No. 14-41127

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; KEN GANDY; GORDON BENJAMIN; EVELYN BRICKNER,

Plaintiffs-Appellees

TEXAS ASSOCIATION OF HISPANIC COUNTY JUDGES AND COUNTY COMMISSIONERS,

Intervenor Plaintiffs-Appellees

v.

GREG ABBOTT, in his Official Capacity as Governor of Texas; CARLOS CASCOS, in his Official Capacity as Texas Secretary of State; STEVE MCCRAW, in his Official Capacity as Director of the Texas Department of Public Safety,

Defendants-Appellants

(*See inside cover for continuation of caption*)

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

OPPOSITION OF THE UNITED STATES TO APPELLANTS' PETITION FOR REHEARING EN BANC

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(*Continuation of caption*)

UNITED STATES OF AMERICA,

Plaintiff-Appellee

TEXAS LEAGUE OF YOUNG VOTERS EDUCATION FUND; IMANI CLARK,

Intervenor Plaintiffs-Appellees

v.

STATE OF TEXAS; CARLOS CASCOS, in his Official Capacity as Texas Secretary of State; STEVE MCCRAW, in his Official Capacity as Director of the Texas Department of Public Safety,

Defendants-Appellants

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

Plaintiffs-Appellees

v.

CARLOS CASCOS, in his Official Capacity of Texas Secretary of State; STEVE MCCRAW, in his Official Capacity as Director of the Texas Department of Public Safety,

Defendants-Appellants

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

Plaintiffs-Appellees

v.

STATE OF TEXAS; CARLOS CASCOS, in his Official Capacity as Texas Secretary of State; STEVE MCCRAW, in his Official Capacity as Director of the Texas Department of Public Safety,

Defendants-Appellants

CERTIFICATE OF INTERESTED PERSONS
No. 14-41127

MARC VEASEY, *et al.*,

Plaintiffs-Appellees

v.

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

Defendants-Appellants

In addition to the individuals listed by Texas in its Certificate of Interested Persons, the undersigned counsel certifies that the following persons in the United States Department of Justice, Civil Rights Division, have an interest in the outcome of this appeal:

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Pursuant to this Court's order dated August 31, 2015, the United States respectfully submits this opposition to appellants' petition for rehearing en banc.

INTRODUCTION

The panel correctly concluded that Senate Bill 14 (SB14)—Texas's strict photo-ID requirements for in-person voting—violates Section 2 of the Voting Rights Act (VRA), 52 U.S.C. 10301, based on its discriminatory result. SB14's restrictive features, including the material burdens it imposes on voters who lack qualifying ID, disproportionately affect minority voters and interact with social and historical conditions tied to race discrimination to result in less opportunity for minority voters to participate in the political process relative to other voters in Texas. Texas attempts to justify en banc review by misreading several decisions of the Supreme Court, this Court, and other circuit courts. But those decisions either involve legal provisions analytically distinct from Section 2, or apply Section 2's results test consistent with (or identical to) the panel's fact-based application here.

In addition, the panel's remand of the discriminatory purpose issue to the district court for further examination does not warrant this Court's en banc review.

STATEMENT

1. Section 2 of the VRA imposes a "permanent, nationwide ban on racial discrimination in voting." *Shelby Cnty.* v. *Holder*, 133 S. Ct. 2612, 2631 (2013). It prohibits any "voting qualification or prerequisite to voting or standard, practice,

or procedure" that "results in a denial or abridgement" of the right to vote "on account of race or color." 52 U.S.C. 10301(a). The VRA defines the terms "vote" and "voting" to encompass "all action necessary to make a vote effective," including "casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast." 52 U.S.C. 10310(c)(1). In 1982, Congress amended Section 2 to make clear that a statutory violation can be established by showing discriminatory intent, a discriminatory result, or both. See *Thornburg* v. *Gingles*, 478 U.S. 30, 34-37, 43-45 & nn.8-9 (1986); 52 U.S.C. 10301(a) and (b); S. Rep. No. 417, 97th Cong., 2d Sess. (1982) (Senate Report).

To establish a discriminatory result under Section 2, a plaintiff must show that, "based on the totality of circumstances," a challenged voting practice results in members of a protected class having "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. 10301(b). The "essence" of a Section 2 results claim is that the challenged practice "interacts with social and historical conditions" linked to race discrimination "to cause an inequality in the [electoral] opportunities enjoyed by [minority] and white voters." *Gingles*, 478 U.S. at 47.

The Supreme Court has emphasized that Section 2 requires an "intensely local appraisal of the design and impact of the contested electoral mechanisms" in light of a jurisdiction's "past and present reality." *Gingles*, 478 U.S. at 78-79

(citations omitted). To that end, courts evaluating the "totality of circumstances" rely on a non-exhaustive list of objective factors to examine social, historical, and political conditions within the jurisdiction. See Senate Report 28-29; *LULAC* v. *Perry*, 548 U.S. 399, 426 (2006); *Gingles*, 478 U.S. at 44-45, 79; *Mississippi State Chapter, Operation PUSH, Inc.* v. *Mabus*, 932 F.2d 400, 405-406 (5th Cir. 1991).

2. a. SB14 generally requires in-person voters to present one of six specified government-issued photo ID. For voters who lack qualifying ID, Texas makes Election Identification Certificates (EIC) available to individuals who travel to a Texas Department of Public Safety office and present designated proof of citizenship and identity. Among voters who lack SB14 ID, the documentation and eligibility requirements for obtaining an EIC, the onerous distances to ID-issuing locations that are often inaccessible by public transit, and the lack of SB14-specific voter education disproportionately burden African Americans and Hispanics. See *Veasey* v. *Perry*, 71 F. Supp. 3d 627, 641-645, 664-676 (S.D. Tex. 2014).

b. From May 2011 until June 2013, Texas was unable to enforce SB14 under Section 5 of the VRA, 52 U.S.C. 10304, due to its failure to show that SB14 had neither a discriminatory purpose nor a discriminatory effect. See *Texas* v. *Holder*, 888 F. Supp. 2d 113 (D.D.C. 2012), vacated and remanded on other grounds, 133 S. Ct. 2886 (2013). In June 2013, the Supreme Court decided *Shelby County* v. *Holder*, *supra*, holding that Section 4(b) of the VRA could no longer

serve as a basis to impose Section 5 preclearance. Within hours of the *Shelby County* decision, Texas announced its intent to enforce SB14 as enacted.

The United States and private plaintiffs filed separate challenges to SB14, each raising claims under Section 2 of the VRA. See *Veasey*, 71 F. Supp. 3d at 632-633 & n.3. After an expedited trial, the district court held, *inter alia,* that SB14 violated Section 2 because it was enacted in part with a discriminatory purpose and because SB14 has a discriminatory result. See *ibid.* As to SB14's discriminatory result, the court found that, of the over 600,000 registered voters who lack a form of SB14 ID, a highly disproportionate percentage are African American or Hispanic. See *id.* at 659-663. The court also found that, among affected voters, minorities face greater obstacles to obtaining qualifying ID. See *id.* at 664-667. Upon examining the "totality of circumstances," the court concluded that SB14 impermissibly results in less opportunity for minority voters to participate in the political process relative to other voters. See *id.* at 694-698.

c. A unanimous panel of this Court affirmed that SB14 has a discriminatory result. *Veasey* v. *Abbott*, No. 14-41127, 2015 WL 4645642, at *1, *10-17 (Aug. 5, 2015) (Op. *__). The panel looked to Section 2's text and the Supreme Court's decision in *Thornburg* v. *Gingles*, *supra*, to frame the relevant inquiry: whether SB14 interacts with social and historical conditions in Texas to cause an inequality in the opportunities enjoyed by minority voters relative to other voters. Op. *10.

The panel reviewed the district court's largely undisputed findings regarding the "stark" racial disparities in SB14 ID-possession rates, the disproportionate and material burdens the law places on minority voters who must obtain such ID, and the ways in which SB14 interacts with social, political, and historical conditions linked to race discrimination to result in less opportunity for minority voters to participate in the political process relative to other voters. Op. *11-17. The panel held that the district court did not clearly err in finding that SB14 has a prohibited discriminatory result. Op. *17. The panel vacated the district court's finding that SB14 has a discriminatory purpose, explaining that the court had relied too heavily on certain evidence, and remanded on that issue and remedy. Op. *5-9, *20-22.

ARGUMENT

En banc review is warranted only when the panel decision conflicts with a decision of the Supreme Court or this Court or where "the proceeding involves a question of exceptional importance," such as "an issue on which the panel decision conflicts with the authoritative decisions of other" circuit courts. Fed. R. App. P. 35(a) and (b); see 5th Cir. R. 35.1 & I.O.P. 35. Neither circumstance exists here.

A. The Panel's Application Of Section 2 In No Way Conflicts With The Decisions Of The Supreme Court, This Court, Or Other Circuit Courts

1. Texas argues that the panel's decision conflicts with *Crawford* v. *Marion County Election Board*, 553 U.S. 181 (2008), and *Voting for America, Inc.* v. *Steen*, 732 F.3d 382 (5th Cir. 2013). Pet. 6-7. Texas is incorrect. Those decisions

were rendered under a different legal standard and entirely outside of the Section 2 context. They do not preclude a finding, weighed as part of Section 2's totality-of-circumstances analysis, that the policies underlying SB14 are tenuous.

Crawford held that Indiana's legitimate interests in fraud prevention and electoral integrity were sufficient to defeat a constitutional challenge to its photo-ID law. See 553 U.S. at 189, 203. But *Crawford*'s acceptance of Indiana's asserted justifications came in the context of a facial challenge, as well as the absence of a strong evidentiary record. See *id.* at 187-188, 199-203. *Voting for America* similarly relied on the legitimate interest in fraud prevention, the features of the challenged law, and the specific facts to reject a facial constitutional attack on Texas's restrictions on third-party voter registration (which itself distinguishes the case). See 732 F.3d at 386-387, 394-396. Though *Crawford* upheld Indiana's voter-ID law, it rejected the view that such laws are per se constitutional and left the door open to statutory and as-applied challenges. See 553 U.S. at 200-204.[1]

Unlike in *Crawford* and *Voting for America*, plaintiffs here challenged Texas's photo-ID law under Section 2 of the VRA. Consistent with Section 2's text, Supreme Court precedent, and this Court's decisions, plaintiffs developed an extensive record that showed how SB14's specific features interact with social and

[1] In *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971), the Court rejected a constitutional challenge to an Indiana county's use of multi-member districts. Two years later, in *White* v. *Regester*, 412 U.S. 755, 765-770 (1973), the Court struck down the use of such districts in two Texas counties because they caused unequal participation opportunities for minority voters.

historical conditions in Texas to result in unequal participation opportunities for African-American and Hispanic voters. Given the well-settled statutory standard, the panel properly recognized that the district court, when presented with evidence of SB14's disproportionate and discriminatory effect on minority voters, had to assess, as part of the totality of circumstances, whether the means Texas used to advance its interests justified SB14's discriminatory result. Op. *16. The panel accepted Texas's interests as legitimate under *Crawford*, but concluded that the district court did not err in relying on the poor fit between Texas's stated goals and the law it enacted to determine that SB14 violates Section 2. Op. *16-17.

The panel's reliance on the district court's tenuousness finding follows this Court's Section 2 analysis in *LULAC, Council No. 4434* v. *Clements*, 999 F.2d 831 (5th Cir. 1993) (en banc). *Clements* stated that even interests deemed legitimate as a matter of law do not preclude Section 2 liability. See *id.* at 869-871. Rather, a State's interest in maintaining a challenged practice must be weighed among the totality of circumstances to determine whether a Section 2 violation exists. *Ibid.*

2. In an attempt to manufacture a conflict between the panel decision and this Court's en banc opinion in *Clements*, Texas argues that the panel "found liability without any evidence that SB14 caused lower levels of registration or turnout among minority voters." Pet. 4. But *Clements* requires no such showing for Section 2 liability. Nor is Texas's proffered standard consistent with Section 2.

The language that Texas quotes from *Clements* (Pet. 4) concerned only whether the plaintiffs in that case, relying on past discrimination and current socioeconomic disparities to support their Section 2 claim, had shown that such discrimination hindered minority participation in the political process. See 999 F.2d at 866-867. *Clements* explained that although Section 2 plaintiffs need not show "a causal nexus between socioeconomic status and depressed participation," they must prove that "participation in the political process is in fact depressed among minority citizens." *Ibid.* (citing Senate Report 29 n.114). *Clements* held that the plaintiffs had offered "no evidence" of reduced levels of voter registration or turnout among minorities, or anything "tending to show that past discrimination has affected their ability to participate in the political process." 999 F.2d at 867.

By contrast, the panel decision in this case expressly adopted the district court's finding that African-American and Hispanic voter registration and voter turnout in Texas lag far behind that of Anglo voters. Op. *15 & n.26. Thus, plaintiffs here proved that participation in Texas's political process "is in fact depressed among minority citizens," *Clements*, 999 F.2d at 866-867. Although "socioeconomic disparities and a history of discrimination," without more, do not suffice to establish a Section 2 violation (Pet. 4-5), plaintiffs here offered ample evidence to enable the "intensely local appraisal" of social and historical conditions that Section 2 demands. *Clements*, 999 F.2d at 866-867.

3. Texas's attempt to graft a new prerequisite onto Section 2's statutory test, *i.e.*, that SB14 has caused racial disparities in voter registration and turnout (Pet. 4, 6-8), finds no support in the case law, and for good reason. See Op. *11 n.21.

By its terms, Section 2 requires plaintiffs to show only that, as a result of a challenged practice, minority voters have "less opportunity" to participate relative to other voters, not that they have "no" such opportunity. 52 U.S.C. 10301(b); see 52 U.S.C. 10301(a) (prohibiting a "denial or abridgement" of voting rights); Senate Report 30 (plaintiffs must show only that the law "result[s] in the denial of equal access to any phase of the electoral process for minority group members"). That overall turnout could theoretically increase despite SB14 does not negate the fact that SB14 provides minority voters with less opportunity to cast a regular ballot relative to other voters because of the increased rates at which they lack SB14 ID and the disproportionate and material burdens they face in obtaining such ID. Although decreased participation rates can demonstrate a discriminatory result, see, *e.g.*, *Operation PUSH*, 932 F.2d at 402-405, the VRA does not *require* plaintiffs to endure a discriminatory practice for multiple elections in order to show any further effect on already depressed participation levels. See 52 U.S.C. 10308(d) (authorizing "preventive relief," including a permanent injunction, where reasonable grounds exist to believe a practice violates Section 2).

Nor is aggregate voter turnout particularly indicative of the presence or absence of a discriminatory result. Plaintiffs' experts explained that turnout will not necessarily show a photo-ID law's suppressive or deterrent effect on certain voters. ROA.43655-43657, 43981-43983. A law may prevent individuals who lack qualifying ID from casting a regular ballot, but a host of unrelated factors—such as the type of election, issues involved, candidates running, competitiveness of the election, and hours and locations of polling places—can increase or decrease aggregate turnout. ROA.99560-99564, 99587. These factors can mask a photo-ID law's effect; even where turnout increases, it could have been even higher had individuals who lacked qualifying ID been able to vote. ROA.43656.[2] Turnout also fails to capture the extraordinary efforts some voters make to obtain qualifying ID, as well as the increased resources organizations dedicate to helping affected voters. Thus, turnout will not always reflect the significant burdens a law imposes.

Regardless, plaintiffs presented expert evidence, and the district court found, that firmly rooted political science principles establish that increases to voting costs, both monetary and non-monetary, decrease turnout. See *Veasey*, 71 F. Supp. 3d at 665-666. Texas's expert did not contest this principle (ROA.100883-100900), and the panel properly accepted the district court's finding. Op. *16.

[2] Indeed, Texas's expert agreed that although voter turnout in 2008 appeared to increase under Georgia's photo-ID law, that increase was a response to the historic presidential campaign; his study of turnout in 2012 suggested that the same law resulted in across-the-board suppression of voter turnout, with Hispanics impacted most severely. See *Veasey*, 71 F. Supp. 3d at 655.

4. Texas claims that the panel decision conflicts with the decisions of the Seventh and Ninth Circuits upholding other States' voter-ID laws. Pet. 5-6. Yet these decisions simply reflect the fact-based nature of Section 2's results inquiry, which includes the challenged law's specific requirements and implementation, as well as the demographic and socioeconomic conditions of the jurisdiction's polity.

In *Gonzalez* v. *Arizona*, 677 F.3d 383 (9th Cir. 2012) (en banc), plaintiffs challenged Arizona's requirement that election-day voters present one form of federal, state, or local government issued photo ID, or two forms of non-photo ID. *Id.* at 388. Like the panel here, the Ninth Circuit relied on Section 2's plain text, *Gingles*, and the "Senate Factors" to evaluate plaintiffs' Section 2 claim. *Id.* at 405-406. Based on the scant record in *Gonzalez*—which included "no evidence" that Latinos were less likely to possess qualifying ID, "no proof of a causal relationship between Proposition 200 and any alleged discriminatory impact on Latinos," and no explanation of how the law's "requirements interact with the social and historical climate of discrimination to impact Latino voting in Arizona"—the Ninth Circuit determined that the district court did not clearly err in rejecting plaintiffs' Section 2 challenge. *Id.* at 406-407.

In arguing that the panel decision conflicts with *Gonzalez*, Texas points to *Gonzalez*'s statement that it is "crucial" for Section 2 plaintiffs to prove a "causal connection between the challenged voting practice and a prohibited discriminatory

result." 677 F.3d at 405. Pet. 6.[3] Here, the panel concluded that plaintiffs had made such a showing: they established not only that minority voters disproportionately lack SB14 ID and face disproportionate and material burdens in obtaining such ID, but also that SB14 interacts with social and historical conditions tied to racial discrimination *to cause* unequal electoral opportunities for minority voters. Op. *11-17. SB14 therefore "results in a denial or abridgement" of the right to vote "on account of race or color." 52 U.S.C. 10301(a).

As relevant here, *Frank* v. *Walker*, 768 F.3d 744 (7th Cir. 2014), reversed a judgment that Wisconsin's photo-ID law violated Section 2 of the VRA. Contrary to Texas's claim of a conflict, *Frank* used *the same two-part test* for analyzing Section 2 claims that the panel adopted in this case. Compare *id.* at 754-755, with Op. *10.[4] *Frank* reached a different result principally based on the record there, or lack thereof. Although the Seventh Circuit accepted that plaintiffs had shown a

[3] Texas argues that *Gonzalez* also requires plaintiffs to show a "disproportionate inability to *obtain or possess* ID," as well as "a resulting disparity in voter turnout or registration." Pet. 6. But *Gonzalez* does not even discuss turnout. As explained, see *supra* pp.7-10, Section 2 requires no showing that the challenged law has caused decreased turnout. In addition, to the extent Texas suggests that voters must be completely unable to obtain qualifying ID before a photo-ID law violates Section 2, *Gonzalez* supports no such proposition. See 677 F.3d at 405-406; cf. *Chisom* v. *Roemer*, 501 U.S. 380, 408 (1991) (Scalia, J., dissenting) (it would violate Section 2 if "a county permitted voter registration for only three hours one day a week, and that made it *more difficult* for blacks to register than whites") (emphasis added).

[4] The Fourth and Sixth Circuits also use this test. See *League of Women Voters of N.C.* v. *North Carolina*, 769 F.3d 224, 240 (4th Cir. 2014), cert. denied, 135 S. Ct. 1735 (2015); *Ohio State Conf.* v. *Husted*, 768 F.3d 524, 554 (6th Cir.), vacated on other grounds, No. 14-3877 (6th Cir. Oct. 1, 2014). The Supreme Court denied certiorari in *Frank*. See 135 S. Ct. 1551 (2015).

statistical disparity in the rates at which minority voters and white voters possessed qualifying ID, it stated that plaintiffs could not establish a Section 2 violation because they failed to show both that "Wisconsin makes it *needlessly* hard to get photo ID" and that "differences in economic circumstances are attributable to discrimination by Wisconsin." 768 F.3d at 752-753.

Regardless of whether the Seventh Circuit properly applied Section 2 in *Frank*, the largely undisputed facts in this case comport with the Seventh Circuit's standards. In contrast to the record developed in *Frank*, plaintiffs here produced evidence demonstrating that Texas makes it needlessly hard to get SB14 ID, that the burden of obtaining SB14 ID falls disproportionately on minorities, and that socioeconomic disparities are attributable to official discrimination. Op. *11-12; see *Veasey*, 71 F. Supp. 3d at 664-673. Indeed, the panel squarely addressed *Frank*, stating that the district court in this case "found both historical and contemporary examples of discrimination in both employment and education by the State of Texas, and it attributes SB14's disparate impact, in part, to those effects." Op. *10 n.17; see also *Veasey*, 71 F. Supp. 3d at 682 (addressing the Seventh Circuit's decision in *Frank*).

5. Having failed to establish any conflict between the panel decision and the decisions of the Supreme Court, this Court, or other appellate courts, Texas argues that the panel erred in applying the Senate Factors to assess whether SB14 causes a

discriminatory result. Pet. 9-10. But Section 2's text directs courts to look at the "totality of circumstances," 52 U.S.C. 10301(b), and *Gingles* makes clear that, in order to do so, courts should apply the Senate Factors. See 478 U.S. at 43-45. As such, numerous circuit courts examining Section 2 claims in analogous contexts have applied the Senate Factors to assess whether a law *causes* a prohibited result.[5]

6. Finally, Texas argues that the panel decision "threatens to invalidate a wide variety of legitimate voting laws" (Pet. 10) and raises "serious constitutional questions" (Pet. 12). Not so. The decision does not rest on "some disparity" and "nominal costs" (Pet. 12), but rather the specific ways in which SB14's features, including the onerous procedures for obtaining qualifying ID, act in concert with the vestiges of race discrimination to abridge minority voting rights. Op. *17.

Texas's constitutional avoidance argument rests on the mistaken premise that the panel dispensed with a showing of causation, based liability on a simple finding of a racial disparity in ID-possession rates, allowed liability based purely on socioeconomic disparities and historical discrimination, and effectively precluded States from taking steps to protect election integrity. But the panel

[5] See, *e.g.*, *Operation PUSH*, 932 F.2d at 405-406 (dual registration); *Ortiz* v. *City of Phila. Office of the City Comm'rs*, 28 F.3d 306, 308-310 (3d Cir. 1994) (voter-purge statute); *League of Women Voters*, 769 F.3d at 240-241 (same-day registration and out-of-precinct voting); *Ohio State Conf.*, 768 F.3d at 554-555 (early voting); *Gonzalez*, 677 F.3d at 405-406 (voter ID); *Johnson* v. *Governor of Fla.*, 405 F.3d 1214, 1227 n.26 (11th Cir. 2005) (stating courts in "vote denial" cases examine relevant factors); cf. *Frank*, 768 F.3d at 752 (voter ID) (finding the *Gingles* preconditions for vote dilution claims "unhelpful in voter-qualification cases" but neither endorsing nor rejecting the applicability of the Senate Factors).

decision did none of these things. In any event, "constitutional avoidance has no role to play" where, as here, a statute's text and history are clear and there is no plausible competing interpretation. *Warger* v. *Shauers*, 135 S. Ct. 521, 529 (2014).

B. Upon Vacating The District Court's Discriminatory Purpose Finding, The Panel Appropriately Remanded That Issue To The District Court

Nor does the panel's decision to remand to the district court for further consideration of discriminatory purpose warrant en banc review. See Op. *9, *17, *20-21. The panel's order applied the well-settled principle that district courts are responsible for factfinding. When an appellate court determines that a district court made "an error of law" in analyzing discriminatory purpose, the "proper course" is to direct the district court to reevaluate the evidence under the correct standard. *Pullman-Standard* v. *Swint*, 456 U.S. 273, 292-293 & 287 n.17 (1982).

The evidence does not permit "only one finding" (Pet. 13). Even applying "the standards elucidated" in the panel's opinion (Op. *9), a reasonable factfinder could conclude that SB14 was enacted at least in part to suppress minority voting.[6]

CONCLUSION

Appellants' petition for rehearing en banc should be denied.

Respectfully submitted,

[6] Ample evidence supports this conclusion, including SB14's passage in response to explosive minority population growth, its authors' inexplicable drafting choices that consistently burdened minority voters and benefitted Anglo voters, and that SB14 in fact disproportionately harms minority voters, giving rise to a strong inference that its adverse effects were intended.

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CERTIFICATE OF SERVICE

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

I further certify that on September 10, 2015, I served a copy of the foregoing OPPOSITION TO APPELLANTS' PETITION FOR REHEARING EN BANC on the following counsel by certified U.S. mail, postage prepaid:

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