

insufficient to support Plaintiffs' claims, that the same evidence could not later justify a ruling in Plaintiffs' favor. *Id.* at 1-3.

This Court, however, fails to recognize a discrepancy between the two decisions. In its Order dated April 14, 2009 this Court stated, in a footnote, that Plaintiffs had not provided the Court with sufficient evidence to determine whether their conclusory representation was accurate. That "conclusory representation" referenced in the footnote is presented in the main text of the order as the claim "that voters for the democratic nominee in the race for the 105th District State Representative Seat *were disproportionately affected* by Defendants' use of iVotronic."² (Docket Entry 42 (p. 8).) (emphasis added).

However, the appropriate standard for the three judge panel to determine, when presented with a claim under Section 5 of the Voting Rights Act, is not whether the voting change results in actual discrimination. Rather, as this Court indicated in its Order dated December 14, 2009, the Supreme Court has limited our inquiry "to whether the challenged alteration has the *potential* for discrimination." *NAACP v. Hampton County Election Comm'n*, 470 U.S. 166, 181 (1985) (emphasis in original). The three judge panel's conclusion that Plaintiffs submitted sufficient evidence to sustain this claim is in no way at odds with a statement in dicta which pointed out the insufficiency

²It should also be noted that both the footnote and the quoted text it refers to are located in a discussion regarding the issue of standing, and are not addressed in the section that discusses Section 5 of the Voting Rights Act. Additionally, as the April 17 Order rightly concluded that the Motion for Summary Judgment regarding the Section 5 claim "must be heard and decided separately by a three-judge court," any statements in that first order concerning the evidentiary sufficiency of the Section 5 claim must be considered dicta. (Docket Entry 42 (p. 13).)

of the evidence to prove that discrimination had occurred.³

Therefore, after reviewing the Court's previous orders and Defendants' arguments, the Court is not persuaded that reconsideration is appropriate. Accordingly, Defendants' Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

Signed this 8th day of September, 2010.

s/Edward C. Prado
EDWARD C. PRADO
UNITED STATES CIRCUIT JUDGE

s/Reed O'Connor
REED O'CONNOR
UNITED STATES DISTRICT JUDGE

s/Jorge A. Solis
JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

³In fact, the panel made clear that it was "not concluding that Dallas County's use of the iVotronic machines actually discriminates." (Docket Entry 45 (p. 9).)