existing resources.

The bill would take effect January 1, 2018.

Local Government Impact

El Paso County reports minor fiscal implication relating to printing of new postings and declarations at polling sites at a cost of approximately $2,000. Last election the county opted to mail a flyer to voters about the new ID law at a cost of $50,000. Hunt, Travis, and Webb Counties estimates no significant fiscal impact.

A Class A misdemeanor is punishable by a fine of not more than $4,000, confinement in jail for a term not to exceed one year, or both. Costs associated with enforcement, prosecution and confinement could likely be absorbed within existing resources. Revenue gain from fines imposed and collected is not anticipated to have a significant fiscal implication.

Source Agencies: 307 Secretary of State, 405 Department of Public Safety

LBB Staff: UP, ASa, LBO, AG, NV, LM, JAW, BM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 25, 2017

TO: Honorable Dan Patrick, Lieutenant Governor, Senate

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **SB5** by Huffman (Relating to requiring a voter to present proof of identification; providing a criminal penalty.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Election Code and the Transportation Code relating to requiring a voter to present proof of identification; providing a criminal penalty.

This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional agencies. The Secretary of State and the Department of Public Safety assume any additional work associated with implementing the provisions of the bill could be absorbed using existing resources.

The bill would take effect January 1, 2018.

Local Government Impact

El Paso County reports minor fiscal implication relating to printing of new postings and declarations at polling sites at a cost of approximately $2,000. Last election the county opted to mail a flyer to voters about the new ID law at a cost of $50,000.

Hunt, Travis, and Webb Counties estimates no significant fiscal impact.

Source Agencies: 307 Secretary of State, 405 Department of Public Safety

LBB Staff: UP, ASa, LBO, AG, NV, LM, JAW, BM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 17, 2017

TO: Honorable Jodie Laubenberg, Chair, House Committee on Elections

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **SB5** by Huffman (Relating to requiring a voter to present proof of identification; providing a criminal penalty.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Election Code and the Transportation Code relating to requiring a voter to present proof of identification; providing a criminal penalty.

This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional agencies. The Secretary of State and the Department of Public Safety assume any additional work associated with implementing the provisions of the bill could be absorbed using existing resources.

The bill would take effect January 1, 2018.

Local Government Impact

El Paso County reports minor fiscal implication relating to printing of new postings and declarations at polling sites at a cost of approximately $2,000. Last election the county opted to mail a flyer to voters about the new ID law at a cost of $50,000.

Hunt, Travis, and Webb Counties estimates no significant fiscal impact.

Source Agencies: 307 Secretary of State, 405 Department of Public Safety

LBB Staff: UP, LBO, ASa, AG, NV, LM, JAW, BM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

March 14, 2017

TO: Honorable Joan Huffman, Chair, Senate Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **SB5** by Huffman (Relating to requiring a voter to present proof of identification; providing a criminal penalty.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Election Code and the Transportation Code relating to requiring a voter to present proof of identification; providing a criminal penalty.

This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional agencies. The Secretary of State and the Department of Public Safety assume any additional work associated with implementing the provisions of the bill could be absorbed using existing resources.

The bill would take effect January 1, 2018.

Local Government Impact

El Paso County reports minor fiscal implication relating to printing of new postings and declarations at polling sites at a cost of approximately $2,000. Last election the county opted to mail a flyer to voters about the new ID law at a cost of $50,000.

Hunt, Travis, and Webb Counties estimates no significant fiscal impact.

Source Agencies: 307 Secretary of State, 405 Department of Public Safety
LBB Staff: UP, ASa, AG, NV, LM, JAW, BM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

March 12, 2017

TO: Honorable Joan Huffman, Chair, Senate Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **SB5** by Huffman (Relating to requiring a voter to present proof of identification; providing a criminal penalty.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Election Code and the Transportation Code relating to requiring a voter to present proof of identification; providing a criminal penalty.

This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional agencies. The Secretary of State and the Department of Public Safety assume any additional work associated with implementing the provisions of the bill could be absorbed using existing resources.

The bill would take effect January 1, 2018.

Local Government Impact

El Paso County reports minor fiscal implication relating to printing of new postings at polling sites and print new declarations to be used at the poling sites of approximately $2,000. Last election the county opted to mail a flyer to voters about the new ID law at a cost of $50,000.

Hunt, Travis, and Webb Counties estimates no significant fiscal impact.

Source Agencies: 307 Secretary of State, 405 Department of Public Safety
LBB Staff: UP, AG, NV, ASa, LM, JAW, BM

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

85TH LEGISLATIVE REGULAR SESSION

May 27, 2017

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **SB5** by Huffman (Relating to requiring a voter to present proof of identification; providing a criminal penalty and increasing a criminal penalty.), **Conference Committee Report**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Election Code to allow voters unable to provide photo identification to provide instead alternate identification in conjunction with a sworn or affirmed declaration of reasonable impediment. Under the provisions of the bill, an individual who provided a false statement or provided false information on the declaration would be subject to prosecution for perjury, which includes aggravated perjury, a third degree felony. The bill would also make intentionally making a false statement or providing false information of reasonable impediment punishable as a third degree felony. These offenses range from a Class A misdemeanor to a third degree felony.

A third degree felony is punishable by confinement in prison for a term from 2 to 10 years and, in addition to confinement, an optional fine not to exceed $10,000.

Expanding the list of behaviors for which a criminal penalty is applied and creating an offense are expected to result in increased demands upon the correctional resources of counties or of the State due to a potential increase in the number of individuals placed under supervision in the community or sentenced to a term of confinement within state correctional institutions. This analysis assumes the provisions of the bill addressing felony sanctions would not result in a significant impact on the demand for state correctional resources. In fiscal year 2016, 53 individuals were arrested, 11 were placed under felony community supervision, and 10 were admitted into state correctional institutions for the offense of aggravated perjury under existing statute.

Source Agencies:

LBB Staff: UP, LM, KJo, AKU

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

85TH LEGISLATIVE REGULAR SESSION

May 25, 2017

TO: Honorable Dan Patrick, Lieutenant Governor, Senate

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **SB5** by Huffman (Relating to requiring a voter to present proof of identification; providing a criminal penalty.), **As Passed 2nd House**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Election Code to allow voters unable to provide photo identification to provide instead alternate identification in conjunction with a sworn or affirmed declaration of reasonable impediment. Under the provisions of the bill, an individual who provided a false statement or provided false information on the declaration would be subject to prosecution for perjury, which includes aggravated perjury, a third degree felony.

A third degree felony is punishable by confinement in prison for a term from 2 to 10 years and, in addition to confinement, an optional fine not to exceed $10,000.

Expanding the list of behaviors for which a criminal penalty is applied and creating an offense are expected to result in increased demands upon the correctional resources of counties or of the State due to a potential increase in the number of individuals placed under supervision in the community or sentenced to a term of confinement within state correctional institutions. In fiscal year 2016, 53 individuals were arrested, 11 were placed under felony community supervision, and 10 were admitted into state correctional institutions for the offense of aggravated perjury under existing statute. This analysis assumes the provisions of the bill addressing felony sanctions would not result in a significant impact on the demand for state correctional resources.

Source Agencies:
LBB Staff: UP, LM, AKU

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

85TH LEGISLATIVE REGULAR SESSION

April 17, 2017

TO: Honorable Jodie Laubenberg, Chair, House Committee on Elections

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **SB5** by Huffman (Relating to requiring a voter to present proof of identification; providing a criminal penalty.), **As Engrossed**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Election Code to allow voters unable to provide photo identification to provide instead alternate identification in conjunction with a sworn or affirmed declaration of reasonable impediment. Under the provisions of the bill, an individual who provided a false statement or provided false information on the declaration would be subject to prosecution for perjury, which includes aggravated perjury, a third degree felony. The bill would also make intentionally making a false statement or providing false information of reasonable impediment punishable as a third degree felony.

A third degree felony is punishable by confinement in prison for a term from 2 to 10 years and, in addition to confinement, an optional fine not to exceed $10,000.

Expanding the list of behaviors for which a criminal penalty is applied and creating an offense are expected to result in increased demands upon the correctional resources of counties or of the State due to a potential increase in the number of individuals placed under supervision in the community or sentenced to a term of confinement within state correctional institutions. This analysis assumes the provisions of the bill addressing felony sanctions would not result in a significant impact on the demand for state correctional resources. In fiscal year 2016, 53 individuals were arrested, 11 were placed under felony community supervision, and 10 were admitted into state correctional institutions for the offense of aggravated perjury under existing statute.

Source Agencies:
LBB Staff: UP, LM, AKU

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

85TH LEGISLATIVE REGULAR SESSION

March 14, 2017

TO: Honorable Joan Huffman, Chair, Senate Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **SB5** by Huffman (Relating to requiring a voter to present proof of identification; providing a criminal penalty.), **Committee Report 1st House, Substituted**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Election Code to allow voters unable to provide photo identification to provide instead alternate identification in conjunction with a sworn or affirmed declaration of reasonable impediment. Under the provisions of the bill, an individual who provided a false statement or provided false information on the declaration would be subject to prosecution for perjury, which includes aggravated perjury, a third degree felony. The bill would also make knowingly providing a false statement or information of reasonable impediment punishable as a third degree felony.

A third degree felony is punishable by confinement in prison for a term from 2 to 10 years and, in addition to confinement, an optional fine not to exceed $10,000.

Expanding the list of behaviors for which a criminal penalty is applied and creating an offense are expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of supervision in the community or longer terms of confinement in state correctional institutions. This analysis assumes the provisions of the bill addressing felony sanctions would not result in a significant impact on the demand of state correctional resources. In fiscal year 2016, 53 individuals were arrested, 11 were placed under felony community supervision, and 10 were admitted into state correctional institutions for the offense of aggravated perjury under existing statute.

Source Agencies:
LBB Staff: UP, LM, AKU

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

85TH LEGISLATIVE REGULAR SESSION

March 12, 2017

TO: Honorable Joan Huffman, Chair, Senate Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **SB5** by Huffman (Relating to requiring a voter to present proof of identification; providing a criminal penalty.), **As Introduced**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Election Code to allow voters unable to provide photo identification to provide instead alternate identification in conjunction with a sworn or affirmed declaration of reasonable impediment. Under the provisions of the bill, an individual who provided a false statement or provided false information on the declaration would be subject to prosecution for perjury, which includes aggravated perjury, a third degree felony. The bill would also make knowingly providing a false statement or information of reasonable impediment punishable as a third degree felony.

A third degree felony is punishable by confinement in prison for a term from 2 to 10 years and, in addition to confinement, an optional fine not to exceed $10,000.

Expanding the list of behaviors for which a criminal penalty is applied and creating an offense are expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of supervision in the community or longer terms of confinement in state correctional institutions. This analysis assumes the provisions of the bill addressing felony sanctions would not result in a significant impact on the demand of state correctional resources. In fiscal year 2016, 53 individuals were arrested, 11 were placed under felony community supervision, and 10 were admitted into state correctional institutions for the offense of aggravated perjury under existing statute.

Source Agencies:
LBB Staff: UP, LM, AKU