

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 14-41127

MARC VEASEY, *et al.*,

Plaintiffs-Appellees

v.

GREG ABBOTT, *et al.*,

Defendants-Appellants

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

OPPOSED MOTION FOR A LIMITED REMAND DIRECTING
THE DISTRICT COURT TO ENTER INTERIM RELIEF
CONSISTENT WITH THIS COURT'S AUGUST 5, 2015, OPINION

The United States respectfully requests a limited remand directing the district court to enter interim relief consistent with this Court's August 5, 2015, opinion. See 28 U.S.C. 2106. Such an order is necessary to ensure that, pending completion of the appellate process and further proceedings below, voters in upcoming elections are not subject to a law that both this Court and the district court have determined violates Section 2 of the Voting Rights Act (VRA), 52 U.S.C. 10301. It also would ensure that the State has adequate time to implement

the requested relief prior to the upcoming elections on November 3, 2015. This Court would retain jurisdiction of the appeal pending the district court's compliance with the limited remand, see, *e.g.*, *Wheeler v. City of Columbus*, 686 F.2d 1144, 1154 (5th Cir. 1982), thereby avoiding any prejudice to the State's ability to petition for further review.¹

The State opposes this motion, and has indicated that it will respond by August 28, 2015. We have consulted with the private plaintiffs, but have not received their position as of this filing.

In support of this motion, the United States provides as follows:

1. On October 9, 2014, the district court issued an opinion holding that Texas Senate Bill 14 (SB14) – Texas's photo-identification requirements for in-person voting – violates Section 2 of the VRA, 52 U.S.C. 10301, and the United States Constitution. Two days later, the district court entered a judgment enjoining Texas from enforcing SB14's photo-ID provisions and requiring the State to reinstate its preexisting voter-ID law.

2. On October 14, 2014, based "primarily on the extremely fast-approaching election date," this Court granted Texas's emergency motion for a stay of the

¹ Given the exigencies created by the upcoming November elections, the relief requested in this motion is directed solely at providing necessary interim relief pending further proceedings below. This motion does not address the question of the appropriate scope of permanent relief.

district court's judgment pending appeal. ROA.27377. Plaintiffs filed emergency applications with the Supreme Court to vacate the stay order, which the Supreme Court denied. See Nos. 14A393, 14A402, 14A404 (S. Ct. Oct. 18, 2014).

Accordingly, Texas has continued to enforce SB14 pending appeal.

3. On December 10, 2014, this Court granted in part the Veasey-LULAC appellees' motion to expedite this appeal. In support of the motion, appellees cited this Court's stay order, upcoming elections in November 2015 and March 2016, and the need to provide election administrators with sufficient time to implement lawful identification procedures without creating significant voter confusion. This Court ordered that, upon the completion of briefing, this case be placed on the first available oral argument calendar.

4. Oral argument was held on April 28, 2015.

5. On August 5, 2015, this Court issued an opinion that, *inter alia*, affirmed the district court's finding that SB14 violates Section 2 of the VRA because the law interacts with social and historical conditions in Texas to produce a discriminatory result. Slip Op. 35-36. In reaching that conclusion, this Court accepted the district court's undisputed findings that over 600,000 registered voters in Texas lack SB14 ID, that a disproportionate number of these affected voters are African American or Hispanic, and that poor individuals face greater obstacles to obtaining SB14 ID. Slip Op. 23-26. Having found that SB14 violated the results

test of Section 2, this Court went on to vacate the district court's finding that SB14 has a discriminatory purpose. Slip Op. 19-20. It also vacated the remedy ordered by the district court, and remanded the case to the district court for further consideration of discriminatory purpose and the appropriate relief in accordance with this Court's opinion. Slip Op. 20, 36, 48-49.

6. In so doing, this Court recognized that the nature and scope of any permanent relief will depend upon the district court's findings on remand. Slip Op. 44-45. This Court also provided "guidance regarding what would constitute a properly-tailored remedy to address [SB14's] discriminatory effects." Slip Op. 45. This Court recognized the longstanding requirement that, when remedying a Section 2 violation, the district court's "first and foremost obligation" is to correct the Section 2 violation. Slip Op. 45. It also stated that courts "should respect a legislature's policy objectives" to the extent possible. Slip Op. 45. To that end, this Court observed that "[o]ne possibility" to remedy SB14's discriminatory result "would be to reinstate voter registration cards as documents that qualify as acceptable identification under the Texas Election Code." Slip Op. 47. But this Court recognized that "the district court must assess this potential solution in light of other solutions posited by the parties, including other forms of photo identification." Slip Op. 48. Regardless of the remedies that the parties might ultimately propose, this Court urged them "to work cooperatively with the district

court to provide a prompt resolution of this matter to avoid election eve uncertainties and emergencies.” Slip Op. 48.

7. On August 5, 2015, this Court also issued a judgment stating that “the judgment of the District Court is affirmed in part, vacated in part, rendered in part, and dismissed in part. This cause is remanded to the District Court for further proceedings in accordance with the opinion of this Court.”

8. Consistent with this Court’s rules and internal operating procedures, the Clerk’s August 5, 2015, docket entries list the mandate pull date as September 28, 2015. Thus, until at least September 29, 2015, the district court is divested of jurisdiction to conduct further proceedings consistent with this Court’s opinion.

9. The Secretary of State already has posted general information and important election dates for statewide, municipal, and local elections scheduled for November 3, 2015, and March 1, 2016. See Texas Sec’y of State, *Election Outlook*, available at <http://tinyurl.com/ouvjp>. Some dates are fast-approaching. Indeed, early voting for this November’s election begins on October 19, 2015.

10. In order to ensure that voters in upcoming elections are not subject to a law that this Court and the district court have now both determined violates Section 2 of the VRA, the United States respectfully requests that this Court issue a limited remand, consistent with this Court’s opinion, directing the district court to enter interim relief pending issuance of the mandate and further proceedings below.

11. One such appropriate order would put in place the guidance this Court provided in its opinion: namely, that voter registration certificates (*i.e.*, Texas's equivalent of voter registration cards) be added to the list of forms of identification provided in SB14 as sufficient for all voting-related purposes. Accordingly, voters would be able to cast a *regular ballot* by presenting a valid registration certificate at the time they appeared at an early voting center or at the polls. A voter who lacked sufficient identification (including a voter registration certificate) at the time he or she appeared at an early voting center or polling place could cast a *provisional ballot* that would be cured by presenting either one of the forms of identification listed in SB 14 *or* a voter registration certificate to the county registrar within six days of the election. The order could also direct that, consistent with current practice, county registrars should make replacement registration certificates freely and readily available to registered voters who seek them and whose registration certificates are lost or destroyed. See Tex. Elec. Code § 15.004 (2013).²

12. The timely entry of interim relief mitigates SB14's discriminatory result while also minimizing any voter confusion or disruption to upcoming election-day

² Under Section 15.004, a voter whose registration certificate is lost or destroyed may request a replacement certificate from his or her county registrar in writing or by telephone. The registrar must fulfill the request within 30 days. See Tex. Elec. Code § 15.004 (2013).

preparations, including poll-worker training and the issuance of election-related information, materials, and notices. Moreover, since SB14's enactment, county registrars throughout Texas have continued to issue initial and renewal registration certificates in accordance with state law. See, *e.g.*, Tex. Elec. Code §§ 13.142, 14.001 (2013). In addition, the Texas Secretary of State has advised in-person voters to bring such certificates to the polls in addition to their SB14 ID. See VoteTexas.Gov, *FAQ*, available at <http://tinyurl.com/nnx9fay> ("Do I still need to bring my voter certificate/card?"). This decreases any possibility that numerous replacement registration certificates will have to be issued in advance of the upcoming election.³

WHEREFORE, the United States respectfully requests a limited remand directing the district court to enter appropriate interim relief, consistent with this Court's August 5, 2015, opinion, pending issuance of the mandate and further proceedings below. To the extent this Court must modify its October 14, 2014, stay order in order to grant the relief sought, we respectfully request that it do so.

³ By law, Texas is scheduled to issue renewal registration certificates to registered voters between November 15, 2015, and December 6, 2015. See Tex. Elec. Code § 14.001 (2013). In addition to the above-mentioned relief and any other ancillary relief the district court deems proper to effectuate the terms of the interim order (*e.g.*, requiring Texas to take such steps as are necessary to educate the public as to the terms of the interim relief), we anticipate requesting that the district court order Texas to remove from such renewal registration certificates any language that is inconsistent with the interim relief ordered (*e.g.*, that in-person voters may cast a regular ballot only upon presenting a form of SB14 ID).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 20, 2015, I electronically filed the foregoing MOTION 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 August 20, 2015, I served a copy of the foregoing MOTION on the following counsel by certified U.S. mail, postage prepaid:

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